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

[2025] SGHC 80

Suit No 848 of 2021

Between

Rita Kishinchand Bhojwani

… *Plaintiff*

And

(1) HVS Properties Pte Ltd
(2) Maya Kishinchand @ Bhojwani Maya Kishinchand
(3) Win Phyu Shwe

… *Defendants*

GROUNDS OF DECISION

[Equity — Estoppel — Proprietary estoppel]
[Land — Licences — Contractual licences]
[Civil Procedure — No case to answer]
[Civil Procedure — Witnesses — Calling defendant as witness for the plaintiff]
[Evidence — Witnesses — Examination — Recantation of concessions made under cross-examination]

CONTENTS

Rita Kishinchand Bhojwani
v
HVS Properties Pte Ltd and others

[2025] SGHC 80

General Division of the High Court — Suit No 848 of 2021
Christopher Tan JC
30, 31 January, 1, 2, 8, 9, 13–15 February, 2–5 April 2024, 28 January 2025

28 April 2025

Christopher Tan JC:

Introduction

1 The plaintiff in this action ("the Plaintiff") is the daughter of the second defendant ("D2"). D2 had two children with her husband, Kishinchand Tiloomal Bhojwani ("KTB"), being the Plaintiff and her older brother, Sunil Kishinchand Bhojwani ("Sunil"). The first defendant is a family company ("the Company") that was controlled by KTB. Both D2 and the third defendant, who is also known as Cindy, were the directors of the Company at the material time. The term "Defendants" is used in this judgment to refer collectively to the Company, D2 and Cindy.

2 One of the assets owned by the Company is an apartment in a condominium development called "Seafront on Meyer" ("the Apartment"). While the Plaintiff was not the legal owner of the Apartment, she stayed there

with D2 and KTB for many years. However, on 25 August 2021, the Plaintiff was evicted from the Apartment pursuant to two board resolutions of the Company signed by D2 and Cindy in their capacity as the Company's directors. The Plaintiff's case was that it was Sunil who orchestrated the eviction,[1] as he wielded significant influence over their mother[2] and was regarded by Cindy (whom the Plaintiff claimed had been appointed by Sunil to the Company's board[3]) as the "boss".[4] As at the time of the eviction, D2 was 87 years of age, while KTB was 93.

3 Aggrieved, the Plaintiff brought the present suit against the Defendants, claiming that she had a right to remain in the Apartment. By this action, the Plaintiff sought various remedies, including an injunction to restore her to possession of the Apartment and restrain any further breaches of her right to stay there. She also sought damages for the tort of conspiracy and for dishonest assistance. The Plaintiff did not bring Sunil into this action as a defendant. KTB, who had already lost his mental capacity by the start of trial for this suit, was also not a party to the action.

4 On 28 January 2025, I dismissed the Plaintiff's claim in its entirety and gave oral reasons. I now give detailed reasons explaining my decision.

Background

5 The Company was incorporated in Singapore by KTB, sometime in

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1 Statement of Claim (Amendment No. 1) ("SoC") at para 53.

2 Reply to First Defendant ("D1") at para 16(c).

3 Plaintiff's AEIC at para 12.

4 Reply to the Third Defendant ("D3") at para 5(b); Plaintiff's AEIC at para 12.

1968.[5] From the point of the Company's inception, D2 served as a director, stepping down only on 8 March 2019. On or about 13 August 2021, being a little over a week prior to the signing of the board resolutions evicting the Plaintiff, D2 was re-instated as a director of the Company.[6] The other director of the Company, Cindy, held the position of director since 28 November 2019.

6 The Company has two million issued shares.[7] In 1984, 30,000 of these shares were transferred to the Plaintiff and, in 1994, a further 50,000 shares were transferred to her, bringing her total shareholdings at the time to 80,000. In 2013, the Plaintiff transferred these shares back to KTB. Sometime in 2019, D2 stepped down as director and both D2 and KTB transferred all two million shares in the Company to Sunil.[8] In December of that same year, Sunil transferred the shares to an entity known as Kensington Trust Singapore Limited,[9] which administers a trust that parties referred to as the "Kensington Trust" and which presently still holds all the shares in the Company. According to the trustees of the Kensington Trust, the beneficiaries of the trust are Sunil's wife and a charity known as the Desmoid Foundation.[10]

7 In 1985, the Plaintiff married her husband, Kirpalani Deepak Govindran. They have one child, Karan Deepak Kirpalani ("Karan"). Sometime in 1994, after about a decade of marriage, the Plaintiff and her son Karan moved to her parents' home at the time, at 6 Peach Garden, Singapore ("the Peach Garden

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5 SoC at para 2; D1's Defence (Amendment No. 1) at para 4.

6 Agreed Bundle of Documents ("AB") Vol 12 at p 5167.

7 Transcripts for 2 February 2024 at p 87 (lines 23–26).

8 Transcripts for 4 April 2024 at p 144 (lines 15–27); AB Vol 9 at pp 4020–4022

9 AB Vol 9 at p 4023.

10 Email from the trustees exhibited in AB Vol 11 at p 5010.

Property").[11] In 2006, the Plaintiff commenced proceedings against her husband by way of summons MSS 1791/2006, in which she sought maintenance from him. Despite the matrimonial disputes, the Plaintiff and her husband remain married to this day, while living apart.

8 In 2007, the Company purchased the Apartment. Three years later, in 2010, the Plaintiff and her parents moved into the Apartment,[12] where she resided until her eviction. Upon moving to the Apartment in 2010, D2 had signed a tenancy agreement with the Company (which was the legal owner of the Apartment),[13] under which D2 would pay a monthly rent of S$6,000 to the Company. D2 also tendered copies of subsequent tenancy agreements signed between D2 and the Company to show that the tenancy was renewed successively every two or three years, up to the point of the Plaintiff's eviction.

9 The dynamics between the family members in this case were atypical, in that they often resorted to litigation to resolve their differences. By way of example, KTB was involved in the following disputes with his children:

(a) In 2003, the Company (at KTB's behest) commenced HC/S 1212/2003 against Sunil in relation to a property at Ardmore Park belonging to the Company and which Sunil was staying in. The Company sought (amongst other remedies) possession of the Ardmore Park property and payment of rent.[14] The action was discontinued the following year, in October 2004.

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11 Plaintiff's AEIC at para 19.

12 SoC at para 10(b).

13 Exhibited in the Second Defendant ("D2")'s AEIC at p 78.

14 See the Company's written submissions in HC/S 1212/2003, exhibited in AB Vol 1 at pp 182–206. See also Reply to D2's Defence at para 8(c)(v)(2).

(b) Sometime in January 2014, the Plaintiff took out a mortgage over a property at 201 Tanjong Rhu Road #06-04 ("the Parkshore Property"), which was held in the Plaintiff's name. The mortgage was to secure a credit facility extended to Karan's company, Specialist Cars Pte Ltd ("Specialist Cars"). KTB objected to the mortgage, claiming that the Parkshore Property was held on trust for him by the Plaintiff, who consequently had no right to encumber it to finance her son's business. KTB had thus commenced HC/S 186/2014 against the Plaintiff, Karan and Specialist Cars.[15] This action was settled in March 2014[16] by way of a settlement agreement[17] where the Plaintiff undertook (among other things) not to incur further liabilities against the Parkshore Property.[18]

10 The Plaintiff was also embroiled in various legal disputes with Sunil – these formed the backdrop to the eviction in this suit:

(a) On 2 March 2021, the Plaintiff filed an originating summons[19] in the Family Justice Courts to appoint herself as deputy for KTB ("the Deputyship Application"). Unbeknownst to her, Sunil had already been granted a Lasting Power of Attorney ("LPA") by KTB to manage the latter's affairs. Both Sunil and D2 resisted the Deputyship Application.

(b) On 10 March 2021, the Plaintiff filed an application seeking a personal protection order ("PPO") against Sunil ("the PPO

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15 See the Statement of Claim for HC/S 186/2014, exhibited in AB Vol 2 at pp 733–745.

16 Karan's AEIC at para 46.

17 Exhibited in AB Vol 2 at pp 748–754

18 See cl 2.2 of the settlement agreement, exhibited in AB Vol 2 at p 750.

19 I have omitted the case number of the proceedings, the records of which have been redacted.

Proceedings"), alleging that he had committed family violence against her during an incident on 23 January 2021.[20] D2 filed an affidavit in support of Sunil, attesting that he did not hurt the Plaintiff at all.[21]

(c) On 14 May 2021, the Plaintiff filed an originating summons[22] in the Family Justice Courts to set aside the LPA that had been granted by KTB to Sunil ("the LPA Challenge"). The Plaintiff's case in the LPA Challenge was that KTB executed the LPA while under undue pressure from Sunil, or alternatively that KTB lacked mental capacity to execute the LPA. D2 applied to intervene in the LPA Challenge. D2 intervened in support of Sunil's position in the proceedings.[23] Pending resolution of the LPA Challenge, the Deputyship Application was stayed.

As seen from the list above, D2 consistently took the side of her son in the legal proceedings that her daughter commenced against him.

11 Amidst the courtroom tussles detailed in the preceding paragraph, the eviction happened. The PPO Proceedings had been fixed for trial over two days, on 25 and 26 August 2021. Two days before the trial, *ie*, on 23 August 2021, both D2 and Cindy (in their capacities as directors of the Company) passed the following two board resolutions ("the Board Resolutions") to evict the Plaintiff from the Apartment:

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20 Plaintiff's 1st affidavit filed in the PPO Proceedings, exhibited in AB Vol 6 at pp 2251–2295, at paras 10–24.

21 D2's 1st affidavit filed in the PPO Proceedings, exhibited in AB Vol 6 at pp 2364–2368, at para 8.

22 Exhibited in Plaintiff's AEIC at pp 192–193.

23 Letter from D2's lawyers to the court, exhibited in p 266–271 of D2's AEIC, at para 3(5).

(a) The first resolution limited the occupants of the Apartment to KTB, D2 and the three helpers.[24]

(b) The second resolution (among other things) barred the Plaintiff from dwelling in the Apartment with immediate effect and authorised the Company's lawyers to deal with the eviction.[25]

According to the Plaintiff, KTB's loss of mental capacity had already ensued by this point.[26]

12 On the evening of 25 August, *ie*, at the end of the first day of trial of the PPO Proceedings, the Plaintiff returned to the Apartment only to find herself blocked from entry. The condominium's security guard had been engaged by the Company to record the incident and prevent her from entering the Apartment. A lawyer representing the Company was also present. Most of the Plaintiff's belongings from within the Apartment had been packed into boxes and lined along the corridor outside the Apartment. As the Plaintiff was not able to cart these boxes away at short notice, the Company subsequently arranged for the boxes to be moved to a warehouse where she could retrieve them later.

13 Following the eviction, the legal proceedings commenced by the Plaintiff were successively concluded as follows:

(a) On the second day of the trial of the PPO Proceedings, *ie*, 26 August 2021 (being the day after the eviction), the hearing did not

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[24] Exhibited in AB Vol 8 at 3402–3403.

[25] Exhibited in AB Vol 8 at 3399–3400.

[26] Plaintiff's Affidavit of Evidence-in-Chief ("AEIC") at para 56; Plaintiff's Reply Submissions at para 44.

proceed. Instead, the trial was postponed to October 2021. However, that subsequent tranche of the trial ultimately did not proceed as the Plaintiff withdrew the PPO Proceedings (with no order as to costs).

(b) In March 2022, the LPA Challenge was dismissed by the Family Court. The Plaintiff's appeal against the dismissal was dismissed by the High Court in December 2022. The Plaintiff's application for leave to appeal against the High Court's decision was also dismissed, with costs.

(c) In March 2023, the Plaintiff filed a summons within the Deputyship Application seeking the court's leave to amend the reliefs sought. This was dismissed. Consequently, in June 2023, the Plaintiff withdrew the Deputyship Application, with the court ordering her to pay costs to Sunil.

Parties' cases in the present action

14 I now set out the parties' respective cases in this trial.

Plaintiff's case

15 The recurring theme running through the Plaintiff's case was that Sunil had procured D2 and Cindy to act against her. Apart from engineering the eviction, the Plaintiff contended that Sunil also manipulated D2 into taking his side and opposing the Plaintiff in the legal proceedings described above.

16 As regards the eviction, the Plaintiff claimed that her removal was unlawful because she had a right to remain in the Apartment. That right arose from an "express and/or implied arrangement or understanding" between the Plaintiff, her parents and the Company ("Arrangement / Understanding"), under which the Plaintiff and her parents would be allowed to stay in the Apartment

without paying any rent to the Company.[27] Undergirding the Plaintiff's case was her claim that a representation had made sometime in or around 2010, after she and her parents moved to the Apartment.[28] As explained below, the contents of that representation and the circumstances under which it was made, as well as how that representation gave rise to the Arrangement / Understanding, were unclear.

17 The Plaintiff claimed that in reliance on the representation, she carried out the following acts to her detriment:

(a) She attended to the personal welfare of KTB and D2[29] on matters such as medical care and household affairs.[30] In particular, she claimed to have served as her parents' "primary caregiver",[31] bringing them for their medical appointments and driving them everywhere.[32]

(b) She spent her time, effort and resources handling the administrative matters relating to the Apartment, including:[33]

(i) renovation, rectification and furnishings; and

(ii) regular communications with the management corporation of the condominium development ("MCST") in which the Apartment was located.

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27 SoC at para 10(b).

28 Plaintiff's further and better particulars ("F&BP") dated 14 January 2022 at para 2(1)(b).

29 SoC at para 10(c)(ii); Plaintiff's Closing Submissions at para 93(ii).

30 Plaintiff's F&BP dated 14 January 2022 at para 3(5)(a); Karan's AEIC at paras 14–15.

31 SoC at para 11(b).

32 Transcripts for 31 January 2024 at p 70 (lines 5–9).

33 SoC at para 10(c)(i); Plaintiff's Closing Submissions at para 93(i).

18 The Plaintiff also claimed that the resources which she invested into taking care of her parents and tending to the Apartment required her to forgo "meaningful, paid employment",[34] with the result that she sacrificed her financial independence.[35]

19 During the trial, the Plaintiff also alleged that her reliance on the representation led her to incur various other categories of detriment that were not pleaded by her in the Statement of Claim (Amendment No. 1) ("SoC"):

(a) Firstly, she claimed that she had allowed a term loan of S$1m to be taken out against the Parkshore Property (referred to at [9(b)] above), with the loan monies being deployed for the Company's operations. The Parkshore Property was then tenanted out to generate rental income that was used to service the loan. The Plaintiff claimed that she did not object to this arrangement, notwithstanding that it would prevent her from residing in the Parkshore Property, as she took comfort in the fact that she could (by virtue of the Arrangement / Understanding) reside in the Apartment.[36]

(b) Secondly, the Plaintiff claimed that a unit in a condominium development called "The Sovereign" ("the Sovereign unit") had been purchased under her name in 1998 and was meant to be her matrimonial home. She claimed that she had allowed the Sovereign unit to be sold to the Company in 2007, below market prices, on the faith that she could stay in the Apartment (by virtue of the Arrangement / Understanding). Had she known that she could be evicted at any time, she would have

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34 SoC at para 11(b); Plaintiff's F&BP dated 14 January 2022 at para 5(4).

35 Plaintiff's Closing Submissions at para 93(iii).

36 Plaintiff's Closing Submissions at para 96.

kept the Sovereign unit.[37] She also claimed that she refrained from using her share of the proceeds from the sale of the Sovereign unit to buy a new residence for herself, given the impression that she could continue staying in the Apartment.[38]

20 The Plaintiff claimed that given the above instances of detriment suffered by her, it would now be unconscionable for the Company to renege on the representation and the Arrangement / Understanding.[39] Specifically, the Plaintiff contended that an irrevocable *equitable interest* in the Apartment had arisen in her favour, founded on proprietary estoppel or on a license coupled with equity, allowing her to reside in the Apartment for the rest of her life, rent-free.[40]

21 Apart from the claim in equity, the Plaintiff also claimed that she had an irrevocable *contractual licence* to stay in the Apartment.[41] According to the Plaintiff, the consideration for the contract underpinning the licence comprised the very same acts of detriment which she claimed to have performed in reliance on the representation underlying her claim in equity.[42]

22 The Plaintiff further claimed that she had a *bare* licence to remain in the Apartment which could not be revoked without reasonable notice,[43] although this was also not pleaded by her in the SoC.

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37 Plaintiff's Closing Submissions at para 97.

38 Plaintiff's Closing Submissions at para 98.

39 SoC at para 11(c).

40 SoC at para 12; Plaintiff's Closing Submissions at para 38(i).

41 SoC at para 13; [41]Plaintiff's Closing Submissions at paras 38(ii) and 121.

42 SoC at para 13.

43 Plaintiff's Closing Submissions at para 38(iii).

23 Finally, the Plaintiff claimed that notwithstanding the transfer of the 80,000 shares back to KTB in 2013 (see [6] above), she retained a beneficial interest in these shares.[44] In particular, she took the position that it was *KTB* who was the bare trustee, holding the shares on trust for her.[45] The Plaintiff contended that her beneficial ownership of shares in the Company conferred upon her an interest in the Apartment, being an asset that was owned by the Company.[46]

24 Following from the Plaintiff's position that she had an equitable and contractual right to stay in the Apartment, she contended that the decision to evict her was wrongful. This in turn formed the basis for two additional claims brought by the Plaintiff.

25 The first additional claim was for *conspiracy*. The Plaintiff claimed that the Defendants had conspired to injure her, by both unlawful and lawful means. In particular, the Plaintiff alleged that Sunil had procured D2 and Cindy to sign the Board Resolutions evicting the Plaintiff,[47] in violation of her equitable and contractual right to stay in the Apartment. The Plaintiff contended that the Defendants' actions were "unlawful, fraudulent and dishonest"[48] and carried out with the predominant intention of injuring her.[49]

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44 SoC at para 7; Plaintiff's F&BP dated 24 May 2022 at paras 2.1 & 3.1; Plaintiff's AEIC at para 18.

45 Reply to D2's Defence at para 6(e).

46 Transcripts for 31 January 2024 at p 32 (lines 16–23) and 2 February 2024 at p 85 (lines 1–6).

47 SoC at para 21.

48 SoC at para 47(b).

49 SoC at para 49.

26 The Plaintiff's second additional claim was for *dishonest assistance*. She alleged that D2 and Cindy had dishonestly assisted the Company to commit an unlawful act, being the violation of the Plaintiff's right to stay in the Apartment, by improperly passing the Board Resolutions in breach of their duties as directors of the Company.[50] The Plaintiff claimed that in procuring the Company to effect the unlawful eviction, D2 and Cindy had acted wrongfully or fraudulently.[51]

27 The Plaintiff thus sought the following reliefs:

(a) An injunction restoring her to possession of the Apartment and thereafter restraining further breaches of her right to reside in the Apartment.[52]

(b) Special damages,[53] which included the expenses of finding alternative accommodation in a hotel.[54]

(c) Aggravated damages,[53] arising in part from the injury to the Plaintiff's dignity and feelings, as well as the fear she had been put through.[55] In particular, she took issue with the manner in which she was evicted from the Apartment:

(i) No reasonable notice was given to her prior to the

50 SoC at paras 52–53.

51 SoC at paras 52–54.

52 SoC at para 55(iv).

53 SoC at para 55(v).

54 SoC at para 25(a), Plaintiff's Closing Submissions at paras 252–253.

55 SoC at para 25.

eviction.[56]

(ii) The eviction was effected at the end of the first day of trial in the PPO Proceedings (see [12] above), with the result that the Plaintiff was unable to attend trial the next day.

(iii) The eviction took place when there were still restrictions during the COVID season, during which looking for alternative accommodation was difficult.[57]

(iv) The security guard engaged by the Company was recording the entire incident on the evening of the eviction.[58]

(v) The Plaintiff's belongings had been packed haphazardly in boxes and left outside the Apartment,[59] making it difficult for her to identify if all her belongings had been properly packed.[60]

28 The Plaintiff also sought various remedies premised on the tort of conversion, in relation to those of her belongings that were unaccounted for immediately following the eviction. However, the Plaintiff withdrew her claim for these remedies during the trial, after the Defendants arranged for the Plaintiff to collect the remainder of her belongings.

Defendants' case

29 The Defendants alleged that the eviction on 25 August 2021 was fully

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56 SoC at para 22.

57 Plaintiff's Closing Submissions at para 244.

58 SoC at para 47(a)(i); Plaintiff's Closing Submissions at para 239.

59 SoC at paras 19(e) and 25(c); Plaintiff's Closing Submissions at para 240.

60 SoC at para 26.

justified by the Plaintiff's unreasonable conduct.

30 It was the Defendants' case that the Plaintiff's behaviour stemmed from the decision by KTB and D2 to bequeath all their properties to Sunil.[61] D2 contended that the Plaintiff had surreptitiously filed the Deputyship Application and the LPA Challenge to wrest control of KTB's property.[62] D2 also claimed that the Plaintiff grew "increasingly unpredictable and aggressive" after commencing the Deputyship Application and the LPA Challenge, both of which D2 opposed.[63] The Plaintiff's behaviour included the following:[64]

(a) yelling at D2 and reducing her to tears;

(b) getting D2 to sign documents to support the Plaintiff's litigation, without telling D2 what these documents were;

(c) taking videos of KTB as he went about his daily activities in the Apartment, as well as of conversations between D2 and Sunil;

(d) intimidating the helpers to the point that one of them lodged a complaint with the Ministry of Manpower;

(e) breaking open the Apartment's letterbox and changing its lock; and

(f) allowing Karan to enter the Apartment during the COVID period despite him having just touched down from overseas, in disregard of

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61 D1/D3's Closing Submissions at paras 5 and 181; D2's Closing Submissions at para 10(3).

62 D2's Reply Submissions at para 67.

63 D2's Defence at para 22(2).

64 D2's Defence at para 22(2).

quarantine requirements and thereby putting the health of both D2 and KTB (who were in the vulnerable age group) at risk.[65]

31 D2 maintained that she was the legal occupier of the Apartment, as evidenced by the tenancy agreements (referred to at [8] above) which she signed with the Company,[66] and thus had the right to ask the Plaintiff to leave the Apartment.

32 The Defendants rejected the Plaintiff's claim that she was allowed to stay in the Apartment indefinitely, by virtue of the Arrangement / Understanding. Their case was that KTB and D2 allowed their daughter to live with them out of goodwill and kindness as she had just separated from her husband.[67] They denied the existence of the Arrangement / Understanding,[68] maintaining that the Plaintiff had no basis to expect that she could lodge herself under her parents' roof indefinitely.[69] The Defendants further contended that *even* if the Arrangement / Understanding existed, there was no basis for the Plaintiff to claim that she had acted on it to her detriment such that an estoppel could be said to have arisen in her favour. Similarly, the Defendants rejected the Plaintiff's claim that she had a contractual licence to stay in the Apartment. As for the Plaintiff's purported reliance on a bare licence, the Defendants contended that this was never alluded to in the Plaintiff's pleadings and she should consequently not be allowed to raise it at trial.[70]

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65 D1/D3's Closing Submissions at para 176.

66 D2's Defence at para 10(1)(a)(ii).

67 D2's Defence at paras 8 and 9(3); D1's Defence (Amendment No. 1) at para 17.2.

68 D1's Defence (Amendment No. 1) at para 17.1; D2's Defence at para 12.

69 D2's Defence at para 10(3)(c).

70 D2's Closing Submissions at paras 15–17; D1/D3's Reply Submissions at para 19.

33 The Defendants also rebuffed the Plaintiff's claim to beneficial ownership of 80,000 shares in the Company. They maintained that the Plaintiff had always been a mere nominee shareholder, with beneficial ownership in the shares residing with KTB all along.[71]

34 As regards the events leading to the eviction, D2's pleaded defence stated that prior to the eviction, she had (a) *orally* asked the Plaintiff to vacate the Apartment;[72] and (b) sent *written letters* through her lawyers, on 26 March and 6 August 2021, asking the Plaintiff to vacate.[73] However, these notices to vacate were ignored by the Plaintiff.

35 Finally, the Defendants denied that they acted in concert with Sunil to remove the Plaintiff from the Apartment.[74]

Significant procedural developments at trial

36 It is fair to say that this trial had more than its fair share of procedural twists and turns. The following is a list of the developments which ultimately came to have a profound bearing on the trial's substantive outcome.

(a) The Plaintiff made a series of highly material concessions while under cross-examination by D2's lawyer, Mr Daniel, on 1 February 2024. She then sought to recant these concessions the very next day, under highly contentious circumstances.

(b) The Plaintiff had initially scheduled only two witnesses to testify

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71 D1's Defence (Amendment No. 1) at paras 8.2 & 9.1.

72 D2's Defence at para 22(2).

73 D2's Defence at para 22(3).

74 D1's Defence (Amendment No. 1) at para 36.2.

on her behalf: the Plaintiff and her son Karan. However, after both had completed their respective testimonies, the Plaintiff's lawyer, Mr Premaratne, sought confirmation as to whether the Defendants would be making a submission of no case to answer. When the Defendants' lawyers refused to commit to whether they were going to do so, the Plaintiff decided against closing her case and instead issued a subpoena for D2 to attend as a witness *for the Plaintiff*. Initially, Mr Daniel had strenuously resisted the subpoena. However, he eventually capitulated and offered D2 to the Plaintiff as a witness.

(c) After D2 had given oral testimony, the Plaintiff closed her case. The Defendants then proceeded to make a submission of no case to answer.

37 It is necessary to set these procedural developments out in some detail, as they formed a critical part of the backdrop against which the findings on substantive issues were arrived at.

Material concessions by the Plaintiff and her subsequent recantation of these concessions

38 On 1 February 2024 (the third day of trial), the Plaintiff was cross-examined by D2's lawyer, Mr Daniel. Over the course of that day's cross-examination, the Plaintiff made a series of highly material concessions – it is fair to say that these caused significant damage to her case. That very evening, after the end of the hearing, the Plaintiff met with her lawyer, Mr Premaratne. The next morning (*ie*, 2 February 2024), when cross-examination by Mr Daniel resumed, the Plaintiff recanted all the concessions she had made the day before.

39 The following paragraphs set out the concessions made by the Plaintiff,

as well as the controversial circumstances under which they were recanted.

Concessions impacting on the Plaintiff's claim to having a right to stay in the Apartment

40 The first set of concessions by the Plaintiff during her cross-examination on 1 February 2024 impacted on her claim that she had a right to stay in the Apartment. To recapitulate, the Plaintiff asserted that she had (among other rights):

(a) an *equitable* interest in the Apartment, stemming from the Arrangement / Understanding that the Plaintiff had relied on to her detriment and which gave rise to a proprietary estoppel; and

(b) a *contractual* licence to stay in the Apartment.

41 As regards the Plaintiff's equitable claim, sub-paragraphs 10(b), 10(c), 11(b) and 11(c) of the SoC encapsulated her claim as to how a proprietary estoppel arose. These sub-paragraphs, reproduced below for ease of reference, listed various acts which the Plaintiff claimed to have performed to her detriment, in reliance on the Arrangement / Understanding:

> 10. The Plaintiff avers that:
> …
> (b). After moving to the [Apartment] in 2010, there was an express and/or implied arrangement or understanding between the [Company] and the Family Members [defined to mean three persons: KTB, D2 and the Plaintiff] that they would remain in the [Apartment] without paying any rent to the [Company] (the 'Arrangement / Understanding').
> (c). Upon the reliance of the Arrangement / Understanding, the Plaintiff had, before she was wrongfully evicted …:
> (i) spent a considerable amount of time, effort and resources handling matters relating to the

> [Apartment], including rectification and renovation work, furnishing of the [Apartment] and regular communication with the Management Corporation ….
>
> (ii) assisted and attended to all aspects of personal welfare and well-being of [KTB] and [D2] (such as household and medical care).
>
> 11. Further and/or in the alternative, the Plaintiff avers that the [Company] is estopped from claiming that the Plaintiff has no interest in the [Apartment] and/or no right to stay in the [Apartment], by reason of an express representation and/or promise and/or conduct of [KTB] made to the Plaintiff, with the intention that the Plaintiff should act on such representation and/or promise and/or conduct, which the Plaintiff did in fact do.
>
> Particulars
>
> …
>
> (b). The Plaintiff has suffered detriment as she continued
>
> (1) to invest time and effort in managing matters relating to the [Apartment] and
>
> (2) to be the primary caregiver for KTB and [D2] after moving into the [Apartment] instead of seeking meaningful, paid employment.
>
> This has impacted the Plaintiff's ability to have sufficient financial independence to purchase her own accommodation after the wrongful eviction.
>
> (c). The Plaintiff avers that it is unconscionable in the circumstances for the [Company] to allegedly exercise its legal rights and renege on the express representation and/or promise of [KTB] made to the Plaintiff and the Arrangement /Understanding.
>
> [emphasis in original omitted]

Paragraph 12 of the SoC stated that in the alternative, a license coupled with an equity had arisen:

> 12. In the alternative, the Plaintiff avers that there is a license coupled with equity between the Plaintiff and the [Company] that allows her to reside and occupy the [Apartment] during her life or as long as she desires without the requirement to pay any rent to the [Company]. This is a continuation of the

> agreement / understanding that existed when the Family Members resided at the Peach Garden Property.

42 As regards the Plaintiff's contractual claim, this was housed in paragraph 13 of the SoC, which stated that the acts of detriment in paragraphs 10(c) and 11(b) of the SoC, as extracted above, *also* constituted consideration which supported an irrevocable contractual licence:

> 13. In the alternative, the Plaintiff avers that there is an irrevocable contractual license for which she had given consideration as set out at paragraphs 10(c) and 11(b).

43 I begin with the Plaintiff's concessions that impacted on her *equitable* claim. During cross-examination, the Plaintiff declared that she had taken care of her parents and tended to the household affairs *out of love*.[75] Mr Daniel had then challenged this declaration of filial piety, pointing out that paragraph 11 of the SoC stated that the Plaintiff's actions were undertaken in *reliance* on a representation made to her, with no mention of love and affection in the relevant sections of her pleadings.[76] This spawned a series of responses from the Plaintiff in which she insisted that her acts were performed out of love *and nothing else*. In doing so, the Plaintiff effectively *conceded* that the alleged acts of detriment were not performed in reliance on any representation made:[77]

> Q: So what you want to say, can we agree, Ms Bhojwani, is that *you did it for love and affection for your parents, nothing else*?
>
> A: That---that---that is *absolutely true*.
>
> …
>
> Q: Can we agree … that given that your position is you did all of these for love and affection … *not for reward, not because anyone promised you anything*---

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75 Transcripts for 1 February 2024 at pp 150 (lines 19–25) & 151 (lines 10–17).

76 Transcripts for 1 February 2024 at pp 157 (line 22) – 158 (line 13).

77 Transcripts for 1 February 2024 at pp 159 (line 1) – 161 (line 16).

A: *Yes.*

[emphasis added]

The Plaintiff also confirmed that her actions were performed *regardless* of any promise that her parents may have made to her and that she was *not relying* on what they had told her:[78]

Q: Here, I'm asking you, why did you do these things for your parents?

A: Because I love them and that is the main thing.

Q: Right. And *you would have done that anyway … regardless of any promise … they have made to you.*

A: *Yes.*

Q: *… So it wasn't in reliance on any promise or representation that anybody made to you.*

A: Yes. But … they happened to tell me also at the same time, they wanted to do everything and---that's that. … But I can't help … just stating that that is what they have said … *but I am not … relying on that.* I'm … *not relying on that.* And this is what … they have told me. *They wish to do everything for me and everything that I should be comfortable always, as far as possible, always. And they have also said so much to me in so many ways, in so many examples. But I never thought of all that.* My only---my main thing was: This is out of my love. Whatever they do for me … is so nice.

Q: Entirely up to them, correct?

A: Absolutely.

[emphasis added]

44 The Plaintiff explained that the relevant paragraphs of the SoC failed to reflect her position as it was her lawyer who had phrased her pleadings in a manner that couched her acts of love as acts of reliance instead. She went along with the phraseology as she thought that this manner of drafting was dictated by

[78] Transcripts for 1 February 2024 at pp 163 (line 22) – 164 (line 20).

law.[79] In truth, however, she felt "so uncomfortable" when reading her own pleadings, to the point that she had remarked to herself: "I don't like this".[80] This line of cross-examination then culminated with the Plaintiff *disavowing* those paragraphs of the SoC setting out her equitable claim:[81]

> Q: Can we agree, that therefore, you are saying that you don't adopt what is at paragraph 10, 11 and 12 now? … That you did all of this only because you were promised, represented to?
>
> A: I---yes.

45 Next, the Plaintiff made significant concessions impacting on her claim to there being a *contractual* licence for her to stay in the Apartment. During cross-examination on this claim, she reiterated that her acts were performed out of love and affection and not pursuant to a commercial bargain:[82]

> Q: … Your parents were providing a home, a roof over your head for a long time, for your son as well, out of love and affection.
>
> A: Yes.
>
> Q: You were also taking care of them, doing stuff at home out of love and affection. It was not a commercial bargain, correct?
>
> A No. Correct.

The Plaintiff was then referred to paragraph 13 of the SoC, in which she stated that the acts of detriment which she had pleaded in support of her estoppel claim also constituted *consideration* for the contractual licence. Upon having her attention drawn to this paragraph, the Plaintiff emphatically disavowed its

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79 Transcripts for 1 February 2024 at pp 159 (lines 5–6) & 163 (lines 2–4)

80 Transcripts for 1 February 2024 at pp 164 (line 30) – 165 (line 8).

81 Transcripts for 1 February 2024 at p 165 (lines 13–17).

82 Transcripts for 1 February 2024 at p 167 (lines 11–16).

contents:[83]

> Q: … Now look at paragraph 13. This is probably the most offensive part of your pleading. 'In the alternative, the plaintiff avers that there is an irrevocable contractual licence for which she had given consideration, set out paragraphs 10(c) and 11(b)…' 10(c) being all those things you say you did; 11(b) saying all the things that you did; and that you can't work. What you are saying here is that you have paid … You have paid for this right or interest that you claim in the [Apartment], and/or the right to stay. That's not your intention, right?
>
> A: Totally not. Absolutely not. … It is completely wrong. … Please take note of this. 110%.
>
> Q: Thank you. So you are prepared to withdraw this as well?
>
> A: Yes, of course.

Concessions impacting on the conspiracy claim

46 The next set of concessions made by the Plaintiff during the cross-examination on 1 February 2024 impacted on her claim for the tort of conspiracy. For ease of reference, I set out the salient paragraphs of the SoC on this claim:

> 47 … on dates unknown to [the Plaintiff], the [Company], [D2] and [Cindy] (whether any two or more together with [Sunil] had conspired and combined together wrongfully and with the intent to injure the Plaintiff and/or to cause loss to the Plaintiff by lawful and unlawful means, as particularized below (the 'Conspiracy'). …
>
> Particulars
>
> (a) There was an agreement between the [Company], [D2] and [Cindy] (whether any two or more together with [Sunil]) to punish the Plaintiff by inflicting maximum harm and embarrassment and to gain an unfair advantage in the ongoing legal proceedings. …
>
> …
>
> (b) The acts of the [Company], [D2] and [Cindy] were

[83] Transcripts for 1 February 2024 at p 167 (lines 17–32).

> unlawful, fraudulent and dishonest …
>
> …
>
> 48 Pursuant to the said conspiracy, the [Company], [D2] and/or [Cindy] had carried out wrongful and improper acts, including the acts at paragraph 47 above.
>
> 49 Further and/or in the alternative, the Plaintiff avers that the said conduct was nevertheless carried out with the predominant intention of injuring the Plaintiff and/or of causing loss to the Plaintiff. The Defendants' said intention was wholly unreasonable and unjustified.
>
> 50 By reason of the aforesaid matters, the Plaintiff has suffered loss and damage, including consequential damage. The Defendants knew and/or must have known that the Conspiracy would cause loss to the Plaintiff in such a manner.
>
> [emphasis in original omitted]

As can be seen from the extract, the Plaintiff's pleaded case accused various parties of conspiring with Sunil – these included D2, Cindy and the Company.

47 During cross-examination on 1 February 2024, the Plaintiff made a series of concessions in which she specifically sought to absolve *D2* from involvement in the conspiracy. In particular, the Plaintiff conceded that she had *no basis* for the allegation in paragraph 47(a) of the SoC that D2 intended to punish the Plaintiff by inflicting maximum harm and embarrassment:[84]

> Q: So you are saying that it is possible that your mother wanted to punish you by inflicting maximum harm and embarrassment to gain an … unfair advantage in the ongoing legal proceedings being the PPO application. You are saying it's possible.
>
> A: I don't know. Because she lives---because anything my brother says, she just … okays it. I don't understand. I need to understand from her … personally.
>
> Q: These are serious allegations … made in any context … let alone in a context of your mother, who's 90 years old this year …, who's fairly infirm …

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[84] Transcripts for 1 February 2024 at pp 176 (line 6) – 177 (line 1).

A: Totally agreed.

Q: … *Are you seriously saying that you want to keep alive this allegation … that she intended to punish you by inflicting maximum harm and embarrassment to you*?

A: *No. I totally wish this to be not the case and to be completely cancelled*, … if I can meet up with her and she can explain to me what's going on. … [U]p to date. I have no explanations of anything.

Q: I am putting to you … that *you have no basis to have made this allegation against your mother*. Agree or disagree?

A: *Against my mother, I agree*.

[emphasis added]

Consequent to this, the Plaintiff withdrew the allegation in paragraph 47(b) of the SoC that D2's actions were unlawful, fraudulent and dishonest:[85]

Q: Now, go to … 47(b) …. You say that your mother's acts were unlawful, fraudulent and dishonest. Again, can you agree that you will withdraw this against your mother right now?

A: I would, yes.

48 The Plaintiff also resiled from the allegation in paragraph 48 of the SoC that D2 had engaged in conspiracy by *unlawful* means: [86]

Q: You would agree also that you would withdraw your mother from this allegation in paragraph 48? Read it to yourself.

A: The---the acts here refer to the eviction, is it?

Q: What is in 47 which you have already withdrawn the allegation of dishonesty against your mother.

A: Here, I am talking about---so this "wrongful and improper acts" refers to?

Q: Whatever is in 47 … the whole of 47(a) and (b). Because

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85 Transcripts for 1 February 2024 at p 177 (lines 4–7).

86 Transcripts for 1 February 2024 at pp 177 (line 10) – 178 (line 3).

it says: [Reads] 'Paragraph 47…above…'

A: *Can I read 47(a) and (b*)?

Q: Sure.

A: Thank you. … *I don't believe my mum would do this*.

…

Q: *So you agree to withdraw the allegations in paragraph 47 and 48 against your mother*, correct?

A: *Against my mother, yes*. … But my brother … how do I get to my brother?

Q: … I don't act for your brother …

[emphasis added]

49 The cross-examination then touched on paragraph 49 of the SoC, which alleged that D2 had a *predominant* intention to damage and injure her, and which thus encapsulated the Plaintiff's claim for conspiracy by *lawful* means. The Plaintiff similarly withdrew this claim as against D2:[87]

Q: Look at paragraph 49. … [I]n law, there are two types of causing loss …. You can cause loss to someone by lawful means and you can loss---cause loss by unlawful means. …. And the difference between the two is, for causing loss by lawful means, you need to show that there was a predominant intention to cause that loss. … Can we agree that you have no basis to say that your mother had a predominant motive to cause you loss and injury?

A: Knowing my mother, normally she would not at all. Unless, you know, my brother had instigated it … using her as a director to do so.

Q: … I ask you one more time. … That you will withdraw this allegation against your mother because you have no basis to say she would do this to you and you know she won't do this to you, correct?

A: That is---that is true, yes.

…

87 Transcripts for 1 February 2024 at pp 178 (line 4) – 181 (line 6).

> Court: … Mr Daniel, you are proceeding on the … premise that she has withdrawn the allegation in paragraph 49, yes?
>
> D2C: Yes, yes, Your Honour. I'll just confirm that again.
>
> …
>
> Q: [I]n paragraph 49 …, it's couched in a … legal way but I'm explaining to you the factual premise behind it, okay? The factual premise behind it is, your mother, intentionally, with a predominant motive of causing you harm, acted in a manner which is described above ….
>
> A: … I'm still … not getting it somehow. Can … you explain because … I don't know. Basically … I just have to understand because I cannot seem to get it. …
>
> Q: Okay, paragraph 49 … says your mother acted with the predominant intention of injuring you and of causing loss to you. 'Predominant intention' means she actually wanted to cause you harm. Not that it's something that will happen automatically if she did something. Here, she really just wants to cause you harm.
>
> A: That's why I don't believe my mother would do it.
>
> Q: Exactly.
>
> A: It was my brother behind it.
>
> Q: Right. So you will … withdraw that allegation against … your mother, correct?
>
> A: Correct.

Withdrawal of the claim for injunctive relief

50 The string of concessions above culminated in the Plaintiff withdrawing her claim[88] for an injunction restoring her to possession of the Apartment. The relevant section of her cross-examination on 1 February 2024 is set out below:[89]

> Q: Paragraph [55(iv)] basically says you want an order for the Court to tell your mother and the other defendants, 'Let her live in the house. You can't … tell her to go away.' … Do you want that order or do you want to have

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88 At SoC at para 55(iv).

89 Transcripts for 1 February 2024 at pp 206 (line 26) – 207 (line 21).

> your mother discuss with you … and you will accept whatever she decides.
>
> A: Absolutely.
>
> Q: If she says 'no', no.
>
> A: Absolutely. That is right. I would prefer that, of course. … That's why I want---want to meet her.
>
> Q Do you still want to keep this paragraph [55(iv)] in light of your answer or you're prepared to give this up as well?
>
> …
>
> A I---I agree. I don't want this. … I don't want this.
>
> Q You don't want this?
>
> A I prefer for me to meet my mother and to have that one-to-one talk and clearly to iron everything out properly because there has been no clarification, no notice, no explanation, nothing.
>
> Q Okay. So are you prepared to withdraw this now?
>
> A Yes.
>
> Q Are you withdrawing it now?
>
> A Yes.

Plaintiff's recantation of her concessions

51 At the end of the hearing on 1 February 2024, Mr Premaratne sought permission to speak with his client about a letter from D2's lawyers, notwithstanding that the Plaintiff was still in the middle of cross-examination.[90] By way of backdrop, the Plaintiff's lawyers had sent an open letter to D2's lawyers, offering to withdraw the present suit, subject to D2 agreeing to a one-on-one meeting with the Plaintiff. D2's lawyers had responded with a letter seeking clarification on the terms of the proposed resolution, as well as requesting that the Plaintiff respond by 2pm on 1 February 2024.[91] Presumably,

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90 Transcripts for 1 February 2024 at p 209 (lines 1–9).

91 Affidavit affirmed by Mr Premaratne on 14 March 2024 at pp 7 & 9.

given that the correspondence pertained to attempts at resolution, the string of concessions made by the Plaintiff under cross-examination that day would have a material bearing on those attempts. Mr Daniel thus indicated that he had no objections with Mr Premaratne speaking to the Plaintiff about the letters.[92] Mr Premaratne thus met with the Plaintiff in his office later that evening.

52 The next morning (*ie*, 2 February 2024), parties indicated that they had failed to reach any resolution pursuant to the exchange of letters. This meant that Mr Daniel would resume his cross-examination of the Plaintiff. However, before that happened, Mr Premaratne stood up and asked that the Plaintiff step out of the courtroom so that he could make an application. After the Plaintiff had taken her leave, Mr Premaratne informed the court that he harboured reservations about how the Plaintiff had given her concessions during cross-examination the day before. Specifically, Mr Premaratne was concerned that the Plaintiff may not have been aware of the "legal implications" of those concessions and he thus asked for an opportunity to speak to her, with a view to advising her about those implications.[93] This struck me as a most irregular request. It is of course entirely within an advocate's remit to raise objections during cross-examination. However, counsel cannot have a private caucus with their client in the middle of the latter's cross-examination, to offer advice about the client's responses on the stand – that would plainly adulterate the crucible in which the client's testimony is being tested. To my mind, Mr Premaratne's concerns about the Plaintiff not having understood the "legal implications" of her concessions were misguided. As can be seen from the extracts above, the Plaintiff's concessions were made in response to questions by Mr Daniel that were *factual* in focus. That the Plaintiff's answers may have carried legal

92 Transcripts for 1 February 2024 at p 209 (line 10).

93 Transcripts for 2 February 2024 at pp 2 (line 2) – 3 (line 24).

implications (as responses in cross-examination very often would) could not in any way justify her lawyer intervening midstream through cross-examination and advising her about the implications of what she was saying. I thus disallowed Mr Premaratne's request to speak to his client.

53 That should have been the end of the matter – or so one would have thought. After Mr Premaratne's request to speak to the Plaintiff was turned down, she was called back into the courtroom for the resumption of cross-examination. It was at this point when the proceedings took a highly unexpected turn. Before Mr Daniel could commence with his questions, the Plaintiff informed him that she was withdrawing all the concessions which she made the day before. In doing so, the Plaintiff explained that when she made those concessions, her "mental state was not there" and she could not understand as she had too many things going on in her mind. I set out below the exchange in which she expressed her desire to recant the concessions:[94]

> Q: … Mdm Bhojwani, where we left off yesterday was at a prayer in the statement of claim. … And I asked you if you were prepared to withdraw that and you said you were.
>
> A: Sorry?
>
> Q: I asked you if you were prepared to withdraw that prayer and you said you were.
>
> A: I'm not. I'm so sorry that I'm not. … I didn't understand actually what it was, you know, I'm so sorry because my mental state was not---not---not there. I'm so sorry.
>
> Q: Right.
>
> A: I didn't understand. … I'm so sorry I did not understand. I was just---I have too many things going in my mind and I couldn't understand and I just---I---I---I don't withdraw it, please.
>
> Q: Right, okay.

---

94 Transcripts for 2 February 2024 at p 12 (lines 5–27).

> A: I really don't withdraw it … and that goes for all of them, please.

54 This prompted Mr Daniel to ask the Plaintiff if she had discussed the evidence which she had given under cross-examination the day before with anyone. The Plaintiff replied that she had not.[95] When asked if she discussed the evidence with her son Karan (who was due to take the stand as her next witness), she said that she did not.[96] Mr Daniel then asked the Plaintiff if she had discussed the evidence with her lawyer. To this, the Plaintiff replied that she had merely discussed the "options" with Mr Premaratne. This included asking Mr Premaratne to explain her claims as well as the "options" attendant upon withdrawal of those claims. The Plaintiff recounted that from her discussion with Mr Premaratne, she concluded that "it doesn't sound right to me". I set out the relevant extracts from the Plaintiff's response:[97]

> Q: You didn't discuss it with your lawyers?
>
> A: I only asked my lawyer what about---*what the claims were*---which I was---which I---I---I, you know, said, 'Okay, but wa---*can you explain to me what---what---what it actually is*?' Because somehow---I said, 'Okay but just explain to me', *and he explained it to me*.
>
> …
>
> Q: Isn't it clear that you were only allowed and your lawyer was only allowed to discuss with you, yesterday evening, about possible settlements … discussions … with your mother … not about your evidence in the pleadings, correct?
>
> A Not evidence. Just the---*what was the meaning of---of this---this---of this claim, what was the meaning*, because I was not in my proper mental state.
>
> Q You were not given permission nor was your lawyer given permission to speak about that in the middle of

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95 Transcripts for 2 February 2024 at p 15 (lines 5–8).

96 Transcripts for 2 February 2024 at p 15 (lines 9–10).

97 Transcripts for 2 February 2024 at pp 15 (line 11) – 16 (line 20).

> your cross-examination ….
>
> A He told me about the options. That was how I asked him. … 'You are telling me the options. It doesn't sound right to me and I need to know why are they like not so proper, wha---I---I don't understand. They don't really complete what I want.' And---and then it came about that according to the claim, that is what---if I---if I---if I say---*if I decide to withdraw this---this, these are the options*. And that was the main subject, the options. And it only is---it only came up because I asked---*I told him, according to the options, it doesn't sound right to me*. It didn't sound complete and what I actually came to the Court for and have been trying for over 2 years now and have been going through so much mental pain for that. It---it doesn't sound right to me. …
>
> …
>
> Q: … now you're saying that you discussed the evidence that you gave in Court yesterday with your lawyer and then asked him, okay, 'So this happened. I withdrew this, withdrew that. So what does it do to my case?' That's exactly what you're not supposed to do. Your lawyer knows that. Why did you have that discussion?
>
> A: It wasn't like---I---I asked about the options because that's what he told me he can only talk to me about. He told me strictly, 'Only about options.'
>
> [emphasis added]

55 Mr Daniel then sought to reconfirm if the Plaintiff was resiling from the concessions that she had made under the previous day's cross-examination. She reiterated that she was:[98]

> Q: … okay, so now you say you want to withdraw all of the concessions, … you want to withdraw all of the withdrawals you made in the last few days when you're giving evidence. Is that what you're saying?
>
> A: All, please.

56 Mr Daniel then asked to address the court in the Plaintiff's absence.

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98 Transcripts for 2 February 2024 at pp 18 (line 30) – 19 (line 3).

After the Plaintiff stepped out of the courtroom, Mr Daniel demanded an explanation from Mr Premaratne as to what the latter had said to the Plaintiff on the previous evening to trigger the about-face in her evidence.[99] Mr Premaratne replied that he was happy to explain, saying that when he met the Plaintiff, he merely told her about the two "options" – either withdraw her claims (which could then pave the way for the Plaintiff to meet with D2 face-to-face) or proceed with the claims.[100] Mr Premaratne also explained that he informed the Plaintiff about these options in the presence of her son, Karan, and both mother and son had then made their decision.[101] Mr Premaratne was not able to go into further specifics, given the boundaries of legal professional privilege.[102] However, he confirmed that he *did* ***not*** *speak to the Plaintiff about the implications of her answers* given under cross-examination on the day before.[103]

57 The Plaintiff was then called back into the courtroom, upon which cross-examination resumed. Mr Daniel continued to press her about why she recanted the concessions made the day before. The Plaintiff replied that she had gotten very emotional and had thus completely agreed with what Mr Daniel had put to her while she was on the stand. Thereafter, she had sought advice from Mr Premaratne:[104]

> Q: You said you were in state of confusion yesterday and you have said many things.
>
> A: All I said was, 'I don't understand. Can you explain?' That's what I asked him. … That I---I---I---what I said

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99 Transcripts for 2 February 2024 at pp 26 (lines 6–32).

100 Transcripts for 2 February 2024 at p 30 (lines 5–13).

101 Transcripts for 2 February 2024 at p 29 (lines 24–29).

102 Transcripts for 2 February 2024 at p 29 (lines 10–13).

103 Transcripts for 2 February 2024 at pp 30 (line 14) – 31 (line 1).

104 Transcripts for 2 February 2024 at pp 52 (line 27) – 53 (line 14).

> yesterday, "What was it I said and what---*what are the implications to what I said*? Can you explain?" Because I---I was, like, quite confused and I got emotional and I---and because of the emotions, I completely lost track. And, you know, *whatever you said, I just agreed and I wanted to understand what it is I agreed to and what are the implications of it*. And when I was---so I was informed that---so I was---I---I---so *when I asked him, he---he naturally clarified with me because he knew I was lost completely* and---and *I was asking him what did I say---what did I say and please explain to me, and he explained to me*. … I got very emotional so I completely … got side-tracked and just agreed with you, you know.
>
> [emphasis added]

58 It was thus clear from the answer above that, contrary to the position which Mr Premaratne had just conveyed to the court (at [56] above), the Plaintiff was affirming that she *did* speak to him about the implications of her concessions. The Plaintiff's position, as encapsulated in her answer extracted immediately above, could be summed up as follows:

(a) She agreed with everything that Mr Daniel suggested under cross-examination, as she was "quite confused" and "emotional".

(b) As such, during her meeting with Mr Premaratne that evening, she had asked him to help her understand what it was that she had agreed to, as well as the implications thereof.

(c) Mr Premaratne had clarified with her as he knew that she was completely lost.

To ensure that the record was free of ambiguity, I asked the Plaintiff to reconfirm if she had indeed spoken with her lawyer about the implications of the concessions she had made in cross-examination the day before (as opposed to simply discussing the "options" of either withdrawing or proceeding with her claims). She confirmed unequivocally that she *did* discuss with Mr Premaratne

about the implications of her concessions in cross-examination:[105]

> Ct: So let's just get this clear. Yesterday evening, … you're saying that you spoke with Mr [Premaratne], you told him that you were in a confused state of mind, you basically asked him what it meant … when you basically withdrew all your claims. Is that what you're saying?
>
> W: Absolutely correct.
>
> Ct: That's what you are saying?
>
> W: Yes, please. Thank you.
>
> …
>
> Ct: So that is not---it's not just the options of whether to withdraw or to proceed, you basically spoke to him about what was---well, what you said in Court, yes?
>
> W: What I said in Court, yah. I was con---what I agreed to and what---what actually it was about, you know, and what---what are the implications, meaning the---what does it mean, you know. …

59 Mr Premaratne subsequently filed an affidavit[106] explaining what transpired when he spoke to the Plaintiff, during the meeting with her and Karan on the evening of 1 February 2024. However, the affidavit was bereft of details, as the Plaintiff had elected *not* to waive privilege over what had been discussed on the evening of 1 February 2024.[107] The main body of the affidavit stretched for less than three pages, recounting in skeletal fashion the two options which Mr Premaratne told the court (on 2 February 2024) that he had advised the Plaintiff about – *ie*, to either withdraw the claims in exchange for a chance to speak to D2 face-to-face, or proceed with the claims (see [56] above). The affidavit thus provided no insight into what prompted the Plaintiff to recant the

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105 Transcripts for 2 February 2024 at pp 53 (line 24) – 54 (line 9).

106 Affirmed on 14 March 2024.

107 Transcripts for 2 April 2024 at pp 7 (lines 26–30), 8 (lines 12–17) & 9 (line 31) – 10 (line 10).

concessions made during cross-examination.

Plaintiff's decision to call D2 as a plaintiff witness

60 In the ordinary course of things, a plaintiff would close his case after all his scheduled witnesses have testified. In the present trial, only two witnesses were originally slated to testify on the Plaintiff's behalf – the Plaintiff herself and Karan. After both had given their evidence, Mr Premaratne did *not* close his case but instead asked the Defendants' lawyers for an indication as to whether they were making a submission of no case to answer.[108] If they were going to make such a submission, it would mean that D2 would not be taking the stand: see *Ho Yew Kong v Sakae Holdings Ltd and other appeals and other matters* [2018] 2 SLR 333, where the Court of Appeal observed (at [70]):

> 70 To begin with, it is settled law in Singapore that the court will not entertain a 'no case to answer' submission by a defendant at the close of the plaintiff's case unless the defendant undertakes not to call evidence …
>
> [emphasis in original omitted]

Mr Premaratne foreshadowed that in such an eventuality, the Plaintiff was going to issue a subpoena for D2 to testify as a witness.[109]

61 The Defendants' lawyers refused to intimate if they would be making a submission of no case to answer, insisting that the Plaintiff first close her case before they indicate what they were minded to do.[110] The Plaintiff consequently declined to close her case and instead proceeded to issue a subpoena to call D2 as a witness *for the Plaintiff*. This rather unconventional manoeuvre had then

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108 Transcripts for 9 February 2024 at p 15 (lines 19–27).

109 Transcripts for 9 February 2024 at pp 17 (line 9) – 18 (line 1).

110 Transcripts for 9 February 2024 at pp 19 (lines 27–28) & 24 (lines 19–21).

triggered a series of procedural scuffles. It is necessary at this juncture for me to set them out in some detail, as well as explain how I resolved them, to better frame the context against which D2 eventually came to give her oral testimony.

D2's attempt to set aside the subpoena served on her by the Plaintiff

62 After the Plaintiff issued a subpoena against D2, D2 responded by filing a summons to have it set aside.

63 Mr Daniel's first ground of objection to the subpoena pertained to D2's fitness to give evidence. He tendered an affidavit by D2 enclosing a medical report prepared by one Dr Lim Yun Chin ("Dr Lim") from Raffles Hospital. Dr Lim had examined D2 on 26 January 2024 and concluded that she suffered from cognitive impairment. Dr Lim's report contained the following findings:[111]

> 21. [D2] was administered the Mini-Mental State Examination (MMSE), which is the most commonly used screening instrument for cognitive impairment, on the day of the interview. She scored 17/30 which indicated cognitive impairment.
>
> 22. She was not oriented to time and place. She was only able to register 1 object in the first attempt but could register all 3 objects after three trials. She later recalled 2 out of 3 objects. She could not repeat a sentence. She was also unable to copy the design accurately.
>
> …
>
> 33. Her oral response and behaviour would be deemed unpredictable and unreliable given the following:
>
> a. Overt cognitive decline;
> b. Her hearing impairment;
> c. Her mental state, which was expected to be of high arousal due to Anxiety;
> d. Her fear of being questioned;
> e. Her inability to recall dates and facts that could contribute to more anxiety; and

[111] Affidavit of D2 affirmed on 14 February 2024 at pp 14–15.

> f. The significant decline in her memory.

The report then alluded to D2's history of falls and concluded as follows:[112]

> 34. ... Her accidents have contributed to a significant decline in both her physical and mental health.
>
> 35. I opine that D2 is unlikely to recall events as she has shown a clear trend of forgetfulness. This, including her anticipated heightened anxiety during the cross-examination of the witness would have a bearing on her evidence.

64 Despite alluding to D2's cognitive decline, Dr Lim's report did not explicitly conclude that D2 was unable to understand or respond to questions posed to her in the witness box. Furthermore, D2 did not call Dr Lim to testify and be subjected to cross-examination by the Plaintiff. I was thus not persuaded that the subpoena against D2 should be set aside on account of Dr Lim's report.

65 Another objection raised by Mr Daniel to the subpoena was that allowing D2 to be called to the stand would circumvent the no case to answer regime. He argued that the Plaintiff was effectively seeking to adduce D2's evidence "through the backdoor", thereby depriving D2 of her right to remain silent.[113] Mr Daniel argued that it would be "oppressive"[114] to compel D2 to give evidence and thereby deprive her of this right.

66 I rejected Mr Daniel's objection. Firstly, he was unable to point to any authorities showing that a defendant's right to make a submission of no case to answer is preponderant to the extent of depriving a plaintiff of the right to call

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112 Affidavit of D2 affirmed on 14 February 2024 at p 15.

113 See submissions filed by D2 in SUM 397/2024 (dated 14 February 2024) to set aside the subpoena issued against D2, at para 47(2).

114 D2's submission in SUM 397/2024 (dated 14 February 2024) at para 47(2).

a witness whose testimony is central to the issues at hand.[115] Rather, the authorities show that there is no general prohibition at law against a party calling the opposing party as a witness: see, *eg*, *Sakae Holdings Ltd v Gryphon Real Estate Investment Corp and others (Foo Peow Yong Douglas, third party) and another suit* [2017] SGHC 100 ("*Sakae Holdings*"); see also *M Ratnavale v S Lourdenadin and M Mahadevan v S Lourdenadin* [1988] 2 MLJ 371 ("*M Ratnavale*") for the Malaysian position. An example of an instance where a plaintiff was allowed to call the defendant is *Pac Asian Services Pte Ltd v The Nanyang Insurance Company Limited* [1993] SGHC 263.

67 I also took the view that Mr Daniel's submission, to the effect that it would be "oppressive"[116] to deprive D2 of her right to remain silent, was somewhat overstated. A plaintiff calling the defendant as a witness would likely face great difficulty in steering the latter towards those answers which the plaintiff needs to elicit, given that s 144(1) of the Evidence Act 1893 (2020 Rev Ed) ("Evidence Act") prohibits a party from posing leading questions to his witness in the face of objections. There is nothing to suggest, nor did any of the parties before me suggest, that this prohibition is automatically lifted just because the witness being called also happens to be the opposing party. There is of course the avenue of applying under s 156 of the Evidence Act to cross-examine one's own witness, but that is not without challenges. In *CIMB Bank Bhd v Italmatic Tyre & Retreading Equipment (Asia) Pte Ltd* [2021] 4 SLR 883, Vinodh Coomaraswamy J held (at [28]) that such an application would not be permitted unless certain conditions are met:

> 28 … At common law, a party may not attack the credibility of its own witness and cross-examine the witness unless certain conditions are met. This common law rule is given statutory

115 Transcripts for 13 February 2024 at pp 25–29.

116 D2's submission in SUM 397/2024 (dated 14 February 2024) at para 47(2).

> expression in s 156 of the Evidence Act …. The reason for the rule is that a party who calls a witness at trial is deemed to put the witness forward as a witness of truth. The party accordingly vouches to the court for the honesty of the witness (see *Alexander v Gibson* (1811) 2 Camp 555). A party cannot resile from this and discredit its own witness unless specific conditions are met. The rule places a salutary burden on a party to choose its witnesses carefully.

As it turned out, when D2 eventually took to the witness stand, the Plaintiff did *not* venture to make an application under s 156 of the Evidence Act to cross-examine her.

68 It would be highly imprudent for a plaintiff contemplating whether to call a defendant as a witness to simply take it for granted that permission under s 156 of the Evidence Act will be given. In *PP v BAU* [2016] 5 SLR 146, Woo Bih Li J (as he then was) made it clear (at [24]) that the court had an absolute discretion whether to allow a party to cross-examine his own witness. Woo J also cautioned against the liberal exercise of that discretion:

> 24 Sarkar, *Law of Evidence in India, Pakistan, Bangladesh, Burma, Ceylon, Malaysia and Singapore* (Lexis Nexis, 16th Ed, 2007) … observes … that the discretion of the court under the equivalent of s 156 is absolute and is independent of any question of hostility or adverseness. I agree. There is no such requirement in the provision. The court has a wide discretion although such a discretion must be exercised carefully, otherwise it will be used liberally to circumvent the general rule that a party may not cross-examine his own witness. …

69 This practical implication is that a plaintiff calling a defendant as a witness is apt to find himself staring at someone in the witness box who unrelentingly spouts testimony hurting the plaintiff's case, while the plaintiff's counsel (being unable to pose leading questions at will) labours under a considerable handicap in managing what comes out of the witness' mouth. The imagery which comes across is akin to that of a boxer stepping into the ring with one arm tied behind his back, or (if the defendant is not merely a passive

nominal party with no interest in the case outcome but an antagonist) some might say both arms. Thus, in *Sakae Holdings*, Judith Prakash JA (as she then was) remarked (at [23]) that while a plaintiff could subpoena the defendant and adduce the latter's testimony as the plaintiff's evidence, this would be "a *highly risky* strategy" [emphasis added].

70 Hence, rather than viewing the Plaintiff's proposal to call D2 as her own witness as (in Mr Daniel's words) "oppressive" to D2, I saw it more as a gamble by the Plaintiff which carried a significant risk of severe damage to the Plaintiff's own case. This was a gamble that the Plaintiff was perfectly entitled to embark on and Mr Daniel was unable to cite any legal authorities showing otherwise. After lengthy arguments from both sides, Mr Daniel ultimately capitulated and agreed to offer D2 to the Plaintiff as her witness, withdrawing his summons to set the subpoena aside.[117]

Plaintiff's list of proposed questions for D2's oral examination-in-chief

71 Prior to D2 being called to the stand, the Plaintiff prepared a list of questions that she proposed to pose to D2 in examination-in-chief.[118] This was to give adequate notice to the Defendants as to the oral evidence that the Plaintiff proposed to elicit from D2, the Plaintiff not having procured an affidavit of evidence-in-chief ("AEIC") from D2 beforehand. The Plaintiff served the list of questions on D2 and her lawyers.[119] In conjunction with the service of the list of questions, I imposed two safeguards, set out below.

72 The first safeguard was prompted by the Plaintiff's request that D2's

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117 Transcripts for 15 February 2025 at p 2 (lines 3–17).

118 Transcripts for 14 February 2024 at p 68 (lines 12–15).

119 Transcripts for 15 February 2024 at p 15 (lines 5–12).

lawyers not discuss the list of questions with D2. Mr Daniel objected to the imposition of any such prohibition.[120] However, I found the Plaintiff's request to be valid and directed that Mr Daniel's firm not speak to D2 about the list of questions, once it had been served on her. In doing so, I took the view that while these questions were to be posed in what was technically "examination-in-chief", they were in substance questions posed by an adverse party seeking to use the answers to those questions to advance his position at trial, at the expense of the witness' case. On this narrow set of facts, I felt that the same approach as that adopted in cross-examination should apply – the party should not be consorting with her lawyers once the questioning has commenced, prior to completion of her oral testimony.[121]

73 The second safeguard imposed by me served to curtail the prospect of Sunil influencing D2, as regards her answers to the Plaintiff's list of questions. Although the Plaintiff had no objections to serving her list of questions on D2 personally,[122] the Plaintiff was concerned that D2 might (upon being served with the questions) be coached by Sunil, with Cindy acting as "the conduit between the son [*ie*, Sunil] and the mother [*ie*, D2]".[123] In this respect, it was the Plaintiff's position that Sunil had been putting his words into D2's affidavits, as well as in the lawyer's letters purportedly sent on D2's behalf.[124] However, the defence contended that seeing as how D2 was already being blocked from access to her lawyers (as per the first safeguard, detailed in the preceding

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120 Transcripts for 15 February 2024 at pp 22 (line 3) – 23 (line 3).

121 Transcripts for 15 February 2024 at pp 23 (lines 4–12) & 24 (lines 3–6).

122 Transcripts for 15 February 2024 at p 15 (lines 5–12).

123 Transcripts for 15 February 2024 at p 25 (lines 5–6).

124 Plaintiff's Reply Submissions at para 15; Transcripts for 1 February 2024 at pp 100 (line 20) – 101 (line 8).

paragraph), it would be "extremely cruel" to *further* isolate D2 by cutting her off from Cindy, who was D2's personal assistant.[125] This was in light of the fact that D2 was 90 years of age, suffered from weakened eyesight and laboured from cognitive impairment (see [63] above), and was consequently heavily dependent on Cindy when it came to reading and understanding legal documents.[126] Given the litany of age-related mental and physical frailties suffered by D2, there was thus a fear that her testimony might be substantively compromised if she was cut off from all familiar lines of support. To balance the concerns from both sides, I allowed Cindy (in her capacity as D2's personal assistant) to explain the Plaintiff's list of questions to D2 but directed that she was *not* to act as Sunil's conduit in doing so.[127] Cindy ultimately did not testify, so there was no issue of D2 and Cindy tailoring their respective testimonies to create a veneer of coherence.

74 I should highlight at this juncture that upon the close of trial, the Plaintiff alleged that the second safeguard detailed above had been breached, by way of Cindy serving as a conduit for Sunil when explaining the Plaintiff's list of questions to D2.[128] However, this turned out to be an entirely bald allegation, with no evidence in support. When D2 was on the stand, she was specifically queried by Mr Premaratne about the process by which Cindy explained the list of questions to her.[129] Mr Premaratne failed to elicit any responses to suggest that D2's answers might have been tainted in any way by Sunil's involvement, whether directly or through Cindy. D2 even explained that she refrained from

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125 Transcripts for 15 February 2024 at p 26 (lines 3–7).

126 Transcripts for 4 April 2024 at pp 9 (line 27) – 10 (line 2).

127 Transcripts for 15 February 2024 at p 26 (lines 12–20).

128 Plaintiff's Closing Submissions at para 19–20.

129 Transcripts for 4 April 2024 at p 22 (lines 6–11).

speaking to Cindy for five to six days prior to testifying.[130] I thus found the Plaintiff's suggestion that Sunil had (through Cindy) somehow coached D2 in her responses to the Plaintiff's list of questions to be without merit.

Plaintiff's objection to the admission of D2's AEIC into evidence

75 While the Plaintiff was keen to admit D2's evidence by way of *oral* examination-in-chief, she strenuously objected to allowing the *written* evidence in D2's AEIC to be admitted into evidence. I dismissed her objection.

76 When a defendant makes a submission of no case to answer, this means that the defence witnesses will not be giving any evidence and would thus not be subjected to cross-examination by the plaintiff. Ordinarily, this would result in the defence witnesses' AEICs being *inadmissible* in evidence, by virtue of the prohibition in O 38 r 2(1) of the Rules of Court 2014, which states:

> **2.**—(1) … evidence-in-chief of a witness shall be given by way of affidavit and, unless the Court otherwise orders or the parties to the action otherwise agree, such a witness shall attend trial for cross-examination and, in default of his attendance, his affidavit shall not be received in evidence except with the leave of the Court.

77 However, given that the Plaintiff took the unconventional step of calling D2 as a witness for the *Plaintiff*, this meant that D2's lawyers would now get to question her, not by way of examination-in-chief, but by way of *cross*-examination. It is not unusual for cross-examining advocates to refer the witness to the latter's out-of-court statement and seek confirmation from the witness that the statement was indeed made by her. This typically serves as a prelude to the cross-examining advocate questioning the witness about the statement and thereafter applying for the statement to be admitted into evidence. However,

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130 Transcripts for 4 April 2024 at p 19 (lines 1–4).

when the defence sought to admit D2's AEIC during her cross-examination, the Plaintiff objected, highlighting concerns that D2's AEIC was 768 pages long (inclusive of exhibits) and arguing that the defence could not simply admit the *entire* document just like that.[131]

78 I saw no reason to disallow the admission of D2's AEIC into evidence. The Plaintiff was unable to offer any legal basis for saying that D2's AEIC should be treated differently from any other out-of-court statement made by a witness and which is sought to be adduced during that witness' cross-examination. More importantly, I saw no material prejudice that the Plaintiff might suffer from D2's AEIC being admitted into evidence. If the Plaintiff had concerns with any part of the AEIC's contents, her lawyer always had the option of seeking clarifications or qualifications from D2 in re-examination. I consequently allowed the defence's application to admit D2's AEIC into evidence.[132]

79 I observed that the Plaintiff's objection to the admission of D2's AEIC into evidence was entirely consistent with the Plaintiff's theory (at [73] above) that Sunil was putting his words into D2's affidavits. However, I was unconvinced by this as the Plaintiff was unable to offer any explanation as to how Sunil might have substituted his words into D2's AEIC when D2's lawyers were involved in the preparation process. The Plaintiff stopped short of explicitly accusing Mr Daniel's firm of being in cahoots with Sunil. In any case, the Plaintiff's theory that Sunil had been using D2's sworn evidence as his mouthpiece was put to rest when D2 eventually took to the witness stand. As explained below, D2 had given oral testimony which heavily undermined the

131 Transcripts for 4 April 2024 at pp 96 (lines 16–22) & 101 (lines 6–9).

132 Transcripts for 4 April 2024 at p 114 (lines 2–12).

Plaintiff's case, despite extensive quizzing by the Plaintiff's own lawyer and without Sunil anywhere in sight to pull the puppet strings.

80 Prior to the admission of the AEIC, D2 had confirmed its veracity by testifying as to what would happen before she signed any affidavit: the document would be read to D2 by her lawyer and she would sign the same only if it was correct.[133] D2 further confirmed that the signature on the AEIC was hers.[134] However, the Plaintiff was still dissatisfied and, after the close of trial, persisted in her contention that D2's AEIC should not have been admitted into evidence. In her closing submissions, the Plaintiff argued that the AEIC should be excluded because Ms Ganga (*ie*, Mr Daniel's second chair, who was tasked by Mr Daniel to cross-examine D2) had, as a prelude to applying for the AEIC's admission, posed highly *leading* questions to D2 when ascertaining the AEIC's veracity.[135] In particular, the Plaintiff took issue with the leading nature of the following line of questioning by Ms Ganga:[136]

> Q So when you signed the affidavit … when you signed … any affidavit, … it is after you know it's correct.
>
> A Yah.
>
> Q If it's not correct, will you sign?
>
> A No.

81 I found the Plaintiff's complaint to be without merit. Before explaining, it is necessary to set out the background to the Plaintiff's grievance on this point. Given that D2 was in effect going to be "cross-examined" by a friendly party (*ie*, her own lawyer), I had prompted Mr Premaratne to confirm if his client was

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133 Transcripts for 4 April 2024 at pp 110 (line 9) – 111 (line 17).

134 Transcripts for 4 April 2024 at pp 111 (line 18) – 112 (line 25).

135 Plaintiff's Reply Submissions at para 12.

136 Transcripts for 4 April 2024 at p 111 (lines 9–17).

relying on any legislative provision, in respect of the manner in which D2's cross-examination was to be conducted.[137] After taking some time to look into this, Mr Premaratne reverted that the Plaintiff was seeking to invoke s 145(2) of the Evidence Act, which gives the court the discretion to prohibit leading questions, *even* in cross-examination, if they are being put to a witness whose interests are aligned with the cross-examining party.[138] While I took the view that some leading questions could be permitted on non-critical matters, I agreed with the Plaintiff that Ms Ganga should not have an unbridled hand in posing leading questions to D2, particularly if these pertained to critical facts in issue. I had thus cautioned both Mr Daniel and Ms Ganga to abide by this when cross-examining D2, *failing which the Plaintiff's lawyer might object*:[139]

> Court: So I think, from the way that I have allowed Mr Premaratne to conduct his exam-in-chief, I think it's quite clear that I have some appetite for leading questions, even by him [in examination-in-chief] … so long as it is not on something very critical … and so long as it's something that will speed things along. But if it is … a very, very critical fact in issue, I think perhaps, for good order, you might want to ask Ms Ganga to phrase it in as open-ended a way as possible.
>
> Daniel: Yes, yes, yes.
>
> Court: Because if not, then *Mr Premaratne's just going to object* [to] *that*, yes.
>
> [emphasis added]

It was thus made very clear that the Plaintiff could object if Ms Ganga's leading questions strayed into any area which she was not prepared for D2 to be led on. Yet, no objections were raised to the questions posed by Ms Ganga when she was eliciting D2's confirmation as to the veracity of the latter's affidavit. I was

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137 Transcripts for 3 April 2024 at p 99 (lines 1–7).

138 Transcripts for 4 April 2024 at p 1 (lines 13–22).

139 Transcripts for 4 April 2024 at p 76 (lines 17–27).

thus not prepared to entertain objections if they were being raised only in closing submissions.

Defendants' submission of no case to answer

82 After D2 had completed giving her oral testimony, the Plaintiff closed her case. The Defendants responded by making a submission of no case to answer and, in doing so, undertook not to call any evidence.

83 The trial then closed.

My Decision

84 As with any other civil matter, the Plaintiff bore the legal burden of proving her case on a balance of probabilities. However, given the absence of any evidence called by the Defendants, this meant that *evidentially*, the Plaintiff needed to prove each element of her claims to only a *prima facie* standard, notwithstanding that *legally*, the standard of proof applicable to the assessment of her case was the balance of probabilities. The *prima facie* standard was determinative here because once the Plaintiff's evidence crossed the *prima facie* threshold, the absence of any countervailing evidence from the Defendants meant that her *prima facie* evidence could be regarded as having effectively proved her claims on a balance of probabilities. In metaphorical terms, given the absence of any evidence from the Defendants to serve as a counterweight, the Plaintiff's *prima facie* evidence would carry enough heft to tip the scales past the "balance of probabilities" gradation.

85 As the Court of Appeal observed in *Ma Hongjin v SCP Holdings Pte Ltd* [2021] 1 SLR 304 ("*Ma Hongjin*") (at [32]–[33]):

> 32 In ***summary***, the plaintiff *does* indeed bear the legal

> burden of proving its case against the defendant in a civil case on a *balance of probabilities*. *Where the defendant has made a submission of no case to answer, this* particular standard of proof is ***met or discharged*** by the plaintiff satisfying the court that there is a *prima facie* case on each of the essential elements of its claim. This is because in a situation where the defendant has made a submission of no case to answer, such a submission *must* … be *coupled* with an election *not to call evidence* …, with the result being that if the plaintiff has established a *prima facie* case on the facts in issue (that are essential to its claim), this would *essentially* result in the court finding that the plaintiff has discharged its burden of proving the aforementioned facts on a ***balance of probabilities***. This is due to the fact that, upon the plaintiff establishing a ***prima facie*** *case* with respect to the relevant facts in issue, the ***evidential*** *burden* will ***shift*** *to* ***the defendant***. ***However***, because the defendant *has* ***had*** *(in the situation of a* ***submission of no case to answer****) to* ***elect*** *to* ***call no evidence***, it *would be* ***unable*** *to adduce* ***(any) evidence*** *to* ***either disprove*** *the plaintiff's position* ***or*** *weaken it such that the facts that the plaintiff relies upon are "****not proved****"*. Put another way, where a defendant elects not to call any evidence upon making a submission of no case to answer, there is simply no contrary evidence from the defendant for the court to consider. The court is only left with the evidence of the plaintiff and if, on a *prima facie* basis, the evidence satisfies all the ingredients or essential elements of the cause of action, judgment will be entered against the defendant. … [I]n such a situation (concerning a submission of no case to answer), provided that it can establish a *prima facie* case on the facts in issue (that are essential to its claim), the plaintiff has (***simultaneously***) proved its overall case on a *balance of probabilities*.
>
> 33 We therefore affirm that, in the situation where the defendant has submitted that it has no case to answer and has (as it legally must) also elected to call no evidence if it fails in this submission, *the plaintiff* would ***succeed*** if it can establish that it has a ***prima facie*** *case* on each of the essential elements of its claim. For the avoidance of doubt (and also for the reasons stated above), the plaintiff would (***simultaneously***) have ***necessarily proved*** its (***overall***) case against the defendant ***on a balance of probabilities***.
>
> [emphasis in original]

Thus, in assessing the Plaintiff's case, I focused on whether she had adduced

prima facie evidence to support each element of her claims.

86 The approach to assessing if a plaintiff has succeeded in establishing a *prima facie* case was canvassed in the High Court decision of *Relfo Ltd (in liquidation) v Bhimji Velji Jadva Varsani* [2008] 4 SLR(R) 657 ("*Relfo*"), which was in turn cited with approval by the Court of Appeal in *Lena Leowardi v Yeap Cheen Soo* [2015] 1 SLR 581 (at [24]). In *Relfo*, Judith Prakash J (as she then was) explained (at [20]):

> 20 … the test of whether there is no case to answer is whether the plaintiff's evidence at face value establishes a case in law or whether the evidence led by the plaintiff was so unsatisfactory or unreliable that its burden of proof had not been discharged. See *Bansal Hemant Govindprasad v Central Bank of India* [2003] 2 SLR(R) 33 … and *Lim Swee Khiang v Borden Co (Pte) Ltd* [2006] 4 SLR(R) 745. In this respect, the plaintiff has only to establish a *prima facie* case.

A plaintiff would thus fail to establish a *prima facie* case if his evidence is deficient in either of the following respects:

(a) *Legally*, the plaintiff's evidence fails to establish a case in law.

(b) *Factually*, the plaintiff's evidence is so unsatisfactory or unreliable that the burden of proof cannot be regarded as having been discharged.

87 As regards the *factual* dimension of a plaintiff's case, a court faced with a submission of no case to answer begins by assuming that the plaintiff's evidence is true. However, the court may depart from this starting position and conclude that a plaintiff has failed to establish a *prima facie* case if the latter's evidence fails to cross certain minimum standards of reliability. In *Relfo*, Prakash J endorsed the view expressed in *Halsbury's Laws of Singapore* vol 10 (Butterworths Asia, 2006 Reissue) that a *prima facie* case may not be made out

if the plaintiff's evidence is "manifestly unreliable" (at [20]):

> 20 … A *prima facie* case is determined by assuming that the evidence led by the plaintiff is true, unless it is inherently incredible or out of all common sense or reason. … See *Halsbury's Laws of Singapore* vol 10 (Butterworths Asia, 2006 Reissue) at para 120.025. As *Halsbury's* also says in the same paragraph:
>
> > Put another way, the evidence is subjected to a minimal evaluation as opposed to a maximal evaluation …
> >
> > If, however, there is no evidence in support of any fact in issue, or any evidence is manifestly unreliable and should be excluded from that score, a submission of no case to answer will succeed.

Similarly, in *Millsopp, Michael Joseph v Then Feng* [2022] SGHC(A) 27, the Appellate Division of the High Court held (at [12]):

> 12 … even though a court will assume that any evidence led by the plaintiff is true in evaluating a submission of "no case to answer", this is subject to the qualification that his evidence is not inherently incredible, out of common sense, unsatisfactory or unreliable.

88 For the reasons set out below, I took the view that from a *factual* perspective, the Plaintiff's evidence was (to use the language quoted in *Relfo*) "so unsatisfactory or unreliable that [her] burden of proof had not been discharged". So far as the Plaintiff's personal testimony was concerned, I found it to be wanting in both particularity and credibility. Taking a step back and viewing the entire corpus of evidence advanced on the Plaintiff's behalf, I found her case to be internally inconsistent on many material fronts. In this respect, I took the view that what constituted the "Plaintiff's evidence" comprised not only the testimonies of the Plaintiff and her son Karan, but the evidence of D2 as well. This was because the Plaintiff had called D2 as a witness *for the Plaintiff*. Indeed, in *M Ratnavale*, the court remarked that "when the defendant is called as a plaintiff's witness, his evidence is to be treated as the evidence of

the plaintiff". Once D2's evidence was baked into the mix and the Plaintiff's evidence scrutinised holistically, the cracks at the seams of the Plaintiff's case were highly visible.

89 The Plaintiff contended that just because she had called D2 as her own witness did not mean that D2's evidence, including that in D2's AEIC, should be accepted as the Plaintiff's evidence *in toto*.[140] I accepted this, to the extent that the Plaintiff was at liberty to qualify D2's testimony, whether by seeking clarifications from her while she was on the stand or even making an application to cross-examine D2 on specific points. However, as explained below, this was not done at various significant junctures in D2's examination-in-chief and re-examination. Consequently, upon the close of D2's oral testimony, much of what she said that undermined the Plaintiff's case remained unqualified.

90 Before elaborating on my findings, it is useful to recapitulate the Plaintiff's substantive claims, for ease of reference:

(a) Firstly, the Plaintiff claimed that her eviction on 25 August 2021 was wrongful as it breached her *right* to occupy the Apartment. According to her, that right stemmed from the following causes of action:

(i) The Plaintiff had an irrevocable *equitable* interest in the Apartment, conferred by way of a proprietary estoppel or a license coupled with an equity, which allowed her to reside in the Apartment for life without paying rent. An equity arose in her favour because she had, in reliance on a representation made to her, performed various acts to her detriment.

140 Plaintiff's Reply Submissions at para 5.

(ii) She also had an irrevocable *contractual* license to remain in the Apartment, wherein consideration for the underlying contract comprised the same acts of reliance which she claimed to have performed to her detriment in (i) above.

(iii) Additionally, she had a *bare* license to remain in the Apartment and this had not been terminated by sufficient notice (the claim to a bare licence was not pleaded).

(iv) She beneficially owned 80,000 shares in the Company, and that somehow conferred upon her an interest in the Apartment, which was owned by the Company.

(b) Secondly, the Plaintiff claimed that all three Defendants *conspired* to injure her, by both lawful *and* unlawful means. Specifically, the Plaintiff claimed that there was an agreement between the Defendants and Sunil to punish her by inflicting maximum harm and embarrassment, thereby conferring an unfair advantage on Sunil in the ongoing legal proceedings.

(c) Thirdly, the Plaintiff claimed that D2 and Cindy *dishonestly assisted* the Company to commit an unlawful act, being the eviction of the Plaintiff, by improperly passing the Board Resolutions in breach of their duties as directors of the Company.

91 My findings in respect of each of these claims are set out below.

Equitable right to occupy: Proprietary estoppel

92 It was a struggle trying to make sense of the Plaintiff's pleadings on her equitable claim.

93 For a start, it was unclear as to exactly *what* the Plaintiff was claiming to have relied upon, to her detriment, which gave rise to the estoppel:

(a) The SoC stated that after the Plaintiff and her parents moved to the Apartment in 2010, the Arrangement / Understanding came into being.[141] The SoC then stated that the Plaintiff had, in *reliance* on the Arrangement / Understanding, engaged in various acts to her detriment, including tending to her parents' welfare and dealing with the Apartment's renovation, rectification and furnishings.[142]

(b) The SoC then stated that *further and/or in the alternative*, the Company was estopped from denying her of a right to stay in the Apartment because there was "an express representation and/or promise and/or conduct" by KTB *which the Plaintiff had acted on*.[143] Presumably, the Plaintiff's case was that the "conduct" here was tantamount to an *implied* representation which she relied upon.

I could not tell from the SoC just how the Arrangement / Understanding in (a) differed from the express/implied representation in (b), such that they were advanced as *alternative* bases for the Plaintiff's estoppel claim. After all, both were put forward by the SoC as being the object of the Plaintiff's reliance. The difficulty in distinguishing between the two items was exacerbated by the fact that the Plaintiff's pleadings, constituted by the SoC and her Further and Better Particulars ("F&BP") (Amendment No. 1), offered extremely scant details about both items. As will be explained in these grounds, the Plaintiff's evidence at trial also failed to pin down, with any meaningful degree of particularity, the

141 SoC at para 10(b).

142 SoC at para 10(c).

143 SoC at para 11.

terms of the Arrangement / Understanding and the occasion on which the representation was made.

94 The only sensible interpretation of the SoC which I could arrive at was that both the Arrangement / Understanding and the representation were two sides of the same coin. The Arrangement / Understanding could not have simply arisen in a vacuum – it would have to be spawned by a representation, whether express (*eg*, by way of a promise) or implied (by way of conduct). The Plaintiff's pleadings could thus be interpreted to say that there was an *express or implied representation about the Arrangement / Understanding*, which the Plaintiff had relied on to her detriment.

95 The next paragraph of the SoC then alluded to a licence coupled with an equity, advancing this as another *alternative* claim:[144]

> 12. *In the alternative*, the Plaintiff avers that there is a license coupled with equity between the Plaintiff and the [Company] that allows her to reside and occupy the [Apartment] during her life or as long as she desires without the requirement to pay any rent ….
>
> [emphasis added]

Again, the Plaintiff did not explain why the licence coupled with an equity was pleaded as an "alternative" claim to the estoppel (referred to in the immediately preceding paragraphs of the SoC) when it was more in the nature of a remedy sought to be imposed *as a result of* the estoppel. There was also no elaboration in the Plaintiff's closing submissions, which simply stated that the Plaintiff's claim in equity was "founded in proprietary estoppel / license coupled with equity".[145] The Plaintiff had thus joined both terms at the hip, without explaining

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144 SoC at para 12.

145 Plaintiff's Closing Submissions at para 38(i).

the interrelationship between them.

96 I read the Plaintiff's SoC to mean that she was advancing the proprietary estoppel as an equitable cause of action, and that she was pursuing a licence coupled with an equity as a *remedy* to satisfy the equity arising in her favour under the estoppel. The nature of such a licence, and how it might flow from an estoppel, was explained by the learned authors of Tang Hang Wu & Kelvin F K Low, *Tan Sook Yee's Principles of Singapore Land Law* (LexisNexis, 4th Ed, 2019) ("*Tan Sook Yee*") at p 655:

> **Licence Coupled with an Equity**
>
> 19.45 A licence to occupy land belonging to another which is not based on contract, and even if not coupled with a grant of an interest, may give the licensee rights extending beyond a bare licence because of the circumstances surrounding the giving of the licence. *A common set of facts involves the owner of the land permitting the occupier to occupy the land and either acquiescing in the occupier's mistaken belief that he has rights to the land, or will be conferred rights to the land, or encouraging him by words or conduct in his mistaken belief, the occupier expending money on the land or in any other way suffering a detriment. The basis of the extension or, in the appropriate case, conferment of rights, is equitable estoppel.* However, the licence coupled with an equity is still inchoate, i.e. before the matter has been resolved by a court, the issue of whether such a right binds third parties is still not clear.
>
> [emphasis added]

Having attempted to make sense of the Plaintiff's pleadings, I delved into her claim that a proprietary estoppel had arisen.

97 To establish a proprietary estoppel, a plaintiff must establish the following three elements:

(a) a representation by the party against whom the estoppel is raised;

(b) reliance by the plaintiff on that representation; and

(c) detriment suffered by the plaintiff as a result of that reliance,

such that it is *unconscionable* to allow the representor to resile from the position conveyed by the representation: *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 ("*Hong Leong Singapore Finance*") at [170]–[171]. Given that the Defendants elected not to adduce any evidence, the Plaintiff needed to prove the above elements to only a *prima facie* degree.

Whether there was a representation giving rise to an estoppel

98 As explained above, the Plaintiff's claim to a proprietary estoppel hinged on a representation about the Arrangement / Understanding.

99 As a preliminary observation, it was the Plaintiff's *pleaded* case that the representation came from *KTB*.[146] She did not expressly spell out why KTB should be regarded as having the authority to make representations as to who would get to stay in the Apartment, given that the tenancy agreements signed by D2 (see [8] above) would suggest that the right should belong to D2, as the legal occupier. However, the Plaintiff submitted that the tenancy agreement was a sham, for the following reasons:

(a) While the first tenancy agreement (signed when the family moved into the Apartment in 2010) was contemporaneously stamped for stamp duty, the subsequent tenancy agreements were not. These subsequent agreements were stamped only *after* legal proceedings commenced.[147]

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146 SoC at para 11.

147 Plaintiff's AEIC at para 73 and pp 2041–2077; Plaintiff's Closing Submissions at paras 137–139.

(b) Furthermore, while D2 claimed that the rental payable by her under the tenancy agreements had been offset from sums due to her by the Company (*eg*, director's fees),[148] the Plaintiff alleged that the Company failed to clearly demonstrate this. Specifically, the Plaintiff asserted that a ledger which the Company had produced, showing how the rent had been offset from sums owing to D2, should not be believed.[149]

(c) Finally, the Company itself had taken the position that it had the exclusive right to decide who stays in the Apartment,[150] despite D2 being the legal tenant.

100 D2 countered that the tenancy agreements were genuine, thus making her the legal occupier of the Apartment.

101 Without expressing any view on whether the rental agreements between D2 and the Company were genuine, I saw some force in the Plaintiff's submission that legal possession of the Apartment had somehow remained with the Company, despite the tenancy agreements with D2. If D2 was indeed the legal occupier, she could have simply thrown the Plaintiff out without going through the rigmarole of procuring the Board Resolutions (see [11] above), signed by Cindy and herself, to effect the eviction.

102 If the Company continued to retain legal possession of the Apartment, this meant that any representations by KTB as to who could stay in the Apartment would be binding, since all parties appeared to contemplate that he

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148 D2's Closing Submissions at para 67(4).

149 Plaintiff's Closing Submissions at paras 143–146.

150 Plaintiff's Closing Submissions at paras 155.

was the Company's directing mind and will.[151] As such, in considering if there had indeed been a representation about the Arrangement / Understanding, any words or conduct emanating from KTB would carry much weight.

103 A representation giving rise to an estoppel may either be express or implied. As regards implied representations, these can be implied from conduct or even silence. In *Hong Leong Singapore Finance*, Sundaresh Menon JC (as he then was) observed (at [194]) that:

> 194 … there is no need to find an express representation. Conduct, including silence, can give rise to an implied representation. Where silence is relied upon, it will normally be necessary to show that the silence was maintained in circumstances where the court considers that the party in question ought to have spoken …

The Plaintiff's pleaded case was that the representation about the Arrangement / Understanding was *either* express or implied.[152]

104 Having assessed the pleadings and the evidence, I concluded that the Plaintiff failed to establish, even at a *prima facie* level, that a representation (whether express or implied) about the Arrangement / Understanding had been made to her.

105 In seeking to establish the representation, the Plaintiff bore the burden of proving *who* made the representation, as well as the *contents* of that representation. As will be elaborated upon in these grounds, I found the Plaintiff's case to be problematic on both fronts:

(a) As regards the identity of the representator, the Plaintiff testified

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151 Plaintiff's Closing Submissions at para 69; D1's Closing Submissions at para 4.

152 SoC at para 10(b).

under cross-examination that the representation was conveyed to her personally by *both* KTB and D2.[153] However, this was a marked departure from the Plaintiff's pleaded case (see [99] above) that it was KTB who made the representation.

(b) As regards the contents of the representation, the Plaintiff's *pleadings* contained insufficient particulars from which one could glean a clear and unequivocal representation, whether by words or conduct, conveying the Arrangement / Understanding. In like vein, the Plaintiff's *evidence* lacked credibility:

(i) Her AEIC failed to cast sufficient light on what exactly was said or done, from which an express or implied representation could be derived.

(ii) As for her oral testimony, I found this to be unreliable to the point of being unable to cross even the *prima facie* threshold of proof.

106 I begin with the Plaintiff's claim that there was an *express* representation.

107 The relevant particulars of the alleged express representation began to emerge only during the Plaintiff's cross-examination. As to what was conveyed, she initially explained in cross-examination that KTB told her that she was his daughter, that he would protect her and that the family's properties were available for the family to live in, expense-free:[154]

It's not like transactional like …, because of this, I do this, …

153 Transcripts for 31 January 2024 at p 32 (lines 9–10).

154 Transcripts for 31 January 2024 at p 83 (lines 16–24).

> like my father had … actually communicated to me that he wanted me to take care of everything and he is protecting me and---but I do it as a---as a normal daughter, don't think so far. But he---he communicated in his own way whatever he wanted. And I relied on that as well. And he always told me he will protect me. This is the family home for generations. All the properties are available for the family to live in, expense-free. He has worked hard enough. There's no problem whatsoever to think and be worried about anything in life for generations to come.

As a preliminary observation, even if the Plaintiff's evidence above were accepted, KTB's alleged words that she could stay in the Apartment "expense-free" stopped far short of the representation which she contended for, which was that her right to stay was *irrevocable*.

108 When the Plaintiff sought to elaborate on the contents of the representation, material inconsistencies as to exactly *what* was represented began to surface. At one juncture, the Plaintiff said that under the Arrangement / Understanding, "it is my right to stay in the property *as long as* ***my family members*** *have wanted* me to" [emphasis added].[155] This suggested that her stay was at her parents' pleasure, which fell short of the representation contended for by the Plaintiff, *ie*, that her right to stay was *irrevocable*. Shortly after that, she said that "my parents … wanted for me as their daughter to live with them *as long as* ***I wished*** because this is the family home and this is where they would like me to spend their old age" [emphasis added],[156] thereby suggesting (by the word "I") that her stay was for a duration determined by her alone and not something which her family could revoke at will.

109 A party laying claim to a proprietary estoppel must clearly set out the

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155 Transcripts for 30 January 2024 at p 89 (lines 22–26).

156 Transcripts for 30 January 2024 at p 90 (lines 11–13).

subject matter to which the estoppel relates. In the House of Lords decision of *Cobbe v Yeoman's Row Management Ltd & and another* [2008] 1 WLR 1752, Lord Scott of Foscote observed (at [28]):

> 28 … Proprietary estoppel requires, in my opinion, clarity as to what it is that the object of the estoppel is to be estopped from denying, or asserting, and clarity as to the interest in the property in question that that denial, or assertion, would otherwise defeat. …

From the preceding paragraph, it was clear that the Plaintiff had failed to provide the requisite clarity, given her inability to even put up a consistent account of exactly what was represented.

110 To my mind, these inconsistencies were material obstacles standing in the way of the Plaintiff's endeavour to prove a *prima facie* case. Even if I were to assume that "the Plaintiff's evidence" was true (this assumption being the starting premise when assessing a submission of no case to answer – see [87] above), the application of that assumption becomes fraught with difficulties if parts of the Plaintiff's testimony point one way and parts of it point to another. Where material, such internal inconsistencies potentially render it challenging for the court to *identify* with certainty just what "the plaintiff's evidence" (which the court is to assume as correct) is.

111 The inconsistencies were also apparent when evaluating the corpus of the Plaintiff's evidence *as a whole* which, as explained at [88] above, included D2's evidence (given that D2 was called as a witness for the *Plaintiff*). Surely, those aspects of D2's testimony which had not been qualified or challenged by the Plaintiff while D2 was being examined (or re-examined) on the stand must form part of the *Plaintiff's* case. In this respect, the Plaintiff's claims about an express representation having been made were flatly contradicted by D2, who stated unequivocally that *both* KTB and D2 never promised the Plaintiff an

irrevocable right to stay in the Apartment:[157]

> Q: Okay, now [the Plaintiff] says that you cannot force her to leave [the Apartment]. She says she has a right to stay in [the Apartment] for the rest of her life. Did you or [KTB] [make] such a promise to [the Plaintiff]?
>
> A: No, no.

The Plaintiff did not attempt to seek any clarification or qualifications from D2, as regards her response extracted above, during D2's re-examination.

112 It is also necessary to highlight at this juncture that the Plaintiff's evidence as to the contents of the representation suffered from two significant procedural deficiencies:

(a) The representations alleged by the Plaintiff above were never pleaded – neither in the SoC nor in the Plaintiff's F&BP. She explained that she failed to plead the representations as she felt "embarrassed", since family members "don't say [these words] to each other".[158]

(b) Additionally, the representations alleged by the Plaintiff were not mentioned in her AEIC. She explained that her AEIC failed to capture KTB's exact words *because the words were conveyed to her through D2*.[159]

I did not accept any of these explanations. It was plain to see that the Plaintiff had held her cards close to her chest, drip feeding the particulars of her claim and fully revealing her position only in her oral testimony.

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157 Transcripts for 4 April 2024 at p 115 (lines 3–6).

158 Transcripts for 31 January 2024 at p 84 (lines 21–27).

159 Transcripts for 31 January 2024 at p 143 (lines 12–20).

113 More importantly, the Plaintiff's explanation in the preceding paragraph that it was D2 who conveyed the representation (even if it was supposedly on KTB's behalf) simply did not cohere with her pleadings, which recounted that it was *KTB* who made the representation (see [99] above). No particulars had been pleaded about D2 having conveyed the same.

114 Given the lack of particulars in the Plaintiff's pleadings and AEIC, as well as the material inconsistencies between the oral testimonies adduced in the Plaintiff's case, I found her claim that there was an *express* representation about the Arrangement / Understanding to be so unreliable that it failed to cross the *prima facie* threshold.

115 I now move to the Plaintiff's claim that there was an *implied* representation about the Arrangement / Understanding.

116 Under cross-examination, the Plaintiff testified that the implied representation arose from how KTB had made her feel "so secure":[160]

> … this is through interactions, communications, understanding. I can give you the---the examples because family don't---don't talk like that to each other. 'You do this. I do this.' If you're staying in a family home, we're a family, we don't talk like that to each other. It's not a practice. But in the ways that he has communicated to me, I can---I can tell you the particular words what he had told me and I, therefore, had no need to think of---of anything. I mean, I---I---I never really thought of anything about---I mean, I was just---he will---he---he made me feel so secure in every way possible and the words which he expressed, I can---I can say that.

The Plaintiff's testimony, as extracted above, was emblematic of her propensity to ramble without any concretisation of particulars. There was no attempt by her to precisely set out the terms of the Arrangement / Understanding conveyed by

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[160] Transcripts for 31 January 2024 at p 86 (lines 1–12).

the implied representation. As explained at [109] above, a plaintiff's evidence needs to be clear as regards the subject matter to which the estoppel relates. Even if KTB made her feel "so secure in every way possible", that could not in and of itself evince an intention to confer an irrevocable right to stay.

117 In any event, an examination of the evidence showed that it was simply not possible to imply any representation by the Defendants that the Plaintiff had an irrevocable right to stay in the Apartment. Many of the dealings which the Plaintiff sought to rely on, in support of her claim to an implied representation that she had an irrevocable right to stay, simply did not carry the implication which she claimed them to have. The following sets out the main dealings which she relied on, as well as my views on them.

118 Firstly, the Plaintiff made much of the fact that KTB promised to provide for her financially.[161] She pointed out that her parents had set up a trust fund worth US$5m for her benefit.[162] That they intended to provide for her was also supported by the evidence of D2, who testified that the Plaintiff did *not* want a trust and preferred to be given cash and properties instead, and that D2 and KTB refused to accede to the Plaintiff's preference because without a trust, "the money will go … just like that".[163] The Plaintiff's parents had thus *specifically* decided (for the Plaintiff's own security) to provide for her by way of a trust. D2 further confirmed that a trust in the Plaintiff's favour was in existence as at the point of the eviction.[164] That said, it was unclear to me what representation the Plaintiff sought to imply from this. Making financial provisions for one's

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161 Transcripts for 31 January 2024 at p 113 (lines 1–13).

162 Plaintiff's Closing Submissions at paras 162–164.

163 Transcripts for 4 April 2024 at p 62 (lines 2–10).

164 Transcripts for 4 April 2024 at pp 66 (line 22) – 67 (line 2).

children, including the setting up of a trust fund, is very different from empowering them to irrevocably lodge themselves under one's roof, rent free.

119 Secondly, the Plaintiff also relied on the evidence of Karan, who testified about an incident in 2013/2014 where Sunil allegedly perpetrated family violence against the Plaintiff. It was Karan's evidence that following the incident, KTB told the Plaintiff that she was an integral part of the family and that KTB wanted the Plaintiff to stay with KTB and D2.[165] This, argued the Plaintiff, reinforced the view that she had an implied right to stay at the Apartment.[166] Again, I found this submission difficult to follow. Letting one's child take refuge in one's home in the wake of some hardship is very different from giving that child an *irrevocable* right to stay. As remarked by the English High Court in *Coombes v Smith* [1986] 1 WLR 808 (at 818):

> … a belief that the defendant would always provide [the plaintiff] with a roof over her head is, to my mind, something quite different from a belief that she had a legal right to remain there against his wishes. …

120 Thirdly, the Plaintiff relied on her heavy involvement in the selection and purchase of the Apartment. For example, she had accompanied her parents to choose the Apartment in 2007. She alleged that when she discussed the purchase with KTB, he had told her to secure a unit that was to her liking. She said that KTB told her that the unit would be the new family home which the Plaintiff could stay in, together with KTB and D2.[167] Thereafter, the Plaintiff had assisted with the administrative steps in completing the purchase of the

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165 Karan's AEIC at para 34.

166 Plaintiff's Closing Submissions at para 73.

167 Plaintiff's Closing Submissions at para 48.

Apartment.[168] I found it difficult to see how any of this was probative of the implied representation which the Plaintiff claimed to have existed. Just because a parent involves his child in buying a home does not in any way signify that he is giving the child an irrevocable equitable interest in that home, particularly when that child provided no financial contribution to the purchase.

121 Finally, the Plaintiff argued that her right to stay could be implied from an affidavit which Sunil had filed in HC/S 1212/2003.[169] As explained at [9(a)] above, this suit pertained to a property at Ardmore Park belonging to the Company, which Sunil had been staying in. The Company had sued Sunil for, among other things, the payment of rent. In an affidavit filed by Sunil in that suit, he claimed that there was an "understanding" between him and KTB, to the effect that Sunil could reside in the Ardmore Park property rent free and without any limitation as to tenure.[170] The Plaintiff contended that Sunil's claim to such an understanding corroborated her case that such arrangements, in which KTB's children were allowed to stay rent-free in the Company's residential properties, could be implied as part and parcel of the family dynamics.

122 I rejected this suggestion. Critically, the Company had in HC/S 1212/2003 *disputed* the existence of any such understanding. Since the Company was acting at KTB's behest, its position could be imputed to KTB, thereby putting paid to the notion that Sunil's rent-free stay at Ardmore Park was accepted practice in KTB's eyes. The Plaintiff then tried to distinguish Sunil's situation by saying that the Plaintiff enjoyed a "nice relationship" with

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168 Plaintiff's Closing Submissions at para 50.

169 Plaintiff's Closing Submissions at para 87.

170 See the Company's written submissions for the HC/S 1212/2003, exhibited in AB Vol 1 at pp 185–186.

KTB, while Sunil was denied the indulgence of rent-free accommodations because of his legal disputes with his father.[171] I did not see how this was a valid distinguishing factor. The Plaintiff herself was embroiled in legal battles with KTB. As explained at [9(b)] above, KTB had commenced HC/S 186/2014 against her after she mortgaged the Parkshore Property to secure funds for Karan's company. KTB took action against the Plaintiff on the basis that the Parkshore Property was held by her on trust for him, meaning that she could not simply mortgage the Parkshore Property to raise funds for her son's business. The Plaintiff failed to explain why, if Sunil should be regarded as having been disqualified from rent-free accommodations by virtue of his litigation with KTB in HC/S 1212/2003, the same should not flow from her litigation with KTB in HC/S 186/2014.

123 Given the above, I took the view that, as with the Plaintiff's case on the alleged express representation, her case that there was an *implied* representation failed to cross the *prima facie* threshold. In particular, I failed to see how the factors which she relied on could support the implication of a representation that she had an irrevocable right to stay.

124 Given the absence of either an express or implied representation, the Plaintiff's claim to a proprietary estoppel failed. For the claim to succeed, any purported acts of detriment on her part would have had to be performed in reliance on such a representation. It would not suffice for these acts to have been performed by the Plaintiff merely in the *hope* that she would get an irrevocable right to stay in the Apartment, if there was never any representation to that effect: see *Hong Leong Singapore Finance* at [179].

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171 Transcripts for 31 January 2024 at pp 58 (line 27) – 59 (line 8); Plaintiff's Reply Submissions at para 79.

Detriment which the Plaintiff claimed to have incurred in reliance on the representation

125 Even if there had been a representation (express or implied) about the Arrangement / Understanding, I was of the view that the evidence failed to establish (even at a *prima facie* level) that the Plaintiff acted in *reliance* on that representation to her detriment.

126 To recapitulate, the acts which the Plaintiff claimed to have performed to her detriment, in reliance on the representation, could be categorised as follows (see [17] above):

(a) tending to the welfare of her parents, on matters such as medical care and household affairs;

(b) sacrificing the opportunity to seek meaningful, paid employment because of having to perform the acts in (a) above; and

(c) tending to the Company's properties, particularly the Apartment, by handling:

(i) renovation / rectification works and furnishings; and

(ii) communications with the MCST.

Additionally, the Plaintiff claimed that she had, in reliance on the representation, incurred detriment by relinquishing the right to stay in two other properties held in her name – being the Parkshore Property and the Sovereign unit -– which she would otherwise have enjoyed: see [19] above.

127 I examined each category of detriment alleged by the Plaintiff and found them to be without merit.

(1) Taking care of D2 and KTB

128 The Plaintiff claimed to have taken care of her parents' welfare, to the point of being their *primary* caregiver.[172] Specifically, she declared herself to have been the main caregiver for D2 since 2006 and for KTB since 2016.[173] She alleged that apart from attending to household affairs, she fetched them to their medical appointments, corroborating her claim with receipts for medical treatments that were in her possession[174] and records of WhatsApp chats where she was seen alluding to the health of KTB and D2.

129 I rejected the Plaintiff's claim. Preliminarily, there was a host of countervailing indicators showing that the Plaintiff was *not* the main caregiver to her parents. For example, there were *multiple* domestic helpers living in the Apartment tending to the needs of both KTB and D2 (see [11] above). In fact, the District Judge hearing the LPA Challenge expressly found that contrary to the Plaintiff's claims, she was *not* KTB's primary caregiver. The District Judge opined that KTB was physically taken care of by the helpers in the Apartment and the fact that the Plaintiff may have issued directions to these helpers did not make her the primary caregiver.[175] Similarly, D2's testimony indicated that the Plaintiff's contributions to the household were plainly unremarkable, with the latter spending her time "sitting in the house":[176]

> Q When she was staying with you. When [the Plaintiff] was staying with you, she did a lot to help out in the house, is that true?

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172 SoC at para 11(b).

173 Plaintiff's Closing Submissions para 113.

174 Plaintiff's Closing Submissions para 111.

175 I have omitted the citation to the District Judge's judgment, in which parties' names have been redacted.

176 Transcripts for 4 April 2024 at p 115 (lines 10–17).

> A Helped us like what? She was staying in our house as in a house member. Sometimes she comes with me to the supermarket, sometimes I go to the clinic, she said 'Mum, shall I come with you?' I said 'Okay, it's up to you.' And we sometimes (indistinct), nothing much, nothing special. She was not in the office, she was not anywhere else except that staying in the house and sitting in the house.

130 More importantly, even if the Plaintiff's acts of taking care of her parents were sufficiently significant as to constitute detriment for purposes of raising an estoppel, the evidence showed that these acts were *not performed in* ***reliance*** on the representation which she claimed to have been made about the Arrangement/ Understanding. To recapitulate, the Plaintiff conceded in cross-examination (see [43] above) that:

(a) what she did was out of love and *nothing else*; and

(b) her actions were performed *regardless* of any promise that her parents may have made to her and she was *not relying* on anything they told her.

131 I am mindful that the Plaintiff recanted these concessions on the very next day (*ie*, on 2 February 2024) – see [55] above. Specifically, she did an about turn and said that the acts of detriment were not performed *entirely* out of love and filial piety. Instead, she re-packaged her testimony to say that her acts were motivated by a *combination* of both filial piety and reliance on the representation about the Arrangement / Understanding. The following sets out the relevant portion of her testimony post-recantation:[177]

> Q: … Can you agree with me that what you had done for them was done purely out of filial piety? Agree or disagree?

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177 Transcripts for 2 February 2024 at pp 73 (line 30) – 74 (line 11).

> W: Your Honour, can I explain to my lawyer--- … Can I ex---because I---I---I don't want to be completely---you see, because, prior to this---can I explain?
>
> Ct: I'm asking you to answer the question. Was it purely out of filial piety? It's a simple question. …
>
> W: It was already---it was already stated it was filial piety, very much, but some of what my parents have conveyed to me over the years as well, *a combination of all*. But filial piety is above everything.
>
> [emphasis added]

In closing submissions, the Plaintiff reiterated that her love for her parents and her reliance on the representation were not mutually exclusive. It was not a binary choice between either, meaning that it was still possible for her to have been motivated by a combination of both.[178]

132 As alluded to at [53]–[58] above, the circumstances under which the concessions were made in cross-examination and their subsequent recantation were nothing short of bewildering. In my view, it was not open to me to simply discount the concessions, just because the Plaintiff attempted to recant them, given that her evidence on the circumstances surrounding the *volte-face* could not – by any stretch of the imagination – be regarded as credible. I took this view for the following reasons.

133 Firstly, the Plaintiff offered no satisfactory explanation for *why* she made the concessions during cross-examination on 1 February 2024, if they were indeed erroneous:

(a) The Plaintiff contended that she made the concessions as she was "emotional" (see [57] above), that her "mental state was not there", and

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178 Plaintiff's Closing Submissions at paras 114–117.

that she had "too many things going in [*sic*] [her] mind" (see [53] above). In closing submissions, the Plaintiff elaborated further, saying that she was suffering from depression, anxiety and schizophrenia and was under medication.[179] However, the Plaintiff failed to point to anything within her medical records showing *how* the mental conditions at issue might bear a causal link to a patient to make false concessions on oath, which the Plaintiff claimed to have done during cross-examination on 1 February 2024.

(b) The Plaintiff also complained that the concessions had been made by her in response to cross-examination questions that were "inadequately phrased" and which focused on isolated portions of her pleadings.[180] I was unable to agree. The questions were clear and pitched at a factual level. If they had indeed been phrased in a misleading fashion, her lawyer could have objected to them.

(c) The Plaintiff also alleged that the concessions were made because she was not afforded the opportunity to seek legal advice before making them.[181] Again, I rejected this submission, for the same reasons that I rejected her lawyer's request (alluded to at [52] above) to advise her in the middle of her cross-examination about the implications of her answers on the stand. It is nothing short of improper for counsel to steer their client's testimony in such fashion, whilst cross-examination is in progress.

I would conclude on this first point by stressing that a witness is expected to

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179 Plaintiff's Closing Submissions at para 255; Plaintiff's Reply Submissions at para 25.

180 Plaintiff's Closing Submissions at paras 255(i) & 256.

181 Plaintiff's Closing Submissions at para 255(iii).

answer both truthfully and carefully, when testifying on the stand. If she wants the court to countenance an about turn from what she previously said in the witness box, there must be a credible explanation for why she gave the evidence (which she now seeks to recant) in the first place, if that evidence was indeed false.

134 Secondly, the explanations for what prompted the Plaintiff to recant her concessions simply did not add up. As alluded to at [56] above, the Defendants' lawyers had demanded an explanation from Mr Premaratne for his client's sudden recantation of her concessions, following her meeting with him the evening before. The Plaintiff was then asked to step out of the courtroom, upon which Mr Premaratne assured the court that he had *not* spoken to the Plaintiff about the implications of her concessions. However, when the Plaintiff returned to the witness stand after that, she said the exact opposite of what Mr Premaratne had just assured the court, *ie*, that she *did* discuss with Mr Premaratne about the implications of her concessions (see [58] above). I was thus left facing a situation where the party was saying one thing and her lawyer was saying something entirely different, on what had become a highly critical point of contention. Mr Premaratne also claimed to be constrained from explaining any further, on account of the Plaintiff refusing to waive privilege as to what had transpired at the meeting with him on the evening of 1 February 2024 (see [59] above). While the Plaintiff was of course entitled to maintain that privilege, the upshot was that the record now contained a highly material discrepancy which remained unexplained and which thus cast a long pall on the reliability of her testimony. In fact, there were portions of the Plaintiff's testimony indicating that the recantations were motivated by collateral reasons. Specifically, the Plaintiff mentioned that she wanted "the liars to come to lie" in court but the

withdrawal of her claims meant that this outcome was no longer tenable.[182] This suggested that her recantations were motivated by tactics rather than truth.

135 Thirdly, the Plaintiff's behaviour in recanting her concessions inspired little confidence in her candour. As explained above, when the recantations were made, Mr Daniel had pressed the Plaintiff about whether she had spoken with anyone after the end of the previous day's cross-examination (see [54] above). Specifically, he asked the Plaintiff if she had spoken with her son Karan (who was due to be called as her next witness) and she had said "no". However, when the Plaintiff was asked to leave the courtroom, Mr Premaratne explained to the court that she *did* speak to Karan when they both met Mr Premaratne the evening before (see [56] above). When the Plaintiff was called back into the courtroom, she was asked *again* if she had spoken to her son the evening before. This time, she admitted that she had done so and conceded that she was not being truthful when she told the court a few moments before that she had not.[183]

136 I thus rejected the Plaintiff's attempt to recant the concessions that she had made while under cross-examination on 1 February 2024. I should add that *even* if recantations were accepted, her evidence post-recantation still failed to sufficiently demonstrate that her actions had been performed in reliance on the representation about the Arrangement / Understanding. As stated at [131] above, the Plaintiff had, after recanting her concessions, sought to clarify that she took care of her parents as she was motivated by a *combination* of both filial piety and reliance. She argued that just because she was motivated primarily by love for her parents, this did not rule out the possibility that her reliance on the representation was also a contributing impetus for her to make the sacrifices that

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182 Transcripts for 2 February 2024 at p 54 (lines 3–14).

183 Transcripts for 2 February 2024 at pp 50 (line 30) – 51 (line 11).

she did. Notwithstanding, she said that filial piety *comprised **99**%* of that combination:[184]

> Q: … Can you agree with me that what you had done for them was done purely out of filial piety? Agree or disagree?
>
> W: Your Honour, can I explain to my lawyer--- … Can I ex---because I---I---I don't want to be completely---you see, because, prior to this---can I explain?
>
> Ct: I'm asking you to answer the question. Was it purely out of filial piety? It's a simple question. …
>
> W: It was already---it was already stated it was filial piety, very much, but some of what my parents have conveyed to me over the years as well, a combination of all. But filial piety is above everything.
>
> …
>
> Ct: … So if you are saying it's, you know, filial piety is part of it---or even---
>
> W: Most of it---most of it. … I would say, 99%, yes. … okay, you can't quantify this filial piety.

The Plaintiff's allusion to 99% was strongly indicative of her reliance on the representation (if any) being *de minimis*. This was reinforced by the Plaintiff's response which followed shortly after the exchange above, in which she re-affirmed that her actions were *not* performed for reward:[185]

> Q: But you know what you are doing in this case? You're saying you did it for reward.
>
> A: Can't quantify it.
>
> Q: Did you take care of your parents for reward, yes or no?
>
> A: No.
>
> …
>
> Q: … Was the desire for reward one of your motives for

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184 Transcripts for 2 February 2024 at pp 73 (line 30) – 74 (line 27).

185 Transcripts for 2 February 2024 at p 75 (lines 1–20).

> taking care of your parents the way you described in your claim?
>
> A: No.

137 Consequently, I rejected the Plaintiff's claim that her actions in taking care of her parents and tending to the household matters constituted detriment that could found a proprietary estoppel. She failed to demonstrate that the extent of detriment allegedly suffered had reached any degree of significance and, more importantly, failed to establish that the acts of detriment (if performed) were in *reliance* on any representation made to her.

(2) Sacrificing the opportunity to secure gainful employment

138 I next touch on the Plaintiff's claim that she suffered detriment in terms of sacrificing the opportunity to seek meaningful, paid employment in the job market, given that she had to shoulder the burden of two sets of responsibilities:

(a) tending to the Company's affairs; and

(b) looking after her parents.

139 As regards tending to the Company's affairs, it was important to set the context by highlighting that this was part of the Plaintiff's *job*. The Plaintiff was employed by the Company, with her employment contract[186] stating that she was to (among other responsibilities):

(a) look after the properties under the Company's control;

(b) make necessary payments of maintenance charges from the Company on all its properties; and

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186 Exhibited in AB Vol 1 at p 84–85.

(c) attend to any works in respect of the Company's properties.

For undertaking these responsibilities, the Plaintiff was paid a monthly salary of S$2,000.[187]

140 *Over and above* this monthly salary, the Plaintiff had been receiving a monthly allowance of S$1,000 from D2, for many years.[188]

141 The Plaintiff's acts of tending to the Company's affairs were thus not a detriment. She was simply doing what she was paid to do. The Plaintiff nevertheless claimed that this constituted a detriment because she had accepted an annual salary of only $24,000 from the Company, when she could have secured financial independence in the job market. She contended that she:[189]

> … would … not have agreed to simply earn S$24,000 per year working at [the Company] since 1996 if she knew she could be evicted at any moment and would have taken steps to seek financial independence by working outside.

I rejected the Plaintiff's contention, for the following reasons:

(a) Firstly, she adduced no evidence to show how much she would have commanded in the job market, and the extent to which this would have exceeded (if at all) the monthly sum of S$3,000 (comprising salary from the Company and the allowance from D2) that she was getting from her family. In fact, it was D2's evidence that the Plaintiff was getting paid by the Company for doing very little. I set out D2's

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187 Transcripts for 31 January 2024 at p 69 (lines 1–3).

188 Transcripts for 1 February 2024 at p 22 (lines 16–26).

189 Plaintiff's Closing Submissions at para 101.

testimony on this point:[190]

> Q Okay. Now [the Plaintiff] said she was also helping with the [Company's] business. Is that true?
>
> A Never. She never go to the office, she never---she doesn't know anything about the business. And all the time, only my son handling the business with the father, not [the Plaintiff].

The Plaintiff did not attempt to obtain any qualifications to this aspect of D2's testimony when re-examining D2 on the stand. It was only in the Plaintiff's closing reply submissions that she sought to refute D2's remarks above. Specifically, the Plaintiff argued that she *did* do some work for the Company, pointing to an email in which the Plaintiff purportedly procured financing from UOB Bank in the Company's favour.[191] However, this document was never drawn to D2's attention while she was on the stand, meaning that D2 was denied the opportunity to give her views on it.

(b) Secondly, I did not understand the Plaintiff's case to be that the time spent by her working for the Company would be *discounted* by a prospective employer assessing if she had relevant work experience. After all, her employment was properly documented by a signed contract setting out the scope of her responsibilities (see [139] above). That being the case, it was difficult to see why the Plaintiff's years of employment with the Company should be regarded as an opportunity cost, if this was something that the job market could properly take account of, should she ever choose to resign from the Company and seek outside employment.

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190 Transcripts for 4 April 2024 at p 115 (lines 18–21).

191 Plaintiff's Reply Submissions at para 19.

142 I thus concluded that there was no basis to regard the Plaintiff's decision to work for the Company (in lieu of seeking outside employment) as a "detriment" that could support an estoppel. There was nothing to suggest that she could have secured more favourable employment terms in the job market, or that her employment with the Company had somehow adversely impacted on her ability to look for another job outside the family business.

143 As regards the Plaintiff's acts of tending to her parents, there was similarly nothing to show how this had in any way prevented her from getting a job outside the family, if she was indeed so minded. As explained at [129] above, the Plaintiff failed to demonstrate that she shouldered any significant caregiving burdens, to the point that she was precluded from finding a job.

144 In any event, the evidence was strongly suggestive of the Plaintiff being predisposed to *not* seeking work (to be precise, work which did not involve taking her parents' money). In 2006, the Plaintiff had filed an affidavit in support of her application against her husband for maintenance in MSS 1791/2006 (referred to at [7] above). In that affidavit,[192] the Plaintiff attested that she had not worked for 21 years prior to 2006, *ie*, since 1985, declaring herself to be a traditional wife who preferred to stay at home and wait on her husband:[193]

> I am a housewife and have not worked since my marriage to the Respondent 21 years ago. It was a mutual decision between the Respondent and I that I would stay at home to take care of our child and the household matters while the Respondent worked and provided for our family. The Respondent and I both come from traditional Indian backgrounds and the wife is expected to

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192 Exhibited in D1's Bundle of Documents at pp 31–60; Transcripts for 31 January 2024 at p 12 (lines 7–18).

193 Para 18 of the affidavit which the Plaintiff filed in MSS 1791, exhibited in D1's Bundle of Documents at pp 37–38.

> stay at home and wait on the husband, and I have always been content to do so. I was financially dependent on the Respondent during the marriage and he supported Karan and I on his income.

There being no suggestion of the Plaintiff securing external employment within the four years spanning 2006 (after the affidavit was filed) to 2010 (when the Arrangement/Understanding was allegedly arrived at), this meant that she had not sought a job outside of the family business for a total of 36 years, comprising the 25 years prior to 2010 plus a further 11 years thereafter (*ie*, up to the eviction in 2021). The Plaintiff's claim that it was her reliance on the Arrangement/ Understanding which stopped her from finding an independent job would thus have to be assessed against this backdrop. If true, her claim meant that after the Arrangement/Understanding came into existence in 2010, her outlook on employment had somehow evolved from what it had always been for the last quarter of a century, and she was now *ready* to get a job outside of the family business. However, she decided to perpetuate the state of comfort which she had enjoyed for the last 25 years, by an additional 11 years, although *this time* her decision to refrain from getting external employment could be attributed to the Arrangement/Understanding.

145 This claim plainly invited incredulity. There was no persuasive explanation showing that after 2010, her mentality on getting a job was any different from what it had always been, *ie*, that she did not want to work. This was also corroborated by the evidence of D2, who affirmed in her AEIC that the Plaintiff "never wanted to work" and would not have worked even if presented with an opportunity to do so.[194]

146 Given the evidence, the Plaintiff's omission to seek employment could

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194 D2's AEIC at para 58.

thus not be said to have arisen from *reliance* on any representation made to her. Rather, the evidence was strongly probative of the Plaintiff having made a lifestyle choice not to work outside of the family and live off her parents instead.

(3) Tending to the Company's affairs

147 The next detriment which the Plaintiff claimed to have suffered was her expenditure of resources in tending to the Apartment. This included:

(a) liaising with the MCST about the Apartment;

(b) effecting renovation/rectification works to the Apartment; and

(c) furnishing the Apartment.

Each of these points are dealt with in turn below.

148 The Plaintiff claimed that she had expended a considerable amount of time, effort and resource handling, among other things, regular communications with the MCST about the Apartment.[195] To my mind, this could not constitute a "detriment" for purposes of founding an estoppel. As explained at [139] above, the Plaintiff was paid $2,000 a month by the Company for various responsibilities, including looking after the Company's properties. Given that liaising with the MCST fell squarely within the scope of that responsibility, it could not constitute a "detriment" – the Plaintiff was merely doing what she was contractually required (and paid) to do.

149 The Plaintiff also claimed to have spent a considerable amount of time, effort and resources handling renovation and rectification works to the

195 Plaintiff's Closing Submissions at para 93(i); Plaintiff's AEIC at pp 314–320.

Apartment.[196] To substantiate this claim, her closing submissions footnoted a list of supporting documents.[197] However, a perusal of those documents showed that they comprised correspondences with the developer, in which various defects were highlighted, including defects on the common property. These documents did not speak to the Plaintiff *personally* incurring any expenses in effecting the renovations or rectifications. That the Plaintiff did not suffer any financial costs in this regard was corroborated by her evidence in cross-examination, where she stated unequivocally that after she moved to the Apartment, the renovations were paid for by her parents.[198] If the Plaintiff's contributions to the Apartment's renovation and rectification works did not involve any payment from her own pocket and she had merely assisted in management and administration, this meant (again) that she was doing what her employment contract with the Company required her to do. There was no detriment to speak of.

150 As regards the furnishings to the Apartment, the evidence militated against the notion that the Plaintiff was rendered out of pocket in any way. In her AEIC, D2 alluded to the Plaintiff's claims of having expended considerable resources on tending to the Apartment's furnishings, rectifications and renovations, before affirming unequivocally that the Plaintiff's contributions were minimal and were in any event "reimbursed to her immediately".[199] The Plaintiff did not seek to re-examine D2 on this portion of her AEIC. I also observed that the Plaintiff herself had testified in cross-examination that she was

196 Plaintiff's Closing Submissions at para 93(i).

197 Footnote 152 to Plaintiff's Closing Submissions at para 93(i), referring to AB Vol 2 at pp 551–554, 561–562 and 636.

198 Transcripts for 31 January 2024 at p 102 (lines 18–21).

199 D2's AEIC at para 57.

reimbursed for expenses incurred in tending to the household:[200]

> … I was very committed to what I was doing …---taking care of the family business as well, managing the properties. And that was also full-time, you know, managing all the matters of sales, rentals, negotiations, renovations and then my house with the family. So I was busy in that and that was fine. *I was okay because all expenses were paid.*
>
> [emphasis added]

151 Out of an abundance of caution, I perused the documents which the Plaintiff put forward as documentary evidence of payments for the Apartment's furnishings. While these records may have shown that sums were incurred for various purchases, there were no corresponding records matching these outflows to the Plaintiff's bank account, to show that *she* was the one personally bearing the expense.

152 More importantly, it was the Plaintiff's evidence that in tending to the Apartment, she acted out of love and not in *reliance* on any promise to let her stay in the Apartment:[201]

> Q: … you are saying you only invested time and effort in managing matters relating to the family home - things like the renovation, liaising the MCST, et cetera … and was the primary caregiver to your mother and father only because you were promised a right … promised an interest in the family home or right to stay, as you call it. Is that what you mean to say here?
>
> A: Disagree.
>
> Q: So what you want to say, can we agree, Ms Bhojwani, is that you did it for love and affection for your parents, nothing else?
>
> A: That---that---that is absolutely true.

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200 Transcripts for 31 January 2024 at pp 113 (lines 8–13).

201 Transcripts for 1 February 2024 at pp 158 (line 26) – 159 (line 3).

This concession thus debunked the Plaintiff's position that her acts of tending to the Apartment could qualify as detriment supporting an estoppel. Of course, as alluded to above, she did attempt to recant this concession but I have explained (at [132] above) why I did not find the recantation to be credible.

153 I should add that even if the Plaintiff had incurred any personal expenditure on the Apartment's furnishings, rectification and renovations, she failed to set out the *amount* that had been incurred. Sifting through the tangled cotton ball of documents that the Plaintiff had appended to her AEIC, it was difficult to tease out a global figure. While I did not expect the Plaintiff to quantify her expenses with detailed precision (especially since some of the transactions took place a while ago), I still expected her to at least give a rough indication in terms of the size of the sum incurred. That would give an idea of the size of the detriment, which would in turn be an important driver informing the court as to how the equity (if one arose on the facts) was best satisfied. As explained by the Court of Appeal in *Low Heng Leon Andy v Low Kian Beng Lawrence (administrator of the estate of Tan Ah Kng, deceased)* [2018] 2 SLR 799 (at [16]–[17]), the court's discretion in satisfying the equity is guided by the following twin lodestars:

(a) achieving *proportionality* between the expectation, the detriment and the remedy; and

(b) doing the *minimum* required to satisfy the maximum extent of the equity and do justice between the parties.

Consequently, if the sum incurred by the Plaintiff personally was relatively modest, it would be disproportionate to satisfy any equity which had arisen in her favour by granting her claim for an irrevocable right to stay in the Apartment for life, rent-free.

(4) Forbearance in respect of properties held in the Plaintiff's name

154 The Plaintiff also claimed that the representation about the Arrangement/Understanding gave her the impression that she would always have a right to stay in the Apartment, thereby lulling her into relinquishing her right to stay in two other properties that were held in her name: the Parkshore Property and the Sovereign unit (see [19] above).[202] Specifically:

(a) she agreed to let the Parkshore Property be rented out to generate income for servicing the Company's debt; and

(b) she agreed to let the Sovereign unit be sold to the Company in 2007 at a discounted price.

According to the Plaintiff, these acts of forbearance were detrimental to her, as they left her with no other place to stay following the eviction.

155 Preliminarily, I noted that the alleged acts of forbearance detailed above were never pleaded. However, a complication which arose in this case was that the Defendants made a submission of no case to answer, thereby electing not to call any evidence (including evidence responding to the aforementioned unpleaded claim). A similar situation arose in *Ma Hongjin*, where the plaintiff sued the defendant for payment of certain sums due under a supplemental agreement. The plaintiff in that case failed to plead her claim that consideration had been furnished for the supplemental agreement, despite knowing that one of the defences being raised was that the supplemental agreement was unenforceable for lack of consideration. Notwithstanding this deficiency in the plaintiff's pleadings, the defendant proceeded to make a submission of no case

202 Plaintiff's Closing Submissions at paras 96–97.

to answer. In doing so, the defendant contended that the plaintiff should not be allowed to assert that consideration was furnished, given that the plaintiff had failed to plead this. At the High Court (see *Ma Hongjin v SCP Holdings Pte Ltd and another* [2019] SGHC 277), Vinodh Coomaraswamy J dismissed the defendant's objection and allowed the plaintiff to pursue her point that consideration had been furnished (albeit this point was ultimately rejected). In doing so, Coomaraswamy J commented (at [107]):

> 107 … I do not consider that the plaintiff's failure to comply with O 18 r 8(1)(*b*) has caused any real prejudice to the first defendant. The issue of consideration in this action is a question of mixed fact and law. As far as the facts are concerned, *the first defendant elected not to call evidence knowing that the plaintiff was asserting that the SA was supported by consideration but had failed to plead that consideration* in compliance with O 18 r 8(1)(b). Further, the first defendant did not attempt to strike out this aspect of the plaintiff's claim or to seek further particulars of it before trial or before its submission of no case to answer. *In my view, the first defendant must be taken to have accepted the risk that the plaintiff would rely on facts which she had not pleaded to make good at trial her assertion that the SA is supported by consideration.*
>
> [emphasis added]

156 Returning to the present case, I noted that the Plaintiff's unpleaded claim, to the effect that she suffered detriment by relinquishing the right to stay in the Parkshore Property and Sovereign unit, was expressly spelt out in her AEIC.[203] Despite this, the Defendants saw fit to advance a submission of no case to answer and thereby elect to not adduce any evidence in response. In line with the views expressed by Coomaraswamy J in *Ma Hongjin*, one might argue that the Defendants, in making this election, should be regarded as having accepted the risk of the Plaintiff advancing the unpleaded claim in her submissions (which was what eventually happened) – this would then militate against the

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[203] Plaintiff's AEIC at paras 66–67.

suggestion that the Defendants had been prejudiced by the Plaintiff's failure to plead. Of course, it could alternatively be argued that a defendant who makes a submission of no case to answer is not necessarily relinquishing his procedural right to object to any unpleaded claims by the plaintiff. In other words, a defendant's submission of no case to answer should be construed as a submission that the defendant has no *pleaded* case to answer, with an implicit reservation of the right to object to any unpleaded facets of the plaintiff's case.

157 There was nevertheless no need for me to pronounce any conclusive views on the implications which a defendant's submission of no case to answer might have on the plaintiff's failure to plead. Even if I were to allow the Plaintiff to pursue her unpleaded claim that she had relinquished the right to stay in the Parkshore Property and Sovereign unit, her evidence on this point still failed to cross the *prima facie* threshold.

158 As regards the Parkshore Property, the Plaintiff had stated unequivocally in her affidavit in MSS 1791/2006 (referred to at [144] above) that this was held on trust for KTB and that she did not contribute towards its purchase.[204] In short, the Parkshore Property was not hers to begin with. The Plaintiff adduced no countervailing evidence to show why it was her place to dictate who could stay in the Parkshore Property, if this was indeed held on trust for KTB.

159 As regards the Sovereign unit, the Plaintiff similarly stated in her affidavit in MSS 1791/2006 that this unit was *purchased by KTB*.[205] There was no evidence of the Plaintiff having contributed to the purchase price. Even then,

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204 Para 20 of the affidavit which the Plaintiff filed in MSS 1791, exhibited in D1's Bundle of Documents at p 38.

205 Para 20 of the affidavit which the Plaintiff filed in MSS 1791, exhibited in D1's Bundle of Documents at p 38

when the Sovereign unit was sold in 2007, she received a substantial share of the sale proceeds, to the tune of S$438,528.41. This would have by no means been a paltry sum, especially at the time of the sale, which was close to two decades ago. The Plaintiff offered no explanation as to what she did with the money. Certainly, there was no explanation as to why her share of the proceeds could not have been applied towards securing alternative accommodation of her own. It was thus difficult to see why the Plaintiff's alleged forbearance in allowing the Sovereign unit to be sold constituted a detriment.

Conclusion on the Plaintiff's proprietary estoppel claim

160 Having assessed the evidence above, I concluded that the Plaintiff failed to establish, even at the level of a *prima facie* case, that a representation (whether express or implied) about the Arrangement/Understanding had been made, or that she had relied on any such representation (if it had even existed) to her detriment, such that an equity had arisen in her favour.

161 Before concluding on the proprietary estoppel claim, I pause to opine that *even* if an equity had arisen in the Plaintiff's favour, it would very likely have been satisfied by the many years of indulgence which KTB and D2 extended to her: see *Chiam Heng Luan and others v Chiam Heng Hsien and others* [2007] 4 SLR(R) 305 at [88]–[89]. One needs to take a step back and holistically view the backdrop against which the Plaintiff claimed to have suffered a detriment:

(a) The Plaintiff and her son had been allowed to live with her parents, rent-free, since 1994.

(b) The Plaintiff's parents had employed more than one helper at a time to attend to the family's needs – it was not disputed that the Plaintiff

enjoyed the full benefit of the helpers' services when living with her parents.

(c) Despite being absolved of having to pay any rent for accommodations, the Plaintiff even received a monthly allowance of S$1,000 from her mother (see [140] above). This was *over and above* the monthly salary of S$2,000 that the Plaintiff was receiving for tending to the Company's properties (which included the Apartment), notwithstanding her own mother's evidence that the efforts expended by the Plaintiff towards the Company's affairs were not particularly significant – see [141(a)] above.

In the Plaintiff's own words while under cross-examination:[206]

> My parents were paying for everything for me as well, so I didn't suffer as such. All expenses were paid, rent-free. My father had expressed to me, 'No problem. Everything is taken care of. I'm protecting you. All is fine. Nothing to worry about, ever'.

162 It was thus obvious that the Plaintiff was the beneficiary of a highly favourable arrangement. This was also corroborated by her evidence in MSS 1791/2006, where the Plaintiff's affidavit (referred to at [144] above) alluded to how her parents bore the brunt of supporting her for many years. The affidavit was peppered with affirmations to that effect, such as "I was surviving on the goodwill of my parents", "I am living off my parents" and "I am currently surviving on my parents' generosity".[207]

163 When the affidavit was put to the Plaintiff in cross-examination, she

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206 Transcripts for 31 January 2024 at p 113 (lines 1–4).

207 Paras 5, 12 & 17 of the affidavit which the Plaintiff filed in MSS 1791, exhibited in D1's Bundle of Documents at pp 32–37.

sought to disavow responsibility for its contents by saying that it was KTB who had (with a view to protecting the Plaintiff's position in MSS 1791/2006) dictated the words in the affidavit, which she had then "signed blindly".[208] If this were true, it would only serve to emphasise the lack of credibility in the Plaintiff's sworn evidence. I say more on this below.

Contractual right to occupy

164 I next move to the Plaintiff's claim that she had a contractual licence to reside in the Apartment.

165 In *Ram Niranjan v Navin Jatia and others and another suit* [2020] 3 SLR 982 ("*Ram Niranjan*"), Chua Lee Ming J alluded (at [112]) to the nature of a contractual licence:

> 112 … A contractual licence is a contractual right, as a result of which the revocability of the licence must rest on the terms of the contract, express or implied: Tan Sook Yee, Tang Hang Wu & Kelvin F K Low, *Tan Sook Yee's Principles of Singapore Land Law* (LexisNexis, 3rd Ed, 2009) at paras 19.7 and 19.31.

166 Returning to the present case, the Plaintiff did not specify exactly who the parties to the contract (underpinning the contractual licence) were. Since it was her case that the rental agreement with D2 was not genuine, this presumably meant that from the Plaintiff's perspective, *the Company* owned the Apartment. That would in turn mean that under the Plaintiff's case, the contract (on which the licence was based) was between the Company and herself, with the Company having been bound to contractual relations by the words of KTB.

167 I found the Plaintiff's claim to a contractual licence to be fraught with

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208 Transcripts for 31 January 2024 at pp 104 (line 24) – 105 (line 13).

difficulties. Firstly, as with the alleged representation underlying her claim to an estoppel, she failed to identify with any measure of particularity the offer and acceptance under which the contract underpinning the licence came to life: see *Kok Kuan Hwa v Yap Wing Sang* [2025] SGHC 19 at [86], as regards the considerations in determining if an oral contract has come into being.

168 Secondly, even if an offer had been made to the Plaintiff to let her reside in the Apartment, there was no evidence of the person making that offer (whether it was KTB or D2) holding any intention to create legal relations. It is trite that within the domestic context, the presumption is that parties do not harbour such intentions. In *Ong Wui Teck (personal representative of the estate of Chew Chen Chin, deceased) v Ong Wui Swoon and another and another appeal* [2019] SGCA 61 ("*Ong Wui Teck*"), the Court of Appeal noted (at [45]):

> 45 … Specifically, where an arrangement is made in the domestic or social context, there is a *presumption* that the parties *do not* intend for legal consequences to follow, that is, there is *no* intention to create legal relations …
>
> [emphasis in original]

The Court of Appeal then referred to the seminal English Court of Appeal decision in *Balfour v Balfour* [1919] 2 KB 571 (at 579), where Atkin LJ (as he then was) observed that:

> [Arrangements between spouses] are not sued upon, not because the parties are reluctant to enforce their legal rights when the agreement is broken, but because the parties, in the inception of the arrangement, never intended that they should be sued upon. Agreements such as these are outside the realm of contracts altogether. The common law does not regulate the form of agreements between spouses. … The consideration that really obtains for them is that natural love and affection which counts for so little in these cold Courts.

The Court of Appeal in *Ong Wui Teck* also made it clear (at [45]) that the presumption against the intention to create legal relations applied not just to

arrangements between spouses, but to that between parent and child as well.

169 In evaluating if that presumption has been rebutted, the court will look at the facts, context and circumstances of the case: *Ram Niranjan* at [84]. Thus, on the facts of *Ram Niranjan*, Chua Lee Ming J found (at [84]) that the presumption was easily rebutted and a contractual licence was held to exist, as the family members in that case had signed a memorandum of understanding.

170 In contrast, there is nothing to displace that presumption on the facts of the present case before me. If anything, the presumption was *reinforced* by the concessions which the Plaintiff had made during cross-examination on 1 February 2024. To recapitulate, the Plaintiff had pleaded in the SoC that the acts which she allegedly performed to her detriment and which undergirded her claim to a proprietary estoppel *also* constituted the consideration for the contractual licence. Specifically, paragraph 13 of the SoC stated that the consideration for the contractual licence comprised the acts in paragraphs 10(c) and 11(b) of the SoC (extracted at [41] above). However, under cross-examination on 1 February 2024, the Plaintiff disavowed the suggestion that these acts were in any way *quid pro quo* for a contract. For example, she made it clear that her actions in taking care of her parents were out of love and nothing else (see [43]–[45] above). When the Plaintiff's attention was drawn to paragraph 13 of the SoC, which stated that the acts in paragraphs 10(c) and 11(b) of the SoC constituted the consideration supporting a contractual licence, she conceded that this was *completely wrong* (see [45] above). While she recanted these concessions when cross-examination resumed the next day (*ie*, on 2 February 2024), I did not think that her recantations should be accepted, for the reasons set out at [132] above.

171 In any case, the Plaintiff's case was bereft of particulars as to the terms

of the alleged contract on which the licence was based. Presumably, the bulk of the terms would have to be implied, given the dearth of any express clauses. Yet, the Plaintiff's pleadings failed to offer any particulars of the contract's terms, whether express or implied, save to say that the licence was "irrevocable". Similarly, the Plaintiff's AEIC and oral evidence failed to offer any insights as to the shape or form of the purported contract. It appeared that the Plaintiff was quite content to leave it to me to decipher for myself the terms which such a contract might have contained. On that note, I observed that in *Ram Niranjan*, Chua J had implied a term into the contractual licence that the occupiers should not behave in a way as would make it unreasonable for them to insist on staying at the property. Chua J held (at [114]–[115]) that on the facts of the case before him, the implication of such a term would be appropriate pursuant to the test in *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193. Returning to the present case, I took the view that even if one were to overlook the abject lack of particulars in the Plaintiff's pleadings and imply a contractual term that she had a licence to stay, that term would similarly have to be subject to a proviso akin to that implied by the court in *Ram Niranjan*: the Plaintiff was allowed to stay *so long as she did not behave in a manner that would make it unreasonable for her to insist on remaining in the Apartment*. It was inconceivable that KTB and D2 would have contemplated letting the Plaintiff stay in the Apartment, irrespective of how she behaved towards her family. Any failure by the parties to provide for this contingency would clearly have been a gap, for which an implied term would be required to give efficacy to the contractual licence. Such a term would, to use Chua J's words in *Ram Niranjan* (at [115]), have received the family's "unhesitating agreement had it been proposed to them then".

172 That any contractual licence would have been revocable by the

Plaintiff's parents, in the face of unreasonable behaviour by the Plaintiff, was supported by evidence from both sides. During cross-examination on 1 February 2024, the Plaintiff admitted that her parents had the right to decide if she could stay in the house, agreeing that it was "entirely up to them".[209] Similarly, she said that if she had a discussion with D2 about whether she could stay in the Apartment, she would accept D2's decision.[210] These intimations were at odds with the notion of the Plaintiff having an absolute right to stay. D2 similarly contemplated that the Plaintiff's right to stay was not unconditional, taking the view that the Plaintiff was welcome to stay in the house so long as she stopped her incessant litigation with members of the household:[211]

> As long as she isn't doing all these cases, until she withdraw[s] all the cases, then she can come and stay in [the Apartment]. … *Not otherwise*.
>
> [emphasis added]

173 Having concluded that the contractual licence (assuming it even came into being) would have been terminable in the face of unreasonable behaviour by the Plaintiff, the question would be whether the right to termination had arisen. If it had, the Plaintiff would no longer be able to rely on the contractual licence as a ground for remaining in the Apartment. In this respect, D2's position was that the Plaintiff *had* behaved in an unreasonable manner as to justify ejection. For the reasons below, I agreed that this position was amply supported on the evidence.

174 As mentioned above, the Plaintiff had commenced a spate of litigation against her family members, which D2 stepped in to oppose. For example:

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209 Transcripts for 1 February 2024 at pp 163 (line 22) – 164 (line 20)

210 Transcripts for 1 February 2024 at pp 206 (line 26) – 207 (line 3).

211 Transcripts for 4 April 2024 at p 47 (lines 27–30).

(a) The Plaintiff commenced the PPO Proceedings against Sunil over an incident of family violence that had allegedly been perpetrated against the Plaintiff in D2's presence.[212] D2 testified that the PPO Proceedings were unnecessary as there was no merit to the Plaintiff's allegations.[213] The Plaintiff ultimately withdrew the PPO Proceedings – see [13(a)] above.

(b) The Plaintiff had also commenced the LPA Challenge, during which she had filed a summons seeking an injunction restraining Sunil and the Company from dealing with KTB's assets. It was D2's evidence that the Plaintiff had informed various financial institutions about the summons, thereby prompting them to close the Company's accounts and call on its loans, causing significant disruption to the Company's operations.[214] The LPA Challenge was eventually dismissed (see [13(b)] above), following which the Plaintiff withdrew the summons for an injunction.[215]

(c) The Plaintiff had also commenced the Deputyship Application, which she subsequently withdrew.

Suffice to say that none of these actions which the Plaintiff had commenced culminated in success for her. The Defendants thus contended that the Plaintiff had incessantly commenced baseless litigation which necessitated her 90-year-old mother having to keep coming to court to intervene. In my view, this was a

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212 Plaintiff's 1st affidavit filed in the PPO Proceedings, exhibited in AB Vol 6 at pp 2251–2295, at paras 19–22.

213 Transcripts for 4 April 2024 at p 116 (lines 4–17).

214 D2's AEIC at para 24(4).

215 D2's AEIC at para 24(5).

relevant factor to be placed in the weighing scales, when determining if the Plaintiff's behaviour had been unreasonable to the point of justifying ejection.

175 Apart from the spate of litigation started by the Plaintiff, there was evidence of other troubles which she had stirred within the household, with the result that by the time of the eviction, D2 clearly wanted the Plaintiff out of the Apartment. While under examination by Mr Premaratne, D2 alluded to how the Plaintiff had incessantly made recordings of the family members while in the Apartment (in preparation for litigation) and fought with the helpers:[216]

> A: … We were talking because all the time she was doing---and send videos and there's a cell phones and take cameras and they send that, making more troubles and troubles, looking for the trouble. So we think that better get her out. She go from my house. So that at least we can sleep peacefully. Now there's no peace. All the time, video recording is that---and just the pain.
>
> …
>
> Q: Now, you used the word 'trouble' to describe your daughter's behaviour, she was causing trouble---
>
> A: Yah, she was troublemaker, you know, all the time looking for the troubles.
>
> …
>
> Q: Can you explain?
>
> A: Mm? You know, unnecessarily recording, I was talking to my son on the dining table also she was recording anything we talked. She was recording, taking photos, I don't know what---what---what she was doing.
>
> Q: [D2], I think I'll give you one more opportunity to clarify this. When you used the word 'trouble' and your daughter was 'causing trouble', what do you mean by that? What was the trouble your daughter was causing?
>
> A: It's the troubles, no? And when fighting with the helpers also. No peace at home. No peaceful house. All the time revolution this, that.

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216 Transcripts for 3 April 2024 at pp 79 (line 1) – 80 (line 10).

176 In closing submission, the Plaintiff advanced various counter arguments to discount D2's testimony above. However, I did not find the Plaintiff's submissions to be in any way persuasive:

(a) As regards the video recordings, the Plaintiff submitted that D2 was not even able to recall if she had watched these videos during the proceedings for the LPA Challenge.[217] In my view however, the fact that D2 could not recall how the videos were eventually used did not alter the fact that according to D2, the Plaintiff *did* make those videos of her family members while in the Apartment. The Plaintiff, on her part, conceded that D2 *was* entitled to feel upset with the Plaintiff making those recordings in the Apartment.[218] Additionally, the Plaintiff submitted that she could not be blamed for making videos if Sunil *also* made videos.[219] It was not clear to me if the Plaintiff, by this submission, was trying to suggest that two wrongs make a right. In any event, I placed little weight on this as the Plaintiff did not attempt to get the views of D2, while the latter was on the witness stand, as to the recordings allegedly made by Sunil.

(b) As for the Plaintiff's clashes with the helpers in the home, the Plaintiff referred to D2's F&BP which alluded to these clashes having taken place on 16 July 2020, 18 November 2020, 24 November 2020 and 11 July 2021. The Plaintiff argued that D2's reliance on events occurring as far back as July and November 2020 as grounds for the eviction was not credible as these points in time would have been *too*

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217 Plaintiff's Closing Submissions at para 197; Transcripts for 3 April 2024 at pp 83 (line 11) – 84 (line 1).

218 Transcripts for 30 January 2024 at p 115 (lines 6–12).

219 Plaintiff's Reply Submissions at paras 64–66.

far prior to the eviction.[220] Yet, I noted that the Plaintiff never sought D2's views about the incidents in July and November 2020, while D2 was on the stand.

177 These submissions also demonstrated a symptomatic failure by the Plaintiff to appreciate that she had called D2 as *the Plaintiff's* witness. If there was any point which the Plaintiff needed D2 to weigh in on, the Plaintiff could have simply obtained the necessary clarifications during D2's examination-in-chief or even re-examination. However, the record was replete with instances (over and above those cited above) in which this was not done and where the Plaintiff saw fit to attack her own witness' evidence only in closing submissions, long after D2 departed from the witness box. I set out further examples of D2' evidence about the Plaintiff's unreasonable behaviour, which the Plaintiff sought to undermine only in closing submissions:

(a) It was D2's evidence that once the Plaintiff realised that D2 was siding with Sunil in the legal proceedings, the Plaintiff would often yell at D2 and act aggressively, reducing D2 to tears.[221] In her closing submissions, the Plaintiff attacked D2's credibility on this point, arguing that D2 had failed to provide details of the incidents.[222] However, the Plaintiff did not attempt to seek any clarifications from D2 about the latter's evidence, pertaining to the Plaintiff's yelling and aggression, while D2 was giving oral evidence.

(b) D2 affirmed that the Plaintiff had procured D2's signature on certain documents without explaining to D2 that these were release

220 Plaintiff's Closing Submissions at paras 207–208.

221 D2's AEIC at para 27(1).

222 Plaintiff's Closing Submissions at paras 198–199.

forms which the Plaintiff was going to use to access KTB's medical records. The Plaintiff had thereafter used the medical records *against* D2 in the Deputyship Application.[223] There was also a recording of a conversation in which D2 had confronted the Plaintiff about why the Plaintiff did this. In her closing submissions, the Plaintiff contended that D2 was raising this as an issue only because Sunil had scolded D2 for signing the release forms[224] and that D2 was in any event agreeable to the release of KTB's medical records to the Plaintiff.[225] Again, these were points which the Plaintiff *could* have questioned D2 about (while D2 was still on the witness stand) but did not.

178 As a further instance of unreasonable behaviour, D2's AEIC alluded to an incident where the Plaintiff had broken into the Apartment's letterbox, taking letters that did not belong to her and changed the lock, with the result that Sunil had to replace the letterbox lock.[226] The Plaintiff's closing submissions sought to refute D2's AEIC on this point, recounting that while D2 was under cross-examination, "when asked about the letterbox, [D2] did not raise any issues with [the Plaintiff] breaking into the letterbox".[227] I found this submission to be plainly at odds with the notes of evidence. For a complete picture, I set out the relevant exchange when D2 was being questioned by Mr Premaratne about the letterbox:[228]

> Q So when [the Plaintiff] was staying at [the Apartment], do you remember who was collecting the letters from the

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223 D2's AEIC at para 26(1).

224 Plaintiff's Closing Submissions at para 200.

225 Plaintiff's Closing Submissions at para 201.

226 D2's AEIC at para 27(3).

227 Plaintiff's Closing Submissions at para 216.

228 Transcripts for 4 April 2024 at p 68 (lines 4–28).

> … letterbox?
>
> A Few months, she was collecting, that I don't know. And then after that, *we stopped---we changed the lock. And we stopped the---her to collecting the letters.*
>
> Q So she collected for a few months?
>
> A Yah.
>
> Q So she stayed at [the Apartment] for almost, I guess, 11-plus years. 2010 to about 2021, so about 11 years.
>
> A Yah.
>
> Q You know she would get letters for herself. It's not just for you. There will be letters for your husband, for her, for you.
>
> A No. [KTB], he gets a letter every day, you know.
>
> Q But, Mdm Maya … So there'll be letters sent to you, your daughter, your husband. So … in that 11 years, 2010 to 2021, right … who would collect the letters for your daughter?
>
> A [KTB] collects and then he give it to my daughter.
>
> [emphasis added]

One can clearly see from the exchange above that the reason why D2 did not raise any issues about the Plaintiff breaking into the letterbox was simply because the Plaintiff failed to ask her about it, while examining D2 on the stand. This was notwithstanding that D2 had *of her own accord* explicitly alluded to the family changing the lock and stopping the Plaintiff from collecting the letters. Yet, Mr Premaratne did not ask her about this and instead moved on to another line of questioning.

179 Ultimately, the Plaintiff's attempt to paint a picture where she lived a life of harmony with her parents did not hold water. The High Court hearing the appeal from the decision of the District Judge in the LPA Challenge remarked rather starkly that the allegedly loving relationship which the Plaintiff had with her father (*ie*, KTB) was exaggerated and that she did *not* have a good

relationship with her mother (D2).[229]

180 Viewing the evidence *cumulatively*, I accepted the evidence of D2 that the Plaintiff had very clearly demonstrated behaviour which was sufficiently unreasonable as to justify termination of the contractual licence, assuming that a contract could even be implied from the facts.

Bare licence to occupy

181 The Plaintiff also claimed that at the very least, she had a bare licence to remain on the property and that she was not given reasonable notice to quit.

182 The learned authors of Kevin Gray, *Elements of Land Law* (Oxford University Press, 5th Ed, 2008) ("*Kevin Gray*") explain the characteristics of a bare licence (at paras 10.2.2–10.2.4):

> A bare licence is a personal permission or consent, granted otherwise than for consideration, to enter, traverse or be present upon the land of another. …
> …
> The bare licence to enter or cross land performs the minimal function of affording a defence to what would otherwise be the tort of trespass. …
> …
> A licence to enter land suspends trespass liability only so long as the licensee does not overstep the ambit of the licence as granted. If the licensee strays beyond the geographical or temporal scope of the permission given to him, his status becomes automatically that of a trespasser.

183 In the present case, the Defendants took issue with the fact that the Plaintiff failed to plead her claim to a bare licence and thus asked the court to disregard the claim.[230] I took the view that the failure to plead did not preclude

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229 I have omitted the citation to the High Court's judgment, in which parties' names have been redacted.

230 D2's Closing Submissions at paras 15–17; D1/D3's Reply Submissions at para 19.

the Plaintiff from relying on the notion of a bare licence. A party needs to plead material facts and not legal inferences or conclusions arising from those facts: *Development Bank of Singapore Ltd v Bok Chee Seng Construction Pte Ltd* [2002] 2 SLR(R) 693 at [24]. The Plaintiff's pleadings contained all the material facts necessary to brace her argument that a bare licence existed. There was no need for her to go one step further and plead her conclusion that those facts *legally amounted* to a bare licence. In any case, I saw no prejudice to the Defendants which might arise from allowing the Plaintiff to make such a claim. D2 did not dispute that a bare licence did exist, while the Company and Cindy conceded that a bare licence might have existed.[231]

184 Both sides proceeded on the premise that a bare licence may be terminated upon reasonable notice being given. Following from that common premise, the Plaintiff claimed that she suffered loss arising from the Defendants' failure to give such notice, while the Defendants countered that they had in fact furnished such reasonable notice. By way of preliminary observation, I noted that there is some academic disagreement over whether there is indeed a requirement at law to give reasonable notice prior to terminating a bare licence. For example, it has been argued that a bare licence is analogous to a tenancy-at-will and, since no notice to quit is required for terminating the latter, the same should hold true for the former: see Jonathan Hill, "The Termination of Bare Licences" (2001) 60 CLJ 89 at 98–108. Nevertheless, it was not necessary for me to express any conclusion on the diverging views in this area. Even if I proceeded on the premise (as parties did) that the Defendants were required to give reasonable notice prior to terminating the bare licence, I found the Plaintiff's claim (premised on the failure to give such reasonable notice) to be

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231 D1/D3's Closing Submissions at para 186.

devoid of merit.

185 In her Defence, D2 pleaded that prior to the eviction, she had *orally* asked the Plaintiff to vacate the Apartment.[232] However, I agreed with the Plaintiff[233] that this position was contradicted by D2's evidence on the witness stand. D2 was specifically asked if she recalled asking the Plaintiff to leave the Apartment prior to the eviction, to which she said that she could not.[234] I was thus not minded to find that oral notice to quit had been given.

186 The Defendants also maintained that D2 gave the Plaintiff *written* notice to leave the Apartment, by way of the following two letters sent by D2's lawyers to the lawyers for the Plaintiff:

(a) The first letter was dated 26 March 2021.[235] By that letter, the Plaintiff was informed that Sunil was travelling from UK to visit and that D2 wanted him to stay with D2 and KTB. The letter further said that because the Plaintiff had commenced the PPO Proceedings against Sunil, she should vacate the Apartment and stay at a hotel once Sunil came over to stay. Paragraph 3 of the letter stated:

> Please therefore take this as notice requiring your client to leave the Residence **by 11 am on 27 March 2021**. We trust that your client will act reasonably and comply. If she fails to comply with our client's request, our client may be forced to take extraordinary steps to ensure your client's compliance.
>
> [emphasis in original]

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232 D2's Defence at para 22(2).

233 Plaintiff's Closing Submissions at paras 80–81 and 176.

234 Transcripts for 4 April 2024 at p 133 (lines 6–9).

235 Exhibited in AB Vol 5 at pp 2159–2161.

The letter also stated at paragraph 4(1):

> … our client is looking into the possibility of having your client permanently move out of the [Apartment] even after … Sunil's immediate departure from Singapore.

In response, the Plaintiff's lawyers set a letter dated 1 April 2021,[236] in which the Plaintiff *rejected* the request for her to move out. The letter explained that the Plaintiff needed to stay and take care of KTB, in light of his deteriorating medical condition.

(b) The second letter was dated 6 August 2021.[237] This letter alluded to the rising tensions between the Plaintiff and the rest of the family, brought about by the looming legal proceedings. The letter recounted that it was improper for the Plaintiff to remain in the Apartment and suggested that she live in a hotel until the proceedings for the LPA Challenge had concluded. That same day, the Plaintiff's lawyers responded with a letter[238] saying that the Plaintiff was "not agreeable to take up the proposed offer".

Collectively viewed, both these letters provided sufficient notice for the Plaintiff to leave, notwithstanding her purported rejection of the requests to vacate.

187 The Plaintiff took issue with the fact that the letters from D2's lawyers appeared to contemplate that the Plaintiff's departure was to be for a temporary duration,[239] when her ultimate ejection (as evidenced by how all her belongings were removed from the Apartment) was clearly intended to be on a more

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236 Exhibited in AB Vol 5 at pp 2174–2176.

237 Exhibited in AB Vol 8 at pp 3284–3285.

238 Exhibited in AB Vol 8 at p 3293.

239 Plaintiff's Closing Submissions at paras 187 and 193.

permanent basis. While the Plaintiff's closing submissions did not explicitly set out the legal implication which she sought to draw from this, her case appeared to be that this had somehow invalidated the validity of the written notices for her to leave. While I agreed that the written notices could have been better phrased, to reinforce the indefinite nature of the eviction in the event of the Plaintiff continuing in her course of conduct, I still failed to see how this advanced the Plaintiff's case. The Plaintiff evinced an uncanny resolve to disregard any notices from D2's lawyers asking her to leave. It cannot be overemphasised that the letter of 26 March 2021 contained the threat of extraordinary measures for non-compliance. Yet, the Plaintiff simply swept the letter under the carpet, blissfully presuming that it did not stem from her mother's instructions. There was no evidence of the Plaintiff approaching D2 to ask about the letter (notwithstanding that both lived under the same roof) or of D2 telling the Plaintiff that she was at liberty to disregard the letter. The Plaintiff's evidence was that "[m]y mother has never communicated this with me, so I won't take this seriously at all"[240] – this betrayed a tellingly cavalier posture towards the notice for her to leave. It was not the Plaintiff's case that her reaction would have been any less dismissive had the notice been pitched to state more clearly that the proposed removal was for a more enduring horizon.

188 It did not escape my attention that the length of the notice afforded by the letter of 26 March 2021 letter was extremely short, being set at only one day. However, this was not raised as an issue in the response from the Plaintiff's lawyers (dated 1 April 2021) which, despite being contained in a rather lengthy letter, neither attempted to ask for a longer notice period nor even alluded to the length of the notice period. The length of the notice period was also not raised

[240] Transcripts for 30 January 2024 at p 103 (lines 17–32).

as an issue by the Plaintiff's closing submissions.

189 Finally, any damage flowing from the failure to give sufficient notice to quit would constitute special damages and would thus have to be pleaded, as well as supported with evidence. The measure of damages for the defective notice would in turn have been informed by what a reasonable notice period would have been, on the current facts. However, the Plaintiff failed to adduce any evidence on this. In fact, when the Plaintiff was pressed in cross-examination to state her view as to what a reasonable notice period would have been, she refused to provide a duration, saying that she did not know:[241]

> Q So just to be very clear, Ms Bhojwani, what I'm saying is, you say here you were not provided with any reasonable notice demanding that you vacate the family home and remove your belongings, okay? … My question to you is: What is the duration of the notice that you think is reasonable?
>
> A … you're just talking about duration of notice?
>
> Q Yes.
>
> A Nothing else?
>
> Q No.
>
> A I don't know. I mean, I … I mean, duration of notice?
>
> Q 1 month, 2 months, 3 months? That's what I mean.
>
> A If there's a reason for that, I can tell you the duration, but I can't think of any reason.
>
> Q The reason is that your mother felt that you were a disharmonious presence in the home.
>
> A Nothing like that was stated to me verbally. I never got that impression from her at all.
>
> Q Assuming it was stated, what would the period have been?
>
> …

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[241] Transcripts for 2 February 2024 at pp 141 (line 20) – 142 (line 12).

> A I---I---I don't know.

190 It was only in her *closing submissions* that the Plaintiff suggested that damages be computed based on a notice period of three to seven years, with damages being calculated on the basis that she incurred S$4,200 a month for the entire duration of that notice period. This yielded a figure of S$150,000 to S$350,000.[242]

191 I rejected this submission. Firstly, the proposed time horizon struck me as inordinately extravagant. What constitutes a reasonable duration of notice is highly fact sensitive. *Kevin Gray* states (at para 10.2.26):

> [T]he reasonableness of notice of termination of a bare licence enjoyed under a 'family arrangement' is governed largely by the difficulty involved in finding alternative accommodation. Here a 'reasonable' period may be measured in months or perhaps even in years.

The footnote to the above passage cites the case of *Parker v Parker* [2003] EWHC 1846 (Ch), where the Earl of Macclesfield was given two years to leave the Shirburn Castle, as that was the minimum duration needed to properly catalogue the castle library prior to transportation. In the present case, the Plaintiff failed to provide any explanation as to why she needed three to seven years to find alternative accommodations.

192 More importantly, apart from having failed to plead these figures, the Plaintiff also omitted to adduce any evidence on how she arrived at the three-to-seven-year duration, or the monthly rate of S$4,200. These numbers did not appear anywhere in her AEIC or oral testimony, or even in her opening statement for that matter. Instead, they surfaced only in *closing submissions,*

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242 Plaintiff's Closing Submissions at paras 252–253.

meaning that the Defendants had absolutely no inkling that the numbers were going to be sprung on them after the close of evidence-taking. The Defendants were thereby denied the opportunity to clarify with the Plaintiff (while she was on the stand) about the basis of her calculations.

193 While the Plaintiff may only have been required to adduce *prima facie* evidence proving her claim, the quantification of her claim was not supported by *any* evidence against which that *prima facie* standard could be applied. I was thus of the view that even if the Defendants could be faulted for failing to give adequate notice terminating the bare licence, the Plaintiff was not entitled to any substantial damages.

Whether shares in the Company conferred a right to stay in the Apartment

194 The Plaintiff also claimed that she retained a beneficial interest in 80,000 shares in the Company,[243] notwithstanding that the Kensington Trust was reflected as the legal holder of all the shares issued by the Company. While the shares were eventually transferred back to KTB in 2013 (see [6] above), the Plaintiff took the position that KTB was a bare trustee who continued to hold the shares on trust for her.[244]

195 The Plaintiff then sought to rely on her alleged beneficial interest in the Company to argue that she had an interest in the Apartment (being an asset of the Company). In her pleadings, the Plaintiff contended that since she and her parents were shareholders in the Company, they would "indirectly own" the Apartment.[245] The Plaintiff elaborated on this in her oral testimony, saying that

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243 SoC at para 7; Plaintiff's AEIC at para 18.

244 Reply to D2's Defence at para 6(e).

245 SoC at para 9(d)(i).

her interest in the Company's shares conferred upon her an interest in the Apartment.[246]

196 In contrast, the Defendants contended that the 80,000 shares were held by the Plaintiff as a nominee of KTB,[247] arguing that this was why the shares were ultimately returned to KTB in 2013. The Defendants also produced a copy of a resolution by the Company's board of directors dated 3 April 2013, purportedly signed by KTB, D2 and the Plaintiff (the Plaintiff having still been a director of the Company at the time of the resolution). The board resolution stated that the 80,000 shares in the Plaintiff's name were to be returned to KTB.[248] Pertinently, the board resolution also declared that the Plaintiff had held the 80,000 shares as a nominee, on trust for KTB. The Plaintiff, on her part, disputed the authenticity of the resolution.[249]

197 In my view, the Plaintiff's claim to beneficial ownership of the 80,000 shares was irrelevant. Even if she was a shareholder of the Company, that could not in and of itself confer upon her any direct interest in the property of the Company, which is a separate legal entity: see *Miao Weiguo v Tendcare Medical Group Holdings Pte Ltd (formerly known as Tian Jian Hua Xia Medical Group Holdings Pte Ltd) (in judicial management) and another* [2022] 1 SLR 884 at [114]–[115].

198 For completeness, I also rejected the Plaintiff's claim that she retained beneficial ownership in the 80,000 shares. Even if the board resolution that the

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246 Transcripts for 31 January 2024 at p 32 (lines 16–23) and 2 February 2024 at p 85 (lines 1–6).

247 D2's Defence at paras 6(2)(b)–(c).

248 Exhibited in D2's AEIC at p 663.

249 Plaintiff's Reply Submissions at para 99.

shares be transferred back to KTB was dismissed as inauthentic, it was still clear that the Plaintiff's claim to beneficial ownership ran counter to her own evidence at trial, where she agreed that:[250] (a) as between KTB and the Plaintiff, she was happy to let KTB decide whether the shares were held on trust or not; and (b) KTB's position all along was that the shares in the Company were being held on trust for his own benefit, since he was the one running the Company. The Plaintiff's claim was also contradicted by her affidavit in MSS 1791/2006 (referred to at [144] above), in which she unequivocally deposed that she held the 80,000 shares on trust for KTB.[251]

199 As explained at [163] above, the Plaintiff sought to disavow the contents of her affidavit in MSS 1791/2006 by saying that it was KTB who dictated its contents, after which she had blindly signed on it. She went so far as to agree that she had *lied* in the affidavit[252] but insisted that it was KTB who made her lie.[253] The Plaintiff had thus shown herself to be someone with no compunction about promulgating falsehoods under oath to preserve her asset position. Even if the falsehoods had been instigated by a family member, that would have done little to ameliorate her disregard for the judicial process, given that this was ultimately *her* affidavit, the contents of which had been affirmed by her to be true.[254] The Plaintiff submitted that even if she had made untrue statements in her affidavit to obtain a favourable maintenance order against her husband, she ultimately did not enforce that order.[255] In my view, this was a misconceived

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250 Transcripts for 1 February 2024 at pp 130 (line 13) – 131 (line 3).

251 Para 19 of the affidavit which the Plaintiff filed in MSS 1791, exhibited in D1's Bundle of Documents at p 38.

252 Transcripts for 31 January 2024 at p 13 (lines 1–18).

253 Transcripts for 31 January 2024 at p 14 (lines 16–30).

254 Transcripts for 31 January 2024 at p 12 (lines 7–18).

255 Plaintiff's Reply Submissions at para 113.

submission. Lying on affidavit is a serious matter and the Plaintiff's attempt to downplay the impact of her falsehoods underscored her abject failure to appreciate the gravity of what she had done. Rather than salvage her credibility, this submission served only to further erode it.

Conspiracy claim

200 The Plaintiff claimed that the Defendants had conspired with Sunil to remove her from the Apartment, alleging that he had procured D2 and Cindy to sign the Board Resolutions evicting the Plaintiff.[256] The Plaintiff contended that the Defendants' actions were "unlawful, fraudulent and dishonest"[257] and carried out with the predominant intention of injuring her.[258] Specifically, she alleged that Sunil and the Defendants wanted to "punish the Plaintiff by inflicting maximum harm and embarrassment and gain an unfair advantage in the ongoing legal proceedings".[259]

201 As regards the unfair advantage, the Plaintiff suggested that the eviction was meant to confer a tactical benefit on Sunil in the PPO Proceedings[260]. Specifically, the eviction was executed at the end of the first day of trial in the PPO Proceedings (see [12] above),[261] with the result that the Plaintiff was unable to attend trial the next day.[262] The Plaintiff also alleged that the eviction was calculated to bring about a state of affairs in which the alleged victim which the

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256 SoC at para 21.

257 SoC at para 47(b).

258 SoC at para 49.

259 SoC at para 47(a).

260 SoC at para 47(a)(iii); Plaintiff's Closing Submissions at para 246.

261 SoC at paras 16, 18 and 19.

262 SoC at para 25(d).

proposed PPO was meant to protect (*ie*, the Plaintiff) was no longer residing in the Apartment in which the alleged perpetrator (*ie*, Sunil) also resided at the time,[263] thereby weakening the perceived need for a PPO to be issued.

202 To establish the tort of conspiracy, the following elements must be present (see *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 686 at [150]):

(a) A combination of two or more persons and an agreement between and amongst them to do certain acts.

(b) The conspirators must have harboured the intention to cause damage or injury to the plaintiff where, if the conspiracy involved the commission of acts that were *lawful*, that intention must have been the *predominant* intention.

(c) The acts were performed in furtherance of the agreement.

(d) The plaintiff suffered damage.

In my view, the Plaintiff's claim failed to meet the first two of the elements set out above.

Whether there was an agreement between Sunil and the Defendants

203 As regards the first of the elements detailed above, the Plaintiff offered no details as to when the agreement between D2, Cindy and Sunil might have been conceived. There was also very little by way of pleaded particulars or evidence as to the occasion on which Sunil might have reached out to procure

263 SoC at para 47(a)(iii); Plaintiff's Closing Submissions at para 246.

the signatures of D2 and Cindy on the Board Resolutions. All that the Plaintiff did say was that the acts would have been carried out "in secret".[264]

204 The best evidence of any such agreement would have come from Sunil, seeing as how he was alleged by the Plaintiff to be the mastermind behind the conspirators. However, for reasons best known to the Plaintiff, she decided not to join Sunil as a defendant to this trial. While she was of course free to select whom to sue, the reasons proffered by her for not joining Sunil as a defendant did not withstand scrutiny. She mentioned that she (like her mother) was afraid of Sunil as he was "overpowering".[265] However, this explanation ran counter to the Plaintiff's conduct in having brought a recent spate of litigation against Sunil. In the end, without the benefit of Sunil's testimony on the stand, the evidence regarding the alleged agreement remained both hazy and speculative.

205 The Plaintiff nevertheless sought to rely on circumstantial evidence, pointing to how D2 had been re-appointed as a director of the Company just shortly before the eviction (see [5] above). The Plaintiff suggested that this showed that Sunil must have reinstated their mother to the Company's Board of Directors to "legitimatize" the Board Resolutions[266] evicting the Plaintiff, by creating the veneer that it was D2 (and not Sunil) who took the initiative to remove the Plaintiff from the Apartment.[267] The coincidental timing of D2's appointment as director would in turn be suggestive of ongoing machinations to orchestrate the eviction.

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264 Plaintiff's F&BP dated 18 February 2022 at para 8.2.

265 Transcripts for 1 February 2024 at p 111 (lines 13–19) and 2 February 2024 at p 145 (lines 23–30).

266 SoC at para 47(b)(ii).

267 Plaintiff's F&BP dated 18 February 2022 at para 11.1.

206 In my view, this was nothing more than a surmise which had in any case been refuted by D2's evidence. Specifically, D2 explained that the Plaintiff had been writing to financial institutions in which the Company held accounts, informing them about the proceedings in the LPA Challenge, as well as the summons that the Plaintiff had filed within those proceedings to restrain Sunil and the Company from dealing with KTB's assets (see [174(b)] above). D2 explained that this had prompted the financial institutions to close the Company's bank accounts and call on its loans, with one of the lenders advising Sunil to step down as a director. To calm the disquiet amongst the Company's lenders stirred up by the Plaintiff's actions, Sunil had to step down from the Board while D2 reprised her role as director in his stead.[268] I noted that the Plaintiff did not specifically challenge D2 on this aspect of her evidence while the latter was on the stand.

Whether the Defendants had an intention to injure the Plaintiff

207 As regards the second element of the tort of conspiracy, I was of the view that the Plaintiff failed to establish – even at a *prima facie* level – that the Defendants bore any intention to cause damage to the Plaintiff, whether by lawful or unlawful means.

208 According to the Plaintiff's closing submissions, the principal act undergirding the conspiracy claim was the passing of the Board Resolutions to evict her.[269] The Plaintiff maintained that the Board Resolutions were unlawful as they were passed in breach of her irrevocable right to reside in the Apartment. I have already explained why I did not think that any such right existed, whether

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268 D2's AEIC at para 24(4).

269 Plaintiff's Closing Submissions at paras 217–220.

in equity or contract. Consequently, any claim to conspiracy by *unlawful* means failed.

209 This meant that to succeed in her conspiracy claim, the Plaintiff would have to prove conspiracy by *lawful* means, in which case the Defendants and Sunil must have collectively harboured the *predominant* intention to damage or injure the Plaintiff. However, the Plaintiff failed to adduce any evidence from which any such an intention could be inferred. To recapitulate, the Plaintiff's case was that both D2 and Cindy were pawns that were moved by Sunil on the chessboard:

(a) In relation to D2, the Plaintiff repeatedly maintained that Sunil was the person orchestrating the eviction,[270] using D2 as the front to do so.[271] The Plaintiff claimed that Sunil was able to do this as D2 was "under his control"[272] and beholden to Sunil as D2 was *afraid* of him.[273] That D2 could not have been the prime mover of the eviction was demonstrated by how she could not even tell what a board resolution was (despite having purportedly been the one who signed the Board Resolutions evicting the Plaintiff) and did not remember instructing lawyers to evict the Plaintiff from the Apartment.[274]

(b) As for Cindy, the Plaintiff maintained that Sunil was her boss and she was accustomed to acting on his instructions (see [2] above).

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270 Plaintiff's AEIC at para 137; Transcripts for 1 February 2024 at pp 108 (lines 8–19) & 109 (lines 23–30).

271 Transcripts for 1 February 2024 at p 175 (lines 1–9).

272 Plaintiff's Closing Submissions at paras 260–261.

273 Transcripts for 2 February 2024 at p 113 (line 20).

274 Plaintiff's Closing Submissions at para 8.

In my view, none of these assertions cast any insights into what intentions D2 and Cindy might have *personally* harboured, when passing the Board Resolutions. There was nothing to show that they shared Sunil's intention to hurt the Plaintiff (assuming Sunil harboured that intention).

210 Critically, the fact that D2 bore no intention (whether predominant or otherwise) to injure the Plaintiff was consistent with the Plaintiff's unequivocal concession during cross-examination on 1 February 2024 that there was *no basis* to allege that D2 harboured the intention, as pleaded in the SoC, to punish the Plaintiff (see [47] above). While the Plaintiff may have tried to recant this concession, I have explained why I found no merit in her attempt to do so (see [132] above). Of course, the Plaintiff's concession pertained only to D2 and not to the other two alleged conspirators, *ie*, Cindy or the Company. However, the withdrawal of the Plaintiff's allegations as against D2 meant that the factual matrix contained very little remaining material to implicate Cindy and the Company on the conspiracy claim.

211 As a side observation, the Plaintiff's case theory about D2 being beholden to Sunil's influence, to the point of being afraid of him, fell apart dramatically when D2 took the stand. D2 had, in response to Mr Premaratne's question as to whether she was afraid of Sunil, stated unequivocally that she was not. D2 even pointedly quipped that, if anything, Sunil should be afraid of her since she was his mother.[275] D2 testified that the decision to evict the Plaintiff, rather than having been taken pursuant to any intention to injure the latter or out of fear of Sunil, was taken because both D2 and Sunil felt that the Plaintiff was causing a lot of trouble in the Apartment.[276] In her *closing reply*

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275 Transcripts for 4 April 2014 at p 140 (lines 2–7).

276 Transcripts for 3 April 2024 at pp 79 (line 1) – 80 (line 10).

submissions, the Plaintiff sought to refute D2's testimony (about D2 not being afraid of Sunil) by arguing that there were various instances in which D2 allegedly faced difficulties in controlling Sunil when the latter lost his temper, as well as suggesting that D2 was financially dependent on Sunil.[277] Again, I observed that the Plaintiff did *not* seek D2's responses on these points, despite having put D2 on the witness stand.

Conclusion on the conspiracy claim

212 Consequently, the Plaintiff's claim on conspiracy failed, even at the *prima facie* threshold. She failed to adduce the requisite evidence to establish the existence of the agreement between the alleged conspirators, as well as of the intention to injure or damage the Plaintiff.

213 I would add that even if the Plaintiff had succeeded in establishing the other elements of the tort of conspiracy, she failed to show how the tort might have caused her any damage. As regards the Plaintiff's suggestion that the tactical timing of the eviction was calculated to hurt her case and confer an unfair advantage on Sunil in the PPO Proceedings (see [201] above), the Plaintiff failed to demonstrate what damage flowed from this. After all, it was the Plaintiff who ultimately decided to withdraw the PPO Proceedings in October 2021 (see [13(a)] above), there being no suggestion that the withdrawal had anything to do with the eviction.

Dishonest assistance claim

214 As regards the Plaintiff's claim for dishonest assistance, the Plaintiff alleged that she was entitled to damages as against D2 and Cindy because both

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277 Plaintiff's Reply Submissions at para 21.

these persons had wrongfully and fraudulently assisted, induced and/or procured the Company to evict the Plaintiff.[278]

215 In my view, the Plaintiff failed to establish a *prima facie* case for this claim. For her to succeed in an action for dishonest assistance, she had to establish the following (see *George Raymond Zage III and another v Ho Chi Kwong and another* [2010] 2 SLR 589 at [20]):

(a) the presence of a trust in her favour;

(b) a breach of that trust;

(c) assistance rendered by the third party towards the breach; and

(d) that such assistance was rendered dishonestly.

216 The Plaintiff's closing submissions failed to list out these elements, much less explain how each of them were met by the evidence. I could only surmise that her case was that:

(a) trust duties were owed by the Company to the Plaintiff; and

(b) both D2 and Cindy were the third parties who dishonestly assisted the Company to breach that trust.

However, the Plaintiff failed to identify the trust which had allegedly been breached. In fact, she failed to demonstrate why the Company, or even D2 or Cindy for that matter, should be regarded as owing any fiduciary duties to her.

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278 SoC at para 54.

Conclusion

217 In light of my findings above, I accept the Defendants' submission that they have no case to answer. The Plaintiff's claims are dismissed, as they have not been established, even to a *prima facie* standard.

218 I will now hear parties on costs.

Christopher Tan
Judicial Commissioner

Hewage Ushan Saminda Premaratne, Choong Guo Yao Sean and Christina Koh Hui Eng (Meritus Law LLC) (instructed) and Chew Di Shun, Dickson (RCL Chambers Law Corporation) for the Plaintiff; Mahmood Gaznavi s/o Bashir Muhammad and Rezza Gaznavi (Mahmood Gaznavi Chambers LLC) for the 1st and 3rd Defendants; Christopher Anand s/o Daniel and Ganga d/o Avadiar (Advocatus Law LLP) for the 2nd Defendant.