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

[2026] SGHC(A) 14

Appellate Division / Civil Appeal No 64 of 2025

Between

Sally Tia Sock Kiu

… *Appellant*

And

Tia Oon Lai

… *Respondent*

Appellate Division / Civil Appeal No 65 of 2025

Between

Sally Tia Sock Kiu (as personal representative of Su Ye Chu, deceased)

… *Appellant*

And

Tia Oon Lai

… *Respondent*

In the matter of Originating Claim No 316 of 2022

Between

Tia Oon Lai

… *Claimant*

And

(1) Sally Tia Sock Kiu (as personal representative of Su Ye Chu, deceased)
(2) Sally Tia Sock Kiu
(3) Tia Poh Kim

… *Defendants*

JUDGMENT

[Trusts — Constructive trusts — Common intention constructive trusts]

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Tia Sock Kiu Sally
v
Tia Oon Lai and another appeal

[2026] SGHC(A) 14

Appellate Division of the High Court — Civil Appeals Nos 64 and 65 of 2025
Woo Bih Li JAD, Kannan Ramesh JAD and Debbie Ong Siew Ling JAD
29 January 2026

5 May 2026 Judgment reserved.

Woo Bih Li JAD (delivering the judgment of the majority consisting of Debbie Ong Siew Ling JAD and himself):

Introduction

1 AD/CA 64/2025 ("AD 64") and AD/CA 65/2025 ("AD 65") are appeals brought by Ms Sally Tia Sock Kiu ("Sally"), in her personal capacity and as personal representative of her mother, the late Mdm Su Ye Chu ("Mother" or "Estate"), respectively (collectively, the "Appellants"), against the decision of the judge sitting in the General Division of the High Court ("Judge") in HC/OC 316/2022 ("OC 316"), which is published in *Tia Oon Lai v Tia Sock Kiu Sally* [2025] SGHC 108 ("Judgment"). The respondent is Sally's younger brother, Mr Tia Oon Lai ("TOL"). For the reasons set out below, we allow the appeals.

Background facts

2 The Mother and TOL were the registered proprietors (as tenants in common in equal shares) of a 30-year lease commencing on 1 August 1998 ("Lease") granted by the Housing and Development Board ("HDB") over the property at 747 Yishun Street 72 #01-108 which houses a coffeeshop ("Coffeeshop"). Mr Tia Ee Tih ("Father") was the Mother's husband and TOL's and Sally's father. The Father and Mother had eight children:

(a) Sally, born in 1951;

(b) a daughter born in 1954;

(c) a daughter born in 1955;

(d) TOL, born in 1956;

(e) Mr Tia Oon Huat ("TOH"), born in 1957;

(f) a daughter born in 1958 or 1959;

(g) a son born in 1960; and

(h) Ms Tia Poh Kim ("Poh Kim"), born in 1963.

3 The Father passed away on 22 November 2004. The Mother passed away on 21 October 2021.

4 The genesis of the Coffeeshop operations can be traced back to the sole proprietorship founded by the Father, Hiap Hoe Eating House ("Hiap Hoe"), which relocated to the Coffeeshop sometime in 1984 when the Father obtained a series of fixed-term tenancies from HDB. In May 1997, the Father suffered a stroke and withdrew from Hiap Hoe, and the Mother and TOL were then registered as its proprietors with effect from 16 May 1997. In June 1997, HDB

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granted Hiap Hoe a further three-year fixed-term tenancy of the Coffeeshop commencing on 1 July 1997.

5 On 17 April 1998, HDB sent a letter to Hiap Hoe stating that Hiap Hoe could apply to HDB to purchase the Coffeeshop for a lease term of 30 years. On 12 October 1998, HDB sent a letter to the Mother and TOL stating that their application to purchase the Lease had been approved. On 15 December 1998, HDB entered into an agreement with the Mother and TOL to grant them the Lease with effect from 1 August 1998. The total purchase price including goods and services tax and other miscellaneous charges was $1,434,154.80. The Lease was registered under the Land Titles Act (Cap 157, 1994 Rev Ed) ("LTA") on 8 February 2000.

6 To finance the purchase of the Lease, two term loans of $968,640 and $111,360 totalling $1,080,000 were taken out from Hong Leong Finance Ltd in 1998 in the joint names of the Mother and TOL (collectively, the "1998 HLF Loan"). The 1998 HLF Loan was secured by a mortgage over the Lease (registered under the LTA on 8 February 2000) and a deed of guarantee from Mr Yong Zhou Chun John ("John Yong") who is Poh Kim's husband (executed on 15 December 1998). By 30 January 2004, the 1998 HLF Loan was repaid in full and the mortgage was discharged.

7 From October 1998 to September 2023, there was a series of license and tenancy agreements whereby the Coffeeshop was rented out to Mr Pang Lim, Mdm Ng Hoon Tien and/or Koufu Pte Ltd ("Koufu"). It is undisputed that all Coffeeshop rental from October 1998 to June 2018 ("Previous Rental") were paid directly to the Mother. TOL's claim to a share of the Previous Rental is the subject of the appeal before us.

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8 In July 2015, the Mother, Sally and Poh Kim opened a joint account ("Tripartite Account") with Oversea-Chinese Banking Corporation Ltd ("OCBC"), so that Sally and Poh Kim could assist the Mother with her finances. Sally knew that the Coffeeshop rental was deposited into the Tripartite Account after it was opened.

The parties' cases below

9 In OC 316, the claimant was TOL, the first defendant was Sally as personal representative of the Estate, the second defendant was Sally in her personal capacity, and the third defendant was Poh Kim. The dispute centred around the beneficial ownership of the Lease and the Previous Rental.

10 TOL's case was that the Father had given the Lease to him and the Mother in equal shares as intimated in a meeting in early 1997. Consequently, he claimed to beneficially own 50% of the Lease and thereby 50% of the Previous Rental, and that the Mother (now Estate) held his share of the Previous Rental under a resulting trust for his benefit. Among other remedies, TOL sought an order for the Estate to account to him his share of the Previous Rental.

11 As against Sally (in her personal capacity) and Poh Kim, TOL alleged that, by gaining control over the Mother's finances, they became trustees of his half share of the Previous Rental, and thereby owed him fiduciary duties. He further alleged that Sally and Poh Kim committed a breach of trust through the unauthorised dissipation of his share of the Previous Rental. Among other remedies, TOL sought orders for Sally and Poh Kim to account to him his share of the Previous Rental.

12 The Estate's case was that TOL held his 50% legal share of the Lease on trust for the Mother, either pursuant to a presumed resulting trust because the

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Mother fully paid for the Lease, or pursuant to a common intention constructive trust. Consequently, TOL was not beneficially entitled to a share of the Previous Rental. The Estate counterclaimed for, among others, an order that TOL transfer his 50% legal share of the Lease to the Estate. Sally and Poh Kim denied any liability to TOL.

The evidence below

13 It will become clear in the rest of this judgment that this case revolves around a few key pieces of documentary evidence and the conduct of TOL and Sally. It is apposite to set out the documentary evidence first.

The Mother's 2015 Will and the Mother's 2015 Letter

14 From 2005 to 2019, the Mother executed a number of wills. In the will she executed on 16 July 2015 ("Mother's 2015 Will"), she purported to "give all that my one undivided equal half share of the immovable property known as [the address of the Coffeeshop] and in the proceeds of sale and in the net rents and profits until sale and all other (if any) my interest therein to my five daughters … in equal shares." In her earlier wills executed on 8 July 2005 and 30 June 2009, the Mother similarly described her interest in the Lease as a "half share". For avoidance of doubt, the last and final will of the Mother was the one executed on 21 October 2019 ("Mother's 2019 Will"), which made no mention of the Coffeeshop or the Lease, and which simply stated that the Mother's residuary estate was left to her five daughters.

15 The Mother also executed a letter sometime in 2015 ("Mother's 2015 Letter"). The Mother's 2015 Letter was addressed to "To Whom It May Concern" and its relevant portions state:

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> 1. The [Coffeeshop] in which I reside and I also let out was purchased from the HDB with money entirely from my personal savings, I added one of my son's name, Tia Oon Lai, in the title of the shophouse and *we together hold it as tenants in common in equal share*.
>
> 2. *All the rental income from the shophouse belong to me* to pay for all the outgoings of the shophouse and for my own expenses. My son Tia Oon Huat who is a joint holder with me in my savings account … with OCBC Bank has no claim in the rental income. I deposited all the rental income into this account. I have lately withdrawn all the money from this account …
>
> 3. I have opened another savings account with OCBC Bank in order to deposit all the withdrawn money into this new account which is in my name and in the names of my eldest daughter, Sally Tia Sock Kiu and my youngest daughter, Tia Poh Kim. All the rental income are now deposited into this new account. *During my lifetime or after my death the money in this new account will serve the purposes of*
>
> (1) renewing the lease of the shophouse from the HDB when it expires;
>
> (2) keeping the shophouse in good repair and insured comprehensively and to its full value with reputable insurers;
>
> (3) paying for the maintenance and conservancy charges of the shophouse to the HDB/Town Counsil; and
>
> (4) paying for all rates taxes and other outgoings in respect of the shophouse.
>
> …
>
> [emphasis added]

16 In the Joint Record of Appeal, the Appellants described the Mother's 2015 Letter as being enclosed with the Mother's 2015 Will. This seems to cohere with the Estate's closing submissions in OC 316 where it was simply assumed that the Mother's 2015 Letter was signed contemporaneously with the Mother's 2015 Will on 16 July 2015. However, contrary to the Estate's submission, TOL did not concede in the trial below that the Mother's 2015 Letter was signed at the same time as the Mother's 2015 Will. Also, Poh Kim's

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evidence at trial was that the Mother's 2015 Letter was signed sometime in 2015 but on a different occasion from the Mother's 2015 Will. Nonetheless, both TOL and Poh Kim accept that they were present when the Mother's 2015 Letter was read out and signed by the Mother. Importantly, TOL did not raise any query as to the contents of the Mother's 2015 Letter at the material time. This is a crucial point which we will discuss in greater detail later.

The Rental Splitting Agreement

17 As mentioned at [7] above, it is undisputed that the Previous Rental (from October 1998 to June 2018) was paid directly to the Mother. However, in August 2018, the Mother, TOL and Koufu entered into a "Rental Splitting Agreement", pursuant to which Koufu agreed to pay the Coffeeshop rental separately to the Mother and TOL in equal shares with effect from 1 July 2018. As the Coffeeshop rental for July and August 2018 had already been paid to the Mother, it was also agreed that Koufu would pay the Coffeeshop rental for September and October 2018 to TOL in satisfaction of the sums owing by the Mother to TOL for his share of the Coffeeshop rental for the months of July and August 2018. The separate payments would then formally commence from 1 November 2018 onwards. Effectively, the Rental Splitting Agreement was backdated by about two months to July 2018. However, TOL did not take this opportunity to pursue a share of the Previous Rental prior to July 2018. This is also a crucial point which we will discuss in greater detail below.

18 The Rental Splitting Agreement was further formalised by way of a tenancy addendum signed by the parties on 24 August 2018, which was an addendum to the existing fourth and fifth tenancy agreements already executed between the Mother with Koufu (as discussed at [52] below).

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19 The relevant portions of the Rental Splitting Agreement state:

> We refer to your joint request on 6 August 2018 for the rental payment to be paid in equal half shares to Mdm Su Ye Chu and Mr Tia Oon Lai, being the lessees of the Premises as tenants in common of half share each. *You, as both legal and beneficial owners each holding equitable interest of 50% of the Premises* had further requested that the aforesaid mode of payment be effective from 1 July 2018 onwards.
>
> As the rental payments for July and August 2018 have already been effect by means of cheques issued to Mdm Su Ye Chu, it was further instructed and agreed by the Landlord that Koufu Pte Ltd proceed to pay the rental for the months of September and October 2018 as follows upon their respective due dates:
>
> …
>
> From 1 November 2018 onwards, Koufu Pte Ltd shall discharge its obligation to pay the monthly rental of $35,000 by effecting payments of $17,500 each to Mr Tia Oon Lai and Mdm Su Ye Chu.
>
> …
>
> [emphasis added]

20 It is important to bear in mind that there were WhatsApp messages exchanged between Sally and TOL in the lead up to the execution of the Rental Splitting Agreement. These messages will be discussed in greater detail later.

The 2019 Recording

21 Sometime in 2019, Sally visited the Mother's flat and used her mobile phone to voice record the Mother speaking when the latter started talking about TOL ("2019 Recording"). In this 2019 Recording, the Mother said, "the money is mine", and according to Sally, the Mother was suggesting that the Coffeeshop rental was hers. The relevant portion of the 2019 Recording is reproduced below:

> Now, you discuss with Pang Lim [PH] (Koufu's CEO), about what to do with your children, to let the government, say, [UI]…the store [UI]. You know? Now, talk about engaging a lawyer, for

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> this matter, about splitting the money in half between (me) and the other. My, this money, [UI] would be split fifty fifty between (me) and the other. Half. (sighs) Without conscience, no good. [UI] Oh, oh, oh, doing like this? You Ah Lai [PH] know, know *the money is mine* [UI]. (You) really don't have conscience, no conscience.
>
> [emphasis added]

Sally's 31 Dec 2021 Voice Message

22 On 30 December 2021, about two months after the Mother's passing, Sally sent TOL a message asking him to attend a prayer ceremony on 28 January 2022 to commemorate the 100th day since the Mother's passing. On 31 December 2021, Sally sent TOL a voice message ("Sally's 31 Dec 2021 Voice Message"). Sally's 31 Dec 2021 Voice Message begins with Sally saying:

> It's not that you don't have any money, it's just that Mum controlled the money, fearing that you'd be cheated by others. It's because she, well, just, just worried that *your money* would be messed around with. If you need money, you could ask Mum for it, like this. Now you have money, *your money* is still there. …
>
> [emphasis added]

Sally then went on to explain how the Mother had "recklessly" given money away, and then said:

> I am serious. I hope you are safe lah, you must behave lah. How much money do you need? You just tell me lah. You just won't say anything, keeping quiet, worrying and fretting over there. What are we going to lie to you for? We are sisters, sisters and brothers, why would we lie? We have to help each other, help whoever is in trouble. You are in trouble, why don't you just say so? *The money is with* us. *What Mum meant was to get the coffee shop back, because the coffee shop has a few years remaining now and will be useless.* So uh, we held that money for her, and we were holding it for the later stage to get the coffee shop back. Come to think of it, it shouldn't be enough to buy (it) anymore lah, because Mum was in the late stage, and there wasn't much left when we took over. Don't think that there was a lot.
>
> [emphasis added]

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The decision below

23 The Judge first rejected TOL's case that the Father gave the Lease to TOL and the Mother in equal shares (Judgment at [45] and [90]). The Judge disbelieved TOL's contention that there was a meeting in early 1997, where the Father conveyed to TOL and the Mother that he would pay for a long-term lease of the Coffeeshop which was to be given to TOL and the Mother in equal shares, and where it was agreed among the three of them that the Mother would hold TOL's share of the Coffeeshop rental for him (Judgment at [46]–[54] and [76]–[79]). The Judge also disbelieved TOL's contention that the Father had paid for the Lease (Judgment at [55]–[75]).

24 Second, as regards the Estate's contention that TOL held his 50% legal share of the Lease on a presumed resulting trust for the Mother because she had fully paid for the Lease, the Judge found that, apart from a cash payment of $354,154.80 ("Cash Payment") which the Judge found was made using the Mother's own funds, the remainder of the purchase price for the Lease was financed by the 1998 HLF Loan, and the mortgage payments were made using the Coffeeshop rental. These mortgage payments came in the form of monthly mortgage payments as well as nine lump sum mortgage payments of $100,000 or more each (Judgment at [94]–[122]). The Judge also found that the mortgage payments were not referable to any agreement between the Mother and TOL, at the time the 1998 HLF Loan was taken out, as to who would make the mortgage payments. Therefore, the Judge applied the presumptive rule in *Su Emmanuel v Emmanuel Priya Ethel Anne* [2016] 3 SLR 1222 ("*Su Emmanuel*") at [91] and found that the Mother and TOL should be taken to have each contributed 50% of the 1998 HLF Loan amount in accordance with their joint liability as co-borrowers. Taking into account the Cash Payment, the Mother's financial contribution was 62.35%, whereas TOL's financial contribution was 37.65%.

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Applying the presumption of a resulting trust, the beneficial interest of the Mother and TOL in the Lease would be in the ratio of 62.35:37.65 unless there was sufficient evidence of: (a) an intention by the Mother to benefit TOL with the larger part of the purchase price that she paid; or (b) a common intention between the Mother and TOL to hold the beneficial interest in the Lease in a different proportion (Judgment at [123]–[126]).

25 Third, after evaluating various pieces of evidence, including the Mother's 2015 Letter and Sally's 31 Dec 2021 Voice Message, the Judge found that there was insufficient evidence of a common intention between the Mother and TOL as to how the beneficial interest in the Lease would be held in the period prior to 1 July 2018 or of an intention by the Mother to benefit TOL with the larger part of the purchase price that she had paid (Judgment at [127]–[148]). However, the Judge found that the Rental Splitting Agreement was evidence of a common intention between the Mother and TOL that the beneficial interest in the Lease would be held in equal shares with effect from 1 July 2018 (Judgment at [141]–[142]).

26 It thus followed that the presumed resulting trust applied prior to 1 July 2018, whereas the common intention constructive trust applied from 1 July 2018 onwards. The Estate's counterclaim based on a common intention constructive trust before 1 July 2018 therefore failed, whereas its counterclaim based on a presumed resulting trust partially succeeded in that, prior to 1 July 2018, TOL held a 12.35% legal share of the Lease on trust for the Mother (Judgment at [149] and [153]).

27 Fourth, the Judge found that the Mother held 37.65% of the Previous Rental on a presumed resulting trust for TOL (Judgment at [158]), and that the Mother had undertaken a duty to account to TOL for his share of the Previous

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Rental. The Judge found that: (a) the Mother knew that TOL was beneficially entitled to a share of the Previous Rental; and (b) the Mother had conducted herself *vis-à-vis* TOL in a manner which demonstrated a degree of responsibility for TOL's share of the Previous Rental (Judgment at [164]–[167]).We pause to note that, in coming to her findings on these points, the Judge assessed that no meaningful adverse inference could be drawn against TOL for his omission to challenge the contents of the Mother's 2015 Letter at the material time, and the Judge was of the view that TOL's inaction in pursuing a share of the Previous Rental even after the Rental Splitting Agreement was neither here nor there where the Mother's knowledge was concerned (Judgment at [165(e)(ii)]–[165(e)(iii)]. However, the Judge did not appear to consider these points in the context of her earlier analysis on the existence of a common intention between the parties. We will comment on the Judge's analysis in greater detail later.

28 Fifth, the Judge found that, as at August 2015, when Sally began assisting the Mother with her finances, Sally knew that: (a) TOL was entitled to a share of the Coffeeshop rental received by the Mother; and (b) the Coffeeshop rental was paid into the Tripartite Account. Given that Sally was prepared in such circumstances to assist the Mother in controlling and operating the Tripartite Account, the Judge found that Sally had voluntarily undertaken a duty to account to TOL for his share of the Previous Rental (Judgment at [191]).

29 As for Poh Kim, the Judge found that TOL had not discharged his burden of proving that Poh Kim knew that TOL was entitled to a share of the Coffeeshop rental paid into the Tripartite Account, and therefore there was no basis to conclude that Poh Kim had undertaken a duty to account to TOL (Judgment at [193]–[194]).

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30 Arising from her findings, the Judge declared that: (a) from 1 August 1998 to 30 June 2018, the Mother and TOL held the beneficial interest in the Lease in the ratio of 62.35:37.65; (b) from 1 July 2018 onwards, the Mother and TOL held the beneficial interest in the Lease in equal shares; and (c) the Mother held a 37.65% share of the Previous Rental on trust for TOL. The Judge ordered the Estate to account to TOL the Previous Rental from 1 October 1998 to 30 June 2018, and ordered Sally (in her personal capacity) to account to TOL the Previous Rental paid into the Tripartite Account from August 2015 to 30 June 2018, and for both defendants to pay TOL his net 37.65% share of the same after permissible deductions, including, for reasonable expenses in respect of the Lease, the Coffeeshop and the Coffeeshop rental (Judgment at [199]–[200]).

31 The Judge also ordered: (a) the Estate to pay TOL's party-and-party costs ("P&P costs") fixed at $110,880 and disbursements of $44,604; (b) Sally to pay TOL's P&P costs fixed at $61,600 and disbursements of $24,903.18; and (c) TOL to pay Poh Kim's P&P costs fixed at $105,000 and disbursements of $12,447.08.

The parties' cases on appeal

32 The Estate's arguments on appeal are broadly as follows:

(a) There was a common intention that the Mother was holding the full beneficial interest in the Lease, if not when the Lease was first acquired, then at least at the time of the Mother's 2015 Letter. In this regard, Sally's 31 Dec 2021 Voice Message was inadmissible hearsay evidence and TOL's evidence was unreliable. More weight should have been given to the Mother's 2015 Letter, the 2019 Recording and the Mother's 2019 Will in finding such a common intention. The Mother

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had also detrimentally relied on the common intention of full beneficial ownership.

(b) The Judge failed to complete the presumed resulting trust analysis to its full and proper conclusion. The Judge should have relied on the authority of *Laskar v Laskar* [2008] 1 WLR 2695 ("*Laskar*") to find that TOL had no beneficial interest in the Lease so as to reflect the overall justice of the case.

(c) The Judge should have relied on the authority of *Laskar* and exercised her discretion to deny TOL an account of the Previous Rental.

(d) TOL was barred from seeking an account by the doctrine of laches.

(e) Even if the Estate's appeal is unsuccessful, TOL should be denied his full costs and disbursements in OC 316 due to his poor conduct.

33 Sally's arguments on appeal are broadly as follows:

(a) The evidence supports the inference that the operating agreement between the Mother and TOL was for the Mother to be solely responsible for repaying the 1998 HLF Loan.

(b) The Judge should have relied on the authority of *Ng Chin Huay v Tan Tien Tuck* [2025] SGHC 145 and found that the mortgage payments on the 1998 HLF Loan were paid using the Mother's funds and not the Coffeeshop rental.

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(c) The Mother did not know that TOL was beneficially entitled to a share of the Previous Rental. The Mother also did not demonstrate a degree of responsibility for TOL's share of the Previous Rental.

(d) Sally did not have knowledge since August 2015 that TOL was beneficially entitled to a share of the Previous Rental.

34 TOL largely aligns himself with the Judge's decision and reasoning.

Issue to be determined

35 There is no appeal by TOL against the Judge's rejection of his case that the Father had given the Lease to him and the Mother in equal shares as intimated in a meeting in early 1997, or the Judge's decision to dismiss his claim against Poh Kim. The only appeals are that of the Estate and of Sally (in her personal capacity). However, the Appellants are not appealing against the Judge's finding that, from 1 July 2018, there was a common intention between the Mother and TOL that the beneficial interest in the Lease would be held in equal shares.

36 In *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*") at [160], the Court of Appeal set out the approach, where parties have contributed unequal amounts towards the purchase price of a property and have not executed a declaration of trust, as to how the beneficial interest in the property is to be apportioned in resolving a property dispute. Regardless of the parties' financial contributions to the purchase price of the property, if there is sufficient evidence of an express or an inferred common intention that the parties should hold the beneficial interest in the property in a particular proportion, the parties will hold the beneficial interest in accordance with that common intention. Hence, it is common ground between the parties in the

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present dispute that the court should first ascertain if there was a common intention between the Mother and TOL as to their beneficial interest in the Lease and consequently in the Coffeeshop rental. It is only in the absence of any evidence of such a common intention that the court would proceed to consider if there was a presumed resulting trust based on the parties' financial contributions.

37 Therefore, the key issue to be determined first is whether, prior to 1 July 2018, there was a common intention between the Mother and TOL that the Mother would hold the full beneficial interest in the Lease and be entitled to all the Coffeeshop rental.

38 In determining the above issue, it should be kept in mind that an appellate court's power of review with respect to findings of fact is limited because the trial judge is generally better placed to assess the veracity and credibility of witnesses, especially where oral evidence is concerned. However, where it can be established that the trial judge's assessment is plainly wrong or against the weight of the evidence, the appellate court can and should overturn any such finding. Furthermore, where a particular finding of fact is not based on the veracity or credibility of the witness, but instead, is based on an inference drawn from the facts or the evaluation of primary facts, the appellate court is in as good a position as the trial judge to undertake that exercise. In so doing, the appellate court will evaluate the cogency of the evidence given by the witness by testing it against inherent probabilities or against uncontroverted facts (*Tat Seng Machine Movers Pte Ltd v Orix Leasing Singapore Ltd* [2009] 4 SLR(R) 1101 at [41]).

39 Another point that should be kept in mind when analysing the issue of common intention is the fact that TOL only filed OC 316 after the Mother

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passed away. This placed the Estate and Sally at a significant disadvantage as the Mother was no longer available as a witness to give evidence to support the Appellants' claim of a common intention or to challenge TOL's evidence on the matter. The Mother would have been a crucial witness on, amongst other things, the circumstances and intention surrounding the parties' registration as proprietors of Hiap Hoe, the execution of the Lease and the 1998 HLF Loan, and the preparation of the Mother's 2015 Will, the Mother's 2015 Letter and the Rental Splitting Agreement.

40 For the reasons set out below, we find that there was a common intention between the Mother and TOL, at the time the Lease was acquired, that the Mother would hold the full beneficial interest in the Lease. We further find that the Mother had relied on the common intention to her detriment. Therefore, we find that a common intention constructive trust applied in the period prior to 1 July 2018, under which the Mother held the full beneficial interest in the Lease. It follows that the Mother also held the full beneficial interest in the Previous Rental and TOL is not entitled to any part of it.

Whether there was a common intention that the Mother would hold the full beneficial interest

41 It is well-established that, to successfully invoke the common intention constructive trust, the common intention between the parties may either be express or inferred, and there must be sufficient and compelling evidence of the express or inferred common intention (*Su Emmanuel* at [83], citing *Chan Yuen Lan* at [160(b)] and [160(f)]). Although direct financial contributions to the purchase price of the property are an important consideration, they are not the only basis upon which the court may infer such a common intention. In exceptional situations, the conduct of the parties may give rise to an inferred

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common intention. An example of such an exceptional situation is when neither party can be said to have made any direct financial contributions towards the purchase price of the property in the typical manner because the property was financed by a mortgage for which repayments were made using rental proceeds from the property (*Ong Chai Soon v Ong Chai Koon* [2022] 2 SLR 457 ("*Ong Chai Soon*") at [34]–[36]).

42 As mentioned at [24] above, the Judge found that apart from the Cash Payment made by the Mother, neither the Mother nor TOL made any direct financial contribution towards the purchase price as the remainder of the purchase price was financed by the 1998 HLF Loan which was paid using the Coffeeshop rental. We see no reason to disagree with this conclusion.

43 To explain why we find that there was a common intention up till June 2018 that the Mother would hold the full beneficial interest in the Lease and be fully entitled to the Previous Rental (which was later superseded by the Rental Splitting Agreement which became effective from July 2018), it would be useful to analyse the various pieces of evidence in a chronological manner. We deal with each in turn.

Registration of TOL as a proprietor of Hiap Hoe

44 It is undisputed that the Father withdrew from Hiap Hoe in May 1997 after suffering a stroke, and in his place the Mother and TOL were registered as proprietors with effect from 16 May 1997 (see [4] above). This raises the question: why was TOL registered as a proprietor of Hiap Hoe? In the proceedings below, TOL's case was that he was registered as a proprietor as part of the Father's gift of the Lease to him and the Mother in equal shares (see [10] above). However, as already mentioned, the Judge rejected TOL's case and

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TOL is not appealing against the Judge's decision (see [23] and [35] above). In other words, for the purpose of the appeals, TOL is not claiming to be entitled to 50% of the Previous Rental, whether pursuant to a gift or otherwise. He has accepted the Judge's decision that he is entitled to 37.65% of the Previous Rental which is based on a presumed resulting trust. While TOL does not attempt to recast his argument for the appeals through the lens of a common intention analysis, there is a separate question of whether TOL's registration as a proprietor of Hiap Hoe is evidence against the Appellants' contention that there was a common intention that the Mother was solely beneficially entitled to the Lease and the Previous Rental.

45 On balance, we are of the view that TOL's registration as a proprietor of Hiap Hoe does not evidence such a common intention. This is chiefly because it remains unclear *why* he was so registered. TOL's narrative in the proceedings below was that the Father had intentionally arranged for each of his sons "to have 50% of a coffeeshop" as part of his legacy planning. It is true that TOH and the Father owned another coffeeshop in Sembawang which, whilst originally held as a joint tenancy, was eventually severed into a tenancy in common in equal shares. However, TOH's own evidence was that he always treated the Sembawang coffeeshop as belonging solely to the Father and it was the Father who received all the rent from the Sembawang coffeeshop. It is worth noting that TOH had nothing to gain if TOL failed in his claim to a share of the Previous Rental. In particular, TOH is not a beneficiary under the Mother's 2019 Will. In the circumstances, there is insufficient evidence to make any informed finding as to why TOL and the Mother were seemingly selected to take over Hiap Hoe from the Father. Even if it is assumed that the registration of TOL as a proprietor of Hiap Hoe was a calculated decision in that TOL was to benefit from the business activities of Hiap Hoe, that is still one step removed

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from the execution of the Lease which took place a year later, and so it is questionable whether the circumstances of TOL's registration as a proprietor of Hiap Hoe can speak to any common intention between the parties when the Lease was obtained.

46 The above analysis has downstream implications on the probative value of subsequent documents which expressly refer to TOL. Prior to the Lease, the existing three-year fixed-term tenancy of the Coffeeshop was granted by HDB to Hiap Hoe (see [4] above). It is therefore unsurprising that HDB's 12 October 1998 letter in the lead up to the Lease was addressed to the Mother and TOL, or that the Lease agreement mentioned the Mother and TOL as tenants in common, since from HDB's perspective, the arrangement was always with Hiap Hoe, and its registered proprietors at the time were the Mother and TOL. Likewise, it is unsurprising that the deed of assignment for the 1998 HLF Loan ("Deed of Assignment") stated the Mother and TOL as co-borrowers, since the purpose of the loan was to facilitate Hiap Hoe's purchase of the Lease, and the Mother and TOL were the registered proprietors of Hiap Hoe at that time. Since the Mother and TOL were named in the aforesaid documents, it is also not surprising that, when the Lease and mortgage were registered under the LTA, the Mother and TOL were likewise mentioned as tenants in common. The express references to TOL in these documents are all explicable by the fact that TOL had been registered as a proprietor of Hiap Hoe. In the absence of evidence as to *why* TOL was so registered, little more can be inferred from the fact that TOL's name is expressly found in these documents.

47 Consequently, the fact that TOL was registered as a proprietor of Hiap Hoe and was named in subsequent documents relating to the Lease and the 1998 HLF Loan at most makes clear the parties' *legal* positions as opposed to their *beneficial* positions. It is true that the Deed of Assignment defines "the

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Assignor" as including the Mother and TOL, and refers to "the Assignor" as the beneficial owner in cl 4. It is also true that the Rental Splitting Agreement refers to the Mother and TOL as the "legal and beneficial owners each holding equitable interest of 50%". However, it is unsurprising that formal documentation with third parties would proceed on the assumption that the registered owners are also the legal and beneficial owners. The search for the true common intention between the Mother and TOL as to their *beneficial* interests must necessarily look beyond what is formally stated in the documentation with third parties. In our view, what is more probative is the substantive involvement (if any) of the Mother and TOL in relation to Hiap Hoe and the Coffeeshop, both before and after their registration as proprietors and the obtainment of the Lease, for that sets the *context* of those arrangements. In this regard, it is not disputed that the court may take into account the parties' subsequent conduct in ascertaining their intentions at the material time (*Tan Yok Koon v Tan Choo Suan* [2017] 1 SLR 654 at [110]). The weight to be given to such subsequent conduct is a separate matter. We therefore turn to consider this issue.

The Mother's and TOL's involvement in the Coffeeshop

48 The Mother's degree of involvement in Hiap Hoe prior to becoming registered as a proprietor was disputed in the trial below. On the one hand, TOL had argued that the Mother was a housewife and was not involved in the Coffeeshop operations. On the other hand, the Estate had argued that the Mother worked at the drinks stall in the Coffeeshop and drew a monthly salary. The Judge ultimately preferred the Estate's case, noting that TOL had conceded in cross-examination that the Mother did draw a salary (of around $1,000 to $2,000) from working at the drinks stall and had been regarded by others as the "lady boss" who assisted the Father in running the Coffeeshop (Judgment

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[114]–[119]). We see no reason to disturb the Judge's finding, not least because TOL is not challenging it.

49 As for TOL, he had given evidence in his Affidavit of Evidence-in-Chief ("AEIC") that, when he was young, the Father had brought him to Hiap Hoe's earlier coffeeshop operations (prior to its relocation to the present Coffeeshop site in 1984) to assist with making coffee, collecting moneys, and serving customers. In our view, such involvement, even if true, is largely irrelevant, since it would have taken place during TOL's childhood years and when Hiap Hoe's coffeeshop operations were at a different location. By the time Hiap Hoe relocated to the present Coffeeshop site in 1984, TOL was already around 28 years old, and there is no evidence to suggest that TOL was involved in the Coffeeshop operations since the relocation in 1984. Indeed, TOL's own evidence was that he became a public officer in HDB in 1977 and only retired sometime in 2003. His own case on appeal is that it was reasonable for him not to be involved in the Coffeeshop operations since he was working full-time in HDB.

50 Thus, from 1984 to May 1997, after the Coffeeshop relocated to its present site but before the Mother and TOL were registered as proprietors of Hiap Hoe, it was primarily the Mother and not TOL who was involved in the Coffeeshop operations with the Father. Thereafter, we consider the period from May 1997 onwards, after the Mother and TOL became registered as proprietors of Hiap Hoe.

51 It is noteworthy that the Judge found that it was the Mother who was actively arranging for the financing of the purchase of the Lease and the repayment of the 1998 HLF Loan (Judgment at [71]). For instance, it was John Yong's unchallenged evidence that the Mother had asked him to be a guarantor

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for the 1998 HLF Loan. The Judge also found that the Mother had made the Cash Payment using her own funds and had organised and marshalled the funds to make the lump sum mortgage payments (Judgment at [121]). In this regard, the Judge's finding was that the rental derived from the Coffeeshop was used by the Mother to make both the monthly and lump sum mortgage payments (Judgment at [101] and [112]). On the other hand, TOL accepts that he left the financing arrangements to the Mother. Also, as the Judge observed, TOL did not assert in his pleadings or AEIC that he made any payment for the purchase of the Lease; he only suggested belatedly in cross-examination that if he had collected his share of the Coffeeshop rental, he would have used it to make the mortgage payments (Judgment at [3]).

52 As for the renting out of the Coffeeshop since October 1998, the very first license agreement (for the period from 1 October 1998 to 30 September 2003) was not adduced as evidence. While a draft copy of the second license agreement (for the period from 1 October 2003 to 30 September 2008) was adduced as evidence, and the draft agreement included both the Mother's and TOL's names as the licensor, it is unclear whether TOL had himself signed the agreement. The third agreement was a tenancy agreement (for the period from 1 October 2008 to 30 September 2013) which included both the Mother's and TOL's names as the landlord but appears to have been signed by only the Mother. The fourth tenancy agreement (for the period 1 October 2013 to 30 September 2018) named only the Mother as the landlord and was signed by only the Mother. Subsequently, a novation agreement, whereby Koufu was substituted as the tenant under the fourth tenancy agreement, named only the Mother as the landlord and was signed by only the Mother. The fifth tenancy agreement (for the period from 1 October 2018 to 30 September 2023) named only the Mother as the landlord and was signed by only the Mother. The picture

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that emerges from these documents is that, whilst TOL could possibly have had some involvement in the renting out of the Coffeeshop in the early years, by around 2008, it was primarily the Mother who was involved in these matters.

53 TOL's own evidence in cross-examination was that he was involved in the first license agreement, but was not involved in the subsequent agreements. He claimed that his Mother "wouldn't let [him] know" about the subsequent agreements, and when he sought legal advice from one "Mr Zheng" sometime between 2008 and 2013, he was told "[g]o and sue them if you're not happy about it". None of this was mentioned in TOL's AEIC. Nonetheless, if TOL's assertion is true, it is noted that TOL did not in fact take legal action, be it in the form of litigation or the execution of supplementary documentation to make clear his involvement as a landlord of the Coffeeshop. In any event, the picture that emerges is that TOL was content to leave the Coffeeshop affairs to the Mother and to play no role in it.

54 The overall backdrop therefore is one in which the Mother had a consistent and significant role in the Coffeeshop affairs, whereas TOL's involvement was minimal and sporadic at best. In our view, this is a factor which supports the inference that there was a common intention between the Mother and TOL, at the time the Lease was obtained, that the Mother would hold the full beneficial title. We accept that this is not conclusive in itself, for it is possible that TOL was simply a sleeping beneficial partner in Hiap Hoe, but it is nonetheless a piece of evidence to be taken into account.

TOL's evidence that the Mother assured him that she was safeguarding his share of the Coffeeshop rental for him

55 TOL's evidence was that the Mother had assured him on various occasions that she was safeguarding his share of the Coffeeshop rental for him,

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and that she was saving the money for the Coffeeshop expenses and lease renewal. We address this piece of evidence upfront because, as will be discussed below, whenever TOL was questioned on his omission to pursue a share of the Previous Rental at various junctures, his response was that he saw no need to do so since the Mother had assured him that she was safeguarding his share of the Coffeeshop rental for him.

56 The Judge accepted TOL's evidence, finding that, in the years prior to 2018, TOL had broached with the Mother the topic of being paid some of the Coffeeshop rental. The Judge considered it not unnatural that, after becoming a co-borrower of the 1998 HLF Loan and a co-licensor of the renting out of the Coffeeshop, TOL felt entitled to at least some part of the Coffeeshop rental. The Judge further found that the Mother had given TOL the impression that she was keeping his share of the Coffeeshop rental for him, since TOL's evidence cohered with Sally's understanding of the situation as expressed in Sally's 31 Dec 2021 Voice Message (Judgment at [129]).

57 In our view, the Judge gave too much weight to TOL's evidence and to Sally's 31 Dec 2021 Voice Message. Although the latter could appear on its face to corroborate TOL's evidence, we are of the view that its corroborative value is limited. As we explain in greater detail at [92] below, the probative value of the voice message is necessarily constrained by the context in which it was sent, where Sally was trying to persuade TOL to attend a prayer ceremony to commemorate the 100th day since the Mother's passing.

58 In contrast, what is telling is that there is no objective record, by way of letters, notes or messages, showing TOL asking the Mother about his purported share of the Coffeeshop rental or the Mother assuring TOL that she was safeguarding it for him. As we explain below, if it were true that the Mother had

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regularly made such assurances to TOL, it would have been natural for her to repeat such assurances in the Mother's 2015 Letter and also around the time the Rental Splitting Agreement was executed, and yet there is no documentary record of such assurances being made at any of those junctures.

59 Furthermore, while the documentary evidence adduced in the trial below included records of messages exchanged between TOL and Sally on the issue of the Coffeeshop rental (see, *eg*, [77] below), not once did TOL refer Sally to any earlier communication he had had with the Mother on the issue of the Coffeeshop rental.

60 Likewise, in the letter of demand sent by TOL's lawyers to Sally (*qua* executrix of the Estate) dated 17 February 2022, after the Mother had passed away, it was asserted that the Mother had failed to account for TOL's purported share of the Previous Rental but it was not mentioned that this was despite the Mother having assured TOL all this while that she was safeguarding his share for him. Indeed, Sally's lawyers replied on 3 March 2022 asserting that TOL was not entitled to any of the Coffeeshop rental because, amongst other things, "the [Mother] merely inserted [TOL's] name as a 50% tenant-in-common in the HDB shop for convenience". When TOL's lawyers reiterated on 23 May 2022 that the Estate was obliged to account to TOL for his share of the Coffeeshop rental, they again did not assert that the Mother had all along assured TOL that she was safeguarding a share of the Coffeeshop rental for him. The allegation that such assurances were provided was only raised for the first time in TOL's Statement of Claim.

61 It is also noteworthy that, as explained in the Mother's 2015 Letter, the Mother had opened OCBC joint accounts, first with TOH and subsequently with Sally and Poh Kim (*ie*, the Tripartite Account), into which the Coffeeshop rental

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was deposited. In contrast, not once did the Mother open such a joint account with TOL. If it were true that the Mother was safeguarding a share of the Previous Rental for TOL, it would have been logical and reasonable for her to have TOL as a joint account holder of the bank account in which the Coffeeshop rental was deposited.

62 Another facet of TOL's evidence was his assertion that, after he retired in 2003, he requested for his purported half share of the Coffeeshop rental from the Mother, and the Mother sent him monthly sums ranging from a few hundred dollars up to $2,000 until the Rental Splitting Agreement in 2018. The Judge accepted this assertion as true because TOL willingly undertook to reduce his claim in OC 316 by $360,000, being $2,000 per month for the period that he had allegedly received moneys from the Mother. The Judge then reasoned that these moneys came from TOL's share of the Previous Rental because the Mother would otherwise have had no reason to make such regular payments to him (Judgment at [166]).

63 With respect, the fact that TOL was willing to reduce his claim in OC 316 to take into account moneys previously received from the Mother, and the fact of previous "payments" from the Mother, are neither here nor there. The latter does not show that the Mother was paying him part of his share of the Previous Rental; it does not prove that such payments were for his purported share of the Coffeeshop rental. Despite these payments allegedly stretching over 15 years, there is no supporting evidence to show that TOL had requested moneys from the Mother as part of his purported half share of the Coffeeshop rental (which would have been between approximately $15,000 and $16,000 per month, see Judgment at [99]), or that the Mother had made such payments to TOL on that basis. There are other equally plausible reasons for the Mother to make such payments, such as to assist her son financially especially after his

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retirement. Further, in cross-examination, TOL suggested that the payments were not all that regular after all: "when mother was happy, she will give me. When she was unhappy, she wouldn't. So I cannot recall how many times she gave me". This suggests that it was up to the Mother to unilaterally decide whether and when to give TOL any money, and that any such payments did not represent TOL's purported half share of the Coffeeshop rental.

The Mother's 2015 Will and the Mother's 2015 Letter

64 As noted at [14] above, the Mother purported to bequeath her "half share" of the Lease in the Mother's 2015 Will and in her earlier wills executed on 8 July 2005 and 30 June 2009. This could appear to indicate that the Mother subjectively believed that she was only beneficially entitled to a "half share" of the Lease. While the Judge was of the view that little weight should be accorded to these wills because it is unclear if they should be taken as reflecting the Mother's intention regarding the beneficial ownership of the Lease during her lifetime (Judgment at [130]), we are of the view that the previous wills go some way towards contradicting the Appellants' case that there was a common intention for the Mother to hold the full beneficial interest in the Lease.

65 Nonetheless, the probative value of the previous wills must be balanced against that of the Mother's 2015 Letter as well as TOL's conduct in response to that letter. In our view, paragraph one of the Mother's 2015 Letter, where the Mother mentioned that she and TOL "together hold [the Lease] as tenants in common in equal share" is neither here nor there, as it is unclear whether she was describing the legal or beneficial status of their ownership. Rather, it is paragraph two that is significant, where the Mother unambiguously stated that "[a]ll the rental income from the shophouse belong to me". Whilst this was not a direct reference to the beneficial ownership of the Lease *per se*, given the

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intrinsic connection between the beneficial ownership of the Lease and the beneficial ownership of the Coffeeshop rental, such a statement from the Mother clearly reflects her subjective belief that she held the full beneficial interest in the Lease. It bears emphasis that, in the Mother's 2015 Letter, the Mother was seeking to explain why the Coffeeshop rental was being transferred and deposited into the Tripartite Account, and setting out her own intentions regarding the use of the Coffeeshop rental moving forward.

66 We add that it would have been obvious to TOL from the Mother's 2015 Letter that the Mother had a pre-existing OCBC joint account with TOH and had also opened another OCBC joint account with Sally and Poh Kim, *ie*, the Tripartite Account. TOL would have known this when the Mother's 2015 Letter was read out in his presence, if not earlier.

67 The Judge placed little weight on the statements in the Mother's 2015 Letter for the following reasons (Judgment at [131] and [165(e)(ii)]): (a) the statements were bare assertions and conclusory in nature, and the Mother's basis for them was unclear; (b) the Mother's statement that she paid for the Coffeeshop with "money entirely from [her] personal savings" was minimally inaccurate since the Judge found that the Mother made only the Cash Payment from her own funds and the 1998 HLF Loan was repaid using the Coffeeshop rental; and (c) under cross-examination, Poh Kim could not explain how the Mother's 2015 Letter had been prepared and ended up conceding that it should not be relied on.

68 With respect, we are of the view that these points do not justify giving the Mother's 2015 Letter as little weight as the Judge did.

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(a) While it is true that the statements in the Mother's 2015 Letter were mere assertions, some of which may have been inaccurate such as the claim that the Lease was purchased entirely using the Mother's personal savings, that does not detract from the fact that the Mother's statement that all the Coffeeshop rental belonged to her reflected her subjective belief at the time. There is no credible reason why the statements did not genuinely reflect her subjective belief at the time. Whether the Mother had provided adequate explanations for her assertions, and whether such explanations could be justified in fact, are separate issues.

(b) As for Poh Kim's apparent concession, we do not give it much weight because it is not clear why she made it. Further, the relevance of the Mother's 2015 Letter lies not only in the truth of the Mother's statement about all the Coffeeshop rental belonging to her, but also in the fact that the Mother made that statement and TOL omitted to question it at the time. In addition, neither the Estate nor Sally made such a concession.

69 It is more significant that, despite being physically present when the Mother's 2015 Letter was read out, TOL did not query why the letter stated that all the Coffeeshop rental belonged to the Mother if he genuinely believed otherwise. In our view, this omission suggests that TOL subjectively believed at that time that the Mother was entitled to all the Coffeeshop rental because she held the full beneficial interest in the Lease. This is reinforced by the fact that, when pressed in cross-examination about the Mother's statement that she was entitled to all the Coffeeshop rental, TOL's answers vacillated.

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(a) Initially, when asked by counsel for the Estate if he agreed that the Mother "said that 100% of the rental belongs to her", TOL disagreed.

(b) Subsequently, when cross-examined by counsel for Poh Kim on why the Mother "said expressly that all the rental proceeds belong to her, alone" and "was of the view that she alone could decide how to spend the rental proceeds", TOL said "[y]es, but she cannot do it this way" and that "I feel that it's not right. There might be someone beside her forcing her to do this". Here, TOL appeared to accept the plain meaning of paragraph two of the Mother's 2015 Letter but postulated that someone had coerced her into taking that position.

(c) Later in the cross-examination by counsel for Poh Kim, when asked if he was present at the meeting where the Mother's 2015 Letter was read out, TOL said "I was present, yes. But I did not see the entire drafting of the document. … It was read out, but I was not shown to it [*sic*]. TOL's explanation here did not make sense as he did not question the authenticity of the letter at trial or when it was read out in 2015.

(d) Then later in the cross-examination by counsel for Poh Kim, when pointedly asked why he raised no objection if he disagreed with the statements in the Mother's 2015 Letter, TOL said "I thought that all the contents inside were advantages [*sic*] to me. That's why I did not chase after them." If TOL had really believed that the statements were advantageous to him, there would have been no need for him to earlier hint that the Mother had not signed the letter or that she had only signed it involuntarily.

TOL's inconsistent responses at trial impinged on his credibility as a witness.

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70 The Judge was of the view that, given the questionable veracity of the statements in the Mother's 2015 Letter, no meaningful adverse inference could or should be drawn from the fact that TOL did not challenge these statements at the material time (Judgment at [165(e)(ii)]).

71 We note that the Judge considered this point under the issue of whether the Mother had a duty to account to TOL, in particular whether the Mother knew that TOL was beneficially entitled to a share of the Previous Rental, but she did not appear to consider it under the issue of common intention. In any event, with respect, we do not agree with the Judge's reasoning. At the time the Mother's 2015 Letter was read out, TOL did not question its authenticity or whether the Mother had signed it voluntarily. Accordingly, it would be natural for him to at least ask about his purported share of the Coffeeshop rental if he genuinely believed that he had a beneficial interest in the Lease. He could have asked the Mother, Sally or Poh Kim – who had, to his knowledge by 2015, begun operating the Tripartite Account – about the Coffeeshop rental, but he did not do so. His explanations in cross-examination for his failure to do so were unpersuasive. We are of the view that an adverse inference should be drawn against TOL for this omission. Furthermore, if it were true that the Mother had consistently assured TOL in the past that she was safeguarding his share for him (see [55] above), then TOL would have raised a query to the Mother's claim to all the Coffeeshop rental but he did not do so.

72 Therefore, in our view, the Mother's claim in the Mother's 2015 Letter that all the Coffeeshop rental belonged to her, and TOL's omission to raise any query, constitute evidence supporting the inference that the Mother and TOL had a common intention, at the time the Lease was acquired, that the Mother would hold the full beneficial interest.

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73 For completeness, we address the Mother's 2019 Will, which was her last and final will. On appeal, the Estate submits that the Mother's 2019 Will supports the inference of a common intention that the Mother held the full beneficial interest. We disagree. The fact that the Mother's 2019 Will made no mention of the Lease, the Coffeeshop or the Coffeeshop rental renders it equivocal in evincing any common intention between the parties.

The Rental Splitting Agreement

74 We now come to the Rental Splitting Agreement. It would be useful to understand how that agreement came about. On 13 August 2012, HDB had granted the Mother and TOL a license to use and occupy an outdoor refreshment area just outside the Coffeeshop premises ("ORA License") for a term of three years commencing on 1 July 2012. The ORA License agreement named both the Mother and TOL as licensees, but was signed by only the Mother. The ORA License was renewed in 2015 and was set to expire on 30 June 2018. In early 2018, the Mother's application for the renewal of the ORA License was rejected as HDB required the renewal form to be signed by both the Mother and TOL. Based on messages exchanged between Sally and TOL at that time, the Judge accepted Sally's explanation that TOL had used the renewal of the ORA License as leverage to pressure the Mother into signing the Rental Splitting Agreement (Judgment at [134]–[136]). We see no reason to disturb the Judge's finding, not least because TOL is not challenging it.

75 How then does the Rental Splitting Agreement reflect the common intention of the parties? As mentioned at [35] above, the Appellants are not appealing against the Judge's finding that the Rental Splitting Agreement evinced a common intention between the Mother and TOL that the beneficial interest in the Lease would be held in equal shares with effect from 1 July 2018.

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Importantly, the Judge found that the Rental Splitting Agreement was forward-looking, and therefore did not shed any light on the parties' common intention prior to 1 July 2018 (Judgment at [142]). Consequently, while Koufu did refer to the Mother and TOL as the "legal and beneficial owners each holding equitable interest of 50%" in the Rental Splitting Agreement, this was not reflective of the Mother's and TOL's common intention prior to 1 July 2018. As alluded to at [47] above, the search for the parties' true common intention must necessarily look beyond what is formally stated in documentation with third parties. We see no reason to disturb the Judge's finding in this regard.

76 In so far as the Rental Splitting Agreement referred to the Mother and TOL as "both legal and beneficial owners each holding equitable interest of 50% of the [Coffeeshop]", we infer that this was due to Koufu treating the Mother and TOL as each being beneficially entitled to the Property since they were holding the Property in name as tenants in common in equal shares. There would have been no reason for the Mother and TOL to share with Koufu what the common understanding was as between them in the past, especially since by that time in 2018, the Mother was prepared to let TOL receive half the rent going forward.

77 Our view is further supported by the WhatsApp messages exchanged between Sally and TOL in the lead up to the Rental Splitting Agreement. On 23 July 2018, Sally messaged TOL seeking the latter's cooperation regarding the ORA License. The following messages were then exchanged on 23 and 24 July 2018:

> Sally: Wen Lai, I know you are unhappy but you must think about this carefully. … So once the LICENCE is gone, it would be very troublesome to apply for it again. …
>
> Sally: Go talk to Pang Lin in person regarding whatever conditions that you want, and let him resolve for you. …

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> TOL: I was already questioned by IRAS last year regarding why I did not declare the huge income from the coffee shop. I told them that I had not been receiving any rent for many years. So starting from now, I must try to get that exploitative Koufu to give me a check with half the rent, so that in this way, I can declare my personal income to IRAS. Otherwise, there's no deal.
>
> Sally: Mum received it all, and declared both accounts together so there was no tax evasion. Now that you want them separate, speak to Mum about it.
>
> Sally: Mum bears responsibility for the tax that you declare so go discuss with her.
>
> Sally: It's not that it wasn't declared. It's that you declared together with Mum's and after she filed, she also paid huge amounts to IRAS in instalments.
>
> TOL: In summary, *I'm going to take back what's mine.* As for the rest, I can't be bothered.
>
> Sally: Fine. Give me your tax declaration forms from last year. We'll give you your declared annual income. And, from August onwards, we will directly transfer half of the rent to you each month. Give me your account number and we'll handle this for you. *This is all I can do as the eldest sister. If you have any other requests, then you must discuss them with Mum.* I only have one request. Before doing all this, you must sign the documents.
>
> TOL: [hand clapping emoticon]
>
> [emphasis added]

78 After the above exchange, Sally and TOL then discussed when they would go to the Mother's flat to sign the ORA License documents. There must have been a further discussion between Sally and the Mother on the one hand and TOL on the other hand because it was eventually agreed that TOL would receive half the rent, not from August 2018 but from July 2018 as reflected in the Rental Splitting Agreement.

79 Importantly, the messages establish, as mentioned above, that TOL had used the renewal of the ORA License as his opportunity to claim half of the Coffeeshop rental going forward by way of the Rental Splitting Agreement. His

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mention of wanting to declare half the rent as his for income tax purposes was a pretext to claim a half share.

80 However, what is even more significant is that TOL did not make any claim for a share of the Previous Rental at that time. Even as Sally was informing TOL that he would get half of the Coffeeshop rental "from August onwards" and that was "all [she could] do as the eldest sister", TOL did not question Sally's position or assert that he was entitled to a share of the rent even from the very beginning when the Coffeeshop was first rented out in 1998. Neither did he remind Sally of the purported assurances from the Mother that she was holding his share of the Coffeeshop rental for him.

81 It is all the more telling against TOL that despite telling Sally that he was going to "take back what's [his]", he did not mention claiming a share of the Previous Rental at that time. This was inexplicable unless the common intention earlier was that the Mother would own the Lease in its entirety beneficially and was entitled to all the Coffeeshop rental until he saw the opportunity in 2018 to claim a share of the Coffeeshop rental by way of the Rental Splitting Agreement.

82 TOL sought to argue at the hearing of the appeals that his omission to claim a share of the Previous Rental in 2018 should be considered in the context of the family relationship and the assurances from the Mother. However, by then, the family relationship between the Mother and him was already strained. There were messages at that time from Sally to TOL urging him to visit the Mother who was ill and telling him that she did not want the Mother to hate TOL for not doing so.

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83 In cross-examination, TOL conceded that the Rental Splitting Agreement was the "perfect opportunity" to press the Mother on his share of the Previous Rental. Yet, when confronted with the fact that he did not pursue it, his response was essentially that he trusted the Mother and her purported assurances that she would safeguard his share of the Coffeeshop rental. He also suggested that the Mother might not have signed any document in respect of the Previous Rental since she was illiterate, and that he had raised the issue of the Previous Rental to Koufu but they dismissed it as a "family affair".

84 These explanations were unpersuasive to say the least.

(a) The suggestion that Koufu had dismissed TOL's concerns about the Previous Rental as a "family affair" was not mentioned in TOL's AEIC, which suggests that it was a belated afterthought. It also sits uncomfortably with the fact that Koufu was willing to execute the Rental Splitting Agreement (and its accompanying tenancy addendum), and even agree that the agreement would take effect retrospectively by two months. Since Koufu was prepared to do that, it would not have been difficult to ask Koufu to make all future payments of the Coffeeshop rental to TOL only, until he was reimbursed for his purported half share of the Previous Rental, as was done for the Coffeeshop rental for July and August 2018. The truth is that there is no evidence to suggest that TOL had broached the subject of the Previous Rental with Koufu, or the Mother or Sally.

(b) As for TOL's suggestion that there was no point pursuing an agreement regarding the Previous Rental as the Mother was illiterate and might not sign such a document, this is illogical when TOL clearly saw it fit to, and did eventually succeed in, using the issue of the ORA

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License as leverage to pressure the Mother into signing the Rental Splitting Agreement.

(c) As for TOL's suggestion that he did not pursue his share of the Previous Rental because he trusted the Mother's purported assurances that she was safeguarding his share, his allegation about the Mother's purported assurances is not credible for the reasons we have already mentioned.

85 The Judge did not place any weight on TOL's omission to seek a share of the Previous Rental in 2018 when she considered whether there was evidence of a common intention between the Mother and TOL as to their beneficial interests in the Property when the Lease was acquired. As with TOL's omission to make any query in 2015 in response to the Mother's 2015 Letter (see [71] above), the Judge also only considered TOL's omission in 2018 in the context of whether the Mother had a duty to account to TOL, and in particular whether the Mother knew that TOL was beneficially entitled to a share of the Previous Rental. Even then, the Judge concluded that TOL's inaction in pursuing recovery of his share of the Previous Rental since 1998 and even after the Rental Splitting Agreement was not material to the question of the Mother's (and Sally's) knowledge of TOL's entitlement to a share of the rental. To the Judge, such inaction did not affect Sally's understanding as reflected in Sally's 31 Dec 2021 Voice Message which we elaborate on later (Judgment at [165(e)(iii)]).

86 It suffices at this stage to say that we are of the view that the Judge had erred.

(a) First, TOL's omission to pursue recovery of his purported share of the Previous Rental after the Rental Splitting Agreement was entered

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into, until after the Mother passed away, is pertinent as it suggests that he did not believe that he was entitled to any share of the Previous Rental.

(b) Second, it is not only TOL's omission after the Rental Splitting Agreement was entered into that is pertinent. His omission to claim any share of the Previous Rental before the Rental Splitting Agreement was signed is also pertinent. TOL's omission is important not only in respect of what the Mother believed but also in respect of what TOL himself believed.

(c) Third, it appears that the Judge omitted to take into account the fact that TOL had asserted in 2018 that he was going to "take back what's [his]" and yet did not claim a share on the Previous Rental in 2018.

87 TOL's omission to make any such claim both before and after the Rental Splitting Agreement was signed, until after the Mother passed away, strongly suggests that he believed that he was not entitled to a share of the Previous Rental.

88 Therefore, while we accept that the *terms* of the Rental Splitting Agreement were forward-looking, the parties' *conduct* surrounding the execution of this agreement in 2018 reflects their state of mind at the time the Lease was acquired in 1998. Specifically, TOL's omission to pursue a share of the Previous Rental in 2018 is further evidence that the Mother and TOL had a common intention, at the time the Lease was acquired, that the Mother would hold the full beneficial interest.

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The 2019 Recording

89 The Judge placed little weight on the Mother's statements in the 2019 Recording because: (a) they were bare and conclusory assertions and the basis for them was unclear; and (b) they were made at a time when the Mother was already displeased with TOL over the Rental Splitting Agreement (Judgment at [66] and [165(e)(iv)]). On appeal, the Estate argues that the 2019 Recording is evidence of a common intention that the Mother owned the full beneficial interest in the Lease. While we agree that the 2019 Recording seems to suggest that the Mother believed that all the Coffeeshop rental was entirely hers, we place much less weight on it than the events which transpired in 2015 and 2018 as set out above, since it is not clear what brought about the Mother's remarks in the recording and the Mother's statements in that recording were not made in the presence of TOL. As TOL was not present at that time, no adverse inference can be drawn against him in relation to the recording.

Sally's 31 Dec 2021 Voice Message

90 We come now to Sally's 31 December 2021 Voice Message. As a preliminary point, the Estate argues that this was hearsay evidence and was not admissible in evidence. However, in our view, the voice message is not necessarily hearsay evidence. For example, if Sally made the statements in the voice message because the Mother had informed Sally that she was keeping half the Coffeeshop rental for TOL, that would not be hearsay. It would be hearsay if, for example, the Mother had informed Sally that the Father had told the Mother that TOL was to be a beneficial owner of Hiap Hoe and all its assets, as Sally would have no personal knowledge as to whether the Father did in fact say that to the Mother. Hence, in itself, the voice message is not hearsay evidence as it does not necessarily allude to something of which Sally herself

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has no personal knowledge. She may have no personal knowledge as to what the common intention of the Mother and TOL was in 1998 when the Lease was acquired, but it does not follow that she also has no personal knowledge as to the Mother's intention for the Coffeeshop rental, especially since it is undisputed that Sally assisted the Mother with her finances at least from 2015 onwards. Accordingly, we reject the Estate's submission about the non-admissibility of the voice message.

91 In relation to Sally's 31 Dec 2021 Voice Message, the Judge made the following findings (Judgment at [146]).

(a) When Sally referred to "your money", she was alluding to the Previous Rental and not the Mother's residuary estate as contended by Sally in the proceedings below.

(b) Sally had alluded to the Mother holding moneys for TOL and to the Mother's intention to use the moneys to renew the Lease, which corroborated TOL's evidence that the Mother had told him that she was keeping the Coffeeshop rental for him and that she was saving the money for lease renewal (see [55] above).

(c) As Sally explained at some length how the Mother had spent the moneys, this showed that Sally felt that TOL was entitled to an explanation, which in turn indicated that Sally knew that some of the Previous Rental belonged to TOL.

Nonetheless, the Judge found that Sally's 31 Dec 2021 Voice Message was not sufficient evidence of the Mother's intention as to how exactly the beneficial interest in the Lease would be held prior to 1 July 2018 bearing in mind the Mother's Cash Payment. At its highest, the voice message indicated that the

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Mother was holding and knew she was holding a part of the Coffeeshop rental for TOL (Judgment at [147]).

92 We accept that Sally's references to "your money" in Sally's 31 Dec 2021 Voice Message could appear to be references to the Previous Rental, and that such a statement might suggest that Sally subjectively believed that TOL was entitled to a share of the Previous Rental. However, it is important to note that Sally was at that time trying to persuade TOL to attend a prayer ceremony to commemorate the 100th day since the Mother's passing. The context was not a considered exchange between Sally and TOL regarding the latter's entitlement to a share of the Coffeeshop rental. Instead, the exchange was made in the context of Sally seemingly trying to appease TOL in some way while persuading TOL to attend the ceremony. Set against that background, we do not think much weight should be given to Sally's use of the phrase "your money" or her extended explanations to TOL as to how the Mother used the Coffeeshop rental. Further, while the statements in Sally's 31 Dec 2021 Voice Message might have some probative value as to Sally's state of mind, any probative value it has as to the Mother's state of mind would be limited. It is also important to bear in mind that according to Sally, on the same day that the voice recording was made, TOL went to her residence with his son and demanded to know the amount of money the Mother had left behind in her bank account. Each time TOL insisted that there must be at least $3m or $2m or $1m, Sally denied that there was any such sum. At no point then did Sally say that the Mother was holding on to TOL's share of the Previous Rental for TOL.

93 Indeed, it is worth reiterating that when TOL's lawyers eventually demanded an account of the Coffeeshop rental in 2022, they did not assert that the Mother had given assurances to TOL that she was safeguarding his share of the Coffeeshop rental for him (see [58] above). Neither did they assert that Sally

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knew about such assurances or that in any event Sally knew that TOL was entitled to half the Previous Rental.

94 Accordingly, we are of the view that less weight should be placed on Sally's 31 Dec 2021 Voice Message, while greater weight should be placed on TOL's omissions in 2015 and in 2018, in inferring a common intention between the Mother and TOL as to the beneficial interest in the Lease.

Conclusion on the issue of common intention

95 In our view, while there may be some pieces of evidence which suggest that TOL had a beneficial interest in the Lease, the totality of the evidence set out above is compelling and supports the inference that there was a common intention between the Mother and TOL, at the time the Lease was acquired, that the Mother would hold the full beneficial interest. In summary, while the Judge was aware that the Mother was in charge of letting out the Coffeeshop and collecting the rent, and making payment of the 1998 HLF Loan using the rent, the Judge erred in giving insufficient weight to the Mother's statement in the Mother's 2015 Letter that all the Coffeeshop rental belonged to her, TOL's omission to raise any query to that statement, and TOL's omission to claim a share of the Previous Rental before and after the signing of the Rental Splitting Agreement in 2018 until after the Mother had passed away. To the extent the Judge gave significant weight to: (a) TOL's evidence that the Mother had assured him that she was keeping his share of the Coffeeshop rental for him and that she was saving the money for Coffeeshop expenses and lease renewal; and (b) Sally's 31 Dec 2021 Voice Message, we respectfully disagree with the Judge's substantial reliance on such evidence for the reasons set out above.

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Whether the Mother relied on the common intention to her detriment

96 To establish a claim under a common intention constructive trust, it must also be shown that the party relied on the common intention to his detriment (*Ong Chai Soon* at [39]). In our view, it is clear that the Mother did rely on the common intention that she was to hold the full beneficial interest in the Lease to her detriment. The Mother made all the arrangements for the financing of the acquisition of the Lease and had made the Cash Payment using her own funds (see [51] above). She also paid the income tax on the full amount of the Previous Rental (Judgment at [137(b)]).

97 TOL submits that the above factors do not constitute detriment. He claims that the Mother's time and effort in the Coffeeshop affairs were self-benefitting steps that merely indicate her having *some* beneficial interest in the Lease. He claims that these were administrative matters that were minimal, and it was not unreasonable for the Mother to handle them since he was working full-time as a public officer in HDB. We are not persuaded by TOL's attempt to minimise the work done by the Mother.

98 As for the Mother's payment of income tax on the full amount of the Previous Rental and her making of the Cash Payment using her own funds, TOL argues that these will be taken into account when the Estate provides an account of the Previous Rental. This is not a correct application of the law. The question of whether there was detrimental reliance is in relation to the state of affairs prior to any judicial remedy which the court might impose. After all, the question of whether a common intention constructive trust arose is necessarily anterior to the question of whether the court should impose any remedy such as an account. In any event, in our view, it is too late in the circumstances for TOL to try to avoid the consequences of the common intention and the Mother's

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detrimental reliance on it. Bearing in mind how the parties had conducted themselves in the past, it would be unconscionable to allow TOL to resile from that common intention.

Conclusion

99 For the above reasons, we find that, from 1 August 1998 to 30 June 2018, a common intention constructive trust arose under which the Mother held the full beneficial interest in the Lease and was entitled to the Previous Rental entirely. TOL did not have a share in it.

100 It is therefore unnecessary for us to consider the Appellants' arguments regarding the Judge's application of the presumption of resulting trust. It also follows that TOL is not entitled to any share of the Previous Rental and has no basis to seek an account of the Previous Rental from the Estate or from Sally. Consequently, it is also unnecessary to address the Estate's argument that TOL should be barred from seeking an account by the doctrine of laches which we note was not even pleaded by the Estate. We thus allow the appeals in AD 64 and AD 65.

101 If parties are unable to agree on costs for OC 316 and for AD 64 and AD 65, they are to file written submissions on costs by 19 May 2026 limited to seven pages each.

Woo Bih Li
Judge of the Appellate Division

Debbie Ong Siew Ling
Judge of the Appellate Division

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Kannan Ramesh JAD (dissenting):

Introduction

102 It is trite that an appellate court should be slow to reverse findings of fact made by a trial judge, and the threshold for appellate intervention will only be met where the trial judge's assessment is plainly wrong or against the weight of the evidence (*Yong Kheng Leong v Panweld Trading Pte Ltd* [2013] 1 SLR 173 at [18]). Indeed, such restraint is warranted even in respect of inferences drawn by the trial judge, as it is not the role of an appellate court to delve into the minutiae of the factual findings and inferences made by the court below unless they were plainly inconsistent with the evidence (*Sim Poh Ping v Winsta Holding Pte Ltd* [2020] 1 SLR 1199 at [62]).

103 In the present appeals, the Judge rejected the Estate's claim that the Mother was the sole beneficial owner of the Lease under a common intention constructive trust (Judgment at [40] and [149]). Following a careful and comprehensive analysis of the evidence, the Judge found that there was insufficient evidence of a common intention between the Mother and TOL prior to 1 July 2018 that TOL would hold the beneficial interest in his half share in the Lease for the Mother (Judgment at [148]).

104 I see no basis for appellate intervention on the Judge's finding on common intention. In my view, the Judge's finding cannot be said to be plainly wrong or against the weight of the evidence. As will become apparent from the analysis that follows, the evidence paints a picture of an absence of any common intention as asserted by the Estate. If anything, the evidence leans towards the conclusion that the common intention between the Mother and TOL was for the beneficial interest in the Lease to be held by each in equal shares as tenants-in-common. Thus, it is difficult to see how it may be said that the Judge erred and

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that the finding should in fact be that there was a common intention as alleged by the Estate. I have read the judgment of the majority and note that they see it differently, concluding that there was a common intention as asserted by the Estate and reversing the Judge's finding on that issue. I respectfully depart from the majority's conclusion and would dismiss the appeals in AD 64 and AD 65 on that issue. My reasons follow. I am mindful that the Estate and Sally have raised other arguments in AD 64 and AD 65 (see [32]–[33] above). However, as the majority is allowing the appeals on the basis that there was a common intention as alleged by the Estate, it is not necessary for the purpose of this dissent for those arguments to be addressed as that would not change the outcome of the majority's decision. I therefore say nothing further about them.

105 Before I turn to my reasons, I should add that given the majority's conclusion that there was a common intention as asserted by the Estate, it was not necessary for the majority to address the appeal in AD 64 on the specific question of whether Sally was personally liable, as opposed to being liable in her capacity as executrix of the Estate, to account for TOL's half share of the Coffeeshop rental income for the period August 2015 to June 2018 ("Previous Rent Period"). As I have concluded that there was no common intention as alleged by the Estate, this question arises for my determination in this case. I address the question below at [158]. In summary, I find that the Judge did not err in concluding that Sally was personally liable to account for TOL's half share of the Coffeeshop rental income for the Previous Rent Period.

Background

106 The facts have been set out comprehensively in the Judgment and in the judgment of the majority and I adopt the definitions used therein. Only the facts pertinent to my analysis are highlighted.

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107 The Mother and TOL were the registered proprietors of Hiap Hoe on and from 16 May 1997. Hiap Hoe was registered in 1961 as a sole proprietorship in the Father's name. Hiap Hoe operated a coffeeshop business. The Father withdrew from Hiap Hoe on 16 May 1997 after suffering a stroke. Ownership of Hiap Hoe was transferred by the Father to the Mother and TOL, with the result that Hiap Hoe became a partnership of the Mother and TOL on and from 16 May 1997. At around that time, on 27 June 1997, the HDB granted Hiap Hoe a three-year fixed-term tenancy of the Coffeeshop commencing on 1 July 1997 (Judgment at [15]). The constitution of Hiap Hoe as a partnership is an important turn of events.

108 By a letter dated 17 April 1998, the HDB invited Hiap Hoe to apply to purchase the Lease. The HDB's letter stated that the premises that the Coffeeshop was operating from had been identified for sale by the HDB. As Hiap Hoe was the tenant of the premises, it was invited to apply to purchase the Lease.

109 As the invitation to apply to purchase was made by the HDB to Hiap Hoe, both the Mother and TOL, as partners of Hiap Hoe, applied to the HDB to purchase the Lease. The HDB approved the application *vide* its letter dated 12 October 1998. An agreement to purchase the Lease was entered into on 15 December 1998 between the HDB, and the Mother and TOL as tenants-in-common in equal shares. The Mother and TOL were later registered as tenants-in-common with equal shares of the Lease.

110 As joint purchasers of the Lease, the Mother and TOL jointly applied for and obtained the 1998 HLF Loan from Hong Leong Finance Ltd ("HLF") to finance the purchase of the Lease. The 1998 HLF Loan was for a sum of $1,080,000 and was secured by, amongst others, a mortgage over the Lease

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executed by the Mother and TOL in HLF's favour. In the Deed of Assignment dated 15 December 1998 for the 1998 HLF Loan, the Mother and TOL declared that they were the beneficial owners of the Lease. In due course, the 1998 HLF Loan was repaid in full, and the mortgage was discharged on 30 January 2004.

111 In the Mother's 2015 Will, which was not in fact the Mother's last will, the Mother referred to her "one undivided equal half share of the [Coffeeshop]". It is accepted that this was a reference to the Mother's half share in the Lease. There was no reference to TOL's half share in the Lease in the Mother's 2015 Will. In the Mother's 2015 Letter, which the Estate asserts was enclosed in the Mother's 2015 Will, the Mother stated that she and TOL "together hold [the Coffeeshop] as tenants in common in equal share [*sic*]". The Mother's 2015 Letter also stated that "[a]ll the rental income from the [Coffeeshop] belong to me to pay for all the outgoings of the [Coffeeshop] and for my own expense". As highlighted below (see [131]–[132]), there is no evidence from the Estate on: (a) the purpose and reason for the Mother's 2015 Letter given that the Mother's testamentary intention was reflected in the Mother's 2015 Will which was allegedly contemporaneously executed; (b) why a codicil to the Mother's 2015 Will or a new will was not executed if the purpose of the Mother's 2015 Letter was to reflect a different testamentary intention from that stated in the Mother's 2015 Will; and (c) the circumstances surrounding the preparation of the Mother's 2015 Letter.

112 On 31 December 2021, Sally sent Sally's 31 Dec 2021 Voice Message to TOL. This was a day after Sally had sent TOL a message to ask him to attend a prayer ceremony to commemorate the 100th day since the Mother's passing. In Sally's 31 Dec 2021 Voice Message, Sally made references to "your [*ie*, TOL's] money":

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> It's not that you don't have any money, it's just that Mum controlled the money, fearing that you'd be cheated by others. It's because she, well, just, just worried that *your money* would be messed around with. If you need money, you could ask Mum for it, like this. Now you have money, *your money* is still there. … [emphasis added]

Sally then explained how the Mother had "recklessly" given money away, before asking TOL how much money he needed, stating that:

> … *The money is with* us. *What Mum meant was to get the coffee shop back, because the coffee shop has a few years remaining now and will be useless.* So uh, we held that money for her, and we were holding it for the later stage to get the coffee shop back. Come to think of it, it shouldn't be enough to buy (it) anymore lah, because Mum was in the late stage, and there wasn't much left when we took over. Don't think that there was a lot. [emphasis added]

113 With the context above in mind, I turn to explain why I hold a different view from the majority on the issue of common intention.

The Estate's pleaded case

114 I start the analysis with the pleadings. Preliminarily, it was *not* TOL's case that there was a common intention constructive trust in his favour. It was the Estate which asserted in its counterclaim that TOL held his half share interest (as a tenant-in-common) in the Lease on a common intention constructive trust for the Estate. The relevant paragraph from the Defence and Counterclaim (Amendment No. 4) states:

> (28) By reason of a purchase money resulting trust, *or in the alternative a common intention constructive trust* the 1st Defendant [*ie*, the Estate] pleads that:-
>
> > (a) The 30 year lease in the Coffeeshop and the Rental Proceeds from the same belong solely to Mother and/or the Mother's Estate (i.e. the 1st Defendant);
> >
> > (b)

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> (c) the Claimant [*ie*, TOL] breached his fiduciary duties to his Mother (as trustee for the 50% equitable interest which he holds on trust for his Mother) when he instructed the Chief Operating Officer of the Coffeeshop operator to deduct the full bank account instead of his account;
>
> (d) the Claimant [*ie*, TOL] breached his fiduciary duties to his Mother (as trustee for the 50% equitable interest which he holds on trust for his Mother) when he pocketed $35,349.01 (comprising $9,749.01 from the first tax rebate and $25,600 from the second cash grant for rental relief framework) in government rebates which were deposited into his personal bank account with OCBC Bank, with account number ending with "001"; and
>
> (e) the Claimant [*ie*, TOL] who currently holds the legal title to the 50% interest in the 30 year lease of the Coffeeshop holds the beneficial title on trust for the Mother and/or the Mother's Estate.
>
> [emphasis added]

115 I make two observations. First, the claim of a common intention constructive trust is the Estate's alternative case. Its primary case is a resulting trust in favour of the Mother, on the basis that she funded the entire purchase price of the Lease. Second, and more fundamentally, there is a paucity – indeed, a complete absence – of particulars on how the common intention came to be and when it was reached. The Estate only makes a bare allegation that there was a common intention. This is significant. It cannot be gainsaid that for there to be a common intention constructive trust, there must first be a common intention. This is a question of fact. The absence of particulars is therefore jarring. Indeed, the evidence at trial from the Estate's witnesses failed to embellish the bare allegation in the pleadings. Thus, the allegation remained, at all times, a bare one. In contrast, specific facts were pleaded and evidence led on the Estate's primary case of a resulting trust.

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116 To establish a common intention constructive trust, there must be evidence of an express or an inferred common intention regarding how the parties should hold the beneficial interest in the property (*Chan Yuen Lan* at [160(b)]). A common intention may (a) arise from an express discussion between the parties; (b) be evidenced by direct financial contributions of the parties to the purchase price of the property; or (c) in exceptional situations, arise from other conduct of the parties (*Chan Yuen Lan* at [97]). It bears emphasis that there must be *sufficient and compelling* evidence of a common intention between the parties for the common intention constructive trust to be invoked (*Su Emmanuel* at [83]). This ensures that the common intention constructive trust does not become a tool for the court to foist upon the parties an intention which they never had in order to achieve what might be a "fair" result in the circumstances (*Chan Yuen Lan* at [156]).

117 Thus, the absence of particulars and evidence on common intention is a critical deficiency in the Estate's case. The Estate bears the burden of proving – on a balance of probabilities – that there was a common intention between the Mother and TOL that the entire beneficial interest in the Lease would be the Mother's (see ss 103 and 105 of the Evidence Act 1893 (2020 Rev Ed) ("EA")). The onus is on the Estate to adequately plead the facts and adduce evidence to support those facts in order to discharge its burden of proving that there was a common intention as alleged. The paucity of particulars and evidence on the common intention begs the question as to whether the Estate has discharged its burden of proof. The Judge held that the evidence fell short of discharging the burden of proof. I turn to examine the evidence to answer the question of whether she had erred.

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The Estate has not proved that there was a common intention for the Mother to hold the full beneficial interest in the Lease

118 In my view, the Estate has failed to discharge its burden of proof on a common intention constructive trust in favour of the Mother. The totality of the evidence does not suggest that the Mother and TOL had a common intention, at the time the Lease was purchased, for the Mother to have the entire beneficial interest in the Lease. Here, the documentary evidence is critical and is the bedrock against which the Mother and TOL's conduct must be assessed. Particularly, where a document answers the factual question at the very heart of the inquiry on common intention constructive trust – *ie*, whether there is a common intention between the relevant parties as to ownership of the beneficial interest in the property (the Lease in this case) – by, for example, specifically acknowledging the beneficial interest of the relevant parties or a party, absent any compelling explanation or reason for why the weight to be accorded to such acknowledgement should be diminished, it is inappropriate, and indeed unjustified, in my view to go beyond or behind such acknowledgment in a search for a different answer.

The purchase of the Lease by Hiap Hoe

119 The analysis must begin with the constitution of Hiap Hoe as a partnership of the Mother and TOL. That is the reference for the events that unfolded thereafter as regards the Lease, starting with the HDB's invitation to Hiap Hoe to apply to purchase the Lease *vide* its letter dated 17 April 1998.

120 It is critical that *both* the Mother and TOL were registered as the proprietors of Hiap Hoe on 16 May 1997, following the Father's decision to withdraw from Hiap Hoe as a result of a stroke he suffered in May 1997. Instead of the Mother taking over Hiap Hoe as a sole proprietor, it was reconstituted as

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a partnership of the Mother and TOL. This decision was taken notwithstanding that: (a) TOL was not engaged in Hiap Hoe's business at that time, as he was an officer with the HDB; and (b) the Mother was assisting the Father on a full-time basis with Hiap Hoe by working at the Coffeeshop.

121 Thus, the admission of the Mother and TOL as partners of Hiap Hoe was a deliberate and considered decision by the Father, the Mother and TOL. Thus, the presumptive position is that both the Mother and TOL had an equal interest in Hiap Hoe as partners on and from 16 May 1997. The Estate has led no evidence to rebut the presumptive position. It has neither offered an explanation on why TOL was admitted as a partner of Hiap Hoe nor asserted that he did not have an interest in Hiap Hoe. If the intention was for TOL not to have any interest in Hiap Hoe, the Mother could have been registered as Hiap Hoe's sole proprietor. Thus, the reasonable and indeed the only conclusion is that both the Mother and TOL had an equal interest as partners of Hiap Hoe on and from 16 May 1997.

122 It is through this lens that the events that unfolded after 16 May 1997 must be understood and assessed, starting with the HDB's invitation to Hiap Hoe to apply to purchase the Lease. The invitation was not made to the Mother and/or TOL in their personal capacities. Instead, the invitation was made to Hiap Hoe as the tenant of the premises. This is important. The letter from the HDB dated 17 April 1998 stated as follows:

> We are pleased to inform that the above premises [*ie*, the Coffeeshop] has been identified for sale. *As the tenant of the premises*, you may apply to HDB to purchase it for a lease term of 30 years. … [emphasis added]

123 Thus, the offer was made to the owners of Hiap Hoe because Hiap Hoe was the tenant of the premises (*ie*, the Coffeeshop) under a three-year fixed-

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term tenancy from 1 July 1997. In setting the purchase price of $1.392m for the Lease, the HDB took into account the fact that Hiap Hoe was the tenant and provided a discount on that basis. Further, when the HDB sent a letter on 12 October 1998 to inform the Mother and TOL that their application to purchase the Lease had been approved, reference was made to the fact that Hiap Hoe's existing fixed-term tenancy will remain in force until payment of 92% of the purchase price of the Lease had been made. These were clear references to the fact that the invitation to apply to purchase the Lease had been made to Hiap Hoe.

124 Consistent with this being a transaction with Hiap Hoe's partners, the application to purchase the Lease was made by *both* the Mother and TOL. Following the HDB's approval, both of them entered into the agreement for the Lease as tenants-in-common in equal shares and were registered as owners of the Lease on the same basis. In my view, this sequence of events points to a shared interest between the Mother and TOL, as tenants-in-common in equal shares, of the Lease. The Mother and TOL's conduct was entirely consistent with the position stated above that both the Mother and TOL had a shared equal interest in Hiap Hoe as partners on and from 16 May 1997. If there had in fact been a common intention between the Mother and TOL that the Lease was to be solely the Mother's, the solution would have been straightforward. TOL could have stepped down as a partner of Hiap Hoe, or it could have been made clear to the HDB that the Mother was the sole purchaser of the Lease. That this was not done is explicable on the basis that the Lease was purchased by the partners of Hiap Hoe.

125 There is a final point, and that concerns the 1998 HLF Loan. The 1998 HLF Loan similarly goes against the view that the Mother and TOL shared a common intention for the Mother to have the entire beneficial interest in the

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Lease. Although the Estate submits that TOL became a co-borrower and co-mortgagor of the 1998 HLF Loan out of convenience, this point was not put to TOL during his cross-examination. The Estate is thus precluded from advancing this point by reason of the rule in *Browne v Dunn* (1893) 6 R 67 (see *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 at [42]). Also, the Estate's argument ignores the sequence of events above starting with the foundational point of the reconstitution of Hiap Hoe as a partnership of the Mother and TOL. When understood in this context, the fact that the 1998 HLF Loan was taken out jointly by the Mother and TOL is consistent with the analysis above. Further, it is difficult to understand why TOL would agree to assume significant debt liability to HLF, if the intention was that the Lease would be the Mother's solely. It is also difficult to understand why TOL would agree to misrepresent to the HDB, his employer, and HLF that he was a co-owner of the Lease. In this regard, as noted earlier (see [110] above), cl 4 of the Deed of Assignment states that the Mother and TOL were the *beneficial* owners of the Lease, and cl 1 of the Deed of Assignment clearly states that the Mother and TOL were jointly liable to repay the 1998 HLF Loan. These are unequivocal representations that both of them owned a share of the Lease.

126 Thus, the circumstances surrounding the purchase of the Lease, when contextualised against the reconstitution of Hiap Hoe as a partnership in May 1997, point to there being no common intention, at the time of its purchase, that the Mother would be the sole beneficial owner of the Lease. Ultimately, what stands in the way of the common intention as alleged by the Estate is its failure to rebut: (a) the presumptive position arising from the admission of the Mother and TOL as partners of Hiap Hoe; and (b) the consistency of the conduct of the Mother and TOL when they purchased the Lease with that position. There is no credible countervailing evidence in relation to the circumstances at that time to

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suggest otherwise. Indeed, the evidence in fact supports a common intention that the beneficial interest was to be held by the Mother and TOL in equal shares.

127 The analysis above focuses on the situation at the time of purchase of the Lease. This is critical as one would expect that any common intention as to the beneficial interest in the Lease would be formed at the time of its acquisition. As noted earlier (see [114] above), that was how the case was run below and on appeal. The next question, which I now turn to, is whether the circumstances after the purchase of the Lease shed a different light.

The Mother's 2015 Will, the Mother's 2015 Letter and the Mother's 2019 Will

128 The contents of the Mother's 2015 Will further support the conclusion that the Mother and TOL did not share a common intention as alleged by the Estate. The Mother's 2015 Will was executed on 16 July 2015 by the Mother. It was, however, not the Mother's last will. Her final will was executed on 21 October 2019 (*ie*, the Mother's 2019 Will). I address the relevance of the Mother's 2019 Will below (see [140]–[141]). The Mother's 2015 Will stated as follows:

> I give all that my *one undivided equal half share of the immovable property known as [the Coffeeshop]* and in the proceeds of sale and in the net rents and profits until sale and all other (if any) my interest therein to my five daughters, namely, … [emphasis added]

129 That the Mother made no attempt in the Mother's 2015 Will to address TOL's half share in the Lease and unequivocally admitted that she only had an "undivided equal half share" in the Lease is significant. The Mother's 2015 Will is evidence of the fact that the Mother only had a half share in the Lease. The

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Mother's 2015 Will was entirely consistent with the fact that the Lease had been purchased by the Mother and TOL as tenants-in-common in equal shares because they were partners of Hiap Hoe. The Mother's 2015 Will was prepared on the Mother's instructions and reflected her testamentary intention at that time, and was fully understood by her. It was executed after it had been interpreted and explained to her in Teochew. If the Mother genuinely believed that she was the sole owner of the Lease, the admission in the Mother's 2015 Will and the failure to address TOL's half share simply made no sense. The Estate's failure to explain away the Mother's conduct as regards the Mother's 2015 Will cannot be ignored.

130 The Estate relies on the Mother's 2015 Letter to support its case on common intention. The Mother's 2015 Letter was presented by the Estate as being enclosed to the Mother's 2015 Will. I make two observations.

131 First, if the Mother's 2015 Letter was enclosed in the Mother's 2015 Will, how were the two supposed to interact? Given that the operative document is the Mother's 2015 Will, it is unclear why and for what purpose the Mother's 2015 Letter was prepared. To the extent the two might be inconsistent, which I do not accept for the reasons below (see [137]), the expectation is for the Mother's 2015 Will to be revised to reflect the Mother's testamentary intention, or at the very least for a codicil or a new will to be prepared. The Mother's 2015 Letter would then have been completely unnecessary. It is inexplicable why the Mother's 2015 Letter was needed, which called for a compelling explanation from the Estate. The Estate has not offered one. I am mindful in this regard that the Mother's 2015 Will was prepared by solicitors.

132 This brings me to my second observation. Given the question mark over the purpose of the Mother's 2015 Letter, the Estate's failure to properly explain

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the circumstances surrounding its preparation is telling. I am mindful that the Mother's 2015 Letter does not state that its contents were interpreted and explained to the Mother before she signed it. On this note, TOL did not accept that the Mother's 2015 Letter was signed contemporaneously with the Mother's 2015 Will, and Poh Kim (*ie*, the Mother's youngest daughter and one of TOL's sisters) testified that the Mother's 2015 Letter was signed in 2015, but at a different time from the Mother's 2015 Will. Absent a credible explanation from the Estate on these matters, the weight to be accorded to the Mother's 2015 Letter must be attenuated.

133 I am not persuaded that the Mother's 2015 Letter assists the Estate's case on common intention. The Estate relies on the following statement in the Mother's 2015 Letter – "[a]ll the rental income from the [Coffeeshop] belong to me to pay for all the outgoings of the shophouse and for my own expenses" – as an assertion by the Mother that the beneficial interest in the Lease belonged entirely to her. TOL's failure to object to the contents of the Mother's 2015 Letter, when it was read out and signed by the Mother, is also relied on as an implicit admission by TOL of the Estate's position on the beneficial ownership of the Lease.

134 I reproduce the relevant portions of the Mother's 2015 Letter:

> 1. The [Coffeeshop] in which I reside and I also let out was purchased from the HDB with money entirely from my personal savings. *I added one of my son's name, Tia Oon Lai, in the title of the [Coffeeshop] and we together hold it as tenants in common in equal share.*
>
> 2. *All the rental income from the [Coffeeshop] belong to me to pay for all the outgoings of the [Coffeeshop] and for my own expenses.* My son Tia Oon Huat who is a joint holder with me in my savings account [ending in 2732] with OCBC Bank has no claim in the rental income. I deposited all the rental income into this account. I have lately withdrawn all the money from this account except a sum of $100,000.00 which is meant for

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> the benefit of my son Tia Oon Huat including all interest earned therefrom.
>
> [emphasis added]

135 One fact is jarring from the contents of the Mother's 2015 Letter. There was no assertion whatsoever of a common intention between the Mother and TOL that the Mother would be the full beneficial owner of the Lease. If the primary purpose – or at least one of the pertinent purposes – of the Mother's 2015 Letter was to make a claim to the full beneficial interest in the Lease *on the basis of a common intention*, there would be an unequivocal statement to that effect. Instead, there is an express acknowledgement in the very first paragraph – paragraph 1 – of the Mother's 2015 Letter that the Mother and TOL are tenants-in-common in equal shares of the Lease.

136 It is difficult to reconcile paragraphs 1 and 2 of the Mother's 2015 Letter (see [134] above). On the one hand, paragraph 1 of the Mother's 2015 Letter states that the Mother and TOL hold the Lease as tenants-in-common in equal shares. On the other hand, paragraph 2 of the Mother's 2015 Letter states that all the rental income from the Coffeeshop belongs to the Mother. This is ostensibly an assertion that the entire beneficial interest in the Lease belonged to the Mother, which would explain her entitlement to all the rental income. This assertion could purportedly have been based on the Mother's understanding that she purchased the Lease "with money entirely from [her] personal savings" as alleged in paragraph 1 of the Mother's 2015 Letter. But this assertion was not accurate. As the Judge found, only a minority portion of the purchase price was paid by the Mother using her own funds, and the remainder was paid using the 1998 HLF Loan (Judgment at [56] and [122]).

137 The equivocation in the Mother's 2015 Letter adds to the earlier expressed concern over its value as evidence to support the Estate's case (see

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[131]–[132] above). In my view, the sensible way to read the Mother's 2015 Letter is to read it alongside the Mother's 2015 Will. The consistency between the two documents lies in the fact that the Mother laid claim to only a half share in the Lease and explicitly acknowledged that the other was TOL's. The clear language of paragraph 1 of the Mother's 2015 Letter is not only consistent with what is stated in the Mother's 2015 Will, but also coheres with the fact that the agreement for the Lease was entered into by the Mother and TOL in their capacities as partners of Hiap Hoe (see [124] above).

138 The Estate focuses on TOL's failure to object to the contents of the Mother's 2015 Letter when it was read out in the presence of TOL and his siblings. This argument misses the point and ignores the importance of the context at that time. The Mother's 2015 Letter did not assert that TOL's half share was the Mother's. In fact, it acknowledged that TOL had a half share in the Lease as tenants-in-common with the Mother. The unequivocal acknowledgement in the Mother's 2015 Will that the Mother only had a half share in the Lease supported this position. When the Mother's 2015 Letter was read out, TOL knew that the Lease was registered in his and the Mother's name as tenants-in-common in equal shares. On the other hand, in my view, TOL cannot be criticised for staying silent in the face of the Mother's 2015 Letter. It certainly does not lend support to the conclusion that there was a common intention for the Mother to be the sole owner of the Lease. To take that view would be to ignore the various glaring shortcomings in the Estate's case, as described above.

139 Consequently, I do not accept that the Mother's 2015 Letter supports the Estate's case on common intention. If anything, it supports the conclusion that the Mother and TOL both had a half share in the Lease as tenants-in-common.

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140 This brings me to the Mother's 2019 Will. The Mother's 2019 Will is a significant event in the common intention analysis. It is significant for two primary reasons. First, the Mother's 2019 Will did not correct the alleged error in the Mother's 2015 Will regarding the Mother's "undivided equal half share" of the Lease. The opportunity to rectify the error presented itself when the Mother's 2019 Will was prepared. However, the Mother's 2019 Will made no mention of the Lease and contains no assertion that there was a common intention between the Mother and TOL that the entire beneficial interest in the Lease was the Mother's. The Mother's 2019 Will merely states that the Mother's residuary estate is to be given to her daughters in equal shares. This is of little assistance on whether TOL held his half share in the Lease for the Mother, pursuant to a common intention.

141 Second, the circumstances at the time when the Mother's 2019 Will was executed are relevant. The instrument was executed on 21 October 2019. By that time, the Mother would have been well aware that the Lease was registered in both her name and TOL's name as tenants-in-common in equal shares. Also, she would have signed the Rental Splitting Agreement just a year earlier in August 2018 (see [154] below). The relationship between the Mother and TOL had soured as a result of the events surrounding the Rental Splitting Agreement. The Judge found that TOL had used the renewal of the ORA License as leverage to pressure the Mother into signing the Rental Splitting Agreement (see Judgment at [134]–[136]). If there was indeed a common intention as alleged by the Estate, the Mother would have been acutely aware of the need to assert it and claim TOL's half share as hers. She did not, and the Estate has made no attempt to explain why. Absent an explanation, the Mother's failure to do so undermines the common intention alleged by the Estate.

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142 I conclude on the salient documentary evidence by referencing the Rental Splitting Agreement, which, as discussed below (at [154]–[156]), goes against the Estate's position on common intention. Indeed, it is consistent with the position that TOL was a beneficial owner of the Lease.

143 Therefore, the available documentary evidence points away from any common intention as alleged by the Estate. To the extent the documentary evidence contains an acknowledgement that TOL has a beneficial interest in the Lease, there is no compelling explanation or reason for disregarding such acknowledgement. If there was indeed a common intention as alleged, the onus was in fact on the Mother to have asserted her claim clearly and unequivocally in the Mother's 2015 Will, the Mother's 2015 Letter and/or the Mother's 2019 Will, given that TOL was registered as a tenant-in-common with a half share in the Lease. That need for clarity became more pressing when TOL asserted his interest by claiming a half share of the Coffeeshop rental income through the Rental Splitting Agreement, an event which pointed to the deterioration in the Mother and TOL's relationship. Indeed, it would not be unreasonable to expect the Mother at that stage to attempt to resolve the issue with TOL, and if that did not result in a positive outcome, to seek recourse to the courts. I note that the majority makes the point that because TOL had brought these proceedings after the Mother had passed on, the Estate and Sally faced evidential difficulties. With respect, I do not share that observation. It seems to me that any criticism should instead be levelled at the Mother. Any evidential difficulties would have been circumvented if the Mother had made her position crystal clear (and there were numerous opportunities to do so) and acted early to establish her claim in the face of TOL's intransigence. It was not for TOL to ensure that the Estate and Sally did not face evidential difficulties.

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Sally's 31 Dec 2021 Voice Message

144 Sally's 31 Dec 2021 Voice Message is relevant to two related questions. First, whether Sally knew that TOL was entitled to a half share of the rental income from the Coffeeshop, which is relevant to whether Sally is under an obligation to personally account for TOL's half share of the Coffeeshop rental income for the Previous Rent Period (see [158] below). Second, whether the Mother accepted that TOL had a half share in the Lease, which is relevant to whether there was a common intention as alleged by the Estate.

145 Before I turn to the contents of Sally's 31 Dec 2021 Voice Message, I deal with a preliminary point regarding its admissibility. The Estate submits on appeal that Sally's 31 Dec 2021 Voice Message was inadmissible hearsay evidence and therefore the Judge had in relying on it erred. I do not accept the submission for the following reasons.

146 First, after he had given evidence, TOL made an oral application before the Judge to adduce Sally's 31 Dec 2021 Voice Message in evidence. Both counsel for Sally and counsel for the Estate below raised objections on the grounds of authenticity and admissibility of Sally's 31 Dec 2021 Voice Message. However, the objection on the ground of authenticity was later withdrawn. That left the objection on the ground of admissibility. The Judge allowed the application, and Sally's 31 Dec 2021 Voice Message was admitted into evidence. In her decision on costs of the application, she erroneously stated that "the defendants withdrew the objections to authenticity and admissibility of the items", when the objection on the ground of admissibility remained. However, neither the Estate nor Sally pointed out the error and emphasised that the objection remained. Indeed, following the admission of Sally's 31 Dec 2021 Voice Message into evidence, TOL was recalled to the stand for the specific

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purpose of being cross-examined on Sally's 31 Dec 2021 Voice Message and was cross-examined on Sally's 31 Dec 2021 Voice Message. Further, Sally too was cross-examined on Sally's 31 Dec 2021 Voice Message. In these circumstances, it seems to me that the Estate and Sally cannot raise, on appeal, the issue of the admissibility of Sally's 31 Dec 2021 Voice Message on the ground of hearsay.

147 Second, in any event, even if it were open for the Estate and Sally to argue the hearsay point on appeal, I am of the view that: (a) there is no issue of hearsay in so far as Sally's 31 Dec 2021 Voice Message is adduced for the purpose of establishing that Sally knew that TOL had a half share in the Coffeeshop rental income; and (b) in so far as Sally's 31 Dec 2021 Voice Message was adduced for the purpose of establishing that the Mother accepted that TOL had a half share in the Lease, Sally's 31 Dec 2021 Voice Message was admissible under the exception to the hearsay rule in s 32(1)(*c*) and/or s 32(1)(*j*)(i) of the EA. To understand both points, it is important to return to Sally's 31 Dec 2021 Voice Message.

148 In Sally's 31 Dec 2021 Voice Message, Sally stated that "your [*ie*, TOL's] money" had been kept by the Mother. The Judge found that when Sally referred to "your [*ie*, TOL's] money", she was referring to the Coffeeshop rental income (Judgment at [146]). I see no reason to disagree with the Judge's finding which is not against the weight of the evidence. The key question is for what purpose Sally's 31 Dec 2021 Voice Message is being adduced. If Sally's 31 Dec 2021 Voice Message is used to prove that Sally knew TOL had a share in the Coffeeshop rental income, there is no issue of hearsay. Sally's reference to "your money" in Sally's 31 Dec 2021 Voice Message points to her understanding that TOL had a share in the Coffeeshop rental income. She had that understanding because of what the Mother had told her. That much is clear

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from Sally's 31 Dec 2021 Voice Message. Sally's understanding is relevant to the question of whether she was under an obligation to personally account to TOL (see [158] below). Thus, in so far as Sally's 31 Dec 2021 Voice Message is relevant to Sally's understanding, it is direct evidence of what was conveyed to Sally by the Mother. Therefore, there is no question of hearsay. I address the relevance of Sally's 31 Dec 2021 Voice Message to Sally's state of mind below (see [158] below). It is important to distinguish this purpose from the use of Sally's 31 Dec 2021 Voice Message to prove that the Mother knew that TOL had a share in the Coffeeshop rental income. If Sally's 31 Dec 2021 Voice Message is relied on for this latter purpose, the question of hearsay would arise.

149 Where Sally's 31 Dec 2021 Voice Message is used to prove that the Mother knew that TOL was entitled to a share of the Coffeeshop rental income because he had a share in the Lease, the question of hearsay would arise. The evidence would be relevant to the issue of common intention. It would be hearsay because the evidence of what the Mother said is not from the Mother, but from Sally based on what the Mother had told her. The question then is whether the evidence is nonetheless admissible under the exceptions to the hearsay rule. In my view, it is admissible under s 32(1)(*c*) of the EA as it is a statement by the Mother against her interest and/or under s 32(1)(*j*)(i) of the EA, given that the Mother has passed away.

150 Having crossed the issue of admissibility, in my view, Sally's 31 Dec 2021 Voice Message does not support the existence of a common intention as alleged by the Estate. If there had in fact been a common intention for the Mother to own the entire beneficial interest in the Lease, it is inconceivable why the Mother would have informed Sally that a portion of the Coffeeshop rental income belonged to TOL and was being held by the Mother on TOL's behalf. Indeed, Sally's 31 Dec 2021 Voice Message points to there being a common

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intention for the beneficial interest in the Lease to be shared equally between the Mother and TOL.

The 2019 Recording

151 I next deal with two other pieces of evidence which may seem to support the Estate's case on common intention.

152 The first is the 2019 Recording. This is a voice recording of the Mother talking about TOL, which was recorded by Sally in 2019. In the 2019 Recording, the Mother stated as follows:

> Now, you discuss with Pang Lim [PH] (Koufu's CEO), about what to do with your children, to let the government, say, [UI]…the store [UI]. You know? Now, talk about engaging a lawyer, for this matter, about splitting the money in half between (me) and the other. My, this money, [UI] would be split fifty fifty between (me) and the other. Half. (sighs) Without conscience, no good. [UI] Oh, oh, oh, doing like this? You Ah Lai [PH] know, know *the money is mine* [UI]. (You) really don't have conscience, no conscience. [emphasis added]

153 The Estate submits that the 2019 Recording supports its case that there was a common intention that the Mother would hold the full beneficial interest in the Lease, as it appears to suggest that the Mother had such a belief. I do not agree. It is not clear what the Mother meant in the 2019 Recording when she referred to the "money" and asserted that "the money is mine". As observed by the Judge, the statements in the 2019 Recording were bare assertions. The basis for them was unclear, and the statements were made when the Mother was already displeased with TOL over the Rental Splitting Agreement (see [154] below) (Judgment at [165(e)(iv)]). The statements must be seen against the Mother's failure to claim TOL's half share in the Mother's 2019 Will.

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The Rental Splitting Agreement

154 The Rental Splitting Agreement is next. This agreement was between the Mother, TOL and Koufu in August 2018. Under the Rental Splitting Agreement, Koufu agreed to separately pay the rental income from the Coffeeshop to the Mother and TOL in equal shares from 1 July 2018 onwards. However, at the time the Rental Splitting Agreement was signed, Koufu had already paid the rental income for July and August 2018 to the Mother. Thus, Koufu, the Mother and TOL agreed for the full rental income for September 2018 and part of the rental income for October 2018 to be paid to TOL, in order to compensate him for not receiving half of the rent for July and August 2018. The Estate contends that TOL's failure to claim the rent paid by Koufu prior to 1 July 2018 is consistent with the fact that he did not own a half share in the Lease.

155 This argument too misses the point. The Rental Splitting Agreement was intended to be a *forward-looking* agreement – between Koufu on the one hand and TOL and the Mother on the other hand – regarding how the payment of the Coffeeshop rental income from 1 July 2018 was to be effected (Judgment at [142]). It was meant to ensure that, moving forward, the Mother did not continue to receive all the rental income from Koufu. The Rental Splitting Agreement was never intended to be, or indeed never could be, a mechanism for redistributing the rental income collected prior to 1 July 2018. In fact, TOL testified that Koufu had informed him that the issue of the distribution of the rental income before 1 July 2018 was a "family affair" which Koufu did not want to get involved in.

156 I note that shortly before the Rental Splitting Agreement was signed, TOL had indicated in a WhatsApp message to Sally on 23 July 2018 that he

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intended to "take back what's [his]", presumably a reference to the rental income which he believed he was entitled to. Although TOL subsequently only "[took] back" his share of the rental income for July and August 2018 *via* the Rental Splitting Agreement (see [154] above), TOL's message and subsequent conduct do not support the existence of a common intention as alleged by the Estate. To the contrary, if there had been such a common intention, there would be no reason for TOL to say that he was "going to take back what's [his]", as there would be nothing for him to "take back" in the first place. In my view, TOL's message to Sally constitutes an assertion of his interest in the Lease which was consistent with the fact that he was registered as a tenant-in-common with a half share of the Lease. It is pertinent in this regard that the Rental Splitting Agreement specifically acknowledges that the Mother and TOL were "legal and beneficial owners each holding equitable interest of 50%" in respect of the Lease. The acknowledgement was unnecessary for the purpose of the Rental Splitting Agreement and evidently it was inconsistent with there being a common intention as alleged by the Estate. Given that the relationship between TOL and the Mother was fraught by then (see [141] above), it is difficult to understand why the Mother would have agreed to its inclusion if there was a common intention as alleged by the Estate.

157 On balance, it is difficult to see how the 2019 Recording and the Rental Splitting Agreement can show that there was a common intention as alleged by the Estate. Indeed, the Rental Splitting Agreement points to a shared interest between the Mother and TOL in respect of the Lease.

Sally is personally liable to account to TOL

158 Before I conclude, I make a final point regarding Sally's liability to personally account to TOL for his half share of the Coffeeshop rental income

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for the Previous Rent Period. Given my conclusion that there was no common intention as asserted by the Estate, TOL is entitled to a half share of the Coffeeshop rental income. It follows that the Estate is obliged to account to TOL for his share of the rental income prior to 1 July 2018, *ie*, the period that precedes the Rental Splitting Agreement. The Judge had found that Sally was also personally liable to account to TOL for his share of the rental income for the Previous Rent Period, *ie*, August 2015 to June 2018. This was because Sally knew: (a) as at August 2015 that TOL was entitled to a share of the rental income received by the Mother; and (b) that the rental income was paid into the Tripartite Account from August 2015 onwards (Judgment at [191]–[192]). The Judge's finding that Sally was aware that TOL was entitled to a share of the Coffeeshop rental income was based on Sally's 31 Dec 2021 Voice Message (Judgment at [190]; see [112] and [148] above). This finding must be seen in the context of the contents of the Mother's 2015 Will and the Mother's 2015 Letter. As previously discussed, the Mother's 2015 Will and the Mother's 2015 Letter both allude to TOL owning a half share in the Lease (see [137] above). Poh Kim testified that Sally was present when the Mother's 2015 Will was signed and when the Mother's 2015 Letter was signed by the Mother. It follows that Sally would have been well-aware – at least by 16 July 2015 (*ie*, the date when the Mother's 2015 Will was executed by the Mother) – that TOL owned a half share in the Lease and was consequently entitled to a half share of the Coffeeshop rental income. It thus cannot be said that the Judge's finding – that Sally knew from August 2015 about TOL's entitlement to a share of the Coffeeshop rental income – was plainly wrong or against the weight of the evidence. Accordingly, Sally is liable to account to TOL for the rental income paid into the Tripartite Account from August 2015 to 30 June 2018.

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Conclusion

159 For the reasons above, I do not share the majority's view that the Judge erred in finding that there was insufficient evidence to prove that there had been a common intention between the Mother and TOL as alleged by the Estate. With respect, there appears to be an overemphasis on TOL's conduct in certain situations, when that is not the central inquiry. The real inquiry, in my view, is whether the Estate has discharged its burden of proof, and this does not turn, at least principally, on what TOL did or did not do in certain situations, but rather on whether the Estate has adduced sufficient evidence to support the common intention it has alleged. The paucity of evidence on the common intention as alleged by the Estate is jarring and unsurprising, as the Estate's primary case – on which much of the evidence was led – was its claim to a resulting trust. When the paucity of evidence is juxtaposed against the documentary evidence – much of which was attributable to the Mother – and the context going back to the constitution of Hiap Hoe as a partnership of the Mother and TOL, the conclusion is clear: there is insufficient evidence of a common intention, at the time the Lease was purchased, that the entire beneficial interest in the Lease is to be held by the Mother. That is what the Judge found, and I see no reason to disagree on the basis that it is plainly wrong or against the weight of the evidence. Indeed, if anything, as the analysis above demonstrates, the evidence points towards a common intention between the Mother and TOL that they would beneficially own equal shares in the Lease as tenants-in-common. I thus respectfully depart from the majority on their conclusion on the issue of common intention

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constructive trust. Accordingly, I would have dismissed the appeals in AD 64 and AD 65.

Kannan Ramesh
Judge of the Appellate Division

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