Tong Djoe @ Tong Lian Joo v Hua Ann Brothers Pte Ltd
[2002] SGHC 243

Case Number : Suit 590/2000

Decision Date : 18 October 2002

Tribunal/Court : High Court

Coram : Woo Bih Li JC

Counsel Name(s) : Woo Tchi Chu, Julia Yeo and Joyce Kok (Robert W H Wang and Partners) for plaintiff; Charles Ezekiel and Arthur Poh (Khattar Wong and Partners) for defendants

Parties : —

Judgment

Cur Adv Vult

GROUNDS OF DECISION

INTRODUCTION

1. This is yet another one of those unfortunate cases where a family has fallen out and there are two camps disputing over the affairs of a family company. The family company is Hua Ann Brothers Pte Ltd ('Hua Ann') which is in liquidation.

2. The first camp comprises:

(a) the plaintiff, Mr Tong Djoe @ Tong Lian Joo, who is the patriarch of the Tong family,

(b) his eldest son Tong Keng Meng Melvin ('Keng Meng'),

(c) his youngest son Tong Kheng Ann, Clement ('Kheng Ann'),

(d) Kao Ming Min, who is the wife of Keng Meng ('Ming Min').

3. The second camp comprises:

(a) the eldest child and only daughter Tong Soh Ting, Christina ('Soh Ting') who represents the interests of her two children Soon Cheng Yee and Soon Tze Ling,

(b) the second son Tong Keng Hiang, Kelvin ('Keng Hiang'),

(c) the fourth son Tong Kheng Lay, Bernard ('Kheng Lay'),

(d) the executrix of the estate of the third son Tong Keng Tit, Paul ('Keng Tit'). The executrix's name is Livia Lim Wee Kuan,

(e) the former wife of Keng Hiang, Jenny Ching Poh Choo ('Jenny').

Although Hua Ann is represented by its liquidator, Mr Don-Ho Mun Tuke, he in turn has to take instructions from a committee which apparently is controlled by the second camp. However, besides the liquidator, only Keng Hiang and Jenny gave evidence for Hua Ann.

4. Tong Djoe is not a director or a shareholder of Hua Ann. The four remaining sons are directors and shareholders of Hua Ann. The grandchildren Soon Cheng Yee and Soon Tze Ling are shareholders of Hua Ann although the validity of some of the shares registered in their names is disputed. Keng Tit was a shareholder and in his will he left his residuary estate to Ming Min and Jenny in equal shares. That is how

Ming Min and Jenny came to be shareholders of Hua Ann as well. In addition, Jenny was awarded some shares in Hua Ann by the High Court of Singapore in her divorce proceedings with Keng Hiang when the High Court was deciding on the distribution of matrimonial assets.

5. Tong Djoe is 76 years old. He is not a Singapore citizen. He said he first came to Singapore in the 1940s. He married his wife Tan Beow Hua ('Mdm Tan') in Singapore on 26 April 1948. According to Tong Djoe's evidence, Mdm Tan was a Singapore citizen before she married him and after she married him, she became an Indonesian citizen (NE 16, 17). In 1958, Tong Djoe incorporated his first company in Singapore, Chin Yeong Pte Ltd. In 1960, he set up his flagship Tunas Pte Ltd ('Tunas') to act as the sole agent in Singapore for the Indonesian oil company Pertamina. Tunas was also the chartering agent for vessels for the operation of Pertamina. In 1970, he commissioned the development of Tunas Building in Anson, Singapore. The building was completed in 1973 with 31 floors. It was then the tallest building along Anson Road. It is now known as Apex Building. Mdm Tan was not a director or shareholder of Tunas.

6. Tong Djoe is seeking an order that he be allowed to live and occupy the third level of a three-storey house at 18 Namly Crescent ('18 NC') in Singapore during his lifetime free of rent, although 18 NC is owned by Hua Ann. He is also seeking an injunction to restrain Hua Ann from selling, mortgaging, pledging or using 18 NC as security, during his lifetime, without his written consent.

7. In my judgment:

AEIC	means	Affidavit of Evidence-in-chief
DBD	means	Defendants' Bundle of Documents
NE	means	Notes of Evidence
PBD	means	Plaintiff's Bundle of Documents

26 THIRD AVENUE ('26 TA')

8. According to Tong Djoe's AEIC (para 9 and 10), his family together with Mdm Tan's mother, Mdm Ang Joo Poh, were living at 26 TA in the 1960s. He had rented it from one John Sum. In 1964, John Sum, the owner of 26 TA, approached him to purchase 26 TA. Mdm Tan and Tong Djoe liked 26 TA and so Tong Djoe agreed to buy 26 TA for $250,000. The purchase price was paid in instalments of $10,000 per month. However, he neglected to get 26 TA transferred until 1976 when it was transferred to Keng Tit. Tong Djoe added that in 1966, while Mdm Tan took an evening walk around 26 TA, she noticed an empty plot of land at 18 NC within walking distance of 26 TA. She told him about it and how the view was spectacular as it was sited on a slope. He then went to see this plot of land with her and eventually he paid about $14,508 for it. The plot of land was, however, then registered in Mdm Tan's name.

9. Keng Meng's AEIC (para 24) also asserted that the Tong family had lived in 26 TA since the early 1960s, first as tenants and subsequently as owners. Keng Meng's evidence was that he knew that sometime around 1964, Tong Djoe had agreed to purchase 26 TA 'from the then owner John Sum' and this property was paid for in instalments. When it was paid up, the property was transferred (presumably by John Sum) to Keng Tit.

10. However, according to a search (DBD 1023), John Sum was not the owner of 26 TA in the 1960s. At that time, the owner was one Rachel Sum. On 18 November 1971, she conveyed 26 TA to John Sum.

11. I also note that during cross-examination, Tong Djoe's evidence was that he was staying both at 61 Grange Road and 26 TA between 1968 to 1978, 61 Grange Road having been bought by Tunas (NE 25 to 27).

12. During cross-examination of Keng Meng, Keng Meng said that he and his parents were staying at 19 and 26 Third Avenue between 1964 to 1969 and from 1969 to 1978, they were staying at 61 Grange Road (NE 72 and 73). Keng Meng's wife Ming Min also said in cross-examination that when she married Keng Meng in 1973, the Tong family was staying at 61 Grange Road and no where else (NE 132 to 133).

13. Furthermore, during cross-examination, Tong Djoe said that he had bought 26 TA for $40,000 (NE 28). When it was pointed out to him that para 10 of his own AEIC referred to a purchase consideration of $250,000, he insisted that 26 TA was bought at $40,000 and he paid this sum in instalments of $10,000 per month. He said the $250,000 was 'a technical point between John Sum and my son'. He then said that his son and Mdm Tan had attended to the matter. All he knew was he paid $40,000. He did not know the details (NE 28 and 29).

14. I am of the view that even if Tong Djoe and the Tong family were residing at 26 TA in the 1960s before moving to 61 Grange Road, this property was not bought from John Sum in 1964 or thereabouts. If the purchase had been in or about 1964, Tong Djoe and Mdm Tan would not have waited 12 years until 1976 to get the property transferred to Keng Tit's name. I am also of the view that the purchase of 26 TA was at the price of $250,000 and not $40,000 and that the purchase was handled by Mdm Tan. Whether Tong Djoe paid the purchase price or part of it is another matter.

PURCHASE OF 18 NC

15. Coming back to 18 NC, I accept that it was Mdm Tan who first became interested in it. It was purchased in 1966/1967 and registered in Mdm Tan's name. At that time, it was vacant land.

16. As I have said, Tong Djoe's position was that he paid the purchase price of about $14,508. This was disputed by the liquidator because Keng Hiang and Jenny said that Mdm Tan provided the funds for the purchase. Their position was that Mdm Tan came from a wealthy family. Furthermore, she was running a tailoring business selling garments to retail shops. The business was known as Li Ping from which she made profits. From these profits, she bought 18 NC. Tong Djoe's witnesses Keng Meng and Kheng Ann did not accept that Mdm Tan came from a wealthy family. For example, para 10 of Kheng Ann's AEIC states that Mdm Tan came from a rather poor family. Her mother, Mdm Ang, used to run a small provision shop in Singapore and Tong Djoe used to purchase goods from her. That was how Tong Djoe came to know Mdm Tan. Yet this evidence was contradicted by Tong Djoe himself. He said that when he got to know Mdm Tan, her mother owned a rubber plantation in Malaysia and was not running a provision shop (NE 8). As for Li Ping, Tong Djoe's position was that Mdm Tan did not make profits from that business.

17. Not surprisingly, there was no documentary evidence as to who paid the purchase price for 18 NC, given the very long lapse of time. In addition, witnesses like Keng Hiang, Keng Meng and Kheng Ann were young at the material time and then had left Singapore for studies overseas. In the case of Jenny, she was not yet married to Keng Hiang. Her evidence was based on what Mdm Tan allegedly told her. Jenny had asserted that she was Mdm Tan's confidante, but, during cross-examination, she had to concede she was nothing of the sort. It was also not really disputed that Keng Hiang had married Jenny in a hurry and without Mdm Tan's approval. Although Jenny sought to portray her relationship with Mdm Tan as a close one, I am of the view that it was otherwise. I make this finding based on various oral evidence and on a letter dated 7 March 1983 which she had written to Keng Tit and Kheng Ann (Exhibit P3). In that letter, she had complained as to how Mdm Tan did not trust her. To be fair, Mdm Tan was not the trusting sort but the point is that Jenny's relationship with Mdm Tan was not close.

18. Paragraph 31 of Keng Meng's AEIC stated:

> '31. I know that it is not possible that my mother came up with her own monies to purchase and develop 18 Namly Crescent. First of all, she was a housewife with little means of her own. Secondly, my mother was always rather insecure about my father. He was (and still is to this day) a very well-known and respected businessman. He was generous with money and many people sought his friendship, including many women. My mother was extremely concerned that my father would give his fortunes away so much so that she would try to take as much as money from him as possible in order to avoid having him give these monies to outsiders.'

While the first two sentences of his para 31 are disputed, the rest are not.

19. In addition, it was not disputed that Tong Djoe gave Mdm Tan large sums of cash from time to time as household expenses whenever she thought fit to ask for money.

20. On balance, I find that Tong Djoe probably provided all or most of the monies to pay for 18 NC.

THE DEVELOPMENT AND CONSTRUCTION OF A HOUSE AT 18 NC, THE INCORPORATION OF HUA ANN AND THE TRANSFER OF 18 NC AND 26 TA TO HUA ANN

21. In 1973, the development of a house at 18 NC started. For convenience, I will refer to the house as '18 NC' as well. It was not

disputed that Mdm Tan was in charge of this and she spent much time on its design and supervising its construction in her own way, including checking on the supply of materials.

22. On 29 September 1973, restriction on the ownership of residential property by non-Singapore citizens was imposed although the actual legislation was enacted subsequently with retrospective effect. Although Mdm Tan could still retain ownership of 18 NC, which was residential property, neither she nor Tong Djoe could acquire any interest in any other residential property, unless approval was obtained from the relevant authority, because both were not Singapore citizens at the material time. Hua Ann was incorporated in 1974.

23. The construction works for a house at 18 NC also commenced in 1974, according to Ming Min. On 8 January 1975, the Registrar of Titles gave Hua Ann clearance to acquire residential property so long as all members and all directors of Hua Ann are Singapore citizens (DBD 1063).

24. On 31 July 1975, 18 NC was conveyed by Mdm Tan to Hua Ann for a consideration of $120,000. Paragraph 6 of the Amended Statement of Claim states, '…It was not a sale. Mdm Tan did not ask for any payment and there was no consideration for the transfer'. However, although Mdm Tan did not receive the purchase price, she was recorded as a creditor of Hua Ann for the sale price. Therefore it is not true to say that there was no consideration for the transfer.

25. In that same year, various properties were also acquired by Hua Ann from Mdm Tan:

(a) 28 Mt Senai (Sinai) Avenue

(b) 18 Wattern (Watten) Park

(c) 166 Wattern (Watten) Estate Road

(d) 8E Taman Serai (later known as 2 Taman Serasi #06-08

(e) Lot 1026 Mt Senai (Sinai)

(see Jenny's AEIC p 148 which exhibits a letter from John Ching & Company, Chartered Secretaries and Management Consultants, to the Comptroller of Income Tax ('CIT') dated 8 October 1978 and see the searches on some of the properties in DBD Vol 9. According to para 15 of Jenny's AEIC, Hua Ann also owned other properties). The letter dated 8 October 1978 from John Ching & Company was sent on behalf of Hua Ann and it stated that Mdm Tan was a creditor in respect of the properties purchased from her. Another letter dated 15 December 1978 from John Ching & Company also to CIT stated in the last para, 'We wish to confirm that the Company is dealing in property and houses rental business. And Mdm Tan Beow Hua is in no way related to the Company'. The last sentence was not true, although I am not saying that John Ching & Company knew it was untrue.

26. As I have mentioned, 26 TA was transferred in April 1976 by John Sum to Keng Tit for $250,000 (DBD 1038). In May 1978, Keng Tit transferred 26 TA to Hua Ann for $200,000.00 (DBD 1056). In the same year i.e 1978, a bank had repossessed 61 Grange Road where the Tong family had been staying and they moved to 26 TA.

27. The design and building of the house at 18 NC took about six years from 1973. It was common ground that Mdm Tan was in charge and she spent much time on it, often changing her mind as to what she wanted. Tong Djoe said he assigned some employees from Tunas to help Mdm Tan deal with the architects and contractors. I would add that Ming Min married Keng Meng in 1973 and Jenny married Keng Hiang in 1975. When Ming Min or Jenny was in Singapore, each would be asked to assist Mdm Tan. The construction was completed in late 1979 and the Temporary Occupation Permit or Licence was obtained in 1980.

WAS 18 NC MEANT TO BE A FAMILY HOME AND A RETIREMENT VILLA FOR TONG DJOE AND MDM TAN?

28. As I have said, it was not disputed that Mdm Tan spent a lot of time in the design and construction of the house at 18 NC. It was and is a house with three levels each having its own bedrooms, bathrooms and living and dining area and its own kitchen. It has a swimming pool. The first and third levels are accessible from the Namly Crescent side whereas the second level has its own access from Fourth Avenue. There

is also an intercom system which allowed the occupants on the various floors to communicate with each other and a music system for music to flow throughout the whole house, including the garden (NE 153).

29. Tong Djoe's position was that these features demonstrated that Mdm Tan intended the house to be used by the extended Tong family where each family staying there would have privacy and yet stay together. The liquidator's position was that the design of the house enabled it to be rented out to various tenants and the first and second levels were in fact, for much of the time, rented out to various tenants, whereas the third level was rented out for two years between 1 August 1992 and 31 July 1994.

30. The liquidator's position was also that Hua Ann was a holding company and the use of 18 NC as a family home would be contrary to its memorandum. Furthermore, 18 NC was also described as an investment property in Hua Ann's books. Hence, even if Mdm Tan had entered into an arrangement with Tong Djoe to allow him to live at the third level for the rest of his life, as claimed by him, this would not have been in the best interest of Hua Ann and would have infringed, in particular, Article 55 of Hua Ann's Memorandum of Association which provides for the doing of all things to enhance the value of any property of Hua Ann (see para 68 and 69 of liquidator's closing submission).

31. To counter the liquidator's assertions, Mr Woo, Counsel for Tong Djoe, pointed out that even when the first floor of 18 NC was being marketed to tenants, Mdm Tan had at one time required some space on the first floor to be set aside so that one of her sons could stay there. Indeed, at one time when the first floor was let out , the occupant and his wife had to sign letters to allow one of Mdm Tan's sons to use two of the rooms on that floor. As for Hua Ann being an investment holding company and 18 NC being described as an investment property, Hua Ann was a family company and there was nothing wrong with a family company using its properties for the residence of family members. Indeed, the liquidator accepted that it was not ultra vives the memorandum of Hua Ann for any of its properties to be used for occupation by the Tong family (NE 181 and 183).

32. I am of the view that Mdm Tan had intended 18 NC to be a family home where Tong Djoe and her could live in, if she so wished. That is why she spent so much time on its design and construction and why there is an intercom system and a music system connecting the entire house. However, her design of the house allowed separate levels to be rented out should she so decide. The mere fact that Hua Ann is an investment holding company and 18 NC is described as an investment property does not preclude family members from residing in 18 NC. I note also that 26 TA was an investment property of Hua Ann but it was used as a residence of the Tong family. However, if there is a dispute among shareholders on the use of properties owned by a company, then that is a different matter. Whether Tong Djoe's claim to have a right to live at the third level of 18 NC for the rest of his life is ultra vives the Memorandum of Association of Hua Ann is another matter. For reasons which are elaborated in my judgment, I need not decide on this point. However, I would add that it is not sufficient for Tong Djoe to establish that 18 NC was originally meant to be a family home and/or a retirement villa.

WHO PAID FOR THE CONSTRUCTION AND RELATED COSTS AND RENOVATION COSTS OF THE HOUSE AT 18 NC?

33. Tong Djoe claims that he provided the money for the construction and related costs, such as architects' fees, and renovation costs of the house at 18 NC. For convenience, I will refer to all such costs as 'the construction costs'. However, the documents he relied on did not establish that he had made direct payment for such costs.

34. In so far as Tong Djoe had exhibited receipts and cheques (see, for example, his AEIC p 63, 67, 85), these documents illustrated that Hua Ann made the payments. As for some payments made by Mdm Tan, they were credited in Journal Slips to her account meaning that she was treated, probably by Hua Ann, as a creditor for these payments (see, for example, his AEIC p 77 to 79). In so far as Tong Djoe relied on a list of names and amounts dated 30 April 1981 (see his AEIC p 95), he was not able to establish that he had made direct payment of the amounts in the list.

35. As for payment vouchers of Tunas, there were two categories of such vouchers. The first category demonstrated that Tunas had made various payments to the Comptroller of Property Tax in respect of 18 NC. However, these were not gifts by Tunas to Hua Ann. These were payments made on Hua Ann's account and, in the absence of any contrary evidence, I have to assume that they were debited against Hua Ann's account with Tunas. Accordingly, these payments by Tunas could not be gifts by Tong Djoe to Hua Ann.

36. The second category of Tunas' payment vouchers demonstrated that there were various cash payments made by Tunas mainly to

Mdm Tan and some of which were made to her mother Mdm Ang. Such cash payments were made on Tong Djoe's account. Again, in the absence of any contrary evidence, I have to assume that these payments were debited against Tong Djoe's account with Tunas. It was not in dispute that from time to time, Mdm Tan would ask Tong Djoe for money as home expenses. Also, in cross-examination, Tong Djoe said that the monies he provided for the construction costs were through Mdm Tan (NE 61).

37. Furthermore, Jenny produced cheque butts of a bank account of Hua Ann for various payments towards the construction costs. In addition, the liquidator's Supplemental Report also exhibited documentary evidence showing payments made by Hua Ann or charged to Hua Ann's account for the construction costs (see, for example, para 9.1, 9.16 to 9.19, 9.23 to 9.29 of his Supplemental Report).

38. The next question then is the identity of the source of Hua Ann's money. As I have mentioned, Jenny and Keng Hiang gave evidence that Mdm Tan had been running a profitable tailoring business known as Li Ping. However, the liquidator's closing submission did not assert that the money for the construction costs came from the alleged profits. During the trial, it was also suggested that rent from various properties were used to pay the construction costs of 18 NC but again the liquidator's closing submission did not rely on this as being the source of the payments for the construction costs. The liquidator relied only on financing from Bank of East Asia as being the source of the payments (para 76 of liquidator's closing submission). However, the documents relied on by the liquidator, at most, demonstrated that Hua Ann's account with Bank of East Asia was being used to make the payments. They did not establish where the funds in that account came from. Besides, there was no evidence that a $120,000 facility from The Bank of East Asia Limited in April 1975 was ever drawn down or, if drawn down, was used to pay the construction costs. Furthermore, the construction costs amounted to more than $600,000. Another facility from this bank in 1984 for $1.5 million (Jenny's AEIC p 360) was available only after 18 NC had been built.

39. As for the monies which Tong Djoe gave Mdm Tan from time to time as household expenses, the liquidator's position was that such monies were used to pay for Mdm Tan's personal expenses like car repair, home expenses, entertainment and funeral expenses. It was submitted for the liquidator that there was no evidence that such monies were ever used to pay the constructions costs.

40. Unfortunately, the accounting records of Hua Ann produced before me were not complete. However, where available, they demonstrated that Mdm Tan had deposited various sums of money into Hua Ann from time to time. I am of the view that there would have been no need for her to do so if the facility from Bank of East Asia was sufficient to pay the construction costs, as well as to buy other properties. Also, if the monies from Tong Djoe for household expenses were used only for Mdm Tan's personal expenses, she would not have deposited them into Hua Ann. In my view, such monies were deposited into Hua Ann to help pay the construction costs, as well as to buy other properties. However, it is important to bear in mind that these deposits were not gifts by Mdm Tan to Hua Ann. Her account with Hua Ann would show a credit in her favour for each sum deposited, meaning that she was a creditor of Hua Ann for each sum.

41. Although I find that the monies deposited by Mdm Tan into Hua Ann came from Tong Djoe, I also find that the monies were gifts to Mdm Tan by Tong Djoe although, at times, she would tell him what she wanted the money for (NE 45, NE 47).

42. I would add that after Mdm Tan's death in October 1986, Tong Djoe continued to provide monies for home expenses but this was because he was the patriarch of the family, as he admitted (NE 45). The monies he provided were of smaller amounts (NE 241) and there is no evidence that these monies were deposited with Hua Ann or that Hua Ann used them to pay the construction costs of 18 NC or any other further renovation costs.

WHOSE COMPANY WAS HUA ANN?

43. The name 'Hua' was taken from Mdm Tan's name i.e Tan Beow Hua, and the name 'Ann' was taken from the name of the youngest son Kheng Ann. The company was named Hua Ann Brothers because at that time it was meant eventually for the sons.

44. Mdm Tan was an independent minded person. At times, she would even make decisions on financial matters first before asking Tong Djoe for money (NE 64). Although neither Tong Djoe or Mdm Tan was ever a director of shareholder of Hua Ann, Mdm Tan was, as I find, the person in de facto control of Hua Ann while she was alive. She passed away in October 1986 while swimming in a pool at 18 NC. No witness has disputed that she was in control of Hua Ann except for Keng Hiang. He had initially admitted that she was in control (NE 261), but then chose to deny this later (NE 289 to 290). Mdm Tan decided who would be the directors and shareholders of Hua Ann from time to time. When her sons were not in Singapore, she used her friends and Ming Min as directors and/or shareholders. When she used friends as

shareholders, she got them to sign trust deeds or declarations of trust in favour of her sons. Some of these documents are exhibited in the AEIC of Tong Djoe.

45. Even when the sons became shareholders, she apparently got them (or some of them) to sign trust deeds of their shares in her favour. For example, there was a trust deed signed by Keng Meng of shares registered in his name (which he said belonged to Kheng Lay) in favour of Mdm Tan. Kheng Ann said that he too signed a trust deed in her favour. There was a letter from Chu Chan & Partners to Mdm Tan dated 3 March 1986 stating, inter alia, that Kheng Ann, Keng Tit and Tong Yee (Keng Meng's son) had signed trust deeds and a bill from the law firm for preparing five sets of trust deeds. However, no one from that law firm gave evidence on the letter or the bill. Even then, I am prepared to accept for the purpose of the present litigation that at least some, if not all, of her sons signed trust deeds in her favour. As I have said, Mdm Tan was not the trusting sort of person and this lack of trust extended to her sons or at least some of them.

46. Also, on 7 April 1975, a power of attorney was given by Hua Ann to Mdm Tan giving her power to manage the business of Hua Ann and to exercise the powers of the directors (2PSB 1).

47. It is also significant to note that it was Mdm Tan, and not Tong Djoe, who was recorded as a creditor for each sum of money deposited by Mdm Tan. Indeed, none of Hua Ann's accounts which were available showed Tong Djoe to be a creditor of Hua Ann (NE 56). It was also Mdm Tan, and not Tong Djoe, who decided how much monies she would deposit with Hua Ann (NE 46). I am of the view that this was because Tong Djoe was not supposed to have any interest in Hua Ann. As Tong Djoe's own witness Keng Meng had emphasized, Mdm Tan was concerned about Tong Djoe's generosity to his friends and his willingness to give his personal guarantee for their businesses (see Keng Meng's AEIC para 31 and NE 87, 89). I also note from the trust deed of shares she obtained from Keng Meng that the trust deed was in her favour and not Tong Djoe and that after Mdm Tan passed away in October 1986, Tong Djoe did not request any of his sons to sign a similar trust deed in his favour. Furthermore, after Mdm Tan's death, Hua Ann was run by some of the sons from time to time but never by Tong Djoe. Indeed, he was not even informed when shares in Hua Ann were allotted to Soh Ting's children in 1988, after Mdm Tan's death (NE 77 and 78). Also, monies were being withdrawn from Hua Ann by the sons, after Mdm Tan's death, apparently without the need for Tong Djoe's approval.

48. In my view, Hua Ann was Mdm Tan's company while Tunas was Tong Djoe's company. I would add that 18 NC was mortgaged by Hua Ann from time to time without Tong Djoe's prior written consent.

WHERE DID TONG DJOE STAY PRIOR TO MDM TAN'S DEATH?

49. As I have mentioned, the Tong family stayed at 61 Grange Road initially, although there is some evidence that they stayed at 26 TA before they stayed at 61 Grange Road. After 61 Grange Road was repossessed by a bank in 1978, they stayed at 26 TA. At that time, the construction of 18 NC had not yet been completed.

50. According to Tong Djoe, after 18 NC was completed, he chose to stay at the third level thereof as it had the best view and he and his wife moved to the third level (see his AEIC para 24 and 30). Yet he also said he stayed at 26 TA on weekdays, and lived at 18 NC on weekends and even then, it was only on some Sundays that the family would gather at 18 NC (see his AEIC para 34 and 73).

51. This evidence was corroborated by Keng Meng (see his AEIC para 42 and NE 92), Keng Hiang (NE 310) and Jenny (NE 234). According to Keng Meng, it was Mdm Tan who would be insisting that the family members attend the Sunday lunch if Tong Djoe was in Singapore (AEIC para 42 and NE 93). In my view, 26 TA was the main residence of Tong Djoe and Mdm Tan. They went to 18 NC occasionally. This was primarily for Sunday lunches with the rest of the family who would gather there.

52. In the meantime, Keng Tit had returned from overseas in 1984 and he was residing in one of the rooms at the third level of 18 NC until he passed away in 1991 (see Keng Meng's AEIC para 38).

WHERE DID TONG DJOE STAY AFTER MDM TAN'S DEATH?

53. I will deal with the question as to where Tong Djoe stayed after Mdm Tan's death in various stages:

(a) From 1986 to 1991 when Keng Tit died

(b) From 1992 to 1994 when the third level of 18 NC was rented out

(c) From 1994 to February 1999 when 26 TA was sold

(d) After 26 TA was sold.

From 1986 to 1991

54. As I have said, Mdm Tan passed away in October 1986. I am of the view that Tong Djoe continued staying at 26 TA. Furthermore, with her death, the Sunday lunches and family gatherings either stopped or became less frequent, and, consequently, Tong Djoe's visits to 18 NC became less frequent too (see again Keng Meng's AEIC para 42 where he said that the Sunday lunches continued until his mother passed away).

Between 1992 to 1994

55. As I have mentioned, Keng Tit passed away in 1991. It is not disputed that for two years between 1 August 1992 to 31 July 1994, the third level of 18 NC was rented to an outsider. Yet in the AEICs of Tong Djoe, Keng Meng, Kheng Ann and Ming Min, this fact was not mentioned. The impression from their AEICs was that Tong Djoe had been staying at the third level all along.

56. For example, in para 74 of Tong Djoe's AEIC, he asserted that after Keng Tit's death, he did not stay at the third level but he did not remove all his belongings. I am of the view that if he did not remove his belongings, the third level could not have been rented out, unless his belongings were stored somewhere else at the third level. In any event, that is a different picture from what he had painted in his para 74. A second example is Kheng Ann's AEIC where at para 65 he states that Tong Djoe has been staying at the third level since 1979/1980 'up to this date' meaning the date of his AEIC. He reiterated this at NE 160. It was only later at NE 167 that he raised the fact of the tenancy of the third level and then alleged, in NE 168, that Tong Djoe had moved permanently to 18 NC from about July 1994.

Between 1994 to February 1999

57. According to the AEICs of Keng Meng, Kheng Ann and Ming Min, when Kheng Ann came back from America in 1994, he stayed with Tong Djoe at the third level of 18 NC to help take care of Tong Djoe until 1999 when Kheng Ann moved to stay at his own place in the Balmoral area. In particular, Kheng Ann said in para 34 of his AEIC:

> '34. My return to Singapore in 1994 was prompted by my father's ill health. My father was about 70 years old. Further, my wife and I decided to start a family in Singapore. We stayed with our father at the 3rd level of 18 Namly Crescent to take care of him.'

I reiterate that Kheng Ann had also said in cross-examination that Tong Djoe moved back to 18 NC 'permanently' from July 1994 (NE 168).

58. However, in cross-examination, Kheng Ann said that when he returned in 1994, he was living at Soo Chow Gardens with his wife and then at 18 NC (NE 167). This corroborates para 52 of Jenny's AEIC where she said that in July 1994, Kheng Ann and his wife had moved into the third level of 18 NC from Kheng Ann's mother-in-law's place at Upper Thomson Road.

59. On 23 July 1994, Keng Hiang wrote a letter (DBD 378), in his capacity as Managing Director of Hua Ann, to Kheng Ann, to state that locks to the third level had been changed without his knowledge, that the third level was meant for rental and that Kheng Ann had committed trespass. According to Kheng Ann, this was Keng Hiang's way of hitting back at Tong Djoe through him because by then the relationship between Tong Djoe and Keng Hiang had soured and Keng Hiang was sacked from Tunas (NE 167). Secondly, Keng Hiang was unhappy with Kheng Ann for looking after Keng Hiang's son in America at Jenny's request without Keng Hiang's knowledge (NE 168). Ming Min's AEIC para 31 said that by 1994 the relationship between the children had strained over money issues of Hua Ann and Kheng Ann was getting a lot of flak about a property in Los Angeles. Whatever the reason or reasons, I accept that by 1994, Keng Hiang's

relationship with Tong Djoe and Kheng Ann had soured.

60. I would add that the occupant under the tenancy of the third level had probably moved out earlier before the expiry of the tenancy and Kheng Ann then moved in in July 1994. I also note that Kheng Ann did not respond to the 23 July 1994 letter to say that he was staying at 18 NC to look after Tong Djoe.

61. According to Jenny, Kheng Ann had cleverly asked Tong Djoe to stay with him at the third level of 18 NC in 1994 on the pretext of taking care of Tong Djoe so that Keng Hiang would not hassle Kheng Ann to move out. She said that Tong Djoe stayed there for three months (her AEIC para 53) or five months (NE 249). Tong Djoe was diagnosed with prostrate cancer in February 1995 and underwent an immediate operation, stayed in the hospital for a month and thereafter returned to 26 TA (her AEIC para 54).

62. I refer also to the minutes of an extra-ordinary General Meeting of Hua Ann held on 15 December 1998 (DBD 387 to 388). The minutes were signed by Keng Meng. They stated, inter alia:

> '(3) Mr. Tong Keng Meng read out the Notice which was submitted by Mr. Tong Keng Hiang on 3rd December 1998 and put forward the following proposals for discussion and voting:-
>
> > (a) For the safety reasons, no director/shareholder should allow third party to use 18 Namly Crescent as a storage place or for any other purposes. He/She should be fully responsible for the consequences if any damage to the said buildings or causes any harm to the occupied tenants.
> >
> > Voting Result: (For: 5 Against: 0 Abstain: 0)
>
> The Chairman declared that the Resolution was passed.
>
> > (b) "In the interest of all shareholders and to generate more rental income to the Company. Director/Shareholder Mr. Tong Kheng Ann who without the consent of the majority of shareholders and unlawfully occupied the third level of 18 Namly Crescent since 18th July 1994, should vacate from the above premises within one month so that the premises could be rented out. The Company have since incurred loss of income revenue for the pass fifty-two months and based on average rental of S$4,500 per month, it had amounting to S$234,000.00."
> >
> > Voting Result: (For: 2 Against: 2 Abstain: 1)
>
> The Chairman declared that the proposal be rejected.
>
> Mr. Tong Kheng Ann promised to the shareholders that he move out latest by 1st May 1999 or earlier whenever the company gets a tenant for the unit he occupied.
>
> '
>
> [Emphasis added.]

63. I note that in Tong Djoe's own AEIC at para 75 and 76, he said:

> '75. Thereafter, in 1994, I lived at 18 Namly Crescent more often. This was precipitated by the fact that Keng Hiang and Jenny were constantly quarreling at 26 Third Avenue. Moreover my relationship with Keng Hiang became very tense so much so that I terminated his employment in Tunas in May 1994.

> 76. When 26 Third Avenue was finally sold in February 1999, I then moved over to stay at 18 Namly Crescent, while a lot of my antiques at 26 Third Avenue had to be put temporarily at a friend's place at 53 Happy Avenue East, Singapore. I gave many of my antiques away as there were just too many. Eventually, these antiques at 53 Happy Avenue East were kept at 18 Namly Crescent.'
>
> [Emphasis added.]

These paragraphs contradict the assertion that Tong Djoe had moved back to 18 NC permanently from July 1994.

64. As I have already said, and as admitted by Tong Djoe and Keng Meng, even when Mdm Tan was alive, she and Tong Djoe went to 18 NC only occasionally for some of the Sunday lunches. Their main residence was 26 TA. After Mdm Tan died in 1986, Tong Djoe continued residing at 26 TA. Keng Tit was residing in a room at the third level of 18 NC from 1984 to 1991 but after he died in 1991, the third level was rented out in 1992 for two years. Tong Djoe continued to reside in 26 TA during these two years. Therefore, when Kheng Ann came back to Singapore in 1994, Tong Djoe was not staying at 18 NC but at 26 TA.

65. In my view, when Kheng Ann returned to Singapore in 1994 with his wife, he had no place of his own. He then stayed at his mother-in-law's place at Soo Chow Gardens. However, it is not true that Kheng Ann returned to Singapore to look after Tong Djoe at 18 NC. If that were so, Kheng Ann would not have stayed first at Soo Chow Gardens. I find that Tong Djoe must then have asked Kheng Ann to move to the third level of 18 NC as Tong Djoe was not staying there.

66. Then, Keng Hiang discovered that Kheng Ann had moved to the third level and that is why he sent the letter dated 23 July 1994 to Kheng Ann (which I have referred to in para 59 above). Tong Djoe then decided to move temporarily to the third level to help Kheng Ann out as he must have been told by Kheng Ann that Keng Hiang was trying to kick him (Kheng Ann) out. I accept that subsequently Tong Djoe moved back to 26 TA after he was diagnosed with cancer in February 1995 and after his stay in a hospital.

67. The minutes of 15 December 1998 (which I have referred to in para 62 above) reflected Keng Hiang's insistence that the third level of 18 NC should be rented out and that Kheng Ann was still residing there. Faced with Keng Hiang's insistence, Kheng Ann promised to move out. There was no mention in the minutes that Tong Djoe was staying at the third level or that Kheng Ann was helping to take care of Tong Djoe at the third level.

68. As for Kheng Ann's evidence that Tong Djoe's things were at the third level of 18 NC and a maid was also there (NE 169), I am of the view that those 'things' were probably artefacts that Tong Djoe was in the habit of purchasing (whether for his own business or for himself, I do not know). On this point, Keng Hiang produced photographs he had taken of 26 TA in 1996 and 1997 (Exhibit D7) showing numerous items placed by Tong Djoe inside and outside 26 TA and an enforcement notice dated 25 January 1997 from the Urban Redevelopment Authority to Hua Ann stating that 26 TA had been used as a store (Exhibit D8). Keng Hiang said that some of these artefacts were also stored at the third level of 18 NC and I accept this evidence (NE 279 and NE 281). That is why Keng Hiang pushed the directors to agree at the meeting on 15 December 1998 that 'no director/shareholder should allow third party to use 18 Namly Crescent as a storage place or for any other purposes …..' (DBD 387).

69. As for the maid, I am of the view that she was there probably to help clean the place and take care of Kheng Ann and his wife and perhaps the artefacts as well.

70. At this stage, I would mention that I find Keng Hiang's alleged concern about the interest of Hua Ann to be hypocritical. While he wanted the third level of 18 NC to be rented out, Jenny and he were staying at 26 TA free of rent together with other family members. Furthermore, he had been taking money from Hua Ann to pay his personal liabilities.

After February 1999

71. The next question is where Tong Djoe stayed after 26 TA was sold in February 1999. In para 76 of his AEIC, which I have cited in para 63 above, he said that he then moved over to stay at 18 NC while a lot of his antiques had to be put temporarily at 53 Happy Avenue East. Eventually they were kept at 18 NC. Interestingly enough, he was not cross-examined by Mr Charles Ezekiel, Counsel for the

liquidator, on this paragraph.

72. However, on the other hand, Mr Woo also did not cross-examine Jenny on her contrary assertion in para 61 of her AEIC. Paragraph 61 stated:

> '61. When the 26 Third Avenue property was sold in February 1999 (Completion Date), the Plaintiff himself was not even allowed to reside in the 3rd floor apartment of the 18 Namly Crescent. In fact, the Plaintiff had to rent 2 houses to stay and to put all his personal belonging, antiques and artefacts. In particular, he rented a property at 53 Happy Avenue East, and another at 48 Gentle Road, Singapore from December 1998. He resided in 53 Happy Avenue East until December 1999.'

73. Neither did Mr Woo cross-examine Keng Hiang on para 24 of his AEIC which stated:

> '24. Sometime in July 1999, Clement Tong moved out of the 3rd floor 18 Namly Crescent and he handed the keys of the 3rd floor to the Plaintiff. The Plaintiff did not lived there but stayed at his penthouse in Tunas Building. On 1 June 2000, I, in the capacity as Managing Director of the Defendant Company, wrote to Melvin Tong, the Chairman of the Defendant Company and objected to the Plaintiff's antiques being placed at the 2nd floor, 3rd floor and the surrounding compound of 18 Namly Crescent. Annexed hereto and marked "TKH-8" is the letter dated 1 June 2000.'

74. Next, I refer to the minutes of a board meeting of Hua Ann on 12 April 1999 (PB 1256). The minutes were signed by Keng Meng, Keng Hiang and Kheng Lay. The minutes stated, inter alia:

> '4) Following previous Boards' decision, Clement confirm to move out from 18 Namly Crescent at a slightly later date but not later than mid-June 99. The vacant premise is either for Mr. Tong Djoe to stay if he wishes, or to be let out to generate additional income.
>
> [Emphasis added.]

75. In my view, this demonstrated the true state of affairs as at that time. Tong Djoe was not staying at 18 NC then (i.e April 1999). Although the minutes said that Tong Djoe could stay (at the third level) if he wanted to, that was the intention then.

76. As Keng Hiang had said in his AEIC, he had written on 1 June 2000 to object to Tong Djoe's antiques being placed on the second and third levels of 18 NC. The letter is at DBD 392 and although it did not specifically mention Tong Djoe's use of the second and third levels for storage purposes, I accept that that was what the letter was alluding to.

77. Next, the minutes of a board meeting of Hua Ann on 7 June 2000 stated, inter alia:

> 'AGENDA
>
> (2) To discuss the 2nd and 3rd Floor Rental income of 18 Namly Crescent since it was left vacant for more than 1 year for the interest of Hua Ann Brothers Pte Ltd.
>
> (a) Mr. Tong Kheng Lay told the meeting that the 2nd floor of Namly Crescent has vacant for more than a year, and should be rented out to generate income.
>
> Voting Result: (For: 4 Against: o)
>
> (b) Mr. Tong Keng Meng stated that as the 3rd Floor is now occupied by senior family member and therefore, should not be rented out).

Voting Result: (For: 2 Against: 2)'

[Emphasis added.]

The minutes were signed by Keng Meng.

78. Although these minutes stated that the 3rd floor was 'now' occupied by Tong Djoe, the current address on Tong Djoe's identity card is an address in Tunas building. He also admitted that he did not have any document showing 18 NC as his address (NE 15). Furthermore, Mr Woo said in his opening statement that, 'Plaintiff is staying there [meaning 18 NC], perhaps not everyday, sometimes at the penthouse. His possessions are at the 3rd level' (NE 2).

79. I am of the view that after 26 TA was sold, Tong Djoe was residing at a place other than the third level of 18 NC. This place was probably the penthouse at Tunas Building. However, Tong Djoe's artefacts were and are stored at the third level of 18 NC.

MY CONCLUSION

80. Tong Djoe's claim, as pleaded, is that he has a right to live at the third level of 18 NC for as long as he lives. Yet, in cross-examination, he asserted repeatedly that 18 NC was his and that he was the true owner of Hua Ann. That was quite a different claim altogether.

81. Tong Djoe's claim, as pleaded, is based on an alleged arrangement with Mdm Tan whereby she allegedly agreed that he would have such a right if he provided the funds for the purchase of 18 NC and the construction of the three storey house at 18 NC. Yet during cross-examination, he relied not so much on the alleged arrangement with Mdm Tan but on the fact that he had provided the funds. That was also the thrust of the evidence, during cross-examination, of his witnesses Keng Meng, Kheng Ann and Ming Min.

82. Mr Woo had sought to rely on the fact that although the sons, as directors of Hua Ann, had wanted to sell 18 NC and/or 26 TA for some years before February 1999, no such sale was entered into until 26 TA was sold in February 1999. He submitted that this was because Tong Djoe had to be consulted before 18 NC or 26 TA could be sold. When 26 TA was sold, this was done only with Tong Djoe's consent. The suggestion was that the consultation was an acknowledgment of the right Tong Djoe is claiming.

83. In my view, there could have been many reasons why no sale was entered into for some time, even though there was a common intention among the sons to sell. The sons were not seeing eye to eye and might not have agreed on the price or how much weight should be given to Tong Djoe's views. In any event, none of the witnesses, including Tong Djoe, said that the very reason why no sale was entered into earlier was because of the right he has pleaded. For example, Keng Meng and Kheng Ann's position that Tong Djoe would have to be consulted was because he is the patriarch of the family who provided the funds (see, for example, NE 112, 160 and 162) and not because he had some arrangement with Mdm Tan or had some legal right to be consulted. In the case of 26 TA, Tong Djoe was also staying there at the time.

84. Mr Woo had also relied on the minutes of the directors' meeting of 12 April 1999, which I have quoted in para 74 above. He submitted that the minutes reflected Tong Djoe's right to stay at the third level of 18 NC. In addition, he also relied on a letter dated 8 August 2000 from Soh Ting to Keng Meng in which she said:

> 'Re: Reside at No. 18 Namly Crescent 3rd Level
>
> Dear Brother,
>
> After reading the letter which you fax to me dated 1st August 2000 from Peter Pang & Co., I, Tong Soh Ting and my two children (Mr. Soon Cheng Yee and Miss Soon Tze Ling) hereby supported that Mr. Tong Djoe @ Tong Lian Joo should stay at the above mentioned property for the rest of his life, if he wants to.

> You may consider for double protection to also have the Tenancy Agreement with Mr. Tong Djoe @ Tong Lian Joo at the rental of S$1/- (Singapore Dollar One) only per month.
>
> Please try your best to let our father Mr. Tong Djoe @ Tong Lian Joo continue to stay at the above mentioned property for the rest of his life, if he wants too.'

85. I am of the view that the minutes of the directors' meeting of 12 April 1999 fall quite short of an acknowledgment of Tong Djoe's right. Although the minutes appear to reflect the wishes of the directors, at that time, that Tong Djoe be allowed to stay at the third level of 18 NC if he so wished, the focus was on getting Kheng Ann out. Besides, if Tong Djoe had the right to stay at the third level, the minutes would have been worded differently.

86. I am also of the view that the letter from Soh Ting dated 8 August 2000 falls short of acknowledging Tong Djoe's right as claimed. It was more of a plea that Tong Djoe be allowed to stay at the third level if he wished. Besides, Soh Ting may no longer be of that view as she is apparently now on the side of Keng Hiang where this issue is concerned.

87. Mr Woo also relied on the fact that the minutes of a board meeting of Hua Ann on 8 January 1999 (PB 1253) recorded that the balance of the sale proceeds of 26 TA would be divided into six equal shares and if needed could be borrowed by each shareholder. Each shareholder was to provide such sum 'at their own accord' to Tong Djoe.

88. According to Keng Meng, the original intention was to buy a small property for Tong Djoe from the balance of the sale proceeds from the sale of 26 TA but the shareholders began to have differing views. So, it was agreed that each should come up with a sum for Tong Djoe (NE 127). Mr Woo submitted that the decision to come up with a sum for Tong Djoe recognised Tong Djoe's right to reside in the family homes (i.e 26 TA and 18 NC). Mr Woo also added that it was precisely because the sons recognised Tong Djoe's right to reside in the family homes that the minutes of a directors' resolution of Hua Ann dated 22 February 1999 recorded that a sum of $70,000 would be advanced to Tong Djoe and/or Tunas.

89. I do not agree with those submissions. If indeed the board had recognised Tong Djoe's right, the minutes of 8 January 1999 would not have said that each shareholder was to provide such sum 'at their own accord' to him. The minutes merely reflected a wish to benefit Tong Djoe and not an acknowledgement of his right. As events turned out, there was a change of mind and no property was purchased for him from the balance of the sale proceeds. Moreover, Tong Djoe did not assert that Hua Ann or its shareholders were obliged to buy a property for him (see his AEIC para 103 to 105 and NE 41 where he said, 'It is ok with me' even though that intention was not carried out).

90. As for the directors' resolution to advance $70,000 to Tong Djoe or Tunas, I am of the view that this was because there was another change of mind by some of the shareholders. Hence only Keng Meng agreed to give $50,000 to Tong Djoe which would be debited against Keng Meng's account and Soh Ting agreed to give Tong Djoe $10,000, i.e $5,000 from each of her two children who are registered shareholders and debited to their respective accounts with Hua Ann. There was no evidence as to whether the balance of $10,000 (to make up $70,000) was given. Interestingly enough, the cheque for $50,000 was made in favour of Tunas and recorded in the payment voucher as a loan to Tunas (see Tong Djoe's AEIC p 406 to 410).

91. In any event, I am of the view that the $70,000 did not constitute an acknowledgment of a legal right in Tong Djoe. It merely reflected the wish of some of his children to benefit him or Tunas out of their love and respect for him and the belief that he had earlier funded the purchase of some properties and the construction costs of 18 NC. If the monies were supposed to compensate Tong Djoe for deprivation of a legal right, all the children would have given something to Tong Djoe proportionately to their shares in Hua Ann.

92. Mr Woo also submitted that there was no reason for Keng Meng, Kheng Ann and Ming Min, who are all shareholders of Hua Ann, to support Tong Djoe's claim to their own detriment unless his claim is true. In my view, they have supported Tong Djoe's claim out of their love and respect for him and in appreciation for what they believe he has done for the Tong family. While their motive may be commendable, it does not necessarily make all their evidence true nor Tong Djoe's claim valid.

93. I find that there was no arrangement between Tong Djoe and Mdm Tan as pleaded by Tong Djoe. He had assumed, not unnaturally,

that, as the patriarch of the family who had provided the funds and because Mdm Tan was controlling Hua Ann, he would be entitled to stay at 18 NC if he so wished. I would add that a unilateral expectation is not binding on others.

94. I have also found that Hua Ann was Mdm Tan's company. She controlled it while she was alive and she was not controlling it for Tong Djoe. After her death, Hua Ann was controlled by her sons, not Tong Djoe. Hua Ann was incorporated for the benefit of her sons and herself and the properties acquired by Hua Ann was for their benefit and not Tong Djoe. True, if she were still alive, she would most probably have allowed Tong Djoe to stay at the third level, or at any level, of 18 NC if he so wished. However, that would be based on her knowledge of the financial support he had provided and her affection and respect for him and not because he has an interest or right, enforceable in a court of law.

95. In any event, Mdm Tan was recorded in Hua Ann's books as a creditor for the purchase monies of 18 NC when she sold and transferred 18 NC to Hua Ann. Likewise, the monies which Tong Djoe gave to Mdm Tan to assist in paying the construction costs of the house at 18 NC and which were deposited by Mdm Tan in Hua Ann were not gifts by her to Hua Ann. As I have mentioned, she was a creditor for each of the sums so deposited and, prima facie, she and her estate would have had a claim for those monies, as well as the purchase monies, against Hua Ann.

96. Tong Djoe, as one of her beneficiaries (as she died intestate) would also, prima facie, benefit from those claims. However, if Tong Djoe himself has a valid claim to the third level of 18 NC against Hua Ann by reason of the monies he has provided, then that would be a sort of double-counting against Hua Ann. The fact that Tong Djoe has chosen not to seek monetary compensation in exchange for his alleged right is immaterial. The point is that he would be entitled to seek such compensation were I to conclude that he has the right he claims. I would add that I am not aware of the current position between Mdm Tan's estate and Hua Ann. There may well have been developments since 18 NC was transferred to Hua Ann and since Mdm Tan deposited the monies and these developments may in turn affect the account as between Mdm Tan and Hua Ann. That is a separate matter which is not before me.

97. I would also add that the cases cited by Mr Woo in support of Tong Djoe's claim had different facts which do not come close to those before me.

98. In the circumstances, it is not necessary for me to reach a conclusion on another argument taken by the liquidator of Hua Ann i.e that Tong Djoe's claim is contrary to the provisions of the Residential Property Act (Cap 274). I would only say that Tong Djoe's claim is not that of a bare licensee and it may well be that his claim would have, in any event, run afoul of the Residential Property Act.

SUMMARY

99. This is not a case of an old man being kicked out onto the streets without a place to stay in. That is the picture which Tong Djoe and his witnesses were painting. As I have said, at all material times, Tong Djoe was and is not staying at the third level of 18 NC. He spends part of his time in Indonesia, and, when he is in Singapore, he is staying somewhere else. The real reason for his claim is his dissatisfaction with some of his children and, in particular, Keng Hiang. The fortunes of Hua Ann have plummeted and Tong Djoe believes that Keng Hiang will cause the sale of 18 NC, the last substantial asset of Hua Ann, at a time when property prices have come down. During the trial, he expressed his unhappiness about the price at which 26 TA was sold, which he felt was too low (NE 7 and NE 41). Moreover, he is also afraid that his children will spend away the money which they will receive from the sale of 18 NC (see his AEIC para 111 and NE 58).

100. Although I find Keng Hiang to be rude, ungrateful and pretentious, the burden of proof is on Tong Djoe as the plaintiff. For the reasons I have stated, I find that he has failed to discharge his burden. In the circumstances, I dismiss Tong Djoe's claim. I will hear the parties on costs.

101. I would add one observation. It came to my attention during the trial that the liquidator had mentioned in his first report the substance of an offer that was made without prejudice by Tong Djoe's solicitors to his solicitors. In cross-examination, the liquidator did not agree that he should not have done this. I am of the view that the liquidator should not have mentioned the substance of the offer in his report. Having done so, he and his solicitors should have blanked out that part of his report on the substance of the offer before they used his report.

Sgd:

WOO BIH LI

JUDICIAL COMMISSIONER

Copyright © Government of Singapore.