IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 260

Suit No 764 of 2013

Between

(1) FOO JEE BOO

(2) FOO LI LI

… *Plaintiffs*

And

(1) FOO JHEE TUANG

(2) TJH LAW CORPORATION

(3) FOO JEE SENG

… *Defendants*

JUDGMENT

[Probate and Administration] — [Personal representatives] — [Powers and duties]

[Legal profession] — [Express and implied retainer]

[Equity] — [Fiduciary relationships] — [When arising]

[Civil procedure] — [Costs] — [Indemnity costs]

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This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Foo Jee Boo and another
v
Foo Jhee Tuang and others

[2016] SGHC 260

High Court — Suit No 764 of 2013
George Wei J
22, 25–29 July 2016; 30 September 2016

28 November 2016 Judgment reserved.

George Wei J:

Introduction

1 This suit arises from a long-standing dispute among a few siblings over the estates of their late parents and late brother. It was commenced by two of the seven beneficiaries of the late father's will, who brought various claims against the executor of the will (who is himself a beneficiary) as well as against the law firm engaged to assist in the administration of the estate.

2 The trial was heard over six days in July 2016, with written submissions filed in September 2016. I now deliver my judgment.

Background facts

The parties

3 The 1st Plaintiff, the 2nd Plaintiff, the 1st Defendant and the 3rd Defendant are four of six siblings in the Foo family. Together with their late mother, Yap Wee Kien ("the Late Mother"), their late brother, Foo Jee Fong ("the Late Brother") and their sister, Foo Chin Chin, they are beneficiaries of the estate of their late father, Foo Tai Joong ("the Late Father") in equal shares. The estate of the Late Father consists solely of a piece of landed property known as 39 Lorong Marzuki ("the Property").

4 The 2nd Defendant is the law firm that was engaged to assist in the administration of the estate, under circumstances which I shall set out at [20] below.

5 The Foo family is no stranger to the courts. The present Suit No 764 of 2013 ("the present suit") is part of a long-running and acrimonious dispute between the siblings over the estates of the Late Father, the Late Mother, and the Late Brother. I will shortly set out some of these proceedings relevant for the purposes of the present suit.

6 The Late Father passed away on 5 May 1979. In his will dated 8 May 1975, he appointed the Late Mother and the 1st Defendant as co-executors and trustees of his estate. The will provided for a trust for sale over the Property. The following shows the distribution of the Late Father's estate according to the will, in order of seniority:

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Name	**Capacity**	**Share**
Yap Wee Kien (deceased)	Late Mother Executor and trustee	1/7
Foo Jee Fong (deceased)	Late Brother	1/7
Foo Li Li	2nd Plaintiff	1/7
Foo Jee Seng	3rd Defendant	1/7
Foo Jhee Tuang	1st Defendant Sole surviving executor and trustee	1/7
Foo Chin Chin	Sister, who is not a party to the present suit	1/7
Foo Jee Boo	1st Plaintiff	1/7

7 Probate was obtained by the Late Mother on 30 November 1979 as sole executor of the will. At this point of time, the 1st Defendant was still a minor.[1] After the Late Mother passed away on 25 July 2005, the administration of the Late Father's estate was granted to the 1st Defendant solely on 11 January 2010.[2] On 21 March 2011, pursuant to an application

[1] AEIC of Foo Jhee Tuang dated 17 June 2016 para 12

[2] AEIC of Foo Jhee Tuang dated 17 June 2016 para 16 and p 43

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brought by the 1st Defendant in Summons No 5672 of 2010 (brought under Originating Summons No 909 of 2010, which I will discuss later), Judith Prakash J (as she then was) declared the 1st Defendant to be the sole surviving executor and trustee of the Late Father's estate, and that he was entitled to apply to have the Property conveyed to him. The Property was thereafter transmitted and duly registered in the 1st Defendant's sole name.

8 In the Late Mother's will dated 18 May 2002, she appointed the 1st Plaintiff and the 1st Defendant as the co-executors and trustees of her estate, which consists solely of her 1/7th share in the Late Father's estate. This share is to be divided among three of the siblings, in order of seniority, as follows:

Name	**Capacity**	**Share**
Foo Jee Seng	3rd Defendant	1/4
Foo Jhee Tuang	1st Defendant Co-executor and trustee	1/4
Foo Jee Boo	1st Plaintiff Co-executor and trustee	1/2

9 A grant of probate for the Late Mother's estate was obtained on 1 October 2012 and issued to the 1st Plaintiff and the 1st Defendant on 14 December 2012.[3] It should be noted that the 2nd Plaintiff is neither an executor nor a beneficiary of the Late Mother's estate.

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[3] AEIC of Foo Jhee Tuang dated 17 June 2016 p 44

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10 The Late Brother passed away intestate on 19 July 2007. His estate also consists solely of his 1/7th share of the Late Father's estate. By FC/P 678 of 2015, a letter of administration was granted to the Late Brother's widow, Chen Yu, in February 2016, which appointed her as the sole administrator of the Late Brother's estate. Over the course of the present proceedings, the parties have come to accept that the claims in relation to the Late Brother's estate are not part of the present suit. This was because neither of the Plaintiffs is an administrator of the Late Brother's estate, and therefore would not have had the standing to bring any claim in relation to his estate. A claim relating to the Late Brother's estate was eventually brought by Chen Yu (as I will elaborate at [59] below). For the purposes of this judgment, I focus only on the disputes in relation to the Late Father's and Late Mother's estates.

11 The relationship between the five surviving Foo siblings quickly deteriorated largely because of disagreements on how to deal with the Property after the Late Mother's death. In brief, the 1st Plaintiff, the 2nd Plaintiff and the 3rd Defendant wanted the Property to be sold, but the 1st Defendant did not. These disagreements led to a slew of legal tussles between them. It is necessary to briefly set out some of the legal proceedings and relevant events at this juncture, as these will provide an essential backdrop to the disputes in the present suit.

Originating Summons No 909 of 2010

12 On 2 September 2010, the Plaintiffs and the 3rd Defendant filed Originating Summons No 909 of 2010 ("OS 909") in the High Court, naming the 1st Defendant and Foo Chin Chin as defendants. OS 909, amongst other things, was an application to compel a sale of the Property and thereafter the distribution of the proceeds of the sale according to the Late Father's will. It

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also sought to compel the 1st Defendant to furnish an account of the proceeds of the rent that he had allegedly received from the Property.

13 The 2nd Plaintiff and the 3rd Defendant were initially represented by Mr David de Souza ("Mr de Souza") from M/s De Souza Lim & Goh LLP. Mr de Souza issued the originating summons on behalf of all the plaintiffs in OS 909, *ie,* the Plaintiffs and the 3rd Defendant. It subsequently came to light that the 1st Plaintiff was separately represented by Mr V Ramakrishnan ("Mr Rama") from V Ramakrishnan & Co. The 1st Plaintiff had apparently sought leave to intervene in OS 909 to apprise the court of issues relating to the Late Mother's estate. The 1st Defendant and Foo Chin Chin, the defendants in OS 909, were represented by M/s Tan See Swan & Co ("TSS").

14 At the first hearing of OS 909 on 21 March 2011, Prakash J felt that it was not appropriate for the Plaintiffs and the 3rd Defendant to be represented by two different sets of solicitors. It was thereafter agreed that Mr de Souza was to submit on behalf of all of them. Mr Rama then left the chambers.

15 OS 909 was ultimately dismissed by Prakash J on 18 May 2011 with costs to be paid by the Plaintiffs and the 3rd Defendant to the 1st Defendant and Foo Chin Chin, as taxed or agreed.

CA 70 of 2011

16 On 9 June 2011, the Plaintiffs and the 3rd Defendant appealed the decision of Prakash J, which led to CA 70 of 2011 ("CA 70"). By this point, the Plaintiffs and the 3rd Defendant had changed their solicitors to Ms Molly Lim SC, Ms Hwa Hoong Luan ("Ms Hwa") and Mr Ang Hou Fu from M/s Wong Tan & Molly Lim LLC ("WTL"), while the 1st Defendant and Foo Chin Chin continued to be represented by TSS.

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17 Further, the 1st Plaintiff engaged M/s Wong Thomas & Leong to file Summons No 5533 of 2011 ("SUM 5533"), again seeking leave for the 1st Plaintiff, in his capacity as co-executor of the Late Mother's estate, to participate in CA 70 to apprise the court of the position taken by each of the beneficiaries in relation to the Late Mother's estate.

18 CA 70 and SUM 5533 were heard together on 29 February 2012. SUM 5533 was dismissed with no order as to costs. The judgment for CA 70 was reserved. On 7 August 2012, the Court of Appeal delivered judgment for CA 70 and made the following orders (collectively "the CA Orders"):[4]

> 1. The Appeal be allowed;
>
> 2. the [1st Defendant] shall take steps to sell [the Property] and distribute the sale proceeds to the beneficiaries according to their respective entitlements under [the Late Father's will];
>
> 3. the sale of the Property shall be effected no later than six months from the date of the judgment hereof, ie, 7th August 2012;
>
> 4. the solicitors for the [Plaintiffs and the 3rd Defendant] [ie, WTL], and the [1st Defendant] [ie, TSS] shall jointly appoint a valuer/agent and a solicitor to effect the sale;
>
> 5. the [1st Defendant] shall, within three months of the date of the judgment hereof, ie, 7th August 2012, furnish an account of the trust to all the beneficiaries; and
>
> 6. the parties are requested to file their submission on costs within 2 weeks hereof.

19 On 31 August 2012, after hearing the parties' submissions on costs, the Court of Appeal further ordered that:

> 7. The costs of the [Plaintiffs and 3rd Defendant] in [CA 70 and OS 909] shall be paid out of the proceeds of the sale of the Property; and
>
> 8. The [1st Defendant] shall bear his own costs.

[4] 2AB 931-933

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Appointment of the 2nd Defendant and attempts to sell the Property

20 Pursuant to the CA Orders, WTL and TSS jointly appointed the 2nd Defendant as the law firm having conduct of the matter. I will elaborate on this appointment further at [177]–[181] below. Ms Eunice Chee ("Ms Chee") of the 2nd Defendant was the solicitor in charge of the matter, and the one whom the parties and their solicitors corresponded with. WTL and TSS also appointed DTZ Debenham Tie Leung (SEA) Pte Ltd ("DTZ") as the valuer/agent for the sale of the Property.

21 An auction for the Property was originally scheduled for 31 October 2012. However, the auction for the Property could not be completed on time. It appears that one reason was that the 1st Defendant had received some unsolicited offers for the Property.[5] In any event, the 1st Defendant requested for the sale of the Property to be postponed, on the basis that he needed time to come up with a reasonable proposal.[6] In late December 2012, DTZ proposed for a public tender to be called instead. WTL agreed to the proposal. However, the 1st Defendant did not agree. By an email dated 4 January 2013, the 1st Defendant stated that the reserve price for the Property was to be $6.5 million, and that he would work it out with the 3rd Defendant and Foo Chin Chin before instructing DTZ on the proposed sale of the Property. On 10 January 2013, he wrote to DTZ stating that the reserve price was $6.5 million, and that he had not agreed for DTZ to do the valuation.[7]

22 Meanwhile, on 4 January 2013, WTL wrote to the 1st Defendant, stating that the Court of Appeal in CA 70 had directed in no uncertain terms

[5] AEIC of Foo Jhee Tuang dated 17 June 2016 para 26

[6] AEIC of Eunice Chee dated 12 May 2016 paras 18, pp 183-185

[7] AEIC of Eunice Chee dated 12 May 2016 paras 19-20, pp 183-185

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that the Property was to be sold. It will be recalled that under the CA Orders, the sale of the Property was to be completed within six months, *ie*, by 7 February 2013. WTL then wrote to DTZ and informed it that the sale of the Property by public tender was to continue. By another letter dated 10 January 2013, WTL warned the 1st Defendant to refrain from writing to DTZ to delay or prevent the sale of the Property, as that would be contrary to the CA Orders. WTL further stated that action would be taken to enforce the CA Orders against the 1st Defendant if he persisted in taking any action to delay or prevent the sale of the Property.[8]

23 The public tender went on, and one of the tenderers ultimately offered $5.8 million for the Property. However, the 1st Defendant refused to sign the Letter of Authorisation and Confirmation to allow the 2nd Defendant to accept the tender bid on his behalf. Instead, he suggested that parties should seek an extension of time for a further six months to sell the Property, so that they could try to secure a sale price of above $6 million.[9]

Summons No 634 of 2013: Enforcement proceedings

24 Convinced that the 1st Defendant was delaying the sale of the Property when the date of completion was scheduled on 19 April 2013, the Plaintiffs and the 3rd Defendant, through WTL, took out Summons No 634 of 2013 ("SUM 634") on 4 February 2013 to enforce the judgment in CA 70, including a prayer asking the court to sanction the sale of the Property for $5.8 million. On 7 February 2013, the 1st Defendant attended at the office of the 2nd Defendant and duly signed the Letter of Authorisation and Confirmation.[10] At

[8] AEIC of Eunice Chee dated 12 May 2016 pp 191-196

[9] AEIC of Eunice Chee dated 12 May 2016 pp 238-240

[10] AEIC of Eunice Chee dated 12 May 2016 para 34, pp 378, 380

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the hearing of SUM 634 on 23 February 2013, the Plaintiffs and the 3rd Defendant were granted leave to withdraw SUM 634, and the cost of the application was fixed at $2,000, to be paid out from the proceeds of the sale of the Property. Ms Chee was informed of this cost order by WTL as well as the 1st Defendant.

25 The tender was ultimately accepted on 8 February 2013[11] and the Property was sold for $5.8 million. The sale was completed on schedule on 19 April 2013.[12] The proceeds of the sale were then deposited into the 2nd Defendant's conveyancing account.

Payments of the sales proceeds by the 2nd Defendant to the 1st Defendant

26 On 10 May 2013, the 2nd Defendant sent an email to the 1st Defendant with a Statements of Accounts relating to the sale of the Property, the deductions to be made, and the amounts to be distributed in relation to the Late Father's and Late Mother's estates. She asked the 1st Defendant to check whether the calculations were correct, and explained that she would need WTL's and Foo Chin Chin's approval before releasing the funds.[13]

27 On 17 May 2013, the 1st Defendant replied to say that the Statement of Accounts was substantively correct, and that "no other lawyer or beneficiary should interfere and obstruct the [distribution] process".[14]

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[11] AEIC of Eunice Chee dated 12 May 2016 p 381

[12] AEIC of Eunice Chee dated 12 May 2016 p 753

[13] AEIC of Eunice Chee dated 12 May 2016 p 775

[14] AEIC of Eunice Chee dated 12 May 2016 p 827

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28 On 20 May 2013, Ms Chee wrote to the 1st Defendant, forwarding him the Statements of Accounts for the Late Father's and Late Mother's estates, as well as a Letter of Authority which was to be signed by "every one named in there in the presence of a solicitor", *ie*, all the surviving beneficiaries. The letter also explained that a sum of $200,000 was being set aside in the 2nd Defendant's conveyancing account to meet the legal costs in connection with "the suits between [the 1st Defendant] and [his] siblings", as well as the "additional work done [by the 2nd Defendant] in attending to the distribution of [the Late Father's and Late Mother's] [e]states".[15]

29 On 21 May 2013, the 1st and 3rd Defendants separately attended at the 2nd Defendant's office to collect the Statements of Accounts relating to the Late Father's and Late Mother's estates. The 1st Defendant alone signed a Letter of Authority, in his capacity as sole executor of the Late Father's estate, confirming the payments to be made to each beneficiary.[16]

30 On 29 May 2013, Ms Chee gave the 1st Defendant a cashier's order issued in his favour for the sum of $1,064,536.02, being his purported shares of the Late Mother's and Late Father's estates, as well as reimbursements for his claims against the two estates. At the same time, Ms Chee gave the 1st Defendant another cashier's order for the sum of $782,542.86, being the purported inheritance due to the estate of the Late Brother. Ms Chee expressly advised the 1st Defendant to open a new bank account under the name "Estate of [the Late Father], Deceased" and to deposit the Late Brother's purported inheritance into the account. She stated that the money "must remain there until a legitimate claimant of [the Late Brother's estate] comes to make

[15] AEIC of Eunice Chee dated 12 May 2016 pp 839-840

[16] AEIC of Eunice Chee dated 12 May 2016 pp 846-847

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his/her/their claims", and that the 1st Defendant was "responsible for ensuring the money is paid to the legitimate claimant" of the Late Brother's estate.[17] Whether the 2nd Defendant should have paid out these amounts to the 1st Defendant was heavily disputed by the parties in the present suit and I shall return to these disputes in due course.

31 Ms Chee also reiterated to the 1st Defendant in a cover letter to the cashier's orders that a sum of $200,000 remained in the 2nd Defendant's conveyancing account for "legal expenses which have not been settled in connection with: (a) the suits between [the 1st Defendant and his siblings] … and (b) [the 2nd Defendant's] fees for the additional work done in attending to the distribution of the [the Late Father's and Late Mother's] [e]states".[18]

32 On 31 May 2013, Ms Chee sent an email to the Plaintiffs, the 3rd Defendant and Foo Chin Chin, informing them that their respective cheques for their shares of the Late Father's estate were available for collection at the 2nd Defendant's office.[19]

33 Shortly after this email was sent, Ms Hwa of WTL called Ms Chee and followed up with an email, essentially stating that since WTL's clients were also party to the 2nd Defendant's appointment, the latter needed to hand over a copy of the Statement of Accounts of the Late Father's estate for confirmation. Ms Hwa also asked Ms Chee to hold the distribution of the sale proceeds in the meantime, until after WTL had replied with their comments on the Statement of Accounts.[20] On 3 June 2013, at a meeting at the office of WTL,

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[17] AEIC of Eunice Chee dated 12 May 2016 pp 870-871

[18] AEIC of Eunice Chee dated 12 May 2016 pp 870-871

[19] AEIC of Eunice Chee dated 12 May 2016 p 875

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Ms Molly Lim asked Ms Chee to arrange to stop payment to the 1st Defendant, but Ms Chee informed Ms Molly Lim that she could not do so as the cashier's orders had already been given to the 1st Defendant a few days before, on 29 May 2016. Ms Chee also received a letter from WTL on the same day, alleging that the Plaintiffs disputed various claims for the expenses incurred on behalf of the Late Father's and Late Mother's estates.[21] Thereafter, there were numerous email exchanges between Ms Hwa, Ms Chee and some of the siblings. This included emails from the 3rd Defendant and Foo Chin Chin on 25 June 2013 stating that they agreed with the calculations of the 1st Defendant,[22] and an email from Ms Chee to WTL on 2 July 2013 stating, *inter alia*, that the 2nd Defendant was not bound to follow WTL's instructions and that the 2nd Defendant would hold the balance pending the instructions of the executor or the court. After further exchanges the present suit was commenced on 26 August 2013, which I shall come to shortly.

BC 127 and 160 of 2013: Taxation proceedings

34 On 13 August 2013 and 24 September 2013, the Plaintiffs (without the 3rd Defendant) filed BC 127 and BC 160 for taxation of the proceedings in CA 70 and OS 909 respectively. On 29 August 2014, these were taxed by Assistant Registrar James Elisha Lee ("AR Lee"). Pursuant to the Plaintiffs' application for a review of AR Lee's taxation order, Prakash J adjusted the sum upwards slightly to an aggregate of approximately $150,000.

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[20] AEIC of Eunice Chee dated 12 May 2016 pp 877

[21] AEIC of Eunice Chee dated 12 May 2016 paras 105-106; pp 936-937

[22] AEIC of Eunice Chee dated 12 May 2016 para 137; pp 1052-1060

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DC 2814 of 2012: the 1st Plaintiff's claim for medical expenses against the Late Mother's estate

35 While the above-related events concerning the estate of the Late Father were unfolding, problems with the estate of the Late Mother also started to surface. These largely concerned medical expenses incurred before her death in 2005. On 14 July 2011, the 1st Plaintiff commenced DC Suit No 2814 of 2012 ("DC 2814") against the estate of the Late Mother, claiming the sum of $99,706.49 as the medical expenses incurred for the Late Mother's treatment at Gleneagles hospital ("the Gleneagles Bills"). This action was ultimately settled. A Deed of Settlement was entered into on 12 November 2012 between the 1st Plaintiff, the 1st Defendant and the 3rd Defendant. The Deed of Settlement states:[23]

> 1. Judgment will be entered in [the 1st Plaintiff's] favour for the sum of $99,706.49 claimed in [DC 2814] within seven (7) days from the date hereof, with each party to bear his own costs. Provided that:
>
> ….
>
> (b) *[The 1st Defendant] shall pay the $2,600 costs ordered in [DC 2814/2012] out of the [Late Mother's] estate…*
>
> …
>
> 5. *The judgment for $99,706.49 entered under paragraph (1)…above will be paid to [the 1st Plaintiff] out of the [Late Mother's] estate…and [the 1st Plaintiff] shall out of the [Late Mother's estate] pay [the 1st Defendant] a sum equivalent to 25% of the [Late Mother's] Gleneagles Bills i.e., the sum of $24,925.* Both payments will be effected on the completion of the sale of the Property
>
> 6. The payments mentioned in paragraph (5) above constitute *full and final settlement of all claims between and amongst [the 1st Defendant, the 3rd Defendant, the 1st Plaintiff and the Late Mother's estate] relating to the [Late Mother's] estate and assets thereof*. Upon the payments mentioned in paragraph (5) above, *neither [the 1st Defendant, the 3rd Defendant, the 1st Plaintiff*

[23] AEIC of Foo Jee Boo dated 18 May 2016 pp 245-248

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> *and the Late Mother's estate] shall make any claim whatsoever against the [Late Mother's] estate or against each other in relation to the [Late Mother's] estate and assets thereof*, apart from their respective entitlement to the [Late Mother's] estate's share of the sales proceeds of the Property under the Late Mother's will dated 18 May 2002.
>
> 7. This Deed does not affect any of the parties' rights accrued under and claim for costs relating to…[CA 70] and such costs will be dealt with between the respective parties' lawyers acting in the said actions/proceedings.
>
> …
>
> 9. This Deed constitutes the whole agreement between the parties hereto relating to its subject matter and no variations hereof shall be effective *unless agreed to by the parties in writing.*
>
> …
>
> [emphasis added]

36 The 1st Plaintiff, the 1st Defendant and the 3rd Defendant further recorded a consent judgment on 14 December 2012. The consent judgment only stated that the Late Mother's estate was to pay the 1st Plaintiff the sum of $99,706.49, and that each party was to bear his or its own cost of the action.[24]

37 The Deed of Settlement and consent judgment provide the backdrop to the disputes in relation to the Late Mother's estate in connection with the present suit. This will be explained further later in the judgment.

The present suit

38 The protracted disagreements between the siblings were not resolved. On 26 August 2013, the 1st and 2nd Plaintiffs, through their then solicitors, M/s Malkin & Maxwell LLP, commenced the present suit against the 1st and 2nd Defendants, bringing the claims which I shall set out at [60]–[65] below.

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[24] AEIC of Foo Jee Boo dated 18 May 2016 p 253

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On 4 August 2014, the Plaintiffs changed their solicitors to M/s Belinda Ang Tang & Partners ("BATP").

39 As originally pleaded, the present suit was brought against the Defendants only in respect of the Late Father's estate. There was no claim made in respect of the Late Mother's or the Late Brother's estates.

40 Numerous interlocutory applications were filed in the present suit, the most essential of which are summarised below.

Amendments of Statement of Claim

41 On 23 October 2013, before the pleadings were deemed closed, the Plaintiffs amended their Statement of Claim pursuant to O 20 r 3 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed). This led to the Statement of Claim (Amendment No 1) ("SOC-1"). The amendments were minor, seeking, for example, an additional relief for interest to be paid on the sums found due. There were still no claims brought against the Late Mother's and Late Brother's estates.

42 On 18 September 2014, the Plaintiffs filed Summons No 4655 of 2014 ("SUM 4655") for leave to amend SOC-1, as indicated in an attached draft. These proposed amendments were fairly significant. In brief, the amendments expanded or added details in respect of the Plaintiffs' claim against the 1st Defendant in relation to the Late Father's estate. The amendments also sought to add new claims against the 1st and 2nd Defendants in respect of the Late Mother's estate and the Late Brother's estate. At the hearing before AR Lee, the Defendants did not object to a number of proposed amendments. As for the contested amendments, AR Lee allowed some, but disallowed a significant number as well. Both the Plaintiffs and the 2nd Defendant were dissatisfied

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with AR Lee's decision. The Plaintiffs filed Registrar's Appeal No 396 of 2014 seeking to reverse the AR's decision disallowing certain paragraphs of the draft. The 2nd Defendant filed Registrar's Appeal No 397 of 2014 seeking to exclude certain paragraphs in the draft that had been allowed. The appeals then came before me.

43 After hearing the parties on 9 February 2015, I allowed the 2nd Defendant's appeal in full, and only partially allowed the Plaintiffs' appeal. These are summarised at [22] of my decision in *Foo Jee Boo and another v Foo Jhee Tuang and another (Foo Jee Seng, intervener)* [2015] SGHC 176 ("the Amendment Judgment"). In essence, I allowed various paragraphs relating to the 2nd Defendant's handling of the Late Father's estate. I also allowed facts relating to the parties' claims in relation to the Late Mother's estate.

44 However, there was considerable confusion over the status in which the parties were suing or being sued in the present suit. In the course of SUM 4655, the parties eventually confirmed that they were suing and being sued in their *personal capacities*: see the Amendment Judgment at [26] and [33]–[36]. That being the case, I disallowed the amendments pleading breach of duty against the 2nd Defendant in relation to the Late Mother's estate. In the case of the claims against the 1st Defendant in respect of the Late Mother's estate, there were *no objections* raised by the 1st Defendant to the amendments, and these were allowed on that basis.

45 The Plaintiffs were dissatisfied with my decision in the Amendment Judgment. On 16 February 2015, they wrote in to court to request for further arguments on the Registrar's Appeals. On 17 February 2015, they filed Summonses No 786 and 787 of 2015, seeking leave to appeal my decision in

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the Registrar's Appeals. On 9 July 2015, I dismissed the applications for leave to appeal and did not change my order in the Registrar's Appeals after hearing their further arguments. I will elaborate on some parts of the Amendment Judgment in due course, when I analyse and set out my decision on the Plaintiffs' case against the 1st Defendant in relation to the Late Mother's estate in the present suit.

46 On 21 July 2015, the Plaintiffs duly amended SOC-1 as directed, which led to the present Statement of Claim (Amendment No 2) ("SOC-2").

Summonses for leave to intervene

47 On 25 November 2014, the 3rd Defendant filed Summons No 5860 of 2014, an application to make himself a party to the present suit and to be allowed to participate in it, on the basis that he was a beneficiary of both the Late Father's and Late Mother's estates. On 4 February 2015, AR Zhuang Wenxiong granted the application. The 3rd Defendant was subsequently added as a defendant to the present suit.

48 I should add that on 23 September 2015, Foo Chin Chin also applied for leave to intervene in the present suit. However, she subsequently withdrew her application at a hearing before me on 7 March 2016, indicating that she no longer wished to contest the proceedings.

Payment into court and payments out of the minimum undisputed sum

49 On 24 March 2014, I ordered the 2nd Defendant to pay the sum of $3,897,359.97, being the balance of the sale proceeds of the Property still held in its conveyancing account, into court pending the determination of the present suit. This was duly done on 29 December 2014.

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50 On 1 September 2015, the Plaintiffs brought Summons No 4346 of 2015 ("SUM 4346") seeking to have the minimum undisputed portions of their shares in the Late Father's estate, quantified at $758,495.68 each ("the Minimum Sum"), to be paid out of the sum paid into court on 29 December 2014. The detailed computation of this figure is set out at [63] below. I granted this application on 7 March 2016.

51 On 15 March 2016, the 3rd Defendant filed Summons No 1291 of 2016 ("SUM 1291") also seeking a payment out of his Minimum Sum. On 22 March 2016, Foo Chin Chin, not being a party to the present suit, filed OS 291 of 2016 ("OS 291") for payment out of her Minimum Sum pursuant to O 90 r 8 of the Rules of Court. I granted orders-in-terms of both applications on 20 April 2016.

Summary of positions

52 In summary, as a result of the abovementioned events and legal proceedings, the positions of the beneficiaries of the Late Father's estate just before the trial of the present suit were as follows:

Name	**Capacity**	**Share**	**Status**
Yap Wee Kien (deceased)	Late Mother Executor and trustee	1/7	See [53] below
Foo Jee Fong (deceased)	Late Brother	1/7	**$782,542.86** paid by the 2nd Defendant to the 1st Defendant to hold for the

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			Late Brother (see [30] above).
Foo Li Li	2nd Plaintiff	1/7	Minimum Sum of **$758,495.68** paid out pursuant to Order of Court dated 7 March 2016 in SUM 4346 (see [50] above).
Foo Jee Seng	3rd Defendant	1/7	Minimum Sum of **$758,495.68** paid out pursuant to Order of Court dated 20 April 2016 in SUM 1291 (see [51] above).
Foo Jhee Tuang	1st Defendant Sole surviving executor and trustee	1/7	**$835,181.57** paid by the 2nd Defendant to the 1st Defendant (see [30] above).
Foo Chin Chin	Sister, who is not a party to the present suit	1/7	Minimum Sum of **$758,495.68** paid out pursuant to Order of Court dated 20 April 2016 in OS 291 (see [51] above).
Foo Jee Boo	1st Plaintiff	1/7	Minimum Sum of

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			$758,495.68 paid out pursuant to Order of Court dated 7 March 2016 in SUM 4346 (see [50] above)

53 The positions of the beneficiaries of the Late Mother's estate just before the trial of the present suit were as follows:

Name	**Capacity**	**Share**	**Status**
Foo Jee Seng	3rd Defendant	1/4	Not paid. Sum remains in court.
Foo Jhee Tuang	1st Defendant Co-executor and trustee	1/4	**$229,354.47** paid by the 2nd Defendant to the 1st Defendant (see [30] above).
Foo Jee Boo	1st Plaintiff Co-executor and trustee	1/2	Not paid. Sum remains in court.

54 After the payments out mentioned above, the sum left in court is **$863,377.25** (being the total sum paid into court, $3,897,359.97 *less* the four payments out of $758,495.68 each).

The Plaintiffs' discharge of solicitors

55 It should be noted that just 11 days before the trial for the present suit, the Plaintiffs discharged their solicitors, BATP, and opted to act in person.

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Proceedings subsequent to the present suit

56 After the present suit was under way, two other legal proceedings were commenced in relation to the Late Mother's and Late Brother's estates.

Suit No 284 of 2016: proceedings in relation to the Late Mother's estate

57 On 23 March 2016, Suit No 284 of 2016 ("S 284") was filed by the 1st Plaintiff, in his *representative capacity* as co-executor and trustee of the Late Mother's estate (contrast [44] above). S 284 is most likely a consequence of the Amendment Judgment, in which I had held that the Plaintiffs had no standing to bring claims against the 2nd Defendant in relation to the Late Mother's estates when suing in their *personal capacities* (see [71] of the Amendment Judgment). S 284 was brought primarily against the 2nd Defendant. The 1st Defendant was joined as defendant because he refused to join the 1st Plaintiff in suing the 2nd Defendant. The claims and reliefs of S 284 arise out of substantially the same facts as those raised in relation to the Late Mother's estate in the present suit. In S 284, the 1st Plaintiff wants the 2nd Defendant to account for all monies received by the 1st Defendant in relation to the Late Mother's estate, including overpayment quantified at $89,678.86, and for the 2nd Defendant to indemnify and pay the 1st Plaintiff for any shortfall the latter suffers if he fails to receive his entitlement of the Late Mother's estate.

58 In June 2016, the Plaintiffs, through BATP, orally applied to consolidate S 284 and the present suit, but this was dismissed by AR Lee.[25] S 284 is currently still at the interlocutory stages, and has not yet come to trial.

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[25] 1st Defendant's closing submissions para 7

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Suit No 811 of 2016: proceedings in relation to the Late Brother's estate

59 On 27 July 2016, Suit No 811 of 2016 was commenced by Chen Yu, the Late Brother's widow, against the 1st Defendant. Chen Yu alleged that the Late Brother was entitled to at least $782,542.86 as 1/7th beneficiary of the Late Father's estate. She claimed for the share of $782,542.86 which she alleged the 1st Defendant had neglected, ignored and/or failed to return to the Late Brother's estate. The Late Brother's estate is, as I mentioned earlier, not an issue in the present suit.

The pleadings

The Plaintiffs' claims

60 Having outlined the history of litigation between the parties, I now set out the Plaintiffs' case in the present suit, as pleaded in SOC-2.

Claims in relation to the Late Father's Estate

61 The Plaintiffs claim that the 1st Defendant had breached the CA Orders, as well as his duties as trustee of the Late Father's estate,[26] specifically by:

> (a) failing to render an account of the trust to the Plaintiffs and the other beneficiaries of the estate, and in particular failing to render an account of the rent proceeds collected from the renting out of the Property within the three-month time limit set by the Court of Appeal in CA 70;

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[26] SOC-2 para 40

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(b) failing to properly calculate the beneficiaries' respective entitlements under the Late Father's estate due to the erroneous inclusion or omission of claims against the Late Father's estate;

(c) failing to properly distribute or to properly instruct the 2nd Defendant to distribute the Late Father's estate; and

(d) wrongfully instructing the 2nd Defendant to release to himself sums of money above and beyond what he is entitled to.

62 The Plaintiffs claim that the 2nd Defendant had represented that it was jointly appointed by the Plaintiffs and the 1st Defendant and would take instructions from both the 1st Defendant and WTL (as solicitors for the Plaintiffs). However, the 2nd Defendant allegedly breached its fiduciary duties owed to the Plaintiffs, and acted contrary to the terms of its engagement and its representations,[27] specifically by:

(a) wrongly acting on the sole and unilateral instructions of the 1st Defendant in relation to the Late Father's estate (in particular in paying out the 1st Defendant's share), without prior consultation or notification to the Plaintiffs or verifying the liability of the Late Father's estate;

(b) wrongly setting aside only $200,000 as legal costs for CA 70 and OS 909; and

(c) wrongly providing for additional expenses claimed by the 1st and 3rd Defendants, thus enabling the 1st Defendant to inflate his share in the Late Father's estate, to the detriment of the Plaintiffs.

[27] SOC-2 paras 27 and 37

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63 According to the Plaintiffs, the correct calculation of each beneficiary's minimum share in the Late Father's estate (the Minimum Sum referred to at [50]) is as follows:[28]

Price of the Property sold	**$5.8 million**
Less (agreed expenses)	
Property Tax	$234.67
DTZ Valuation	$2,140
Agency commission	$46,545
2nd Defendant's costs	$6,641.55
Expenses incurred by 1st Defendant (admitted)	$10,202.20
Less (items to be set aside for adjudication)	
Legal fees for CA 70 & OS 909	$350,000
Legal fees for SUM 634	$2,000
Expenses incurred by 1st Defendant (disputed)	$42,436.50 This includes: -Repairs to the Property: $37,436.50 -Transportation costs for removal of rubbish: $5,000
Expenses incurred by 3rd Defendant	$14,000 (removal of altar and religious ceremonies)
Expenses incurred by 1st Plaintiff	$16,330.31 (renovation works and other miscellaneous expenses)
Net amount for distribution	***$5,309,469.77***
Each beneficiary's minimum	**$758,495.68**

[28] SOC-2 p 39

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1/7th share	
1st Defendant's share	**$768,697.88** (Minimum Sum *plus* $10,202.20 for admitted expenses incurred by the 1st Defendant)
Overpayment to the 1st Defendant	**$66,483.69** ($835,181.57 paid to the 1st Defendant (see [52] above) *less* $768,697.88 which he is entitled)

Claims in relation to the Late Mother's estate

64 The Plaintiffs further claim that the 1st Defendant had breached his duties as one of the joint executors and trustees of the Late Mother's estate,[29] as well as the Deed of Settlement, in particular by:

(a) wrongfully claiming his own expenses against the Late Mother's estate, resulting in an overpayment to himself;

(b) failing to act fairly towards the beneficiaries when he preferred and allowed claims of some beneficiaries to be made against the Late Mother's estate, but not similar claims of the Plaintiffs.

65 According to the Plaintiffs, the correct calculation of each beneficiary's minimum share in the Late Mother's estate is as follows: [30]

Value of Late Mother's 1/7th share	**$758,495.68** (see [63] above)

[29] SOC-2 para 46

[30] SOC-2 p 40

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in Late Father's estate	
Less (1st Plaintiff's claims)	
The Gleneagles Bills	$99,706.49
Legal costs of DC 2814	$2,600
Less (items to be set aside for adjudication)	
Expenses incurred by 1st Defendant for Late Mother's medical expenses	$22,312.60
Expenses incurred by 1st Defendant for Late Mother's funeral expenses	$25,923.60
Expenses incurred by 3rd Defendant for Late Mother's medical expenses	$4,709.62
Expenses incurred by Foo Chin Chin for Late Mother's medical expenses	$5,123.99
Legal fees incurred by 1st Plaintiff in relation to Late Mother's estate	$39,416.96
Net amount for distribution	**$558,702.42**
1st Defendant and 3rd Defendant's share (25% each)	**$139,675.61 each**
1st Plaintiff's share (50%)	**$381,657.70** ($279,351.21 as 50% share *plus* $99,706.49 for the Gleneagles Bills *plus* $2,600 for legal costs of DC 2814)
Overpayment to the 1st Defendant	**$89,678.86** ($229,354.47 paid to the 1st Defendant (see [53] above) *less* $139,675.61 which he is entitled)

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The 1st Defendant's Defence

The Late Father's estate

66 In relation to the Late Father's estate, the main lines of the 1st Defendant's Defence are as follows:

(a) There was no refusal on the part of the 1st Defendant to account for the rent money, as he had not been in receipt of any rental income, other than what the 1st Plaintiff had already known, and which was disclosed in OS 909 (see [87] below).[31] In fact, it was the 1st Plaintiff that had rented out various rooms in the Property to the tenants and received rents;[32]

(b) The amounts of $52,638.70 and $14,000 were legitimately incurred, and thus debts verily owed by the Late Father's estate to the 1st and 3rd Defendants respectively;[33] and

(c) The 1st Defendant never agreed to pay $350,000 as legal costs for OS 909 and CA 70. The sum of $200,000 was more than sufficient to defray any legal costs incurred in CA 70 and OS 909.[34]

67 According to the 1st Defendant, each beneficiary's entitlement to the Late Father's estate was correctly calculated as follows:[35]

Price of Property sold	**$5.8 million**

[31] 1st Defendant's Defence para 17

[32] 1st Defendant's Defence para 11

[33] 1st Defendant's Defence paras 26 and 35

[34] 1st Defendant's Defence paras 14 and 34

[35] SOC-2 p 39

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Less	
Property Tax	$234.67
DTZ Valuation	$2,140
Agency commission	$46,545
2nd Defendant's costs	$6,641.55
Expenses incurred by 1st Defendant	$52,638.70 This includes: -Expenses admitted by Plaintiffs: $10,202.20 -Repairs to the Property: $37,436.50 -Transportation costs for removal of rubbish: $5,000
Expenses incurred by 3rd Defendant	$14,000 (removal of altar and religious ceremonies)
Legal fees	$200,000
Net value for distribution	***$5,477,800.08***
Each beneficiary's minimum 1/7th share	**$782,542.86**
1st Defendant's share	**$835,181.56** (Minimum Sum *plus* $52,638.70 as legitimate expenses incurred)
3rd Defendant's share	**$796,542.86** (Minimum Sum *plus* $14,000 as legitimate expenses incurred)

The Late Mother's estate

68 In relation to the Late Mother's estate, the main lines of the 1st Defendant's Defence are as follows:

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(a) He disputes the quantum of $99,706.49 for the Gleneagles Bills.[36] He also denies that the sum was owed to the 1st Plaintiff, as he states that there was a verbal agreement between the 1st Defendant and the 1st Plaintiff that the latter had waived this claim.[37]

(b) He alleges that he had also incurred expenses for the Late Mother's medical fees.[38]

69 According to the 1st Defendant, each beneficiary's entitlement to the Late Mother's estate should be calculated as follows:[39]

Value of 1/7th share in Late Father's estate:	**$782,542.87**
Less	
Expenses incurred by 1st Defendant for Late Mother's medical expenses	$22,312.60
Expenses incurred by 1st Defendant for Late Mother's funeral expenses	$25,923.60
Expenses incurred by 3rd Defendant for Late Mother's medical expenses	$4,709.62
Expenses incurred by Foo Chin Chin for Late Mother's medical expenses	$5,123.99
Net value for distribution	***$724,473.06***
1st Defendant's share	**$229,354.46** ($181,118.26 as 25% share] *plus* $22,312.60 for medical

[36] 1st Defendant's Defence para 39

[37] 1st Defendant's Defence para 32

[38] 1st Defendant's Defence para 32

[39] AEIC of Foo Jhee Tuang p14-15

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	expenses *plus* $25,923.60 for funeral expenses)
3rd Defendant's share	**$185,827.88** ($181,118.26 as 25% share *plus* $4,709.62 for medical expenses)
1st Plaintiff's share (50%)	**$362,236.53**

The 2nd Defendant's Defence and Notice of Indemnity and/or Contribution against the 1st Defendant

70 In brief, the 2nd Defendant's main lines of defence are as follows:[40]

(a) The 2nd Defendant was appointed to act for the 1st Defendant *only*, as the sole surviving executor and trustee of the Late Father's estate. The 2nd Defendant was obliged only to act on the instructions of the 1st Defendant;

(b) The Plaintiffs were not the 2nd Defendant's clients. At the material time, the Plaintiffs' solicitors were WTL, who advised, assisted and represented them. No duties were therefore owed by the 2nd Defendant to the Plaintiffs;

(c) The 2nd Defendant was only appointed to act in the sale of the Property, and not the distribution of the proceeds of the sale; and

(d) The computation of each beneficiary's 1/7th share of the Late Father's estate at $782,547.87 was correct.

71 The 2nd Defendant issued a Notice of Indemnity and/or Contribution against the 1st Defendant on 30 July 2014, and filed its Statement of Claim

[40] 2nd Defendant's Defence (Amendment No 2) dated 6 August 2015

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against the 1st Defendant on 2 June 2016. It sought a contribution or indemnity from the 1st Defendant against any sums that the 2nd Defendant is held liable to pay the Plaintiffs, on the ground that the 1st Defendant ought to have known that the 2nd Defendant's appointment was to act for the 1st Defendant. Therefore, if the Plaintiffs suffered any loss as a result of the distribution, this was caused by the 1st Defendant, since the 2nd Defendant only acted on the instructions, confirmation and authorisation of the 1st Defendant.

The Late Father's estate: claims against the 1st Defendant

The law on the powers and duties of an executor

72 Before turning to the specific claims brought by the Plaintiffs against the 1st Defendant, it will be helpful to set out briefly the powers and duties of an executor, such as the 1st Defendant.

73 KS Rajah JC (as he then was) provided a succinct summary of the duties of executors in *Lee Yoke San and another v Tsong Sai Sai Cecilia and another* [1992] 3 SLR(R) 516 ("*Lee Yoke San*") at [35]:

> An executor "*calls in" the estate* that collects and converts the assets into cash, and *pays all the funeral and testamentary expenses, estate duty, debts and legacies*. When he has done this, he has discharged his duties as an executor. Then he steps into the shoes of a trustee. He owes a *fiduciary duty* to the beneficiaries, whether he is an executor or trustee.
>
> [emphasis added]

74 I shall now elaborate on the duties owed by an executor as summarised in the preceding paragraph.

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Calling in assets

75 First and foremost, an executor is obliged to "call in" the deceased's real and personal estate. In other words, he has to determine the extent of the assets and liabilities of the deceased, and then act diligently and reasonably in realising the assets. In this respect, if the deceased died testate, his will would be a guide, although not necessarily a comprehensive one, as to the assets that he owned: G Raman, *Probate and Administration in Singapore and Malaysia* (LexisNexis, 3rd Ed, 2012) at pp 157 and 159 ("*Probate and Administration*"). Where the estate is small, like the present case in which the estate consists of a single asset, the carrying out of this duty does not normally pose an issue.

Paying funeral and testamentary expenses

76 Section 57(3) of the Probate and Administration Act (Cap 251, 1985 Rev Ed) allows for the estate to be applicable towards the discharge of the funeral, testamentary and administration expenses of the deceased.

77 Testamentary and administration expenses are "expenses incident to the proper performance of the duty of the executor": *Sharp v Lush* [1879] 10 Ch D 468 ("*Sharp v Lush*") at 470. They include, but are not limited to:

(a) The costs of obtaining probate or letters of administration;

(b) Legal costs occasioned in commencing a suit to obtain assistance of the court to decide on questions relating to the ascertainment of debts and liabilities due from the deceased's estate, the payment of such debts and liabilities, and the legal and proper distribution of estate among persons entitled. The suit can be instituted either by the executor himself or by the beneficiaries in a proper case. The costs that are allowed includes the costs by the person who

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instituted the suit, as well as the costs of other parties to the suit: *Sharp v Lush* at 470-471; and

(c) The costs of taking the advice of a solicitor and counsel outside the administration suit as to the distribution of the estate: *Sharp v Lush* at 471.

Paying debts

78 In addition, it is the duty of the executor to pay off the debts of the deceased. This duty is owed to the creditors as well as the beneficiaries. *In Re Tankard, Tankard v Midland Bank Executor and Trustee Company, Limited* [1942] 1 Ch 69 at 72 summarised this duty in the following terms:

> …it is the duty of executors, as a matter of the due administration of the estate, *to pay the debts of their testator with due diligence* having regard to the assets in their hands which are properly applicable for that purpose, and in determining whether due diligence has been shown regard must be had to all the circumstances of the case…The duty is owed not only to creditors, *but also to beneficiaries*, for the ultimate object of the administration of an estate is to place the beneficiaries in possession of their interest and that object cannot be fully achieved unless all debts are satisfied.
>
> [emphasis added]

79 Prior to the conveyance or distribution of the deceased's assets, it would be prudent for the executor to protect himself by giving notice in the *Gazette* of his intention to make a conveyance or distribution of the assets, and requiring any person interested to send to the executor particulars of his claim in respect of the assets within a stipulated period that is not less than two months: see s 29 of the Trustees Act (Cap 337, 2005 Rev Ed). If the necessary advertisements are placed, the executor will be at liberty after the expiration of the time specified in the advertisements to distribute the assets, having regard only to the claims of which he has notice.

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Rendering accounts of the estate

80 It is also the duty of the executor to keep proper accounts of the administration of the estate that they are dealing with. If called upon by the beneficiaries to render accounts, they are obliged to furnish such accounts and allow the beneficiaries to inspect the accounts. The accounts would be required to show the monies and assets received by the executor and how he had dealt with these monies and assets: see *Halsbury's Laws of Singapore: Probate, Administration and Succession* at para 190.102, citing *Thompson v Dunn* (1870) LR 5 Ch App 573 at 576; see also *Foo Jee Seng and others v Foo Jhee Tuang and another* [2012] 4 SLR 339 ("*Foo Jee Seng (CA)*") (the Judgment in CA 70) at [86]–[87]. It is also a requirement before the executor winds up the administration that he submits accounts for the beneficiaries' perusal and approval prior to distribution: *Probate and Administration* at p 167.

81 The request for an account and any suit commenced for an account are not based on any allegations of impropriety on the part of the executor, but simply arise from the *fiduciary relationship* between a fiduciary (the executor) and the object of the fiduciary duty (the beneficiaries): *A-G v Cocke* [1988] Ch 414 ("*A-G v Cocke*") at 420. Naturally, if there is an allegation of a breach of fiduciary duty, the beneficiaries would all the more be entitled to an account: *Foo Jee Seng (CA)* at [87]. The only exception occurs where it would be oppressive to require the executor to so account, or for some other good reason, the court in its discretion thinks it wrong to make an order: *A-G v Cocke* at 420.

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General duty to act in best interest of the beneficiaries

82 Because an executor is in a fiduciary relationship with the beneficiaries (see *Lee Yoke San* at [35] and *A-G v Cocke* at 420), it is the executor's foremost duty to act in the best interests of the beneficiaries when carrying out his duties or exercising his powers, in the sense that he must do his best to promote the beneficiary's affairs: *Halsbury's Laws of Singapore: Equity and Trusts* at para 110.213.

83 Where an executor is to act for the benefit of a class of persons, such as multiple beneficiaries of a will, he must advance their common interests, holding the scales evenly among the beneficiaries, and act with detachment and impartiality: *Probate and Administration* at p 165. I should add that this is especially important when the executor is *himself* a beneficiary, such as the 1st Defendant is in the present case. In such a case, it is all the more crucial that he cannot prefer his own interest over that of other beneficiaries.

The Plaintiffs' claims against the 1st Defendant

84 Having set out the duties owed by an executor, I now turn to the Plaintiffs' claims against the 1st Defendant in relation to the Late Father's estate. The main issue is whether the 1st Defendant's acts and omissions breached the CA Orders and his duties as the executor of the Late Father's estate. The relevant acts and omissions broadly fall into three categories: (i) his failure to provide further accounts of rent received from the Property; (ii) his setting aside of only $200,000 and not $350,000 for legal costs of CA 70 and OS 909; and (iii) his reimbursements of various expense claims by himself and the 3rd Defendant, while not taking into account the claims by the Plaintiffs. I shall deal with each of them in turn.

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Account of rent

85 To recapitulate, one of the CA Orders is that "the [1st Defendant] shall, within three months of the date of the judgment hereof, *ie*, 7th August 2012, furnish an account of the trust to all the beneficiaries" (see [18] above). I pause to observe that even in the absence of the CA Orders, it is incumbent upon the 1st Defendant, as executor of the Late Father's estate, to render an account of the estate when required to do so, by virtue of his fiduciary relationship with the beneficiaries (see [80] – [81] above).

The parties' submissions

86 The Plaintiffs submit that the 1st Defendant failed and/or refused to provide an account of the trust, and in particular, the rent proceeds he received from the Property to date, despite the express CA Orders which were not varied.[41] It is clear that the Property, at the very least, had been rented out from time to time. Private investigators from Covert Investigations Pte Ltd were hired, and the investigation report revealed that the Property was occupied by no less than 16 persons, all of whom were foreigners and most of whom were Myanmar nationals.[42] The Report covered the period 23 August 2011 to 14 September 2011.The account of rent that the 1st Defendant provided in his Affidavit of Evidence-in-Chief ("AEIC") in OS 909 was plainly inadequate, as the CA was aware of the account of rent in his AEIC but nonetheless made the order for him to provide an account of the trust in CA 70.[43]

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[41] Plaintiffs' submissions paras 8, 43(d) and 82

[42] AEIC of Foo Jee Boo dated 18 May 2016 para 20(c) and p 146; Plaintiffs' submissions para 87(c).

[43] Plaintiffs' submission para 87(f)

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87 The 1st Defendant did not dispute that the CA had ordered that he was to provide an account of the trust, including the rent proceeds. However, his position was that there were no additional rent proceeds to disclose, as all the rent collected and the expenses incurred between September 2009 to September 2010 had been disclosed at para 53 of the AEIC dated 22 October 2010, which was filed in OS 909.[44] These are reproduced below:

Month	**Rental collected (S$)**	**Expenses (S$)**	**Balance (S$)**
Sep 2009	1,130	400	730
Oct 2009	1,130	1,100	760
Nov 2009	830	700	720
Dec 2009	830	1,000	250
Jan 2010	830	700	850
Feb 2010	480	700	850
Mar 2010	480	800	310
Apr 2010	480	600	190
May 2010	350	300	240

[44] AEIC of Foo Jhee Tuang dated 17 June 2016 para 64

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Jun 2010	350	500	90
Jul 2010	350	500	-70
Aug 2010	200	200	-70
Sep 2010	200	200	-70

88 Further, the 1st Defendant submits that at the hearing of SUM 634, the Plaintiffs' enforcement application, the 1st Defendant had explained his predicament to the Court of Appeal. Since leave was granted to withdraw the summons with no further order to account, he did not therefore have a continuing duty to account for his trust.[45]

89 In any event, the 1st Defendant stated that it was not possible for him to continue renting the Property out to foreign workers, as a letter from the Urban Redevelopment Authority ("URA") dated 16 April 2010 ("the URA letter") had explicitly stated that URA had not approved the use of the Property as a workers' dormitory, and that the unauthorised use must cease within one month from the date of the letter in order to avoid enforcement action being taken.[46]

90 At trial, the 1st Defendant clarified that after 16 May 2010 (the one-month deadline set by URA), "the house was empty" all the way *until "somewhere after CA 70"*.[47] Thereafter, the 1st Defendant said that he rented

[45] 1st Defendant's submissions para 76

[46] AEIC of Foo Jhee Tuang dated 17 June 2016 p 98

[47] Transcript 27 July 2016 61:1-62:12

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out one of the rooms in the house to some Myanmar nationals for about seven to eight months. These tenants had stayed in the Property to take care of and maintain the premises.[48] The sums collected from these occupants were minimal, and only defrayed the costs of utilities and gardening.[49]

91 The 1st Defendant also alleges that it was the 1st Plaintiff who had rented out various rooms in the Property to various tenants until 2010.[50] For this allegation, he relies on a letter dated 1 March 2010,[51] in which 1st Plaintiff informed the occupants that they could continue staying in the Property, but were to pay rental to the Late Father's estate from 1 March 2010. This showed that the 1st Plaintiff was clearly aware of the identity of the tenants and was even able to list their identification numbers. The 1st Plaintiff, however, asserted that he had been working overseas at least since 2008 and could not have been renting out the Property then.[52]

92 I pause here to note that after the death of the Late Father in 1979, the Late Mother was the sole executor of the Late Father's Estate. It would be recalled that the 1st Defendant did not actually become appointed as the executor until 11 January 2010 (see [7] above). It appears that the Late Mother resided in the Property together with the Late Brother up to the time of their passing. It is unclear when the Late Brother's wife left the property. It is also unclear when the 2nd Plaintiff, 1st Defendant and 3rd Defendant ceased to reside at the Property. Indeed, even in the case of the 1st Plaintiff, the

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[48] Transcript 27 July 2016 62:11-19; 63:11-13

[49] 1st Defendant's submissions para 78; Transcript 27 July 2016 63:6-10; 76:1-3, 25-27

[50] AEIC of Foo Jhee Tuang dated 17 June 2016 para 65; Transcript 27 July 2016 163:13-16

[51] AEIC of Foo Jhee Tuang dated 17 June 2016 p 100-101

[52] Transcript 27 July 2016 70:18-71:16

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evidence as to his residence in the Property was confused. On the whole, it seems that he was working in Malaysia from 2006 to 2007. It appears that he returned to Singapore in 2007.[53] Thereafter, on 8 August 2008, he left to work in Qatar (which is now his place of residence).[54] However, his evidence was rather inconsistent. At one point, the 1st Plaintiff asserted that he never went overseas while his mother was alive (*ie,* before 25 July 2005).[55] A short while later, the 1st Plaintiff said that "[he had] been overseas *since the year 2002*" [emphasis added].[56] The general point is that it is unclear as to which sibling was in effective day-to-day control of the Property. The evidence as to when the Property or individual rooms in the Property were rented out, and to whom, was also thin and confused. That said there is some evidence that the 1st Defendant visited the property from time to time and was handed sums of cash for utility bills in 2012.[57]

Decision

93 In my view, the 1st Defendant clearly owes a duty to provide an account of the trust, including rent proceeds, pursuant to the CA Orders and also under common law (see [80]–[81] above). I agree with the Plaintiffs that the Court of Appeal had clearly been aware of the account set out in the 1st Defendant's AEIC in OS 909, but had nonetheless ordered an account of the trust. This must mean that the Court of Appeal still considered it necessary to impose a positive duty on the 1st Defendant to account for rental income.

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[53] Transcript 22 July 2016 151:19-27; 30-31

[54] Transcript 22 July 2016 152:1-13

[55] Transcript 22 July 2016 151:19-20

[56] Transcript 22 July 2016 152:13-15

[57] Transcript 27 July 2016 160:24-30

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94 The 1st Defendant argues that because leave was granted in SUM 634 to withdraw the enforcement application, with no further order as to his duty to account, this must have meant that he was no longer under a continuing obligation to account for the rent. I am unable to agree. Instead, the withdrawal of SUM 634 merely signified that the the Plaintiffs and the 3rd Defendant no longer wished to *enforce* the CA Orders at that time, but did not go towards *negating* his continuing duty to provide an account in accordance with the CA Orders. The Court of Appeal, in granting leave to withdraw SUM 634, was not making any judgment on the merits of the CA Orders, nor was it varying them.

95 One of the 1st Defendant's arguments is that he was not in receipt of any rental income, other than those disclosed in his AEIC in OS 909. This is clearly not the case in light of the Covert Investigation Report (see [86] above), which related to investigations carried out between 23 August and 14 September 2011 (*ie*, *before* the CA Orders were made). The Covert Investigation Reports showed that there were still occupants in the Property. These rental receipts were not recorded in the 1st Defendant's AEIC in OS 909, which only covered the period from September 2009 to September 2010. The Covert Investigation Report was not seriously challenged by the 1st Defendant at trial. I am more inclined to give greater weight to the Covert Investigation Report than the 1st Defendant's contrary stance at trial, where he made the bare assertion (with vague details) that the Property was empty and not rented out until sometime *after* CA 70.[58]

96 The URA letter is also not of much assistance to the 1st Defendant. While the URA letter prohibited the use of the Property as a *workers'*

[58] Transcript 27 July 2016 61:1-62:12

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dormitory, it did not prevent any rental of the Property at all. It therefore does not preclude the rental of the Property to any persons other than foreign workers. It cannot be used to prove that the 1st Defendant never rented out the Property after the receipt of the URA letter.

97 A related argument, raised at trial, is that the 1st Defendant did not receive any rental income because any money paid was used to defray utility and gardening bills of the Property. In my view, this is simply irrelevant. The CA Orders only provide that the 1st Defendant has to provide an account of the trust. They do not state that the 1st Defendant must only so account if he has made an *overall profit*, *ie,* if the rent he received exceeded the expenses incurred in the upkeep of the Property. All that the 1st Defendant is obliged to do is to provide an account of the rent he received and expenses incurred during the relevant periods, even if, like in July, August and September 2010, he incurred a net loss. This, in my opinion, should not be an unduly onerous task.

98 However, I should add that based on the material before the court, it is unlikely that the account will disclose "very substantial" income received by the 1st Defendant, if at all. Indeed, the Court of Appeal in CA 70 had observed (at [8]) that the net rental income from the Property was not high, ranging from $1,130 in September 2009 to $200 in September 2010. Nonetheless, even if any rent after September 2010 was small, this does not detract from the 1st Defendant's continuing duty to provide such account.

99 I now deal briefly with the 1st Defendant's assertion that it was *the 1st Plaintiff* who had been renting out the Property. The only evidence that the 1st Defendant relied on was the letter from the 1st Plaintiff to several foreign nationals dated 1 March 2010.[59] It appears from the letter that the 1st Plaintiff

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was dissatisfied with the 1st Defendant's administration of the Late Father's estate, and had instructed the tenants to pay rent to the Late Father's estate, presumably instead of to the 1st Defendant. The 1st Plaintiff did not, at any point in the letter, state that he was the one who had rented out the Property to the tenants. In fact, under cross-examination, the 1st Plaintiff clarified that these tenants were staying in the Property "rent-free" in exchange for their taking care of the Property while the 1st Plaintiff was overseas.[60] They also paid the utilities bills and other outgoings. Although the rest of the siblings (except the Late Brother) had moved out of the Property, the 1st Plaintiff denies that he was in control of it and states that the Property was a "family house" and that the siblings could go back to it at any time.[61] In light of the whole of the evidence, I am not satisfied that the 1st Plaintiff had received any rent from the Property.

Costs of CA 70 and OS 909

100 I now move on to another of the CA Orders for the costs of the Plaintiffs and the 3rd Defendant in CA 70 and OS 909 that was to be paid out of the proceeds of the sale of the Property. The Court of Appeal did not, however, determine the quantum of the costs to be paid. The quantum became a substantial bone of contention in the present suit.

The Plaintiffs' submissions

101 According to the Plaintiffs, there was an agreement between the parties for costs of CA 70 and OS 909 to be fixed at $350,000.[62] This amount was

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[59] AEIC of Foo Jhee Tuang pp 100-101

[60] Transcript 22 July 2016 66:23 – 69:1

[61] Transcript 22 July 2016 69:29-70:13

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supposed to be set aside from the sale proceeds of the Property, but was not. In support of their position, the Plaintiffs refer to the following series of correspondence.

102 On 12 November 2012, WTL wrote to the Plaintiffs and the 3rd Defendant, asking them to "please confirm whether you have spoken with [the 1st Defendant] as to whether he is agreeable to have your costs of the Appeal [*ie*, CA 70] and the court below [*ie*, OS 909] fixed at $350,000.00 (inclusive of disbursements)." WTL further stated that "[i]f there is no agreement by [the 1st Defendant] as to the costs, we will have to tax the costs. Please let us have [the 1st Defendant]'s agreement by close of business, Monday, 19 November 2012, failing which we will proceed to tax the costs".[63]

103 Later that day, the 3rd Defendant forwarded the email attaching the WTL letter to the 1st Defendant, asking him to "please read the attached file" and said that the 1st Defendant could call him later".[64]

104 On 13 November 2012, the 1st Defendant replied to the Plaintiffs and the 3rd Defendant, stating that "I have no problems to the cost if all our legal cost all can claim to estate, with receipt, we don't want to have further damage and cost incur[r]ed. Cost for tax is not necessary, we siblings have to sit down and discuss with answ[e]r and in Win Win situation" ("the 13 November 2012 email").[65]

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[62] Plaintiffs' submissions para 99

[63] 2AB 1098

[64] 2AB 1099-1100

[65] 2AB 1099

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105 On 19 November 2012, the 3rd Defendant wrote to WTL, copying the Plaintiffs, stating, "I had spoken to [the 1st Defendant] and he was agreeable to have our cost of the Appeal [*ie,* CA 70] and the court below [*ie,* OS 909] fixed at $350,000.00 (inclusive of disbursements)... Thus, do not proceed to tax the costs" ("the 19 November 2012 email").[66]

106 On 23 November 2012, Ms Hwa wrote to the 3rd Defendant, copying the Plaintiffs, stating "We note your instructions that [the 1st Defendant] has agreed on the Appellant's costs for [CA 70] and [OS 909] at $350,000 in lieu of taxation. As such, we forward the agreement on costs for [the 1st Defendant] to sign and return to us the duly signed original agreement for our record". Ms Hwa duly attached the agreement on costs to be signed by the 1st Defendant.[67]

107 The Plaintiffs argue that the above correspondence was evidence that the 1st Defendant had agreed to pay the sum of $350,000, and that he subsequently reneged on the agreement.[68]

The 1st and 3rd Defendant's submissions

108 On the other hand, the 1st and 3rd Defendant's case is that the 1st Defendant never agreed to fixed costs of $350,000. The 1st Defendant points out that the 13 November 2012 email was clearly premised, *inter alia,* on costs being verified with receipts, which were not provided by the Plaintiffs. Further, the 19 November 2012 email, which alleged that the 1st Defendant had agreed to the costs, was sent by *the 3rd Defendant* to WTL and the

[66] 2AB 1102

[67] 2AB 1108-1110

[68] Plaintiffs' submissions para 43(e)

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Plaintiffs, without copying the 1st Defendant. It cannot be used as evidence to show that *the 1st Defendant* had agreed to the fixed costs.[69]

109 The 1st and 3rd Defendants both point out that the actual amount of costs incurred in OS 909 and CA 70 was only about $296,000, which fell short of $350,000. Thus, the 1st and 3rd Defendants allege that the Plaintiffs are attempting to profit from the litigation.[70]

110 The 3rd Defendant's main gripe is that the 1st Plaintiff's costs for hiring Mr Rama in OS 909 (see [13] above) were incurred in relation to the Late Mother's estate, and should not be claimed from the Late Father's estate. This is especially because Mr Rama left the chambers at the hearing of OS 909 in the High Court, upon Prakash J's indication that it was inappropriate for two sets of solicitors to be acting for the Plaintiffs. In the 3rd Defendant's view, Mr Rama therefore "did not do any legal work pertaining to [the Late Father's] estate".[71] Further, the 3rd Defendant is of the view that the 1st Plaintiff should not be allowed to recover the costs paid to M/s Wong, Thomas and Leong for SUM 5533 (see [17] above), which was dismissed with no order as to costs, as it again related to the Late Mother's estate.[72]

Decision

111 The first question that arises for determination is whether there was an agreement for legal costs to be fixed at $350,000. In my view, it is evident that there was no such agreement. It was *the 3rd Defendant* who had informed

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[69] 1st Defendant's submissions paras 13-16; 3rd Defendant's submissions para 43(6)-(7)

[70] 1st Defendant's submissions paras 15-16; 3rd Defendant's submissions para 43

[71] 3rd Defendant's submissions paras 12-14, 17

[72] 3rd Defendant's submissions paras 18-21

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WTL that the 1st Defendant had agreed to the fixed costs, on his own interpretation of the 1st Defendant's words in the 13 November 2012 email. The 1st Defendant himself never replied in these terms, and the 1st Plaintiff conceded that this was the case at trial.[73] The 1st Defendant also never signed the agreement to costs which was forwarded by WTL. That must have been precisely the reason WTL proceeded to tax the costs of CA 70 and OS 909, which is what it had indicated it would do if there was no agreement to costs (see [102] above).

112 I pause to observe that the Plaintiffs' position on the alleged $350,000 in costs shifted in the course of these proceedings. In SOC-2, the 1st Plaintiff's AEIC and the Plaintiffs' opening statement, the $350,000 was referred to as "legal costs" or "the costs of… OS 909 and CA 70",[74] which were *actually* incurred. However, during cross-examination by the 1st Defendant's counsel, the 1st Plaintiff conceded that he did not in fact incur $350,000 in costs, but only about $296,000.[75] The actual sum incurred is also evidenced by an email from Ms Hwa to the Plaintiffs and the 3rd Defendant on 28 September 2012, which summarised the costs of CA 70 and OS 909 as merely $296,135.28.[76]

113 Instead, the 1st Plaintiff said that the figure of $350,000 was merely for costs that were "incurred *and anticipated*" [emphasis added] and which "encompass[ed] everything". It was to be set aside on a contingency basis, over and above the actual costs incurred, in case any further applications to Court in connection with the matter was required.[77] Given that this was the

[73] Transcript 22 July 2016 25:18-19; 26:20-23; 27:30-38:2

[74] SOC para 36(b), AEIC of Foo Jee Boo dated 18 May 2016 para 54, Opening Statement of Plaintiffs para 2(a)

[75] Transcript 22 July 2016 35:1-6

[76] AEIC of Foo Jee Seng dated 17 June 2016 p29.

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case, the 1st Plaintiff's attempt to explain that $350,000 was to be set aside for costs already incurred as well as anticipated costs comes very late in the day, and does not square with evidence of actual legal costs incurred. In my view, this was nothing more than an afterthought and a poor attempt to justify the $350,000 he insisted was agreed upon.

114 As it turned out, the sum of $200,000 set aside for the legal costs of CA 70 and OS 909 was more than sufficient. Upon bills of costs coming for taxation in BC 127 and 160 before AR Lee on 15 August 2014 and a subsequent review by Prakash J on 31 October 2014, the costs were determined to only be about $150,000.[78] I note that the taxation had gone through two layers of scrutiny. The present proceedings cannot be used as a backdoor to challenge the taxed costs. On the same note, while I understand that the 3rd Defendant disputes the appropriateness of including the legal fees paid to Mr Rama, I do not find it necessary to delve into the precise figures. These disputes had already been raised by the 3rd Defendant at the taxation hearing and review, and must have been taken into account by AR Lee and Prakash J.[79]

115 In any event, I note that there is clear documentary evidence that the 3rd Defendant and Foo Chin Chin had expressly agreed that if there was a shortfall in funds and the $200,000 set aside was not enough to meet the taxed legal costs of CA 70 and OS 909, they were willing to "top up" the difference from their shares.[80] This is, in my view, eminently reasonable.

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[77] Transcript 22 July 2016 33:12-15, 19-22, 36:1-6

[78] 4AB 3022-3028.

[79] 4AB 3019, 3020, 3025

[80] 3AB 2171, 2177

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The claims

116 Finally, I turn to the various heads of claims that are disputed by the parties.

Should the 1st Defendant have forwarded the accounts prior to distribution?

117 Before delving into the specifics of each of the disputed claims, I first deal briefly with the Plaintiffs' submission that the 1st Defendant should have kept them informed about the various expense claims made by the other beneficiaries, for example, by forwarding them the accounts prior to distribution so that they can be aware of the claims against the Late Father's estate and take a position on any disputed payments.[81] I was not, however, pointed to any case authority on point.

118 In my judgment, this issue can be analysed under the existing framework of the executor's duties as set out earlier. Under this framework, the 1st Defendant was indeed under a duty to forward the accounts to the Plaintiffs (as well as other beneficiaries), detailing the claims made and the amounts to be paid out, before instructing the 2nd Defendant to distribute the sales proceeds. This is part of his duty to provide accounts of the assets when the beneficiaries so require (see [80] above).

119 The imposition of this duty simultaneously helps to fulfil another of the 1st Defendant's duties as executor, which is to act in the best interest of the beneficiaries. By forwarding the accounts to the Plaintiffs and other beneficiaries, he ensures that they are kept fully informed of all material facts that may affect their rights and entitlements under the will, and have the

[81] Plaintiff's submissions paras 6, 118

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opportunity to inspect the accounts and voice any concerns about them. This is especially so because the 1st Defendant must have been aware from the email correspondence that the Plaintiffs had objections to some of the claims, such as the expenses involved in the removal of the family altar.

120 The forwarding of the accounts to the beneficiaries is made all the more important in this case, because the 3rd Defendant was in fact given a copy of the Statements of Accounts of both the Late Father and Late Mother's estates on 21 May 2013 (see [29] above). The 1st Defendant therefore should also have forwarded the Statements of Accounts to the other beneficiaries, to discharge his duty of acting fairly and impartially among the members of a class of beneficiaries and to hold the scales evenly between them (see [82] and [83] above).

121 In the ideal scenario, the beneficiaries will agree to and approve the accounts before distribution (see [80] above). However, I am cognisant that in this particular case, the precise reason that the 1st Defendant did not want the accounts to be forwarded to the beneficiaries was because he did not want to incur further legal costs in the event of additional disputes between the beneficiaries. While the danger of gridlock among the beneficiaries is a legitimate concern, the 1st Defendant must still act impartially and not prefer his own claims or the claims of some beneficiaries over that of the others. Instead, the 1st Defendant should have forwarded the accounts to the beneficiaries and parties should have tried to come to an agreement on the claims. If this was not possible, the 1st Defendant should have sought the assistance of the court. The 1st Defendant should not have attempted to circumvent the problem *by simply keeping the beneficiaries in the dark.* I, therefore, find that the 1st Defendant had breached his duty in failing to forward the accounts to the beneficiaries of the Late Father's estate.

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Nonetheless, given that the present suit has been brought by the Plaintiffs, the court is now essentially called on to adjudicate on the disputed claims.

Claims taken into account

122 I now move on to the claims that the 1st Defendant had taken into account prior to distribution. The Plaintiffs' position is that the 1st Defendant breached his fiduciary duties by accepting these claims, which were unreasonably claimed and unreasonable in amount.[82] I will examine each claim in turn.

REPAIRS TO THE PROPERTY: $37,436.50

123 The first disputed claim is in relation to costs allegedly incurred by the 1st Defendant for repairs carried out on the Property, amounting to $37,436.50.

THE PARTIES' SUBMISSIONS

124 The Plaintiffs' main grievance is the veracity of the $35,000 allegedly incurred for "supply material and labour cost" to repair the Property. They contend that these were unsubstantiated by any invoices, receipts or other evidence of payment.[83] According to the Plaintiffs, the $35,000 "cash sales" document that the 1st Defendant referred to at trial was completely unsatisfactory, as it was devoid of details such as the name of the contractor, his contact details, and the date that the works were commenced or completed.[84]

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[82] Plaintiffs' submissions para 43(a)

[83] AEIC of Foo Jee Boo dated 18 May 2016 para 20(f)

[84] 1AB 431; Plaintiffs' submissions para 80(m); Transcript 27 July 2016 90:14-91:26

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125 Further, the Plaintiffs point out that the large sum that the 1st Defendant allegedly spent on repairs to the Property was contrary to the position he took at para 84 of his AEIC in SUM 5533, filed on 7 February 2012, in which he stated that "there was no real need to spend a large sum of money to repair [the Property]. This is because [the Property] [was] a structurally sound and solid building, save for some parts of the building which require some repairs".

126 The 1st Defendant, on the other hand, states that his expenditure is reasonable and fully supported by invoices, whereas the Plaintiffs had not proffered any alternative valuations for the repairs, which made their assertions on the costs of the repairs speculative.[85]

127 The 1st Defendant also points to a letter from the Building and Construction Authority ("BCA") dated 16 November 2010 ("the BCA letter"),[86] which indicated that the structural integrity of the Property was of concern.[87] In particular, the BCA letter highlighted the "extensively damaged termite infested roof" of the premises, advising the immediate engagement of a Professional Engineer to inspect the roof and building structure, and to advise on necessary protective measures. Thus, the 1st Defendant argues, the expenses are completely necessary and legitimate. At trial, Ms Chee also indicated that she had considered the claim, reviewed photographs produced by the 1st Defendant and noted that the timber rafters of the roof had been replaced. She observed that the cost of treated timber was "very high" and thus thought that the $35,000 incurred was reasonable.[88]

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[85] 1st Defendant's submissions paras 20 and 22

[86] AEIC of Foo Jhee Tuang dated 17 June 2016 p 99.

[87] 1st Defendant's submissions para 21

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DECISION

128 Upon careful consideration, I do not, on balance, see any reason to reject the 1st Defendant's claims for repairs. This is especially so when seen in light of the following circumstances. The BCA letter on 10 November 2010 clearly referred to an "extensively damaged termite infested roof" at the Property. This must have meant that there was a genuine need to carry out extensive repair works on the roof. About one and a half years later, on 1 February 2012, a civil engineer inspected the Property and prepared a report dated 2 February 2012. He concluded that the building was in "good structural condition[]". In particular, he observed that the "roofing is in good working condition[] except for some minor rafter defects" which was due to some of the timber rafters being "[worn] out" (rather than because of any termite infestation). A photo of the roof attached to the report was accompanied by the caption "[t]imber roof [is] safe and sound".[89] The contrasting positions taken in the BCA letter and the civil engineer's report a year and a half later, on the very same Property, must have meant that rectification works had been carried out in the interim period. These repair works are evidenced by various receipts for the repair work done to the roof precisely during that interim period, between October 2011 and January 2012.[90] The repair works may well have meant that the 1st Defendant incurred significant costs, especially when, as the 1st Defendant stated at trial, the contractor had to "remove all the termite infected roof structure…and replace all the roof ceiling".[91] Thus, although the documentary evidence is far from perfect, it is nonetheless my view that the

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[88] 1st Defendant's submissions para 23; Transcript 28 July 2016 47:3-21

[89] Bundle of cause papers for SUM 5533 Tab 3 pp 71 and 74

[90] Bundle of cause papers for SUM 5533 Tab 3 pp 81-84

[91] Transcript 27 July 2016 93:5-14

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$35,000 cash sales invoice dated 30 October 2011 is, on a balance of probabilities, a legitimate expense incurred by the 1st Defendant.

129 I should add that I find the BCA letter to be a more objective assessment of the state of the Property, as compared to the 1st Defendant's contrary statement in his AEIC in SUM 5533 that the Property was structurally sound.

TRANSPORTATION COSTS FOR REMOVAL OF RUBBISH: $5,000

130 With that, I move on to the next disputed claim, which is the 1st Defendant's claim for $5,000 as transportation costs for the removal of unwanted items and rubbish from the Property. These expenses were allegedly for the ten trips made on 13 March 2013 and 17 April 2013.

THE PARTIES' SUBMISSIONS

131 The Plaintiffs agree in principle that the 1st Defendant should be reimbursed for reasonable expenses incurred as the transportation costs for removal of rubbish, but that there was no proof that these costs were reasonably incurred.[92] The Plaintiffs argue that the rubbish outside the gate was limited, and would not require four additional trips to clear in April 2013. There was also no reason the 1st Defendant could not have ensured that the contractors finished removing the rubbish in March 2013.[93]

132 The 1st Defendant's position was that the Property had been occupied by the Foo family for about 50 years, during which they had accumulated numerous personal effects, resulting in the Property being in an unkempt state.

[92] AEIC of Foo Jee Boo dated 18 May 2016 para 20(h)

[93] Plaintiffs' submissions para 80((f) – (l)

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The 1st Defendant was thus duty bound as executor to instruct professional movers to dispose of unused articles and rubbish in view of impending sale of the Property.[94] The Plaintiffs had failed to show why the expenses were unreasonably incurred or provide any alternative quotations.[95]

DECISION

133 At the outset, I note that the 1st Plaintiff did not dispute that he was "agreeable [to] reasonable expenses so incurred to be borne by the estate" and that, "[b]eing the executor of [the Late Father's] estate, [the 1st Defendant] can do what [he] deem[s] fit[] to vacate the Property with appropriate cost[s] being born by the estate" and that he "never had any objections in this regard".[96]

134 The 1st Plaintiff also stated that he believed that "there [were] many stuff (like unused chairs, tables, utensil, cupboard etc) [that]…need to be removed" from the Property.[97] Under cross-examination by the 1st Defendant's counsel, the 2nd Plaintiff also confirmed that there were many items in the Property that would need to be removed.[98] Curiously, the Plaintiffs nonetheless disagreed that the transport costs incurred by the 1st Defendant was reasonable.

135 In my view, it is disingenuous for the Plaintiffs to claim that they agree for reasonable costs to be incurred, admit that numerous artefacts were accumulated over the years, and yet insist that the transportation costs were

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[94] AEIC of Foo Jhee Tuang dated 17 June 2016 para 61; 1st Defendant's submissions para 58

[95] Opening statement of 1st Defendant para 6(d); 1st Defendant's submissions para 59

[96] 2AB 1527; 2AB 1551

[97] 2AB 1527

[98] Transcript 25 July 2016 35:26-29

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excessive and on such a flimsy basis. This is especially so as it is undisputed that the expenses incurred in March and April 2013 are supported by handwritten receipts,[99] and the Plaintiffs had no alternative quotations upon which reasonableness (or the lack of it) can be assessed.[100] I, therefore, find the 1st Defendant's claim for $5,000 as transportation costs for the removal of unwanted items and rubbish from the Property to be a reasonable claim.

REMOVAL OF ALTAR AND RELIGIOUS CEREMONIES: $14,000

136 I turn to the next claim by the 3rd Defendant for $14,000 in respect of prayers and religious rites conducted for the deceased family members, and the removal of a single family altar from the Property.

THE PARTIES' SUBMISSIONS

137 The Plaintiffs contend that the altar could have been removed for $2,000 by a "temple care-taker", and that they had already made known to the 1st and 2nd Defendants that they were unwilling to pay more than $2,000 for the removal of the altar.[101] Further, the Plaintiffs state that since it is a family altar, not all of the $14,000 should be deducted from the Late Father's estate alone. Instead, the sum should be divided and a part of it claimed from another estate, such as the Late Brother's or Late Mother's estate, especially because there were separate invoices issued for each of the family members, which specified the items purchased and services performed.[102]

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[99] 2AB 1535; 3AB 1694

[100] Transcript 22 July 2016 39:23-40:8

[101] AEIC of Foo Jee Boo dated 18 May 2016 para 20(i); Plaintiffs' submissions para 80(a)

[102] AEIC of Foo Jee Boo dated 18 May 2016 para 20(i)(iii)

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138 The 1st and 3rd Defendants, however, state that the family tradition of ancestral worship involves saying prayers for those who have passed on, and moving the family altar to a proper place of rest.[103] The altar is a "precious item" which "cannot simply be crowbarred off the wall and thrown into the back of a lorry to be transported elsewhere". Instead, "[m]oving it was an intricate task that only Taoist priests could reasonably undertake, and needless to say this entailed incurring significant cost" which was nonetheless reasonably incurred.[104] Further, the 1st Defendant argues that under s 67(1) of the Probate and Administration Act, funeral expenses must be "suitable to the station in life of the deceased". The family altar was a spiritual embodiment of the family's ancestral beliefs and practices, thus the ceremony and rites were fitting with tradition and not a fanciful whim.[105]

DECISION

139 I agree with the 1st Defendant that the costs of removing the family altar and the religious ceremonies for the deceased family members is a legitimate expense that is expressly allowed under s 67(1) of the Probate and Administration Act. These are "reasonable expenses of subsequent religious ceremonies suitable to the station in life of the deceased". In addition, these are also necessary expenses to allow for the vacant transfer of the Property, thus they are properly incurred for the benefit of the Late Father's estate. The expenses are also fully supported by official receipts from the Taoist Ritual and Prayer Ceremony Services.[106]

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[103] AEIC of Foo Jee Seng dated 17 June 2016 para 21F

[104] AEIC of Foo Jhee Tuang dated 17 June 2016 para 82

[105] 1st Defendant's submissions para 67

[106] 3 AB 1695-1700

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140 The Plaintiffs' claim that the removal of the family altar could have been done for $2,000 is a mere assertion and their evidence in support of this is woefully thin, if at all existent. Further, the assertion that the expenses should have been split between all the estates, including the Late Brother's estate, was never pleaded. There is no dispute that there was only one family altar for all the generations of deceased family members, and it would not be sensible to split the costs across all of these estates.

SUB-CONCLUSION ON CLAIMS TAKEN INTO ACCOUNT

141 For the abovementioned reasons, I find that none of the claims that had been taken into account by the 1st Defendant were unreasonable in nature and quantum. I therefore find that the 1st Defendant had not breached any of his duties in taking these claims into account.

Claims not taken into account

142 I now come to the claims of the Plaintiffs that they say the 1st Defendant should have taken into account, but did not. The Plaintiffs' claims relate to:

(a) $16,330.31 for utilities, property tax, telecommunications bills, termite, bee and snake removal, and renovation works on the Property ("the miscellaneous expenses"); and

(b) $2,000 as the fixed costs for SUM 634, the enforcement application subsequently withdrawn by the the Plaintiffs and 3rd Defendant: see [24] above ("the enforcement costs").

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THE PARTIES' SUBMISSIONS

143 The Plaintiffs allege that the 1st Defendant breached his fiduciary duties by failing to act fairly between the beneficiaries. This is because he allegedly preferred his own claims against the Late Father's estate, as well as the claims of the other beneficiaries, but failed to take the Plaintiffs' claims into account.[107]

144 The 1st Defendant's position was that the Plaintiffs had ample time to put in their claims. From the time the Property was contracted for sale on 7 February 2013, to the notification by Ms Chee that the cheques were ready for collection on 31 May 2016, the Plaintiffs had more than three months to submit their claims.[108] Further, the Plaintiffs were, at the material time, represented by WTL, which was in a position to put forth all claims on behalf of the Plaintiffs. However, no claims were made, other than the claim for legal costs of $350,000. The 1st Defendant was thus unaware of the claims and was consequently not in a position to consider the merits of these claims, or to accept or reject them.[109]

145 In relation to their claim for miscellaneous expenses, the Plaintiffs argue that the claim is proved by cheques made payable to "Air IQ Engineering and Marketing" and should have been included in the 1st Defendant's accounts.

146 However, the 1st Defendant states that the claims were not made timeously, prior to distribution. He says that the belated claim simply

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[107] Plaintiffs' submissions para 43(b) and (c)

[108] 1st Defendant's submissions para 53

[109] 1st Defendant's submissions para 38

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evidences a "tit-for-tat" strategy by the Plaintiffs, who only decided to bring the claim after they noticed that the 1st Defendant had also made claims against the Late Father's estate.[110] Further, the 1st Defendant argues that the claims were brought in bad faith. There were no supporting documents for the claim for property tax. The utilities and telecommunication bills were attributable to the occupants of the Property at that time, and not to the Late Father's estate. The cheques issued to "Air IQ Engineering and Marketing" for the alleged renovation works did not explain what these services were for and how they related to the Late Father's estate. In any event, the cheques allegedly in support of the Plaintiffs' claim only add up to about $7,000. As for the other incidental expenses, such as for nails, paintwork and materials, the 1st Plaintiff had enjoyed rent-free occupation of the Property to the exclusion of the other beneficiaries for many years. Any expenses incurred in the upkeep of the Property would have been the result of his own use and should be borne by the 1st Plaintiff and not by the Late Father's estate.[111]

147 The 3rd Defendant asserts that this claim was an afterthought, as it was submitted very late in the day. The three cheques exhibited only added up to $7,000, and the rest of the invoices add up to approximately $6,086.83. The total was $13,086.43 which was still some distance from the claim of more than $16,000.

148 As for the enforcement costs, the Plaintiffs allege that the sum of $2,000 should have been set aside from the Late Father's estate. The 1st

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[110] 1st Defendant's submissions paras 24-27

[111] AEIC of Foo Jee Seng dated 17 June 2016 para 19A; Opening statement of 1st Defendant para 6(c); 1st Defendant's submissions paras 29-31, 55(a)

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Defendant's position was that the $200,000 legal costs set aside would be sufficient to cover the enforcement costs of $2,000.[112]

DECISION

THE 1ST DEFENDANT DID NOT BREACH HIS FIDUCIARY DUTIES

149 I first deal with the broad issue of whether the Defendant had breached his fiduciary duties by unfairly preferring the claims of the other beneficiaries (including himself) and failing to take into account the Plaintiffs' claims. It will be recalled that one of the duties of the 1st Defendant, as executor for a class of beneficiaries, is to act with impartiality and to hold the scales evenly among the beneficiaries: see [83] above.

150 After carefully reviewing the facts and circumstances of the case, as well as the contemporaneous documents, I am of the view that he did not breach his duties in this respect. This is for three main reasons.

151 First, from as early as February 2013, the Plaintiffs were intimately involved in heated discussions about certain claims that were to be made against the various estates. For example, the Plaintiffs sent various emails to the other beneficiaries between 2 February 2013 and 14 March 2013, expressing their views on the costs of moving the family altar and the expenses for removing rubbish from the Property.[113] In fact, on 19 March 2013, the 1st Plaintiff wrote an email which contained detailed breakdowns of legal costs incurred, as well as debts due from the other beneficiaries to him.[114]

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[112] Transcript 22 July 2016 78:27-30

[113] 2AB 1527, 1536-1537, 1550, 1551, 1556-1557

[114] 2AB 1554-1560

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On 27 May 2013, the 2nd Plaintiff had personally attended at Ms Chee's office, asking Ms Chee when she would receive her share of the sales proceeds. The 2nd Plaintiff also said that she had claims she wished to make against the Late Brother's estate and passed Ms Chee some documents.[115] In my judgment, these are all evidence that the Plaintiffs were acutely aware that claims were being made against the various estates by the other beneficiaries, and they also seemed to be in the midst of preparing their own claims.

152 Second, I agree with the 1st Defendant that the Plaintiffs had, in any event, ample time to submit their claims. From the time that they were aware that claims were being made (February 2013) to the time that the 1st Defendant collected his share of the sale proceeds (29 May 2013), there was an intervening period of more than three months in which claims could have been made. Indeed, the miscellaneous expenses were incurred in or before 2008, and the Plaintiffs would have been aware of them in 2013, could have brought them up, but did not do so. Indeed, the Plaintiffs and Ms Hwa accepted that there was nothing to stop them putting in claims and that they knew claims were in fact being made.[116]

153 Third, it is reasonable for the 1st Defendant to believe that all of the Plaintiffs' claims had already been submitted prior to the payments out. This is especially so given the following series of correspondence:

(a) On 19 March 2013, Ms Hwa sent an email to Ms Chee ("the 19 March 2013 WTL email"), stating "[w]e will collate the payments to be deducted from the sale proceeds before distribution and forward

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[115] AEIC of Eunice Chee dated 12 May 2016 para 94 and p 866

[116] Transcript 25 July 2016 128:15-129:19; 26 July 2016 108:-77

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these to you in due course, together with the contracts". This was in response to Ms Chee's earlier email asking about the terms of engagement and agreed fees payable to DTZ. The "payments" presumably referred to the fees due to DTZ. Ms Hwa also stated, "our clients want certain set-offs from each other's share and once they have confirmed this, we will revert".[117]

(b) On 5 April 2013, WTL wrote a letter to the 2nd Defendant, stating:[118]

> On completion of the sale of the Property, the following payments are to be made from the sale proceeds:
>
> a. DTZ's costs of valuation and their commission for the sale of the sums of $2,000 plus GST and $43,500.00 plus GST respectively;
>
> b. your legal costs in acting for the vendor in the sale of the Property;
>
> c. $350,000.00 made payable to use to meet the agreed costs and expenses in respect of OS 90[9] and CA 70;
>
> d. a further sum of either $50,000.00 or $100,000.00 to meet the costs of enforcement proceedings, which sum will be notified to you on 9 April 2013;
>
> e. *the balance sale proceeds* ***after the payments set out in paragraphs 2a to 2d above****, will be divided into 7 equal shares and paid to the following beneficiaries:*
>
> i. 1/7th share to [the 2nd Plaintiff];
>
> ii. 1/7th share to Foo Chin Chin;
>
> iii. 1/7th share to [the 3rd Defendant];
>
> iv. 1/7th share to [the 1st Plaintiff];
>
> v. 1/7th share to the Estate of [the Late Mother]; and

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[117] 2AB 1561

[118] 2AB 1584

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> vi. 2/7th share to [the 1st Defendant] of which 1/7th share is due to [the 1st Defendant] as beneficiary and 1/7th share to be held by [the 1st Defendant][as trustee holding on trust for [the Late Brother's] widow or estate.
>
> [emphasis added in italics and bold italics]

154 In my view, it is reasonable for the 1st Defendant to infer that the payments stated at paragraphs 2a to 2d were *exhaustive* of the Plaintiffs' claims against the Late Father's estate. This is especially so given that no other claims were made between the 5 April 2013 letter and 29 May 2013, when the 1st Defendant collected his share of the sale proceeds. That being the case, the 1st Defendant had duly taken into account all the claims that he had been aware of at that time (see s 29 of the Trustees Act and [79] above). For this reason it is not necessary to consider whether the 1st Defendant is able to rely on section 60 of the Trustees Act.[119]

155 In light of the foregoing, the Plaintiffs cannot now shift the blame to the 1st Defendant by alleging that he had breached his fiduciary duties by deliberately acting unfairly towards them. Indeed, the Plaintiffs were, at all material times, represented by their solicitors, WTL, who were aware of the date of completion of the sale of the Property.[120] The 3rd Defendant and Foo Chin Chin – who were not even legally represented at that time – had managed to put in their claims against the Late Father's and Late Mother's estates on their own accord before the distribution was made to the 1st Defendant.[121] The Plaintiffs' claims were not included because of their own fault, and not as a consequence of any unfair preference or breach of fiduciary duty on the 1st

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[119] 1st Defendant's submissions at para 43

[120] 2AB 1442

[121] AEIC of Eunice Chee dated 12 May 2016 pp 529, 770-771

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Defendant's part. This is especially so when I have already found earlier that the claims that the 1st Defendant did take into account were reasonable both in nature and quantum: see [141] above.

THE PLAINTIFFS' CLAIMS SHOULD NOT IN ANY CASE BE ALLOWED

156 Even if I had found that the 1st Defendant had breached his fiduciary duties, and should have taken the Plaintiffs' claims into account, I would still have been of the view that the Plaintiffs' claims should not be allowed. Even at trial, the expenses claimed against the Late Father's Estate were vague and poorly supported. The three cheques made to "Air IQ Engineering & Marketing" relied on by the Plaintiffs only totalled $7,000 and did not specify what the payments were for. Indeed, it was not even clear whether the cheques were cleared by the bank, as there was no invoice from the recipient. As for the renovation expenses for which receipts were produced, these were incurred in early 2008 when the 1st Plaintiff was still residing in the Property (*ie*, before he left Singapore to work overseas), and also before the Property was contracted for sale. Given that this is the case, the renovation expenses would be for his own benefit as an occupier of the Property, rather than for the benefit of the Late Father's estate. The expenses for property tax, utilities bills, telecommunications bills, termite, bee, and snake removals were not at all supported by receipts. As I see it, the claim for miscellaneous expenses is merely an afterthought by the Plaintiffs and not legitimate expenses that were attributable to the Late Father's estate.

157 As for the enforcement costs, this was neither pleaded nor included in the Plaintiffs' AEICs. I agree that the 1st Defendant was aware that the enforcement costs were fixed by the Court of Appeal at $2,000, as he was present at the hearing of SUM 634 itself, and had thereafter informed the 2nd

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Defendant precisely of this fact.[122] However, the $200,000 set aside for legal costs is more than sufficient to meet the costs of SUM 634, since the taxed costs was only about $150,000. In fact, Ms Chee's correspondence to the 1st Defendant on 20 May 2013 and 29 May 2013 expressly stated that the $200,000 set aside was for legal costs in connection with "the suits between [the 1st Defendant] and [his] siblings" (see [28] and [31] above), which would include the enforcement costs.

Conclusion on the Plaintiffs' claims against the 1st Defendant

158 I pause to summarise my findings on the claims by the Plaintiffs against the 1st Defendant in relation to the Late Father's estate. I find that the 1st Defendant had breached his fiduciary duties in failing to provide an account of rent received from the Property, and in failing to forward the Statements of Accounts to the Plaintiffs before distribution. However, the 1st Defendant did not breach his fiduciary duties in accepting the claims that he did take into account, as they were reasonable both in nature and quantum. He also did not breach his fiduciary duties in not taking into account the Plaintiffs' claims, as that was a result of the Plaintiffs' own fault in not submitting the claims on time. For these reasons, the 1st Defendant did not unfairly prefer the claims of the other beneficiaries over those of the Plaintiffs. In any event, even if the Plaintiffs had submitted the claims in time, I note that the claims would in all likelihood have been rejected for reasons as set out in [156] and [157]. For these reasons, the 1st Defendant's failure to forward the Statements of Accounts to the Plaintiffs did not cause them to suffer any loss.

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[122] AEIC of Eunice Chee dated 12 May 2016 p 756

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The Late Father's estate: claims against the 2nd Defendant

159 Having dealt with the Plaintiffs' claims in relation to the Late Father's estate against the 1st Defendant, I now turn to consider their claims against the 2nd Defendant.

The Plaintiffs' submissions

160 According to the Plaintiffs, because the 2nd Defendant was jointly appointed, it was under an express retainer to *both* the Plaintiffs and the 1st Defendant.[123] The very purpose of a joint appointment by the Court of Appeal was for the 2nd Defendant to act as a neutral solicitor to safeguard the parties' interests in the sale proceeds of the Property, and to prevent the sale proceeds due to the Plaintiffs from falling into the hands of the 1st Defendant.[124]

161 The Plaintiffs also contend that the 2nd Defendant's scope of work under the express retainer was not limited to the sale of the Property, but also included the *distribution of the sale proceeds*. This is because part of a solicitor's engagement to act in the sale of a property must naturally be to handle the proceeds of the sale as well.[125] In fact, the 2nd Defendant expressly represented that it would distribute the sale proceeds. In an email dated 8 March 2013 from Ms Chee to the 1st Plaintiff and the 1st Defendant, copied to the 2nd Plaintiff, the 3rd Defendant and Foo Chin Chin, it was stated that "[the 2nd Defendant]'s appointment was only to act in the sale of [the Property] *and to distribute the proceeds as directed by the 2 legal firms, (i) [WTL] and (ii) [TSS]…"*[126] [emphasis added].

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[123] Plaintiffs' submissions para 149; SOC-2 para 16

[124] Plaintiffs' submissions para 150

[125] Plaintiffs' submissions para 151

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162 Even if there was no express retainer, the Plaintiffs say that there was an implied retainer because of the 2nd Defendant's conduct and correspondence:[127]

(a) Referring to the 19 March 2013 WTL email (see [153(a)] above),[128] the Plaintiffs argue that Ms Chee must have known that WTL was collating payments to be made from the sale proceeds. She must also have known that the Plaintiffs wanted the 2nd Defendant to take these payments into consideration before distributing the monies in the Late Father's estate.[129]

(b) Further, on 5 April 2013, Ms Chee wrote to Ms Hwa copying Ms Molly Lim, stating that "for the deduction of various items claimed against the estates, [the Late Father and the Late Mother], *I shall forward them to you once I have organized them"* [emphasis added].[130] The Plaintiffs said that they were therefore under the impression that the 2nd Defendant required their approval or confirmation before any distribution of the sale proceeds.[131]

163 This was also evidenced by Ms Chee's emails to the 1st Defendant:

(a) In Ms Chee's emails to the 1st Defendant on 6 April 2013 and 10 May 2013, she reiterated that she needed WTL approval for the

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[126] 2AB 1526

[127] Plaintiffs' submissions para 45, 108 and 153

[128] 2AB 1561

[129] Plaintiffs' submissions paras 110, 112.

[130] 2AB 1586

[131] Plaintiffs' submissions paras 114-115

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accounts of the estate before distribution. In her 6 April 2013 email, she attached various expenses incurred by the 1st Defendant and Foo Chin Chin, which she said she would tender to WTL "for their approval".[132] In her 10 May 2013 email, she stated that she needed to "get [WTL] to confirm before [she] can arrange for the Pay-Out." She reminded the 1st Defendant that "[the Plaintiffs and the 3rd Defendant] are all represented by [WTL]. [Foo] Chin Chin is unrepresented and I have to seek her approval too."[133]

(b) On 20 May 2013, Ms Chee wrote to the 1st Defendant forwarding a Letter of Authority to be signed by "every one named in there" (*ie*, the Plaintiffs, the 1st Defendant, the 3rd Defendant and Foo Chin Chin). She added that "the amounts therein must be acceptable *to all otherwise we will not be able to draw out the funds"* [emphasis added], and concluded "please let us know whether your siblings are *all ready* to sign the Letter of Authority so that action can be taken to initiate the payment out".[134]

164 The necessity to send the Statement of Accounts to the Plaintiffs was made all the more important given that the 2nd Defendant was aware of the acrimonious relationship and distrust between the Plaintiffs and the 1st Defendant.[135]

165 Even in the absence of an express or implied retainer, the Plaintiffs argue that the 2nd Defendant nonetheless owed fiduciary duties to them by

[132] 2AB 1600

[133] AEIC of Eunice Chee dated 12 May 2016 p 775.

[134] 3AB 1923-1924

[135] Plaintiffs' submissions paras 50 and 129

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holding itself out to be acting on behalf of them and in their interests.[136] Alternatively, the 2nd Defendant is liable for dishonest assistance, in helping the 1st Defendant to commit a breach of trust in improperly distributing the sales proceeds.[137]

166 Finally, the Plaintiffs contend that the 2nd Defendant owed them a duty of care under tort law as beneficiaries of the Late Father's estate, based on the case of *AEL and others v Cheo Yeoh & Associates LLC and another* [2014] 3 SLR 1231 ("*AEL*").[138]

The 2nd Defendant's submissions

167 The 2nd Defendant's position is that its only client was the 1st Defendant, and it was only obliged to act on his instructions. Further, it was appointed only for the sale of the Property and *not* for the distribution of the sale proceeds. It states that this is evident from the correspondence surrounding the appointment of the 2nd Defendant,[139] as well as from the CA Orders. The CA Orders did not state that a law firm was to be jointly appointed to *distribute* the sales proceeds, but that *the 1st Defendant* was responsible for distributing the sale proceeds to the beneficiaries according to their respective entitlements. Finally, in the final bill that the 2nd Defendant rendered to the 1st Defendant, the former had stated its professional charges in acting for the latter "in the *sale* of the Property" [emphasis added].[140]

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[136] Plaintiffs' submissions para 154

[137] Plaintiffs' submissions paras 158-159

[138] Plaintiffs' submissions paras 47, 155-157

[139] 2nd Defendant's submissions paras 37- 42

[140] 2nd Defendant's submissions para 45(3); 3AB 1854; 1934

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168 According to the 2nd Defendant, the Plaintiffs' claim for breach of fiduciary duties must fail. Fundamentally, the Plaintiffs had failed to specifically plead precisely how it had breached its fiduciary duties listed at para 27 of SOC-2. For example, they did not specify how it had failed to act in good faith, or acted in a conflict of interest, or for a third party interest.[141] Moreover, the relationship between the Plaintiffs and the 2nd Defendant is not within one of the accepted categories of fiduciary relationships. This is also not a case where a fiduciary relationship can be implied from the facts and circumstances of the case. In particular:

(a) The 2nd Defendant never undertook to act for the Plaintiffs in the distribution of the Late Father's estate. In fact, the Plaintiffs and WTL in correspondence regarded the 2nd Defendant as solely acting for the 1st Defendant.[142]

(b) The interests of the Plaintiffs and 1st Defendant conflict, as they were warring parties from the commencement of OS 909. The Court should thus be slow to infer that a fiduciary relationship had been assumed by the 2nd Defendant to the Plaintiffs, when the 1st Defendant was also a client of the 2nd Defendant.[143]

(c) The Plaintiffs were not in a position that was vulnerable to abuse by the 2nd Defendant, as they were represented by their own solicitors. The onus and power to distribute the proceeds to the beneficiaries fell solely on the 1st Defendant, and the 2nd Defendant

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[141] 2nd Defendant's submissions para 146.

[142] 2nd Defendant's submissions paras 62-69

[143] 2nd Defendant's submissions paras 75 and 78

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only rendered simple assistance (such as mathematical calculation), and had itself no power to distribute.[144]

(d) There was no relationship of trust or confidence between the 2nd Defendant and the Plaintiffs. In fact, the correspondence between the Plaintiffs and Ms Chee was acrimonious, with the Plaintiffs showing deep disdain for her and an unwillingness to work with her. Indeed, at one point, the Plaintiffs even sought to discharge her.[145]

169 The 2nd Defendant further claims that even if fiduciary duties were owed by the 2nd Defendant to the Plaintiffs, the fiduciary relationship would have been terminated when the 1st Plaintiff emailed WTL on 11 March 2013 stating that he did not have a working relationship with the 2nd Defendant and/or when the Plaintiffs proposed to discharge the 2nd Defendant in place of Mr Eric Ng of M/s Malkin & Maxwell LLP on 10 April 2013. Thus, by the time the 2nd Defendant released the 1st Defendant's share of the Late Father's estate to him on 29 May 2013, there would not have been any subsisting fiduciary relationship between the Plaintiffs and the 2nd Defendant.[146]

170 In addition, the 2nd Defendant also did not owe the Plaintiffs a duty of care at common law (*ie*, in tort). It cannot be inferred, from the 2nd Defendant's appointment to assist the 1st Defendant, pursuant to CA Orders, that the 2nd Defendant had voluntarily assumed responsibility to the Plaintiffs.

171 In any event, the 2nd Defendant alleges that the Plaintiffs did not suffer any loss. The sum of $782,547.87 for the 1/7th share was correctly

[144] 2nd Defendant's submissions paras 100-121

[145] 2nd Defendant's submissions para 123-133

[146] 2nd Defendant's submissions paras 167-168

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calculated. Even if it was not, the Plaintiffs would not have suffered any loss because the estate accounts are still not finalised, and can be adjusted.[147]

Issues

172 Having considered the submissions, the following issues arise for determination:

(a) What was the scope of the 2nd Defendant's work? This involves an examination of the language of the CA Orders as well as the correspondence between the parties' solicitors in relation to the appointment of the 2nd Defendant.

(b) What duties did the 2nd Defendant owe to the Plaintiffs? This involves the examination of whether the 2nd Defendant owed duties to the Plaintiffs under an express or implied retainer, in tort, or in equity.

173 I will examine each of these issues in turn.

What was the scope of the 2nd Defendant's work?

174 For convenience, the relevant CA Orders are set out again below:

> 2. *the [1st Defendant]* shall take steps to *sell [the Property]* ***and distribute the sale proceeds*** *to the beneficiaries* according to their respective entitlements under [the Late Father's Will];
>
> 3. the sale of the Property shall be effected no later than six months from the date of the judgment hereof, ie, 7th August 2012;
>
> 4. the solicitors for the [the Plaintiffs and 3rd Defendant] [*ie,* WTL], and [the 1st Defendant] [*ie,* TSS] shall jointly appoint a valuer/agent and a solicitor *to* ***effect the sale***...

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[147] 2nd Defendant's submissions paras 252-258

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[emphasis added in italics and bold italics]

175 On a plain reading of the CA Orders, the duty is on the 1st Defendant to "take steps to sell" the Property and to *distribute the sale proceeds*. This is eminently reasonable because the 1st Defendant was neither removed as an executor of the Late Father's estate, nor were any of his powers as executor removed (except that the Court of Appeal set a six-month time limit on the sale of the Property). The CA Order for the jointly appointed solicitor to "effect" the sale is, in my view, simply be a direction for this solicitor to provide legal services to facilitate the conveyancing of the Property. It does not impose an independent duty on the 2nd Defendant to sell the Property *per se*, much less distribute the sale proceeds.

176 I do not agree with the Plaintiffs' submission that the 2nd Defendant must have been appointed for the distribution of sale proceeds as well, because the purpose of the CA Order for joint appointment was for that solicitor to police the sale proceeds to prevent them from falling into the hands of the 1st Defendant. I similarly disagree with Ms Hwa's statement at trial that "obviously [the] Court of Appeal didn't trust [the 1st Defendant], [therefore necessitating] a joint appointment" and her characterisation of the joint appointment as "a check of balance… [to] help [Ms Hwa] check on [the 1st Defendant]". Indeed, given that the Court of Appeal has never made any finding on the unsuitability of the 1st Defendant to act as the executor of the Late Father's estate, there is no reason this would have been the purpose of the CA Order. Instead, as WTL itself stated in a letter dated 12 November 2012 to the Plaintiffs, the purpose of the CA Order which asked the *solicitors* for both sides, WTL and TSS, to appoint the solicitors "for the sale" of the Property is to "ensure that there is *no delay to the sale* which may result if appointment is *by the parties*, who are unable to agree" [emphasis added].[148] Ms Hwa

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ultimately admitted that this was the purpose of the CA Order during cross-examination.[149]

177 The fact that the 2nd Defendant was only engaged for the sale of the Property is also clear from the correspondence surrounding the engagement of the 2nd Defendant. In WTL's first letter of engagement to the 2nd Defendant on 2 October 2012, it stated:[150]

> 6. The parties' solicitors have agreed to appoint you *to act for the trustee* in *the sale of the Property*…
>
> 7. Upon the sale of the Property, the sale proceeds after the payment of the [plaintiffs in OS 909]'s costs of the Appeal and in the court below [ie, OS 909] *will be distributed* to "the beneficiaries according to their respective entitlements under the will of [the Late Father]…"
>
> 9. Please confirm your willingness to act *in the sale.*
>
> [emphasis added]

178 The letter only stated that the 2nd Defendant was to act in the "sale" of the Property. It further stated that the sale proceeds "will be distributed" to the beneficiaries, but did not impose a duty on *the 2nd Defendant* to distribute the sale proceeds.

179 On 4 October 2012, Ms Chee replied to WTL in the following terms:[151]

> Thank you for your letter of 2nd October 2012.
>
> We would be pleased to accept the appointment *to act for the trustee, Foo Jhee Tuang,* in the *sale* of the above property.
>
> The scope of work-

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[148] 2AB 1097

[149] Transcript 26 July 2016 81:19-83:7

[150] 2AB 926-927

[151] 2AB 942

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> 1. liaising with the DTZ in the preparing the sale contract
>
> 2. getting your approval before finalizing the terms
>
> 3. completing the sale transaction
>
> 4. *distributing the sale proceeds pursuant to the order*
>
> Our fee would be $5,000.00 plus GST plus disbursements. Please let us know whether this is acceptable.
>
> [emphasis added]

180 In this letter, Ms Chee, on behalf of the 2nd Defendant, accepted the appointment to act in the "sale" of the Property. While the scope of work detailed referred to "distributing the sale proceeds" from the sale of the Property, this was only "pursuant to the [CA] [O]rder". The CA Order placed the obligation on the *1st Defendant* to distribute the sale proceeds. Thus, the 2nd Defendant must have meant that its task was only to distribute the sale proceeds *as directed by the 1st Defendant*. Indeed, I find that this is the natural and reasonable interpretation of words used in the correspondence set out above. The 2nd Defendant did not recognise that it had any independent duty to distribute the sale proceeds. This was consistent with Ms Chee's evidence on the stand, in which she explained that the sale proceeds belonged to the registered owner of the Property, *ie* the 1st Defendant. However, as the sale proceeds were deposited into the 2nd Defendant's conveyancing account, it had to be distributed, but only on the instructions of the owner of the proceeds, *ie,* the 1st Defendant.[152]

181 On the same day, WTL replied to the 2nd Defendant, stating:[153]

> We refer to your fax dated 4 October 2012 and are instructed that our clients on their part are agreeable to engage you as

[152] Transcript 28 July 2016 15:28-31

[153] 2AB 944

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> the solicitors to handle *the sale of the Property* based on your fees quote.
>
> [emphasis added]

182 On 9 October 2012, TSS also replied to the 2nd Defendant:[154]

> We refer to your letter dated 4 October 2012.
>
> We are pleased to inform you that your fees quoted for handling *the sale of the [Property]* is acceptable to our client.
>
> [emphasis added]

183 From the above correspondence, it is clear to me that, over and above the express wording of the CA Orders, the joint intention of WTL, TSS and the 2nd Defendant was also for the 2nd Defendant to act in the sale of the Property only.

What duties did the 2nd Defendant owe to the Plaintiffs?

Duty under an express or implied retainer

184 In my view, it is clear that there was no express retainer subsisting between the Plaintiffs and the 2nd Defendant in the present circumstances. The correspondence surrounding the engagement of the 2nd Defendant in the previous section shows that its appointment was to "act for the trustee" *ie*, the 1st Defendant only. I find that this would be the understanding of any reasonable person placed in the Plaintiffs' position. Indeed, I go further and state that this must also have been the Plaintiffs' understanding. The 1st Plaintiff had himself, in an email dated 10 April 2013 to the 1st Defendant, stated that he was "not comfortable with [Ms Chee] *because she is acting for [the 1st Defendant] as Executor*" [emphasis added].[155] Indeed, the 2nd

[154] 2AB 946

[155] 3AB 1639

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Defendant's invoice for legal fees was also issued to the 1st Defendant as the executor of the Late Father's estate.[156]

185 I do not accept the Plaintiffs' argument that because the CA Order required WTL and TSS to jointly appoint a solicitor, the 2nd Defendant was therefore under a duty to take instructions from *both* the Plaintiffs and the 1st Defendant. This alleged duty simply did not follow from the joint appointment. First, the Plaintiffs were represented by their own solicitors, WTL, at the material time. Second, such an argument would not be in accordance with the purpose of the CA Order for joint appointment (see [176] above). The purpose of the CA Order is to ensure an expedient *appointment* of a solicitor to facilitate the conveyance of the Property, and to prevent the possibility of gridlock and delay if that solicitor was to be chosen by the warring parties. It did not follow that the solicitor, *after* appointment, would still have to actively take instructions from both parties.

186 The next issue is whether there was nonetheless an implied retainer between the Plaintiffs and the 2nd Defendant. The circumstances under which a retainer may be implied is set out in *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR(R) 308 ("*Ahmad Khalis*") at [66]:

> A retainer may be implied where, on an objective consideration of all the circumstances, *an intention to enter into such a contractual relationship ought fairly and properly to be imputed to all the parties.* The implication would have to be *so clear that the solicitor ought to have appreciated it.* Circumstances to be taken into account might include, where appropriate, *who is paying the [solicitor's] fees, who is providing instructions and whether a contractual relationship has existed between the parties in the past.*
>
> [emphasis added]

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[156] 3AB 1854

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187 The court in *Anwar Patrick Adrian v Ng Chong & Hue LLC* [2014] 3 SLR 761 ("*Anwar*") stated that the crux of the matter is whether a contractual relationship "ought fairly and properly" be imputed to all parties (at [53]). The giving of advice to a third party is a strong inference that the solicitor and the third party had regarded themselves as being in some kind of contractual relationship. However, the absence of any advice given, while in many cases helpful in enabling the court to infer that no implied retainer had arisen, is not decisive on whether there is an implied retainer if other objective evidence point towards the existence of an implied retainer (at [51]-[52]).

188 In this case, there are no factors that point towards the need for a retainer to be implied. Applying the factors outlined in *Ahmad Khalis*, it is clear that a retainer should not be implied in these circumstances. The 2nd Defendant's bill was addressed to the 1st Defendant, as executor of the Late Father's estate. It was the 1st Defendant who gave the 2nd Defendant instructions. There was no previous contractual relationship between the Plaintiffs and the 2nd Defendant. No advice was given by the 2nd Defendant to the Plaintiffs; in fact, the Plaintiffs were separately advised by lawyers from WTL, which included a senior counsel. Any emails from the 2nd Defendant to WTL was merely to keep them updated of matters pertaining to the sale of the Property.[157] Further, the Plaintiffs had themselves repeatedly told Ms Chee not to reply to their emails, stating that they were not comfortable with her and did not want to communicate with her.[158] It would not be fair and proper to imply a retainer in such circumstances. Indeed, the implication of a retainer was not "so clear that the solicitor [the 2nd Defendant] ought to have appreciated it". On the contrary, the 2nd Defendant must sensibly have come to the opposite

[157] Transcript 28 July 2016 29:31-32

[158] See eg, 2AB 1531, 1536, 1541, 1550

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conclusion that there was no subsisting solicitor-client relationship between itself and the Plaintiffs. Indeed, it is clear from the emails (where the Plaintiffs state that they were not comfortable with Ms Chee) that they did not want any communications from her.

189 As for Ms Chee's emails to the 1st Defendant which stated that she would send various expenses incurred by the 1st Defendant and Foo Chin Chin to WTL "for their approval", and her statement that the letter of authorisation required the signatures of all the beneficiaries, Ms Chee had explained in her AEIC and on the stand that this was because she had mistakenly thought she needed the consent of all beneficiaries but realised she only needed the consent of the executor of the Late Father's estate, *ie*, the 1st Defendant.[159] Further, under cross-examination by the 1st Plaintiff, Ms Chee made clear that the reference to the Plaintiffs' approval was not because she owed any obligations under a retainer to the Plaintiffs, but because she knew that there was a history of unhappiness and distrust between the parties and hoped that all would agree to prevent future disputes. I accept these explanations.

Duty of care in tort

190 Having dismissed the Plaintiffs' claim that the 2nd Defendant owed them a duty of care under an express or implied retainer, I move on to the claim that the 2nd Defendant owed them a duty of care in tort. The immediate difficulty for the Plaintiffs is that this cause of action was not even pleaded. While the Plaintiffs chose to discharge counsel just before the trial, they did have legal representation at the time the pleadings were drafted (and indeed

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[159] AEIC of Eunice Chee dated 12 May 2016 para 83; Transcript 28 July 2016 91:3-9

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amended). No evidence was led on this claim at the trial. The claim only surfaced in the closing submissions. Given that no replies were allowed to be filed, the 2nd Defendant never had a chance to address the claim. For these reasons, the claim in tort for breach of a duty of care fails. I add in passing that, on the facts before me, even if the claim had been properly pleaded, the claim in tort is highly questionable, to say the least.

Fiduciary duties

191 Since there is no subsisting solicitor-client relationship between the Plaintiffs and the 2nd Defendant, the question whether the 2nd Defendant owes fiduciary duties to the Plaintiffs is one which demands careful examination.

192 The only question is whether the present case is one in which the circumstances justify an imposition of fiduciary duties. A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to *a relationship of trust and confidence*: *Bristol & West Building Society v Mothew* [1998] Ch 1 at 18, recently cited in *FHR European Ventures LLP v Cedar Capital Partners LLC* [2014] UKSC 45 at [5]. In this case, it cannot be said that there was a relationship of trust and confidence between the 2nd Defendant and the Plaintiffs, for largely the same reasons as I have detailed at [188].

193 Furthermore, there is no voluntary assumption of responsibility by the 2nd Defendant. No advice was rendered by Ms Chee to the Plaintiffs. Indeed, it bears repeating that the Plaintiffs made it clear to Ms Chee in the email correspondence that her input and reply was not required. They made no attempts to hide their disdain and distrust of her. The 1st Plaintiff, for

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example, wrote to Ms Hwa stating that he "do[es] not communicate with [Ms Chee] nor give her any instruction[s]…Anyway I do not have [a] working relationship with her and I will not regard her".[160] It would fly in the face of logic for the Plaintiffs to now suggest that Ms Chee had assumed responsibility towards them or had entered into a relationship of trust and confidence in respect of the distribution, when they themselves had *prevented* her from taking any responsibility. Further, based on the correspondence surrounding the appointment of the 2nd Defendant (see [177] to [183] above), the only person that the 2nd Defendant agreed to accept responsibility for was the 1st Defendant.

194 The Plaintiffs were independently advised by WTL, whom they treated as their solicitors. WTL also always referred to the Plaintiffs as "[their] clients".[161] The 2nd Defendant was simply acting on the instructions of the 1st Defendant, who was the executor of the Late Father's estate. It was the 1st Defendant who had the power to order the distribution of the sale proceeds. The Plaintiffs were not vulnerable and dependent on the 2nd Defendant such as to give rise to a relationship of trust and confidence.

Dishonest assistance

195 The Plaintiffs' claim in dishonest assistance was not pleaded and appears to be an afterthought. In any event, a claim in dishonest assistance is a type of accessorial liability: the defendant must have lent assistance to the commission of some breach of duty by a person in a fiduciary relationship with the plaintiff. As I have already found that the 1st Defendant did not

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[160] 2AB 1531

[161] Eg, 2AB 1561, 1609

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breach his fiduciary duties (except in relation to the provision of accounts), the 2nd Defendant naturally cannot be held liable for dishonest assistance. In any event, there is also no dishonesty on the 2nd Defendant's part.

Conclusion on the Plaintiffs' claims against the 2nd Defendant

196 The Plaintiffs' claims against the 2nd Defendant are dismissed in their entirety. The 2nd Defendant does not owe the Plaintiffs a duty of care in contract or equity. The claims in tort and dishonest assistance were not pleaded nor canvassed during trial, and these belated claims are also rejected.

The 2nd Defendant's claim for contribution or indemnity against the 1st Defendant

197 Given my findings that the 2nd Defendant did not owe any duties towards the Plaintiffs, there is no need to deal with the 2nd Defendant's claim for contribution or indemnity against the 1st Defendant.

The Late Mother's estate

198 Having dealt with the Plaintiffs' claim in relation to the Late Father's estate, I now move on to deal with their claims in relation to the Late Mother's estate.

Do the Plaintiffs have standing to bring claims in relation to the Late Mother's estate?

199 The complaint essentially relates to an allegation that the Late Mother's 1/7th share in the Late Father's estate should have been retained or paid over to the 1st Plaintiff and 1st Defendant as the co-executors and trustees of her estate. The 1st Defendant should not have been given his share (as a beneficiary) of the Late Mother's estate. Further, the share that he

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received was incorrect as certain expenses against the Late Mother's estate had not been properly accounted for. The problem, however, for the Plaintiffs is that these issues or claims in respect of the Late Mother's estate are not or are no longer before this court. I explain by first revisiting the preliminary issue of whether the Plaintiffs even have the *locus standi* to bring claims in relation to the Late Mother's estate in the first place.

200 In my Amendment Judgment (which I referred to briefly at the start of this judgment), I had stated that the Plaintiffs' unequivocal position in the course of the present suit was that the parties were all suing and being sued in their *personal capacities* only (at [35] of the Amendment Judgment). I had held (at [71]) that the Plaintiffs, suing in their personal capacities, had no standing to bring certain claims relating to the Late Mother's estate *against the 2nd Defendant*. I therefore did not allow the inclusion of certain paragraphs in the Statement of Claim outlining the said claims against the 2nd Defendant. I pause to note that the Plaintiffs had legal representation at this juncture.

201 I had also observed (at [73] of the Amendment Judgment) that my decision on standing as outlined in the previous paragraph had an impact on the Plaintiffs' standing to bring claims in relation to the Late Mother's estate *against the 1st Defendant* as well. However, I noted that because the 1st Defendant had never objected to the paragraphs pertaining to these claims, the issue was not before me and it was for the parties to take the necessary courses of action they deemed fit following my decision.

202 Following my Amendment Judgment, the 1st Plaintiff commenced S 284 in his *representative capacity* as executor of the Late Mother's estate (see [57] above), bringing claims against *the 2nd Defendant* in relation to the Late Mother's estate.

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203 The 1st Defendant, in his opening statement, submitted that S 284 was the proper forum for matters concerning the Late Mother's estate to be properly ventilated. This was allegedly because the reliefs sought in S 284 were clearly the same as in the present suit.[162] On the first day of the trial, counsel for the 1st Defendant cross-examined the 1st Plaintiff on the commencement of S 284, and the 1st Plaintiff admitted on more than one occasion that he "should not claim twice" against the 1st Defendant and that "having [a] double-claim is wrong".[163] In the Plaintiffs' closing submissions, they appear to have given up the claims in the present suit in relation to the Late Mother's estate, stating at para 160 that "[a]s the Late Mother's estate was ordered to be dealt with at the trial of [S 284], we will leave this to the trial judge at the trial of [S 284] to make the appropriate orders against the 1st and 2nd Defendants".

204 I first observe that S 284 was brought primarily against *the 2nd Defendant*, with reliefs sought against the 2nd Defendant. As currently pleaded, no substantive claims were brought against the 1st Defendant. Whether this remains the case is to be seen, since there is technically nothing to prevent the Statement of Claim from being amended to set out substantive claims against the 1st Defendant as well. I make clear that I am not making any comment on the conduct of S 284 which is not before me. While it may be said that the 1st Plaintiff, as a litigant-in-person, might not have fully comprehended the technical arguments on legal capacities,[164] I am of the view that he clearly accepted that all issues against the 1st and 2nd Defendants in relation to the Late Mother's estate are to be dealt with in S 284.

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[162] 1st Defendant's submissions paras 6 and 62

[163] Transcript 22 July 2016 14:26, 28; 15:26

[164] Transcript 22 July 2016 14:32-17:10

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205 In any event, although the 1st Defendant did not expressly address the point of capacity in his submissions, I am of the view that the Plaintiffs simply do not have the standing to bring an action against the 1st Defendant in relation to the Late Mother's estate in the present suit. In this respect, I refer to my analysis and reasoning at [58]–[67] of the Amendment Judgment, in which I analysed the case of *Wong Moy v Soo Ah Choy* [1996] 3 SLR(R) 27 ("*Wong Moy*"). Based on the authority of *Wong Moy*, the 1st and 2nd Plaintiffs did not have the standing to bring the claims against the 1st Defendant in relation to the Late Mother's estate, given that they were suing in their *personal capacities*, as beneficiary and creditor of the Late Mother's estate respectively. This is because the Plaintiffs have not been able to prove that it is "impossible or at least seriously inconvenient for the representatives to take proceedings" (*Wong Moy* at [28]). Indeed, the 1st Plaintiff, as co-executor of the Late Mother's estate, could have brought the claims in a representative capacity *against the 1st Defendant*. He has done precisely that when he commenced S 284 in relation to claims *against the 2nd Defendant*. The Plaintiffs only have themselves to blame for this omission and the current state of affairs. I had in my Amendment Judgment (at [73]) already made clear that my decision on standing in relation to the Plaintiffs' claims against the 2nd Defendant would affect their standing against *the 1st Defendant* as well. I had given them a chance to take up any proceedings they deemed necessary (see [211] above). It would have been prudent for the 1st Plaintiff to do so, but he has not up to this point.

Some observations on the Plaintiffs' claims against the 1st Defendant in relation to the Late Mother's estate

206 Notwithstanding the fact that the Plaintiffs agreed and accepted that the claims in respect of the Late Mother's estate were to be dealt with in S 284,

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they gave considerable evidence in respect of their complaints in relation to the Late Mother's estate. That said, the 1st and 3rd Defendant also touched on matters relating to the Late Mother's Estate. The evidence mainly concerned: (i) the 1st Plaintiff's claim for the Gleneagles Bills, the Deed of Settlement and the consent judgment in DC 2814; (ii) the 2nd Plaintiff's claim for the Late Mother's medical expenses; (iii) the 1st and 3rd Defendant's claim for the Late Mother's medical expenses; (iv) the 1st Defendant's claim for the Late Mother's funeral expenses; (v) the failure to take account of "*pek kim*" collected during the Late Mother's wake.

207 Given that the parties have agreed that claims in respect of the Late Mother's estate will be decided in S 284, I make no further comment on the evidence.

Costs

208 Having dealt with all the claims by the Plaintiffs, I now turn to the final issue of the costs of this trial.

The parties' submissions

209 The 1st Defendant asks for costs on an indemnity basis against the Plaintiffs. This was for a few reasons. First, despite the Amendment Judgment, in which I disallowed claims concerning the Late Mother's and Late Brother's estates, the Plaintiffs did not discontinue the claims relating to Late Mother's estate until the first day of trial when the 1st Plaintiff conceded that it would be improper to make double claims.[165] After the commencement of the present suit, the Plaintiffs separately commenced S 284, which related to the Late

[165] 1st Defendant's submissions para 111

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Mother's estate. This made the various heads of claim under the present suit unnecessary and duplicative. Further, the Plaintiffs insisted on taking unreasonable positions, for example by insisting that there was an agreement of $350,000 on legal costs. This is a larger sum than what the Plaintiffs had actually incurred, and more than the quantum determined in taxation proceedings.

210 The 2nd Defendant also claims for costs on an indemnity basis from the Plaintiffs. According to the 2nd Defendant, the contemporaneous documents and the evidence evinces a lack of basis to the Plaintiffs' case against the 2nd Defendant. The Plaintiffs also never had any intention to settle, and sought to disingenuously paint themselves as involuntary plaintiffs, alleging that the 2nd Defendant was inviting them to sue, when there was no such evidence. Further, the Plaintiffs discharged their former solicitors BATP at the very last moment, at the doorstep of trial. This prejudiced the Defendants, causing numerous delays and resulting in the 2nd Defendant incurring extra costs in preparing documents such as the agreed bundles, which would ordinarily have been the responsibility of the Plaintiffs. Finally, the 2nd Defendant points to the Plaintiffs' behaviour at the trial, stating that they formulated convoluted questions, which resulted in protracted cross-examination.

211 In their further submissions on indemnity costs filed on 30 September 2016, the Plaintiffs argue that indemnity costs should not be awarded, as their conduct was not unreasonable. As against the 1st Defendant, the Plaintiffs' position is that there is merit to their claims, as the 1st Defendant has clearly shown a flagrant disregard for the CA Orders and for his duties to the beneficiaries.[166] Further, the Plaintiffs had tried to make proposals to the 1st

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Defendant for mediation and settlement, but these were all rejected. Further, as S 284 was brought only in relation the Late Mother's estate, there is no duplication. Instead, it was the 1st Defendant who ought to pay the Plaintiffs' costs on an indemnity basis if he fails in the present suit, and should not be entitled to any costs if he succeeds.[167]

212 As against the 2nd Defendant, the Plaintiffs claim that they had written to the 2nd Defendant on 19 June 2013 to try and settle the claim, but this was rejected. At the beginning of the action, the 2nd Defendant's counsel had made an offer to settle but this was subject to the Plaintiffs' agreement to pay the 2nd Defendant indemnity costs, which the Plaintiffs had found unacceptable. Further, the Plaintiffs assert that they are genuinely aggrieved by the 2nd Defendant's actions and have no ulterior motive or personal grievance. They only wish to seek redress from the courts for the loss that the Plaintiffs have suffered as a result of the 2nd Defendant's acts and omissions. Further, the reason they were unable to continue with legal representation for the trial was because they have limited funds. They deny that they have been abusing the process of the court.[168]

The law on indemnity costs

213 When costs are awarded on an indemnity basis, all costs are allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred, and any doubts in these respects will be resolved in favour of the receiving party: O 59 r 27(3) of the Rules of Court. By contrast, where an order is made for costs on a standard basis, the receiving party is

[166] Plaintiffs' further submissions paras 15 and 18

[167] Plaintiffs' further submissions paras 36-37

[168] Plaintiffs' further submissions paras 23, 25-27

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allowed a reasonable amount in respect of all costs reasonably incurred, and any doubts are resolved in favour of the paying party: O 59 r 27(2). Costs on an indemnity basis are awarded as an exception rather than the norm: see *CCM Industrial Pte Ltd v Uniquetech Pte Ltd* [2009] 2 SLR(R) 20 at [32].

214 The determination of whether indemnity costs are appropriate begins with a consideration of the factors under O 59 r 5 of the Rules of Court, which states

> **Special matters to be taken into account in exercising discretion (O. 59, r. 5)**
>
> 5. The Court in exercising its discretion as to costs shall, to such extent, if any, as may be appropriate in the circumstances, take into account –
>
> (a) any payment of money into Court and the amount of such payment;
>
> (b) the conduct of all the parties, including conduct before and during the proceedings;
>
> (c) the parties' conduct in relation to any attempt at resolving the cause or matter by mediation or any other means of dispute resolution; and
>
> (d) in particular, the extent to which the parties have followed any relevant pre-action protocol or practice direction for the time being issued by the Registrar.

215 Two of the factors are particularly relevant to this case. The first is the conduct of the parties, including conduct *before* and *during* the proceedings (O 59 r 5(b)). The second is the parties' conduct in relation to any attempt at resolving the cause of matter by mediation or any other means of dispute resolution (O 59 r 5(c)). I shall return to these factors later in my judgment.

216 The recent decision of *Airtrust Hong Kong Ltd v PH Hydraulics & Engineering Pte Ltd* [2016] SGHC 167 ("*Airtrust*"), cited by all the parties, comprehensively examined the case law on indemnity costs. In that case,

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Chan J opined that it may be useful for a court to ask itself the question of whether the party's conduct was "so unreasonable as to justify an award of indemnity costs". Such conduct must "reflect a high degree of unreasonableness, and cannot merely be wrong or misguided in hindsight". However, the unreasonable conduct "need not rise to the level of dishonesty or moral iniquity": *Airtrust* at [50].

217 To assess the unreasonableness of the party's conduct, the court may consider whether the party's conduct caused prejudice to the other party as well as the context and nature of the dispute. One example cited in *Airtrust* was the case of *Goh Eileen née Chia and another v Goh Mei Ling Yvonne and another* [2014] 3 SLR 1356 ("*Goh Eileen*"). In *Goh Eileen*, the plaintiff's application to remove the defendants as joint tenants to a flat was dismissed. The defendants sought, *inter alia,* to recover costs on an indemnity basis. Quentin Loh J found that the case was not sufficiently exceptional to warrant an order of indemnity costs. Loh J considered (at [50]) that at the heart of the case was a family dispute where siblings were fighting over their parents' flat and "[l]ike most family disputes, emotions ran deep and tempers flared; various allegations, valid or otherwise, were made both in and out of court".

218 Chan J further suggested (at [23] and [49] of *Airtrust*) that it may be appropriate for a court to make an order of indemnity costs where the action or a party's conduct falls into any of the following non-exhaustive categories:

(a) Where the action is brought in bad faith, as a means of oppression or for other improper purposes;

(b) Where the action is speculative, hypothetical or clearly without basis;

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(c) Where a party's conduct in the course of proceedings is dishonest, abusive or improper; and

(d) Where the action amounts to wasteful or duplicative litigation or is otherwise an abuse of process.

219 For the purposes of my decision, I adopt the propositions set out above, which I find to be a helpful summary of the law on indemnity costs.

Decision

On what basis should costs be assessed?

220 After a careful review of the circumstances surrounding the present suit, I award costs on an indemnity basis to be paid by the Plaintiffs to the 2nd Defendant *only*.

221 In respect of the 1st Defendant, I am of the view that the context and nature of the present suit is similar to *Goh Eileen* (see [217] above). This is, after all, a family dispute between siblings, for which there was, and still is, deep-seated grievances and hurt. Emotions flared during the course of the trial and various allegations were made, some of which were uncalled for. However, this fact alone did not mean that indemnity costs would invariably be allowed.

222 In particular, I note that the 1st Defendant had raised the argument that despite the Amendment Judgment, in which I had apparently disallowed claims concerning the Late Mother's and Late Brother's estates, the Plaintiffs did not discontinue the claims relating to Late Mother's estate until the first day of trial. That is not entirely accurate. As I had earlier explained, I had only held in the Amendment Judgment that the Plaintiffs were not allowed to add

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certain paragraphs to the Statement of Claim with respect to claims *against the 2nd Defendant* in relation to the Late Mother's estate. While I observed that this decision may have an impact on whether the Plaintiffs were allowed to pursue the claims in relation to the Late Mother's estate *against the 1st Defendant*, I did not express any firm views on this for the simple reason that the 1st Defendant never raised any objections to these and the issue was not properly before me. It is also not the case that the Plaintiffs had pursued *duplicitous* claims in the present suit, because S 284 (as presently formulated) did not even encompass claims against the 1st Defendant.

223 For these reasons, I am of the view that there was nothing exceptional in the matters alleged by the 1st Defendant to warrant a departure from the usual basis of costs on the standard basis. While the 1st Defendant has been ordered to provide an account of the rental income (which may well prove not to be substantial), I note that in all other aspects he has succeeded and is entitled to full costs.

224 The situation is different with respect to the 2nd Defendant, where the Plaintiffs' conduct is far more unreasonable. The claims that were brought by the Plaintiffs were untenable in law, without factual basis, and sometimes directly contradicted by contemporaneous documents. I also observe that it was the Plaintiffs' own conduct that had distanced Ms Chee, and it was disingenuous for them to allege that the 2nd Defendant had breached various duties towards them. Further, the Plaintiffs had not even pleaded substantive causes of action in the tort of negligence and in dishonest assistance against the 2nd Defendant. This was wholly unacceptable given that they were represented by counsel (BATP) at the pleadings stage.

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225 Further, the Plaintiffs' conduct prior to the proceedings is objectionable. First, the Plaintiffs chose to discharge their solicitors at the eleventh hour, less than two weeks before the trial began. This caused real prejudice to the 2nd Defendant (a factor in [217] above), who was burdened with having to prepare documents, such as the four agreed bundles, which would ordinarily be the onus of the Plaintiffs. During the trial, the Plaintiffs were not able to give good reasons for the discharge of their solicitor at such a late stage, save for a vague and unsubstantiated belief that they would not be able to fully articulate their side of the story if they continued to be represented by solicitors.[169] It was only in their further submissions that they made a belated reference to the fact that they "do not have unlimited resources of funds".[170]

226 Second, it is evident to me that the Plaintiffs never had any intention to settle the suit. Up to their opening statements, the Plaintiffs stated that they were "willing to compromise", and that their "attempts at mediation and offers to settle were rejected",[171] but their acrimony and obvious hostility towards the 2nd Defendant both before and during the proceedings militates against any genuine intention to settle. There was only one offer to settle dated 19 June 2013 to the 2nd Defendant. The other "proposal" pointed out by the Plaintiffs simply informed the 2nd Defendant that the Plaintiffs were about to commence legal action against the 1st Defendant and asked if the 2nd Defendant was willing to be bound by the judgment in that action.[172] In fact, it appears that the Plaintiffs' position was that they were essentially involuntary

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[169] Transcript 22 July 2016 141:28-142:16

[170] Plaintiffs' further submissions para 27

[171] Plaintiffs' opening statement paras 2 and 4

[172] 3 AB 2132-2135; 3 AB 2235-2236

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plaintiffs because the 2nd Defendant had "invit[ed] [them] to sue". This allegation is unsupported by evidence and completely at odds with sense or reason.

227 I should add that the Plaintiffs could not rely on their status as litigants-in-person to avoid adverse cost orders when their conduct has passed the threshold of unreasonableness. I have already granted the Plaintiffs significant latitude in the presentation of their case, even though they were sometimes evasive in their answers, disruptive during cross-examination, and insisted on spending copious time on irrelevant questions. In this respect, I draw guidance from the observations of Edmund Leow JC in the recent case of *Ong Chai Hong (executrix of the estate of Chiang Chia Liang, deceased) v Chiang Shirley and others* [2016] 3 SLR 1006 at [40]–[41]:

> It is every layperson's right to represent himself or herself without the aid of counsel. Justice requires that courts do not apply professional standards to litigants in person, who may be involved in a court proceeding for the only time in their lives. *However, litigants in person are still subject to the same rules and procedure of court. Whilst the courts are cognisant of the fact that litigants in person are not legally trained, and are thus more indulgent of their mistakes, this does not mean that they can act without regard to these rules and procedures...* I find that the first defendant had behaved unreasonably, even when allowance is made for her inexperience and lack of objectivity; her actions caused the other parties in the litigation to incur unnecessary costs to respond to her allegations and in managing her disruptions. In my view, the first defendant had taken unfair advantage of the leeway given to her as a litigant in person and pursued her claims in a manner that was prejudicial to the other parties in the case.
>
> I pause to clarify that I did not draw an adverse inference against the first defendant for not engaging counsel for the trial when she could afford to do so: her right to appear in person is quite absolute. *However, her status as a litigant in person alone does not and cannot mean that she can conduct her case in an unreasonable manner that causes the other parties to incur unnecessary costs, and remain immune from adverse cost orders…*

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[emphasis added]

By whom should the costs be paid?

228 Despite fairly extensive submissions on the *basis* of the assessment of costs, there were no submissions made by any of the parties on *who* should bear the costs incurred –whether it should be borne by the parties personally, or by the Late Father's estate. Nonetheless, it is my view that there is sufficient evidence before this court to make an assessment on this issue.

229 In my view, the costs of the Plaintiffs and the 1st Defendant incurred for the present suit are to be paid by the Late Father's estate, *ie*, out of the sale proceeds of the Property. This is because these proceedings are brought to determine the scope of the 1st Defendant's duty as executor. Such legal proceedings can be brought by the beneficiaries in a proper case, with legal expenses of *both* the person who instituted the proceedings, as well as other parties in the suit, borne by the estate as legitimate testamentary expenses (see [77(b)] above). However, I note that a sum of only $863,377.25 remains in court after the payments out of the Minimum Sums: see [54] above. At the point of the payments out, provision had been made for the legal expenses that the Plaintiffs allege have been incurred in OS 909 and CA 70 ($350,000): see [50]-[52] and [63] above. However, the court's attention was not drawn in any of the summonses to the fact that further provision may need to be made for meeting the costs of *the present suit*. In the circumstances, it is unclear whether the amount that remains in court would be sufficient to meet the cost order currently made. If it is not, the outstanding amount that cannot be met by the remaining sum in court is to be divided among the beneficiaries equally, and each beneficiary is to pay that amount back to court in order to satisfy the cost order.

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230 However, the Plaintiffs are to bear the costs incurred by the 2nd Defendant in this suit *personally*. It is clear that there was no merit to their case against the 2nd Defendant and it would not be just or reasonable to make the Late Father's estate bear the costs of such untenable claims, when the Plaintiffs were responsible for this state of affairs. Looking at the evidence as a whole, it is clear that the Plaintiffs' displeasure with the 2nd Defendant was largely due to their perception that Ms Chee was not listening to their instructions and that she was "favouring" the 1st Defendant. I find that they have no basis for this perception. Ms Chee was acting as best she could in difficult circumstances, taking account of the scope of her appointment and the CA Orders. Indeed, the Plaintiffs were the ones who had attempted to cut off communications with her: see [188] above. Ms Chee, through no fault of her own, became embroiled in what was already a highly emotional and bitter dispute between the siblings over the Late Father's estate that has now stretched to involve three estates.

231 As for the 3rd Defendant, I am of the view that he should bear his own costs. The 3rd Defendant was added to the present suit mainly to apprise the court of his position in relation to some of the disputed claims, and his evidence was fairly contained.

Conclusion

232 In summary, I find that:

(a) The 1st Defendant has breached his fiduciary duties only in relation to his failure to provide an account of rent of the Property and to forward the Statements of Accounts to the Plaintiffs before distribution of the sale proceeds. However, the 1st Defendant did not breach his fiduciary duties in accepting the claims that he did take into

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account. He also did not breach his fiduciary duties in not taking into account the Plaintiffs' claims, which would not in any case have been allowed. The failure to forward the Statements of Accounts to the Plaintiffs therefore did not cause any loss to the Plaintiffs.

(b) The Plaintiffs' claims against the 2nd Defendant are dismissed in their entirety.

233 The 1st Defendant is to provide an account of rent received from the Property within two months of the date of this judgment. If the account of rent reveals profits made from the rental, these profits must be returned to the estate and be equally divided among the beneficiaries. I remind the 1st Defendant that he needs to perform this duty *assiduously and honestly*.

234 The 1st Defendant's costs are to be assessed on a standard basis. The Plaintiffs' and 1st Defendant's costs are to be paid out of the Late Father's estate. If the amount left in court is insufficient to meet this cost order, the outstanding costs are to be divided equally among the beneficiaries, with each beneficiary to pay back that amount into court as necessary to satisfy the cost order.

235 In addition, the Plaintiffs are to pay the 2nd Defendant's costs on an indemnity basis. These costs are to be paid by the Plaintiffs *personally*.

236 All the above costs are to be agreed or taxed.

237 The 3rd Defendant is to bear his own costs.

238 I conclude by making some observations about the present suit. It is clear that there is much bitterness among the Foo siblings and deep-rooted

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grievances against one another which has spilt into the courts over the years. This is underscored by the sheer number of suits and interlocutory proceedings in relation to the late parents' estates. Indeed, there are now also proceedings concerning the Late Brother's Estate. These legal proceedings have resulted in the estate monies being substantially depleted in pursuing and defending the claims, without any real prospect of settlement. In fact, in the present suit, the disputed sums are negligible compared to the Minimum Sums already paid out to the beneficiaries. It bears emphasis that the court should not be used as a forum for the airing of grievances accumulated over a lifetime against other family members. As a court of law, the grievances must be set out in the context of legally enforceable rights and obligations and with due regard to established rules on procedure and evidence. It is my hope that this judgment provides some closure to the parties and enables them to leave behind their animosity and to move on to the next chapter of their lives.

George Wei
Judge

The plaintiffs in person;
Nandwani Manoj Prakash and Christine Ong (Gabriel Law Corporation) for the 1st defendant;
Christopher Anand s/o Daniel, Ganga d/o Avadiar and Foo Li Chuan Arlene (Advocatus Law LLP) for the 2nd defendant;
The 3rd defendant in person.

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