IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 08

Suit No 71 of 2012

Between

(1) Cristian Priwisata Yacob
(2) Denny Suriadinata

… Plaintiffs

And

(1) Wibowo Boediono
(2) Koh Teng Teng Isabelle

… Defendants

Suit No 169 of 2012

Between

(1) Cristian Priwisata Yacob
(2) Nila Susilawaty

… Plaintiffs

And

(1) Budiono Kweh
(2) Wibowo Boediono
(3) Toh Wee Jin
(4) Tan Lay Pheng
(5) Koh Teng Teng Isabelle

… Defendants

And

(1) Wibowo Boediono

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(2) Koh Teng Teng Isabelle
(3) Toh Wee Jin

… Third Parties

JUDGMENT

[Damages] — [Mitigation] — [Tort]

[Land] — [Registration of Title]

[Restitution] — [Unjust Enrichment]

[Tort] — [Misrepresentation] — [Fraud and Deceit]

[Tort] — [Misrepresentation] — [Negligent Misrepresentation]

[Tort] — [Negligence] — [Duty of Care]

[Tort] — [Negligence] — [Breach of Duty]

[Tort] — [Negligence] — [Causation]

[Tort] — [Negligence] — [Contributory Negligence]

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Cristian Priwisata Yacob and another
v
Wibowo Boediono and another and another suit

[2017] SGHC 08

High Court — Suit Nos 71 and 169 of 2012
George Wei J
16–20, 23–27, 30 March. 9, 11–12, 16–20 November 2015, 15–19, 24–26, 29 February, 1–2 March 2016; 1 June 2016

26 January 2017 Judgment reserved.

George Wei J:

Introduction

1 The present proceedings concern two actions commenced in the High Court: Suit No 71 of 2012 ("S 71/2012") and Suit No 169 of 2012 ("S 169/2012"). For ease of reference, I will refer to them collectively as "the Suits". The actions were not consolidated but had been ordered on 14 September 2012 to be tried together.

2 Given the complicated and interlocking narrative behind the claims in the Suits, I start with a brief summary setting out the *dramatis personae*, the essential claims and the general position taken by the parties.

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Background

Dramatis personae

3 Cristian Priwisata Yacob ("Cristian"), 48, is an Indonesian citizen educated in Indonesia up to high school level. Sometime in 1998, he started his own business in Surabaya which involved the raw timber trade. It appears that Cristian's business was and is primarily within Indonesia. Cristian is married to Nila Susilawaty ("Nila"), with whom he has three children. The children were born in 1991, 1993 and 2006. Nila's family home is in Surabaya and her family's business is in the timber industry. Cristian and Nila owned, at the material time, a unit at a condominium in Singapore located at Lorong Chuan ("the Lorong Chuan condominium"). For convenience, I will refer to the unit owned by Christian and Nila as "the Chuan".

4 Denny Suriadinata ("Denny") is Cristian's friend and business partner. Cristian had timber-related business dealings with Denny. These dealings started some time ago, possibly as early as 2006.[1] Cristian gave evidence that he also entered into joint investments with Denny outside Indonesia. Such investments included joint investments in shares listed in Singapore which were made through Pacific Heights Ltd ("Pacific Heights"), a company registered in the British Virgin Islands. Pacific Heights, which was owned by Cristian and Denny,[2] held an account at Credit Suisse in Singapore. Whilst the joint investments were primarily concerned with the stock market,[3] it appears

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1 Notes of Evidence ("NOE") 17 March 2015 p 62 line 10–p 63 line 14 (Denny); NOE 9 November 2015 p 19 line 1–6 (Cristian); NOE 9 November 2015 p 33 line 2–6.

2 Plaintiffs' Supplemental Bundle of Document-12 (Share Certificates for Cristian and Denny) r/w NOE 18 March 2015 p 7 line 10–17; NOE 16 November 2015 2015 p 52 line 24–25.

3 NOE 17 March 2015 p 96 line 3–8.

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that Cristian and Denny were not averse to the idea of investment in the property market in Singapore.[4] The evidence is that Cristian and Denny contributed equally to the funds of Pacific Heights.[5] There is, however, no documentary evidence on the investment arrangement between Cristian and Denny nor on how Pacific Heights was funded.

5 Wibowo Boediono ("Wibowo") was born in Indonesia in 1986. He became a Singapore permanent resident in 2012. Wibowo was educated in Canada and the United States, although his early schooling was in Singapore. Wibowo graduated in May 2007 and returned to Singapore permanently around September 2008. He is fluent in English.

6 Wibowo is married to Isabelle Koh Teng Teng ("Isabelle"), a Singaporean with a degree in Economics from the National University of Singapore, obtained in 1998. Isabelle had already graduated when the couple first met in 2001.[6] At that time, Wibowo was 15 years old and Isabelle was 28 years old.[7] They kept in contact whilst Wibowo was studying overseas. They met up again in 2007 and married in November 2007. Like Cristian and Nila, Wibowo and Isabelle owned a unit at the Lorong Chuan condominium. Whilst Cristian and Nila clearly do understand some English, it is apparent that Wibowo's command of English is very much stronger. Indeed, the evidence is that Wibowo is more comfortable communicating in English rather than Bahasa Indonesia. It is significant to note that Isabelle's evidence is that she is unable to converse in Bahasa Indonesia.

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4 NOE 17 March 2015 p 86 line 13–22.

5 NOE 17 March 2015 p 91 line 18–20; NOE 19 March 2015 p 55 line 9–12.

6 NOE 24 February 2016 p 4 line 6–12.

7 NOE 16 February 2015 p 3 line 23.

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7 I pause to note that Isabelle comes from a well-to-do family. Her father provided considerable financial assistance to the newly married couple in respect of various property purchases. Isabelle's evidence is that after her marriage in 2007, she essentially became a home-maker; all matters relating to finances and household income were left in Wibowo's hands. It should be noted that in 2007, Wibowo had only recently graduated and was only just about to start his working life in Singapore. In contrast, it appears that by 2007, Isabelle must have been working for many years. Prior to her marriage and for some time thereafter, Isabelle worked in Singapore as a "guardian" for children from overseas who were studying in Singapore. It appears that this service continued for a while after her marriage as it was only stopped after the birth of her second child in 2010.[8]

8 Budiono Kweh ("Kweh"), Wibowo's father, was married to Liem Landy ("Landy"). Kweh and Landy were in the plywood furniture business in Indonesia. They had some business dealings with Cristian in connection with the supply of timber. Cristian's evidence was that his dealings were more with Landy rather than Kweh and that Landy was active and took a major role in the running of the plywood business. It is also significant to note that Kweh passed away after the Suits were filed. Wibowo's evidence is that he has become the owner or part-owner of the Indonesian plywood business.[9] This is so even though Wibowo has not been appointed as a legal representative of his father's estate either in Singapore or Indonesia.

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8 NOE 16 February 2016 p 7 line 6–21 (Wibowo); NOE 26 February 2016 p73 line 7–19 (Isabelle).

9 NOE 19 February 2016 p 74 line 8–23.

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9 Toh Wee Jin ("Toh") and Tan Lay Pheng ("Tan") are both solicitors in Singapore who were involved in an allegedly fraudulent transfer of the Chuan owned by Cristian and Nila to Kweh. The facts pertaining to their involvement will become clearer later in this judgment.

The pleadings in S 71/2012

10 There are two distinct claims in S 71/2012. The principal claim is brought by Cristian and Denny against Wibowo and Isabelle for the recovery of monies invested by them in two properties, a unit at Oasis Garden and a unit at Parc Mondrian ("the Investment Claim"). The secondary claim is brought by Cristian for conversion/loss of use of a car that was purportedly bought and paid for by him but registered in Isabelle's name ("the Car Claim").

11 Whilst Wibowo and Isabelle accept that monies were indeed transferred by Cristian into their joint bank account in Singapore, they deny that any sums are owed or that they are in breach of any joint investment agreement. The crux of the defence was that the monies were paid over in part-satisfaction of a debt owed by Cristian to Kweh. According to Wibowo and Isabelle, the proposed investment and acquisition of units in Oasis Garden and Parc Mondrian never materialised although the investment had been discussed. Further, Wibowo and Isabelle deny entering into any joint investment agreement with Denny; Wibowo's position is that the discussions which he had with Cristian were only in respect of a possible investment agreement with Cristian alone. In any event, Isabelle's case is that she was not a party to the alleged joint investment agreement. As for the Car Claim, Wibowo and Isabelle deny that the car in question belonged to Cristian. They

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claim that the monies were provided by Cristian to satisfy the same debt owed by Cristian to Kweh.

The pleadings in S 169/2012

12 In S 169/2012, Cristian and Nila claim that Kweh, Wibowo and Isabelle engaged solicitors to fraudulently convey the Chuan to Kweh without their knowledge or consent ("the Fraud Claim"). Cristian and Nila claim damages for the loss of the Chuan and their belongings in the Chuan. According to Cristian and Nila, they only discovered the transfer to Kweh when Wibowo and Isabelle filed and served the defence in S 71/2012 on 22 February 2012.[10] The defence stated that the Chuan had been transferred to Kweh in satisfaction of the balance of the alleged debt that Cristian owed to Kweh. According to Cristian and Nila, they knew nothing of the transfer of the Chuan before that date. They further assert that they never instructed solicitors to act in the supposed sale or transfer.

13 Cristian and Nila also brought negligence claims against Toh and Tan ("the Negligence Claims"). Toh was the solicitor who acted for Kweh (as the "buyer") under the instructions of Wibowo and Isabelle in the conveyance of the Chuan. Toh had also applied for a Replacement Certificate of Title ("RCOT") which was used to complete the transfer of the Chuan to Kweh. This was done, allegedly on the instructions of Cristian and Nila. Tan, on the other hand, was the solicitor who purported to act for Cristian and Nila (as the "sellers") in the conveyance of the Chuan to Kweh.

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[10] NOE 26 March 2015 p 20 line 24–p 21 line 2 (Nila); NOE 19 November 2015 p 3 line 17–p 4 line 5 (Cristian).

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14 The case against Toh and Tan is that Cristian and Nila never instructed them to act on any matter in relation to the Chuan. Any instructions were in fact provided by Kweh and/or Wibowo and/or Isabelle without the knowledge and authority of Cristian and Nila. The crux of the complaint is that Toh and Tan did not conduct proper checks to verify the source and authenticity of the supposed instructions that they thought they had received from Cristian and Nila. If this had been done, they would have discovered that they did not have any authority to act for Cristian and Nila. There is no assertion that Toh and/or Tan were complicit in the fraudulent plans of Wibowo, Isabelle and Kweh.

15 Toh, in turn, took out third party proceedings against Wibowo and Isabelle.[11] The crux of Toh's claim is that if Cristian and Nila succeed in their claim against him, Wibowo and Isabelle are liable to him for fraudulently misrepresenting that Cristian and Nila had agreed to Toh acting in respect of the application for a RCOT. Toh also has a claim for contribution against Wibowo and Isabelle under the Civil Law Act (Cap 43, 1999 Rev Ed) ("CLA").

16 Another set of third party proceedings was taken out by Tan against Toh. The crux of Tan's claim is that if he is found liable to Cristian and Nila, Toh is liable to indemnify him, because Toh had negligently or recklessly misrepresented that Cristian and Nila had agreed to appoint him to act in the conveyance. Tan also has a claim for contribution against Toh under the CLA.

The relevance of Kweh's demise

17 Kweh, the first defendant in S 169/2012, passed away in Penang on 17 November 2012. The estate of Kweh was unrepresented at the trial as there

[11] 3rd Defendant's Statement of Claim against Third Parties at p14.

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was no litigation representative or personal representative appointed on behalf of Kweh's Estate. I note that the question as to whether a litigation representative or personal representative should be appointed appears to have been raised in early interlocutory proceedings. Curiously, the evidence of Wibowo is that he is not even aware of the appointment of any personal representative for his late father, not even in Indonesia. This is a point that I shall return to later.

18 I note that an application was made for a supplementary affidavit of evidence-in-chief ("SAEIC") by Isabelle to be filed after Kweh's demise. This affidavit explains that on 8 March 2012, Isabelle accompanied Kweh to the law offices of Rajah & Tann Singapore LLP ("Rajah & Tann") where a statement was taken from Kweh setting out his general position in S 169/2012. The signed statement was exhibited in this affidavit. In the circumstances, especially given that Kweh passed away eight months from the date Kweh provided his statement, leave was granted for the statement to be admitted.

19 To facilitate understanding, the judgment will be broadly divided into three parts. Part One will mainly examine the evidence relating to the issues and dispute between Cristian/Nila/Denny and Wibowo/Isabelle. Part Two will deal with the evidence on the issues and disputes concerning the acts and conduct of Toh and Tan in respect of the conveyance. Part Three will deal with legal issues and set out the decisions reached in the light of Parts One and Two. The judgment will conclude by setting out separately the decision and orders in respect of each suit and claim.

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Part One: The Issues and Disputes between Cristian/Nila/Denny and Wibowo/Isabelle

Burden of Proof

20 A preliminary issue that arises is whether the burden of proof lies on Cristian and Nila to show that the conveyancing documents are spurious or on Wibowo and Isabelle to establish that the documents are genuine.

21 In *iTronics Holdings Pte Ltd v Tan Swee Leon and another* [2016] 3 SLR 663, this court held at [63], citing *Chng Bee Kheng and another (executrixes and trustees of the estate of Fock Poh Kum, deceased) v Chng Eng Chye* [2013] 2 SLR 715 ("*Chng Bee Kheng*") at [51], that the party who alleges that a document is a sham bears the burden of proving that the parties intended the document to be a pretence. Whilst this statement relates to sham agreements (agreements that were "entered into" but never intended to be relied upon), I am of the view that it is equally applicable in the context in the present case. I also note the endorsement by the Court of Appeal in *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 686 at [183]–[184] of the following statement in *Tang Yoke Kheng v Lek Benedict* [2005] 3 SLR(R) 263 at [14]: "the more serious the allegation, the more the party, on whose shoulders the burden of proof falls, may have to do if he hopes to establish his case".

22 Applying the above to the present case, I am of the view that the legal burden of proof falls on Cristian and Nila to show that the conveyancing documents (such as the application for a RCOT and the Letter of Authority appointing Tan) in question are spurious. Their pleaded case is that the Chuan was their property and that the conveyance of the Chuan to Kweh was fraudulent in that they had never agreed to make the transfer of the Chuan for

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any purpose at all. To this end, all the documents which appear to suggest that they had willingly agreed to the transfer are said to be spurious and the product of a fraud. On the facts, this must include, at the very least, sufficient proof that they did not knowingly sign the documents in question.

23 This is not, however, the end of the matter on the question of proof and evidence. V K Rajah JA in *Britestone Pte Ltd v Smith & Associates Far East, Ltd* [2007] 4 SLR(R) 855 ("*Britestone*") stated at [58] that there are two kinds of burden in relation to the adduction of evidence. The first is the *legal* burden of proof which describes the obligation to persuade the trier of fact that, in view of the evidence, the fact in dispute exists. This *legal* burden always rests with the plaintiffs, unless a legal presumption operates. The second is the *evidential* burden to produce evidence since, whenever it operates, the failure to adduce some evidence will mean a failure to engage the question of the existence of a particular fact or to keep this question alive. This *evidential* burden can and will shift.

The evidence at trial

24 I turn now to the evidence elicited at the trial before me. Six witnesses were called on behalf of the plaintiffs in the Suits. The four factual witnesses were: Cristian, Nila, Denny, Agus Riyanto (a friend of Denny). Two expert witnesses were also called: Yap Bei Sing (a handwriting expert) ("Mr Yap") and Tan Kah Leong (a mobile forensics expert). For the defendants, evidence was heard from four factual witnesses: Wibowo, Isabelle, Toh and Tan.

25 The cross-examination was lengthy and often robust and intense. Given the lack of documentary evidence and independent corroboration of the basic underlying loans and transactions between Cristian/Nila/Denny and

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Wibowo/Isabelle, the examination of the witnesses gained importance. For this reason, it will be necessary to set out a somewhat lengthy discussion of the oral evidence. This will be done in relation to the specific issues that arose in the two suits. The parties agree that the claims in the Suits overlap in terms of the narrative. As will be seen, in the case of the core battle between the two couples, it is evident that much will turn on the court's assessment of the credibility of the testimony of each witness as a whole.

26 To facilitate understanding, I will first elaborate on the main factual issues in turn, before presenting my findings on each of them. The factual issues will be addressed in the following order:

(a) Whether Cristian was indebted to Kweh;

(b) Whether Cristian had paid for the cars;

(c) Whether Cristian and Denny had paid the monies over pursuant to an alleged joint investment in Oasis Garden and Parc Mondrian;

(d) Whether the Chuan had been fraudulently transferred;

(e) Whether Isabelle was involved; and

(f) Whether Kweh was involved.

Whether Cristian was indebted to Kweh

27 This is the key issue that underlies the disputes in the Suits. The crux of the defence of Wibowo and Isabelle to the Investment Claim, the Car Claim as well as the Fraud Claim is that the monies that Cristian transferred to them for the alleged purposes of purchasing vehicles and joint investment, as well as the Chuan that was transferred to Kweh, were in fact made to discharge

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Cristian's indebtedness to Kweh. Therefore, it will be more convenient to begin with the story from the perspective of Wibowo and Isabelle. The existence of the debt is the lynchpin of their defence. As will be seen, there is no doubt that monies were transferred from Cristian and Denny to Wibowo's and Isabelle's joint bank account. Wibowo and Isabelle assert and plead that these monies were transferred by way of part-payment of a large debt owed by Cristian to Kweh.[12] It stands to reason that the burden lies on Wibowo and Isabelle to adduce evidence on this debt.

28 According to Wibowo, he was told of the debt that Cristian owed to Kweh when he informed his parents about his proposed joint investment with Cristian, because he needed financial assistance from his parents and sought their consent. He claims that he only found out the details after S 71/2012 was commenced. He was then told of the loans made to Cristian by Kweh and the fact that Kweh had borrowed the loan monies from another Indonesian businessman, one "Haryono." The debt was said to be large and in the region of IDR 22.5 billion and dating back to February or March 2009. After his parents were told of the possible joint investment (which they strongly opposed), Wibowo's evidence is that Kweh and Cristian entered into an oral agreement whereby Cristian would make repayments in Singapore dollars direct into Wibowo's account in Singapore. This apparently explains the transfers of funds into Wibowo's and Isabelle's joint account and the transfer of the title to the Chuan.

29 Against the above, Cristian's position is straightforward: he was not indebted to Kweh at all. The funds transferred by him and Denny to Wibowo were not made in satisfaction of any debt owed by him to Kweh.

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[12] Defence (Amendment No 2) in S 71/2012 at paras 15–16

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Whether Cristian had paid for the car

30 I begin with the undisputed facts before setting out the parties' respective accounts. On 7 April 2008, Cristian made a transfer of S$100,000 to Wibowo. This was evidenced by a DBS transfer note and in any case, Wibowo did not deny receiving the sum. In May 2008, Wibowo purchased, in his name, a new Honda Accord at the price of S$97,800 (excluding insurance). Documents adduced confirmed the purchase of the Honda Accord in Wibowo's name with delivery taking place on 28 May 2008.[13] Apart from an initial down-payment of S$28,640 (which was paid for using part of the S$100,000 transferred by Cristian), the remainder of Wibowo's purchase (S$69,160) was financed by a loan.[14]

31 Subsequently, in or around November 2009, the Honda Accord was traded in for a new Mercedes E300 ("the E300") which was registered in Isabelle's name. Wibowo made the bid for the certificate of entitlement himself and secured it at a lower figure than that offered by the dealer. The trade-in price of the Honda Accord was S$80,000 and the purchase of the E300 at S$217,389 was financed by a S$120,000 loan that was taken out by Isabelle.[15] The E300 was delivered on 25 November 2009.[16] Cristian transferred, in two tranches, a total of S$140,100 to Wibowo in August 2009.[17]

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13 Wibowo's affidavit of evidence-in-chief ("AEIC") Tab 3 (p 69).

14 Wibowo's AEIC at para 15; Tab 2 (p 64); Tab 4 (p 82).

15 Wibowo's AEIC at para 34; Tab 7 (pp 96 and 108).

16 Isabelle's AEIC at para 16; Tab 1 (p 41).

17 Cristian's AEIC at para 11; NOE 11 November 2015 at p 42 line 22–23; p 53 line 7–16.

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32 The car was eventually sold by Wibowo and Isabelle on or around 17 January 2012 for the sum of S$173,000.[18]

Cristian's and Nila's account

33 Cristian's and Nila's trips to Singapore increased in frequency around 2005, when their children started attending school in Singapore. Prior to that, Cristian visited Singapore only occasionally. They subsequently decided to purchase a flat in Singapore where the children could stay. The Chuan was purchased in April 2007[19] and the actual transfer was dated 30 July 2008.[20] For this purchase, Cristian and Nila engaged the services of JS Yeh, a Singapore solicitor. The couple also used the services of a property agent (also an Indonesian) named "Kristopher" in their search for a suitable property and the conveyance. The details of the purchase were said to have been explained to him by Kristopher. Cristian's position is that whilst he has a little knowledge of English, he is not fluent and is much more comfortable communicating in Bahasa Indonesia.

34 Cristian and Nila assert that they decided to acquire or obtain use of a car in Singapore at or around the time the Chuan was purchased. Whilst there is some inconsistency over whose idea it was to acquire a car and when the decision was made, I have no reason to doubt the general tenor of their evidence as to why they wanted to have use of a car in Singapore. It does not appear that they had previously bought a car in Singapore.

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18 Isabelle's AEIC at para 17.

19 NOE 9 November 2015 p 46 line 5–p 47 line 2.

20 NOE 9 November 2015 p 43 line 25– p 44 line 2.

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35 Cristian and Nila assert that the arrangement was for the car to be purchased in Wibowo's name. The idea, they claim, came from Wibowo. It was more convenient to register the car in Wibowo's name for the purpose of road tax renewal and servicing, since Wibowo and Isabelle were living in Singapore. Further, at that time, Cristian/Nila and Wibowo/Isabelle were about to become neighbours at the Lorong Chuan condominium. When asked why he did not simply rent a car, Cristian explains that he was under the impression at the time that as a foreigner, he might not be able to rent a vehicle.[21]

36 In respect of the purchase of the Honda Accord, Cristian claims that he provided the monies, S$100,000, by means of a bank transfer to Wibowo. Cristian's evidence was that the S$100,000 was for outright purchase and he was unaware until the trial that in fact, Wibowo financed the purchase through a substantial loan.

37 As for the decision to purchase the E300, Cristian explained that it was made at Wibowo's suggestion to upgrade the Honda Accord to a new E300 which had just been launched. The Honda Accord (only one year old) had a very low mileage. It was estimated to possess a trade-in value of about S$85,000. Cristian asserts that he transferred S$140,000 to Wibowo's bank account to make up for the price difference.[22] He claimed that he was unaware that Isabelle in fact took out a loan of S$120,000 to finance the purchase. His understanding was that the monies for the E300 came from the trade-in value of the Honda Accord plus the S$140,000 that he had remitted to Wibowo. Thereafter, the E300 was used by Cristian and Nila when they were in Singapore. Cristian's case is that he paid for the road tax and other expenses.

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21 NOE 11 November 2015 p 11 line 2–17.

22 NOE 11 November 2015 p 35 line 7–11.

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Wibowo's and Isabelle's account

38 The story from Wibowo's and Isabelle's perspective is entirely different. They assert that Cristian and Nila initially had the idea of renting a car.[23] Wibowo offered to let them use one of his own cars. The Honda Accord was purchased in Wibowo's own name as it always was to be his own car. All the expenses for the Honda Accord were met by Wibowo. Wibowo does not deny receipt of the S$100,000 from Cristian. However, he explains that the sum (which Cristian claims was remitted to pay for the Honda Accord) was given to him by Kweh who agreed to provide him (Wibowo) with financial help to acquire furniture, fittings and a car. The sum was transferred *via* Cristian pursuant to a remittance arrangement between Cristian and Kweh. These monies were used to meet the down-payment and the balance was financed by a bank loan.

39 As for the upgrade to the E300, Wibowo explains that the upgrade was made for his own purposes and the purchase was to be financed in the same way: funds would be sent by Cristian to Wibowo's bank account and Kweh would settle directly with Cristian. As can be seen, the stories are diametrically opposed. Clearly one side must be lying. There is no room to explain away the discrepancies as a simple misunderstanding.

Whether Cristian and Denny had paid the monies over pursuant to an alleged joint investment in Oasis Garden and Parc Mondrian

40 This dispute concerns Cristian and Denny on the one side and Wibowo and Isabelle on the other side. The key factual issues are whether the parties had entered into a joint investment in Oasis Garden and Parc Mondrian and

[23] Wibowo's AEIC at para 26; Isabelle's AEIC at para 14.

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whether the sums of monies paid by Cristian and Denny were indeed paid pursuant to the joint investment. Again, I will begin with the undisputed facts before setting out the parties' respective accounts.

41 After Wibowo's return to Singapore from the United States, he was keen to invest in property developments. It is not in dispute that Wibowo first approached Cristian on a possible joint investment in a unit which was under construction and nearing completion at Oasis Garden. The idea was that Wibowo and Cristian acquire a unit and to sell it for a profit as and when the opportunity arose. Shortly afterwards, Wibowo contacted Cristian again with news that there was a second unit at another condominium under construction called Parc Mondrian.

42 On 7 December 2010, Cristian arranged for the transfer of S$607,700 to Wibowo. Subsequently, on 23 December 2010, Denny transferred S$450,000 to Wibowo. In the same month, Denny remitted further sums to Wibowo via the use of money changers in Indonesia and Singapore. In total, Wibowo and Isabelle accept that they had received S$1,232,270.19 into their joint DBS account.[24]

43 On 4 April 2011, Wibowo sent Cristian a new proposal by email to convert the investment in Oasis Garden and Parc Mondrian into a single joint investment in a cluster bungalow project said to be worth S$10.5m ("the Cluster Bungalow Email").[25] In brief, the email sets out the price of land (16,000 sq ft) as being S$10.5m. The project was for a minimum of four houses but with an intention to build six to eight houses. The construction cost

[24] Wibowo's AEIC at paras 55–56; Isabelle's AEIC at para 23.

[25] Cristian's AEIC at para 29, Exhibit CPY-5 (p 56–57).

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for each house was estimated to be between S$700,000 and S$1,000,000. Figures were also provided for, *inter alia*, house design cost, documentation. The estimated selling price was between S$4,600,000 and S$5,300,000 based on the then prevailing market value and size. It is not disputed that nothing came out of this proposal. I pause to note that the parties disagree on why this email was sent and its purpose.

Cristian's, Denny's and Nila's account

44 Cristian's evidence is that he discussed the investments in Oasis Garden and Parc Mondrian with Denny who expressed interest in joining. The pair then decided that they would enter into a joint investment which was structured as follows: the investment in Oasis Garden would be made in the joint names of Nila and Isabelle, whereas the investment in Parc Mondrian would be made in the joint names of Denny and Isabelle. Each investor would have a half share in the relevant property. Cristian asserts that Wibowo was informed about and agreed to Denny's participation in the joint investment. According to Cristian, he forwarded to Denny emails from Wibowo containing the details of the joint investments and left Denny to make the necessary arrangements to effect the payments required for his investment in Parc Mondrian.

45 Cristian also gave evidence that in reliance on Wibowo's representations on the joint investment for the purchase of the Oasis Garden unit, he and Nila flew to Singapore on 7 December 2010. They were met at the airport by Wibowo and Isabelle and taken to a "Bak Kut Teh" restaurant for lunch. During lunch, they signed some documents that were purportedly for the purchase of the unit. They then proceeded to Credit Suisse bank to effect the transfer of the sum of $607,700 to a DBS Bank account jointly held by

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Wibowo and Isabelle. Cristian also asserted that he provided to Wibowo copies of his and Nila's passports that were said to be for the purchase of the unit.

46 As for Denny, he claims to have flown to Singapore on 23 December 2010 to sign documents pertaining to his investment in Parc Mondrian. He claims that he was told to sign certain documents that he assumed was for his investment. Denny also effected a transfer of S$450,000 to Wibowo for his share of the investment on the same day.

47 Cristian's evidence was also that Wibowo subsequently made contact with him in June 2011, informing him that a Malaysian buyer had been found for the unit at Oasis Garden. According to Cristian, he understood that he and Nila had to come to Singapore to sign documents relating to the sale of Oasis Garden. Nila's evidence was that she went back to Singapore on 15 June 2011 and stayed at the Chuan. According to her, Wibowo and Isabelle came to her flat late at night on 20 June 2011 and obtained her signature on certain documents that were purportedly for the sale of the unit at Oasis Garden. Her understanding was that Wibowo needed the documents signed urgently because he was leaving very shortly for Malaysia by coach or bus to meet the buyer. Nila's evidence was that she signed quite a few documents – the language of the documents was English and some pages that she signed were either partially blank or wholly blank.

48 Cristian asserts that he arrived in Singapore on 21 June 2011 and met Wibowo and Isabelle by the swimming pool at the Lorong Chuan condominium late at night. Cristian was also asked to sign some documents. The evidence was that the lighting at the poolside was poor and Cristian simply signed where he was asked to sign, thinking that these documents

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related to the sale of Oasis Garden. A cashier's order for S$7,250 was given to Cristian. Cristian's understanding was that this represented his half share of the Malaysian buyer's deposit. Whilst it might appear odd that Cristian should meet Wibowo at the poolside, the evidence is that Wibowo and Cristian often did this for discussions over cigarettes. According to Cristian, his understanding from Wibowo was that the sale transaction for Oasis Garden would be completed by end of July 2011. He claims that he was also told that Wibowo would provide copies of the documents that had just been signed.[26]

49 According to Cristian, sometime in August 2011, he came across an Indonesian news report that Kweh and Landy were being sought by the Indonesian authorities for questioning on a suspected fraud. After discussions with Denny, it was decided that Cristian should send a strongly-worded email to Wibowo setting out their concerns. The email, written in Bahasa Indonesia, dated 24 September 2011, was sent to Isabelle's email address. The email referred to the investment in property and the car and asked for a meeting to sort matters out. Specific reference was made in this email to Denny's interest in the joint investment. The urgency is apparent from the tone of the email:[27]

> To Wibowo
>
> I have to write this email because it is very difficult to contact you.
>
> I am not sure whether you (wi) are too busy to return my call or you (WI) are hiding something from me.
>
> What is it Wi??? I really trust you. Look at all the transactions. I have even heard of the negative condition of your family in Surabaya, but I still trust you. I still worked with you and even bought an apartment + car using your name.

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26 NOE 17 November 2015 p 16 line 3–9.

27 Cristian's AEIC Exhibit CPY-7 (p 71).

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> Honestly speaking I felt embarrassed and bad regarding Uncle Denny when his father wanted to stay in the apartment but I did not hear anything from you.
>
> …
>
> Let us have a meeting or somehow resolve this matter.
>
> In the future we can still be engaged in other businesses.
>
> I myself do not believe that you are avoiding me.
>
> Uncle Denny keeps pushing me. Please do not embarrass me.
>
> because when I get embarrassed, I be unreasonable.
>
> Thanks wi.

50 On 30 September 2011, Isabelle replied Cristian stating that Wibowo was only free to meet Cristian on 1 November 2011 in Singapore.[28] Cristian followed this with emails on 20 and 24 October 2011 asking for confirmation of the meeting on 1 November 2011.[29] On 30 October 2011, Cristian's evidence is that he flew to Singapore together with Bonardo Pardonuan ("Bonardo"), his Indonesian lawyer and another individual referred to as Suraya, who apparently also had a small share in the Oasis Garden investment. The meeting with Wibowo did not materialise. Subsequently, it appears that Cristian, Nila and Denny visited Singapore from 1 to 7 December 2011. During this visit, they assert that they paid visits to Oasis Garden and Parc Mondrian in an attempt to discover whether any units were in their names or the names of Wibowo or Isabelle. They found out that no units were registered under any of those names.[30] Cristian claims that thereafter, he sent an SMS to Isabelle sometime in December 2011 asking for urgent responses on Parc Mondrian for the sake of Denny and Denny's father.[31]

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28 NOE 25 February 2016 p 19 line 16–p 20 line 5; AB pp 196–197.

29 Cristian's AEIC at para 38; Exhibit CPY-7 (p 74–75).

30 Cristian's AEIC at para 39; Denny's AEIC at para 19.

31 NOE 18 November 2015 p 34 line 5–p 37 line 20; Cristian's AEIC at para 39,

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51 Overall, Cristian's and Nila's evidence is that between the 20 and 21 June 2011 meetings at the Chuan and the end of December 2011, it was hard to communicate directly with Wibowo on the investments. That said, there is no dispute that Cristian/Nila and Wibowo/Isabelle did in fact meet in Bali in July 2011. The purpose of the Bali trip was never made clear – although it seems to have been made in connection with another large property/resort venture in Bali that had arisen for discussion. July 2011, of course, was the month when Cristian's understanding was that the sale of Oasis Garden would be completed. Thereafter, the evidence of Cristian/Nila is that there was no more face-to-face contact with Wibowo/Isabelle.

Wibowo's and Isabelle's account

52 In stark contrast to Cristian's and Denny's account, Wibowo's case is that whilst he did propose a joint investment in Oasis Garden and Parc Mondrian to Cristian, the agreement never materialised. His evidence was that his parents, when consulted by him, instructed him not to enter into any joint investment with Cristian. Wibowo's recollection as to when he was instructed by his parents was hazy. Inconsistent dates were provided as to when he discussed the matter with his parents, although he eventually stated that it was after he had sent the 27 November 2010 emails in which he summarised the purchase schedule and price for Oasis Garden and Parc Mondrian. Wibowo's position is that the emails of 27 November 2010 were just for the purpose of providing information to Cristian. The emails were not evidence that a joint investment with Cristian and Denny had been agreed. Wibowo's evidence is that neither he nor Isabelle in fact purchased units at Oasis Garden or Parc

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Exhibit CPY-8 (p 77–80).

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Mondrian. Wibowo and Isabelle categorically deny meeting Cristian and Nila at all on 7 December 2010 (see [45] above).

53 When asked to explain why Cristian did in fact transfer funds to Wibowo, including the S$607,700 that Cristian said was for his half share investment in Oasis Garden, Wibowo's response was that Cristian had agreed with Kweh that he would repay the debt by transferring monies to Wibowo. The total sum of S$1,232,270.19 was transferred to his account. Although this figure matches the amount referred to in the 27 November 2010 email for the half share in the investment in Oasis Garden and Parc Mondrian, Wibowo's position is that this was in fact a part-payment of the debt owed.

54 Wibowo also denies that he was ever informed that Denny was the investor for Parc Mondrian. He also denies that he agreed to the arrangement. His evidence is that he does not know Denny. Wibowo asserts that he agreed to meet him at the airport on 23 December 2010 and to accompany him to Credit Suisse only as a favour for Cristian. He claims that he was only dealing with Cristian as far as he was concerned. Whilst he met Denny on 23 December 2010 and Denny in fact transferred S$450,000 to Wibowo on that day, his evidence is that he does not know why Denny made that transfer. He postulates that Cristian may have asked Denny to do this as a further part-payment of the debt.

55 Wibowo's and Isabelle's position is that they did not meet Nila at all on the night of 20 June 2011. However, they claim to have met Cristian in the morning on 21 June 2011 (instead of at night as alleged by Cristian). In order to prove that he had left Singapore by the evening of 21 June 2011, Wibowo produced copies of the relevant pages of his passport with the date stamps. This was only done very late in the day and during the course of the trial. It

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was also very surprising, because Wibowo had previously explained that he was unable to produce his old passport (covering the period) as it had been taken or seized by the authorities in Indonesia. Yet, when production of the passport was to his advantage, he was able to produce it overnight.

56 Wibowo further asserts that nothing was signed at the meeting on 21 June 2011 although the cashier's order was handed over, but for a rather different reason namely that the sum represented the money due to Cristian in respect of the sale and transfer of the Chuan and the settlement of the debt to Kweh.

57 Wibowo initially claimed that he did not receive the emails and text messages that were sent to him by Cristian through Isabelle. This includes the email of 24 September 2011 when Cristian was asking for a meeting to resolve matters (see [49] above). Eventually, under cross-examination, Wibowo accepted that he did use Isabelle's email account from time to time and that he did have access to her email. Wibowo accepts that Isabelle did inform him that Cristian had sent an email for him to her email account. He however asserts that Isabelle did not understand the email as it was in Bahasa Indonesia and further he did not bother checking the email himself. Neither did he bother getting in touch with Cristian to find out what was on his mind. Paradoxically, Wibowo claimed that he was talking a lot to Cristian at the time on his Blackberry and that he was getting tired of Cristian's questions. I state for completeness that documentary evidence of these alleged Blackberry conversations was not placed before the court; Wibowo's evidence is that he has changed his phone and no longer has his Blackberry.[32]

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[32] NOE 17 February 2016 p 61 line 14–19; p 90 line 10–12

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58 I note also that in their affidavits of evidence-in-chief ("AEICs"), Wibowo and Isabelle explained that during this period (sometime on or around 30 September 2011) Wibowo was out of Singapore.[33] Wibowo denied that he was trying to avoid Cristian. Subsequently, Wibowo's evidence changed and he asserted that he was in fact in Singapore during this time and staying at Sentosa without Isabelle. This change of evidence took place after Wibowo's passport was entered into evidence.

59 The passport showed that Wibowo was in Singapore during this period. When asked to explain why Isabelle also stated that he was out of Singapore, his answer was simple. He had lied to her. Their marriage was going through problems at that time and he was in fact staying at Sentosa with a friend and without her knowledge.[34]

60 Wibowo asserted in cross-examination that he did in fact meet Cristian in Singapore on 31 October 2011. The meeting was said to have taken place outside his Dunsfold property. At this meeting, Cristian is said to have handed over a statutory declaration connected with an application for a RCOT for the Chuan. This time, it is Cristian who denies that any such meeting took place.[35]

Whether the Chuan had been fraudulently transferred

61 It is not in dispute that the Chuan was transferred to Kweh. The transfer was effected by way of a RCOT that was allegedly applied for by Cristian and Nila as they had allegedly misplaced the original certificate of title ("COT"). Toh acted for Cristian and Nila in the application for the RCOT.

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33 Wibowo's AEIC at para 122(a); Isabelle's AEIC at para 61(a).

34 NOE 26 February 2016 p 81 line 14–p 82 line 6.

35 NOE 18 November 2015 p 41 line 18–p 43 line 25.

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Thereafter, he acted for Kweh (as the buyer) in the transfer of the Chuan. Tan, on the other hand, acted for Cristian and Nila (as the sellers) in the transfer of the Chuan. It will be convenient to begin with the story from the perspective of Wibowo and Isabelle.

Wibowo's and Isabelle's account

62 Wibowo's evidence was that by February or March 2011, he was informed by Kweh that the debt owed by Cristian had been reduced to about S$1.793m[36] and was to be satisfied by the transfer of the Chuan to Kweh by 31 December 2011. Nila was said to have signed a cheque for S$1.793m which Kweh was to encash if the transfer was not made. A handwritten note by Kweh was said to have been signed by Nila, recording the purpose of this cheque.

63 Wibowo asserts that Kweh had in late May or early June 2011 requested Wibowo to assist in the transfer of the Chuan. In June 2011, Wibowo contacted Toh to handle the transfer of the Chuan to Kweh. Wibowo knew Toh as he had acted for Wibowo in respect of other conveyancing matters. Toh was told the background and purpose of the transfer. This was followed by two emails on 10 June 2011 attaching soft copies of Cristian's and Nila's passports.

64 What follows is a brief time-line of events leading up to completion of the transfer of the Chuan to Kweh. The time-line sets out the key events in broad terms mainly as asserted by Wibowo. Where relevant, the case asserted by Toh and Tan is also briefly set out. The time-line is set out purely as a

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[36] Wibowo's AEIC at para 58; NOE 18 February 2016 p 25 line 3– p 26 line 23.

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matter of convenience to provide the scene for a more detailed analysis of the evidence as a whole of the events and steps leading up to the conveyance.

(a) 14 June 2011: Toh prepared a draft sale and purchase agreement.[37]

(b) 15 June 2011: Wibowo emailed Toh and explained that whilst the debt was now S$1.793m, the purchase price was agreed at S$1.8m. Toh advised that Wibowo should not pay the balance due (S$7,250) until Toh's further advice.[38]

(c) 17 June 2011: Isabelle attends at Toh's office and collects the undated sale and purchase agreement and transfer documents marked with tabs indicating where Kweh, Cristian and Nila were to sign.[39]

(d) 21 June 2011: Wibowo hands Cristian a cashier's order for S$7,250 which Wibowo alleges represents the balance of the purchase price for the Chuan.[40] Wibowo claimed to have done so in accordance with Kweh's instructions. This cheque was handed over at the Chuan.[41]

(e) 21 June 2011: Wibowo and Cristian flew to Surabaya where they met Kweh. The documents were passed to Kweh. The documents were to be signed before an Indonesian notary public.[42]

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37 Wibowo's AEIC at para 69, Tab 23 (p 199).

38 Wibowo's AEIC at paras 70–71, Tabs 24–25 (pp 200–206).

39 Wibowo's AEIC at para 75.

40 NOE 17 February 2016 p 7 line 9–19.

41 Wibowo's AEIC at para 76.

42 Wibowo's AEIC at para 77.

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(f) 27 June 2011: Kweh returned the documents to Wibowo: the signed sales and purchase agreement, transfer instrument and written statement confirming receipt of S$1.793m by Cristian and Nila. The documents appear to have been signed before one Hengki Budi Priyanto Putro ("Hengki"), purportedly an Indonesian notary public. Wibowo returned to Singapore and passed the documents to Toh.[43]

(g) Late June or early July 2011: Kweh informed Wibowo that Cristian had misplaced the COT for the Chuan. Toh was alleged to have advised Wibowo that Cristian/Nila can apply for a RCOT. Toh was prepared to assist in making this application and asks Wibowo for Cristian's contact details to make arrangements. Thereafter, Wibowo claimed that he obtained from Cristian a mobile number and the following email address: cristianyacob@ymail.com ("Address A").[44]

(h) 3 July 2011: Wibowo sent an email from Isabelle's email address to Toh informing Toh of Cristian's contact details.[45]

(i) 7 July 2011: Toh sent an email to Isabelle asking Wibowo/Isabelle to collect documents for the application for RCOT and the draft statutory declaration to be signed by Cristian and Nila. A few days later, Wibowo gave these to his friend, one Suteja Hartanto, to bring these back to Surabaya so that Kweh could arrange for Cristian and Nila to sign before a notary public. Thereafter, Kweh came to Singapore for a health checkup and passed the signed documents back to Wibowo who passed them to Toh through Isabelle.[46]

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43 Wibowo's AEIC at paras 78–80.

44 Wibowo's AEIC at paras 81–83.

45 Wibowo's AEIC at para 84.

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(j) 20 September 2011: Toh made the RCOT application. The RCOT application was rejected by the Singapore Land Authority ("SLA") because the statutory declaration did not set out enough information on how the original COT was lost or misplaced. Toh's staff informed Wibowo that more information is required.[47] I pause here to note that it was on 24 September 2011 that Cristian sent an email to Wibowo at Isabelle's email address requesting for a meeting as Cristian was finding it hard to contact Wibowo (see [49] above).

(k) 18 October 2011: Wibowo emailed Toh, providing more information on how the original COT was lost.[48]

(l) 20 October 2011: Toh emailed Wibowo, attaching a revised draft statutory declaration for the RCOT application based on the additional information given. Toh informed Wibowo that more details are required. Toh requested Wibowo to ask Cristian to email Toh directly on the new application.[49]

(m) 24 October 2011: Cristian provided more information on how the original COT was lost in Surabaya by an email to Toh sent from yacob.cristian@yahoo.co.id ("Address B"),[50] an email address that was different from the one which Wibowo had provided earlier (*ie*, Address A). This appears to be the first direct communication between Toh and Cristian. According to Toh, his office sent back on the same day to

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46 Wibowo's AEIC at paras 86–89.

47 Toh's AEIC at para 4.2.1; Wibowo's AEIC at para 90.

48 Wibowo's AEIC at para 90, Tab 35 (p 234); Toh's AEIC at para 4.2.2.

49 Wibowo's AEIC at paras 91; Tab 36 (p 236); Toh's AEIC at para 4.2.5.

50 Toh's AEIC at Tab 11 (p 70).

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Address B a new or revised draft statutory declaration. Neither Wibowo nor Isabelle were copied on this email.

(n) 25 October 2011: Isabelle attended at Toh's office and collected the new application for RCOT and a new statutory declaration. Wibowo passed these documents to another friend in Singapore called Angkee who is said to live near Kweh in Surabaya. Angkee was told to pass the same to Kweh for Cristian and Nila to sign.[51]

(o) Late October/Early November 2011: Wibowo asserted that he met Cristian near his Dunsfold home. At this meeting, Cristian handed to Wibowo, the second application for RCOT and second statutory declaration. These appear to have been signed before Ali Husein, another Indonesian notary public. Wibowo handed the documents to Toh a few days later.[52]

(p) 2 December 2011: The SLA issued the RCOT and sent a letter to the Chuan notifying Cristian and Nila of the same.[53] Cristian's and Nila's evidence is that they never received this letter.[54]

(q) 7 December 2011: Toh's evidence is that he had earlier provided Tan with Address B and yacob.cristian@yahoo.com.id ("Address C") as the email addresses at which Tan could make contact with Cristian.[55] Tan's evidence is that he emailed a draft Letter of

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51 Wibowo's AEIC at paras 92-93

52 Wibowo's AEIC at para 94.

53 Wibowo's AEIC at para 96; Toh's AEIC at para 4.2.16.

54 NOE 19 November 2015 p 63 line 13–p 72 line 9; NOE 25 March 2015 p 14 line 10–p 15 line 7

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Authority and a draft Sales and Purchase agreement to both email addresses on 7 December 2011, but received a failure notice in respect of the email sent to Address C.[56] According to Tan, on either 6 or 7 December 2011, Toh informed him that Wibowo was about to visit Indonesia to meet Cristian, Nila and Kweh. Tan then emailed the very same Letter of Authority to Toh to be handed to Wibowo and brought to Indonesia by Wibowo for Cristian to sign. Pausing here, it is to be noted that Cristian and Nila were in Singapore from 1 December 2011 to 7 December 2011.[57]

(r) 10 December 2011: Wibowo collected the Letter of Authority from Toh's office and sends the same to Kweh by courier.[58] I note however that the date when Wibowo actually collected the Letter of Authority is unclear.[59] Wibowo's case is that Kweh arranged for Cristian and Nila to sign the Letter of Authority before a notary public. The Letter of Authority was then sent back to Wibowo who passed it on to Toh.[60] For completeness, Tan's recollection is that he received the Letter of Authority from Toh around 22 December 2011.[61]

(s) 12 December 2011: According to Tan, an email was sent to him from Address B which appeared to be from Cristian. The email did not

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55 Tan's AEIC at para 14; NOE 1 March 2016 p 83 line 3–p 87 line 21 (Toh).

56 Tan's AEIC at para 21.

57 NOE 18 November 2015 p 22 line 13–16 (Cristian); NOE 26 March 2015 p 29 line 6–22 (Nila).

58 Wibowo's AEIC at para 97.

59 Toh's Supplementary AEIC ("SAEIC") at para 4.2.5–4.2.6.

60 Wibowo's AEIC at para 97.

61 NOE 2 March 2016 at p1 lines 18–24.

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mention either the Letter of Authority or Sale and Purchase Agreement. It simply stated:[62]

> Dear Tan
>
> Informasi [*sic*] I recevie [*sic*] is correct. Property fully paid. Thanks.
>
> Yacob

(t) 23 December 2011: Tan's case is that he sent an email to Cristian at Address B asking for confirmation that he was agreeable to proceed to an earlier completion.[63]

(u) 27 December 2011: Tan's evidence is that he received a short email from Address B confirming early completion and volunteering details of Cristian's and Nila's birthday.[64]

(v) 28 December 2011: The transfer of the Chuan to Kweh was completed.[65]

Cristian's and Nila's account

65 Cristian and Nila take the position that they were victims of an elaborate fraud and they claim that they never intended to transfer the Chuan to Kweh. Their position is that Address B is a fake and was likely created and operated by Wibowo and/or Isabelle. In any case, they say that Addresses A and B are both spurious in that they do not belong to Cristian. According to

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62 Tan's AEIC at Tab 5 (p 33).

63 Tan's AEIC at Tab 8 (p 49).

64 Tan's AEIC at Tab 9 (p 53).

65 Wibowo's AEIC at para 98; Tan's AEIC at para 30.

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them, Cristian's only actual email address is the address used by him in the emails with Wibowo and Isabelle that have been discussed earlier.[66]

66 Further, Nila denies any knowledge of the cheque that was purportedly signed by her and the note accompanying the cheque (referred to above at [62]). I note that Cristian's and Nila's evidence is that when they gained access to the Chuan after discovering the transfer to Kweh, a number of their personal items, including their cheque book, were missing.[67]

My findings

67 I begin with the observation that Cristian and Wibowo were on friendly terms. Cristian is very much older and has much more business experience than Wibowo. Cristian was familiar with Wibowo's parents having had business dealings with them in Indonesia. There is some evidence that the first meeting between the two couples at Lorong Chuan was facilitated by Wibowo's parents. Nila and Isabelle became acquainted through their husbands. The relationship between Isabelle and Nila whilst cordial did not appear to be close because of the asserted language barrier.

68 What follows in the paragraphs below is a more detailed discussion of the evidence relating to the specific claims and issues. I should make clear at the outset that the parties' versions of the events and on what transpired are by and large polar opposites on nearly all important points. The claims and issues overlap. The assessment is made more difficult by the absence of independent corroborating evidence. Counsel for the two couples have also urged this court to bear in mind that the different claims and issues in the Suits are related in

66 Plaintiffs' Closing Submissions ("PCS") at paras 221 and 226.

67 Cristian's AEIC at para 68; Nila's AEIC at para 48.

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that they arise out of a singular fraudulent intent to cheat. Thus, for example, it is said that if the court believes and accepts the evidence of one side in relation to one claim (such as in respect of the car), this must directly impact the assessment of the creditability for the other claims as well.[68]

My findings on whether Cristian was indebted to Kweh

69 Having considered all the facts and evidence, I find that Cristian was not indebted to Kweh for the said IDR 22.5 billion. The evidence on the loan by Haryono to Kweh and the drawdown by Cristian of the loan by Kweh to Cristian is based almost entirely on the testimony of Wibowo which, in my view, was highly unsatisfactory. As will be elaborated on below, certain aspects of Wibowo's evidence appear to be at odds with the conduct of the parties at the material time. In addition, the documentary evidence said to support the existence of the debt was "dubious" to say the least. I am unable to accord much (if any) weight to them.

70 At the outset, I note that Wibowo accepts that he was not present at any meetings or discussions between Haryono and Kweh or between Kweh and Cristian. He claims that all his knowledge on the loan and debt is from what he was told by his father, Kweh. No other witnesses testified in support of Wibowo and the pleaded case on the debt. Neither Haryono (who allegedly provided the funds to Kweh that had been on-lent to Cristian) nor Landy (who was originally listed as a witness) testified before this court. The failure of Landy to testify is especially puzzling as Kweh's signed statement asserts that Landy had knowledge of the loan or debt. As for Haryono, it was said that the reason for his absence from the proceedings was simply that he did not want to

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[68] PCS at paras 1, 3; Wibowo/Isabelle closing submissions ("WCS") at para 12.

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get involved. I note in passing that Haryono was actually in the public gallery of the courtroom on 19 February 2016. The court was only informed of this on 20 February 2016 when he apparently had already left Singapore.[69]

71 Secondly, there is no written document or other independent evidence on the loan provided by Haryono to Kweh, even though the loan was supposedly secured by a large number of post-dated cheques signed by Kweh, to be encashed by Haryono only if Kweh was late in making the scheduled repayments.[70] There is also a notebook that was said to have been discovered after Kweh's death and written by Kweh that records the alleged drawdowns by Cristian, and one of the pages from the notebook was exhibited in Wibowo's AEIC.[71] However, the note was undated and there was no expert or independent confirmation that it was indeed written by Kweh. The notebook was not referred to in Kweh's statement taken at Rajah & Tann. In these circumstances, even if I was minded to ignore the hearsay rule, the handwritten note carries little to no weight.

72 I note that there was also a copy of a cheque signed by Nila for the sum of S$1,792,750 attached to the statement prepared by Kweh sometime before his death but after commencement of the actions (see above at [18]). The cheque was drawn on a HSBC bank account in the names of Cristian and Nila. The name of the payee was left blank and the cheque was undated. This cheque was said to have been signed by Nila before Kweh on 25 May 2011. It was to be encashed only if the Chuan was not conveyed to Kweh by end of 2011. Nila denies any knowledge of the cheque. Kweh's statement also refers

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69 NOE 19 February 2016 p 5 line 10–18.

70 Wibowo's AEIC at para 51; Tab 16.

71 Wibowo's AEIC at para 49(c)–(d); Tabs 14–15.

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to a note signed by Nila on the same day. The note, which is written by hand in Bahasa Indonesia and which purports to have been written by Kweh and signed by Nila, sets out the purpose of the cheque as described above.[72] No expert evidence was placed before the court as to the handwriting and authenticity of Nila's signature. In these circumstances, there is a real doubt over the authenticity of the cheque and handwritten Bahasa Indonesia note and I am as such unable to place any reliance on these documents.

73 Thirdly, as mentioned above, certain aspects of Wibowo's evidence sit uncomfortably with the parties' conduct at the material time. Wibowo claimed that his parents were adamant in October/November 2010 that there should be no joint investment with Cristian in Singapore. In this light, it is curious, to say the least, that Wibowo would engage Cristian with details of a cluster bungalow project in Singapore in April 2011. This raises a serious question over the veracity of his evidence. Further, it is rather surprising that in July 2011, Wibowo would meet Cristian in Bali (with others) to discuss what appears to have been an even more substantial property/resort project proposal of Cristian's. After all, at this time, Cristian still owed Kweh a considerable amount of money which was only allegedly fully repaid by the transfer of the Chuan at the end of 2011.

74 Moreover, Wibowo's evidence was that by February or March 2011, he was informed by his father that the debt owed by Cristian had been reduced to S$1.793m.[73] This is well before S 71/2012 was brought. Wibowo's evidence, it will be recalled, is that he did not know the details of the debt until after S 71/2012 was commenced. This does not appear to be the case. On the

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[72] Isabelle's SAEIC at p 12; Kweh's statement at para 23.

[73] Wibowo's AEIC at para 58; NOE 18 February 2016 p 25 line 3– p 26 line 23.

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contrary, there is some evidence that he appears to have known quite a number of details. For example, in Wibowo's email to Toh dated 15 June 2011 (sent from Isabelle's email address), details of the alleged loan instalments were included.[74]

75 Fourthly, I find it difficult to believe that Kweh would agree to such haphazard repayments of the alleged loan. Wibowo's and Isabelle's case is that the monies that were allegedly remitted to Wibowo for the purchase of the vehicles (S$100,000 and S$140,100), a cheque that was made out for the road tax and insurance on the E300 in 2011 (over S$5,484.50), the joint investments in Oasis Garden and Parc Mondrian (several transfers of funds which totalled S$1,232,270.19) as well as the transfer of the Chuan were intended to discharge Cristian's indebtedness to Kweh. The issue of Cristian's alleged indebtedness must also be viewed in light of the evidence that has been adduced in respect of the alleged car arrangement and the joint investments. As will be explained in the paragraphs that follow, I take the view that the evidence was consistent with Cristian's/Denny's/Nila's case that the transfers of funds from Cristian to Wibowo were effected for the cars and the joint investments as alleged by Cristian, rather than to satisfy the purported debt to Kweh. At this juncture, it would suffice for me to briefly conclude that Cristian was not indebted to Kweh in the manner alleged by Wibowo and Isabelle.

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74 NOE 18 February 2016 p 32 line 19 – p 33 line 20; Agreed Bundle ("AB") 181–182 and Wibowo's AEIC at paras 70 and 72.

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My findings on whether Cristian paid for the cars

76 Having considered the evidence and the parties' arguments, I find, on a balance of probabilities, that Cristian had indeed remitted monies to Wibowo for the acquisition of the Honda Accord and the E300.

(1) The first meeting between Cristian/Nila and Wibowo/Isabelle

77 A key factual dispute centred on when Cristian and Nila first met Wibowo and Isabelle. If the couples only met *after* May 2008, it would be highly unlikely that the Honda Accord was purchased pursuant to the alleged arrangement as asserted by Cristian. This is because Cristian had purportedly made a transfer of S$100,000 to Wibowo for the Honda Accord in April 2008. The evidence of Cristian and Nila initially was that the meeting was around August 2008.[75] During cross-examination, Nila's recollection was that the first meeting was only around September 2008.[76] It was in her re-examination that Nila changed her mind and asserted that it was April 2008.[77] Similarly, Cristian's recollection of the date of their first meeting changed to February or March 2008 during cross-examination.[78] On the other hand, Wibowo's and Isabelle's position was that the first meeting only took place around June or July 2008.

78 Whilst the evidence of Cristian and Nila was inconsistent, the events did take place a very long time ago and at a time when many things were happening in the lives of both couples. Indeed, Nila's statement that the first

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75 Cristian's AEIC at paras 4–5; Nila's AEIC at paras 3–4.

76 NOE 20 March 2015 p 47 line 11–21.

77 NOE 30 March 2015 p 10 line 5–16.

78 NOE 9 November 2015 p 48 line 24– p 49 line 1.

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meeting was in September 2008 was made after a lengthy period of cross-examination on when the couple obtained the keys to the Chuan and when the children moved into the Chuan. Nila appeared to be confused over the dates. In any case, there is no dispute that S$100,000 was transferred to Wibowo's and Isabelle's joint account in April 2008. This would be considerably before the couples first met according to the time-line of Wibowo. Looking at the evidence as a whole, I am satisfied that the couples did meet in Singapore sometime in March/April 2008, before the transfer of the S$100,000.

79 To prove that Nila was indeed in Singapore between 2 April 2008 and 25 April 2008, counsel for the plaintiffs drew the court's attention to a copy of Nila's old passport ([number redacted]) in his reply submissions. Counsel for Wibowo and Isabelle strongly objects to this reference and the attachment of the copy of the said passport on the basis that it was an improper attempt to introduce evidence from the Bar. Counsel for the plaintiffs rightly and fairly concedes that the copy of the old passport had not been formally admitted and marked by an inadvertent omission but submits that the court could have regard to the copy of the passport since it had been relied on in cross-examination. Counsel also submits that the copy of the passport was in fact referred to during the re-examination of Nila when she testified that she was in Singapore for three weeks in April 2008.

80 I am unable to place much (if any) reliance on the passport pages that were attached to the plaintiffs' reply submissions. First, while two pages of Nila's old passport had been referred to in cross-examination, those pages were different from those (bearing the entry and exit stamps) that counsel for the plaintiff seeks to rely on. I reiterate that the pages that bore the exit and entry stamps had not been disclosed and admitted into evidence. Further, the cross-examination on Nila's old passport proceeded on a completely different

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point and mainly concerned the form and appearance of her signature, and nothing more. I would also add that there was no dispute as to the authenticity of the pages of Nila's old passport that were relied on during cross-examination as well as the fact that Nila did have an older passport bearing the number [redacted].

(2) The evidence relating to the alleged car arrangement between Cristian/Nila and Wibowo/Isabelle

81 The evidence in respect of the alleged agreement to have the cars in Wibowo's/Isabelle's name, whilst thin, tends to support Cristian's account. The documentary evidence mainly comprises two SMS messages allegedly sent by Wibowo to Cristian in respect of the E300. The first SMS message dated 9 September 2009 states:[79]

> Uncle at first gave me 30,000 + 110,000 = 140,000
>
> I paid dp e-class 28,888.
>
> Bid number 1,100, paid Eric 1,000. Paid for coe 12000. Balance of money 98k.

82 The second SMS message is dated 21 November 2010 and states:[80]

> Insurance: $3,075.50
>
> Road tax: $2409
>
> Altogether is $5484.50
>
> For one year. Please write a check to Koh Teng Teng

83 As for the first SMS message, this was said to have been received by Cristian on his Blackberry mobile on 9 September 2009. Subsequently, the message was forwarded to a solicitor at Lee & Lee who was assisting in the

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79 Plaintiffs' Core Bundle ("PCB") p 13.

80 PCB p 17.

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case. Cristian asserts that he is unable to exhibit the original message that he received because his Blackberry data was lost when the mobile was being repaired in December 2013. For this reason, Cristian arranged to take a photograph of the SMS message as it appeared on the Samsung phone of the Lee & Lee solicitor to whom he had forwarded the message. The solicitor in question has since left Lee & Lee. The difficulty with the first SMS is that neither the Samsung nor Blackberry mobile phones was examined by the expert. The solicitor to whom Cristian forwarded the message was not called to give evidence. Given that Wibowo claims he has no memory of this SMS and does not admit its authenticity, I am unable to attach any weight to this SMS.

84 In my view, the second SMS, whilst not conclusive, is consistent with the evidence of Cristian. First, the authenticity and contemporaneity of this SMS is supported by the expert report of Mr Tan Kah Leong. Second, the evidence of Wibowo on the second SMS is unsatisfactory to say the least. While Wibowo claimed that he would usually communicate with Cristian by Blackberry Messenger Service, he had the means to send SMS messages if he desired since he agreed when questioned that he had two mobile phones at the time: a Blackberry and an iPhone. Further, his explanation that he may have sent the second SMS because Cristian wanted to find out the cost for maintaining a car like an E300 was unsatisfactory since it did not explain why he would ask Cristian to make out a cheque to "Koh Teng Teng" (*ie*, Isabelle).

85 I am also not impressed by Wibowo's explanation that Cristian had offered to pay the road tax and insurance on the E300 for 2011 as a partial redemption of the debt he owed to Kweh and that this was paid for by means of a cheque.[81] I have found earlier that the debt that Cristian allegedly owed to

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Kweh did not exist. As I have earlier mentioned, given the size of the debt that Cristian was said to owe Kweh, it is surprising that Kweh would agree to accept repayments in such a haphazard manner. I reiterate that there is no independent evidence to corroborate the alleged debt owed by Cristian to Kweh or indeed of an arrangement whereby Cristian would send monies to Wibowo as and when requested by Kweh for Wibowo's own use and purposes.

86 Wibowo and Isabelle also question why Cristian should be so trusting as to remit funds to Wibowo and allow the cars to be registered in his or Isabelle's name. After all, by all accounts, they had only recently met. Wibowo was a young man. He was very much less experienced than Cristian. I am equally unimpressed by this line of argument. Cristian knew Wibowo's parents and it appears that their first meeting was facilitated by Wibowo's parents. When the Honda Accord was bought, Wibowo and Isabelle had already acquired a unit of their own at the Lorong Chuan condominium. Even though it seems that Wibowo and Isabelle subsequently moved to the Dunsfold Road property, the evidence was that this property was just across the road from the Lorong Chuan. Indeed, Wibowo and Isabelle only sold their own unit at the Lorong Chuan condominium in 2013, sometime after the purchase of the E300 in November 2009.

87 Counsel for Wibowo and Isabelle submits that the fact that neither Cristian and Nila went to the showrooms to choose the cars or to conduct test drives is inconsistent with their story that the Honda Accord and E300 were intended to be their own. I disagree. Convenience aside, the fact that the Honda Accord and E300 were bought in the names of Wibowo and then

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[81] NOE 17 February 2016 p 59 line 12–p 60 line 8.

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Isabelle must be seen in the context that Wibowo was a car aficionado with considerable experience in buying and selling cars. Between 2008 and 2012, Wibowo bought, sold and owned some 12 cars including: a Honda Odyssey, a Lexus SC 430, a BMW X6, a Mercedes ML 350, a Mercedes S350, a Mercedes S300, a Nissan GTR, a Mini Cooper S, a Honda S 2000, a Fiat Diablo, a Land Rover Discovery and a Range Rover Evoque.[82] Many of these cars were registered in Isabelle's name apparently because this was advantageous for insurance and other reasons. Whilst there is no evidence that Isabelle's name was used for this purpose in the case of the Honda Accord and E300, the simple point is that the couples (especially the husbands) were on friendly terms at the material time.

88 Further, whilst it may be "curious" as to why Cristian decided to upgrade the Honda Accord to the much more expensive E300 after only a year of light usage, on balance, I accept Cristian's evidence that the decisions were made in the manner that they were said to have been made. Registration of the cars in Wibowo's (the Honda Accord) and Isabelle's names (the E300) was as a matter of convenience. I add that whilst the precise sequence of the purchases of the Mercedes S350, S300 and E300 is a little unclear, it does appear that on Wibowo's own version of events, he and Isabelle acquired the E300 at about the same time when they were buying the S350.[83]

My findings on whether Cristian and Denny had paid monies to Wibowo pursuant to the alleged joint investment

89 Before delving into the facts proper, it will be useful to bear in mind that Wibowo and Isabelle accept that they had received a total of

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[82] NOE 17 February 2016 p 19 line 16–p 30 line 7; PCB p 16

[83] NOE 17 February 2016 p22 line 17-p23 line 4; p55 line 4 -19; p.71 line 12-15.

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S$1,232,270.19 into their joint DBS account but claim that these monies were paid pursuant to the alleged loan owed by Cristian to Kweh. However, as I have found that the alleged loan did not exist, much of Wibowo's and Isabelle's defence falls away. Further, I note that the evidence in this regard tends to support Cristian's and Denny's case that the monies were paid to Wibowo pursuant to the joint investment. In particular, I find that Wibowo was, at all material times, apprised of Denny's involvement in the joint investment, and that Cristian, Nila and Denny had signed documents that were purportedly for the purpose of the joint investments in Oasis Garden and Parc Mondrian.

(1) The documentary evidence and the payments

90 In my judgment, the correspondence between the parties as well as the conduct of the parties suggest that the parties had entered into the joint investments as alleged by Cristian and Denny.

91 I begin with the joint investment proposal that is set out in an email sent by Wibowo to Cristian at 8.41pm on 27 November 2010. The email was written in Bahasa Indonesia and has been translated as follows:[84]

> Detail of Properties:
> 1. Oasis Garden
> developed by Kheng Leong Co. Total units: 134
> full condo facilities.
> FREEHOLD
> Size: 1227 sqft, asking: 1,280,000 million
> selling price: 1,180,000 million

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[84] AB p 154.

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> psf: $961.695
>
> $1,180,000 + $35,400 (3% tax) = $1,215,400
>
> $1,215,400:2 = $607,700
>
> 2. Parc Mondrian
>
> Full condo facilities
>
> FREEHOLD
>
> Size: 1184 sqft, asking: $1,293,000 million
>
> Selling price: 1,238,000
>
> psf: $1045.61
>
> $1,238,000 + $37,140 (3% tax)= $1,275,140
>
> $1,275,140: 2 = $637,570
>
> the 2nd one is close to ama american school. opening next year.

92 Some two hours later, Wibowo sent out a second email (also in Bahasa Indonesia) with the payment terms and schedule. This email suggested a degree of urgency in meeting the payment schedule which suggests that an agreement between the parties had already been concluded. This email states:[85]

> 1% for deposit, from 27 november
>
> 1 week later, 4%
>
> The following 1 week 3% tax (stamp duty – transfer of name)
>
> 4 weeks, the remaining.
>
> This is only the estimated schedule, it can be earlier. We would like to sell quickly and notarial process should proceed faster, therefore, we have to present cheque in full amount to the notary public. We cannot afford to be late, if we are late, we will be subject to interest payment
>
> wahh it's not easy to translate English to Indonesian

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[85] AB p 156

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93 The plan was to put the properties in the names of Nila and Isabelle. I note that only brief details are provided in the above emails. Cristian responded with a short reply which was translated as follows: [86]

> Hahaha, you have to speak Indonesian. You come from here anyway. Ok, I will forward it.

According to Cristian, by saying that he "will forward" the emails, he meant that he would send the same to Denny.[87]

94 Aside from the above emails which were sent on 27 November 2010, there are no other documents relevant to the joint investment agreement or the discussions on Oasis Garden or Parc Mondrian. There is certainly no written joint investment agreement. Wibowo submits that the emails simply set out basic information for discussion purposes only. Cristian and Denny's case is that the quoted words from the second email above suggest a degree of urgency in meeting the payment schedule and that this is consistent with their assertion that an agreement had already been made. I agree. The two emails at the very least strongly suggest that there was a clear understanding already over the key terms of the agreement.

95 Even if there is doubt (arising from the above emails) as to whether the joint investment remained a proposal or had crystallised as an agreement, the fact that Cristian subsequently provided his share of the investment in Oasis Garden in the sum of S$607,700 (as calculated in Wibowo's first email on 27 November 2010 referred to above at [91]) puts it beyond doubt that there was a firm agreement between Cristian and Wibowo to invest in Oasis Garden. As for Denny, there were numerous payments that made up his share of the

86 AB p 160

87 NOE 12 November 2015 p 60 line 3–11; PCB p 59.

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investment in Parc Mondrian and I accept Denny's case that those monies were paid over to Wibowo pursuant to the joint investment. In short, the fact that the correct sums were provided by Cristian and Denny is clear evidence supporting their case that a firm agreement had been reached with Wibowo.

96 Further evidence that the parties had entered into the joint investment may be found in the Cluster Bungalow Email. In brief, the email sets out the price of land (16,000 sqft) as being S$10.5m. The project was for a minimum of four houses but with an intention to build six to eight houses. The construction cost for each house was estimated at S$700,000 – S$1,000,000. Figures were also provided for house design cost, documentation, *etc*. The estimated selling price was S$4,600,000 – S$5,300,000 based on current market value and size. For convenient reference, the email stated, *inter alia*:[88]

> Selling price of oasis garden condo $1,500,000
>
> Selling price of Parc Mondrian condo $1,800,000
>
> within 4 weeks, the money from the condos shall be returned to us, at the most 8 weeks (document is complete)
>
> payment scheme: $10,500,000 in cash to be entitled for
>
> credit minimum 70%
>
> credit will be arranged within 3 weeks at the quickest, or at the latest within 2 months
>
> You will not lose money building a landed house uncle, although property price may drop for the condo market but it will remain stable and even climb for landed property.
>
> Thank you

97 In my view, the email on its face is also consistent with some sort of investment in Oasis Garden and Parc Mondrian having been entered into and which Wibowo was now proposing to replace with a landed property

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[88] PCB p 80.

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investment. Contrary to Wibowo's assertion that he was simply giving Cristian information to help Cristian source for potential investors for the cluster bungalow project, the natural interpretation of the email is that Cristian was indeed being asked to move out of condominium-based investments and into a landed project proposal. In any case, even if Cristian had asked for detailed information on the cluster bungalow project, this does not explain why references are made in the same email to Oasis Garden and Parc Mondrian.

98 It is also noted that Wibowo does not appear to have sent any email or SMS or Blackberry message to Cristian advising him that the investment proposal had been withdrawn. Instead, what we have is a bare assertion that Kweh spoke to Cristian around the time and sought repayment of the debt from Cristian. There is also a bare assertion that on an unspecified date, Wibowo spoke to Cristian and they agreed to abort the joint investment.

(2) The meetings between Cristian/Nila and Wibowo/Isabelle in December 2010

99 As mentioned already, Cristian's and Nila's evidence is that they flew to Singapore on 7 December 2010 to sign documents pertaining to the investment in Oasis Garden. Cristian and Nila claimed that they met Wibowo and Isabelle on that day. Over lunch at a "Bak Kut Teh" restaurant, they were presented with numerous documents (drafted in English) to sign and were told that these related to the investment in Oasis Garden. They claimed to have signed without reading the documents and copies of these documents were not provided to them. Cristian also asserts that he handed copies of his and Nila's passports for the purpose of the investment at the 7 December 2010 meeting. Thereafter, the parties went to Credit Suisse where Cristian arranged for the

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transfer of S$607,700 to Wibowo representing his half share of the investment in the acquisition of Oasis Garden.[89]

100 While there were inconsistencies in the evidence of Cristian and Nila (in cross-examination and re-examination) as to the details of what transpired (how many documents or pages were signed, *etc*), I accept Cristian's and Nila's evidence that they met Wibowo and Isabelle on 7 December 2010 and had signed documents that were purportedly for their investment in Oasis Garden. First, although Wibowo and Isabelle aver that no meeting took place on 7 December 2010, I note that Cristian's passport shows that he did indeed enter Singapore on 7 December 2010[90] and this is consistent with his assertion that the 7 December 2010 meeting took place. Secondly, Cristian's evidence that he was subsequently informed that the copy of Nila's passport was of poor quality is also supported by his subsequent sending of a new scanned copy of Nila's passport by email on 10 December 2010.[91] Thirdly, Cristian's evidence is also consistent with the fact that the transfer of $607,700 to Wibowo and Isabelle took place on 7 December 2010.

(3) The 23 December 2010 meeting between Wibowo and Denny

101 According to Denny, whose evidence I accept, he flew to Singapore to sign the papers relating to Parc Mondrian on 23 December 2010. Denny asserts that he had confirmed the position with Wibowo and arrangements were made for him to meet Wibowo in Singapore. He was also met at the airport by Wibowo where he signed documents that he also assumed related to the investment. Thereafter, he was taken to Credit Suisse to effect payment.

89 Cristian's AEIC at para 23; PCB pp 44–45.

90 NOE 20 March 2015 p 72 line 15–p 73 line18; PCB p 60 (Cristian's passport pages).

91 NOE 20 November 2015 p 3 line 3–13; Exhibit P-7; PCB pp 49–50.

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Denny's evidence is that he transferred S$450,000 to Wibowo on 23 December 2010 as part-payment of his share.[92] The balance of his share was paid by monies transferred from Indonesia through money changers in Indonesia and Singapore to Wibowo. Whilst the evidence as to how these funds were transferred was confused and poorly documented, I note that Wibowo accepted that it was common practice for Indonesians to send monies to Singapore through middlemen and money changers. As in the case of Oasis Garden, Denny was not provided with copies of what he had signed.

102 At this juncture, it is apposite to address Wibowo's claim that he was unaware of Denny's involvement in the joint investments. Cristian asserts that he had made it clear to Wibowo in telephone communications that Denny was his partner and would invest in Parc Mondrian with Wibowo. Whilst the evidence as to what was said or agreed is thin, I am of the view that the evidence on the whole supports the position taken by Cristian and Denny.

103 It is clear that Denny did come to Singapore on 23 December 2010. It is also not in dispute that Denny was met by Wibowo at the airport and that Wibowo had accompanied Denny to Credit Suisse on the same day. Wibowo's position is that he did not know Denny. He claims that he agreed to meet Denny at the airport and to accompany Denny to Credit Suisse as a favour to Cristian. I find his explanation to be unconvincing. Further, the undisputed fact that Denny transferred S$450,000 to Wibowo from the Credit Suisse account maintained by Pacific Heights (the British Virgin Islands company owned by Cristian and Denny) on 23 December 2010[93] is further evidence that

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92 Denny's AEIC at para 7; NOE 18 March 2015 p 75 line 10–16; p 76 line 18–p 77 line 6.

93 NOE 16 February 2016 p 67 line 21–p 68 line 10.

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Wibowo knew of Denny's involvement in the joint investment. In addition, there are also subsequent emails or messages sent by Cristian to Wibowo (which will be referred to later) which are also consistent with Denny's involvement in the joint investment.

(4) The events thereafter.

104 I am of the view that the subsequent correspondence between the parties as well as the conduct of the parties support Cristian's and Denny's version of the story that they thought they had invested monies in Oasis Garden and Parc Mondrian and were becoming frustrated at their unsuccessful attempts to contact Wibowo between June/July 2011 and December 2011.

105 In June 2011, Wibowo is alleged to have made contact with Cristian with news that a Malaysian buyer had been found for the unit at Oasis Garden. Even though Oasis Garden was supposed to have been purchased in the joint names of Isabelle and Nila, he was advised that under Indonesian law, it was best if he also signed certain documents as he did not have a prenuptial agreement with Nila. The nature of the documents and why they had to be signed by Cristian because of Indonesian law was never made clear in the evidence. Cristian's evidence was that he understood that they had to come to Singapore to sign documents relating to the sale of Oasis Garden.

106 The evidence as to the meetings of 20 June 2011 (Nila) and 21 June 2011 (Cristian) was thin and at times confused. Given the long time that has elapsed since June 2011, it is again perhaps not surprising that there will be lapses of memory. Wibowo and Isabelle, on the other hand, simply deny the meeting of 20 June 2011. Wibowo and Isabelle claim that they met Cristian on the morning of 21 June 2011. However, their claim is squarely contradicted by

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an SMS dated 21 June 2011 at 6.08pm which Cristian claims was sent by Isabelle. The SMS states that Wibowo would be returning that night and would leave for Surabaya the next day. Although Isabelle has denied sending this SMS,[94] I am of the view that the SMS tends to support Cristian's version of what happened; it contradicts Wibowo's testimony that he actually met Cristian in Singapore on the morning of 21 June 2011 when he merely handed over the cashier's order.

107 My view is reinforced by the tone and contents of the emails sent by Cristian to Wibowo nearer to the end of 2011. It will be recalled that Cristian sent to Wibowo a strongly-worded email asking for a meeting to resolve things. This email was referred to at [49] above. Whilst there was considerable cross-examination as to why Cristian should choose to attempt making contact with Wibowo by sending emails to Isabelle, it is clear that the above email was in fact received by Isabelle. Isabelle's evidence was confused and hard to follow. At times, it appears that her evidence was that she did not read this email or that she did not understand the email. However, the fact remains that Isabelle replied on 30 September 2011 stating that Wibowo was only free to meet Cristian on 1 November 2011 in Singapore.[95] Cristian followed up with emails on 20 and 24 October 2011 asking for confirmation of the meeting on 1 November 2011.[96]

108 On 30 October 2011, Cristian's evidence is that he flew to Singapore together with Bonardo, his Indonesian lawyer and another individual referred to as Suraya, who apparently also had a small share in the Oasis Garden

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94 NOE 25 February 2016 p 17 line 10–p 19 line 8.

95 NOE 25 February 2016 p 16–p 20 line 5; AB p 196–197.

96 Cristian's AEIC at para 38; Exhibit CPY-7 (p 74–75).

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investment. The meeting with Wibowo did not materialise. What is, perhaps, even more surprising is that Wibowo asserted in cross-examination that he did in fact meet Cristian in Singapore on 31 October 2011. At this meeting, Cristian is said to have handed over a statutory declaration connected with an application for a RCOT for the Chuan. Whilst Isabelle also made reference to a meeting on 31 October 2011 outside their Dunsfold property, there is also evidence that by early June 2011, Wibowo and Isabelle had already moved out of the Dunsfold property to another residence at Jalan Angin Laut. This evidence comprises Isabelle's bank statements sent to Jalan Angin Laut in June 2011. Isabelle's explanation was that she had updated her address (for the bank statements) before she actually moved to Jalan Angin Laut in September/October 2011.[97] This seems rather improbable. All in all, the evidence as to where Wibowo and Isabelle were staying between June and October 2011 is vague or hard to follow.

109 In the circumstances, bearing in mind the matters referred to above and the evidence as a whole, it is hard to accept that such a meeting took place and that Cristian handed over a statutory declaration. It is far more likely that Cristian was in Singapore for the meeting that was supposed to take place on 1 November 2011 and which clearly did not materialise.

110 Thereafter, Cristian's evidence was that his attempts to contact Wibowo were still unsuccessful. Cristian claims that he sent an SMS to Isabelle sometime in December 2011 asking for urgent responses on Parc Mondrian for the sake of Denny and Denny's father.[98] Isabelle's position is

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97 NOE 25 February 2016 p 39 line 14–p 40 line 24.

98 NOE 18 November 2015 p 34 line 5–p 37 line 20; Cristian's AEIC at para 39; Exhibit CPY-8 (pp 77–80).

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that she has no knowledge at all of this SMS. Isabelle points out that the date stamp for this SMS was 10 August 2009 which, of course, is wholly inconsistent with the timeline. This SMS was sent by Cristian on his Nokia mobile phone. This was the same mobile phone that had been examined by the expert, Mr Tan Kah Leong. The expert's report noted that the Nokia phone had on many occasions reset itself back to the year 2009. The resetting of the phone clock could have been the result of depletion of the phone battery or the changing of the phone SIM card. Whilst the expert was not able to determine when this SMS was actually sent, he concluded that there was a possibility that the SMS was sent later than 2009. In any event, the expert's opinion was that there was no indication that the SMS messages on the Nokia phone had been tampered with. Given that the message itself appears to be genuine, the only explanation for the date stamp is that the Nokia phone must have been reset in the manner indicated by the expert. After all, there is no reason at all as to why such a message should have been sent by Cristian to Isabelle in August 2009. The content only makes sense if it was sent sometime after Parc Mondrian was constructed. Whilst it is unclear as to exactly when the message was sent, the fact that such a message was sent at all is at least consistent with the assertion that Denny thought he had an interest of some sort in Parc Mondrian.

(5) The absence of formal agreements evidencing the joint investments

111 The explanation for the absence of a proper written joint investment agreement was that everything is done under trust. By this, what was meant is that an oral agreement was sufficient for the parties. Wibowo was the son of an Indonesian businessman whom Cristian knew and had dealings with in the past. Certainly, the tone of many of the emails or messages between Wibowo was framed in a courteous manner, with Wibowo referring to Cristian as

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"uncle" on several occasions. Whilst a proper written agreement or a more detailed email would have avoided many of the difficulties of proof that have arisen, the evidence of Cristian is that in Indonesia it is common practice for business deals to be entered on an oral basis. Further, in the case of the business arrangement between Denny and Cristian in Pacific Heights and the investment in shares, there is also no written agreement as such. It appears that the oral agreement was sufficient given the relationship and trust between Cristian and Denny.[99] In any event, after hearing the evidence of Cristian and Denny, I have no reason to doubt that Cristian and Denny were indeed business (or investment) partners in Singapore.

112 To conclude, I am persuaded, on the evidence before me, it is more likely than not that Cristian, Denny and Wibowo had entered into a joint investment in Oasis Garden and Parc Mondrian and Cristian and Denny had paid over monies pursuant to the same.

My findings on whether the Chuan had been fraudulently transferred

113 To recapitulate, I have previously found that there is no sufficient proof of the alleged debt. The existence of this debt is essential to the defence presented by Wibowo and Isabelle. The "evidence" in support comprised largely assertions of Wibowo based on what he was told by Kweh. The documentary evidence in support is, however, woefully thin. In my assessment, there are many features of the alleged events leading up to the transfer of the Chuan which reinforce the view that Cristian and Nila were indeed the victims of an elaborate fraud. These are set out below.

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[99] NOE 18 March 2015 p 80 line 4–12; NOE 19 March 2015 p 68 line 5–20.

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114 I begin with the passing observation that Cristian and Nila had engaged the services of JS Yeh, a Singapore lawyer in respect of their purchase of the Chuan in 2008. The short point is that even if Cristian and Nila were staying mostly in Indonesia in 2010 and 2011, there is no explanation as to why they would not consider engaging JS Yeh's services for the application for a RCOT and or the conveyance and completion of the transfer.

(1) The email addresses that allegedly belong to Cristian

115 Cristian's case is that Addresses A and B are both spurious in that they do not belong to him and that his actual email address is the address used by him in the emails with Wibowo and Isabelle. There was no reason why Wibowo would have needed to ask Cristian for an email address to pass to Toh when he already knew what his email address was. Reference may be made to the email sent on 24 September 2011 by Cristian to Isabelle in which he was urgently requesting a meeting to resolve matters. Indeed, it is clear that Wibowo had also used that email address.

116 In the circumstances, whilst there is no direct evidence, I find that the two disputed email addresses are more likely than not, spurious, and created and operated by Wibowo and/or Isabelle. They are not Cristian's real email addresses and are not operated by him.

(2) Cristian's and Nila's signatures on the transfer documents

117 Cristian and especially Nila were cross-examined at length on the signatures that appeared on the sale and purchase agreement, transfer instrument, the applications for RCOT, the statutory declarations, the letter of appointment of Tan, the acknowledgment of receipt of the cashier's order

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dated 20 June 2011, the handwritten note signed by Nila of 25 May 2011 and the HSBC cheque for S$1.793m.

118 The genuineness of the signatures or circumstances under which these documents were signed is heavily disputed. I pause here to refer to the defendants' submission that Cristian and Nila never pleaded forgery as such.The defendants complain that instead of pleading forgery, Cristian and Nila took an equivocal position of (i) denying the signatures were genuine; and (ii) asserting that if they were genuine that they were obtained by fraud and deception.[100] Whilst their evidence could have been clearer, I am satisfied that Cristian's and Nila's position is that the signatures on the contested documents were either forgeries or were real but had been obtained by trickery and deceit. I do not accept the suggestion that these are inconsistent positions to take. The underlying position is clear: either way, they did not knowingly sign any of the disputed documents. Given that their case is that there were two occasions when they were asked to sign documents (in a rush and without proper explanation), they could not say for sure whether the signatures were forgeries or obtained by deceit.

119 In fact, Cristian and Nila accept and indeed assert that they did sign numerous documents at the meeting of 7 December 2010 and at the meetings at the Lorong Chuan condominium on 20/21 June 2011. Their position, however, is that these documents were not explained properly (or at all), many pages where they signed were blank and that their understanding was that the documents related to the investment and purchase of the Oasis Garden unit and the subsequent sale to the Malaysian buyer. It appears that Cristian's and Nila's position is that it is for this reason that they are unable to state

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100 WCS at paras 251, 259 and 389.

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affirmatively whether the signatures on the disputed documents are genuine as being their real signatures. The key point is that they never signed documents whether in Indonesia or elsewhere for the transfer of the Chuan to Kweh.

120 It will be recalled that Wibowo's and Isabelle's position is an emphatic denial of the meeting on 7 December 2010. Whilst Wibowo agrees that he met Cristian by the poolside of Lorong Chuan condominium on 21 June 2011 (though they differ on the exact timing, as discussed at [55] above), the meeting with Nila on the night of 20 June 2011 is completely denied. Wibowo and Isabelle deny that they asked Cristian and Nila to sign any documents in respect of Oasis Garden at all. Their case is that the disputed documents relating to the sale and transfer of the Chuan were all signed in Indonesia in the manner outlined earlier and which, of course, Cristian and Nila deny.

121 Cristian's and Nila's expert evidence on the signatures was confined to their signatures on the Letter of Authority to Tan (and no other disputed document or signature). The expert, Mr Yap, expressed the opinion that these signatures were likely a form of "trace forgery". The defendants did not call any expert evidence of their own although they had engaged their own expert to review the disputed documents including the Letter of Authority. The decision not to call the defendants' expert was made after the testimony of Mr Yap.

122 In *ECICS Ltd v Capstone Construction Pte Ltd and others* [2015] SGHC 214, the court noted (at [45]) that an adverse inference may be drawn from the failure of a party to call a handwriting expert engaged to produce a report. Whilst I accept that the drawing of an adverse inference may be appropriate in some cases, this is not such a case. Cristian and Nila decided to confine their own expert evidence to just one of the disputed documents.

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Given this position, the defendants decided not to call their expert who had examined all the disputed documents. This was done after Mr Yap's evidence was concluded.

123 Whilst the defendants criticise the expert report, the unrebutted evidence is that the signatures on that document were likely forged. Indeed, the expert was not cross-examined at all by Wibowo's and Isabelle's counsel. The question remains: what, if any, inference can be drawn as to the signatures on the other disputed documents and on which there was no expert evidence from either side? Counsel for Cristian and Nila submit that if the signature on any one disputed document is shown to be forged, the inference arises that the same must be likely for all the signatures on all the disputed documents. The point made is that the Letter of Authority is just one document in the chain of alleged fraudulent documents needed to carry out the fraud.

124 Given that the law requires cogent evidence to support a finding of fraud, I am not prepared to draw an inference that all the signatures on all the disputed documents are likely to be forgeries based *simply* on the expert opinion that the signatures on one document, *viz* the Letter of Authority to Tan, were likely "trace forgeries." Nevertheless, looking at the evidence as a whole, I accept the evidence of Cristian and Nila that they did not knowingly sign the disputed documents such as the sale and purchase agreement, the transfer deed, the statutory declarations, *etc* in Indonesia before notaries public. I accept that their position is that all the signatures are either forgeries or, if they are genuine, were obtained by deceit.

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(3) The notaries public

125 Given the sequence of events outlined above on the transfer documents, the best evidence to establish the alleged fact that Cristian and Nila signed the documents before notaries public in Indonesia would be from the notaries public in question.

126 Hengki is said to be an Indonesian notary public. According to the evidence of Wibowo and Isabelle, the sale and purchase agreement, transfer instrument, application for RCOT, statutory declarations and a written acknowledgement, all in respect of the conveyance of the Chuan, were signed by Cristian and Nila before Hengki. It was intended that Hengki testify for Wibowo and Isabelle at trial. An affidavit was sworn by Hengki on 8 March 2012 verifying that he witnessed the signatures. Subsequently, however, Hengki changed his mind and declined to testify in Singapore.[101] An application was made on 25 February 2015 to admit the affidavit of Hengki as an annex to Wibowo's SAEIC. However, the application was disallowed on 16 March 2015, the first day of the trial.[102]

127 Bonardo is a legal counsel in Indonesia engaged by Cristian and Nila. Bonardo swore an AEIC for the plaintiffs in which he exhibited statements said to have been signed by Hengki before Bonardo. The statements were to the effect that Hengki had never met Cristian and Nila and that the documents were not signed before him. In addition, there is a statement made by Hengki on 18 July 2012 before another Indonesian notary public confirming, *inter alia*, that the documents were not signed by Cristian and Nila before him.

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101 2nd affidavit of Wibowo in S 169/2012 dated 25 February 2015 at paras 26–30 and pp 52–54.

102 SUM 913/2015; Minute sheet dated 16 March 2015.

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Given that Hengki has declined to testify, an application was made to admit these statements under s 32(1)(*j*) of the Evidence Act (Cap 97, 1997 Rev Ed) ("EA").[103] This application was also rejected on the first day of the trial.[104]

128 As may be discerned from above, it appears that Hengki had provided contradictory statements on this matter to both sides. One statement (by affidavit) asserts that he did witness and notarise the documents as alleged on or around 27 June 2011.[105] The other statement was said to have been obtained by Bonardo from Hengki on 8 June 2012. In that statement, Hengki asserted that he had never met Cristian and Nila and that the documents were not signed before him. Both statements were ruled inadmissible.

129 To be clear, the applications in respect of Hengki's contradictory statements to the effect that he did witness the signatures of Cristian and Nila as well as the attempt to introduce evidence of his retraction are referred to solely for the purpose of setting out the backdrop. Ultimately, there was no evidence before the court from or concerning Hengki other than the fact that he refused eventually to give evidence.

130 Ali Husein is said to be another Indonesian notary public before whom it is asserted Cristian and Nila signed a Letter of Authority appointing Tan to act in the conveyance of the Chuan. Ali Husein did not give evidence at the trial. Cristian and Nila, who have denied signing any Letter of Authority, appear to have made some efforts, through Bonardo, to verify with the Indonesian authorities the existence of Ali Husein as a notary public. To this

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103 2nd Affidavit of Wibowo in S 169/2012 dated 25 February 2015 at para 33.

104 Minute sheet dated 16 March 2015.

105 2nd Affidavit of Wibowo in S 169/2012 dated 25 February 2015 at pp 53–55.

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end, some letters between Bonardo and the authorities were referred to and exhibited in Cristian's AEIC. The letters state that Ali Husein was not a registered notary in Kota Gresik or a member of the Association of Notary Public of Indonesia of Gresik Branch.[106] The long and short of the responses is that they were unable to verify his existence. Cristian and Nila submit that there is a real doubt as to whether Ali Husein in fact exists or is a notary public.

131 On the first day of the trial on 16 March 2015, the question arose as to the admissibility of the letters written by or to Bonardo over the status of Ali Husein. Cristian's and Nila's position was that the letters were evidence suggesting that Ali Husein is not in fact a registered notary public.[107] Wibowo and Isabelle strongly objected on the basis that the authenticity of the letters was not admitted and were hearsay.[108] Leaving aside any issue on authenticity, the letters were at least some evidence that efforts had been made by Cristian and Nila, through Bonardo, to ascertain the whereabouts of Ali Husein. In the end, the decision I reached was that whilst the letters were not admissible, this was on the basis that the parties agreed to the facts in paras 7–11 and 13 of Bonardo's first AEIC dated 16 July 2014 that he wrote the letters, made a police report and received the replies that he did. In short, the parties accepted that efforts were made by Bonardo, the Indonesian lawyer, to verify the status of Ali Husein.[109] What is also abundantly clear is that Wibowo, Isabelle, Toh and Tan made no attempts to verify the existence of Ali Husein. The position

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106 Cristian's AEIC Exhibit CPY-15 (p 136–144).

107 Cristian's AEIC at para 59.

108 WCS at paras 297–301.

109 Plaintiffs' reply submissions ("PRS") at para 115; WCS at para 295.

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that they take is essentially they are entitled to rely on the signature and stamp of Ali Husein as it appears on the face of the documents.

132 Further, the failure of Wibowo and Kweh to call Ali Husein is troubling given that it is Wibowo's and Isabelle's case that signatures for the documents for the second application for a RCOT and the Letter of Authority were witnessed before Ali Husein.[110] I make this observation not so much because it relates to the legal burden of proof. The point is that it is rather surprising that no attempt appears to have been made by Wibowo or Isabelle to call Ali Husein or to at least verify his existence as a notary public.

133 I note also that none of the friends or middlemen who were said to have helped Wibowo carry or bring the disputed documents to Indonesia to pass to Kweh for Cristian and Nila to sign was asked to give evidence. Whilst Kweh states in the signed note that Nila signed the cheque and handwritten acknowledgment at his house in Indonesia on 25 May 2011, there is also no evidence to corroborate Nila's visit to Kweh's house on that day.

(4) The inconsistencies between the evidence of Wibowo and Toh

134 In reaching the conclusion that the disputed documents were not signed by Cristian and Nila as alleged in Indonesia (bearing in mind that Wibowo/Isabelle have not suggested that they were signed anywhere else), I have also taken account of inconsistencies between the evidence of Wibowo and Toh.

135 According to Wibowo, Toh advised him that there was no need for Cristian and Nila to sign the documents before him in Singapore. Toh, on the

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[110] Wibowo's AEIC at para 94; Toh's AEIC at Tab 16 (p 86–89) and Tab 18 (p 95).

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other hand, asserted under cross-examination that it was Wibowo and Isabelle who stated that all documents would be signed in Indonesia. Toh's advice was that in such a case they must be signed before a notary public. The decision as to where the documents were to be signed was left to Wibowo and Isabelle.

136 I pause here to note that what is clear is that Toh never actually met Cristian or Nila. He had not even spoken to them on the telephone in respect of the application for RCOT. Whilst he had acted for Wibowo and Isabelle on previous matters, he had no knowledge of Cristian and Nila at all. The same is true for Tan, the lawyer who was allegedly instructed to act for Cristian and Nila for the conveyance.

(5) The inclusion of the transfer of the Chuan in the defence filed in S 71/2012

137 Perhaps the strongest point in favour of Wibowo and Isabelle is the fact that they chose to reveal the transfer of the Chuan to Kweh in the defence filed in S 71/2012. For convenience, the relevant timeline is as follows.

(a) 28 December 2011: Transfer of the Chuan to Kweh was completed.

(b) 5 January 2012: Letter before commencement of S 71/2012.

(c) 10 January 2012: Rajah & Tann requested for time to respond.

(d) 30 January 2012: S 71/2012 was filed.

(e) 12 February 2012: Kweh received a letter of offer from OCBC for a loan of S$1.44m with the Chuan as collateral.

(f) 16 February 2012: Letter of offer was signed by Kweh.

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(g) 20 February 2012: Caveat was lodged by OCBC.

(h) 22 February 2012: Defence was filed in S 71/2012 at 5pm. The sale and transfer of the Chuan to Kweh is pleaded.

(i) 24 February 2012: The OCBC caveat was registered.

(j) 28 February 2012: First attempt to file a caveat to protect interest of Cristian and Nila in the Chuan.

(k) 29 February 2012: The Instrument of Mortgage is lodged the day before and registered on this day. The Chuan is mortgaged to OCBC.

(l) 29 February 2012: The SLA rejects Cristian's and Nila's caveat because of inadequate information on the basis of the caveat.

(m) 1 March 2012: A fresh caveat was lodged. Lee & Lee received notice confirming acceptance at 6.02 pm.

(n) 1 March 2012: A one-day account was opened at OCBC by Kweh. The loan is disbursed into this account. The funds are withdrawn on the same day by a cash withdrawal and two transfers to another joint account of Kweh and Wibowo at OCBC. Kweh's OCBC account is closed.

(o) 2 March 2012: A generally indorsed Writ of Summons in S169/2012 is filed on the basis of which Cristian and Nila obtained a Mareva injunction, which, *inter alia*, prohibited Kweh from (i) disposing of the sum of S$1,245,270; and (ii) disposing of and/or diminishing the value of the property.

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(p) 8 March 2012: Isabelle accompanies Kweh to Rajah & Tann for Kweh to sign his statement. That statement only recounted events up to 28 December 2011. No mention at all was made of the OCBC term loan at (e) above.

(q) March to April 2012: Monies in the joint account of Kweh and Wibowo were disposed by a series of telegraphic transfers and cash withdrawals.

(r) 21 May 2014: The Chuan was sold by mortgagee auction for S$1.8m.

(s) 12 August 2014: Balance of S$167,999.65 was paid into Court pursuant to the Mareva injunction.[111]

138 The point made is that if Wibowo, Isabelle and Kweh were perpetrating a bold and audacious scam, *inter alia*, to obtain the Chuan, there was no reason for the pleaded defence in S 71/2012 to reveal the transfer of the Chuan. It would have made more sense to wait until the loan was disbursed and the funds transferred out. On Cristian's and Nila's evidence, they were unaware at the time the Defence was filed of what had taken place.

139 But against this, it would have only been a matter of time before Cristian and Nila discovered what had transpired. In any case, time was rapidly running out to file the Defence in S 71/2012. It appears that the Defence was filed on the last day allowed under the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC"). As highlighted above, the loan from OCBC to Kweh had been granted on 16 February 2012. OCBC had lodged a caveat on

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[111] Cristian's AEIC at para 75; Tab 20 (pp 314–315).

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20 February 2012. In these circumstances, it is also not surprising on the basis of Cristian's and Nila's version of what had taken place that the defence as pleaded on 22 February 2012 "revealed" the existence of the debt and the agreement to settle by transfer of the Chuan.

140 Looking at the evidence and submissions as a whole, I am of the view that the reaction of Cristian and Nila on discovering the transfer of the Chuan on 22 February 2012 is consistent with their version of the events. Their lawyers were clearly concerned and conducted a Singapore Titles Automated Registration System ("STARS") search that very day to confirm the transfer of the Chuan. Whilst Nila and Cristian might have been expected to return to Singapore immediately, given the seriousness of the turn of events, their evidence, which I accept, is that they were unable to do so immediately. Nila's father was seriously ill and Cristian had other urgent business to attend to. Cristian, in any case, returned to Singapore on 28 February 2012. Between 23 and 28 February 2012, Lee & Lee conducted investigations and queried Tan in an effort to discover what had taken place. On 28 February 2012, the first attempt was made to lodge a caveat on the basis of a constructive trust arising out of an unauthorised transfer of the Chuan. Whilst the first attempt failed, the second attempt succeeded on 1 March 2012.

(6) Miscellaneous points

141 The point may also be taken that the trust shown by Cristian and Nila in Wibowo took a surprisingly long time to erode. The failure of Wibowo to provide copies of the documents signed on 7 December 2010 (for Oasis Garden) and 23 December 2010 (for Parc Mondrian) did not provoke a strong reaction. The difficulty Cristian had in contacting Wibowo in September/October 2011 (especially given that his understanding was that the

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sale of Oasis Garden would be completed by July 2011) and Wibowo's failure to appear for the meeting on 1 November 2011 merely resulted in Cristian, Nila and Denny paying visits to Oasis Garden and Parc Mondrian in December 2011 in an effort to establish if any units were in their names. Nothing else was done: no complaints were made to the police in Singapore. No attempt was made at that point to engage legal counsel for advice.

142 The point has also been made that the fraud perpetrated by Wibowo and Isabelle was inherently impossible if not absurd. The chance of success was very slim and depended, *inter alia*, on the failure of the lawyers involved in the RCOT application and conveyance to obtain direct or face-to-face confirmation of the instructions from Cristian and Nila. The fraud in this sense was almost bound to fail if due care was taken by the lawyers.

143 Nevertheless, the reverse observation can also be made. If Cristian did owe large sums to Kweh and had agreed to repay by means of the cash transfers (essentially the subject matter of S 71/2012) and the transfer of the Chuan (the subject matter of S 169/2012), then the commencement of S 71/2012 at the time and in that manner might be thought to be equally puzzling. It was bound to attract the defence that was filed. It would mean that Cristian and Nila had, well in advance, formed a plan to fabricate an elaborate scam of their own: to deprive Kweh of his money in respect of the debt through an elaborate ruse. Under this purported scam, Cristian and Nila would sign documents in Indonesia in circumstances such as to make it possible for them to challenge the documents subsequently in court. As a consequence, the lawyers involved would necessarily be pulled in. Cristian and Nila would then take no action to stop or prevent the transfer of the Chuan to Kweh. In doing so, they must have calculated that they would be able to take action later against Kweh, Wibowo and Isabelle to recover the Chuan or its value as

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compensation. This version of events is equally, if not more, remarkable. Indeed, if Cristian did owe large sums to Kweh, but was unwilling or unable to make repayments, it was unthinkable that he would fabricate such an elaborate scheme to avoid repayment given the huge risk he was taking on the Chuan and his investments.

144 Looking at the matter in the round, I am of the view that the transfer of the Chuan to Kweh had been effected without the knowledge of Cristian and Nila, and on the basis of documents which (i) had not been signed by them; or (ii) they were tricked into signing. In coming to my conclusion, I have also noted the weaknesses and inconsistencies in the evidence of Cristian and Nila. Some of these, such as inconsistencies as to dates and details of certain events, can be explained by the long time that has elapsed since the events took place.

My findings on Isabelle's involvement in the fraud

145 I turn to deal with the extent to which Isabelle was a knowing participant in the fraud that was perpetrated on Cristian and Nila. Isabelle's evidence is that she had little knowledge of what was taking place. She asserts that she had no personal knowledge of the business dealings between Kweh, Landy and Cristian. She also claimed to be unaware of the alleged debt owed by Cristian to Kweh until after the start of the proceedings. All or most of the information that she possessed was said to have been provided by Wibowo. Whilst her family background appears well-to-do and Isabelle has a degree in Economics, her position is that she left all financial matters to Wibowo. Her role after marriage was primarily that of mother and home-maker. Whilst the E300 was registered in her name, I accept that this alone does not prove that she had knowledge that the monies for the car was provided by Cristian. Indeed, as noted, it appears that many other cars bought by Wibowo were

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registered in Isabelle's name and the evidence was that this was to secure better insurance terms (see [87] above).

146 Notwithstanding Isabelle's pleas of ignorance, I am, on balance, of the view that Isabelle was a knowing participant in the fraud perpetrated on the plaintiffs in the Suits.

147 First, Isabelle's mobile phone number was used to send the SMS on 21 November 2010 to Cristian. In that SMS, Cristian was asked to make out a cheque for the road tax for the E300 which was registered in the name of Isabelle. This SMS supports Cristian's assertion that the E300 was indeed bought and paid for by Cristian. Isabelle has attempted to distance herself from the mobile phone number by explaining that the number belonged to Wibowo until she took over the number around August 2012. Isabelle claims that she had no knowledge of that SMS. I find her evidence on her use of this phone number to be confusing and unsatisfactory. At times, she appears to accept that she did have access to the number and did use it sometimes.[112] At other times, she states that she remembers only using the number after August 2012.[113]

148 Second, it appears that Isabelle had sent another SMS on 21 June 2011 at 6:08pm[114] from the same number to Cristian. This SMS states: "Bowo might come back tonight om, he is goin[g] back to Surabaya tomorrow."[115] It is clear that Bowo is a reference to Wibowo. The natural inference is that the sender of

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112 NOE 25 February 2016 p 13 line 19–23; p 23 line 17–p 24 line 8.

113 NOE 25 February 2016 p 11 line 24–p 12 line 16; p 13 line 24–p 14 line 10.

114 PCB pp 85–87.

115 NOE 25 February 2016 p 17 line 10–21.

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this SMS is Isabelle and not Wibowo. The SMS is also significant because it supports Nila's and Cristian's version of the timing of the meeting between Cristian and Wibowo on 21 June 2011 near the swimming pool of the Lorong Chuan condominium. Isabelle's response to this SMS is two-fold. First, she claims that she has no recollection of this SMS. Secondly, she denies that she commonly uses "Bowo" to refer to her husband. When confronted with the evidence that she sent an email to Cristian on 30 September 2011 stating that she had already forwarded Cristian's email of 24 September 2011 to "Bowo", her response was that she had used this expression only because Cristian calls him by that name (*ie*, "Bowo"). I find her evidence on this rather strained. In my view, the SMS that was sent to Cristian on 21 June 2011 suggests that Isabelle was using this mobile number much earlier than she was prepared to admit to.

149 Third, there is also an email to Isabelle's email account from Toh's law firm dated 24 October 2011. The email records that a staff member had called Isabelle at the very mobile number in issue.[116] Separately, in Isabelle's telegraphic transfer application that is dated 18 November 2011, Isabelle's phone number is recorded as the same number.[117]

150 Even more troubling is her evidence on the emails meant for Wibowo and which were sent to her email address by Cristian. This includes the email (in Bahasa Indonesia) of 24 September 2011 in which Cristian was asking Wibowo for a meeting to resolve the issues and problems on the joint investment (see [49] above). To be clear, the fact that Cristian tried to contact Wibowo through Isabelle does not mean that she was actively involved in

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116 Isabelle's AEIC at Tab 12; NOE 25 February 2016 p 23 line 10–p 24 line 8.

117 Isabelle's AEIC at Tab 3; NOE 25 February 2016 p 24 line 9–p 25 line 6.

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Wibowo's business dealings. That said, it is also clear that Wibowo accepts that he did have access to her email account and that he did from time to time use her email for communications. Isabelle's evidence on whether she had seen these emails was troubling. I have touched on this already. Her evidence is that she rarely checked or read her emails. This is surprising as she was involved in other on-going legal proceedings at the time.[118] Indeed, Isabelle asserts that the first thing she will often do when opening her email account is to delete emails. This is also a somewhat surprising and a rather convenient response. Isabelle also asserts that she does not understand Bahasa Indonesia. Nevertheless, Isabelle was able to reply to Cristian's email (which was written in Bahasa Indonesia) on 30 September 2011 stating that Wibowo was only free to meet him in Singapore on 1 November 2011.[119]

151 The evidence, as a whole, is consistent with Isabelle having use of the number well before August 2012. Further, if it was Wibowo's intention to keep Isabelle in the dark on what was happening between himself and Cristian, it is surprising that he would make so much use of Isabelle's mobile phone number or a phone number that Isabelle was also using or had access to.

152 Moving on, Isabelle accepts that she was involved in the dealings between Wibowo and Toh in respect of the transfer of the Chuan. Aside from accompanying Wibowo to the meetings, she was also the one who collected the documents from Toh so that Wibowo could arrange for them to be sent to Indonesia as described earlier. Isabelle insists, however, that she was simply acting as a "courier" and on the instructions of Wibowo in all her contacts

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118 NOE 25 February p 113 line 5–9.

119 AB p 196–197.

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with Toh. However, Toh's evidence was that he was dealing mainly with Isabelle.[120]

153 After S 71/2012 was commenced, Isabelle agrees that she played an active role in communications with their lawyers, Rajah & Tann. This includes, for example, accompanying Kweh and Landy to Rajah & Tann on the day when the statement was recorded on 8 March 2012. Isabelle's evidence was that she was simply assisting her husband and following his instructions. This is surprising. It bears repeating that Kweh was rather ill and was the first defendant in S 169/2012, which raised serious allegations of fraud. The taking of the statement was clearly important from the perspective of the defendants. Wibowo was the one who was said to have directly communicated with Kweh on matters relating to the key events such as the existence of the debt and the later arrangements to transfer the Chuan. It would make much more sense for Wibowo to have accompanied Kweh for the taking of the statement, unless of course Isabelle had a much greater understanding and knowledge of the background details than she was prepared to acknowledge. That said, Isabelle's evidence was that Wibowo was away in Indonesia on 8 March 2012. Even if this is so, given the importance of Kweh's statement, it is surprising that Wibowo would not have insisted on accompanying Kweh. After all, their position is that Isabelle is unable to speak Bahasa Indonesia and has almost no knowledge of Kweh's business arrangements. Wibowo, at the very least, according to his evidence, had received instructions from Kweh, his father, on the arrangements between Kweh and Cristian, and had a basic command of Bahasa Indonesia.

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120 NOE 29 February 2016 at p 36 line 21–p 38 line 3.

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154 I also note that Isabelle was made a "partner" of Landy in August 2007, in respect of a company set up in Singapore called Citra Abadi Bosco ("Bosco"). Bosco appears to be connected with Kweh's and Landy's Indonesian company called Citra Surabaya. Isabelle's evidence is that she was made a partner because it was easier if a Singapore citizen was involved when setting up a company in Singapore. Her evidence was that she received a monthly fee of S$5,000 until the closure of the Bosco bank account in January 2009. I am inclined to disbelieve her evidence on the extent of her knowledge. In my view, her partnership in Bosco is another piece of evidence that she could not have had no knowledge of Kweh's business arrangements.

155 Looking at the evidence as a whole, I am also of the view that Isabelle played a much more active role in the family finances than she was prepared to admit. This is especially given that in 2008, Wibowo was still a young man who had only just started business in Singapore after graduation. Isabelle was some 13 years his senior and had graduated many years earlier in 1998.

156 Against this, it could be argued that Isabelle was not an active participant in the fraud, because she was not even aware of Wibowo's true whereabouts in September 2011, when events were developing fast and Cristian was clearly anxious to get in touch with Wibowo to resolve the matters. Isabelle's evidence is that Wibowo was out of Singapore at that time. On the other hand, Wibowo's evidence, it will be recalled, is that he had lied to Isabelle as to his whereabouts; he was actually in Singapore and in Sentosa with a friend (see [58] above). However, Wibowo's explanation was only revealed when copies of the pages of his passport were produced in the course of trial, in proving another matter (see [55] above), and it became incontrovertible that he was in Singapore in September 2011. Clearly, Wibowo had a self-serving interest in stating that he had lied to Isabelle on his

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whereabouts, *ie*, to explain away the inconsistencies between his account and Isabelle's as to his whereabouts in September 2011. For this reason, I am unable to place much weight on Wibowo's statement, and consequently, this argument in favour of Isabelle's lack of knowledge and participation in the fraud.

157 Considering the evidence as a whole, I am of the view that Isabelle had sufficient knowledge and involvement such as to make her a knowing participant in the fraud in respect of the joint investment (Oasis Garden and Parc Mondrian) and the transfer of the Chuan.

My findings on Kweh's involvement in the fraud

158 On the basis of the fraud that I have found perpetrated by Wibowo and Isabelle on Cristian and Nila, the claim against Kweh is that he was a knowing participant (and, of course, beneficiary) of the plan to cheat Cristian and Nila of the Chuan.

159 Wibowo's and Isabelle's position is that they acted under the instructions of Kweh at all times.[121] The decision to engage Toh for the conveyance of the Chuan as well as the instructions on the need for a RCOT were all said to have come from Kweh at a time when he was already seriously ill.[122] Indeed, it will be recalled that during or around this period (July/August 2011), the Indonesian authorities were looking for Kweh and Landy in respect of a suspected offence. However, there is almost no direct evidence as to the nature of the problems that led to the police report and

121 WCS at paras 37(d) and 367 (in relation to the Chuan); 70, 73 and 93 (in relation to monies allegedly received to purchase the cars); 238 (in relation to monies allegedly received pursuant to the joint investment agreement).

122 Wibowo's AEIC at paras 64–65; 81.

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announcement that he and Landy were wanted for questioning by the Indonesian police.

160 The picture that Wibowo paints is that he had little knowledge of the business dealings of his parents and that he was even unaware of the details of the debt owed by Cristian to Kweh until after S 71/2012 was commenced. This clearly contradicts his evidence that he knew, well before the commencement of S 71/2012, that the size of the alleged debt had been reduced and that the balance owing was to be met by the transfer of the Chuan. Wibowo's evidence was that Kweh did not have a bank account in Singapore and that Kweh effectively used Wibowo's own joint bank account with Isabelle to transfer monies back and forth. This was sometimes done without even telling Wibowo in advance of transfers into the account.

161 The general impression that I formed was that Wibowo was keen to return to Singapore. Almost immediately upon graduation, he married Isabelle and had his first child in Singapore. Quite apart from financial support from his own parents, it is evident that he also received considerable financial support from his father-in-law. He acquired several properties and professed a keen interest in property-based investments. It is also clear that he needed his parents' assistance on the proposed investments in Oasis Garden and Parc Mondrian, which he informed his parents he planned to invest jointly with Cristian. Whilst there is a severe dispute between the parties as to why Wibowo's parents were against the idea, it is clear, on Wibowo's evidence, that they did not support the plan. By this time, Kweh was already unwell and was being treated in Singapore for kidney-related problems and diabetes. Isabelle accompanied him to make the statement at Rajah & Tann on 8 March 2012, some eight months before his death. Kweh's statement was relied on by Wibowo and Isabelle in their defence. Kweh also obtained a term loan from

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OCBC secured by the Chuan and he transferred the monies on the same day to the joint account that he opened with Wibowo. In the circumstances, given Kweh's involvement in the many aspects relating to the Chuan, I find that Kweh was a knowing participant in the fraud perpetrated by Wibowo and Isabelle.

Part Two: The Involvement of the Lawyers

162 To recapitulate, Toh was the solicitor engaged by Kweh (through Wibowo) to handle the conveyance of the Chuan. Kweh and Wibowo were comfortable with engaging the services of Toh as he had acted for them on previous property matters. Tan was the solicitor whom Toh recommended to represent Cristian and Nila in the sale.

163 Toh's position is that he had no reason to doubt the genuineness of his instructions on the sale and transfer of the Chuan to Kweh as part of an agreement to repay a debt owed by Cristian. Toh asserts that he did not act in breach of any duty that he owed to Cristian and Nila and that he was entitled to apply for the RCOT based on the instructions and information provided by Wibowo. In taking this position, Toh asserts that Cristian and Nila have not established that the signatures on the disputed documents are forgeries or that they were obtained by deception and fraud. Second, even if the signatures were forgeries or fraudulently obtained, Toh asserts that (i) he was not in breach of any duty by applying for the RCOT and acting in the manner that he did; (ii) Cristian and Nila failed to take reasonable steps to safeguard their interest immediately upon discovery of the fraudulent transfer; and (iii) Wibowo and Isabelle are liable to indemnify him on account of their fraudulent misrepresentations to him.

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164 Tan's position is that he was properly authorised to act for Cristian and Nila in the conveyance. If, to the contrary, it is found that he was not in fact authorised and that he was in breach of his duty to Cristian and Nila, he asserts that he is also a victim of the same fraud perpetrated by Wibowo and Isabelle. In that eventuality, Tan claims that the loss and damage suffered by Cristian and Nila were not caused by his breach but by the fraud of Wibowo and Isabelle and the negligence of Toh. Tan also asserts that he is entitled to an indemnity against Toh.

165 Insofar as the issue and evidence on whether the signatures were forged or obtained by means of some fraud or deceit is concerned, this has been examined above (see [117] to [124] above). I have found that their signatures are either forgeries or, if they are genuine, obtained by deceit.

166 I turn now to a more detailed discussion of the involvement by the lawyers in the steps leading up to the transfer of title.

167 Toh's evidence was that he never received instructions direct from Kweh. All his instructions came from Wibowo and Isabelle. Whilst Wibowo and Isabelle maintain that it was Wibowo who was driving the instructions on the conveyance (on behalf of Kweh), Toh agrees that he had more communications with Isabelle.[123] It is clear that Toh has never met Cristian or Nila. Toh's evidence was that he considered it was acceptable for his firm to apply for RCOT for Cristian and Nila notwithstanding his intention to recommend Tan to act for the Cristian and Nila. His explanation was that in his mind, application for a RCOT was a "neutral application".[124] The Chuan

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[123] NOE 29 February 2016 p 36 line 21–p 38 line 3.

[124] NOE 29 February 2016 p 7 line 16–line 18.

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would still have to be conveyed to Kweh and it was up to Tan to take the necessary and usual steps.

168 It is clear that Toh did not even attempt to contact Cristian and Nila for confirmation of the instructions on the position on the RCOT. He appears to have relied entirely on what he had been told by Wibowo. To be clear, even though Wibowo had provided Toh with a phone number and email address for Toh to reach Cristian, Toh made no attempts to directly verify with Cristian or Nila at this stage.[125] This reveals a surprisingly lax stance by Toh. Instead, the first RCOT application and statutory declaration were prepared and passed over to Wibowo (via Isabelle) for Cristian and Nila to sign before Hengki (apparently a notary public in Indonesia). It does not even seem that Toh is familiar with Hengki. It was only when the first RCOT application failed (for want of details as to why the original was lost) that any email contact was made by Toh's office with Cristian. Even then, it is undisputed that this email contact appears to have been initiated by Cristian and from an email address (Address B) that was different to the one provided to Toh by Wibowo (Address A) (see [64(g)] and [64(m)] above). It is abundantly clear that Toh did not attempt to independently verify the identity of the sender of the 24 October 2011 email.[126]

169 Based on the information provided in that email, a new RCOT application and statutory declaration were prepared. These were then allegedly signed before a notary public in Indonesia in the manner related earlier. The second application was successful and the matter was able to proceed towards

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[125] NOE 29 February 2016 p 48 line 19 – p 54 line 3.

[126] NOE 29 February 2016 p 8 line 10–22; NOE 1 March 2016 p 32 line 8–p 33 line 21.

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completion. Further, it is clear that Toh, again on Wibowo's instructions, was able to secure a slightly earlier completion date.

170 Toh accepts that he did not take any steps to verify the identity of the notary public who witnessed the plaintiffs' execution of the second RCOT application and statutory declaration.

171 It was after the successful second RCOT application that Toh recommended Tan to act for Cristian and Nila. His evidence was that this was advisable in his view as there might be a conflict of interest if Toh acted for both sides.[127] Toh and Tan were classmates at university. They were at the time friends and had referred work to each other. Tan asserts that the approach was made around 6 December 2011. Tan said he was provided with an overseas phone number of Cristian. Tan claims that he made several unsuccessful attempts to contact Cristian at that number on or around 7 December 2011. On 7 December 2011, Tan emailed a draft Letter of Authority and a draft Sales and Purchase agreement to the email address from which Toh had received the 24 October 2011 email from Cristian on the second RCOT.[128] Nevertheless, instead of waiting for a response, Tan chose to email the very same Letter of Authority to Toh so that Toh could hand the same to Wibowo who was going to Indonesia. The idea apparently was that the draft Letter of Authority would be passed to Cristian to sign before a notary public.

172 On 12 December 2011, Tan received an email from Address B confirming that the information set out in that email was correct and that the purchase price had been paid. This appears to be an email from Cristian.

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128 Tan's AEIC at p 20; Toh's AEIC at p 70.

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173 The date of completion was scheduled for 31 January 2012. Other documents handed to Tan included the signed Letter of Authority and the signed instrument of transfer. On 22 December 2011, Toh sent Tan a request for completion to be brought forward to 28 December 2011. As a result, Tan sent another email to Address B asking whether the plaintiffs were agreeable. An affirmative response was received on 27 December 2011 from Address B. Tan agrees that he never attempted to meet Cristian or Nila face-to-face or to speak by telephone or by video conference. Tan's position is that he was entitled to rely on: (i) Toh's representation that Cristian and Nila wanted to engaged him for the conveyance; (ii) the signed Letter of Authority before an Indonesian notary public (although, as in the case of Toh, Tan did not take steps to verify the identity of the notary public); and (iii) the fact that he had received two emails which appeared on their face to be from Cristian.

174 Tan also complains that he was never informed of the applications for RCOT made by Toh on behalf of Cristian and Nila and in respect of which Toh earned a fee. Tan asserts that if he had known of this, he would have declined the engagement. The difficulty, however, is that if Tan had conducted a fresh title search prior to completion he would have been alerted to the fact that a RCOT had been applied for. The reason why he did not conduct the title search was because he had been provided with a copy of a title search done by Toh some six months earlier.[129] Tan's position is that it was acceptable and common practice at the time to rely on title searches that were six months old. There is no independent evidence, however, to support this assertion. Tan also appears to take the position that it was the buyer's responsibility to conduct a title search and that he would not have conducted a search even if Toh had not provided him with a title search.[130] Against this, it is clear that Tan knew that

[129] NOE 2 March 2016 p 39 line 22–p 40 line 22.

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this was not a "normal" sale and purchase. No monies would be paid on completion as the conveyance was in fact by way of discharge of a debt. Indeed, according to Tan, he was approached by Toh rather late in the day.

General Observations on the Evidence

175 The AEICs of Cristian, Nila, Wibowo and Isabelle were subjected to the criticism that they were comparatively bereft of details as compared to their testimony under cross-examination. In the case of Cristian and Nila, inconsistencies between their evidence on points of detail, such as when they first met Wibowo and Isabelle and as to what took place at the "Bak Kut Teh" meeting of 7 December 2010, were highlighted by counsel for Wibowo and Isabelle. There are other points where Cristian's and Nila's recollection or testimony on details were at variance. In the case of Wibowo and Isabelle, whilst their testimony was generally more consistent, it is clear that Wibowo has been less than truthful to Isabelle on his whereabouts in September/October 2011. It will be recalled that this was the period when Cristian was trying to set up a meeting with Wibowo to resolve matters. As mentioned previously, the fact that Wibowo's and Isabelle's marriage was going through a rough time at that stage does not prove the fraud or conspiracy that has been alleged. However, the general point remains that the evidence as to Wibowo's whereabouts and the revelation of his passport stamps casts some doubt over whether Wibowo has been completely frank and open in his evidence.

176 On the stand, Nila was cross-examined at length for six days.[131] Cristian was cross-examined for nine days. The distress that Nila felt over the

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130 NOE 1 March 2016 p155 line 15-22; NOE 2 March 2016 p 33 line 24 – p34 line 10.

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transfer of the Chuan in the witness box was self-evident. Whilst it is clear that there were lapses in her memory, I am satisfied that she was a witness to the truth. In reaching this view, I am cognisant of the timely reminder of the Court of Appeal in *Sandz Solutions (Singapore) Pte Ltd and others v Strategic Worldwide Assets Ltd and others* [2014] 3 SLR 562 ("*Sandz Solutions*") (at [43]) against excessive reliance on the demeanour of a witness:

> Findings on demeanour often relate to the fluency (or hesitation) of a witness, his steady or shifting gaze, his body language and the like. *A great deal of caution should be exercised by the trial judge when placing reliance on these factors alone to find a witness untruthful.* In this regard, it is important to remember the context in which evidence is given in court – the witness is under intense scrutiny of the judge and is also under pressure to answer counsel's questions; even truthful witnesses may wilt and display discomfort in such circumstances.
>
> [emphasis in original]

177 In a similar vein, I note Yong Pung How CJ's reminder in *Public Prosecutor v Singh Kalpanath* [1995] 3 SLR(R) 158 at [60] that in some instances, the failure of a witness to answer questions "may be the direct result of the aggressive manner of the cross-examination." In the present case, as noted, Nila was cross-examined over a period of six days. The cross-examination was robust, persistent and intense at times. The events occurred many years in the past. In the circumstances of this particular case, it is not that surprising if there are inconsistencies in points of detail in her answers. Indeed, even on general points such as when Nila first met Wibowo and Isabelle in 2008, I have formed the impression that Nila was a witness to the truth, even though she had problems in recollection and had given inconsistent answers. In assessing her evidence (and, indeed, the evidence of all the witnesses), I have paid due regard to the length and intensity of the cross-

[131] 20, 23–26 and 30 March 2015.

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examination especially on areas where the witness is asked repeated questions on specific points of detail. As always, it is important not to lose sight of the wood for the trees. To be clear, in making these comments, I make no criticism of the manner in which Nila was cross-examined.

178 I note that the comments in *Sandz Solutions* were made in respect of a finding that a witness has been untruthful. I accept that caution is needed even where the demeanour is said to support a finding that the witness has been truthful. Even so, I note that the Court of Appeal in *Sandz Solutions* (at [56]) added that a witness should not be found to be less credible merely because of gaps in his memory, especially where a long time has elapsed. The duty of the court is to consider the totality of the evidence in determining the veracity, reliability and credibility of a particular witness' evidence. The totality of the evidence will, of course, include contemporaneous objective documentary evidence. In the present case, my conclusion on the veracity of Nila is based on the evidence as a whole.

179 I should add that I am of the same view in respect of the evidence of Denny. Denny did have some difficulty recollecting the details of conversations he had with Cristian and Wibowo on the property investment. His evidence on the amounts remitted to Wibowo through the use of money changers as intermediaries in Indonesia and Singapore has been noted. Nevertheless, I am satisfied that his evidence squares with the evidence as a whole, including the subsequent email messages sent by Cristian to Wibowo on the difficulties he was having explaining to Denny what had happened to his investment. To be sure, Cristian and Denny might well have been much more careful in their dealings and to have taken tougher action only when they started to worry about their investment with Wibowo. But, looking at the

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circumstances as a whole, I do not think this provides a sufficient basis to doubt their testimony.

Summary of main factual findings

180 Given the broad range of issues and facts in dispute across the various claims, it is convenient to set out a summary of the main findings of facts:

(a) Cristian provided the S$100,000 to Wibowo for the acquisition of the Honda Accord. The Honda Accord, whilst registered in Wibowo's name, was the property of Cristian. Subsequently, Cristian remitted another S$140,000 for the purchase of the E300 by way of upgrade of the Honda Accord. The E300, which was registered in Isabelle's name, was supposed to have been purchased outright by means of the trade-in of the Honda Accord and the cash remittance. The E300 was the property of Cristian.

(b) Cristian and Denny had entered into an oral agreement with Wibowo to invest in a unit at Oasis Garden and another unit at Parc Mondrian. Under the agreement, Cristian would invest with Wibowo in the Oasis Garden unit. The properties were to be registered in joint names of Nila and Isabelle. Denny would be the investment partner in the Parc Mondrian unit. This property was also to be acquired in the joint names of Nila and Isabelle. The question as to whether Isabelle was a party to this oral agreement is considered later.

(c) Cristian and Nila did not agree to transfer the Chuan to Kweh. Cristian and Nila were unaware of the engagement of Toh in respect of the RCOT and the engagement of Tan in respect of the conveyance of the Chuan.

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(d) Isabelle was a knowing participant in the fraud in respect of the joint investment (Oasis Garden and Parc Mondrian) and the transfer of the Chuan.

(e) Kweh was aware of the acts of Wibowo and he must have participated actively in the various steps taken by Wibowo to instruct solicitors for the RCOT, conveyance, the OCBC loan and the disbursement and transfer of the loan monies out of the loan account and into a joint account that he held with Wibowo.

Part Three: Legal Issues

The Car Claim: S 71/2012

181 Cristian's claim in respect of the E300 is essentially based on the tort of conversion.[132] The agreement was that the E300 would be purchased in Isabelle's name as a matter of convenience (for purposes of payment of road tax and insurance) using funds provided by Cristian through transfer of funds and the trade-in value of the Honda Accord owned by Cristian (as described above).

182 Gary Chan Kok Yew and Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) ("The *Law of Torts in Singapore*") at para 11.002 explains that conversion is a wrongful interference with the claimant's chattel in a manner that is inconsistent with the claimant's superior possessory title. Cristian rightly submits that legal ownership is not a prerequisite as such to a claim in conversion. It is not necessary even to show that the claimant is in actual possession at the time of the interference. The tort

[132] Plaintiffs' Statement of Claim (Amendment No 2) in S 71/2012 ("SOC (2) (S 71)") at para 28.

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of conversion, as noted in *Tat Seng Machine Movers Pte Ltd v Orix Leasing Singapore Ltd* [2009] 4 SLR(R) 1101 at [49], can be grounded on proof of an "immediate right to possession." The Hong Kong decision in *Fook Woo Waste Paper Co Ltd v Leung Kai Kuen* [2015] HKEC 2007 ("*Fook Woo Waste Paper*") was cited as an example where conversion succeeded in respect of a car that was paid for by the claimant but registered in the name of the defendant. In *Fook Woo Waste Paper*, the car was registered in the defendant's name. The defendant had confirmed in a Confirmation Note that he held the car on behalf of the claimant. In the present case, there is no confirmation or statement by the defendants acknowledging that the car was registered on behalf of Cristian. Whilst the position would have been much clearer and simpler if there was such an acknowledgement, I am satisfied on the evidence as a whole that Cristian did provide the funds for the E300 and that Isabelle held the E300 on behalf of Cristian.

183 Given my findings, it is clear that Cristian has a sufficient title to maintain the action in conversion. The E300 was sold by Wibowo and Isabelle on or around 16 January 2012 for S$173,000 without Cristian's knowledge or consent. It follows that the Wibowo and Isabelle are jointly and severally liable to pay damages for the act of conversion. It is noted that liability for conversion is strict. The general measure of damages is the market value of the converted asset at the date of conversion. This is the measure which usually best approximates the loss suffered by the claimant. In this case, it would be the price obtained in the sale of the E300. Thus, Cristian succeeds in his claim against Wibowo and Isabelle for S$173,000 as damages for the loss.

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The Investment Claim: S 71/2012

184 I turn now to the claim in unjust enrichment brought by Cristian and Denny against Wibowo and Isabelle in respect of the monies provided for the joint investment in Oasis Garden and Parc Mondrian. This amounts to S$607,700 from Cristian and S$624,570.19 from Denny. The plaintiffs seek restitution of the said sum and all gains or profit arising from the use of the monies by Wibowo and Isabelle.[133]

185 In *Tjong Very Sumito v Chan Sing En and others* [2012] 3 SLR 953 at [81], the High Court held that the elements of a successful claim in unjust enrichment are as follows:

(a) The defendant is enriched;

(b) The enrichment is at the expense of the plaintiff;

(c) It is unjust to allow the defendant to retain the enrichment;

(d) There are no available defences.

186 In the context of unjust enrichment, "unjust" refers to specific "categories which the law recognises as sufficient to make retention by the recipient unjust" (*Deutsche Morgan Grenfell Group plc v Inland Revenue Commissioners* [2007] 1 AC 558, cited by the Singapore Court of Appeal in *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 ("*Anna Wee*") at [130]). These are known as "unjust factors". For example, in Andrew Burrows, *The Law of Restitution* (Oxford University Press, 3rd Ed, 2011)

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133 SOC (2) (S 71) at para 27.

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("*The Law of Restitution*") at p 86, unjust factors are summarised as follows (as cited in *Anna Wee* at [132]):

> As regards the cause of action of unjust enrichment, the main unjust factors can be listed as follows: mistake, duress, undue influence, exploitation of weakness, human incapacity, failure of consideration, ignorance, legal compulsion, necessity, illegality and public authority ultra vires exaction and payment.

187 The unjust factor relied on by the plaintiffs here is total failure of consideration.[134] The plaintiffs argued that the defendants were enriched by the sums that they received. The monies were transferred as consideration for their anticipated half shares in the Oasis Garden and Parc Mondrian units. The joint investment agreement was never carried out by the defendants. The plaintiffs assert that the monies were therefore paid for a consideration that has totally failed.[135]

188 To succeed in such a claim, it is necessary to show a total failure of the consideration on the part of the promisor to perform that which he had promised: Andrew Phang Boon Leong gen ed, *The Law of Contract in Singapore* (Academy Publishing, 2012) ("*The Law of Contract in Singapore*") at para 23.252. In this context, what this means is that the promisor does not provide that which has been promised. The claim, being based on unjust enrichment, looks to the future performance and not the bare promise as the relevant consideration: *Baltic Shipping Co v Dillon* (1993) 176 CLR 344.

189 The authors of *The Law of Contract in Singapore* at para 23.255 also rightly point out that unjust enrichment can arise in both a contractual and

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134 PCS at para 86; PRS at para 72.

135 PCS at para 186.

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non-contractual context. The example provided is a situation where advances were made to further a particular purpose or goal, and the purpose or goal fails. In such cases, the recipient in general must return the advance. In a similar vein, in *The Law of Restitution* at p 372, it is stated that the failure of consideration analysis would be equally applicable where money was paid over under an incomplete contract. The point is that the fact that contract law does not impose liability (since it is an incomplete contract) does not rule out an independent cause of action in unjust enrichment. In the present case, I have found that a contract had been entered into in respect of which Cristian and Denny transferred monies to Wibowo and Isabelle for the acquisition of units at Oasis Garden and Parc Mondrian ("the joint investment agreement"). I have also found that the investments in Oasis Gardan and Parc Mondrian were never carried out. Wibowo and Isabelle have thus failed to perform any part of the contractual duties that was promised. It follows that Cristian and Denny are entitled to recover the sums that have been paid by way of a claim for unjust enrichment.

190 I pause for a moment to examine Isabelle's involvement with respect to the joint investment agreement. There is no direct evidence to show that Isabelle was a party to the joint investment agreement. That said, I am satisfied that Isabelle was fully aware of the joint investment agreement and the purpose for which the monies were transferred by Cristian and Denny. Further, it is clear that the intention all along was that the two properties be purchased in the joint names of Nila/Denny and Isabelle. Looking at the evidence as a whole, I am satisfied that the joint investment agreement included Isabelle. The monies were paid into Wibowo's and Isabelle's joint bank account at DBS.[136] This is the basis on which Cristian and Denny assert

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[136] Wibowo's AEIC at paras 13, 55 and 60; Isabelle's AEIC at para 23; NOE 24

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Isabelle was unjustly enriched.[137] There is also no evidence to show how the monies paid into the account were used by Wibowo and/or Isabelle. For these reasons, I find that Isabelle was acting in concert with Wibowo. Whilst the basis of the claim against Isabelle could have been pleaded more clearly, I am satisfied that Wibowo and Isabelle were aware of the underlying basis of the claim in unjust enrichment.

191 I note in passing the point that there is some evidence that Cristian and Denny had a third partner, Suraya, who was said to have a small share of about 2% in the investment made into Oasis Garden.[138] The evidence was, however, thin and it is unclear what the relationship was between Cristian, Denny and this third partner. That said, it appears that even if there was a third partner (with a small share), this was some "private" arrangement between them. In these circumstances, I do not find this factor relevant at all to the claim by Cristian and Denny in unjust enrichment.

192 In these circumstances I find that Wibowo and Isabelle are liable to return S$607,700 to Cristian and S$624,570.19 to Denny. Whilst Cristian and Denny have claimed the right to interest, no submissions were made as to the date from when interest should run. My decision is that interest at the usual rate of 5.33% per annum is to be awarded from date of the writ of summons up to the date of payment.[139]

February 2016 p 13 line 3–5; p 15 line 4–7.

137 PRS at para 82.

138 NOE 18 November 2015 p 16 line 24–p 18 line 7.

139 Supreme Court Practice Directions at para 77(5).

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The Fraud Claim against Kweh, Wibowo and Isabelle: S 169/2012

193 In respect of the Chuan, it is convenient to deal first with the claim against Kweh, Wibowo and Isabelle (the first, second and fifth defendants) before turning to the Negligence Claims against the lawyers (the third and fourth defendants).

194 The plaintiffs for this claim are Cristian and Nila. The crux of their claim is that Kweh, Wibowo and Isabelle fraudulently transferred or caused to be transferred the Chuan to Kweh. As a result, the plaintiffs suffered loss and damage. The claim was framed under the tort of conspiracy by unlawful means. I note that the Statement of Claim in S 169/2012 merely claimed that the defendants fraudulently transferred or caused the transfer of the Chuan, without specifically pleading the cause of action. That said, whilst the pleadings could have been better, I am satisfied that the Statement of Claim made clear that the claim was that Wibowo, Kweh and Isabelle were jointly and severally liable for fraud. In any case, I note that no issue on this account was taken on behalf of Wibowo, Kweh and Isabelle.

195 The tort of conspiracy by unlawful means is committed when two or more persons combine to commit an unlawful act with the intention of injuring the claimant. It is well-established that it is sufficient to establish the fact of a combination or concerted action. It is not necessary to show proof of a concrete agreement as such. The combination may even be inferred in appropriate cases from the acts and conduct of the parties. Whilst the unlawful means conspiracy in this case involves an allegation of fraud, the standard of proof required remains set at a balance of probabilities. However, it is also clear that more evidence is required to reach that standard of proof where fraud is alleged (see *The Law of Torts in Singapore* at para 15.055).

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196 On the facts before me, I have no doubt that the plaintiffs have established the combination and the use of unlawful acts required to establish the tort. Turning to the requirement of the intention to injure, I observe that it does not require proof that the predominant purpose was to cause harm. It is sufficient to establish that the conspirators intended the injury or damage *as the means to an end* or as an end in itself. On the facts as I have found them, I have no doubt that the requirement of intention has been established.

197 Wibowo's liability, on the facts as I have found them, is self-evident. I shall proceed to elaborate on my reasons with respect to Isabelle and Kweh in the following sections. I will then address the issue of the proper remedy available to the plaintiffs.

Isabelle's involvement in the transfer of the Chuan

198 As against Isabelle, the plaintiffs assert that she played a vital role in securing Toh's compliance with Kweh's, Wibowo's and her instructions. On this basis, the plaintiffs assert that Isabelle, Wibowo and Kweh shared a common intention to deprive them of the Chuan.[140]

199 Given my earlier findings of fact, the claim that Isabelle is liable as a joint tortfeasor by conspiracy succeeds. Isabelle's evidence was that she merely communicated with Toh for and on behalf of Wibowo by helping to convey instructions and to collect documents. I find her evidence hard to accept. It will be recalled that Toh's evidence was that he communicated primarily with Isabelle on matters regarding the conveyance (see [152] above). Isabelle also asserts that it was Wibowo who was in direct communication with Kweh and that she had little knowledge of the details of Kweh's business

[140] PCS at para 252.

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and arrangements. I have already noted (at [155] above) that Isabelle was likely to have been much more involved in the family finances than she was prepared to admit. Beyond this and for the reasons that were discussed earlier, I do not accept her evidence that she did not have knowledge of the details or arrangements made by Kweh and Wibowo on the conveyance and that she acted merely on her husband's instructions. Accordingly, the claim against Isabelle succeeds.

Kweh's status in the proceedings and his involvement in the transfer of the Chuan

200 I turn now to consider the claim against Kweh. I begin by considering Kweh's position in the proceedings, given that his estate was not represented in the proceedings at trial, before examining the issue of whether the evidence supports the finding that Kweh is liable for conspiracy.

201 It will be recalled that S 169/2012 was issued *inter alia* against Kweh as the first defendant and Wibowo as the second defendant. Isabelle was later added as the fifth defendant. The plaintiffs' claim against the defendants is joint and several. Under such circumstances, upon Kweh's death, they may choose to proceed against the other defendants, or against the representative of the deceased and the other defendants: Foo Chee Hock JC gen ed, *Singapore Civil Procedure 2016* vol I (Sweet & Maxwell, 2016) at para 15/7/9.

202 Kweh engaged Rajah & Tann to act in his defence. By the time Kweh passed away on 17 November 2012, a joint defence by Kweh and Wibowo had been filed by their lawyers (on 26 April 2012). No personal representative was appointed, even though according to the plaintiffs, they have complied with a direction by Tay Yong Kwang J (as he then was) in earlier interlocutory proceedings to invite family members and beneficiaries to Kweh's Estate to

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come forward.[141] However, the minutes of the hearing on 13 May 2013 before Tay J records that Wibowo and Isabelle were directed to file an affidavit stating that they did not wish to represent the Estate of Kweh and their reasons for the decision.[142] The said affidavit was filed by Isabelle on 3 June 2013. Eventually, no person came forward. The Court expresses surprise at this. Kweh's wife, Landy, who was originally slated to testify for Wibowo and Isabelle did not come forward. Wibowo did not step forward either, even though he intended to rely on the signed written statement of Kweh taken at Rajah & Tann and which I have referred to. Wibowo explained that he did not "see the purpose." Indeed, Wibowo was quick to add that Kweh had already given him some assets and that he had already received what Kweh wanted to give him.[143] Wibowo's position was simple: he was not the legally appointed representative of Kweh's estate and he did not have any desire or further interest in the estate.

203 On the death of any person, all causes of action subsisting against him shall survive against his estate: s 10(1) of the CLA. The main exception concerns claims for defamation which is not presently applicable. It follows that Kweh's death does not extinguish the cause of action which remains maintainable against his estate.

204 Order 15 r 7(1) of the ROC also provides that "where a party to an action dies or becomes bankrupt but the cause of action survives, the action shall not abate by reason of the death or bankruptcy." A representative of the deceased's estate may be joined to the action under O 15 r 7(2).

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141 PCS at para 318.

142 Summons 849/2013 and RA 82/2013 of 22 April 2013 and 13 May 2013.

143 NOE 17 February 2016 p 5 line 1; PCB p 217

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205 The difficulty in the present case is that no representative was appointed for Kweh's Estate. No family member stepped forward. It follows that it was not possible for an application to be made for the personal representative of Kweh to be made a party to the action under O 15 r 7(2).

206 Special provisions are set out in O 15 r 9 dealing with the position where the cause of action has survived but no order under O 15 r 7 is made substituting, *inter alia*, the personal representatives of the deceased defendant. Jeffrey Pinsler SC, *Singapore Court Practice 2014 Vol 1* (LexisNexis, 2014) at para 15/9/1 explains that the provisions under O 15 r 9 would apply, for example, where the defendant dies and the plaintiff fails to apply for an order making the defendant's personal representatives parties. In such a case, the personal representatives can apply under O 15 r 9 for an order that unless the action is proceeded with within such time as may be specified in the order, the action may be struck out. However, no such application was made either.

207 I pause to note that the minutes of the 13 May 2013 hearing before Tay J also records the learned judge's direction that after Isabelle and Wibowo have filed the affidavit referred earlier, the plaintiffs were to proceed "by way O 15 r 10 (if applicable) and r 13A."[144] No submissions were made on the effect of this direction. It does not appear that the plaintiffs have taken any steps under r 13A. Instead, at the start of the hearing, counsel for the plaintiffs informed the Court that they were applying under O 15 r 15 to proceed in the absence of Kweh and that the decision in the proceedings bind Kweh's Estate to the same extent as it would had a personal representative been a party to the proceedings.[145] Even though detailed submissions were not provided, it is appropriate to consider the applicability of O 15 r 15 in some detail.[146]

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144 Summons 849/2013 and RA 82/2013 of 13 May 2013.

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208 Order 15 r 15 of the ROC provides as follows:

> 15.—(1) Where in any proceedings it appears to the Court that a deceased person was *interested* in the matter in question in the proceedings and that he has no personal representative, the Court may, on the application of any party to the proceedings, proceed in the absence of a person representing the estate of the deceased person or may by order appoint a person to represent that estate for the purposes of the proceedings; and any such order, and any judgment or order subsequently given or made in the proceedings, shall bind the estate of the deceased person to the same extent as it would have been bound had a personal representative of that person been a party to the proceedings.
>
> (2) Before making an order under this Rule, the Court may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate as it thinks fit.
>
> [emphasis added]

209 In *Wong Moy (administratrix of the estate of Theng Chee Khim, deceased) v Soo Ah Choy* [1995] 3 SLR(R) 822 ("*Wong Moy*"), Judith Prakash J (as she then was) at [20] sets out four conditions to be satisfied before the court could make an order under O 15 r 15: (i) the application is made at a time when there are existing proceedings; (ii) the deceased person is interested in the matter in question in the action; (iii) the deceased does not have a personal representative; and (iv) the applicant is a party to the existing proceedings.

210 At first blush, the facts before me appear to meet the conditions referred to in *Wong Moy*. The difficulty, however, is that this is a case where the defendant was already a party to the dispute prior to his death. In *Wong Moy*, Prakash J observed at [22] that:

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145 NOE 17 March 2015 p 1 line 19–22.

146 PCS at para 321.

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> … O 15 r 15(1) is directed at the situation where after an action has been started and both plaintiff and defendant were litigating it, it became apparent that *a deceased person who was neither the plaintiff nor the defendant and thus not a party to the litigation* had an interest in the subject matter of the litigation and therefore his estate should be represented in the action. This was not the case here because when the suit had started, the plaintiff had sued in her purported capacity as administratrix of the deceased's estate. She had brought the action on behalf of the deceased and not an action on her own behalf. There was no pending proceeding between third parties in which the deceased had an interest because the plaintiff was in fact the deceased in other clothing.
>
> [emphasis added]

211 The holding of Prakash J was approved in *Teo Gim Tiong v Krishnasamy Pushpavathi (legal representative of the estate of Maran s/o Kannakasabai, deceased)* [2014] 4 SLR 15. The Court of Appeal at [56] held that whilst the word "interested" in O 15 r 15(1) had a wide ambit, it did not circumvent or displace the rule in O 15 r 7(2). A purposive approach to O 15 r 15 was called for. The provision only permitted the court to order that some person, not a personal representative, may represent the estate of a deceased person where the deceased person was not a party to the litigation.

212 Whilst the parties did not make substantive submissions before me on the effect of the death of Kweh or indeed on the relevant case law, it is clear that O 15 r 15 has no application in the present case.

213 Nevertheless, I am of the view that the action against Kweh continues against his estate upon his death. Where an individual is already a proper party to a cause of action prior to his death and in circumstances where the cause of action does not abate and by law continues against the estate, it cannot be right that the cause of action can be negated by the simple act of those with the most obvious and direct interest in the estate refusing to step forward or to seek the appointment of any individual as the personal representative. The negation of

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a cause of action in such a manner is incompatible with the fundamental rule expressed in s 10(1) of the CLA that on a person's death, an action against him survives against his estate. As noted above, O 15 r 7 provides for a change of parties by reason of death, and O 15 r 9 allows for the personal representatives of the deceased defendant to strike an action out if the plaintiff does not proceed under O 15 r 7. It appears to me, therefore, that the default position in the absence of any application under O 15 r 9 is that the action survives and proceeds against the estate.

214 In the present case, whilst the plaintiffs were unsuccessful in their applications under O 15 r 7, no application under O 15 r 9 was made (nor could it have been made, given that Kweh has no known personal representatives). Therefore, the action survived and proceeded against Kweh's Estate, and this judgment must accordingly bind his Estate. I add that even though no personal representative has come forward, there is no doubt that Wibowo and Landy are cognisant of the action and were content to let the action against Kweh's Estate continue with no representative appointed. What makes this especially troubling is that Wibowo, the second defendant who was being sued jointly and severally with Kweh, professed no further interest in Kweh's Estate and had no desire to step forward even though (i) he was representated by the same law firm which represented Kweh; and (ii) he intended to rely on the position taken by Kweh in the statement signed at the law firm's offices.

215 In any event, even if I am wrong and the decision in S 169/2012 does not bind the estate of Kweh, this does not affect the position of Wibowo and Isabelle.

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216 Returning to the question of whether Kweh is liable for conspiracy by unlawful means, it will be recalled that Wibowo's assertion was that all decisions and instructions relating to the conveyance of the Chuan in settlement of the alleged debt came from Kweh. It was Kweh's decision to instruct lawyers in Singapore for the conveyance. Wibowo, in turn, was merely carrying out his father's instructions. According to Wibowo, it was Kweh who arranged for the documents to be signed by Cristian and Nila before notaries public in Indonesia. There is no dispute that Kweh applied for and was granted financial facilities from OCBC secured by the Chuan. The funds were drawn down and transferred out of the loan account on the same day and placed into another account held by Kweh and Wibowo. The monies were soon after transferred out of the joint account. In these circumstances and given my findings against Wibowo, there is a very strong inference that Kweh must have actively participated in the fraud against Cristian and Nila. In coming to this conclusion, I note that Kweh was not able to give his own evidence in his own voice. Whilst there was a signed written statement, I have rejected the contents of that written statement as being unreliable. In any event, I repeat that the signed written statement adds little to the defence as pleaded. Accordingly, the plaintiffs succeed in their claim against Wibowo, Isabelle and Kweh.

Remedies

217 The plaintiffs originally sought three remedies: (i) a declaration that the transfer to Kweh is null and void; (ii) an order for rectification of the Register of Title at the Land Titles Registry by expungement of the Instrument of Transfer and deleting the registration of the same by the Kweh on 28 December 2011; and (iii) damages in respect of the loss of the Chuan.[147]

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218 The plaintiffs subsequently amended their Statement of Claim and filed Statement of Claim (Amendment No 2) on 28 January 2014. Among other changes, this amendment removed the prayer for the second remedy, *viz*, the order for rectification of the Register of Title.[148] The position remains the same in their Statement of Claim (Amendment No 3).[149] Indeed, it was unlikely that the second remedy could have been granted, given that the current owner of the Chuan is not a party to the proceedings. With this in mind, I turn to the declaration sought. The declaration was not addressed in the plaintiffs' submissions. The plaintiffs were content to focus on the issue of damages in their submission, arguing that damages amounting to the value of the Chuan should be awarded.[150] In the circumstances, the declaration appears unnecessary and I accordingly decline to make the declaration. I shall now address the claim for damages.

219 In principle, on the facts before me, the plaintiffs are entitled to recover the value of the property that has been misappropriated. No submissions were made on the methodology (or indeed the date) to be used in assessing the value of the misappropriated property. On the facts before me, I find that the appropriate basis is to make the assessment based on the market value at the date of the appropriation. In this case, based on the material before me, I find that the price realised at the mortgagee auction (S$1.8m) is the best representative of that value.

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147 Plaintiffs' Statement of Claim (Amendment No 1) for S 169/2012 at p 16.

148 Plaintiffs' Statement of Claim (Amendment No 2) for S169/2012 at p 21.

149 Plaintiffs' Statement of Claim (Amendment No 3) for S169/2012 at p 20.

150 PCS at para 253.

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The Negligence Claims against Toh and Tan: S 169/2012

220 Toh and Tan (whom, it will be recalled, are the third and fourth defendants in S 169/2012) are the solicitors involved in the conveyance of the Chuan. As noted earlier, the claim is essentially in negligence. There is no claim or allegation of fraud against either solicitor.

221 The general position of Toh and Tan is that no fraud took place: that the evidence of Wibowo and Isabelle was to be preferred over the evidence of Cristian, Denny and Nila in respect of the alleged investment agreement in Oasis Garden, Parc Mondrian and also in respect of the signing of the disputed conveyancing documents, such as the sales and purchase agreement and the Letter of Authority. For completeness, I note there remains some dispute among Toh, Wibowo and Isabelle over: (i) whether Toh took instructions from Wibowo and/or Isabelle on the conveyance and whether he dealt more with Isabelle than Wibowo; and (ii) whether it was Wibowo and Isabelle who instructed Toh to apply for the RCOT (on the basis that this was what Cristian and Nila wanted) or whether it was Toh who took the initiative to make the application.

222 Since I have found in favour of Cristian's and Nila's claim against Kweh, Wibowo and Isabelle, any liability in negligence on the part of the solicitors must be assessed and determined in the light of the fact that a serious fraud had been committed. Toh and Tan submit, amongst other arguments, that in that eventuality, they were victims of the same fraud.

223 Both Toh and Tan accept that they each owed the plaintiffs a duty of care to take reasonable steps to verify their instructions when Toh and Tan purported to act for the plaintiffs in the RCOT application and the conveyance

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of the Chuan, respectively.[151] I find that their concessions were correctly made. While there was no contract or retainer between the plaintiffs and Toh or Tan as an advocate and solicitor, this does not mean that a duty of care does not arise.

224 In the decision of the Supreme Court of New South Wales in *Chandra and anor v Perpetual Trustees Victoria Ltd and ors* [2007] NSWSC 694 ("*Chandra"*), a solicitor was found negligent for acting without authority in applying for a RCOT. A fraudster instructed a solicitor to obtain a RCOT using forged statutory declarations to the effect that the original was lost. The fraudster was then able to use the replacement certificate to obtain advances secured by the property. In holding that a duty of care was owed, Bryson AJ held at [100] that the plaintiffs, as registered owners, stood to be affected by the negligence of the solicitor as much as and perhaps even more than they would have been affected had the solicitor actually a retainer from the plaintiffs. To this end, the remarks of Bryson AJ at [101] bear setting out:

> The weakness and vulnerability of the plaintiffs' situation was related to the weakness of [the solicitor's] situation in that he accepted that [the fraudster] had authority from the plaintiffs. The plaintiffs' vulnerability to an event or loss such as the one which in fact occurred was very high; indeed I cannot see how it could be any higher, as the plaintiffs had no means of preventing [the fraudster] from getting his hands on a new [COT] and no means of knowing that he was doing so, and the ordinary measure available to a registered proprietor of seeing that his own [COT] is in a safe place could not protect the plaintiffs.

225 In *Chandra*, Bryson AJ (at [106]) commented that the fraudster was unknown to the solicitor, there was no confirmation of authority and not a line of writing nor a voice on the telephone. In finding breach of duty, Bryson AJ

[151] Toh's closing submissions at paras 173–174; Tan's AEIC at para 31; Tan's closing submissions at para 53(a).

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held that a reasonable solicitor would have wanted to see the clients and would have wanted them to establish their identities or would have wanted a much better story as to why they were not consulting the solicitor themselves.

226 Another Supreme Court of New South Wales case is the decision of Rein J in *Chen v Gu; Chen v Nguyen* [2011] NSWSC 1622 ("*Chen*"). This was a case where a husband and wife were named as co-owners in the COT. The wife sold the property without the knowledge and consent of her husband, by forging her husband's signature on the contract of sale and letters of authority. The defendant solicitor had no prior knowledge of the husband and wife. Whilst the wife attended at his office to give instructions together with a male relative who pretended to be the husband, the solicitor only took instructions from the wife. The solicitor did not take any steps to verify that the person who he thought was the husband understood the documents. No steps were taken to verify the identity of the persons such as by means of photographic identity, although the solicitor did take steps to check that the COT was genuine. In the circumstances as a whole, the court found that the solicitor was negligent in failing to take adequate steps to verify the identity of the person presented to him as the husband. The two critical points in time were (i) when the person was first presented; and (ii) when the wife required the net sale proceeds to be paid entirely over to herself. In finding that there was a duty of care owed and that this duty was breached, the Court (at [125(10)]) agreed with the importance placed by the *Chandra* decision on a solicitor being conscious of the significance of his action *vis-à-vis* persons who he purported to represent.

227 In the present case, there is no doubt that both the application for the RCOT and the conveyance are significant acts. I note that Toh had explained that in his view, application for a RCOT was a "neutral application", since the

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intention was for a different set of lawyers to act for Cristian and Nila in the actual conveyance and transfer of title. That may well be so. However, the point remains that obtaining the RCOT was an essential step without which the Chuan could not have been conveyed. I pause to note that Toh's fees for applying for the RCOT were actually paid for by a cheque signed by Isabelle.[152] Accordingly, in the circumstances, both Toh and Tan owed duties of care to the plaintiffs. For completeness, I add that the existence of a duty of care in the circumstances before me is fully consistent with the principles established by the Court of Appeal in *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100; *Man Mohan Singh s/o Jothirambal Singh v Zurich Insurance (Singapore) Pte Ltd* [2008] 3 SLR(R) 735 and *Anwar Patrick Adrian and another v Ng Chong & Hue LLC and another* [2014] 3 SLR 761 ("*Anwar Patrick Adrian*").

228 Toh and Tan both argued that they had taken reasonable steps to verify their instructions. They each placed much emphasis on the fact that key documents were notarised. I shall begin by surveying the rules (if any) applicable to: (i) the verification of a client's identity by an advocate and solicitor; and (ii) the identification and verification of a notary public. I will then turn to the question of whether Toh and Tan breached their duties of care. Thereafter, I will consider questions of causation, remoteness, mitigation and contributory negligence.

What are the relevant professional rules on verification of client identity?

229 In *Fong Maun Yee and another v Yoong Weng Ho Robert* [1997] 1 SLR(R) 751 ("*Fong Maun Yee*"), the Court of Appeal observed (at [44]-[45])

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152 PCS at para 241(f).

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that guidelines as to what constitutes good conveyancing practice in other jurisdictions should be adapted and followed where possible by Singapore conveyancing practitioners so as not to be exposed to the risk of acting without authority. The Court of Appeal endorsed para 1.3.1 of Silverman, *The Law Society's Conveyancing Handbook* (1993) (England), which states that where the solicitor is instructed by one person to act on behalf of that person and another (for example as co-vendors), the non-instructing client's authority to act and consent "should be confirmed directly with the person concerned." The Court of Appeal also cited with approval para 9.05 of *The United Kingdom Law Society's Guide to the Professional Conduct of Solicitors* (1990), which states that where instructions are received not from the client but from a third party purporting to represent that client, a solicitor should obtain written instructions from the client that he wishes him to act or "in any case of doubt he should see the client or take other appropriate steps to confirm instructions".

230 In Singapore, the applicable rules can be found in the various iterations of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed) ("PCR (2010)"). Under the PCR (2010), before a lawyer accepts instructions to act in a matter, the lawyer must "take reasonable measures to ascertain the identity of a client as soon as reasonably practicable": r 11D(1) of the PCR (2010). If such instructions emanate from an agent on behalf of a principal client, the lawyer "shall take reasonable measures to ascertain the identity of the principal client": r 11D(2).

231 Rule 11D of the PCR (2010) is of general application to the solicitor/client relationship. It is not limited to any particular type of transaction or any particular circumstances.

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232 The PCR (2010) goes on to set out further provisions dealing with the duty of the lawyer to know the client's business relationship. In particular, r 11F(1)(*a*) imposes such a duty where the lawyer acts for a client in the acquisition, divestment or any other dealing of any interest in real estate. In such a case, the lawyer or law firm must obtain satisfactory evidence as to the nature and purpose of the business relationship with the client in the matter and the business relationship between the client and any other party to the matter: r 11F(2).

233 The provisions in PCR (2010) were amplified by Practice Direction 1 of 2008 ("PD (2008)"), which was issued by the Council of the Law Society of Singapore (I note for completeness that PD (2008) has since been superceded by Practice Direction 1 of 2015). The preamble of PD (2008) explains that the direction is concerned with the prevention of money laundering and funding of terrorist activity.

234 PD (2008) Part (c) goes on to explain how client identification is to be carried out. It provides that the duty is "to identify and then verify the identity of a client before starting work on any matter." It goes on to set out detailed provisions. For example, para 14 provides that the client's identity must be verified using reliable, independent data or information at the beginning. Paras 22 and 23 require the lawyer to ascertain the identity of the principal client, check the identity of the agent who is giving instructions, establish that the agent in fact represents the client, and verify that he has the specific authority to relay instructions to the lawyer on behalf of the client. Part (d) recognises that in some cases (depending on the type of client and type of business or transaction) "simplified know your client" checks may suffice. For example, simplified checks may suffice if the client is an individual or entity where reliable information on the identity of the client and its beneficial owners is

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publicly available. In the present case, given that Toh has never been instructed by Cristian and Nila before on any matter (and, indeed, he has no personal knowledge of them at all), it is clear that simplified know your client checks are not appropriate or indeed permitted under PD (2008).

235 Leaving aside cases where a law firm, after conducting client due diligence, makes a decision to carry out a risk-based simplified know your client verification, PD (2008) Part (e) sets out detailed provisions on the actual steps to be taken in identifying a client. In the case of face-to-face meetings, evidence of identity can be obtained and verified by sight of the original identity card or international passport or a driving license. Where the lawyer is unable to meet the client face-to-face, a certified true copy of the identity document must be provided. In addition, the lawyer is required to "take appropriate precautions to ensure that the client's identity and particulars…are adequately verified." Part (e) states that "a lawyer/law practice must not accept a fax or photocopied version of identity documents which is not adequately verified as the same may be fabricated."

236 Toh takes the position that PD (2008) does not apply. Toh submits that PD (2008) only applies in the context of money laundering and terrorist funding activities. The submissions, with respect, are hard to follow. The danger and harm which PD (2008) seeks to prevent or mitigate is indeed money laundering and/or terrorist activity. Nevertheless, PD (2008) in my view is of general application. It is clearly intended to inculcate a system where proactive steps are to be taken to avoid or minimise the risk of the law firm being involved inadvertently in money laundering activities. PD (2008) Part (f) mandates that a full know your client check must be conducted in the case of new clients. Furthermore, PD (2008) Part (j) at para 60 specifically refers to the requirement in r 11F(1)(*a*) of PCR (2010) that the lawyer must

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takes steps to know his client's business whenever there is any acquisition or divestment of real estate. That said, it is appreciated that the objective of PD (2008) is to control or detect money laundering and terrorist financing. Even though strict compliance will render fraud on individual clients or members of the public more difficult, it is not the immediate objective of PD (2008) to protect clients and members of the public from fraud as such. Nevertheless, for reasons that will become clear below, I am of the view that this makes little difference on the facts before me.

What rules (if any) apply to identification and verification of a Notary Public?

237 Toh asserts that there are no specific rules in the PCR (2010) or PD (2008) that require the lawyer to take steps to confirm and verify the identity of a person who witnesses documents as a notary public. Much is made of the fact that there are provisions in the ROC and the EA which makes clear that a party producing and relying on a notarised document does not have to prove that the seal in fact belongs to the notary public in question. To this end, reference was made to O 41 r 12 of the ROC, which provides that a document purporting to have affixed or impressed or subscribed thereon the seal or signature of a notary public in the testimony of an affidavit shall be admitted in evidence without proof of the seal or signature being that of the notary public. However, O 41 r 12 of the ROC is about admission of the document in an affidavit in evidence. It does not necessarily mean that a lawyer is entitled to assume, as part of his duty of due diligence, that the signature or seal is indeed the seal or signature of the person name as the notary public or that the affidavit was in fact signed before the notary public. This is considered further below.

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238 Toh also relies on section 59(1)(*f*) of the EA. This provides that the court is to take judicial notice of all seals which English courts take judicial notice, the seals of all the courts in Singapore, the seals of notaries public and all seals which any person is authorised to use by any law in force for the time being in Singapore. In my view, this provision does not assist. Section 59 is about facts which need not formally be proved. These facts are regarded as being so well-established that the court may assume its existence without proof. Jeffrey Pinsler SC, *Evidence and the Litigation Process* (LexisNexis, 5th Ed, 2015) at para 11.002 explains that "in such circumstances, proof is unnecessary because the fact has an objective existence beyond, and unaffected by, the specific circumstances of the case." It is accordingly not necessary to adduce evidence that the seal used by a notary public is a seal that is authorised for use by that notary public. The provision, however, is not about the duty of a lawyer to confirm and verify the identity of a person who witnesses documents as a notary public.

239 Finally, Toh also relies on section 87 of the EA which states that the court will presume that powers of attorney purportedly authenticated by a notary public were indeed so authenticated.

240 A large number of cases from various jurisdictions (including Malaysia, Hong Kong and the United States of America) was cited to support the proposition that a litigant who challenges the authenticity of signatures on a notarised document "must meet a high threshold to discharge their burden of proof".[153] The cases cited were: *NKR Arunsalam Chettiar a/l Karuppan Chettiar v Goh Yew Jin & Ors* [1999] 6 MLJ 202; *Brooke v Brooke* (1881) 17 Ch D 833; *Free Focus Ltd v Fels China Ltd* [1990] 1 HKLR 731; *Butler v*

153 Toh's closing submissions at para 248.

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Encyclopedia Brittanica Inc 41 F 3d 285 (7th Circuit, 1994); *1st Coppell Bank v Smith* 742 S.W. 2d 454 (Tex. App. Dallas, 1987). Reference was also made to the principle that "great respect is accorded to notarial acts" (see NP Ready, *Brooke's Notary* (Sweet & Maxwell, 13th Ed, 2009) ("*Brooke's Notary*") at p 90, citing *The Hedwig* (1853) 1 Spinks E & Ad 19). The point made is that a person appointed as a notary public has the duty to take care in carrying out his responsibilities. His is an office of trust and the veracity of the statements made by the notary public in a document is "accepted without question" (*Brooke's Notary* at p 90).

241 Toh relies on the above cases and provisions in support of the submission that good practice in Singapore permits solicitors to rely on notarised documents without requiring further verification of the notary public. In addition, the point was made that the SLA in fact accepts notarised documents without requiring further proof of the person appearing as notary public.

242 Whilst this Court is not bound by the overseas decisions, I have no doubt that Singapore can and does take judicial notice of the seal of a notary public and that in the absence of convincing contrary evidence, it is presumed that a document which on its face appears to have been regularly notarised, has in fact been properly notarised. The key question before me, however, is whether a solicitor can *always* rely on the fact that the document in question appears to have been signed by the client before a notary public, whose name, seal and signature appears on the face of the document, as being sufficient to fulfil his obligation to take due care to his client. In the specific circumstances of the case before me, can Toh rely on the fact that he was given application forms for RCOT and statutory declarations which appear to have been signed

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before Hengki in Indonesia as sufficient to discharge his duty to establish the identity of his client and his instructions to act? This is considered next.

Is Toh in breach of his duty to identify his client and to confirm instructions to act?

243 The leading decision on the duty of a lawyer to confirm his instructions to act is *Fong Maun Yee*, which I have referred to earlier at [229] above. In that case, the appellants sued the respondent lawyer, *inter alia*, for negligent misrepresentation and breach of warranty of authority. A property agent had used forged documents to trick the appellants into thinking that the seller (a company) had resolved to sell a property and to appoint the respondent as their lawyers for the sale. Neither the appellants nor the respondent was aware that the documents (including the option) were forgeries. The respondent carried out a company search to confirm that the persons who signed the resolution and option were the purported seller's directors, communicated this information to the appellants, but did not obtain a letter of appointment from the sellers. The property agent absconded with the appellants' monies.

244 The Court of Appeal found that the respondent had breached his duty of care by not taking steps to verify his instructions from the seller. As a result, the respondent was found liable for negligent misstatement to the appellants as well as breach of warranty of authority. On the particular facts, the Court of Appeal found that by failing to verify his instructions to act directly from the seller, there was a clear foreseeable risk that the respondent would be acting without authority. The risk could have been avoided by getting direct confirmation from the seller. At the very least, the respondent should have informed the appellant that he had not been able to confirm his instructions direct from the seller. Support for this conclusion was found in the statement of Lord Brightman in *Edward Wong Finance Co Ltd v Johnson*

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Stokes & Master (a firm) [1984] AC 296 ("*Edward Wong*") at 306 that in assessing whether solicitors fell short of the standard of care, three questions had to be considered: first, did the practice as operated by the solicitors in the instant case involve a foreseeable risk? If so, could that risk have been avoided? If so, were the solicitors negligent for failing to take avoiding action?

245 Several points are to be noted about the decision in *Fong Maun Yee*. First, the Court of Appeal reached its conclusion notwithstanding that there was evidence that it was sufficient to rely on the resolution and option and that it was not the practice in Singapore to verify instructions. Instead, the question of the required standard of care "is not really what the practice is or what a particular solicitor would have done in a particular situation but the extent of the legal duty in a given situation, which is a question of law" (*Fong Maun Yee* at [46]).

246 Second, the suit was brought by the would-be buyers for negligent misrepresentation and breach of warranty of authority which caused the buyer to hand over monies to the property agent. The suit was not by the purported sellers (as in the present case before me). It appears that the transaction was never completed. The respondent denied that he owed any solicitor-client duties to the appellants. I note that the Court of Appeal stated at [40] that it could not be denied that, as a matter of law, the respondent owed a duty to the appellants to exercise care and skill as their solicitor. This second point bolsters my earlier conclusion that Toh and Tan owed duties of care to the Cristian and Nila.

247 I return now to the question of standard of care and breach. There is no dispute that the standard required is what a reasonably competent solicitor would do having regard to the standards normally adopted in his profession.

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Toh rightly stresses that the standard is not based on hindsight citing the following passage from *JSI Shipping (S) Pte Ltd v Teofoongwonglcloong (a firm)* [2007] 4 SLR(R) 460 ("*JSI Shipping*") at [69]:

> …a court must always guard against the "scapegoat effect" that often magnifies *ex post facto* and makes plausible culpability by employing the spectacles of hindsight…the standard of reasonable care [must] be objectively assessed on the basis of knowledge then reasonably available as well as measures that could have been reasonably adopted at the material time. The acid test is certainly not one of retrospective plausibility.

248 Whilst evidence as to existing conveyancing practice may be relevant, a number of points should be borne in mind. First, is there convincing evidence of the conveyancing practice which the defendant asserts and relies on? Second, even if there is evidence, it does not follow that the practice is conclusive of the issue: *Edward Wong*.

249 In some cases, such as *Fong Maun Yee*, there may be conflicting evidence on what is the established practice. Indeed, in assessing the opinion expressed by the "expert", much may depend on the level of generality at which the question is posed. Both Toh and Tan gave evidence that when clients signed documents overseas, they would customarily rely on documents signed before a notary public. This was said to be the relevant conveyancing practice. Thus, Toh asserts that it would not be reasonable to require him to demand or obtain verification that the documents were genuine in that they were really signed before the notary public.[154]

250 The problem, however, is that leaving aside the various provisions on accepting or recognising notarial seals, there is no independent evidence of the

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154 Toh's closing submissions at paras 236-239

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conveyancing practice in Singapore. Further, the question is not whether the court accords the greatest respect to acts of a notary public or even whether judicial notice is to be taken of notarial seals and signatures. The question is what steps would a reasonably competent solicitor in a position such as Toh be expected to take to verify his instructions from Cristian and Nila, on the particular facts and circumstances before him.

251 Toh submits that sufficient steps were taken because he: (i) requested and received written instructions from Cristian to make the application; and (ii) received the relevant application forms and statutory declarations which appeared to have been signed by Cristian and Nila before Hengki, the Indonesian notary public. Whilst these notarised documents were used for the first RCOT application, and the application failed because of insufficient information on what happened to the original certificate, Toh asserts that he had no reason to suspect that Cristian and Nila did not know of the application.

252 The circumstances in which Toh made the first and second RCOT applications have been set out in some detail above. In my judgment, the steps taken by Toh were clearly insufficient on the facts for the following reasons:

(a) The transaction was not a standard sales and purchase agreement. One of the registered proprietors (Cristian) was said to be heavily indebted to Kweh, the "buyer", and the transfer of title was by way of satisfaction of that debt.

(b) Toh was instructed to act for Kweh, the creditor and buyer. It was not Toh's intention to act for the registered proprietors (Cristian and Nila).

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(c) Toh received all his instructions from Isabelle and Wibowo, the son of Kweh. These included information on the alleged debt owed by Cristian, the agreement to transfer the Chuan so as to satisfy the debt, and instructions that the original COT was lost. Whilst Wibowo claimed that the decision that Toh could make the application for a RCOT was made by Toh himself, it is clear that Toh made the application because he thought he had instructions from Wibowo to do so on behalf of Cristian and Nila.

(d) Toh had no prior dealings with Cristian and Nila.

(e) Toh made no attempts at all to verify Cristian's and Nila's instructions or consent prior to his making the first RCOT application. This was so even though Wibowo had provided Toh with an email address at which he could contact Cristian. Indeed, if the first RCOT application had been successful, the replacement certificate would have been obtained without any verification at all (aside from the fact that the application and statutory declaration appeared to have been notarized).

(f) When the first RCOT application was turned down by SLA (for insufficient information), instead of trying to contact Cristian and Nila himself, Toh merely requested Wibowo to contact Cristian for further information so as to satisfy SLA. Shortly thereafter, Toh received an email apparently from Cristian setting out brief details requested. This was the first direct "communication" Toh had with Cristian. Even then, the email was from a different email address. The email was not sent by Cristian in reply to an email from Toh. There was no request for

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Cristian to provide the information personally or any attempt by Toh to speak to Cristian by telephone.

(g) Whilst the second RCOT application was successful, it appears that the RCOT was never passed to Tan. In any case, it is clear that Tan was unaware and had no knowledge at all that a RCOT had been applied for and that Toh had made the RCOT applications.

253 Bearing in mind rr 11D(1), 11D(2) and 11F(1)(a) of the PCR (2010) (see [230]-[232] above), I am of the view that any reasonable solicitor in the position of Toh would have taken further steps to verify Cristian's and Nila's instructions to apply for a RCOT. The fact that great respect is paid to the acts of a notary public, is neither here or there. In *Chandra*, the court found at [104] that everything the solicitor knew and saw depended on the sincerity of the property agent who claimed to represent the registered proprietors. In the present case, the reality is that Toh thought he could trust the words of Wibowo. He asserts that he had no reason to doubt Wibowo and thought that it was sufficient in the first instance to just rely on the fact that the first RCOT application and documents appeared to have been signed by Cristian and Nila before a notary public. This was so even though he had never met Cristian and Nila or had any contact with them. He was also content to pass the documents to Wibowo for transmission to Cristian and Nila for signing in Indonesia.

254 It goes without saying that the measures to be expected from a reasonably competent solicitor must be commensurate with the risk of harm. In this regard, I repeat the observation of the Supreme Court of New South Wales in *Chandra* at [106] that "a solicitor[] handling title documents of a client or of a supposed client calls for vigilance. Possession of a [COT] is

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charged with economic significance: loans are made on their mere deposit, even without writing."

255 Whilst I accept that there is no evidence as to whether loans are extended in Singapore simply on deposit of a COT, the point remains that the COT is an important document. The remarks in *Chandra* (at [107]) referring to the mischief which can arise from misuse of RCOTs falling into the wrong hands, as well as the need for a solicitor to consider fully what he is doing and to obtain appropriate authority when handling COTs, bear underscoring. Toh was prepared to accept Wibowo's explanation of the background debt without direct confirmation of the same from Cristian and Nila. As in the case of *Chandra* at [106], I am of the view that at the very least, a much better explanation ought to have been sought from Wibowo as to why Cristian and Nila were unable to consult a solicitor directly by themselves. Indeed, in the circumstances, the question remains as to why Toh did not ensure that the RCOT when obtained was passed to Cristian and Nila or Tan.

256 In coming to my decision, I note the remarks made in *Chen*. In that case, the solicitor argued that a requirement for a solicitor to obtain photographic identification of the identity of a new client unknown to him, at least where the new client is not referred to him by a person well-known to the solicitor, will have wide reaching implications and effect. Against this, the Supreme Court of New South Wales stressed at [129] the importance of balancing that consideration against the significance of important documents of title in the title registration system, the fact that the capacity for harm to the owner is considerable and the task of seeking photographic identification is not particularly onerous. In the present case, Toh (and Tan) argue that, aside from requiring signed and notarised documentation, it will be very onerous to take further steps to verify the identity of a client who is overseas. It is

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accepted that the more steps required, the greater the inconvenience and expense of the verification procedure. However, as evident in *Chen*, this must be balanced against the risk of harm and the particular circumstances of each case. Whilst Toh makes the point that he was familiar with Wibowo and Isabelle, it is clear that he has never met Kweh nor had he any prior knowledge or dealings with Cristian and Nila. Toh was well aware that the transfer of the title was for the purposes of extinguishing a rather large debt said to be owed to Kweh. Even if Toh had been shown or provided with a mere copy of Cristian's and Nila's passports, this would not have provided any assurance. It may be different if Cristian and Nila had actually appeared before Toh when the original passports are produced to verify their identities.

257 I pause to note that in *Fong Maun Yee*, the Court of Appeal at [41] noted the view expressed at first instance that a lawyer is not the insurer for his client's own folly nor is he obliged to guarantee the validity of a transaction which documentation he did not prepare. But just as this was not the point in *Fong Maun Yee*, the same is equally true in the present case. Toh was responsible for preparing the application and draft statutory declarations for the RCOT. He was purporting to do this for Cristian and Nila and with their authority. In failing to take proper steps to verify his instructions, there was a foreseeable risk that he would be acting without authority. Toh may well have been honest in expressing his belief that he could trust Wibowo and that the email from Cristian in respect of the second RCOT application was genuine and had confirmed his instructions to act. This is not an answer however to the claim in negligence.

258 I note also Toh's submission that, even if there was a foreseeable risk (that he might be acting without authority), this was not a risk that could have been avoided.[155] Toh's position is that short of requiring a face-to-face

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interview with Cristian and Nila, there was nothing else that could be done, especially since the second RCOT application documents appeared to have been signed in Indonesia before a notary public. The point, however, is that this is not a case where the solicitor has taken adequate steps in the first place to verify his instructions and authority to act. Relying on the application and statutory declaration as confirming his instructions begs the question: instructions to do what and from whom? The whole point of verifying instructions and authority to act is to lessen the risk that the solicitor is acting without authority and being used by some party to commit fraud.

259 Professor Tan Yock Lin ("Professor Tan") in *The Law of Advocates and Solicitors in Singapore and West Malaysia* (Butterworths Asia, 2nd Ed, 1998) ("*The Law of Advocates and Solicitors*") at p 350 discusses the duty of a solicitor to verify that he has instructions to act from all joint owners and states that a solicitor's negligence or omission to do his duty in verifying the identity of all his clients means that he assumes responsibility for any who has not in fact retained him. The case cited as authority is *Penn v Bristol and West Building Society* [1995] 2 FLR 938. The plaintiff and her husband were joint owners of a house. The husband ran into financial difficulties which the wife was unaware of. The husband made arrangements to sell the property to raise monies. The wife was unaware of this. The husband and the purchaser colluded and forged the wife's signature on the conveyance and contract of sale. Solicitors were instructed to act in the sale. The solicitors did not verify the instructions to act from the wife. Instead he merely sent a letter addressed to the husband and wife. This letter was intercepted by the husband who proceeded to forge her signature on the property questionnaire. Judge Kolbert found (at 949) the wife was never a client of the solicitor. Nevertheless, the

[155] Toh's closing submissions at para 217(b).

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solicitors owed a duty of care to her as she was reasonably within their contemplation when the solicitors received the title deeds. The wife's interest as co-owner meant that she was sufficiently proximate to the transaction in which they were engaged. The solicitor had assumed he had the authority of both husband and wife. The court also held that he had ready means to discharge that duty. He should have written directly to the wife to seek her confirmation or to take other steps such as to require her to call at his office. Had this been done, the fraud would have been "stopped dead in its tracks". The fact that the husband may well have intercepted such a letter evidently did not impress the court. Indeed, I note that the solicitor submitted that his failure to check whether he did have authority did not have any effect on her existing interest. The fraud would have been perpetrated in any case. The submission was rejected and the court found that as a direct consequence the fraud took place causing direct loss and distress to the wife.

260 Similarly, in the present case, I am of the view that more could and should have been done by Toh to confirm and verify his instructions directly with Cristian and Nila. Even though he did receive what he assumed was a response from Cristian and Nila in respect of information for the second RCOT application, I am of the view that he should have been far more pro-active and to have independently sought information and instructions by means of a direct communication with the registered owners. To rely on an intermediary who is taking instructions from the creditor and would-be buyer is fraught with risk.

261 I pause here to repeat the warning of the Court of Appeal in *Mahidon Nichiar bte Mohd Ali and others v Dawood Sultan Kamaldin* [2015] 5 SLR 62 ("*Kamaldin*") at [144]:

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> It is even more imperative for the solicitor to communicate directly with all the clients where (as in the present case) he has been approached by only one of them who, quite obviously is the party that stands to benefit from the intended transaction. The solicitor would be seriously mistaken if he believes that he has the informed consent of *all* the clients based only on the word of *one* of them. In these circumstances, what the solicitor must do is communicate directly with the ostensibly disadvantaged clients and confirm with them that the instructions which he has received are indeed reflective of their intentions…
>
> [emphasis in original]

262 This case involved an estate matter wherein four siblings and their mother were beneficiaries to their late father's estate. One sibling, X, was also the sole administrator. X instructed a firm of solicitors to prepare a deed whereby the other three siblings renounced their interests in the late father's estate in favour of their mother and X. The solicitor took the instructions solely from X and did not verify the instructions independently with the three siblings. It is in this context that the above warning was set out by the Court of Appeal. The present case is different in that Toh had always intended that Cristian and Nila (the sellers) should be represented in the conveyance by separate lawyers to avoid any possible problem with conflict of interest. Nevertheless, at the time when he decided to assist in the application for a RCOT for Cristian and Nila, he was already acting for Kweh, the buyer. Toh clearly knew that the RCOT was essential but reasoned that the act of applying was "neutral." In my view, it was incumbent on Toh, much for the same reasons articulated by the Court of Appeal in *Kamaldin*, to communicate directly with Cristian and Nila and obtain unambiguous confirmation of his authority to act. This is especially since Toh knew or understood that Cristian and Nila were in a sense being forced to "sell" the Chuan because of the debt that was owed to Kweh: a debt on which he only had the instructions of Wibowo. Toh did not even have direct confirmation of the debt from Kweh at

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that time.[156] Even if Toh was of the view that there was no risk because Tan was to be engaged to act for Cristian and Nila in the conveyance, I am of the view that a reasonably competent solicitor would at the very least have informed Tan expressly of the problem with the COT, that Toh had obtained a RCOT for Cristian and Nila and that his instructions were being provided to him by intermediaries, namely, Wibowo and Isabelle. On balance, I am of the view that Toh is in breach of his duty to identify his client and to confirm his instructions to act.

Is Tan in breach of his duty to Cristian and Nila?

263 Tan's position on the applicable law in respect of his duty to Cristian and Nila is similar to the position argued by Toh. To be clear, Tan does not dispute the existence of the duty to take reasonable care by the standards of a reasonably competent and diligent conveyancing lawyer. Tan does not dispute that the duty includes a duty to take reasonable measures to ascertain the identity of his client and to verify the instructions to act. However, he denies any breach of the duty on the facts.

264 Tan's case is that he took all reasonable steps in the circumstances to ascertain the identity of his clients and to verify his instructions to act in the conveyance of the Chuan. Tan submits that the circumstances against which the reasonableness of his conduct is to be assessed includes the following:

(a) Tan had no prior knowledge of Cristian and Nila, the registered proprietors.

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156 NOE 1 March 2016 p 42 line 3–10.

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(b) Tan had no knowledge of Wibowo or Isabelle during his involvement in the conveyance.

(c) It was Toh who referred the matter to Tan for the purposes of Tan acting for the would-be sellers.

(d) Tan was informed by Toh that he (Toh) was acting for the would-be buyer in the sale and purchase. Toh never told Tan that he had never met Kweh before and was in fact receiving his instructions through intermediaries, Wibowo and Isabelle.

(e) Toh provided Tan with two email addresses and a phone number at which he could contact Cristian and Nila.

(f) Tan made a few unsuccessful attempts to contact Cristian at the phone number.

(g) Tan sent an email on 7 December 2011 to the two addresses provided by Toh requesting confirmation and attaching a draft sales and purchase agreement and Letter of Authority.

(h) Tan also provided a copy of the Letter of Authority to Toh so that Kweh could pass the same to Cristian and Nila at an upcoming meeting in Indonesia. Whilst there is a dispute as to whether this was done at Toh's suggestion, it is not disputed that Toh did receive a copy of the Letter of Authority by email which he then passed to Wibowo and Isabelle.[157]

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157 Toh's SAEIC at paras 4.2.2–4.2.6; Tan's AEIC at paras 23–24 and 26.

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(i) Tan received a confirmation by email from Cristian on 12 December 2011 ("the confirmatory email"), which confirmed the contents of Tan's email and stated that the purchase price had already been fully paid.

(j) The Letter of Authority was returned to Tan bearing the signatures of Cristian and Nila and signed before Ali Husein, an Indonesian notary public.

(k) Tan accepts that he never had a face–to-face meeting with Cristian and Nila. Neither did he ask for their identity documents.[158]

(l) Tan was aware that the conveyance of the Chuan was for the purpose of repayment of a debt.

(m) Tan also received documents relevant to the conveyance from Toh that on their face were signed by Cristian and Nila before a notary public in Indonesia. These included the sale and purchase agreement dated 13 June 2011 and the Instrument of Transfer.

(n) Tan also communicated with someone purporting to be Cristian by email on 23 December 2011 on the question of an earlier completion date.

(o) Tan was not informed by Toh that he had assisted Cristian and Nila obtain a RCOT. Indeed, Tan had been informed by Toh on 22 December 2011 that the original COT was in his possession. Tan accepts that he did not perform a fresh title search prior to completion. Instead, he relied on a title search conducted by Toh on 6 July 2011.

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158 NOE 2 March 2016 p 12 line 19–25.

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Tan accepts that if a title search was done in December 2011 the fact that a RCOT had been issued would have been apparent.

(p) Completion of the sale was brought forward and took place on 28 December 2011.

265 Tan's position is that he acted as a reasonably competent and diligent solicitor. He had been referred the business (to act for the seller) by Toh, a fellow advocate and solicitor who was acting for the buyer. In these circumstances, Tan asserts that he acted reasonably in relying on (i) the confirmatory email; and (ii) the Letter of Authority which appeared to have been signed before a notary public.

266 To Tan's credit, the confirmatory email that he received was in response to an email that Tan had sent to Cristian at the email address which had been provided by Toh. The difference between this confirmatory email and the email which Toh received from Cristian providing further information for the second RCOT is clear (see [252(f)] above). In Toh's case, he had never initiated direct communication with Cristian at any email address, let alone at the email address that he says Wibowo provided him with. The email that purports to be from Cristian was apparently sent to Toh because Toh had asked Wibowo to contact or ask Cristian to provide the information. Toh never felt any need to pro-actively initiate direct communications of any sort with Cristian and Nila. On the other hand, it could be said that Tan at least took the initiative and did email Cristian directly at the address which Toh had provided for confirmation, and later appeared to have received such confirmation. There is also some evidence that Tan had attempted unsuccessfully to call Cristian at the number provided by Toh. Further, whilst there is some dispute as to when Toh first asked Tan whether he was interested

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in acting, it is clear that Tan was only engaged late in the day: sometime in December 2011. The date for completion was not far off and indeed was later brought forward.

267 However, on balance, it is in my view still insufficient for Tan to simply rely on the confirmatory email and the signed Letter of Authority. The email address was provided by Toh and not by Cristian and/or Nila. Email addresses can be easily set up. Moreover, it is one thing to rely on a signed Letter of Authority where Tan had obtained direct reliable confirmation of Cristian's and Nila's instructions (such as by means of a face-to-face meeting); it is quite a different matter to rely on the same where there has been no direct reliable confirmation from them. I accept that the effort required to obtain direct and reliable confirmation of instructions can be inconvenient and incur expenses. This is, however, not a reason for not taking the steps as I have noted above.

268 Tan's position is that Toh did not provide him with any other information which gave rise to any cause for concern. This included the fact that the original COT was said to have been lost and that Toh himself had been involved in the process of applying for a RCOT for Cristian and Nila on the instructions of Wibowo. Indeed, it appears that Tan's position is that Toh misled him (whether accidentally or otherwise) into thinking that Toh had possession of the original COT.[159] However, Tan knew that this was not the usual case where a buyer will transfer money to the seller to complete the purchase. The transfer was instead made in order to satisfy a large debt said to be owed by one of the registered proprietors (Cristian) to an Indonesian businessman in Indonsesia. Even though Toh, a fellow advocate and solicitor,

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[159] AB p 235.

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was referring the would-be sellers to Tan, much more should have been done to verify the instructions from Cristian and Nila. If Tan had pressed Toh for more information, something he should have done as reasonably competent solicitor, he would have realised that Toh himself did not have any direct knowledge of the registered proprietors.

269 In these circumstances, I am satisfied that Tan breached his duty of care in failing to take reasonable steps to verify his instructions, for example, by requiring a face–to-face meeting or conference call.

270 In coming to this decision, I note the plaintiffs' argument that Tan should have conducted a more current title search. If he had done this, he would have in all likelihood discovered that a RCOT had been obtained. Armed with that knowledge, a competent solicitor in Tan's position would have taken further steps to require explanation and verification of the RCOT from Cristian and Nila. The need to conduct an updated title search before completion is underscored by the importance attached to the Certificate of Correctness that Tan was required to sign in the Instrument of Transfer.

271 Tan submits that whilst the taking of such steps may have revealed the fraud, breach is not to be assessed using the lens of hindsight. In addition, Tan's evidence was that it is common practice for solicitors in Singapore to rely on title searches which are less than six months old and that it was common for a seller's solicitor to rely on a title search provided by the buyer's solicitor.[160] There is no independent evidence, however, that this is in fact the common practice in Singapore.

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160 NOE 1 March 2016 p 155 line 15-22.

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272 In *Anwar Patrick Adrian*, the Court of Appeal agreed at [57] that an accurate certificate of correctness was of paramount importance because the Registrar of Titles and the public place enormous faith on the certificate, especially where it emanates from an advocate and solicitor. By signing on the certificate, the solicitor must have thought he had the authority to act. For this and other reasons, the Court of Appeal found that an implied retainer existed.

273 The point, however, is that the remarks in *Anwar Patrick Adrian* on the certificate of correctness were made in connection with the question whether an implied retainer and a duty of care existed. In the present case, there is no dispute that Tan owes a duty of care. The question is whether he acted in breach of the duty of care that he readily accepts he owes. There is nothing in *Anwar Patrick Adrian* that states a solicitor must conduct a title search shortly before completion and the signing of the certificate of correctness. There is no doubt that a title search must be done. However, as argued by Tan, a title search was done by Toh and produced to Tan. Looking at the facts and circumstances as a whole, I am unable to conclude that by failing to do a fresh search in mid-December 2011 (or thereabouts), Tan had fallen below the standards of a reasonably competent and diligent solicitor. For the avoidance of doubt, this court is not holding that the duty owed by a solicitor will never require a fresh or updated title search to be conducted shortly before completion. Whether such a step is needed must depend on the facts and circumstances of each case.

274 Nevertheless, this does not detract from my finding that Tan is negligent in failing to take adequate and reasonable measures to identify his clients and to confirm his instructions in a reliable manner.

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Causation and the Negligence Claims against Toh and Tan

275 Toh submits that even if there was a breach of duty on his part, the breach did not cause any loss. Instead, the loss was caused by the fraud of Wibowo and Isabelle as well as the negligence of Tan, which constituted *novus actus interveniens* and broke the chain of causation.[161] Tan, on the other hand, submits that "the chain of causation was broken by [Toh's] involvement in the application for a [RCOT]".[162]

276 Adapting the language of Lord Sumner in *Weld-Blundell v Stephens* [1920] AC 956 at 986, where *novus actus interveniens* is established, the effect is to "insulate" the first tortfeasor from the victim. It follows that it is not sufficient to merely establish that the intervening act was a "conduit pipe" through which the consequences created by the defendant's negligence flowed. *Novus actus interveniens* requires proof of a wholly independent cause of damage which breaks the chain of causation (see *TV Media Pte Ltd v De Cruz Andrea Heidi* [2004] 3 SLR(R) 543 at [76]). In other words, it refers to a "new intervening act that takes place between the defendant's negligent conduct and the damage": *The Law of Torts in Singapore* at para 07.071.

277 I begin with Tan's submission on causation which can be easily disposed of. Since Toh's involvement in the RCOT application preceded Tan's tort, the former cannot be said to have broken the chain of causation for the latter.

278 In relation to the submission by Toh that *Tan's negligence* had broken the chain of causation, I am similarly unable to follow the argument. It was

161 Toh's closing submissions at paras 281-291

162 Tan's closing submissions at paras 149–150.

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Toh who introduced the conveyance of the Chuan to Tan with the intention that Tan should act for the sellers. It was Toh who provided Tan with a particular email address at which Tan might contact Cristian. It was Toh who assisted Tan in sending the Letter of Authority to Wibowo and Isabelle for passing over to Cristian and Nila for signing in Indonesia. Toh also informed Tan that he had in his possession the COT – without telling Tan the history of his involvement in procuring what was in fact a RCOT.

279 Indeed, quite apart from the fact that Tan did not know that Toh earned fees for the RCOT application, it appears that Isabelle also arranged for Tan's fees to be sent to Toh for onward transmission to Tan.[163] In these circumstances (bearing in mind that causation is not a precise science but a matter of overall justice), I am unable to see how Tan's negligence could amount to a "wholly independent cause" which severed the chain of causation beginning with Toh's own negligence in applying for the RCOT without first making proper checks to identify Cristian and Nila and his instructions to act.

280 In coming to this conclusion, I found the following passage from the Court of Appeal decision in *Sunny Metal & Engineering Pte Ltd v Ng Khim Ming Eric* [2007] 3 SLR(R) 782 at [54] helpful:

> As illustrated by the example just discussed, sometimes, the defendant's conduct sets off a sequence of events, each one of which is a necessary link in the causal chain between the initial wrong and the claimant's damage. In such cases, the court has to determine whether any of the intervening events can be said to be said to be so significant causally as to break the causal link to be regarded as a *novus actus interveniens*. There is usually no dispute as to what in fact happened to cause the claimant's damage; rather the question is which event will be treated as the *cause* for the purpose of attributing legal responsibility. The court therefore has to

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163 NOE 29 February 2016 p 56 line 5–10.

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> decide whether the defendant's wrongful conduct constituted the "legal cause" of the damage. This recognises that causes assume significance to the extent that they assist the court in deciding how best to *attribute responsibility* for the claimant's damage: see *M'Lean v Bell* (1932) 48 TLR 467 at 469. In effect, as Andrews J quite candidly put it in *Palsgraf v The Long Island Railroad Company* 248 NY 339 (1928) at 352:
>
> > [B]ecause of convenience, of public policy, of a rough sense of justice, the law arbitrarily declines to trace a series of events beyond a certain point. This is not logic. It is practical politics.
>
> [emphasis in original]

281 I pause to note that it is in fact unclear whether *novus actus interveniens* is available in cases where the subsequent intervening act or event is tortious in nature (see *Baker v Willoughby* [1970] AC 467, *Jobling v Associated Dairies Ltd* [1982] AC 794, *Salcon Ltd v United Cement Pte Ltd* [2004] 4 SLR(R) 353 and *The Law of Torts in Singapore* at para 07.068).

282 This is not a matter, however, that this court needs to examine. As set out at [278]–[279] above, I am satisfied that the negligence of Tan is not a wholly independent cause of the loss of the Chuan. It did not break the chain of causation. Indeed, this is a case where both acts of negligence, sequential though they were, caused and contributed to the same loss. In coming to this conclusion, I have also found the following hypothetical discussed by Goff LJ in *Muirhead v Industrial Tank Specialties Ltd* [1986] QB 507 at 532–533 helpful:

> …Let it be supposed that pumps installed at a fish farm for these purposes cut out; and that a supervisor engaged by the fish farm failed negligently to call at the farm for a week or so with the result that the discovery of the fault was delayed and the fish died in consequence. In such a case there would be two contributory causes of the damage—the failure of the pumps, due to the negligence of the manufacturer, and the failure to attend at the fish farm, due to the negligence of the supervisor. I cannot see that the former could escape liability on the simple basis that he did not anticipate the negligence of

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> the latter, especially when the purpose for which his goods were to be used was, as he should have appreciated, to preserve the health and lives of the fish. Only where the act or omission of another was of such a nature that it constituted a wholly independent cause of the damage, i.e., a novus actus interveniens, could the manufacturer escape all liability for the damage…

283 I turn now to the submission that the chain of causation was broken by the deliberate and intentional fraud of Wibowo and Isabelle. If Cristian and Nila were victims of that fraud, Toh was also a victim of the same fraud. Toh submits that, as a general principle, the more deliberate and intentional the third party act, the more likely it will be taken to constitute a *novus actus interveniens*. That said, it is clear that *novus actus interveniens* is not applicable where the intervening act was something that was likely to occur or where the risk of it occurring was glaringly obvious (see *The Law of Torts in Singapore* at para 07.078, referring to *Home Office v Dorset Yacht Co Ltd* [1970] AC 1004).

284 In deciding whether the chain of causation has been broken, it is necessary to bear in mind the nature and scope of the duty that was breached by the defendant. For example, it is obvious that a security guard engaged to patrol an estate cannot point to the deliberate acts of a burglar as breaking the chain of causation between his falling asleep on the job and the losses sustained by a householder. The Court of Appeal in *Chong Yeo and Partners and another v Guan Ming Hardware and Engineering Pte Ltd* [1997] 2 SLR(R) 30 (at [58]) cited with approval the following remarks of Oliver LJ in *Lamb v Camden London Borough Council* [1981] QB 625 at 640:

> What is referred to as the "chain of causation" may be broken and the most common example of a break in the chain is the intervening act of a third person over whom the tortfeasor can exercise no control. Such an intervention does not always break the chain, and in particular, it will not do so where the

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> very breach of duty relied on is the duty of the defendant to prevent the sort of intervention which has occurred…

285 The issue of causation and solicitor's negligence was also considered in the recent case of *Nava Bharat (Singapore) Pte Ltd v Straits Law Practice LLC and another and another suit* [2015] SGHC 146 ("*Nava Bharat*"). The High Court, after citing the remarks of the Oliver LJ, went on to approve the observations of Carnwath J in *British Racing Drivers' Club Ltd v Hextall Erskine & Co* [1996] 3 All ER 667 at 681:

> … [I]n cases of solicitor's negligence, it is unlikely that the conduct of the solicitor will itself be the direct cause of the damage which is suffered. More usually the basis of the claim is the solicitor's failure to protect the client against some other effective cause. The question, therefore, is whether the particular loss was within the reasonable scope of the dangers against which it was the solicitor's duty to provide protection.

286 In a similar vein, Denning LJ in *Roe v Ministry of Health and others, Woolley v Ministry of Health* [1954] 2 All ER 131 at 138 postulated that "causation, as well as duty, often depends on what you should foresee" and that the question was "is the consequence fairly to be regarded as within the risk created by the negligence."

287 Toh submitted that he did not owe any duty to Cristian and Nila to detect and prevent the fraud committed by Wibowo and Isabelle.[164] Instead the duty owed "was confined to the 2nd Application for [the RCOT]."[165] Toh argued that the act of "[o]btaining the replacement certificate of title, in and of itself, could not give rise to the loss which the plaintiffs now complain, namely the fraudulent transfer of the property."

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164 Toh closing submissions at para 285.

165 Toh's closing submissions at para 285(a).

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288 In support, considerable reliance was placed on the decision in *Nava Bharat*. In that case, the plaintiff entered into a series of agreements with one Dicky Tan ("DT"). The goal of the agreements was to enable the plaintiff to gain control of an Indonesian company, of which DT was the president director and majority shareholder. The plaintiff was represented by his own lawyer. DT was represented by another lawyer, Chidambaram Chandrasegar ("CC"). It was alleged that DT (together with others) later sold or dispersed the shares in the company (by bringing proceedings to reverse his share ownership) as a result of which loss was caused to the plaintiff. An action was brought against DT, the plaintiff's own lawyer as well as CC. The essence of the claim against CC was that he had been negligent in failing to protect the plaintiff's interest against fraud by DT. The High Court found fraud by DT against the plaintiff. The High Court went on to find that even if CC owed a duty of care to the plaintiff (which it found he did not), the acts of DT in reversing the shares were not reasonably foreseeable. The High Court held at [566] that CC neither knew nor was involved in the alleged conspiracy to defraud the plaintiff. CC was not under a duty to protect the plaintiff from fraud. It followed that even if CC was negligent, (i) his negligence was not the effective cause of the losses; or alternatively (ii) the acts of DT broke the chain of causation (at [567]). In reliance on *Nava Bharat*, it was submitted that Toh likewise owed no duty to prevent the fraud of Wibowo and Isabelle. By the time the transfer took place, Toh had already ceased to act for Cristian and Nila.

289 In my view, *Nava Bharat* was decided on its own particular facts and circumstances. The primary holding was that CC did not owe any duty of care to the plaintiff. Given that the plaintiff had conceded that CC was not under a duty to protect the plaintiff from fraud, the High Court found that the cause of

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the alleged losses was the acts of DT (and others) in procuring the share reversals which CC was not involved in. Alternatively, the High Court stated that it would have found that the share reversal was a *novus actus interveniens* which broke the chain of causation. In my view, the facts of that case bear little relevance to the present case.

290 I also note the submission that even if Toh had required more identification and proper verification of instructions on the RCOT, it was likely that false identification material would have been provided. A similar argument was made and rejected in *Chen*. In that case, the court held at [135] that if the solicitor had taken steps to question the man purporting to be the husband, that man would not have been able to produce legitimate identification. The court was also not satisfied on the balance of probabilities that he would have produced false identification. Instead, there is a strong likelihood that the wife would have withdrawn her instructions to proceed. In the present case, I am similarly not satisfied that false identification documents will have been produced such that the fraud would still have succeeded; this is a matter of pure speculation. Instead, if Toh had taken adequate steps to verify the instructions directly with Cristian and Nila, it is likely that the fraud would have been discovered.

291 Parties also made submissions on the decision of the Supreme Court of Western Australia in *Zeljko Mrsa (As Executor of Estate of Late Ivan Mrsa) v Mrsa* [2014] WASC 482 ("*Zeljko*"). In this case, the daughter, M, of the registered proprietor of a piece of land committed fraud by forging a power of attorney of her father and obtaining a RCOT. Another daughter signed the power of attorney as a witness to the execution by the father. She was brought in as a third party. Whilst the third party claimed that she was not aware of the fraudulent intention of M, the court found that she must have known that the

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representation made by the power of attorney was false. The property was then sold by M to the Western Australia Planning Commission. The plaintiff (the father) obtained a default judgment against M with damages to be assessed. The problem was that the whereabouts of M was unknown and, indeed, it was likely that she was no longer even in Australia. Whilst the plaintiff sought to proceed with the assessment of damages against M, the Supreme Court of Western Australia declined to do so for procedural reasons and because of lack of utility. What remained was the plaintiff's claim against the Registrar under the Transfer of Land Act 1893 (Western Australia) ("the Transfer of Land Act") and the Registrar claim against M and the third party for an indemnity.

292 Section 205 of the Transfer of Land Act provides that any person who has sustained loss "… by the registration of any other person as proprietor and who by the provisions of this Act is barred from bringing an action for ejectment … may in any case in which the remedy by action for recovery of damages as herein provided is inapplicable bring an action against the State with the Registrar as nominal defendant for the recovery of damages."

293 It was clear that the Western Australia Planning Commission had become the registered proprietor by reason of the fraud of M and that the plaintiff had a claim under section 205.

294 The Supreme Court of Western Australia held at [24] that the plaintiff was entitled under section 205 to recover the amount of money as would place him in the same position as if the deprivation of title had not taken place. In some cases, the appropriate measure will be the value of the land at the time of deprivation of title by registration of another proprietor. In other cases, it might be the value of the land at date of judgment (at [25]). On the facts, this compensation was assessed at A$1,290,000.

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295 In this context, the Registrar sought to recover in deceit on the basis that the State had sustained damage by the Registrar acting on the false representations of M. In particular, the assertion by the Registrar was that in obtaining a RCOT and in executing the transfer of land as her father's attorney, M had made representations knowing and intending that the Registrar would rely on them. It was in this context that the court held at [76] that the damage was caused by the fraudulent inducements. But for M's fraud, the title of the Western Australia Planning Commission would not have been registered.

296 The Supreme Court of Western Australia held (at [75]) that the act of obtaining the RCOT was material to the registration of the transfer. The fraud by which the RCOT was obtained did not directly cause the loss, although it provided an instrument by which the later fraud was facilitated.

297 In reliance on this case, Toh submits that where a fraudster obtains a RCOT and uses it to transfer the property, it is *the fraud* which will be regarded as causative of the loss "and not any alleged negligence by other parties."[166]

298 With respect, I disagree with this interpretation of *Zeljko*. The Supreme Court of Western Australia at [75] was dealing with section 205 of the Transfer of Land Act and the question of whether the State could claim an indemnity. As was clear at [77] of *Zeljko*, section 205 provided for payment of compensation by the State under a statutory compensation scheme. That scheme was implemented to support the operation of a title registration system that provided for indefeasibility of title. The liability of the State did not

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166 Toh's reply submissions at para 117.

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depend on fraud or some other tort. The Supreme Court of Western Australia's final decision was that section 205 did not contemplate that payments made by the State, as a result of its liability under section 205, being a loss that is recoverable in an action for deceit or any other tort. The present context is markedly different from *Zeljko*.

299 Indeed, it is to be noted that the Supreme Court of Western Australia also held at [79] that the conduct of the third party (in signing as witness) also met the "but for test" (for liability in tort). Nevertheless, this was not causative of the State's loss and the Registrar's claim under section 205 (which is concerned with statutory compensation).

300 The key point is that the Supreme Court of Western Australia was not dealing with the question of the liability of a solicitor whose negligence led to the issuance of the RCOT used by a fraudster to effect a title transfer. There is nothing in the decision which supports the statement that in such a case, the acts of the fraudster is the effective cause of the loss to the exclusion of the negligence of the solicitor. In such cases, it appears to me that the RCOT was an instrument of fraud and was essential to making good the fraudulent transfer. If a solicitor's negligence (failure to confirm identity and instructions) resulted in the issuance of the instrument of fraud, it is hard to see why, barring exceptional cases, the negligence ceases to be causative when the fraud is completed.

301 Professor Tan in *The Law of Advocates and Solicitors* at p 383 rightly cautions that careful attention to the scope of the duty of care is necessary precisely because it does not follow that every loss caused by the advice in question or the information supplied must be guarded against by the solicitor.

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Professor Tan cautions that the solicitor's liability must not be spread too wide.

302 Sometimes, the balance is found in resolving the question of whether a duty of care was owed on the particular facts. In other cases, it may be the matter is better approached from the perspective of breach and standard of care required. The third possibility is to approach the issue from the perspective of causation including remoteness. The present case is not concerned with negligent advice or failure to provide information to the plaintiffs. It is mainly concerned with the duty of care owed by Toh to take reasonable steps to identify his client and to verify his instructions and authority to act in respect of the application for a RCOT. Toh emphasised that a duty of care is confined to the second RCOT application. With respect, this begs the question: what is the scope of the duty of care that is owed in tort in this respect? This can only be sensibly answered by taking account of the reason why the duty of care arose in the first place: what is the harm the foreseeability of which generates the duty of care?

303 In *Chandra*, the Supreme Court of New South Wales, after referring to "recent experience of frauds involving wrongly obtained duplicate certificates of title", commented (at [107]) that "the need for a solicitor to consider fully what he is doing and obtain appropriate authority when handling [COTs] is quite obvious." Whilst there is no evidence before me as to whether fraud and RCOTs are common or well-known, I am of the view that it is because of this obvious danger, there is a duty to take reasonable care to identify the client and to verify or confirm his instructions to act. As applied to the facts and circumstances of the case at hand (Toh was getting his instructions from an intermediary and not from the registered proprietors of whom he had no knowledge of), the importance and significance of Toh's duty to identify his

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client and to verify his instructions to apply for a RCOT is obvious. The failure of Toh to take reasonable steps to confirm his instructions with the registered proprietor lead to the issuance of the very RCOT that was essential to the completion of the fraudulent transfer. In my judgment, looking at the circumstances as a whole, the fact that Toh had ceased to act for Cristian and Nila at the time when the conveyance and transfer was completed does not affect the issue of causation. This is especially since Toh had told Tan that he had possession of the COT.

Is the loss suffered too remote to be recoverable against Toh?

304 Toh argues that aside from causation, the losses are too remote to be recoverable. The general principle is well-known: the question is whether the type of damage was reasonably foreseeable and not whether the defendant could have foreseen the full extent of the damage: *Saatchi & Saatchi Pte Ltd and others v Tan Hun Ling (Clarke Quay Pte Ltd, third party)* [2006] 1 SLR(R) 670 at [11]. *The Law of Torts in Singapore* at para 07.105 rightly comments that where third party acts are involved, the judicial analysis can be especially complicated and may traverse duty of care (policy), causation as well as remoteness. Indeed, as earlier discussed, a remoteness driven approach necessarily involves a question over the scope of the duty owed and breached.

305 Toh relies on *JSI Shipping* in support of his submission that the losses are too remote. In *JSI Shipping*, an action was brought against an accounting firm for negligent auditing of the company accounts. Three categories of losses were claimed: (i) payment of excessive remuneration to the director; (ii) encashment of fraudulent or unauthorised cheques by the director; and (iii) payments to the director for fictitious office renovation expenses. The Court of Appeal held at [107] that the essence of an audit was to obtain and provide

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reasonable assurance that a company's accounts provided a true and fair view of the financial position of the company. This encompassed the duty to verify and to be sensitive to the possibility of fraud. On the facts, the Court of Appeal found that the accounting firm owed a duty of care to make proper enquiries so as to verify the director's remuneration. It was not enough in the particular circumstances for the accountant to just rely on a confirmatory email sent by the client: additional enquiries should have been made to "ensure the chastity of the verification process". The problem, however, was that the claim extended to include losses arising from payments on fraudulent cheques and office expenses. The Court of Appeal held that it was not convinced that proper verification of the director's entitlement to remuneration would have led to a realistic chance of discovery, prevention and recovery of these items. At [144], the Court of Appeal stated that the breach of duty only related to the failure to take adequate steps to verify the director's remuneration and that this breach was not to be conflated with the alleged failure to detect fraud by verifying all the alleged false invoices and cheques.

306 *JSI Shipping* well demonstrates the thin line between duty, causation and remoteness. The decision also demonstrates the highly fact-sensitive nature of the inquiry. In my judgment, the present case can be distinguished. The scope of the duty and breach in *JSI Shipping* concerned the failure of the accounting firm to take proper steps to confirm or verify the director's remuneration. For this reason, the Court of Appeal found that this breach was the effective cause of the losses arising from the excessive or unauthorised remuneration. The Court of Appeal was of the view (at [155]) that even if proper steps were made to verify the remuneration, this did not mean that the losses arising from the fraudulent cheques and expense claims would have

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been caught. In short, the breach found did not have any causative effect in respect of these other losses.

307 In the present case, I have found that Toh was in breach of his duty by failing to take proper steps to identify Cristian and Nila and to verify his instructions and authority from them in respect of the RCOT application. On the facts, a successful application for a RCOT was essential if the transfer of the property was to take place. The breach by Toh was thus an effective cause of the loss sustained by Cristian and Nila, the registered proprietors. The fact that Wibowo and Isabelle (together with Kweh) had acted deliberately and fraudulently in using the RCOT as an essential document in completing the transfer does not break the chain of causation any more than the deliberate acts of the director in *JSL Shipping* amounted to a break in the chain of causation in respect of the excessive remuneration.

Did the plaintiffs fail to take reasonable steps to mitigate the loss?

308 Toh and Tan both submit that Cristian and Nila failed to mitigate their loss by (i) failing to lodge a caveat on the property in a timely manner; and (ii) failing to make an application for a Mareva injunction against Kweh, Wibowo and/or Isabelle in a timely manner.[167]

309 In support of the contention, Toh relies on the decision of the Court of Appeal in *The "Asia Star"* [2010] 2 SLR 1154 ("*The Asia Star*") where it was said at [24] that:

> …[t]he aggrieved party must take all reasonable steps to mitigate the loss consequent on the defaulting party's breach, and cannot recover damages for any loss which it could have

[167] Toh's closing submissions at para 302; Toh's Defence (Amendment No 2) at para 19B; Tan's Defence (Amendment No 2) at para 14C.

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> avoided but failed to avoid due to its own unreasonable action or inaction….

310 I note that *The Asia Star* was a decision on the duty to mitigate in respect of a breach of contract, a voyage charterparty. However, it is clear that the duty to mitigate arises in respect of both claims in tort and contract. Andrew Burrows in *Remedies for Torts and Breach of Contract* (Oxford University Press, 3rd Ed, 2004) at p 122 explains that the duty to mitigate "is a restriction placed on compensatory damages. A claimant should not sit back and do nothing to minimize loss flowing from a wrong but should rather use its resources to do what is reasonable to put itself into as good a position as if the contract had been performed or the tort not committed." In a similar vein, *The Law of Torts in Singapore* at para 20.098 summarises the principle as follows:

> It is the defendant's burden to show that the plaintiff ought to have taken reasonable steps to prevent or reduce the plaintiff's loss arising from the defendant's tort. If the defendant is able to discharge his or her burden, the loss claimable by the plaintiff would be reduced accordingly. The question of mitigation is one of fact, not law. The standard of conduct expected of the plaintiff in mitigation is generally not a high one considering that the defendant is the wrongdoer.

311 The facts and circumstances relied on in support of the assertion of a failure to mitigate are as follows:

(a) 28 December 2011: the Chuan was transferred to Kweh.

(b) 16 February 2012: Kweh signed the letter of offer to mortgage the Chuan to OCBC.

(c) 22 February 2012: Cristian and Nila discovered that the Chuan had been transferred to Kweh by way of the Defence filed in S 71/2012.

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(d) 24 February 2012: OCBC registered a caveat on the Chuan.

(e) 28 February 2012: the plaintiffs unsuccessfully filed a caveat.

(f) 29 February 2012: OCBC registered the mortgage.

(g) 1 March 2012: the plaintiffs' amended caveat was registered.

(h) 1 March 2012: A one-day account was opened at OCBC by Kweh. The loan was disbursed into this account. The funds were withdrawn on the same day by a cash withdrawal and two transfers to another joint account of Kweh and Wibowo at OCBC. Kweh's OCBC account was closed.

(i) 2 March 2012: A generally endorsed Writ of Summons in S 169/2012 was filed, on the basis of which Cristian and Nila obtained a Mareva injunction which, *inter alia*, prohibited Kweh from (i) disposing of the sum of S$1,245,270; and (ii) disposing of and/or diminishing the value of the property.

(j) March to April 2012: Monies in the joint account of Kweh and Wibowo were disposed by a series of telegraphic transfers and cash withdrawals.

(k) 21 May 2014: the Chuan was sold by mortgagee auction for S$1.8m.

(l) The balance of S$167,999.65 was paid into Court pursuant to the Mareva injunction.

312 I shall address the issues of the caveat and Mareva injunction in turn.

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The lodging of a caveat

313 Toh argues that Cristian and Nila had sufficient time to lodge an effective caveat which would have prevented the mortgage of the property to OCBC. Cristian and Nila were aware of the transfer of the Chuan on 22 February 2012. Whilst OCBC registered its own caveat on 24 February 2012, the mortgage was only registered on 29 February 2012. The argument is that if a caveat had been lodged before 29 February 2012 or, indeed, 24 February 2012, the attempt by Kweh to mortgage the Chuan to OCBC would have failed or at least would have been subject to their interest. Toh submits that until the mortgage was actually registered, OCBC only had an equitable interest in the property under *Walsh v Lonsdale* (1882) 21 Ch D 9. According to Toh, if Cristian and Nila had lodged the caveat before OCBC had lodged its own caveat on 24 February 2012, OCBC would have notice of the fraud committed by Kweh and would have been unable to lodge their own caveat. Toh also submits that even if Cristian and Nila had lodged a caveat between 24 February and 29 February 2012, OCBC would have been notified of that caveat. Thereafter OCBC would have either challenged the plaintiffs' caveat or withdrawn its own caveat.[168] The point made is that if the plaintiffs had given timely instructions to their lawyers to lodge a caveat, the mortgage to OCBC could have been prevented. Instead, the evidence is that instructions were only given on 28 February 2012.

314 I reject Toh's submissions. The reality is that Cristian and Nila were unable to come to Singapore immediately to discuss matters with their Singapore lawyers because (a) Nila's father was critically ill; and (b) Cristian had other urgent business matters to attend to (see [140] above). In this regard,

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168 Toh's closing submissions at para 321.

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Toh submits that there is no independent evidence to support these reasons and there was no reason why instructions could not have been given immediately to lodge a caveat. This is inaccurate. In fact, on 22 or 23 February 2012, Cristian's and Nila's lawyers, Lee & Lee, were able to speak to them about the defence that had just been filed. It will be recalled that the defence in S 71/2012 was filed on the last day permitted under the ROC. Cristian expressed his shock to his lawyers and indicated that he would come to Singapore as soon as he was able to do so. In the meantime, his lawyers started an immediate investigation to verify the allegations on the Chuan made in the Defence that had just been filed. The steps taken included the following. First, on 23 February 2012, a STARS search was conducted by Lee & Lee at the SLA. The search confirmed the transfer of the Chuan to Kweh on 28 December 2011. At that date, no registered or pending interest in the Chuan had been registered.[169]

315 Second, upon discovering that Tan acted in the conveyance, enquiries were made with Tan. Tan agreed to send copies of the relevant documents to Lee & Lee.[170] Third, on 28 February 2012, Cristian returned to Singapore and confirmed to Lee & Lee that the sale to Kweh was unauthorised. A draft caveat was uploaded on SLA STARS e-lodgment portal at 4.30 pm.[171] On 29 February 2012 at 4.55pm, the SLA notified Lee & Lee that the caveat had been rejected on the grounds that the basis for the caveat was not made clear.[172] On the same day, Lee & Lee also received copies of documents from Tan, including the Letter of Authority and the Sales & Purchase Agreement.

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169 Cristian's SAEIC at para 6.

170 Cristian's SAEIC at para 7.

171 Cristian's SAEIC at para 10.

172 Cristian's SAEIC at para 11.

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Cristian and Nila examined these documents and informed Lee & Lee that they did not sign the documents and that neither had appeared before the notaries public in Indonesia.[173] A second amended caveat was lodged with SLA and registered on 1 March 2012.[174]

316 In this regard, I note Tan's submission that the plaintiffs were at fault for the rejection of the caveat application on 29 February 2012.[175] Whilst the first attempt to register a caveat failed because the SLA required more details on the basis of the claim, I am of the view that this failure cannot be categorised as a "fault" or carelessness.

317 To be clear, the first caveat application sets the ground out as "[c]onstructive trust arising out of unauthorised transfer of the land to the Registered Proprietor." The SLA rejected the application because "[t]he Grounds of Claim does not clearly state on how the Caveators derive their interest from the registered proprietor."

318 The second and successful caveat application made on 1 March 2012 sets the ground out as: "Constructive trust arising out of the transfer of the land to the Registered Proprietor by fraud or deception committed by the Registered Proprietor and others in concert." It is noted that the SLA in fact sought further clarifications by phone call from Lee & Lee on 1 March 2012. It was only after Lee & Lee explained to the SLA that Cristian and Nila intended to swear a statutory declaration, file a police report and apply for an injunction that the caveat was lodged and registered.[176]

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173 Cristian's SAEIC at para 12.

174 Cristian's SAEIC at para 15.

175 Tan's closing submissions at para 161.

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319 Accordingly, I find that the plaintiffs did not fail to mitigate their losses with respect to the lodgement of the caveat.

The failure to obtain an earlier Mareva injunction

320 Toh also submits that if Cristian and Nila had obtained a timely Mareva injunction against Kweh and Wibowo, they could have prevented the mortgage to OCBC and thereby significantly mitigated their loss. By the time a Mareva injunction was obtained, the mortgage had already been registered and the funds disbursed to Kweh's account, from which it was transferred to another joint account held by Kweh and Wibowo. Toh also submits that the Mareva injunction obtained on 2 March 2012 did not in any case prevent Kweh and/or Wibowo from removing his assets from Singapore up to the value of S$1.8m. I stress, however, that the question is not whether (with the benefit of hindsight) the plaintiffs could have reduced the losses by taking out an earlier Mareva injunction or a Mareva injunction that was more broadly framed. The question is whether the plaintiffs had acted reasonably *at the material time*.

321 Toh also complains that as matters now stand, Cristian and Nila cannot rectify the land register since OCBC has already taken possession and sold the Chuan by mortagee sale to a third party purchaser. Only the sum of S$167,999.65, representing the excess proceeds of sale of the Chuan, remains and has been paid into court.[177] This may well be so, but the law is cognisant of the fact that the plaintiffs were placed into a perilous situation by Toh and Tan's breaches of duty. In these circumstances, I reject the assertion that

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176 Cristian's SAEIC at para 14.

177 Toh's closing submissions at para 329.

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Cristian and Nila acted unreasonably and breached their duty to mitigate their loss. For the avoidance of any doubt, I also reject any suggestion that the plaintiffs' lawyers were negligent in the responses that were made.

322 In coming to this decision, I note the finding in *The Asia Star* at [43] that there is strong support for the view that the court should adopt a generous approach in assessing the aggrieved party's conduct in mitigation. I also agree with the statement in *Jia Min Building Construction Pte Ltd v Ann Lee Pte Ltd* [2004] 3 SLR(R) 288 ("*Jia Min Building Construction*") at [73] that:

> …Mitigation is neither an exact science nor a mathematical exercise. It must be viewed through a commercial lens and measured by commercial common sense. The court will not audit every decision made in the turmoil of a difficult and fluid commercial situation….

323 Whilst *The Asia Star* and *Jia Min Building Construction* dealt with mitigation in the context of a contractual claim, I accept that the same general principle applies to claims in tort. Whilst it may also be said that the reference to "commercial lens" and "commercial common sense" is usually more appropriate for contractual disputes, the general sentiment is clear. A detailed forensic examination aided with a heavy dose of hindsight is not the correct approach to take. It is sufficient if the plaintiffs have acted reasonably in the circumstances in which they found themselves. In the present case, I find that the plaintiffs have acted reasonably and thus did not fail to mitigate their losses.

Were the plaintiffs contributorily negligent?

324 Tan submits that Cristian and Nila were contributorily negligent for signing documents on 7 December 2010 and again on 20/21 June 2011 without verifying the contents.[178] I reject this submission. It will be recalled

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that Cristian and Nila believed they were signing documents for the investment in the Oasis Garden unit on 7 December 2010. They had no reason to suspect Wibowo's and Isabelle's *bona fides* at that stage. The circumstances under which Nila and Cristian signed further documents on 20/21 June 2011 has been dealt with earlier. In any case, it bears repeating that on Wibowo's and Isabelle's own case, the conveyancing documents were actually signed by Cristian and Nila in Indonesia before notaries public. What is clear, in my findings, is that Cristian and Nila never signed any of the disputed documents before notaries public in Indonesia. It must follow that their signatures on these documents were either forged or obtained surreptitiously from Cristian and Nila at some other place and time. For these reasons, I am not satisfied that Cristian and Nila were contributorily negligent in the manner complained of.

Claims by Toh

325 In this section, I shall examine in turn whether Toh succeeds against Wibowo and Isabelle in his claims for contribution or indemnity, and his claim in the tort of deceit.

Is Toh entitled to a contribution or indemnity from Wibowo and Isabelle?

326 Section 15(1) of the CLA provides that:

> Subject to subsections (2) to (5), any person liable in respect of any damage suffered by another person may recover contribution from any other person liable in respect of the same damage (whether jointly with him or otherwise).

327 Sections 16 (1) and (2) of the CLA go on to state:

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178 Tan's closing submissions at paras 165–167.

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> (1) Subject to subsection (3), in any proceedings for contribution under section 15, the amount of the contribution recoverable from any person shall be such as may be found by the court to be just and equitable having regard to the extent of that person's responsibility for the damage in question.
>
> (2) Subject to subsection (3), the court shall have power in any such proceedings to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.

328 Toh submits that he is entitled to claim a contribution from Wibowo and Isabelle on the basis that they are liable to Cristian and Nila for the same damage that is the unauthorised transfer of the Chuan. Wibowo and Isabelle are jointly and severally liable for the fraud that was committed. The liability of Toh is different in that it lies in negligence. A distinction is drawn in tort law between joint tortfeasors who cause indivisible injury to the plaintiff and a case where several concurrent tortfeasors who committed independent acts which have resulted in the same damage. In the former case, the plaintiff is entitled to sue any one joint tortfeasor for the whole damage. That tortfeasor may in turn bring a claim for contribution against the other tortfeasor. In the latter case, several torts are committed and which result in the same damage. These tortfeasors are severally liable for their independent acts and torts. They are not joint tortfeasors: *The Law of Torts in Singapore* at para 18.030. Prior to 1998, the CLA only provided for contribution where the liability of the tortfeasors was as joint tortfeasors for the same damage. The statutory provisions were amended in 1998 so to permit *inter alia* a claim for contribution, even where the liability is several in respect of the same damage (see Singapore Parliamentary Debates, Official Report (26 November 1998) vol 69 at cols 1694–1695 (Assoc Prof Ho Peng Kee, Minister of State for Law)). In the present case, I am satisfied that the two torts, whilst distinct and several, have resulted in the same damage *viz* the loss of the Chuan. That being so, Toh is *prima facie* entitled to seek a contribution from Wibowo and

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Isabelle. Apportionment of liability is based on the seriousness of the respective parties' fault and the causative impact on the plaintiffs' loss: *The Law of Torts in Singapore* at para 18.036, citing *Downs v Chappell* [1997] 1 WLR 426 at 445. Toh submits that in terms of culpability, the fraud committed by Wibowo and Isabelle is by far the more serious.

329 In *Nationwide Building Society v Dunlop Haywards Ltd and Cobbetts (a firm)* [2009] EWHC 254 (Comm), the plaintiff (lender) suffered a loss when it relied on fraudulently over-stated valuations of a property in making loans to a company. The action was brought by the lender against the valuers for deceit and against its own solicitors for negligence (failing to alert the lender to the indicia of fraud which they should have spotted). The English High Court found at [47] that the two tortfeasors were on the facts at least to some extent liable and responsible for the same damage. That damage was eventually quantified at some £6.6m. The High Court apportioned the loss at 80% for the valuers and 20% for the solicitors, holding at [77]:

> …In my judgment the relative proportions should be 80%/20%. The moral blameworthiness of [the valuers] and the causative potency of the fraud of its agent are very much greater than that of [the solicitors]. [The valuers'] deceit was bare-faced fraud … That deceit was the prime reason for [the plaintiff] making the advances that it did. [The solicitors] should have alerted [the plaintiff] to the indicia of fraud … But their failing was not to pick up on the fraudulent scheme rather than to play any part in it.

330 Coming back to the present case, I agree that the culpability of Kweh, Wibowo and Isabelle is far greater than that of Toh. Further, whilst both torts were the cause of the same loss, I have little doubt that the causative impact and moral blameworthiness of the fraud of Kweh, Wibowo and Isabelle was far greater. I am of the view that Toh is entitled to an 80% contribution from Wibowo and Isabelle in respect of his liability for the loss.

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331 I note for completeness that Tan has not claimed an indemnity or contribution against Wibowo or Isabelle.[179] He has, however, claimed an indemnity or contribution against Toh. This claim is addressed at [339] below.

Is Toh entitled to succeed in his claim against Wibowo and Isabelle in deceit?

332 Given that I have found that Toh is liable to Cristian and Nila for the loss of the Chuan (apportioned as above), the question that remains is whether Toh succeeds in his own claim against Wibowo and Isabelle in the tort of deceit. The elements of this tort, as stated by the Court of Appeal in *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 at [14], comprise the following elements:

(a) There must be a representation of fact made by words or conduct;

(b) The representation must be made with the knowledge that it is false – it must be wilfully false or at least made in the absence of any genuine belief that it is true;

(c) The representation must be made with the intention that it should be acted upon by the plaintiff or a class of persons which includes the plaintiff;

(d) The plaintiff has acted upon the false statement and suffered damage in so doing.

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179 Tan's Statement of Claim; Notice Served Pursuant to Rules of Court Order 16 Rule 8 by the 4th Defendant against the 3rd Defendant dated 10 November 2014.

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333 The claim is predicated on the following arguments. Toh will only be liable to Cristian and Nila if the court finds that Cristian and Nila were the victims of the fraud that they have alleged. If so, it must follow that Toh was himself deceived by Wibowo and Isabelle when he was given instructions and information on the debt owed to Kweh, the agreement to redeem the loan by transfer of the Chuan, the information that the COT had been lost and the instructions to apply for a RCOT. All of these statements or representations, which Toh assumed to be true, were bare-faced lies and falsehoods. The statements were made with the intention that Toh should rely on them: which he indeed did. As a result, Toh has suffered detriment in having to defend this lawsuit and being potentially liable to compensate Cristian and Nila.

334 Counsel for Wibowo and Isabelle deny that any false statement was made. Much is made of the assertion that it was Toh who advised them that he could apply for a RCOT for Cristian and Isabelle. However, as I have earlier stated, it was Wibowo who provided information to Toh that a problem had arisen because Cristian had lost the COT. There is no doubt that when Toh applied for the RCOT, he did so because this was what Wibowo and Isabelle had wanted him to do. Wibowo's evidence that he himself had very little knowledge of what was going on between Kweh and Cristian and that he was merely conveying his father's wishes or instructions is strained and hugely difficult to accept. Looking at the evidence as a whole, I am satisfied that Wibowo and Isabelle falsely represented to Toh that Cristian and Nila had requested Wibowo and Isabelle to instruct Toh to prepare an application for a RCOT.

335 In these circumstances, I find that Toh succeeds in his claim against Wibowo and Isabelle for the tort of deceit. Toh, whilst negligent, was also a victim of the fraud. As a result of his act of applying for a RCOT on the basis

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of the false information he had been provided, Toh was exposed to liability to Cristian and Nila. The Court of Appeal in *Wishing Star Ltd v Jurong Town Corp* [2008] 2 SLR(R) 909 held (at [26]) that damages for deceit includes all losses flowing directly from the plaintiff's reliance on the defendant's fraudulent misrepresentation, whether or not the losses were foreseeable. *The Law of Torts in Singapore* at para 14.029 correctly states that in an action for deceit, it is no defence for the defendant to allege that the plaintiff acted incautiously and failed to take steps to verify the truth of the representations which a prudent man would have done. As has often been said, "a knave does not escape liability because he is dealing with a fool."

Claims by Tan

336 Other issues raised by the pleadings include the question whether Tan has a claim against Toh for negligent misrepresentation at common law and/or under the Misrepresentation Act (Cap 390, 1994 Rev Ed) ("the MA"). The question also arises whether Tan can seek contribution or indemnity from Toh. I will address each in turn.

337 In my view, the MA is not relevant to the present case. I accept Toh's submission in this regard that the words "[w]here a person has entered into a contract after a misrepresentation has been made to him by another party thereto" in s 2(1) of the MA confines the scope of the provision to situations where a mispresentation is made between contracting parties (see also *The Law of Contract in Singapore* at paras 11.223–11.224).[180] Given that Tan and Toh were not contracting parties, Tan's claim under the MA must fail.

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180 Toh's closing submissions at para 396–397.

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338 I turn now to Tan's claim at common law. In my view, this claim also fails for the fundamental reason that Toh did not owe Tan a duty of care. Toh and Tan were acting for different sides in a conveyancing transaction. It bears repeating that Toh decided to refer the matter to Tan precisely because of a possible conflict of interest if Toh had gone ahead to act for both sides. Toh did not assume personal responsibility and was not "advising" Tan on how he should do his own work. I thus dismiss Tan's claims against Toh for negligent misrepresentation at common law and under the MA.

339 Nevertheless, given that I have found that Toh's and Tan's negligent acts were operative causes of the same loss, Tan is entitled to a contribution from Toh under the CLA. Looking at the negligence of Toh and Tan and the relative culpability, I am of the view that Tan is entitled to a 50% contribution from Toh in respect of his liability for the damage.

Conclusion

340 The evidence in the two Suits was heard over three tranches. The dispute goes back many years. Numerous questions of fact and law have been fought over. Given the nature of the allegations and the paucity of documentary evidence, it is perhaps not surprising that the cross-examination was oftentimes intense. Whilst I have dealt with the evidence and issues in a unitary manner, it may be convenient and helpful to the parties if I summarise my decision and orders in respect of each Suit.

S 71/2012

341 The plaintiffs, Cristian and Denny, succeed in their claims against Wibowo and Isabelle.

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342 With regards to the Car Claim:

(a) The defendants are jointly and severally liable to pay Cristian damages for loss arising from the act of conversion which I assess at S$173,000.

(b) Interest is awarded at 5.33% per annum on the S$173,000 from the date of the writ of summons until the date of the judgment.

343 As to the Investment Claim:

(a) The defendants are jointly and severally liable to return S$607,700 to Cristian and S$624,570.19 to Denny.

(b) Interest is awarded at at 5.33% per annum on the said amounts from the date of the writ of summons until the date of the judgment.

344 The plaintiffs are awarded costs to be agreed or taxed.

S 169/2012

345 The plaintiffs, Cristian and Nila, succeed in their suit against Kweh, Wibowo, Isabelle, Toh and Tan:

(a) Kweh, Wibowo and Isabelle are jointly and severally liable for the fraudulent conversion of the Chuan. The loss is assessed at the value of the misappropriated property by reference to the price realised at the OCBC mortgagee's auction namely, S$1.8m.

(b) Toh and Tan are each severally liable in negligence for the full extent of Cristian's and Nila's loss (ie, $1.8m). In other words, Toh is

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liable to Cristian and Nila for the same damage as that for which Tan is liable and *vice versa*.

(c) Interest is awarded at 5.33% per annum on the S$1.8m from the date of the writ of summons until the date of the judgment.

(d) Toh succeeds in his claim against Wibowo and Isabelle for a contribution or indemnity under the CLA. If the full claim of S$1.8m is enforced against Toh, he is entitled to an 80% contribution (*ie*, S$1.44m) from Wibowo and Isabelle.

346 Toh succeeds in his claim against Wibowo and Isabelle for damages arising from the deceit. Given my finding in respect of Toh's claim for an indemnity under the CLA, the damages flowing from the deceit effectively comprises his 20% "share" of the damages payable above to Cristian and Nila, amounting to S$360,000.

347 Tan succeeds in his claim against Toh for a contribution under the CLA. Bearing in mind that Tan and Toh are severally liable for the loss of the Chuan, I find that Tan is entitled to a 50% contribution from Toh (amounting to S$900,000).

348 Tan's claim against Toh for misrepresentation, both under the MA and at common law, is dismissed.

349 The plaintiffs are entitled to costs against Kweh, Wibowo, Isabelle, Toh and Tan.

350 Toh is entitled to costs in respects of his claim against Wibowo and Isabelle for deceit and the contribution claim

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351 Toh is also entitled to costs in respects of Tan's claim against Toh for misrepresentation.

352 Tan is entitled to costs against Toh for his contribution claim.

353 All of the above costs awards are to be agreed or taxed.

George Wei
Judge

Quek Mong Hua, Benjamin Yam and Jacqueline Chua (Lee & Lee) for the plaintiffs;
Harish Kumar, Jonathan Toh and Michelle Lee (Rajah & Tann Singapore LLP) for the first and second defendants in S 71/2012 and the second and fifth defendants in S 169/2012;
Sarjit Singh Gill SC, Tan Su Hui and Jamal Siddique (Shook Lin & Bok LLP) for the third defendant in S 169/2012;
Khwaja Imran Hamid, M K Eusuff Ali, Lucinda Lim and Daniella Ong (Tan Rajah & Cheah) for the fourth defendant in S169/2012.

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