IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 44

Suit No 274 of 2017

Between

UJT

… Plaintiff

And

UJR

… Defendant

[2018] SGHCF 6

Originating Summons (Probate) No 9 of 2016

Between

UJR

… Plaintiff

And

(1) UJS
(2) UJT
(3) UJU

… Defendants

JUDGMENT

Version No 1: 27 Oct 2020 (22:40 hrs)

[Probate and administration] — [Personal representatives] — [Powers]
[Trusts] — [Resulting trusts]
[Trusts] — [Constructive trusts] — [Common intention constructive trusts]

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UJT
v
UJR and another matter

[2018] SGHC 44; [2018] SGHCF 6

High Court — Suit No 274 of 2017 and Originating Summons (Probate) No 9 of 2016
Valerie Thean J
21, 22 November; 1 December 2017

27 February 2018 Judgment reserved.

Valerie Thean J:

1 In Originating Summons (Probate) No 9 of 2016 ("the Probate Application"), the plaintiff ("the Grandson") applies for a number of orders in relation to a two-storey terraced house ("the Property") belonging to his late grandfather's estate. The principal effect of these orders is to enable him as executor of the estate to sell the Property despite the three defendants' continued occupation of it. The second defendant in the Probate Application, who is his grandmother ("the Grandmother"), has in turn brought Suit No 274 of 2017 ("the Suit"), seeking among other things a declaration that she has a beneficial interest in the Property, or otherwise a right to remain in the Property until her death.

2 As this judgment concerns both the Probate Application and the Suit, and as the former is a proceeding which is required under s 10 of the Family

Justice Act (No 27 of 2014) ("the FJA") to be heard in camera, the names and details of the parties have been redacted pursuant to r 672(2) of the Family Justice Rules 2014 (S 813/2014) ("the FJR").

3 For the reasons that follow, I dismiss the Suit, and make orders pursuant to the Probate Application to facilitate the sale of the Property.

Background

4 The Grandmother's husband, whom I shall refer to as the Grandfather, died on 5 June 2014 at the age of 84. He left a will by which he gave his fourth and youngest son ("the Fourth Son") and the Grandson, the Property upon trust to sell and, after payment of his debts and funeral and testamentary expenses, to share in the proceeds of sale equally.[1] He also appointed them as the executors and trustees of his will. The Property is registered in the Grandfather's sole name, and it was the matrimonial home of him and the Grandmother, who is today 83 years old. The property is now occupied by her, the Fourth Son, and the couple's second son ("the Second Son").

5 The Grandfather and the Grandmother married in 1949 when he was 19 and she was 14.[2] They had five children.[3] Their eldest son ("the Eldest Son"), who is the father of the Grandson and not a party to these proceedings, was born in 1951 and is now 66 years old. The Second Son was born in 1954 and is now 63 years old. Their only daughter was born in 1955 and is now 62 years old. Like the eldest son, she is not a party to these proceedings. Their third son, born

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1 Agreed Bundle of Documents dated 27 October 2017 at p 90.

2 Grandmother's AEIC in S 274/2017 dated 31 August 2017 at para 7.

3 Grandmother's AEIC in S 274/2017 dated 31 August 2017 at para 6.

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in 1957, passed away in 1982. The Fourth Son is their youngest. He was born in 1962 and is now 55 years old.

6 During the early years of their marriage, the Grandfather and the Grandmother lived in what has been referred to in these proceedings as a "zinc roof house" in the vicinity of Alexandra Avenue, near Alexandra Hospital where the Grandfather worked as a peon and she as an "amah".[4] Sometime in the 1960s, they were told that the Government intended to take back the land upon which their house was built.[5] They were given notice to leave the zinc roof house, which they did. They turned down the option of being relocated to public housing because of the size of their family. The Government offered them a compensation sum for leaving the house and, according to the Grandmother, she and the Grandfather were each entitled to half the sum. The amount of the compensation sum is a matter of some uncertainty.

7 With the compensation they had received and with what they had saved, the Grandfather and the Grandmother decided in 1967 to buy the Property.[6] There is some dispute about its purchase price, in particular, whether it was $33,900 or $36,500. The purchase was financed partly by a mortgage loan of $10,250 from Overseas Union Trust, Limited, which was fully redeemed in 1970.[7] Whether and to what extent Mdm Lim contributed to the purchase price is a matter of dispute. At the time they moved into the Property, the couple were 39 and 34 years old respectively, and their five children, 16, 13, 12, 10 and 5.

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4 Grandmother's AEIC in S 274/2017 dated 31 August 2017 at paras 8–9.

5 Grandmother's AEIC in S 274/2017 dated 31 August 2017 at para 17.

6 Grandmother's AEIC in S 274/2017 dated 31 August 2017 at para 20.

7 Agreed Bundle of Documents dated 27 October 2017 at p 5.

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8 Sometime after 1967, the Grandfather started a watch-selling business at Alexandra Avenue.[8] In 1988, he took out a loan secured on the Property to finance his business and to invest in commercial properties.[9] Those properties were placed under his and his children's names, and they became the premises from which his business operated. The loan appears now to have been fully repaid.

9 The Grandson alleges that in the 1990s, the Grandfather and the Grandmother's relationship began to deteriorate, and they began staying in separate rooms.[10] This assertion is disputed by the Grandmother.

10 In 2002, the Grandfather had a will drafted by which he left the Property to the Fourth Son and the Grandson upon trust to sell and to share in the proceeds of sale equally. As I have mentioned, the Fourth Son and the Grandson were appointed the executors and trustees. About a decade later, the Grandfather was diagnosed with cancer and he passed away in June 2014. At the time of his passing, the Grandmother, the Fourth Son and the Second Son lived at the Property.

11 In October 2014, the Grandson applied for grant of probate in relation to the Grandfather's will.[11] This was issued to him in November 2014. Under the grant, a power was reserved to the Fourth Son for him to apply for a similar grant of probate.[12] By April 2015, the Fourth Son still had not exercised that power. The Grandson therefore decided to issue a citation under r 244 of the

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8 Grandmother's AEIC in S 274/2017 dated 31 August 2017 at para 13.

9 Grandmother's AEIC in S 274/2017 dated 31 August 2017 at para 33.

10 Grandson's Affidavit in OSP 9/2016 dated 16 September 2016 at para 9(a).

11 Grandson's Affidavit in OSP 9/2016 dated 6 May 2016 at para 15.

12 Grandson's Affidavit in OSP 9/2016 dated 6 May 2016 at para 16.

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FJR to the Fourth Son asking him to accept or refuse a grant of probate in respect of the Grandfather's will.[13]

12 A number of hearings took place under those citation proceedings in which the Fourth Son's counsel, Mr Johnny Seah, indicated that his client was interested to take part in the probate.[14] The Fourth Son, however, did not eventually apply for a grant of probate. Accordingly, in August 2015, the court ordered that the Fourth Son would be deemed to have renounced his rights and title to the probate and execution of the will unless he filed an application for grant of probate or if he contested the Grandson's grant of probate within seven days.[15] Neither was done. In September 2015, the court ordered that the Fourth Son's rights as an executor under the will had ceased.[16]

13 Separately, in March 2015, the Grandmother and the Second Son were sued by the Eldest Son, who sought a declaration that he had a beneficial interest in a commercial property registered in his and the Second Son's name. The Grandmother was named a defendant in that suit because the Second Son had alleged that she had contributed to the purchase price of the property. In the event, the parties in that suit reached a settlement in February 2016 after mediation.

14 The Grandson then applied in May 2016 for orders to effect the sale of the Property. These include orders to declare that he now acts as sole executor of the Grandfather's estate and to require the current occupants of the Property to grant him access to it. I shall examine these orders individually, but as I have

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13 Grandson's Affidavit in OSP 9/2016 dated 6 May 2016 at para 18.

14 Grandson's Affidavit in OSP 9/2016 dated 6 May 2016 at para 19.

15 Grandson's Affidavit in OSP 9/2016 dated 6 May 2016 at pp 115–116.

16 Grandson's Affidavit in OSP 9/2016 dated 6 May 2016 at p 162.

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said, their principal effect is to enable the Grandson to carry out the sale of the Property in accordance with the trust for sale established by the Grandfather's will. In response, the Grandmother in March 2017 filed the Suit against the Grandson, seeking a declaration that she has a beneficial interest in the Property or otherwise that she has a right to remain in it.

15 The parties agreed that the trial of the Suit would take place first, and the Probate Application dealt with thereafter on the basis of written submissions. That is because the answer to whether the Grandmother has an interest in the Property will have an effect on the determination of the Probate Application. This judgment therefore also deals first with the Suit.

The Suit

16 I begin with an overview of the parties' cases.

The parties' cases

17 The Grandmother pleads that she is entitled to 60.3% of the beneficial interest in the Property.[17] Her primary case is that the Grandfather's estate holds that proportion of the Property's beneficial interest on resulting trust for her because she contributed 60.3% of the Property's purchase price. She claims that the Property was bought for $36,500[18] and was paid for using (a) a compensation sum of $6,000 obtained from the Government when their land was acquired (see [7] above); (b) cash in the sum of $19,000; (c) cash of an unknown amount from the Grandfather, which was used to pay stamp and legal fees; and (d) a loan of $10,250 from Overseas Union Trust, Limited (see [7] above), which was repaid by the Grandfather.[19]

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17 Statement of Claim dated 28 March 2017 at para 22.

18 Statement of Claim dated 28 March 2017 at para 13.

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18 The Grandmother claims that her contribution comprised half the compensation sum from the Government and the $19,000 in cash.[20] In her pleadings, she states the total sum of her contribution to be $22,500,[21] but this appears to be an arithmetic error. Half of $6,000 is $3,000, and adding that to $19,000 yields a total sum of $22,000. $22,000 and not $22,500 is 60.3% of $36,500. Thus, $22,000 appears to be the figure which the Grandmother intended to state in her pleadings as the total sum of her contribution. Separately, the sum of $19,000 is simply stated to come from the "savings and contributions from the family".[22] Given that the Grandmother is saying that it was she who contributed that $19,000, she can only be implying that the sum came from *her* savings or contributions which *she* gathered from the family. In this regard, her pleadings refer to the fact that she "supplemented the income of the family"[23] by working as an amah at the Alexandra Hospital[24] and by selling homemade rice wine.[25]

19 The Grandmother's alternative case is based on the existence of a common intention constructive trust.[26] This aspect of her case is poorly pleaded. In particular, it is not clear what she alleges to be the substance of the common intention. It is also not clear what are the specific facts that she relies upon to establish that common intention. She does however say that it was a common intention shared between her and the Grandfather at the time the Property was

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19 Statement of Claim dated 28 March 2017 at para 14.

20 Statement of Claim dated 28 March 2017 at para 15.

21 Statement of Claim dated 28 March 2017 at para 15.

22 Statement of Claim dated 28 March 2017 at para 14.2.

23 Statement of Claim dated 28 March 2017 at para 6.

24 Statement of Claim dated 28 March 2017 at para 6.

25 Statement of Claim dated 28 March 2017 at para 7.

26 Statement of Claim dated 28 March 2017 at para 24.

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purchased in 1967.[27] She also appears to suggest that the proportion of the beneficial interest in the Property held on a common intention construction trust in her favour is also 60.3%, given that she states no other proportion in her pleadings and given that she presents the common intention constructive trust as a reason for why she is entitled to that proportion.[28] In her closing submissions, she also raises, for the first time, the existence of a proprietary estoppel against the Grandfather's estate which, she alleges, entitles her to half of the beneficial interest in the Property.

20 The Grandmother's further alternative is that as a widow in occupation of the Property, she has a "right to abode over the Property", given that it was her matrimonial home.[29] She claims that the Grandson is obliged to respect that right and allow her to continue to occupy the Property.[30]

21 In his defence, the Grandson states that he has no personal knowledge of the circumstances of the purchase of the Property. That is only to be expected. He claims therefore that the Grandmother should be put to strict proof of her case.[31] He does, however, claim that the purchase price of the Property was $33,900 and not $36,500.[32] He denies that the Grandmother made any contribution to the purchase price of the Property.[33] He denies the existence of a purchase price resulting trust, a common intention constructive trust and that the Grandmother has a "right to abode over the Property".[34] He also argues now

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27 Statement of Claim dated 28 March 2017 at para 24.

28 See Statement of Claim dated 28 March 2017 at para 26.

29 Statement of Claim dated 28 March 2017 at para 25.

30 Statement of Claim dated 28 March 2017 at para 25.

31 Defence dated 20 April 2017 at para 4.

32 Defence dated 20 April 2017 at para 4(c).

33 Defence dated 20 April 2017 at para 4(d).

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that the Grandmother cannot rely on a proprietary estoppel because it was not pleaded. Finally, he claims that the Grandmother failed to bring her claims in equity within a reasonable time and, as a result, those claims are now barred by laches or by her acquiescence.[35]

Issues to be determined

22 Having regard to the pleadings, the submissions and the evidence before me, I consider there to be five broad issues in the Suit for determination:

(a) Is the Grandmother barred by the doctrine of laches from bringing her claims in equity?

(b) Does the Grandfather's estate hold 60.3% of the beneficial interest in the Property on resulting trust for the Grandmother?

(c) Does the Grandfather's estate hold any proportion of the beneficial interest in the Property on a common intention constructive trust for the Grandmother and, if so, what is the size of that proportion?

(d) Is the Grandmother entitled to raise a proprietary estoppel against the Grandfather's estate?

(e) Does the Grandmother, as a widow in occupation of her matrimonial home, have a right to occupy the Property and, if so, is the Grandson in any way bound by that right?

23 For the reasons explained below, I hold that the Grandmother is not barred by the doctrine of laches from bringing her claims in equity.

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34 Defence dated 20 April 2017 at para 5.

35 Defence dated 20 April 2017 at para 5(b).

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Nevertheless, in light of the paucity of evidence and threadbare pleadings, I find that the Grandfather's estate does not hold any beneficial interest in the Property on trust for the Grandmother. Neither does the Grandmother have a right to occupy the property.

Issue 1: Laches

24 The doctrine of laches operates to bar any equitable claim by a plaintiff if the defendant can show that it would be unjust to give the plaintiff a remedy. The justice of the case is considered with regard to three factors in particular: (a) the length of delay before the claim was brought; (b) the nature of the prejudice said to be suffered by the defendant; and (c) any element of unconscionability in allowing the claim to be enforced: *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [44].

25 In my view, there was no unreasonable delay in the Grandmother's bringing of this claim. She found out about the Grandfather's intention in his will only after his death. That was in 2014. The Suit was brought in 2017. During the intervening period, the Grandmother was involved in another litigation with two of her sons concerning the ownership of a commercial property (see [13] above). In the circumstances, three years is not unreasonable delay in taking action to ascertain or enforce one's interest in one's matrimonial home. The Grandson observes that his efforts to sell the Property have been delayed by the commencement of the Suit, and that he has had to incur costs in defending the "frivolous claims" in the Suit.[36] This does not, in my opinion, amount to prejudice of the kind contemplated by the doctrine of laches, because any litigation will involve time and money.

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[36] Grandson's Closing Submissions in S 274/2017 dated 21 November 2017 at para 85.

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Issue 2: Resulting trust

26 The principles on when a resulting trust arises are not contested by the parties and may be summarised as follows. If a plaintiff can show that he made a financial contribution to the purchase price of a property, a defendant holding title to the property will be presumed to hold, on trust for the plaintiff, a beneficial interest in the property in the proportion of the plaintiff's contribution to the purchase price. The defendant may attempt to rebut the presumption of a resulting trust by raising a presumption of advancement. To raise a presumption of advancement, the defendant must show, on the nature of his relationship with the plaintiff and on the state of that relationship, that the plaintiff may be presumed to have intended to make a gift to the defendant. Conversely, the plaintiff may attempt to prove the presumption of resulting trust by showing that he had no intention to gift his financial contribution to the defendant. These principles are stated in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*") at [160]; *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 at [56]–[57] and [77]–[78].

27 The Grandson denies that the Grandmother made a financial contribution to the purchase price of the Property. Having taken this position, he does not seek to raise a presumption of advancement in favour of the Grandfather's estate because, on his case, there was nothing for the Grandmother to advance. Accordingly, the issues of fact which arise for determination are (a) the purchase price of the Property; and (b) whether the Grandmother made a financial contribution to the purchase price and, if so, what the size of that contribution is.

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(1) What was the purchase price of the Property?

28 It is not disputed that the Grandfather and the Grandmother bought the Property from one Ms Chng Mei Lien, who had in turn bought it from the developer of the Property. The only available evidence on the purchase price comprises two letters relating to the Grandfather's transaction with Ms Chng. The first is a letter dated 7 April 1967 and addressed to Ms Chng by her solicitors. In that letter, her solicitors write to confirm that she has agreed to sell to the Grandfather the benefit of her agreement with the developer to buy the Property. The letter says:[37]

> Dear Madam,
>
> …
>
> We write to confirm that you have signed the agreement in escrow to sell the benefits of your agreement made between [the developer] of the one part and yourself of the other part whereby you agreed to purchase [the Property] at the price of $33,900/- of which a sum of $17,900/- has been paid leaving therefore a balance of $16,000/- due and owing to [the developer].
>
> The Deed of Assignment for the sale of benefits of the agreement between [the developer] and yourself is in consideration of a price of $20,500/-. A sum of $10,250/- has so far been paid to us and as agreed between yourself and the sub-purchaser, [the Grandfather], the balance of $10,250/- would be paid to us for you upon completion of the above property as certified by the architects.

[37] Agreed Bundle of Documents dated 27 October 2017 at p 1.

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29 The second letter is dated 21 April 1967 and is prepared by the same set of solicitors. The letter is written to inform the developer that Ms Chng had successfully assigned to the Grandfather the benefit of her agreement with the developer to purchase the Property. The letter says:[38]

> Dear Sirs,
>
> …
>
> We write to inform you that the purchaser Miss Chng Mei Lien has assigned her benefits of the agreement to [the Grandfather] and we enclose herewith a xerox copy of the Deed of Assignment for your reference. Please note that this will serve as authority to you to convey the property in favour of [the Grandfather] at the price of $33,900/-.

30 The authenticity of these documents were not challenged by the Grandson, and they make it clear that the purchase price of the Property was $36,500, as the Grandmother claims. The letter of 7 April 1967 shows that Ms Chng had an agreement with the developer to buy the property for $33,900, and that as at that date, she had paid $17,900 to the developer, leaving $16,000 due. That letter also shows that at about that time, she decided to assign the benefit of the agreement to the Grandfather for the price of $20,500. The effect of the assignment was that the Grandfather would acquire the Property from the developer if he paid the developer the remaining $16,000. That is why the letter of 21 April 1967 indicated that, the assignment having been made, the developer was in a position to convey the Property to the Grandfather for $33,900. Accordingly, the Grandfather acquired the property for a total sum of $36,500, out of which $20,500 was payable to Ms Chng and $16,000 to the developer.

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[38] Agreed Bundle of Documents dated 27 October 2017 at p 3.

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(2) Did the Grandmother make a financial contribution to the purchase price and, if so, what is its size?

31 I turn now to the main issue arising from the Grandmother's case: whether and to what extent she contributed to the purchase price of the Property. I note that she has through her written submissions changed her position from claiming 60.3% of the beneficial interest in the Property to claiming 58.9% of it,[39] due to an error she says she had made which I will explain at [36] below. Regardless, my finding, stated briefly here, is that she has failed to prove on a balance of probabilities that she contributed either 58.9% or 60.3% of the purchase price. Although I do not find her lacking in credibility, I do find that her evidence is confused and uncertain. In the total absence of documentary evidence, the result is that I have no basis upon which to find that she contributed a specific sum to the purchase price.

32 I begin with a general observation on the state of the evidence. This is that the Grandmother herself accepts that her case on her contribution to the purchase price is bereft of documentary evidence, and that all that the court has to go on is her word. It is useful at this juncture to outline the Grandmother's specific case on her contribution to the purchase price. She claims that she did so:

> (a) first, by way of cash in the sum of half the compensation sum received from the Government when it acquired the land under the zinc roof house, although it is not clear whether the compensation sum was $5,000 or $6,000; and

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[39] Grandmother's Closing Submissions in S 274/2017 dated 24 November 2017 at para 64.

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(b) second, by way of cash in the sum of $19,000, which came from:

(i) her savings from earning $92.60 or $96 a month as an amah at Alexandra Hospital from the time she gave birth to her first child in 1951 to the time she gave birth to her third child in 1955;[40]

(ii) her savings from collecting $20 to $30 a month from letting out six rooms at the zinc roof house;[41]

(iii) her savings from earning $100 a month by making and selling rice wine;[42] and

(iv) money from jewellery she had pawned and money which she had borrowed from her sister.[43]

33 The Grandmother accepts that there is no documentary evidence for any of these claims. First, in respect of the compensation sum, she accepts that there is no documentary evidence as to whether the zinc roof house was owned jointly or, as in the case of the Property, held solely by the Grandfather.[44] Regarding the substantial cash sum of $19,000, she accepts that there is no documentary evidence, in the form of bank account statements, for example, on how much she earned while working as an amah.[45] And she accepts that there is no documentary evidence that she took a loan from her sister and pawned their

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40 Grandmother's AEIC in S 274/2017 dated 31 August 2017 at paras 8–9.

41 Grandmother's AEIC in S 274/2017 dated 31 August 2017 at para 10.

42 Grandmother's AEIC in S 274/2017 dated 31 August 2017 at para 11.

43 Grandmother's AEIC in S 274/2017 dated 31 August 2017 at para 24(b).

44 Grandmother's Closing Submissions in S 274/2017 dated 24 November 2017 at para 42.

45 Grandmother's Closing Submissions in S 274/2017 dated 24 November 2017 at para 55.

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jewellery for cash to pay for the Property,[46] an assertion which was also not pleaded, although it is stated in her affidavit of evidence-in-chief ("AEIC").[47] In the words of her counsel, she "acknowledges that she has no documents to show for her case of her contributions of the $19,000".[48]

34 This absence of documentary evidence means that the Grandmother's case turns entirely on her credibility and on the cogency of her oral evidence. In this regard, my assessment is that while she was an honest and forthcoming witness, her evidence was confused and ultimately unreliable. Having observed her on the stand, I saw that she had no hesitation in accepting that there was no documentary evidence for many of the claims that she made. Understandably, she emphasised that the events relating to the purchase of the Property took place many years ago, and that the documents from that time, even if there were any, were no longer available.

35 The Grandson is correct to point out, however, that on issues which were crucial to Grandmother's case on the amount of her contributions, she either took inconsistent positions[49] or was simply unable to recall what had happened.[50] In my judgment, these inconsistencies and gaps in her memory diminished the reliability of her evidence and made it difficult for me to make any finding on the exact sum she contributed to the purchase price. This is fatal to her case on a purchase price resulting trust.

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46 Grandmother's Closing Submissions in S 274/2017 dated 24 November 2017 at para 57.

47 See Grandmother's AEIC in S 274/2017 dated 31 August 2017 at para 24(b).

48 Grandmother's Closing Submissions in S 274/2017 dated 24 November 2017 at para 58.

49 Grandson's Closing Submissions in S 274/2017 dated 21 November 2017 at para 36.

50 Grandson's Closing Submissions in S 274/2017 dated 21 November 2017 at para 38.

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36 First, she has been inconsistent on the proportion of the beneficial interest in the Property to which she claims to be entitled. In her pleadings, she uses the figure of 60.3%: see [17] above. In her AEIC, she uses the figure of 58.9%.[51] During cross-examination, she confirmed that the figure of 60.3% was correct.[52] She was not able to explain why the figures in her pleadings and in her AEIC were different. In her written submissions, she now adopts the figure of 58.9%.[53] This is because, she says, she had mistaken the amount of compensation received from the Government to be $6,000 when it was allegedly only $5,000. Accordingly, her share of the sum, which she contributed to the purchase of the Property, had also to be reduced, and that reduction meant that she contributed only 58.9% and not 60.3% of the purchase price.

37 Second, she has been inconsistent on the amount of compensation that she and the Grandfather allegedly received from the Government. In her pleadings, she says the amount was $6,000.[54] In her AEIC, she says the amount was $5,000.[55] On the first day of cross-examination, she confirmed that it was $6,000. When Mr Low pointed out to her that this was inconsistent with the figure in her AEIC, she suggested that the difference of $1,000 was not important.[56] Then during re-examination the next day, she said that she had thought about the issue the whole night and that $5,000 was the correct figure.[57]

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51 Grandmother's AEIC in S 274/2017 dated 31 August 2017 at para 28.

52 Certified Transcript, 8 November 2017, p 13 at line 10.

53 Grandmother's Closing Submissions in S 274/2017 dated 24 November 2017 at para 62.

54 Statement of Claim dated 28 March 2017 at para 12.

55 Grandmother's AEIC in S 274/2017 dated 31 August 2017 at para 18.

56 Certified Transcript, 8 November 2017, p 12 at lines 5–6.

57 Certified Transcript, 9 November 2017, p 11 at lines 14–15.

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38 Third, she has been inconsistent on the amount of her salary at the time she worked as an amah. In her pleadings, she said that she earned $96 a month.[58] In her AEIC, she said that she earned $92.60 a month.[59] When the trial began, Mr Johnny Seah made an oral application to amend the figure stated in the AEIC to $96. However, when Mr Seah then attempted to confirm the effect of this amendment with her while she was on the stand, she said that $92.60 was the correct figure.[60]

39 Fourth, although she has no evidence or other testimony to support her contention that she earned $100 a month from rice wine, this cottage industry appeared to have been more lucrative than her full time employment (which was $96 a month at its highest) or the rental of six rooms which was put at $30 at its highest. A comparison of these various figures, without accompanying explanation, may suggest some inaccuracy in memory.

40 Lastly, she could not recall how much money she had borrowed from her sister or how much money she had obtained by pawning jewellery belonging to her and her sister in order to pay for the Property. This may be seen from the following exchange during her cross-examination:[61]

> Q Insofar as you have mentioned, that there was a loan from your sister, how much was that amount?
>
> A I can't remember. I can't remember how much I borrowed from my elder sister, but there was insufficient fund, so I think she also used her jewellery and the jewelleries were pawned to make up the amount. It has been a long time ago, I can't remember all the details.

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58 Statement of Claim dated 28 March 2017 at para 6.

59 Grandmother's AEIC in S 274/2017 dated 31 August 2017 at para 9.

60 Certified Transcript, 8 November 2017, p 5 at lines 17–21.

61 Certified Transcript, 8 November 2017, p 25 at lines 18–23.

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41 To be clear, I think it is quite explicable, considering the Grandmother's age, for her to take inconsistent positions and to be unable to remember how she was able to contribute to the purchase price of the Property. I am willing to attribute these weaknesses in her evidence to the fact that the Property was purchased five decades ago, and that her memory has faded since, and that any documentation from that time is very likely now to be unavailable or at least limited. In this regard, I echo the observations of V K Rajah JA in *Chan Yuen Lan* ([26] *supra*) at [63]–[64]:

> Fourth, and as adverted to by the Judge … the oral testimony of Mdm Chan was not very helpful to the court as she had lost most, if not all, of her memory of the relevant events which transpired. Her common refrain in cross-examination was that she had forgotten or did not know what had happened at the material time. This is *not*, of course, meant to be a criticism of her in any way.
>
> Mdm Chan's memory deficit underscores the fifth point that we wish to make here, which is that the events surrounding the Purchase took place some three decades earlier. That was a very long time ago. It was therefore understandable that the documentary evidence in this case was not complete. That said, we note that some potentially vital evidence was not adduced (whether due to the effluxion of time or to other reasons).
>
> [emphasis in original]

42 Nevertheless, as the plaintiff, she bears the burden of proof. Although the difficulties in her evidence are benign in this sense, they pose a serious obstacle to the court's accepting her case. That is because all the court has now is (a) a complete absence of documentary evidence on the fact and extent of her contribution; and (b) evidence on the same given by her which is internally inconsistent and lacking in detail in material respects. In *Chan Yuen Lan*, there was at least a handwritten note contemporaneous with the purchase of the property in 1983 which listed the sources of the money which went towards the purchase price, and that list stated that the party who was asserting a resulting trust had contributed a specific figure of $290,000; the defendant did not dispute

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that the plaintiff had this amount of money and sought only to argue that she had advanced it as a loan: see *Chan Yuen Lan* at [18], [25] and [76]. In contrast, there is no documentary evidence in the present case to show that the Grandmother had contributed $22,000 (assuming the compensation sum was $6,000) or $21,500 (assuming the compensation sum was $5,000) to the purchase price of the Property.

43 This absence of documentary evidence is also the reason I reject the contention put forward by counsel for the Grandmother, Mr Tan Siah Yong, that she would have, by 1967, saved an amount of $11,000 to $12,000. This is pure conjecture. Mr Tan's calculation consists simply in (a) a summation of her wholly undocumented earnings from working as an amah, selling rice wine, and letting out rooms at the zinc house (see [32(b)] above); and (b) an application of a discount of 50% to that total sum on the assumption – which is unpleaded and not stated in her AEIC – that she would save 50% of her total earnings.[62] There is simply no objective basis for any aspect of this calculation.

44 In my judgment, therefore, the Grandmother has failed to satisfy me on the balance of probabilities that she contributed 60.3% or 58.9% of the purchase price of the Property. The result is that there is no purchase price resulting trust.

Issue 3: Common intention constructive trust

45 I turn now to the Grandmother's alternative case. To establish a common intention constructive trust in the context of two parties who have contributed unequal amounts towards the purchase price of a property, it must be shown that the parties had a common intention, which may subsist at or subsequent to the time the property was acquired, that the property would be held (a) on trust for

[62] Grandmother's Closing Submissions in S 274/2017 dated 24 November 2017 at paras 50–52.

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both parties and (b) in a certain proportion. Such an intention may be expressed or inferred, but it may not be imputed. Evidence of such intention must be sufficient and compelling. These principles are stated in *Chan Yuen Lan* ([26] *supra*) at [160(b)] and [160(f)], and restated in *Su Emmanuel v Emmanuel Priya Ethel Anne and another* [2016] 3 SLR 1222 ("*Su Emmanuel*") at [83]. On what is "compelling evidence", the Court of Appeal in *Chan Yuen Lan* at [114] referred to Lord Neuberger's explanation of the term in *Stack v Dowden* [2007] 2 AC 432 ("*Stack*") at [138]–[139]:

> … in [Lord Neuberger's] view, such an alteration of the quantification of each party's share of the beneficial interest required "compelling evidence", which would normally involve "discussions, statements or actions, subsequent to the acquisition, from which an agreement or common understanding as to such change [could] properly be inferred" (see *Stack* at [138]), although he appeared to accept that it was possible to infer a common intention to alter a party's share of the beneficial interest if that party carried out "significant improvements to the home" (see *Stack* at [139]).

46 The burden is therefore on the Grandmother to prove, on a balance of probabilities, that she and the Grandfather had a common intention, either subsisting at the time of the purchase of the Property in 1967 or arising after that, that the Grandfather hold a certain proportion of the beneficial interest in the Property on trust for her.

47 In my judgment, the Grandmother's case on common intention constructive trust must fail, for two reasons. First, her case was not pleaded with sufficient particularity. In my view, it is at least arguable that this was prejudicial to the Grandson as a defendant, and the consequence of this is that she cannot be permitted to rely on a common intention constructive trust. Secondly and more fundamentally, even if that aspect of her case were held to be sufficiently pleaded, the evidence is insufficient to establish, and is in fact contrary to, the existence of a common intention between her and the

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Grandfather, subsisting at any time, that the Grandfather would hold some part of the beneficial interest of the Property on trust for her. I now elaborate.

(1) Is the Grandmother's case on common intention constructive trust pleaded with sufficient particularity?

48 It is well-established that for a pleading not to be embarrassing, it should state those facts which will put those against whom it is directed on their guard, and tell them what is the case which they will have to meet: *Philipps v Philipps* (1878) 4 QBD 127, cited in Foo Chee Hock (gen ed), *Singapore Civil Procedure 2018 Volume 1* (Sweet & Maxwell, 2018) at para 18/7/12. This requirement is implicit in the requirement in O 18 r 7(1) of the Rules of Court (Cap 322, R5, 2014 Ed) that every pleading must contain in a summary form the "material facts" on which the party pleading relies for his claim. "Material" means necessary for the purpose of formulating a complete cause of action, and if any one material statement is omitted, the statement of claim is bad: *Bruce v Odhams Press Ltd* [1936] 1 KB 697 at 712 *per* Scott LJ, approved by the Singapore High Court in *Multi-Pak Singapore Pte Ltd (in receivership) v Intraco Ltd and others* [1992] 2 SLR(R) 382 at [29]. And even if the facts are not material to the cause of action, they may be facts in issue at the trial, and they would therefore be material facts that must be pleaded to avoid surprise at trial: see *Millington v Loring* (1881) 6 QBD 190 at 195 *per* Lord Selborne LC.

49 The issue therefore is whether the Grandmother has pleaded the material facts in relation to the existence of a common intention constructive trust. Her reliance on this doctrine is stated in just one paragraph in her Statement of Claim:[63]

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63 Statement of Claim dated 28 March 2017 at para 24.

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> Further or in the alternative the Plaintiff says that by reason of the ma tters set out under the circumstance there was a common intention constructive trust between her and the [Grandfather] when so purchasing the Property as a matrimonial home with the continual use and occupation of the Property based on the Plaintiff's 60.3% of his beneficial interest over the Property.

50 It will be observed, firstly, that nothing is directly said about the substance of the common intention which the Grandmother shared with the Grandfather. Second, nothing is pleaded about any discussion, statement or action (in the words of Lord Neuberger in *Stack* at [138], approved by the Court of Appeal in *Chan Yuen Lan* at [114]: see [45] above) which forms the basis of the Grandmother's allegation that she and the Grandfather share any common intention. Third, the use of the phrase "by reason of the matters set out" is vague and unhelpful because the matters set out before that paragraph in her pleading comprises the entirety of her narration of the background of their family, the loss of the zinc roof house, the Grandmother's alleged contribution to the purchase price of the Property, and the setting up of the Grandfather's watch business. It is unclear which of these facts are regarded by the Grandmother as relevant to her claim on common intention constructive trust. And in so far as all of them are pleaded as relevant, it is unclear how they are relevant.

51 I note that the paragraph could be construed as saying that (a) the Grandmother and the Grandfather had a common intention that the Grandfather would hold the beneficial interest in the Property on trust for himself and the Grandmother; (b) that common intention existed at the time the Property was purchased (note the words "when so purchasing the Property"); and (c) the substance of the common intention was that the Grandfather would hold 60.3% of the beneficial interest in the Property on trust for her because that is the proportion of her contribution to the purchase price (note the words "based on the Plaintiff's 60.3% interest"). But even if this interpretation were taken, the

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point remains that nothing is pleaded about any discussion, statement or action that forms the basis for inferring the existence of such an intention.

52 Furthermore, this construction of her pleading does not represent the case which she is now advancing on common intention constructive trust. She now submits that she and the Grandfather "had a common intention that the [Grandmother] would be a beneficial co-owner of equal share (50% interest) in the Property".[64] And she contends that this intention may be inferred by their conduct "both before and after the acquisition of the Property".[65] In my view, this is a clear departure from her pleaded case. Nothing in her pleadings states that the intention was for her to have a *50% share* in the beneficial interest of the Property. And nothing in her pleadings states that such intention may be inferred from conduct before and after the purchase of the Property. In any event, I find that there is no evidence to establish a common intention constructive trust. I turn now to discuss this.

(2) Did the Grandfather and the Grandmother have a common intention?

53 In brief, I agree with the Grandson that the Grandmother has failed to provide sufficient evidence to show that she and the Grandfather had a common intention, whether at the time of the purchase of the Property in 1967 or at any time after that, that the Grandfather would hold the beneficial interest in the Property in a manner other than what is reflected in the Property's title deed.[66] My reasons are as follows.

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64 Grandmother's Closing Submissions in S 274/2017 dated 24 November 2017 at para 87.

65 Grandmother's Closing Submissions in S 274/2017 dated 24 November 2017 at para 99.

66 Grandson's Closing Submissions in S 274/2017 dated 21 November 2017 at para 62.

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54 First, she has adduced no evidence of any discussion between her and the Grandfather on the ownership of the Property at or around the time of its purchase in 1967. Her evidence, instead, is that it was the Grandfather who "handled the matter",[67] that "[a]t that time parties thought nothing of whose names the Property was to be purchased under",[68] and that she was "not told by [the Grandfather] that the Property was purchased in his sole name".[69] It appears therefore that she did not apply her mind at that time to who truly owned the Property and, if that is so, it is very unlikely that she and the Grandfather then had any common intention on how the beneficial interest of the Property would be held.

55 Second, she has adduced no evidence to show that she and the Grandfather had any discussions on the ownership of the Property after 1967.

56 Third, her own evidence on events occurring after 1967 shows that the Grandfather was fully aware of the implications of placing a property in a person's name. He was intentional about whom he wished to benefit through the properties he owned, and he would, according to the Grandmother, agree with her on how those wishes would be carried out by conveying the property into the names of specific children. Against this background, it is difficult to say that the Grandfather's sole legal title to the Property did not truly reflect his intention with regard to who was entitled to the Property's beneficial interest. And it is also difficult to reconcile the Grandmother's claim to the Property with the complete absence of any evidence or assertion on her part that they had discussed or agreed that some proportion of the beneficial interest of the

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67 Grandmother's AEIC in S 274/2017 dated 31 August 2017 at para 22.

68 Grandmother's AEIC in S 274/2017 dated 31 August 2017 at para 25.

69 Grandmother's AEIC in S 274/2017 dated 31 August 2017 at para 26.

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Property belonged to her. The following are the relevant parts of the Grandmother's evidence which bear out these points.

(a) In an affidavit filed in the suit commenced by the Eldest Son in 2015 against the Grandmother concerning the ownership of a commercial property (see [13] above), the Grandmother explained the practice that she and the Grandfather adopted in allocating the benefit of their commercial properties:[70]

> (1) At all material times, my late Husband and myself would agree/decide what properties to buy and how they are to be used/dealt with and although the properties we bought include our children's names, they are/were merely our nominees and they held the properties in trust for both my late Husband and me.
>
> (2) One such property is … which was bought in the names of my late Husband [*ie*, the Grandfather] and [the Second Son].
>
> (3) Another property … was bought in the names of my late Husband and our 2 sons, [the Second Son and the Fourth Son] and upon sale, the sale proceeds were all taken by my late Husband who will decide what he wants to do with the sale proceeds as the children are/were all our nominees and they held their shares or interest in the properties in trust for my late Husband and me.
>
> …

(b) Next, the Grandmother's evidence is that she believed that the Property was intended to benefit the Fourth Son only, which by implication excludes herself. That is why she said during cross-examination that she was surprised when she found out that the Grandfather had named the Grandson as a beneficiary as well:[71]

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70 Grandson's Supplemental Bundle of Documents, p 155 at paras 5(1)–5(4).

71 Certified Transcript, 8 November 2017, p 16 at line 28 to p 17 at line 3.

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> Q … This is where you then go on to say at paragraph 55 [of the Grandmother's AEIC]:
>
> [Reads] "I then discovered that the Deceased" … "had willed the Property to the Defendant and my younger son in equal shares."
>
> So, again, does this help give her context as to when she found out about the will giving the property at 102 Farrer Road in equal shares to the grandson and her son?
>
> A When---the house was intended for my son [the Fourth Son]. I didn't know he willed it to also my grandson.

(c) On the second day of cross-examination, the Grandmother affirmed that answer and explained how the division of the family's assets between her children had already been decided:

> Q Now do you recall that in your cross-examination, you gave an answer when your---when you and your husband bought [the Property], it was intended for your younger son? Do you remember giving that evidence yesterday?
>
> A Yes.
>
> Q Now your answer would appear to suggest, how about your other children?
>
> A No, already decided long ago. Can I say something?
>
> Q You can explain what is your---why you say that.
>
> A The---for the division of the properties and each person would have a share. And Malaysia property, the condominium would be for the eldest son so the eldest son would not have any share of proper---for the Singapore properties. And at that time he was very sick, that's why he said that it would be given to the other children. …

57 This evidence suggests to me that if there had been any common intention between the Grandfather and the Grandmother that part of the

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beneficial interest in the Property belonged to her, it would have easy for the Grandmother to say, simply and directly, that there was such an intention. But she did not say this in her pleadings or her AEIC, and her oral testimony contradicted any such intention.

58 Finally, the objective evidence, in the form of the will,[72] is evidence that the Grandfather did not think that he held any portion of the beneficial interest in the Property on trust for the Grandmother. It was drafted on the assumption that the Grandfather was the sole legal and beneficial owner of the Property, and it expresses his intention that his youngest son and his eldest grandson share in the proceeds of the sale of the Property. No suggestion has been made that the will is not to be taken at face value.

59 Having considered the evidence, I find that the Grandmother had the assumption, before the will was discovered, that the Property would belong to the Fourth Son, with whom she was living and today still lives. Nothing in her own evidence suggests that she expected that she had a share in the Property. As the Fourth Son lived with her, she would then have had an expectation, arising from that assumption, that she would continue to live in the Property after the Grandfather died. That is quite different from sharing a common intention, with the Grandfather, that she would be entitled to 50% or 60.3% of the beneficial interest in the Property. She has failed to prove that there was ever such an intention and, for this reason, her claim on common intention constructive trust must fail.

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72 Agreed Bundle of Documents dated 27 October 2017 at p 90.

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Issue 4: Proprietary estoppel

60 Next, the Grandmother in her closing submissions for the first time in these proceedings advances a case based on proprietary estoppel.[73] I have no hesitation in rejecting it on the ground that it is not pleaded. In *V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422, the Court of Appeal held that the trial judge had erred in allowing the plaintiff's claim on the ground of proprietary estoppel when that cause of action had not been pleaded and the plaintiff's case had been one based principally on a purchase price resulting trust. In this regard, the Court of Appeal noted that the words "proprietary estoppel" did not have to be specifically pleaded, but the material facts supporting each element of the cause of action had to be. The Court said at [43]:

> The Judge was of the view that the words "proprietary estoppel" did not have to be *specifically* pleaded. We agree, except that if such a cause of action is to be relied on, the pleadings should at the very least disclose the material facts which would support such a claim, so as to give the opponent fair notice of the *substance* of such a case, especially in a claim based on proprietary estoppel. … [emphasis in original]

61 After examining the relevant part of the respondent's pleadings, the Court said at [46]:

> In our view, the aforesaid paragraphs do not support a claim based on proprietary estoppel but one based on a resulting trust. The 1st Respondent did not plead that the Deceased encouraged him to obtain an advance from Govindasamy or to repay Govindasamy on the understanding that he would have a beneficial interest in the Property. *There was no promise, reliance or detriment alleged in these paragraphs.* [emphasis added]

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73 Grandmother's Closing Submissions in S 274/2017 dated 24 November 2017 at para 116.

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62 In my judgment, the Court's observation in that last sentence which I have italicised applies squarely to this case. The elements of proprietary estoppel are (a) a representation on the part of the party against whom the estoppel is sought to be raised; (b) reliance on the representation on the part of the party seeking to raise the estoppel; and (c) detriment suffered by that party as a result of his reliance: *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 at [170] *per* Sundaresh Menon JC (as the Chief Justice then was). In my view, nowhere in the Grandmother's pleadings is it stated that the Grandfather had made a representation to her and, if so, what the substance of the representation was. Neither is it stated that the Grandmother relied on any such representation by taking or forbearing to take any action, much less suffering any detriment, in consequence of her believing the truth of the representation.

63 The Grandmother now submits that the Grandfather and the Grandmother had "discussions" on whether the Property should be acquired and how it might be mortgaged to finance the family's business, and that these discussions in some way constituted the Grandfather's "representations" to the Grandmother that he intended her to have beneficial interests in the Property.[74] She further submits that she relied on these representations to her detriment by, among other things, spending money, time and effort on the maintenance of the household.[75] I reject these submissions. None of these facts were pleaded and, in so far as they were, they were not framed as occurring as a result of the Grandmother's reliance on any representation that she had perceived the Grandfather to have made. Correspondingly, the Grandson cannot be said to

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74 Grandmother's Closing Submissions in S 274/2017 dated 24 November 2017 at para 119.

75 Grandmother's Closing Submissions in S 274/2017 dated 24 November 2017 at para 122.2.

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have been given a fair opportunity to cross-examine her on her evidence relating to what she now alleges to be the representation, reliance and detriment that establishes a proprietary estoppel. Accordingly, to allow the Grandmother now to rely on proprietary estoppel would be prejudicial to the Grandson, and I therefore do not permit her to do so. For this reason, her claim on proprietary estoppel must fail.

Issue 5: Grandmother's right of abode

64 The final aspect of the Grandmother's case in the Suit is that even if she does not have a beneficial interest in the Property and even if there is no proprietary estoppel, she still has a right to occupy the Property. Unfortunately, Mr Tan characterises this right in confusing terms. First, he calls it a right that is "akin to a licence coupled with an equity".[76] Then, he says that her "right of abode" is a "greater right than that of a licence", and that it must be satisfied by the Grandfather's estate "such that she has the right to continual occupation of the Property".[77]

65 Mr Tan in his submissions appears to suggest a number of bases, at the level of principle, for the existence of such a right. These include (a) a wife's right of occupation as against her husband, as recognised in the House of Lords' decision in *National Provincial Bank Ltd v Ainsworth* [1965] AC 1175 ("*Ainsworth*");[78] (b) the fact that the legislature by s 46(1) of the Women's Charter (Cap 353, 2009 Rev Ed) recognises the "intuitive expectation and moral obligation that spouses are to maintain each other, including providing for their

[76] Grandmother's Closing Submissions in S 274/2017 dated 24 November 2017 at para 132.

[77] Grandmother's Closing Submissions in S 274/2017 dated 24 November 2017 at para 132.

[78] Grandmother's Closing Submissions in S 274/2017 dated 24 November 2017 at para 134.

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accommodation";[79] and (c) the idea that it is "unthinkable" that a wife's right to occupy her matrimonial home terminates upon the natural death of her husband.[80]

66 It seems to me that Mr Tan is referring either to what is known in England as the "deserted wife's equity", which was indeed addressed by the House of Lords in *Ainsworth*, or to a licence coupled with an equity, which English decisions like *Binions and another v Evans* [1972] Ch 359 ("*Binions*") (on which the Grandmother relies) have recognised as giving rise to a right of occupation that is enforceable against third parties. I shall therefore consider whether, on the ground of either of these two lines of authority, the Grandmother does in fact have a right to occupy the Property which is enforceable against the Grandson.

(1) Deserted wife's equity

67 The question whether a widow has a right to occupy property which used to be the matrimonial home does not appear to be a question that the Singapore courts have addressed before. Professor Leong Wai Kum (see *Elements of Family Law in Singapore* (LexisNexis, 2nd Ed, 2013) at p 496) is of the view, and parties appear to accept, that *Ainsworth* represents the position at common law in Singapore. In *Ainsworth*, the House of Lords held that a spouse's right to occupy the matrimonial home was a "mere equity" and not an equitable interest, and that it was determinable at the discretion of the court. It was held to be an equity which arises under family law and enforceable only against the other spouse, not against third parties. It therefore has no proprietary effect.

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79 Grandmother's Closing Submissions in S 274/2017 dated 24 November 2017 at paras 137.2 and 137.3.

80 Grandmother's Closing Submissions in S 274/2017 dated 24 November 2017 at para 137.8.

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68 It is important to note that in *Ainsworth* at 1224C, Lord Hodson observed that the deserted wife's equity "would not survive divorce". That is no doubt because the equity is a family law right, and family law ceases to apply, so to speak, once the marriage is no longer subsisting, which would be the case when the parties have divorced. The same situation arises when the other spouse dies. The marriage will by that spouse's death have terminated, and there will no longer remain any juridical basis for the common law to recognise the claimant spouse's right to occupy what used to be the matrimonial home. Once the spousal status disappears by virtue of the marriage's dissolution in a given case, there is no longer any reason for common law to regard the claimant as a deserted "wife". Correspondingly, she therefore cannot be held to possess a deserted wife's equity. Accordingly, in the present case, the Grandmother can rely on no such equity now because the Grandfather has passed away.

69 Notwithstanding the position at common law, I note that in England, the Family Law Act 1996 (c 27) (UK) and its predecessors confer on a spouse or civil partner what has been called "a judicially protected right of occupation": *Richards v Richards* [1984] AC 174 at 211A–B *per* Lord Scarman; see generally Charles Harpum, Stuart Bridge & Martin Dixon, *Megarry & Wade: The Law of Real Property* (Sweet & Maxwell, 8th Ed, 2012) ("*Megarry & Wade*") at paras 34-023–34-024. The 1996 Act gives a spouse the right (a) not to be evicted from occupation; and (b) to enter and occupy with leave of the court. These rights are referred to as statutory matrimonial home rights and may be made enforceable against third parties by register entry. They may be brought to an end by the death of the other spouse, among other things. The court has the power to extend such a right even after the death of the spouse, although the application for such extension must be made during the marriage: see ss 33(5) and 33(9) of the 1996 Act. In exercising that power, the court must have regard

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to all the circumstances of the case, including the housing needs and resources of the spouse and any relevant child: see ss 33(6) and 33(8) of the 1996 Act.

70 It is significant that the protections afforded by the 1996 Act are partly a legacy of the concern in the wake of *Ainsworth* that the strict rules of property law had left without remedy deserted wives to whom injustice had been occasioned: see *Megarry & Wade* at para 34-022. This type of concern – over potential injustice arising from applying the strict rules of property law to familial situations – was also what motivated the majority in *Stack* ([45] *supra*) to hold that the starting point for jointly owned matrimonial homes was that each party has an equal share of the beneficial interest under a common intention constructive trust: see *Stack* at [4]–[5] *per* Lord Hope of Craighead and [56] *per* Baroness Hale of Richmond. The Singapore Court of Appeal has expressed disapproval of this approach in *Chan Yuen Lan* ([26] *supra*). Agreeing with Lord Neuberger's minority opinion in *Stack*, the Court considered that the resulting trust should be the default analytical tool in the absence of proof of common intention between the parties as to how the beneficial interest in the property concerned is to be held (at [153] and [158]). The Court acknowledged that this would "lead to outcomes which some people may perceive as 'unfair' in certain cases", but was "of the view that subjective fairness may not be the most appropriate yardstick to apply in resolving property disputes" (at [159]).

71 Against this backdrop, it may be said that a legislative response similar to the 1996 Act may be apt in Singapore, all the more because our jurisprudence has expressly taken a different path from *Stack* (although *Stack* would have been of no assistance to the Grandmother either in the case at hand because she was not a joint legal owner of the Property). It could be said to be somewhat inequitable, or even perverse, that a marriage of 65 years, out of which 50 were spent in the matrimonial home, could have resulted in a more equitable outcome

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if dissolved by divorce rather than death.

(2) Licence coupled with an equity

72 I turn now to consider whether the Grandmother's asserted right to occupy the Property may be supported by reference to the concept of a licence coupled with an equity. The orthodox position at common law was that a contractual licence did not bind the licensor's successors in title because a licence was a personal transaction which created no proprietary interest in land. In England, there gradually emerged a view, advanced by Lord Denning, that a constructive trust would be imposed whenever a purchaser takes property subject to a contractual licence: see *Binions* at 368B *per* Lord Denning MR and *DHN Food Distributors Ltd and others v London Borough of Tower Hamlets* [1976] 3 All ER 462 at 467*a per* Lord Denning MR. The English Court of Appeal then restored the law to its orthodox position in *Ashburn Anstalt v Arnold and another* [1989] Ch 1 ("*Ashburn Anstalt*"), where it was held that a contractual licence did not create an interest in land (at 25E–G *per* Fox LJ). The court also held that although a constructive trust might be imposed on a transferee of land in respect of an interest affecting that land which would not otherwise bind him (*eg*, a licence), it would do so only where the transferee's conscience was affected: *Ashburn Anstalt* at 25H *per* Fox LJ.

73 Although there is no Singapore decision which discusses and rationalises this line of cases with reference to the specific issue of whether a contractual licence is capable of binding third parties, the Court of Appeal has by way of *obiter dicta* in *Guy Neale and others v Ku De Ta SG Pte Ltd* [2015] 4 SLR 283 ("*Guy Neale*") endorsed the position set out in *Ashburn Anstalt*. Sundaresh Menon CJ, delivering the court's judgment, wrote the following in

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the context of cautioning against importing into trade mark law principles derived from land law (at [80]):

> A licence in respect of land, which is personal in nature, will generally not bind a purchaser of land *even if that purchaser had notice of the licence*, though admittedly, this has limits: thus, a court of equity will not permit such a purchaser to deny the licensee his rights if his conscience had been so affected that it would be inequitable to allow him to do so and a constructive trust will be imposed to uphold the rights of the licensee (*Ashburn Anstalt v Arnold* [1989] Ch 1 ("*Ashburn*") at 25–27). [emphasis in original]

74 Bearing in mind these principles, I note that Mr Tan purports to rely on the principle in *Binions* and other similar cases to establish that the Grandmother has a licence coupled with an equity which gives her the right to occupy the Property.[81] Two observations are due in this regard. First, no analysis is provided in Mr Tan's submissions on the specific requirements of the principle in *Binions* and on how the Grandmother's case satisfies those requirements. Second, there is no discussion on whether *Binions* represents the position in Singapore even though in England it has been confined by *Ashburn Anstalt*, which has in turn received *obiter* approval from the Court of Appeal in *Guy Neale*.

75 Moreover, to the extent that Mr Tan is suggesting that the Grandson's conscience has been affected and that he is therefore bound by the Grandmother's licence to remain in the Property, the facts relied upon supporting such a suggestion are the same as the facts which go towards her claim on proprietary estoppel.[82] As I have said (at [62]–[63] above), those facts have not been pleaded with sufficient particularity in reference to a claim based on proprietary estoppel. That is also true with reference to a claim based on a

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81 Grandmother's Closing Submissions in S 274/2017 dated 24 November 2017 at paras 137.14–137.15.

82 Grandmother's Closing Submissions in S 274/2017 dated 24 November 2017 at paras 137.10–137.11.

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licence coupled with an equity. Therefore, it would be prejudicial to the Grandson if I were to allow the Grandmother to rely on the existence of a contractual licence creating an estoppel or a constructive trust to support her asserted right to occupy the Property.

76 For these reasons, I hold that the Grandmother's right to abode cannot be supported on the ground that she has a licence coupled with an equity.

Conclusion on the Suit

77 For all the reasons above, I dismiss the Suit.

The Probate Application

78 Turning now to the Probate Application, I begin by setting out that part of the Grandfather's will that relates to the Property and the orders that the Grandson has applied for. The will states:[83]

> 2. I APPOINT [the Fourth Son] and [the Grandson] to be the executors and trustees of this my Will (hereinafter called "my Trustees"). In subsequent clauses of this my Will the expression "my Trustees" shall include the trustee or trustees of this my Will for the time being whether original, additional or substitute.
>
> 3. I GIVE all my property known as [the Property] to my Trustees upon trust to sell call in and convert the same into money (with power to postpone such sale calling in and conversion for so long as they think fit without being responsible for any consequent loss) and after payment of my just debts funeral and testamentary expenses and taxes arising out of or due at my death my Trustee shall stand possessed of the net proceeds of such sale calling in and conversion UPON TRUST for the said [the Fourth Son] and [the Grandson] in equal shares absolutely.

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83 Grandson's Affidavit in OSP 9/2016 dated 6 May 2016 at p 86.

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79 Under the Probate Application, the Grandson applies for the following orders:[84]

> 1. A declaration that paragraph 3 of the Last Will and Testament of [the Grandfather] dated 29 October 2002 ("Will") creates a trust for sale of [the Property] and [the Grandson], in his capacity as sole executor of the Will / estate of [the Grandfather], must sell and covert the same.
>
> 2. A declaration that [the Grandson] is and shall continue to act in his capacity as the sole executor of the Will / estate of [the Grandfather] until after the just debts, funeral and testamentary expenses and taxes of the estate have been paid and the legacies distributed to the beneficiaries under the Will.
>
> 3. An order that the Property be sold with vacant possession by [the Grandson], in his capacity as the sole executor of the Will / estate of [the Grandfather], henceforth at any time in his sole discretion without being responsible for any consequent loss and on such conditions as this Honourable Court deems fit.
>
> 4. An order that [the Grandmother, the Second Son and the Fourth Son] shall within 7 calendar days from the date of the order to be made herein provide a set of keys to the Property to [the Grandson] with respect to the sale of the Property and allow the Property to be accessed by [the Grandson], his property agents, any prospective purchasers and/or any parties involved in the same.
>
> 5. An order that [the Grandmother, the Second Son and the Fourth Son] will deliver up vacant possession of the Property to the [the Grandson] within 3 months of the execution of an option to purchase by a prospective purchaser of the Property or such reasonable time as this Honourable Court deems fit.
>
> 6. An order that [the Grandmother, the Second Son and the Fourth Son] shall within 14 calendar days from the date of the order to be made herein provide the [the Grandson] with the Certificate of Title to the Property or provide written confirmation by way of statutory declarations that they have undertaken reasonable efforts and have been unable to locate the same.

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[84] Originating Summons (Probate) No 9 of 2016 dated 6 May 2016.

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> 7. An order that the [the Grandmother, the Second Son and the Fourth Son] shall within 14 days from the date of the order to be made herein provide [the Grandson] with any and all documents relating to the assets and liabilities of [the Grandfather], and in particular, the documents that [the Grandmother, the Second Son and the Fourth Son] have obtained from [the Grandfather's] room in the Property.
>
> 8. An order that [the Grandson] be allowed and granted a commission of not less than 1% of the sale price of the Property and that such commission form part of the testamentary expenses payable by the estate of [the Grandfather].

The parties' positions

80 The essence of what the Grandson seeks by these eight prayers, in terms of practical effect, is the court's endorsement of his authority to sell the Property immediately without the consent of the Fourth Son. That will in turn give him the right to seek an order for the sale of the property, and orders that procure the cooperation of the people currently occupying the Property to facilitate its sale. Such authority is said to inhere in his capacity as sole executor of the Grandfather's estate. Accordingly, the Grandson seeks specifically to be characterised as such by an order of court. In addition, he seeks to be declared not to have stepped into the shoes of a trustee under the will. That is because if he were acting as a trustee, he would have no power to sell the Property by himself: By s 15(3) of the Trustees Act (Cap 337, 2005 Rev Ed) ("the Act"), the proceeds of sale arising under a trust of land cannot be paid to fewer than two trustees, and the Grandson accepts this to be the position in law.[85] In this regard, the Grandson takes the position that the will does create a trust for the sale of the Property.[86] Finally, the Grandson asks to be paid a commission of 1% to

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85 Grandson's Closing Submissions in S 274/2017 dated 21 November 2017 at para 113(b).

86 Grandson's Closing Submissions in S 274/2017 dated 21 November 2017 at para 93.

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2.5% of the assets collected for expenses incurred in administering the Grandfather's estate.

81 The Grandmother accepts that the Grandson, as executor of the Grandfather's estate, is entitled to sell the Property in his sole discretion, and that he need not act together with the Fourth Son to do so.[87] She takes the view that the grant of probate recognises the Grandson as executor and "therefore he has the right to sell and act alone".[88] The Grandmother also does not contest the view that the Grandfather's will created a trust for sale of the Property.[89] However, she argues that in the event that she is determined to have no beneficial interest in the Property – as indeed I have concluded – I should exercise my "equitable jurisdiction" to "postpone the sale of the Property until such time where [the Grandmother] passes on".[90] She also contends that the Grandson is not entitled to commission because the assets of the Grandfather have yet to be collected.[91]

Issues to be determined

82 Having regard to the parties' positions on the Probate Application, and to the terms of the orders prayed for, I consider there to be three broad issues for determination:

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87 Grandmother's Reply Submissions in S 274/2017 dated 30 November 2017 at paras 93–95.

88 Grandmother's Reply Submissions in S 274/2017 dated 30 November 2017 at para 95.

89 Grandmother's Reply Submissions in S 274/2017 dated 30 November 2017 at para 101.

90 Grandmother's Closing Submissions in S 274/2017 dated 24 November 2017 at para 216.

91 Grandmother's Reply Submissions in S 274/2017 dated 30 November 2017 at para 104.

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(a) First, does the Grandson have independent authority to sell the Property? The Grandmother does not dispute this point; her point, rather, is that the prayers requested are unnecessary. As I have received the Grandson's submissions on the issue, I will set out my views on it, with a focus on the issue of whether the Grandson is now acting in his capacity as sole executor or as trustee of the Grandfather's estate.

(b) Second, may the court order the Property to be sold and, if so, should it? In particular, does the court have a discretion to postpone the sale of the Property and, if so, should it be exercised in the Grandmother's favour?

(c) Third, should the Grandson be awarded a commission of 1% to 2.5% on the assets collected?

83 For the reasons below, I hold that the Grandson has independent authority to sell the Property and I give orders to facilitate his doing so. His claim for commission is, however, premature. I will deal with each issue in turn before setting out the appropriate orders to be granted.

Issue 1: Grandson's authority to sell the Property

(1) Applicable principles

84 An executor as a personal representative of a deceased person has vested in him the entire ownership of the deceased's estate which he holds *in auter droit* for the purposes of administration: John Ross Martyn & Nicholas Caddick, *Williams, Mortimer and Sunnucks on Executors, Administrators and Probate* (Sweet & Maxwell, 8th Ed, 2013) ("*Williams, Mortimer and Sunnucks*") at para 57-06. He holds such property without any differentiation between the legal and beneficial interests, and the beneficiaries merely have the right to

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ensure that he duly administers that estate. His powers and duties in relation to such property, like his general powers and duties, are governed by both legislation and the common law. The main piece of legislation for this purpose is the Act, which by s 3 defines a "trust" as extending "to the duties incident to the office of a personal representative" and defines "trustee" as including a personal representative "where the context admits".

85 One of the powers that a personal representative has is the power to sell land belonging to the deceased person's estate. A normal trustee will also have such a power (as well as a duty to exercise it) in so far as the trust is a trust for the sale of land, but he can only exercise that power together with another trustee. That is because s 15(2) of the Act prohibits a sole trustee from giving a valid receipt for the proceeds of sale arising under a trust for sale of land, and s 15(3) of the Act proscribes the payment of such proceeds to fewer than two trustees. The rationale for these provisions is generally understood to be to reduce the chance of fraudulent dealing with the trust property by means of requiring at least two trustees to act together. By contrast, a personal representative is not subject to this limitation. He has the right to sell the estate's land and to receive the proceeds of sale by himself. Thus s 15(4) of the Act provides:

> Subsection (3) does not affect the right of a sole personal representative as such to give valid receipts for or direct the application of the proceeds of sale or other capital money mentioned in that subsection; nor, except where capital money arises on a transaction, render it necessary to have more than one trustee.

86 In my view, that is the position even if the will appointing the personal representative provides for a trust for sale to be executed by two trustees, as in the will of the Grandfather, which constitutes the Grandson and the Fourth Son as trustees for the sale of the Property. It is well-established that where property

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is bequeathed to executors, the proving of the will constitutes an acceptance of the particular trusts constituted by the will, and an executor who proves the will is clothed with those trusts and must carry them out: *Williams, Mortimer and Sunnucks* at para 57-06. However, it has never been the position that such a trust *limits* the power an executor has as a personal representative. Instead, the idea is that by proving the will, he voluntarily undertakes to perform the trust, and he may therefore be held liable for breaching the duty he has adopted: see *Mucklow v Fuller* (1821) Jac 198 at 201–202 *per* Lord Eldon LC; *Booth v Booth* (1838) 1 Beav 125 at 129 *per* Lord Langdale MR; *Stiles v Guy* (1832) 4 Y & C Ex 572 at 575 *per* Lord Lyndhurst CB. And he is entitled to discharge that duty using the full powers of an executor.

87 In *Herman Iskandar v Shaikh Esa and another* [1992] 2 SLR(R) 395 ("*Herman Iskandar*") the High Court, dealing with the question whether a sole executor had the power to sell property under a statutory trust for sale imposed by the Residential Property Act (Cap 274, 1985 Rev Ed) ("the RPA") in respect of residential property willed to a foreigner, held that effecting the sale was part of the duty of administering the testator's estate which a legal personal representative under the RPA had to discharge (at [10]). Referring to *Wong Boon Pin v Wong Boon Wah* [1989] 1 SLR(R) 189 where Chan Sek Keong J (as the former Chief Justice then was) had characterised the statutory trust under the RPA as a trust for sale, Michael Hwang JC explained at [15] that the term "trust for sale" did not imply that a legal personal representative, in exercising his duty of sale, would lose his status of legal personal representative. Regardless of how the trust for sale had arisen, the point was that the beneficiaries' interest lay in the sale proceeds of the property and it was mandatory under the RPA for the land to be sold in order that the proceeds may be distributed to the beneficiaries. Similarly, in my judgment, when an executor

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proves a will establishing a trust, and thereby becomes clothed with the trust, his undertaking to carry out the trust simply becomes part of his duty of administering the estate, which he is therefore entitled to discharge using the full powers of an executor.

88 Of course, the proposition that a sole executor may sell a property that is subject to a trust for sale carries a potential for abuse. As the Supreme Court of the Straits Settlements observed in *Re A Contract between Wee Poh Neo and Goona Veeragoo Naidoo* [1936] 1 MLJ 213 (*per* Clarke J):

> An executor remains an executor indefinitely, even though he be also nominated under the will to be a trustee of trusts created by that will. A dishonest person who is both executor and trustee under the will, by falsely alleging to an innocent purchaser that he is selling *qua* executor, may therefore be enabled, at any rate during a period of six years after the testator's death, to sell all the trust property and to pocket the proceeds unimpeded by any necessity of abetment by a second trustee.

However, that does not mean that there are no safeguards. In so far as the executor has undertaken to carry out the trust, he is liable to be sued by the beneficiaries of the trust for any breach of his undertaking. Thus, if the Grandson after selling the Property does not distribute the sale proceeds equally between himself and the Fourth Son, the Fourth Son can sue him for breach of trust.

89 Finally, as a general rule, an executor's power to dispose property ceases when he completes the administration of the deceased's estate and clears it of all liabilities, whereupon he steps into the shoes of a trustee: *In re Ponder* [1921] 2 Ch 59 at 61 *per* Sargant J; *Herman Iskandar* at [10] *per* Michael Hwang JC; *Lee Yoke San and another v Tsong Sai Sai Cecilia and another* [1992] 3 SLR(R) 516 at [35] and [43] *per* K S Rajah JC. To this general rule, the Court of Appeal

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has recognised an exception, applicable particularly to small estates, to the effect that an executor's power to dispose property survives the completion of administration in so far as it is needed to facilitate the distribution of assets: *Scan Electronics (S) Pte Ltd v Syed Ali Redha Alsagoff and others* [1997] 1 SLR(R) 970 at [9] *per* M Karthigesu JA. In addition, the cessation of an executor's powers must be distinguished from cessation of his office as an executor, which does not take place unless he renounces his office or unless the grant of probate is revoked, hence the maxim "Once an executor, always an executor": Francis Barlow, *Williams on Wills* (LexisNexis, 10th Ed, 2014) at para 25.9. Thus, for example, he is entitled to receive a reversionary interest in the property falling in many years after the testator's death.

(2) Decision

90 In the present case, it is not disputed that the Grandson by extracting grant of probate was properly appointed as executor of the Grandfather's estate and was conferred the right to administer it. Since the Grandfather's will also named the Fourth Son as executor, it was entirely proper for the family court who heard the Grandson's application for probate to reserve power to make a like grant in the form of double probate in favour of the Fourth Son: see *Williams, Mortimer and Sunnucks* at paras 11-10 and 25-15. In the event, the Fourth Son did not apply for double probate, as he would have been entitled to do, and the result is that the Grandson is sole executor, in the sense that only he has the right to administer the Grandfather's estate.

91 It is also not disputed that the Grandson has yet to complete his administration of the estate, given that he has yet to pay his Grandfather's funeral expenses and testamentary expenses. Accordingly, he retains his powers as a personal representative and has yet to step into the shoes of a trustee. And

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as personal representative, he has the power to sell the Property by himself even though the will establishes a trust for sale, for the reasons explained at [86]–[87] above. Accordingly, I hold that the Grandson has both the authority and, indeed, the duty to sell the Property, to use the proceeds to clear the estate's liabilities and then to distribute the net proceeds in equal shares between himself and the Fourth Son. In the light of these holdings, it is not necessary to make any declaration that he is able so to do, as he has prayed for in prayers 1 and 2 of the Probate Application. Such declarations would simply reflect the position at law with regard to the Grandson's position as sole executor, and this position is not disputed. The dispute is in respect of the Grandson's wish for an immediate sale of the Property, to which I now turn.

Issue 2: Sale of the Property

(1) Power to order sale

92 Section 22(2) of the FJA provides that the Family Division of the High Court shall, when exercising jurisdiction relating to family proceedings, have all the powers of the High Court in the exercise of its original civil jurisdiction. One of those powers is the power to order the sale of land, which is contained in paragraph 2 of the First Schedule of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("the SCJA"), which reads:

> Power to partition land and to direct a sale instead of partition in any action for partition of land; and in any cause or matter relating to land, where it appears necessary or expedient, to order the land or any part of it to be sold, and to give all necessary and consequential directions.

93 A similar power is contained in r 540 of the FJR. That provision falls under Part 17A of the FJR, which governs proceedings brought in relation to the Wills Act (Cap 352). Rule 540 reads:

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> (1) Where in any cause or matter relating to any immovable property it appears necessary or expedient for the purposes of the cause or matter that the property or any part of the property should be sold, the Court may order that property or part to be sold.
>
> (2) Any party bound by the order and in possession of the property or part of the property, or in receipt of the rents and profits of the property or part, may be compelled to deliver up such possession or receipt to the purchaser or to such other person as the Court may direct.

94 In the light of para 2 of the First Schedule of the SCJA and r 540 of the FJR, I consider that I do have the power to order a sale of the Property, and to make all necessary and consequential directions to effect its sale, including an order for its occupants to deliver vacant possession to the Grandson (see [79] above), which is a type of order specifically contemplated by r 540(2) of the FJR. In addition, I am persuaded that I should exercise my power to make such orders. This is because the Grandson, as I have found, has the authority to conduct the sale of the Property, and because ordering the sale of the Property will enable him to perform his duty as an executor of the Grandfather's will to realise the Property, to use its proceeds to clear the estate's liabilities, and to distribute the net proceeds equally between him and the Fourth Son. As I have decided that the Grandmother does not hold any beneficial interest in the Property, the trust for sale is therefore held for the benefit of only the Grandson and the Fourth Son. The Fourth Son has not filed any affidavits or sought to postpone the sale. It is the Grandmother who seeks to do so. Mr Tan invites me to postpone the sale of the Property, and I turn now to consider his submission in this regard.

(2) Discretion to postpone sale

95 Mr Tan relies on the case of *Bedson v Bedson* [1965] 2 QB 666 ("*Bedson*") to persuade me that I have an "equitable jurisdiction" to postpone

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the sale of the Property until the Grandmother passes on.[92] In my view, his reliance on that case is misconceived.

96 *Bedson* was decided during a period in England – before the enactment of the Trusts of Land and Appointment of Trustees Act 1997 (c 47) (UK) – where a trust for sale was imposed by statute upon land held by two or more persons beneficially: see ss 34 and 36 of the Law of Property Act 1925 (c 20) (UK). This was to provide overreaching machinery so that purchasers needed to investigate only the title to the legal estate. Under this regime, the English courts developed a number of principles as to how they would exercise their discretion to order the sale of the land in the event that its joint owners, being trustees of the sale of land, were in dispute over whether the land should be sold. One of the principles developed was that the court must have regard to the purpose of the trust and discern whether it was indeed to sell the land or to retain it for some other purpose. Many of these cases arose over the separation of married couples, and one of these was *Bedson*.

97 In *Bedson*, the husband and wife were joint owners of their matrimonial home, from which the husband ran his business, and in which they were held each to have had an equal beneficial share. The parties had not divorced, and the wife's applied under s 17 of the Married Woman's Property Act 1882 (c 75) (UK) for the home to be sold. The English Court of Appeal dismissed her application on the ground that a sale would "defeat both … contemplated purposes" of the property which was held on trust, namely to house the business which provided for the family and to provide a home for the parties and their children: *Bedson* at 679D–F *per* Lord Denning MR.

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92 Grandmother's Closing Submissions in S 274/2017 dated 24 November 2017 at para 217–218.

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98 Nothing in *Bedson* assists the Grandmother's case. First, the court's jurisdiction to order or postpone a sale in *Bedson* was statutory and not equitable. Second, in so far as I have any discretion to that effect, Mr Tan is wrong to rely on *Bedson* suggest that the purpose for which the Property was acquired is relevant to the exercise of that discretion. The equivalent purpose was relevant in *Bedson* only because the property there was, as a matter of the prevailing statutory law on joint ownership, held on a trust for sale: that is why the purpose of the joint owners in acquiring the property in question was relevant. If any purpose is to be relevant in the present case at all on the *Bedson* analysis, it should be the purpose for which the trust of land was established by the Grandfather's will, and that purpose is for the proceeds of sale to be used to pay for the estate's liabilities and to be distributed between the Grandson and the Fourth Son equally, as I have observed at [94] above. I therefore reject Mr Tan's submission.

Issue 3: Grandson's entitlement to commission

99 The final issue concerns the Grandson's claim for commission on the assets collected, pursuant to s 66(1) of the Probate and Administration Act (Cap 251, 2000 Rev Ed). The Grandmother submits that the Grandson is not entitled to commission as the assets of the Grandfather have yet to be collected and that the claim is excessive. She relies on the text of s 66(1) for her contention that an executor having collected and administered the assets is a pre-condition:

> The court or a judge may in its or his discretion allow the executors or administrators a commission not exceeding 5% on the value of the assets *collected by them*, but in the allowance of disallowance of such commission the court shall be guided by its or his approval or otherwise of their conduct in the administration of the estate. [emphasis added]

100 In *Shiraz Abidally Husain and another v Husain Safdar Abidally and*

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others [2009] 4 SLR(R) 11, the High Court held that in deciding the quantum of commission to be awarded, the court should consider, among other things, the nature of the estate administered, the work done by the executor, the executor's conduct in administering the estate, whether professional assistance had been given for the administration, and whether the executor had done his duty according to law. In that case, the plaintiff executors after administering the estate for five years claimed a 1% commission, which the court granted after taking into account the factors just mentioned.

101 In the present case, the Grandson justifies his claim for commission on a number of bases, including the time and effort he has expended to deal with the lack of cooperation on the part of those occupying the Property in his attempt to effect its sale,[93] and the suggestion that he has been acting in a fair and reasonable manner in exercising his duty as sole executor.[94] However, I observe also that the bulk of the administration of the Grandfather's estate has not been completed. That is largely because the Property, being the main asset under the will, has not been sold and the proceeds therefore have yet to be distributed. The liabilities of the estate have also yet to be cleared. The court has no basis upon which to assess the executor's conduct. In my view, therefore, a claim for commission, at the present time, is premature.

Orders to be made

102 For the reasons above, I make the following orders:

(a) No order is made on Prayers 1 and 2.

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93 Grandson's Closing Submissions in S 274/2017 dated 21 November 2017 at para 139(a).

94 Grandson's Closing Submissions in S 274/2017 dated 21 November 2017 at para 139(c).

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(b) Prayer 3 is granted on the following terms: The Property shall be sold with vacant possession by the Grandson, in his capacity as the sole executor of the estate of the Grandfather, henceforth at any time in his sole discretion.

(c) Prayer 4 is granted on the following terms: The Grandmother, the Second Son and the Fourth Son shall within 7 days from the date of the order provide a set of keys to the Property to the Grandson with respect to the sale of the Property and allow the Property to be accessed by him, his property agents, any prospective purchasers and/or any parties involved in the same.

(d) Prayer 5 is granted on the following terms: The Grandmother, the Second Son and the Fourth Son shall deliver up vacant possession of the Property to the Grandson within 3 months of the execution of an option to purchase by a prospective purchaser of the Property.

(e) Prayer 6 is granted on the following terms: The Grandmother, the Second Son and the Fourth Son shall within 14 days from the date of this order provide the Grandson with the Certificate of Title to the Property or provide written confirmation by way of statutory declarations that they have undertaken reasonable efforts and have been unable to locate the same.

(f) Prayer 7 is granted on the following terms: The Grandmother, the Second Son and the Fourth Son shall within 14 days from the date of this order provide the Grandson with any and all documents relating to the assets and liabilities of the Grandfather, and in particular, the documents that the Grandmother, the Second Son and the Fourth Son have obtained from the Grandfather's room in the Property.

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(g) Prayer 8 is dismissed.

(h) The parties are to have liberty to apply.

103 I shall hear the parties on costs.

Valerie Thean

Judge

Mr Tan Siah Yong (ComLaw LLC) for the plaintiff in HC/S 274/2017 and the second defendant in HCF/OSP 9/2016;
Mr Johnny Seah (Seah & Co) for the third defendant in HCF/OSP 9/2016
Mr Darrell Low and Mr Samuel Wee (Yusarn Audrey) for the defendant in HC/S 274/2017 and the plaintiff in HCF/OSP 9/2016;
First defendant in HCF/OSP 9/2016, unrepresented.

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