IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 59

Originating Summons No 1100 of 2017

Between

TAN & AU LLP

… *Applicant*

And

(1) SEO PUAY GUAN
(2) SEOW PUAY TECK
(3) SEO PUAY YONG
(4) SEO PECK NGO
(5) SEO PECK GUAT
(6) SEO PUAY BENG
(7) SEO PUAY HIN

… *Respondents*

JUDGMENT

[Contract] – [Duress]
[Contract] – [Contractual terms] – [Express terms]
[Legal Profession] – [Remuneration] – [Stakeholding fees]

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Tan & Au LLP
v
Seo Puay Guan and others

[2019] SGHC 59

High Court — Originating Summons No 1100 of 2017
Dedar Singh Gill JC
12, 13 September; 12 October 2018

7 March 2019 Judgment reserved.

Dedar Singh Gill JC:

Introduction

1 This is an application by Tan & Au LLP ("the Applicant"), for the determination of how the net sales proceeds of 63 West Coast Park ("the Property") which it held as stakeholder for several months are to be distributed amongst the Respondents. The Applicant also seeks to be paid stakeholding fees and disbursements out of these proceeds.

Background facts

2 The Respondents are seven siblings (whom I shall refer to as "R1", "R2" *etc*, respectively). Their parents are the late Mr Seo Tian Hock and Mdm Tan Poh Geok, who passed away on 3 June 1995 and 19 November 2009

respectively. Both passed away intestate. At present, there has been no application for the grant of letters of administration for either of their estates.

3 In 1982, R1 and his then-wife purchased the Property. It is R2, R3 and R6's position in this application that prior to completion, R1 and his then-wife had sold the Property to the Respondents' parents (see [18] below).[1] Nonetheless, it is undisputed that the Property was registered in the names of R1 and his then-wife as joint tenants. Sometime in 2004, the manner of holding was changed to a tenancy-in-common. In 2008, R1's then-wife filed for divorce. In the divorce proceedings, R1 took the same position that R2, R3 and R6 take in this application – that the Property had been sold to their parents *before* completion in 1982, and that although the Property was registered in his and his former wife's names, it did not actually belong to either of them.[2] (I should mention that R1's position in the present proceedings is quite different and I will elaborate on that at a later point in this judgment.) Eventually, the parties reached a settlement as to how to deal with the Property for the purposes of the divorce proceedings. By way of a court order dated 23 July 2010, by consent, R1 was ordered to pay his former wife $1.5m for her 50% share and rights in the Property.[3] Thereafter, the Property remained registered solely in R1's name.

4 On 13 January 2017, R1 sold the Property to a third party for a sale price of $4.1m, with completion scheduled for 7 April 2017. However, about a month prior to completion, R7 lodged a caveat against the Property.[4] After some

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1 Affidavit of R2, R3 and R6 dated 8 June 2018, p 3.

2 Affidavit of R2, R3 and R6 dated 8 June 2018, p 9; NE, 12 September 2018, 81:7–14.

3 Affidavit of R1 dated 10 January 2018, p 42.

4 Affidavit of R1 dated 10 January 2018, p 7.

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negotiations, R1 and R7 entered into a settlement agreement dated 6 April 2017 ("the R1–R7 SA") by which R1 promised to pay R7 a sum of $430,000 out of the sales proceeds if R7 withdraws his caveat.[5] R7 then withdrew his caveat against the Property.

5 Meanwhile, on 4 April 2017, R2 to R6 instructed the Applicant to lodge a caveat against the Property on the basis that the Property belonged to their late mother, and that R1 was holding the Property as trustee for all the beneficiaries of her estate. The caveat was duly lodged on 5 April 2017, as confirmed by a letter from the Applicant dated 12 April 2017 ("the Letter"). I will set out the relevant details of the Letter in due course.

6 On 13 April 2017, R1 to R6 met at the Applicant's office in an attempt to resolve their disputes arising from the lodgement of the caveat. This meeting was initiated by R1.[6] After the meeting, the Applicant prepared several drafts of a settlement agreement which were circulated to R1 through his then-lawyer, who responded with proposed amendments on 18 and 20 April 2017.[7] However, the version of the settlement agreement which the parties eventually signed dated 21 April 2017 ("the SA") did not incorporate any of the amendments proposed by R1 (*ie*, the SA was in the form proposed by R2 to R6 on 19 April 2017).[8] Subsequently, R1 to R6 also signed a variation deed dated 3 May 2017 ("the VD"). I will set out the key portions of the SA and VD in a later section of this judgment. For present purposes, it need only be noted that pursuant to cll 6.1 and 6.2 of the SA (as varied by cl 2 of the VD), the parties agreed that

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5 Affidavit of R1 dated 10 January 2018, pp 174–175.

6 NE, 12 September 2018, 8:24–9:1.

7 Affidavit of R2, R3 and R6 dated 8 June 2018, pp 64–69 and 84–85.

8 Affidavit of R2, R3 and R6 dated 8 June 2018, p 70.

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R2 to R6 would withdraw their caveat if certain sums were paid to the Applicant to hold as stakeholder upon completion. These clauses read as follows:[9]

> 6.1 For completion of the sale of the Property, [R1] shall procure the following sums to be paid to [the Applicant] by way of cashier's order(s):
>
> 6.1.1 a sum of S$205,000.00 being 5% of the sale price of the Property which was paid by the Purchaser to [R1]; and
>
> 6.1.2 a sum of S$2,732,067.69 being the balance of the sale price of the Property …
>
> 6.2 In exchange for the said cashier's orders mentioned in clauses 6.1.1 and 6.1.2, [the Applicant] shall release the Withdrawal of Caveat (in respect of Caveat IE/795234J) to the Vendor's solicitors and provide to the said solicitors an undertaking that the said Withdrawal of Caveat will be lodged at the Singapore Land Authority within 3 working days of actual completion of sale of the Property.

7 On 28 April 2017, the sale of the Property was completed.

8 On 2 May 2017, R1 duly deposited $2,937,067.69 with the Applicant.[10]

9 In August 2017, the Applicant was discharged by R4 and R5. This was followed by R2, R3 and R6 doing the same in September 2017. However, as the Applicant was still the stakeholder of the sum deposited with it by R1, it commenced the present application to determine how that sum ought to be dealt with. In its originating summons filed on 29 September 2017 ("the OS"), the Applicant sought the following prayers:

> 1. Leave be granted to the Applicant to pay the sum of S$2,937,067.69 into Court being the net sales proceeds ("Net Sales Proceeds") arising out of the sale of [the Property].

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9 Affidavit of Au Thye Chuen dated 6 February 2018, p 34.

10 Affidavit of Au Thye Chuen dated 6 February 2018, p 2, para 3.

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> 2. [R1 to R7] appear and state the nature of their respective claims to the Net Sales Proceeds and maintain or relinquish the same and abide by such Court order as may be made herein.
>
> 3. Leave for the Applicant to apply to Court for a preliminary order of S$20,000.00 for disbursements to be deducted from the S$2,937,067.69 paid into Court to account of Applicant for out of pocket expenses at the outset of the Application which is to be taken into consideration upon the conclusion of the said matter against such of the Respondents as this Court deems fit.
>
> 4. That [R1] and [R7] refund the sums of S$690,000.00 and S$430,000.00 respectively which they had illegally obtained from the "Net Sales Proceeds".
>
> 5. The costs of this Application is to be agreed or taxed and paid by such parties as this Court deems fit to the Applicants.

For convenience, I refer to the above prayers as "prayer 1", "prayer 2" *etc*, respectively.

10 On 12 January 2018, Senior Assistant Registrar Christopher Tan ("the SAR") ordered as follows ("the 12 January Order"):

> By Consent …
>
> (a) Leave be granted to the Applicant to pay the balance stakeholding sum of $2,937,067.69 being the net sale proceeds arising out of the sale of [the Property], less the alleged stakeholding fees of $33,600, into Court; [and]
>
> (b) That the Respondents' rights at any time to dispute, claim and/or bring an action against the Applicant and/or claw back the alleged stakeholding fees (and/or any other sums which have been charged or deducted as stakeholding fees), whether in whole or in part, and/or for the Respondents' rights to bring this issue of the alleged stakeholding fees before the Court for determination at the hearing of this action (HC/OS 1100/2017) herein are reserved.

11 On 29 March 2018, the Applicant paid the sum of $2,903,467.69 (being $2,937,067.69 less $33,600) into court.

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Parties' cases

The Applicant's case

12 The Applicant makes no argument as to how the net sales proceeds should be divided amongst the seven Respondents, and claims to have no interest in the substantive proceedings.[11] However, the Applicant claims to be entitled to stakeholding fees and disbursements, which are to be paid out of the net sales proceeds *prior to* any distribution of the same amongst the Respondents. In this regard, the Applicant relies on four key documents. The first document is the Letter, mentioned at [5] above. In particular, paras 4, 5 and 6 of the Letter state:[12]

> 4. We now write to you on our costs for acting for you in the matters (without any court action). Our costs would range between S$8,000.00 to S$12,000.00. We estimate that the work would take about 20 hours to complete by way of settlement. We will write to you further if matters exceed 20 hours and/or if court action is required to be taken to resolve the matters, we will notify you of the same and inform you of our further costs in the matters.
>
> 5. In addition, costs will be payable if our firm were to act as stakeholder of the sales proceeds arising from the sale of the Property. *Our costs for acting as stakeholder will be S$4,000.00* (without any court action) and if interpleader action is required to be taken for payment of the monies into court, we will write to you on the amount of further costs payable.
>
> 6. Our costs mentioned in paragraphs 4 and 5 above are exclusive of disbursements. You will pay all disbursements incurred or to be incurred by us in discharging the work entrusted to us. We will also be entitled to render interim invoices to you periodically for settlement.
>
> [emphasis added]

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11 Applicant's Closing Submissions (Amendment No. 1), para 1.

12 Affidavit of Au Thye Chuen dated 6 February 2018, p 9.

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13 The second document is the SA, drafted by the Applicant and signed by R1 to R6 (see [6] above). Clauses 7 and 8 of the SA state:[13]

> 7. The Stakeholder Sum shall be held by [the Applicant] until probate or letters of administration has been obtained in respect of Seo Tian Hock, deceased and/or Tan Poh Geok, deceased or earlier if it is ascertained by [the Applicant] that probate or letters of administration is not required to be obtained for distribution of the Stakeholder Sum. *Any fee payable to [the Applicant] to act as stakeholder shall be deducted from the sale proceeds of the Property.*
>
> 8. The Stakeholder Sum shall be held by the Stakeholder on the following terms: -
>
> …
>
> 8.2 professional fees shall be payable to the stakeholder for acting as stakeholder in the matter and both parties (i.e. the Vendor [*ie*, R1] and 5 siblings) agree that *any professional fee paid to the stakeholder shall be deducted from the Stakeholder Sum before distribution*;
>
> [emphasis added]

14 The third document is the VD, also drafted by the Applicant and signed by R1 to R6 (see [6] above). Clauses 3 and 4 of the VD provide for the substitution of cll 7 and 8 of the SA with new clauses as set out in the VD.[14] For present purposes, it is not necessary to set out the precise wording of these new clauses as their overall effect remains unchanged: the Applicant is entitled to the payment of stakeholding fees out of the net sales proceeds of the Property.

15 The fourth and final document is a draft of a deed of family arrangement dated 18 July 2017 ("the DFA"), also prepared by the Applicant. The DFA was supposed to have been executed by all seven Respondents, but R1 and R7 never did so. Clause 3 of the DFA reads:[15]

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13 Affidavit of Au Thye Chuen dated 6 February 2018, p 28.

14 Affidavit of Au Thye Chuen dated 6 February 2018, pp 34–36.

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> (3) The parties herein also agree to the payment of [the Applicant's] outstanding legal bills, namely, bills no. 6230 ($4,200.00), 6236 ($7,400.00) & 6237 ($4,200.00) totalling $15,800.00 to be deducted from the stakeholding monies exhibited herein as Appendix A.

16 On the basis of the aforementioned documents, the Applicant argues that there is an agreement for it to receive stakeholding fees and disbursements out of the net sales proceeds prior to any distribution of the same amongst the Respondents. Importantly, the Applicant argues that this agreement was for *monthly* stakeholding fees of $4,000, as opposed to a one-off payment of $4,000. Separately, the Applicant also claims to have incurred monthly disbursements of $200. Thus, for stakeholding the net sales proceeds of the Property for nine months between May 2017 and January 2018 before paying that sum into court, the Applicant claims a total of $37,800 (comprising $36,000 in fees and $1,800 in disbursements).[16] I note that this sum differs from the figure of $33,600 stated in para (a) of the 12 January Order as the amount of stakeholding fees allegedly owed to the Applicant (see [10] above). For the purposes of the present judgment, I will take it that the Applicant's claim is for the higher figure of $37,800, as that is the position taken in its closing submissions.

The Respondents' cases

17 I turn now to the Respondents' cases. Apart from R7, the Respondents may be divided into two camps.

18 The first camp comprises R2, R3 and R6, who are represented by Yeo-Leong & Peh LLC. Their case is that the Respondents' rights to the net sales

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15 Affidavit of Au Thye Chuen dated 6 February 2018, p 16.

16 Applicant's Closing Submissions (Amendment No. 1), paras 18 and 26.

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proceeds of the Property are as set out in the SA (as varied by the VD), which is a genuine *compromise agreement* aimed at resolving the following disputes between the Respondents: (a) whether the Property was held on trust by R1 for the Respondents' parents' estates; and (b) whether all of the Respondents were entitled (as beneficiaries of their parents' estates and/or in their own right) to the Property in equal shares.[17] In particular, R2, R3 and R6 rely on the preamble and cll 2 and 3 of the SA, the relevant portions of which read as follows:[18]

> **WHEREAS**
>
> A. The parties herein, and [R7] who is not party to this Agreement, are siblings. Their parents were Seo Tian Hock and Tan Poh Geok.
>
> B. [R1] is the registered proprietor of the property at 63 West Coast Park, Singapore (hereinafter "the Property").
>
> C. [R2 to R6] claimed that the Property was originally purchased by [R1] and his former wife Yee Yeow Kum but before completion of the purchase of the Property, it was sold by [R1] and his former wife to his parents Seo Tian Hock and Tan Poh Geok in or about 1982 for valuable consideration.
>
> D. The siblings' parents Seo Tian Hock and Tan Poh Geok had at different times, in that order, died intestate and [R2 to R6] have all along claimed and maintained that the Property was held on trust by [R1] for the estate of Seo Tian Hock, deceased and Tan Poh Geok, deceased.
>
> …
>
> G. The parties now enter into this Agreement to resolve their dispute on the terms and conditions set out in this Agreement.
>
> **NOW IT IS HEREBY AGREED AS FOLLOWS:**
>
> …
>
> 2. [R1] hereby acknowledges, confirms and agrees that *the Property, though registered in his sole name, is all along held on trust by him for the estate of Seo Tian Hock, deceased and Tan Poh Geok, deceased and / or all their 7 children.*

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17 R2, R3 and R6's Closing Submissions, paras 37 and 41.

18 Affidavit of Au Thye Chuen dated 6 February 2018, pp 26–27.

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> 3. As both Seo Tian Hock and Tan Poh Geok died intestate, *all their 7 children, namely [R1 to R7] are entitled to, among other things, the Property in equal shares.*
>
> …
>
> [emphasis added]

19 Being a compromise agreement, the SA (as varied by the VD) takes over as the basis of the parties' legal and contractual relationship, and puts an end to the issues previously raised by the Respondents which led to the formation of the SA. On this basis, R2, R3 and R6 argue that R1 is now *precluded* from re-opening the issues of whether there was a trust over the Property and in what shares the Respondents were entitled to the Property.[19] Instead, these issues are to be dealt with in accordance with the terms of the SA and the VD – which provide, *inter alia*, that all seven Respondents were entitled to the Property in equal shares.[20] They, however, reserve their position on whether R7's share as provided for under the SA and VD is affected by the R1–R7 SA, which appears to limit R7's entitlement to $430,000 only.[21]

20 The second camp comprises R1, R4 and R5, who are represented by Central Chambers Law Corporation. Their response to R2, R3 and R6's case is two-fold. First, the SA and VD are both invalid because they are premised on an alleged trust which does not in fact exist.[22] Secondly, the SA and VD are both void because R1 had signed them under duress.[23] According to them, R1 is the sole legal *and* beneficial owner of the Property and is thus entitled to the entirety of the net sales proceeds.

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19 R2, R3 and R6's Closing Submissions, paras 44–45.

20 R2, R3 and R6's Closing Submissions, para 561.

21 R2, R3 and R6's Closing Submissions, paras 561–562.

22 R1, R4 and R5's Closing Submissions, para 67.

23 R1, R4 and R5's Closing Submissions, para 70.

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21 As for R7, who is unrepresented, his case appears to be substantially aligned with the first camp's position in that he claims to be entitled to an equal share of the net sales proceeds.[24] R7 also argues that he is entitled to retain the $430,000 that he had earlier received pursuant to the R1–R7 SA.[25]

22 Finally, the Respondents' main arguments in response to the Applicant's claim for $37,800 in stakeholding fees and disbursements may be summarised as follows:

(a) R1 is not liable for the fees and disbursements because the SA and VD are void for duress.[26]

(b) R4 and R5 are only liable for a one-off payment of $4,000 in stakeholding fees, pursuant to the Letter. There is nothing in the Letter which indicates that the $4,000 fee is a recurring monthly charge.[27] In any event, a monthly fee of $4,200 (including disbursements) constitutes overcharging within the meaning of r 17 of the Legal Profession (Professional Conduct) Rules 2015 (Cap 161, 2015 Ed) ("LPPCR").

(c) R2, R3 and R6 take the same position as R4 and R5 (see [(b)] above).[28]

(d) R7 argues that he is not liable for the Applicant's fees and disbursements as he is not a party to the SA and VD.[29]

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24 R7's Closing Submissions, para 7.

25 R7's Closing Submissions, para 6.

26 R1, R4 and R5's Closing Submissions, para 75(i).

27 R1, R4 and R5's Closing Submissions, para 75(v).

28 R2, R3 and R6's Closing Submissions, paras 450–451.

29 R7's Closing Submissions, paras 5 and 8.

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My decision

23 The Applicant has asked this court to determine the Respondents' entitlements to the net sales proceeds which it previously held as stakeholder and has now paid into court (save for $33,600, being the alleged stakeholding fees). The issue of the Respondents' entitlements to the net sales proceeds is inextricably linked to the anterior question of the *beneficial ownership of the Property*. If the Property was (as R1, R4 and R5 contend) *wholly owned* by R1 at the time of its sale, then it follows that he alone is entitled to the net sales proceeds arising therefrom. If, however, the Property was (as R2, R3 and R6 contend) held *on trust* by R1 at the time of its sale, the net sales proceeds form part of their parents' estates, which then fall to be divided in accordance with the rules of distribution in the Intestate Succession Act (Cap 146, 2013 Rev Ed) ("Intestate Succession Act"). In this regard, it is important to note that letters of administration for both parents' estates have yet to be granted (see [2] above). So my findings on the entitlements of the Respondents do not mean that the moneys can be paid to them yet. Thus, to be clear, I emphasise that any orders made in these proceedings are *not* to be construed as orders that the net sales proceeds be distributed to the various Respondents forthwith.

Beneficial ownership of the Property

24 I begin by considering whether the Property was wholly owned by R1 or held on trust by R1 for the Respondents' parents' estates at the time of its sale. While this issue would ordinarily be resolved by the application of the principles of the law of equity and trusts, the present scenario is somewhat unusual given the existence of the SA and VD. In particular, as set out in cl 2 of the SA, it was *agreed* between R1 to R6 that R1 held the Property on trust for the Respondents' parents' estates (see [18] above). The critical question is this: what is the legal effect of such an agreement? In my judgment, the SA (as varied

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by the VD) is a compromise agreement by which R1 to R6 agreed that R1 held the Property on trust, and that each of the seven Respondents was beneficially entitled to the Property in equal shares. As R2, R3 and R6 point out, it is evident from para G of the preamble of the SA that the agreement was entered into precisely for the purpose of definitively resolving the dispute regarding the beneficial ownership of the Property, at least as between R1 to R6 (see [18] above).

25 As against this, R1, R4 and R5 submit that the SA and VD are "invalid" because they are premised on a trust which, according to them, does not actually exist (see [20] above). In this regard, they submit at length on the events that allegedly took place between R1 and his parents in 1982.[30] As earlier foreshadowed, the position which R1 now takes is *inconsistent* with that taken in the earlier divorce proceedings. To recapitulate, R1 previously maintained that the Property had been sold to his parents *before* the completion of the sale to him and his then-wife in 1982, and thus although the Property was registered in both his and his then-wife's names, it did not actually belong to either of them (see [3] above). However, R1 now takes the position that he entered into the agreement to sell and transfer the Property to his parents only *after* completion, but that this "terminated/fell through" because R1's parents had stopped making the requisite instalment payments sometime in 1987.[31] R1 further argues that even if the Respondents' parents had purchased the Property from R1, no trust could have been created over the Property in his parents' favour because the statutory requirement that a declaration of trust in respect of any immovable property must be evidenced in writing was not satisfied (see s 7 of the Statute of Frauds 1677 (c 3) (UK), which, according to R1, applies because the trust in

30 R1, R4 and R5's Closing Submissions, paras 46–66.

31 Affidavit of R1 dated 10 January 2018, paras 8–11.

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question would have been made in or around 1982 and thus predates s 7 of the current Civil Law Act (Cap 43, 1999 Rev Ed)).[32]

26 In my view, the argument that the SA and VD are "invalid" because they are premised on a trust that does not actually exist fundamentally misapprehends how compromise agreements operate. The relevant principles are comprehensively set out in *Gay Choon Ing v Loh Sze Ti Terence Peter and another appeal* [2009] 2 SLR(R) 332 at [54], [56] ("*Gay Choon Ing*") and *Real Estate Consortium Pte Ltd v East Coast Properties Pte Ltd and another* [2011] 2 SLR 758 ("*Real Estate*") at [53]–[61] and may be summarised as follows:

(a) A settlement agreement to resolve disputes between parties puts an end to all the contested issues covered by the agreement. Thereafter, it is the settlement agreement that governs the parties' legal relationship.

(b) The claims and counterclaims previously raised need not have any basis in fact or in law. They fall away.

(c) The jurisprudential basis of a settlement agreement lies in contract. Therefore, the prior issues may still be relevant where the settlement agreement is affected by illegality, fraud, duress, undue influence or mistake.

27 In sum, where parties have agreed to a certain factual and/or legal basis in a compromise agreement, that state of affairs *takes over as the basis of the parties' relationship*. The argument that the SA and VD are "invalid" because they are premised on the existence of a trust over the Property when there is in

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[32] R1, R4 and R5's Submissions, para 31; R1, R4 and R5's Closing Submissions, para 15.

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fact no such trust flips the point on its head: a compromise agreement is *not* rendered "invalid" by proving that what is agreed to therein has no foundation in fact or in law. In fact, parties are *precluded* from reneging on the mutual compromise and re-opening the issues previously raised which led to the formation of the compromise agreement in the first place, except in the limited scenarios mentioned at [26(c)] above.

28 The English Court of Appeal decision of *Colchester Borough Council v Smith and others* [1992] 1 Ch 421 ("*Colchester*") is also instructive as the facts are somewhat analogous. That case involved a dispute between the plaintiff council and the defendant over the latter's rights, title or interest to a plot of land which he leased from the plaintiff council. The parties resolved this dispute by way of a written agreement for the lease of the land for a fixed term. In particular, cl 4 of this agreement contained an acknowledgment by the defendant that his possession of the land had been as a bare licensee or tenant at will and that he had not obtained any interest in the land by adverse possession. Subsequently, upon expiry of the agreement, the plaintiff council commenced proceedings to regain possession of the land and sought declarations that it was the freehold owner of the land in question, and that the defendant had no estate or interest in the land except as a tenant pursuant to the written agreement. Finding in favour of the plaintiff, Dillon LJ held that the written agreement was "a *bona fide* compromise of a dispute and that [the defendant], who had the advice of his solicitors and signed the agreement through them, [was] estopped by the terms of the agreement he made from going behind it and litigating the antecedent dispute" (at 435). The key proposition to be gleaned from *Colchester* is that parties are free to enter into a compromise agreement to resolve disputes over title or ownership to immovable property but, once that is done, they are precluded from re-opening the issues previously

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raised. It follows that the substantive merits of those underlying disputes are irrelevant. Rather, the more important question is whether the compromise agreement *itself* should be upheld.

29 Accordingly, applying the principles set out in *Gay Choon Ing, Real Estate* and *Colchester* to the present dispute, it does not matter whether R1 actually held the Property on trust for his parents' estates. Rather, the real inquiry is whether, as a matter of *contract law*, there are grounds to set aside the SA and VD and re-open the issues which these agreements purportedly resolved, including the issue of whether R1 held the Property on trust.

30 This brings me to the second and more pertinent argument raised by R1, R4 and R5: that the SA and VD are void because R1 had signed them under duress (see [20] above). Specifically, R1 refers to the fact that R2 to R6 had lodged a caveat against the Property just two days prior to the completion date of the sale to a third party (see [5] above). According to R1, the Applicant (which was acting for R2 to R6 at the time) had allegedly told him that this caveat would only be withdrawn if he accepted the terms stipulated by R2 to R6 and signed the SA. R1 thus claims that he signed the SA under the pressure of late completion.[33]

31 However, under cross-examination, R1 accepted that the lawyers from the Applicant had never spoken to him *directly* after the meeting on 13 April 2017. Rather, the Applicant had only communicated with R1 through his then-lawyers, Low Yeap Toh & Goon LLP.[34] Accordingly, it could not have been the case that the Applicant had told R1 that R2 to R6 would only withdraw their

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33 R1, R4 and R5's Closing Submissions, para 70.

34 NE, 12 September 2018, 12:12–21.

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caveat if he signed the SA. In any event, R1's argument runs into further difficulties. There are two elements required to establish actionable duress: (a) pressure amounting to compulsion of will of the victim; and (b) illegitimacy of the pressure exerted (see *E C Investment Holding Pte Ltd v Ridout Residence Pte Ltd and another (Orion Oil Ltd and another, interveners)* [2011] 2 SLR 232 ("*E C Investment*") at [48] and [51]). In determining whether there is coercion of the will, it is material to consider the following factors (*E C Investment* at [44], citing *Pao On v Lau Yiu Long* [1980] AC 614):

(a) whether the person alleged to have been coerced did or did not protest;

(b) whether, at the time he was allegedly coerced into making the contract, he did or did not have an alternative course open to him such as an adequate legal remedy;

(c) whether he was independently advised; and

(d) whether after entering the contract he took steps to avoid it.

32 Having regard to the factors above, it is evident that the pressure R1 claims to have been under at the material time does not rise to the level of a "coercion of will". First, and most significantly, R1 was at all material times represented by his conveyancing lawyer from Low Yeap Toh & Goon LLP, Mr Tan Chong Peng Kenneth ("Mr Tan"). As R1 accepted in cross-examination, he had the benefit of Mr Tan's legal advice at the time when he received the drafts of the SA.[35] In fact, it is evident on the face of the SA itself that R1 had signed it *in the presence* of Mr Tan, who had then countersigned

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[35] NE, 12 September 2018, 17:15–17.

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the same.[36] R1's argument that he allegedly had "no option" to seek legal advice because he had been told that R2 to R6's terms were "non-negotiable"[37] must be rejected: his being told of that fact does not prevent him from bringing the proposal to Mr Tan to seek legal advice on his options on how to deal with the caveat lodged by R2 to R6.

33 This brings me to the second factor: the availability of alternative courses as an adequate legal remedy. R1 readily admitted in cross-examination that he had been advised by Mr Tan that apart from negotiating with R2 to R6, he could also commence legal proceedings to remove the caveat lodged against the Property.[38] However, because legal proceedings would delay the scheduled completion, cause him to incur late interest payment daily,[39] and possibly open him up to being sued by the purchaser of the Property for breach of contract,[40] R1 instead *chose* to initiate the meeting with R2 to R6 on 13 April 2017 to "negotiate [the] settlement of outstanding issues arising from the lodgement of the [caveat] without litigation in Court".[41] This meeting eventually led to the SA (see [6] above). In other words, when his lawyer presented him with his available options, R1 deliberately *chose* to negotiate with R2 to R6 instead of commencing legal proceedings to remove the caveat. This being the case, it does not lie in R1's mouth to say that he had been *coerced* to sign the SA.

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36 Affidavit of Au Thye Chuen dated 6 February 2018, p 30.

37 R1, R4 and R5's Closing Submissions, para 70(v).

38 NE, 12 September 2018, 7:31–8:7.

39 Affidavit of R1 dated 8 June 2018, paras 6(e) and 6(f); R1, R4 and R5's Closing Submissions, para 70(vi).

40 R1, R4 and R5's Closing Submissions, para 70(vii).

41 Affidavit of R1 dated 8 June 2018, para 10.

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34 The situation is even clearer where the VD is concerned. R1 was represented by Mr Tan at the time when the Applicant circulated drafts of the VD.[42] R1 signed the VD in Mr Tan's presence, who then countersigned the same.[43] Most significantly, R1 admitted in cross-examination that he had *not* been pressured to enter into the VD at all:[44]

> Q: Since this variation deed was at your request and for your benefit, it was in your interest to enter into this variation deed and you were not pressured to do so. You agree?
>
> A: Yes.

35 I come now to the factor of whether the person alleged to have been coerced did or did not protest. Although several draft versions of the SA had been exchanged, R1 did not at any point in time protest or object to the clauses which stated that he held the Property on trust and/or that each of the seven Respondents was entitled to an equal share of the Property. As R1 admitted under cross-examination (and is evident on the face of the documents), none of the proposed amendments to the drafts of the SA as communicated by Mr Tan on 18 and 20 April 2017 touched on the issue of the beneficial ownership of the Property.[45]

36 It is also significant to note that even after signing the SA and VD in April and May 2017, R1 did not protest or object to these two agreements, or take steps to set aside or nullify the same,[46] at least up until his affidavit dated 10 January 2018 filed in the present proceedings. In other words, the first time

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42 Affidavit of R2, R3 and R6 dated 8 June 2018, pp 87–111.

43 Affidavit of Au Thye Chuen dated 6 February 2018, p 38.

44 NE, 12 September 2018, 57:17–22.

45 NE, 12 September 2018, 23:3–8 and 27:29–32; Affidavit of R2, R3 and R6 dated 8 June 2018, pp 64–69 and 84–85.

46 NE, 12 September 2018, 61:9–28.

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that R1 alleged that he had been forced or pressured into signing the SA and VD was more than half a year after the fact.[47] In fact, during the interim period, R1's behaviour was entirely consistent with the agreement contained in the SA and VD. In particular, I note that in R1's email to the other Respondents on 4 August 2017, he said:[48]

> I believe we can sit down together to work out the quickest method to distribute the monies presently held in the CVY account.

R1 confirmed in his cross-examination that this email was intended to follow up on the distribution of the sum held by the Applicant as stakeholder among the Respondents, pursuant to the DFA.[49] The DFA expressly referred to and was in fact premised on the SA and VD. This email is thus significant because it demonstrates that R1 accepted that the sum held by the Applicant as stakeholder was to be distributed among the Respondents in accordance with the SA and the VD, and was even actively taking steps to carry that distribution into effect. If R1 had truly signed the SA and VD under duress, he would not have acted in this manner. In this connection, it is important to bear in mind that R1 was by no means a naïve, simple-minded or weak-willed person. He had worked with an insurance company for nearly 40 years, where he was an agency manager and a top performer. He also held office as director and secretary in Seo's & Sons Pte Ltd for six years, and was the sole proprietor of Everton Enterprise for 29 years.[50]

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47 Affidavit of R1 dated 10 January 2018, paras 39–40.

48 R2, R3 and R6's Closing Submissions, para 140.

49 NE, 12 September 2018, 73:7–28.

50 NE, 12 September 2018, 39:32–40:26.

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37 In conclusion, I find that R1 was *not* under pressure that amounted to a "coercion of will", and therefore cannot be said to have entered into the SA and VD under duress. For this reason, I hold that the SA (as varied by the VD) is a *valid* compromise agreement binding on R1 to R6. R1 is thus precluded from re-opening the dispute as to whether he held the Property on trust for his parents' estates, that issue having been definitively resolved in the *affirmative* by cl 2 of the SA.

The Respondents' entitlements to the net sales proceeds

38 Since the Property was held on trust by R1, it follows that the net sales proceeds form part of the Respondents' parents' estates and fall to be divided in accordance with the rules of distribution set out in the Intestate Succession Act. I emphasise that the question of the division of the property (or proceeds thereof) belonging to the Respondents' parents' estates – after payment of the expenses of due administration as prescribed by the Probate and Administration Act (Cap 251, 2000 Rev Ed) – among the persons entitled to succeed beneficially to them under s 5 of the Intestate Succession Act is ***not*** the subject of the present application. Such distribution is to be determined and effected by the administrators of the Respondents' parents' estates, if and when the relevant letters of administration are granted. The issue presently before the court is a more specific one, *ie*, how the Respondents' entitlements to the net sales proceeds of the Property are *affected by the SA and VD*. This is a matter of *contract law*, which is a private arrangement between the relevant parties, and *overlays* the statutory regime. In other words, while the administrators of the Respondents' parents' estates are to determine and effect the distribution of the estates according to the rules set out in the Intestate Succession Act, as between the Respondents who are bound by what has been agreed to in the SA and VD,

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a subsequent reshuffling of the proceeds which R1 and R7 have received may become necessary.

39 I turn now to consider the relevant contractual provisions. The obvious starting point is cl 3 of the SA (see [18] above), by which it was agreed between R1 to R6 that all seven Respondents were entitled to receive an equal share of the Property. It bears reiterating that R1 is precluded from arguing otherwise because the SA (as varied by the VD) is a valid compromise agreement binding upon R1 to R6 (see [27] and [37] above). Following from this, in principle, all seven Respondents should receive an equal share of the net sales proceeds of the Property when the parents' estates are eventually divided.

40 However, there is an added complication to this: R1 and R7 each received certain sums out of the sales proceeds of the Property *prior to* the sum of $2,937,067.69 being deposited with the Applicant as stakeholder. For this reason, there are provisions in the SA and VD which deal *specifically* with R1's and R7's respective entitlements to the sum which the Applicant held as stakeholder. I begin with R1, who received a sum of money to settle and pay off the loan amount outstanding under a mortgage secured on the Property. This is reflected in cll 1 and 4 of the VD (which vary cll 4 and 8 of the SA respectively). In particular, cll 8.3 to 8.5 of the varied SA read as follows:[51]

> 8.3 [R1] has deducted a sum of S$683,416.48 from the sale proceeds of the Property to settle and pay to UOB the Loan Amount Outstanding at the time of completion of sale of the Property. The parties hereby direct and authorise the Stakeholder to take into consideration of the amount of S$683,416.48 deducted by [R1] from the sale proceeds of the Property to settle and pay UOB the Loan Amount Outstanding.
>
> 8.4 *If [R1's] entitlement to the Estates under the Intestate Succession Act shall be* ***less than S$683,416.48, [R1] shall***

[51] Affidavit of Au Thye Chuen dated 6 February 2018, p 36.

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> ***not be entitled to any further payment from the Stakeholder Sum*** *and [R1] shall have no claims whatsoever to the Stakeholder Sum.*
>
> 8.5 *If the sum of S$683,416.48 deducted by [R1] from the sale proceeds of the Property to fully settle the Loan Amount Outstanding at the time of completion of the sale of the Property is* ***in excess of [R1's] entitlement to the Estates*** *(i.e. S$683,416.48 less the amount of [R1's] entitlement), [R1]* ***shall forthwith repay any such excess payment*** *to the Estates or the 5 Siblings equally on demand being made by the 5 Siblings to [R1] and until such repayment is made, such excess payment shall be deemed to be a debt owing by [R1] to the Estates and/or the 5 Siblings.*
>
> [emphasis added in italics and bold italics]

Although these clauses state that R1 had received $683,416.48, it appears that R1 had in fact received a slightly larger sum of $690,000. This is evidenced by a letter from R1's then-lawyers dated 24 April 2017, asking that a cashier's order for $690,000 be provided "in favour of UOB for Seo Puay Guan".[52]

41 I turn now to set out the provisions affecting R7's entitlement to the net sales proceeds. As mentioned at [4] above, R7 received a sum of $430,000 pursuant to the R1–R7 SA, in exchange for removing the caveat that he had lodged against the Property. This is reflected in cl 5 of the SA and cl 4 of the VD (which varies cl 8 of the SA). In particular, cl 8.2 of the varied SA provides:[53]

> 8.2 Prior to the distribution of the Stakeholder Sum to the 5 Siblings, the parties agree that [R7], who is not a party to the Settlement Agreement, has already been paid a sum of $430,000 by [R1] from the sales proceeds of the Property. The parties hereby direct and authorise the Stakeholder to take into consideration of the amount of S$430,000.00 paid to [R7] and *if [R7's] entitlement to the Estates under the Intestate Succession Act shall* ***be more than S$430,000.00****, [R7] shall be* ***entitled***

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52 Affidavit of Au Thye Chuen dated 26 September 2017, p 12.

53 Affidavit of Au Thye Chuen dated 6 February 2018, pp 35–36.

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> ***to further payment*** *from the Stakeholder Sum to make up the underpayment payable to him.*
>
> [emphasis added in italics and bold italics]

42 As can be seen, the SA (as varied by the VD) contemplates that R1's and R7's respective entitlements under the Intestate Succession Act are to be calculated ***before*** any determination is made as to whether they are entitled to receive a portion of the net sales proceeds of the Property that were at the time being held by the Applicant as stakeholder (referred to as the "Stakeholder Sum" in the text of these provisions). To put it simply:

(a) In relation to R1, cll 8.4 and 8.5 provide that if the amount he has already received is *greater than* his total entitlement to his parents' estates, the amount in excess must be repaid forthwith, on such demand being made by R2 to R6.

(b) In relation to R7, cl 8.2 provides that if his total entitlement to his parents' estates is *greater than* the amount he has already received, he is entitled to further payment out of the net sales proceeds.

43 Since R1 to R6 have agreed to these clauses, they are bound to act in accordance with them. This means that regardless of how the administrators divide the property of the parents' estates among the Respondents, R1 to R6 are *contractually obligated* to ensure that the *eventual distribution* of the net sales proceeds complies with cll 8.2 to 8.5 of the SA (as varied by the VD), as well as all the other clauses set out therein. I emphasise that my holding on this issue is confined to how the provisions of the SA and VD affect the Respondents' entitlements to the net sales proceeds merely *as a matter of contract law*, and do not displace the distribution rules set out in the Intestate Succession Act.

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44 Unfortunately, that eventual distribution is presently unknown. The letters of administration have yet to be granted and there is no information on the property comprising the Respondents' parents' estates before this court. The total amount actually available for distribution to the Respondents under s 5 of the Intestate Succession Act (*ie*, the Respondents' parents' estates less the expenses of due administration) is unknown. Therefore, whether R1's and R7's respective total entitlements to their parents' estates under the Intestate Succession Act are less or greater than the amounts that they have already received also remains unknown. In the premises, it is also not possible to determine the *specific quantum of net sales proceeds* that R1 and R7 are entitled to receive (if at all) pursuant to cll 8.2 to 8.5 of the varied SA.

45 There is a further point to be made specifically in respect of R7. As alluded to at [19] above, under the R1–R7 SA, it was agreed that R7's entitlement would be limited to $430,000. The specific clause in question reads:[54]

> (1) [R1] shall pay [R7] a sum of S$430,000.00 for [R7] to withdraw the Caveat and move out/vacate [the Property] with no further claim whatsoever for the completion of the sale of the Property scheduled on 7th April 2017 to take place smoothly and without any obstruction or hindrance.

This clause clearly contradicts cl 8.2 of the varied SA, which contemplates that R7 may ultimately receive *more than* $430,000 by virtue of further payment out of the net sales proceeds being held by the Applicant as stakeholder at the time (see [41] and [42(b)] above). How then are these two clauses in the two different agreements to be reconciled? In my view, since R7 agreed that he would receive the sum of $430,000 and pursue "no further claim whatsoever", for him to actively pursue a claim that he is entitled to more than $430,000 would likely

[54] Affidavit of R1 dated 10 January 2018, p 174.

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constitute a breach of the R1–R7 SA. However, this is a unique situation where R1 to R6 have *separately* agreed to distribute the net sales proceeds in a certain way to account for R7 having previously received the sum of $430,000, and the logical consequence of that agreement between R1 to R6 is that R7 *may* stand to benefit by receiving further payment out of the net sales proceeds such that the total sum he receives exceeds $430,000. In these circumstances, I do not consider that R7's receipt of more than $430,000 would amount to a breach of the R1–R7 SA, as he is merely the passive beneficiary of a separate contract to which he was not even a party (*ie*, the SA and VD entered into by R1 to R6). Thus, in my view, cl 3 of the R1–R7 SA does *not* stand as an obstacle to the performance of cl 8.2 of the varied SA. In other words, although R7 has already received $430,000, he may receive a further payment out of the net sales proceeds so as to make up his total entitlement under the Intestate Succession Act, simply by virtue of R1 to R6 complying with their contractual obligation under cl 8.2 of the varied SA.

46 I make one final point before leaving this issue. This concerns prayer 4 of the OS – that R1 and R7 refund the sums of $690,000 and $430,000 respectively which they had "illegally obtained" from the net sales proceeds (see [9] above). I note that in its closing submissions, the Applicant did not make any specific arguments or provide any elaboration as to what it meant by its assertion that those sums had been "illegally obtained". However, in its supporting affidavit dated 26 September 2017, the Applicant did provide the following explanation:[55]

> … The distribution of the said balance sale proceeds are [*sic*] contested by [R1] and [R7] herein despite their wrongfully claiming and taking monies amounting to S$690,000.00 and S$430,000.00 respectively from the [sales] proceeds of [the

[55] Affidavit of Au Thye Chuen dated 26 September 2017, para 3(b).

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> Property] and despite the fact that it was *illegal for them to do so in the absence of Grant of Probate or the Letters of Administration or a signed Deed of Family Arrangement*. … [emphasis added]

47 Although the Applicant did not specify the portions of the DFA that it was referring to, the following clauses appear to be relevant:[56]

> **WHEREAS**
>
> (A) In the sale of [the Property], $430,000.00 was paid out to [R7] and $690,000.00 was paid out to [R1] from the sale price which sale proceeds rightly belonged to the Estate of Mdm TAN POH GEOK in the absence of Grant of representation.
>
> (B) [R2 to R6] who are also beneficiaries of the said Estate, are greatly disadvantaged by the afore-said payments and are desirous of being treated on a level playing field as between all seven beneficiary SEO siblings.
>
> **NOW, IT IS HEREBY AGREED AS FOLLOWS:**
>
> (1) Upon the execution of this agreement by all seven SEO siblings herein, [R2 to R6] shall each be entitled to a payment of $430,000.000 from the stakeholding monies currently held by [the Applicant] which are part of their inheritance.
>
> …
>
> (4) In the event that one or more of the SEO siblings refused to execute this DFA, any one or more of the other SEO siblings are entitled to proceed to the Supreme Court to apply for the refund to the said Estate of the $430,000.00 and $690,000.00 payments which are paid out in the absence of Grant of Representation during the conveyance of [the Property].
>
> …

48 The Applicant's argument on this point thus seems to be as follows. R1 and R7 *should not* have received any portion of the sales proceeds of the Property prior to the grant of letters of administration, since such proceeds rightfully belong to the Respondents' parents' estates. On that basis, and given

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[56] Affidavit of Au Thye Chuen dated 6 February 2018, pp 15–16.

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the Respondents' failure to arrive at an agreement in the terms of the DFA, the Applicant prays for R1 and R7 to "refund" these sums that they have received.

49 It is important to bear in mind the particular context in which this application arose. When the Applicant filed the OS in September 2017, it was the stakeholder of the net sales proceeds. It is therefore understandable why the Applicant thought it was appropriate, at the time, to seek a prayer for sums which it thought had been "illegally" paid out of the net sales proceeds to be refunded, presumably in order that these amounts could be safeguarded by the Applicant together with the rest of the moneys, for the Respondents' benefit. However, since then, the net sales proceeds have been paid into court and the Applicant is no longer charged with the duty of stakeholding and safeguarding the net sales proceeds of the Property. Additionally, I have found that the Property was held on trust and so the net sales proceeds thereof form part of the Respondents' parents' estates. In these circumstances, it seems to me that it is for the administrators – if and when letters of administration are granted – to take the necessary steps to call in all the estate assets, which may include the amounts which were previously paid out to R1 and R7. Conversely, the Applicant no longer has any interest in safeguarding the net sales proceeds, and so it is not for the Applicant to seek a prayer that the amounts "illegally" paid out of the net sales proceeds to R1 and R7 be refunded. I therefore decline to make any order on prayer 4 of the OS.

The Applicant's claim to payment of stakeholding fees and disbursements

50 I turn now to consider the Applicant's claim in these proceedings. As mentioned at [16] above, the Applicant argues that it is contractually entitled to $37,800 in fees and disbursements for acting as stakeholder from May 2017 to January 2018, and that this amount is to be paid out of the net sales proceeds

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prior to any distribution of the same to the Respondents. The key question is this: what quantum of fees and disbursements is the Applicant entitled to? In my view, based on an objective construction of the relevant documents, the agreement was for the Applicant to receive a one-off payment of $4,000 in stakeholding fees, plus disbursements incurred in the course of discharging its work, subject to proof. My reasons are as follows.

51 The appropriate starting point is the wording of para 5 of the Letter, which sets out the parameters of the fee arrangement between the Applicant and R2 to R6 (see [12] above). I refer, in particular, to the phrase that the Applicant's "costs for acting as stakeholder *will be S$4,000.00*" [emphasis added].[57] The plain and ordinary language used indicates that the Applicant's fees are *fixed* at $4,000. There is no further suggestion in this paragraph, or indeed in any other part of the Letter, that the fee of $4,000 is to be a *monthly* recurring charge for however long the Applicant acts as stakeholder. Indeed, the Applicant admits that "the fees [in the Letter] were not expressly stated to be monthly-recurring".[58] However, the Applicant insists that it had *meant* for those fees to be for a single month and further explains that it had provided a quote in these terms because it "expected the matter to be resolved within 20 hours of legal work".[59] This explanation must be rejected. An objective reading of para 5 or the Letter as a whole clearly does not support the Applicant's case that the stakeholding fees quoted are contingent on it only spending 20 hours on the matter. As the drafter of the Letter, it was incumbent on the Applicant to have stated that clearly if that was indeed its position. Having failed to do so, the objective construction of the document – that the Applicant is only entitled to a

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57 Affidavit of Au Thye Chuen dated 6 February 2018, p 9.

58 Applicant's Closing Submissions (Amendment No. 1), para 9.

59 Applicant's Closing Submissions (Amendment No. 1), para 9.

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one-off payment of $4,000 in fees for the entire duration for which it acted as stakeholder – must prevail. I further add that the Applicant only has itself to blame for assuming that the matter would only take 20 hours to resolve, given that this turned out to be a rather significant under-estimation.

52 As for the SA and VD (see [13] and [14] above), although they contain references to fees payable to the Applicant as stakeholder, these documents do not set out a specific quantum of fees, let alone suggest that such fees are payable on a monthly basis. Therefore, these two documents do *not* assist the Applicant's case that it is entitled to monthly stakeholding fees of $4,000.

53 The final document relied on by the Applicant is the DFA (see [15] above). Specifically, the Applicant argues that by signing the document, R2 to R6 affirmed and evidenced their agreement to stakeholding fees of $4,200 per month, as set out in bills no 6230 and 6237.[60] If the Applicant's argument here is that R2 to R6 are *contractually bound* to pay the sums stated in cl 3 of the DFA, then this argument is misconceived because the DFA was *never* executed by R1 and R7, who were two of the seven intended parties to the agreement. This being the case, the DFA has *no* legal effect, even on those who *had* executed the document. If the Applicant's argument is that R2 to R6's execution of the DFA (and thus, agreement to cl 3) is *evidence* of what the parties actually agreed to, then the question is whether such subsequent conduct constitutes cogent evidence of the parties' agreement at the time when the contract was concluded (see, *eg*, *Centre for Laser and Aesthetic Medicine Pte Ltd v GPK Clinic (Orchard) Pte Ltd and others and another appeal* [2018] 1 SLR 180 at [51]). In my view, R2 to R6's agreement to cl 3 of the DFA at best demonstrates their assent to three specific outstanding bills being paid out of the net sales

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60 Applicant's Closing Submissions (Amendment No. 1), para 16.

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proceeds. It does not go so far as to demonstrate that their agreement *at the time of contracting* was for the Applicant to be paid monthly stakeholding fees of $4,000 (and disbursements of $200) out of the net sales proceeds. Notably, the DFA omits to mention that stakeholding fees for the months ahead would similarly be paid out of the net sales proceeds, as one might expect it to state if that was truly the parties' intention. Overall, I therefore *reject* the Applicant's argument that it is entitled to monthly stakeholding fees of $4,000 (summing up to a total of $36,000 for nine months). Rather, it is evident from an objective construction of the relevant documents (particularly, the Letter) that the Applicant is only entitled to a *one-off* payment of $4,000.

54 Given my above finding, it is unnecessary to consider R2 to R6's argument that *monthly* stakeholding fees of $4,000 amount to overcharging in breach of the LPPCR (see [22(b)]–[22(c)] above).

55 Having dealt with the issue of the Applicant's fees, I turn now to consider the issue of disbursements. The relevant paragraph in the Letter is para 6, which states that the Applicant is entitled to "all disbursements incurred or to be incurred … in discharging the work entrusted to [it]". It will be recalled that the Applicant claims monthly disbursements of $200 over a period of nine months (see [16] above). However, as disbursements can only be claimed in respect of *actual* out-of-pocket expenses, it goes without saying that the Applicant is only entitled to disbursements which it can *prove*, to the court's satisfaction, to have been incurred.

56 For this purpose, by way of letter dated 19 October 2018, I had directed the Applicant to file an affidavit detailing and exhibiting all documentary evidence to support the claimed disbursements of $200 in each invoice. Pursuant to this direction, the Applicant filed an affidavit on 30 October 2018

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("the Disbursements Affidavit"). This affidavit subsequently became the subject of two striking out applications filed on 13 November 2018 (*viz*, Summons No 5436 of 2018 filed by R1, R4 and R5 and Summons No 5437 of 2018 filed by R2, R3 and R6). I heard these applications on 21 February 2019 and agreed with R1 to R6 that the Disbursements Affidavit should be struck out on the basis of it failing to supply any evidence to explain how the monthly disbursements of $200 were arrived at. This being the case, there is thus presently *no evidence* before this court which proves that the Applicant had incurred monthly disbursements of $200 between May 2017 and January 2018. Accordingly, the Applicant's claim for monthly disbursements of $200 (summing up to a total of $1,800 for nine months) must fail in its entirety.

57 To summarise, the Applicant is only entitled to a total of $4,000 in fees in respect of the entire duration for which it acted as stakeholder of the net sales proceeds of the Property. Further, in the absence of any evidence that disbursements of $200 were incurred on a monthly basis, that aspect of the Applicant's claim must fail. I note that R2, R3 and R6 accept that none of the Applicant's stakeholding bills have been paid to-date,[61] and that R1, R4, R5 and R7 have not contended otherwise. This raises two issues. First, which of the Respondents are liable for the Applicant's fees of $4,000? Secondly, how is the sum of $33,600 in alleged stakeholding fees that the Applicant is currently holding on to pursuant to para (a) of the 12 January Order to be dealt with (see [10] above)?

58 On the first issue, given my conclusion that the SA (as varied by the VD) is a valid compromise agreement binding on its signatories (*ie*, R1 to R6) (see [37] above), it follows that pursuant to cll 7 and 8 of the SA, the stakeholding

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[61] R2, R3 and R6's Closing Submissions, para 490(5).

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fees payable to the Applicant should be deducted from the net sales proceeds of the Property before distribution of the balance sum to the Respondents. Thus, *in effect*, the liability of the stakeholding fees will be borne by the seven Respondents equally. This may seem unfair to R7, who was not a party to the SA (and the VD) and therefore did not agree to the payment of $4,000 in stakeholding fees out of the net sales proceeds prior to distribution. However, seeing as R7 also effectively reaps the benefit of the stakeholding services provided by the Applicant (the net sales proceeds forming part of his parents' estates, to which he is entitled to succeed beneficially), it would only be fair, in the circumstances, that he be made to bear the liability of the stakeholding fees alongside the other Respondents.

59 Following from the above, on the second issue, the Applicant must repay $29,600 (being $33,600 less $4,000). This brings the total amount paid into court to $2,933,067.69 (being $2,903,467.69 plus $29,600). Then, until administrators are appointed to administer the Respondents' parents' estates, no sums shall be paid out to any of the Respondents.

Conclusion

60 To conclude, my orders on the OS are as follows.

(a) Prayer 1: I note that all parties had agreed that this prayer could be removed in the light of para (a) of the 12 January Order.[62] While leave was granted for the Applicant to amend the OS, no amendment was actually filed and so prayer 1 as it originally stood is technically still before me. However, since prayer 1 has essentially been rendered moot (see [10] and [11] above), I make no order on this prayer.

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62 Minute Sheet dated 12 January 2018.

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(b) Prayer 2: Given that letters of administration for the Respondents' parents' estates have not been granted, I make no order for distribution of the net sales proceeds, which form part of their parents' estates, to the Respondents. However, as a matter of contract law, I hold that R1 to R6 are bound by their agreement in the SA (as varied by the VD) and that R1's and R7's respective entitlements to the net sales proceeds must be dealt in accordance with cll 8.2 to 8.5 therein (see [39] and [42]–[43] above). Again, I emphasise that this holding is not intended to displace the rules of distribution set out in the Intestate Succession Act, but merely governs the private contractual arrangement between the parties (see [38] and [43] above).

(c) Prayer 3: This prayer was essentially also rendered moot by the 12 January Order, which allowed for the Applicant to deduct $33,600 representing its alleged stakeholding fees from the net sales proceeds, prior to paying the balance into court (see [10] and [11] above). However, para (b) of the 12 January Order expressly preserved the Respondents' rights to dispute, claim and/or claw back any portion of these stakeholding fees (see [10] above). In the light of my finding that the Applicant is only entitled to a one-off payment of $4,000 in stakeholding fees, the Applicant is to repay $29,600 into court (see [57] and [59] above), within seven days of the present judgment.

(d) Prayer 4: I make no order on prayer 4 of the OS, for the reasons set out at [49] above.

61 Parties are to file submissions on the appropriate costs orders to be made in relation to this application, limited to 10 pages, within 14 days of the present judgment.

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Dedar Singh Gill
Judicial Commissioner

Carolyn Tan Beng Hui, Au Thye Chuen and Kelvin Leong (Tan & Au LLP) for the applicant;
Twang Kern Zern and Lam Jianhao Mark (Central Chambers Law Corporation) for the first, fourth and fifth respondents;
Chooi Yue Wai Kenny, Fong Kai Tong Kelvin and Kong Tai Wai David (Yeo-Leong & Peh LLC) for the second, third and sixth respondents; and
the seventh respondent in person.

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