IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 289

Suit No 704 of 2018

Between

Lim Lai Soon

… *Plaintiff*

And

(1) Tan Hong Sin
(2) Friendlypack Sdn Bhd
(3) Duramin Sdn Bhd
(4) Friendlypack (S) Pte Ltd
(5) Friendly Pack (Thailand) Co Ltd
(6) Koh Choon Heong
(7) Tan Siew Hui
(8) Teo Eng Wah
(9) Philip Tan Pei Yeanz

… *Defendants*

GROUNDS OF DECISION

[Companies — Shares]
[Trusts — Beneficiaries — Rights]

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Lim Lai Soon
v
Tan Hong Sin and others

[2022] SGHC 289

General Division of the High Court — Suit No 704 of 2018
Aedit Abdullah J
28–30 September, 5–8, 26–27 October 2021, 10 March, 2 June 2022

18 November 2022

Aedit Abdullah J:

Introduction

1 This suit concerns the beneficial ownership of the shares in the second to fifth defendant companies (collectively referred to as the "Companies") as well as two patents (the "Patents"). The plaintiff, Lim Lai Soon, seeks declarations that the first defendant, Tan Hong Sin, is the beneficial owner of the shares of the Companies (the "Shares") and the Patents.

2 Having considered the parties submissions and evidence, I was satisfied that the plaintiff made out a substantial part of her claim against the first defendant. Brief remarks were released on 2 June 2022. The first, seventh and ninth defendants have appealed against my decision. I now set out the full grounds for my decision.

Background

3 The plaintiff and the first defendant were married on 16 January 1993.[1] On 22 June 2017, the plaintiff commenced divorce proceedings against the first defendant in FC/D 2880/2017 (the "Matrimonial Proceedings"). Interim judgment was granted on 9 January 2018.[2] Final judgment has not been granted.

4 The present suit arose out of a dispute between the plaintiff and the first defendant in the course of the ancillary hearings in the Matrimonial Proceedings, namely, whether the Shares and the Patents (collectively, the "Assets") formed part of the pool of matrimonial assets to be divided. The plaintiff contended that the first defendant was the beneficial owner of the Assets, and thus should be part of the pool of matrimonial assets. The first defendant disagreed and took the position that his relatives were the true beneficial owners of the Assets. These relatives include the seventh defendant, Tan Siew Hui, who is the sister of the first defendant; the eighth defendant, Teo Eng Wah @ Teo Eng Huah, who is the sister-in-law of the first defendant, having married the first defendant's late brother, Tan Hong Kee (the "Late Brother"); and the ninth defendant, Philip Tan Pei Yeanz, who is the eighth defendant's son and the nephew of the first defendant. The sixth defendant, Koh Choon Heong, is also named as a party to the suit, but he is not consanguine with the first, seventh, eighth, and ninth defendants. While the eighth defendant was initially named as a party the suit, the plaintiff subsequently filed a Notice of Discontinuance on 7 September 2021 to discontinue the action against her.

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1 Plaintiff's affidavit of evidence in chief dated 6 January 2020 ("1PF") at para 13.

2 First defendant's affidavit of evidence in chief dated 6 January 2020 ("1DF") at para 12.

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5 For completeness, alongside the seventh to ninth defendants, there were also other members in the first defendant's family who were allegedly involved in the Companies. They are Tan Ching Siang, the late father of the first defendant (the "Father"); Tan Hong Chai; Tan Cheng Pow @ Tan Chin Pow; Susan Lim and Tan Ee Lean. Collectively, they are referred to as the "Relatives". Apart from the first, seventh, eighth, and ninth defendants, Tan Hong Chai and Tan Cheng Pow @ Tan Chin Pow also gave evidence.

6 The Companies are in the business of the manufacturing and selling and/or leasing of metal crates and pallets, for the packing and transportation of natural rubber.[3] The second defendant, Friendlypack Sdn Bhd ("Friendlypack Malaysia"), is incorporated in Malaysia and is in the business of manufacturing and selling metal pallets.[4] For present purposes, it should be noted that Friendlypack Malaysia was incorporated in September 2000 with a paid-up capital of RM2; the first defendant and the Father were each allotted one share of RM1 each.[5] Since then, its paid-up capital has been increased on two occasions, 31 December 2003 and 10 March 2004, to RM300,000.[6] The third defendant, Duramin Sdn Bhd ("Duramin"), is incorporated in Malaysia and has been dormant since incorporation.[7] The fourth defendant, Friendlypack (S) Pte Ltd ("Friendlypack Singapore"), is incorporated in Singapore and is in the business of leasing metal pallets.[8] The fifth defendant, Friendly Pack (Thailand) Co Ltd ("Friendlypack Thailand"), is a joint venture incorporated in Thailand

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3 1PF at paras 22 and 23.

4 1DF at para 8.

5 1DF at para 34.

6 1DF at para 36; 1PF at para 71.

7 1DF at para 9.

8 1DF at para 10.

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between the beneficial shareholders of Friendlypack Malaysia and one Puriwaj Sarawiroj, a Thai national.[9] Notably, the fifth defendant was in default of appearance and did not take part in the proceedings.

7 The first defendant is responsible for the day-to-day operations of the Companies. He is also a director of the second, third, and fifth defendant whereas the sixth defendant is the sole director and shareholder of the fourth defendant.

8 The legal shareholdings of the Companies were not disputed. Prior to 25 July 2018, they were as follows:[10]

	Registered shareholding	**Number of shares held**	**By percentage (%)**
Friendlypack Malaysia	First defendant (Tan Hong Sin)	124,001	41.33 (rounded)
	Seventh defendant (Tan Siew Hui)	153,001	51.00
	Eighth defendant (Teo Eng Wah @ Teo Eng Huah)	22,998	7.67 (rounded)
Duramin	First defendant (Tan Hong Sin)	99,999	99.999

9 1DF at para 11.

10 Lead Counsel Statement of first to fourth and ninth defendants, Part Two, Sub-section III, Common Ground between Parties at s/n 3.3 (p 5). See also Lead Counsel Statement of plaintiff, Part Two, Sub-section III, Common Ground Between Parties at s/n 3.3 (p 6).

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	Registered shareholding	**Number of shares held**	**By percentage (%)**
	Seventh defendant (Tan Siew Hui)	1	0.001
Friendlypack Singapore	Sixth defendant (Koh Choon Heong)	2	100
Friendly Pack Thailand	First defendant (Tan Hong Sin)	1,800	45
	Seventh defendant (Tan Siew Hui)	160	4
	Puriwaj Sarawiroj	2,040	51

9 Following a series of transfer of shares between the various defendants, the present legal shareholdings of the Companies are as follows:[11]

	Registered shareholding	**Number of shares held**	**By percentage (%)**
Friendlypack Malaysia	First defendant (Tan Hong Sin)	1	0.0003 (rounded)
	Seventh defendant (Tan Siew Hui)	227,001	92.33
	Ninth defendant (Philip Tan Pei Yeanz)	22,998	7.67 (rounded)

[11] Lead Counsel Statement of first to fourth and ninth defendants, Part Two, Sub-section III, Common Ground between Parties at s/n 3.4 (p 6). See also Lead Counsel Statement of plaintiff, Part Two, Sub-section III, Common Ground Between Parties at s/n 3.4 (p 6).

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	Registered shareholding	**Number of shares held**	**By percentage (%)**
Duramin	First defendant (Tan Hong Sin)	1	0.001
	Seventh defendant (Tan Siew Hui)	99,999	99.99
Friendlypack Singapore	Sixth defendant (Koh Choon Heong)	2	100
Friendly Pack Thailand	First defendant (Tan Hong Sin)	1,800	45
	Seventh defendant (Tan Siew Hui)	160	4
	Puriwaj Sarawiroj	2,040	51

10 Apart from the Shares, the equitable ownership of the Patents is also contested. The first patent pertains to the design of a metal crate ("Crate Patent") while the second patent concerns the design of a metal pallet ("Pallet Patent"). The first defendant conducted research and came up with the design of the Patents, and they are registered in his name.[12] The Patents expired on 1 June 2021.[13]

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12 Lead Counsel Statement of first to fourth and ninth defendants, Part Two, Sub-section III, Common Ground between Parties at s/n 2.1 and 2.2 (p 5). See also Lead Counsel Statement of plaintiff, Part Two, Sub-section III, Common Ground Between Parties at s/n 2.1 and 2.2 (p 5).

13 Set Down Bundle ("SDB"), Tab 26, 1st Defendant's Defence (Amendment No 3) ("1Defence"), paras 3(b) and 3(c) (p 163).

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Summary of the parties' cases

The plaintiff

11 The plaintiff's case is that the first defendant is the beneficial owner of most, if not all, of the Shares as well as the Patents.[14] The plaintiff takes guidance from the observation in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*") that the legal ownership of an asset is presumed to mirror the beneficial ownership in the absence of any unequal financial contributions that might give rise to a trust. As such, the first defendant must demonstrate that he did not have beneficial ownership of the shares that he holds in his name. Conversely, the plaintiff must demonstrate that the shares not held in the first defendant's name are beneficially owned by him.[15]

12 As a preliminary point, the plaintiff contended that that the transfer of shares in Friendlypack Malaysia and Duramin, as outlined at [9], should be disregarded for the purposes of demonstrating beneficial ownership. The first defendant had not provided any viable reasons for the transfers. Hence, the present exercise must occur with reference to the state of shareholdings before the transfer of shares. The plaintiff's claims are thus particularised as follows. In relation to Friendlypack Malaysia and Duramin, the first defendant is the registered holder of 41.3% of the shares in the former and 99.9% of the shares in the latter. The seventh and ninth defendants' shares in Friendlypack Malaysia are held on trust for the first defendant.[16] In respect of Friendlypack Singapore, the shares held by the sixth defendant (as the sole shareholder) are held on trust

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14 SDB, Tab 24, Statement of Claim (Amendment No 4) ("SOC"), para 11(a) (p 155).

15 Plaintiff's closing submissions dated 24 January 2022 ("PCS") at paras 135 to 137.

16 SDB, Tab 24, SOC, para 8(b) (p 154).

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for the first defendant.[17] As for Friendlypack Thailand, the first defendant is the registered holder of 45% of the shares, and the seventh defendant holds her shares in Friendlypack Thailand on trust for the first defendant.[18]

13 The plaintiff highlighted that Friendlypack Malaysia is the only defendant company that the Relatives made financial contributions to. It also forms the basis of the Relatives' beneficial interests in the remaining companies, and thus sits at the heart of the dispute. In this connection, she raised four points regarding Friendlypack Malaysia. First, the financial contributions by the Relatives to Friendlypack Malaysia were not capital contributions; instead, they were loans or seed funding. The contributions were disparate, widespread, and not coterminous with the capital issuances of Friendlypack Malaysia.[19] In particular, the documents provided by the seventh defendant indicated that her financial contributions were loans.[20] The seventh defendant's explanation that some parts of the loans were then capitalised was an afterthought and unpersuasive.[21] The plaintiff also canvassed the financial contributions of other parties, such as the Late Brother, Tan Hong Chai, Tan Cheng Pow @ Tan Chin Pow, and Father, and noted that several of them had their contributions refunded to them.[22] In this connection, the first defendant's attempt at reconciling the refund of these moneys and their retention of beneficial interest on the basis of an informal understanding between them is unpersuasive: it was not pleaded or

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17 SDB, Tab 24, SOC, para 8(a) (pp 153 – 154).

18 SDB, Tab 24, SOC, para 8(c) (p 155).

19 PCS at para 143.

20 PCS at para 149.

21 PCS at paras 154 and 166.

22 PCS at paras 172 to 196.

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described in the first defendant's affidavit of evidence in chief, and there were no documents reflecting such an understanding.[23]

14 Second, the manner in which the dividends of Friendlypack Malaysia were issued and assigned pointed to the first defendant being its sole beneficial owner. The first defendant received the lion's share of the dividends, dwarfing the amounts assigned to the others. In fact, the other legal shareholders routinely assigned their dividends to the first defendant, even when they were in financial need.[24]

15 Third, the first defendant's beneficial ownership of the shares in the Companies is corroborated by the WhatsApp messages exchanged between the seventh defendant and the plaintiff. Therein, the first defendant was described by the seventh defendant in a manner that would only make sense if he had the full beneficial ownership of Friendlypack Malaysia.[25]

16 Fourth, the evidence from the defendants at the trial was inconsistent with their position in their pleadings, namely, that the Relatives are the beneficial owners of the Friendlypack Malaysia shares in proportion to their respective financial contributions. Pertinently, the first defendant admitted on the stand that there was no way to ascertain the beneficial interests of the Relatives. Further, his position was also inconsistent from the one he took in the Matrimonial Proceedings.[26] The seventh defendant, too, departed from her position in the pleadings, stating during cross-examination that only the

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23 PCS at paras 197 to 204.

24 PCS at paras 205 to 248.

25 PCS at paras 249 to 250.

26 PCS at paras 43, 44 and 49.

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Relatives who were allotted shares had any beneficial interest in the Companies.[27] She was further inconsistent as to other aspects of her evidence, such as when the loans she extended to Friendlypack Malaysia were capitalised.[28] Against this, the plaintiff had given consistent evidence supported by contemporaneous evidence.[29]

17 In respect of the remaining companies, the defendants' case rests on the Relatives having beneficial interests in Friendlypack Malaysia, and that the funds of Friendlypack Malaysia were used to acquire these companies. This is unviable, because the Relatives would not have any rights to the assets of these other companies even if the defendants' case *vis-à-vis* Friendlypack Malaysia was true.[30]

18 In any event, the evidence showed that the defendant is the beneficial owner of the remaining companies. In respect of Duramin, the first defendant held 99.99% of its shares. They were transferred to him in the course of his acquisition of Duramin. He also made a loan of over a million ringgit to Duramin.[31] With regard to Friendlypack Singapore, the sixth defendant (its sole shareholder and director) was a nominee shareholder who signed two deeds of trust: the first was in favour of the first defendant, and the second was in favour of the seventh defendant. Given that the first deed of trust disposed of the sixth defendant's beneficial interest in favour of the first defendant, it follows that the first defendant must be the beneficial owner of Friendlypack Singapore, and that

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27 PCS at paras 70 and 71.

28 PCS at paras 73 and 74.

29 PCS at paras 94 to 97.

30 PCS at para 263.

31 PCS at paras 267 to 269.

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the second deed of trust was ineffectual.[32] As for Friendlypack Thailand, the first defendant was able to run the business without consulting anyone, not even the majority shareholder.[33]

19 Turning lastly to the Patents, the first defendant is both the legal and beneficial owner of them. He is the registered owner of both Patents and was personally responsible for their design and invention. That the seventh defendant had funded the registration is irrelevant.[34]

The first, second, third, fourth and ninth defendants

20 Preliminarily, the plaintiff's failure to join all relevant parties is fatal to her claim. Relying on *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd and another appeal* [2006] 1 SLR(R) 112 ("*Karaha Bodas*"), the defendants argued that all parties whose interests may be affected, *ie*, the Relatives (apart from those who have already been joined), should be joined. This would have allowed them the opportunity to raise objections to the declaration sought by the plaintiff.[35] Moreover, their identities were made known to the plaintiff at an early stage.

21 In the main, the defendants relied on a presumption of resulting trust that arose in their favour, that they are the beneficial owners of the shares in Friendlypack Malaysia in proportion to their contributions on the basis that the Relatives paid for 299,999 shares in Friendlypack Malaysia. Given so, for the

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32 PCS at paras 282 to 284.

33 PCS at para 299.

34 PCS at paras 302 and 303.

35 1st to 4th and 9th defendants' closing submissions dated 24 January 2022 ("1DCS") at paras 21 to 38.

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plaintiff to succeed, she must prove that there was a common intention, whether at the time of the acquisition of the shares or at a subsequent time, that the Relatives intended the first defendant to be the beneficial owner of all of the shares in Friendlypack Malaysia. This burden had not been discharged: first, she had no personal knowledge of the material facts, as against the consistent accounts provided by the Relatives;[36] second, she knew that the first defendant had no beneficial ownership in the Shares, as evinced by her position in the first set of divorce proceedings filed and discontinued in 2008 where no claim was made by her against the first defendant for the Shares to be part of the pool of matrimonial assets;[37] and third, her evidence was unreliable.[38]

22 There was also sufficient evidence to rebut the plaintiff's case. The defendants' narrative was that Friendlypack Malaysia was set up with the financial assistance of the Relatives. The Relatives were thus the beneficial owners of Friendlypack Malaysia in proportion to their respective financial contributions.[39] Notwithstanding their shareholdings, the Relatives decided that the first defendant would be the largest shareholder to facilitate his negotiations with external parties.[40] Funds of Friendlypack Malaysia were then used to acquire the third to fifth defendants.[41] The Relatives trusted the first defendant to run the Companies, and to give them a fair return on their investments.[42]

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36 1DCS at paras 56 to 66.

37 1DCS at paras 74 to 85.

38 1DCS at paras 86 to 98.

39 SDB, Tab 26, 1Defence, para 7 (p 167).

40 1DCS at paras 102 to 104.

41 1DCS at para 105.

42 1DCS at para 107.

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23 In respect of Friendlypack Malaysia, the defendants highlighted that the financial contributions made by the Relatives were investments. There was little to no contemporaneous documentary evidence to suggest otherwise. Pertinently, the Father contributed RM92,000 and was the beneficial owner of 78,001 shares in Friendlypack Malaysia. These shares were then transferred to the seventh defendant to be held on trust for the Father's grandchildren.[43] That the plaintiff accepted that these shares beneficially belonged to the Father is apparent from the WhatsApp messages exchanged between the plaintiff and the seventh defendant.[44] The plaintiff's attempt to explain otherwise was unpersuasive.[45] As for the seventh defendant, it was undisputed that she contributed RM455,000 to Friendlypack Malaysia.[46] Their Late Brother also made financial contributions to Friendlypack Malaysia, with 22,998 shares registered in his name. Before his passing, the Late Brother transferred the shares to the eighth defendant, *ie*, his wife, who subsequently transferred the same to the ninth defendant. At no point in time were these shares transferred to the first defendant. Additionally, stamp duty was paid on the transfer of these shares between the Late Brother, the eighth defendant and the ninth defendant. These facts did not cohere with the first defendant being the beneficial ownership of the shares.[47] The defendants similarly highlighted evidence showing that the financial contributions of two other relatives – Tan Hong Chai and Tan Cheng Pow @ Tan Chin Pow – were investments.[48]

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43 1DCS at para 122.

44 1DCS at paras 116 to 119.

45 1DCS at paras 120 to 125.

46 1DCS at paras 137 to 140.

47 1DCS at paras 154 to 157.

48 1DCS at paras 158 to 170.

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24 The defendants also disputed that the manner of distribution of Friendlypack Malaysia's dividends was indicative of the first defendant's beneficial ownership of the Shares. This was especially since the Companies were run on a loose and informal arrangement.[49] In any event, the distribution of the dividends could be explained. Broadly, the dividends were used for two purposes. First, they supplemented the first defendant's income.[50] Second, they were paid to the Relatives. Prior to 2011, the payments to the Relatives were recorded as director's loans to the first defendant. This was as Friendlypack Malaysia did not have sufficient profits to declare dividends but wanted to allow some of the Relatives to receive a return on their investment. These loans were then set-off and discharged in 2011 when Friendlypack Malaysia had sufficient profits to declare dividends.[51] Following 2011, dividends were properly declared and paid to the first defendant and the Relatives as well as to finance the purchase of land for the construction of a factory in the name of Duramin.[52]

25 As for the remaining companies, they were acquired with the funds of Friendlypack Malaysia. Shares in Friendlypack Singapore were held by a nominee shareholder, the sixth defendant, who executed two trust deeds. The trust deeds were to ensure that he would not be able to claim beneficial ownership of the shares.

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49 1DCS at paras 172 to 175.

50 1DCS at paras 176 to 184.

51 1DCS at paras 185 to 192.

52 1DCS at paras 193 to 207.

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The sixth defendant

26 The sixth defendant did not take a position in the dispute between the plaintiff and the first defendant.[53] He was a nominee sole shareholder of the two shares in Friendlypack Singapore and did not hold any beneficial interest in the shares. He additionally confirmed that he had executed two deeds of trust that were both dated 13 July 2011, one of which was in favour of the first defendant and the other in favour of the seventh defendant.[54]

The seventh defendant

27 The seventh defendant argued that the plaintiff bears the evidential burden of proving that the first defendant is the beneficial owner of the 124,000 shares in his name, as there was no evidence that the first defendant paid for them. The seventh defendant's narrative in respect of Friendlypack Malaysia is largely similar to that of the first defendant: all but one of the shares in Friendlypack Malaysia were paid by herself, their Late Brother, and their Father.[55] The seventh defendant, however, differed from the first defendant in stating that only the relatives who were allotted shares had any beneficial interest in Friendlypack Malaysia. For the relatives who were not allotted shares, they retained an interest in the profits of Friendlypack Malaysia in consideration of their contributions.[56]

28 On the seventh defendant's account of events, she extended a loan totalling RM455,000 to Friendlypack Malaysia by way of two cheques issued

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53 6th defendant's closing submissions dated 24 January 2022 at para 3.

54 SDB, Tab 31, 6th Defendant's Defence (Amendment No 1), para 4(d) (p 212).

55 7th defendant's closing submissions dated 24 January 2022 ("7DCS") at paras 18 to 21.

56 7DCS at paras 151 to 157.

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between 2003 and 2004 for its working capital.[57] As Friendlypack Malaysia was unable to repay her, there was an agreement to capitalise some of the loans.[58] Of the sum of RM455,000, RM199,000 was capitalised such that she was the beneficial and legal owner of 199,000 shares. This comprised 124,000 shares that were initially held by the first defendant (before it was transferred to her) and 75,000 shares that were allotted to her directly.[59] A balance of RM250,000 was returned to her by way of three cheques in 2006.[60] The 124,000 shares were transferred to the first defendant pursuant to an informal agreement to facilitate his dealings with external parties. It was also broadly consistent with the financial contributions of the seventh and first defendants (or lack thereof).[61] These 124,000 shares were then transferred to her after the present suit was commenced as she wanted to protect her assets.[62] Resultantly, she holds 199,000 shares in Friendlypack Malaysia.[63] In this connection, the seventh defendant highlighted her involvement in the business of Friendlypack Malaysia.

29 Further in respect of Friendlypack Malaysia, the seventh defendant took the same position as the first defendant concerning the Father's beneficial ownership of the shares that were now held by her on trust for the grandchildren.[64] She also shared the first defendant's position concerning the Late Brother's beneficial ownership of the shares, that were then transferred to

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57 7DCS at para 43.

58 7DCS at paras 50 to 57.

59 7DCS at para 71.

60 7DCS at paras 86 to 94.

61 7DCS at paras 58 to 63.

62 7DCS at paras 68 to 70.

63 7DCS at para 94.

64 7DCS at para 105.

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the eighth and ninth defendants.[65] As for the dividends declared by Friendlypack Malaysia, she relied on the same narrative as the first defendant: the dividends were used to supplement the first defendant's salary, purchase a plot of land, and for redistribution among the Relatives.

30 For the remaining companies, Friendlypack Singapore and Duramin were acquired by the funds of Friendlypack Malaysia. There was also a trust deed executed in her favour with regard to Friendlypack Singapore. As for the Patents, she funded their registrations and is thus the beneficial owner.[66]

Decision

31 Having considered the evidence and submissions, I was satisfied that the plaintiff had made out a substantial part of her claim against the first defendant, and much of the defence could not be made out.

Issues to be determined

32 The specific issues to be determined were:

(a) Whether the requirements for the grant of a declaration have been met.

(b) The effect of the seventh defendant's departure from her pleadings and affidavit of evidence in chief ("AEIC").

(c) Whether the Shares are owned by the first defendant. Subsumed within this issue includes the ownership of the legal and equitable titles

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65 7DCS at paras 138 to 143.

66 7DCS at paras 157 to 164.

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of the Shares, in particular, in respect of Friendlypack Malaysia, Duramin, Friendlypack Singapore and Friendlypack Thailand.

Whether the requirements for the grant of a declaration have been met

33 The issue that arose was whether, as stipulated in *Karaha Bodas*, the requirement that persons whose interests might be affected should be before the Court had been fulfilled by the plaintiff. The plaintiff argued that it would be sufficient to join the legal owners of the Shares to the suit, as it was sufficient to proceed against the trustees of shares (without joining the beneficiaries of the assets); that it would otherwise be onerous to join all alleged beneficial owners; and it would be adequate to join just the trustees as the beneficial owners only possess rights against trust assets and not against the trustees' rights.[67] The defendants, in turn, argued that the other five relatives (Teo Eng Wah @ Teo Eng Huah; Tan Hong Chai; Tan Cheng Pow @ Tan Chin Pow; Susan Lim; and Tan Ee Lean), who they alleged to also be beneficial owners of the Shares, should also be joined. Their identities were made known to the plaintiff, and they should have been joined to be given the opportunity to raise objections to the declarations sought given that they would potentially be deprived of their beneficial interests in the Companies.

34 The plaintiff relied primarily on O 15 r 14 of the Rules of Court (2014 Rev Ed), which indicates that any proceedings, including proceedings seeking declaratory relief, may be commenced against trustees without having to join any of the persons having a beneficial interest in the trust.[68] Additionally, the rights of beneficiaries are safeguarded by the trustee, and they do not directly

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67 PCS at para 104.

68 PCS at paras 105 and 107.

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possess rights against the assets.[69] I had doubts on the use of O 15 r 14 in this manner as the claims of the constructive trustee may conflict with that of the supposed beneficiaries. This was contemplated in *V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 at [66], that there may be instances where the "trustees could not or did not represent the interests of the beneficiaries that [the Court] may join [the non-party beneficiaries] as parties".

35 But on the facts, I was satisfied that there was no viable assertion on the evidence before me that others not before the Court would likely have any claim. The defendants referred to their investment into the business of Friendlypack Malaysia or their channelling of such investment through the first defendant, and there did not appear to be any credible assertion of any other beneficial interests beyond that. There was little evidence before me to show that these other interests could be made out: it was incumbent on the defendants in asserting the insufficiency of the parties joined to at least show some basis that there were other interests that could potentially be affected. What the defendants could say was only that these other relatives had contributed to the "seed capital" of Friendlypack Malaysia in a manner similar to the seventh defendant and the Father, and further that their identities and the quanta of their contributions were specified at an early stage.[70] In other words, their claims would have been based solely on their financial contributions and were, in substance, no difference from those who had been joined to the suit such as the seventh defendant. That this would be the case was evident from the evidence of Tan Hong Chai and Tan Cheng Pow @ Tan Chin Pow. The duo was amongst the Relatives who were not joined to the suit but gave evidence in the trial. They

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69 PCS at paras 119 to 122.

70 1DCS at paras 25 to 27.

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testified primarily on the moneys that they had provided to Friendlypack Malaysia. There was nothing beyond this that they could rely on in asserting an interest in Friendlypack Malaysia. As for the details provided by the defendants, they did not alter the nature or character of the likely claims of the parties who were not joined.

The effect of the seventh defendant's departure from her pleadings and affidavit

36 The seventh defendant's position in court departed from her pleadings, which had not since been amended. It is trite that parties are bound by the cases they plead: *Fan Ren Ray and others v Toh Fong Peng and others* [2020] SGCA 117 at [12]. As pointed out by the plaintiff, what was stated in the seventh defendant's defence and her affidavit of evidence in chief was in line with the position of the first to fourth and ninth defendant. In the seventh defendant's defence, she claimed that the beneficial ownership of Friendlypack Malaysia, and subsequently the remaining companies (*ie*, the third to fifth defendant companies) was in proportion to the respective financial contributions of each of the Relatives, including those who were not allotted any shares for their financial contributions. This was stated at paragraph 12 of her defence:[71]

> Given that the [Companies] [were] fully funded by the Relatives, the beneficially ownership of Friendlypack Malaysia and subsequently the 3rd to 5th Defendants was in proportion to the respective financial contributions of each of the Relatives,

[71] SDB, Tab 30, 7th Defendant's Defence (Amendment No 1) ("7Defence"), para 12 (p 205).

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> including *some of whom that were not issued shares for their contribution towards the Friendlypack Business*. …
>
> [emphasis added]

37 However, in her testimony and submissions, she moved away from this, undermining what was in her pleadings and affidavit and going against the rest of the defendants. Essentially, in her testimony, she testified that only those with allotted shares had a stake in the company as the legal and beneficial owners of the shares. In cross-examination, the seventh defendant, in explaining that she disagreed with the case of the first defendant, stated:[72]

> Q. Which part of your case did you say that you do not agree with [the first defendant]?
>
> A. The case of all contributors have a stake in the interests of the rest of the companies.
>
> Q. You are saying you do not agree with that?
>
> A. No.
>
> Q. "No" meaning you do not agree with [the first defendant]?
>
> A. I do not agree with [the first defendant] that the contributors that was not allotted any shares in the current company has a stake in the company.
>
> Q. So to your mind the only parties that have a stake are yourself, [the Late Brother's] family and [the first defendant's] one share, is that correct?
>
> A. Yes.
>
> Q. And nobody else has any other shares?
>
> A. Yes.
>
> Q. When I say nobody else has any other shares, actually I am referring to both legal and beneficial ownership. Is that your understanding as well?
>
> A. My understanding is those allotted the shares, registered members, they are the legal and beneficial owners of the shares.

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72 Transcript, 26 October 2021, p 27 line 12 to p 28 line 13.

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> *Q.* *And no other party is entitled to assert any beneficial interest other than these three parties that I have stated?*
>
> *A.* *Yes.*
>
> [emphasis added]

38 On the seventh defendant's account, any relative who made financial contributions and who was not allotted any shares did not have any equitable interest in Friendlypack Malaysia. On her testimony, there was no room for any beneficial ownership beyond that. Similarly, in her submissions, she reiterated her position *vis-à-vis* Friendlypack Malaysia: only her, her Late Brother and their Father, as the shareholders and beneficial owners of 299,999 fully paid-up shares, were entitled to Friendlypack Malaysia's assets. None of the other Relatives had any beneficial interest in Friendlypack Malaysia.[73] No explanation of any kind was provided to account for the stark departure from her position in her pleadings.

39 In what appeared to be a belated bid to reconcile her conflicting positions, the seventh defendant averred in her reply submissions that the plaintiff had mischaracterised her position. She claimed the plaintiff had conflated her defences with that of the first and ninth defendants, and reiterated her position as stated at [28] above.[74] This was unpersuasive. It was unclear how the plaintiff erred in treating her defence as being materially similar to that of the first and ninth defendants', given the state of their pleadings. The seventh defendant's argument, in any event, misses the mark. The plaintiff's complaint did not concern the seventh defendant's narrative that the Father, the Late Brother and herself received shares for their financial contributions in Friendlypack Malaysia. Instead, it concerned her disavowal that Relatives

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[73] 7DCS at para 22.

[74] 7th defendant's reply closing submissions dated 1 March 2022 at para 15.

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without any allotted shares would not have a beneficial interest in Friendlypack Malaysia. This inconsistency, which remained unresolved, undermined her evidence in a substantial way.

40 The seventh defendant's position stood in stark contrast to the submissions and evidence of the other defendants, who maintained that the Relatives are the beneficial owners of the shares in Friendlypack Malaysia in proportion to their respective financial contributions regardless of whether they were allotted shares. In the first defendant's submissions and testimony, his position remained unchanged from his defence, save for his claim during his in-court testimony that the respective contributors would have to sit down to discuss their entitlement to shares in Friendlypack Malaysia.[75] The ninth defendant, too, remained largely aligned to the first defendant's case.[76] Put in other words, the seventh defendant's case stood in opposition to the first and ninth defendants' narrative of events. Such a discrepancy undercuts the case theory that they pleaded in unison.

41 Various inconsistencies among the defendants, in particular between the first and seventh defendants (who gave most substantial evidence in the course of the hearing), followed accordingly. On the seventh defendant's case, there were only three beneficial owners of Friendlypack Malaysia, *ie*, herself, the first defendant and the ninth defendant; on the first defendant's case, it is shared among the Relatives. In fact, according to the first defendant, the exact beneficial holding of each Relative is unknown and is to be worked out among the Relatives. On the other hand, on the seventh defendant's case, each of the

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75 1DCS at para 109. See Transcript, 5 October 2021, p 23 line 25 to p 24 line 11. See also Transcript, 6 October 2021, p 124, lines 1 to 22.

76 Transcript, 7 October 2021, p 12, lines 6 to 19. See also Transcript, 7 October 2021, p 13 line 6 to p 14 line 10.

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trios' beneficial holding is clearly delineated. Inconsistencies between the cases of the first and seventh defendants do not, in themselves, mean that both cases must be rejected. It is possible that either case is true, based on the facts and evidence. But in the present matter, the first and seventh defendants had pleaded the same position concerning the equitable ownership of Friendlypack Malaysia, a company which both of them had extensive involvement with and on at least the first defendant's case, a matter which he had personal knowledge of.[77] Given this contradiction between the two main witnesses on the side of the defence, which could not be explained away, the strength and veracity of the claims of the first and seventh defendants were significantly undermined.

Whether the Shares are owned by the first defendant

42 The ultimate issue was whether the Shares as claimed by the plaintiff are beneficially owned by the first defendant. Legal title that is subject to beneficial interests of others would not serve the purposes of the plaintiff, who ultimately seeks to include the Shares as matrimonial property to be divided between the first defendant and her in the Matrimonial Proceedings. The existence of any beneficial ownership turns, in terms of the pleadings and facts here, on whether the other defendants contributed to the acquisition of the properties claimed, rather than merely lending money to the first defendant. The controlling case giving guidance on this area is *Chan Yuen Lan*. Briefly, *Chan Yuen Lan* sets out a framework for the determination of beneficial interests where no declaration of trust has been executed: at [160]. Of particular relevance is the guidance provided on when and in what manner a presumption of resulting trust arises (*ie*, when there is sufficient evidence of parties' respective financial contributions to the purchase price of a property) and the

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77 1DCS at paras 56 to 98.

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circumstances under which such a presumption may be defeated, such as where there is sufficient evidence of an express or an inferred common intention as to the holding of the beneficial interest in a property. Also of relevance was the observation in *Chan Yuen Lan* that the beneficial interest of a property may be held in a manner different from that in which it was held at the time of acquisition of the property if there is sufficient and compelling evidence of such an intention subsequently. The law was not in issue in the present case; rather the dispute between the parties centred largely on the facts.[78]

Legal title of the Shares

43 It was noted that the legal title of the Shares was originally substantially in the name of the first defendant. There were however purported transfers of various shares in Friendlypack Malaysia and Duramin to the seventh defendant that substantially altered the shareholdings in these two companies, but these took place after the suit was filed and on the eve of the trial. *Mareva* injunctions were obtained by the plaintiff against, *inter alia*, the first and seventh defendants in the course of the Matrimonial Proceedings. In my view, the transfers were clearly designed to pre-empt the Court's determination of the ownership rights of these shares in this suit. The timings of the transfers were suspect, and the fact of the transfers was initially concealed from the plaintiff in the Matrimonial Proceedings.[79] There was also no justification for the parties to have executed the transfers, given that they were aware the beneficial ownership of these shares was in dispute. In this connection, the seventh defendant's explanation that she was trying to protect her interests in her shares was untenable as those

78 PCS at para 128. See also 1DCS at para 46.

79 PCS at paras 33 and 34.

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shares were the very subject matter of the present suit.[80] As for the first defendant, he adopted the position of the seventh defendant in resisting the *Mareva* injunction in the Matrimonial Proceedings (which had been rejected).[81] In the present proceedings, he goes no further than to repeat that he was not the owner of these shares, which is plainly untenable.[82] As such, the transfers of shares in Friendlypack Malaysia and Duramin were disregarded. Whether any abuse of process or attempted abuse of process occurred and the consequences that should follow will also need to be determined subsequently.

44 There was also a transfer of shares in Friendlypack Malaysia between the Late Brother and the eighth defendant, which were then subsequently transferred from the eighth defendant to the ninth defendant (her son). The first defendant emphasised that the transfer of shares from the Late Brother and the eighth defendant occurred before the commencement of the present proceedings.[83] Be that as it may, the transfers between the Late Brother, the eighth defendant and the ninth defendant did not affect the first defendant's legal shareholding of shares in Friendlypack Malaysia and did not influence the outcome of the case in the same way.

45 The legal title in shares would thus be taken as indicated by the plaintiff, as stated at [8] above:

	Registered shareholding	**Number of shares held**	**By percentage**

80 7DCS at paras 68 to 70.

81 Plaintiff's core bundle ("PCB") at p 60, para 14.

82 1DF at para 120.

83 1DCS at para 148.

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	Registered shareholding	**Number of shares held**	**By percentage**
Friendlypack Malaysia	First defendant (Tan Hong Sin)	124,001	41.33 (rounded)
	Seventh defendant (Tan Siew Hui)	153,001	51.00
	Eighth defendant (Teo Eng Wah @ Teo Eng Huah)	22,998	7.67 (rounded)
Duramin	First defendant (Tan Hong Sin)	99,999	99.999
	Seventh defendant (Tan Siew Hui)	1	0.001
Friendlypack Singapore	Sixth defendant (Koh Choon Heong)	2	100
Friendly Pack Thailand	First defendant (Tan Hong Sin)	1,800	45
	Seventh defendant (Tan Siew Hui)	160	4
	Puriwaj Sarawiroj	2,040	51

Equitable title of the Shares

Friendlypack Malaysia

46 The equitable claims by the Relatives on the first defendant's shareholdings in Friendlypack Malaysia were not made out. The first defendant held 124,001 shares (or 41.33% of the total shareholding) beneficially for himself.

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47 Most of the other defendants on their own evidence did not contribute to the acquisition of the property representing the ownership of the second defendant by the first defendant. What they contributed to was money for the running of the company. Their contributions were not coterminous with the issuances of shares in Friendlypack Malaysia which occurred on two occasions, 31 December 2003 and 10 March 2004. Tan Hong Chai contributed RM20,000 on 13 March 2004, and RM15,000 sometime in February 2005.[84] These contributions occurred after Friendlypack Malaysia's second (and last) share issuance, 10 March 2004. Similarly, the family of Tan Cheng Pow @ Tan Chin Pow contributed RM50,800, which occurred on 13 instances spread over 25 July 2001 to 20 February 2004.[85] Apart from a contribution of RM2,000 on 30 December 2003, which was made one day before Friendlypack Malaysia's first share issuance on 31 December 2003, the remaining 12 instances were made on disparate occasions that were unrelated to the share issuances of Friendlypack Malaysia. Despite the numerous contributions which spanned the two share issuances by Friendlypack Malaysia, no shares were issued to any of the family members of Tan Cheng Pow @ Tan Chin Pow. This was quite a telling failure, which substantially undermined the defendants' case. One would have expected given these infusions of money that there would have been some shares issued had there really been any such expectation or agreement. On the stand, Tan Cheng Pow @ Tan Chin Pow sought to explain this on the basis that Friendlypack Malaysia is a family business.[86] What he appears to suggest is that there is some degree of laxity in the manner in which these things were dealt with, and that it is unsurprising that these matters were not discussed. This, however, is inadequate. The fact that he treated Friendlypack Malaysia as a

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84 Agreed Bundle of Documents ("ABD"), Vol 7, p 270.

85 ABD, Vol 7, p 270.

86 Transcript, 7 October 2021, p 74 line 19 to p 75 line 9.

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family business is wholly consistent with the contributions being loans, as opposed to investments, with these loans being dealt with on an informal basis. Nothing on his narrative of events weighs heavily in favour of the inference that these payments were investments. Taking the evidence in the round, it appears that these payments were in the nature of loans or working capital, as opposed to investments.

48 While contributions that are not coterminous with the issuance of the shares may still be considered as financial contributions for the purpose of a presumed resulting trust in favour of the Relatives, this would only be possible pursuant to an agreement at the time of the acquisition of the property.[87] No such agreement, however, had been highlighted. Under cross-examination, Tan Cheng Pow @ Tan Chin Pow agreed that there was no agreement concerning his beneficial ownership of the shares in Friendlypack Malaysia.[88] This, too, was the evidence of Tan Hong Chai:[89]

> Q. I just wanted to tell you also, well, there were a couple of witnesses before you and one of them was Mr Tan Chin Pow, and when I was asking him about discussions about his investment with the family business, *he told the court that there wasn't any discussion or there wasn't any agreement in relation to the issuance of the shares.* Would that also be your evidence?
>
> A. Yes, that is correct.
>
> [emphasis added]

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87 Plaintiff's reply submissions dated 1 March 2022 ("PRS") at para 74.

88 Transcript, 7 October 2021, p 90, lines 11 to 18.

89 Transcript, 8 October 2021, p 12 lines 23 to p 13 line 6.

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This was further broadly consistent with the defence of the first, seventh and ninth defendants, that there were no discussions as to the precise apportionment of the Shares.[90]

49 A further difficulty concerned the return of moneys to several of the Relatives who made financial contributions. This includes Tan Hong Chai, Tan Cheng Pow @ Tan Chin Pow and the Late Brother.[91] Tan Hong Chai's contributions of RM35,000, for instance, was returned by way of two payment vouchers dated 5 May 2009.[92] Tan Cheng Pow @ Tan Chin Pow's family's contributions of RM50,800, too, were returned by the first defendant by way of a loan taken from Friendlypack Malaysia, as reflected in the company's loan records.[93] To this, the first defendant and some of the Relatives claimed that there was a tacit understanding that the Relatives would retain their beneficial interests despite the return of their moneys. The details of the purported agreement, however, were sparse. It was not mentioned or elaborated on in the first defendant's affidavit of evidence in chief. It was also not stated in the first defendant's defence. And as further conceded by the first defendant, there were no documents available to verify the existence or the details of such an agreement.[94] When the first defendant was questioned on the details of the agreement, he stated that it was first discussed in 2001. When it was then highlighted to the first defendant that some of the Relatives made contributions

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90 SDB, Tab 26, 1Defence, at para 7(e) (p 168); SDB, Tab 30, 7Defence, at para 12 (p 205); SDB, Tab 32, Defence of the 9th Defendant, at para 8(e), (p 221).

91 Transcript, 26 October 2021, p 118, lines 2 to 11; Transcript, 5 October 2021, p 96, lines 12 to 17; Transcript, 5 October 2021, p 110 line 1 to p 111 line 20.

92 Transcript, 5 October 2021, p 96, lines 12 to 17 (Tan Hong Sin); Transcript, 8 October 2021, p 18, lines 5 to 18 (Tan Hong Chai); PCB at p 116.

93 ABD, Vol 8, p 349. See also Transcript, 5 October 2021, p 110 lines 8 to 23.

94 Transcript, 5 October 2021, p 97 line 13 to p 98 line 18.

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after 2001, he explained that it was a "continuous discussion" which involved new contributors as they came in.[95] However, there was similarly no reference to such a process in any of the defendants' affidavits of evidence in chief. It therefore appeared that the said agreement was an afterthought. Furthermore, a tacit agreement needs to be substantiated by evidence; where behaviour is relied upon, as here, such behaviour must be sufficiently linked to the tacit agreement, rather than be explained by other causes. Here it was at least just as plausible, if not more so, that the contributions were made not on the basis of any intention or agreement to have a proprietary interest, but only in the hope of receiving some benefit determined by the first defendant.

50 Finally, the first defendant was unable to specify the beneficial interest of each Relative. To ascertain each Relatives' beneficial interest, he would have required them to sit down and sort it out among themselves.[96] The first defendant further agreed that the alleged manner of allocation of beneficial interests in Friendlypack Malaysia as described in his defence was not adhered to.[97] Tan Hong Chai and Tan Cheng Pow @ Tan Chin Pow were equally equivocal as to their beneficial shareholdings in Friendlypack Malaysia. The duo stated that their shareholdings were to be determined by the first defendant.[98] There was therefore a lack of clarity as to how and in what proportion the Relatives had beneficial ownership of Friendlypack Malaysia. The Relatives relied on the first defendant. Yet, the first defendant depended on the Relatives working it out among themselves. It was quite clear that the defendants' different interests

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95 Transcript, 5 October 2021, p 105 lines 2 to 8.

96 PCS at para 57. See also Transcript, 5 October 2021, p 27, lines 2 to 14.

97 Transcript, 5 October 2021, p 53, lines 14 to 20.

98 Transcript, 8 October 2021, p 36, lines 4 to 8. See also Transcript 7 October 2021, p 76 line 25 to p 77 line 7.

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had to be worked out even on their own version: this put paid to the existence of any agreement, tacit or otherwise. Furthermore, taken together, it could clearly not be believed that the Relatives had any beneficial interest in the shares registered in the first defendant's name.

51 As for the seventh defendant's position, as noted above, her position shifted from the pleadings. Contrary to what was pleaded, she stated on the stand that the Relatives who were not issued shares did not have any beneficial interest. This severely undermined her evidence. As was argued by the plaintiff, several of the contributions relied upon by the seventh defendant were recorded as loans by the seventh defendant herself. She also admitted in cross-examination that the whole of her contribution was meant as a loan at the time, and that her affidavit position, which indicated that her contribution was payment for equity in Friendlypack Malaysia, was in error.[99]

52 I also rejected her contention that there was a subsequent capitalisation of the loans. The evidence did not support this. The amount of the loans capitalised was far less than her purported shareholding of Friendlypack Malaysia. For her to hold 92.33% of the shares, at least RM 277,017 (the value of 92.33% of the total paid-up capital of Friendlypack Malaysia) would have had to be capitalised. However, only RM199,000 of the loans were capitalised. Her evidence concerning when the loans were capitalised was also equivocal. Sparse details were provided in her affidavit of evidence in chief.[100] On the stand, the seventh defendant initially claimed that the loans were capitalised sometime in March 2004. On her account, it occurred after "[the first defendant

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99 Transcript, 26 October 2021, p 31 line 13 to p 32, line 5; Transcript, 26 October 2021, p 32 line 14 to p 33, line 10.

100 7th defendant's affidavit of evidence in chief dated 6 January 2020 ("7DF") at para 28.

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and the Late Brother] mentioned the [*sic*] [Friendlypack Malaysia] couldn't repay me", which was proximate to the time when the Late Brother was preparing documents for an application for a bank loan. She confirmed that the said application happened sometime in early March 2004.[101] However, the financial statements of Friendlypack Malaysia in 2003 did not record any loans under current liabilities.[102] This was contrary to her narrative that her loans were capitalised in March 2004. When confronted with this information, she revised her position to state that the loans were capitalised sometime in December 2003.[103] It was thus disbelieved that the loans were capitalised as she claimed. In any event, the capitalisation of the loans would not have supported the creation of beneficial interest, not being linked to any acquisition of such an interest.

53 What was relied on by the defendants to make out their contributions to the acquisition of property fell far short. As made clear in *Chan Yuen Lan*, a presumption of a resulting trust may arise in so far as the evidence shows that the financial contributions went towards the acquisition of the property. As observed earlier, some of the supposed contributions, such as those by Tan Hong Chai which were made after the second share issuance on 3 December 2004 as outlined at [46] above, were after the fact of acquisition. Absent an agreement concerning how these contributions were to be treated, they could not be relied on.[104]

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101 Transcript, 26 October 2021, p 34 line 11 to p 36 line 3.

102 ABD, Vol 7, pp 311 to 317.

103 Transcript, 26 October 2021, p 75 line 3 to p 77 line 2.

104 PRS at paras 72 and 75.

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54 There was also a lack of control over the dividends, which would have reflected beneficial ownership. Dividend movements are relevant to a court's determination of beneficial interests: *Pan-Electric Industries Ltd (in liquidation) v Sim Lim Finance Ltd and others* [1993] 2 SLR(R) 154 at [29]. The Relatives appear to have little to no control over the dividends declared by Friendlypack Malaysia. Tan Cheng Pow @ Tan Chin Pow stated that he did not have the right to ask for a percentage of the profits of Friendlypack Malaysia, and this was something for the first defendant to decide.[105] Tan Hong Chai, too, stated that this was something to be decided by the first defendant.[106] In other words, their entitlement to dividends was not based on their beneficial ownership. It was to be decided by the first defendant. That this was the case was evidenced by the dividend sums that Tan Cheng Pow @ Tan Chin Pow and Tan Hong Chai received. Tan Cheng Pow @ Tan Chin Pow received RM14,952.40 in January 2017 and Tan Hong Chai received RM9,750.66 in January 2017.[107] These sums were not only entirely decided by the first defendant but also arrived at without any consideration for the duo's alleged beneficial ownership of Friendlypack Malaysia. For Tan Cheng Pow @ Tan Chin Pow, the first defendant explained that his general thought process was that he took into account Tan Cheng Pow @ Tan Chin Pow's monthly salary in the allocation of dividends.[108] Similarly, for Tan Hong Chai, there was no formula that the first defendant used in arriving at the sum.[109] This suggested that the first defendant exerted control over the dividends of Friendlypack

105 Transcript, 7 October 2021, p 72, lines 15 to 20.

106 Transcript, 8 October 2021, p 24, lines 5 to 17.

107 PCB at pp 118 to 119. See also ABD, Vol 2, p 436.

108 Transcript, 6 October 2021, p 8 line 18 to p 9 line 16.

109 Transcript, 6 October 2021, p 12, lines 9 to 19.

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Malaysia, and correspondingly, was the beneficial owner of the shares in Friendlypack Malaysia.

55 Additionally, majority of the dividends declared appeared to overwhelmingly benefit the first defendant. Dividends were declared by Friendlypack Malaysia from 2011 to 2016. Across these years, it was undisputed that at least RM702,000 was assigned to the first defendant by the other registered shareholders.[110] Beyond these sums, the other dividends declared by Friendlypack Malaysia also seemed to substantially benefit the first defendant. By way of example, dividends totalling RM3,000,000 were declared and paid to the first, seventh and eighth defendants in 2016. The full sum of RM3,000,000 was then fully assigned to the first defendant by the seventh and eighth defendants. After a portion was used to offset director's loans, the first defendant received an aggregate of RM1,047,042.51, of which he distributed RM38,781.62, leaving him to receive a net amount of RM1,008,260.89. The overarching impression, therefore, was that the first defendant benefitted considerably from the dividends.

56 In a bid to account for the movement of the dividends, the defendants contended that there was a loose and informal family arrangement in place. The dividends were to be used for various purposes, one of which was to supplement the first defendant's income by way of dividends as compared to increasing his salary directly to reduce his tax liability.[111] Another purported use was to offset the director's loans that the first defendant had taken out for payment to the Relatives before 2011. This was to allow the Relatives some return on their investments at a time when Friendlypack Malaysia was unable to pay out

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110 1DF at para 110; 7DF at para 63.

111 1DCS at paras 176 to 184.

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dividends.[112] Where property rights are concerned, which are to be asserted against third parties, it is insufficient for the defendants to point vaguely as they have done here. To defeat the plaintiff's claim, the defendants would have had to adduce stronger evidence of some arrangement that was clearly meant to modify the legal and presumptive beneficial ownership of the registered shareholder at the material time, especially given that the evidence suggested that the first defendant had not only control of the movement of the dividends but also benefitted substantially from the dividends declared. This they did not do.

57 I noted that there were shares previously held legally by the Father that are now held by the seventh defendant. The evidence I accepted shows that these shares were held for the beneficial interest of the first defendant as well, though the dividends were distributed to various family members according to his wishes as expressed through the seventh defendant.

58 However, as regards the shares registered now in the name of the ninth defendant, originally held in the name of the eighth defendant (and prior to that, the Late Brother), I did not find sufficient evidence to conclude that the beneficial interest was held other than according to the legal shareholding.

59 The plaintiff thus succeeded in respect of her claim against the shares in Friendlypack Malaysia in the name of the first and seventh defendants, ignoring the transfers done after the commencement of the proceedings.

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112 1DCS at paras 185 to 192.

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Duramin, Friendlypack Singapore and Friendlypack Thailand

60 As regards the claims in respect of the other shares in the other companies, I found that there was insufficient evidence to cause the Court to move away from the legal title in the shareholdings, as represented by the registered shareholdings, save that in relation to Friendlypack Singapore.

61 In respect of Duramin, I found that on the evidence, there was nothing to disturb the legal shareholding held by the first defendant. The shares were transferred to him in his acquisition of Duramin. As for the seventh defendant, her claim to Duramin was based on the purported lineage of the funds used to acquire Duramin. On her account, these funds originated from Friendlypack Malaysia, and because of her beneficial ownership of the shares in Friendlypack Malaysia, this entitles her to the beneficial ownership of Duramin. This was explained by the seventh defendant:[113]

> Q. Even for Duramin, you say that you claim ownership over Duramin, correct?
>
> A. Correct.
>
> Q. For Duramin, you claim the entire share in Duramin?
>
> A. *Based on the -- yes, based on the funds flowing from Friendlypack Malaysia.*
>
> [emphasis added]

62 This was legally tenuous. Even if the funds did originate from Friendlypack Malaysia (and assuming that she was a beneficial owner of Friendlypack Malaysia), this would at most suggest that Friendlypack Malaysia had some kind of interest in Duramin. It did not mean that the beneficial owners of Friendlypack Malaysia had any legal or equitable right to the assets of

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113 Transcript, 27 October 2021, p 77, lines 16 to 22.

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Duramin. In any event, the seventh defendant's position is also factually strained. The funds may be described to have originated from Friendlypack Malaysia in so far as they were initially assigned as dividends to the first defendant, who then used them to acquire Duramin. Put another way, the funds used to acquire Duramin was from the first defendant, not Friendlypack Malaysia. The fact that the genesis of these funds was from Friendlypack Malaysia was neither here nor there.

63 As regards Friendlypack Singapore, the legal shareholder, the sixth defendant, held the shares on trust, which he declared in favour of the first defendant. This is the effect of the first of two trust declarations: the first was dated 13 July 2011 and made in favour of the first defendant and was also witnessed; the second was also dated 13 July 2011 and made in favour of the seventh defendant but was unwitnessed. On the evidence, I accepted that the second trust deed was executed much later in 2018 and was of no effect. The first trust deed would have disposed of the sixth defendant's beneficial interest in favour of the first defendant. By the time the second trust deed was executed, there would have been no beneficial interest to be disposed of in favour of the seventh defendant. Accordingly, the seventh defendant had no interest in the shares in Friendlypack Singapore, nor does Friendlypack Malaysia.

64 As for Friendlypack Thailand, I accepted that the first defendant held the shares in his name beneficially. The seventh defendant's shares were, on the evidence, best explained as having been acquired by the first defendant.

65 No order was made in respect of the Patents as these have expired.

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Conflict of laws

66 A query was raised by the Court as to the appropriate conflict of laws rules, given that the transactions and the Shares were largely foreign. However, since no evidence was given as to foreign law, primarily Malaysian law, the Court proceeded on the basis that this was the same as Singapore law.

Conclusion

67 The plaintiff succeeded then on part of her claim, and the Court accordingly granted an order in terms of the declaratory relief sought in respect of the Shares as follows:

(a) Friendlypack Malaysia: 92.33%;

(b) Duramin: 100%;

(c) Friendlypack Singapore: 100%; and

(d) Friendlypack Thailand: 49%.

Aedit Abdullah
Judge of the High Court

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Lok Vi Ming SC, Qabir Singh Sandhu and Siow Xian Qi Natalie (LVM Law Chambers LLC) for the plaintiff;
Ling Daw Hoang Philip, Chua Cheng Yew and Andrea Kristin Arriola (Wong Tan & Molly Lim LLC) for the first, second, third, fourth and ninth defendants;
The fifth defendant absent and unrepresented;
Fan Kin Ning and Varsha Krishnan (DOP Law Corporation) for the sixth defendant;
Khoo Kah Lip Michael SC and Josephine Low (Michael Khoo & Partners) for the seventh defendant.

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