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

[2023] SGHC(A) 22

Civil Appeal No 4 of 2023

Between

Zhang Lan

… *Appellant*

And

La Dolce Vita Fine Dining
Group Holdings Limited

… *Respondent*

Civil Appeal No 5 of 2023

Between

Zhang Lan

… *Appellant*

And

La Dolce Vita Fine Dining
Company Limited

… *Respondent*

Civil Appeal No 6 of 2023

Between

Success Elegant Trading Limited

… *Appellant*

And

La Dolce Vita Fine Dining Company Limited

… *Respondent*

Civil Appeal No 7 of 2023

Between

Success Elegant Trading Limited

… *Appellant*

And

La Dolce Vita Fine Dining Group Holdings Limited

… *Respondent*

In the matter of Originating Summons No 1139/2020 (Summons No 2703 of 2021)

Between

La Dolce Vita Fine Dining Company Limited

… *Plaintiff*

And

(1) Zhang Lan
(2) Grand Lan Holdings Group (BVI) Limited
(3) Qiao Jiang Lan Development Limited
(4) Success Elegant Trading Limited

… *Defendants*

In the matter of Originating Summons No 1140/2020 (Summons No 2704 of 2021)

Between

La Dolce Vita Fine Dining Group Holdings Limited

… *Plaintiff*

And

(1) Zhang Lan
(2) Grand Lan Holdings Group (BVI) Limited
(3) Success Elegant Trading Limited

… *Defendants*

JUDGMENT

[Civil Procedure — Judgments and orders — Enforcement — Equitable execution — Appointment of receivers]
[Trusts — Resulting trusts]

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Zhang Lan
v
La Dolce Vita Fine Dining Group Holdings Ltd and other appeals

[2023] SGHC(A) 22

Appellate Division of the High Court — Civil Appeal Nos 4 to 7 of 2023
Woo Bih Li JAD and Aedit Abdullah J
27 March 2023

27 June 2023

Woo Bih Li JAD (delivering the judgment of the court):

Introduction

1 AD/CA 4/2023, AD/CA 5/2023, AD/CA 6/2023 and AD/CA 7/2023 ("AD 4" to "AD 7", respectively) are appeals against the decision of the General Division in HC/SUM 2703/2021 ("SUM 2703") and HC/SUM 2704/2021 ("SUM 2704"; collectively referred to as "SUMs 2703 and 2704").

2 The present dispute arises from a sale and purchase agreement for shares dated 10 August 2013 (the "SPA") between La Dolce Vita Fine Dining Company Limited ("LDV"), La Dolce Vita Fine Dining Group Holdings Limited ("LDV Group"), and Mdm Zhang Lan ("Mdm Zhang") (amongst other parties). LDV Group wholly owns LDV. Under the SPA, the LDV and LDV Group (collectively, the "LDV Entities") acquired 86.2% of South Beauty

Investment Company Limited ("SBIC"), a company owned by Mdm Zhang. SBIC was the holding company of the well-known 'South Beauty' restaurant chain that Mdm Zhang had founded and developed.

3 After the SPA was complete, SBIC experienced a decline in its financial performance. Following internal investigations into the matter, the LDV Entities each commenced arbitration in the China International Economic and Trade Arbitration Commission ("CIETAC") against Mdm Zhang, claiming that Mdm Zhang had made fraudulent and negligent representations in connection with the SPA. The CIETAC found for the LDV Entities in their claim for negligent representation (the "Arbitral Awards"). The LDV Entities then obtained judgments in Hong Kong recognising the Arbitral Awards (the "HK Judgments").

4 Following this, the LDV Entities successfully registered the HK Judgments in Singapore (the "SG Registration Order"). LDV and LDV Group then respectively filed SUMs 2703 and 2704 against Mdm Zhang in a bid to enforce the SG Registration Order. SUMs 2703 and 2704 were applications for the appointment of receivers over the bank accounts of Success Elegant Trading Limited ("SETL"), a company incorporated in the British Virgin Islands pursuant to a trust arrangement established under Mdm Zhang's instructions. SETL was later added as a defendant in SUMs 2703 and 2704. The central issue before the High Court judge (the "Judge") in SUMs 2703 and 2704 was whether the moneys in the bank accounts of SETL (the "Bank Accounts") were beneficially owned by Mdm Zhang. The Judge held in the affirmative: see *La Dolce Vita Fine Dining Co Ltd v Zhang Lan and others and another matter*

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[2022] SGHC 278 (the "HC Judgment"). Accordingly, he appointed the receivers over the Bank Accounts.

5 Dissatisfied, Mdm Zhang filed AD 4 against LDV Group and AD 5 against LDV, which are appeals against SUM 2704 and SUM 2703 respectively. SETL also appealed against the Judge's decision, filing AD 6 against LDV and AD 7 against LDV Group. AD 6 and AD 7 are appeals against SUMs 2703 and 2704 respectively. In these appeals, the issue of the beneficial ownership of the moneys in SETL's Bank Accounts (the "Assets") remains the main bone of contention between the various parties. In our judgment, and for reasons that will be explained below, the Judge did not err in finding that Mdm Zhang was the beneficial owner of the Assets. In light of this, we affirm his decision in SUMs 2703 and 2704.

Background

6 We begin our judgment by setting out the necessary background. The genesis of the dispute between the parties stretches back to around May 2012, when the international private equity and investment firm CVC Capital Partners ("CVC") approached Mdm Zhang to discuss the acquisition of the well-known 'South Beauty' restaurant chain she had founded and developed. These discussions culminated in the SPA dated 10 August 2013. The parties to the SPA were the LDV Entities (which were subsidiaries of CVC incorporated for the purpose of the acquisition), Mdm Zhang, and other companies ultimately owned by Mdm Zhang (the "BVI Companies").

7 Under the SPA, the LDV Entities would acquire 86.2% of the shares in SBIC, the ultimate holding company for the South Beauty restaurant chain. In

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exchange, a total of US$286,850,887 was paid over three tranches to Mdm Zhang between 16 December 2013 and 13 June 2014. The bulk of this purchase price was paid into Mdm Zhang's Safra Sarasin bank account in Hong Kong (the "SS Account").

8 Prior to and amidst these transfers, Mdm Zhang sought advice from one Ms Xiao Yanming ("Ms Xiao"), the chairman and CEO of an asset management company known as Cornucopiae Asset Management Ltd ("CAM") on the setting up of a family trust for the benefit of her son, Mr Wang Xiaofei ("Mr Wang"). The first step of the trust arrangement was the incorporation of SETL in the British Virgin Islands on 2 January 2014, with Mdm Zhang being the owner of the sole share in SETL and its director. From February to March 2014, Mdm Zhang set up bank accounts with Credit Suisse AG Bank ("CS") and Deutsche Bank AG ("DB") both in Singapore under SETL's name. From 10 March 2014 to 21 July 2014, US$142,051,618 in cash and securities was transferred from Mdm Zhang's SS Account to SETL's bank account with CS (the "CS Account"). US$85,225,000 was also transferred from the CS Account to SETL's DB bank account (the "DB Account") between 27 March 2014 and 27 November 2014. On 3 June 2014, a Declaration of Trust was executed over the sum of US$10 in favour of "Wang Xiaofei and his children and remoter issue" (the "Declaration of Trust"), with Asiatrust Limited ("Asiatrust"), a company that provides professional trustee services, named as the trustee. This trust was referred to as the "Success Elegant Trust". The following day, Mdm Zhang executed a Deed of Addition of Assets (the "Deed of Addition"), in which the sole share in SETL was transferred from Mdm Zhang to Asiatrust. The Declaration of Trust and Deed of Addition are collectively referred to as the "Trust Documents".

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9 Some months after the LDV Entities' acquisition of SBIC was complete, SBIC began experiencing a significant decline in its financial performance. After conducting internal investigations, the LDV Entities decided to take legal action against Mdm Zhang and the BVI Companies. On 26 February 2015, the LDV Entities sought injunctive relief against Mdm Zhang and the BVI Companies in the Hong Kong Court of First Instance ("HKCFI"). This included an injunction to restrain them from disposing of any of their assets whether within or outside Hong Kong. Mimmie Chan J granted the injunction on an urgent basis on 26 February 2015 (the "HK Freezing Orders"). The LDV Entities also filed HC/OS 178/2015 ("OS 178") and HC/OS 180/2015 ("OS 180"), seeking freezing orders over Mdm Zhang's assets in Singapore. OS 178 and OS 180 were granted on 2 March 2015 (the "SG Freezing Orders"). Upon receiving notice from the LDV Entities of the SG Freezing Orders, the respective banks froze the CS Account and DB Account.

10 On 5 March 2015, the LDV Entities commenced the CIETAC arbitration (mentioned at [3] above) and obtained the Arbitral Awards on 28 April 2019. While Mdm Zhang applied to set aside these awards before the China International Commercial Court and in Hong Kong, those applications were dismissed. The Arbitral Awards were successfully enforced in Hong Kong (*ie*, in the HK Judgments). The LDV Entities then filed HC/OS 1139/2020 and HC/OS 1140/2020 ("OS 1139 & 1140"), which were the LDV Entities' applications for leave to register the HK Judgments in Singapore pursuant to s 4 of the Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed). The Singapore High Court allowed OS 1139 & 1140 on 11 November 2020.

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11 SUMs 2703 and 2704 were then filed on 9 June 2021, and SETL was added as a defendant to the action on 16 September 2021. In SUMs 2703 and 2704, the LDV Entities sought the appointment of receivers nominated by the LDV Entities to "receive the monies and securities in respect of the interest of [Mdm Zhang] in … the monies and securities in [the Bank Accounts], in or towards satisfaction of the monies and interest due to the [LDV Entities] under the [SG Registration Order]". This application was motivated by the fact that SETL was the *legal* owner of the Bank Accounts, thus precluding the LDV Entities from availing themselves of the various modes of legal execution such as a writ of seizure and sale.

12 The LDV Entities took the position that Mdm Zhang was the beneficial owner of the moneys in the Bank Accounts. In support of this, the LDV Entities relied on the following evidence:

(a) bank documents filed with CS and DB which identified Mdm Zhang as beneficial owner of the Bank Accounts, such as the form completed by Mdm Zhang for the opening of the CS Account dated 11 February 2014 (the "CS Account Opening Form") and a Client Investment Risk Profile Form dated 7 March 2014 with DB (the "DB Risk Profile Form");

(b) that CS and DB themselves considered that the Bank Accounts fell within the scope of the SG Freezing orders despite these orders only being directed at Mdm Zhang;

(c) A letter dated 6 March 2015 by Mdm Zhang's then-solicitors Reed Smith Richards Butler ("Reed Smith") to DB's solicitors

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which stated that Mdm Zhang "maintains" the DB Account (the "6 March 2015 Letter");

(d) that SETL took no action to correct the documents listed in subparagraph (a) above, nor any action to set aside the SG Freezing Orders for seven years;

(e) that Mdm Zhang directed the transfer of around US$32.3m from the CS Account and US$35,832,587 from the DB account to herself or to Mr Wang. This was *after* she had divested her share in SETL to Asiatrust on 4 June 2014; and

(f) that Mdm Zhang also gave urgent instructions to DB to make transfers out of the DB Account (amounting to US$35,832,587) to various entities *one day* after receiving notice of the HK Freezing Orders.

The Judge's decision

13 SUMs 2703 and 2704 were heard before the Judge in chambers on 28 and 29 September 2021, with the parties electing not to cross-examine the various deponents on their affidavit evidence. The Judge issued the HC Judgment on 2 November 2022. The key factual issue before him was whether Mdm Zhang beneficially owned the moneys in the Bank Accounts: HC Judgment at [33(b)].

14 The Judge held that Mdm Zhang beneficially owned the Assets: HC Judgment at [54]. In particular, the Judge found that:

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(a) Mdm Zhang was motivated by a desire to protect her funds from potential claims by the LDV Entities without giving up her ability to make use of those funds for her own benefit (HC Judgment at [54]). This was evident from the fact that Mdm Zhang had transferred moneys from the Bank Accounts for her own purposes prior to the HK Freezing Orders and SG Freezing Orders. Further, Mdm Zhang transferred moneys out of the DB Account in haste after receiving notice of the HK Freezing Orders.

(b) As her solicitor, Reed Smith acted as Mdm Zhang's agent. They had confirmed on Mdm Zhang's behalf in the 6 March 2015 Letter that Mdm Zhang "maintains" the DB Account. The Judge found that this was an admission that the account was Mdm Zhang's under ss 17 and 18 of the Evidence Act 1893 (2020 Rev Ed) ("EA") (HC Judgment at [54(c)] and [56]).

(c) SETL sought to rely on two Certificates of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting ("W-8BEN Forms") dated 11 February 2014, which were submitted by SETL to CS in the course of setting up the CS Account. The W-8BEN Forms identify SETL as the beneficial owner of the income in the CS Account. However, in the Judge's view, the evidential value of the W-8BEN Forms was outweighed by the rest of the evidence (HC Judgment at [55]).

15 The Judge held that it was just and convenient for the receivership orders to be made. This was so for three reasons: first, moneys in bank accounts are property amenable to execution at law if the accounts were in the name of the

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judgment debtor. Secondly, in the circumstances, the use of execution processes at law such as a garnishee order was not available to the LDV Entities in relation to the Bank Accounts as they were in SETL's name. Thirdly, the appointment of receivers for the equitable execution over the Bank Accounts will facilitate a cost-effective and convenient means to satisfy the judgments: HC Judgment at [58].

16 On 25 January 2023, Mdm Zhang filed AD 4 against LDV Group and AD 5 against LDV, appealing against the Judge's decision in SUM 2704 and SUM 2703 respectively. The next day, SETL filed AD 6 against LDV and AD 7 against LDV Group, which were appeals against SUMs 2703 and 2704 respectively.

Parties' Cases

LDV Entities' case

17 The LDV Entities' case is largely similar to that in the hearing below. Relying on the items of evidence set out at [12] above, the LDV Entities argue that the Judge was correct to find that Mdm Zhang intended to retain beneficial ownership of the Assets. The LDV Entities also aver that it would be just and convenient to appoint receivers over the moneys and securities in the Bank Accounts since 'traditional' modes of legal execution were not available to them, and because they would otherwise be deprived of the fruits of the Arbitral Awards.

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Mdm Zhang's case

18 Mdm Zhang argues that the Judge had erred in framing the issue as whether she had retained beneficial interest in the Assets. In her view, the proper question was whether the moneys were settled into an express trust (the Success Elegant Trust) for the benefit of her son and his issue.

19 To this, Mdm Zhang submits that the "objective and unchallenged" evidence shows that she intended to divest herself of the beneficial interest in the Assets for the benefit of her son and his issue. Upon the execution of the Trust Documents, Asiatrust's conscience was engaged in relation to the shares *and assets* in SETL, including any assets vested by Mdm Zhang in the SETL *after* 4 June 2014. She also highlights in support the following: (a) that she was advised by Ms Xiao of CAM on the setting up of a family trust for the benefit of her son; (b) that, in accordance with Ms Xiao's advice, she had taken steps to constitute the Success Elegant Trust (one year before the freezing injunctions were obtained and the CIETAC arbitrations were commenced); and (c) the findings of Chan J in *La Dolce Vita Fine Dining Company Limited v Zhang Lan* [2018] HKCFI 548 ("*La Dolce Vita (HK)*"), which arose from an application by the LDV Entities to commit Mdm Zhang for breaching the HK Freezing Orders amongst other things. Chan J had found in *La Dolce Vita (HK)* that it was not shown beyond a reasonable doubt that Mdm Zhang beneficially owned the Assets. Mdm Zhang also avers that any bank documentation that continued to indicate that she was the beneficial owner of the Bank Accounts was attributable to administrative delays. In relation to the various transfers that Mdm Zhang directed after the constitution of the Success Elegant Trust, Mdm Zhang's evidence is that these were for the benefit of her son. She submits in any case that the exercise of practical control over the Bank Accounts cannot

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"retrospectively erase a valid settlement of the moneys under the [Success Elegant Trust]".

20 Finally, Mdm Zhang argues that as she is not the beneficial owner of the Assets, there are no grounds for the appointment of a receiver.

SETL's case

21 Similar to its case below, SETL's case is that Mdm Zhang's intention was to part with ownership of the assets held in the Bank Accounts *absolutely* so that the Success Elegant Trust could be set up. It argues that, from the available evidence, Mdm Zhang either intended to transfer the Assets absolutely to SETL or, in the alternative, to transfer the Assets beneficially to Mr Wang and his issue in terms of the Trust Documents. The following items of evidence, amongst others, were highlighted:

(a) the Trust Documents themselves, which SETL avers evinces Mdm Zhang's intention to divest herself of the beneficial interest in the Assets;

(b) the W-8BEN Forms, which indicate that SETL was the beneficial owner of the income of the CS Account;

(c) in relation to the 6 March 2015 Letter, that Reed Smith later clarified in a letter dated 15 April 2015 to DB that Mdm Zhang "does not have any beneficial ownership interest in [SETL] and/or the [DB Account]" ("the 15 April 2015 Letter").

22 As such, SETL submits that it is the absolute owner of the Assets and there is no ground for the appointment of a receiver.

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Issue

23 The key issue before us was whether the Judge erred in finding that Mdm Zhang remained the beneficial owner of the Assets after 4 June 2014. We add that neither Mdm Zhang nor SETL seriously contested the Judge's determination that it was just and convenient for receivers to be appointed over the Bank Accounts should Mdm Zhang be found to be the beneficial owner of the Assets.

24 Before setting out our determination on these issues, we address a preliminary issue that arose in the course of these proceedings – whether the appellants required permission to appeal against the HC Judgment. This issue was raised in a case management conference which took place on 8 February 2023, with all parties (including the LDV Entities) taking the position in a joint letter to the Registrar dated 15 February 2023 that permission to appeal was not necessary.

Decision

Permission to appeal

25 Under para 3(*l*) of the Fifth Schedule of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA"), the permission of the appellate court is required to appeal against a decision of the General Division where a judge makes an order at the hearing of any interlocutory application (other than an application for certain matters set out under para 3(*l*) which are not applicable to the present proceedings).

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26 The meanings of the words "order" and "interlocutory application" in para 3(*l*) of the Fifth Schedule of the SCJA were settled by the Court of Appeal in *Telecom Credit Inc v Midas United Group Ltd* [2019] 1 SLR 131 ("*Telecom Credit*"). In *Telecom Credit*, addressing the equivalent provision under para (*e*) of the Fifth Schedule of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed), Prakash JA held that an "order" referred to an "interlocutory order", which in turn refers to an order that "does not finally dispose of the rights of the parties": *Telecom Credit* at [19]. Further, an "interlocutory application" refers to "an application whose determination *may or may not* finally determine the parties' rights in the cause of the pending proceedings in which the application is being brought" [emphasis added]: *Telecom Credit* at [26]. The purpose of the statutory scheme regarding the right to appeal is that "an appeal to the Court of Appeal will generally be as of right for orders made at interlocutory applications which have the effect of finally disposing of the substantive rights of the parties": *OpenNet Pte Ltd v Info-communications Development Authority of Singapore* [2013] 2 SLR 880 at [18].

27 Turning to the present facts, the Judge was of the view that the power of the court to appoint receivers by way of equitable execution was founded on s 4(10) of the Civil Law Act 1909 (2020 Rev Ed) ("CLA"). Section 4(10) of the CLA provides that:

> **Injunctions and receivers granted or appointed by *interlocutory orders***
>
> (10) A Mandatory Order or an injunction may be granted or a receiver appointed by an *interlocutory order* of the court, either unconditionally or upon such terms and conditions as the court thinks just, in all cases in which it appears to the court to be just or convenient that such order should be made.
>
> [emphasis added in italics]

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28 Notably, s 4(10) of the CLA describes such an order for the appointment of a receiver as "an interlocutory order of the court". On a plain reading of the provision, therefore, it would appear that if an order to appoint receivers were indeed made under s 4(10), such an order is an "interlocutory order" of the court which then requires permission before an appeal can be made. On that view, as the appellants had not applied for permission to appeal before the filing of the present appeals, the appeals would have been dismissed for want of permission.

29 A brief perusal of the legislative history behind s 4(10) of the CLA affirms the plain reading of the provision that the order is an interlocutory one. Section 4(10) has its roots in s 25(8) of the UK Supreme Court of Judicature Act 1873 (c 66) (UK) (the "1873 Act"). The 1873 Act, in turn, sought to codify extant equitable rules pursuant to the fusion of the courts of law and equity. In this regard, it has been recognised that the equitable power to appoint a receiver is "a discretionary power exercised by the court … [which] is *provisional* only for the more speedy getting in of a party's estate, and securing it for the benefit of such person *who shall appear to be entitled* ..." [emphasis added] (*Skip v Harwood* (1747) 3 Atk 564). Turning then to more recent expressions of the power under s 4(10) of the CLA, in *Lee Kuan Yew v Tang Liang Hong and another and other suits* [1997] 1 SLR(R) 328 ("*Lee Kuan Yew*"), Lai Kew Chai J observed at [8] that the purpose of the appointment of receivers under s 4(8) of the Civil Law Act (Cap 43) (which is *in pari materia* to s 4(10) of the CLA) is "to preserve the asset or to prevent any dissipation of any asset of the defendant who may thereby make the asset judgment proof". In this vein, the receiver's role is "the identification, collection and protection or preservation of property which he must hold to abide by the outcome of the action in which he is appointed" (*Lee Kuan Yew* at [7]). Claimants seeking to rely on this

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preservatory power of the court need not "have a proprietary claim or *any right over the asset over which a receiver is appointed*" [emphasis added] (*Lee Kuan Yew* at [8]). In other words, the nature of s 4(10) is properly interlocutory in the sense that it may be exercised *pending the final determination of the parties' rights*.

30 However, there was another provision on the appointment of receivers. This pertained to the court's power to appoint a receiver by way of equitable execution based on a different statutory basis, *ie*, O 51 r 1(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC 2014"), which provides that:

> RECEIVERS: EQUITABLE EXECUTION
>
> **Appointment of receivers by way of equitable execution (O. 51, r. 1)**
>
> **1.—**(1) *Where an application is made for the appointment of a receiver by way of equitable execution,* the Court in determining whether it is just or convenient that the appointment should be made shall have regard to the amount claimed by the judgment creditor, to the amount likely to be obtained by the receiver and to the probable costs of his appointment and may direct an inquiry on any of these matters or any other matter before making the appointment.
>
> [emphasis added]

31 Paragraph 51/1/1 of *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) describes O 51 r 1(1) of the ROC 2014 as "a form of equitable relief to enforce a judgment debt where recovery by the more usual processes of execution or attachment of debts is impracticable". In similar terms, G P Selvam J in *Lee Kuan Yew v Tang Liang Hong and another* [1999] 1 SLR(R) 533 observed at [15] that:

> … There are various interests in property to which a judgment debtor may be entitled, yet which cannot be taken in execution under the usual form of execution. *Equitable interests in*

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> *property held in the name of someone else is an example of proprietary interests which are not amenable to legal execution.* Appointment of a receiver by way of equitable execution of equitable interests in property was conceived by the Court of Chancery to reach such interest. …
>
> [emphasis added]

32 We observe that the exercise of the power under O 51 r 1(1) of the ROC 2014 appears to be situated at the point of the proceedings where the substantive rights of the parties *have already been determined*, and where equitable relief is necessary in order for the judgment creditor to attain the fruits of the court's determination on the merits. This is as opposed to the exercise of the power under s 4(10) of the CLA for *preservatory* purposes.

33 As such, it appears to us that the nature of the court's power to appoint a receiver under s 4(10) of the CLA takes on a different complexion from that envisaged in O 51 r 1(1) of the ROC 2014. Given the nature of the application before the Judge, we are of the view that O 51 r 1(1) of the ROC 2014, rather than s 4(10) of the CLA, was the proper statutory basis for his orders.

34 In any event, we respectfully disagree with the Judge's observation that "[t]he appointment of a receiver in aid of enforcement of a judgment is an interlocutory one, even though made after final judgment", and that "[i]t is inherently temporary and comes to an end once the judgment debt is paid": HC Judgment at [2]. In our view, the appointment of a receiver by way of equitable execution is no more temporary than an order to pay. The latter order is *permanent* even though its purpose is achieved once the judgment debt is paid. Further, the Judge's orders were premised on a determination of the substantive rights over the Assets, and were, as such, final ones. Once the orders were made, there was nothing else for the court to determine under the applications. Thus,

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the applications for the appointment of receivers were not interlocutory in nature in the circumstances.

35 For these reasons, we agree with all the parties that the appellants may appeal against the Judge's decision as of right.

Whether Mdm Zhang is the beneficial owner of the Assets

36 The applicable legal principles on the substantive issue are not in dispute. These are summarised as follows:

(a) Where there is an express trust over a property, the court generally cannot impose an implied trust unless there are vitiating factors such as fraud, or where the express trust is proven to be a sham. In such cases, the express trust is set aside, and it is open for the court to impose an implied trust over the property: *Pankhania v Chandegra* [2012] EWCA Civ 1438 ("*Pankhania*"); Lynton Tucker, Nicholas Le Poidevin & James Brightwell, *Lewin on Trusts* (Sweet & Maxwell, 20th Ed, 2020) at paras 5-034 and 5-035.

(b) A resulting trust arises when a transferor transfers property to a transferee in circumstances in which the transferor does not intend to benefit the transferee: *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*") at [35]; *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*") at [43]. A transferor's lack of intention to benefit the transferee can be established in two ways: (a) by a failure to rebut the presumption of resulting trust which arises when a transferee of property does not provide the whole of the consideration for the transfer; or (b) by evidence of the

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transferor's intention with respect to the transfer. The court should not resort to the presumption if there is direct evidence which can reveal the transferor's intention or from which that intention can be inferred: *Chan Yuen Lan* at [51] and [52].

(c) The two factual elements which give rise to a resulting trust are therefore: (a) a transfer of property to a transferee; and (b) circumstances in which the transferor does not intend to benefit the transferee: *Moh Tai Siang v Moh Tai Tong and another* [2018] SGHC 280 at [72]; *Lau Siew Kim* at [35].

37 At present, the parties agree that there is no need to resort to evidential presumptions as there is sufficient evidence to ascertain Mdm Zhang's intention in relation to the Assets. The court's task is to arrive at an objective assessment of the subjective intentions of the transferor, Mdm Zhang: *Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 ("*Tan Yok Koon*") at [83]. The time at which to ascertain a transferor's intention is, generally, the time at which the property was transferred to the transferee: *Acute Result Holdings Ltd v CGS-CIMB Securities (Singapore) Pte Ltd (formerly known as CIMB Securities (Singapore) Pte Ltd*) [2022] SGHC 45 at [71]. However, evidence of the transferor's subsequent conduct is admissible and potentially relevant: *Tan Yok Koon* at [110]. Turning then to the facts before us, the operative time at which Mdm Zhang's intention should be assessed is 4 June 2014, being the date at which the Deed of Addition was executed and which she claims beneficial ownership of the Assets was transferred to Mr Wang and his children. We thus begin our analysis with the Trust Documents themselves, before considering the circumstances surrounding the execution of the same.

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The Trust Documents

38 Both Mdm Zhang and SETL take the position that the Trust Documents evince Mdm Zhang's intention to part with the equitable interest in the *assets* of SETL generally. In this regard, both Mdm Zhang and SETL argue that under the scheme of the Success Elegant Trust, it would not have made sense to transfer SETL to Asiatrust without any corresponding intention to benefit either SETL or Mr Wang and his issue. The share in SETL *per se* had "no intrinsic value" and, viewed apart from the Assets, SETL was "an empty corporate shell".

39 At the outset, we note that the Trust Documents, on their face, do not expressly deal with the Assets. The Declaration of Trust executed on 3 June 2014 contains a declaration that the "Trustees", identified as Asiatrust, hold the "Trust Fund" for the benefit of the "Beneficiaries". The "Trust Fund" is identified in clause 1(17)(b) of the Declaration of Trust as "all money investments or other property… under the control of and… accepted by the Trustee as additions", with the Second Schedule of the Declaration of Trust providing that the "Trust Fund" comprised the nominal sum of US$10. The "Beneficiaries" are identified in the Third Schedule of the same document as "Wang Xiaofei and his children and remoter issue". The Deed of Addition, executed the next day, states that Mdm Zhang, as "Settlor" of the Success Elegant Trust, transfers "[o]ne (1) fully paid share … in [SETL]" in addition to the "Trust Fund". That the Trust Documents do not expressly relate to a transfer of the Assets was similarly noted by the Judge (at [49] of the HC Judgment). Mdm Zhang and SETL appear to accept the same in their respective submissions, albeit impliedly.

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40 SETL relies on an excerpt in Lynton Tucker, Nicholas le Poidevin and James Brightwell, *Lewin on Trusts* (Sweet & Maxwell, 19th Ed, 2015) ("*Lewin"*) at para 9-034, where it is argued that "[w]here a trust is constituted for the purpose of acquiring property through a holding company owned by the trust and the settlor provides the purchase money for the acquisition of the property by the holding company, the court is *likely to infer* that the provider intended the holding company to be the equitable owner of the property" [emphasis added]. By analogy, SETL argues that Mdm Zhang must have intended for SETL to be the equitable owner of the Assets which she had transferred to the Bank Accounts.

41 In our view, this proposition in *Lewin* is of limited assistance to SETL. The accompanying footnote to the excerpt in *Lewin* cites the case of *Nightingale Mayfair Ltd v Mehta and others* [1999] All ER (D) 1501 ("*Nightingale*") (which SETL relies on as well). In *Nightingale,* the issue was whether the defendant had beneficial interest in a property that he had transferred to an offshore company, the shares of which were vested in an offshore trust. Blackburne J found that the beneficial interest in the property was vested in the offshore company rather than with the defendant, as he was satisfied with the defendant's evidence that such a structure was in place so that certain tax objectives could be achieved, and that this object would not be fulfilled if the beneficial interest in the property did not vest in the offshore company. In this context, Blackburne J observed that "the proper and natural inference from the decision by an individual to purchase a property in the name of a company and provide it with the funds to do so, especially where the company is controlled by the individual, is that the company should be the beneficial as well as the legal owner of the money and then the property".

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42 It would appear, however, that subsequent authorities have not drawn such an inference as *readily* as Blackburne J suggested in *Nightingale*.

(a) In *United Overseas Bank Ltd v Chief Emmanuel C Iwuanyanwu and another* [2001] All ER (D) 40 (Mar) ("*Iwuanyanwu*"), the issue was whether the defendant retained the beneficial interest in a property that was transferred to a company under his control. The claimant bank sought a declaration to this effect in order to enforce a judgment debt against the defendant. Robert Englehart QC (sitting as Deputy Judge of the High Court) held that the beneficial interest remained with the defendant as there was no practical reason in evidence to explain why the defendant would have wanted to transfer the beneficial interest to the company.

(b) In *NRC Holding Ltd v Danilitskiy and others* [2017] EWHC 1431 (Ch) (*"NRC*"), the issue was, similar to that in *Iwuanyanwu*, whether the defendant retained the beneficial interest in a property that was transferred to a company under his control. The claimant sought a charging order over the property to enforce judgment debt against the defendant. Robin Dicker QC (sitting as Deputy Judge of the High Court) held for the claimant. Having considered the observations of Blackburne J in *Nightingale*, Dicker QC at [44] appeared to cast doubt on the extent to which "the inference that Blackburne J referred to is indeed the proper and natural one", preferring instead (at [46]) the position that "[e]ach case ultimately depends on the facts" (having noted elsewhere in his judgment the similar observations of Lord Sumption in *Prest v Petrodel Resources Ltd and others* [2013] 2 AC 415 at [52] that "[w]hether assets legally vested in a company are beneficially owned by its controller is a

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> *highly fact-specific* issue" [emphasis added]). Dicker QC also observed that the case of *Iwaunyanwu* was illustrative of the broader rule that the issue of beneficial ownership ultimately depends on the facts of each case (*NRC* at [50]).

43 The upshot of the above is that the settlor's donative intent (or lack thereof) remains, in the final analysis, an inquiry to be determined on the facts and must be balanced against all the available evidence. It may well be that in the ordinary case, a trust constituted over the *shares* of the company also extends to its *assets*. However, as we later demonstrate in relation to Mdm Zhang's conduct and dealings with the Assets after the execution of the Trust Documents, this was not an ordinary case. It is clear to us that Mdm Zhang acted on the premise that she owned the Assets.

44 Before leaving this section of our analysis, and having elaborated at [39] above on the Trust Documents, we outline the *evidential* significance of the Trust Documents. In our view, as the Declaration of Trust sets the contours for the authority and powers exercisable by Mdm Zhang as settlor, Asiatrust as Trustee, and Mr Wang as "protector" (as well as the beneficiary to the Success Elegant Trust together with his issue), it provides the quintessential backdrop against which Mdm Zhang and SETL's subsequent conduct may be assessed. To this, it must be noted that Mdm Zhang, as the settlor, is accorded *no* residual powers under the Declaration of Trust except to terminate the protector of the trust. In other words, once the Declaration of Trust was executed, the settlor largely falls away.

45 If the Assets had truly been transferred away by Mdm Zhang, Mdm Zhang's role would have been reduced to acting as the authorised

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signatory over the Bank Accounts up till late-March 2015 and as the sole director of SETL until 3 March 2015 when Mdm Zhang resigned in order for ATP Directors Limited to take over as the sole director of SETL. In this regard, the circumstantial evidence indicates that steps were taken to remove Mdm Zhang as the sole signatory of the CS Account and DB Account (albeit some months after the execution of the Trust Documents) and to inform both CS and DB of the status of Asiatrust as the new shareholder of SETL later, *ie*, from October 2014 to March 2015.

(a) For the CS Account:

(i) In an e-mail from CAM to CS dated 17 October 2014, CAM informs CS of a change in the shareholder of SETL from "Zhang to trust (*ie*, Asiatrust)";

(ii) In an e-mail from CAM to CS dated 20 October 2014, CAM informs CS of the structure of the Success Elegant Trust, with Asiatrust identified as trustee, and "Mr. Wang Xiaofei and his children" listed as "beneficiaries" under the trust;

(iii) On 17 February 2015, one Ms Dorothy Cheng (identified as the Manager of the Corporate & Trust Services of Asiaciti Trust Hong Kong Limited, which in turn is part of the same group of companies as Asiatrust), e-mails CS attaching a signed confirmation that "[t]he Beneficiaries of the [Success Elegant Trust] are Wang Xiaofei and his children". In the course of these communications, Ms Dorothy Cheng also attaches specimen signatures of representatives of Asiatrust pursuant to amendments to "the authorized signatory list" for the account.

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(b) For the DB Account:

(i) on 17 February 2015, Ms Dorothy Cheng wrote to DB with a document entitled "Cover letter to DB re change of shareholder", in which AsiaCiti informed DB that Asiatrust was now the sole shareholder of SETL; and

(ii) from 25 March to 26 March 2015, AsiaCiti wrote to DB to inform DB of the change of director and authorised signatory to the DB Account.

46 Relatedly, while there was no documentary evidence before us showing precisely when changes to the signatory of the Bank Accounts occurred, the LDV Entities mentioned in their submissions that "Mdm Zhang remained the sole authorised signatory [of the Bank Accounts] until around late March 2015".

Events subsequent to the execution of the Trust Documents

47 With this background in mind, we turn to consider the events that followed the execution of the Success Elegant Trust on 4 June 2014. The first material event, to which the Judge placed great emphasis upon and the LDV Entities similarly rely on, are a series of transfers from 12 June 2014 to 11 February 2015 from the CS Account to Mdm Zhang and Mr Wang (the "June 2014 to February 2015 CS Transfers"). These transfers amounted to around US$32.3m in total. These transfers, together with Mdm Zhang's evidence on the purpose of the transfers, are detailed as follows:

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Date	Event	Mdm Zhang's evidence
12 June 2014	**Fund Transfer out of the CS Account**: US$12,057,000 is transferred to Mr Wang.	For Mr Wang's benefit.
7 August 2014	**Fund Transfer out of the CS Account**: US$12,057,000 is transferred to Mr Wang.	For Mr Wang's benefit.
22 September 2014	**Fund Transfer out of the CS Account**: US$3,000,000 is transferred to Mdm Zhang's personal bank account.	Mdm Zhang claims that "due to the long passage of time, [she is] unable to locate the relevant documents and information" on this transfer.
29 September 2014	**Fund Transfer out of the CS Account**: US$5,000,000 is transferred to Mr Wang.	For Mr Wang's benefit.
19 January 2015	**Fund Transfer out of the CS Account**: US$100,000 is transferred to Mdm Zhang's personal bank account.	According to Mdm Zhang, this was for the purchase of Tiffany jewellery for the benefit of Mr Wang.
10 February 2015	**Fund Transfer out of the CS Account**: JPY 3,000,000 is transferred to Mdm Zhang's personal bank account.	Mdm Zhang claims that "due to the long passage of time, [she is] unable to locate the relevant documents and information" on this transfer.

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Date	Event	Mdm Zhang's evidence
11 February 2015	**Fund Transfer out of the CS Account**: US$114,478.93 is transferred to Mdm Zhang's personal bank account.	Mdm Zhang claims this is for onward payment to Stephen Sills Associates LLC for the benefit of Mr Wang to acquire property.

48 From the above transfers, three points arise. First, of the above transfers, four were made *directly* to Mdm Zhang. These are: (a) the transfer dated 22 September 2014 for US$3,000,000; (b) the transfer dated 19 January 2015 for US$100,000; (c) the transfer dated 10 February 2015 for JPY 3,000,000; and (d) the transfer dated 11 February 2015 for US$114,478.93. While Mdm Zhang explained that the transfers dated 19 January 2015 and 11 February 2015 were made respectively for the purchase of Tiffany jewellery and for onward payment to Stephen Sills Associates LLC, and that these were payments made for the benefit of her son Mr Wang, this misses the point. There was simply no valid reason for the moneys to be transferred first to Mdm Zhang's account.

49 Secondly, Mdm Zhang was unable to account for the transfers of US$3,000,000 and JPY 3,000,000 on 22 September 2014 and 10 February 2015 respectively other than to state that she was unable to locate the relevant documents on this transfer nor recall what they were made for. We find it difficult to accept that Mdm Zhang could not recollect the purpose of the payment of a large sum of US$3,000,000. This is particularly so when contrasted with the fact that Mdm Zhang was able to give evidence on the purpose of the transfers of US$100,000 and US$114,478.93 on 19 January and 11 February 2015 respectively. Mdm Zhang's failure to explain and produce

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evidence in relation to the 22 September 2014 and 10 February 2015 transfers is also questionable given the nature of the Success Elegant Trust, which is administered by a *professional trustee,* Asiatrust. One would ordinarily expect a professional trustee to keep some documentation on changes to the assets of the trust. Absent any evidence pointing to the contrary, we agree with the Judge that the natural inference to be drawn is that Mdm Zhang directed these transfers for *her own benefit* (see the HC Judgment at [54(a)]). Furthermore, we are of the view that it is likely that Asiatrust was not aware of the existence of the bank accounts, a point which we elaborate on later.

50 This brings us to our third point, which is that there is nothing in the evidence before us to show that the *trustee*, Asiatrust*,* had directed Mdm Zhang to make the June 2014 to February 2015 CS Transfers. Indeed, Mdm Zhang did not assert that she had done so on the instructions of Asiatrust. As we had highlighted at [44]–[45] above, by this juncture, Mdm Zhang was supposed to play *a limited role* as the sole signatory to the CS Account and as the director of SETL. If indeed the beneficial ownership of the Assets had been transferred and if Asiatrust had assumed the duty to administer those assets as trustee, why was Mdm Zhang able to direct those transfers unilaterally?

51 When these three points are taken together, we are of the view that the June 2014 to February 2015 CS Transfers were highly probative of Mdm Zhang's intention, at the time of the creation of the trust, to retain a beneficial interest in the Assets notwithstanding the trust arrangements.

52 In fact, the events that followed the June 2014 to February 2015 CS Transfers reinforce this conclusion. Around two weeks after the last of the June 2014 to February 2015 CS Transfers, the LDV Entities had on 26 February 2015

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filed an *ex parte* application in the HKCFI to obtain the HK Freezing Orders. Chan J granted the HK Freezing Orders that same day. The LDV Entities' evidence is that Mdm Zhang received notice of the HK Freezing Orders on 2 March 2015 through her office located in Beijing. The next day, she also attended a meeting with Mr Roy Kuan, a representative of CVC, and acknowledged her receipt of the HK Freezing Orders.

53 On 3 and 4 March 2015, Mdm Zhang then proceeded to direct the following transfers out of the DB Account (the "March 2015 DB Transfers"):

Date of Transaction	**Transaction**
3 March 2015	US$9,902,257.00 and US$6,037,505 to The Manufacturers Life Insurance (the "Manufacturers Life Transfer")
4 March 2015	US$14,878,868 to Transamerica Life (Bermuda) Limited (the "Transamerica Transfer")
	US$13,937 to Asiaciti Trust Hong Kong Limited (the "Asiaciti Transfer")
	US$3,000,000 to Metro Joy International Limited (the "Metro Joy Transfer")
	US$2,000,000 to Joy Grain Group Limited (the "Joy Grain Transfer")

54 Of the above transfers, the payment instructions for the transfers on 4 March 2015, *ie*, the Transamerica Transfer, the Joy Grain Transfer, the Metro Joy Transfer and the Asiaciti Transfer, show not only that these transfers were directed by Mdm Zhang on the *very same day*, but further that they were

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directed with the instruction that payment be made "*soonest*" [emphasis added]. The payment instructions for the Transamerica and Asiaciti Transfers were also marked "TOP URGENT". This instruction for payment to be made "soonest" may be contrasted to the payment instructions in relation to the Manufacturers Life Transfer which simply states that the relevant transfer may be made on "Mar 3, 2015". Neither Mdm Zhang nor SETL has accounted for why these transfers had to be made with such urgency in their evidence.

55 In our view, when the great haste with which Mdm Zhang had directed the transfers on 4 March 2015 is taken together with the fact that she had been served the HK Freezing Orders merely *one day earlier*, it may be inferred that Mdm Zhang had acted as she did in fear that the Assets in Singapore may also be subject to similar freezing orders. Indeed, the LDV Entities were granted the SG Freezing Orders on 2 March 2015, and had on 9 March 2015 obtained leave to serve the relevant papers on Mdm Zhang out of jurisdiction. In this regard, we agree with the Judge's conclusion that at [54(b)] of the HC Judgment that this urgency spoke to Mdm Zhang's subjective view that the Assets were *her own* rather than vested in Mr Wang and his issue, or SETL for that matter. That is not all.

56 In relation to the *purpose* of the March 2015 DB Transfers, SETL relies on the following evidence to support its assertion that these transfers were ultimately made for Mr Wang's benefit:

(a) **Manufacturers Life and Transamerica policies:** While the Manufacturers Life and Transamerica policies themselves are not in evidence, SETL highlights a letter dated 13 February 2015 from Mr Wang to Asiatrust directing the purchase of one insurance policy from

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Transamerica and three policies for "Manulife" (which presumably refers to the Manufacturers Life). In this letter, SETL is identified as "the sole owner and sole beneficiary of each polic[y]". Asiatrust executes a trustee's resolution that same day authorising these payments. Director's resolutions of SETL dated 15 February 2015 to approve the acquisition of the Manufacturers Life and Transamerica policies were also adduced in evidence.

(b) **Metro Joy Transfer**: Ms Xiao's evidence is that this transfer, made to Metro Joy International Limited, was part of a trust arrangement set up for the benefit of Mr Wang and his issue. This trust arrangement had a similar structure to the Success Elegant Trust.

(c) **Joy Grain Transfer**: While the Joy Grain Transfer was directed and made on 4 March 2015, the transfer was subsequently ratified by SETL pursuant to resolutions dated 24 May 2015. At this point, ATP Directors Limited had taken over as director of SETL. SETL also relies on a letter dated 24 May 2015 by Mr Wang to Asiatrust consenting to the transfer of "USD 2,000,000 to [himself] on 4 March 2015", and a trustee's resolution by Asiatrust on the same date authorising the said transfer. While Joy Grain is not explicitly referred to in these latter two documents, the LDV Entities do not dispute that they refer to the Joy Grain Transfer.

(d) **Asiaciti Transfer**: This was made for the payment of Asiatrust for the provision of trustee services.

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57 Against these, the LDV Entities, referring to the Manufacturers Life and Transamerica Transfers, dispute that the relevant authorisations for these transfers were accurately dated. They argue that "given the context and Mdm Zhang's conduct", these authorisations are "more likely than not to be retrospective attempts to legitimise the transfers made to The Manufacturers Life Insurance and Transamerica Life under the pretext of a trust". In support of this, they point to the fact that retrospective approval was given in relation to the Joy Grain Transfer.

58 In our judgment, the assertion that the Manufacturers Life and Transamerica Transfers were backdated is a speculative one that is not supported by the evidence. Insofar as the nature of the March 2015 DB Transfers as a whole are concerned, there is nothing to indicate (unlike in the case of the June 2014 to February 2015 CS Transfers) that these transfers were not made for Mr Wang's benefit.

59 Leaving the veracity of the Manufacturers Life and Transamerica Transfer aside, however, the real point to be made is that Mdm Zhang had clearly exercised a large extent of *control* over these "urgent" transfers on 4 March 2015. Mdm Zhang appeared to have directed the Joy Grain Transfer without *any prior direction* from the trustee. This, in our view, strengthens the aforesaid inference that may be drawn from the *urgency* in which the same transfer was directed – that Mdm Zhang ultimately viewed the Assets as her own. Given that there is no documentary evidence of any approval or ratification of the Metro Joy Transfer, a similar conclusion may be reached in relation to that transfer. It was clear to us that Mdm Zhang saw fit to deal *freely* with the Assets without regard to the very same trust arrangement she now seeks to rely

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on. This, taken together with her limited if not virtually *non-existent* role in the Success Elegant Trust, spoke to her subjective intention to retain beneficial ownership over the moneys in the Bank Account.

60 Yet another pertinent aspect of the evidence was SETL's *lack of action* after the Assets in the Bank Accounts were frozen following the SG Freezing Orders. At the time of the hearing before the Judge, around seven years had lapsed without SETL taking any action to contest the SG Freezing Orders. To account for this, SETL relies on the evidence of Ms Angela Edith Pope ("Ms Pope"), who gave evidence on behalf of ATP Directors Limited in the course of pre-action discovery proceedings commenced by the LDV Entities in HC/OS 305/2015. It will be recalled that ATP Directors Limited had been appointed as director of SETL in place of Mdm Zhang on 3 March 2015. The relevant part of Ms Pope's evidence is as follows:

> I also wish to explain why SETL did not pursue legal action against [DB] in order to ensure the 'release' of SETL's funds held in its account with [DB]. Simply put, there was no urgency for the 'release' of the funds held with [DB], which continued to earn interest. In addition, there was no good reason (apart from optics, with the benefit of hindsight) for SETL to spend money to seek such a 'release', given that SETL believed the said funds would be released in due course through the efforts of Mdm Zhang. SETL knew she had already applied for the injunctions against her in Hong Kong to be set aside, and, if successful, the [SG Freezing Orders] would ultimately be set aside also.

61 In our view, Ms Pope's explanations were not convincing.

62 First, there was no good reason why SETL should leave it to Mdm Zhang to object to the SG Freezing Orders. If SETL had indeed obtained *absolute* ownership over the Assets (as is SETL's position in the present appeal), it was for SETL, rather than Mdm Zhang, to contest the SG Freezing

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Orders. There was no valid reason for SETL to depend on Mdm Zhang to do so if she truly had no interest in the Assets after 4 June 2014.

63 Secondly, Ms Pope's evidence that there was no urgency for the release of the funds in the DB Account was not consistent with SETL's own conduct in the course of these proceedings. Following the imposition of the SG Freezing Orders, SETL filed HC/SUM 3695/2021 ("SUM 3695") on 4 August 2021 for permission to withdraw $500,000 from the Bank Accounts to meet the legal expenses in connection with OS 1139 and 1140, and a further $175,000 to meet "*operational expenses incurred by SETL* whether incurred before or after" the date of the application [emphasis added]. This latter sum included the director's remuneration of $12,000 per month for Mr Ang Chiang Meng, the director of SETL at the time the application was filed, and "[f]ees for maintaining SETL [which includes] fees for book keeping services, corporate secretarial services, and premiums for directors and officers liability insurance" which amounted to $31,000 per annum. It therefore appears from SUM 3695 that the SG Freezing Orders had caused some measure of operational difficulty for SETL.

64 In our view, SETL's failure to challenge the Singapore Freezing Orders promptly undermines its case that it is the absolute owner of the Assets. SETL's protracted inaction gives rise to the inexorable inference that SETL *itself* did not believe that it had absolute ownership over the Assets, and thus did not think it necessary to separately seek to set aside the SG Freezing Orders which were directed only toward assets directly and/or indirectly owned by Mdm Zhang. The Judge had relied on this in reaching his determination that Mdm Zhang intended to retain the Assets (HC Judgment at [54(a)]); and in our view, rightly so.

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65 This leaves us with three broad categories of evidence: (a) the 6 March 2015 Letter from Reed Smith; (b) Chan J's decision in *La Dolce Vita (HK)*; and (c) the bank documents (such as the CS Account Opening Form and the DB Risk Profile Form). In our judgment, these items of evidence either reinforces our conclusion that Mdm Zhang intended to retain beneficial ownership over the Assets, or were, at best, equivocal to the issue. We deal with them in turn.

The 6 March 2015 Letter

66 On 5 March 2015, a day after the March DB Transfers were completed, the LDV Entities commenced arbitration proceedings in CIETAC against Mdm Zhang and her associated companies. On 6 March 2015, Reed Smith, in response to the freezing of the DB Account, wrote to DB's solicitors. The 6 March 2015 Letter stated as follows:

> 1. We act for Ms Zhang Lan.
>
> 2. We are instructed that Ms Zhang maintains the following account with you:
>
> A/C Name: Success Elegant Trading Limited
>
> …
>
> 3. We are further instructed that you have frozen the aforementioned account by reason of court orders which have been served on you. Please provide us with copies of the relevant court orders.
>
> 4. Ms Zhang is taking legal action to set aside the said court orders. In the meantime, you are reminded of and requested to comply strictly with your duty of confidentiality towards Ms Zhang. In particular, you are not to disclose any information and/or documents relating to Ms Zhang and/or the aforementioned account to any third parties without the express consent of Ms Zhang.

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67 In relation to the 6 March Letter, the Judge observed at [54(c)] of the HC Judgment that:

> … The word "maintain" when used in relation to a bank account is not apt to describe merely being a signatory of an account. For someone to be said to maintain an account that account must be theirs. This was a formal communication by her lawyers in the wake of the SG Freezing Orders. There is no basis for interpreting the word in any other way, especially when her lawyers identified Mdm Zhang as the person to whom DB owed the duty of confidentiality. This could only mean that she was DB's customer in respect of the DB Account.

The Judge further found at [56] of the HC Judgment that Reed Smith was acting as Mdm Zhang's agent, and that Reed Smith's confirmation that Mdm Zhang had maintained the DB Account was an admission under ss 17 and 18 of the EA.

68 SETL disagrees with the Judge's interpretation of the word "maintain". It argues instead that the word "maintain" is ambiguous and may refer instead to the fact that Mdm Zhang maintained the DB Account in her capacity as a signatory. They highlight Reed Smith's subsequent 15 April 2015 Letter, where Reed Smith clarifies that SETL "is the holder of the [DB Account]" and that "[Mdm Zhang] does not have any beneficial ownership interest in [SETL] and/or the [DB Account]".

69 In our view, the Judge did not err in his assessment of the 6 March 2015 Letter with respect to the word "maintain". Contrary to SETL's suggestion, the 6 March 2015 Letter *does* support the inference that Mdm Zhang saw the moneys in the DB Account as her own.

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70 Furthermore, if indeed Mdm Zhang saw the moneys in that account as belonging to SETL, she would have immediately informed SETL of the situation. We infer that she did not do so as SETL only came into the picture much later. In a letter dated 30 March 2015, SETL's solicitors Zhong Lun Law Firm wrote to DB to claim that the DB Account belonged to SETL and not to Mdm Zhang. This was more than three weeks after the 6 March 2015 Letter. Importantly, there is also no evidence as to when SETL knew of the existence of the DB Account (and the CS Account). The late involvement of SETL suggested that Mdm Zhang had not informed the new shareholder of SETL or the new director promptly about the Bank Accounts when the share was transferred or the new director was appointed, respectively, at the time of transfer or appointment.

La Dolce Vita (HK)

71 On 14 March 2017, the LDV Entities obtained leave to commence committal proceedings against Mdm Zhang in the HKCFI, claiming that she had breached the HK Freezing Orders (amongst other claims). The issues before Chan J were, amongst others, whether Mdm Zhang had (a) dissipated the Assets through acts which include the June 2014 to February 2015 CS Transfers and the March 2015 DB Transfers; and/or (b) failed to disclose the full extent of her assets. In her judgment dated 14 March 2018 in *La Dolce Vita (HK)*, Chan J held that the LDV Entities had not proven that Mdm Zhang was the beneficial owner of the Assets, and was therefore not liable for dissipating the Assets in breach of the HK Freezing Orders: *La Dolce Vita (HK)* at [78]. Mdm Zhang, however, was found liable for contempt for failing to disclose all her assets of value of HKD 500,000 or more whether in or outside Hong Kong: *La Dolce Vita (HK)* at [112].

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72 Mdm Zhang submits that Chan J's findings in relation to the issue of her beneficial ownership in the Assets supports her case. In particular, Mdm Zhang highlights the observation of Chan J at [77] of *La Dolce Vita (HK)* that it was "not implausible that the trustees permitted [Mdm Zhang] to remained the sole signatory of SETL's bank accounts … irrespective of whether it is the best practice, it is conceivable that the trustees may be prepared to permit and agree to [Mdm Zhang's] continued role as a signatory in the operation of SETL's bank accounts" and also at [70] of *La Dolce Vita (HK)* that it was "reasonably possible and plausible that she signed as signatory of the accounts of SETL upon instructions and at the direction of the trustee".

73 The decision in *La Dolce Vita (HK)* is of limited evidential value to the issue before us. The issue before Chan J was whether Mdm Zhang was liable for contempt for breaching the HK Freezing Orders by dissipating Assets. This, in turn, depended on whether "it [could] be established *beyond a reasonable doubt* that [Mdm Zhang] had a beneficial interest in SETL" (at [36]) [emphasis added], to which "no court would wish to make a finding of contempt unless the evidence to support such a finding was good" (at [50]). The application before Chan J required a higher standard of proof, *ie*, beyond a reasonable doubt, than the one before the Judge in the HC Judgment which was on a balance of probabilities. In fairness to Mdm Zhang, she accepts in her submissions that this higher standard of proof was operative in Chan J's decision. As such, Chan J's findings must be viewed in the context of this higher standard of proof which does not apply in the present case. It was also not clear what the evidential basis was for Chan J's observation that it was "reasonably possible and plausible" that Mdm Zhang authorised the transfers "upon instructions and at the direction of the trustee" as there was no such evidence before us of any such instruction

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or direction. As mentioned, Mdm Zhang did not even allude to either. Therefore, Chan J's views were not sufficient to displace the inferences rightfully drawn by the Judge in relation to the beneficial ownership of the Assets.

74 It is also notable that Chan J had also observed at [75] of *La Dolce Vita (HK)* that the June 2014 to February 2015 CS Transfers had "suspicious or unusual features". She also questioned "why [Mdm Zhang] was able to give instructions for transfers from SETL's accounts for payments … at a time when she had allegedly ceased to have any beneficial interest in SETL or the assets of the trust" (at [75]). These observations broadly accord with our analysis on the June 2014 to February 2015 CS Transfers above, and to that extent, it is arguable that Chan J may have reached a different result on the issue of beneficial ownership had her decision been premised on a balance of probabilities.

Bank Documentation

75 In the course of setting up the CS and DB Bank Accounts, Mdm Zhang (with the assistance of CAM) had submitted the following documents amongst others: the CS Account Opening Form and W-8BEN Forms on 11 February 2014; the DB Risk Profile Form on 7 March 2014.

76 The LDV Entities rely on the former two documents as evidence of Mdm Zhang's intention to retain beneficial ownership over the Assets. The LDV Entities argue that the CS Account Opening Form supports the view that Mdm Zhang is the beneficial owner of the Assets. This is due to the fact that Mdm Zhang is listed as the "beneficial owner(s) of the assets" in Section 4.3 of the said form ("Section 4.3"), and further because she is listed as the sole authorised signatory of the CS Account. The LDV Entities also rely on Section

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II of the DB Risk Profile Form, where Mdm Zhang indicates in relation to the DB Account that she is the "authorized signer", "shareholder" and "beneficial owner" of the account.

77 Mdm Zhang and SETL, on the other hand, deny that these documents warrant such an inference. In particular, SETL argues that the use of the term "beneficial owner" in the CS Account Opening Form relates to *natural* rather than corporate persons, and therefore does not hold much, if any, evidential value to the present issue. Further, it argues that the use of the same term in the DB Risk Profile Form relates to beneficial ownership of *SETL* rather than its assets. SETL also point to the W-8BEN Forms, which were submitted to CS for compliance with US tax laws. In these forms, SETL is declared the "beneficial owner" of the income of the CS Account. The LDV Entities, on the other hand, argue that the W-8BEN Forms only deal with beneficial ownership regarding the *income* of the CS Account, and do not explicitly say that SETL is the beneficial owner of the account itself.

78 We first consider the CS Account Opening Form. Section 4.3 of the CS Account Opening Form, titled "Beneficial Owner(s)", sets out two options for the applicant to select from. These options, and Mdm Zhang's indication between the two, were as follows:

> **4.3 Beneficial Owner(s)**
>
> Please tick one of the boxes below.
>
> ☐ You, the account holder, are the beneficial owner (see definition at end of this section 4.3) of the assets in the account, now and in the future (only applicable to account holders such as listed companies/state-owned enterprises/charities or their subsidiaries).

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> ☑ The beneficial owner(s) of the assets in the account are listed below:
>
> …
>
> Name as it appears on identification document: *Zhang Lan*
>
> [emphasis added]

79 As is evident from the face of the CS Account Opening Form, Mdm Zhang had indeed indicated that she was the beneficial owner of the assets in the CS Bank Account. Consistent with this, Section 4.3 also defines the phrase "beneficial owner(s) of the assets" as one who "exercises ultimate effective control over and/or takes decisions about the assets and gives instructions to the account holder …". Even if, as SETL argues, the term 'beneficial owner' in the CS Account Opening Form was instead CS's own term of art and did not refer to beneficial ownership in the sense recognised in equity, the fact remained that Mdm Zhang had, through the form, acknowledged that she "exercised ultimate effective control" over the CS Account. This had *evidential weight* insofar as it supported the inference that Mdm Zhang retained the beneficial interest in the Assets in the CS Account.

80 However, we are also cognisant of the fact that it may not have been open for *SETL itself,* as the account holder, to indicate that it was the beneficial owner since the first option in Section 4.3 set out above was "only applicable to account holders such as listed companies/state-owned enterprises/charities or their subsidiaries". SETL was not any of these things. From this, however, the most that can be said in favour of Mdm Zhang and SETL is that the contents of the CS Account Opening Form were *equivocal* to the issue of beneficial ownership.

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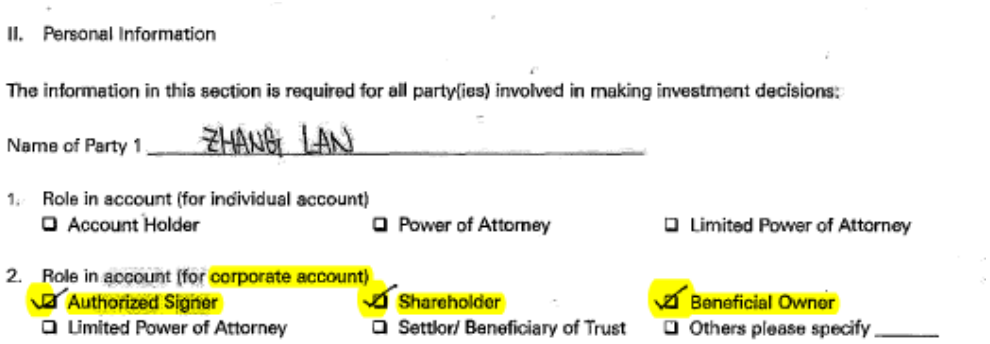
81 Turning to the DB Risk Profile Form, LDV highlights the fact that Mdm Zhang indicated that she was the "beneficial owner" in respect of her "role in [the] account" (the added highlights below are our emphasis):



II. Personal Information

The information in this section is required for all party(ies) involved in making investment decisions:

Name of Party 1 ZHANG LAN

1. Role in account (for individual account)
   ☐ Account Holder ☐ Power of Attorney ☐ Limited Power of Attorney

2. Role in account (for corporate account)
   ☑ Authorized Signer ☑ Shareholder ☑ Beneficial Owner
   ☐ Limited Power of Attorney ☐ Settlor/ Beneficiary of Trust ☐ Others please specify _____

82 SETL, however, argues that the indication of "beneficial owner" in the context of the DB Risk Profile Form relates not to the *assets* in the DB Account, but to beneficial ownership of *SETL* instead. They point here to a separate document entitled the "Establishment of Beneficial Owner's Identity" which was completed on the same day and submitted to DB. This document identifies Mdm Zhang as the "beneficial owner(s) *of the corporation*" [emphasis added], *ie*, SETL:

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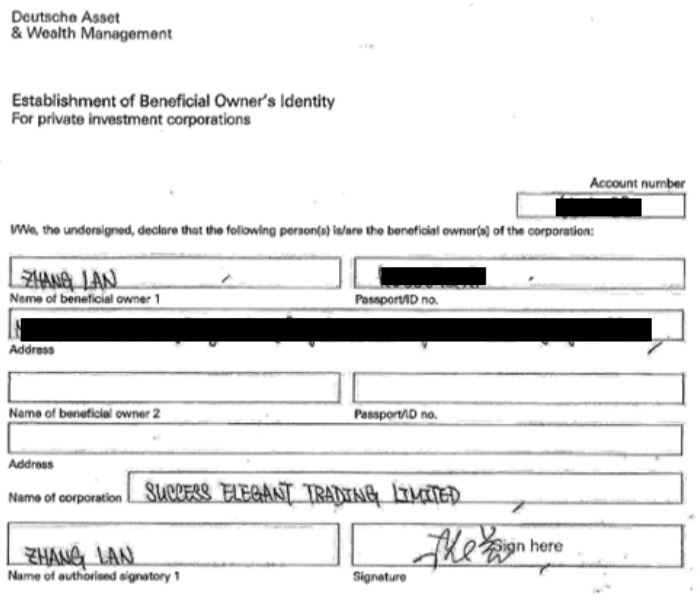

Deutsche Asset
& Wealth Management

Establishment of Beneficial Owner's Identity
For private investment corporations

Account number [redacted]

I/We, the undersigned, declare that the following person(s) is/are the beneficial owner(s) of the corporation:

ZHANG LAN — Name of beneficial owner 1 | [redacted] — Passport/ID no.

[redacted] — Address

Name of beneficial owner 2 | Passport/ID no.

Address

Name of corporation SUCCESS ELEGANT TRADING LIMITED

ZHANG LAN — Name of authorised signatory 1 | Sign here — Signature

83 Akin to our conclusion with respect to the CS Account Opening Form, we are of the view that the DB Risk Profile Form is, at the very least, not inconsistent with the view that Mdm Zhang was the beneficial owner of the DB Account.

84 SETL also points to the W-8BEN Forms, which were submitted to CS for compliance with US tax laws. In these forms, SETL was declared the "beneficial owner" of the income of the CS Account. The LDV Entities, on the other hand, aver that the W-8BEN Forms only deal with beneficial ownership regarding the *income* of the CS Account, and do not explicitly say that SETL is the beneficial owner of the account itself.

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85 In our view, contrary to the LDV Entities' suggestion, it was not clear on the W-8BEN Forms themselves nor elsewhere in the evidence that a distinction between ownership over the *income* and the *Assets* was a material one. On balance, we accept that the W-8BEN Forms are of *some* evidential support to SETL's case that Mdm Zhang intended to part with the beneficial interest in the Assets. However, this evidence must be weighed against the relevant material events that occurred after the sole share in SETL was transferred on 4 June 2014. In this regard, we agree with the Judge that the bulk of the evidence weighed against the inference to be drawn from the W-8BEN Forms (HC Judgment at [55]).

Summary on beneficial ownership of Assets

86 To summarise, we hold that the Judge did not err in finding at [57] of the HC Judgment that Mdm Zhang intended to "retain beneficial ownership and not give the moneys to SETL". Mdm Zhang and SETL's subsequent conduct was highly probative of the fact that Mdm Zhang and SETL regarded the Assets as beneficially owned by her. This is evident from the following:

(a) the extent of *control* she exhibited in directing the June 2014 to February 2015 CS Transfers and the March 2015 DB Transfers, and the concomitant lack of any evidence that these transfers were initiated or instructed by the trustee. This was despite the fact that her only role within the scheme of the Success Elegant Trust was that of a signatory to the Bank Accounts and director of SETL;

(b) that it was likely that she had *personally benefitted* from certain payments in the course of the June 2014 to February 2015 CS Transfers;

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(c) the fact that she had directed the March 2015 DB Transfers on *an urgent basis* after receiving the HK Freezing Orders without any explanation for why these transfers had to be made with such haste; and

(d) the late involvement of SETL in responding to the HK Freezing Orders and in challenging the SG Freezing Orders.

87 The other circumstantial evidence, such as the 6 March 2015 Letter, while not determinative of the issue in and of themselves, serves to reinforce this conclusion. In our view, the collective weight of the abovementioned evidence also outweighs any inference to the contrary that may be drawn from the Trust Documents, and/or the W-8BEN Forms.

Conclusion

88 Mdm Zhang's appeals in AD 4 and AD 5 are dismissed. SETL's appeals in AD 6 and AD 7 are also dismissed. As for costs, we award the LDV Entities costs of $35,000 inclusive of disbursements, to be borne jointly and severally by Mdm Zhang and SETL. The usual consequential orders apply.

Woo Bih Li
Judge of the Appellate Division

Aedit Abdullah
Judge of the High Court

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Tham Lijing (Tham Lijing LLC) (instructed), Darren Tan, Kevin Cheng, Siew Wei Ying Silas and Yeo Hsien Yang Shane Anthony (Yang Xianyang) (Invictus Law Corporation) for the appellant in Civil Appeal No 4 of 2023 and Civil Appeal No 5 of 2023;
Thio Shen Yi, SC, Koh Li Qun Kelvin (Xu Liqun), Kevin Elbert, Tan Shi Ying Crystal and Phoon Wuei (TSMP Law Corporation) for the appellant in Civil Appeal No 6 of 2023 and Civil Appeal No 7 of 2023; and
Han Guangyuan Keith and Angela Phoon Yan Ling (Oon & Bazul LLP) for the respondents in Civil Appeal No 4 of 2023 to Civil Appeal No 7 of 2023.

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