IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA 20

Court of Appeal / Civil Appeal No 34 of 2024

Between

(1) Khoo Phaik Ean Patricia
(2) Ng Eu Lin Evelyn

… *Appellants*

And

(1) Khoo Phaik Eng Katherine
(2) Khoo Phaik Lian Joyce
(3) Khoo Teng Jin

… *Respondents*

GROUNDS OF DECISION

[Trusts — Resulting trusts — Ownership of moneys in joint bank accounts]

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Khoo Phaik Ean Patricia and another
v
Khoo Phaik Eng Katherine and others

[2025] SGCA 20

Court of Appeal — Civil Appeal No 34 of 2024
Sundaresh Menon CJ, Tay Yong Kwang JCA and Belinda Ang Saw Ean JCA
14 November 2024

30 April 2025

Belinda Ang Saw Ean JCA (delivering the grounds of decision of the court):

Introduction

1 The central question for this court on this appeal was whether the beneficial interests in the choses in action representing the joint credit balance in two joint bank accounts passed to the appellants by survivorship, or whether the appellants held them on a resulting trust for the estate of the deceased, Dr Khoo Boo Kwee ("Dr Khoo"). The appellants were Dr Khoo's eldest daughter and wife, Khoo Phaik Ean Patricia ("Patricia") and Ng Eu Lin Evelyn ("Evelyn") respectively. Crucial to the determination of the central question was Dr Khoo's intention at the time the joint accounts were created.

2 The joint accounts comprised an account with the United Overseas Bank ("UOB" and the "UOB Account") and an account with the Post Office Savings Bank ("POSB" and the "POSB Account") held in the joint names of Dr Khoo

and the appellants. The UOB Account and POSB Account are collectively referred to as the "Joint Accounts." Dr Khoo contributed mainly to the funds in the Joint Accounts, which were previously held in his sole name.

3 In oral arguments before us, counsel for the appellants, Ms Marina Chin SC ("Ms Chin"), shifted the appellants' case to focus on a clause in the bank documents that purportedly declared the appellants' beneficial entitlement to the moneys in the Joint Accounts when these accounts were opened. In other words, there was an immediate *inter vivos* gift of the choses in action representing the Joint Accounts on the date that Dr Khoo's sole accounts with UOB and POSB were converted into the Joint Accounts. We will, among other things, examine below when a clause will deal effectively with – *ie*, be dispositive of – the beneficial entitlement to the chose in action in a bank account and when it will not.

4 At the centre of the appellants' argument was the decision of the Privy Council, relied on by them for the first time in this appeal, in *Whitlock and another v Moree* (2017) 20 ITELR 658 ("*Whitlock*"). The appellants contended that *Whitlock* necessitated revisiting the current legal framework on resulting trusts under Singapore law. Specifically, the appellants sought to interpose a threshold question as to whether the bank documents governing a joint account contained a declaration of the account holders' beneficial interests. According to the appellants, such a declaration, if existing, would be conclusive of the parties' intentions on the issue of beneficial ownership of the account. The appellants submitted that the account conversion forms designed to convert an existing account in the sole name of an account holder to an account in joint names ("Conversion Forms") and terms and conditions ("T&Cs") governing the Joint Accounts in this case did contain such a declaration which thereby

conclusively established Dr Khoo's intention that the appellants were beneficially entitled to the Joint Accounts. In the alternative, the appellants argued that the preponderance of evidence showed, in any event, that Dr Khoo intended to gift the Joint Accounts to them.

5 The respondents in this appeal were Dr Khoo's other children, Khoo Phaik Eng Katherine ("Katherine"), Khoo Phaik Lian Joyce ("Joyce") and Khoo Teng Jin ("Teng Jin"). They argued that a resulting trust did arise in favour of Dr Khoo's estate. Counsel for Katherine and Joyce was Mr Chung Ting Fai ("Mr Chung"). Teng Jin was represented by Mr Jaikanth Shankar ("Mr Shankar").

6 In our oral remarks dismissing the appeal on 14 November 2024, we said that the appeal turned on the facts and on the interpretation of the clauses in the bank documents governing the Joint Accounts that Dr Khoo and the appellants had signed. We also said that *Whitlock* did not lay down any new law but was, in fact, consistent with the existing framework for resulting trusts under Singapore law. Furthermore, on a proper construction of the provisions in the bank documents respecting the Joint Accounts, none of them dealt with the account holders' beneficial interests in the Joint Accounts. Finally, Dr Khoo's

actions at the material time indicated that he did not intend to gift the Joint Accounts to the appellants.

7 We now explain in detail our decision in these written grounds of decision.

Background facts

8 We begin by providing a chronological outline of the facts and events that led to the parties' dispute and the commencement of the proceedings below.

Parties

9 Dr Khoo and Evelyn married in August 1958 and had four children. They were Teng Jin, Patricia, Katherine and Joyce. Overall, Dr Khoo and Evelyn's marriage was a happy one, although we note that Evelyn and Dr Khoo in fact lived apart for many years. While the family initially resided in a property at East Coast Road together with Dr Khoo's parents, Evelyn later moved out to live with her parents when Katherine was in primary school. According to Katherine, the separation was not due to a breakdown in the relationship between Dr Khoo and Evelyn, but because Evelyn found it difficult to reside together with Dr Khoo's mother. This arrangement only ended in 1991, when the family (except for Teng Jin) moved into the family home, a detached house at Siglap Avenue (the "Siglap Property") which Dr Khoo's mother had earlier gifted to him in 1973. Teng Jin did not move in with the rest of the family into the Siglap Property as he had by then married and was living in his own home.

Dr Khoo's Will

10 Dr Khoo's will executed on 10 August 2012 (the "Will") was drafted by a lawyer, Mr Jeffrey Ching ("Mr Ching"). Patricia, Joyce, and Katherine were the named executrixes and trustees of the Will.

11 The Will addressed the distribution of Dr Khoo's estate in two parts. First, cl 4 of the Will dealt with the Siglap Property. Clause 4 provided that:

> (a) the Siglap Property was to be excluded from Dr Khoo's residuary estate;
>
> (b) Evelyn could continue residing in the Siglap Property until her death, on the condition that she paid for the upkeep of the Siglap Property using her own funds; and
>
> (c) in the event that Evelyn moved out of the Siglap Property of her own volition, the Siglap Property was to be sold, and the proceeds of sale distributed equally among Evelyn and Dr Khoo's four children.

12 As for his residuary estate, cl 5(1) of the Will provided that Dr Khoo's residuary estate, including the specific assets and property set out in Schedule A to the Will, was to be distributed equally among his four children. Schedule A contained, among other things, six fixed deposits with UOB held under the UOB Account, as well as the POSB Account.

Discussions between Dr Khoo and Patricia on amendments to the Will

13 Dr Khoo was diagnosed with liver cancer in October 2019. Following his cancer diagnosis, it appeared that Dr Khoo began to tidy up and settle his personal affairs. Patricia testified to four discussions she had with Dr Khoo

between 3 and 6 November 2019 about amendments her father wished to make to the Will (the "Four Discussions"). As these discussions were of considerable importance, we set them out in detail.

The first discussion

14 The first discussion took place on or around 3 November 2019. According to Patricia, Dr Khoo had spoken on matters such as his cancer treatment, his wishes for Evelyn's long-term care, and the ownership of the Siglap Property. As regards the Siglap Property specifically, Dr Khoo said that he wished for the Siglap Property to be kept in the family as it had been given to him by his mother. To this end, Dr Khoo asked Patricia if she would like to purchase the Siglap Property, ostensibly because: (a) Patricia had been the favourite grandchild of Dr Khoo's mother; and (b) Dr Khoo wanted Evelyn to be able to live in the Siglap Property for the rest of her life, which would be best achieved by having Patricia become the owner of the Siglap Property (seeing that she was Evelyn's primary caregiver).

15 Although Patricia was keen to purchase the Siglap Property, she expressed concern to Dr Khoo that she did not have sufficient means and funds to do so. In response, Dr Khoo told Patricia that he would help her. Whilst the respondents did not deny that this conversation took place, they disagreed with Patricia's interpretation of what Dr Khoo meant when he offered to help Patricia purchase the Siglap Property. The appellants interpreted the help offered by Dr Khoo as including financial assistance for the purchase (which they said was consistent with an intention to gift Patricia the Joint Accounts). The respondents disagreed with Patricia's interpretation.

16 After this first discussion, Patricia informed Joyce of her intention to purchase the Siglap Property and sought Joyce's support. However, Joyce told Patricia that she wanted to buy half of the Siglap Property herself.

The second discussion

17 The second discussion between Dr Khoo and Patricia occurred on 4 November 2019, after Patricia's conversation with Joyce. When Patricia informed Dr Khoo of what Joyce had said, Dr Khoo responded by referring to Joyce's expression of interest in half of the Siglap Property as a "mischief" for getting in the way of his wish for Patricia to purchase the Siglap Property. To ensure that his wish was carried out, Dr Khoo instructed Patricia to draft a letter to the executrixes and trustees of the Will, stating that:

(a) he wanted the Siglap Property to be sold to Patricia at a price that was the average of two valuations;

(b) Evelyn would be allowed to reside in the Siglap Property as long as she wished or until her death;

(c) only Patricia and Katherine (and not Joyce) were to be the executrixes of the Will; and

(d) he was of sound mind when making these decisions.

18 Dr Khoo also instructed Patricia to get in touch with Mr Ching to make corresponding amendments to his Will to: (a) remove Joyce as a joint co-executrix of his estate; and (b) provide, upon his death, for the Siglap Property to be sold to Patricia at a price that was the average of two valuations, and for

Evelyn to be allowed to reside in the Siglap Property for as long as she wished or until her death.

19 That same day, Patricia informed Evelyn of Dr Khoo's intention to make changes to his Will but assured her that she would be allowed to live in the Siglap Property until her death. When Evelyn expressed a desire to see the Will, Patricia facilitated this after seeking and obtaining Dr Khoo's consent. Evelyn claimed that after reading the Will, she requested Dr Khoo to make a gift of $80,000 to her out of the $4,080,000 in the residuary estate, and that Dr Khoo agreed to this request.

The third discussion

20 The third discussion between Dr Khoo and Patricia occurred on or about 5 November 2019. Patricia presented to Dr Khoo a draft of the letter to the executrixes and trustees of the Will that he had previously directed her to prepare (see [17] above). Dr Khoo agreed to the draft, and asked Patricia to print a copy of the letter so that he could sign it in the presence of his oncologist, Dr Robert Lim ("Dr Lim").

21 Dr Khoo subsequently signed the letter on 8 November 2019, with Dr Lim signing as witness. Dr Khoo also reminded Patricia to contact Mr Ching to make the corresponding amendments to his Will and to pass on the signed letter to Mr Ching.

The fourth discussion

22 The fourth discussion between Dr Khoo and Patricia occurred on or around 6 November 2019. Apart from checking if Patricia had contacted Mr Ching about his instructions to amend his Will, Dr Khoo further instructed

Patricia on a new amendment he wished to make: $80,000 from his fixed deposits with UOB was to be now given to Evelyn as a separate cash gift.

23 The next day, on the morning of 7 November 2019, Patricia spoke with Mr Ching and conveyed Dr Khoo's instructions for the following amendments to be made to the Will:

(a) for Joyce to be removed as a joint co-executrix of Dr Khoo's Will;

(b) for the Siglap Property to be sold to Patricia at a price that was the average of two valuations, subject to Evelyn's right to live in the Siglap Property for as long as she wanted or until her demise; and

(c) for a cash gift of $80,000 to be made to Evelyn out of Dr Khoo's fixed deposits with UOB.

The conversion of the sole accounts to the Joint Accounts

24 In the afternoon of the same day (*ie*, 7 November 2019), after Patricia's conversation with Mr Ching to amend the Will, Dr Khoo told the appellants that he wanted the appellants to accompany him to UOB and POSB, and that they were to bring along their identity cards. Later that day, the trio attended at the branch offices of the banks, during which the UOB Account and POSB Account, which had hitherto been personal accounts in Dr Khoo's sole name, were converted into joint accounts in Dr Khoo and the appellants' names. According to the appellants, before attending at the banks, they did not know that Dr Khoo intended to convert his bank accounts into joint accounts in all three of their names.

25 According to the appellants, what happened at each of the banks was broadly similar:

(a) Dr Khoo informed the respective banks' officers of his intention to convert the respective accounts into a joint account in his and the appellants' joint names;

(b) the bank officers explained the effect of a conversion of Dr Khoo's account into a joint account, including that any of the co-account holders would be able to use the funds independently and that the right of survivorship applied such that the surviving account holders would come to own the moneys in the accounts upon the death of any of them;

(c) the bank officers explained the differences between a "Joint-Alternate" account (where any one account holder could operate the account) and a "Joint-All" account (where the approval of all account holders was necessary to effect a transaction);

(d) the bank officers interviewed Dr Khoo to confirm his instructions and understanding of the legal effect of a conversion; and

(e) Dr Khoo and the appellants signed the relevant forms to convert Dr Khoo's accounts into the Joint Accounts.

26 We pause here to observe that no officers from either bank were called to give evidence. Be that as it may, the respondents did not challenge the appellants' account of the various conversations with the bank officers, and the appellants' recollection of these conversations remained undisputed on appeal.

27 The key provisions of the bank account documentation were material to the parties' dispute and will be set out in greater detail below. For now, it suffices to record that the bank account documentation consisted of the T&Cs and Conversion Forms.

28 After returning home from the banks, Patricia claimed that Dr Khoo handed her the passbook for the POSB Account (the "POSB Passbook"), as well as the fixed deposit slips for his fixed deposits with UOB (the "UOB Fixed Deposit Slips") and said to her "[i]t's yours". According to Patricia, she understood Dr Khoo as saying that the conversion of the Joint Accounts was to gift the Joint Accounts to the appellants to help Patricia purchase the Siglap Property and care for Evelyn in the future.

29 Around 12 November 2019, Dr Khoo received a letter from POSB concerning the change in the mandate regarding the POSB Account. This letter was addressed only to Dr Khoo and Patricia, not Evelyn. Dr Khoo complained about this to Patricia and asked her to confirm with POSB that the POSB Account was held in the joint names of himself and the appellants.

30 Patricia duly called POSB and confirmed with the bank that the POSB Account was held in the joint names of the trio. She then conveyed this to Dr Khoo.

The execution of the Codicil to the Will

31 After the conversion of Dr Khoo's sole accounts into the Joint Accounts on 7 November 2019, over the next six days, Patricia continued to liaise with Mr Ching on the amendments to the Will that Dr Khoo had wanted during the earlier discussions from 3 to 6 November 2019 (see [14]–[22]).

32 On 18 November 2019, Dr Khoo and Patricia attended at Mr Ching's office. Dr Khoo duly executed a codicil (the "Codicil") in the presence of Mr Ching and Mr Ching's secretary. The material terms of the Codicil were as follows:

(a) By cl 1.1 of the Codicil, Joyce was removed as a co-executrix and trustee of the Will, leaving only Patricia and Katherine.

(b) By cl 1.2.1 of the Codicil, Dr Khoo directed that the Siglap Property was to be sold to Patricia and/or any members of her family nominated by her at a price derived from the average of two valuations to be conducted by two of three stated banks, within the later of: (i) six years from Dr Khoo's death; or (ii) three years from Evelyn moving out of the Siglap Property of her own volition or her death, whichever was earlier.

(c) By cl 1.2.2 of the Codicil, Dr Khoo confirmed that he had carefully deliberated on all those matters, and that those matters were not to be disputed by any of the beneficiaries of his estate.

(d) By cl 1.3 of the Codicil, Dr Khoo amended cl 5(1) of the Will to confirm that the distribution of his residuary estate, which did not include the Siglap Property, could occur prior to the sale of the Siglap Property to Patricia. This was to ensure that the distribution of the residuary estate to the beneficiaries would not be held up given the completion date for the sale of the Siglap Property, which was expected to take – in Dr Khoo's words – a "good number of years".

(e) Clauses 1.4.2 and 1.4.4 of the Codicil referred to the same accounts mentioned in Schedule A annexed to the Will. Incidentally, the

POSB and UOB Accounts retained the same bank account numbers after being converted to the Joint Accounts.

(i) By cl 1.4.2 of the Codicil, Dr Khoo directed the trustees of the Will to take out $80,000 from his fixed deposits with UOB and to pay the same to Evelyn as a cash gift.

(ii) Further, by cl 1.4.4, Dr Khoo referred to the POSB Account as listed in Schedule A of the Will and clarified that the POSB Account had previously been maintained with "POSB Siglap Branch", but this had to be changed to "POSB Marine Parade Branch", which had taken over the business of POSB Siglap Branch.

The decision below

33 The Judge ruled that the appellants held the Joint Accounts on a resulting trust for Dr Khoo's estate as there was sufficient direct evidence that Dr Khoo intended to retain the beneficial interest in the Joint Accounts. There was thus no need to resort to the *presumptions* of resulting trust and advancement (see *Khoo Phaik Eng Katherine and another v Khoo Phaik Ean Patricia and another* [2023] SGHC 314 ("Judgment") at [78]–[80]).

34 The Judge considered the legal position to be that a survivorship clause in bank documents was, without more, merely a contractual arrangement between the bank and the joint account holders as to how to deal with the moneys in the joint account. It was not conclusive of the parties' intention as to the ownership of the moneys in the joint account. A bank was not generally concerned with the beneficial entitlements of the joint account holders to the

moneys in the joint account, as it was only concerned with its obligations and liabilities to its customers (Judgment at [46] and [49]).

35 On that basis, the Judge assessed the T&Cs alongside the totality of the evidence and concluded that the T&Cs were not conclusive of Dr Khoo's state of mind at the material time. The Judge placed particular weight on the fact that the Codicil was executed just 11 days after the conversion of Dr Khoo's bank accounts in his sole name to the Joint Accounts, and the terms of the Codicil made plain that Dr Khoo continued to treat the moneys in the Joint Accounts as *his* moneys to be bequeathed under the Will and Codicil (Judgment at [50]).

36 The Judge assessed the conversion to the Joint Accounts in itself to be a neutral factor. Although it was arguably consistent with an intention to gift the Joint Accounts to the appellants, it was arguably also consistent with Dr Khoo's intention for the appellants to assist in administering his medical expenses from the Joint Accounts. While there were other ways by which Dr Khoo could have given the appellants access to his accounts for administrative convenience, the possibility that Dr Khoo had added the appellants as joint account holders solely for administrative reasons could not be ruled out. In this regard, the Judge considered Dr Khoo's statement to Patricia when passing her the POSB Passbook and UOB Fixed Deposit Slips (*ie*, "[i]t's yours") to be equivocal as it was unclear what Dr Khoo was referring to by "it" (Judgment at [53]–[54] and [73]).

37 The terms of the Codicil clearly demonstrated Dr Khoo's intention for the moneys in the Joint Accounts to be distributed among his four children in equal shares on his death. That Dr Khoo had specified a fresh $80,000 cash gift to Evelyn out of the moneys in the UOB Account demonstrated that he

considered, 11 days after the conversion to the Joint Accounts, that the moneys in the Joint Accounts remained his to dispose of. It was also noteworthy that Dr Khoo had referred to the moneys in the UOB Account as "*my* total fixed deposits" and "*my* fixed deposits" [emphasis in original omitted; emphasis added in italics] (Judgment at [59]).

38 The Judge agreed with the parties' characterisation of Dr Khoo as a person who handled his affairs in an organised and meticulous manner. This much was clear from how the Four Discussions between Dr Khoo and Patricia on the amendments to be made to his Will could be mapped to the changes that were effected through the Codicil. It was therefore striking that a change in Dr Khoo's testamentary intention as significant as a gift of the entirety of the Joint Accounts to the appellants was not mentioned by Dr Khoo during his discussions with Patricia. Indeed, these discussions occurred right before the conversion to the Joint Accounts. The Judge considered it "nothing short of incredible" that Dr Khoo could have abruptly changed his mind from his last discussion with Patricia (when he clearly intended the moneys in the Joint Accounts to be distributed in accordance with his Will) to gift the entirety of the Joint Accounts to the appellants the very next day (Judgment at [61]–[67]).

39 Although the appellants relied on instances of Dr Khoo's subsequent conduct, including Patricia having attended with Dr Khoo to renew the fixed deposits for the UOB Account and Dr Khoo having requested Patricia to confirm with DBS that the POSB Account was held jointly in his and the appellants' names, the Judge did not consider these to be sufficient evidence that Dr Khoo had intended to make a gift to the appellants. Apart from the Siglap Property, the moneys in the Joint Account formed the most substantial part of Dr Khoo's estate. Given the steps Dr Khoo had taken in the lead-up to executing

the Codicil, it was inexplicable that Dr Khoo did not take any similar steps in relation to his intention to make a gift of the Joint Accounts to the appellants (Judgment at [70]–[71]).

40 The Judge did not consider the various allegations made by the parties about the nature and state of each person's relationship with Dr Khoo to be particularly material, as Dr Khoo had evidently not considered the nature and state of his relationships with his family to be relevant to how the moneys in the Joint Accounts should be distributed upon his death. The clearest example of this lay in how Dr Khoo had treated Teng Jin equally to his other children, despite it being undisputed by all the parties (except Teng Jin himself) that the two had been estranged since 2006. Even if Dr Khoo had favoured Patricia over his other children, this was adequately reflected in how he had given her the additional benefit through the Codicil of a right to purchase the Siglap Property within a generous timeframe. This was also consistent with Dr Khoo's offer to "help" Patricia acquire the Siglap Property during his discussions with her (Judgment at [74]–[77]).

41 For completeness, had it been necessary to rely on the *presumptions* of resulting trust and advancement, the Judge said he would have reached the same conclusion based on the *presumption* of resulting trust remaining unrebutted given the clear words of the Will and Codicil. For the *presumption* of advancement, this presumption was weak in relation to Evelyn as Dr Khoo did not consider himself morally or legally obliged to provide for her. There was no evidence of Dr Khoo having intended to make financial provision for Evelyn after his death apart from the $80,000 cash gift. Indeed, Dr Khoo had contemplated Evelyn paying for the upkeep of the Siglap Property using her own funds while she resided there and given that Evelyn deposed that she had

her own source of monthly income, it was probable that Dr Khoo had not been concerned about Evelyn's financial state after his death (Judgment at [81] and [84]).

The parties' cases

The appellants' arguments

42 The appellants submitted that the Judge's finding of a resulting trust in favour of Dr Khoo's estate was wrong, and they were absolutely entitled to the Joint Accounts following Dr Khoo's death.

43 First, as mentioned at [3]–[4] above, the appellants' primary argument was that, in light of *Whitlock*, the existing framework for ascertaining beneficial ownership in co-owned property should be modified to interpose a threshold question of whether there was a declaration of beneficial interests as between the co-owners which evidentially would be conclusive of the co-owners' intention *vis-à-vis* their respective beneficial entitlements to the property. The appellants submitted that the Conversion Forms and T&Cs governing the Joint Accounts did contain such a declaration, and this declaration was therefore conclusive of Dr Khoo's intention to gift them the beneficial interests in the Joint Accounts.

44 At this juncture, we note that there was some confusion in the appellants' case. While the appellants' case was, at the highest degree of abstraction, consistent in so far as they asserted that they were beneficially entitled to the Joint Accounts after Dr Khoo's death, their position on how and when this came about vacillated. Specifically, before the Judge, the appellants' case appeared to be that they became beneficially entitled to the Joint Accounts *only upon*

Dr Khoo's death through the operation of the rule of survivorship. But before us, to accommodate the appellants' newfound reliance on *Whitlock*, Ms Chin clarified after questions from this court that the appellants' case was that they became beneficially entitled to the Joint Accounts *from the very moment Dr Khoo's sole accounts were converted to the Joint Accounts* on 7 November 2019. It appeared to us that the confusion was probably due to a failure to clearly distinguish between the different ways in which the interests in co-owned property could be held. We thus take the opportunity in this case to clarify the legal position on this issue at [59]–[79] below.

45 Second, the appellants argued that even if evidence other than the bank documents were considered, the evidence would nonetheless establish that Dr Khoo had intended to gift the Joint Accounts to them such that no trust could arise in favour of Dr Khoo's estate. Among other things, the appellants emphasised the following undisputed facts which they submitted should have constrained the Judge to find in their favour:

(a) Dr Khoo had expressed an intention during the Four Discussions with Patricia that he wished for (i) Evelyn to be well-cared for after his death and (ii) Patricia to purchase the Siglap Property;

(b) Dr Khoo stated that he would help Patricia purchase the Siglap Property when she expressed concern that she lacked the means to do so;

(c) the significance and effect of the conversion to the Joint Accounts were explained to Dr Khoo during the visit to the banks on 7 November 2019;

(d) on returning home from the banks, Dr Khoo had handed the POSB Passbook to Patricia while telling her "it's yours"; and

(e) Dr Khoo further expressed consternation when the letter from POSB concerning the change in mandate was only addressed to himself and Patricia (and not Evelyn).

46 Third, the appellants downplayed the significance of evidence relied on by the respondents. We specifically highlight two points made by the appellants:

(a) Although the appellants accepted the inconsistency between their case and the terms of the Will and Codicil (which provided for a specific gift of $80,000 out of the UOB Account to Evelyn and an equal distribution of the remaining moneys in the Joint Accounts among Dr Khoo's four children), the inconsistency could be explained on the basis that Dr Khoo had thought it unnecessary to remove the Joint Accounts from his residuary estate when executing the Codicil as his intention to gift the Joint Accounts to the appellants had already materialised through the earlier conversion of his accounts in his sole name to the Joint Accounts.

(b) Dr Khoo did not merely add the appellants as joint account holders for administrative convenience as (i) there were other means (besides converting his accounts in his sole name to joint accounts) for him to grant the appellants access to the moneys in the Joint Accounts; and (ii) there would have been no reason to add Evelyn given that she was physically incapable of helping him administer the accounts.

47 Fourth, to the extent that the *presumption* of resulting trust arose, the appellants argued that it was rebutted by a strong counter-presumption of advancement that operated in their favour as Dr Khoo's daughter and wife. In this regard, the appellants emphasised that it was not seriously disputed by the respondents that they shared a close relationship with Dr Khoo.

The respondents' arguments

48 The respondents submitted that the Judge correctly found that the appellants held the Joint Accounts on a resulting trust for Dr Khoo's estate.

49 First, on the question of law raised by the appellants' reliance on *Whitlock*, counsel for Katherine and Joyce, Mr Chung, submitted that *Whitlock* should not be followed in Singapore as there was no reason why bank documents should intrinsically be given more weight than other forms of evidence. Ultimately, the court's task was to strive to give effect to the parties' intentions based on the totality of the relevant evidence. The bank documents were merely one piece of the jigsaw puzzle.

50 Second, even if *Whitlock* were followed in Singapore to modify the analytical framework as the appellants contended, it did not assist the appellants as the provisions in the Conversion Forms and T&Cs relied on by the appellants did not address the beneficial ownership of the Joint Accounts.

51 Third, Mr Chung argued that it was clear from the evidence that Dr Khoo did not intend to gift the Joint Accounts to the appellants. The terms of the Will and Codicil, the latter of which was executed a mere 11 days after the conversion of the Joint Accounts, were irreconcilable with Dr Khoo having made a gift of the Joint Accounts to the appellants. It was also emphasised that

Dr Khoo did not manifest the intentions expressed in the Codicil only after the accounts in his sole name were converted to the Joint Accounts, as he had already communicated these intentions during the Four Discussions with Patricia immediately before the conversion. In this regard, Mr Chung suggested that the appellants were added as co-account holders for administrative purposes.

52 Fourth, the instances relied on by the appellants were neither here nor there and did not lead to the conclusion that Dr Khoo had intended to gift the Joint Accounts to the appellants. Among others, the following points were made:

(a) Mr Chung suggested that Dr Khoo's passing of the POSB Passbook to Patricia, accompanied with the words "it's yours", was equivocal. Indeed, it was not clear what Dr Khoo was referring to by "it" – "it" could have been either the POSB Passbook itself or the Joint Accounts;

(b) even if there were other ways by which Dr Khoo could have given the appellants access to the moneys in the Joint Accounts for administrative convenience, the fact that he did not employ these alternatives did not mean that he did not convert the sole accounts into the Joint Accounts for administrative convenience; and

(c) to the extent that Patricia emphasised Dr Khoo's promise to "help" her purchase the Siglap Property, there was no indication that Dr Khoo meant that he would provide *financial* assistance to Patricia in the form of the moneys in the Joint Accounts.

53 Fifth, if it were necessary to have recourse to the presumptions, the respondents submitted that the presumption of resulting trust arising in favour of Dr Khoo's estate (on account of Dr Khoo being the sole contributor of the moneys in the Joint Accounts) was not rebutted by the counter-presumption of advancement in the appellants' favour. The presumption of advancement supporting the appellants was weak as, among other factors, Dr Khoo continued to exercise complete dominion over the Joint Accounts after the conversion, Evelyn was financially independent from Dr Khoo, and the closeness of the relationship between the appellants and Dr Khoo was not as significant as they claimed.

Issues to be determined

54 There were two main issues for determination in this appeal:

(a) whether the legal framework for determining beneficial ownership of property had to be modified in light of the Privy Council's decision in *Whitlock*; and

(b) whether Dr Khoo intended to make a gift of the Joint Accounts to the appellants.

Our decision

The legal framework for determining beneficial ownership of property

The existing legal framework

55 The parties were generally agreed on the analytical framework for disputes of this kind as laid down in existing authority, save for the appellants' primary contention that this court should modify it based on *Whitlock*, which

we will return to shortly below. For present purposes, both the Judge and the parties drew on the summary set out in the High Court decision of *Estate of Yang Chun (Mrs) née Sun Hui Min, deceased v Yang Chia-Yin* [2019] 5 SLR 593 ("*Yang Chun*"). We generally agree with that summary and will amplify on it below.

56 The starting point is that equity follows the law, and joint tenants of the legal estate would also be joint tenants in equity. However, this is merely "in some extremely general sense … equity's starting assumption", and is "readily displaced by any of a number of contra-indications that, regardless of the legal joint tenancy, equitable ownership was intended to take the form of a tenancy in common" (see *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*") at [85]).

57 The starting point can be displaced by establishing either a resulting trust or common intention constructive trust. In the present case, neither of the parties invoked the doctrine of common intention constructive trust, and the focus of the parties' dispute was whether a resulting trust arose in favour of Dr Khoo's estate. In this connection, we take the opportunity to endorse the recent observations of the Appellate Division of the High Court ("Appellate Division") in *Djony Gunawan v Christina Lesmana and another appeal* [2024] 1 SLR 591 ("*Djony Gunawan*") that the step-by-step framework set out at [160] of *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*") should not be applied mechanistically (at [19]–[20]). In a case like the present where there is neither any suggestion of a common intention constructive trust nor any dispute as to the parties' financial contributions to the property, the court does not have to go through the motions of applying the *Chan Yuen Lan* framework from start to finish. It can simply zero in on the resulting trust analysis.

58 A resulting trust under Singapore law, as established in the decisions of this court in *Lau Siew Kim* and *Chan Yuen Lan*, responds to a lack of intention on the part of a transferor of property to benefit the transferee. A resulting trust may arise in one of the two following ways:

(a) First, a resulting trust will arise if there is sufficient evidence that the transferor did not intend to benefit the transferee. The totality of the evidence should be considered in determining the transferor's intention (see *Chan Yuen Lan* at [43]).

(b) Second, if the evidence of the transferor's actual intention is unavailable or equivocal, recourse may be had to the *presumption* of resulting trust and, if applicable, the counter-presumption of advancement, if the circumstances attracting their application are present (see *Chan Yuen Lan* at [50]–[52]).

59 We next turn to the different ways in which the equitable interest in jointly owned property is held where *A* gratuitously transfers property in the joint names of *A* and *B*, as well as the different types of intention underlying each situation.

60 In our view, leaving aside situations where a common intention constructive trust is alleged, the position in equity where *A* gratuitously transfers property to *A* and *B*'s joint names in law for no consideration can be broadly categorised into four scenarios which are differentiated based on *A*'s intention as discerned from the evidence before the court:

(a) where the evidence establishes that *A* intended to benefit *B* immediately ("Scenario 1");

(b) where the evidence establishes that *A* did not intend to benefit *B* immediately but intended that *B* will inherit whatever is left in the estate when *A* dies ("Scenario 2");

(c) where the evidence establishes that *A* does not intend to benefit *B* at all ("Scenario 3"); and

(d) where there is either no or insufficient evidence of *A*'s intention ("Scenario 4").

61 These four scenarios were raised by the parties before us. As we have indicated at [44] above, we had some difficulty in the shifting nature of the appellants' case as to when they became beneficially entitled to the Joint Accounts because, in oral submissions, Ms Chin vacillated between characterising the conversion of Dr Khoo's bank accounts to the Joint Accounts as (a) having constituted the appellants as joint owners of the Joint Accounts with Dr Khoo in law and in equity from the date of conversion on 7 November 2019 (see Scenario 1 at [60(a)] above); and (b) allowing the appellants to inherit the beneficial interest in the Joint Accounts only upon Dr Khoo's death by reason of survivorship (see Scenario 2 at [60(b)] above). In the appellants' written submissions, there was also a fallback reliance on the presumptions of resulting trust and advancement in the event that the appellants were unable to satisfactorily establish Dr Khoo's actual intention (see Scenario 4 at [60(d)] above). By contrast, the respondents' case was that Dr Khoo's actual intention in this case corresponded to Scenario 3 at [60(c)] above.

62 The vacillation in the appellants' position as between Scenario 1 and Scenario 2 was undesirable because the time at which the appellants became beneficially entitled to the property was not the same in both of these scenarios:

in Scenario 1, the appellants became beneficial owners from the moment of conversion, but in Scenario 2, the appellants only became beneficial owners after Dr Khoo's death. More importantly, the intention on Dr Khoo's part underlying each scenario, and therefore what the appellants had to establish, was different. Put another way, parties must be clear on which scenario they are relying on as the intention underlying each scenario which must be proven is different. Proof of a different intention on *A*'s part will result in different legal consequences as regards the beneficial ownership of the property as between *A* and *B*.

63 We briefly outline the legal consequences of each of these four scenarios below.

64 Scenario 1 is where *A* intends to benefit *B* immediately. In this scenario, no question of a resulting trust arises, and *A* and *B* would hold as joint tenants immediately upon the transfer. As there is no occasion for a trust to arise, there is no separation of the equitable interest in the property from the legal interest, and consequently, upon the death of *A*, *B* would become the sole and absolute owner of the property by virtue of the right of survivorship operating on *A*'s aliquot share of the *legal* interest (see *Koh Lian Chye and another v Koh Ah Leng and another and another appeal* [2021] SGCA 69 at [24], citing *Yang Chun* at [56]; *Soemarto Sulisto v Stukan Yetty Fang and others* [2021] SGHC(A) 5 at [18]).

65 For the avoidance of doubt, the subject-matter of the gift from *A* to *B* is not the right of survivorship *per se*, but an aliquot share in the legal title of the property. A bare right of survivorship cannot, by itself, be the subject-matter of an *inter vivos* gift or testamentary disposition as to be capable of a freestanding

existence from joint tenancy and subject to alienation from *A* to *B*. This is because the right of survivorship is merely an incident of the legal title being held by two or more persons as joint tenants. This was explained by Vinodh Coomaraswamy J in *Ng Lai Kuen Priscilla Elizabeth and others v Ng Choong Keong Steven* [2023] SGHC 343 as follows (at [91]):

> It is not possible to make a gift of a right of survivorship arising from a joint tenancy of property. The right of survivorship is not property, whether tangible or intangible and whether a chose in possession or a chose in action. The right of survivorship is simply the legal consequence of holding property as joint tenants. It is inseparable as a proprietary right from the joint tenancy itself.

66 Scenario 2 is where *A* does not intend to benefit *B* immediately but intends that *B* will inherit whatever is left of the estate when *A* dies. This arrangement, particularly in situations involving the credit balance in a joint bank account, has been recognised amongst the courts of various common law jurisdictions such as: Australia (see the decision of the High Court of Australia in *Russell v Scott* (1936) 55 CLR 440 ("*Russell*")); New Zealand (see the decisions of the New Zealand High Court in *Edgar v Commission of Inland Revenue* [1978] 1 NZLR 590 and *Re Brownlee* [1990] 3 NZLR 243); and England and Wales (see the decisions of the English High Court in *Young and another v Sealey* [1949] Ch 278 ("*Young*"), *In re Figgis, Decd; Roberts and another v MacLaren and others* [1969] 1 Ch 123, *Aroso v Coutts & Co* [2002] 1 All ER (Comm) 241 and *Drakeford v Cotton and another* [2012] 3 All ER 1138).

67 However, the juridical basis for such an arrangement has not been clearly articulated thus far. As this issue did not arise on the facts of this case, it is not necessary to resolve it definitively. However, we make the following

observations which may arise for possible and more mature consideration in the future.

68 The principal difficulty that courts have grappled with is that this arrangement appears, outcome-wise, to resemble a testamentary disposition that would generally require compliance with certain formalities (see the decision of the Supreme Court of Canada in *Pecore v Pecore* [2007] 1 SCR 795 at [48]). This was why Romer J (as he then was) in *Young* went as far as to comment that, but for the existence of prior authority upholding such an arrangement, he would have been inclined to the view that it ought to be a testamentary disposition that failed for want of compliance with formality requirements (at 294–295). In the context of joint accounts, it is understandable that legal formalities are necessary since the beneficial entitlement in a joint account is to the chose in action representing the credit balance rather than a direct interest in the funds standing to the credit of the account; it is the bank that has the legal and beneficial interest in the funds themselves from the time of their deposit. Legal formalities are necessary to determine what rights the surviving account holder or the deceased account holder's estate obtained (if any) to the equitable title to this chose in action.

69 The High Court of Australia in *Russell* provides a possible solution to work around the problem described in [68] above. In that case, an elderly lady and her nephew were joint holders of a bank account into which a large sum of money from an account in the aunt's sole name had been transferred. The nephew assisted the aunt with all her matters of business but did not contribute at all to the moneys in the joint account. The moneys in the account were used solely for the purpose of the aunt's needs. When the account was opened, the aunt told the nephew that any balance remaining in the account at her death

would belong to him, and the trial court found that that had indeed been the aunt's intention. The main issue before the court was whether the nephew was beneficially entitled to the moneys (as the aunt intended) or held the moneys on a resulting trust for the aunt's estate. In holding that the nephew was entitled to the account, Dixon and Evatt JJ reasoned as follows (at 454–455):

> … At law, of course, it was joint property which would accrue to the survivor. In equity, the deceased was entitled in her lifetime so to deal with the contractual rights conferred by the chose in action as to destroy all its value, namely, by withdrawing all the money at credit. But the elastic or flexible conceptions of equitable proprietary rights or interests do not require that, because this is so, the joint owner of the chose in action should in respect of the legal right vested in him be treated as a trustee to the entire extent of every possible kind of beneficial interest or enjoyment. *Doubtless a trustee he was during her life time, but the resulting trust upon which he held did not extend further than the donor intended; it did not exhaust the entire legal interest in every contingency. In the contingency of his surviving the donor and of the account then containing money, his legal interest was allowed to take effect unfettered by a trust. In respect of his jus accrescendi his conscience could not be bound. For the resulting trust would be inconsistent with the true intention of that person upon whose presumed purpose it must depend.* [emphasis added]

70 Thus, a resulting trust subsisted during the lifetime of the aunt, but terminated upon her death such that the nephew, who acquired the entirety of the legal interest by virtue of survivorship, took the joint account absolutely and not on a continuing trust for the aunt's estate. The resulting trust was moulded to fit the aunt's intention. So, when *A* transfers property to *B* gratuitously, he may intend not to make a gift *at all* (in which case, the resulting trust would subsist after *A*'s death, and *B* would remain a resulting trustee for *A*'s estate), or *A* may intend a gift *upon his or her death* (in which case the resulting trust would terminate upon *A*'s death, allowing *B* to take the entire interest in the property absolutely).

71 Dixon and Evatt JJ's analysis was echoed in the concurring judgment of McTiernan J, who stated his understanding of the situation in arguably even clearer terms (*Russell* at 457–458):

> … His legal interest was saddled with that particular trust during her lifetime. But that trust did not exhaust the interest taken by him as a joint legal owner of the chose in action, and if there was no evidence to rebut the implication of a resulting trust he would be bound to hold the interest unexhausted by the particular trust subject to a resulting trust in favour of the lady or her personal representative. *A resulting trust did not arise because it was the intention of the deceased that the appellant should after her decease be entitled to operate on the account for his own benefit. The legal interest which accrued to him by survivorship was not saddled with a resulting trust in favour of the representative of the deceased's estate and it is not suggested that there is any other trust upon which he is bound to hold his legal rights as survivor.* … [emphasis added]

72 This resulting trust-based analysis of Scenario 2 in *Russell* sidesteps the concern of amounting to a testamentary disposition as while *B* becomes the absolute owner of the property upon *A*'s death, there is, on a conceptual level, no transmission of any interest from *A* to *B* at the time of *A*'s death (see *Russell* at 454–456). Rather, *B* becomes the absolute owner upon *A*'s death by the combination of (a) the extinguishing of *A*'s aliquot share in the legal interest by the operation of survivorship (see the decision of this court in *Shafeeg bin Salim Talib and another v Fatimah bte Abud bin Talib and others* [2010] 2 SLR 1123 at [35] and [39]–[42]); and (b) the extinguishing of *A*'s equitable interest due to the cessation of the resulting trust (see [70] above). In this way, *Russell* could potentially provide a conceptual account of the legal nature of Scenario 2.

73 We note that the jurisprudence in Singapore on presumed resulting trusts might support this analysis of a resulting trust limited to *A*'s lifetime, even though we recognise that this has not been articulated in such precise terms. In *Lau Siew Kim*, V K Rajah JA observed that the presumption of advancement

was not limited to presuming an intention to gift *immediately* but could relate to an intention "for the rule of survivorship to operate to pass the absolute interest of the property to the survivor", and that this was consistent with the fact that "a resulting trust need not necessarily relate to the entire interest in the property" (at [105]). Rajah JA further explained that the presumption of advancement did not necessarily operate only to infer an "outright gift to the person benefitting at the time of the transfer or conveyance", as (at [145]):

> … the presumption of advancement may operate in respect of *part* of the interest in property as well as, for instance, the remainder or surviving interest. *The transferor or contributor may have intended to give only a right of survivorship and no "present beneficial interest at all"* (see *Clelland v Clelland* [1945] 3 DLR 664 at 666). … [emphasis added]

74 This principle was subsequently applied by the High Court in *Neo Hui Ling v Ang Ah Sew* [2012] 2 SLR 831 ("*Neo Hui Ling*"). In that case, property had been acquired in the joint names of a mother and daughter, with the daughter having paid the entire purchase price. The property was sold while both were alive, and the mother sought a 50% share of the sale proceeds on the basis that the property had been held in an equitable joint tenancy. The daughter denied this. She contended that the sale proceeds were held by both parties on a resulting trust for her as the sole contributor of the purchase price. The mother argued that the property had been conveyed into their joint names with the intention that the property would pass to her by survivorship if the daughter were to predecease her, and this, therefore, established an intention for the property to be held by them as equitable joint tenants.

75 The High Court dismissed the mother's claim. Lai Siu Chiu J (as she then was) accepted the mother's contention that the rule of survivorship was the reason why the property had been conveyed into the parties' joint names (*Neo*

Hui Ling at [35]). But the learned judge held that the rule of survivorship only affected the remainder in the property and not the life interest; thus, the intention for survivorship to apply at the time of one joint tenant's death said nothing about the parties' intentions as to their beneficial interests in the property while both were alive. The daughter's intention that the rule of survivorship would apply upon her death therefore did not suffice to rebut the presumption of resulting trust arising in favour of the daughter (*Neo Hui Ling* at [39]–[42]).

76 Nevertheless, as we have mentioned at [67] above, we do not have to resolve these difficult questions on the legal validity and the correct conceptual underpinnings of Scenario 2 in this case, and apart from the brief observations above, we propose to say no more on Scenario 2.

77 We now turn to Scenario 3 and Scenario 4 outlined at [60] above. Scenario 3 contemplates an actual resulting trust that responds to *A*'s lack of intention to benefit *B*. Upon *A*'s death, *B* would continue to hold his aliquot share of the legal title on a resulting trust for *B*'s estate. It would be apparent that what distinguishes Scenario 3 from Scenario 2 above is that, in Scenario 3, *A* does not intend to benefit *B at all*, whereas in Scenario 2, *A* does not intend to benefit *B* for the duration of *A*'s lifetime but *does* intend to benefit *B* after *A*'s death in the event that *B* should survive him.

78 Finally, Scenario 4 comprises a residual category of case where there is no or insufficient evidence of *A*'s intention. In such case, *A* and *B*'s respective interests in the property would turn on the application of the *presumptions* of resulting trust and advancement (as may be applicable). This is consistent with the existing case law that has established that recourse to the presumptions is

neither necessary nor permissible where the evidence before the court sufficiently establishes *A*'s intention (*Chan Yuen Lan* at [49]–[52]):

(a) The presumption of resulting trust does not directly infer a resulting trust *per se*, but infers on the part of the transferor a lack of intention to benefit the transferee in circumstances where (a) there has been a transfer of property from *A* to *B*, (b) for which *B* does not provide the whole of the consideration (see *Lau Siew Kim* at [35], citing Robert Chambers, *Resulting Trusts* (Clarendon Press, 1997) at p 32; *Chan Yuen Lan* at [36]). Given that the presumption of resulting trust (and the counter-presumption of advancement) are merely inferences as to the transferor's intention, it follows that the court will not call in aid of them if the evidence before it adequately reveals the actual intention of the transferor (see *Su Emmanuel v Emmanuel Priya Ethel Anne and another* [2016] 3 SLR 1222 ("*Su Emmanuel*") at [79]). As Hri Kumar Nair J explained in *Kua Swee Lin v Ho Kim Yan and another* [2023] 5 SLR 1125 (at [54]):

> … the first step is to analyse *the evidence of the intention of the transferor,* and it is only if the said evidence is *inconclusive* that the presumption of a resulting trust or advancement operates (as the case may be). … [emphasis in original]

(b) Where the presumption of resulting trust arises, it can be rebutted by the counter-presumption of advancement if it is applicable on the facts of the case. The counter-presumption of advancement infers, on the part of the transferor, an intention to make a gift to the transferee and not to retain any interest in the property, based on the factual circumstance of the parties being in a category of relationship which attracts its application (see *Lau Siew Kim* at [56]). The relationships that

attract the counter-presumption of advancement, in so far as they were relevant to this appeal, include transfers from husband to wife and from father to child (see *Lau Siew Kim* at [60]). The effect of the operation of the counter-presumption of advancement is to shift the burden of proof to the transferor to prove that he or she did not intend a gift (see *Lau Siew Kim* at [57]).

79 In summary, the legal consequences regarding the beneficial ownership of the property as between *A* and *B* will vary depending on *A's* specific intention as is established by the evidence. Even in a case where the ultimate outcome is for *B* to be the beneficial owner of the property upon *A*'s death, this outcome may be obtained either by *B* becoming a beneficial owner immediately upon the transfer (Scenario 1) or only upon *A*'s death (Scenario 2), depending on what was *A*'s intention.

There was no basis to modify the existing legal framework in light of Whitlock

80 We now turn to the appellant's contention that the legal framework outlined above ought to be modified following the Privy Council's decision in *Whitlock*. In our view, *Whitlock* did not lay down any new law and the approach in that case was consistent with the existing framework for resulting trusts under Singapore law.

(1) The decision in *Whitlock*

81 *Whitlock* was an appeal from the Bahamas relating to the beneficial ownership of a joint bank account. The respondent, Mr Moree, held jointly with the deceased, Mr Lennard, some B$190,000 on account at the First Caribbean International Bank (Bahamas) Ltd ("FCIB"). The moneys in the joint account

had been solely contributed by the deceased from an account with the FCIB that had previously been in the deceased's sole name.

82 The question for the Board was whether the beneficial interest in the chose in action representing the joint credit balance passed to Mr Moree by survivorship, or whether Mr Moree held it on a resulting trust for Mr Lennard's estate.

83 The account opening forms were signed by the deceased and Mr Moree. These were in the bank's standard form and contained three features of note. First, the form signed by the deceased had a manuscript note "to pay utilities" in a box headed "State Purpose of Account", and it was not disputed that an unidentified bank official had written this. Second, immediately above the deceased's and Mr Moree's signatures on the forms was a declaration that they had "received, read, understood and accepted the agreement". Third, and most importantly, the forms contained the following provision at cl 20:

> JOINT TENANCY: Unless otherwise agreed in writing, all money which is now or may later be credited to the Account (including all interest) is our joint property with the right of survivorship. That means that if one of us dies, all money in the Account automatically becomes the property of the other account holder(s). In order to make this legally effective, we each assign such money to the other account holder (or the others jointly if there is more than one other account holder).

84 The Board by a majority of 3:2 advised that cl 20, on a proper construction, expressly set out the parties' intentions as to the beneficial interests in that joint account; it provided for any balance to be the beneficial property of the survivor upon the death of the other account holder, regardless of who contributed the money to the credit of the account before that date (*Whitlock* at [50]). For this reason, cl 20 was "dispositive of the beneficial

interest" in the account and "there was no need to conduct an open-ended factual analysis as to the subjective intention of [the deceased]" (*Whitlock* at [50]). To support their interpretation of cl 20, the majority led by Lord Briggs (with whom Lady Hale and Lord Sumption agreed) relied on key phrases such as "Joint Tenancy"; "our joint property with the right of survivorship"; and "if one of us dies, all money in the Account automatically becomes the property of the other account holder(s)". There would have been no need to make any express provision by cl 20 in relation to the bare legal title, which would be held jointly in any event. In contrast, beneficial ownership could be as joint tenants or tenants in common, or in some other form. Furthermore, the phrase "unless otherwise agreed in writing" could only reasonably refer to beneficial title as there was only one form of joint legal title, regardless of what the parties might purport to agree (*Whitlock* at [47]).

85 Lord Briggs (writing for the majority) framed the general principle that the majority applied to arrive at this outcome to be that "where the relevant property is transferred to the legal holders by a written instrument, a statement as to the beneficial ownership of the property in that instrument is usually conclusive". Any issue of beneficial ownership turned on the construction of the instrument, which was "an objective process, in which evidence as to the subjective intention of the maker of the instrument is inadmissible" (*Whitlock* at [23]). The doctrine of presumed resulting trusts was also not applicable "because the potential beneficial owners have declared what are their beneficial interests by signed writing" (*Whitlock* at [29]). Pertinently, Lord Briggs considered that the written declaration was conclusive and excluded further evidence "not merely because it [was] incontrovertible proof of the transferor's intentions", but "because it [was] itself dispositive of those beneficial interests" (*Whitlock* at [37]). Finally, as any question of construction turned on the specific

document(s) at hand, there could be no general rule that bank account agreements only dealt with legal title or the relationship between the account holders and the bank (as opposed to the relationship between the account owners *inter se*) (*Whitlock* at [42]).

86 The minority led by Lord Carnwath (with whom Lord Wilson agreed) did not disagree with the majority on the underlying legal principle that a declaration of beneficial ownership in the bank documents would be conclusive (*Whitlock* at [63]), but dissented on whether cl 20 was on its proper construction such a declaration. As Lord Carnwath made clear, "the critical issue [came] down, *not to any question of general principle*, but to whether cl 20 in this particular agreement, properly construed in its context, satisfies that test" [emphasis added] (*Whitlock* at [62]).

87 Lord Carnwath opined that an important starting point that distinguished a joint bank account from other property transactions was that a customer did not generally see a bank account as a means to effect a transfer of property in the longer term, but rather to provide a convenient vehicle for holding and dealing in money for the time being. The construction of provisions in bank documents had to be approached against that background (*Whitlock* at [55]). Lord Carnwath went on to draw attention to the fact that clauses in banking documents which are dispositive of beneficial interests are explicit in that they refer to what is to happen to the beneficial interest on death. In support of this observation, Lord Carnwath (*Whitlock* at [77]) cited a case from Singapore – *Lim Chen Yeow Kelvin v Goh Chin Peng* [2008] 4 SLR(R) 783 ("*Lim Chen Yeow*") – where the clause there read: "In the event of death of a joint account holder…. the amount standing to the credit of the joint account shall be held for the benefit and to the order of the survivor(s)". In this regard, Lord Carnwath

thought that there was "nothing in the language of cl 20 to indicate an intention to deal with beneficial interests, rather than simply spell out the consequences of holding a legal estate in a joint bank account" (*Whitlock* at [86]). In his Lordship's view, as an account opening form was a standard form prepared by the bank, without input from its customers, it would naturally be designed to deal with matters which the bank was concerned with, that is, in legal and not beneficial interests; similarly, customers would view a bank account as a mechanism to hold and handle money rather than an instrument to make a generous gift to another (*Whitlock* at [88]). Finally, any suggestion that the deceased had intended to make a gift to Mr Moree was negated by the specific indication that the purpose of the joint account was "to pay utilities" (*Whitlock* at [89]).

(2) *Whitlock* was reconcilable with the existing legal framework under Singapore law

88 The appellants submitted that because the Board in *Whitlock* emphasised the conclusive effect of a declaration of beneficial interests in the bank account documentation, it was necessary to modify the existing legal framework by interposing a threshold question of "whether there is a declaration of beneficial interests" before considering whether there was sufficient evidence of the transferor's actual intention to establish a resulting trust (or, in an appropriate case, a common intention constructive trust) and supply a reason for equity not to follow the law.

89 In our judgment, the appellants were drawing a distinction without a difference. The question of whether there was a declaration of beneficial interest as between the parties was, in our view, subsumed within the broader inquiry of

whether there was sufficient evidence of the transferor's actual intention, such that it was wrong to hive it off as a separate question.

90 In the first place, the appellants' suggestion that *Whitlock* had changed the existing law was ill-founded given that neither the majority nor minority of the Privy Council considered themselves to be speaking at cross-purposes in terms of the applicable legal principles.

91 What was most pertinent, in our view, was that while Lord Briggs and Lord Carnwath did say that a declaration of beneficial ownership was not *merely* evidence of the testator's intention, they ultimately did not question that it *was* evidence of intention, and that the key question to be resolved was what the clause said about this. The clearest example of this can be found in the following passage in Lord Carnwath's opinion (see *Whitlock* at [63]):

> It is right, as the majority point out (para [37]), that if this test is satisfied, that is not merely conclusive as to the testator's intentions … but also dispositive of the relevant beneficial interest. … *However, I do not see that this comment affects the nature of the test.* ***The question is what the clause discloses about the common intention of the parties****, in respect of the beneficial (as opposed to the legal) interest in the relevant funds.* … [emphasis added in italics and bold italics]

92 As Lord Carnwath made clear here, the underlying question when the court considers whether a particular clause or provision in the bank documents constitutes a declaration of beneficial ownership is "what the clause discloses about the common intention of the parties" as regards the beneficial interests. That being so, it was fundamentally wrong to suggest, as the appellants did, that *Whitlock* decoupled the question of the existence of a declaration of beneficial interests from the broader question of the transferor's intention. Any provision

or clause in the bank documents would only be a declaration of beneficial interests if the parties intended that it be so.

93 This was also apparent from tracing the source of the legal principle that both Lord Briggs and Lord Carnwath relied on. Both their Lordships referenced the decision of the House of Lords in *Vandervell v Inland Revenue Commissioners* [1967] 2 AC 291 ("*Vandervell*"), and specifically, to the speech of Lord Upjohn. It is helpful to situate the relevant part, taken from the start of Lord Upjohn's speech, within its proper context (*Vandervell* at 312):

> … I will be as brief as I can upon the principles. Where A transfers, or directs a trustee to transfer, the legal estate in property to B otherwise than for valuable consideration *it is a question of the intention of A in making the transfer whether B was to take beneficially or on trust and, if the latter, on what trusts*. If, as a matter of construction of the document transferring the legal estate, *it is possible to discern A's intentions*, that is the end of the matter and no extraneous evidence is admissible to correct and qualify his intentions so ascertained. [emphasis added]

94 In *Whitlock*, the Board focused on the last sentence of this extract and therefore emphasised that the question of beneficial ownership was a matter of construction. But as is evident from considering the statement in its entire context, Lord Upjohn was indubitably concerned with ascertaining the *intention* of the transferor – the exercise in construction of the document was a means to this end, rather than being an end in and of itself. Indeed, in an earlier decision of this court in *Goh Swee Fang and others v Tiah Juah Kim* [1994] 3 SLR(R) 556 ("*Goh Swee Fang*"), L P Thean JA had accurately captured the essence of Lord Upjohn's speech in *Vandervell* when he paraphrased it in these terms (at [18]):

> … in cases where the intention of the transferor or guarantor at the time of the transfer can be ascertained from the documents,

> then no question of any presumption of resulting trust would arise.

In so far as *Whitlock* merely applied general principles derived from *Vandervell* to the particular context of bank account documents, the endorsement and application of *Vandervell* in *Goh Swee Fang* fortified our view that *Whitlock* did not establish any new principle.

95 It is trite that where one is concerned with a resulting trust, it is the intention of the *transferor* that is relevant because the resulting trust responds to the transferor's lack of intention to benefit the transferee. Thus, the intention of the transferee is strictly irrelevant to the analysis of whether a resulting trust has arisen (*Chan Yuen Lan* at [43]; *Djony Gunawan* at [21]). In a situation where both the transferor and transferee have made a declaration of beneficial ownership that is addressed to a third party like a bank, arguably the parties' intentions would be mirror images of each other. But that is not the proper analysis when one is concerned with a resulting trust. As both Lord Upjohn in *Vandervell* and Thean JA in *Goh Swee Fang* made clear, the operative question was what the document disclosed about the *transferor's* intention *vis-à-vis* the beneficial ownership of the property. As a precursor, Lord Carnwath's commonsensical observation (*Whitlock* at [86]) – that where large amounts of money are at stake, people tend not to use the mechanism of a joint bank account to make a large personal gift – is instructive.

96 We turn to the few local authorities that have specifically addressed the relevance of bank documents in the analysis. These authorities have, drawing primarily on Canadian case law, generally stated that the bank documents may have strong evidential value but not legal presumptive value as to the transferor's intent (see *Low Gim Siah and others v Low Geok Khim and another*

[2007] 1 SLR(R) 795 ("*Low Gim Siah*") at [52]–[53]; *Lim Chen Yeow* at [117]–[118]). In *Lau Siew Kim*, this court stated that bank documents which prescribe and describe the operation of survivorship "could constitute cogent evidence of the parties' intention", but that "this needs to be assessed in relation to the factual matrix" (at [108]).

97 In our view, these statements are consistent with the approach in *Whitlock*. None of the existing authorities we have referred to went as far as to take the absolutist position that bank documents could *never* be conclusive of the parties' intentions. Instead, the point emphasised was that there was no *a priori* assumption that the bank documents would be determinative. That is what this court had in mind when it cautioned in *Low Gim Siah* (at [53]) that bank documents "should not be assigned presumptive value when trying to determine a party's intention" – the simple reason for this was that the bank documents might, on a proper construction, say *nothing* about the beneficial ownership of the account and, therefore, nothing about the parties' intentions. It was, therefore, wrong to operate on a presumption that the bank documents would speak to the beneficial ownership of the account.

98 Ultimately, the bank documents in any case would have to be construed in their own terms and context to determine whether they address beneficial ownership. To be more precise, the true question is not whether the bank documents address beneficial ownership in the abstract – in the sense of the joint account holders holding the entirety of the beneficial interest in the account as a collective – but whether they address the ordering of the beneficial interest in the account *as between the account holders*.

99 For the reasons explained above, *Whitlock* did not lay down any new principle of law that was different from Singapore law or irreconcilable with the existing legal framework where one is concerned with a resulting trust. The key points emerging from the discussion above are fourfold:

(a) First, the interpretation of the bank documents does not stand apart from the question of the transferor's intention regarding the beneficial ownership of the account – to the contrary, the exercise in interpretation is itself an attempt at ascertaining the intention of the transferor.

(b) Second, we agree that the bank documents *can* be conclusive of the transferor's intention and, in turn, the account holders' respective beneficial entitlements in the account. This conclusion comes about after undertaking an inquiry into the intention of the transferor outlined in the first point.

(c) Third (and building on from the previous point), whether bank documents *are* conclusive in any given case would turn on their proper construction in accordance with settled principles, namely, whether they address the issue of beneficial ownership as between the account holders *inter se*.

(d) Fourth, there is no bright-line rule as to what bank documents do or do not address, such that one should not approach the exercise with a pre-conceived notion as to whether a document addresses the beneficial ownership as between the account holders *inter se*.

Whether Dr Khoo intended to make a gift of the Joint Accounts to the appellants

100 Having disposed of the appellants' legal arguments based on *Whitlock*, the remaining issue in this appeal was the question of Dr Khoo's intention when he converted the Joint Accounts on 7 November 2019: did Dr Khoo intend a gift to the appellants of the equitable interest in the chose in action representing the funds? The answer to this issue turned on the totality of the evidence before the court as well as the construction of the provisions in the Conversion Forms and T&Cs.

101 In our analysis below, we approach the question of Dr Khoo's intention in two parts. First, we consider all of the evidence other than the bank documents on which the appellants relied. Second, we address the appellants' contention that the Conversion Forms and T&Cs contained declarations of beneficial ownership which conclusively established Dr Khoo's intention to gift the Joint Accounts to them.

102 Although the appellants' position was that the present case fell into either Scenario 1 or Scenario 2 of the framework at [60] above, the evidence revealed that the present case, in fact, fell within Scenario 3 such that they held the legal title in the Joint Accounts on a resulting trust for Dr Khoo's estate. Let us explain.

Dr Khoo's intention to benefit his four children equally was unwavering throughout his lifetime

103 We leave aside the bank documents for the moment. We agreed with the Judge and were satisfied that the totality of the evidence showed that Dr Khoo did not intend to make a gift of the Joint Accounts to the appellants.

Indeed, Dr Khoo's broad intention concerning the Joint Accounts never changed from the initial execution of the Will in 2012 to the execution of the Codicil on 18 November 2019. Save for the bequeathment of $80,000 to Evelyn out of the Joint Accounts, Dr Khoo's intention remained consistent: to have all four of his children benefit equally from the Joint Accounts.

(1) The original Will

104 It is necessary to begin with the terms of the original Will. To recapitulate, cl 5(1) of the Will provided that Dr Khoo's residuary estate – including the UOB Account and POSB Account as specified in Schedule A – was to be distributed equally among Dr Khoo's four children, *ie*, Patricia and the respondents. Indeed, Dr Khoo did not merely say that the properties in Schedule A were to be distributed among his four children *per se*, which would have left their respective entitlements ambiguous. Instead, he saw fit to specify that the distribution was to be "to [his] four children in *equal shares*" [emphasis added]. Quite rightly, Patricia conceded in cross-examination that there was "no doubt" that Dr Khoo's intention as manifested in the Will was for his four children to share the moneys in the UOB Account and POSB Account – which, at the time, were accounts in Dr Khoo's sole name – equally.

105 In fact, the manner of distribution of Dr Khoo's residuary estate – *ie*, the properties in Schedule A – was not the only indicator in the Will of the premium that Dr Khoo placed on equality among his children, as Dr Khoo had also treated his four children equally *vis-à-vis* the distribution of the sale proceeds of the Siglap Property. Clause 4(2) of the Will provided that in the event that Evelyn moved out of the Siglap Property of her own volition, the Siglap Property was to be sold, and its proceeds distributed "in five (5) equal parts" to Evelyn and

his four children such that "each of them shall be entitled to a twenty per cent (20%) share."

106 The fact that Dr Khoo already saw fit in 2012 for his four children to be treated equally was significant. A central part of the appellants' case, especially in relation to Patricia, was to invite the inference that Dr Khoo had intended to favour Patricia over his other three children because Patricia shared the closest relationship with him. Even if that premise were true, it was clear from the terms of the Will that the closeness of the relationship he shared with each of his children was not a factor that weighed much, if at all, on Dr Khoo's mind when it came to deciding on their inheritance. Indeed, although Dr Khoo and Teng Jin had an estranged relationship, no favouritism was shown to the others. Dr Khoo treated Teng Jin no differently from his other three children, including Patricia.

107 Given this indisputable starting point, and the clear evidence that manifested Dr Khoo's intention to benefit his four children equally at different milestones of his life, except for the act of conversion itself of his bank accounts, there was not an iota of evidence supporting the appellants' case. It was incumbent on the appellants to demonstrate that Dr Khoo had a radical change of intention when it came to the conversion of the accounts in his sole name to the Joint Accounts such that he decided to exclude the respondents from any entitlement to the Joint Accounts completely.

(2) The Four Discussions and the execution of the Codicil

108 The Four Discussions between Dr Khoo and Patricia in which the former gave instructions to the latter on the various intended amendments to his Will came shortly in the wake of Dr Khoo's cancer diagnosis. To recapitulate, the

conversations that passed between Dr Khoo and Patricia could be distilled into the following:

(a) Dr Khoo wished for Evelyn to live comfortably in the Siglap Property for the rest of her life, with Patricia being her primary caregiver. Dr Khoo knew the best way to achieve this was for Patricia to purchase the Siglap Property. Dr Khoo also wished for Patricia to own the Siglap Property as she had been the favourite grandchild of Dr Khoo's mother, from whom Dr Khoo himself had inherited the Siglap Property. When Patricia expressed concern about not having sufficient funds to purchase the Siglap Property, Dr Khoo said he would help her. The Siglap Property was to be sold to Patricia at the average of two valuations.

(b) After Joyce expressed an interest in purchasing half of the Siglap Property for herself, Dr Khoo directed that Joyce be removed as an executrix and trustee of the Will. This meant that only Patricia and Katherine would remain as joint executrixes and trustees.

(c) $80,000 was to be gifted to Evelyn from Dr Khoo's fixed deposits with UOB.

109 The Four Discussions occurred before Dr Khoo and the appellants went to the banks. Evelyn read the Will and learnt that Dr Khoo had bequeathed a sum of $4,080,000 in the residuary estate to his four children in equal shares. Given that Schedule A to the Will stated that the total value of the UOB Account was $4,080,000, a specific gift of $80,000 to Evelyn out of this sum meant that Patricia and the respondents would still share equally in the accounts in the sum of $1m each. It seemed obvious to us that Dr Khoo was willing to accede to

Evelyn's request for $80,000 since each child would still share equally in the accounts. The appellants did not satisfactorily explain why Dr Khoo would, despite instructing Mr Ching to prepare a codicil to the Will that would *inter alia* gift $80,000 out of the sum of $4,080,000 to Evelyn, immediately thereafter gift the entirety of the Joint Accounts to Evelyn and Patricia.

110 Dr Khoo duly executed the Codicil which was consistent with his intention not to confer the beneficial interest in the Joint Accounts on the appellants. Had that not been the case, he would not have signed the Codicil without amending it to reflect his new purported intentions. Dr Khoo did not inform either Patricia or Mr Ching of the need to remove the $80,000 cash gift from the Codicil (which was rendered otiose by a gift of the entirety of the Joint Accounts through conversion of the bank accounts into the Joint Accounts) whether before executing the Codicil (while drafts of the Codicil were being prepared) or when he attended in person at Mr Ching's office to execute the Codicil. Put simply, and as Patricia conceded in cross-examination, the appellants' case invited the court to find that Dr Khoo did not merely do a complete *volte-face* between 6 November 2019 (*ie*, the date of the fourth discussion with Patricia) and 7 November 2019 (*ie*, the date of the conversion into the Joint Accounts), but that he also "deliberately kept mum" of the change in his intention to the appellants and Mr Ching up until his death, despite being in the process of amending his Will and meticulously articulating to Patricia all other changes in his testamentary wishes that he intended and which duly found their way into the Codicil that followed shortly after. This hypothesis, which imputed to Dr Khoo conduct that was nothing short of irrational, was far-fetched, to say the least. There was not the slightest doubt in our minds that it could not be correct.

111 We also considered significant the fact that Dr Khoo's response to Joyce's "mischief" in proposing that she buys a half share of the Siglap Property was not to disinherit Joyce or otherwise alter his equal treatment of her *vis-à-vis* his other three children with regards to the moneys in the UOB Account and POSB Account but to remove her as a co-executrix of his estate. This demonstrated that despite being contemporaneously upset with Joyce for attempting to hijack or disrupt his testamentary wishes, Dr Khoo remained unwavering in his original intention that his four children should be treated equally.

112 On the same theme of equality and bearing in mind his reasons for Patricia to acquire the Siglap Property, Dr Khoo changed his Will to provide for the sale of the Siglap Property and to specify Patricia as his choice purchaser – he could have but did not gift the Siglap Property to Patricia. What was also striking was his testamentary disposition of the sale proceeds should the property be sold: Evelyn and the children were to share the sale proceeds equally.

113 The Four Discussions segue nicely into Dr Khoo's execution of the Codicil on 18 November 2019 as the substantive amendments to Dr Khoo's testamentary wishes effected by the Codicil were a mirror image of Dr Khoo's instructions to Patricia during the Four Discussions:

> (a) At the first and second discussions, Dr Khoo had expressed his intention for Patricia to purchase the Siglap Property upon his death. To this end, he had instructed that his Will be amended to (i) provide for the Siglap Property to be sold to Patricia at a price that was the average of two valuations; (ii) allow Evelyn to stay in the Siglap Property for as long as she wished or until her death; and (iii) remove Joyce as an

executrix of his estate such that only Patricia and Katherine remained. These corresponded to cll 1.1, 1.2.1 and 1.2.2 of the Codicil.

(b) At the fourth discussion, Dr Khoo had expressed his intention for a specific cash gift of $80,000 to be made to Evelyn out of the moneys in the UOB Account. This corresponded to cl 1.4.2 of the Codicil.

114 At the hearing before us, Ms Chin conceded that the terms of the Codicil could not be squared with the appellant's case but downplayed this as a mere "wrinkle". With respect, this was an understatement, to say the least. The execution of the Codicil after the conversion to the Joint Accounts had to be seen in the context of (a) it being the endpoint of the process of Dr Khoo making amendments to his Will, which began right *before* the conversion to the Joint Accounts; (b) the terms of the Codicil mirroring the contents of the Four Discussions, the last of which took place the day before the conversion to the Joint Accounts; and (c) Patricia, on the morning of 7 November 2019 (before the appellants accompanied Dr Khoo to the banks in the afternoon), speaking with Mr Ching and conveying Dr Khoo's instructions for the amendments to be made to the Will. The significance of this factual context was that the execution of the Codicil could not merely be waved away as subsequent conduct that was not probative of Dr Khoo's intention at the time of the conversion of the Joint Accounts as the Codicil merely gave legal effect to Dr Khoo's intention as it stood *immediately before* the conversion. In a sense, there was a seamless and unbroken link between the Four Discussions preceding the conversion to the Joint Accounts and the execution of the Codicil postdating it. This line of analysis is analogous to the view expressed in earlier decisions of this court that, in determining the parties' contributions to the purchase price of property for

the purpose of the resulting trust, subsequent payments of mortgage instalments would generally not be relevant, subject to the qualification that mortgage repayments would be relevant if they are made pursuant to an agreement between the parties when the mortgage is taken out. The rationale for this is that while subsequent conduct such as mortgage repayments may not be relevant to the parties' intentions at the time of acquiring the property, this would not be the case if the subsequent conduct is referable or traceable to the parties' intentions at the earlier point in time of acquiring the property in question (see *Lau Siew Kim* at [116]–[117]; *Su Emmanuel* at [89]).

115 Indeed, at a more general level, the law has developed further such that a more liberal approach to subsequent conduct has been commended in more recent decisions of this court. In *Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 ("*Tan Yok Koon*"), this court considered the historical rule in *Shephard v Cartwright* [1955] AC 431 under which subsequent conduct in the transferor's favour was treated as inadmissible to ascertain his or her intention at an earlier time of the transfer of property, unless it was so closely connected in time to the transfer so as to form part of the same transaction. The rationale for this rule was the concern that subsequent conduct may be self-serving; in other words, since the transferor may have simply changed his mind after the event, his subsequent conduct may not be consistent with his intention at the earlier time of transfer (*Tan Yok Koon* at [107]). This court concluded that there were strong reasons for relaxing the rule and that, instead of imposing a strict or blanket bar against subsequent conduct, a better approach would be to take a broad view of admissibility but focus on ascribing the proper weight to be given to subsequent conduct as evidence of the transferor's intention at an earlier point in time (*Tan Yok Koon* at [110]). In our view, the present case was precisely a case where Dr Khoo's subsequent

conduct was not only relevant, but *highly* relevant, to his intention at the time of the conversion of the Joint Accounts due to the consistency in his expressed intention before the conversion (*ie*, during the Four Discussions) and after it (*ie*, the execution of the Codicil), as well as the proximity in time between the conversion and the execution of the Codicil (*ie*, a mere 11 days). The symmetry in Dr Khoo's intention before and after the conversion allayed any concern that he could have simply changed his mind after initially intending to make a gift through the conversion to the Joint Accounts. Indeed, we consider that even if the stricter historical approach had been adopted, the execution of the Codicil would *still* have been admissible as forming part of the same transaction as the conversion to the Joint Accounts given not only its proximity in time but also its symmetry with Dr Khoo's intention immediately before the conversion.

116 The terms of the Codicil were, therefore, not a mere "wrinkle" but a glaring inconsistency with the appellants' case that they had to come up with a satisfactory explanation for. But when it came to it, the hypothesis which the appellants advanced to explain away the Codicil did not come anywhere close to being viable. In essence, Ms Chin's argument before us was that Dr Khoo had gone ahead to sign the Codicil (and, in doing so, added a specific cash gift to Evelyn out of the UOB Account) despite having made an earlier gift of the Joint Accounts to the appellants through the act of conversion for the following reason: as a matter of law, Dr Khoo could no longer give away the Joint Accounts by the time he executed the Codicil as he had already given them to the appellants by constituting them as joint tenants of the accounts. Put differently, Dr Khoo did not need to delete the Joint Accounts from his residuary estate (and thereby disinherit the respondents from the Joint Accounts) through the Codicil and remove the superfluous cash gift to Evelyn out of the UOB Account as the law would already carry into effect his intention of gifting the

appellants the entirety of the Joint Accounts. We did not think much of Ms Chin's explanation and will elaborate on this below.

(3) Other evidence that Dr Khoo did not intend to gift the Joint Accounts to the appellants

117 In our view, Dr Khoo's unwavering intention was for his children to benefit equally from the Joint Accounts. Ms Chin's explanation at [116] above was problematic for several reasons. In the first place, the appellants' assertion that Dr Khoo could no longer gift away the Joint Accounts by the time he executed the Codicil was a bald statement on the appellants' part. It involved an unrealistic suggestion that Dr Khoo had undertaken some sort of analysis of how the law would resolve conflicting gifts of the Joint Accounts between (a) his Will and Codicil (providing for a specific cash gift of $80,000 to Evelyn and for the rest to be equally distributed among his four children); and (b) the act of conversion (giving the appellants the entirety of the Joint Accounts through the operation of the right of survivorship).

118 Second, we agreed with Mr Chung that since Dr Khoo was meticulous in his affairs, it was unlikely that he would have failed to expressly state in the Codicil that the moneys in the Joint Accounts were to be gifted to the appellants. Indeed, it was unbelievable that a man who exhibited as much meticulousness and diligence in settling his testamentary affairs as Dr Khoo did would deliberately create and leave such an ambiguity in his testamentary wishes that risked spawning conflict between the beneficiaries of his estate. At cl 1.2.2 of the Codicil, Dr Khoo had expressly stipulated, in relation to his arrangements for the Siglap Property following his death, that "[t]he matters so decided by [him] as aforesaid shall not be disputed by any of the beneficiary/beneficiaries of [his] estate". Although this strictly did not relate specifically to the

distribution of Dr Khoo's residuary estate, it did make clear that Dr Khoo was undoubtedly keen to avoid any risk of the beneficiaries of his estate getting into a dispute over his testamentary affairs.

119 Third, the appellants' argument was difficult to square with the fact that Dr Khoo had, by cl 3 of the Codicil, confirmed that save as modified by the terms of the Codicil, he "reaffirm[ed] and republish[ed]" his Will. By doing so, Dr Khoo confirmed that, except for the specific cash gift to Evelyn introduced by cl 1.4.2 of the Codicil, his original intention in cl 5(1) of the Will for his four children to share in the Joint Accounts equally remained his current intention *even after the conversion to the Joint Accounts*.

120 Fourth, it could not be suggested that Dr Khoo failed to apply his mind to the Joint Accounts when the Codicil was executed as, apart from making the cash gift of $80,000 to Evelyn out of the UOB Account, Dr Khoo also clarified by cl 1.4.4 of the Codicil that the reference to the POSB Account being maintained with "POSB Siglap Branch" in Schedule A of the Will was no longer correct as POSB Siglap Branch was now defunct and had its business taken over by "POSB Marine Parade Branch". This, to our minds, was a testament to the sheer degree of care that Dr Khoo exercised *vis-à-vis* his testamentary affairs, to the extent that he did not merely make substantive changes on the manner of distribution of his property, but also corrected administrative details even if there was unlikely going to be any doubt as to which POSB Account he was referring to notwithstanding the change of branch. If he had the presence of mind to even correct the reference to "POSB Siglap Branch" to "POSB Marine Parade Branch", it struck us as plainly inconceivable that Dr Khoo would not have simply made clear in the Codicil his intention to gift the Joint Accounts to the appellants if that had indeed been his intention.

121 Fifth, the appellants sought to bolster their claim that Dr Khoo had intended to gift them the moneys in the Joint Accounts by framing this as a form of financial assistance to Patricia to complete the purchase of the Siglap Property, which she had been given the exclusive right to purchase (or to appoint a family nominee to purchase) by cl 1.2.1 of the Codicil. We accepted that it was not entirely implausible that Dr Khoo intended to provide some form of financial assistance to Patricia. However, we did not think this necessarily extended to giving Patricia (and Evelyn) the entirety of the Joint Accounts. By cl 1.3 of the Codicil, Dr Khoo specified that the distribution of his residuary estate could occur before the sale of the Siglap Property as he foresaw that the "Completion Date for the sale of [the Siglap Property] under Clause 1.2.1 of [the] Codicil [was] expected to take up a good number of years". In our view, the fact that Dr Khoo anticipated that the sale of the Siglap Property to Patricia would "take up a good number of years" militated against the appellants' claim that he intended to give them a significant windfall in the form of all the moneys in the Joint Accounts. Further, given that Patricia was an equal beneficiary with the respondents to the Joint Accounts under cl 5(1) of the Will, she *would* receive some form of financial assistance from Dr Khoo to purchase the Siglap Property. Dr Khoo's intention to make an equal four-way distribution of the moneys in the Joint Accounts was therefore not inconsistent with the appellants' case that Dr Khoo also intended to give financial assistance to Patricia for her purchase of the Siglap Property. There was also the matter of the sale proceeds where her share and that of Evelyn's would add up to 40% of the purchase price. For the sake of argument, her total financial outlay for the purchase would be only what she was required to pay her three siblings.

122 Taking the appellants' case to its logical conclusion, Dr Khoo envisioned a circular flow of moneys out and then back into his estate: the

appellants would first obtain the entire benefit of the Joint Accounts, only for the moneys in the Joint Accounts to be funnelled back into Dr Khoo's estate as the proceeds of sale of the Siglap Property (through Patricia applying them to her purchase of the Siglap Property), to be then distributed equally among the appellants (who were the initial benefactors of the Joint Accounts) and the respondents. Such a structure made no sense and was unlikely to have been what Dr Khoo intended. An outright gift of the Siglap Property to Patricia would have been simpler.

123 We add that we did not accept Evelyn's submission that Dr Khoo intended to gift her the Joint Accounts because he knew that she did not have enough money for her daily expenses, medical treatments and home-based care. This assertion lacked basis as Evelyn did not provide any evidence of how much her daily expenses were and how much her medical treatment cost. Against her own evidence that she received around $9,100 each month in terms of her own income, we could not accept Evelyn's bare assertion that she did not have the means to support herself. Instead, the reality was that Dr Khoo appeared to have regarded Evelyn as able to provide for herself. Two main indicia reflected this. One, as cl 4(1) of the Will provided that Evelyn was to use her own funds to upkeep the Siglap Property if she chose to stay on in the property following Dr Khoo's passing, Dr Khoo clearly believed that Evelyn had the wherewithal to do so. Two, but for Evelyn asking for the specific $80,000 cash gift which Dr Khoo introduced through the Codicil, Dr Khoo would have made no provision for her other than giving her a continuing right to stay in the Siglap Property and a right to share equally in the sale proceeds of the Siglap Property with his four children if it was sold in her lifetime. It would be recalled that the Will had only provided for a four-way distribution of Dr Khoo's residuary estate among his four children. This suggested that Dr Khoo did not think it necessary,

for one reason or another, to provide financial assistance to Evelyn after his death.

124 Sixth, cl 1.3 of the Codicil also buttressed the inference that Dr Khoo never intended to gift the Joint Accounts to Evelyn and Patricia. By cl 1.3 of the Codicil, Dr Khoo accelerated the distribution of his residuary estate: it was now no longer necessary for the sale of the Siglap Property to be completed before the residuary estate could be distributed. Read together with cl 5(1) of the Will and Schedule A (which included the Joint Accounts), this demonstrated that Dr Khoo never lost sight of his intention to benefit his four children equally. Indeed, it was clear that he did not want the respondents to have to wait for Patricia to either complete or fail to complete the purchase of the Siglap Property within the lengthy timeframe before they could begin to obtain any benefit from his estate.

125 Finally, the handling of the Joint Accounts after the conversion was also consistent with Dr Khoo having no intention to make a gift of the Joint Accounts to the appellants. Patricia's own evidence was that her father made the only withdrawal (*ie*, a sum of $180,332.88) from the UOB Account, which evidences that Dr Khoo ultimately retained control over the accounts following the conversion. If the appellants genuinely believed that Dr Khoo had made a gift of the Joint Accounts to them through the act of conversion on 7 November 2019, there would have been nothing to stop them from withdrawing the moneys for their own purposes. The fact that the moneys went untouched for over a year until Dr Khoo's death exposed their belief that the moneys in the Joint Accounts remained Dr Khoo's own even after the conversion.

126 Indeed, in an e-mail to Mr Ching on 12 November 2019 – five days after the conversion to the Joint Accounts – discussing Dr Khoo's intended amendments to his Will, Patricia had made the following enquiry to Mr Ching:

> May I please know what happens if or during the period/years till my father Dr Khoo's death, *his FD money* is used to pay for *his* medical expenses and living needs or if the number and amounts of *his* FDs change or become less than the stated amount in his Will? [emphasis added]

In our view, this e-mail was telling. It made plain that Patricia did not hold any genuine belief, five days after the conversion of the Joint Accounts, that the moneys in the Joint Accounts had ceased to be *Dr Khoo's* moneys and were to be distributed in accordance with the Will. If Patricia thought that the Joint Accounts had been gifted to her and Evelyn on 7 November 2019 and were to be no longer distributed among her and the respondents equally, it made no sense for her to ask Mr Ching what would happen if the UOB Account was depleted and "bec[a]me less than the stated amount in his Will". It was obvious that Patricia recognised that the Joint Accounts remained as part of Dr Khoo's residuary estate and would be distributed in accordance with the Will. Seen in this light, it was clear to us that the appellants' case that Dr Khoo had made a gift of the Joint Accounts to them on 7 November 2019 by converting the accounts was nothing but an afterthought.

127 To summarise our analysis above, Dr Khoo did not intend any gift of the Joint Accounts to the appellants through the act of conversion on 7 November 2019. Instead, he fully intended to retain the beneficial interest in the Joint Accounts so as to dispose of them equally among his four children in accordance with cl 5(1) of the Will. Indeed, it was patently clear that this was Dr Khoo's unwavering intention from the outset, when he first executed the Will in 2012,

all the way through to the execution of the Codicil (which left cl 5(1) of the Will untouched) and his eventual death.

128 Although a finding that Dr Khoo intended to retain the beneficial interest in the Joint Accounts was sufficient to uphold the Judge's conclusion that the appellants held the legal title on a resulting trust for Dr Khoo's estate, it was relatively clear to us what Dr Khoo's intention when converting the Joint Accounts was. The Judge observed, somewhat conservatively, that it could not be conclusively ruled out that Dr Khoo had added the appellants as co-account holders for administrative convenience (Judgment at [73]). We would have been prepared to be less tentative. We agreed with Mr Chung that the appellants were added as co-account holders for administrative purposes. Taking a step back, Dr Khoo was diagnosed with liver cancer just one month before he converted the accounts in his sole name to the Joint Accounts. Dr Khoo had previously expressed his intention to only receive home-based care. Set against this, it was reasonable to suppose that, on learning of his cancer diagnosis, Dr Khoo began to get his affairs into order, and this included, among other things, preparing to meet his medical and other expenses, should he become indisposed. Given this, Dr Khoo likely added the appellants to the Joint Accounts to facilitate this contingency. Indeed, the fact that there was no evidence that either of the appellants drew on the Joint Accounts during Dr Khoo's lifetime supported the suggestion that they were really added as a back-up plan in the event that Dr Khoo was unable to administer the account himself. He never intended to gift the Joint Accounts to the appellants.

The effect of the bank documents in this case

129 Having dealt with all of the evidence other than the bank documents, we now turn to address the effect of the bank documents relied on by the appellants.

We did not think that the bank documents spoke to a different conclusion. The Conversion Forms and T&Cs did not, as the appellants contended, contain any stipulation of the appellants' and Dr Khoo's beneficial interests in the Joint Accounts and therefore said nothing about Dr Khoo's intention.

130 The appellants submitted that the Conversion Forms "plainly declare[d] each of Dr Khoo's and the Appellants' beneficial interest in the accounts". The appellants relied on the following statements in the UOB and POSB Conversion Forms, which we set out for ease of reference:

(a) In the Conversion Form for the POSB Account:

> We are the beneficial owner of the funds in the account and shall only use the account and the Bank's products and services for legal purposes.

(b) In the Conversion Form for the UOB Account:

> I/we confirm that I/we am/are the beneficial owner(s) of the account.

131 The appellants laid great emphasis on the phrase "beneficial owner" in these declarations, which they construed as confirmations by Dr Khoo and the appellants that each of them was beneficially entitled to the moneys. In other words, this declaration confirmed that, upon conversion to the Joint Accounts, the Joint Accounts were held by Dr Khoo and the appellants as of 7 November 2019 (the date of the conversion) in a true joint tenancy at law and in equity.

132 We disagreed with the appellants' construction for two reasons. First, we did not think that the references in these declarations to the appellants and Dr Khoo being the "beneficial owners" of the Joint Accounts entailed "beneficial ownership" in the legally technical sense of them being entitled *in*

the eyes of equity to the Joint Accounts. Instead, we considered that "beneficial ownership" was referred to here as a term of art bearing a specific meaning in the context of bank documents, namely, a natural person who ultimately owns and controls the bank's customer, or the natural person on whose behalf the bank's customer is transacting or establishing business relations.

133 In *Whitlock*, Lord Carnwath opined that as standard form documents drafted by the bank, bank documents ought to be interpreted in light of what *the banks* would be concerned with (at [88]). We agreed with his Lordship's approach. The same could be said for the Conversion Forms (and indeed, the T&Cs) in this case.

134 The phrase "beneficial owner" does not, on its plain meaning, necessarily refer to a person holding an *equitable entitlement to the chose in action representing the credit balance.* As mentioned earlier, the bank has the legal and beneficial interest in the funds themselves from the time of their deposit and it is necessary to distinguish between the legal and equitable chose in action. The legal chose in action is important to the bank as regards dealings and transactions between the bank and its customer. Thus, we consider that a statement that a person is the "beneficial owner" is, on a plain reading, equivocal as to whether a person holds an equitable interest to the chose in action representing the credit balance in the joint account.

135 *Zhang Lan v La Dolce Vita Fine Dining Group Holdings Ltd and other appeals* [2023] 2 SLR 137 ("*La Dolce Vita (AD)*") is an instructive case as the Appellate Division made this same point in relation to a reference to "beneficial owner" in the bank documents before it. In short, the facts involved a dispute as to whether a judgment debtor, Mdm Zhang, had a beneficial interest in certain

bank accounts with Deutsche Bank AG ("DB") and Credit Suisse AG Bank ("CS"), such that a receiver could be appointed by way of equitable execution for the enforcement of a judgment against those accounts. The court's focus, therefore, was on beneficial ownership in the legally technical sense of holding an equitable interest in property. For present purposes, what is material is that the court there considered bank documents that contained substantively similar declarations to those in the Conversion Forms for the Joint Accounts that the appellants relied upon. Specifically, Section 4.3 of the CS account opening form listed Mdm Zhang as the "beneficial owner(s) of the assets in the account", whereas Section II of a risk profile form for DB indicated Mdm Zhang as, *inter alia*, the "beneficial owner" of the DB account.

136 Although the Appellate Division ultimately concluded that Mdm Zhang held the equitable interest in the bank accounts, it did not think that the abovementioned declarations of Mdm Zhang being the "beneficial owner" of the accounts were conclusive. Instead, the court simply noted, without any positive or adverse comment, the argument that the phrase "beneficial owner" was a term of art used by the banks rather than referring to "beneficial ownership in the sense recognised in equity" (see *La Dolce Vita (AD)* at [79]). Indeed, in an earlier interlocutory application in the same litigation, Philip Jeyaretnam J had observed that "[a] declaration of beneficial ownership is required at the time of account opening and periodically rechecked", and is "required of banks by the Monetary Authority of Singapore ('MAS'), to combat money laundering and other illegal activities such as terrorism financing" (see *La Dolce Vita Fine Dining Co Ltd v Zhang Lan and others* [2022] 5 SLR 602 at [39]).

137 In this connection, counsel for Teng Jin, Mr Shankar, referred us to Notice 626 dated 24 April 2015 (the "Notice"), issued by the MAS, pursuant to

s 27B(1) of the Monetary Authority of Singapore Act (Cap 186, 1999 Rev Ed) "for the prevention of money laundering or for the prevention of the financing of terrorism" (see generally, *Tang You Liang Andruew v Public Prosecutor and another appeal* [2023] 3 SLR 229). Emphasis was placed on the obligations of banks under para 6.13 of the Notice to "inquire if there exists any beneficial owner in relation to its 'customer'", as well as the definition of "beneficial owner" in para 2.1 of the Notice. Mr Shankar submitted that the declarations in the Conversion Forms were purposed towards the discharge of UOB's and POSB's obligations under the Notice, and therefore, the reference to "beneficial owner" in the Conversion Forms ought to be interpreted in light of the Notice.

138 We saw force in that submission. As a preliminary point, in light of the ambiguity as to what the reference to "beneficial owner" in the Conversion Forms entailed, we considered that reference to the Notice as an interpretive aid was permissible under s 94(*f*) of the Evidence Act 1893 (2020 Rev Ed) (the "EA"), which allows extrinsic evidence to be admitted showing in what manner the language of a document is related to existing facts. It is well-established that s 94(*f*) of the EA embodies the contextual approach to contractual interpretation (see *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 ("*Zurich Insurance*") at [121]; *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193 at [63]). As Mr Shankar pointed out, the contextual approach entails interpreting the provisions of a contract with regard to the "legal, regulatory, and factual matrix which constitutes the background in which the document was drafted" [emphasis omitted] (see *Zurich Insurance* at [131]). In this regard, para 2.1 of the Notice defines "beneficial owner" as follows:

> … "beneficial owner", in relation to a customer of the bank, means the natural person who ultimately owns or controls a

> customer or the person on whose behalf a transaction is being conducted and includes the person who exercises ultimate effective control over a body corporate or unincorporate.

139 The focal point of "beneficial ownership" as contemplated in the Notice is thus on *factual control* of the customer with whom the bank is transacting, such that the bank knows who exactly it is dealing with. There is no axiomatic link between that focus, which is framed to combat money laundering and terrorism financing, and beneficial ownership in the sense of holding equitable title to the chose in action representing the balance funds in a joint account.

140 The second reason for our view that the reference to "beneficial owner" in the Conversion Forms did not assist the appellants was that even if it were assumed that the reference to "beneficial owner" connoted equitable entitlement to the chose in action, the declarations were, on a plain reading, *joint* declarations by the account holders *as a collective* to the bank that *they* were the beneficial owners of the account. This was the import of the use of "we" in the Conversion Forms, which referred to Dr Khoo and the appellants as a collective. Thus, even taking the appellants' case at its highest, the declarations did not address the material question of how the equitable interest was held *as between Dr Khoo and the appellants* so as to be capable of establishing that a true joint tenancy was created between them when the Joint Accounts were converted on 7 November 2019.

141 Turning to the T&Cs, the appellants referred to provisions which may loosely be referred to as "survivorship clauses" addressing what would occur in the event of the death of one of the holders of the joint account. We set these provisions out for ease of reference:

(a) Clause 2.15 of the UOB T&Cs:

> **Death of Joint Account Holder**
>
> 2.15 If a joint Account holder dies (except in the case of joint Accounts designated as trust or executors' accounts):-
>
> (a) the surviving Account holder obtains on the face of it, title to the Account and may give instructions on the Account; but, if we choose to, we may take such steps we deem appropriate including paying the credit balance in the Account into a court of competent jurisdiction; and
>
> (b) the obligations of the surviving Account holder and our rights (including any lien or right of set-off) are not affected.

(b) Clause 12(b) of the POSB T&Cs:

> **OPERATION OF JOINT ACCOUNT**
>
> Where the Account (including Account in "Trust" other than POSBKids Account) is in 2 or more joint names or has 2 or more authorised signatories:
>
> …
>
> (b) if any one Account holder dies, we are authorised to hold any credit balance in the Account to the order of the surviving Account holders. This does not affect any other right we may have in respect of such balance arising out of any lien, charge, pledge, set-off or any other claim or counter-claim actual or contingent or otherwise. We will be released from all demands, claims, suits and actions by the heirs, executors and administrators of the deceased. In addition, we may, if any Account holder dies, suspend or close the Account (whether it is a Joint-All or Joint-Alternate Account) without notice;

142 The material parts of these provisions were, to our minds: (a) "[t]he surviving Account holder obtains on the face of it, legal title to the Account and may give instructions on the Account" (in cl 2.15 of the UOB T&Cs); and (b) "if any one Account holder dies, we are authorised to hold any credit balance *to*

the order of the surviving Account holders" [emphasis added] (in cl 12(b) of the POSB T&Cs).

143 In our judgment, these provisions did not bear the weight that the appellants placed on them as they at most only addressed the legal title to the account and not the beneficial interest.

144 In his analysis of the survivorship clauses in the T&Cs, the Judge commented that "a bank is only concerned with its obligations and liabilities to the customer" and it was "not typically concerned with the identity of the person *beneficially entitled* to the chose in action that is the joint account" [emphasis in original] (Judgment at [49]). Although we repeat our caution at [99] above that there are no bright-line rules as to what bank documents do or do not address, the Judge's view is the corollary of the reality, also recognised by the minority in *Whitlock*, that the T&Cs were standard forms drafted by the banks without input from customers. It was thus eminently sensible that the provisions in the T&Cs had to be construed from the bank's perspective and what the bank would be concerned with (see [133] above).

145 In this regard, we found it significant that the provisions did not make any express reference to equitable ownership of the Joint Accounts but rather were focused on the issue of who the banks were *entitled to act on the instructions of* in the event of the death of one of the account holders. This was expressly stated in cl 2.15 of the UOB T&Cs and was implicit in cl 12(b) of the POSB T&Cs where the surviving account holder was referred to as the person to whom the account would stand "to the order of". In our view, this indicated that the purpose of these provisions was to remove any uncertainty upon the death of one of the account holders that may result in the banks breaching their

duty of strict compliance with their customer's mandate (see *Philipp v Barclays Bank UK plc* [2024] AC 346 at [30]). The T&Cs did this by stipulating clearly that the bank was authorised to act on the instructions of the surviving account holder (see E P Ellinger, Eva Lomnicka & C V M Hare, *Ellinger's Modern Banking Law* (Oxford University Press, 5th Ed, 2011) at p 324).

146 For the reasons above, it stood to reason that the bank documents governing the Joint Accounts did not address the account holders' respective beneficial entitlements to the chose in action representing the credit balance. We were therefore unpersuaded by the appellants' claims that the Conversion Forms and T&Cs contained a declaration of beneficial interests that communicated an unequivocal intention on Dr Khoo's part to gift the Joint Accounts to them. Instead, the provisions cited by the appellants in these documents merely addressed the legal title to the Joint Accounts, and more precisely, were focused on providing the banks with the security of acting on the instructions of a surviving account holder.

Conclusion

147 Given that the evidence clearly established that Dr Khoo's actual intention was for the Joint Accounts to be shared equally by his four children, we affirmed the Judge's decision that Dr Khoo intended to retain the beneficial interest in the Joint Accounts and the appellants thus held the legal title in the Joint Accounts on a resulting trust for Dr Khoo's estate. The appeal was accordingly dismissed. We ordered costs fixed at $54,000 and $30,000, payable by the appellants to Katherine and Joyce (who were jointly represented) and

Teng Jin (who was separately represented), respectively. We also made the usual consequential order for the payment out of the security for costs.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Belinda Ang Saw Ean
Justice of the Court of Appeal

Marina Chin Li Yuen SC, Alcina Lynn Chew Aiping and Clarise Chew Shu-Min (Tan Kok Quan Partnership) for the appellants;
Chung Ting Fai, Muk Yin Shyn, Tan Tzu Kwang Paul and Azura Tengku Nur Azura Binte Tuan Azman (Chung Ting Fai & Co) for the first and second respondents;
Jaikanth Shankar, Sumedha Madhusudhanan, Waverly Seong, Shilpa Krishnan and Suhas Malhotra (Davinder Singh Chambers LLC) (instructed), Chan Jer Hiang (Chan Jer Hiang & Co) for the third respondent.