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

[2026] SGHC 83

Originating Application No 1025 of 2024

Between

Hajjah Noor Jehan bte
Mohamed Ghouse

… *Applicant*

And

Nur Fairuz Magnus

… *Respondent*

And

Zulfaizal bin Rohani

… *Non-party*

GROUNDS OF DECISION

[Trusts — Resulting trusts]
[Trusts — Constructive trusts — Common intention constructive trusts]
[Equity — Estoppel — Proprietary estoppel]
[Trusts — Unlawful trust — Whether trust is unenforceable for illegality]

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Hajjah Noor Jehan bte Mohamed Ghouse
v
Nur Fairuz Magnus
(Zulfaizal bin Rohani, non-party)

[2026] SGHC 83

General Division of the High Court — Originating Application No 1025 of 2024
Pang Khang Chau J
5 November 2024, 20 January, 21 March, 23 May, 7 August 2025, 28 August 2025

15 April 2026

Pang Khang Chau J:

1 Originating Application No 1025 of 2024 ("Application") is an application brought by a mother ("Applicant") for a declaration of her rights in respect of a residential property ("Property") purchased by her daughter ("Respondent"). The Property was purchased in the Respondent's sole name partly with monies advanced by the Applicant. The Application was brought pursuant to guidance provided by the Court of Appeal in *UDA v UDB* [2018] 1 SLR 1015 ("*UDA v UDB*") in the light of impending divorce proceedings between the Respondent and her husband ("Non-Party").

2 I held that the monies advanced by the Applicant to the Respondent were in the nature of a loan with the consequence that the Applicant does not have any beneficial interest in the Property. I therefore declared that the Respondent

is personally liable for repaying the loan to the Applicant upon the sale of the Property in accordance with the terms of a loan agreement made between the Applicant and the Respondent on 29 August 2024. In the light of my finding that the Applicant possessed only a contractual claim against Respondent personally for repayment of the loan and had no beneficial interest in the Property, I further clarified that if the Property is held, by the court hearing the divorce proceedings between the Respondent and the Non-Party, to be a matrimonial asset, and the Property is ordered by that court to be sold, any repayment of loan to be made by the Respondent to the Applicant shall be made only from the Respondent's share of the sale proceeds.

3 The Applicant has appealed against my decision.

Background

4 The Property is a freehold strata landed property with an estimated floor area of 322 square metres.[1] It was purchased by the Respondent sometime in late December 2018/early January 2019 at the price of $2,400,000.[2] The Respondent took vacant possession of the Property in May 2019.[3]

5 The Respondent and the Non-Party were engaged on 30 June 2018 and were married on 9 February 2019.[4] For the first few months of their marriage, the couple lived together with the Applicant and her husband in a Housing and Development Board ("HDB") flat owned by the Applicant and her husband

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1 Affidavit of Hajjah Noor Jehan binte Mohamed Ghouse filed on 3 October 2024 ("Applicant's 1st Affidavit") at p 13.

2 Applicant's 1st Affidavit at para 5.

3 Applicant's 1st Affidavit at p 151.

4 Affidavit of Zulfaizal bin Rohani filed on 18 March 2025 ("Non-Party's 1st Affidavit") at para 10.

("Bedok Flat"). After the completion of the purchase of the Property, the Respondent and the Non-Party moved into the Property together with the Applicant, her husband and the Applicant's mother.[5]

6 On 12 September 2024, the Respondent initiated the process for divorce at the Syariah Court by registering for the mandatory marriage counselling programme.[6] On 13 September 2024, the Respondent told the Non-Party that she wanted him to move out of the Property.[7] On 20 September 2024, the Non-Party discovered upon returning home from work that he had been locked out of the Property. Thereafter, the Non-Party resided with his parents.[8]

7 On 3 October 2024, the Applicant commenced the present application to seek the following order:

> 1. For a declaration that the Applicant is entitled to the sale proceeds of the property at XXX Wak Hassan Drive Singapore (the "Property") as follows:
>
> > a. Repayment of all loans given by the Applicant to the Respondent towards the purchase and service of the mortgage on the Property (including all miscellaneous fees);
> >
> > b. A percentage of the profits from the sale of the Property equivalent to the Applicant's contribution (being a percentage of the monies loaned by the Applicant to the Respondent used for the purchase of the Property divided by the total payments made by the Applicant and the Respondent directly for the purchase and/or the servicing of the mortgage loan), after deduction of the outstanding bank mortgage (if any), all CPF refunds and accrued interest, and repayment of the Applicant's loan as per sub para 1a above;

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5 Non-Party's 1st Affidavit at para 8.

6 Non-Party's 1st Affidavit at para 17.

7 Non-Party's 1st Affidavit at para 18.

8 Non-Party's 1st Affidavit at para 22.

> c. For the avoidance of doubt, the parties' percentage share in the profits of the sale proceeds referred to in subparagraph 1b is to be calculated as follows:
>
> A - Sale price
>
> B - Mortgage loan redemption
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> C - Respondent's CPF redemption including accrued interest
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> D - Total outstanding loan owing to Applicant (includes miscellaneous expenses)
>
> E - Loan given by Applicant used for purchase of Property (payment of purchase price and servicing of mortgage loan)
>
> F - Respondent's CPF used for payment of purchase price and servicing of mortgage loan (excluding miscellaneous expenses and accrued interest)
>
> G - Respondent's cash (if any) used for payment of purchase price and servicing of mortgage loan
>
> Applicant's share = E/(E+F +G) x (A-B-C-D) x 100%
>
> Respondent's share = (F+G)/(E+F+G) x (A-B-C-D) x 100%

8 The Respondent consented to the Application.[9]

The parties' cases

9 Given the various shifts in the Applicant's position, it would be more convenient, and also facilitate better understanding, for me to present the parties' positions in the chronological order in which they were presented to the court.

[9] Applicant's Written Submission dated 29 October 2024 ("Applicant's 1st Written Submissions") at para 3.

Applicant's affidavit of 3 October 2024 ("Applicant's 1st Affidavit")

10 According to the Applicant's 1st Affidavit, the Applicant and the Respondent had originally intended to purchase the Property in their joint names. However, sometime in December 2018, the Applicant decided to withdraw her name from the purchase, leaving the Respondent to complete the purchase of the Property in her sole name. The Applicant explained that she withdrew her name from the purchase of the Property because she had decided to rescind an agreement she previously made for the sale of the Bedok Flat.[10]

11 The Applicant gave two reasons for rescinding the agreement for sale of the Bedok Flat. The first reason she gave was that it was for sentimental reasons.[11] The second reason she gave was that she was reminded by her youngest daughter, Nurul Huda binte Ishak Magnus ("Nurul Huda"), that she (the Applicant) had given an undertaking that she would not move out of the town/estate where the HDB flat owned by Nurul Huda ("Nurul Huda's Flat") was located during the five-year minimum occupation period ("MOP") of Nurul Huda's Flat.[12] The Applicant had given this undertaking in order for Nurul Huda to obtain a grant under the CPF Housing Grant Scheme for Family (Living Near Parents/Married Child). (As the practical effect of this undertaking, in the light of the Applicant's circumstances, was that she would not be able to move out of the Bedok Flat, I shall in the interest of brevity refer to this undertaking simply as an undertaking not to move out of the Bedok Flat.)

12 The Applicant explained that, as the Respondent did not have the financial means to purchase the Property without the Applicant's assistance, the

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10 Applicant's 1st Affidavit at paras 6 to 7.

11 Applicant's 1st Affidavit at para 7.

12 Applicant's 1st Affidavit at para 8.

Applicant agreed to assist the Respondent by "giving her loans which [were] to be used to *inter alia* purchase the Property, service the mortgage loan on the Property and for miscellaneous purpose in relation the Property". The Applicant described the understanding between her and the Respondent in the following terms:[13]

> The agreement between us is that in the event of sale of the Property, these loans will be returned to me from the sale proceeds, after deduction of the outstanding mortgage and the CPF refund. Further, the respondent represented to me that the balance profit will be apportioned between her and I in the percentage of our respective financial contribution directly towards the purchase of the property and the servicing of the mortgage loan. This was agreed verbally between us at the time of the purchase. It was also agreed that in the event I pass away the Property was to be distributed between all my children and grandchildren in certain shares. I have exhibited a copy of a contemporaneous document signed by me, showing the share distribution of the sale proceed of the Property in the event of my death at page 19 of **HNJ-1**.

13 The "contemporaneous document" referred to in the passage quoted above is a handwritten note bearing the Applicant's signature and dated 10 January 2019 ("Handwritten Note"). The address of the Property is written at the top, below which is a pie chart divided into five unequal shares with a person's name and a percentage share indicated against each division of the pie chart. Below the pie chart is a signature which was not quite identifiable, and below that signature are the words: "In the event of this property sales, this is the division." The Applicant's signature appeared below those words, and below the Applicant's signature was the following note: "Note: Rauf entitled to have 1 room in the house."[14]

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13 Applicant's 1st Affidavit at para 9.

14 Applicant's 1st Affidavit at p 19.

14 The Applicant's 1st Affidavit went on to calculate that the Applicant had loaned the Respondent the sum of $1,020,378.85 in total, comprising $450,000 towards the initial purchase of the Property, $6,000 towards opening the Maybank loan repayment account, $345,415.30 towards monthly mortgage repayments and $218,963.55 towards various miscellaneous payments.[15]

Applicant's written submissions dated 29 October 2024 ("Applicant's 1st Written Submissions")

15 The Applicant's 1st Written Submissions explained that the impetus for this application was the "impending divorce proceedings of the Respondent and the Non-Party", in the light of the guidance given in *UDA v UDB*. The Court of Appeal had, in *UDA v UDB* at [54], held that a "third party claiming an interest in property alleged to be a matrimonial asset … should commence independent civil proceedings against either or both the spouses for a declaration as to his interest".[16] Thus, the Applicant made the Application "to preserve and protect her rights in the sale proceeds of the Property herein, and any interest she may have in the Property, which may be determined as a matrimonial asset and subject to division thereof."[17]

16 In respect of the Handwritten Note, the Applicant's 1st Written Submissions submitted that (a) it was "signed by *the parties* on 10 January 2019" (emphasis added) and, (b) it would appear from the Handwritten Note that "the Applicant and Respondent seem to have treated the

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15 Applicant's 1st Affidavit at para 22.

16 Applicant's 1st Written Submissions at paras 4 to 5.

17 Applicant's 1st Written Submissions at para 7.

Applicant as a beneficial owner of the Property, in that her other children is similarly entitled to a share of the Property, and even a room in the Property."[18]

17 The Applicant's 1st Written Submissions went on to make two legal submissions:

(a) The Applicant is entitled to the return of the sums she paid from the sale proceeds of the Property as and when the Property is sold.[19]

(b) The Applicant is in fact a beneficial owner of the Property because:[20]

(i) the agreement between the Applicant and the Respondent reflects that parties intended for the sale proceeds to be distributed in accordance with each party's financial contribution, and this is reflective of parties' intention for the Applicant to be a beneficial owner in respect of her percentage contribution to the Property; and

(ii) there is a resulting trust and/or constructive trust that arose in favour of the Applicant in respect of monies contributed by the Applicant towards the Property.

Hearing on 5 November 2024 ("First Hearing")

18 When the matter came before me on 5 November 2024 ("First Hearing"), the Applicant appeared through counsel while neither the Respondent nor the Non-Party appeared. I explained to the Applicant's counsel

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[18] Applicant's 1st Written Submissions at para 11.

[19] Applicant's 1st Written Submissions at para 17.

[20] Applicant's 1st Written Submissions at para 18.

that the nature of the alleged agreement between the Applicant and the Respondent had *not* been explained sufficiently clearly. Further, the contents of the Handwritten Note were not clearly explained. I also commented that the legal submissions had to be beefed up. I therefore adjourned the matter for filing of further affidavits and further submissions.

Applicant's affidavit of 17 December 2024 ("Applicant's 2nd Affidavit")

19 In the Applicant's 2nd Affidavit, the Applicant explained that she went on a minor pilgrimage to Saudi Arabia in December 2018. This coupled with the fact that she returned to Singapore on 5 January 2019 with a very bad cough and cold, reminded her of her mortality and caused her to reflect on the afterlife. As the balance of the deposit for the Property and the stamp duty were due to be paid on 10 January 2019, and realising that there were no documents reflecting the agreement between the Applicant and the Respondent, the Applicant decided to pen the Handwritten Note.[21]

20 The Applicant explained that out of the five divisions in the pie chart, two had the Respondent's name on it, one with "25%" written against it and the other with "17%". Of the remaining three divisions, Hafiz, the Applicant's son, was assigned 16%, Nurul Huda was also assigned 16% while Rauf, the Applicant's grandson was assigned 25%.[22]

21 The Applicant explained that, as at 10 January 2019, the Respondent had contributed 25% (*ie*, $150,000) while the Applicant had contributed 75% (*ie*, $450,00) towards the initial payment to the developer for the purchase of the Property. The division of the pie chart with the Respondent's name for 25%

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[21] Applicant's 2nd Affidavit at paras 4 to 6.

[22] Appicant's 2nd Affidavit at paras 7 to 9.

reflected the Respondent's 25% contribution.[23] The remaining 75% of the pie chart represented the "share of the profits" due to the Applicant, which the Applicant wished to distribute to her children and grandson in the manner indicated in the pie chart in the event of her death.[24] The Applicant explained that this was a direction to the Respondent on how the Applicant's share in the Property should be distributed when the Property is sold after her death.[25] She added that:[26]

> I had no doubt that should [the Property] be sold during my lifetime, my loans and the profits in accordance with my share contribution would be returned to me, as per the agreement between the Respondent and myself. This [Handwritten Note] is therefore written for the purpose of indicating to my children the share distribution of the sale proceeds of the Property after my passing.

22 As for the "signature" immediately below the pie chart which I previously described as unidentifiable (see [13] above), the Applicant explained that it was actually her name with her initial inscribed next to it.[27]

23 According to the Applicant, the Respondent was aware of the Handwritten Note at all times and was in agreement with it.[28]

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23 Applicant's 2nd Affidavit at para 7.

24 Applicant's 2nd Affidavit at para 8.

25 Applicant's 2nd Affidavit at para 8.

26 Applicant's 2nd Affidavit at para 11.

27 Applicant's 2nd Affidavit at para 10.

28 Applicant's 2nd Affidavit at para 14.

Applicant's written submission of 17 December 2024 ("Applicant's 2nd Written Submissions")

24 The Applicant made four legal submissions in the Applicant's 2nd Written Submission.

25 The first submission is that, despite labelling the monies advanced as "loans", the agreement to share the profits made from the sale of the Property means that the monies are not loans in the traditional sense of the word.[29] Further, the Handwritten Note is evidence of the understanding that the Applicant retained 75% beneficial interest in the Property.[30]

26 The second submission is that a resulting trust arose in favour of the Applicant as there was "evidence of an intention by the Applicant that she retains a beneficial interest in the Property".[31] In this regard, any presumption of advancement is rebutted by (a) the directions contained in the Handwritten Note, (b) the fact that the Applicant has more than one child, and (c) the Respondent's agreement that monies paid by the Applicant are to be returned to the Applicant.[32]

27 The third submission is that there exists a common intention constructive trust as "there is an intention between the Applicant and the Respondent that the parties are to retain beneficial interest in the Property in the proportion of their respective contributions".[33]

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29 Applicant's 2nd Written Submissions at para 5.

30 Applicant's 2nd Written Submissions at para 7.

31 Applicant's 2nd Written Submissions at para 17.

32 Applicant's 2nd Written Submissions at para 22.

33 Applicant's 2nd Written Submissions at para 23.

28 The fourth submission is that the Applicant may rely on proprietary estoppel in that there was a representation by the Respondent to the Applicant that the Applicant would be entitled to a share of the Property corresponding to her contribution.[34] The Applicant relied on such representation and suffered detriment in that she expended large sums of money towards the purchase, paid for the renovation and furnishings and took charge of the daily running and maintenance of the Property.[35]

Hearing on 20 January 2025 ("Second Hearing")

29 At the hearing on 20 January 2025 ("Second Hearing"), the Non-Party appeared in person. He explained that he understood the Applicant's position but was not willing to accept the Applicant's version of events as true. Although the Respondent did not initially attend the Second Hearing, the Applicant's counsel arranged for her to appear after I indicated that I would like to hear from the Respondent.

30 According to the Respondent, she had a discussion with the Applicant concerning how the proceeds of sale of the Property would be divided if it were to be sold after the Applicant's death. This resulted in the Handwritten Note, which was safekept by the Respondent. The Respondent explained that the recent death of her cousin caused her to worry about what the arrangement should be in the event that the Respondent were to pass away. According to the Respondent, there was already an arrangement concerning the Applicant's demise in the form of the Handwritten Note but there was no arrangement concerning the Respondent's own passing. She therefore had some discussion with the Applicant in early 2024 which resulted in an agreement that, if the

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34 Applicant's 2nd Written Submissions at para 28.

35 Applicant's 2nd Written Submissions at para 29.

Property were to be sold while both of them are still alive or if the Respondent were to pass away, then the Applicant and the Respondent would each get back their contribution and split the profit according to the share of their respective contribution.

31 When I asked the Respondent if there is a written record of this agreement which the Respondent reached with the Applicant in 2024, the Respondent replied that they had engaged a lawyer to draw up a formal agreement for them. At this point, the Applicant's counsel explained that he was the lawyer engaged by the Applicant and the Respondent to draw up the formal agreement which was signed by the Applicant and the Respondent on 29 August 2024 ("August 2024 Agreement"). The Applicant's counsel explained that he did not include the August 2024 Agreement in evidence as he thought it may be seen as a self-serving document drawn up just before the Application.

32 I redirected the Respondent's attention back to the Handwritten Note and asked whether it was her understanding from the Handwritten Note that she owned 25% of the Property. The Respondent answered as follows:

> Understanding that if she passed, and I sell the house, I would get this percentage. But I also made clear to her that, if I don't sell the house, we do not need to split the assets so that the siblings won't force me to sell the house. I asked her to write clearly that it was only if we sell the property.

33 When I asked the Respondent whether this meant that the Handwritten Note dealt only with the situation where the Property was sold after the Applicant's demise, the Respondent replied in the affirmative. I then asked the Respondent whether there was any discussion back in December 2018/ January 2019 concerning what would happen if the Property were to be sold while both the Applicant and the Respondent were alive. The Respondent replied:

> Not back then. We had no discussion on that, because I had no intention to sell the house. It is a freehold property and I intended to keep it for the next generation.

34 I also asked the Respondent what she understood to be the nature of the monies advanced to her by the Applicant – whether it was a loan or the Applicant investing in the Property as part owner. The Respondent replied that, in her mind, the Application was investing as a part owner.

35 I adjourned the hearing for Applicant's counsel to file a further written submission concerning the matters stated by the Respondent during the Second Hearing.

Applicant's written submissions dated 17 February 2025 ("Applicant's 3rd Written Submissions")

36 In the Applicant's 3rd Written Submissions, the Applicant made the following submissions:

(a) The matters stated by the Respondent at the Second Hearing did not detract from the evidence of the Applicant but in fact confirmed the same.[36]

(b) Even though the Handwritten Note was limited to sale of the Property upon the Applicant's demise, it does not detract from the fact that "parties' shares of the Property was specifically agreed as indicated in the [Handwritten] Note".[37]

(c) The signing of the 29 August 2024 Agreement only served to crystallise what was all along implicitly agreed and understood between

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[36] Applicant's 3rd Written Submissions at para 5.

[37] Applicant's 3rd Written Submissions at para 6.b.(i).

the parties, which is that both parties are owners in the Property and the party with the bigger contribution owned a bigger share of the Property.[38]

37 The Applicant's 3rd Written Submissions also confirmed that the prayers sought in this application (as quoted at [7] above) reflected the terms of the August 2024 Agreement.[39] The Applicant's 3rd Written Submissions further explained that the August 2024 Agreement was not put into evidence as it added nothing new to the evidence of the Applicant for this application.[40]

Non-Party's affidavit of 18 March 2025 ("Non-Party's 1st Affidavit")

38 On 17 March 2025, the Non-Party appointed counsel to represent him. On 18 March 2025, the Non-Party filed the Non-Party's 1st Affidavit without leave of court. This affidavit went generally into the background concerning the Non-Party's relationship with the Respondent and the Applicant, the living arrangements at the Property and the events leading up to the Respondent initiating divorce proceedings. In particular, the Non-Party stated that:

(a) He believed that the Applicant initiated this application to secure all she could of the Property so that there would be little available for division in the Syariah divorce proceedings.[41]

(b) He was never informed by the Respondent or the Applicant of any agreement concerning repayment of loan or sharing of profits.[42]

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38 Applicant's 3rd Written Submissions at para 6.c.(i).

39 Applicant's 3rd Written Submissions at para 6.c. (chapeau).

40 Applicant's 3rd Written Submissions at para 6.d.

41 Non-Party's 1st Affidavit at para 14.

42 Non-Party's 1st Affidavit at para 30.

(c) He strongly believed that no such agreement ever took place between the Applicant and the Respondent and he urged the court to scrutinise the alleged agreement in view of the Respondent's non-participation in the proceedings.[43]

(d) He also questioned the veracity of some of the payments which the Applicant claimed to have made. In particular, he noted that the $4,800 which the Applicant transferred to the Respondent every month purportedly for mortgage payment towards the Property was recorded in the Respondent's bank statement as payment of salary.[44]

(e) As the Property was originally intended to be bought in the names of both the Applicant and the Respondent, the court should conclude that the Applicant intended to assist the Respondent and the Non-Party with the purchase and provide for the Respondent and Non-Party a home for their family. As such, there should not be any return of any funds to the Applicant from the sale of the Property and the Application should be dismissed.[45]

(f) As the Applicant's two other children both have their own homes, it was not inconceivable that that the Applicant intended an advancement to the Respondent by assisting the Respondent with the purchase of the Property.[46]

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43 Non-Party's 1st Affidavit at para 33.

44 Non-Party's 1st Affidavit at paras 36 to 43.

45 Non-Party's 1st Affidavit at para 55.

46 Non-Party's 1st Affidavit at para 56.

Hearing on 21 March 2025 ("Third Hearing")

39 At the hearing on 21 March 2025 ("Third Hearing"), I granted leave retrospectively for the filing of the Non-Party's 1st Affidavit. Further, having regard to the fact that the Non-Party's 1st Affidavit was filed practically on the eve of the Third Hearing, I adjourned the matter for the Applicant and Respondent to file responsive affidavits and for parties to file and exchange written submissions thereafter to address the matters arising from the Non-Party's 1st Affidavit and the other two parties' responsive affidavits.

Respondent's affidavit of 16 April 2025 ("Respondent's 1st Affidavit")

40 In the Respondent's 1st Affidavit, the Respondent stated that she confirmed the contents of the Applicant's two affidavits except for minor inaccuracies in respect of some of the dates concerning mortgage loan repayment. She exhibited a spreadsheet detailing the accurate dates of the transactions between the Applicant and the Respondent concerning the Property.[47]

41 The Respondent added that, in addition to the contributions mentioned in the Applicant's affidavits, the Applicant had also loaned the Respondent a separate amount of $432,000 for the Respondent to deposit and pledge with Maybank so as to allow the Respondent to meet the Total Debt Servicing Ratio ("TDSR") for the mortgage loan in accordance with the TDSR framework laid down by the Monetary Authority of Singapore. This amount of $432,000 was extended by the Applicant to the Respondent as a loan on 10 January 2019 pursuant to an oral agreement between the Applicant and the Respondent. At the end of the four-year pledge period, the Respondent returned this amount to

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47 Respondent's 1st Affidavit at para 5.

the Applicant together with all the interest she received from Maybank for placing the $432,000 on deposit for four years. As the interest received from Maybank amounted to $14,828.40, the Respondent returned a total of $446,828,40 to the Applicant as repayment for this loan.[48]

42 In response to the Non-Party's point at [38(d)] above, the Respondent clarified that the notation of "salary" in her bank statement for the $4,800 she received monthly was "done without much thought and out of convenience on online banking".[49]

43 In relation to the Handwritten Note, the Respondent stated the following:[50]

> 26. The Note reflected what is a clear understanding between myself and my mother regarding how the proceeds of the property should be divided and in the event the property is sold after her passing.
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> 27. The purpose of the Note was to provide clarity and to prevent potential disputes from arising among my siblings upon my mother's passing, particularly if they contest my continued right to reside in the house or attempt to force a sale.
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> …
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> 29. At that point in time, there was no doubt in my mind that if the Property was to be sold while my mother is still alive, that she would be entitled to a share of the proceeds in the proportion of our respective financial contributions to the purchase.

44 The Respondent's 1st Affidavit did not address the August 2024 Agreement at all.

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48 Respondent's 1st Affidavit at paras 7 to 8.

49 Respondent's 1st Affidavit at para 11.

50 Respondent's 1st Affidavit at paras 26 to 29.

Applicant's affidavit of 17 April 2025 ("Applicant's 3rd Affidavit")

45 The bulk of the Applicant's 3rd Affidavit was directed at rebutting various allegations made in the Non-Party's 1st Affidavit concerning various background matters. I do not propose to repeat or summarise those rebuttals here as I do not think they are germane to the issues I had to decide in these proceedings. The key part of the Applicant's 3rd Affidavit is her explanation of the events lead up to the present proceedings, which reads as follows:[51]

> 9. Sometime in January 2024, the Respondent and I had a discussion on what would happen to the Property should she pass away before I did. The Note that I penned on 10 January 2019 reflected the agreement on Property sale proceeds distribution in the event I pass away. As I had contributed more financially, the Respondent was concerned that there were no documents reflecting our agreement in respect of our percentage shares, in the event of her passing. She was particularly concerned about her mortality as one of her cousins, had just passed away. We discussed the matter and I decided to seek legal advice.
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> 10. On 23 January 2024, my husband and I consulted with our lawyer Mr Ibrahim to draft a proper loan documentation. I provided the lawyer with the necessary documents but as I was preparing for my Haj pilgrimage, the matter was temporality paused. My lawyer drew up a loan agreement between us, reflecting the terms of our agreement and understanding. The agreement was signed only upon my return from pilgrimage. …
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> 11. My daughter made the decision to divorce [the Non-Party] on her own. It was solely her decision. I did not coerce or influence her in any manner to do so.
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> 12. The application before this Court now is necessary to secure my equitable interest in the Property via a court order prior to the division of matrimonial assets in the Respondent's divorce proceedings in the Syariah Court. My daughter consents to this application as I am only seeking a declaration of what was already agreed between us from the outset.

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[51] Applicant's 3rd Affidavit at paras 9 to 12.

Applicant's written submissions of 9 May 2025 ("Applicant's 4th Written Submissions")

46 The Applicant's 4th Written Submissions was cast as a "consolidated written submissions" which sought to include and subsume the points made in all of the Applicant's previous submissions in one place, in addition to rebutting the points made in the Non-Party's 1st Affidavit.[52]

47 In this "consolidated written submissions", the background facts were related by the Applicant's counsel in the following manner:

(a) The original intention was for the Applicant and the Respondent to purchase the Property as joint owners.[53]

(b) The Applicant decided not to proceed with the purchase of the Property "as legal owner" because she decided to keep the Bedok Flat. The Applicant's decision to rescind the sale of the Bedok Flat was "multifold", one of which was that she had given an undertaking to HDB to remain in her current flat for five years for Nurul Huda's purchase of her own HDB flat with a CPF housing grant.[54]

(c) The Applicant's decision to not sell the Bedok Flat meant that she would have been liable for additional buyer's stamp duty ("ABSD") of 12% should she proceed to "include her name in the purchase of the Property".[55]

(d) The Applicant agreed with the Respondent as follows:

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52 Applicant's 4th Written Submissions at paras 1 to 2.

53 Applicant's 4th Written Submissions at para 12.

54 Applicant's 4th Written Submissions at para 13.

55 Applicant's 4th Written Submissions at para 13.

(i) The Applicant would loan the Respondent money from time to time for the purchase of the Property.[56]

(ii) In the event of the sale of the Property, the monies that were loaned by the Applicant to the Respondent are to be deducted from the sale proceeds and repaid, and the remaining sale proceeds (after deduction of all mortgage redemption amount and CPF refund) is to be apportioned between the Applicant and the Respondent according to the percentage each contributed towards the purchase of the Property.[57]

(iii) In the event the Applicant passes away and the Property is sold, the sale proceeds would be distributed in certain shares as reflected in the Handwritten Note.[58]

48 The "consolidated submissions" went on to submit that "the Applicant is in fact a beneficial owner of the Property" on the following bases:[59]

(a) The agreement between the Applicant and Respondent in respect of the balance sale proceeds (after deduction of all CPF refund, mortgage and the Applicant's loan) reflects that the parties intended for the sale proceeds to be distributed in accordance with each party's financial contribution of the Property. This is reflective that the parties intended for the Applicant to be a beneficial owner in respect of her percentage contribution to the Property.

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56 Applicant's 4th Written Submissions at para 14.a.

57 Applicant's 4th Written Submissions at para 14.c.

58 Applicant's 4th Written Submissions at para 15.

59 Applicant's 4th Written Submissions at para 24.

(b) There is resulting trust and/or constructive trust that arose in favour of the Applicant in respect of the monies the Applicant contributed towards the Property.

49 The "consolidated submissions" concluded with the following propositions:

(a) Despite the parties using the label "loans" to describe the monies extended by the Applicant for use in the purchase of the Property, the agreement between the parties and the contemporaneous evidence in the form of the Handwritten Note made it clear that this term was erroneously subscribed to by the parties and that in fact the agreement between them showed that parties intended for a common intention constructive trust to arise in respect of the Applicant's monies used.[60]

(b) In the alternative, a resulting trust exists as evidenced by the Handwritten Note or alternatively, by the character or nature of the unequal contribution to the purchase price by the parties.[61]

(c) Finally, in the alternative, the Applicant relies on proprietary estoppel in that she had relied to her detriment on the representation made by the Respondent that she would be entitled to the benefits of the profit of the Property in the share contribution made by her.[62]

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60 Applicant's 4th Written Submissions at para 93.a.

61 Applicant's 4th Written Submissions at para 93.b.

62 Applicant's 4th Written Submissions at para 93.e.

Non-Party's Submissions of 13 May 2025 ("Non-Party's 1st Written Submissions")

50 In the Non-Party's 1st Written Submissions, it was observed that the share claimed by the Applicant according to the formula set out in the prayers of the Application differed from the 75% claimed in the Handwritten Note.[63] Therefore, if the Handwritten Note was to be relied upon as evidence of common intention, the disparity between the amount claimed by the Applicant in these proceedings and the percentage stated in the Handwritten Note casts serious doubts as to the credibility and reliability of the Handwritten Note.[64] The Non-Party questioned whether the Handwritten Note could be considered an agreement when it was signed only by the Applicant and not the Respondent.[65] The Non-Party also noted that, if the Handwritten Note is meant to show the share distribution after the Applicant's death, it would not be an agreement between the Applicant and the Respondent on the share distribution in the event of a sale during the lifetime of the Applicant.[66]

51 The Non-Party submitted that the Applicant, by claiming a beneficial interest in the Property (at time when she still owned the Bedok Flat) while not putting her name down as a legal owner of the Property, was engaging in evasion of ABSD.[67] The Application should therefore be dismissed with costs for illegality.[68]

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63 Non-Party's 1st Written Submissions at paras 26 to 29.

64 Non-Party's 1st Written Submissions at para 30.

65 Non-Party's 1st Written Submissions at para 36.

66 Non-Party's 1st Written Submissions at para 37.

67 Non-Party's 1st Written Submissions at paras 44, 45 and 56.

68 Non-Party's 1st Written Submissions at

Hearing on 23 May 2025 ("Fourth Hearing")

52 At the hearing on 23 May 2025 ("Fourth Hearing"), the Applicant's counsel brought the court's attention to a new authority, *Khoo Phaik Ean Patricia v Khoo Phaik Eng Katherine* [2025] 1 SLR 758 *("Khoo v Khoo")*, which the Court of Appeal decided barely three weeks before the Fourth Hearing. The Applicant's counsel noted that in *Khoo v Khoo* at [60], the Court of Appeal held that the position in equity where A gratuitously transfers property to A's and B's joint names in law for no consideration can be broadly categorised into four scenarios. The Applicant's counsel submitted that the present case fell within "Scenario 3", where the evidence established that the Applicant did not intend to benefit the Respondent at all, with the consequence that there was an actual resulting trust that responds to the Applicant's lack of intention to benefit the Respondent. The Applicant continued to rely on common intention constructive trust and proprietary estoppel as alternative bases for her claim.

53 In respect of the illegality point raised by the Non-Party, the Applicant relied on *Ochroid Trading v Chua Siok Lui (trading as VIE Import & Export)* [2018] 1 SLR 363 ("*Ochroid Trading*") and *Lau Sheng Jan Alistair v Lau Cheok Joo Richard* [2023] 5 SLR 1703 ("*Alistair Lau*") to argue that (a) a trust to avoid ABSD is not *per se* illegal, (b) even if there was illegality, the court should apply a proportionality analysis, and (c) even if the agreement between parties is not enforceable, the court may still uphold a resulting trust.

54 The Non-Party's counsel clarified that, in the light of the further evidence put forth in the Respondent's 1st Affidavit, the Non-Party was no longer contesting the Applicant's calculation of the sums which she actually advanced to the Respondent. Instead, the Non-Party submitted that the main

issues are the issue of resulting trust and the issue of illegality. On the issue of resulting trust, the Non-Party did not put forth any additional submissions at the Fourth Hearing. On the issue of illegality, the Non-Party submitted that the Applicant should not be allowed, through the backdoor of equity, to avoid the imposition of ABSD. Allowing the Applicant to claim a beneficial interest in the present circumstances would undermine the policy underlying the ABSD legislation.

55 At the end of the hearing, I reserved judgment.

Further arguments after judgment was reserved

56 On 5 June 2025, the Applicant's counsel wrote a letter to court requesting to make further arguments and requesting leave to file two further affidavits – one from the Applicant and one from the Respondent.

57 The further arguments set out in the letter began by reiterating that the term "loan" used by the parties was merely a label given by laypersons, and that it is clear from the evidence that the Applicant and the Respondent intended for the Respondent to have a "share" in the Property. The letter then went on to assert that there was no intention to evade ABSD and expanded on the Applicant's arguments made at the Fourth Hearing on the issue of illegality. The final part of the letter levelled some allegation of professional misconduct against the Non-Party's counsel.

58 As for the further affidavits, the Applicant's affidavit ("Applicant's 4th Affidavit") contained additional information and documents surrounding the purchase of the Property and the aborted sale of the Bedok Flat in support of the submission that there was no intention to evade ABSD. According to the Applicant, the issue of ABSD was not in her thoughts at the time she decided to

remove her name from the purchase of the Property. The Applicant further stated that she "did not form any to intention deceive IRAS or any intention to commit any illegal act or intend any illegal purpose".[69] As for the Respondent's affidavit ("Respondent's 2nd Affidavit"), it exhibited transcripts of recordings of conversations between the Respondent and the Non-Party in support of the allegation of professional misconduct.

59 I allowed the Applicant's request for further arguments and granted leave for the two further affidavits to be filed. I then allowed the Non-Party to file further submissions and an affidavit in response. From the Non-Party's further submissions and affidavit, I concluded that the allegation of misconduct arose from a misunderstanding and was therefore not substantiated. As for the Applicant's further arguments on the illegality issue, the Non-Party submitted that, when the Applicant was reminded by Nurul Huda of the undertaking given to HDB not to move out of the Bedok Flat, the Applicant could either:

(a) proceed with the sale of the Bedok Flat and return the $50,000 grant given by HDB to Nurul Huda, which would then allow her (the Applicant) to purchase the Property jointly with the Respondent without incurring ABSD; or

(b) proceed with the purchase of the Property jointly with the Respondent without selling the Bedok Flat and pay the applicable ABSD.

Instead, the Applicant was neither prepared to return the HDB grant nor prepared to pay ABSD. Now that the Applicant is seeking the assistance of the court, her application should be dismissed.

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69 Applicant's 4th Affidavit at para 12.

Observations about the parties' cases

60 In the light of foregoing narrative, I set out some observations on the parties' cases in the following paragraphs.

61 According to the Applicant, the Applicant and the Respondent originally intended to purchase the Property jointly. However, the Applicant withdrew her name from the purchase when she decided to abort the sale of her Bedok Flat. In the Applicant's 1st Affidavit, the Applicant initially gave two reasons for aborting the sale of the Bedok Flat: (a) sentimental reasons, and (b) the Applicant being reminded by Nurul Huda about an undertaking she had given to HDB not to move out of the Bedok Flat during the five-year MOP of Nurul Huda's flat. In the Applicant's 4th Written Submissions, a third reason was given – *ie*, that having decided to abort the sale of the Bedok Flat, the Applicant would be liable for ABSD if she did not withdraw her name from the purchase of the Property. However, after the Non-Party made the submission that the Applicant's case was tainted by illegality for evasion of ABSD, the Applicant filed a further affidavit, after judgment had been reserved, to claim that the issue of ABSD was "not in her thoughts" at the time she decided to remove her name from the purchase of the Property.

62 In respect of the loan made by the Applicant to the Respondent for the purchase of the Property, the Applicant's initial position, as set out in the Applicant's 1st Affidavit, was that (a) there was an "agreement" that the loan would be returned to the Applicant in the event of sale of the Property after deduction of the outstanding mortgage and the CPF refund, and (b) further, the Respondent "represented" to the Applicant that the balance profit would be apportioned in the percentage of their respective financial contribution toward the purchase of the Property and service of the mortgage loan. The Applicant

thus appeared to have drawn a distinction between the content of her *agreement* with the Respondent (which concerned the return of the loan) and the content of the Respondent's *representation* to the Applicant (which concerned the sharing of profits). By the time of the Applicant's 2nd Affidavit, this distinction disappeared and she referred to both the return of the loan and the sharing of profit as "per the agreement between the Respondent and myself".[70]

63 While the Applicant stated in the Applicant's 1st Affidavit that the foregoing arrangement was "agreed verbally between [the Applicant and the Respondent] at the time of the purchase",[71] the Respondent explained things differently at the Second Hearing. The Respondent said that the agreement she had with the Applicant *at the time of the purchase* concerned only how the proceeds of sale of the Property would be divided if it were sold *after the Applicant's demise*. According to the Respondent, there was no discussion at the time of the purchase concerning what would happen if the Property were to be sold while both the Applicant and the Respondent were still alive. The Respondent went on to explain that it was only in early 2024 that she began discussing with the Applicant what would happen if the Property were to be sold while both of them were still alive. This discussion resulted in the drafting of the August 2024 Agreement.

64 It would therefore appear from what the Respondent said to the court that there were two agreements – one made at the time of the purchase concerning what would happen if the Property were sold after the Applicant's death, and another made in 2024 concerning what would happen if the Property were sold while both the Applicant and the Respondent are still alive.

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70 Applicant's 2nd Affidavit at para 11.

71 Applicant's 1st Affidavit at para 9.

65 Notwithstanding the foregoing, when the Respondent filed the Respondent's 1st Affidavit on 16 April 2025 (three months after the Second Hearing), the Respondent stated on oath that, at the time of the purchase, there was no doubt in her mind that if the Property was to be sold while the Applicant is still alive, the Applicant would be entitled to a share of the proceeds in proportion to their respective financial contributions. The Respondent did not explain how this understanding arose in her mind back then, given her earlier explanation to the court that there was no discussion between Applicant and the Respondent on this issue at the time of the purchase.

66 As for the Handwritten Note, the Applicant stated in the Applicant's 1st Affidavit that it was "signed by the parties", thus giving the impression that it was signed by both the Applicant and the Respondent. After some probing from me, the Applicant clarified in the Applicant's 2nd Affidavit that the Handwritten Note was signed only by the Applicant. While not much may turn on this discrepancy as a matter of substance, it serves as yet another example of how the Applicant's position shifted as the case progressed.

67 I found it to be of interest that, despite going through the trouble of drawing up the August 2024 Agreement, no mention was made of this agreement in the Applicant's 1st Affidavit. It was only after the Respondent referred to this agreement pursuant to questioning by the court that the Applicant decided to put the August 2024 Agreement into evidence. At the Second Hearing, Applicant's counsel explained that he did not put the August 2024 Agreement in evidence as he thought it may be seen as self-serving given that it was concluded shortly before the Application was filed. In the Applicant's 3rd Written Submissions, a different explanation was given – that the August 2024 Agreement was not put into evidence as it added nothing new

to the evidence of the Applicant. In my view, in the light of the discussion at [106]–[107] below, this new explanation rings hollow.

68 The Applicant claims to be a beneficial owner of the Property in proportion to her percentage contribution to the Property (see [48(a) above). She based this claim on an alleged oral agreement with the Respondent dating back to the time of purchase of the Property. In the light of this claim, it would appear that, at the time of purchase of the Property, the Applicant intended to beneficially own part of the Property even though she knew that she would have to pay ABSD if she became a part owner of the Property while retaining ownership of the Bedok Flat. As noted above, the Non-Party submitted that this amounted to evasion of ABSD with the consequence that the Application should be dismissed on the grounds of illegality.

69 Finally, in support of the claim that it was all along intended that the Applicant would beneficially own part of the Property, the Applicant submitted that the parties, as laypersons, had used the term "loan" erroneously to describe the monies she extended to the Respondent for the purchase of the Property. My observation about this submission is that the term "loan" was also used in the August 2024 Agreement, which was drafted with legal advice. In fact, even prayer 1.a. of the Application, which presumably was drafted by the Applicant's counsel, also used the term "loan".

70 One further observation I would make about the August 2024 Agreement is that it is remarkable that so little mention was made of it by the Applicant in her affidavits and submissions. This is despite the fact that the August 2024 Agreement was a formal agreement drawn up with legal advice to define the legal relationship between the Applicant and the Respondent concerning the monies extended by the Applicant for the purchase of the

Property. On this note, I turn now to consider the terms of the August 2024 Agreement.

The August 2024 Agreement

71 The August 2024 Agreement is a five-page agreement signed by the Applicant and the Respondent on 29 August 2024.[72] The signatures were witnessed by Applicant's counsel and another lawyer named "Prasanna Prabhakaran". The agreement bore the title "Loan Agreement" on the top of the first page and described the Applicant and the Respondent as "Lender" and "Borrower" respectively. The recitals of the agreement stated that it was decided that the Respondent would be given an "interest free Loan" from the Applicant.

72 Clause 4 of the August 2024 Agreement, entitled "Repayment of Loan", is divided into two parts. Clause 4.1 requires the Respondent to repay the Applicant "the Loan amount including any and all interest paid to Maybank" if the Property is sold or if the Respondent refinances the Property. Clause 4.2 provides that if the Property is sold or refinanced, the Respondent will "divide the profit and or loss from such sale amount in the proportion to the contribution of [the Applicant and Respondent] respectively …".[73]

73 Clause 5 of the August 2024 Agreement is an entire agreement clause which provides that the agreement "constitutes the full and entire understanding and agreement between the parties hereto with regard to the subject matter hereof".[74]

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72 Applicant's 3rd Affidavit at pp 11 to 15.

73 Applicant's 3rd Affidavit at p 13.

74 Applicant's 3rd Affidavit at p 14.

74 Nothing in the August 2024 Agreement refers to the Applicant having beneficial ownership of the Property or having any type of beneficial interest in the Property.

Issues to be determined

75 The prayers in the Application sought a simple declaration concerning the Applicant's entitlement to return of the loan and to a share of the profit of sale of the Property. On the face of it, these prayers could be understood as simply asserting a contractual claim, based on the terms of the August 2024 Agreement, against the Respondent personally (without any claim by the Applicant of a beneficial or proprietary interest in the Property). However, the framing of the Applicant's affidavits and submissions (as summarised above) makes clear that her claim is not so simple. Instead, the Applicant's affidavits and submissions made clear that the Applicant was in fact claiming to be a beneficial owner of the Property. This understanding of the Applicant's claim is consistent with her explanation that the Application is brought pursuant to guidance given in *UDA v UDB* at [54]. As noted above, this guidance is applicable only to a "third party claiming an interest in property alleged to be matrimonial asset".

76 Therefore, the overarching issue which I had to determine is, having regard to the true nature of the arrangement between the Applicant and the Respondent regarding the monies advanced by the Applicant to the Respondent, whether the Applicant is a beneficial owner of the Property. In determining this overarching issue, I considered the following sub-issues which have been raised in the Applicant's submissions:

(a) whether there is a resulting trust in favour of the Applicant;

(b) whether there is common intention constructive trust; and

(c) whether there is proprietary estoppel.

77 Finally, in the light of the Non-Party's submissions, a further issue to be determined is whether the arrangement between the Applicant and the Respondent is tainted by illegality such that the court should dismiss the Application.

Whether the Applicant is a beneficial owner of the Property

78 As noted above, the Applicant claims to be a beneficial owner of Property on three alternative bases: resulting trust, common intention constructive trust and proprietary estoppel. I examined each of these bases in turn.

Whether there is a resulting trust

79 The Applicant submitted that a presumption of resulting trust arose because the Applicant made substantial payment towards the purchase of the Property. In this regard, the Applicant relied on the following passage from *Lau Siew Kim v Yeo Guan Chye* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*") at [34]:

> 34 Resulting trusts are presumed to arise in two sets of circumstances. These circumstances were appositely summarised by Lord Browne-Wilkinson in *Westdeutsche* at 708 as follows:
>
> > Under existing law a resulting trust arises in two sets of circumstances: (A) where A makes a voluntary payment to B or pays (wholly or in part) for the purchase of property which is vested either in B alone or in the joint names of A and B, there is a presumption that A did not intend to make a gift to B: the money or property is held on trust for A (if he is the sole provider of the money) or in the case of a joint purchase by A and B in shares proportionate to their contributions. It is important to stress that this is only a *presumption*, which

> presumption is easily rebutted either by the counter-presumption of advancement or by direct evidence of A's intention to make an outright transfer … (B) Where A transfers property to B *on express trusts*, but the trusts declared do not exhaust the whole beneficial interest … Both types of resulting trust are traditionally regarded as examples of trusts giving effect to the common intention of the parties. A resulting trust is not imposed by law against the intentions of the trustee (as is a constructive trust) but gives effect to his presumed intention. [emphasis in original]

80 According to the foregoing passage from *Lau Siew Kim*, a resulting trust arises in two situations: (a) where there is a "voluntary payment"; and (b) where there is a failure of an express trust. Since the Applicant's case is not based on the failure of an express trust, the Applicant's claim falls to be evaluated under the "voluntary payment" limb.

81 The term "voluntary payment" in the context of the law of trusts refers to a payment made for no valuable consideration. Thus, in commenting on the passage from *Westdeutsche Landsebank Girozentrale v Islington LBC* [1996] AC 669 ("*Westdeutsche*") at p 708 quoted at [79] above, the authors of *Snell's Equity* (John McGhee and Steven Elliott QC gen ed) (Sweet & Maxwell, 34th Ed, 2020) ("*Snell's Equity*") at para 25-003 explained that "the facts giving rise to the presumption of a resulting trust are that A transfers property to B for which *B provides no consideration*" (emphasis added). This situation is also described in *Snell's Equity* as "gratuitous transfer of property" in the following passage (at para 25-001):

> There are two main situations where resulting trusts may arise: where there is a gratuitous transfer of property and where an express trust of property fails to dispose of the beneficial interest in property.

Robert Chambers, *Resulting Trusts* (Clarendon Press, Oxford, 1997) described this same situation as "apparent gift of property" in the following passage (at p 2):

> Most resulting trusts arise in one of two situations: (i) where there has been an apparent gift of property or (ii) where an express trust has failed to dispose of all of the trust property.

82 Where the recipient of a payment has provided valuable consideration for the payment, it would not be a situation of "voluntary payment" or "gratuitous transfer" or "apparent gift". In such a case, the facts giving rise to the presumption of resulting trust do not exist and there is no reason to embark on a resulting trust analysis. If further authority is needed for this view, reference may be made to the Court of Appeal's latest pronouncements in *Khoo v Khoo* at [60] where the situation which triggers the resulting trust analysis is described as "where *A* **gratuitously transfers** property to *A* and *B*'s joint names in law for **no consideration**" (italics in original, emphasis added in bold).

83 Consequently, where a payment takes the form of a loan, it would not be a voluntary payment, gratuitous transfer or apparent gift because the recipient has provided consideration by undertaking an obligation to repay the loan (see *Yong Ching See v Lee Kah Choo Karen* [2008] 3 SLR(R) 957 at [49], citing *Re Sharpe* [1980] 1 WLR 219). Quite simply, a loan made with the expectation that there is an obligation to repay is neither a voluntary payment nor a gratuitous transfer nor an apparent gift.

84 The foregoing proposition is also borne out by the following illustration given by Bagnall J in *Cowcher v Cowcher* [1972] 1 WLR 425 at 431:

> Suppose a conveyance to A for £24,000 with A admittedly providing £8,000 out of his own free available moneys. The remaining £16,000 may be provided by B in a number of ways: (i) out of his own free available moneys; (ii) by loan from a third

> party; (iii) *by loan from A*; and (iv) by a loan secured by a mortgage on the freehold of the property. Cases (i) and (ii) are indistinguishable and will give B, if no contrary intention, a two-thirds interest under a resulting trust, leaving with one-third. In cases (iii) and (iv) A is involved because he either lends the money or it is raised on property in which he has an interest. In my judgment*, in such a case prima facie B will also have a two-thirds interest because he or his obligation to repay a loan has been the source of £16,000 of the purchase money*. [emphasis added]

Case (iii) in this illustration demonstrates that, where B uses monies he borrowed from A to pay part of the purchase price of a property, the portion of the beneficial interest in the property corresponding to the borrowed purchase money will be attributed to B, the borrower (and *not* to A, the lender). It is pertinent to note that, in this illustration, Bagnall J treated Case (iii) (which concerns a loan from A) the same ways as Case (ii) (which concerns a loan from a third party) and Case (iv) (which concerns a mortgage loan from a financial institution). This is because, on a proper legal analysis, B's obligation to repay the loan is the legally relevant "source" of the borrowed purchase money in all three cases. (See also *Tan Hui Min Sabrina Alberta v Chian Hai Ding* [2024] 3 SLR 1329 where it was accepted at [16] and [70], that the $300,000 contributed by the husband's father would be treated as the couple's contribution if it was a loan to the couple but treated as the father's contribution if it was not a loan.)

85 In the present case, the evidence shows that the monies advanced by the Applicant to the Respondent is a loan. The parties called it a loan. The Respondent has provided consideration by undertaking an obligation to repay the loan. Despite the Applicant's protestation that she, as a layperson, had used the term "loan" erroneously to describe the monies she advanced to the Respondent, the Applicant has proffered no convincing argument for why the transaction should not be regarded as a loan. Pertinently, when parties sought to formalise their arrangement by reducing it in writing in the form of the

August 2024 Agreement, *which was an agreement drawn up with legal advice*, they made it very clear in the August 2024 Agreement that the transaction is a loan (see [71]–[72] above). The Applicant has not explained why the words used in the August 2024 Agreement should not be read in accordance with their ordinary meaning. The fact that the August 2024 Agreement does not require the Respondent to pay interest on the loan but instead obliges the Respondent to pay a share of the profits to the Applicant does not detract from the character of the transaction as a loan. Finally, I also found it telling that, even at the time of filing the Application, the Applicant described these monies as "loan" in the prayers of the Application.

86 For the foregoing reasons, 100% of the monies which the Applicant loaned to the Respondent are to be attributed to the Respondent as the Respondent's contribution to the purchase of the Property (and not as the Applicant's contribution). Consequently, I rejected the Applicant's claim that there is a resulting trust in her favour.

Whether there is a common intention constructive trust

87 The Applicant submits that there exists a common intention constructive trust because there was a common intention between the Applicant and the Respondent that the parties are to retain beneficial interest in the Property in proportion to their respective contributions.

88 The law on common intention constructive trust is explained by the authors of Tang Hang Wu & Kelvin FK Low, *Tan Sook Yee's Principles of Singapore Land Law* (LexisNexis, 4th Ed, 2019) as follows:

> 7.73 Traditionally, where land is purchased in the name of one spouse, whether the other spouse has an interest in the property depends on whether there is scope for the application of the presumption of resulting trust, *and/or* whether there is

> a common intention that she/he is to have an interest. The presumption of resulting trust will operate where the spouse has made direct contribution to the acquisition of the property at the time of the purchase. Where the presumption of resulting trust applies, the quantum of the wife's interest will correspond the proportion of the purchase price contributed by her unless the presumption is rebutted. This initial view of the parties' shares may however be adjusted where there is a common intention that the property is intended to be shared in different proportions and detrimental reliance established. Such common intention, unlike the presumed intent for the resulting trust, may either be established at the time of the purchase or subsequently.
>
> …
>
> 7.76 If it is determined that there is an agreement, whether expressed or inferred, that the other spouse is to have a share in the disputed property, the courts will impose a constructive trust in that spouse's favour if she/he has also acted in reliance on the agreement to her/his detriment. This is the case even if the agreement is not in writing …
>
> [emphasis in original]

89 Therefore, for the court to impose a common intention constructive trust in the Applicant's favour, the Applicant needs to establish that (a) there was an agreement that the Applicant would have a share in the Property, and (b) there was detrimental reliance.

90 The Applicant cited the following six-step analytical framework from *Chan Yuen Lan v See Fong Mun* [2014] 3 SRL 1048 ("*Chan Yuen Lan*") at [160]:

> (a) Is there sufficient evidence of the parties' respective financial contributions to the purchase price of the property? If the answer is "yes", it will be presumed that the parties hold the beneficial interest in the property in proportion to their respective contributions to the purchase price (*ie*, the presumption of resulting trust arises). If the answer is "no", it will be presumed that the parties hold the beneficial interest in the same manner as that in which the legal interest is held.
>
> (b) Regardless of whether the answer to (a) is "yes" or "no", is there sufficient evidence of an express or an inferred common

> intention that the parties should hold the beneficial interest in the property in a proportion which is different from that set out in (a)? If the answer is "yes", the parties will hold the beneficial interest in accordance with that common intention instead, and not in the manner set out in (a). In this regard, the court may not impute a common intention to the parties where one did not in fact exist.
>
> (c) If the answer to both (a) and (b) is "no", the parties will hold the beneficial interest in the property in the same manner as the manner in which they hold the legal interest.
>
> (d) If the answer to (a) is "yes" but the answer to (b) is "no", is there nevertheless sufficient evidence that the party who paid a larger part of the purchase price of the property ("X") intended to benefit the other party ("Y") with the entire amount which he or she paid? If the answer is "yes", then X would be considered to have made a gift to Y of that larger sum and Y will be entitled to the entire beneficial interest in the property.
>
> (e) If the answer to (d) is "no", does the presumption of advancement nevertheless operate to rebut the presumption of resulting trust in (a)? If the answer is "yes", then: (i) there will be no resulting trust on the facts where the property is registered in Y's sole name (*ie*, Y will be entitled to the property absolutely); and (ii) the parties will hold the beneficial interest in the property jointly where the property is registered in their joint names. If the answer is "no", the parties will hold the beneficial interest in the property in proportion to their respective contributions to the purchase price.
>
> (f) Notwithstanding the situation at the time the property was acquired, is there sufficient and compelling evidence of a subsequent express or inferred common intention that the parties should hold the beneficial interest in a proportion which is different from that in which the beneficial interest was held at the time of acquisition of the property? If the answer is "yes", the parties will hold the beneficial interest in accordance with the subsequent altered proportion. If the answer is "no", the parties will hold the beneficial interest in one of the modes set out at (b)–(e) above, depending on which is applicable.

91 In *Djony Gunawan v Christina Lesmana* [2024] SGHC(A) 14 the Appellate Division held, at [20], that the *Chan Yuen Lan* framework should not be applied when one of the parties had contributed nothing to the purchase of the property and that "the precise framework set down in *Chan Yuen Lan* need not be resorted to where the court is not required to determine the proportion of

the contributors' interests that is to be derived from the types of contributions and the amounts paid at the time of acquisition of the property". What this means is that, given my conclusion at [86] above that the Respondent was the sole contributor, there is no need to go through all the steps in the *Chan Yuen Lan* framework in the present case. Nevertheless, in order to ensure that all of the Applicant's submissions were addressed, I went through the *Chan Yuen Lan* framework for completeness.

Step (a) of the Chan Yuen Lan *framework*

92 At Step (a), the Applicant submitted that there is sufficient evidence of the parties' respective financial contributions to the purchase price of the Property. I agreed. I accepted that the evidence tendered by the Applicant proved on the balance of probabilities that the Applicant had in fact advanced to the Respondents the various sums of monies as she had claimed. However, where my view differed from the Applicant's position is with regard to the attribution of these sums. As explained at [85] above, the evidence shows that monies were advanced by the Applicant to the Respondent as a loan. Based on the analysis set out at [83]–[86] above, all of the sums loaned by the Applicant to the Respondent should be attributed to the Respondent as the Respondent's contribution to the purchase of the Property (and not the Applicant's contribution). Therefore, at the end of Step (a), it is presumed that the Respondent holds the entire beneficial interest in the Property and the Applicant holds none.

Step (b) of the Chan Yuen Lan *framework*

93 In Step (b), the question is whether there is sufficient evidence of an express or inferred common intention that the parties should hold the beneficial interest in a proportion which is different from Step (a). In other words, in the

context of the present case, the search is for evidence of a common intention that, despite the Respondent having contributed 100% of the purchase money, the Applicant should nevertheless hold a beneficial interest in the Property.

94 The first piece of evidence relied on by the Applicant is that the loan arrangement between the Applicant and the Respondent contains an agreement that the profit from the sale of the Property would be shared between the Applicant and the Respondent according to the amount of loan extended by the Applicant. The Applicant submitted that this profit-sharing agreement demonstrates that the monies advanced by the Applicant are "not in fact 'loans' in the traditional sense of the word."[75]

95 As noted at [64] above, there are actually two agreements reached at different points in time relating to the sharing of proceeds or profit upon sale of the Property. The first is an agreement reached at the time of the purchase of the Property, as evidenced by the Handwritten Note ("First Agreement"). Under the First Agreement, if the Property were to be sold *after the Applicant's demise*, 25% of the proceeds of sale would go to the Respondent while the remaining 75% of the proceeds of sale would be distributed among the Applicant's children and grandchild in the manner specified in the Handwritten Note. The second is the August 2024 Agreement, which provides that if the Property is sold or refinanced, the Respondent would pay the Applicant all amounts loaned by the Applicant as well as a share of the profits arising from such a sale according to the proportion which the loan amount bears to the total amount spent on the Property ("Second Agreement"). One key difference between the two agreements is that the First Agreement appears to provide for a fixed proportion for sharing of sale proceeds while the Second Agreement provided

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75 Applicant's 2nd Written Submissions at para 5.

for a proportion for sharing of profit that would fluctuate as the quantum of the loan amount changes over time.

96 It is not clear, from the *Chan Yuen Lan dicta* quoted at [90] above, whether the inquiry at Step (b) should be confined to evidence concerning the situation at the time of purchase of the Property only or may include subsequent agreements such as the Second Agreement. In my view, since the *Chan Yuen Lan* framework includes a Step (f) which would take into account subsequent agreements, it would be neater if I were to consider only the First Agreement and not the Second Agreement for the purpose of Step (b), and then consider the Second Agreement only in Step (f).

97 In the Applicant's 1st Affidavit, the Applicant referred to (a) an agreement that the loan would be returned to her from the sale proceeds, (b) a representation that the profit from the sale would be apportioned between the Applicant and the Respondent, and (c) an agreement that if the Applicant were to pass away "the Property was to be distributed between all my children and grandchildren in certain shares" as evidenced by the Handwritten Note. Of these three points, the first two dealt only with the proceeds of sale. It was only in relation to the third point that the Applicant appeared to refer to the distribution of the Property itself. However, the evidence relied on by the Applicant in support of this third point is the Handwritten Note which, as explained by both the Applicant and the Respondent, would take effect only if there is a sale. This means that, despite the use of the phrase "the Property was to be distributed", the agreement referred to in the third point is really an agreement about distribution of sale proceeds, and not an express agreement to confer a present share in the ownership of the Property.

98 A similar observation may be made about the Applicant's 2nd Affidavit. In one part of the Applicant's 2nd Affidavit, she characterized the Handwritten Note as "a written direction to the Respondent on the share distribution of my share in the Property". However, in another part of the same affidavit, she explained that the Handwritten Note was "written for the purpose of indicating to my children the share distribution of the sale proceeds of the Property after my passing". Again, despite the Applicant's attempt to characterise the Handwritten Note as an agreement conferring her a "share in the Property", she could not run away from the fact that the agreement embodied in the Handwritten Note dealt only with the distribution of sale proceeds. This is made amply clear by the annotation: "In the event of this property sales, this is the division" in the Handwritten Note.

99 I appreciate that there is some merit in the argument that an agreement by the owner of a property to share the proceeds or profit of sale with another person upon the sale of that property could be a basis from which to infer an intention on the part of the owner to grant the other person a share in the property itself. However, a similarly valid argument may be made that such an inference is neither necessary nor compelling. In my view, an intention to share the proceeds or profit of sale is sufficiently distinct, conceptually, from an intention to share the property itself such that one does not necessarily imply the other. Support for this view may be found in the series cases which held that a mere contractual right to be paid from the proceeds of sale of a property does not give rise to an interest in land to support the lodging of a caveat under the Land Titles Act 1993 (see *Kok Zhen Yen v Beth Candice Wu* [2024] 3 SLR 730 at [38], citing *Salbiah bte Adnan v Mirco Credit Pte Ltd* [2015] 1 SLR 601 at [41]). I therefore regard the agreement embodied in the Handwritten Note to be, at best, equivocal on the question of common intention to share ownership of the Property.

100 Next, there is the statement by the Respondent to the court at the Second Hearing that, to her mind, the Applicant was "investing in the Property as part owner" and they "would both own the house". However, the Respondent also explained that, initially, when the decision was made to purchase the Property, there was no discussion as to the percentage share between the parties. It was only later on that there was a discussion concerning what would happen if the Applicant were to pass away, which resulted in the agreement evidenced by the Handwritten Note.

101 Finally, the Respondent told the court that her understanding with the Applicant was that, after the Applicant's demise, the Respondent would not need to share the Property itself with her siblings and could not be forced by her siblings to sell the Property. Instead, it was only if the Respondent decides to sell the Property after the Applicant's demise that she would have to share the proceeds with her siblings. In my view, this is strong evidence that the Applicant was not intended to have a present beneficial interest which could be passed down to her other children as a proprietary claim on the Property. Instead, this is evidence that what the Applicant was intended to pass down to her other children after her demise was merely a claim in debt against the Respondent for the loan which the Applicant had extended.

102 Overall, I found the Applicant's evidence to be equivocal and insufficient to support a finding that there was a common intention that the Applicant was to have a present share in the beneficial ownership of the Property (as opposed to a contractual claim to the sale proceeds after the Property is sold). On the two occasions when the Applicant appeared to be alluding to a share of the Property, an examination of the underlying evidence she relied on shows that those are really references to an agreement to share the sale proceeds. While the Respondent's statements to the court at the Second

Hearing were less equivocal, those statements were not made on oath and were not repeated in the affidavits filed by the Respondent after the Second Hearing. In any event, to the extent that the Respondent's statements appeared to articulate the Applicant's case more strongly than the position articulated in the Applicant's own statements, this is an inconsistency which should cause me to hesitate placing weight on such statements from the Respondent. As pointed out by the Non-Party, the Respondent has an incentive to minimise the pool of matrimonial assets available for division in the impending divorce proceedings.

103 In the light of the foregoing, I found as a fact that there is insufficient evidence of an express or inferred common intention that the Applicant should hold a beneficial interest in the Property. Therefore, my conclusion at the end of Step (b) is the same as that at the end of Step (a) – the Respondent holds 100% of the beneficial interest in the Property and the Applicant holds none.

Steps (c) to (e) of the Chan Yuen Lan *framework*

104 Given my conclusion on Step (b), there was no need to consider Steps (c) to (e).

Step (f) of the Chan Yuen Lan *framework*

105 Under Step (f), the inquiry is into whether there is a subsequent express or inferred common intention that the parties should hold the beneficial interest in a manner different from that derived from Steps (b) to (e).

106 In this regard, the latest and most up to date articulation of the parties' common intention is that found in the August 2024 Agreement. The August 2024 Agreement is entitled "Loan Agreement". It describes the Applicant as "Lender" and the Respondent as "Borrower". It describes all the

monies extended by the Applicant to the Respondent as "loan". Most importantly, it does not contain any provision which either grants the Applicant a beneficial interest in the Property or acknowledges that the Applicant has a beneficial interest in the Property. There is an entire agreement clause in Clause 5.1 which provides that the August 2024 Agreement constitutes the parties' "full and entire understanding and agreement". In the circumstances, there is no room for finding or inferring a common intention that the Applicant is to have a share of the beneficial interest in the Property. In other words, the analysis in Step (f) confirms the conclusion which I have arrived at in Step (b).

107 More importantly, even if I were wrong in my conclusions in Step (b), the existence of the August 2024 Agreement with the features described in the preceding paragraph means that, irrespective of what the conclusion at the end of Step (b) may be, the proper conclusion at the end of Step (f) would be that the Respondent holds 100% of the beneficial interest in the Property and the Applicant holds none.

108 Although the August 2024 Agreement did not expressly state whether it is intended to supersede and replace the First Agreement, I am of the view that it does. I have three reasons for coming to this view. First, Clauses 4.1 and 4.2 of the August 2024 Agreement are worded broadly enough to apply to both a sale during the Applicant's life and a sale after the Applicant's death. In other words, the August 2024 Agreement does not carve out the situation of sale after the Applicant's death from its scope. Second, the Handwritten Note is mentioned in Clause 3.4 of the August 2024 Agreement only for the purpose of confirming its truth and veracity, not for its continued applicability after the coming into effect of the August 2024 Agreement. Third, the entire agreement clause, which provides that the August 2024 Agreement constitutes the "full and

entire understanding and agreement" with regard to the loan, indicates that parties did not intent to preserve the continued operation of the First Agreement.

109 My finding that the August 2024 Agreement supersedes and replaces any earlier agreement means that my final conclusion at Step (f) would be that set out at [107] above irrespective of what the conclusion at the end of Step (b) should be.

Conclusion on existence of common intention

110 For the foregoing reasons, it was my conclusion, after applying the six-step analytical framework from *Chan Yuen Lan*, that there was insufficient evidence of a common intention that the Applicant should have a beneficial interest in the Property.

Detrimental reliance

111 In any event, even if I were wrong on the question of existence of common intention, I found that the Applicant's claim for a common intention constructive trust fails for lack of detrimental reliance. As noted in *Chan Yuen Lan* at [97], a person claiming under a common intention constructive trust must have relied to his detriment on the common intention that the beneficial interest in the property is to be shared. As for the quality of conduct which would suffice as detrimental reliance, the following *dicta* from *Grant v Edwards* [1986] Ch 638 at p 648 is instructive:

> It seems therefore, on the authorities as they stand, that a distinction is to be made between conduct from which the common intention can be inferred on the one hand and conduct which amounts to an acting upon it on the other. There remains this difficult question: what is the quality of conduct required for the latter purpose? The difficulty is caused, I think because although the common intention has been made plain, everything else remains a matter of inference. Let me illustrate

> it in this way. It would be possible to take the view that the mere moving into the house by the woman amounted to an acting upon the common intention. But that was evidently not the view of the majority in *Eves v. Eves* [1975] 1 W.L.R. 1338. And the reason for that may be that, in the absence of evidence, the law is not so cynical as to infer that a woman will only go to live with a man to whom she is not married if she understands that she is to have an interest in their home. So what sort of conduct is required? In my judgment *it must be conduct on which the woman could not reasonably have been expected to embark unless she was to have an interest in the house*. If she was not to have such an interest, she could reasonably be expected to go and live with her lover, but not, for example, to wield a 14-lb. sledge hammer in the front garden. In adopting the latter kind of conduct she is seen to act to her detriment on the faith of the common intention.
>
> [emphasis added]

Therefore, the quality of conduct must be conduct which the Applicant could not reasonably have been expected to embark on unless she was to have an interest in the Property.

112 The Applicant submitted that she suffered detriment by expending large sums of money, paying for renovation and furnishings and taking charge of the daily running and maintenance of the Property. In my view, given the existence of the loan agreement, the said expenditure of money and said payment for renovation and furnishings (which are included as part of the loan pursuant to Clause 2 of the August 2024 Agreement) did not amount to conduct which the Applicant could not reasonably have been expected to embark on unless she was to have an interest in the Property. This is because the conduct could be explained by the terms of the August 2024 Agreement, which promises both repayment of the loan and a share of the profit on sale of the Property. In a similar vein, the Applicant's conduct in taking charge of the household is conduct which could reasonably be expected of a matriarch living in a multi-generational household even if there is no common intention that she would have a share of the Property. Further, any payment made by the Applicant

towards maintenance of the Property could not be classified as conduct which the Applicant could not reasonably have been expected to embark on unless she was to have an interest in the Property. Those amounts were not paid gratuitously by the Applicant but were expressly accounted for as part of the loan pursuant to Clause 2 of the August 2024 Agreement.

Conclusion on common intention constructive trust

113 For the foregoing reasons, I rejected the Applicant's claim based on common intention constructive trust. There was insufficient evidence of a common intention and there was, in any event, no detrimental reliance.

Whether there is proprietary estoppel

114 On the question of proprietary estoppel, it was submitted in the Applicant's 4th Written Submission at para 48 that "there was representation by the Respondent that the Applicant would be entitled to a corresponding share of the Property". The footnote to this statement cites to para 9 of the Applicant's 1st Affidavit. However, para 9 of the Applicant's 1st Affidavit did not attest to any representation that the Applicant would be entitled to a *share of the Property*. Instead, the only representation mentioned in the said para 9 was the representation that the Applicant would get a *share of the profit* in the event of sale of the Property. The claim on proprietary estoppel fails because there is no evidence to support the existence of a representation from the Respondent that the Applicant would get a *share of the Property*.

115 In any event, the Applicant had not acted to her detriment in reliance on the alleged representation that she would get a share of the profit in the event of sale of the Property. She had secured exactly what was represented to her in the form of a legally enforceable contractual right enshrined in the August 2024

Agreement which guarantees her share of the profit in the event of sale of the Property.

Conclusion on whether Applicant is beneficial owner

116 For the reasons given above, I held that the Applicant is not a beneficial owner of the Property. Instead, what the Applicant possessed is a claim in contract against the Respondent personally for return of the loan and a share of the profit in the event of sale of the Property.

Non-Party's argument on illegality

117 As explained in the Applicant's 4th Written Submissions, one of the reasons she decided to not purchase the Property together with the Respondent after she aborted the sale of her Bedok Flat was that she would have to incur ABSD. The Non-Party submits that, since the Applicant knew that she would have to pay ABSD if she became a co-purchaser of the Property, it would be incongruent for the Applicant to secretly claim beneficial ownership of the Property while structuring the purchase in such a way as to avoid her being named on paper as a legal owner so as to escape paying ABSD.

118 Given my finding that the Applicant does not have any beneficial ownership of the Property, the situation which the Non-Party complained of in the preceding paragraph does not arise and there is, strictly speaking, no need for me to consider the Non-Party's submission on illegality. However, as there is a pending appeal against my decision, the prudent course for me to take would be to set out my views on the Non-Party's illegality argument for completeness in case I were found to be wrong in my conclusion that the Applicant is not a beneficial owner of the Property.

119 In *Alistair Lau*, Goh Yihan JC (as he then was) held that the framework laid down by the Court of Appeal in *Ochroid Trading* in the context of illegal contracts could, with the necessary modifications, be applied to illegality defences in the context of trusts. This modified framework is as follows:

(a) First, the court should consider whether the trust in question is illegal in itself and therefore void and unenforceable; a trust is illegal in itself when it is expressly or impliedly prohibited by statute or falls within an established category of situations that renders it void and unenforceable.

(b) Second, if the trust is not illegal in itself, the court should then consider whether the trust concerned is created for an illegal purpose, or which arose as an incidental consequence of the illegal purpose. If so, the proportionality analysis applies to determine a proportionate response to the illegality, and the factors to be considered include: (i) whether allowing the claim would undermine the purpose of the prohibiting rule; (ii) the nature and gravity of the illegality; (iii) the remoteness or centrality of the illegality to the trust; (iv) the object, intent and conduct of the parties; and (v) the consequences of denying the claim.

(c) Third, if the court decides that the trust was created for an illegal purpose and should not be enforceable, the court may consider if the party seeking to enforce the trust in question can nonetheless establish an alternative basis for enforcing a proprietary interest by the operation of trusts law, such as by a resulting trust if his claim to enforce an express trust fails because the express trust is found to be unenforceable. In considering this, the court should apply the principle of stultification to

determine if, in allowing the claim, the fundamental policy that prohibited the trust in question in the first place would be undermined.

120 The facts of *Alistair Lau* concerned a pair of parents who bought a property in 2020 on trust for their adult son. Had the parents bought the property for themselves, they would have been liable for ABSD. By holding the property on trust for their son, no ABSD was applicable because their son, the beneficial owner, did not own any other property in Singapore. In 2021, the mother commenced divorce proceedings against the father. Thereafter, the son commenced proceedings to terminate the trust pursuant to the rule in *Saunders v Vautier* (1841) 4 Beav 115 and have the property transferred to him absolutely. The son's application was opposed by the mother but supported by the father. The mother opposed the application on the ground that the trust was a sham instrument to avoid ABSD or should be unenforceable for illegality.

121 At the first step, Goh JC held that the trust is not illegal in itself as the Stamp Duties Act 1929 ("Stamp Duties Act") does not expressly or by necessary implication prohibit trusts created to avoid ABSD. At the second step, Goh JC held that the trust was not created for an illegal purpose as he had made a finding of fact that the trust was not a sham instrument.

122 The *Alistair Lau* framework was considered and applied recently in the case of *Ngor Shing Rong Jake v Wong Mei Lee Millie* [2025] SGHC 119 ("*Ngor Shing Rong*"). In that case, a pair of romantic partners bought a property together, with the girlfriend registered as the legal owner of 99% share in the property and the boyfriend registered as the legal owner of 1% share in the property. The boyfriend contributed the majority of the purchase money for the property. When the relationship between them broke down, the boyfriend applied to court for a declaration that he held approximately 70% of the property

on resulting trust. After considering the evidence, Lee Seiu Kin SJ found that the girlfriend held 54.22% of the property on resulting trust for the boyfriend. One argument raised by the girlfriend was that the court should decline to enforce the resulting trust on grounds of illegality.

123 In applying the *Alistair Lau* framework, Lee SJ noted that the first step would typically not apply to resulting trusts because resulting trusts are typically not in and of themselves illegal. Instead, the primary query is at the second step – whether the trust was created for an illegal purpose or arose as an incidental consequence of an illegal purpose. Lee SJ held that the true gravamen of the illegality objection was not any evasion or avoidance of tax through the *initial* registration of the 99:1 ownership ratio, but in the contemplated actions of the parties if and when they decide to decouple their ownership in the property. At the point of decoupling, the boyfriend would transfer his 1% legal interest in the property to the girlfriend and pay stamp duty based on the value of the 1% legal interest even though he retained a larger beneficial interest in the property. Lee SJ observed that an illegality would arise from a breach of s 4 of the Stamp Duties Act for understamping – *ie*, paying stamp duty based on 1% of value of the property instead of the actual value of his beneficial interest. Lee SJ therefore held that an illegal purpose would exist so long as the parties planned to transfer and pay stamp duty on the 1% interest at the decoupling stage. It did not matter that the parties may not know that such an act would be unlawful. Nevertheless, Lee SJ held that it would be disproportionate to deny the resulting trust claim because (a) the illegality was not sufficiently grave, (b) the contemplated understamping was never carried out, (c) the policy undergirding the prohibition against understamping was not undermined as the Stamp Duties Act contained its own remedies such as "upstamping" and penalties, and (d) the consequences of denying the claim is excessive.

124 In coming to the above decision, Lee SJ referred, at [105], to the Australian case of *Nelson v Nelson* [1995] 132 ALR 133 which bears some resemblance to the fact pattern of the case pleaded by the Applicant. In that case, a mother was eligible for state subsidies to buy a house as a widow of a veteran if she did not own any other property. To maintain this eligibility, she first bought a property under the names of her children and then purchased another house for herself utilising the state subsidies by falsely declaring that she did not own or have an interest in any other property. Subsequently, when the first property was sold, the mother sought a declaration that the sale proceeds from the first property were held on trust for her by her children. Although the majority in the High Court of Australia upheld the mother's claim, this was only on condition that she disgorge her ill-gotten subsidies.

125 Returning to the present case, the main plank of the Applicant's case is founded on common intention constructive trust. If the Applicant's case is accepted, and the Applicant were found to have acquired partial beneficial ownership in the Property together with the Respondent at the time of the purchase, the Applicant would likely be liable for ABSD pursuant to Article 3(*bf*) read with Article 3(2)(*d*) of the First Schedule of the Stamp Duties Act. Article 3(*bf*) provides that ABSD applies to a "[c]onveyance, assignment or transfer on sale of residential property" if the "grantee, transferee or lessee is a Singapore citizen owning one property". Article 3(2)(*d*) provides that "a reference to a grantee, transferee or lessee, in a case where the grantee, transferee or lessee is to hold the residential property on trust, is a reference to the beneficial owner". Therefore, if it were accepted that the Respondent was holding part of the beneficial interest in the Property on trust for the Applicant, the Applicant would be a beneficial owner for the purposes of Article 3(2)(*d*). Consequently, the Applicant, as beneficial owner, would by virtue of Article 3(2)(*d*) be deemed to be the "grantee, transferee or lessee" for the

purposes of Article 3(*bf*). Since the Applicant already owned a property (*ie*, the Bedok Flat), she would be liable for ABSD pursuant to Article 3(*bf*). Second, if ABSD is found to be applicable, the Applicant may also be liable for late payment penalty pursuant to s 46 of the Stamp Duties Act. Finally, it is possible that the Respondent and/or the Applicant may also have committed an offence under s 62(*a*) read with s 5 of the Stamp Duties Act for executing an instrument which does not fully and truly set out all the facts and circumstances affecting the liability of the instrument to duty or the amount of the duty with which the instrument is chargeable.

126 If I were to apply the *Alistair Lau* framework to the case as pleaded by the Applicant, I would, at the first step, have likely held that the alleged common intention constructive trust is not illegal in itself, as nothing in the Stamp Duties Act expressly or impliedly prohibits parties from coming to an agreement to hold the beneficial interest in a property in a manner which differs from how the legal title is held. At the second step, I would likely have held that the alleged common intention constructive trust, under which the Applicant was to acquire a 75% (or more) beneficial interest in the Property without paying ABSD for such acquisition, was for an illegal purpose or arose as an incidental consequence of the illegal purpose.

127 The Applicant submitted that there was no intention to evade or avoid ABSD. I was not inclined to believe the Applicant given how she had shifted her position during these proceedings. The Applicant initially took the position (in the Appicant's 4th Written Submissions) that one of the Applicant's reasons for deciding to withdraw her name from the purchase of the Property was that she would be liable for ABSD otherwise. However, after judgment had already been reserved, the Applicant filed a further affidavit to claim that the issue of ABSD was not on her mind at the material time. Further, the Applicant is a

successful business owner with the financial resources to fork out more than $1 million in cash upfront for the Property (comprising $450,000 downpayment to the developer, $80,600 for stamp duty, $110,000 for renovation and furnishings and $432,000 as pledged deposit with Maybank).[76] It was therefore extremely unlikely that she would not have considered tax implications such as ABSD at the material time. In any event, in *Ngor Shing Rong*, Lee SJ held that understamping (*ie*, the payment of less stamp duty than is actually due) was an illegal purpose irrespective of whether the parties knew it was unlawful. By the same token, the omission to pay ABSD in the present case would also be an illegal purpose irrespective of whether the Applicant knew it was unlawful.

128 In this regard, it is pertinent to note a key difference between the facts of *Alistair Lau* and the present case. In *Alistair Lau*, it was the parents who already owned an existing property that had bought the new property on trust for their son who did not own any other property. By operation of Article 3(2)(*d*) of the First Schedule of the Stamp Duties Act, ABSD would not be applicable under this arrangement because the son, as beneficial owner, would be deemed the "grantee, transferee or lessee". In the present case, it was the daughter who did not own any other property that allegedly bought the new property on trust for her mother who already owned an existing property. By operation of Article 3(2)(*d*) of the First Schedule of the Stamp Duties Act, ABSD would be applicable under this arrangement.

129 For the proportionality analysis under the second step, I would likely have held that allowing the Applicant's claim would not have undermined the purpose of the statutory provisions on ABSD as there appears to be sufficient mechanism under the Stamp Duties Act for the tax authorities to claw back any

[76] Applicant's 1st Affidavit at paras 12, 17 and 19; Respondent's 1st Affidavit at para 7.

advantages gained by the Applicant. Consequently, I would likely have found it unnecessary to deny enforcement of the Applicant's claim under the trust despite its illegal purpose. In the light of my view on the proportionality analysis, it would not have been necessary to consider the third step of the *Alistair Lau* framework.

130 To conclude the discussion on Non-Party's illegality argument, I should clarify, for the avoidance of doubt, that the foregoing analysis would apply only if I were found to have been wrong in concluding that the Applicant is not a beneficial owner. If I was correct in finding that the Applicant is not a beneficial owner, no ABSD would be applicable and there would be no occasion to consider the Non-Party's illegality argument.

The appropriate orders to be made

131 For the reasons given above, it is my conclusion that the true nature of the monies advanced by the Applicant to the Respondent in respect of the Property is that of a loan. Therefore, all monies borrowed by the Respondent from the Applicant in respect of the Property are to be attributed solely to the Respondent as the Respondent's contribution. Consequently, the Applicant does not have a beneficial interest in the Property but has a contractual claim for return of the loan and a share of profit in accordance with the terms of the August 2024 Agreement.

132 In the light of my conclusion that the Applicant is entitled to enforce the August 2024 Agreement personally against the Respondent as a contractual claim, I was initially quite prepared to grant order in terms of the prayer set out at [7] above, since the prayer merely reflects the terms of August 2024 Agreement. However, as the Applicant had framed her case in terms of a claim to beneficial ownership of the Property, I was concerned that if I were to grant

order in terms of the prayer without any clarifications, my order might be misunderstood as an endorsement of the Applicant's claim to beneficial ownership. I have therefore decided to provide the appropriate clarification by amending the chapeau of the prayer to read:

> The Respondent is liable personally to repay the Applicant, upon the sale of the property at XXX Wak Hassan Drive ("the Property"), for the loan which the Applicant has extended to the Respondent as follows:
>
> …

133 Further, as the Application was brought to clarify the Applicant's rights concerning the Property in the event that the Property is held by the court hearing the divorce proceedings between the Respondent and the Non-Party ("Divorce Court") to be matrimonial assets, I consider it appropriate to provide another clarification for the avoidance of doubt. This clarification would be that, if the Property is ordered to be sold by the Divorce Court, the liability to honour the provisions of the August 2024 Agreement for return of the loan to, and sharing of profit with, the Applicant should be borne solely by the Respondent as her personal liability. In providing such clarification, I express no views whether the Property should be considered matrimonial assets. There are arguments either way and this is a matter for the Divorce Court to decide based on the evidence and submissions put before it. Similarly, I do not express any views on whether the amounts owed by the Respondent to the Applicant under the August 2024 Agreement should be treated (whether in whole or in part) as a matrimonial debt that would reduce the overall value of the matrimonial assets available for division. Depending on the evidence and submissions put before it, there are various possible approaches which the Divorce Court could take on this question. For example, even if the Divorce Court were inclined to treat the debt owed by the Respondent to the Applicant as a matrimonial debt, it may be possible for an argument to be made that this applies only to the liability under

Clause 4.1 of the August 2024 Agreement to return the loan amount (corresponding to prayer 1.a. of the Application) but *not* to the obligation under Clause 4.2 of the August 2024 Agreement to divide profit (corresponding to prayer 1.b. of the Application). As these are issues to be decided by the Divorce Court and not issues before me, I refrain from saying more. Instead, I would simply emphasise that the purpose of the foregoing clarification is merely to ensure that, whatever division the Divorce Court arrives at, the Non-Party should not be deprived of what the Divorce Court regards as his fair and equitable share of the matrimonial assets by having his rightful share of the sale proceeds (if any) taken away from him to pay for the Respondent's liability under the August 2024 Agreement.

Conclusion

134 For the foregoing reasons, I made the following order:

> 1. The Respondent is liable personally to repay the Applicant, upon the sale of the property at XXX Wak Hassan Drive ("the Property"), for the loan which the Applicant has extended to the Respondent as follows:
>
> > a. Repayment of all loans given by the Applicant to the Respondent towards the purchase and service of the mortgage on the Property (including all miscellaneous fees);
> >
> > b. A percentage of the profits from the sale of the Property equivalent to the Applicant's contribution (being a percentage of the monies loaned by the Applicant to the Respondent used for the purchase of the Property divided by the total payments made by the Applicant and the Respondent directly for the purchase and/or the servicing of the mortgage loan), after deduction of the outstanding bank mortgage (if any), all CPF refunds and accrued interest, and repayment of the Applicant's loan as per sub para 1a above;
> >
> > c. For the avoidance of doubt, the parties' percentage share in the profits of the sale proceeds referred to in subparagraph 1b is to be calculated as follows:

A - Sale price

B - Mortgage loan redemption

C - Respondent's CPF redemption including accrued interest

D - Total outstanding loan owing to Applicant (includes miscellaneous expenses)

E - Loan given by Applicant used for purchase of Property (payment of purchase price and servicing of mortgage loan)

F - Respondent's CPF used for payment of purchase price and servicing of mortgage loan (excluding miscellaneous expenses and accrued interest)

G - Respondent's cash (if any) used for payment of purchase price and servicing of mortgage loan

Applicant's share = E/(E+F +G) x (A-B-C-D) x 100%

Respondent's share = (F+G)/(E+F+G) x (A-B-C-D) x 100%

2. In the event that the Property is held by a court hearing divorce proceedings between the Respondent and her husband to be a matrimonial asset subject to division and is ordered by that court to be sold as a result, any repayment to be made by the Respondent to the Applicant in accordance with the foregoing paragraph shall be made only from the Respondent's share of the sale proceeds.

Costs

135 The Applicant had brought the Application pursuant to *UDA v UDB* to claim an interest in the Property and failed. Costs should therefore follow the event in the sense that the Applicant ought to pay costs to the Non-Party. This is notwithstanding the fact that the Applicant had obtained an order from me which appeared to be on substantially the same terms as her prayer in the Application. This is because the order I granted was merely declaratory of the contractual obligations owed personally by the Respondent to the Applicant. Since there was never any dispute between the Applicant and the Respondent over such contractual obligations, it was wholly unnecessary for the Applicant

to commence the Application merely to enforce her contractual rights against the Respondent personally. As there were multiple rounds of affidavits, submissions and hearings, I ordered the Applicant to pay the Non-Party's costs fixed at $15,000 inclusive of disbursements.

Pang Khang Chau
Judge of the High Court

Mohamed Ibrahim s/o Mohamed Yakub (Achievers LLC) for the applicant;
The respondent in person;
Faizal Wahyuni Bin Huasen Waryouni (A L Hussien & Faizal Wahyuni) for the non-party.