IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 36

Civil Appeal No 54 of 2021

Between

Ong Chai Soon

… *Appellant*

And

(1) Ong Chai Koon
(2) Ong Kim Geok
(3) Ong Sor Kim
(4) Ong Sor Mui
(5) Ong Soh Ai

… *Respondents*

In the matter of Suit No 1310 of 2018

Between

(1) Ong Chai Koon
(2) Ong Kim Geok
(3) Ong Sor Kim
(4) Ong Sor Mui
(5) Ong Soh Ai

… *Plaintiffs*

And

Ong Chai Soon

… *Defendant*

JUDGMENT

[Equity — Defences — Laches]
[Statutory Interpretation — Construction of statute — Section 51(10) of the Housing and Development Act]
[Trusts — Constructive trusts — Common intention constructive trusts]
[Trusts — Constructive trusts — Section 51(10) of the Housing and Development Act]
[Trusts — Resulting trusts — Section 51(10) of the Housing and Development Act]

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This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Ong Chai Soon
v
Ong Chai Koon and others

[2022] SGCA 36

Court of Appeal — Civil Appeal No 54 of 2021
Andrew Phang Boon Leong JCA, Judith Prakash JCA and Steven Chong JCA
21 February 2022

22 April 2022 Judgment reserved.

Andrew Phang Boon Leong JCA (delivering the judgment of the court):

Introduction

1 Established in February 1960 amidst an acute housing shortage, the Housing & Development Board ("HDB") was tasked with the considerable endeavour of providing homes for the rapidly growing population of a newly self-governing state (see Centre for Liveable Cities & HDB, *Housing: Turning Squatters into Stakeholders* (Cengage Learning Asia Pte Ltd, 2013) at p 5). Today, HDB properties house approximately 80% of Singapore's population (see HDB, "HDB History and Towns" <https://www.hdb.gov.sg/about-us/history> (accessed 9 March 2022)). This remarkable feat of national planning has been facilitated over the years by an intricate statutory regime, chiefly comprising successive iterations of the Housing and Development Act and the Land Acquisition Act. These statutes have, in turn, imposed various

restrictions and conditions on the rights that private individuals may acquire in HDB property, being as it is property with a rather unique character.

2 One such restriction is set out in s 51(10) of the Housing and Development Act (Cap 129, 2004 Rev Ed) ("the HDA"), which provides that "[n]o person shall become entitled to any protected property (or any interest in such property) under any resulting trust or constructive trust whensoever created or arising". The proper interpretation of this provision and its predecessors has been considered by our courts on numerous occasions. Since the decision of Sundaresh Menon JC (as he then was) in the High Court decision of *Tan Chui Lian v Neo Liew Eng* [2007] 1 SLR(R) 265 ("*Tan Chui Lian*"), the consistent position adopted in the case law has been that the provision only bars *ineligible* persons from becoming entitled to any interest in HDB property under a resulting or constructive trust (which we refer to as "the Eligibility Interpretation"). In the High Court decision of *Lim Kieuh Huat and another v Lim Teck Leng and another* [2020] SGHC 181 ("*Lim Kieuh Huat (HC)*"), however, a different interpretation was proposed by Andre Maniam JC (as he then was) – that the provision bars *all* persons (including eligible persons) from becoming entitled to an interest in HDB property under a resulting or constructive trust *if they do not already have an entitlement to the property in question* (which we label "the Pre-Existing Interest Interpretation").

3 The present appeal raises squarely the question of which interpretation of s 51(10) of the HDA should be preferred. Having considered the language of the provision, its legislative history and evolution, as well as the broader contextual and historical developments in which it must be situated, we endorse the Eligibility Interpretation and reject the Pre-Existing Interest Interpretation proposed in *Lim Kieuh Huat (HC)*. In this regard, we disagree, with respect, with the analysis of the High Court judge below ("the Judge"), who expressed

a tentative preference for the Pre-Existing Interest Interpretation at [152] of the High Court decision in *Ong Chai Koon and others v Ong Chai Soon* [2021] SGHC 76 ("the Judgment"). We affirm the Judge's other findings regarding the common intention constructive trust that arose in this case and the inapplicability of the defence of laches. When the Eligibility Interpretation is applied, the consequence of these findings is that the respondents are entitled to the equitable relief they seek. It is on this basis that we dismiss the appeal.

Facts

4 The factual background to this case was canvassed in detail by the Judge at [3]–[22] of the Judgment, and we restate the material facts below.

The parties

5 The parties are the six children of Mr Ong Chen Kiat and Mdm Ang Mong Kwa: (a) Ms Ong Sor Kim ("SK"); (b) Ms Ong Soh Ai ("SA"); (c) Ms Ong Sor Mui ("SM"); (d) Mr Ong Chai Soon, the appellant and the eldest son of the Ong family; (e) Mr Ong Chai Koon ("CK"); and (f) Ms Ong Kim Geok ("KG"), listed from oldest to youngest (see the Judgment at [3]). We refer to SK, SA, SM, CK and KG collectively as "the respondents".

The properties

The flats in Yishun

6 In 1988, the *kampong* land on which the Ong family lived was compulsorily acquired by the government. A significant sum was paid to them in compensation ("the compensation moneys"), which was kept and managed by the parties' mother. Although the precise amount of the compensation

moneys was disputed before the Judge, the parties' evidence suggested that it was somewhere in the range of $100,000 to $176,000 (see the Judgment at [9]).

7 To assist in their resettlement, the Ong family was offered the opportunity to purchase two adjoining three-room HDB flats in Yishun. One flat ("Unit 172") was paid for with about $60,000 of the compensation moneys, and was registered in the joint names of the parties' parents. The other flat ("Unit 174") was completely financed by a loan from the HDB, and was registered in the joint names of the appellant and CK. It was common ground that the appellant did not make any financial contributions to the payment of the loan for Unit 174 over the years (see the Judgment at [10]). We refer to Unit 172 and Unit 174 collectively as "the Yishun Flats".

The property in Hougang

8 In February 1989, a tender for a two-storey HDB shophouse in Hougang ("the Property") was successfully made in the appellant's name, resulting in the execution of a tenancy agreement dated 31 March 1989 between the HDB and the appellant (see the Judgment at [11]).

9 The Property, which was a shophouse, consisted of a commercial space on the ground floor and a residential unit on the second floor. The commercial space was sub-divided into four separate spaces and let to various sub-tenants. One of these spaces was occupied by a hairdressing salon known as "Red Point Hair Beauty and Trading" ("Red Point"), which was a sole proprietorship registered in the appellant's name. SK, SM and KG worked at Red Point from its inception until 2018, when the parties' dispute arose (see the Judgment at [12]).

Changes in the ownership and occupancy of the properties

10 Over the years, the registered ownership of the Yishun Flats and the Property changed several times, as follows (see the Judgment at [13]–[15]):

(a) Unit 172: In 1994, the parties' father passed away and their mother became the sole owner of Unit 172. In 1995, SM was added as a joint owner of Unit 172, and she became the sole registered owner of Unit 172 when the parties' mother passed away in 2016.

(b) The Property: In 1995, the HDB offered the Property for sale to the appellant (the existing tenant), which the appellant took up. The purchase price of $782,000 was completely financed by a bank loan. The appellant was registered as the owner of the Property, and remains the sole registered owner to date.

(c) Unit 174: In 1999, CK was deregistered as a co-owner of Unit 174 as he wished to apply for an HDB flat of his own. SK replaced him as registered co-owner of Unit 174. To date, the appellant and SK are the registered joint owners of Unit 174.

11 Similarly, the occupancy of the Yishun Flats and the Property changed several times over the years (see the Judgment at [16]–[18]):

(a) Except for KG who was married in 1989, most of the Ong family resided in the Yishun Flats after moving out of the *kampong*. SA moved out of the Yishun Flats in the mid-1990s, and CK did so in 1999.

(b) The appellant: While the appellant maintained a room at Unit 174, he usually stayed on the second floor of the Property.

(c) SK and SM: In 2003, SK, SM and the parties' mother moved from Unit 172 to the second floor of the Property. Following this, the Yishun Flats were rented out and the rental proceeds were used to pay for the family's expenses. After the parties' mother passed away in 2016, SK and SM continued to live in the Property until they were forced to move out by the appellant in 2018. SK and SM then moved to Unit 174.

The events leading up to the suit

12 On 25 June 2017, a family meeting was held at the Property ("the Family Meeting"). The meeting, which was audio-recorded, lasted for more than two and a half hours. It was described by the Judge as "fractious" with "plenty of shouting and arguing", and "[m]any longstanding family issues were raised" (see the Judgment at [20]). Towards the end of the meeting, the appellant signed a document ("the Document") which stated as follows:

> AGREEMENT
>
> I, Ong Chai Soon [(NRIC)] agree to share the following properties under my name with all of my siblings equally as the following properties were financially supported by late mother, Ang Mong Kwa, prior to her passing:
>
> 1. [The Property]
>
> 2. [Unit 174 of the Yishun Flats]
>
> My five siblings are Ong Sor Kim [(NRIC)], Ong Soh Ai [(NRIC)], Ong Sor Mui [(NRIC)], Ong Chai Koon [(NRIC)], Ong Kim Geok [(NRIC)].
>
> I agree to acknowledge that my siblings and I have an equal say in the matters of the mentioned properties.
>
> In the event of selling the mentioned properties, I agree to divide the proceeds equally among my siblings and I.

13 After the meeting, the appellant sought legal advice. Subsequently, on 2 July 2017, he made a police report claiming that he had been forced by threats of physical violence to sign the Document (see the Judgment at [21]).

14 On 25 January 2018, the appellant began to demand that KG, SK and SM (who worked at Red Point) pay him rent for use of the premises, but they refused. Red Point's business ceased shortly thereafter (see the Judgment at [21]).

15 On or around 25 June 2018, the appellant applied for a personal protection order ("PPO") against the respondents. The PPO application was eventually resolved by a settlement agreement in which the parties agreed that the respondents "will not visit" the appellant at the Property, and that this was "without admission of liability by any of the parties" (see the Judgment at [21]).

16 On 27 December 2018, the respondents commenced proceedings against the appellant, seeking (among other things) an order that the Property be sold and the sale proceeds divided equally among the six Ong siblings. The respondents claimed that the Property was a family asset held by the appellant on a common intention constructive trust for each of the Ong siblings, who were entitled to equal beneficial shares. Further, they claimed that the doctrine of proprietary estoppel precluded the appellant from denying that he held the Property for the benefit of all the siblings in equal shares.

Decision below

17 The Judge found that the Property and its sale proceeds were subject to a common intention constructive trust in favour of the Ong siblings as beneficial owners in six equal shares. Having examined the evidence in detail, the Judge found that – although there was no direct evidence as such that the Ong siblings

and their mother had collectively agreed that the Property should be held by the appellant on trust for the siblings at the time when the HDB offered the Property for sale to the appellant in 1995 – there was sufficient evidence which showed that the Property was intended to be acquired as a family asset for the Ong family as a whole. Furthermore, it was intended that the Property would eventually be sold and the sale proceeds shared equally to assist in the Ong siblings' retirement. This intention was known to and shared by all the Ong siblings, including the appellant (see the Judgment at [107]). Accordingly, the Judge held that the respondents had established that the Property and its sale proceeds were subject to a common intention constructive trust where the true beneficial owners were the appellant and the respondents in six equal shares (see the Judgment at [108]). The Judge went on to observe that, while this conclusion made it unnecessary to determine whether a resulting trust had arisen in the respondents' favour, he would have presumed a resulting trust in favour of the parties in equal shares had it been necessary to do so (see the Judgment at [110]–[113]).

18 However, on an application of the Pre-Existing Interest Interpretation (which the Judge expressed a tentative preference for), the Judge held that s 51(10) of the HDA barred the respondents from becoming entitled to a beneficial interest in the Property under the common intention constructive trust (or any resulting trust) as they were not registered owners of the Property (see the Judgment at [152] and [159]). Nevertheless, the Judge took the view that an equity arose in the respondents' favour in relation to the Property which compelled the appellant to act in a manner consistent with the parties' common intention that they had equal beneficial shares in the Property and its sale proceeds. To satisfy that equity, the Judge considered it necessary and expedient to order that the Property be sold by the appellant within 12 months and that the

net sale proceeds be divided among the Ong siblings in equal one-sixth shares (see the Judgment at [184]–[191] and [194]).

19 The respondents' proprietary estoppel claim was, however, dismissed by the Judge. The Judge held that the appellant's general conduct of not asserting any control over matters concerning the Property over the years could not amount to a representation giving rise to a proprietary estoppel. There was scant evidence to show that the appellant was aware of what exactly the respondents were doing which was said to be consistent with their belief that they, too, were equal owners of the Property (see the Judgment at [171]–[172]). Furthermore, sufficient detrimental reliance on the respondents' part relating to the alleged representation had not been shown (see the Judgment at [174]).

20 The appellant appealed to the Appellate Division of the High Court against the Judge's decision. The appeal was transferred to the Court of Appeal on 8 October 2021 on the ground that it raised a point of law of public importance, *viz*, the proper interpretation of s 51(10) of the HDA.

The parties' cases

21 The parties' cases on appeal focus on three issues: (a) whether the Judge had erred in finding that there was a common intention constructive trust over the Property; (b) whether the doctrine of laches bars the respondents' claim; and (c) whether s 51(10) of the HDA bars the respondents' claim.

On the common intention constructive trust

22 First, the appellant seeks to challenge the Judge's finding that there was a common intention constructive trust over the Property. The appellant makes three submissions.

(a) First, that the respondents' inability to lead evidence of their direct contributions to the purchase price of the Property is fatal to their case that there is a common intention constructive trust over the Property.

(b) Second, that the respondents have not discharged their burden of proving a common intention constructive trust over the Property, and that there is no evidence of a common intention shared by the Ong siblings that the Property was to be held beneficially by all of them. Specifically, the appellant argues that:

(i) the Judge had erred in finding that the balance compensation moneys had been applied towards the setting up of Red Point;

(ii) the Judge had erred in finding that the reason for the Family Meeting was the appellant's purported covetous behaviour in relation to the Property;

(iii) the Judge had failed to consider that, based on the appellant's statements during the Family Meeting, he had conducted himself as if he was the sole beneficial owner; and

(iv) the respondents had tried to engineer the appearance of a common intention constructive trust by forcing the appellant to sign the Document at the Family Meeting, after their mother's passing.

(c) Third, that the lack of detrimental reliance on the part of the respondents is fatal to their claim that there is a common intention constructive trust over the Property.

23 In response, the respondents make the following submissions.

(a) It is not the case that a common intention constructive trust may only be inferred from direct financial contributions. In any case, the respondents had made direct financial contributions towards the purchase of the Property, given that the mortgage loan for the Property had been paid for entirely by funds that belonged beneficially to the Ong siblings (namely, the sub-tenancy rental proceeds from the Property and the earnings from Red Point).

(b) The Judge was correct to find that the respondents had proved the common intention constructive trust. The testimony of the respondents' witnesses was consistent and believable, whereas the appellant's evidence was confusing and unsatisfactory. Furthermore, the appellant's arguments regarding the Family Meeting have no merit in light of the Judge's factual findings regarding that meeting, which ought not to be disturbed.

(c) KG, SK and SM's taking of meagre salaries over the 28 years of their tenure with Red Point, and the free carpentry work carried out by CK, constitute detrimental reliance for the purposes of the common intention constructive trust.

On the doctrine of laches

24 The appellant further submits that the doctrine of laches applies to bar the respondents' claim because the respondents ought to have raised their interest in the Property while the parties' mother was still alive, and their failure to do so has prejudiced the appellant.

25 The respondents, on the other hand, submit that the doctrine of laches does not apply. There was no substantial lapse of time and the time taken for the respondents to assert their claim was reasonable in the circumstances. The respondents highlight the fact that the appellant had not exhibited any conduct showing that he intended to claim sole beneficial ownership of the Property while the parties' mother was still alive.

On s 51(10) of the HDA

26 Finally, the appellant submits that s 51(10) of the HDA applies to bar the respondents' claim, whether on the Eligibility Interpretation or on the Pre-Existing Interest Interpretation. On the Eligibility Interpretation, the respondents have not shown why they would be eligible to acquire the Property and would have an interest in the Property under a common intention constructive trust. On the Pre-Existing Interest Interpretation (which the appellant submits should be adopted by this court), the restriction in s 51(10) is unqualified and does not depend on eligibility, and instead encompasses any interest in the Property.

27 The respondents submit that s 51(10) of the HDA does not bar their claim. The Pre-Existing Interest Interpretation should not be adopted as it is against the weight of authority. In any case, even on that approach, the Judge was not prevented from ordering a sale of the Property and that the sale proceeds be distributed equally among the parties. This is because s 51(10) does not prevent a common intention constructive trust (or an equity in respect of the Property by virtue of the common intention constructive trust) from *arising*; it merely provides that the respondents cannot *acquire an interest in the Property* by it.

Issues to be determined

28 From the parties' arguments before us, three broad issues arise for our determination in this appeal:

(a) whether the Judge had erred in finding that the parties had a common intention to acquire the Property as a family asset, which would eventually be sold and the sale proceeds shared equally;

(b) whether the doctrine of laches bars the respondents' claim; and

(c) whether s 51(10) of the HDA bars the respondents' claim.

29 While the third issue, as our introductory remarks suggest, forms the focus of our analysis, we deal with it only after addressing the first and second issues as our decision on those issues provides an important backdrop to our decision on the third issue.

Common intention constructive trust

30 We begin with the issue of whether the Judge had erred in finding that the parties shared a common intention to acquire the Property as an income-generating family asset, which would eventually be sold and the sale proceeds shared equally to provide a "retirement fund" for each of them (see the Judgment at [92] and [107]). This finding was, in turn, based on the following key findings made by the Judge after considering all the evidence before him (including the credibility and cogency of the various witnesses' testimony):

(a) First, that the mortgage instalments for the loan taken out to finance the purchase of the Property were paid for using a *mixed fund*

which comprised mostly the sub-tenancy rental proceeds and the earnings from Red Point's business (see the Judgment at [82] and [85]).

(b) Second, that *Red Point itself* was set up using funds from the parties' mother and the compensation moneys, and that the parties' intention was always that it was a family business operated for the benefit of all the Ong siblings, such that the profits it generated belonged to the Ong siblings in equal shares (see the Judgment at [93] and [99]).

(c) Third, that the *compensation moneys* were treated by the Ong family as a communal or family fund to pay for the family's expenses and to set up businesses for the family's benefit. Thus, the Ong family had treated the Yishun Flats (which were acquired mainly using the compensation moneys) as assets that would ultimately be shared by all the Ong siblings (see the Judgment at [87]–[88]).

(d) Fourth, that the *parties' conduct in relation to the Property* was consistent with a common intention that it was to be shared beneficially by all of them, and that, at some later stage, the Property would be sold and the sale proceeds shared equally by them. The appellant's conduct over the years was consistent with his belief that the Property was part of the pool of family assets, instead of being beneficially owned by him solely. While there was no direct evidence that the parties and their mother had collectively met to discuss and agree that the Property should be held by the appellant on trust for the Ong siblings in 1995 (when the HDB offered the Property for sale to the appellant), there was sufficient evidence which showed that the acquisition of the Property was intended for the Ong family as a whole (just like the Yishun Flats and Red Point's business), and that this intention was known to and

shared by all the Ong siblings, including the appellant (see the Judgment at [100] and [107]).

31 This led the Judge to conclude that an assessment of the totality of the evidence supported the respondents' case that the Property and its sale proceeds were subject to a common intention constructive trust where the true beneficial owners were the respondents and the appellant in six equal shares (see the Judgment at [107]–[108]).

32 In our view, the appellant has provided no basis for disturbing the Judge's findings and conclusion on this point, which – we reiterate – were arrived at after a thorough consideration of the facts and the parties' evidence. We deal briefly with the various arguments raised by the appellant on appeal, none of which we found to be persuasive.

33 The first plank of the appellant's case in this regard is his submission that the respondents' inability to show that they made direct financial contributions to the purchase price of the Property is fatal to their claim that a common intention constructive trust exists over the same. We are unable to accept this submission either as a matter of law or as a matter of fact. On the *facts*, we see no reason to depart from the Judge's finding that the Property was paid for using a mixed fund comprising the sub-tenancy rental proceeds (the ownership of which is inextricably linked to the question of who beneficially owned the Property) and the earnings from Red Point, which belonged to all the Ong siblings in equal shares. In these circumstances, the use of Red Point's earnings to pay the mortgage instalments for the Property would suffice to show a direct financial contribution by the respondents to the purchase of the Property.

34 More importantly, as a matter of *law*, the appellant's fixation on direct financial contributions to the purchase price of the Property takes *too narrow* a view of the common intention constructive trust analysis. The authorities relied on by the appellant do not support such a narrow approach. Instead, the court is ultimately concerned with identifying whether the parties shared a *common intention* as to the beneficial interest in the property. Although direct financial contributions to the purchase price of that property are an important consideration, they are not the only basis upon which the court may infer such a common intention. This was clearly set out by this court in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*") at [97]:

> … X acquires a beneficial interest in a property by way of a common intention constructive trust when he relies to his detriment on a common intention that the beneficial interest in the property is to be shared. *Such a common intention may: (a) arise from an express discussion; or (b) take the form of an inferred common intention, as evidenced by direct financial contributions by X to the purchase price of the property; or (c) in exceptional situations, arise from other conduct by X which gives rise to an implied common intention.* … [emphasis added]

35 These principles were reiterated in *Su Emmanuel v Emmanuel Priya Ethel Anne and another* [2016] 3 SLR 1222 at [83], where this court observed that "the common intention … between the parties may either be express or inferred", and that "there must be *sufficient and compelling* evidence of the express or inferred common intention" [emphasis in original]. More recently, in *Geok Hong Co Pte Ltd v Koh Ai Gek and others* [2019] 1 SLR 908 ("*Geok Hong Co*") at [80], this court stated that an inferred common intention could arise from other forms of conduct in "exceptional situations", although "the focus remains very much on the financial contributions of the parties".

36 The present case is such an exceptional situation because *neither* the appellant *nor* the respondents can be said to have made any direct financial

contributions towards the purchase price of the Property in the typical manner, such as by using moneys from their personal bank accounts or Central Provident Fund ("CPF") accounts. Instead, the mortgage instalments were paid using primarily the sub-tenancy rental proceeds and Red Point's earnings. Thus, as we pointed out during the hearing to counsel for the appellant, Mr Choo Zheng Xi ("Mr Choo"), there is no *direct* evidence of *any* of the parties' direct financial contributions to the purchase price. In these circumstances, focusing on the parties' direct financial contributions in analysing their common intention would not be apposite, and the Judge was justified in inferring *from the totality of the evidence* that the parties' common intention was for each of them to have an equal beneficial share in the Property and its sale proceeds.

37 The second plank of the appellant's case is that the Judge had failed to appreciate that the respondents had not discharged their burden of proving that a common intention constructive trust existed over the Property, and had therefore erred in his findings of fact on various points (as summarised at [22(b)] above). It suffices to state that, in our judgment, the appellant's contentions in this regard are without merit, and there is no basis to disturb the specific findings of fact made by the Judge which the appellant takes issue with on appeal. These findings are far from being plainly wrong or against the weight of the evidence, which the Judge considered in meticulous detail before arriving at his conclusions.

38 The third and final plank of the appellant's case regarding the common intention constructive trust over the Property (aside from the effect of s 51(10) of the HDA, which we shall come to shortly) is that the lack of detrimental reliance by the respondents is fatal to their common intention constructive trust claim. The appellant relies on the Judge's finding (at [174] of the Judgment) that the respondents' mere acts of accepting allegedly "meagre salaries" at Red

Point and carrying out carpentry work for free did not constitute sufficient detrimental reliance. Further, the appellant submits that these acts must be considered alongside the benefits derived by the respondents, and in the context of the familial relationship – in particular, the fact that SK and SM lived at the Property rent-free, and that CK operated his audio business rent-free in one of the spaces in the Property.

39 We disagree. While detrimental reliance is indeed necessary to establish a claim under a common intention constructive trust (see the decision of this court in *Tan Thiam Loke v Woon Swee Kheng Christina* [1991] 2 SLR(R) 595 at [18] (citing the decision of the House of Lords in *Lloyds Bank Plc v Rosset* [1991] 1 AC 107 at 132–133); *Chan Yuen Lan* at [97]; and the High Court decision of *Lai Hoon Woon (executor and trustee of the estate of Lai Thai Lok, deceased) v Lai Foong Sin and another* [2016] SGHC 113 at [140]), there was in fact detrimental reliance by the respondents in the present case. Although the Judge did not couch his analysis in the express language of detrimental reliance, he considered how the respondents had conducted themselves in reliance on the parties' common intention regarding the Property. Specifically, he found that KG, SK and SM worked at Red Point for 28 years taking relatively meagre salaries because they regarded Red Point as a family business and they believed that the earnings of Red Point would be pooled with the family funds and used to service the mortgage loan on the Property, which they regarded as a family asset of which they each owned a part (see the Judgment at [101]); and that CK did renovation, fitting-out and carpentry work for the space which Red Point would occupy in the Property because he regarded Red Point and the Property as family assets (see the Judgment at [103]).

40 In this regard, the present case is clearly distinguishable from *Geok Hong Co*. In *Geok Hong Co*, this court held that undertaking renovation works

and withdrawing an HDB flat application did not constitute detriment for the purposes of a common intention constructive trust and/or proprietary estoppel. The court observed in that case that whatever equity that had arisen by virtue of the renovation works was extinguished by the fact that the claimant had enjoyed the benefits of such renovations and had lived rent-free in the property for over 15 years. Furthermore, it was speculative whether the claimant could have made capital gains if he had obtained his own HDB flat (see *Geok Hong Co* at [91]–[92]). The detriment suffered by the respondents in this case *clearly exceeds* the detriment alleged in *Geok Hong Co*. Not only did the respondents take meagre salaries for 28 years and do carpentry work for free, they also consented to Red Point's earnings (which belonged beneficially to all of them) being used to pay the mortgage instalments for the Property. The appellant's reliance on the fact that SK and SM lived at the Property rent-free and CK operated his own business rent-free from the Property is also misguided as this conduct is in fact *consistent* with the existence of the common intention constructive trust, given that the appellant's consent does not appear to have been expressly sought or required for the Property to be used in this way when these arrangements began.

41 Further, although the Judge was "unconvinced that the mere act of accepting 'meagre salaries' at Red Point and working on carpentry work for free would suffice as detrimental reliance" (see the Judgment at [174]), this was in the context of the respondents' claim in *proprietary estoppel*. Given the conceptual differences between proprietary estoppel and common intention constructive trusts, the Judge's observation that there was no detrimental reliance for the purposes of proprietary estoppel does not necessarily mean that there was no detrimental reliance for the purposes of the common intention constructive trust. In the context of proprietary estoppel, the detriment must be suffered in reliance on the relevant *representation* (see, for example, *Geok Hong*

Co at [94] and the Judgment at [174]); whereas in the context of a common intention constructive trust, the relevant detriment is that suffered in reliance on the *common intention* as to the sharing of the beneficial interest in the property (see, for example, *Chan Yuen Lan* at [97]). While the respondents' acts may not be referable to any *representation* made by the appellant, the Judge's findings set out at [39] above show that these acts were carried out in reliance on the *common intention* that the Red Point business and the Property were family assets of which the parties each owned a part. In our view, there was sufficient detrimental reliance by the respondents to found their common intention constructive trust claim.

42 Thus, none of these submissions takes the appellant very far. Indeed, as Mr Choo acknowledged during the hearing, the strongest point the appellant could raise to challenge the Judge's findings regarding the common intention constructive trust was that the legal title to the Property was registered in the appellant's sole name, in contrast to the Yishun Flats which were registered in the joint names of either the parties' parents (in the case of Unit 172) or the appellant and CK (in the case of Unit 174). This, however, misses the mark. While the manner in which the different properties were registered is certainly *one* consideration in ascertaining the parties' common intention, it is far from being conclusive, and it must be viewed in its proper context and weighed against all the other evidence. The Judge was no doubt cognisant of the manner in which the Yishun Flats were held, and went on to remark that the parties "treated those Yishun [F]lats not much differently from the [Property]" (see the Judgment at [88]–[90]). Yet, having considered the totality of the evidence before him, the Judge ultimately concluded that – notwithstanding the fact that the Property was registered in the appellant's sole name – the parties shared a common intention that the Property was a family asset, the sale proceeds of

which would be shared equally among all of them. For the reasons we have set out above, we affirm this conclusion and the Judge's decision in this respect.

Doctrine of laches

43 The appellant's next submission is that the doctrine of laches bars the respondents' claim. The appellant argues that it was unconscionable for the respondents not to have asserted their beneficial interest in the Property while the parties' mother was still alive, and that the respondents have provided no satisfactory explanation for not doing so. The parties' mother now cannot be cross-examined, and this is prejudicial to the appellant as she would have been a key witness who could have attested to the parties' common intention regarding the Property and whether the compensation moneys were applied towards starting the Red Point business for the benefit of the entire Ong family.

44 Preliminarily, and as the appellant rightly acknowledged, this is a new point that was not argued before the Judge. The appellant did not seek the court's leave to introduce this point as required under O 57 r 9A(4)(*b*) of the Rules of Court (2014 Rev Ed) ("the ROC"). Nevertheless, the respondents did not object to this point being raised and responded substantively to it in their Respondents' Case. Moreover, as this point can be determined on appeal without further evidence (see the decision of this court in *Liew Kit Fah and others v Koh Keng Chew and others* [2020] 1 SLR 275 at [14]), we see no obstacle to considering it.

45 However, the appellant's submission on the doctrine of laches fails on the merits. The applicable principles are well-established. Citing the High Court decision of *Cytec Industries Pte Ltd v APP Chemicals International (Mau) Ltd* [2009] 4 SLR(R) 769 at [46], this court explained at [97] of *Geok Hong Co* that:

> Laches is a doctrine of equity. It is properly invoked where essentially there has been a *substantial lapse of time* coupled with *circumstances where it would be practically unjust to give a remedy* either because the party has by his conduct done that which might fairly be regarded as equivalent to a waiver thereof; or, where by his conduct and neglect he had, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him, if the remedy were afterwards to be asserted … This is a broad-based inquiry and it would be relevant to consider the *length of delay before the claim was brought*, the *nature of the prejudice said to be suffered by the defendant*, as well as any element of *unconscionability* in allowing the claim to be enforced … [emphasis in original omitted; emphasis added]

46 On the facts of the present case, there is no basis for the doctrine of laches to bar the respondents' claim. As the Judge observed, it was only *after* the death of the parties' mother in 2016 that the appellant "started acting in a way which caused the [respondents] to believe that he would attempt to claim beneficial ownership over the [Property]" (see the Judgment at [19]). Specifically, around late 2017 to early 2018, the appellant began to assert sole beneficial ownership of the Property. For example, he made a police report claiming that he owned the Property entirely; demanded rent from KG, SK and SM for use of the premises for Red Point's business; and forced SK and SM to move out from the second floor of the Property (see the Judgment at [18]–[21]). The proceedings in the suit were commenced by the respondents several months later, on 27 December 2018.

47 The appellant claims that he had requested CK to remove his items from the Property as early as 2014, and that the respondents could have asserted their beneficial interest in the Property at that time. However, we agree with the respondents that this is based on thin evidence – namely, a few comments made by the appellant during the Family Meeting. Furthermore, the appellant's request to CK did not necessarily indicate that the appellant was thereby trying to assert his beneficial ownership to the exclusion of the respondents. This only

became clear in late 2017 to early 2018 when, despite having signed the Document, the appellant began to take active steps to exclude the respondents from the Property.

48 In our judgment, the present case is distinguishable from the rather exceptional facts of *Geok Hong Co* itself, on which the appellant seeks to rely. In *Geok Hong Co*, the party's failure to take steps to assert his alleged beneficial interest spanned a substantial period of almost 40 years, with no reasonable explanation for the "inordinate" delay, and that party (who had since passed on) was the *only* person then still alive who was privy to the alleged oral representation which would have supported his claim to be entitled to a beneficial interest in the property, which he asserted by way of a statutory declaration mere days before he passed on. In those circumstances, this court found that it was "unconscionable for [that party] not to have taken any step to establish his claim long before he passed on", and that this was extremely prejudicial to the other party who was deprived of an opportunity to cross-examine witnesses on various matters that would have been essential to the claim (see *Geok Hong Co* at [98] and [100]–[101]).

49 In the present case, given that the appellant only began asserting sole beneficial ownership of the Property in late 2017 to early 2018, and the respondents commenced proceedings against him in December 2018 (less than two years later), it cannot be said that there was a substantial lapse of time, and these facts provide a reasonable explanation for the respondents asserting their beneficial interest in the Property only after the parties' mother had passed on. Further, there are no circumstances that would make it practically unjust for the respondents to be granted a remedy, particularly because the parties' mother was not the only witness who could give evidence on the parties' common

intention regarding the Property. Accordingly, we reject the appellant's submission based on the doctrine of laches.

Section 51(10) of the HDA

50 We turn now to the issue that, in our view, lies at the heart of this appeal: the proper interpretation of s 51(10) of the HDA, and consequently its effect on the respondents' common intention constructive trust claim. Section 51(10) and the two sub-provisions that precede it (ss 51(8) and 51(9)) provide as follows:

> **Property not to be used as security or attached, *etc.*, and no trust in respect thereof to be created without approval of Board**
>
> **51.**— … (8) No trust in respect of any protected property shall be created by the owner thereof without the prior written approval of the Board.
>
> (9) Every trust which purports to be created in respect of any protected property without the prior written approval of the Board shall be null and void.
>
> (10) *No person shall **become entitled** to any protected property (or any interest in such property) under any resulting trust or constructive trust whensoever created **or arising.***
>
> [emphasis added in italics and bold italics]

51 It was common ground between the parties that the Property was "protected property" within the meaning of s 51(10) (see the Judgment at [141]). The appellant urges us to adopt the Pre-Existing Interest Interpretation preferred by the Judge on the ground that the restriction in s 51(10) is unqualified and broadly framed, and that its language does not distinguish between eligible and ineligible persons. Nevertheless, Mr Choo was prepared to accept that the Eligibility Interpretation was also a valid interpretation of s 51(10). The respondents submit that the Eligibility Interpretation should be preferred on a purposive approach to s 51(10), and that the Pre-Existing Interest Interpretation is against the weight of authority. Counsel for both parties, however, were

careful to argue that the outcome they advocated for would follow from *either* interpretation of s 51(10).

52 In our judgment, based on a purposive and contextual approach to s 51(10) of the HDA, it is clear that the Eligibility Interpretation is correct. We elaborate on our reasons for preferring the Eligibility Interpretation before going on to consider its application to the facts of the present case.

Evolution of the provision and the two interpretations

53 It is helpful to first set out how the provisions which eventually became ss 51(8)–51(10) of the HDA have evolved over the years, and how they have been interpreted by the courts thus far.

Section 36E(4) of the 1959 Ordinance and s 44(4) of the 1970 HDA

54 The origin of these provisions has tended to be traced back to, at the earliest, s 44(4) of the Housing and Development Act (Cap 271, 1970 Rev Ed) ("the 1970 HDA") (see, for example, the decision of this court in *Cheong Yoke Kuen and others v Cheong Kwok Kiong* [1999] 1 SLR(R) 1126 ("*Cheong Yoke Kuen*") at [18] and *Lim Kieuh Huat (HC)* at [91]). However, the very first iteration of what later became s 51(9) of the HDA was in fact s 36E(4) of the Housing and Development Ordinance 1959 (No 11 of 1959) ("the 1959 Ordinance"). This provision, introduced in 1964 by s 9 of the Housing and Development (Amendment) Ordinance 1964 (No 10 of 1964) ("the 1964 Amendment Ordinance"), stated as follows:

> **Implied conditions as to flats**
>
> **36E.**— … (4) Every trust or alleged trust, whether such trust be express, implied or constructive, which purports to be created in respect of any such flat [*ie*, a flat sold by the HDB] by the

> owner thereof shall be null and void and shall be incapable of being enforced by any court.

55 This provision later became s 44(4) of the 1970 HDA, which (as amended by s 6 of the Housing and Development (Amendment) Act 1971 (Act 15 of 1971)) provided as follows:

> **Implied conditions as to flats**
>
> **44.**— … (4) Every trust or alleged trust, whether the trust is express, implied or constructive, which purports to be created in respect of any such flat, house or other building by the owner thereof shall be null and void and shall be incapable of being enforced by any court.

Sections 51(4) and 51(5) of the 1997 HDA

56 Pursuant to s 3 of the Housing and Development (Amendment) Act 1984 (Act 30 of 1984), s 44(4) of the 1970 HDA was replaced by ss 44(4)(*a*) and 44(4)(*b*) – and was renumbered ss 51(4)(*a*) and 51(4)(*b*) in the 1985 Revised Edition of the Housing and Development Act (Cap 129, 1985 Rev Ed) ("the 1985 HDA"). These last-mentioned provisions were subsequently renumbered as ss 51(4) and 51(5) in the 1997 Revised Edition of the Housing and Development Act (Cap 129, 1997 Rev Ed) ("the 1997 HDA") respectively, which stated as follows:

> **Flats, houses or other buildings not to be attached, etc., and no trust in respect thereof to be created without approval of Board**
>
> **51.**— … (4) No trust in respect of any such flat, house or other building shall be created by the owner thereof without the prior written approval of the Board.
>
> (5) Every trust which purports to be created in respect of any such flat, house or other building without the prior written approval of the Board shall be void.

57 These provisions were considered by this court in *Cheong Yoke Kuen*. That case concerned a sibling dispute over the ownership of an HDB flat. The flat had initially been held jointly by the respondent and the parties' mother. Subsequently, the respondent transferred his legal interest in the flat to his mother after buying another HDB flat with his family. After their mother passed away, the appellants (who were his siblings) claimed that the flat formed part of their mother's estate such that all the siblings were entitled to an equal share of the flat. On the other hand, the respondent contended that, as he had paid the purchase price and all outgoings even after their mother's death, he was the beneficial owner of the flat by operation of a resulting trust.

58 The issue before the court was whether the alleged resulting trust was prohibited by s 51(4) and void under s 51(5) of the 1997 HDA, which in turn required a consideration of whether the resulting trust was "created" for the purpose of these provisions. The court referred (at [18]) to the Parliamentary speech by the then Minister for National Development, Mr Teh Cheang Wan ("Mr Teh"), which stated as follows (see *Singapore Parliamentary Debates, Official Report* (24 August 1984) vol 44 at col 2025):

> As the Act now stands, no trust in any form can be created in respect of an HDB dwelling or property. *The original intention of this provision was to prevent abuse by persons not eligible for HDB flats from purchasing a flat in the name of nominees.* Over the years, however, *there has been increasing need for the HDB to permit the creation of trusts for legitimate reasons.* For example, it is necessary to empower trustees to hold flats in trust for minor children who are citizens in the event of death of the lessee parent, and where the surviving parent is neither a citizen nor a permanent resident and therefore not eligible to assume ownership of the flat. Similarly, in some cases of legal separation or divorce, flats have to be held in trust for minor children until they reach the age of 21 years. *Clause 3 of this Amendment Bill, therefore, seeks to allow a trust to be created in respect of an HDB dwelling provided such trust is approved by the Board.* [emphasis added]

59 In holding that the resulting trust in the respondent's favour *was* prohibited and void, this court reasoned as follows:

(a) First, despite the relaxation of the prohibition in s 44(4) of the 1970 HDA to permit the creation of trusts with the HDB's prior written approval *via* the introduction of ss 51(4) and 51(5), "the underlying purpose of the prohibition remain[ed] unchanged". This purpose would be undermined if a resulting trust arising from the purchaser's payment of the purchase price of the property was permitted, notwithstanding that any *express* trust attempted to be created by the purchaser and nominee without the HDB's approval would be prohibited. This "would give rise to a highly unsatisfactory result and would open the way to abuse by persons who would and could easily purchase HDB properties through nominees", which "would frustrate the policy of the [1997 HDA] and could not have been intended by Parliament" (see *Cheong Yoke Kuen* at [19]).

(b) Second, by transferring his entire interest in the flat to his mother while intending to remain the beneficial owner of the flat and for his mother to hold the flat on trust for him, the respondent had "in effect 'created' a trust of the flat in his favour". Accordingly, the resulting trust had been "created" by the respondent within the meaning of ss 51(4) and 51(5) of the 1997 HDA (see *Cheong Yoke Kuen* at [20]).

60 The next case concerning ss 51(4) and 51(5) of the 1997 HDA was the High Court's decision in *Sitiawah Bee bte Kader v Rosiyah bte Abdullah* [1999] 3 SLR(R) 606 ("*Sitiawah*"). This case concerned a dispute between a mother and a daughter over an HDB flat that they had purchased in their names as joint tenants. S Rajendran J found that the contributions of the mother and

the daughter towards the purchase of the flat were approximately in the ratio of 23:77. Thus, applying ordinary "equitable considerations", an equitable tenancy in common existed whereby the mother held a 23% share in the flat while the daughter held 77% (see *Sitiawah* at [10] and [12]).

61 Rajendran J then considered whether this resulting trust survived the application of s 51(4). He first held that, as the parties had initially purchased the flat as joint tenants and had no express intention of creating any trust at that time, the resulting trust in this case had not been "created" but instead arose by presumption of law. There was no policy objection to affirming the resulting trust in these circumstances; a tenancy in common at law would have been acceptable to the HDB if the parties had arranged for it, and the parties had no intention of flouting any HDB requirements. Citing the same Ministerial speech referred to in *Cheong Yoke Kuen*, Rajendran J observed that "the underlying intent of s 51(4) was to prevent ineligible persons … from using such trusts to acquire interests in HDB flats, and thereby circumvent the intention of Parliament to confer the privileges of HDB housing only on persons fulfilling certain eligibility criteria" (see *Sitiawah* at [13]–[15]).

62 Rajendran J also explained that this court in *Cheong Yoke Kuen* "was not … making a blanket statement that all resulting trusts would be void under s 51(4)". Instead, *Cheong Yoke Kuen* "must be interpreted in the negative to mean simply that not all resulting trusts are outside the scope of the section". Thus, a resulting trust would be prohibited under s 51(4) "[i]f a party sets about creating a situation where a resulting trust will arise in his favour *in order to circumvent the provisions of the HDB flat*" [emphasis added] (see *Sitiawah* at [20]). Accordingly, Rajendran J distinguished *Cheong Yoke Kuen* on the basis that the resulting trust in that case had been "created" by the respondent "when he divested his legal interest in the flat to his mother … in order to make it

appear that he had no interest in the first flat which violated s 51(4) of the [1997 HDA]". In contrast, in *Sitiawah*, there was "no intention on the part of any party to 'create' a resulting trust to defeat the objectives of the [1997 HDA]". On the contrary, the parties' conduct "was within the parameters set by the HDB and they at all times remained the registered owners of the flat" (see *Sitiawah* at [19]).

63 *Cheong Yoke Kuen* and *Sitiawah* were considered by Judith Prakash J (as she then was) in the High Court decision of *Neo Boh Tan v Ng Kim Whatt* [2000] SGHC 31 ("*Neo Boh Tan*"). Similarly to *Sitiawah*, this case involved an HDB flat which had been jointly purchased by a mother and her son. Subsequently, the relationship between the parties became strained and the son moved out. The mother sought a declaration that she was absolutely entitled to the flat and to have the title in the flat transferred entirely to her. In allowing the mother's claim, Prakash J found that she had been the sole contributor to the purchase price of the flat, and that if the flat were private property, the son would hold the whole of his legal share on trust for his mother (see *Neo Boh Tan* at [10] and [12]). Furthermore, ss 51(4) and 51(5) did not bar the mother's claim, for the following reasons.

> (a) First, the original legislation, which "did not even admit the possibility of a trust over an HDB flat being created with the consent of the HDB", was intended to "prevent abuse by persons not eligible for HDB flats from purchasing a flat in the name of a nominee". The introduction of ss 51(4) and 51(5) represented Parliament's recognition that this "evil … could be eliminated without also eliminating all possibility of creating a trust over an HDB flat" (see *Neo Boh Tan* at [14]).

(b) In *Cheong Yoke Kuen*, the respondent had "deliberately created the impression that he no longer had any legal or beneficial interest in the first flat". Although he "had not in the literal sense of the word 'created' a trust by executing a trust document, he had taken a deliberate action to misrepresent the ownership situation and thereby create the appearance of sole ownership in his mother whilst all along intending to retain his own beneficial interest in the first flat". The court in *Cheong Yoke Kuen* thus "gave a purposive definition to the word 'created' … so as to ensure that the legislative intent to prevent nominee ownership would not be flouted" (see *Neo Boh Tan* at [17]–[18]).

(c) In contrast, the parties in *Neo Boh Tan* itself "had no intention of circumventing any HDB regulation or policy" and did not do so. Accordingly, the resulting trust in this case, which arose by way of legal implication, "was not created by the [mother] either literally or in the sense given to that word by the Court of Appeal [in *Cheong Yoke Kuen*]". It could thus be given effect to and was not rendered void by s 51(5) (see *Neo Boh Tan* at [17]–[19]).

(d) Prakash J also agreed with the reasoning of Rajendran J at [14]–[15] and [20] of *Sitiawah* (as summarised above), and adopted it as an additional ground for the finding that the trust in *Neo Boh Tan* was valid and enforceable (see *Neo Boh Tan* at [24]).

Section 51(6) of the 2004 HDA

64 Following these cases, the 2004 Revised Edition of the Housing and Development Act (Cap 129, 2004 Rev Ed) ("the 2004 HDA") was enacted. Section 6 of the Housing and Development (Amendment) Act 2005 (Act 29 of

2005) then introduced an additional provision in s 51 – s 51(6) – which read as follows:

> **Flats, houses or other buildings not to be attached, etc., and no trust in respect thereof to be created without approval of Board**
>
> **51.—** … (6) No person shall become entitled to any such flat, house or other building under any resulting trust or constructive trust, whensoever created.

65 Section 51(6) was considered in *Tan Chui Lian*. A father and son had purchased an HDB flat as joint tenants. Subsequently, the father unilaterally severed the joint tenancy and, in his will, bequeathed his share in the HDB flat to his wife. Upon the father's death, the son sought an order that the flat be sold and the net sale proceeds divided in the ratio of the parties' contributions towards its purchase.

66 Turning first to ss 51(4) and 51(5) of the 2004 HDA (which were retained from the 1997 HDA), Menon JC (as he then was) observed that these provisions prohibited the creation of express trusts. They also prohibited "any trust that could in some way be said to have been 'created' through a connivance between the parties even if the form of the transaction was such that it might have given rise to a resulting trust" (see *Tan Chui Lian* at [8]).

67 Next, in considering the effect of s 51(6) of the 2004 HDA, Menon JC had regard to the Parliamentary speech of the then Minister for National Development, Mr Mah Bow Tan ("Mr Mah") (see *Singapore Parliamentary Debates, Official Report* (15 August 2005) vol 80 at col 1259):

> Clause 6 of the Bill amends section 51 to make it clear that, in addition to prohibiting the voluntary creation of trusts over an HDB flat, the [2004 HDA] also prohibits any person from becoming entitled to a [*sic*] HDB flat under a resulting trust or constructive trust. *This will help to prevent a situation where a*

> *person who is ineligible to own an HDB flat may become entitled to own one, for example, by paying the purchase price of the flat on behalf of the owner.* [emphasis added]

68 Based on this speech, Menon JC analysed Parliament's intention behind s 51(6) of the HDA as follows (see *Tan Chui Lian* at [10]):

> It becomes clear when one has regard to that statement that Parliament's intention was *not* to prevent any interest in an HDB flat arising under a resulting trust or a constructive trust regardless of the circumstances, but rather ***to prevent any entitlement to own an HDB flat arising in favour of a person by virtue of the law implying a resulting or constructive trust, where that person would otherwise have been ineligible to acquire such an interest***. In my judgment, having regard to the mischief underlying the section, the provision was not intended to have any application where the parties concerned were already entitled to some interest in the property and therefore no issue could arise as to their eligibility to such entitlement. In such circumstances, the parties concerned would not be claiming to *become* entitled to own an interest in the flat by virtue of the implied trust and ***there would be no concern of their bypassing the eligibility criteria set by the HDB from time to time***. [emphasis in italics in original; emphasis added in bold italics]

69 Menon JC held that two further points supported this view of s 51(6):

(a) First, both s 51(6) and Mr Mah's statement used the phrase "become entitled", which could be contrasted with the much plainer and simpler formulations "be entitled to any interest in" or "acquire any interest in" (see *Tan Chui Lian* at [11]).

(b) Second, the effect of *Cheong Yoke Kuen* was "that a person could not acquire an interest in an HDB flat through a constructive or resulting trust if he was ineligible to do so under the provisions of the [HDA] and the HDB's eligibility criteria". To construe s 51(6) (which was enacted with retrospective effect) as going further than *Cheong Yoke Kuen* would mean that Parliament was "retrospectively displacing accrued

property rights". There was nothing in Mr Mah's speech to suggest that this was intended in the enactment (see *Tan Chui Lian* at [12]–[15]).

70 Applying this interpretation of s 51(6), as there was no suggestion that either party was ineligible or did not already have some entitlement to the flat, Menon JC held that s 51(6) had no application (see *Tan Chui Lian* at [17]).

Section 51(10) of the HDA

71 In 2010, the HDA was amended once again by s 5 of the Housing and Development (Amendment) Act 2010 (Act 18 of 2010), such that ss 51(4)–51(6) were renumbered as ss 51(8)–51(10) and read as follows:

> **Property not to be used as security or attached, *etc*., and no trust in respect thereof to be created without approval of Board**
>
> **51.**— … (8) No trust in respect of any protected property shall be created by the owner thereof without the prior written approval of the Board.
>
> (9) Every trust which purports to be created in respect of any protected property without the prior written approval of the Board shall be null and void.
>
> (10) *No person shall **become entitled** to any protected property (or any interest in such property) under any resulting trust or constructive trust whensoever created **or arising.***
>
> [emphasis added in italics and bold italics]

72 Notably, s 51(10) of the HDA is substantially similar to s 51(6) of the 2004 HDA, which was considered in *Tan Chui Lian*. The only real difference is that the words "or arising" have been added to the end of s 51(10).

73 Section 51(10) of the HDA was considered by Prakash J (as she then was) in the High Court decision of *Koh Cheong Heng v Ho Yee Fong* [2011] 3 SLR 125 ("*Koh Cheong Heng*"). In that case, the issue was whether

the doctrine of *donatio mortis causa* offended s 51(10). Turning first to the amended HDA provisions, Prakash J opined that Menon JC's interpretation in *Tan Chui Lian* remained good law under s 51(10) (see *Koh Cheong Heng* at [56]):

> Although the amended legislation includes the words "or arising" at the end of the relevant provision, *in my opinion the addition of the words "or arising" only clarify that a "resulting trust" or a "constructive trust" may be more properly said to arise by operation of law, rather than by the creation of parties.* It is neither evident from Hansard, nor from the plain reading of the provision, that Parliament was seeking to change the legal position as it stood in *Tan Chui Lian*. Indeed, if such a change was deemed necessary, Parliament could have said for instance, "No person shall become entitled, *regardless of eligibility*, …". This Parliament did not do. Furthermore, the words "become entitled", which formed the basis for Menon JC's judgment, were left unchanged by Parliament. As Menon JC expressly noted in his judgment, it would have been much "plainer and simpler" for Parliament to have said that no person shall "be entitled to any interest in" an HDB flat if Parliament were indeed minded to prohibit *all* trusts, regardless of the beneficiary's eligibility (*Tan Chui Lian* at [11]). Again, Parliament did not make such a change. *Accordingly, in my view, the law regarding creation of trusts over HDB property remains as stated in* Tan Chui Lian. [emphasis added]

74 Thus, Prakash J concluded that "resulting and constructive trusts are not precluded by the HDA if the beneficiary is eligible to own an HDB flat" (see *Koh Cheong Heng* at [57]). Accordingly, as the plaintiff was an eligible person, the doctrine of *donatio mortis causa* did not offend s 51(10) of the HDA. To conclude otherwise "would unfairly, and unnecessarily, impinge upon the rights of HDB flat owners to deal with their flats" and "would also be inconsistent with the intention of Parliament in enacting s 51(10), *viz*, to prevent ineligible persons from obtaining any interest in an HDB flat" (see *Koh Cheong Heng* at [57]).

75 Following *Koh Cheong Heng*, the approach adopted in *Tan Chui Lian* has been followed in most High Court decisions, which have treated ***eligibility*** as the primary determinant of whether s 51(10) of the HDA precludes a claim under a resulting or constructive trust. We set out some examples below:

(a) In the High Court decision of *Low Heng Leon Andy v Low Kian Beng Lawrence (administrator of the estate of Tan Ah Kng, deceased)* [2013] 3 SLR 710 ("*Low Heng Leon Andy*") at [18]–[21], Quentin Loh J (as he then was) held that the objective of s 51(10) was "to prevent ineligible persons from taking an interest in HDB flats" by "prevent[ing] an ineligible person from taking an interest in the flat as a result of any transaction or transfer which might purport to do so". The words "become entitled" suggested that ineligible persons who were not allowed to have an interest in HDB flats could not have such an interest just because they were beneficiaries under a resulting or constructive trust.

(b) In the High Court decision of *BWU and another v BWW and another matter* [2019] SGHC 128 at [5] and [9], Choo Han Teck J observed that s 51(10) complemented s 47(1) of the HDA (which placed certain restrictions on the purchase of HDB property) by preventing ineligible persons from acquiring an interest in HDB flats via a resulting or constructive trust implied by law, and held that s 51(10) thus prohibited one of the plaintiffs (who was an ineligible person) from being entitled to any interest in the flat by way of a constructive trust.

(c) In the High Court decision of *Philip Antony Jeyaretnam and another v Kulandaivelu Malayaperumal and others (Thirumurthy Ayernaar Pamabayan, third party; Pramela d/o Govindasamy and*

another, non-parties) [2020] 3 SLR 738 at [26] and [29], Debbie Ong J held that, as there was no dispute that the plaintiffs were not eligible persons for the purposes of the HDA, s 51(10) applied and there could be no constructive trust over the HDB flat. Accordingly, there was no basis to order a sale of the flat.

(d) In the High Court decision of *Ong Swee Geok and another v Gee Ah Eng* [2021] 5 SLR 726 ("*Ong Swee Geok*") at [25]–[29], Maniam JC applied the interpretation that s 51(10) prevents a person who is ineligible to acquire an HDB flat from obtaining or becoming entitled to an interest in such a flat by way of a resulting or constructive trust. As the applicants had expressly accepted that they were ineligible to acquire the flat, Maniam JC held that s 51(10) applied to bar their claim to the beneficial interest in the flat.

76 The exception to the line of case law summarised above is Maniam JC's decision in *Lim Kieuh Huat (HC)*, which preceded his decision in *Ong Swee Geok*. That case concerned two flats which were purchased, a few years apart, in the sole name of the plaintiffs' son, with the first flat having been gazetted for compulsory acquisition by the government before either flat was purchased. The plaintiffs claimed that they had paid for the flats in full, and that they had a common understanding with their son that they were the owners of those flats. According to the plaintiffs, they had registered the flats under their son's name to avoid incurring an HDB resale levy. Thus, they contended that they were the beneficial owners of the flats on a resulting trust or a common intention constructive trust.

77 In rejecting the plaintiffs' claim, Maniam JC first held that the purported creation of a trust over the flats without the HDB's prior written approval was

prohibited by s 51(8) and null and void under s 51(9) of the HDA. Maniam JC emphasised that the alleged trust had been created with the express intention of circumventing HDB regulation or policy in relation to the payment of resale levies and eligibility for HDB housing loans. In doing so, the plaintiffs created a façade that their son was the sole owner of the flats and deliberately misrepresented the ownership situation (see *Lim Kieuh Huat (HC)* at [48], [57], [62], [67] and [69]).

78 Maniam JC went on to hold that s 51(10) *also* applied to defeat the plaintiffs' claim. Maniam JC opined that s 51(10) "draws no distinction between eligible and ineligible persons, in relation to whether they can 'become entitled' to an HDB flat", and "does not merely apply to bar otherwise ineligible owners from becoming entitled to an HDB flat (or an interest in it) under a resulting trust or a constructive trust" (see *Lim Kieuh Huat (HC)* at [80] and [86]). In this regard, Maniam JC distinguished *Tan Chui Lian*, *Neo Boh Tan* and *Sitiawah* on the basis that in those cases, the parties had been registered co-owners of the flats in question and there was also no issue as to their eligibility. Furthermore, in those cases, "there was no intention to circumvent any HDB regulation or policy, and the court was simply asked to determine the parties' beneficial interests in the properties". In contrast, this case involved "nominee ownership", where the plaintiffs were not registered owners and their purported interests were "hidden from the HDB" (see *Lim Kieuh Huat (HC)* at [84]).

79 In *Lim Kieuh Huat v Lim Teck Leng and another and another appeal* [2021] 1 SLR 1328 ("*Lim Kieuh Huat (CA)*"), this court dismissed the appeal against Maniam JC's decision. The court observed that, on the plaintiffs' own evidence, the entire arrangement in relation to the flats was a "nominee arrangement", *ie*, "an intentional arrangement for them to avoid paying the

resale levy and for the [son] to be able to obtain a housing loan, while they held the beneficial interest in the flats". This would be a trust which was "created" or "purports to be created", in the language of ss 51(8) and 51(9) of the HDA. The plaintiffs having failed to obtain the HDB's prior written approval, the purported trust was null and void under s 51(9) (see *Lim Kieuh Huat (CA)* at [11]).

80 Furthermore, this court found that as the plaintiffs were ineligible to purchase the second flat without paying the resale levy, they were precluded by s 51(10) of the HDA from claiming beneficial ownership of the second flat. In this regard, this court held that (see *Lim Kieuh Huat (CA)* at [14]):

> … The concept of 'eligibility' is not a merely notional one. It does not turn on whether a person could conceivably apply for an HDB flat, considered abstractly. Instead, *the question must be whether the particular person could purchase the particular flat, and what conditions must be met before that purchase would be approved.* Any other view would diminish the limitations that have been clearly set out in the authorities. … [emphasis added]

81 As for Maniam JC's holding that s 51(10) would prevent even an otherwise eligible owner from obtaining an interest under a resulting or constructive trust if that person did not already have an interest in the flat in question (*ie*, the Pre-Existing Interest Interpretation), this court observed that "this might go further than the existing authorities which have hitherto focused on ineligibility as the central consideration in determining whether s 51(10) … precluded a claim". However, as it was not necessary to determine this issue, and given the plaintiffs' ineligibility, this issue was expressly left open (see *Lim Kieuh Huat (CA)* at [13]).

82 In the Judgment, the Judge indicated that he was tentatively inclined to prefer the Pre-Existing Interest Interpretation of s 51(10) of the HDA proposed in *Lim Kieuh Huat (HC)*. The Judge provided two broad reasons for this view:

(a) First, the focus on eligibility in the cases preceding *Lim Kieuh Huat (HC)* – particularly *Tan Chui Lian* and *Koh Cheong Heng* – was not conclusive of whether s 51(10) *should* bear such an interpretation. This was because those cases did not involve situations where the plaintiff *did not already have an interest in the disputed HDB property*, but was otherwise eligible to own the property (see the Judgment at [152]).

(b) Second, statutory interpretation must accord primacy to the text of s 51(10), which bars *anyone* from becoming entitled to any interest in HDB property under a constructive or resulting trust, without drawing any distinction between eligible and ineligible persons. To read s 51(10) as applying only to *ineligible* persons would require the phrase "entitled to … any interest in such property" to mean "entitled *to become eligible to own* an interest in such property" [emphasis in original], or the term "entitled" to be equated with "eligible to own". This would stretch the words of s 51(10) "beyond their natural and ordinary meaning" (see the Judgment at [153]).

83 The most recent decision on s 51(10) of the HDA is that of the Appellate Division of the High Court in *Lim Choo Hin (as the sole executrix of the estate of Lim Guan Heong, deceased) v Lim Sai Ing Peggy* [2021] SGHC(A) 22 ("*Lim Choo Hin*"). The parties' father was initially the sole registered proprietor of an HDB flat, but the respondent subsequently became registered as a joint tenant of the flat. Upon their father's death, the legal title to the flat devolved to the

respondent pursuant to the right of survivorship. The applicant sought a declaration that the respondent held the flat on trust for their late father's estate. In response, the respondent argued that any trust in respect of the flat would be prohibited under ss 51(8) or 51(9) of the HDA.

84 The Appellate Division first found that the respondent held the flat on resulting trust for her father's estate, as the parties' father had not intended to gift a beneficial interest in the flat to her (see *Lim Choo Hin* at [23]–[24]). Section 51(10) of the HDA, rather than ss 51(8) and 51(9), was applicable because the trust was in the nature of a resulting trust, not an express trust. Nevertheless, the resulting trust did not contravene s 51(10) because, regardless of which interpretation of s 51(10) was adopted, it was "clear that … s 51(10) does not extend to situations where the person in whose favour the trust arises *already* has an interest in the flat in question" [emphasis in original] and thus cannot be said to have "become entitled" to an interest in the flat by virtue of a resulting or constructive trust. As the parties' father had already possessed an interest in the flat before the respondent became a registered joint tenant, he did not "become entitled" to an interest in the flat by virtue of the resulting trust in his favour (see *Lim Choo Hin* at [28]). Thus, the declaration of trust was granted.

The preferable interpretation

85 Having surveyed the existing case law on the interpretation of s 51(10) of the HDA and its predecessors, we come now to the central question of which interpretation should be preferred. Applying the well-established principles of purposive statutory interpretation set out by this court in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*") at [37] and [54(c)], it is clear to us that *the Eligibility Interpretation* should be adopted. In addition to the points raised in the earlier case law regarding the purpose of s 51(10) of

the HDA, the Eligibility Interpretation can *also* be justified based on the wording of s 51(10) itself, and the concerns raised in *Lim Kieuh Huat (HC)*, the Judgment and *Lim Choo Hin* can, in fact, be addressed within the framework of this particular interpretation.

Possible interpretations of s 51(10) of the HDA

86 It will be clear from our overview of the case law that there are at least two possible interpretations of s 51(10) of the HDA: the Eligibility Interpretation and the Pre-Existing Interest Interpretation, respectively. On the *Eligibility Interpretation*, s 51(10) would only bar *ineligible* persons from becoming entitled to an interest in HDB property under a resulting or constructive trust, regardless of whether such persons already have an interest in the HDB property in question. On the *Pre-Existing Interest Interpretation*, s 51(10) would bar *all* persons (including otherwise eligible persons) from becoming entitled to HDB property under a resulting or constructive trust *if they do not already have an interest in the HDB property in question*.

87 Central to the discomfort with the Eligibility Interpretation in *Lim Kieuh Huat (HC)* and the Judgment is the concern that it strains the natural and ordinary meaning of the words used in s 51(10) of the HDA. This concern was shared by Mr Choo, who submitted that the "plain language" of s 51(10) was "dispositive" in answering the question of how it ought to be interpreted. In *Lim Kieuh Huat (HC)* at [80], Maniam JC emphasised that s 51(10) states that "[n]o person shall become entitled", not that "[n]o *ineligible* person shall become entitled". Maniam JC appears to have equated the phrase "become entitled" with the *acquisition of an interest* under a resulting or constructive trust (see *Lim Kieuh Huat (HC)* at [79]–[85]). Similarly, the Judge reasoned that s 51(10) did not use the wording "entitled *to become eligible to own*" an interest in

HDB property, and remarked that the meaning of the term "entitled" could not be equated with the meaning of the term "eligible to own" without stretching the words of s 51(10) beyond their natural and ordinary meaning (see also [82(b)] above). On the natural reading of s 51(10), it could not be said that eligible persons did not "become entitled" to the HDB property because of the resulting or constructive trust (see the Judgment at [153]).

88 These difficulties identified by Maniam JC and the Judge arise from their implicit premise that the phrase "become entitled" must refer to the *acquisition of an interest* under a resulting or constructive trust. The Pre-Existing Interest Interpretation follows from this, such that s 51(10) would prevent any person from *acquiring an interest* in HDB property under a resulting or constructive trust if that person *did not already have an interest* in the property in question. However, we do not, with respect, think that the phrase "become entitled" should be read so restrictively. On an ordinary reading of the word "entitled", a person may be said to "become entitled" to an interest which he *could not* have obtained before (due to his or her ineligibility to obtain such an interest – *ie*, the Eligibility Interpretation), ***or*** may "become entitled" to an interest which he *did not* have before (*ie*, the Pre-Existing Interest Interpretation). We are therefore unable to agree with the Judge that reading the requirement of eligibility into s 51(10) would be stretching its words "beyond their natural and ordinary meaning".

89 The view that the Eligibility Interpretation is not only a possible but a *plausible* interpretation based on the text of s 51(10) is further supported by an examination of the provision in the broader statutory scheme of the HDA. The word "entitled" is used in several other provisions of the HDA without carrying the meaning of "having an interest in property" or "acquiring an interest in

property", and indeed is used in a sense much more closely correlated with the concept of eligibility. For example:

(a) Section 47(1) provides that "[n]o person shall be *entitled to purchase*" [emphasis added] any HDB property if he, his spouse or any authorised occupier owns (or has recently owned) another property. Section 50A(1) provides that, notwithstanding s 47, the Minister may declare any body corporate "to be *entitled to purchase*" [emphasis added] any HDB property.

(b) Section 65H(9)(*b*) provides that, under certain circumstances, an owner of a flat may have a charge on the flat discharged and "shall be *entitled to a certificate of discharge*" [emphasis added] from the HDB.

(c) Section 65P(2)(*a*) provides that, upon a publication of a particular notification, the reversion immediately expectant on certain leases shall vest in the HDB, and the HDB "shall have all *powers, rights and remedies* to which the approved developer as the reversioner was by law *entitled*" [emphasis added]. Section 65P(3) then provides that an approved developer whose land is the subject of such a notification "shall be *entitled to receive such compensation* as is agreed" with the HDB [emphasis added].

(d) Most interestingly, s 65R(1) provides that a person shall not be "eligible" to purchase certain types of HDB property from an approved developer "if such person or his spouse is not *entitled to purchase*" any HDB property from the HDB or "ceases to be *entitled to be such a purchaser*" [emphasis added].

90 Thus, as was recently noted by Alvin Chen, "Entitlement and Eligibility – Regulating Trusts Over HDB Properties", *Singapore Law Gazette* (January 2022), the word "entitled" in the statutory context of the HDA has "a unique meaning that is strongly linked to eligibility", and "[d]issociating eligibility from entitlement under section 51(10) *only* does not appear to be justified" [emphasis added]. In our view, when the wording of s 51(10) is considered in the context of the HDA as a whole, the Eligibility Interpretation is an entirely tenable reading of that particular provision.

Legislative purpose or object

91 With this in mind, we turn to consider the purpose of s 51(10) of the HDA. It is clear to us from the various Ministerial statements that have been made over the years in the Parliamentary debates (which we have excerpted at [58] and [67] above) that the purpose of s 51(10) is to prevent ***ineligible*** persons from acquiring an entitlement to HDB property, and ***not*** to prevent *all persons without a pre-existing interest* from doing so. When these Ministerial statements and the successive iterations of the HDA are viewed in their broader historical context, and when the particular character of HDB property is borne in mind, it becomes even more apparent to us that the Eligibility Interpretation is the most sensible approach to s 51(10).

92 As we have observed at [54] above, the true starting point in examining the history of ss 51(8)–51(10) of the HDA is the introduction of s 36E(4) of the 1959 Ordinance in 1964, by means of the 1964 Amendment Ordinance. Section 36E(4) was part of a series of provisions, introduced as the new Part IIIA of the 1959 Ordinance, governing the sale of flats, houses and other living accommodation. These included: s 36A, which empowered the HDB to sell any developed land or part thereof belonging to it; s 36B, which imposed

restrictions as to purchase (by providing that "[n]o person shall be entitled to purchase more than one" HDB property); s 36D, which laid down implied conditions as to HDB flats, houses and other living accommodation (by providing that such property could not be sold, leased, mortgaged or disposed of without the HDB's prior written consent); and s 36F, which dealt with the transmission of HDB property on the death of the owner (whose registration required the HDB's written consent).

93 Although the 1964 Amendment Ordinance was passed only in November 1964, the amendments therein were deemed to have come into operation in February 1964 (see s 1 of the 1964 Amendment Ordinance). This was a highly significant time period in the history of the HDB: in February 1964, the Home Ownership Scheme was introduced, under which the HDB would build and offer affordably priced public housing flats for sale on 99-year leases (see Sock-Yong Phang, *Policy Innovations for Affordable Housing in Singapore: From Colony to Global City* (Palgrave Macmillan, 2018) ("Phang (2018)") at p 29). This was a housing policy innovation with both political and economic advantages. In 1964, four years after the HDB was established, Singapore's acute housing shortage had been alleviated sufficiently for the HDB to turn its attention to the issue of home *ownership*. The "basic objective" of the Home Ownership Scheme was "to encourage a property-owning democracy in Singapore, and to enable Singapore citizens in the lower middle income group to own their own homes" (see HDB, *Annual Report* (1964) at p 9).

94 The corollary of the latter aim was the need to ensure that the subsidised public housing provided by the HDB was made available to Singapore citizens who needed such housing the most. Thus, from the outset of the Home Ownership Scheme, the government was alive to the importance of putting in

place various restrictions and eligibility conditions to prevent the scheme from being abused. As the then Minister for National Development, Mr Lim Kim San, explained (see State of Singapore, *Legislative Assembly Debates, Official Report* (4 November 1964) vol 23 at cols 179–181):

> This Bill is to fulfil [the] Government's promise to provide opportunities for the middle and lower income group to own homes. … *We have reached the stage where we can offer accommodation to any citizen of Singapore who is* ***eligible*** *to a house if he is not too choosey*. However, there are quite a number of people with low income who want to, and should be encouraged to, own their homes too. Unfortunately the flats and houses built by private developers are priced beyond their means. We have therefore now started a scheme whereby *two- and three-room flats are sold on instalment at the subsidized prices* of $4,900 and $6,200 respectively. … *In putting up this scheme* ***it is our intention to see that no abuse arises out of it****. Therefore, certain* ***conditions and regulations*** *have to be made pertaining to the sale of these flats.* There are enough provisions in this Bill to prevent these flats which are sold on instalments from falling into the hands of speculators and profiteers. ***The flats are to be sold only to bona fide purchasers who wish to buy a house for their own occupation.*** … Under this Bill, a person is not entitled to purchase more than one flat, and if he does so, he contravenes the Ordinance, and on conviction will be liable to imprisonment for a term not exceeding 12 months, or to a fine not exceeding $2,000, or to both fine and imprisonment. Any flat purchased in contravention of the Ordinance will not be registrable. …
>
> …
>
> Powers are given in the Bill to enable the [HDB] to determine the lease under various circumstances, such as non-payment of instalments, securing purchase of a flat on false pretext or the owner has violated the rules for the sale of flats. *In order to regulate the sale of flats, the [HDB] will be empowered to make rules* for purposes such as methods of sale, ***qualifications of persons eligible***, monthly instalments, period of payments, and so on.
>
> [emphasis added in italics and bold italics]

95 After legislative amendments in 1968 allowed CPF moneys to be withdrawn and used to finance the purchase of HDB housing, demand for HDB flats under the Home Ownership Scheme gained considerable momentum

(see Steven H K Yeh, "Some Trends and Prospects in Singapore's Public Housing" (March 1972) 33(196) Ekistics 182 at 182–183; Kyunghwan Kim & Phang Sock Yong, "Singapore's Housing Policies: 1960–2013" in *Frontiers in Development Policy: Innovative Development Case Studies* (KDI School of Public Policy and Management and the World Bank Institute, 2013) ch 1 at p 128). As a consequence of the overwhelming response to the Home Ownership Scheme, there were long waiting lists for prospective homeowners. During this period in the 1960s and 1970s, the HDB imposed stringent eligibility conditions and restrictions on the resale of HDB flats (see Phang (2018) at pp 99–100 and Cassy Xie Kaixi, "Law and Family in the Formation of Modern Singapore" in *Encounters with Singapore Legal History: Essays in Memory of Geoffrey Wilson Bartholomew* (Kevin YL Tan & Michael Hor, eds) (Singapore Journal of Legal Studies, 2009) ch 9 ("Xie (2009)") at p 266). The categories of persons eligible for HDB housing were expanded in 1972 so as to include, for instance, non-citizen spouses of deceased Singapore citizens, with their children, and orphans who could form a family group with other persons (see Xie (2009) at p 267). At the same time, in the 1970s, restrictions on eligibility arising from the ownership of private property were imposed in line with the policy imperative of ensuring that subsidised public housing was allocated to those who needed it (because they did not or could not own other property) and preventing property owners from taking advantage of subsidised public housing for their personal gain: see, for example, *Singapore Parliamentary Debates, Official Report* (20 March 1974) vol 33 at col 434 (Mr E W Barker, Minister for Law and National Development) and *Singapore Parliamentary Debates, Official Report* (27 May 1977) vol 37 at col 19 (Dr Tan Eng Liang, Senior Minister of State for National Development).

96 It is worth noting that s 44(4) of the 1970 HDA, which was in force during this time, contained an *absolute* bar on the creation of *any* trust in respect of HDB property by the owner thereof. Such trusts were automatically "null and void" and "incapable of being enforced by any court". The position changed in 1984, when s 44(4) was amended to allow the creation of trusts *with the prior written approval of the HDB*. At the Second Reading of the Housing and Development (Amendment) Bill in August 1984, by which s 44(4) of the 1970 HDA was replaced by ss 44(4)(*a*) and 44(4)(*b*) of the 1985 HDA (which were later renumbered as ss 51(4) and 51(5) of the 1997 HDA and, later, as ss 51(8) and 51(9) of the HDA), Mr Teh explained that this change in legislative policy arose from the need for the HDB to permit the creation of trusts for "legitimate reasons". This portion of Mr Teh's speech, which was considered by the court in *Cheong Yoke Kuen* at [18] and is excerpted at [58] above, is worth setting out again here (see *Singapore Parliamentary Debates, Official Report* (24 August 1984) vol 44 at col 2025):

> As the Act now stands, no trust in any form can be created in respect of an HDB dwelling or property. *The original intention of this provision was to* ***prevent abuse by persons not eligible for HDB flats from purchasing a flat in the name of nominees***. Over the years, however, *there has been* ***increasing need for the HDB to permit the creation of trusts for legitimate reasons***. For example, it is necessary to empower trustees to hold flats for minor children who are citizens in the event of death of the lessee parent, and where the surviving parent is neither a citizen nor a permanent resident and therefore not eligible to assume ownership of the flat. Similarly, in some cases of legal separation or divorce, flats have to be held in trust for minor children until they reach the age of 21 years. *Clause 3 of this Amendment Bill, therefore, seeks to allow a trust to be created in respect of an HDB dwelling provided such trust is approved by the Board.* [emphasis added in italics and bold italics]

97 In the same Parliamentary session, however, Mr Teh reiterated the continuing importance of preventing abuse of the privilege of subsidised public

housing (see *Singapore Parliamentary Debates, Official Report* (24 August 1984) vol 44 at cols 2056–2057):

> … In the broader national context, the HDB has to look after the interests of the majority of our citizens and therefore *it is essential for HDB to institute rules and regulations to govern these flats, to prevent people from abusing the flats*. … [I]t is essential that *HDB must have rules and regulations to prevent the abuse of the flats*. … At this stage, I would like to say that because of the national interest and that 80% of our population are living in HDB estates, it is essential that the Government and HDB continue to study the needs of residents in this ever-changing social environment. Rules and regulations will continue to be made and implemented as a strong deterrent to those who act against the interests of the HDB flat-dwellers because they represent the majority. Those people who misuse their flats represent only a minority. ***We must prevent people from abusing the privilege of subsidized public housing.*** [emphasis added in italics and bold italics]

98 In the late 1980s and early 1990s, as the housing shortage eased and households sought to upgrade their housing or change their location, efforts were made towards deregulation in order to facilitate the development of an HDB resale market. Resale regulations on the eligibility of buyers were amended to facilitate household mobility within the HDB sector, as well as between the HDB sector and the private sector (see Phang (2018) at p 100). Even then, however, the principle that public housing was for owner-occupation (and not for speculation or investment) was emphasised by Parliamentarians, and continued to be reiterated in the 2000s. For example, the following remarks were made by Mr Lim Hng Kiang, the then Minister of State for National Development, in 1992 (see *Singapore Parliamentary Debates, Official Report* (16 November 1992) vol 60 at cols 308–309):

> … [I]n land-scarce Singapore, ***public housing has to be strictly for owner-occupation***. … We cannot allow private property owners to purchase HDB flats without residing in the flats. *This will only encourage speculative demand for public housing, and deprive those who are in real need of public housing from owning HDB flats. It would defeat the very purpose*

> *of providing public housing in the first place.* So ***we would like to maintain the principle of owner-occupation in HDB flats***. … [T]he principle is that ***the HDB flat is meant as public housing and it must be owner-occupied***. If you allow HDB flats to be open for purely investment purposes, I think the demand will be very much greater than today. Today, we must build flats for Singaporeans who want to reside in HDB flats. [emphasis added in italics and bold italics]

99 Another example may be found in the speech by the then Minister for National Development, Mr Mah, at the Second Reading of the Housing and Development (Amendment) Bill (Bill No 35/2002), where he stressed that "the Government [was] not abandoning the principle of long-term owner occupation, or the social objectives of public housing" and that public housing was not for speculation or investment (see *Singapore Parliamentary Debates, Official Report* (31 October 2002) vol 75 at cols 1374 and 1395). It should be noted that the relevant regulations came to be relaxed to permit, for example, the increased sub-letting of HDB flats (see, for example, Phang (2018) at pp 102–103). Nevertheless, in our judgment, this does not in any way detract from the centrality of *eligibility* to the regulatory scheme of the HDA.

100 In this context, legislation has served an important *facilitative* function in "provid[ing] the necessary legal framework for the bureaucracy in general and the various statutory boards in particular to implement the public housing programme" (see Andrew Phang Boon Leong, *The Development of Singapore Law: Historical and Socio-Legal Perspectives* (Butterworths, 1990) at p 330). Tight eligibility conditions for the acquisition of HDB property have helped to optimise the use of Singapore's limited land resources, keep housing affordable, and support the government's prevailing social and economic policies. For example, other than helping to ensure that the benefits of subsidised public housing were channelled to those who genuinely needed them, eligibility conditions have also "played an important part in supporting the government's

population and family planning policies" (see Xie (2009) at p 266) over the years, such as through the criterion of a "family nucleus".

101 It is against this background that the eventual introduction of s 51(6) of the 2004 HDA (which would later become s 51(10) of the HDA) must be viewed. In 2005, during the Second Reading of the Housing and Development (Amendment) Bill (Bill No 19/2005) which inserted s 51(6) into the 2004 HDA, Mr Mah explained that the new provision was targeted towards preventing *ineligible* persons from becoming entitled to own HDB flats (see *Singapore Parliamentary Debates, Official Report* (15 August 2005) vol 80 at col 1259). Again, although these remarks have been excerpted at [67] above, they are worth repeating here:

> Clause 6 of the Bill amends section 51 to make it clear that, *in addition to prohibiting the voluntary creation of trusts over an HDB flat, the [2004 HDA] also prohibits any person from becoming entitled to a [*sic*] HDB flat under a resulting trust or constructive trust. This will help to prevent a situation where a person who is* ***ineligible*** *to own an HDB flat may become entitled to own one*, for example, by paying the purchase price of the flat on behalf of the owner. [emphasis added in italics and bold italics]

102 These Parliamentary statements are "clear and unequivocal", "disclose the mischief targeted by the enactment or the legislative intention lying behind any ambiguous or obscure words" and are "directed to the very point in question" (which, as this court noted in *Tan Cheng Bock* at [52], are necessary for such Parliamentary statements to be of real use). They reveal that the specific legislative intent undergirding the introduction of s 51(6) of the 2004 HDA, and thereafter s 51(10) of the HDA, was to prevent persons who were ***ineligibl***e to own HDB flats from becoming entitled to such property under a resulting or constructive trust, when such persons would not have been permitted to own an HDB flat directly or outright. This view of Parliament's intention is consistent

with the language of s 51(10) and its statutory context, as well as the observations made by the courts over the years (as set out at [59(a)], [61], [63(a)], [68], [72]–[74] and [75] above). More holistically, a consideration of the broader contextual developments and legislative history of s 51 of the HDA reveals that Parliament's consistent policy concern, reiterated on numerous occasions since the inception of the Home Ownership Scheme in 1964, was to prevent the abuse of the privilege of subsidised public housing by those who, under the prevailing regulatory schemes, were *ineligible* to enjoy the benefits of such subsidised public housing, and yet might nevertheless become entitled to an interest in such property under a trust.

103 On this view of Parliament's intention behind s 51(10) of the HDA, it is evident that the Eligibility Interpretation better furthers its legislative purpose. Under the Eligibility Interpretation, the critical issue is whether the person in question is ***eligible or ineligible*** to acquire the HDB property in question. The question of whether an eligible person has a pre-existing interest in the property is immaterial, except in so far as it may ***evidence*** his eligibility. This point appears to have been contemplated in *Tan Chui Lian* at [10], where Menon JC stated that s 51(10) "was not intended to have any application where the parties concerned were already entitled to some interest in the property *and therefore no issue could arise as to their eligibility to such entitlement*" [emphasis added]. By directing the inquiry specifically towards the question of eligibility, the first interpretation dovetails neatly with Parliament's object of preventing ineligible persons from becoming entitled to HDB property and thereby circumventing the regulatory restrictions imposed by the HDB.

104 At this juncture, it is apposite for us to address the Appellate Division's observation in *Lim Choo Hin* at [28] that, on either interpretation of s 51(10), it "does not extend to situations where the person in whose favour the trust arises

already has an interest in the flat in question" [emphasis in original]. This is subtly different from the Pre-Existing Interest Interpretation: under the Pre-Existing Interest Interpretation, s 51(10) would bar the claim of any person who does not already have an interest in the HDB property, whereas the Appellate Division in *Lim Choo Hin* was applying the converse proposition that a claim by a person who already *has* an interest in the property would *not* be barred by s 51(10). In our judgment, the Appellate Division's comments in *Lim Choo Hin* can be reconciled with the Eligibility Interpretation in the following manner. If a party already has an interest in the disputed HDB property, this serves as an indicium of that party's eligibility to acquire such an interest. In those circumstances, to borrow Menon JC's words in *Tan Chui Lian* at [10], "no issue could arise as to their eligibility to such entitlement". More precisely, applying the approach to "eligibility" set out in *Lim Kieuh Huat (CA)* at [14], the fact that the person has already acquired an interest would show that "the particular person could purchase the particular flat" and that the necessary conditions for the purchase to be approved have, as a matter of fact, been met.

105 We deal here with the appellant's submission that the Eligibility Interpretation of s 51(10) would permit eligible claimants asserting a resulting or constructive trust to circumvent the requirement to seek the HDB's approval under ss 51(8) and 51(9) of the HDA. In our view, this does not follow. Sections 51(8) and 51(9) apply when a trust is purportedly "created" in respect of HDB property without the HDB's written approval. The cases are clear that ss 51(8) and 51(9) are not limited to express trusts; they also apply when a party intentionally creates a nominee arrangement whereby a trust (constructive or resulting) arises in his favour to circumvent the HDA's provisions (see *Cheong Yoke Kuen* at [20]; *Sitiawah* at [20]; *Neo Boh Tan* [17]–[18]; *Tan Chui Lian* at [8]; and *Lim Kieuh Huat (CA)* at [11]). Thus, even on the Eligibility

Interpretation of s 51(10), ss 51(8) and 51(9) would still operate to prevent the intentional circumvention of the HDA's requirements.

106 In contrast to the Eligibility Interpretation, the critical issue under the Pre-Existing Interest Interpretation is whether the person in question *already has an interest in the HDB property in question*. On this approach, s 51(10) would apply *regardless of the person's eligibility* to acquire the property. This would not support Parliament's articulated object of preventing *ineligible* persons from becoming entitled to HDB property. On the contrary, by applying to all persons regardless of eligibility, the Pre-Existing Interest Interpretation would be over-inclusive, depriving even *eligible* beneficial owners from asserting their interests in HDB property even where they have *not* purported to "create" the trust through some "connivance" (see *Tan Chui Lian* at [8]) or intentional nominee arrangement (see *Lim Kieuh Huat (CA)* at [11]) which would be caught by ss 51(8) and 51(9) of the HDA. This is aptly illustrated by the facts of the present case, where – even though there is no evidence of any attempt by the respondents to circumvent any regulatory restrictions imposed by the HDB – s 51(10) would, on the Pre-Existing Interest Interpretation, operate to bar their claim to a beneficial interest in the Property simply because they did not have a pre-existing interest in the same (see the Judgment at [159]). It is not clear which of the HDB's policies (if any) this would serve to uphold, or whether Parliament would have intended such an outcome.

107 Indeed, a further problem with the Pre-Existing Interest Interpretation is that it would appear to preclude all claims under a resulting or constructive trust by any person who does not already have a *legal* interest in the property as a registered proprietor. This is implicit in *Lim Kieuh Huat (HC)* at [84] and the Judgment at [159]. The practical effect of this interpretation is that s 51(10) would allow a claim to a resulting or constructive trust over an HDB property

only in cases where both parties are already *registered owners* of the property under a joint tenancy or tenancy in common, and one party seeks to argue that their respective beneficial shares of the property should not follow the proportions of their legal shares. In our view, there is no basis in the legislative purpose of s 51(10) for circumscribing the operation of resulting or constructive trusts over HDB property this narrowly. Whereas the focus on *eligibility* as the touchstone has been a recurring motif in the Parliamentary material, at no stage in the history of the HDA does there appear to have been any particular concern that the public housing scheme might be abused by *eligible but unregistered beneficial owners* claiming to have acquired equitable interests in HDB property under the ordinary principles of trusts law.

108 To conclude on this point, on the analysis above, it is clear to us that the Eligibility Interpretation should be preferred based on a purposive interpretation of s 51(10) of the HDA.

Section 58(11) of the 2020 HDA

109 After the issuance of the Judgment and the filing of the appeal, the Housing and Development Act 1959 (2020 Rev Ed) ("the 2020 HDA") came into effect on 31 December 2021. This is the version of the HDA presently in force. Section 51(10) of the HDA has now been renumbered as s 58(11) of the 2020 HDA, and "shall become entitled" in s 51(10) has been replaced with "is entitled" in s 58(11) of the 2020 HDA. Given that s 58(11) of the 2020 HDA is not the version of the legislation applicable to the facts of the present appeal, it is not necessary for us to express a conclusive view on how it should be interpreted and applied. Nevertheless, we express an indicative view on s 58(11) for completeness.

110 In view of the general legislative drafting policy behind the 2020 Revised Editions of minimising the use of the word "shall" and instead using "is" to denote declaratory provisions (Law Revision Unit, Legislation Division, Attorney-General's Chambers, *Guide to the 2020 Revised Edition of Acts* (31 December 2021) at p xii), and given that these specific amendments were not debated in Parliament, it seems to us that these amendments are purely editorial in nature, and cannot be taken to have changed the substantive meaning or effect of s 51(10) of the HDA (on the Eligibility Interpretation that we have adopted). Reference may also be made to the speech made by the Attorney-General, Mr Lucien Wong SC, at the Opening of the Legal Year 2022, wherein he stated that the 2020 Revised Editions did not change the meaning of the legislation (see "Opening of the Legal Year 2022" (10 January 2022) at para 31, <https://www-agc-gov-sg-admin.cwp.sg/docs/default-source/newsroom-doucments/speeches/oly-2022---address-by-the-honourable-attorney-general.pdf> (accessed 16 March 2022)). These amendments in the 2020 HDA also do not shed any light on how the earlier s 51(10) should be interpreted. However, it should be highlighted that the new wording of s 58(11) may not accommodate *either* of the existing interpretations of s 51(10) of the HDA – both of which have rested in part on the phrase "*become* entitled" [emphasis added] – as comfortably.

111 In our view, for the reasons set out in our analysis above, the Eligibility Interpretation should apply equally to s 58(11) of the 2020 HDA, such that the provision would operate to bar only *ineligible* persons from holding an interest in HDB property under a resulting or constructive trust. Significantly, the amendments in s 58(11) of the 2020 HDA make no attempt to effect a legislative reversal of the Eligibility Interpretation, which – until *Lim Kieuh Huat (HC)* – had been consistently adopted and applied by the courts since

the 2006 decision of Menon JC (as he then was) in *Tan Chui Lian* in respect of s 51(6) of the 2004 HDA. Indeed, had the Eligibility Interpretation in *Tan Chui Lian* been out of step with Parliament's intentions, it would have been open to the legislature to make the necessary amendments to s 51(10) of the HDA in 2010. However, as noted at [71] above, the only real difference between s 51(6) of the 2004 HDA and s 51(10) of the HDA is the addition of the words "or arising".

112 Parliament's treatment of the courts' decisions adopting the Eligibility Interpretation over the years stands in contrast to its legislative reversals of other decisions in various domains. Three examples are illustrative:

(a) In the High Court decision of *Turner (East Asia) Pte Ltd v Builders Federal (Hong Kong) Ltd and another* [1988] 1 SLR(R) 281 ("*Turner*"), Chan Sek Keong JC (as he then was) had held that foreign lawyers' representation of one of the parties in arbitration proceedings in Singapore would contravene ss 29(1) and/or 30(1) of the Legal Profession Act (Cap 161, 1985 Rev Ed). The Legal Profession (Amendment) Bill (Bill No 1/1992) was therefore introduced to "amend the Legal Profession Act to clarify the position of foreign lawyers appearing in arbitration proceedings", by "insert[ing] a new s 34A to provide that the exclusive right of practising Singapore advocates and solicitors to practise law and act as an agent in legal proceedings will not apply to arbitration where the law applicable to the dispute is foreign law" (see *Singapore Parliamentary Debates, Official Report* (27 February 1992) vol 59 at cols 424–425 (Prof S Jayakumar, Minister for Law)). Subsequently, s 2 of the Legal Profession (Amendment) Act 1992 (Act 7 of 1992) inserted into the Legal Profession Act (Cap 161, 1990 Rev Ed) a new provision – s 34A – which stated that ss 32 and 33

(which had earlier replaced ss 29 and 30) did not extend to certain arbitration proceedings.

(b) The Criminal Justice Reform Bill (Bill No 14/2018) sought to insert a new subsection into the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC") to "clarify" that the making of a statement by an accused person was not to be regarded as caused by any inducement, threat or promise merely because of certain specified circumstances (see the Explanatory Statement to cl 74 of the Bill). During the Second Reading of the Bill, it was stated that this clarificatory amendment was necessary because the "relevant court decision" had left it "debatable in each case whether merely telling a person that he is bound to tell the truth amounts to an inducement". This clarification was, however, "achieved through a substantive change" to the legislation (see *Singapore Parliamentary Debates, Official Report* (19 March 2018) vol 94 (Ms Indranee Rajah, Senior Minister of State for Law)). Subsequently, s 74 of the Criminal Justice Reform Act 2018 (Act 19 of 2018) amended s 258 of the CPC by inserting a new subsection (4A) to this effect.

(c) In *Diablo Fortune Inc v Duncan, Cameron Lindsay and another* [2018] 2 SLR 129 ("*Diablo*"), this court had affirmed the High Court's decision that a shipowner's lien was a charge that had to be registered under s 131 of the Companies Act (Cap 50, 2006 Rev Ed) ("the Companies Act"). At the Second Reading of the Companies (Amendment) Bill (Bill No 27/2018), it was observed that the effect of the *Diablo* decision "[gave] rise to several practical difficulties for the shipping industry", as compliance with s 131 of the Companies Act in relation to shipowners' liens would be "particularly burdensome" for the

> shipping industry. The Bill therefore exempted shipowners' liens from the registration requirements under s 131 of the Companies Act while maintaining the court's characterisation of such liens as charges in *Diablo* (see *Singapore Parliamentary Debates, Official Report* (6 August 2018) vol 94 (Ms Indranee Rajah, Second Minister for Finance)). Subsequently, s 2 of the Companies (Amendment) Act 2018 (Act 35 of 2018) amended s 131 of the Companies Act by inserting new subsections (3AB) and (3AC) (which dealt specifically with shipowners' liens) to this effect.

113 We would therefore have adopted the same interpretation of s 58(11) of the 2020 HDA (*ie*, the Eligibility Interpretation) if this provision had been directly before us in the present appeal. In our view, the amendments in s 58(11) did not alter the substantive effect of s 51(10) of the HDA. On the contrary, the fact that s 58(11) is the latest in a series of legislative amendments to the HDA which have made no attempt to reverse the effect of the courts' adoption of the Eligibility Interpretation lends further support to our view that this is indeed the correct interpretation of the provision.

Application of the Eligibility Interpretation

114 In the proceedings below, there was no dispute between the parties regarding the respondents' eligibility to own the Property, and the Judge thus accepted as an undisputed fact that the respondents were eligible (see the Judgment at [157]–[158]).

115 The appellant, however, seeks to persuade us on appeal that the respondents' claim should still fail because they have not shown why they would be eligible to own the Property. Mr Choo submitted at the hearing that

the "gatekeeper of eligibility" had to be the HDB, and that eligibility could not simply be asserted by counsel and "accepted as an evidential fact" by the Judge when the appellant did not respond to this assertion of eligibility. As we stressed to Mr Choo, this submission is a non-starter because the issue of the respondents' eligibility to own the Property was not in dispute in the proceedings below. It was incumbent on the appellant, as the party seeking to rely on s 51(10) of the HDA to argue that the respondents' claim was barred, to adduce some evidence of the respondents' ineligibility to own the Property. The appellant has entirely failed to do this, and indeed did not even challenge the respondents' assertion as to their eligibility before the Judge. In these circumstances, we do not see any basis for disturbing the Judge's factual finding that the respondents were indeed eligible persons. Nor do this court's observations in *Lim Kieuh Huat (CA)* at [14] (set out at [80] above), which pertain to the fact-specific nature of the eligibility inquiry, assist the appellant. It bears emphasis that the Judge found as a fact that the respondents were eligible to own the Property, and the appellant has advanced no positive argument or evidence to the contrary.

116 The appellant further submits that the HDB's consent is required to fulfil the requirement of eligibility, because – in accordance with ss 50(1) and 47(8) of the HDA – any sale, lease, mortgage or disposal of HDB property requires the HDB's consent. However, s 50(1) applies where HDB property is *sold, leased, mortgaged or disposed of* without the prior written consent of the HDB, while s 47(8) allows the HDB to sell or lease property to any person notwithstanding that that person has (with the HDB's prior written consent) purchased or acquired commercial property below a particular value, for business purposes. Neither provision applies in the present case, where the issue

is whether the respondents have acquired a beneficial interest in the Property under a common intention constructive trust.

117 Since the appellant has given us no reason to question the Judge's factual finding that the respondents are eligible to own the Property, s 51(10) of the HDA (on the Eligibility Interpretation) does not operate to bar their claim under the common intention constructive trust to each have a one-sixth beneficial share of the Property and its sale proceeds. The respondents are therefore straightforwardly entitled to the relief sought in the proceedings below, including the orders eventually granted by the Judge for the sale of the Property and for the sale proceeds to be divided equally among the Ong siblings (at [193]–[194] of the Judgment). We affirm the Judge's decision and order of sale, and dismiss the appeal, on this basis.

The Judge's reasoning in support of granting an order of sale

118 On the Eligibility Interpretation of s 51(10) of the HDA which we have adopted, it is not strictly necessary to consider whether it remains open to the court to make an order of sale in spite of s 51(10), which we have held does *not* bar the respondents' claim for relief. Nevertheless, as this formed a significant part of the Judge's decision, we think it necessary to express our views on the basis for the Judge's order that the appellant sell the Property within 12 months and distribute the net sale proceeds equally among the Ong siblings.

119 Notwithstanding his preference for the Pre-Existing Interest Interpretation, the Judge found that it would be appropriate to order the sale of the Property and the equal division of its sale proceeds among the Ong siblings on *either* interpretation of s 51(10) of the HDA (see the Judgment at [193]). In

respect of the basis for such an order under the Pre-Existing Interest Interpretation, the Judge reasoned as follows (at [181]–[192] of the Judgment):

(a) First, a common intention constructive trust arose over the Property but, owing to the operation of s 51(10) of the HDA (on the Pre-Existing Interest Interpretation), the court could not grant a declaration that each respondent was entitled to a one-sixth beneficial interest in the Property or order the sale of the Property.

(b) However, given the parties' common intention that the Property was intended to be a "retirement fund" for them and that a common intention constructive trust would arise over the sale proceeds if the Property was sold (under which they would each have been entitled to equal beneficial shares), "an equity" arose in the respondents' favour in relation to the Property which compelled the appellant to act in a manner consistent with that common intention.

(c) To satisfy this equity, it was necessary and expedient to order the appellant to sell the Property and divide the sale proceeds in equal one-sixth shares between the parties. While the Judge recognised that a common intention constructive trust is an institutional constructive trust and is "a constructive trust in the proprietary sense", such that "a plaintiff's successful claim of a common intention constructive trust immediately and automatically establishes a beneficial interest in the property", the Judge opined that this did not preclude an equity from arising from a common intention constructive trust. The expression "an equity" was here being used in the "broader and less precise sense to refer to any entitlement or obligation … of which a court of equity will take cognizance". Such an equity could arise from the "actual

infringement of one of equity's standards of conduct" or a "breach of an equitable obligation".

(d) As the parties intended that there be a common intention constructive trust over the Property, but s 51(10) of the HDA (on the Pre-Existing Interest Interpretation) prevented the trust from operating in such a manner as to allow the court to declare that the respondents were entitled to individual shares in the Property, "an equity [arose] to affect the conscience of the [appellant] to honour and give effect to this common intention constructive trust". On the "unique" facts of this particular case, the minimum that was necessary to satisfy this equity was to grant an order of sale in respect of the Property.

(e) This equity, in the Judge's view, provided a substantive legal basis to order the sale of the Property in the exercise of the court's power under s 18(2) read with para 2 of the First Schedule to the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) or O 31 r 1 of the ROC.

120 With respect, we disagree with the Judge's reasoning on this point. In our view, there was no legal basis for the Judge to find that the parties' common intention gave rise to a freestanding equity sufficient to found an order of sale in respect of the Property. This is not a recognised equitable right, obligation or doctrine, and to apply the concept of an "equity" in this manner would stretch the existing jurisprudence too far. Although the Judge made reference to several authorities, these do not, on a closer reading, lend support to the Judge's approach.

121 For instance, the article by Joseph Campbell, "When and Why a Bribe is Held on a Constructive Trust: The Method of Reasoning Towards an

Equitable Remedy" (2015) 39(3) Australian Bar Review 320 (cited at [187] of the Judgment) concerns a completely different situation where a fiduciary agent receives a bribe in breach of his fiduciary obligations. Similarly, the excerpt from Denis Browne, *Ashburner's Principles of Equity* (Butterworths, 2nd Ed, 1933) (also cited in the Judgment at [187]) speaks of the jurisdiction of the Court of Chancery and the use of the term "an equity" in that context. It does not represent the modern-day jurisprudence in Singapore on equity and trusts law.

122 The same may be said of the Australian cases cited by the Judge. *Commonwealth of Australia v Verwayen* (1990) 95 ALR 321 ("*Verwayen*") (cited at [188] of the Judgment) was a decision of the High Court of Australia on estoppel by conduct. In that case, the question was whether a party was estopped from contesting the issue of liability when it had previously taken the position that it would not do so. In that context, Deane J explained that while a promissory estoppel is not "an equity" in the "narrow sense" because it does not give rise to "an immediate right to positive equitable relief", it is "an equity" in "a broader and less precise sense" as it is an "entitlement or obligation (the equities) of which a court of equity will take cognisance". As examples of such "equities", Deane J referred to the doctrines of laches, acquiescence, delay and set-off (see *Verwayen* at 348–349). However, these are *established* equitable doctrines, unlike the proposition here (*ie*, that in cases involving a common intention constructive trust, the parties' common intention can give rise to a standalone equity which can provide the substantive legal basis for an order of sale). Thus, *Verwayen* offers very limited support (if any) for the order eventually made by the Judge.

123 In a similar vein, the Federal Court of Australia decision of *Parianos v Melluish (as trustee for the estate of the late George Parianos*) (2003) 30 Fam LR 524 ("*Parianos*") (also cited at [188] of the Judgment)

concerned a wife's claim that her late husband held his interest in a certain property on constructive trust for her. Jacobson J held that it was appropriate to impose a constructive trust in the wife's favour in the circumstances of this case, in view of the parties' inferred common intention (see *Parianos* at [48]). Having decided that, Jacobson J then considered the further issue of whether the wife's equitable interest in the property stood outside the husband's bankruptcy and was therefore unavailable for distribution among his creditors. It was in this context that Jacobson J opined that, while the facts "create[d] a personal equity between the parties which may be defeated by competing claims", this personal equity was not defeated by the bankruptcy (see *Parianos* at [61]). In our view, it is clear that Jacobson J did not mean that there was a freestanding "personal equity" which could be vindicated apart from the imposition of the constructive trust, as the Judge appeared to suggest at [188] of the Judgment.

124 We therefore have considerable reservations about the *basis* on which the Judge ordered the appellant to sell the Property and divide the net sale proceeds equally among the Ong siblings under the Pre-Existing Interest Interpretation. Nevertheless, given our decision on the effect of s 51(10) of the HDA (properly interpreted) on the respondents' claim (see [117] above), we do not need to arrive at a definitive conclusion on this point in the present appeal beyond our observations above.

Conclusion

125 For the foregoing reasons, we dismiss the appeal, although we adopt the Eligibility Interpretation of s 51(10) of the HDA and reject the Pre-Existing Interest Interpretation which was preferred by the Judge in the court below.

126 In so far as the costs of the appeal are concerned, we order the appellant to pay $50,000 (inclusive of disbursements) to the respondents. The usual consequential orders will apply.

Andrew Phang Boon Leong
Justice of the Court of Appeal

Judith Prakash
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

Choo Zheng Xi and Yuen Ai Zhen Carol (Peter Low & Choo LLC) (instructed), Kertar Singh s/o Guljar Singh, Anil Singh Sandhu s/o Kertar Singh and Rueben S Pillaii (Kertar & Sandhu LLC) for the appellant;
Nandwani Manoj Prakash and Quah Chun En Joel (Ke Chun'en) (Gabriel Law Corporation) for the respondents.