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

[2022] SGHC(A) 30

Civil Appeal No 130 of 2021

Between

Wei Ho-Hung

… *Appellant*

And

Lyu Jun

… *Respondent*

In the matter of Suit No 625 of 2019

Between

Lyu Jun

… *Plaintiff*

And

Wei Ho-Hung

… *Defendant*

GROUNDS OF DECISION

[Civil Procedure — Appeals — Leave to raise new points — O 56A r 9(5)(*b*) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed)]

[Contract — Intention to create legal relations — Loan agreements]
[Gifts — Conditions attached]
[Trusts — *Quistclose* trusts — Threshold of proof]

TABLE OF CONTENTS

Wei Ho-Hung
v
Lyu Jun

[2022] SGHC(A) 30

Appellate Division of the High Court — Civil Appeal No 130 of 2021
Belinda Ang Saw Ean JAD, Woo Bih Li JAD and Hoo Sheau Peng J
22 July 2022

19 August 2022

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

Introduction

1 This appeal concerned a dispute between an unmarried couple over putative gifts made during the time of their relatively short relationship. It arose from the decision of a Judge of the General Division of the High Court (the "Judge") in *Lyu Jun v Wei Ho-Hung* [2021] SGHC 268 (the "Judgment"). On 22 July 2022, we heard the appeal. After hearing submissions from parties, we substantially dismissed the appeal, though we varied an aspect of the Judge's decision. At [59]–[63] below, we will explain the basis on which we decided to effect this variation.

Background

2 The background to this matter is stated more fully in the Judgment.

3 In essence, the parties met in March 2016, and, by May 2016, they became romantically involved. It bears highlighting that the respondent ("Mr Lyu") was married at the time he and the appellant ("Ms Wei") entered into their relationship. Mr Lyu remained married throughout, though his wife was in the process of obtaining a divorce from him. He wished to marry Ms Wei after his divorce and to formally start their life together as a married couple. In this connection, he had informed Ms Wei that upon his divorce, some of his assets would need to be transferred to his wife (see the Judgment at [44] and [49]).

4 During their relationship, Mr Lyu transferred substantial sums of money to Ms Wei. These sums were used to acquire assets in Ms Wei's name, such as an apartment, as well as for various other purposes which did not result in the ownership of an unencumbered asset, such as to discharge a mortgage over Ms Wei's apartment. After their relationship soured and ended, Mr Lyu sought to recover these assets and sums of money, the collective value of which he claimed was around S$8 million, though Ms Wei only admitted to receiving around S$7 million (see the Judgment at [7]). This disagreement is not salient.

5 There were *ten* assets and sums of money in respect of which Mr Lyu brought claims. Adopting the descriptions used by the Judge (see the Judgment at [8]), the assets and claims concerned the following matters:

(a) The D'Leedon apartment;

(b) The Car;

(c) The discharge of the Bartley mortgage;

(d) The Cairnhill option;

(e) The first clinic investment;

(f) The US surrogacy;

(g) The application for Grenadian citizenship;

(h) The Marne Road shop;

(i) The second clinic investment; and

(j) The Rolex watch.

6 At trial, Mr Lyu's overarching contention was that the transfers made to Ms Wei were not gifts, and had only been made with a view to building their life together as a married couple. Ms Wei was thus not entitled to retain them once their relationship came to an end. In response, Ms Wei's general defence was that she received them as gifts of love, and was therefore entitled to them *wholly*. We note that it was not Ms Wei's case that she was entitled to a share of the assets and sums of money. For her, it was *all-or-nothing*, and this is what the Judge understood her case to be as well (see the Judgment at [25]).

The decision below

7 The Judge found substantially for Mr Lyu and allowed eight of his ten claims. Only the two claims relating to the money used to discharge the Bartley mortgage and the Rolex watch were dismissed (see the Judgment at [62]–[67] and [91]–[93] respectively).

8 In arriving at his decision, the Judge took into account the parties' oral evidence on the stand, text messages, and various pieces of evidence which shed light on the context of their communications. In general, such evidence led the Judge to the conclusion that Mr Lyu did not intend – by most of his transfers of funds – to benefit Ms Wei gratuitously.

Grounds of the appeal

9 Ms Wei appealed the Judge's decision in respect of all eight claims on which Mr Lyu succeeded. Mr Lyu did not appeal the two claims on which he failed and, so, only eight claims were in issue before us.

10 For present purposes, Ms Wei's grounds of her appeal are conveniently grouped around two subsets of those eight claims:

(a) The first group comprises Mr Lyu's claims in respect of: (i) the D'Leedon apartment; (ii) the Car; (iii) the Cairnhill option; and (iv) the Marne Road shop. These claims are grouped together because they raise a common dispositive issue to which we will turn at [24]–[32] below.

(b) The second group comprises Mr Lyu's claims in respect of: (i) the first clinic investment; (ii) the US surrogacy; (iii) the second clinic investment; and (iv) the application for Grenadian citizenship. These claims do not have a common dispositive issue, but the issue arising in relation to each are of a similar character. We will explain this similarity at [19]–[23] below.

11 Before turning to explain the issues in respect of each group, we pause to highlight that in the Appellant's Case[1] as well as the Appellant's Skeletal

[1] Appellant's Case (18 Apr 2022) at paras 62–77.

Arguments,[2] there was some indication that Ms Wei's appeal in respect of the Cairnhill option would raise issues which would straddle both groups. However, at the hearing before us, her counsel, Mr Mahesh Rai ("Mr Rai"), confirmed that this was not the case and that the Cairnhill option only fell within the first group, or what he described as the "resulting trust assets". Accordingly, we only considered her appeal in relation to the Cairnhill option insofar as it related to the *first group* of claims.

The first group of claims

12 In respect of the claims falling within the first group, Ms Wei in this appeal abandoned her assertion that the sums used to acquire these assets were transferred to her as gifts *wholly* for her benefit (see [6] above). Instead, the ground of her appeal was that the Judge erred in determining that Mr Lyu lacked *any and all* intention to benefit her, even to a lesser degree (*ie*, less than 100%). As Ms Wei put in her Appellant's Case:

> 16. The Judge found that a resulting trust arose over 100% of the D'Leedon apartment because Ms Wei had failed to prove Mr Lyu's intention to gift the property completely to her. However, as argued … below, the contemporaneous evidence adduced before the Court shows that Mr Lyu undoubtedly had the intention for Ms Wei to possess some beneficial interest. Even if the Judge was not convinced that Mr Lyu had intended to gift Ms Wei with 100% of the beneficial interest in the property, a declaration that Ms Wei holds the entire property on resulting trust for Mr Lyu can only be upheld if the Judge was satisfied that there was a <u>complete</u> absence of intention by Mr Lyu to benefit Ms Wei.
>
> 17. The Judge adopted an all-or-nothing approach towards declaring the beneficial owner of D'Leedon Property because Ms Wei had regarded Mr Lyu's financial contributions as a pledge of love towards her. This led to the Judge remarking that "[n]either party has contended that there is any question of shared ownership of the beneficial interest of any particular asset".

---

2 Appellant's Skeletal Arguments (20 Jun 2022) at paras 5, 7 and 10–19.

> 18. However, regardless of Ms Wei's genuine expectations during the relationship, the question of donative intent must be answered from Mr Lyu's perspective. From the contemporaneous documents and Mr Lyu's oral testimony itself, there is sufficient basis for the Court to draw the conclusion that Mr Lyu intended to benefit Ms Wei.
>
> 19. To this extent, Ms Wei seeks leave under Order 56A Rule 9(5)(*b*) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) to introduce the new point *that Mr Lyu had the donative intent to benefit her with at least 50% beneficial interest in the D'Leedon Property*.
>
> [emphasis in original in underline; emphasis added in italics]

13 On this footing, Ms Wei claimed that the evidence should be read to disclose a donative intention on Mr Lyu's part to benefit Ms Wei with at least 50% of the beneficial interest in the D'Leedon apartment. In respect of this, Ms Wei recognised that this was not an issue canvassed at trial given that her case was that the money had been gifted to her *wholly*. She thus stated that she was seeking this court's leave under O 56A r 9(5)(*b*) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) to raise this as a "new point" on appeal.[3]

> ORDER 56A
>
> APPEALS TO APPELLATE DIVISION
>
> …
>
> **Preparation of Cases (O. 56A, r. 9)**
>
> …
>
> (5) If a party —
>
> (*a*) is abandoning any point taken in the Court below; or
>
> (*b*) intends to apply in the course of the hearing for leave to introduce a new point not taken in the Court below,
>
> this should be stated clearly in the Case, and if the new point mentioned in sub-paragraph (*b*) involves the introduction of fresh evidence, this should also be stated clearly in the Case and an application for leave must be made under Rule 17 to adduce the fresh evidence.

---

3 Appellant's Case (18 Apr 2022) at para 19.

14 Preliminarily, it bears calling to attention that the Appellant's Case only expressly sought leave under O 56A r 9(5)(*b*) in respect of the claim concerning the D'Leedon apartment. In Mr Lyu's Respondent's Case, it was pointed out to us, however, that Ms Wei had made similar arguments in respect of the Car, the Cairnhill option as well as the Marne Road shop in her Appellant's Case.[4] Issue was taken with this, and, in response, Mr Rai made three arguments. First, O 56A r 9(5)(*b*) uses the phrase "intends to apply *in the course of the hearing*". Relying on this phrase, Mr Rai submitted that the court's leave is not sought in the Appellant's Case itself. Rather, it is sought at the hearing, and the requirement that an intention to seek such leave be stated in the Appellant's Case served the more limited function of giving the opposing party notice. Mr Rai cited *The Oriental Insurance Co Ltd v Reliance National Asia Re Pte Ltd* [2008] 3 SLR(R) 121 ("*The Oriental Insurance*") at [27], where the Court of Appeal permitted the appellant to raise a new point on the basis that "adequate notice" had been given to the respondent. Second, it was clear that Mr Lyu had adequate notice because, in his Respondent's Case, he did in fact respond to the "new point" in relation to the Car, the Cairnhill option as well as the Marne Road shop. Lastly, in any event, the Appellant's Skeletal Arguments made clear that O 56A r 9(5)(*b*) leave was being sought for all four assets, not just the D'Leedon apartment.[5]

15 At the hearing, we invited Mr Lyu's counsel, Mr Lok Vi Ming SC ("Mr Lok"), to respond to these points. After an initial exchange, Mr Lok conceded that – although the Appellant's Case did not specifically seek the court's leave to do so – Mr Rai could still seek leave at the hearing to raise Ms Wei's new point in respect of the Car, the Cairnhill option and the Marne

4 Respondent's Case (30 May 2022) at para 65.

5 Appellant's Skeletal Arguments (20 Jun 2022) at paras 8–9.

Road shop. This was a fair concession from a reasonable construction of O 56A r 9(5)(*b*). Order 56A r 9(5)(*b*) and the authorities do not preclude a party from seeking leave to raise a "new point" at the hearing of the appeal even when the "new point" had been omitted (as the case may be) in an appellant's or respondent's written case on appeal. The court's overarching concern is that the other side is not ambushed by a "new point" raised late at the oral hearing. That being said, it should go without saying that allowing an appellant or respondent to seek leave is not the grant of leave itself.

16 We turn to the following sentence in O 56A r 9(5)(*b*): "[i]f a party intends to apply in the course of the hearing for leave to introduce a new point not taken in the Court below, this *should* be stated clearly in the Case" [emphasis added]. The question is whether the word "should" ought to be construed as a strict condition-precedent for seeking leave. In our view, the word "should" need not be interpreted as a condition-precedent for leave to be sought. This would be an unnecessary constraint; after all, even if the court permits an appellant or respondent to apply for leave in respect of a "new point" which was not included in their written case, it does not follow that leave will be granted. Indeed, appellants or respondents who omit to state their intention to seek leave under O 56A r 9(5)(*b*) clearly in their written cases do so at their own peril. As *The Oriental Insurance* shows, the adequacy of notice is a relevant factor which the appellate court will take into account when assessing whether leave ought to be granted. Failing to indicate even one's basic intention to seek leave under O 56A r 9(5)(*b*) will, in most cases, be fatal to the application for leave. Put differently, if an appellant or respondent fails to state his intention to apply for leave in his written case, and yet comes before an appellate court to seek such leave, he should be prepared to provide a very good explanation for his omission.

17 In this case, Mr Rai confirmed at the hearing that Ms Wei was seeking leave to raise her "new point" (see [12]–[13] above) not just in respect of the D'Leedon apartment, but also the Car, the Cairnhill option and Marne Road shop. Therefore, the crucial issue which was before us in respect of the appeal concerning the first group of claims was whether Ms Wei should be granted leave to raise her "new point". In fact, this was the *sole* issue which needed to be determined because the Appellant's Case[6] and Skeletal Arguments[7] did not – subject to the clarification stated at [11] above – raise any other points which required our consideration in the event that leave was not granted in respect of the "new point". At the hearing, we sought Mr Rai's confirmation that this was an accurate understanding of the case on appeal, and he confirmed that it was. Accordingly, it was agreed that if Ms Wei's application for leave was denied, her entire appeal against the Judge's decision on the first group of claims would fall away.

18 For completeness, and before we move on to set out the grounds of Ms Wei's appeal in respect of the second group of claims, we turn to comment on two matters. First, in this case, Mr Lyu had ample notice of Ms Wei's intention to raise her "new point" in relation to all four assets. As stated, the Respondent's Case responded to Ms Wei's new point.[8] Secondly, we propose to explain the Court of Appeal's decision in *Bintai Kindenko Pte Ltd v Samsung C&T Corp and another* [2019] 2 SLR 295 ("*Bintai*"). There, it was remarked that, because of the appellant's failure to seek the court's leave to raise the new point in issue, its arguments on the point "could be dismissed on [that] basis alone" (at [66]). Before his concession (see [15] above), Mr Lok initially relied

---

6 Appellant's Case (18 Apr 2022) at paras 12–61 and 92–97.

7 Appellant's Skeletal Arguments (20 Jun 2022) at paras 7–26.

8 Respondent's Case (30 May 2022) at paras 95–111 and 133–137.

on this decision to resist Ms Wei's attempt to raise her "new point" in relation to the Car, the Cairnhill option and the Marne Road shop, beyond the D'Leedon apartment. However, the appellant in *Bintai* simply did not seek the court's leave, whether in writing or at the hearing (at [65]). As can be seen from the paragraphs above, this is distinct from the present case. We therefore make clear that there is a difference between omitting to indicate one's intention to seek leave under O 56A r 9(5)(*b*) and failing entirely to seek the court's leave to raise a new point whether in writing or orally. As stated at [16] above, the former counts against the application for leave (which may still be made); but the latter, as the Court of Appeal held in *Bintai*, may result in the dismissal of the new point without anything further.

The second group of claims

19 This brings us to the second group of claims. In respect of these, Ms Wei challenges the legal bases by which the Judge arrived at his conclusions. More specifically, that he erred in determining that there was sufficient evidence to meet the relevant legal thresholds for establishing the *Quistclose* trusts (see the Judgment at [28]) or loan agreement he found to have existed (see the Judgment at [33]). For good order, *Barclays Bank Ltd v Quistclose Investments Ltd* [1970] AC 567 ("*Quistclose*"), the namesake decision which established this as a type of trust, should be cited.

20 In respect of the claims concerning the first clinic investment and the US surrogacy, the Judge had determined that either a *Quistclose* trust existed or a restitutionary claim for unjust enrichment was established (see the Judgment at [75] and [76]). In the appeal, Ms Wei's first contention was that there was not enough evidence to show that Mr Lyu intended for the funds he transferred to be applied *exclusively* to those purposes. On this basis, she submitted that a

Quistclose trust could not have arisen because, as the Judge himself recognised (see the Judgment at [27]), such exclusivity of purpose is a crucial requirement for this type of trust to arise.[9] Her second contention, in relation to the finding that Mr Lyu had an alternative restitutionary claim, was that the Judge had failed to consider her defence that there had been a change in her position.[10]

21 The issue which Ms Wei took with the claim relating to the second clinic investment is the same; that no *Quistclose* trust could have arisen on the facts given the lack of evidence demonstrating Mr Lyu's intended purpose for the transfer, much less an exclusive purpose.[11] There was, however, a difference between this and the claims relating to the first clinic investment and the US surrogacy. As stated, in respect of the first clinic investment and the US surrogacy claims, the Judge expressly formulated his decision either on the basis of a *Quistclose* trust or unjust enrichment. The legal basis of the Judge's decision in respect of the second clinic investment, by contrast, was less clear. All the Judge said in this connection was that the transfer made to Ms Wei was "not a gift" but "for the purpose" of the second clinic investment. Thus, "when the purpose of the transfer failed, Ms Wei had to return [the money] to him" (see the Judgment at [89]). This could be understood as being premised on a *Quistclose* trust, but the precise legal basis into which this translates is not wholly clear.

22 Last was the claim concerning the application for Grenadian citizenship. The Judge resolved this claim on the basis that Mr Lyu and Ms Wei had entered into a loan agreement. On appeal, Ms Wei contended that there was not enough

---

9 Appellant's Case (18 Apr 2022) at paras 62–77.

10 Appellant's Skeletal Arguments (20 Jun 2022) at para 33.

11 Appellant's Case (18 Apr 2022) at paras 98–102.

evidence to demonstrate that Mr Lyu intended to create a creditor-debtor relationship which carried with it the "expectation that the amount transferred would be repayable on demand". For these propositions as to the specific intention required to create a contract of loan, she referred to the decisions of *Toh Eng Tiah v Jiang Angelina* [2020] SGHC 65 ("*Toh Eng Tiah*") at [60] and *E C Investment Holding Pte Ltd v Ridout Residence Pte Ltd and others and another appeal* [2012] 1 SLR 32 at [54].[12]

23 From this, we saw that the broad issue which Ms Wei's appeal raised in connection with the second groups of claims was whether the Judge erred in determining that the facts and evidence before him satisfied the relevant legal thresholds of the doctrines underpinning his decision, specifically, those of a *Quistclose* trust and a loan agreement.

Our decision

The first group of claims

24 We did not grant leave for Ms Wei's "new point" to be raised on appeal, and, given what we stated at [17] above, her appeal in respect of the four claims in the first group was dismissed.

25 In our judgment, Ms Wei mischaracterised her application under O 56A r 9(5)(*b*) as one to raise a new "point" when, in fact, what she sought to do was to advance a new *case* which had not been put before the Judge (see also the Judgment at [25]). Mr Rai confirmed that Ms Wei's case at trial was not that she was entitled to a share of the money transferred by Mr Lyu, but rather, that she was entitled to it wholly and without conditions. Our own review of the

[12] Appellant's Case (18 Apr 2022) at paras 78–91.

Defence also satisfied us that Ms Wei's position on appeal was not that which she had pleaded.[13]

26 Two factors have led us to the conclusion that this new, so-called "point" should not be considered on appeal. First, the assertion that Mr Lyu's transfers of funds were *wholly* gifts, and that the assets purchased in her name were also *wholly* gifts, was fundamentally at odds with the assertion that the transfers were for *their* joint benefit, of which Ms Wei is entitled to share in a part. Ms Wei's case on appeal asserted quite a particular state of mind and it is one which the parties and the Judge should have had the opportunity to explore fully *at trial*. Whilst Mr Rai stated that Ms Wei did not need to adduce further evidence, and that she was content to rely on the record of appeal before the court, Mr Lyu certainly did not take the same position.

27 We preferred Mr Lyu's position that rightly called for evidence to have been adduced and tested. Even if Ms Wei was content to rely on the record of appeal, we did not consider this to be appropriate. The evidence which she presented to the Judge needed to be tested in cross-examination with reference to the specific case she sought to advance on appeal. Conversely, as Mr Lok argued, it was also important for Mr Lyu to have had an opportunity to explain the messages exchanged between himself and Ms Wei, again, specifically in the context of her claim that such messages evinced an intention to share the sums transferred and assets acquired in a proportion which saw Ms Wei receiving at least 50%. We accepted Mr Lok's submission. As the Judge very aptly put, the parties' messages were "written in the language of love: larded with vows, suffused with sacrifice and stirred from time to time by anger or resentment. Such language is not always easy to render into the dry language of property

[13] Defence (Amendment No 1) (26 Feb 2021) at paras 6, 9–10, 12, 21 and 26.

law" (the Judgment at [2]). Our considered view was that it would have been prejudicial to Mr Lyu for us to have applied our lens to these exchanges without the parties' explanations provided in the context that was different from their respective pleaded cases.

28 Second, and demonstrative of the first factor above, Ms Wei did not explain how she derived the 50% figure she asserted (see [12]–[13] above). We were not concerned with a division of matrimonial assets, and it was not for parties to simply suggest a figure which they considered would represent a just and equitable division of assets, nor was it the court's function to make this assessment. Ms Wei needed to *prove* that Mr Lyu specifically intended for her to receive the benefit of at least 50% of the monies he had transferred. Given her case at trial (see [6] above), this was simply not an issue which would have crossed the minds of the parties and the Judge. There was therefore inadequate evidence that could shed light on the specific proportion of the share Mr Lyu allegedly intended Ms Wei to have, and the case which Ms Wei raised on appeal before us could not be determined.

29 These two factors were, in our judgment, sufficient to dismiss Ms Wei's appeal in respect of the first group of claims. However, we should also highlight the Court of Appeal's decision in *JWR Pte Ltd v Edmond Pereira Law Corp and another* [2020] 2 SLR 744. There, the appellant attempted to advance a new case on appeal (see [25]), and the apex court regarded such conduct as an abuse of the appeal process. The court noted that the appellant was not seeking to challenge the trial judge's decision, with which it was dissatisfied; instead, by its new case, it was effectively seeking to conduct a second trial. To this, the court said (at [32]):

> … We have reminded counsel in various appeals that they should not be coming before the Court of Appeal as if it were a

> second trial court and we hope we do not need to sound the same admonition against such abuse of the appeal process for future appeals.

30 At the hearing, we brought Mr Rai's attention to this decision and invited submissions on where Ms Wei's O 56A r 9(5)(*b*) fell between the line of raising a new "point" and advancing an entirely new "case". His submissions were directed at, but were not in our view, even remotely able to overcome the points we have made at [26]–[28] above. As stated, her application was, quite plainly, an attempt to advance a wholly new case, not merely a new point.

31 In suitable cases, new points *may* be allowed on appeal. That being said, the appellant courts are guarded against parties who seek to raise such points inappropriately. The reason why leave is required in respect of a new point which a lower court did not have the opportunity to consider was put in a most careful and measured way by the learned Lord Chancellor, Lord Birkenhead in *North Staffordshire Railway Company v Edge* [1920] AC 254 at 263–264:

> [T]here are very few cases of which it can be confidently stated that a failure to raise a relevant contention at the appropriate stage will not prejudice the other litigant. … I do not think it necessary to point out that this suggestion may possibly in another case require qualification or consideration, … [b]ut I desire to draw attention to a consideration which in my view is both more general and more important. The appellate system in this country is conducted in relation to certain well-known principles and by familiar methods. The issues of fact and law are orally presented by counsel. In the course of the argument it is the invariable practice of appellate tribunals to require that the judgments of the judges in the Courts below shall be read. *The efficiency and the authority of a Court of Appeal, and especially of a final Court of Appeal, are increased and strengthened by the opinions of learned judges who have considered these matters below.* To acquiesce in such an attempt as the appellants have made in this case is in effect to undertake decisions which may be of the highest importance without having received any assistance at all from the Judges in the Courts below. *I have carefully examined the cases upon the subject which have been decided in this House, and my examination of them has led me more and more to the conclusion*

> *that such attempts must be vigilantly examined and seldom indulged.*
>
> [emphasis added]

32 In the same vein, the Court of Appeal in *Panwah Steel Pte Ltd v Koh Brothers Building & Civil Engineering Contractor (Pte) Ltd* [2006] 4 SLR(R) 571 at [15] – to which Mr Lok referred us – cited the House of Lords' decision in *The Owners of the Ship "Tasmania" and the Owners of the Freight v Smith and others, The Owners of the Ship "City of Corinth" (The "Tasmania")* (1890) 15 App Cas 223 with approval. There, the learned Lord Herschell said (at 225):

> My Lords, I think that a point such as this, not taken at the trial, and presented for the first time in the Court of Appeal, ought to be most jealously scrutinised. The conduct of a cause at the trial is governed by, and the questions asked of the witnesses are directed to, the points then suggested. And it is obvious that no care is exercised in the elucidation of facts not material to them.
>
> It appears to me that under these circumstances a Court of Appeal ought only to decide in favour of an appellant on a ground there put forward for the first time, if it be satisfied beyond doubt, first, that it has before it all the facts bearing upon the new contention, as completely as would have been the case if the controversy had arisen at the trial; and next, that no satisfactory explanation could have been offered by those whose conduct is impugned if an opportunity for explanation had been afforded them when in the witness box.

33 Given the cautious approach the appellate courts take even towards the introduction of new *points*, there is no room for entirely new *cases* to be raised on appeal. Given that the latter was what Ms Wei sought to advance before us in respect of the first group of claims, we firmly dismissed her appeal in this regard, which we emphasise was an abuse of the appeal process.

The second group of claims

34 We turn next to our decision in respect of the second group of claims.

The first clinic investment and the US surrogacy

35 As regards the claims relating to the first clinic investment and the US surrogacy, we deal first with Ms Wei's submission that the Judge erred in determining that a *Quistclose* trust arose. As stated at [20] above, her essential complaint was that the Judge took too loose an understanding of the requirement of "exclusivity" of purpose. Given this, the first question we needed to answer was what precisely such "exclusivity" entailed, and how it needed to be proven. Ms Wei referred us to two cases in this connection.[14]

36 The first was *Toh Eng Tiah*, where no *Quistclose* trust was found to have arisen on the facts (at [145]), but where the learned Andrew Ang SJ stated at [144]:

> 144 Notwithstanding differing views as to the nature of the trust, for a *Quistclose* trust to arise there must at the very least be a specified purpose for which the property was advanced and a restriction on the recipient's disposition of the property. As Lord Millett observed ([*Twinsectra Ltd v Yardley* [2002] 2 AC 164] at [73]–[74]):
>
> > 73 A *Quistclose* trust does not necessarily arise merely because money is paid for a particular purpose. A lender will often inquire into the purpose for which a loan is sought in order to decide whether he would be justified in making it. He may be said to lend the money for the purpose in question, but this is not enough to create a trust; once lent the money is at the free disposal of the borrower. Similarly payments in advance for goods or services are paid for a particular purpose, but such payments do not ordinarily create a trust. The money is intended to be at the free disposal of the supplier and may be used as part of his cashflow. Commercial life would be impossible if this were not the case.
> >
> > 74 The question in every case is whether the parties intended the money to be at the free disposal of the recipient: *In re Goldcorp Exchange Ltd* [1995] 1 AC 74,

[14] Appellant's Case (18 Apr 2022) at para 68.

> 100 *per* Lord Mustill. His freedom to dispose of the money is necessarily excluded by an arrangement that the money shall be used exclusively for the stated purpose …
>
> [emphasis in original omitted]

37 The second case was *Quistclose* itself, which involved a loan with the express stipulation that it would "*only be used*" for a particular purpose due on a particular date (*Quistclose* at 569D).

38 Relying *just* on these decisions to establish the relevant legal threshold that the Judge supposedly ought to have borne in mind when determining whether a *Quistclose* trust arose, the Appellant's Case then turned its attention to the evidence on record.[15] The approach which Mr Rai took at the oral hearing before us mirrored Ms Wei's written case. He placed emphasis on the broad threshold requirements; namely, that Mr Lyu needed to establish that the transfers he made to Ms Wei were for a *specified*, *exclusive* purpose, and, on the flip side, that the money transferred was *not at her free disposal*. Mr Lok's approach was similar to that taken by Mr Rai. When we questioned him on this issue at the hearing, he accepted that Mr Lyu bore the burden of proving the specific and exclusive purpose or purposes for which the transfers to Ms Wei were made. However, he did not elaborate on what was necessary to demonstrate "specificity", "exclusivity" and the absence of a right of "free disposal", for a *Quistclose* trust to arise. Instead, like Mr Rai, his submissions focused on the characterisation of the objective evidence on record.[16]

39 Although this general statement of the law was not inaccurate, it was somewhat superficial and that, we thought, was slightly unfortunate. We fully

---

15 Appellant's Case (18 Apr 2022) at paras 69–77.

16 Respondent's Case (20 May 2022) at paras 112–122.

appreciated that the underlying dispute was to be resolved on the available evidence in this case. However, even so, it would still have behoved counsel for both parties to have referred us to more precise authorities demonstrating the degree of evidential rigour to which prior courts have subjected plaintiffs seeking to assert a *Quistclose* trust. Though the notions of "specific purpose", "exclusivity" and the absence of a right of "free disposal" are clear indications of a trust, they can accommodate considerable ambiguity in respect of the *amount* and *quality* of evidence which courts ought to require of plaintiffs.

40 For example, in *Eleftheriou and others v Costi and another* [2013] EWHC 2168 (Ch), Mr Simon Barker QC (sitting as a judge of the High Court) considered it a "fatal blow" that the transferors failed to stipulate that the transferee keep the money he received in a separate bank account (at [71]). Conversely, in *Re English & American Insurance Co Ltd* [1994] 1 BCLC 649, Harman J was persuaded that a trust arose over certain funds held by an insolvent insurance company, crucially, because the agreement governing the company's receipt of those funds provided not only that they be applied exclusively to the purposes set out in the agreement, but *also* that they be segregated. In a more general vein, Watkins LJ in *R v Clowes and another (No 2)* [1994] 2 All ER 316 ("*Clowes (No 2)*") quoted a passage from the decision of Channell J in *Henry v Hammond* [1913] 2 KB 515 at 521:

> It is clear that if the terms upon which the person receives the money are that he is bound to keep it separate, either in a bank or elsewhere, and to hand that money so kept as a separate fund to the person entitled to it, then he is a trustee of that money and must hand it over to the person who is his cestui que trust. If on the other hand he is not bound to keep the money separate, but is entitled to mix it with his own money and deal with it as he pleases, and when called upon to hand over an equivalent sum of money, then, in my opinion, he is not a trustee of the money, but merely a debtor. All the authorities seem to me to be consistent with that statement of the law. I agree with the observation of Bramwell L.J. in *New Zealand and*

> *Australian Land Co. v. Watson* [(1881) 7 QBD 374] when he said that he would be very sorry to see the intricacies and doctrines connected with trusts introduced into commercial transactions.

41 Affirming this, Watkins LJ suggested that the following approach be adopted – in cases like these – to determine whether a trust might have arisen over funds which are transferred in connection with some specified purpose or use (*Clowes (No 2)* at 325):

> Those propositions of Channell J have stood the test of time. … As to segregation of funds, the effect of the authorities seems to be that a requirement to keep moneys separate is normally an indicator that they are impressed with a trust, and that the absence of such a requirement, if there are no other indicators of a trust, *normally* negatives it. The fact that a transaction contemplates the mingling of funds is, therefore, not necessarily fatal to a trust.
>
> [emphasis added]

42 The learned authors of *Snell's Equity* (John McGhee and Steven Elliott gen eds) (Sweet & Maxwell, 34th Ed, 2020) ("*Snell*") also appear to give particular credence to the quality of the inference drawn (as to the transferor's intention to preclude the transferee's free disposal) where the transfer is made upon the condition that the money be segregated (see para 25-034):

> A's intention needs to be communicated to B so that it is clear to B that the monies must be returned if A's purpose cannot be fulfilled. It is not fatal to finding the required intention that A contemplates that the money may eventually be mingled with B's general funds. *But a requirement that the money is to be kept unmixed in a special account strengthens the inference that B does not have it at his free disposal, and that he is not a simple contract debtor.* Unless A's intention to restrict B's free disposal of the money is demonstrated, then the money ordinarily belongs beneficially to B. This is consistent with the true default position that the transfer of the legal title ordinarily carries with it the beneficial interest.
>
> [emphasis added; footnotes omitted]

43 We note from Watkins LJ's speech as well as *Snell* that there is, at least strictly speaking, no need for segregation to infer the necessary intention for a *Quistclose* trust to arise. However, the frequency with which it appears in the reasoning of judges – indeed, segregation was part of the factual matrix of *Quistclose* itself – seems to suggest not only that it carries a particular weight, but also, that there exists a relatively high evidential burden to prove that segregation was at least contemplated.

44 That said, it does not seem to us that the courts have uniformly applied the same, generally rigorous expectations of proof. The most useful example is the leading decision of *Twinsectra Ltd v Yardley* [2002] 2 AC 164 ("*Twinsectra*"). There, a solicitor, Leach, was engaged to act for Yardley in connection with the purchase of land. To complete the purchase, Yardley needed to borrow £1m. Twinsectra was willing to lend this sum subject to the provision of certain undertakings. Twinsectra did not deal with Yardley but instead, another firm of solicitors, Sims & Roper of Dorset ("Sims"), whom Yardley separately instructed because Leach was unwilling to provide the undertakings required by Twinsectra. Sims provided Twinsectra with the undertakings it sought and, in turn, they received £1m. The terms of the undertaking Sims provided were:

> 1. The loan moneys will be retained by [Sims] until such time as they are applied in the acquisition of property on behalf of [Mr Yardley]. 2. The loan moneys will be utilised solely for the acquisition of property on behalf of [Mr Yardley] and for no other purpose. 3. [Sims] will repay to [Twinsectra] the said sum of £1m together with interest calculated at the rate of £657.53 per day … such repayment to be made [within four calendar months after receipt of the loan moneys by [Sims]].

45 In breach of these undertakings, Sims paid the money to Leach upon receiving Yardley's assurance that the money would be applied to purchase the relevant property. Leach also did not take steps to ensure that the money was

used solely to complete the purchase; instead, he released the funds to Yardley on his instructions. In consequence, Yardley applied around £360,000 of the borrowed funds to purposes other than the purchase of the property. Twinsectra's essential claim was that Sims held the £1m on trust, and had breached that trust when it paid it out to Leach contrary to the terms of its undertaking. Leach, in connection, was said to have dishonestly assisted Sims' breach of that trust.

46 In the High Court, Carnwath J (as he then was) rejected the contention that Sims held the money on trust for Twinsectra for want of certainty of intention and object. In his view, the "vague terms" of the undertaking did not disclose an intention to create a trust, and it also did not specify the particular property to which the £1m could have been validly applied (*Twinsectra* at [14] *per* Lord Hoffmann). The Court of Appeal reversed this decision and also found that Leach had acted dishonestly. Leach was the only appellant to the House of Lords, and he contended that the Court of Appeal had erred in finding him liable for dishonest assistance. The Lords overturned the Court of Appeal on the issue of dishonest assistance, but more pertinent for present purposes, Lord Millett did not agree with Carnwath J that the terms of the undertaking were vague. On the contrary, he said at [75]:

> In the present case paragraphs 1 and 2 of the undertaking are *crystal clear*. Mr Sims undertook that the money would be used solely for the acquisition of property and for no other purpose; and was to be retained by his firm until so applied. It would not be held by Mr Sims simply to Mr Yardley's order; and it would not be at Mr Yardley's free disposition. Any payment by Mr Sims of the money, whether to Mr Yardley or anyone else, otherwise than for the acquisition of property would constitute a breach of trust.
>
> [emphasis in original omitted; emphasis added in italics]

47 Then, in rounding off on this issue, his Lordship said at [99]:

> … There is clearly *a wide range of situations* in which the parties enter into a commercial arrangement *which permits one party to have a limited use of the other's money for a stated purpose, is not free to apply it for any other purpose*, and must return it if for any reason the purpose cannot be carried out. The arrangement between the purchaser's solicitor and the purchaser's mortgagee is an example of just such an arrangement. All such arrangements should if possible be susceptible to the same analysis.
>
> [emphasis added]

48 A question to which *Twinsectra* gives rise, however, is whether – in this "wide range" of circumstances by which parties may restrict the purposes for which transferred monies may be used – there needs to be an *express* declaration or agreement that the money is only to be used for an exclusive purpose (or purposes). In *Twinsectra*, it was undertaken that "[t]he loan moneys [would] be utilised solely for the acquisition of property" (see [44] above). Similarly, in *Re EVTR, Gilbert and another v Barber* [1987] BCLC 646 ("*Re EVTR*"), a case cited by Lord Millett in *Twinsectra* at [89], money was advanced to solicitors with written authority to release the money "for the sole purpose of buying new equipment" (see 650a–b).

49 Again, it appears, the authorities do not all point one way. In *Templeton Insurance Ltd v Penningtons Solicitors LLP and others* [2006] EWHC 685 (Ch) ("*Templeton*"), the defendant solicitors also provided an undertaking on behalf of their client to secure a loan of £500,000. A term of this undertaking provided that, "[i]f completion of the purchase [was] delayed for more than 14 days the said sum [would] be placed in a designated client deposit account to earn interest for you until completion" (at [3]). Lewison J (as he then was) considered it "plain" from this undertaking – particularly, the words "for you" – that a *Quistclose* trust arose (at [7]). The undertaking there was certainly not as forthright as those in *Twinsectra* or *Re EVTR*, and thus, it appears that the evidential threshold which Lewison J had in mind was not particularly high. No

expression of specific intention was required, and the learned judge was content to infer the requisite intention from the broader formulation of the solicitors' undertaking. Evans-Lombe J seemed to take a similar view in *Cooper v PRG Powerhouse Ltd and others* [2008] 2 All ER (Comm) 964 ("*Cooper*"). There, he suggested (at [15]) that it was sufficient to show "that the arrangement pursuant to which the payment was made defined the purpose for which it was made in such a *way that it was understood by the recipient that it was not at his free disposal*" [emphasis added].

50 The learned authors of *Underhill and Hayton: Law of Trusts and Trustees* (Charles Mitchell, Paul Matthews, Jonathan Harris & Sinéad Agnew eds) (LexisNexis, 20th Ed, 2022) – drawing cases like *Templeton* and *Cooper* together, amongst others – suggest generally that (at para 27.6):

> To bring a case within the scope of the … *Quistclose* principle it seems the parties need not have expressly agreed that the money should be applied for a 'sole purpose' or 'exclusive purpose', provided that this is the substance of their arrangement, and that it was understood by the borrower that the money was not at his free disposal. Nor does it matter if the relevant purpose is couched in broad terms … or described more precisely, provided that it is expressed sufficiently clearly for a court to be able to say of any application of the money that it does or does not fall within the terms of the power given to the borrower. …
>
> [footnotes omitted]

51 The long and short of the foregoing discussion is this. By requiring less or more evidence of a lower or higher quality, the court may circumscribe or expand the applicability of the *Quistclose* trust doctrine. The place at which one lands in this regard depends on the position from which one begins. Cases in which *Quistclose* trusts have typically been asserted are those involving loans for a particular purpose, with the dispute arising because the borrower does not apply the funds to that specific purpose *and* later becoming insolvent. One may

view cases like these with a certain scepticism and be concerned that what the party asserting the *Quistclose* is trying to do, is circumvent ordinary priority in insolvency. If so, one is more likely to apply a rigorous evidential lens, but, even then, as the foregoing discussion shows, not all courts have chosen to begin their analysis from this position *even* in commercial cases involving insolvency.

52 This brings us back to the present case. If the extent of evidential rigour to which even commercial cases have been subjected has not been uniformly high, there must necessarily be less room for such rigour in cases like the present involving *voluntary* transfers of money between individuals in a private non-commercial setting. The law has traditionally taken a sceptical view of such transfers; for example, by shifting the evidential burden of proof, as in the operation of the presumed resulting trust. Alternatively, it may – as was appropriate in this case – require less by way of rigorous proof that money transferred was not intended to be a gift, but rather, to be used exclusively for specified purposes such that the recipient did not have free disposal of the money transferred.

53 Seen through this lens, we were satisfied that the evidence presented by Mr Lyu made out a *Quistclose* trust in respect of the money he transferred to be used in connection with the first clinic investment and the US surrogacy. We were persuaded by the fact that Ms Wei was the one who asked Mr Lyu to transfer her some money to be spent on three items: (a) the first clinic investment; (b) the US surrogacy; and (c) the Cairnhill option. Initially, Mr Lyu expressed concerns over the amount of money he was spending on their relationship in general. In response, Ms Wei persuaded him that she was being as effective as possible in her usage of the funds, stating that the cost of the US

surrogacy alone was initially S$1.4 million, but that she had managed to allocate this sum towards all three items. Her salient messages read:[17]

> The costs of clinic, the down payment of the new house and the surrogacy in the United States would need about one million Singapore dollars! At first, only the clinic would need 1.4 million Singapore dollars! I broke it down into three things!
>
> …
>
> If you decided to go to bank this afternoon, I will finish many things on Monday! If you don't want to do that or you feel huge pressure, you can tell me directly! Then we stop planning everything! And I can find the right direction! Because I was alone but I need to think about everything for us! Your acceptance could reduce my pressure …

54 Mr Lyu responded that she was asking for around RMB 7 million and that it was applying too much pressure on him financially. After some back and forth, Ms Wei then said:[18]

> To do the three matters with 5 million yuan! If you agree, we can do them according to my plan! If you don't, I will not do anything! From now on, I will do nothing for you! You mind your businesses, and I mind mine!

55 Mr Lyu continued to maintain that Ms Wei was asking for too much money, replying to her above message with the following: "Don't push me, I prefer to do them one by one".[19] These messages were exchanged on 10 March 2017. Subsequently, after a period of silence, on 29 March 2017, the couple spoke on the phone for around 18 minutes and, later that day, Mr Lyu proceeded to transfer Ms Wei RMB 4 million.[20] This amounted to the approximate

---

17 Record of Appeal (Vol 3B) at pp 194–197.

18 Record of Appeal (Vol 3B) at pp 197–205.

19 Record of Appeal (Vol 3B) at p 205.

20 Record of Appeal (Vol 3B) at pp 206–229.

S$800,000 which was spent on the first clinic investment, US surrogacy and Cairnhill option (see the Judgment at [72] and [78]).

56 In our judgment, this was sufficient to establish an intention on the part of Mr Lyu, that the RMB 4 million he transferred was to be used only for the three purposes discussed, and was not to be at the free disposal of Ms Wei. His initial resistance to the quantum Ms Wei was requesting, and the gradual reductions in her requests are particularly indicative of such intention. Therefore, given that it was common ground between the parties that neither the first clinic investment nor the US surrogacy was proceeded with, the purpose of Mr Lyu's transfer failed in those respects, and Ms Wei therefore held those sums on a *Quistclose* trust for him.

57 At the hearing, Mr Rai took us through certain communications which seemed to demonstrate that Mr Lyu was aware that Ms Wei had used some of this RMB 4 million for other purposes, and he did not raise any objection.[21] This, Mr Rai submitted, suggested that Mr Lyu did not intend the money to be applied *exclusively* for the three items; after all, if he had such an intention, one would expect him to express at least some objection. To be clear, Mr Rai was not suggesting that Mr Lyu's subsequent passivity should be construed as a waiver of the trust, or an estoppel by conduct. His submission was that Mr Lyu's subsequent conduct ought to inform our inference of his intention at the point of the transfer. We did not accept this. In our view, the exchanges between Mr Lyu and Ms Wei *before* the transfer supported the stronger inference as to Mr Lyu's intention than his subsequent lack of objection to Ms Wei using the money transferred for other purposes.

---

[21] Appellant's Case (18 Apr 2022) at para 69.

58 Although we dismissed Ms Wei's contention that the Judge erred in determining that a *Quistclose* trust arose in respect of the money transferred for the first clinic investment and the US surrogacy, and this was sufficient to affirm the Judge's decision on these claims, for completeness, we should address the alternative basis for the Judge's decision. As stated at [20] above, the Judge offered two legal bases for his decision: a *Quistclose* trust or a claim for unjust enrichment. In respect of the latter, Ms Wei contended that the Judge failed to consider her defence that her position had changed. Indeed, at [32] of the Judgment, the Judge noted that she raised this, but only briefly stated that "it would not be inequitable" for Ms Wei to repay the sums of money to Mr Lyu for the first clinic and the US surrogacy ([75] and [76] of the Judgment). However, there was no discussion of the defence in the Judgment. That being said, Ms Wei did not go further in this appeal than the bare assertion that she had raised the defence. She only made mention of the Judge's failure to consider the defence in one line of her Skeletal Arguments, and the submission did not feature in her Appellant's Case.[22] There was therefore little we could make of this point and, accordingly, it was not a reason to disturb the Judge's alternative basis for his decision in respect of these two claims.

The second clinic investment

59 Next is the appeal regarding the second clinic investment. We noted at [21] above that the precise legal basis of the Judge's decision was not clear. Accordingly, we referred to the pleadings. It is most convenient to set out the relevant paragraphs of Mr Lyu's Statement of Claim and Reply concerning the second clinic investment, as well as Ms Wei's Defence, in full:

Statement of Claim

22 Appellant's Skeletal Arguments (20 Jun 2022) at para 33.

> …
>
> 15. With respect to the monies of RMB 500,000 (approx. SGD 100,000) to be applied towards the purchase of a clinic in Singapore sometime in May 2018, the planned purchase had never materialised. Of the RMB 500,000 intended to have been applied towards the first tranche of the payment of SGD 100,000, the Plaintiff has secured the benefit of SGD 60,000 and the remainder SGD 40,000 was borrowed by the Defendant who promised to repay the same. The sum of SGD 40,000 is due and payable by the Defendant to the Plaintiff.
>
> …
>
> **Defence**
>
> …
>
> 10(j). Wei eventually found the investment at the dental clinic to be unsuitable, as Lyu did not succeed in obtaining an employment pass despite two attempts. As such, she did not proceed with the purchase. Lyu was kept informed of Wei's decision, and did not request for any part of the monetary gifts back.
>
> …
>
> **Reply**
>
> …
>
> 11(h). Paragraph 10(j) of the Defence is not admitted. The Plaintiff avers that he had requested for the return of the monies and the Defendant had returned the sum of S$60,000.00 to the Plaintiff's possession when he requested for the same and the remainder S$40,000.00 was borrowed by the Defendant who promised to repay the same.
>
> …

60 It can be seen from the quoted pleadings that in Mr Lyu's Statement of Claim, he averred that the money transferred was "to be applied towards the purchase of a clinic in Singapore", but that this planned purchase "never materialised". This *seemed* to suggest that he was asserting the existence of a *Quistclose* trust, and indeed, the sole ground on which Ms Wei challenged the Judge's decision in respect of this claim was that he erred in determining that a

Quistclose trust had been supportable by the facts before him. However, we did not agree that this is what Mr Lyu was asserting.

61 It can be seen that later in this same paragraph of his Statement of Claim, the focus of Mr Lyu shifted. He stated with relative clarity that Ms Wei returned S$60,000 of the S$100,000 initially transferred but asked to borrow the remaining S$40,000, to which Mr Lyu agreed on account of the fact that she "promised to repay the same". In his Reply, the word "borrowed" was used again.

62 On balance, we considered that the more accurate reading of Mr Lyu's pleadings was that he had been asserting the existence of a loan agreement. The initial hints of a potential *Quistclose* trust had to be read with the rest of his pleadings about a borrowing. A loan being the legal basis of his claim, the onus lay on him to prove that there existed such an agreement for a loan. It was not correct for the Judge to determine that the transfer was "not a gift" and, thereafter, to order the repayment of S$40,000 on the basis that the "purpose of the transfer failed" (see the Judgment at [89]). As the judge in *Multi-Pak Singapore Pte Ltd (in receivership) v Intraco Ltd and others* [1992] 2 SLR(R) 382 stated, citing the decisions of *Esso Petroleum Co Ltd v Southport Corporation* [1956] AC 218, *Panding v London Brick Co Ltd* [1971] 10 KIR 207 and *Lloyde v West Midlands Gas Board* [1971] 1 WLR 749, "[a] court may not make a finding or give a decision based on facts not pleaded and a finding or decision so made will be set aside" (at [24(c)]).

63 The unfortunate effect of Mr Lyu's convoluted pleaded case is that the Judge made no finding as to the existence of a loan agreement in connection with the second clinic investment. Given our reading of the pleadings, such a finding was needed for Mr Lyu's claim to succeed and, in its absence, the claim

had no basis to succeed. We accordingly set aside the Judge's decision in respect of the second clinic investment.

The application for Grenadian citizenship

64 Finally, we turn to the application for Grenadian citizenship. We did not accept Ms Wei's contention that there was insufficient evidential basis for the Judge to have concluded that there existed a loan agreement. We carefully considered [79] to [83] of the Judgment and we took the view that the Judge was accepting Mr Lyu's evidence over Ms Wei's. Mr Lyu's evidence, as set out in his affidavit of evidence-in-chief – and which he maintained at trial – was that Ms Wei requested a loan of US$400,000 from him for the purpose of applying for Grenadian citizenship for herself and her four children. He was very specific that the money was transferred *as a loan*. Accepting this account of the facts – and indeed, nothing raised by Ms Wei reasonably suggested to us that her account should objectively have been preferred over Mr Lyu's – there was a clear and adequate evidential basis for the Judge's finding that the transfer of funds used by Ms Wei and her children to obtain Grenadian citizenship was made pursuant to a loan agreement. On this basis, we dismissed Ms Wei's appeal in respect of this claim.

Conclusion

65 In summary, we dismissed Ms Wei's appeal: (a) for the first group of claims; and (b) for the second group of claims except for one. For the reasons at [59]–[63] above, we considered it appropriate to set aside the Judge's decision in respect of the second clinic investment and, accordingly, to reduce the Judge's order that Ms Wei repay Mr Lyu the sum of S$354,684.22 by S$40,000. We directed that the remaining orders made by the Judge, as set out in the Judgment at [94], were to stand.

66 In the round, we observe that there was nothing raised by Ms Wei which seriously warranted appellate intervention. Half the case she raised on appeal was a departure from that which was advanced at trial, and the other half pressed points without suggesting that real errors were made by the Judge. In the premises, there was no reason for us to find that the Judge had erred in his findings save for the one claim mentioned above. We awarded Mr Lyu S$45,000 (all-in) in costs and directed that the usual consequential orders would apply.

Belinda Ang Saw Ean
Judge of the Appellate Division

Woo Bih Li
Judge of the Appellate Division

Hoo Sheau Peng
Judge of the High Court

Mahesh Rai s/o Vedprakash Rai and Samuel Soo Kuok Heng (Drew & Napier LLC) for the appellant;
Lok Vi Ming SC and Qabir Singh Sandhu (LVM Law Chambers LLC) (instructed), Chong Xin Yi and Tan Lena (Gloria James Civetta & Co) for the respondent.