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

[2023] SGHC 107

Originating Application No 696 of 2022

In the matter of Section 18(2) of the Supreme Court of Judicature Act 1969

And

In the matter of Paragraph 2 of the First Schedule of the Supreme Court of Judicature Act 1969

And

In the matter of the Estate of Tan Tuck Kow, deceased in PRG No.: 82/2023

And

In the matter of 342 Jurong East Street 31 #01-05 Singapore 600342

And

In the matter of 345 Jurong East Street 31 #01-19 Singapore 600345

Between

(1) Chen Xiaoqi
(2) Chen Fangying

… *Claimants*

And

(1) Chen Fangqi
(2) Chen Changfeng

… *Defendants*

JUDGMENT

[Probate and Administration — Administration of assets]

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Chen Xiaoqi and another
v
Chen Fangqi and another

[2023] SGHC 107

General Division of the High Court — Originating Application No 696 of 2022
Goh Yihan JC
20 March 2023

21 April 2023 Judgment reserved.

Goh Yihan JC:

1 This is the claimants' application for orders in three broad areas:

(a) an order for the sale of the properties known as (i) 342 Jurong East Street 31 #01-05 Singapore 600342 ("#01-05") and (ii) 345 Jurong East Street 31 #01-19 Singapore 600345 ("#01-19") (collectively, "the Properties") and directions as to the conduct of the sale and the distribution of the sale proceeds;

(b) an order for account and payment against Ms Chen Fangqi; and

(c) miscellaneous orders such as costs.

2 In turn, the defendants have mounted a counterclaim for the following orders:

(a) an order that the claimants carry out the agreement to dispose of the Properties on terms agreed in the claimants' solicitor's letter dated 24 August 2022 ("the Letter");

(b) in the alternative, an order that the claimants pay damages to the defendants for their breach of the above agreement;

(c) a declaration that the first defendant be entitled to remuneration amounting to $125,100 as administrator of the Estate, as well as a monthly sum of $1,000 from April 2023 until the administration is completed;

(d) an order that the first claimant pay damages to the first defendant for her breach of fiduciary duties as administrator of the Estate; and

(e) miscellaneous orders such as costs.

I will deal with each of these claims in turn.

Background facts

3 By way of background, the claimants and defendants are siblings in the following order of seniority:

(a) Ms Chen Xiaoqi ("Xiaoqi"), the eldest child and the first claimant;

(b) Ms Chen Fangqi ("Fangqi"), the second child and the first defendant;

(c) Mr Chen Changfeng, the third child and the second defendant; and

(d) Ms Chen Fangying, the fourth child and the second claimant.

The parties' father was the late Mr Tan Tuck Kow ("Mr Tan"). Their mother is Dr Hor Chun Lay ("Dr Hor"). The parties' father and mother divorced sometime in the early 2010s.

4 Mr Tan passed away unexpectedly on 28 December 2011. Xiaoqi and Fangqi made a joint application for letters of administration of Mr Tan's estate ("the Estate"). On 23 July 2012, Letters of Administration were granted to Xiaoqi and Fangqi as joint administrators over the Estate. The beneficiaries of the Estate are the four parties taking in equal shares each.

5 The Estate was valued at $5,345,742.53. The major assets in the Estate are the Properties. Both of these Properties are HDB shophouses. Another asset is a dental clinic previously run by Mr Tan and operating under the name of "Lakeside Dentist". After his passing, Mr Tan's business was converted on 20 January 2012 from a sole proprietorship to a private limited company structure through the incorporation of a company known as Lakeside Dentist Pte Ltd ("the Company"). Each beneficiary of the Estate was allocated an equal 25% shareholding in the Company.

6 On 6 March 2014 and 26 June 2014, the ownership of #01-19 and #01-05 were, respectively, devolved to Xiaoqi and Fangqi holding as joint tenants as administrators of the Estate. It is not disputed that the parties each hold a beneficial interest of 25% in each of the two Properties. Xiaoqi and Fangqi in their capacities as joint administrators have leased #01-19 to various tenants for rental income. However, no rental income is derived from #01-05. The Company has occupied #01-05 on a rent-free basis to operate a dental practice. In that regard, Dr Hor is the sole director of the Company and the sole

dentist. The Company would declare dividends and distribute those to parties in proportion to their shareholding.

The claimants' claim

Whether orders for the sale of the Properties and related matters should be granted

7 I turn first to the claimants' prayers for the sale of the Properties, with the net sale proceeds to be divided among the parties, and for Xiaoqi to have sole conduct of the valuation and sale of the Properties.

The parties' arguments

8 The claimants advance three arguments for the orders sought in respect of the Properties. First of all, the claimants' main argument is that the relationship between the parties as siblings, as well as the relationship between some of the parties and Dr Hor, have been fractious and tense. In this regard, the parties have advanced various allegations against each other. There is no need for me to reproduce these details here. It suffices to state generally that Xiaoqi says that her relationship with Fangqi has deteriorated to such an extent that it is impossible for them to work together as co-administrators of the Estate. From Fangqi's perspective, Xiaoqi has not done her part as a co-administrator as she has been resident in Australia to pursue her studies since 2010. The claimants rightly recognise that these various allegations made by the parties against each other are not, by themselves, helpful in resolving the present matter. However, the claimants do say that these allegations evidence the deep animosity between the parties.

9 Second, the claimants say that #01-05 can be put to much better economic use than being occupied by the Company rent-free. They thus argue

that the present state of the Properties is not satisfactory and prejudicial to all the beneficiaries of the Estate.

10 Third, the claimants argue that the orders sought in respect of the Properties do not result in prejudice to the defendants. In this regard, they point out that the defendants do not dispute that the Properties should be sold. In fact, the defendants have indicated that they "too are keen to sell".[1] Indeed, the claimants say that the defendants would only stand to gain from the sale of the Properties as all the parties would then be able to unlock the full value of their inheritance from the Estate.

11 In response, the defendants do not dispute the need for the Properties to be sold. Rather, they say that the parties have already reached an agreement for the sale of the Properties to be conducted in a particular manner. In this regard, they allege that the agreement is contained in the Letter. According to the defendants, their solicitors had clearly summarised and confirmed the agreed terms of the parties' agreement in the Letter. The defendants further say that the parties had discussed and agreed on the mechanics of carrying out their agreement in subsequent correspondences. Crucially, the defendants point out that both sets of parties had acted on the agreement to engage valuers to value the Properties. The claimants reject the defendants' suggestion that the parties had reached an agreement in relation to the sale of the Properties on 24 August 2022.

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[1] Affidavit of Chen Fangqi and Chen Changfeng filed on 9 December 2022 at pp 3 and 5.

My decision: the orders should be granted with some modifications

(1) Whether there was an agreement reached between the parties on 24 August 2022

12 In my view, it is helpful to first deal with the defendants' argument that the parties had reached an agreement on 24 August 2022. This is because if the parties had reached such an agreement, then the agreement should govern the parties' conduct of the sale of the Properties. This would make it unnecessary for further orders by the court in respect of the Properties.

(A) THE APPLICABLE LAW

13 The main issue here is whether the parties had reached a settlement that the defendants allege was concluded through the Letter. In this regard, there are three applicable principles. First, the Court of Appeal in *Gay Choong Ing v Loh Sze Ti Terence Peter and another appeal* [2009] 2 SLR(R) 332 ("*Gay Choong Ing*") held (at [46]) that the general principles of contract law apply to the law of compromise or settlement as in other contractual contexts. Andrew Phang Boon Leong JA elaborated as follows (at [46]):

> … As Foskett has observed (at para 3-01, and adopted in *Info-Communications* (at [115])), a compromise will not arise unless certain requirements are fulfilled; these include (differing somewhat, though, from the precise sequence Foskett has adopted) what is, in fact, traditionally required under the general common law of contract, *viz*, an identifiable agreement that is complete and certain, consideration, as well as an intention to create legal relations. …

14 Second and more specifically, it is axiomatic that before there can be a concluded contract in law, its terms must be certain. In this regard, a term that is "uncertain" exists but is otherwise incomprehensible. A contract may be unenforceable for uncertainty even though there has otherwise been both offer and acceptance between the parties (see *The Law of Contract in Singapore*

(Andrew Phang Boon Leong gen ed) (Academy Publishing, 2nd Ed, 2022) ("*The Law of Contract in Singapore*") at p 162). Thus, Maugham LJ had said in the oft-cited English Court of Appeal decision of *Foley v Classique Coaches Ltd* [1934] 2 KB 1 at 13:

> It is indisputable that unless all the material terms of the contract are agreed there is no binding agreement. An agreement to agree in future is not a contract; nor is there a contract if a material term is neither settled nor implied by law and the document contains no machinery for ascertaining it. …

15 Third, as Phang JA also held in *Gay Choong Ing* at [53], the court should look at the whole suite of correspondence between parties to ascertain whether a valid compromise or settlement agreement had been formed between the parties. In affirming this proposition of law, Phang JA endorsed the approach taken by the Malaysian Federal Court in *The Ka Wah Bank Ltd v Nadinusa Sdn Bhd & Anor* [1998] 2 MLJ 350 that such a settlement agreement can be entered into through an exchange of correspondence between the parties, in which "there [was] to be found in them an offer substantially accepted in terms which constitute a contract" (at 366).

(B) THERE WAS NO AGREEMENT REACHED BETWEEN THE PARTIES ON 24 AUGUST 2022

16 In my judgment, the parties did not enter into a binding settlement agreement on 24 August 2022 through the Letter. In the first place, there was no offer and acceptance between the parties so as to form an agreement. By the defendants' own case, the parties had begun corresponding with each other since the claimants sent a letter of demand to the defendants on 22 March 2022. The claimants do not disagree that the parties then exchanged correspondence, including some marked as "without prejudice", in an attempt to reach agreement on, among others, arrangements to sell the Properties. While there were several

variables for the parties to agree on, the defendants submit that an agreement to sell the Properties, along with the agreed material terms, was reached by way of the Letter, which ironed out some last few items of contention between the parties. The defendants also point out that their solicitors had clearly summarised and confirmed the agreed terms in a subsequent letter dated 1 September 2022.

17 However, the defendants' claim is not made out by the parties' correspondence. To begin with, it is crucial to note that the parties had been negotiating on the basis that they will record what terms had been agreed, so as to make clear the remaining points of disagreement. Indeed, this approach was suggested by the defendants' solicitors. In a letter dated 15 August 2022, the defendants' solicitors had suggested this:[2]

> We have thus far exchanged a few proposals in an attempt to reach an amicable settlement between parties. To facilitate more effective tracking of terms agreed upon and the remaining points of disagreement, we summarise the agreed terms below.

Thus put, this arrangement whereby the terms agreed between the parties are recorded is merely meant to be an administrative procedure to make the negotiation process more efficient. I do not think the parties intended that the terms that are recorded as "agreed" are meant to be binding on the parties without a further holistic review and agreement. Rather, it must be a necessary corollary to the above paragraph that the parties conducted their negotiations on a "subject to contract" basis, even if this was not expressly spelt out. This is because agreements are concluded as a package, rather than on a term-by-term basis. Thus, it cannot be that the parties intended to be bound simply by discrete terms that had been recorded as having been "agreed", without a holistic

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2 Affidavit of Chen Fangqi and Chen Changfeng filed on 9 December 2022 at p 18.

assessment of the broader package deal. Also, despite the claimants' solicitors saying in the Letter that they "affirm" or are "agreeable" to the contents of the letter dated 15 August 2022, it is clear that they were not committing to a binding agreement.

18 Moreover, there were at least two aspects of the Letter dated 24 August 2022 that strongly militated against a finding that there was a binding settlement agreement concluded between parties then. First, para 11 of the Letter stated that "negotiations have dragged on for more than 5 months *without concrete progress being made*" [emphasis added].[3] This points against the defendants' suggestion that parties were ready to be immediately bound to the terms being tabled by 24 August 2022. Second, the Letter ended with a notice (at para 12) that unless the defendants provided their responses within seven days of the date of the Letter, the claimants had given their solicitors strict instructions to commence legal proceedings. I agree with the claimants that this notice would have been unnecessary if a settlement agreement were indeed reached on 24 August 2022. As such, I find that the Letter dated 24 August 2022 merely recorded the terms that were being tabled in negotiations, and neither constituted an acceptance of an offer nor evidenced a binding agreement between the parties.

19 More generally, I also disagree with the defendants' apparent suggestion that an agreement was concluded between the parties once the terms that were recorded as "agreed" crossed the threshold of sufficient material terms to constitute an agreement, even though some terms have yet to be agreed. In my view, such an outcome would not reflect the true intentions of parties who were negotiating on the basis that the terms agreed to date are being tracked purely

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[3] Affidavit of Chen Fangqi and Chen Changfeng filed on 9 December 2022 at p 20.

for administrative purposes. Indeed, it would certainly surprise such parties to find out that they are bound to an agreement once the terms recorded as "agreed" reach an undefined point in terms of number and materiality that is sufficient to constitute a binding contract. While I do not discount the possibility of a contract being formed in such a manner, particularly when discussions take place informally and orally, I do not think that this would likely be *in this context*, where parties were proceeding on the basis of careful negotiations by correspondence undertaken by solicitors. In this context, one should be slow to find agreement from the correspondence until the parties expressly state that they have agreed on a compromise or settlement agreement. In this regard, I respectfully adopt the comments made by Sir Andrew Morritt C in *Cheverny Consulting Ltd v Whitehead Mann Ltd* [2007] 1 All ER (Comm) 124 at [45]:

> Obviously each case depends on its own facts but in my view where, as here, solicitors are involved on both sides, formal written agreements are to be produced and arrangements made for their execution the normal inference will be that the parties are not bound unless and until both of them sign the agreement. …

Ultimately, the important question is whether the parties, by their words and conduct, have made it objectively clear that they intend to be bound despite the unsettled terms (see the Court of Appeal decision of *The "Rainbow Spring"* [2003] 3 SLR(R) 362 at [20]). As I said earlier, objectively assessed, the parties here must have been negotiating on the basis that neither side would be bound by an agreement until they had formally executed one.

20 More broadly, my conclusion that the parties never intended to be bound by the terms that they had recorded as "agreed", without more, is also supported by the *other* correspondences between the parties. For example, in the letter from the defendants' solicitors dated 15 August 2022, the defendants' solicitors clearly spelled out the material issues on which they disagreed despite the fact

that some terms were recorded as "agreed". These issues included how the Properties are to be valued, without which I cannot see how the sale of the Properties can go through.

21 Similarly, in their subsequent letter dated 1 September 2022, even the *defendants'* solicitors clearly did not think that the parties had reached an agreement a week before on 24 August 2022. This is because at the close of the letter, the defendants' solicitors had stated thus:[4]

> Our clients similarly wish to resolve matters as expediently as possible. However, our clients continue to have other responsibilities and obligations and *require time to consider and respond productively to your proposals*. Our clients seek your clients' understanding that making demands, incessant telephone calls to our firm and threatening legal action, *is not conductive to reaching an amicable resolution of matters*.
>
> [emphasis added]

As is obvious from the italicised words, the defendants, through their solicitors, indicated that they needed time to consider the claimants' proposal. The defendants also indicated that the claimants' alleged various conduct was not conducive to *reaching* an amicable resolution of matters. Moreover, another part of the 1 September 2022 letter stated that the defendants' solicitors "summarise[d] the terms agreed upon between our mutual clients … on the sale of the Company and the Clinic Premises *to date*" [emphasis added].[5] The qualification in the letter to the terms agreed "to date" suggests that parties contemplated adding to or modifying the recorded terms, and were still working towards a binding agreement that they would formally conclude through their solicitors. Viewed holistically, these statements clearly show that, in so far as the defendants are concerned, there was still no agreement between the parties

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4 Affidavit of Chen Fangqi and Chen Changfeng filed on 9 December 2022 at p 24.

5 Affidavit of Chen Fangqi and Chen Changfeng filed on 9 December 2022 at p 22.

as of 1 September 2022. Put in legal language, there was simply no offer and acceptance between the parties so as to form an agreement even as of 1 September 2022, which is later than the defendants' pleaded date of 24 August 2022.

22 Even if I am wrong that there had not been an offer and acceptance between the parties, I am also of the view that the resulting agreement supposedly formed on 24 August 2022 through the Letter would be too uncertain to be enforceable. As the authors of *The Law of Contract in Singapore* point out (at para 03.238), if there was an essential part of the contract that was incomplete, and which cannot be remedied by an implication of a term, then the contract would be unenforceable. In this regard, I agree with the claimants that the alleged agreement arising from the Letter is simply too uncertain as it lacked a number of material terms. For example, the parties did not agree on how the defendants could buy over the claimants' interests in the Properties. This is a material term because it constitutes the fallback position in the event that the Properties are not sold on the open market.

23 Finally, I turn to the defendants' argument that the parties had acted on the supposed agreement to engage valuers. In this regard, the Court of Appeal had held in *The "Luna" and another appeal* [2021] 2 SLR 1054 that it is permissible to consider evidence of subsequent conduct for contract *formation* (at [30]). However, as Edmund Leow JC observed in *Higgins, Danial Patrick v Mulacek, Philippe Emanuel and others and another suit* [2016] 5 SLR 848 at [39], the taking of preparatory steps, on the basis of a hope and expectation there would be an agreement in the future, cannot form the basis of a contract where the negotiations between the parties have not crystallised into a contractually-binding agreement. In the present case, given that there is clear evidence showing that negotiations between the parties had not crystallised into a binding

agreement on 24 August 2022, I do not think that the engagement of valuers detracts from this conclusion. Rather, as the Letter dated 24 August 2022 expresses, the engagement of valuers was meant to facilitate the negotiation of the final sale price of the Properties. In the words of the defendants' solicitors in the Letter (repeated in exact terms at paras 5 and 9), "it is only fair that our respective clients negotiate and decide on the final sale price after both sets of valuations are completed".[6]

24 For all of these reasons, I conclude that there was no agreement reached between the parties on 24 August 2022 in relation to the sale of the Properties.

(2) Whether there are good reasons to grant the orders in relation to the Properties

25 It follows therefore that I should go on to consider whether there are good reasons to grant the orders in relation to the Properties.

(A) THE APPLICABLE LAW

26 I turn now to the applicable law. To begin with, the present application is based on s 18(2) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA") read with the First Schedule to the SCJA ("First Schedule"). Section 18(2) of the SCJA provides that the General Division of the High Court shall have the powers set out in the First Schedule. Relevantly, para 2 of the First Schedule provides as follows ("Paragraph 2"):

> **Partition and sale in lieu of partition**
>
> 2. Power to partition land and to direct a sale instead of partition in any action for partition of land; and in any cause or matter relating to land, where it appears necessary or

6 Affidavit of Chen Fangqi and Chen Changfeng filed on 9 December 2022 at pp 20-21.

> expedient, to order the land or any part of it to be sold, and to give all necessary and consequential directions.

27 In deciding whether it is "necessary or expedient" for a sale to be ordered, the Court of Appeal in *Su Emmanuel v Emmanuel Priya Ethel Anne and another* [2016] 3 SLR 1222 ("*Su Emmanuel*") held that this had to be done through a balancing exercise of various factors as follows (at [57]):

> 57 In our judgment, the following points may be distilled from the foregoing discussion of the authorities:
>
> (a) In deciding whether it is necessary or expedient for a sale to be ordered in lieu of partition, the court conducts a balancing exercise of various factors, including (i) the state of the relationship between the parties (which would be indicative of whether they are likely to be able to co-operate in the future); (ii) the state of the property; and (iii) the prospect of the relationship between the parties deteriorating if a sale was not granted such that a "clean-break" would be preferable.
>
> (b) Regard should be had to the potential prejudice that the various co-owners might face in each of the possible scenarios, namely, if a sale is granted and if it is not granted.
>
> (c) A sale would not generally be ordered if to do so would violate a prior agreement between the co-owners concerning the manner in which the land may be disposed of.

(B) THERE ARE GOOD REASONS TO GRANT THE ORDERS IN RELATION TO THE PROPERTIES

(I) SALE OF THE PROPERTIES

28 Applying these factors to the present case, I am firstly of the view that the relationship between the parties has clearly broken down and that a sale should be ordered. This is indeed an unfortunate instance in which each family member has a certain immovable perspective of the state of affairs, which has led to the present difficulties. In the circumstances, it would be preferable to accord the parties a clean break as far as this is possible. Second, the orders

sought do not prejudice the defendants. Indeed, the defendants do not actually dispute the need for the sale and agree for the sale to take place. Third, I have not found that the parties had entered into a prior agreement on 24 August 2022 for the sale of the Properties.

29 I therefore conclude that it is "necessary or expedient" that the Properties should be sold so as to resolve the conflict between the parties. I make the orders prayed for by the claimants in prayers one and two of their claim.

(II) CONDUCT OF THE SALE OF THE PROPERTIES

30 As for whether Xiaoqi should have sole conduct of the valuation and sale of the Properties, the High Court in *Tan Chor Hong v Ng Cheng Hock* [2020] 5 SLR 1298 ("*Tan Chor Hong*") had said this (at [50]):

> Where one of two co-owners applies to court for a sale in lieu of partition, it could be because one owner wishes to sell while the other owner does not wish to sell. In such a situation, it may be unrealistic to expect the other owner to co-operate in the sale if the court were to order a sale with parties having joint conduct of the sale. In such a situation, an order for joint conduct of the sale would simply afford the owner not wishing to sell an opportunity to hold up the sale.

Thus, in *Tan Chor Hong*, Pang Kang Chau J opined (at [51]) that the foregoing considerations in *Su Emmanuel* (see [27] above) should similarly apply in determining whether one of the co-owners should have sole conduct of the sale. On the facts of that case, the court found (at [51]) that although one of the co-owners did not formally object to the court granting an order of sale, his past behaviour demonstrated that he might have an incentive not to co-operate in the sale. This was especially since the flat in question was, at the time of the court's decision, solely occupied by him, with the other co-owner fearful of returning

to the flat. The state of the parties' relationship also meant that it was unrealistic to expect parties to co-operate in the sale.

31 In the present case, both sets of parties actually agree that the Properties should be sold. Hence, there would not be the danger identified in *Tan Chor Hong* should there be joint conduct of the valuation and sale of the Properties. However, in light of the breakdown in the parties' relationship with one another, I do not think that it is realistic or expedient to order such a joint conduct. As such, as a starting point, I am inclined for the valuation and sale of the Properties to be conducted solely.

32 The defendants unsurprisingly object to Xiaoqi having such sole conduct. They first argue that this would be in breach of the parties' settlement agreement, which imply that all parties are to be involved in the sale of the Properties. Since I have found that the parties did not enter into such an agreement, this argument falls away.

33 Second, the defendants argue that because the present case involves trust properties that have been left in the charge of the administrators of the Estate, the claimants' prayer for Xiaoqi to have sole conduct of the valuation and sale of the Properties is actually an application to remove Fangqi as an administrator over the Properties.[7] The defendants further say that since the removal of an administrator is subject to a high bar of proving dishonesty and misconduct, there is no cause for removing Fangqi as an administrator in such a manner. I agree with the defendants to the extent that, in determining whether a stricter standard should apply, the court would look at the substance of the prayer sought for to determine if it is, *in effect*, a request that an administrator be

7 Defendants' Written Submissions dated 14 March 2023 at p 36.

removed. In this regard, it is trite that the court does not countenance backdoor attempts to circumvent a stricter standard that is imposed by law by simply recharacterising the application (see, for example, the Court of Appeal decisions of *Lee Hsien Loong v Singapore Democratic Party and others and another suit* [2008] 1 SLR(R) 757 at [29] and *Management Corporation Strata Title Plan No 3322 v Mer Vue Developments Pte Ltd* [2016] 4 SLR 351 at [18]–[19]).

34 However, the fact that a co-administrator is not involved in a certain facet of the administration cannot mean that he or she has thereby been removed or is seen to be removed as an administrator. That co-administrator will remain as an administrator and remains subject to his or her rights and responsibilities as such. Indeed, apart from the Properties, the Estate comprises various assets ranging from shares securities to unit trusts, bank accounts, a car, and a golf membership. Thus, in respect of the other assets, Xiaoqi would not be prevented from exercising her rights as administrator. As such, it is incorrect to characterise this prayer as a request to remove Xiaoqi as an administrator. Parenthetically, if the prayer were that Fangqi is to have sole control over the *entire* Estate such that Xiaoqi no longer has any role to discharge, this might justify the imposition of the higher standard applicable to the removal of an administrator.

35 Third, while it is not entirely clear from how they have presented it in their submissions, the defendants appear to say that it would be detrimental to the beneficiaries if Xiaoqi were to have sole conduct of the valuation and sale of the Properties. This is because she is allegedly not committed to obtaining the best valuation possible for them. I disagree with this argument. While the parties may disagree on many things, the parties must all be aligned that the Properties should be sold at the highest possible price. I therefore cannot see

why Xiaoqi would deliberately want to seek a lower valuation for the Properties if she were granted sole conduct of the valuation and sale.

36 For these reasons, I decide that the valuation and sale of the Properties should be conducted *solely*, and that the costs incidental to valuation and sale of the Properties shall be paid out of the sale proceeds of the Properties. However, there remains the question of whether Xiaoqi should have such sole conduct. In my view, because the evidence does reveal that Xiaoqi is not ordinarily resident in Singapore and is based overseas, I do not order that Xiaoqi should have such sole conduct.

37 As for whether Fangqi should be the one to have sole conduct of the valuation and sale of the Properties, the claimants have argued that Fangqi is not suited for this role because her conduct gives rise to suspicions that she has breached her duties as an administrator. However, to be fair to Fangqi, these allegations have not been proven and the claimants do not argue that these breaches have actually happened in the present case. In this regard, I can see why, as between Xiaoqi and Fangqi, Fangqi would be the better person to take on the sole conduct of the valuation and sale of the Properties as she is ordinarily resident in Singapore and is familiar with the Properties.

38 Notwithstanding this, I order that the parties jointly appoint a solicitor to conduct the valuation and sale of the Properties, as was done in the Court of Appeal decision of *Foo Jee Seng and others v Foo Jhee Tuang and another* [2012] 4 SLR 339 ("*Foo Jee Seng*") at [89]. This is because, as I have said earlier, the parties should be accorded a clean break as far as that is practicable. This certainly should be the case in relation to the Properties, which are a major portion of the Estate, and which have, as the evidence has shown, led to various disagreements between the parties over the years. As such, it would be

preferable in my view for an independent third-party solicitor to conduct the valuation and sale of the Properties. While this will still require the parties to agree on who the solicitor should be, I trust that they will be able to look past their disagreements to see the bigger picture, which is that the expedient sale of the Properties will alleviate everyone from their various disagreements.

Whether orders for account and payment against Fangqi should be granted

The claimants' prayers clarified

39 I now deal with the claimants' second broad area of orders prayed for, namely, orders for Fangqi to provide an account in respect of (a) the amount of rental income received and payable to the claimants from the lease of #01-19 in the period starting from the financial year ended 31 December 2019 to the present; and (b) the dividends declared by the Company and payable to the claimants from the financial year ended 31 December 2019 to the present. In addition, the claimants also pray for an order that Fangqi to pay over any outstanding rental income or dividends due to the claimants. The claimants make these prayers on the basis of an administrator's duty to account for his or her administration of an estate under s 28(1) of the Probate and Administration Act 1934 (2020 Rev Ed) ("PAA").

40 I pause to clarify what I understand the claimants to be praying for by asking for Fangqi to provide an "account". In this regard, the Court of Appeal had in the recent case of *Baker, Michael A (executor of the estate of Chantal Burnison, deceased) v BCS Business Consulting Services Pte Ltd and others* [2022] SGCA(I) 8 ("*Baker*") elaborated on the essential duty of a trustee to maintain and render a proper and accurate account of trust assets. More specifically, Steven Chong JCA had explained as follows (at [25]):

> Thus, as noted in John McGhee QC and Steven Elliott QC, *Snell's Equity* (Sweet & Maxwell, 34th Ed, 2020) at para 20-013, the accounting procedure serves the informative purpose of allowing the beneficiaries to know the status of the trust property and what transformations it has undergone. The procedure may identify specific assets in respect of which the beneficiaries may be entitled to proprietary relief. Further, it has a substantive purpose in that any personal liability from maladministration of the trust may be ascertained. …

41 As can be seen from the learned judge's explanation, there are two purposes to the accounting procedure, namely, an informative purpose, as well as a substantive purpose. Also, because the claimants are seeking for an account of the assets that Fangqi has received in her accountable capacity by virtue of her fiduciary relationship between the beneficiaries and herself, and what has happened to those assets, this is for an account on a common basis (see John McGhee QC and Steven Elliott QC, *Snell's Equity* (Sweet & Maxwell, 34th Ed, 2020) ("*Snell's Equity*") at para 20-014). For completeness, I do not understand from the claimants' submissions that they are seeking an account on a wilful default basis. In any event, while the claimants have alleged that Fangqi had breached her fiduciary duties as an administrator of the Estate, I find these allegations to be unproven (for reasons which I elaborate on at [96] below).

42 In this regard, the learned authors of *Snell's Equity* elaborate (at para 20-014) that claims for an account on this basis may be divided into three stages: (a) the claimant's right to an account, (b) the taking of the account, which ends in a settlement covering the accounting period, and (c) consequent relief such as an order for payment. Transposed into Chong JCA's terms in *Baker*, stages (a) and (b) are informative in the sense of letting the beneficiaries understand the status of the assets, whereas stage (c) is substantive in effecting various consequential relief. Applied to the context of the present case, I

therefore understand the claimants' prayers four and five to be about stages (a) and (b), and prayer six to be about stage (c).

The parties' arguments

43 With the above clarifications in mind, I come now to the parties' arguments, which really centre on the claimants' *right* to an account, as opposed to any consequential relief. The claimants point out that, as beneficiaries to the Estate, the claimants are entitled to an account of the administration of the Estate from Fangqi as of right, pursuant to Fangqi's continuing duty to render proper accounts to any beneficiary who demands the same.[8] In addition, the claimants argue that this right is buttressed by the factual matrix in the following respects. First, the claimants say that Fangqi has had a greater role in the administration of the Estate. In particular, Fangqi took on a greater role in the financial management and proportionate distribution of the rental income from #01-19 and dividend payments from the Company due to Xiaoqi's relocation overseas. As a result, Fangqi has a disproportionate control over the information and documents pertaining to the administration of the Estate and should now provide an account to the claimants, who are entitled to such an account as of right.

44 Second, the claimants say that despite a prolonged period of correspondence between the respective parties' solicitors, there remain several outstanding issues in relation to the administration of the Estate. In particular, the claimants continue to be denied access to transaction bank statements pertaining to #01-19 and the Company. The claimants have also not received a satisfactory explanation to their queries regarding various discrepancies in the Company's dividend payments. The claimants say that they are extremely

8 Claimant's Written Submissions dated 14 March 2023 at para 59.

concerned about this state of affairs because Fangqi allegedly has a history of transferring funds derived from the rental income and dividend payments to herself without the approval of the other beneficiaries.

45 Third, and in response to the defendants' argument that the Company is not part of the Estate, the claimants say that the Company is listed as an asset in the Schedule of Assets annexed to the Grant of the Letters of Administration over the Estate. The claimants further say that the Company should be regarded as falling under the administration of the Estate because the true interest that Mr Tan sought to pass down to the beneficiaries is the continued revenue generation of the Company's dental practice in the form of annual dividends. As such, the claimants submit that the Company falls under the Estate and Fangqi is liable to account for the management of the Company and the amount of dividends declared by the Company.

46 In response, the defendants argue that the claimants have no basis to seek an account in relation to the Company because it was never under the administration of the Estate. The defendants say that after the Company was set up on 20 January 2012, all its shares are held in equal shares by all four of Mr Tan's children (*ie*, the parties involved in the present case). While the defendants then raise several other arguments about how the claimants have advanced several other misconceived bases in support of their claim for an account of the Company, I will not address these arguments because the claimants have not raised these other bases before me.

47 As for the claimants' prayer for an account of the rental income, while again not so apparent from their submissions, I discern that the defendants essentially make the following points. First, the defendants say that the claimants' right to an account is not absolute but is subject to limitations and

exceptions. These were set out in the High Court decisions of *Chiang Shirley v Chiang Dong Pheng* [2015] 3 SLR 770 ("*Chiang Shirley*") (at [87] and [89]) and *Lakshmi Prataprai Bhojwani (alias Mrs Lakshmi Jethanand Bhojwani) v Moti Harkishindas Bhojawani* [2019] 3 SLR 356 ("*Lakshmi*") (at [44]). In any event, the defendants say that the claimants have not satisfactorily explained why further supporting documents will be helpful, especially if the claimants are not alleging that Fangqi has breached her fiduciary duties as an administrator.

48 Second, the defendants argue that if Fangqi is obligated to provide the accounts, she has already provided sufficient accounts of the rental income. In relation to the claimants' specific request for accounts from the financial year ended 2019 to the present, the defendants have exhibited the accounts which they say Fangqi has sufficiently provided in the various WhatsApp chat groups that the parties have been members of throughout the years.

49 Third, the defendants argue that it would be oppressive for Fangqi to be made to provide documents that are well within the claimants' power to obtain. The defendants point out that the tenants send rental payment into an account jointly held by Fangqi and the parties' aunt. Therefore, it should be within the claimants' power to ask for the necessary bank documents from their aunt as opposed to asking Fangqi. In relation to the trust tax forms which the claimants also seek, the defendants say that the claimants can obtain the documents from the tax authorities directly instead of "badgering" Fangqi for them.

My decision: the orders should be granted in part

50 Having considered the parties' arguments, I grant the claimants' prayers for the orders in relation to an account in part. I do not, however, grant the

claimants' prayer for consequential relief as it is premature to do so without first adjudicating on the status of the settled account. It would be convenient to deal with the claimants' prayers with respect to (a) the orders in relation to the rental income, and (b) the orders in relation to the Company.

(1) Whether the orders in relation to the rental income should be granted

(A) AS AN ADMINISTRATOR, FANGQI IS OBLIGED TO PROVIDE THE ACCOUNTS WHEN ASKED

(I) THE APPLICABLE PRINCIPLES

51 In my judgment, the orders in relation to the rental income should be granted. To begin with, the claimants argue that the administrator of an estate is obliged to account for such administration. This is encapsulated in s 28(1) of the PAA, which provides as follows:

> **Oath**
>
> **28.**—(1) Upon the grant of any probate or letters of administration, the grantee shall take an oath in the prescribed form, faithfully to administer the estate and to *account for the same*.
>
> [emphasis added]

52 More broadly, the effect of s 28(1) in the context of administration was set out in the Court of Appeal decision of *Foo Jee Seng*, in which the court said (at [87]):

> *Beneficiaries are entitled, within proper bounds, to be furnished with an account of the funds in the trust. There is no necessity to allege any breach of fiduciary duties on the part of the trustees.* Of course, if there is such a breach, they would all the more be entitled to an account and if the trust were to suffer any loss on account of such breach, the trustees would be obliged to make good the same.
>
> [emphasis added]

Similarly, albeit in a slightly different context, in *Baker*, Chong JCA explained in the following terms the duty of a trustee to provide proper, complete, and accurate justification and documentation (at [24]):

> The duty of a trustee to be constantly ready with his account has been said to be the 'first duty' of a trustee (*Pearse v Green* (1819) 1 Jac & W 135 at 140; cited in *Foo Jee Seng and others v Foo Jhee Tuang and another* [2012] 4 SLR 339 at [86]). In providing an account to the beneficiaries, it has been said that what is required from a trustee is: (a) he must say what the assets were; (b) he must say what he has done with the assets; (c) he must say what the assets now are; and (d) he must say what distributions have taken place (*Ball v Ball and another* [2020] EWHC 1020 (Ch) at [24]). The trustee must by the accounting process give 'proper, complete, and accurate justification and documentation for his actions as a trustee,' as the taking of an account is a means to hold the trustee accountable for his stewardship of trust property (*Lalwani Shalini Gobind and another v Lalwani Ashok Bherumal* [2017] SGHC 90 at [23]).

53 Thus, commentaries on the subject have consistently said that the administrator bears a duty to account to a beneficiary. For example, in G Raman, *Probate and Administration in Singapore and Malaysia* (LexisNexis, 4th Ed, 2018), the learned author states (at para 12.37):

> The personal representative's duty at the end of the administration of the estate would be to render proper accounts. In fact, the duty to render proper accounts to any beneficiary who demands the same lies on the personal representative throughout the administration of the estate. If called upon to render accounts he is obligated to provide them. It is a requirement before he winds up the administration that he submits accounts for the beneficiaries' perusal and approval prior to distribution. This is not based on any allegations of breach of trust that the beneficiary may make but arises from the fiduciary relationship between the trustee and the beneficiaries.

Similarly, the learned authors of *Williams, Mortimer and Sunnucks on Executors, Administrators and Probate* (Alexander Learmonth gen ed) (Sweet & Maxwell, 21st Ed, 2018) explain as follows (at para 42-21):

> A representative is under a duty, when required to do so by the court, to exhibit on oath in the court a full inventory of the estate and when so required render an account of the administration of the estate to the court. In this regard, an executor on taking probate and an administrator on taking out letters of administration takes an oath that he will (amongst other things) when required to do so by the court exhibit a full inventory of the said estate and render an account thereof to the court. A failure to produce an inventory when required is treated as an admission of assets.

54 While the defendants are correct that the High Court decisions of *Chiang Shirley* and *Lakshmi* have laid down some limitations to the administrator's obligation to provide an account to a beneficiary when asked, it is pertinent to note that nowhere in those cases did the court deny the near-absolute right of a beneficiary to seek such an account. Rather, the cases were concerned with *how* that right is exercised. Thus, in *Chiang Shirley*, the court held (at [89]) that "there must be reasonable intervals between the demands". Similarly, in *Lakshmi*, the court held (at [44]) that it retained a residual discretion to decline to make an order for an account. In my view, the cases simply stand for the proposition that the beneficiary's right to demand an account should be exercised "within proper bounds" (see *Foo Jee Seng* at [87]), *ie*, in a manner that is not unduly onerous for the trustee. However, this does not detract from the court's recognition of the beneficiary's right to such an account. There is also no suggestion in the cases or commentaries that the beneficiaries must provide a good reason in asking for an account.

(II) APPLICATION TO THE PRESENT CASE

55 Accordingly, as a starting point, I find that Fangqi, in her capacity as an administrator of the Estate, is obliged to provide the account of the rental income that is derived from one of the Properties comprising the Estate, *ie*, #01-19. In this regard, I reject the defendants' suggestion that the claimants, in their

capacities as beneficiaries, must provide a good reason for requesting an account and the related documentary evidence.

56 Furthermore, as to Fangqi's argument that the claimants can seek the relevant documentary evidence elsewhere, I do not find that satisfactory at all. The touchstone remains whether asking Fangqi to account in these circumstances would be unduly onerous for her, and I do not think that it would. Indeed, even if I accept the defendants' allegation that the information may be obtained from the parties' aunt and the Inland Revenue Authority of Singapore, it does not follow from this alone that it would be unduly onerous for Fangqi to simply obtain the information herself, since she already knows who to obtain it from. As such, I conclude that the claimants should not be prevented from exercising their right to ask for an account on the basis that the relevant documentary evidence may be obtained elsewhere.

57 Lastly, the defendants submit that the claimants displayed a pattern of conduct over the years to repeatedly ask for information or documents from Fangqi, and then blaming her for not producing them. While "it is common sense that there be *reasonable intervals* between the demands" [emphasis added] (see *Chiang Shirley* at [89]), the defendants have not produced any proof to show how often the alleged demands were made, and what the contents of the alleged demands were. As such, I am not persuaded that to ask Fangqi to provide an account now would be unduly onerous for her.

(B) FANGQI HAS NOT AT PRESENT PROVIDED A SUFFICIENT ACCOUNT

58 I additionally find that Fangqi has *not*, at present, provided a sufficient account of the rental income for the following reasons.

(I) THE APPLICABLE STANDARD

59 To begin, as regards the standard that Fangqi has to meet on the common basis, the Court of Appeal in *Baker* has provided some guidance on the level of evidence that a trustee needs to provide in order to meet his or her obligation to account. The court opined (at [30]) that "there is nothing particularly sophisticated about the essential task of a trustee, whether professional or lay, in documenting expenses. Save for exceptional circumstances, … a trustee is expected to provide an explanation for the breakdown of expenses and to substantiate the same with sufficient supporting evidence, oral or documentary, depending on the nature and quantum of such expenses".

60 On this point, I disagree with the defendants' submission that the High Court decision of *Foo Jee Boo and another v Foo Jhee Tuang and others* [2016] SGHC 260 ("*Foo Jee Boo*") stands for the proposition that there is no need to provide supporting evidence in the taking of an account on the common basis. In *Foo Jee Boo*, George Wei J considered the effect of a previous Court of Appeal order for the first defendant, who was the trustee, to "furnish an account of the trust to all the beneficiaries" (at [85]). This was because the plaintiffs there submitted that the first defendant had failed and/or refused to provide an account of the trust, and in particular, the rental proceeds he received from the property held under trust (at [86]). In his defence, the first defendant relied on the fact that before the Court of Appeal's order was even made, he had previously, in a separate application, filed an affidavit in the form of table showing the rent collected from and expenses of the property (at [87]). He alleged that, other than what had been disclosed earlier, he did not receive any rental income because any money paid was used to defray the utility and gardening bills incurred in the upkeep of the property.

61 Wei J held that this allegation was irrelevant as the Court of Appeal order simply provided that the first defendant had to provide an account of the trust and did not state that he must only so account if he had made an *overall profit*, *ie*, if the rent he received exceeded the expenses incurred in the upkeep of the property. Importantly, it was *in this context* that the learned judge made the following statements which the defendants in this present action rely on (at [97]):

> … All that the 1st Defendant is obliged to do is to provide an account of the rent he received and expenses incurred during the relevant periods, even if, like in July, August and September 2010, he incurred a net loss. This, in my opinion, should not be an unduly onerous task.

Read in context, the learned judge was simply making the point that the first defendant in *Foo Jee Boo* was not only obliged to account if he had made an overall profit; but rather, he must account for the rent received and expenses incurred even if no profit had been made. More crucially, the learned judge did *not* go further to say that no supporting evidence was required in respect of the rent received and expenses incurred.

62 The next question is what, then, would amount to sufficient supporting evidence for a trustee to discharge his obligation to account? While it has been observed that the court will often make allowances for a lay trustee's accounting (see *Baker* at [31]), I would emphasise that this is a fact-sensitive assessment. Indeed, as the English Court of Appeal opined in *Exsus Travel Limited v Turner* [2014] EWCA Civ 1331 ("*Exsus*"), "[h]ow that burden is discharged will vary from case to case" (at [42]). In this regard, the factors to consider include: (a) the nature of the expenses, (b) the quantum, and (c) whether such expenses would typically be reflected in some documentation (see *Baker* at [33]). The principle that undergirds these (non-exhaustive) factors is, in my view, whether the court

can be satisfied that the account is generally accurate and credible. This hearkens back to the purpose of the taking of an account, which is intended to allow beneficiaries to know the status of the fund and to ascertain any breaches of fiduciary duty (see [40] above). If these purposes cannot be met because the trustee has not provided sufficient documentation of how the trust property has been applied, then it follows that the trustee's account was inadequate.

63 This point may be illustrated by two contrasting authorities. On the one hand, in *Exsus*, the first respondent was one Mr Turner who was an ex-director of Exsus Travel Ltd ("ET"), one of the appellants. The appellants had issued proceedings against the respondents on the basis that the defendants had allegedly taken or misapplied substantial sums of the claimants' money and that they had failed to keep proper records. On the accounts, the master found, among others, that, in respect of an Amex credit card in the name of ET, the expenses claimed were proper business expenses of the claimants. On appeal, the English Court of Appeal affirmed the decision of the master below in finding that Mr Turner had justified the entirety of the payments on the Amex credit card, "even if not every paper and electronic trail could be pursued to an entirely satisfactory conclusion" (at [47]). As Mr Turner had discharged the burden of proof as to more than 80% of the payments entirely by documents or other records, the court took the view that he was entitled to be believed on the remainder (at [48]). In coming to this conclusion, the court gave regard to, among others, the context in which the credit card payments were made, stating (at [49]):

> … In short, however, it is in reality an impossibility for an ex-employee or officer of a company with a complex modern business to reconstruct at arm's length the paper/computer trail of thousands of payments in the manner to which these Appellants perceive that they are entitled. The vouching process can only go so far, without the active assistance of the ex-employer in tracing material papers. As Mr Turner consistently

> said, and the Master held, many of the answers to the Appellants' queries probably lay in the supplier invoices, none of which were disclosed.

Indeed, this case shows that where there are practical difficulties involved in accounting, the trustee would not have necessarily failed in his obligation to account even if he is not able to provide evidence in respect of each and every transaction. This is as long as he has provided enough evidence that would be regarded as sufficient in the circumstances to justify the conclusion that the account was generally accurate and credible. Parenthetically, this case also illustrates the related principle that the taking of an account on the common basis should not be unduly onerous for the trustee or administrator.

64 On the other hand, it is quite a different matter where significant parts of the account are vague, unreliable, and unsupported by documentation. In *Lau Koon Ying Matthew as the Executor of the estate of Lau Yiu Wing, deceased v Lau Tark Wing and another* [2019] HKCU 1595, an issue that the Hong Kong Court of First Instance had to consider related to the questions of how much gross rental proceeds were received, how much was spent in earning them, how the rental proceeds were dealt with, and how the proceeds should be repaid to the estate in question (at [15(c)]). The plaintiff's counsel submitted (at [23]) that the accounts prepared by one of the defendants, Tark Wing, in relation to the rental proceeds should be ignored as they contained numerous inaccuracies and generalised propositions. It was also submitted that the accounts were defective as they did not provide any information on what the rental proceeds were used for or applied to, and as such the necessary inference was that they were used by Tark Wing and his companies for their own purposes. The court agreed and held that the rental tables prepared by Tark Wing were vague and unreliable as they were not supported by documents. In particular, no supporting documents were provided in respect of the proposed blanket deductions of 10% for wear-

and-tear repairs, another 5% for "rates and/or government rent", and 16.5% for tax allegedly paid (at [25]). This case shows that where there are serious doubts as to the general accuracy and credibility of the account, as would be the case where a significant part of the account is unsupported, a court would not find that the trustee's obligation to account has been discharged.

(II) APPLICATION TO THE PRESENT CASE

65 Having regard to these principles, I turn to the defendants' case that Fangqi has provided the accounts mainly via messages in the various WhatsApp chat groups that the parties were members of throughout the years. I will only focus on the accounts for the financial years of 2019, 2020, and 2021, which are the relevant years asked for by the claimants.

66 I turn first to the account provided for the financial year of 2019, which appears as follows:[9]

beauty	2900 x 12
house	2000 x 12
Mahendran	2700 x 9
Sub-total:	83100
Town council	216.68 x 12
Property [Tax]	5060
Stamp cert	259 + 278
Agent fee:	2889
Sub-total:	11086.16
Net:	72013.84
Divide by 4:	18003.46

[9] Defendants' Reply Affidavit dated 30 January 2023 at p 127.

In my view, this record is incomplete. It is merely the addition of unsubstantiated figures that supposedly represent, among others, the rental income derived from the Properties. I do not think that an administrator can claim to have fulfilled his or her duty of keeping a proper account of the assets in an estate if the only record is that of a WhatsApp message (or more specifically, a screenshot sent as a WhatsApp message) of figures that lack any proper basis or substantiation.

67 I turn next to the to the account provided for the financial year of 2020, which appears across four pages in the affidavit. For brevity, I only reproduce the final summary table, which reflects as follows:[10]

Year 2020

beauty 24994

house 24000

Mahendran 24644

Sub-total:

Town council 216.68 x 8, 184.18 x 4

Property [Tax] waived

Sub-total: 2470.16

Net: 71167

Divide by 4: 17791

While the three preceding pages in the affidavit comprise the handwritten working behind these final figures, I find that these are also inadequate. For one, the working is rather short and does not contain a breakdown of the monthly rental income. There is also no apparent correlation between the working and

[10] Defendants' Reply Affidavit dated 30 January 2023 at pp 128–131.

the final figures, in that the final figures do not quite appear to be derived from the working.

68 I turn finally to the account provided for the financial year of 2021, which the defendants say appears in their solicitors' letter dated 6 May 2022. However, I note that much of the letter does not actually provide the account requested. Rather, the account appears in a similar format as those found in the WhatsApp messages:[11]

> **Rental Income Breakdown**
>
> Beauty: $2900/mth x 12
>
> Mahendran: $2700/mth x 12
>
> 2nd level: $2000/mth x 12
>
> Total Income: $91200
>
> S&CC: $216.68/mth x 12
>
> Property Tax: $5920
>
> Total Expenses: $8520.16
>
> 2022 profit for each beneficiary: $20669.96
>
> "Admin" Fee to FQ: $3600 (Goodwill payment, decided by 4 siblings)
>
> Each will receive $19769.96

For similar reasons as before, I do not think that this account is sufficient. The figures presented are not explained or substantiated by any documentary evidence. I also note that this table was provided to the claimants only in May 2022, five months after the close of the financial year of 2021 on 31 December 2021 (as the parties have defined it).

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[11] Chen Xiaoqi's Affidavit filed on 20 October 2022 at p 172.

69 For completeness, I should note that there is no account for the financial year of 2022.

70 In my judgment, I do not find that Fangqi has, at present, provided a sufficient account of the rental income. My finding is informed by the following considerations. First, the volume of transactions reflected in her accounts does not appear to be very high and may not be accurate. Second, the quantum of the transactions appears to be significant enough to warrant the keeping of proper records. By way of one example, in the account for the financial year of 2021 (at [68] above), the total income of the Estate appeared to be valued at $91,200. Third, many of the transactions listed in her accounts do not appear to be of the nature where providing documentation would be too onerous. Using the same account for the financial year of 2021, there would, in all likelihood, exist documentation which would evidence the payment of "Property Tax". While I appreciate that Fangqi is not a professional trustee and is undertaking a lion's share of the work in administering the Estate, it would surely not be impractical or unduly onerous for her to provide some documentation substantiating the various amounts, at the very least. Indeed, as I alluded to earlier (at [62]), a lay trustee is not dispensed with the obligation to account in a way that would serve the purposes of allowing the beneficiaries to know the status of the fund and to ascertain any breaches of fiduciary duty.

71 For all these reasons, I find that Fangqi is under an obligation to provide the account of the rental income in the manner sought by the claimants. I therefore make the order prayed for by the claimants in prayer four of their claim. I do not, however, make the order prayed for by the claimants in prayer six of their claim in relation to the rental income because it is premature to do so now. The claimants can make a fresh application if the account provided by Fangqi reveals any shortfall, which the court can then adjudicate upon.

(2) Whether the orders in relation to the Company should be granted

72 I also do not make an order prayed for by the claimants in prayer five of their claim. This is regarding the orders sought in relation to the Company. I agree with the defendants that, even if the claimants can be construed as seeking an administrative order in relation to it, the fact of the matter is that the Company is not an entity that falls under the administration of the Estate. This is because the assets of the prior sole proprietorship had been transferred and distributed to the parties through the setting up of the Company. Each of the parties hold 25% of the shares in the Company, and therefore, the assets associated with the sole proprietorship had already been transferred and distributed to the rightful beneficiaries. It does not make sense to say that the Company is still part of the Estate when all four parties in the present case are the absolute owners of its shares.

73 In saying this, I recognise that the Company is listed as an asset in the Schedule of Assets annexed to the Grant of the Letters of Administration over the Estate. The Grant and the Schedule are both dated 15 May 2013. This therefore post-dates the establishment of the Company on 20 January 2012, which is when, according to the defendants at least, its shares were distributed equally to the four parties in the present case. However, I find that the Schedule of Assets cannot be conclusive of the issue of whether the Company is an asset of the Estate in this present application. The Schedule of Assets was a supporting document filed in an application for Grant of Letters of Administration by Xiaoqi and Fangqi. The truth of its contents was presumably affirmed in affidavit by Xiaoqi and Fangqi.

74 While it is puzzling why the Company should be listed as an asset in these circumstances, it could well be that Xiaoqi and Fangqi erroneously

believed the Company to be part of the Estate back then. Their subjective belief, however, does not affect whether the Company forms part of the Estate. Indeed, it is rather odd that the Company, which was incorporated *after* Mr Tan's death, can be considered part of the Estate. This goes against the intuitive notion that the assets of the Estate refer to the property that the deceased had beneficially owned while he was alive, which can only refer to property acquired up till the point in time immediately preceding his death (see, *eg*, s 5 of the Intestate Succession Act 1967 (2020 Rev Ed) and s 37(1) of the PAA). Nevertheless, in my view, regardless of whether the Company was ever an asset of the Estate, the Company cannot now be an asset of the Estate as it has been distributed to the beneficiaries who have now all become the absolute owners of its shares.

75 During the hearing before me, Mr Alwyn Kok, who appeared for the claimants, emphasised the point that Mr Tan's intention must have been to pass down the Company as a revenue-generating asset to his children. However, I agree with Ms Ho Chee Jia, who appeared for the defendants, that any argument as to Mr Tan's intention is necessarily speculative because he had died without a will. Thus, his assets were distributed in accordance with the laws of intestacy. There is, otherwise, no evidence of what his intentions might have been, and it would not be right to base any argument on them.

76 Therefore, if the claimants have an issue in relation to the dividends paid out by the Company, the rightful party they should go after is Dr Hor who, as the director of the Company, is answerable for the dividends declared by the Company. The claimants should not go after Fangqi because it does not make sense for one shareholder to go after another shareholder if the former shareholder has concerns about a company's declaration of dividends.

77 Accordingly, I do not make an order prayed for by the claimants in prayer five of their claim. I also do not make an order in terms of prayer six in so far as the dividends are concerned.

Whether the other orders should be granted

78 The remaining orders prayed for by the claimants relate to the Registrar or the Assistant Registrar of the Supreme Court being empowered to execute, sign or indorse all necessary documents, as well as to order costs for this application. Given my directions above in relation to the orders sought in respect of the Properties, I make an order prayed for by the claimants in prayer seven of their claim. I will reserve my order on costs until after parties have addressed me on this following the present decision.

Summary of the orders made in favour of the claimants

79 In summary, and for all the reasons given above, I make orders in terms of prayers one, two, three (with the qualifications above), four, and seven of the claimants.

The defendants' counterclaim

80 I turn then to the defendants' counterclaim, which I will deal with in the following order: (a) the enforcement of alleged agreement between the parties reached by the Letter dated 24 August 2021 or damages for its breach, (b) a declaration that Fangqi is entitled to remuneration as an administrator of the Estate, and (c) an order that Xiaoqi pays damages to Fangqi for her breach of fiduciary duties as an administrator of the Estate.

Whether the alleged agreement between the parties by the Letter should be enforced

81 Given my findings above that the parties did not enter into an agreement reached through the Letter dated 24 August 2021, I reject the defendants' claim for either the specific performance of such an agreement or damages flowing from its breach.

Whether Fangqi is entitled to remuneration as administrator of the Estate

The parties' arguments

82 The defendants further argue that Fangqi is entitled to commission for her work as administrator and trustee of the Estate over the last decade. Indeed, the defendants point out that, by the claimants' own admission, Fangqi has largely taken all the duties of administering the Estate on her own.

83 Further, the defendants say that there was already a previous consensus between the parties for Fangqi to be paid the sum of $1,000 per month for her work as an administrator. Despite this, Fangqi never drew down on the Estate's funds for a monthly pay as the beneficiaries are her siblings. She did, however, withdraw the sums of $300 and $3,600 on two occasions in 2017 and 2022, respectively, for her work.

84 Finally, the defendants submit that the amount sought by Fangqi, which is $125,100 as an administrator of the Estate, as well as a monthly sum of $1,000 from April 2023 until the administration is completed, is fair and reasonable. This is because the size of the Estate is about $5.3m, with the administrator's work including calling in 20 assets, ranging from shares securities, unit trusts, bank accounts, a car, and a golf membership. Fangqi also had to manage the rental of the Properties, which included a myriad of work, such as physically

checking the utilities meters and making various calculations. The sum sought is well within the statutory limit of 5% and is also proportionate to the scale of the work undertaken by Fangqi in the last decade.

85 In response, the claimants say that Fangqi is not entitled to remuneration because (a) she has provided no records to substantiate her request for remuneration, (b) the scope of her administrative duties do not justify such a large amount of payment, (c) it is likely that Fangqi withdraws funds from the Estate in varying amounts as and when she likes without the consent of all the beneficiaries, (d) it is unfair to Xiaoqi if only Fangqi is entitled to remuneration since Xiaoqi was also heavily involved in the administration of the Estate after Mr Tan's passing, (e) it is incongruous that Fangqi now demands such a large amount for her administrative work when she has repeatedly denied her involvement in the administration of the Estate, (f) there is no agreement between the parties for Fangqi to receive remuneration, (g) Fangqi has, in fact, breached her fiduciary duties to the beneficiaries of the Estate, and (h) this is the wrong forum for her claim because Fangqi should claim against the administrators of the Estate and not in the present case where the claimants are making claims for orders of sale in respect of the Properties and for accounts and inquiries over the Estate.

86 While the claimants have raised a number of arguments against the defendants' claim in this regard, it is not necessary for me to address all of them. I will, instead, focus only on the key issues that will determine whether Fangqi is entitled to remuneration.

My decision: Fangqi is entitled to remuneration as administrator of the Estate but not at present

(1) The applicable law

87 The starting point, which all parties agree on, is that s 66(1) of the PAA gives the court a discretion to allow the administrator a commission not exceeding 5% of the value of the assets. The section provides as follows:

> **Executors' or administrators' commission**
>
> **66.**—(1) The court may in its or his discretion allow the executors or administrators a commission not exceeding 5% on the value of the assets collected by them, but in the allowance or disallowance of such commission the court shall be guided by its or his approval or otherwise of their conduct in the administration of the estate.
>
> (2) The registrar may, in the course of the taking of the administration accounts of executors or administrators, exercise the powers conferred on the court by subsection (1).

88 This is, of course, only a discretion that a court can choose to apply or not to apply, depending on the facts of each case. In exercising this discretion, the court must consider the conduct of the executor or administrator in the administration of the estate. As Murison CJ put it in *Re Chew Joo Chiat, Deceased* [1933] MLJ 187, which was cited with approval by Tan Lee Meng J in *Shiraz Abidally Husain and another (executors of the estate of Abidally Abdul Husain, deceased) v Husain Safdar Abidally and others* [2009] 4 SLR(R) 11 at [11], the true test for the calculation of what remuneration an executor or administrator ought to get is whether or not the executor or administrator has done his duty according to law. In applying this test, some factors that the court may consider include: (a) the nature of the estate administered; (b) the work done by the executor or administrator; (c) the executor's conduct in administering the estate; (d) whether professional assistance had been given for the administration; and (e) whether the executor had done his duty according to

law (see the High Court decision of *UJT v UJR and another matter* [2018] 4 SLR 931 at [100]).

(2) Whether Fangqi is entitled to remuneration based on the parties' agreement

89 With these principles in mind, I turn first to consider whether Fangqi is entitled to remuneration for her work as an administrator of the Estate based on the parties' agreement to this effect. To begin with, I find that the parties had reached an agreement that Fangqi is entitled to a monthly remuneration of $1,000 per month for her work as an administrator. At the very least, the parties conducted themselves as if there was such an agreement. This much is clear from Xiaoqi's own evidence in the present case. For a start, in her first affidavit, she stated as follows:[12]

> In particular, on 15 September 2012, Fangqi and I had a conversation over Facebook in which we discussed, *inter alia*, how to ensure that the tenants of #01-19 paid their fair shares of the utilities bills. I was appreciative that Fangqi was amenable to perform hands-on tasks like reading the utilities meters (especially since I am not physically present in Singapore). *Fangqi suggested that she deserved to be paid for doing administrative work, and I was agreeable.*
>
> [emphasis added]

It is clear from this paragraph that Xiaoqi was "agreeable" to Fangqi's suggestion that she deserves to be paid for doing administrative work. This is a classic instance of offer and acceptance. At the very least, Xiaoqi agreed that Fangqi should be paid for her work as an administrator, but without having agreed on the exact sum payable.

12 Chen Xiaoqi's Affidavit filed on 20 October 2022 at para 20.

90 However, when the parties' exact correspondence over a period of time is examined, it is clear that they had discussed and agreed on the sum of $1,000 per month. Thus, in this first series of exchange between Xiaoqi and Fangqi on 15 September 2012, it is clear that Xiaoqi had said that she did not mind paying Fangqi the "admin fee" that was asked:[13]

> …
>
> XQ Chen: don't mind paying [you]
>
> …
>
> Chen Fangqi: pay me admin fee can liao
>
> …

91 Then, on 2 June 2013, Xiaoqi admitted that Fangqi is to be paid $1,000 per month:[14]

> …
>
> Chen Fangqi: thanks
>
> XQ Chen: Can 1000 as long [as you] account for it can liao
>
> Chen Fangqi: then come up with the list for me since [you] asked.
>
> XQ Chen: Yah, family business is like that. Deal with it. Stop complaining all the time. It's not like you're doing it for free
>
> Chen Fangqi: [And] I'm going to study 2 years [later]. …
>
> Chen Fangqi: technically $500. [Cause] I'm not paid last year
>
> Chen Fangqi: aren't [you] glad [you] are not in my position
>
> XQ Chen: Yah [you] do it [cause you] are paid to do it – 1000/month

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13 Chen Xiaoqi's Affidavit filed on 20 October 2022 at p 62.

14 Chen Xiaoqi's Affidavit filed on 20 October 2022 at p 66.

As can be seen from this series of exchange between Xiaoqi and Fangqi, Xiaoqi has admitted that Fangqi is to be paid $1,000 a month for her administrative work. Later on, Xiaoqi also said that $1,000 is fine "so long [as you] account for it", meaning that Xiaoqi agreed that Fangqi can be paid $1,000 a month provided she accounted for the sum.

92 In sum, I conclude that Xiaoqi and Fangqi had agreed for the latter to be paid $1,000 a month from June 2013 for her work as an administrator of the Estate, *subject* to certain conditions. Indeed, I find that such an agreement is also supported by the circumstances: by her own admission, Xiaoqi has been based overseas for much of the material time and the responsibilities of administering the Estate fell almost solely on Fangqi. Just as Xiaoqi had her family and career to attend to, so too did Fangqi. Yet, Fangqi took on the role of an administrator primarily. It is entirely believable that Xiaoqi would think it is fair that Fangqi should be paid for her efforts, and this is aptly borne out by the parties' correspondence.

93 However, it is pertinent to note that a condition for Fangqi to be paid is that she has to "account" for her work. As for what "account" meant, this can be seen from the parties' correspondence earlier in the chain on 2 June 2013:[15]

XQ Chen:	Will [I] be paid doing your record then?
Chen Fangqi:	if you want a record, [you] think about what I will be doing [and] come up with a record for me
…	
Chen Fangqi:	do not ask me to do things
XQ Chen:	[Oh] and [I] can request [you] to keep a record of what [you have] done for the clinic monthly. Like [that] time [you] take to do the admin stuff and driving and petrol costs etc. This is to account

[15] Chen Xiaoqi's Affidavit filed on 20 October 2022 at p 68.

> for your 1000/month pay for our records [and] tax.

It is clear that Xiaoqi asked Fangqi to "keep a record of what [you have] done for the clinic monthly". This shows that when Xiaoqi referred to "account" in that context, she meant to ask Fangqi to keep a record of what she has done.

94 In sum, although there was an agreement between the parties for Fangqi to be paid $1,000 a month for her work as an administrator, Fangqi had to keep a record of her work. In my view, keeping such a record is a precondition to her being paid. In other words, Fangqi's entitlement to be paid is dependent on her producing records of her work done to justify the monthly remuneration. The problem is that there is no evidence that Fangqi has kept such records. For this reason, I find that Fangqi has not satisfied the condition within the parties' agreement for her to be paid $1,000 a month.

(3) Whether Fangqi is nonetheless entitled to remuneration

95 Despite this, in fairness, I find that Fangqi's work as an administrator may be, in principle, deserving of some remuneration. I accept her evidence that her work as an administrator of the Estate, which has assets over $5m, is not insignificant. Although I have found that Fangqi cannot rely on the parties' agreement, the difficulty of administering the Estate must be why Xiaoqi agreed to the sum of $1,000 in June 2013. Xiaoqi must have realised the enormity of the task and how Fangqi was taking a load of everyone's shoulders by taking it on. In this regard, I do not think that it lies in Xiaoqi's mouth to say that it is unfair to her if Fangqi should be compensated, and she is not. Indeed, if Xiaoqi thinks that this is unfair, it is open to her to make a similar application for remuneration. The fact that she has not done so is not a good reason to stop Fangqi from being remunerated. The undisputed evidence is that Xiaoqi was

largely overseas during the material time and could therefore not do much in terms of the administration of the Estate. While Xiaoqi might have done some work at the time of Mr Tan's passing, that is surely superseded by the work done by Fangqi over the course of the past decade.

96 Moreover, I do not think that Xiaoqi can rely on Fangqi's alleged breaches of fiduciary duties when these have not been proved. For example, even by the claimants' own case, it is only "likely" that Fangqi privately withdrew funds from the Estate as and when she likes. But the claimants have intentionally used the qualifier "likely" because they do not have solid evidence to prove this allegation. Similarly, while the claimants have stated that Fangqi has breached various fiduciary duties, these are largely only unproven allegations from an objective perspective. I do not think that it is fair for the claimants to rely on their own affidavit evidence to the exclusion of Fangqi's explanations, especially when the claimants have themselves opposed converting this originating application into an originating claim, which would have allowed the parties' competing evidence to be tested more vigorously. Indeed, the claimants' solicitors had stated in their opposition to the defendants' application to convert that the "[k]ey point is that in [the claimants' affidavits] there is no allegation of breach of [fiduciary] duty".[16]

97 Finally, I do not think it is an obstacle that the present case concerns the claimants making claims for orders of sale of the Properties and for accounts and inquiries over the Estate. This is because O 6 r 14 of the Rules of Court 2021 does not need any nexus in law or in fact between the claim in the originating application and the counterclaim between the parties. Apart from the clear wording of the rule that does not impose such a requirement, this position

[16] Certified Transcript of 11 January 2023 at p 6.

has been affirmed by the Court of Appeal in the context of O 28 r 7(1) of the Rules of Court (2014 Rev Ed), which is the equivalent provision of O 6 r 14 of the Rules of Court 2021 (see the Court of Appeal decision of *Suresh Agarwal v Naseer Ahmad Akhtar* [2019] 2 SLR 672 at [24]).

98 All that being said, I am cognisant that I have granted the claimants' prayer for Fangqi to provide an account of the rental income to them. The status of that account may reveal the extent, if at all, to which Fangqi may not have kept proper accounts. That will naturally have an impact on any remuneration that Fangqi is entitled to and the quantum. Therefore, while I am inclined to find that Fangqi is entitled to some remuneration, I think that it is premature for me to rule on this prayer determinatively now. Instead, I give Fangqi the liberty to file a fresh application for remuneration after she has provided the account and after the parties' dispute in relation to the rental income is resolved.

Whether Xiaoqi should pay damages to Fangqi for breach of fiduciary duties as administrator of the Estate

The parties' arguments

99 I come finally to the defendants' claim that Xiaoqi should pay damages to Fangqi for breach of fiduciary duties. In essence, the defendants say that Xiaoqi has breached her duties by leaving the administrative work mainly to Fangqi because the former was not based in Singapore. The defendants say that Xiaoqi's lack of involvement has resulted in the loss of opportunities and income for Fangqi. Hence, Fangqi seeks equitable compensation from Xiaoqi.

100 In response, the claimants say that the defendants have not established any breach of fiduciary duties. Further, even if the duties can be established,

they are owed by the administrators to the beneficiaries, and not by Xiaoqi to Fangqi.

My decision: Xiaoqi is not in breach of fiduciary duties

101 In my judgment, the defendants' claim in this regard is a non-starter. First, I do not think that the defendants can establish a breach of fiduciary duties on the facts simply on a broad allegation that Xiaoqi was not involved in the administration of the Estate. The parties had in reality acquiesced to Fangqi taking on a heavier responsibility because Xiaoqi is based overseas. Indeed, the present arrangement had persisted for over a decade with no allegation of any breach of fiduciary duty. Relatedly, it is not as if Xiaoqi was not involved *at all*. Apart from being more involved on a hands-on basis just after Mr Tan's passing, the evidence clearly shows that Xiaoqi continued to ask questions even when she was away.

102 Second, it is not clear to me how the defendants are structuring their claim. It is trite law that fiduciary duties are owed in this context by the administrators to the beneficiaries. It is not clear from the defendants' submissions and affidavits what capacity they are suing the claimants in and how.

103 Third, the defendants have not explained why the alleged breach of fiduciary duty has caused loss, apart from a bare assertion that this has occurred. While Ms Ho clarified that the loss of opportunity is to Fangqi and not the Estate, I am not sure this assists her claim. This is because in a claim for breach of fiduciary duty, the loss is to the estate, and not to a fellow trustee or administrator. In any event, between Fangqi and Xiaoqi, there is no breach of fiduciary duty as Xiaoqi's fiduciary obligations are owed to the Estate, and not

Fangqi. Therefore, while Fangqi might feel aggrieved that she had to, in her view, sacrifice her education and career prospects in order to carry out her duties as an administrator, a claim for breach of fiduciary duties is not the correct avenue to remedy that perceived grievance. Moreover, while the defendants have asked for damages to be assessed, they have not provided evidence as to how their loss is to be measured.

104 I accordingly dismiss the defendants' counterclaim founded on Xiaoqi's alleged breach of fiduciary duties.

Conclusion

105 In conclusion, in relation to the claimants' claim, I make orders in terms of prayers one, two, three (with the qualifications above), four, and seven of the claimants. The claimants have the liberty to file a fresh application in relation to prayer six after being provided with the relevant accounts.

106 In relation to the defendants' counterclaim, I dismiss the claims in relation to the alleged agreement between the parties reached by the Letter dated 24 August 2022, and the alleged breach fiduciary duties by Xiaoqi. However, I give Fangqi the liberty to file a fresh application for remuneration for her work as an administrator of the Estate after the parties' dispute in relation to the rental income has been resolved, so that the court can have a clearer picture of whether Fangqi has breached her duties (if at all) in that regard.

107 On the issue of costs, both parties have submitted that each side should be made to bear costs on an indemnity basis. That was presumably on the basis that each side succeeded almost entirety in their respective claims. Given my decision above, and unless parties are able to agree, I would invite both parties

to tender written submissions on costs, limited to 10 pages each, within two weeks from the date of this decision.

108 This is an unfortunate case. Taking a step back, Fangqi clearly feels she has been made to bear a disproportionate load of the administrative responsibilities while Xiaoqi has been able to pursue her family life and career overseas. This much is understandable, and to the extent that she has discharged her role as an administrator, Fangqi may yet be remunerated. However, the claimants, in their capacities as beneficiaries, have every right to seek an account of the Estate's state of affairs from Fangqi in the discharge of her role as an administrator. This is why I have made the order for an account to be made in relation to the rental income.

109 Also, the parties have made various allegations against each other for breaches of fiduciary duties. I do not think that these allegations are made out by the evidence. Nor is it conducive to the bigger picture to get into these allegations. That bigger picture is that the parties are beneficiaries to an Estate whose primary assets are the Properties. Given the breakdown in the parties' relationship, the Properties should be sold so that the parties can have a clean break from each other. In that regard, I have ordered the parties to appoint a solicitor to have sole conduct of the valuation and sale of the Properties to ensure an efficient process that is free from the disputes that have plagued the parties. While this requires the parties to come together to appoint the solicitor, I trust that they will see the bigger picture pertaining to the importance of selling the Properties. Also, while I have strived to give the parties a clean break as far as practicable, there are certain issues that require follow-up. I hope that the parties will try their best to resolve those issues without coming back to court. It is not necessary to prolong their disputes any further than is necessary, especially after

the Properties are disposed of. I very much hope also that the parties' respective lawyers can also help in resolving the remaining issues in an amicable manner.

110 But perhaps the biggest picture is that, at the end of it all, I hope that the parties can recognise that the parties have each other as family and that there is room for reconciliation after all this is behind them.

Goh Yihan
Judicial Commissioner

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