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

[2023] SGHC 58

Suit 438 of 2021

Between

(1) Er Kok Yong

… Plaintiff

And

(1) Tan Cheng Cheng (as co-administratrix of the estate of Spencer Tuppani, deceased)
(2) Tan San San (as co-administratrix of the estate of Spencer Tuppani, deceased)
(3) Keh Lay Hong(as co-administratrix of the estate of Spencer Tuppani, deceased)

… Defendants

GROUNDS OF DECISION

[Trusts — Constructive Trusts]
[Trusts — Resulting Trusts]

CONTENTS

Er Kok Yong
v
Tan Cheng Cheng (as co-administratrix of the estate of Spencer Tuppani, deceased) and others

[2023] SGHC 58

General Division of the High Court — Suit No 438 of 2021
Mavis Chionh Sze Chyi J
4–6, 10–13, 17–19 May, 29 August 2022

10 March 2023

Mavis Chionh Sze Chyi J:

Introduction

1 This was the second of two suits brought following Spencer Tuppani's ("Spencer") death at the hands of his father-in-law on 10 July 2017. The other suit was HC/S 554/2021 ("S 554"). The Plaintiff in this suit, Er Kok Yong ("the Plaintiff", also known as "Jason"), was also one of the two plaintiffs in S 554. In S 554, the two plaintiffs claimed – collectively – a two-thirds beneficial interest in a property registered in Spencer's sole name. In the present suit, the Plaintiff claimed sole beneficial ownership of a BMW M6 vehicle ("the Vehicle") registered in Spencer's sole name.

2 The Defendants in the present suit were also the defendants in HC/S 554/2021. They are the co-administratrix of Spencer's estate. The 1st Defendant

("Shyller") was married to Spencer at the time of his death; the 2nd Defendant ("Sherry") is her sister; and the 3rd Defendant is Spencer's former (and first) wife. In this suit, the Defendants denied that the Plaintiff was the sole beneficial owner of the Vehicle. They also brought a counterclaim against the Plaintiff in respect of a sum of S$1,108,076.00.

3 This suit was heard together with S 554 in the same trial before me. There was an overlap in the witnesses to be called for the two suits. In correspondence exchanged with the court registry and at the JPTC conducted by me prior to the trial, counsel for the parties in the two suits confirmed that parties had agreed to evidence led in respect of one suit standing as evidence in the other (subject to the rules of evidence, including relevance). The only exception was in respect of Mr Andy Chiok ("Mr Chiok"), counsel for the Defendants in S 438, who was called as a factual witness in S 554. As Mr Chiok was called to give evidence on issues pertaining solely to S 554, it was generally agreed that his testimony would not be relevant to S 438.

4 At the conclusion of the trial, I dismissed the claims in both suits, as well as the Defendants' counterclaim in the present suit. My grounds of decision in S 554 were issued on 17 February 2023: *Er Kok Yong and another v Tan Cheng Cheng (as co-administratrix of the estate of Spencer Tuppani, deceased) and others* [2023] SGHC 38. I now set out the reasons for my decision in this suit.

The Plaintiff's case

5 The Plaintiff claimed that in November 2013, he became interested in purchasing a BMW M6 vehicle for his personal use.[1] According to the Plaintiff's pleaded case, he and Spencer "orally agreed" in the course of a discussion

[1] Statement of Claim Amendment No. 1 ("SOC") at para 4.

sometime in late 2013 that he (the Plaintiff) would purchase the BMW M6 from Munich Automobiles Pte Ltd ("Munich Automobiles"); and "[i]n particular", the two of them shared a common intention that:[2]

> (a) The Vehicle would be purchased in Spencer's name, with Spencer holding it on trust for the Plaintiff;
>
> (b) Only the Plaintiff would enjoy sole use and beneficial ownership of the vehicle;
>
> (c) The Plaintiff would be solely responsible for the contributions towards the payment of the purchase price of the vehicle;
>
> (d) The Plaintiff would carry out the maintenance of the vehicle at his own cost; and
>
> (e) The Plaintiff would enjoy full possession and usage of the vehicle.

6 In keeping with their "oral agreement", Spencer proceeded to purchase the Vehicle sometime in February 2014 for S$566,000.00. The purchase price was not paid in one lump sum. Spencer first paid a deposit of S$30,000.00 to Munich Automobiles by way of cheque on 19 February 2014. He then used his credit card to make payment of S$236,000.00 to Munich Automobiles on 26 February 2014. As for the outstanding balance which came up to S$300,000.00, Spencer took out a 5-year loan from BMW Financial Services Singapore Pte Ltd ("BMW Financial Services").

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[2] SOC at para 5.

7 On his part, according to the Plaintiff, he paid Spencer S$266,000.00 in cash. This amount covered the deposit Spencer had paid for the car, as well as the partial payment he had made using his credit card. As for the vehicle loan from BMW Financial Services, the Plaintiff paid the loan instalments which amounted to S$5,570.00 per month for a period of 60 months. The Plaintiff made these monthly repayments by issuing cheques directly to BMW Financial Services, except for the following periods:

(a) April 2014, February 2015, March 2015, July 2015, August 2015 (the "First Period");

(b) September 2015 to January 2017 (the "Second Period").

8 In respect of the monthly payments made during the First Period, the Plaintiff claimed that he had paid Spencer cash, after which Spencer had issued cheques to BMW Financial Services.

9 In respect of the Second Period, the Plaintiff alleged that he entered into an oral agreement with one Mr Lim Soon Hwa Lawrence ("Lawrence"), whereby Lawrence would "completely take over sole beneficial ownership, possession and use of the Vehicle" for an agreed price of S$420,000.00 based on the "market value" of the Vehicle in or around July 2015. Lawrence was a friend of the Plaintiff and Spencer. Pursuant to this oral agreement, Lawrence took over the vehicle and paid the Plaintiff the cash amount in excess of the outstanding loans, while also taking over payment of the monthly instalments due to BMW Financial Services during the Second Period.[3]

[3] SOC at para 13.

10 According to the Plaintiff, sole beneficial ownership of the car subsequently reverted to him in January 2017, pursuant to another oral agreement with Lawrence whereby the Plaintiff was to "take over the sole beneficial ownership, possession and use" of the Vehicle for S$340,000.00 (being the market value of the car in or around January 2017). The Plaintiff paid Lim the cash amount in excess of the outstanding loans and resumed making payment of the monthly instalments due to BMW Financial Services.

11 The Plaintiff also claimed that he and Lawrence "made full payment of the car insurance, road tax and any fees including those incurred for the maintenance and enhancements to the Vehicle, respectively during the periods when they were in sole beneficial ownership, possession and use of the Vehicle since the purchase of the Vehicle to date".[4] According to the Plaintiff, the "common intention" between him and Spencer was that he (the Plaintiff) he would be the beneficial owner of the Vehicle, and that he would make full payment for it. The Plaintiff therefore claimed to be entitled to the Vehicle on the basis of a common intention constructive trust.

12 Alternatively, the Plaintiff claimed that since he had "made all financial contributions" in respect of the Vehicle, he was "entitled to the whole of the beneficial interest in the Vehicle on resulting trust principles".[5]

The Defendants' case and the Plaintiff's response

13 The Defendants denied the existence of any oral agreement between the Plaintiff and Spencer for the former to have beneficial ownership of the BMW M6 purchased in Spencer's sole name. The Defendants also denied the Plaintiff's

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4 SOC at para 14.

5 SOC at paras 17 – 18.

claims to having "made all financial contributions" in respect of the Vehicle.[6] In the alternative, they contended that even if the Plaintiff had made payment to BMW Financial Services for the loan instalments, both Spencer and the Plaintiff were "co-beneficial owners" of the Vehicle to the extent of their respective financial contributions.[7]

14 As for their counterclaim, the Defendants claimed from the Plaintiff the repayment of various amounts allegedly paid by Spencer to the Plaintiff in the period between 26 August 2014 and 23 May 2017.[8] Spencer was said to have paid the Plaintiff a total of S$1,108,076.00 in eight tranches during the said period. According to the Defendants, these payments were made by Spencer without any donative intent, nor was there any presumption of advancement in the Plaintiff's favour. The Defendants contended that the total amount of S$1,108,076.00 was held by the Plaintiff on a "presumed resulting trust" for Spencer, and that the Plaintiff was consequently "now liable to account to the Defendants as personal representatives for the said monies or such amounts as may be due".[9]

15 Further, the Defendants pleaded that in respect of those payments made by Spencer in 2014 (*ie*, more than six years prior to the filing of the counterclaim), no period of limitation applied by virtue of section 22(1)(*b*) of the Limitation Act 1959 (2020 Rev Ed) ("Limitation Act").

16 Not surprisingly, the Plaintiff resisted the counterclaim put forward by the Defendants. He denied that he held any monies on trust for Spencer and/or

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6 Defence and Counterclaim (Amendment No. 3) at para 5.

7 Defence and Counterclaim (Amendment No. 3) at para 7.

8 Defence and Counterclaim (Amendment No. 3) at para 15.

9 Defence and Counterclaim (Amendment No. 3) at paras 17 – 18.

that he had any obligation to account to the Defendants for the payments listed in their counterclaim.[10] Further or in the alternative, he contended that even if all the payments were proven, these were payments made by Spencer in repayment of loans given by him (the Plaintiff).[11] In any event, the counterclaim was "time-barred by virtue of section 6(2) of the Limitation Act (Cap 163)".[12]

Issues

17 The following issues arose for my consideration:

(a) Whether, as between the Plaintiff and Spencer, there was a common intention constructive trust whereby the Plaintiff would be the sole beneficial owner of the Vehicle registered in Spencer's name;

(b) Whether, in the alternative, the Plaintiff could claim sole beneficial ownership of the Vehicle by virtue of a resulting trust;

(c) In respect of the Defendants' counterclaim, whether the payments allegedly made by Spencer to the Plaintiff in 2014 were time-barred;

(d) In respect of the Defendants' counterclaim, whether the Plaintiff was obliged to account to the Defendants for the amount of S$1,108,076.00 on the basis of "a presumed resulting trust".

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10 Reply and Defence to Counterclaim (Amendment No. 3) at para 10B(b).

11 Reply and Defence to Counterclaim (Amendment No. 3) at para 10B(c).

12 Reply and Defence to Counterclaim (Amendment No. 3) at para 10A.

My decision

The law on common intention constructive trusts and resulting trusts

18 At the outset, it will be useful to summarise the general principles relating to common intention constructive trusts and resulting trusts. As the name suggests, a common intention constructive trust arises "where it is clear that there is a common intention among parties as to how their beneficial interests are to be held": *per* the Court of Appeal ("CA") in *Su Emmanuel v Emmanuel Priya Ethel Anne and another* [2016] 3 SLR 1222 ("*Su Emmanuel*") at [83]. To successfully invoke the common intention constructive trust, the common intention – which subsists either at, or subsequent to, the time the property was acquired – may either be express or inferred; and there must be sufficient and compelling evidence of the express or inferred common intention: *Su Emmanuel* at [83] citing *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*") at [160(b)] and [160(f)]. Apart from proving the common intention, detrimental reliance on that common intention must also be shown: *per* the CA in *Ong Chai Soon v Ong Chai Koon and others* [2022] 2 SLR 457 at [40] – [41].

19 Where the definition of resulting trusts is concerned, it is perhaps better to focus on the circumstances in which a resulting trust arises as opposed to resorting to descriptions (which may be potentially over-inclusive) or unhelpful metaphors: Christopher Hare and Vincent Ooi, *Singapore Trusts Law* (LexisNexis, 2021) at [9-2]. The *locus classicus* on resulting trusts is Lord Browne Wilkinson's judgment in *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 ("*Westdeutsche*"), where Lord Browne-Wilkinson set out (at p 708) two scenarios in which a resulting trust would typically arise. The first scenario is where **A** makes a voluntary payment to **B** or pays (wholly or in part) for the purchase of property which is vested either in **B** alone or in the joint names of **A** and **B**. There is a presumption

that **A** did not intend to make a gift to **B**: the money or property is held on trust for **A** (if he is the sole provider of the money) or in the case of a joint purchase by both **A** and **B**, in shares proportionate to their contributions. This is the "presumed resulting trust", which is also referred to as the "purchase money resulting trust" or the "purchase price resulting trust". It should be noted that the presumption is easily rebutted either by the counter-presumption of advancement or by direct evidence of **A**'s intention to make an outright transfer. The second scenario is where **A** transfers property to **B** on express trusts but the trusts declared do not exhaust the whole beneficial interest. This is the automatic resulting trust. I need not say more about the automatic resulting trust in these written grounds because it was common ground between the parties in the present case that we were concerned with the first scenario described by Lord Browne-Wilkinson described (*ie*, the "presumed resulting trust").

20 Insofar as Singapore law is concerned, the doctrinal basis for the resulting trust is the lack of intention analysis advanced by Robert Chambers: as the CA in *Chan Yuen Lan* noted, that analysis (at [44]) may "potentially provide a more sensible basis for the principled and pragmatic development" of the equitable doctrine of the resulting trust. This lack of intention can either be proven on the facts, or presumed (assuming that the evidence is inconclusive as to the transferor's intentions – see [66] below). As the CA in *Chan Yuen Lan* also noted (at [52]): the "question in every case where the claim is based on the existence of a resulting trust is still whether there is any *direct evidence that may adequately reveal the intention of the transferor* [emphasis added]". The CA cited with approval the observations of the High Court in *Lim Chen Yeow Kelvin v Goh Chin Peng* [2008] 4 SLR(R) 783 ("*Lim Chen Yeow Kelvin*", at [116]):

> If the court **could discern a clear intention** on the part of the deceased to gift all the moneys in the joint account to the survivor from the evidence before it, **then there should be no**

> **need to apply any presumption of a resulting trust to aid the fact-finding or decision-making process**. Only when the court is not able to find any clear intention or if the evidence is inconclusive either way as to what the deceased's real intention might be, then in this rather limited and exceptional situation (where the evidence is so finely balanced on either side) should the court apply the evidential presumption of a resulting trust to tilt the balance in favour of the estate of the deceased (who solely contributed the moneys in [the] joint account).
>
> [emphasis added]

21 It is not uncommon for claims of both a common intention constructive trust and a presumed resulting trust to be made in property disputes involving "parties who have contributed unequal amounts towards the purchase price of a property and who have not executed a declaration of trust as to how the beneficial interest in the property is to be apportioned". In such cases, the framework for the analysis of such claims was set out by the CA in its judgment in *Chan Yuen Lan* (at [160]):

> (a) Is there sufficient evidence of the parties' respective financial contributions to the purchase price of the property? If the answer is "yes", it will be presumed that the parties hold the beneficial interest in the property in proportion to their respective contributions to the purchase price (ie, the presumption of resulting trust arises). If the answer is "no", it will be presumed that the parties hold the beneficial interest in the same manner as that in which the legal interest is held.
>
> (b) Regardless of whether the answer to (a) is "yes" or "no", is there sufficient evidence of an express or an inferred common intention that the parties should hold the beneficial interest in the property in a proportion which is different from that set out in (a)? If the answer is "yes", the parties will hold the beneficial interest in accordance with that common intention instead, and not in the manner set out in (a). In this regard, the court may not impute a common intention to the parties where one did not in fact exist.
>
> (c) If the answer to both (a) and (b) is "no", the parties will hold the beneficial interest in the property in the same manner as the manner in which they hold the legal interest.
>
> (d) If the answer to (a) is "yes" but the answer to (b) is "no", is there nevertheless sufficient evidence that the party who paid a

> larger part of the purchase price of the property ("X") intended to benefit the other party ("Y") with the entire amount which he or she paid? If the answer is "yes", then X would be considered to have made a gift to Y of that larger sum and Y will be entitled to the entire beneficial interest in the property.
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> (e) If the answer to (d) is "no", does the presumption of advancement nevertheless operate to rebut the presumption of resulting trust in (a)? If the answer is "yes", then: (i) there will be no resulting trust on the facts where the property is registered in Y's sole name (ie, Y will be entitled to the property absolutely); and (ii) the parties will hold the beneficial interest in the property jointly where the property is registered in their joint names. If the answer is "no", the parties will hold the beneficial interest in the property in proportion to their respective contributions to the purchase price.
>
> (f) Notwithstanding the situation at the time the property was acquired, is there sufficient and compelling evidence of a subsequent express or inferred common intention that the parties should hold the beneficial interest in a proportion which is different from that in which the beneficial interest was held at the time of acquisition of the property? If the answer is "yes", the parties will hold the beneficial interest in accordance with the subsequent altered proportion. If the answer is "no", the parties will hold the beneficial interest in one of the modes set out at (b)–(e) above, depending on which is applicable.

22 In *Chan Yuen Lan*, the starting point of the analysis was an examination of whether a presumption of a resulting trust arose on the facts – followed by an examination of whether the parties could be shown to have had a common intention to hold the beneficial interest in different proportions from the proportions of their respective contributions to the purchase price. That being said, the courts in later decisions have taken the position that the analysis need not always proceed in this strict sequence. As the court in *Ng So Hang v Wong Sang Woo* [2018] SGHC 162 ("*Ng So Hang*") observed (at [24]) (see also *Yeow Jen Ai Susan v Ravindaranath Kalyana Ramasamy* [2021] SGHC 94 ("*Yeow Jen Ai Susan*") at [26] – [30]; *Ong Chai Koon and others v Ong Chai Soon* [2021] SGHC 76 ("*Ong Chai Koon*") at [45] – [46]):

> While the approach in Chan Yuen Lan starts its analysis with the purchase price resulting trust, in practice the foremost claim that is put forward is usually the common intention constructive trust, with an alternative basis relied upon of a proprietary estoppel; the resulting trust is usually the backstop claim.

23 In the present case, the Plaintiff relied on a common intention constructive trust as his foremost claim, with the resulting trust as his backstop claim. As such, I first considered the issue of the alleged common intention constructive trust.

Whether there was a common intention constructive trust

24 Although the Plaintiff's statement of claim alluded at one point to an "oral agreement" between him and Spencer,[13] I understood this to constitute – not a pleading of an express trust as the Defendants seemed to think it was[14] – but the main basis of the alleged common intention constructive trust which formed the crux of the Plaintiff's claim. This was certainly how the Plaintiff's case was framed in his pleadings as a whole and also in the opening statement and the closing submissions filed on his behalf[15]. The common intention, as *per* his pleaded case, was for Spencer to hold the Vehicle on trust for him and for him to have sole beneficial ownership of it.

25 Having invoked a common intention constructive trust, the Plaintiff had to adduce sufficient and compelling evidence of the pleaded common intention (*Su Emmanuel* at [83]). I found that he was unable to do so. Having considered the evidence adduced and the parties' submissions, I found the Plaintiff's case

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13 SOC at paras 5 and 6.

14 Defendants' Closing Submissions dated 24 June 2022 at para 12.

15 SOC at para 5; Plaintiff's Opening Statement at para 2; Plaintiff's Closing Submissions at para 60.

on common intention constructive trust to be incoherent, internally inconsistent and frankly unbelievable.

26 To begin with, it must be noted that in his evidence at trial and in the case he put forward in closing submissions, the Plaintiff's position was that while he was the sole beneficial owner of the Vehicle from February 2014 to August 2015; that Lawrence assumed sole beneficial ownership of it from August 2015 to January 2017 following a "sale" by the Plaintiff to him; and that the Plaintiff himself became sole beneficial owner once again from January 2017 onwards, following a "sale" by Lawrence to him. As the Defendants pointed out,[16] this effectively meant that there would have been three separate common intention constructive trusts: first, from February 2014 to August 2015, there must have been a common intention as between the Plaintiff and Spencer for the former to have the entire beneficial ownership of the Vehicle and for the latter to hold it on trust for him; second, from August 2015 to January 2017, there must have been a common intention as between Lawrence and Spencer for Lawrence to have the entire beneficial ownership of the car and for Spencer to hold it on trust for him; and finally, from January 2017 onwards, there must have been a common intention as between the Plaintiff and Spencer for the Plaintiff once again to have the entire beneficial ownership of the car and for Spencer to hold it on trust for him.

27 Unfortunately for the Plaintiff, this convoluted narrative – which only emerged in amendments made mid-trial – actually ran contrary to other key portions of his own pleadings, which posited an oral agreement between the Plaintiff and Spencer in late 2013 for the former to have the *sole* use and beneficial ownership of the car and for the latter to hold it on trust *solely* for him.

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16 Defendant's Closing Submissions at para 25.

It should be highlighted that in the Plaintiff's original statement of claim, the case he put forward about the arrangements with Lawrence was that he and Lawrence had "orally agreed that in exchange for the Plaintiff allowing Lim [Lawrence] to enjoy the use of the Vehicle during the Second Period [September 2015 to January 2017], Lim was to make the monthly payments [to BMW Financial Services] for the corresponding months on behalf of the Plaintiff".[17] Nothing was said in the original statement of claim about a "sale" by the Plaintiff to Lawrence, or about Lawrence taking over "sole beneficial ownership, possession and use of the Vehicle for an agreed price of S$420,000.00". The assertions about a "sale" from the Plaintiff to Lawrence and about Lawrence assuming sole beneficial ownership of the Vehicle were only introduced in amendments made on 12 May 2022 (*ie*, a year after the original statement of claim was filed and halfway through the trial). The question which naturally arose in the wake of this unusual development was why the Plaintiff had failed to mention the "sale" to Lawrence and the change in beneficial ownership to begin with.

28 To this, the Plaintiff had no intelligible answer. In the affidavit he filed in support of his summons to amend the statement of claim mid-trial, he claimed that he had only remembered the "exact details" of his arrangements with Lawrence "just before affirming [his] Affidavit of Evidence-in-Chief on 17 March 2022".[18] There was no explanation given as to how his memory had suddenly – and belatedly – been jolted nearly a year after filing his original statement of claim. Moreover, Lawrence's purported assumption of sole beneficial ownership between August 2015 and January 2017 was a fundamental change in the ownership of the Vehicle and not a mere "detail" which might have

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17 Original Statement of Claim filed 14 May 2021 at para 12.

18 Er Kok Yong 8th affidavit dated 9 May 2022 at para 6.

easily been forgotten. It made no sense, in any event, that the Plaintiff's recollection of events occurring in the period between August 2015 and January 2017 should have improved with the passage of *more* time.

29 Further, the amendments made by the Plaintiff on 12 May 2022 stated that it was pursuant to an oral agreement between him and Lawrence that the latter had "completely" taken over "sole beneficial ownership, possession and use" of the Vehicle – but these amendments said nothing of Spencer's position vis-à-vis this alleged agreement between the Plaintiff and Lawrence. No evidence was proffered either as to Spencer's position vis-à-vis this alleged agreement. This was quite incredible since Lawrence could not have taken over sole beneficial ownership of the Vehicle for the fairly lengthy period spanning August 2015 to January 2017 unless Spencer – as the registered owner – had agreed to holding it on trust for Lawrence. Very oddly, the amendments also said nothing about Spencer's position vis-à-vis the alleged subsequent agreement between the Plaintiff and Lawrence for the former to "take over" once again the over "sole beneficial ownership, possession and use" of the Vehicle in January 2017. Nor was there any evidence of Spencer's position vis-à-vis this alleged subsequent agreement.

30 The Plaintiff's silence on Spencer's response to his alleged oral agreements with Lawrence in August 2015 and in January 2017 was perplexing. It will be recalled that *per* the Plaintiff's pleaded case, the common intention which he and Spencer shared at the point of acquiring the Vehicle was for Spencer to hold the Vehicle for him and for him to be the sole beneficial owner. At no point in these proceedings did the Plaintiff ever assert that there were changes in the common intention between him and Spencer following the purchase of the Vehicle – and yet if his story at trial were to be believed, there would have had to be changes in the common intention. His inability to explain

the position as between him and Spencer in the period between August 2015 and January 2017 – and in particular, the state of the common intention between them in this period – cast doubt on the veracity of his narrative of a common intention constructive trust arising in his favour at the point of purchase.

31 While it is true that common intention can be established by subsequent conduct, including the making of direct financial contributions (*Ng So Hang* at [61]), the evidence available in this case did not bear out the common intention pleaded by the Plaintiff. While it appeared that he did pay at least some of the monthly loan instalments due to BMW Financial Services, the evidence given by Low Gaik Ling Elyn ("Elyn") – who was Spencer's personal assistant at the material time and who had been instructed by Spencer to "keep a record of the monthly instalments paid to BMW Financial Services" – was that:[19]

> The Deceased [Spencer] informed me that Jason [the Plaintiff] would be using the Vehicle, and thus, would be responsible for the payment of the monthly instalments of interest and capital.

32 In other words, therefore, Elyn's evidence actually supported the Defendants' case, which was that even if the Plaintiff had made payment of the car loan instalments (and for that matter, of other items such as insurance and maintenance charges), these payments were made because he had used the Vehicle, and not because he was its sole beneficial owner.[20]

33 Insofar as the payment of the monthly loan instalments was concerned, moreover, it was an inescapable fact that Lawrence had paid these loan instalments for nearly 1.5 years between September 2015 and January 2017. This ran contrary to the Plaintiff's narrative of the common intention which he and

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19 Low Gaik Ling Elyn AEIC dated 17 March 2022 at para 8.

20 Defence and Counterclaim (Amendment No. 3) at para 6.

Spencer had shared for him (the Plaintiff) to enjoy sole beneficial ownership of the Vehicle and to be "*solely* responsible for the contributions towards the payment of the purchase price of the Vehicle".[21] As to the Plaintiff's attempt at trial to explain Lawrence's payments away as part of an oral agreement between him and Lawrence for the latter to take over sole beneficial ownership of the Vehicle, I have pointed out earlier the disconcerting anomalies in this later narrative (see [25] – [30] above). Indeed, having examined the evidence available, it appeared to me that the Plaintiff's later story about the "sale" to Lawrence in August 2015 and the further "sale" back from Lawrence in January 2017 was concocted specifically as a means of addressing the incongruities presented by the evidence of Lawrence's payment of the car loan instalments. As I noted earlier, if this later story were true, it made no sense for the Plaintiff to have omitted all mention of it in his original statement of claim; and it also made no sense for him to have omitted all mention of Spencer's position vis-à-vis the purported change in beneficial owners.

34 I noted that in putting forward at trial their story of the two "sales" of the Vehicle between the two of them in August 2015 and January 2017, the Plaintiff and Lawrence claimed that they had computed the purchase price with reference to the then market value of the car, and that they paid each other the "cash amount in excess of the outstanding loans". I did not find these claims in the least believable. Leaving aside the bare assertions made by the two men, no objective evidence was produced of the not inconsiderable cash payments they claimed to have made to each other; and neither man could recall with any specificity the amounts allegedly paid. In cross-examination, Lawrence conceded that there was no documentary evidence of these cash payments.[22] It

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21 SOC at para 5(c).

22 Transcript dated 5 May 2022 at p 91 ln 17 – p 92 ln 1.

appeared to me that the Plaintiff's and Lawrence's evidence about having computed the purchase price of the Vehicle and having paid each other the cash amount in excess of outstanding loans in August 2015 and January 2017 was merely something the pair of them had made up to give some verisimilitude to their story of the two "sales".

Other evidential issues in relation to the Plaintiff's claim of a common intention constructive trust

Adverse inference drawn against the Plaintiff

35 I make two other points about the evidence in relation to the Plaintiff's claim of a common intention constructive trust. The first point concerns the absence of any evidence of his WhatsApp communications with Spencer and Lawrence regarding the purchase and ownership of the Vehicle. While the Plaintiff claimed that the three of them were part of a WhatsApp group chat ("SUP") and that his intended purchase of the car was discussed within this group chat,[23] the messages from this group chat was never adduced as evidence at trial. According to the Defendants, this must be because the Plaintiff knew that such evidence – if adduced – would give the lie to his claims about having discussed with Spencer the latter's acquisition of the Vehicle and their "oral agreement" for him to own the Vehicle beneficially. The Plaintiff and Lawrence, on the other hand, provided the following identical explanations in their affidavits of evidence-in-chief ("AEIC"):[24]

> I should highlight that I no longer have access to the WhatsApp Group as I have changed my phone multiple times since the Deceased's passing. The data in the WhatsApp Group was also not backed up.

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23 Er Kok Yong AEIC dated 17 March 2022 at para 21.

24 Er Kok Yong AEIC dated 17 March 2022 at para 9; Lim Soon Hwa Lawrence AEIC dated 17 March 2022 at para 9.

36 Under cross-examination, however, both the Plaintiff and Lawrence changed their story. According to Lawrence:[25]

Q.	**According to you, the data in the WhatsApp group chat was not backed up when you changed phones?**
A.	Yes, I no make -- **I did not back up.**
Q.	So can you tell us when exactly did you lose access to the WhatsApp group chat?
A.	**Probably lose the access -- I recall I think I delete the WhatsApp -- WhatsApp Group, maybe I probably delete the WhatsApp group chat after deceased pass away one month or two weeks.**
COURT:	Sorry, probably or maybe you deleted the group chat maybe one month or two weeks after Mr Tuppani passed away?
A.	Two weeks.
COURT:	When you say "probably" or "maybe", is this something you remember or what?
A.	**Because I recall that after deceased passed away then like every time see the group chat will make us feel sad, that's why I delete away the WhatsApp group chat.**
……	
MR YEO:	… Then why, at paragraph 8 of your AEIC, you say you no longer have access to the WhatsApp group because you changed your phone?
A.	I no longer because maybe I delete the WhatsApp.
Q.	You agree with me that it's two different things, what you're saying on the stand and what is in your AEIC?
A.	Oh, to say that it's like -- now delete the -- probably I delete away.
COURT:	Probably you deleted away?
A.	Yes.

[25] Transcript dated 4 May 2022 at pp 97 – 100.

COURT: Mr Yeo is saying that in your affidavit, at paragraph 8, you said that the reason why you no longer have access to the WhatsApp group chat is because you changed your phone multiple times after deceased passed away and you didn't back up the data in the WhatsApp group.

A. Mm-hmm.

COURT: But just now you told us that the reason why you no longer have access to the group chat is because probably you deleted the group chat one month or two weeks after deceased passed away. So, Mr Yeo is saying that's a different reason from what you say here in paragraph 8. Do you want to clarify?

A. No. What I mean is probably I delete or I didn't update the -- backup the data.

……

Q. Okay? I am not trying to trick you or push you into a corner. I am just trying to find out what exactly happened. Now, in your AEIC, paragraph 8, you say you lost access to the WhatsApp group chat because you changed your phone. On the stand, you say you deleted it because seeing the WhatsApp group chat "make us sad". Which is it? Which is your evidence?

A. **Deleted**.

Q. Okay.

A. **I recall it's deleted.**

[emphasis added]

37 The Plaintiff, who took the witness stand after Lawrence, adopted the version of events which Lawrence had produced during his testimony:[26]

Q. Yesterday you were in court here, correct?

A. Yes.

Q. Yesterday when Mr Lawrence Lim was on the witness stand, I asked him about this WhatsApp

[26] Transcript dated 5 May 2022 at p 140 lines 21 – 25 to p 142 line 3.

group chat. He said that the both of you deleted this WhatsApp group chat, agree?

A. Yes.

Q. Mr Lawrence Lim said that the both of you discussed before deleting this WhatsApp group chat, agree?

A. Yes.

Q. **Mr Lawrence Lim also told us that the reason why you all deleted this group chat was because you all felt sad when you saw the WhatsApp group chat after Mr Tuppani had passed on, correct?**

A. **Yes**.

Q. Can you recall when exactly did you delete this WhatsApp group chat?

A. I cannot recall the exact timing.

Q. Roughly?

A. Within three to four weeks after he passed away.

COURT: Three to four weeks after Mr Tuppani passed away?

A. Yes, your Honour.

MR YEO: Which should be in late July, early August, fair?

A. Yes.

Q. After deleting the WhatsApp group chat, there is no way to retrieve it.

A. Can you repeat your question?

Q. **After deleting the WhatsApp group chat, you have no way of retrieving it, correct?**

A. **Yes**.

[emphasis added]

38 I found it telling that the Plaintiff and Lawrence appeared to have difficulty keeping their story straight regarding the WhatsApp group chat "SUP". If it were indeed the case that they had deleted this group chat after Spencer's death because they felt sad whenever they looked at it, there was no

reason for them to have refrained from saying so in their AEICs and to have instead made up a different (and false) explanation altogether. I agreed with the Defendants that the Plaintiff's and Lawrence's various explanations for the disappearance of the group chat simply could not be believed. In other words, I found that this was not a case of the Plaintiff being unable to produce evidence of the WhatsApp group chat: rather, it was a case of his being unwilling to do so. In this connection, I considered whether an adverse inference should be drawn against the Plaintiff, pursuant to s 116, illustration (g) of the Evidence Act 1893 (2020 Revised Edition) which states:

> **Court may presume existence of certain fact**
>
> 116. The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.
>
> …
>
> (g) that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it;

39 In considering the application of this provision, I found guidance in the reasoning of the court in *Mohamed Amin bin Mohamed Taib and others v Lim Choon Thye and others* [2011] 2 SLR 343 ("*Mohamed Amin*"). This was a case concerning a hearing on costs following the substantive outcome of Originating Summons No 17 of 2008 ("OS 17/2008"), in which the plaintiff subsidiary proprietors had succeeded in their appeal to the High Court have the decision of the Strata Titles Board set aside. Upon the matter being remitted to the Strata Titles Board for a fresh hearing, the plaintiffs' application for approval of the collective sale and purchase agreement ("SPA") was dismissed by the Board on the ground that the SPA was unstamped. When the parties reappeared before the High Court to address the issue of the costs of OS 17/2008, the plaintiffs argued that since they had succeeded in the substantive appeal in OS 17/2008, they were

entitled to their costs. The defendant subsidiary proprietors argued, on the other hand, that the plaintiffs should be deprived of their costs in the appeal because they had failed to ensure the stamping of the SPA. In addition, the defendants submitted that the nature of the fee-paying arrangement between the plaintiffs and their solicitors was such that the plaintiffs were not obliged to pay the latter costs for conducting the action on their behalf. The plaintiffs refused, however, to disclose the terms of their retainer, on the basis that this was covered by privilege.

40 The High Court in *Mohamed Amin* ruled that there would be no order as to costs. In so ruling, the court noted that the plaintiffs' own evidence suggested that there had been an agreement by their solicitors not to charge them. While the court could not compel the production of the plaintiffs' retainer, where a real and relevant dispute of fact arose in argument over costs, the court would require the party claiming costs to prove the facts on which he relied; and it would be for that party to choose what evidence he would adduce and to what extent he would waive his privilege. In *Mohamed Amin*, the plaintiffs' refusal to waive their privilege and to disclose the terms of their retainer constituted a failure to prove a fact that was especially within their knowledge. No explanation was provided for their failure. There was thus sufficient ground for the court to draw an adverse inference against them pursuant to s 116, illustration (g) and illustration (h) of the Evidence Act (at [26] – [31] of *Mohamed Amin*).

41 In the present case, the Plaintiff was the one who had claimed that his discussions with Spencer on the acquisition and ownership of the Vehicle took place, *inter alia*, within their WhatsApp group chat. As I have explained, given the glaring inconsistencies and oddities in his evidence (and Lawrence's) regarding the unavailability of the group chat, I found that he was in fact unwilling to produce the group chat. In the circumstances, it should be presumed

that evidence of this group chat – if given – would be unfavourable to the Plaintiff's claims about his alleged discussions with Spencer.

The 1st Defendant's initial acknowledgements of the Plaintiff's interest in the Vehicle

42 Finally, I add that although the Plaintiff made much of the 1st Defendant Shyller's admission that she had – following Spencer's death – initially acknowledged his interest in the Vehicle before doing an about-face,[27] I did not find this to be fatal to the Defendants' defence. Shyller was able to provide an explanation for her initial conduct: namely, that she had not had the opportunity, at that point, to go through Spencer's financial records and had trusted, at that point, what her lawyer Mr Mahtani Bhagwandas ("Mahtani") told her.[28] I found her explanation to be reasonable and entirely believable. Spencer had, after all, died at her father's hands; and in the days which followed his death, she was clearly preoccupied not only with trying to come to grips with estate matters but also with the criminal proceedings against her father.[29] The ownership of the BMW M6 would not have been uppermost in her mind during that period of time. I did not find it at all surprising that she should have initially accepted whatever she was told by the Plaintiff and by Mahtani about the ownership of the Vehicle, nor did I find it sinister that she should have subsequently changed her position after carrying out her own review of Spencer's financial records.

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27 Plaintiff's Closing Submissions dated 24 June 2022 at paras 47 – 53.

28 Defendants' Closing Submissions dated 24 June 2022 at paras 37 – 38.

29 Transcript dated 4 May 2022 at ln 4 – 22.

43 In sum, I found that the Plaintiff was unable to prove he had sole beneficial ownership of the Vehicle pursuant to a common intention constructive trust.

Whether there was a resulting trust

44 I address next the Plaintiff's alternative claim of resulting trust. As seen earlier, this alternative claim was based on the assertion that he had made "made *all* financial contributions [for the Vehicle] and [Spencer] did not do so".[30] Having examined the evidence adduced, however, I found that the Plaintiff could not discharge the burden of proving he had made "*all* financial contributions" for the Vehicle.

45 First, the objective documentary evidence showed that Spencer had made a considerable number of payments towards the purchase of the car. The Plaintiff himself admitted that it was Spencer who paid Munich Automobiles the initial deposit of $30,000 on 19 February 2014; and it was also Spencer who made a credit card payment of $236,000 to Munich Automobiles on 26 February 2014.[31] Conversely, the Plaintiff's assertion that he had reimbursed Spencer in cash for these payments was not borne out by the evidence. According to the Plaintiff's pleaded case, as at February 2014, he had already paid Spencer a total of $266,000 to reimburse the latter for payments made in that period.[32] In cross-examination, he belatedly changed his position and claimed that the amount was $260,000 instead.[33] However, not only did Spencer's bank statements fail to reveal cash deposits totalling this alleged sum of $260,000, as the Defendants

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30 SOC at para 17.

31 Er Kok Yong AEIC dated 17 March 2022 at para 30.

32 SOC at para 7.

33 Transcript dated 6 May 2022 at p 99 lines 10 – 25.

observed, there was no evidence to show that the Plaintiff's cash withdrawals were connected to payments to Spencer. Critically, the Plaintiff claimed in his affidavit that he had given Spencer $266,000.00 before 19 February 2014, but in cross-examination, he was unable to explain why the sum of $30,000.00 which alleged formed part of the $266,000.00[34] was only withdrawn *one week later, on 26 February 2014*.[35] I reproduce below the Plaintiff's answers when asked about this anomaly:

Q:	Paragraphs 29 and 30. All right?
A:	Yes.
Q:	Look at the two paragraphs. Now, reading the two paragraphs together, it is clear that you gave or you say you gave Spencer Tuppani 266,000 before 19 February, correct?
A:	Yes.
Q:	But the 30,000, which forms or is supposed to form part of the 266,000, was only withdrawn by you on 26 February. Can you explain this?
A:	What I mean is this cheque shows that I have the money at the point of time. Maybe I can take from my father 30,000, then I go and withdraw, then I take from my father 30,000, make it the sum of this, pass to Spencer, then after that I withdraw this money, pass back to my father. This is what I mean.
COURT:	Sorry, what do you mean "Maybe I can take from my father 30,000, then I go and withdraw and give back to my father"?
A:	No --
COURT:	Are you saying -- wait, wait. Are you saying that this is actually what happened?
A:	I cannot really recall the whole incident.

[34] Transcript dated 6 May 2022 at p 101 lines 12 – 25.

[35] Er Kok Yong AEIC dated 17 March 2022 at paras 29 and 30.

MR CHIOK:	Mr Er, just now you volunteered about how you may have taken from your father. Do you recall that? You just said it.
A:	Yes.
Q:	Is that what really happened or are you speculating?
A:	You mean the 96,000?
COURT:	No. Just now what you said about "Maybe I can take 30,000 from my father, then I give it to Spencer, then I withdraw 30,000 and pay back to my father", Mr Chiok is asking you to confirm is that what actually happened in this case, or are you just speculating?
A:	I think so, but I cannot confirm.
COURT:	You think so what?
A:	The money, maybe I can take from my father, but I cannot confirm.
COURT:	I don't understand what you mean when you say "Maybe I can take from my father but I cannot confirm". So is this what actually happened?
A:	Yes.
COURT:	"Yes" meaning what?
A:	Yes, I take the money from my father.
COURT:	Are you saying now you remember that you took 30,000 from your father, gave it to Spencer, then withdrew 30,000 and paid it back to your father?
A:	Yes.

46 Even from the relatively short extract above, it could be seen that the Plaintiff was glib, evasive and prone to invention. Pressed to explain the fact that his withdrawal of $30,000 had only occurred on 26 February 2014, he first volunteered a version of events in which he had taken $30,000 from his father to pay Spencer before withdrawing the same amount from his own account and returning it to his father. This was a version of events which had never been

mentioned in his AEIC. When asked to elaborate, he promptly declared himself unable to remember – only to fall back on the story about taking the money from his father when it became clear that he had no other explanation as to why his own withdrawal of the $30,000 had come about on 26 February 2014.

47 Further and in any event, even if I were to ignore the fact that the Plaintiff's withdrawal of $30,000 took place only after he had allegedly paid Spencer the sum of $266,000 in cash, no evidence could be found to show that the amount of $30,000 was conveyed to Spencer either in the form of cash or via a cheque deposited into Spencer's bank account. Indeed, this was the case for the rest of the cash withdrawals from the Plaintiff's accounts, which allegedly made up the sum of $260,000.00 paid to Spencer in cash: in cross-examination, the Plaintiff himself conceded that leaving aside the bare assertions in his AEIC, there was no evidence to show that he had passed Spencer such a sum in cash.[36] Although counsel for the Plaintiff sought to suggest to Shyller in cross-examination that the total cash amount of *$222,280* deposited in Spencer's Citibank account *between 10 February 2014 and 11 April 2014* came from the Plaintiff paying Spencer cash during this period, this suggestion was unsupported by any evidence: not even the Plaintiff himself made any mention of it whether in his AEIC or in oral testimony. Indeed, this suggestion contradicted the Plaintiff's assertion that he had paid Spencer *$260,000 in February 2014* via two cash withdrawals of $100,000 each, a cash withdrawal of $30,000 on 26 February 2014, and another sum of $30,000 from cash he had in hand.

48 I add that although the purchase price of the Vehicle was pleaded by the Plaintiff as being $566,000, this turned out to be incorrect, as evidence adduced

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[36] Transcript dated 6 May 2022 at p 105 lines 12 – 16.

at trial established that the purchase price was in fact $601,800.[37] There was no credible evidence to show that the Plaintiff had paid this entire amount.

49 Finally, although the Plaintiff expended a considerable amount of time seeking to prove the 2nd Defendant Sherry's alleged attempt to list the registration plate number EK 9J for sale,[38] this matter was in my view completely irrelevant to his case of common intention constructive trust and/or resulting trust in respect of the Vehicle. Even assuming for the sake of argument that Sherry had listed the registration plate number EK 9J for sale, this did not in any way advance the Plaintiff's case of common intention constructive trust and/or resulting trust in respect of the Vehicle.

50 Given the unsatisfactory state of the Plaintiff's evidence, I found that he was also unable to discharge the burden of proving the existence of a resulting trust which gave him sole beneficial ownership of the Vehicle. Based on the evidence available, it appeared to me more likely than not that insofar as the Plaintiff – and for that matter, Lawrence – had paid some of the instalments of the car loan and/or some of the insurance charges as well as maintenance and other related costs, they had made these payments to cover the periods when they were using the Vehicle – as *per* the Defendants' pleaded case.

Whether the Plaintiff was liable to account to the Defendants for the amount of $1,108,076 on the basis of a "presumed resulting trust"

51 I address next the Defendants' counterclaim against the Plaintiff in respect of the aggregate amount of $1,108,076 paid by Spencer to the Plaintiff over a period from August 2014 to May 2017. The Defendants claimed that the

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37 Defendants' Closing Submissions dated 24 June 2022 at para 33.

38 Plaintiff's Closing Submissions dated 24 June 2022 at paras 47 – 53.

Plaintiff held these monies on "a presumed resulting trust" for them (which I understood to be really a claim that the monies were being held on trust for Spencer's estate).[39] They prayed for a declaration that he held the sum of $1,108,076 on trust for them (the Defendants); as well as an order that the Plaintiff account to them for this sum of $1,108,076, and a further order that he pay this sum to them "or such amount as the Court may deem just".[40]

52 I did not think there was any serious controversy about the fact that the monies were paid by Spencer into the Plaintiff's UOB account 373-303-389-2.[41] In this connection, although the Plaintiff's counsel highlighted in the course of the trial that the monies paid by Spencer were mixed with other monies in the Plaintiff's UOB account,[42] neither the Plaintiff's counsel nor the Defendants' counsel followed up with any substantive legal arguments on this point. If the Plaintiff's counsel was attempting to suggest that such mixing of funds *per se* precluded a resulting trust from arising, I did not think this could be correct as a matter of principle (see *eg*, *In re Oatway* [1903] 2 Ch. 356); nor did the Plaintiff's counsel cite any authorities which might support such a proposition.

The argument of time-bar

53 Having said that, the Defendants' counterclaim – or a substantial portion of their counterclaim – did face a fundamental objection in the form of the Plaintiff's pleaded defence of time-bar. In this connection, as both parties in the present case acknowledged, our courts have previously held that the Limitation Act applies to resulting trusts. In *Lim Ah Leh v Heng Fook Lin* [2018] SGHC

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39 Defence and Counterclaim (Amendment No. 3) at para 18.

40 Defence and Counterclaim (Amendment No. 3) at pg 7.

41 Agreed Bundle of Documents at p 165.

42 Transcript dated 6 May 2022 at p 145 ln 17 – 22.

156 ("*Lim Ah Leh*") at [162] – [174] (upheld on appeal), the High Court – citing its previous decision in *Tan Chin Hoon and others v Tan Choo Suan and others* [2016] 1 SLR 1150 ("*Tan Chin Hoon*") – noted that s 2 of the Limitation Act defined the terms "trust" and "trustee" as "[having] the same meanings as in the Trustees Act [Cap. 337]". This was a reference to s 3 of the Trustees Act (Cap 337, 2005 Rev Ed), which defines the terms "trust" and "trustees" as including "implied and constructive trusts, and ... cases where the trustee has a beneficial interest in the trust property, and to the duties incident to the office of a personal representative". In both *Tan Chin Soon* (at [249] – [250]) and *Lim Ah Leh* (at [163] – [167]), the High Court held that although this definition did not include resulting trusts, it was an inclusive definition and not an exhaustive one; and in the court's view, the weight of authority suggested that resulting trusts were dealt with on the same footing as express and constructive trusts for the purposes of the section.

54 Both parties in the present case also acknowledged that our courts have previously held that a beneficiary's action for an account is caught by s 6(2) of the Limitation Act applies. In *Lim Ah Leh*, the court – citing the CA's decision in *Yong Kheng Leong and another v Panweld Trading Pte Ltd and another* [2013] 1 SLR 173 (at [69]) – held that "section 6(7) of the Limitation Act makes clear that s 6(2) applies to the remedy of an account in equity as it does to the remedy of an account at common law, and… it does so regardless of whether the claim for an account in equity is founded on a common law right or an equitable right" (at [168] – [174] of *Lim Ah Leh*):

> …(T)he six-year limitation in s 6(2) of the Limitation Act applies to a beneficiary's action against a trustee for an account unless the beneficiary can bring himself within one of the exceptions set out in s 22 of the Limitation Act. So if the plaintiff in this case cannot bring himself within those exceptions, he can obtain an account only of the defendant's dealings with trust property

> which she received in the past six years before he commenced this action.

55 In the present case, the Defendants' counterclaim was filed on 3 June 2021. As such, unless they could bring themselves within one of the exceptions set out in s 22(1) of the Limitation Act, claims in respect of payments made by Spencer prior to 3 June 2015 were barred by s 6(2) of the Limitation Act.

56 *Per* their amended defence, the Defendants pleaded reliance on s 22(1)(*b*) of the Limitation Act: according to the Defendants, the $1,108,076 "remain[ed] in the possession of the Plaintiff", or alternatively, the monies had been "received by the Plaintiff and converted to his own use".[43] The burden lay on the Defendants to satisfy me that the Plaintiff was still in possession of the $1,108,076 or that he had converted these monies to his own use (*Lim Ah Leh* at [240]).

57 Having considered parties' submissions and the evidence before me, however, I found that the Defendants were unable to establish the Plaintiff's possession of the $1,108,076. As with the plaintiff in *Lim Ah Leh*, so too the Defendants in this case failed entirely to adduce any evidence to show that the monies were still in the Plaintiff's possession at the time they commenced the counterclaim against him. As the High Court in *Lim Ah Leh* pointed out (at [242]), "(t)he fact that a trustee has received trust money cannot, in itself, justify an inference that the trustee is still in possession of trust money" – all the more so when the monies were said to have been deposited in the Plaintiff's account at different intervals ranging from four to seven years prior to the counterclaim being filed.

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43 Defence and Counterclaim (Amendment No. 3) at para 19.

58 I also found that the Defendants could not establish the Plaintiff's alleged conversion of the said monies. Again, the Defendants adduced no evidence at all of the alleged conversion. The only piece of evidence the Defendants pointed to was an answer given by the Plaintiff in cross-examination where he had stated:[44]

> To be honest, when my lawyers show me this amount, right, this is happen eight, nine years ago, I have no idea what these… at that point of time, I have no idea what these amounts were for because I believe this amount is all my money and after it's deposit to my bank, I withdraw. I spend, and after that, Spencer never asked me back for the money any more, after 2014. So I believe this money is all mine.

59 I did not think the above answer by the Plaintiff assisted the Defendants in any way to prove that he had *converted* the monies deposited by Spencer in his UOB account. It must be pointed out that this answer was given in response to a question by the Defendants' counsel as to the reason(s) why the Plaintiff's explanation about the payments from Spencer being "loan repayments" was put forward only for "the first time…in the court documents".[45] Given the context, I understood the Plaintiff's answer to be in effect a statement that he actually had no recollection (or "no idea", as he put it) what the purpose of Spencer's payments was and he believed the monies in the UOB account to be his own monies. I did not think this answer *per se* was enough for me to conclude that when the Plaintiff spent monies from the UOB account, he must have used the trust monies – *ie*, the deposits from Spencer – to pay for such expenditure.

60 In this respect, the Defendants' position was not dissimilar from that of the plaintiff beneficiary in *Lim Ah Leh.* In that case, the plaintiff – in seeking to rely on the conversion limb under s 22(1)(*b*) of the Limitation Act – had argued

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44 Transcript dated 6 May 2022 at p 126 ln 10 – 18.

45 Transcript dated 6 May 2022 at p 126 ln 4 – 9.

that the defendant must have used trust money to pay for her own investments because she did not herself have the financial resources to pay for investments such as shares and foreign commercial property. Some evidence was adduced by the plaintiff of the cost of those investments as well as the overdrawn state of the defendant's bank account at the time of her purchase of the foreign commercial property. The court was asked to infer that the defendant must therefore have used trust money to pay for these purchases. However, the court declined to draw such inference and instead rejected the plaintiff's allegation for want of evidence (*Lim Ah Leh* at [225] – [226]). In the present case, as I have noted, the Defendants adduced no evidence at all of the alleged conversion: they could point only to the Plaintiff's receipt of the various sums (a fact insufficient in itself to suggest conversion, let alone to prove it), as well as one of the answers he gave in cross-examination (an answer both vague and taken out of context).

61 For the reasons set out above, I found that the Defendants were unable to rely on either the possession limb or the conversion limb of s 22(1)(*b*) of the Limitation Act; that s 6(2) therefore applied to monies paid by Spencer in 2014; and that the Defendants' counterclaim in respect of the five 2014 payments was time-barred.

Counterclaim for the remaining three payments made between 21 October 2015 and 23 May 2017

62 Leaving aside the time-barred 2014 payments, I address next the remaining three payments made between 21 October 2015 and 23 May 2017. These three payments made up a total of $203,600.

63 At the outset, as I noted earlier, I did not think it could be seriously disputed that these three payments were in fact made by Spencer to the Plaintiff's UOB account. In gist, to recapitulate, the Defendants wanted a declaration that

the Plaintiff held the amounts on trust for them; and they also wanted the Plaintiff to give an account of the monies received and then to pay back these amounts "or such amount as the court may deem just".

64 I should first make it clear that I was unable to accept the Plaintiff's explanation (in the alternative) that the monies from Spencer were repayments of loans from the Plaintiff. This was because leaving aside self-serving bare assertions, the Plaintiff could not produce any evidence of these purportedly substantial loans. Indeed, he could not even be certain of the amount he had lent Spencer: at one point in cross-examination, he stated that he had lent Spencer "close to a million", but was unable to say what the balance amount of $108,076 Spencer might have been for.[46] As seen above (at [58]), he also conceded at one point in cross-examination that he no longer had any idea what the various amounts deposited by Spencer were for because these transactions had taken place some years ago.[47]

65 Unfortunately, the Defendants appeared to assume that so long as they could show the payment of monies by Spencer to the Plaintiff, a resulting trust would be established, and this would entitle them to the reliefs they sought. I did not think this could be right.

66 First, as I alluded to earlier, the presumption of a resulting is but a mere *presumption*. This presumption does not operate in cases where there is direct evidence revealing the intention of parties: in essence, the presumption is "no more than a long stop to provide the answer when the relevant facts and circumstances fail to yield a solution": *Lau Siew Kim v Yeo Guan Chye Terence*

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46 Transcript dated 6 May 2022 at p 127 ln 9 – p 128 ln 22.

47 Transcript dated 6 May 2022 at p 126 ln 10 – 18.

and another [2008] 2 SLR(R) 108 at [36]. Moreover, as Lord Browne-Wilkinson made clear in *Westdeutsche* (at p 708), the presumption is "*easily rebutted* either by the counter-presumption of advancement or by direct evidence of A's [the transferor or payor] intention to make an outright transfer".

67 In the present case, the Defendants relied on the mere fact that Spencer had transferred these monies to the Plaintiff, without more: they did not adduce *any* evidence at all (whether in the form of text and WhatsApp messages, emails, or other documentary evidence) of the circumstances or the context in which these transfers were made. Against this, there was the undeniable fact that Spencer had for years made various fund transfers to the Plaintiff without apparently requesting any repayment at any point in time – or even maintaining a clear record of these fund transfers. The complete absence of any such documentation should be contrasted with Spencer's conduct in relation to the BMW M6 car, where there was evidence that Spencer had instructed Elyn to maintain detailed records of instalment payments made by the Plaintiff towards the vehicle loan in Spencer's name, for the periods that the Plaintiff was using the car (see [31] above). If Spencer had in fact always intended that the Plaintiff should not have the benefit of the funds transferred into his account, it seemed to me quite unbelievable that Spencer should have omitted to maintain similarly clear records of the transfers and the repayment details.

68 In the circumstances, even setting aside the Plaintiff's alternative story of loan repayments and even without a presumption of advancement in his favour, what evidence I could actually see of Spencer's conduct over the period in which the fund transfers were made spoke to an intention to make outright transfers. In other words, even assuming the Defendants were able to rely on a presumption of resulting trust based on the mere fact of funds having been transferred by Spencer to the Plaintiff, such a presumption was in my view

capable of being rebutted when all the evidence available was weighed up in the balance.

69 I add that the present case was unusual because of the dearth of any evidence proffered by the party purporting to claim the benefit of a resulting trust. While it might seem tempting to sympathise with the practical difficulties the Defendants faced in mustering evidence relating to the fund transfers, to allow them to succeed on their resulting trust claim would have potentially unsettling repercussions beyond the present case. In *Chan Yuen Lan*, the CA took the view (at [44] and [48]) that the lack-of-intention analysis might provide a more sensible basis for the principled and pragmatic development of the equitable doctrine of resulting trusts – but notably, the court also cautioned against an "unduly wide doctrine of resulting trusts" which could potentially blur the "distinction between claims based on unjust enrichment and claims based on resulting trusts" and cause "unsettling effects on the rights of third parties and the security of commercial transactions". Some academics such as Birks,[48] and even Chambers himself,[49] have advanced the argument that the resulting trust is an appropriate response to unjust enrichment claims. However, this argument has not been judicially endorsed: in *Westdeutsche*, for example, Lord Goff declined to grant a declaration of a resulting trust over money which had been paid pursuant to a void contract.

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48 Peter Birks, "Restitution and Resulting Trusts" in *Equity: Contemporary Legal Developments* (Stephen R. Goldstein, ed) (Harry and Michael Sacher Institute for Legislative Research and Comparative Law, the Hebrew University of Jerusalem, 1992), cited in *Westdeutsche* at p 689.

49 Robert Chambers, "Resulting Trusts and the Law of Restitution" (DPhil Thesis, submitted 1995).

70 For the reasons explained, I was not minded to grant the Defendants a declaration that the Plaintiff held the sum of $1,108, 076.00 on trust for them.

71 Further, and in any event, even assuming the existence of a presumed resulting trust, the Defendants still bore the burden of proving that the Plaintiff – as a trustee under a presumed resulting trust – owed them fiduciary duties including the duty to account for the monies: *Lim Ah Leh* at [138], citing the CA's decision in *Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 ("*Tan Yok Koon*").

72 In *Tan Yok Koon*, the CA reviewed a number of authorities and academic texts in detail before coming to the following conclusions:

> 205 …**First**, there is no one set of obligations that pertains to all fiduciaries – not even persons who undertake those obligations in the course of an express trusteeship. This is *a fortiori* the case for resulting trustees, if they do indeed owe fiduciary duties at all. If we recall Prof Finn's observations (see above at [193]), the finding of a resulting trust is only part – in fact, the beginning – of the analysis as to *whether* and *what* fiduciary duties are owed. **Second**, these obligations are entered into *voluntarily* and such a finding will be arrived at by *objectively* assessing the conduct of the person who is said to be a fiduciary. The precise content of these duties are to be deduced from the surrounding circumstances, including, and especially, any relationship between the parties. **Third**, there is no doubt that *express* trustees owe fiduciary duties. The duty to perform the trust honestly and to act in good faith for the benefit of the beneficiaries is *at the same time* an irreducible core duty of the trust and a duty that is fiduciary in nature. In this context, the fiduciary duty arises not from the trustee-beneficiary relationship *per se*, but from the *voluntary undertaking to the settlor* to manage the trust property not for the trustee's own benefit but for the benefit of the beneficiaries. **Fourth**, the situation with regard to *resulting* trustees evidently poses more problems. Resulting trusts arise in at least two situations, possibly more. It can be seen, especially from Prof Chambers's work (see above at [200]), that resulting trustees can be located on a continuum. At one end are the innocent recipients of property, and at the other end are recipients of property which forms the subject of a failed express trust. It is therefore

> conceivable that a person who becomes a resulting trustee on the basis of a failed express trust may still owe fiduciary duties; we agree with Prof Chambers and Prof Virgo that it is generally difficult to say that that undertaking to act in another's benefit – or in more abstract terms the undertaking to act in self-denial – should cease when that express trust fails. However, it may well be the case that the precise obligations which are owed *to the settlor-beneficiary* in a resulting trust are different from (and almost invariably narrower than) those owed in respect of the beneficiaries in an express trust.
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> 206 The real question, in our view, is whether, objectively speaking, the resulting trustee can be said to have undertaken (whether expressly or impliedly) to act in a particular way which is fiduciary in nature. In this regard, the knowledge that one does not hold the beneficial interest in the property is, while not a sufficient condition by itself, strictly necessary because the conscience cannot otherwise be affected in a way that equity can take cognisance of. The duties that are applicable to each resulting trustee will vary significantly, and are very fact-specific. The duties owed by a resulting trustee to the settlor-beneficiary will, however, almost invariably be narrower than the duties owed by an express trustee in relation to the beneficiaries.
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> 207 It should be noted that the fact that a fiduciary duty may be imposed on a *fact-specific* basis ought *not* to be perceived as being arbitrary in any way. In addition to the perceptive observations by Prof Finn (see above at [193]), the observations by Justice Edelman (see above at [193]) might also be usefully noted – at least in so far as both observations suggest that the mere existence of a fiduciary *relationship, without more*, would *not necessarily* give rise to fiduciary *duties*. As we shall see in a moment, ***the facts and circumstances are also of the first importance in order to ascertain whether or not a fiduciary duty ought to be imposed even where there already exists an established fiduciary relationship between the parties concerned***.
>
> [emphasis added]

73 Bearing in mind the CA's injunction that the duties applicable to each resulting trustee "will vary significantly" and are "very fact-specific", the onus is on the plaintiff claiming the benefit of the resulting trust in each case to adduce enough evidence of the specific fiduciary duties applicable to the defendant resulting trustee and to establish the defendant's alleged breach of these fiduciary duties and their own entitlement to the reliefs sought. Thus, for example, in *Lim*

Ah Leh, the High Court found that the plaintiff beneficiary in that case was able to establish that there was a duty on the defendant's part to account because, *inter alia*, he was able to show that he had an ongoing arrangement with the defendant for the latter to assist him in managing and investing the monies he paid her; that he reposed a high degree of trust in her to manage and invest his money; and that between 1993 and 2007 the defendant had updated him on the status of his investments whenever he asked for information. Even then, the court found the plaintiff's claim time-barred; and the court held in addition that quite apart from the time-bar, it would have exercised its discretion not to order the defendant to render an account to the plaintiff because it would have been oppressive to do so.

74 In the present case, although the Defendants pleaded in their counterclaim that the Plaintiff was "now liable to account" to them for the amounts paid to him, they did not plead any material facts which went towards establishing the Plaintiff's alleged assumption of fiduciary duties including the duty to give an account. Nor was there any evidence adduced by the Defendants to demonstrate the Plaintiff's assumption of such fiduciary duties. Indeed, both in her AEIC and her oral testimony, the 1st Defendant Shyller appeared to take it for granted that because the Plaintiff had received these funds from Spencer, it must *ipso facto* follow that he had a duty to account for the monies – when in fact the onus was on her to prove that the Plaintiff had assumed such fiduciary duties. It might well be that given the passage of time, the Defendants found it challenging to locate evidence showing the true nature of the dealings between Spencer and the Plaintiff. It might also not be wholly unexpected for the Defendants to feel that the Plaintiff, as the person who received the monies from Spencer, should be the one obliged to give an explanation as to any use made of the monies. However, the fact remained that as Defendants were the plaintiffs in the counterclaim and as they had put forward a case of resulting trust, they bore

both the legal burden and the evidential burden of proving the elements of their case. To shift that evidential burden to the Plaintiff (who was the defendant in the counterclaim), the Defendants had first to produce at least some evidence (not inherently incredible) of the existence on the Plaintiff's part of fiduciary duties, including the duty to account (see *eg*, *Britestone Pte Ltd v Smith & Associates Far East, Ltd* [2007] 4 SLR(R) 855 at [60]). The failure to adduce any evidence at all in this respect was, in my view, fatal to the Defendants' case.

75 By way of a final observation on the evidence: I noted that there was some evidence adduced in the course of the trial which suggested that Spencer and the Plaintiff had been jointly involved in a number of businesses; and that these businesses included – according to Spencer's former solicitor Mahtani – the junket business.[50] This was a business which the Plaintiff described as being largely cash-based, since it involved frequent transfers of cash to and from the junket operator's customers.[51] It was not clear to me whether Spencer's and the Plaintiff's involvement in the junket business provided an explanation of some sort for the various sums of money transferred by Spencer to the latter's bank account at various points in time; and the Plaintiff did not follow up on this part of his narrative, at least in relation to the counterclaim in S 438 (perhaps unsurprisingly in view of his concerns over IRAS' scrutiny of his sources of income and cash flow). Ultimately, I did not make any firm findings in this respect, since it was not necessary for me to come to any finding on the specific reason(s) for the funds transfers made by Spencer.

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50 Transcript dated 10 May 2022 at p 20 ln 13 – 25.

51 Transcript dated 6 May 2022 at p 141 ln 9 – p 143 ln 15.

76 Given my findings at [51] to [75] above, I concluded that the Defendants' counterclaim in S 438 could not be sustained; and I accordingly dismissed their counterclaim.

Conclusion

77 In light of the decision I arrived at on both the claim and the counterclaim in S 438, I was of the view that in all fairness, the Plaintiff and the Defendants should each bear their own costs of these proceedings. I therefore ordered that the Plaintiff and the Defendants should each bear their own costs of the proceedings in S 438.

Mavis Chionh Sze Chyi
Judge of the High Court

Oommen Mathew and See Wern Hao (Omni Law LLC) for the plaintiff;
Chiok Beng Piow and Margaret Lee Hui Zhen (AM Legal LLC) for the defendants.