Mahidon Nichiar bte Mohd Ali and others *v* Dawood Sultan Kamaldin [2015] SGCA 36

Case Number : Civil Appeal No 112 of 2014

Decision Date : 28 July 2015

Tribunal/Court : Court of Appeal

Coram : Sundaresh Menon CJ; Chao Hick Tin JA; Chan Sek Keong SJ

Counsel Name(s) : Bernard Sahagar s/o Tanggavelu (Lee Bon Leong & Co) for the appellants; Koh Swee Yen and Rich Seet (WongPartnership LLP) for the respondent.

Parties : Mahidon Nichiar bte Mohd Ali and others — Dawood Sultan Kamaldin

Contract – Mistake – Non est factum

Deeds and Other Instruments – Deeds – Avoidance

Legal Profession – Conflict of interest – Duties – Client

Limitation of actions – Particular causes of action – Trust property

[LawNet Editorial Note: The decision from which this appeal arose is reported at [2014] 4 SLR 1309.]

28 July 2015 Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 A deed was signed by several beneficiaries renouncing their interests in their father's estate in favour of the sole administrator of the estate and one other beneficiary. The deed was executed more than a decade ago and no attendance note was prepared at that time. The solicitor who was primarily responsible for preparing the deed and attending to its execution claims that he "must have" fully explained its nature and contents to the beneficiaries, and that they, in turn, must have understood the same. At the same time, the solicitor admits that he did not meet or communicate directly with the beneficiaries who were renouncing their interests before the day on which they signed the deed. He was content to receive his instructions entirely from the sole administrator, and he proceeded to prepare the deed on that basis even though the sole administrator was a principal beneficiary under the deed. The solicitor says that he did not independently verify the instructions he was given because he never saw any potential conflict of interest. From first to last, he saw this as a non-contentious probate matter. The solicitor took comfort in the fact that he could discern no sign of disagreement when the parties finally came to his office to execute the deed. The solicitor apparently thought that a conflict of interest had to be manifested in a palpable conflict or discord between the parties at an interpersonal level rather than in their interests. As a result, the solicitor overlooked the possibility of such a conflict between the interests of the beneficiaries who were giving up their rights to their father's estate under the deed and those of the sole administrator, who was to receive a substantial part of those rights.

2 The central question that this gives rise to is whether it can safely be concluded in these circumstances that the solicitor had furnished the beneficiaries with a sufficient explanation of what

the deed of renunciation entailed such that they fully and fairly understood what they were signing when they executed the deed.

The background facts

The parties, the disputed property, and the family business

3 The head of a Muslim household ("Father") passed away on 15 March 2000, and was survived by his wife and four grown-up children. The wife ("Mother"), her eldest son ("Jahir"), and her two daughters ("Aysha" and "Noorjahan") are the appellants in this appeal (collectively, "the Appellants"), while the second son ("Dawood") is the sole respondent. At the centre of their dispute is the main asset which Father left behind upon his death, namely, the family home at 4 Merryn Terrace ("the Property"). There are other assets in Father's estate (see [60] below), but those assets are not the subject of the present family dispute and, furthermore, are relatively low in value as compared to the Property.

4 Father purchased the Property in 1979 and registered it in his sole name. The family initially lived there together. Noorjahan was the first to move out in 1992, followed by Aysha in 1996, and Jahir in 2000. All three siblings did so after getting married. Dawood, however, never actually moved out of the Property, although it appears from his evidence that he purchased another property with his wife sometime in November 2011 and thereafter divided his time between the two properties. Mother lived in the Property at all material times until her death on 15 March 2015, just before the hearing of this appeal.

5 Father suffered a stroke sometime in or around 1990. This left him bedridden. Until then, he had operated a mutton stall at Tekka market. That business was the family's only source of income. Jahir helped out at the stall until Father's stroke, after which he took over the running of the business. At about this time, Dawood, who was then a first-year accountancy student at Nanyang Technological University ("NTU"), put his studies on hold in order to assist Jahir in running the stall, which was facing some financial difficulties. Things stabilised subsequently and Dawood moved on in 1996. However, instead of returning to NTU to complete his studies, he enrolled as a cadet pilot with Singapore Airlines. He subsequently became, and continues to be, a pilot with Singapore Airlines.

Dawood obtains the first Certificate of Inheritance in 2000

6 Just four months after Father's passing in March 2000, Dawood, unbeknownst to the Appellants, took the first step towards administering the estate. Dawood applied to the Syariah Court for what is known as a Certificate of Inheritance. He wrote a letter dated 13 July 2000 to the Syariah Court for this purpose, but a copy of that letter was never produced in these proceedings.

7 Under Muslim personal law, matters of succession are determined by the Syariah Court, which issues a Certificate of Inheritance at the request of the prospective heirs. It is not disputed that in issuing a Certificate of Inheritance, the Syariah Court relies on the information that it is provided with. Consistent with this, the Syariah Court issued a Certificate of Inheritance dated 21 July 2000 ("the First Certificate") which was expressly stated to be based on Dawood's letter of 13 July 2000 (see [86] below). The First Certificate stated that the *only* beneficiaries of Father's estate were Mother (with a $^{1}/_{8}$th share) and Dawood (with the remaining $^{7}/_{8}$th share). Curiously, the First Certificate made no mention at all of Dawood's other siblings, Jahir, Aysha, and Noorjahan, whom we shall collectively refer to at times in this judgment as "the Three Siblings".

8 The First Certificate received scant attention in the proceedings below. It only emerged for the

first time in the midst of Dawood's cross-examination. For reasons which will become evident later in this judgment, we consider it a matter of some importance.

9 Having obtained the First Certificate, Dawood took no steps to distribute Father's estate. About four years later, in early 2004, the subject was raised again. This time, the Appellants were involved, but they were not told anything about the First Certificate. It is common ground that, following some discussion, the Appellants agreed that Dawood should be appointed as the sole administrator of Father's estate and that he should consult solicitors for this purpose.

Dawood instructs solicitors for the administration of Father's estate

10 Dawood was referred by a friend to Mr Harjeet Singh ("Mr Singh"), who is a solicitor of more than 30 years' standing. Dawood attended at Mr Singh's office on 19 February 2004 for their first meeting. Mr Singh's wife, Ms Gurmeet Kaur ("Ms Kaur"), who was then an associate and is now a partner of the firm, was also present at this meeting. Both solicitors appeared as witnesses for Dawood in the proceedings below.

11 What transpired at the 19 February 2004 meeting will be the subject of close scrutiny in due course; but, at this point, it suffices to note that Dawood did produce the First Certificate to the solicitors at that meeting. This is confirmed by the solicitors' oral evidence as well as by a handwritten attendance note prepared by Ms Kaur. We will return to that handwritten note later. What may be noted at this stage is that, like the First Certificate, Ms Kaur's handwritten note too made no mention of the Three Siblings. For completeness, we should mention that there was also a handwritten note prepared by Mr Singh, although it was not clear whether that was a contemporaneous note of matters actually discussed at that meeting or an aide memoire that was prepared subsequently.

12 Although the First Certificate was produced at that first meeting on 19 February 2004, it is evident that it was very shortly thereafter discarded as invalid since it made no mention of the Three Siblings. Hence, on 24 February 2004, some days after the first meeting, Mr Singh proceeded to apply for a fresh Certificate of Inheritance from the Syariah Court in respect of Father's estate, which certificate ("the Second Certificate") was duly issued on the same day. The Second Certificate stated that it was issued "based on information regarding the beneficiaries given by Harjeet Singh, requested on February 24, 2004". Unlike the First Certificate, the Second Certificate listed the following beneficiaries and their respective interests:

(a) Jahir – $^{14}/_{48th}$ share;

(b) Dawood – $^{14}/_{48th}$ share;

(c) Mother – $^{6}/_{48th}$ share;

(d) Aysha – $^{7}/_{48th}$ share; and

(e) Noorjahan – $^{7}/_{48th}$ share.

13 Mr Singh proceeded to communicate the receipt of the Second Certificate to Dawood. Although Mr Singh could not exactly recall, among other things, whether he did so in person, it was Dawood's evidence that this conversation took place over the telephone. According to Mr Singh, he received

the following instructions from Dawood during that conversation: (a) that the Appellants had all agreed to appoint Dawood as the sole administrator of Father's estate; and (b) that the Three Siblings had also agreed to renounce their interests in the estate and to have the Property transferred to Mother and Dawood as joint tenants. Mr Singh did not question those instructions at all; indeed, in cross-examination, he said that he thought at that time that this was a fair arrangement in all the circumstances.

14 Based on those instructions, Mr Singh and Ms Kaur duly prepared various probate papers. It appears from the documents themselves that they were executed in Mr Singh's presence on 27 February 2004. This was the only occasion on which Mr Singh and Ms Kaur met the Appellants; but, unlike in the case of their first meeting with Dawood alone on 19 February 2004, neither of the solicitors kept an attendance note recording the circumstances in which the probate papers were executed, or the advice or explanations that might have been given at that time.

15 There are two deeds amongst the probate papers which require elaboration. The first is known as the Deed of Renunciation of Persons with Equal Rights ("the RPER Deed"). This was entered into by all the Appellants, and under it, they each agreed to give up their rights to administer Father's estate and to have Dawood appointed as the sole administrator. The second deed, which is central to this appeal, is the Deed of Renunciation of Beneficial Interest ("the RBI Deed"). This was executed only by the Three Siblings, who, in so doing, purportedly agreed to renounce their respective interests in Father's estate under the Second Certificate in favour of Mother *and Dawood*. The reasons for the execution of the RBI Deed and the circumstances in which its execution allegedly took place were hotly contested in the proceedings below, and we will elaborate on this shortly when we set out the parties' respective cases. Mr Singh did not deliver copies of any of these deeds to the Appellants after they had been executed.

16 Pursuant to the two deeds, the Property was transferred to Mother and Dawood as *joint* tenants on 29 March 2005. The implications of the Property being held under a joint tenancy were not discussed with Mother at any time, although Mr Singh had something to say on this when he was cross-examined. We will come to that later. The transfer was registered on 15 April 2005, and, according to Dawood, he received the new certificate of title to the Property from Mr Singh when he paid the solicitors' final bill. Mr Singh did not update the Three Siblings or Mother on the completion of the transfer; nor did he deliver copies of the new title deed to any of them. Sometime in October 2014, after the commencement of the proceedings from which this appeal arises and a few months before her death, Mother unilaterally severed the joint tenancy, whereupon she and Dawood held the Property in their respective half-shares.

17 At this point, it is appropriate to pause and recount briefly some aspects of the way in which Mr Singh conducted the matter:

(a) At all times, Mr Singh received his instructions from Dawood alone.

(b) Mr Singh accepted that he was acting at all times not only for Dawood, but also for the Appellants in respect of each of their various interests in this matter.

(c) Mr Singh did not verify any of his instructions with any of the Appellants directly. This included the instructions that Dawood would be the sole administrator under the RPER Deed and that his interest in Father's estate was to be enlarged at the expense of the Three Siblings according to the terms of the RBI Deed.

(d) Mr Singh met the Appellants for the first time only when the probate documents were

executed at his office on 27 February 2004.

(e) Mr Singh did not keep any contemporaneous notes of this meeting. As such, there is no documentary proof which might shed light on whether he had advised the Appellants at all and, if so, what advice he had given them. Specifically, the matters on which he would have been expected to have advised them include:

(i) the precise nature of their respective interests in Father's estate pursuant to the Second Certificate;

(ii) the Three Siblings' intent to wholly forgo their respective interests in favour of Mother and Dawood by executing the RBI Deed;

(iii) the fact that the Three Siblings' intent to renounce their respective beneficial interests was a wholly distinct matter from the Appellants' intent to appoint Dawood as the sole administrator of Father's estate; and

(iv) the manner in which the Property was to be held by Mother and Dawood.

(f) Consistent with his practice of communicating only with Dawood, Mr Singh also did not follow up on the matter with the Appellants by, for example, writing to update them on its progress, providing them with copies of the signed probate papers, or providing them with copies of the new title deed to the Property once the transfer had been completed.

We should point out that we have referred in this paragraph to the conduct of Mr Singh alone because he had primary responsibility for preparing the probate papers and attending to their execution. However, what we have just said, as well as our discussion later in this judgment on what Mr Singh should have done, applies equally to Ms Kaur to the extent of her involvement in the matter.

The Three Siblings lodge a caveat against the Property

18 Returning to the narrative of the facts, the next significant event after the transfer of the Property to Mother and Dawood transpired more than six years later on 15 November 2011. This was when the Three Siblings lodged a caveat in respect of the Property with the assistance of another solicitor, one Mr Ibrahim, who was a friend of Aysha and studied at the same mosque as her. The Three Siblings' caveat was lodged based on the contention that Dawood had "no legal right to gift [the Property] to himself and [Mother], to the exclusion of their interests". As will become apparent, the Appellants deny that the Three Siblings ever intended to renounce their interests in the Property in favour of Mother and Dawood jointly, notwithstanding the fact that this was precisely the effect of executing the RBI Deed.

19 According to Aysha, the Appellants had never seen the title deed to the Property; hence, they were unaware of the true manner in which it was held after the execution of (among other probate documents) the RBI Deed and the RPER Deed in 2004. Sometime in 2011, Mother asked Dawood if she could see the title deed. Dawood apparently was not forthcoming with the title deed. Mother mentioned this to Aysha, who then approached Mr Ibrahim for assistance. Mr Ibrahim carried out a title search, and, after discovering that the Property was registered in Mother's and Dawood's joint names, he informed Aysha accordingly. Aysha was shocked to learn of this. After discussing the matter with Jahir and Noorjahan, she consulted Mr Ibrahim again and the Three Siblings then decided to lodge the caveat against the Property.

The Appellants commence proceedings against Dawood

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20 More than a year passed after the lodgement of the caveat before the Appellants commenced their suit against Dawood on 27 March 2013.

The pleadings

The Appellants' pleaded case

21 The Appellants claimed that, sometime after the issuance of the Second Certificate on 24 February 2004, all the siblings (*ie*, the Three Siblings plus Dawood) agreed to waive their respective interests in Father's estate to benefit Mother *solely*. This agreement (referred to hereafter as "the Appellants' Agreement" where appropriate to the context) came about because they considered Mother's share under the Second Certificate to be "minuscule". Having appointed Dawood to consult solicitors for the administration of Father's estate, the Appellants were under the impression that the probate papers, which had been prepared solely on Dawood's instructions, were intended to give effect to the Appellants' Agreement. Therefore, when the Appellants executed the various documents (including, on the part of the Three Siblings, the RBI Deed), they did so on an erroneous footing. The Appellants did not contend that the RBI Deed was forged, but they maintained that it did not set out what they understood would be its intended effect.

22 Aside from this, the Appellants also gave a different account of how the probate papers had been signed. According to them, only Mother and Aysha had gone to the solicitors' office on 27 February 2004 to execute those documents in Mr Singh's presence. As for Jahir and Noorjahan, they had allegedly executed the probate papers at different times and at different locations. Moreover, the Appellants contended that none of them had received any explanation as to the legal effect and meaning of the documents which they were signing, including, in particular, the two deeds. Further, they each claimed that they had only been given "several single page papers" to sign, as opposed to the relevant documents in their entirety.

23 Given the circumstances in which the probate papers were signed, as well as the mistaken impression which the Appellants were labouring under when they did so, the Appellants denied that the Three Siblings had ever renounced their respective interests in Father's estate in favour of Dawood. Instead, they claimed that Dawood, without their knowledge and consent, and in breach of the Appellants' Agreement, had "surreptitiously and/or in bad faith" procured the transfer of the Property to himself as its joint legal and beneficial owner along with Mother. The Appellants therefore sought, among other things, a declaration that the transfer of the Property was void, a further declaration that Mother was the sole beneficial and legal owner of the Property, and an order that Dawood sign all documents and deeds necessary to rectify the land register so as to reflect the position under the Appellants' Agreement.

Dawood's pleaded case

24 The crux of Dawood's case, in contrast, was that all the siblings had reached a *different* agreement from that which the Appellants advanced. According to Dawood, the agreement reached (referred to hereafter as "Dawood's Agreement" where appropriate to the context) was that the Three Siblings would renounce their respective interests in Father's estate and vest the Property in Mother *and* him as joint tenants. The RBI Deed was therefore executed by the Three Siblings in furtherance of precisely this agreement.

25 There are two points to note about Dawood's Agreement which will assume some significance in our analysis.

26 The first relates to the time of its formation. In his pleadings, Dawood stated that this agreement among all the siblings was reached sometime at the end of 2003 or early 2004; but, in his affidavit of evidence-in-chief ("AEIC"), he was slightly more specific, placing the formation of this agreement at a family meeting in early January 2004. According to Dawood, this was the same meeting at which the Appellants had agreed to appoint him as the sole administrator of Father's estate (see [9] above). What is clear is that, on Dawood's case, the alleged agreement was formed well before the solicitors were first instructed on 19 February 2004 (see [10] above) and also well before the application for and the issuance of the Second Certificate on 24 February 2004 (see [12] above).

27 The second point about Dawood's Agreement concerns the alleged motivation or rationale underlying it. Just why would the Three Siblings have agreed to forgo their beneficial interests in Father's estate? Dawood claimed that this stemmed from his agreement to: (a) be appointed as the sole administrator of Father's estate; and (b) live with Mother in the Property and look after her. This was framed in his pleadings in terms of "consideration", even though we are concerned here with a deed. Dawood claimed that he was the "sole" child who lived with and took care of Mother as his siblings had moved out to live with their respective families. In his AEIC, Dawood also placed great reliance on his assertion that it had always been Father's intention, which was allegedly "known amongst the family members", that the Property would belong to Mother and him upon Father's demise. He contended that the Three Siblings agreed to the transfer of the Property because this was "in line with the wishes of [Father]".

28 Apart from this affirmative case, Dawood also pleaded that the Appellants' action was time-barred. Dawood claimed that, to the extent that the Appellants' action was premised on his alleged breach of the Appellants' Agreement, the cause of action must have accrued by 15 April 2005, which was when the transfer of the Property to Mother and Dawood as joint tenants had been registered (see [16] above). Since the Appellants only commenced their action in March 2013, after more than six years had lapsed, their claim was time-barred pursuant to s 6 of the Limitation Act (Cap 163, 1996 Rev Ed). We note in passing that the Appellants' claim was in fact pleaded on the basis that the transfer of the Property was void. Their claim was not framed as one for damages arising from a breach of contract, nor as one for specific performance. Rather, it was evident from the reliefs sought in respect of the Property that their claim was that Dawood had misappropriated property to which he was not entitled.

29 Dawood also counterclaimed that the lodgement of the caveat against the Property by the Three Siblings was wrongful, vexatious, and/or without reasonable cause. He therefore sought compensation for the losses arising therefrom pursuant to s 128 of the Land Titles Act (Cap 157, 2004 Rev Ed) ("LTA"), including, in the main, the cost of obtaining legal advice in respect of the caveat. Dawood also sought a declaration that, in the event that the court found that the Three Siblings each had an interest in the Property, they were liable in proportion to their respective interests for the cost and the expenses related to the administration of Father's estate and the upkeep of the Property.

The decision below

30 The judicial commissioner in the court below ("the Judge") found that neither the Appellants' Agreement nor Dawood's Agreement had been proved on a balance of probabilities. But, since the burden ultimately rested on the Appellants (as the plaintiffs) to prove their case, he dismissed their claim (see *Mahidon Nichiar bte Mohd Ali and others v Dawood Sultan Kamaldin* [2014] 4 SLR 1309 ("the GD") at [6]).

31 Beginning with the Appellants' Agreement, the Judge found that there were several irreconcilable inconsistencies and gaps in the Appellants' individual testimonies regarding its alleged formation (see the GD at [70]–[87]). In this regard, the Judge considered the "most critical" factor to be the existence of the RBI Deed, which, on its face, was wholly inconsistent with the alleged agreement to benefit Mother alone (see the GD at [88]).

32 The Judge did not believe the Appellants' version of how the RBI Deed (amongst the other probate papers) had been executed. He observed, for example, that it did not make sense for Mr Singh to have given the Appellants only the signature pages of the documents to sign (see the GD at [113]). Both the RBI Deed and the RPER Deed also ended with a declaration by Mr Singh that they had been executed in his presence; hence, the Judge thought the Appellants' contention that Jahir and Noorjahan had signed the RBI Deed on their own, and not in Mr Singh's presence, was unconvincing (see the GD at [133]). Ultimately, the Judge preferred the solicitors' evidence of how the probate papers had been executed, which was that all the Appellants had attended at their office on 27 February 2004 to sign the relevant documents after Mr Singh had explained their nature and contents. The Judge thought he "did not have any good reason to disbelieve" the solicitors' evidence (see the GD at [134]), and was therefore satisfied that the RBI Deed had been validly executed by the Three Siblings.

33 With regard to Dawood's Agreement, the Judge was troubled by the fact that Father's alleged wish for the Property to vest after his death in Dawood and Mother, which appeared to be an "integral element" of the alleged agreement, had barely featured in Dawood's closing submissions and in the cross-examination of the Appellants (see the GD at [155]–[160]). The Judge was not convinced that Father had ever had, let alone expressed, any such wish, and so found that Dawood's Agreement too had not been made out.

34 The Judge also held that the Appellants' action was, in any event, time-barred. He characterised the Appellants' claim as a "plain vanilla contract claim" (see the GD at [48]) to which s 6 of the Limitation Act *prima facie* applied. The Appellants had submitted that the running of the six-year limitation period should be postponed pursuant to s 29 of the Limitation Act on account of Dawood's surreptitious concealment of the transfer of the Property. As this was only discovered by the Appellants in 2011, they claimed that the commencement of the limitation period should be postponed until then, with the result that their claim would not be time-barred. The Judge rejected this argument. Having found that the Three Siblings had executed the RBI Deed knowingly and willingly, he held that there was no breach of contract to begin with, much less any basis to find concealment on the part of Dawood so as to call for the invocation of s 29 of the Limitation Act (see the GD at [164]–[168]).

35 Finally, the Judge held, on Dawood's counterclaim, that the caveat against the Property had been lodged without reasonable cause; hence, the Three Siblings were liable to compensate Dawood for any loss incurred in that connection (see the GD at [174]).

Our decision

The focus of the present appeal: The validity of the RBI Deed

36 In this appeal, the parties' written submissions centred mainly on the Judge's findings regarding their respective versions of the alleged agreement between the siblings outlined at [21] and [24] above. On the one hand, the Appellants sought to explain away the various discrepancies in their evidence and their case which the Judge had identified concerning the formation of the Appellants' Agreement. They also sought to undermine the solicitors' evidence that they: (a) had been given the

probate documents (including the RBI Deed) in their entirety to sign; (b) had received an explanation from Mr Singh as to what those documents were; and (c) had signed the documents on the same occasion when they attended at the solicitors' office on 27 February 2004. On the other hand, Dawood submitted that the Judge was correct to find that the Appellants' Agreement had not been proved; in addition, he argued that the Judge should also have found that Dawood's Agreement had been proved on a balance of probabilities.

37 Having considered the arguments and the GD, we do not think we are in a position to disturb the Judge's finding that neither the Appellants' Agreement nor Dawood's Agreement had been proved on a balance of probabilities. But, that does not conclude the matter against the Appellants. Once both versions of the alleged agreement are discarded, what remains at the heart of the Judge's decision is his central finding that the RBI Deed had been validly executed by the Three Siblings. Properly understood, that was the essential basis of his decision. Indeed, at [165] of the GD, he said that the RBI Deed was "the basis of the transfer" of the Property to Mother and Dawood. But, herein lies a potential difficulty. The RBI Deed might make sense if it is seen as the actualisation of Dawood's Agreement. However, once that agreement is discarded, as it was in the court below, then it begs the crucial question as to why and in what circumstances the RBI Deed was entered into.

38 With regard to the circumstances in which the probate documents were executed, we accept the Judge's findings in two respects – first, that all the Appellants were present at the solicitors' office on 27 February 2004 to sign the probate papers in one sitting; and, second, that the solicitors had provided the probate papers to the Appellants in their entirety, rather than just their respective signature pages. We accept this not because we think this must be true, but because we have no basis to interfere with these findings by the Judge given the state of the evidence that was led. What we focus on, instead, is the Judge's uncritical acceptance of the solicitors' evidence that Mr Singh "must have" fully explained the nature and effect of the documents – in particular, the RBI Deed – to the Appellants before they were signed by the Appellants (and, in the case of the RBI Deed, by the Three Siblings). If we are unable to agree with the Judge that Mr Singh had adequately advised the Three Siblings as to the terms and effect of the RBI Deed, then that, in our judgment, will affect its validity.

A preliminary point: Is the Appellants' claim time-barred under s 6 of the Limitation Act?

39 We depart, for the moment, from the main trunk of our analysis to deal with a preliminary point which arises in this appeal. This concerns the Judge's finding that the Appellants' claim was time-barred under s 6 of the Limitation Act, which finding, in turn, was premised on his analysis of their claim as a pure contract claim. If this is correct, then this appeal must fail *in limine*, making it unnecessary for us to go on to consider whether the RBI Deed was valid in the circumstances.

40 With respect, we do not agree with the Judge's characterisation of the Appellants' claim. It is true that the Appellants' Agreement was pleaded as an important feature of their case. It is also true that the Appellants contend that this agreement was breached by Dawood when he procured the Three Siblings' execution of the RBI Deed. But, as we have noted above at [28], the Appellants do not claim damages for breach of contract; nor do they seek specific performance. The principal relief sought, in fact, is for the land register to be rectified on the basis that "[Dawood] has no legal or beneficial interest in the [P]roperty". In short, the real nature of the Appellants' claim is that Dawood's title to the Property is defective. This rests on the Three Siblings' denial that they had renounced their interests in the Property in accordance with the terms of the RBI Deed (despite their having signed it), such that the transfer of the Property effected pursuant to that deed must be invalid. Their key contention is that the transfer is void because it was effected pursuant to a void deed. While it is a fact that Dawood (together with Mother) holds the *legal* title to the Property, the

Appellants contend that the Three Siblings continue to retain their respective beneficial interests therein (in the proportions set out in the Second Certificate), subject to the terms of the Appellants' Agreement if that agreement is proved. Hence, in truth, the Appellants are asserting their claim as beneficial owners against Dawood as trustee.

41 Once the true nature of the Appellants' case is understood, it becomes evident, in our judgment, that any issue as to their claim being time-barred properly falls to be governed by a different provision of the Limitation Act, namely, s 22(1)(*b*), which concerns actions by beneficiaries to recover trust property in the possession of a trustee. We pause to observe that a "trustee" for the purposes of this provision has the same meaning as a "trustee" under the Trustees Act (Cap 337, 2005 Rev Ed). Section 3 of the latter Act explicitly defines a trustee as "including a personal representative"; this further supports our view that s 22(1)(*b*) of the Limitation Act is the applicable limitation provision in the present case since the Property was transferred by Dawood in his capacity as the sole administrator of Father's estate. Significantly, s 22(1)(*b*) stipulates that *no* period of limitation applies to an action by beneficiaries to recover trust property in a trustee's possession:

> **Limitations of actions in respect of trust property**
>
> **22.**—(1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action —
>
> …
>
> (*b*) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.
>
> …

42 The fact that no statutory period of limitation applies to the Appellants' claim does not, however, preclude the court from taking notice of any delay on their part in bringing their claim and denying them the relief sought on the ground of laches. This is the effect of s 32 of the Limitation Act, which provides that nothing in the said Act shall affect "any equitable jurisdiction to refuse relief on the ground of acquiescence, laches or otherwise". In this regard, we endorse the following views expressed by the High Court in *Re Estate of Tan Kow Quee (alias Tan Kow Kwee)* [2007] 2 SLR(R) 417 ("*Re Estate of Tan Kow Quee*") at [29]–[30] (which were also cited with approval in the subsequent High Court decision of *Sukhpreet Kaur Bajaj d/o Manjit Singh and another v Paramjit Singh Bajaj and others* [2008] SGHC 207 at [21]–[22]):

> 29 I note that in *Patel v Shah* [2005] EWCA Civ 157, the English Court of Appeal held at [22] that *even if no period of limitation applies to a given claim (as I have found to be the case here), the court retained the equitable jurisdiction to refuse relief on the grounds of laches*. This was followed in *Green v Gaul* [[2006] EWCA Civ 1124]: see at [39] and [40] of that judgment. The point was well made by Chadwick LJ, who noted as follows at [33]:
>
> > Section 36(2) of the Limitation Act 1980 provides, in terms, that: "Nothing in this Act shall affect any equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise." It is not, I think, in doubt that "acquiescence" in that context includes conduct which would lead a court of equity to refuse relief on the grounds of laches. At first sight, therefore, *it is difficult to see how an express provision in the 1980 Act that no period of limitation prescribed by the Act shall apply to the claim* – or, more generally, the absence of any provision in the Act which does, on a true analysis, prescribe a period of limitation in respect

of the claim – *can have the effect of excluding a defence of laches if, on the facts, such a defence would otherwise be available*.

30 In my judgment, this is correct and to the extent that it may be suggested that authorities such as *Ahminah v Meh and Pakir* [1892] SSLR 1 and *In re Pauling's Settlement Trusts (No 1)* [1964] Ch 303 at 353 point the other way, I choose not to follow those cases. In my judgment, not only is the point not adequately reasoned in those cases, but the logic underlying the decision in *Green v Gaul* on this issue and what I have said at [28]–[30] provide a sufficient basis for the view I have taken.

[emphasis added]

43 As was also noted in *Re Estate of Tan Kow Quee* (at [33]), the basis for equitable intervention on the ground of laches is ultimately found in unconscionability. And, in determining this, the court adopts a broad-based approach inquiring into all the circumstances of the case. This will include considerations such as the length of the claimant's delay in prosecuting his claim, the nature of the prejudice said to be suffered by the defendant, and, if it exists, any element of unconscionability in allowing the claim to be enforced (see also *Re Estate of Tan Kow Quee* at [38], recently cited with approval by this court in *Dynasty Line Ltd (in liquidation) v Sukamto Sia and another and another appeal* [2014] 3 SLR 277 at [58]).

44 In the present case, the Appellants' claim is only sustainable if they can establish that the Three Siblings were in fact unaware of the terms and effect of the RBI Deed at the time they signed it. If the Appellants can establish that, then what we consider important, in the context of laches, is to determine the point at which they subsequently came to know that the Property had been placed in the joint names of Mother and Dawood. That is the point which determines when the Appellants would have been in a position to commence their action against Dawood. In other words, it provides the reference point for assessing the length of delay (if any) on their part in bringing their claim, and that in turn goes towards the overall inquiry of unconscionability.

45 That is a question which cannot be answered until we have determined the central issue in this appeal – namely, whether or not the Three Siblings knew the nature and effect of the RBI Deed when they signed it, and thus, whether or not that deed was validly executed. We therefore defer our analysis of the possible operation of laches until after we have decided the main point in this appeal.

The validity of the RBI Deed

Two competing explanations for the RBI Deed

46 We return, then, to the central focus of the appeal, which is the validity of the RBI Deed. Before elaborating on certain aspects of the evidence of the solicitors, it is necessary for us to set the stage by returning to an important observation that was made earlier at [37] above. This concerns the fact that, having held that neither Dawood's Agreement nor the Appellants' Agreement had been proved, the Judge left a crucial question unanswered: what explanation is there then to account for the execution of the RBI Deed? Surely, the parties could not have all descended upon the solicitors' office to sign away the Three Siblings' interests in Father's estate without any rational explanation for this.

47 The fact remains that the RBI Deed was signed. In our judgment, there can only be two possible competing explanations that might account for this.

48 First, notwithstanding the Judge's finding that Dawood's Agreement had not been proved, the siblings (*ie*, the Three Siblings plus Dawood) may have reached a mutual understanding along the lines of that agreement at some stage before the execution of the RBI Deed. It has to be said at the outset that this hypothesis will run into the very difficulties which caused the Judge to find that Dawood's Agreement had not been proved. We leave that to one side for now, save to emphasise that it is simply inconceivable that the first time that the Three Siblings were apprised of their alleged agreement to surrender their interests in Father's estate in favour of Mother and Dawood was when they (together with Mother) went to the solicitors' office on 27 February 2004. Hence, for this hypothesis to be found valid, it will be necessary, despite the Judge's reservations, to find on balance that there was some such *prior* agreement or understanding, and therefore, the Three Siblings attended at the solicitors' office for the purpose of executing the RBI Deed, *knowing* the consequences of their doing so *and intending* that deed to take effect according to its terms.

49 The second possible explanation is that although the RBI Deed was in fact executed by the Three Siblings, they did so without ever understanding its nature and effect. On this hypothesis, there was never any prior agreement (or, perhaps, even any discussion) among the siblings concerning how their respective interests in Father's estate should be divided. The reason why they, together with Mother, attended at the solicitors' office on 27 February 2004 was because, as is common ground in these proceedings, the Appellants had agreed to appoint Dawood as the sole administrator of Father's estate sometime in early 2004 (see [9] above). But, so far as the Three Siblings were concerned, that was the extent to which any prior agreement amongst them went – they did *not* agree to renounce their interests in Father's estate and vest the Property in the way that eventually transpired. Instead, the Three Siblings signed the RBI Deed because, having failed to receive proper advice as to its true nature and effect, they did not in fact understand it, in particular, the material aspects in which it differed from the RPER Deed, which they (as well as Mother) were aware of and did in fact intend to execute.

50 It falls on us now to examine which of these competing hypotheses is the more probable.

The first hypothesis: The Three Siblings executed the RBI Deed knowingly, intending to give effect to some prior agreement among all the siblings

51 In our judgment, there are numerous difficulties with the first hypothesis outlined at [48] above.

(1) The problem of timing the formation of such an agreement

52 To begin with, it is impossible to say, even roughly, *when* an agreement among all the siblings to constitute Mother and Dawood as the joint tenants of the Property might have been formed. On the evidence, the latest date on which such an agreement could have been reached is just *prior* to the issuance of the Second Certificate on 24 February 2004. This is because Mr Singh's evidence is that he was instructed by Dawood for the first time that the siblings had allegedly agreed to vest the Property in Mother and Dawood jointly in the course of the very same conversation in which he (Mr Singh) told Dawood what the various family members' individual entitlements to Father's estate were pursuant to the Second Certificate (see [13] above). However, this sequence of events runs into an obvious problem. If the Second Certificate post-dated the alleged agreement, then the Three Siblings must have willingly renounced their interests in Father's estate at a time when they did not even know what the extent of those interests were. It seems to us inherently improbable that they would have agreed to give up what they did not yet know they had.

53 This problem might, perhaps, be overcome if, as a matter of general knowledge, the siblings

were aware that they were each entitled to a share of Father's estate, and perhaps even had some general idea of what their respective shares might be. In this respect, Dawood said in the course of his cross-examination that he had spoken to a mosque elder and had found out that Father's male descendants would receive a larger share of his estate than the female descendants, with Mother's share being the smallest. Dawood also appeared to suggest that he had conveyed this to the rest of his siblings, and claimed that this was the "common understanding" upon which they had discussed the division of the Property in early January 2004 (see [26] above). In our judgment, this runs into two further problems which cannot satisfactorily be explained away.

54 First, the evidence is overwhelming that Dawood had *not* informed the solicitors at their first meeting on 19 February 2004 about the alleged agreement of the Three Siblings to give up their respective interests in Father's estate in favour of Dawood and Mother. This omission would be extremely odd if, as Dawood claimed, such an agreement had already been formed by then and he had gone to see the solicitors with the ultimate aim of giving effect precisely to this. Indeed, one would have expected this to be central to the instructions that he conveyed to the solicitors. After all, why would he not give the solicitors the full picture of what had been agreed amongst the family members?

55 When cross-examined on this point, Dawood stated that he had informed Mr Singh of the alleged agreement at their first meeting. However, we are satisfied that this is untrue and against the weight of the evidence for the following reasons:

(a) First, it is evident from the transcript of the notes of evidence that Dawood's initial response to counsel for the Appellants, Mr Bernard Sahagar ("Mr Sahagar"), was merely that it was *possible* that he had mentioned his version of the agreement to Mr Singh at their first meeting on 19 February 2004.

(b) After Dawood was pressed on the point, he abandoned his equivocal position in favour of a firm answer that he had informed Mr Singh of the same. But, not only did Dawood fail to advance this position in his AEIC, he in fact said the opposite there, namely, that the first time that he mentioned his version of the agreement to Mr Singh was after being informed that the Second Certificate had been issued on 24 February 2004.

(c) This was also consistent with Mr Singh's version of the events. He testified that he only received instructions regarding Dawood's Agreement after having informed Dawood about the issuance of the Second Certificate (see [13] above).

(d) Finally, and perhaps most crucially, Dawood's belated statement in his oral evidence that he did inform Mr Singh of his version of the agreement at their first meeting on 19 February 2004 is plainly and simply inconsistent with the available documentary evidence. There is *nothing* in the attendance notes of that meeting recorded by either Ms Kaur or Mr Singh which suggests that anything along the lines of Dawood's Agreement was discussed.

56 The second irreconcilable difficulty with finding that an agreement to vest the Property in Mother and Dawood jointly had been reached at some point before the meeting of 19 February 2004 is that, if this were truly the case, then the parties must have operated on the basis that the Three Siblings *were* each entitled to a share in the Property to begin with and were going to renounce their respective shares. Logically, this must also mean that Dawood must have been aware that the First Certificate was invalid because it reflected only his and Mother's interests to the exclusion of the Three Siblings. However, this is impossible to reconcile with the fact that Dawood produced the First Certificate to the solicitors at the 19 February 2004 meeting, apparently suggesting that it was valid

(see [11] above).

(2) The problem of rationalising why such an agreement would have been entered into

57 Aside from the above difficulties relating to *when* an agreement akin to Dawood's Agreement could have been formed, it is perhaps even more problematic trying to rationalise *why* the Three Siblings would have agreed to enter into such an arrangement in the first place.

58 As mentioned above at [27], the reason which Dawood gave in his AEIC for his version of the alleged agreement was that all the family members knew of and wanted to give effect to Father's wish to have the Property owned jointly by Mother and Dawood after his (Father's) demise. However, the Judge found this implausible and we agree. Dawood conceded under cross-examination that, contrary to what he had asserted in his AEIC, he did not actually know whether Father's wish had been communicated to the Appellants. He claimed that he had been told of this wish in what was "a conversation between a son and a father", but accepted that he had not relayed this to the Appellants and was not aware of Father having done the same. Therefore, it appears that, on Dawood's own evidence, Father's alleged wish could not have formed the basis for the Three Siblings' renunciation of their interests in the Property in favour of Dawood and Mother. This is significant because Dawood does not say that he had *himself* proposed placing the Property in his and Mother's joint names. Therefore, once Father's alleged wish is discarded as the explanation for the actions of the Three Siblings, then this leaves the Three Siblings as having – *of their own initiative and without any prompting* – come up with this arrangement notwithstanding the obvious disadvantage which it placed them in. This seems to us highly improbable, to say the least.

59 This becomes even more improbable when one scrutinises the other reasons why, according to Dawood, the siblings came to an agreement along the lines of Dawood's Agreement. In part, it was said that such an agreement was reached so that Dawood would live with Mother in the Property and be responsible for her expenses (see [27] above). However, as it turns out, this was not in fact how the parties actually conducted themselves. As noted earlier at [4] above, Dawood spent less time at the Property with Mother after he got married and purchased his own home with his wife in November 2011. And, as regards Mother's expenses, it was not the case that Dawood had paid *exclusively* for her upkeep. Dawood accepted under cross-examination that Aysha had contributed substantially to the payment of Mother's medical expenses; indeed, there is evidence of Mother herself having made such payments as well through her Central Provident Fund account.

60 Finally, there was a suggestion made during the hearing by Dawood's counsel, Ms Koh Swee Yen ("Ms Koh"), that because Dawood had not benefitted from any *other* assets belonging to Father, the Appellants were happy for him to have the Property together with Mother. Brief references were made in Dawood's AEIC to what those other assets were. They included the mutton stall at Tekka market, which Dawood said had been left entirely to Jahir, and also certain properties in India, which Aysha and Noorjahan had allegedly been given upon their respective marriages. The thrust of this submission, therefore, was that there was a semblance of "fairness" in how Father's assets came to be distributed, such that the rest of the family would see it as patently fair and so volunteer that Dawood should receive a half-share in the Property. We do not accept this submission. The mutton stall at Tekka market and the unspecified properties in India that were allegedly given to the sisters bear no comparison at all to the Property, which is in an upmarket location in Singapore. At the time of Father's death, it was estimated to be worth $850,000, and it has, more recently, been valued at some $3m.

61 In summary, aside from the problem of timing the formation of an agreement akin to that alleged by Dawood, there was, on the evidence, no plausible explanation put forward as to why the Three

Siblings would have *volunteered* to give up their respective interests in the Property in favour of Mother and Dawood jointly. Small gestures of generosity are not uncommon in a family setting, but this was generosity of a scale that called for a cogent explanation. None was forthcoming. For these reasons, we, like the Judge, find it improbable that the RBI Deed was executed to give effect to some prior agreement on the part of all the siblings.

The second hypothesis: The Three Siblings executed the RBI Deed without understanding its nature and effect

62 We turn to consider the alternative hypothesis (see [49] above), which is that the Three Siblings executed the RBI Deed without receiving a proper explanation of what they were signing and, as a consequence, without appreciating its true nature and effect. There is no question that the Three Siblings knew, when they executed the RBI Deed, that they were signing a document which was intended to and did have legal effects and consequences. But, on this alternative hypothesis, they signed the document in the mistaken belief that it was something that was meant to give effect to their limited agreement to appoint Dawood as the sole administrator of Father's estate.

(1) The importance of the solicitors' conduct in this case

63 To determine whether the Three Siblings understood what they were signing when they executed the RBI Deed, it becomes necessary to analyse the extent to which they had been appropriately advised by the solicitors, in particular, Mr Singh, who had primary carriage of the matter. If Mr Singh had adequately discharged this duty, then it would seem almost inevitably to follow that the Three Siblings fully understood what they were signing even if it is not possible to make sense of why they would have done so. If, however, Mr Singh had not adequately explained the position to them, then it would greatly strengthen the hypothesis that the Three Siblings did not fully understand what they were signing. The questionable validity of the RBI Deed would then come sharply into focus.

64 What then was expected of Mr Singh? This question cannot be answered in a vacuum. Rather, the answer must be calibrated to the particular circumstances of this case, which has a number of significant features.

65 First, the Appellants had only modest education. They were not sophisticated clients. Moreover, their capacity to understand the documents they were signing has to be assessed against the complexity of the transaction contemplated by those very documents. In so far as the RBI Deed is concerned, Mr Singh accepted that, from his own experience, such a document was not commonly prepared in the course of non-contentious probate proceedings. But, it is insufficient to view the RBI Deed in isolation as an unusual document. Instead, it has to be situated in the context of a number of other documents which were all signed in the course of the same meeting on 27 February 2004. Some of those documents were essentially administrative in nature, while others affected the parties' substantive rights and interests. Further, within the latter category of documents were the RBI Deed and the RPER Deed, which, between them, dealt with very distinct matters: the former recorded the Three Siblings' agreement to renounce their substantive interests in Father's estate in favour of Mother and Dawood, while the latter involved them (and Mother) renouncing their rights to be co-administrators of the estate. It was entirely plausible, and indeed might not have been unusual, for the Appellants to have given up the right to administer the estate and manage the process of distributing it *without* also, on the Three Siblings' part, giving up their respective interests in the actual distribution of the estate. This distinction is critical because if, as both we and the Judge have found, there was no prior agreement amongst the family members to alter the anticipated division of the estate (either as claimed by the Appellants or as claimed by Dawood), then the only agreement

that had been reached prior to the execution of the probate documents related to the appointment of Dawood as the sole administrator. That agreement was embodied in the RPER Deed. So, unless the evidence clearly demonstrates that Mr Singh had fully explained the RBI Deed to the Three Siblings, who in turn understood it, did not question why it had been prepared, and spontaneously formed a desire to give effect to it, it is difficult to see why they would have executed it when there had been no prior agreement to that effect.

66 There was, moreover, a further issue: even if the Three Siblings did intend to renounce their respective interests in the Property in favour of Mother and Dawood, were they and Mother aware of and alive to the potential significance of the Property being held by Mother and Dawood as joint tenants, rather than as tenants in common?

67 In these circumstances, we consider that there were at least four potential issues that the Appellants ought to have been specifically alerted to, and their confirmation sought, when the solicitors met them for the first and only time on 27 February 2004:

(a) First, did they trust and intend Dawood to be the sole administrator of Father's estate, and so, to be able to deal with its assets in that capacity?

(b) Second, and as a separate and distinct matter from the first, did they understand the terms of the Second Certificate, and, in so far as the Three Siblings were concerned, did they in fact intend to unconditionally renounce their respective interests in Father's estate in favour of Mother and Dawood alone, contrary to the terms of the Second Certificate?

(c) Third, were they aware of the possible difference in consequences of the Property being held by Mother and Dawood as joint tenants rather than as tenants in common?

(d) Fourth, were Dawood's factual instructions to the solicitors on all of the above matters accurate and reflective of their own intentions?

68 Viewed from this perspective, it becomes clear that the matter was in fact somewhat complex and attended by delicate distinctions which, given the Appellants' lay background, they would not reasonably have been expected to understand without those points being carefully explained to them. In these circumstances, it is clear that a higher level of explanation and circumspection would be required from the solicitors than if they had, for example, been dealing with a sophisticated businessman (see *Lie Hendri Rusli v Wong Tan & Molly Lim (a firm)* [2004] 4 SLR(R) 594 ("*Lie Hendri Rusli*") at [55]). As Professor Jeffrey Pinsler quite rightly states in *Ethics and Professional Responsibility: A Code for the Advocate and Solicitor* (Academy Publishing, 2007) ("*Pinsler*") at para 14-022:

> The advocate and solicitor is … responsible for making every effort to assist his client in understanding the issues and circumstances which arise from the retainer. It is only when the client understands his position that he can decide how to proceed and what instructions to give. Accordingly, the advocate and solicitor's advice, his explanations and the manner in which he provides information must be clear. *The amount of effort required in this respect differs according to the client's capacity to understand.* Indeed, particular problems may arise where the client is unschooled or suffers from a language handicap or other incapacity which requires special attention (even if it means involving an interpreter or guardian). … [emphasis added]

69 The duty of a solicitor will therefore be affected by the complexity of the transaction (which was relatively high in this case), and also by the level of sophistication of the clients (which, at least

on the Appellants' side, was relatively low in this case). The solicitors in the present case were therefore under a heightened duty to explain the position carefully. But, there is more.

70 In our judgment, the call for care on the part of the solicitors is further enhanced by what we consider to be the defining feature of the present case, which is the fact that the solicitors were acting concurrently for parties whose interests were potentially conflicting. On the one hand were beneficiaries who, to their obvious *detriment*, were supposedly seeking to dispose of their respective interests in their father's estate. On the other hand was the sole administrator who stood to *benefit* significantly from this disposition. In accepting the brief to act in this matter, the solicitors had placed themselves right in the middle of these apparently adverse interests; and, as they readily accepted, throughout the course of the retainer, they took their instructions solely from one side in respect of matters that directly and adversely affected the other side.

71 There is no absolute bar against a solicitor acting for multiple clients with ostensibly adverse interests, but the courts have often warned of the special precautions which need to be observed in such situations because the solicitor may not be able, by virtue of the very position of potential conflict in which he has placed himself, to properly discharge his duties to one or more of the clients. As was helpfully set out in *Law Society of Singapore v Uthayasurian Sidambaram* [2009] 4 SLR(R) 674 ("*Uthayasurian Sidambaram*") at [52], such precautions include advising *all* the affected clients of the risks and consequences involved in having the solicitor act for them in such a situation of potential conflict; obtaining the clients' informed consent to the solicitor's acting in that capacity by disclosing the potential risks involved; advising the clients to seek independent legal advice; and, where potential pitfalls appear in the particular transaction concerned, drawing those pitfalls immediately to the attention of all the clients, notwithstanding that it might incur the displeasure of some of them. We elaborate more on these precautions in the coda to this judgment. For present purposes, it suffices to state that *all of them are intended to ensure that the client is placed in no less informed a position than he would have been in had he received separate advice from a competent solicitor looking* ***exclusively*** *after his interests*. This need, we reiterate, is even more pressing in a case such as this where one party assumes the mantle of being the group representative for dealings with the solicitor, appears to be paying entirely for the legal expenses incurred, and, in particular, gives to the solicitor all the instructions which, if carried into effect, would benefit him. This seems to us to be a matter of simple common sense.

72 It is clear from the foregoing that acting concurrently for both the Appellants and Dawood in the administration of Father's estate was not a straightforward matter. Careful and considered measures had to be taken at each step by the solicitors to ensure that the apparent conflict of interest never became real, and that, when it finally came to the execution of the probate documents themselves, a full and proper explanation of what those documents entailed in a somewhat complex arrangement was given in terms that were accessible to these lay and unsophisticated clients.

(2) A brief interlude: A review of English authorities

73 Before we scrutinise the evidence of how the solicitors in the present case had in fact approached the matter, we find it instructive to first refer to a line of early English authorities which, broadly speaking, also involved solicitors who had advised on the execution of deeds while facing a conflict of interest that arose either because of their own personal interest in the matter or because (as in this case) the interests of the parties being advised were at odds with one another. The courts in these cases were acutely aware of the state of the solicitor-client relationship in these circumstances. On the one hand, the client goes to the solicitor in full trust and confidence, relying upon the solicitor to safeguard his interests and, therefore, expecting to receive competent and complete advice as to the nature of the transaction which he enters into by executing the deed in

question. On the other hand, the solicitor, faced with two or more potentially competing interests, may subconsciously or otherwise prefer one set of interests over another. In such circumstances, there would be good grounds for the disadvantaged client to apply to set aside the deed if the precautions alluded to at [71] above and elaborated on in the coda to this judgment are not observed.

74 We begin with the decision of the English Court of Appeal in *Sturge v Sturge* (1849) 12 Beav 229. There, a solicitor, Mr Roberts, acted for a group of siblings in a transaction whereby one of them, the plaintiff, conveyed his interest in an estate devised under his grandfather's will to the rest of his brothers, who were the defendants in the action, by a deed that had been prepared by Mr Roberts. On a proper construction of the grandfather's will, the plaintiff was entitled to the whole of the estate; however, the plaintiff in fact executed the deed on the basis that he was entitled to only one-fourth of the estate. The evidence showed that Mr Roberts was himself doubtful as to whether the deed accurately represented the effect of the will (at 237). But, because he understood that the defendants desired an equal division of the estate, and because he thought this was fair and proper having regarding to the family's situation, he never communicated this doubt to the plaintiff (at 238 and 240).

75 The deed was set aside on grounds which included Mr Roberts' failure to properly advise the plaintiff as to his rights under his grandfather's will. It is useful to reproduce the following passage from the judgment of Lord Langdale MR (at 239–240) which contains his view of Mr Roberts' failings in the circumstances:

> … Now in a case like this, I think it was the duty of the brothers, and of Mr Roberts, who was their legal adviser, to see that the Plaintiff, who was or (in regard to the doubts of Mr Roberts) might be entitled to the whole estate, and who was called upon to alienate the whole for the alleged value of a fourth part, … did clearly understand what his right was, and what he was doing. *In the circumstances in which they were placed, I think it was the duty of the Plaintiff's brothers and of Mr Roberts, to see and be able to shew, that the Plaintiff did, in fact, receive and act upon independent advice as to his rights, and that he parted with his rights with knowledge and on deliberation.* On considering the evidence of Mr Roberts, in many places ambiguously expressed, I own that I am not satisfied from it that the Plaintiff understood, or ever had communicated to him, the true state of the case. … [emphasis added]

76 The next case, *Willis and others v Barron and others* [1902] AC 271 ("*Willis*"), is a decision of the House of Lords. There, the plaintiff executed a deed by which she renounced her rights under a settlement in favour of the son of Mr Skinner, the solicitor who had prepared and advised her on the deed and who was also her trustee under the settlement. The plaintiff executed the deed in the belief that it was meant merely to correct a "mistake" in an earlier deed when, in fact, it altered her position detrimentally, among other things, by cutting down the life interest that she was entitled to under the settlement.

77 The House of Lords set aside the deed as Mr Skinner had failed to advise the plaintiff on how the deed affected her rights and position. It was also held that because Mr Skinner was in a position of conflict, he should have advised the plaintiff to obtain independent legal advice. *Willis* is a slightly different case from the present as the conflict there arose out of self-dealing. Be that as it may, *Willis* remains helpful in highlighting the cautious approach which the courts will take when there is a conflict of interest affecting the solicitor in question. In our judgment, regardless of the precise species of conflict, the courts' true concern is to ensure that a client is not unduly prejudiced by a solicitor who finds himself placed in a position of conflict because the client would, in the ordinary nature of things, be entitled to rely on that solicitor for proper advice. Lord Macnaghten recognised

this precise point in *Willis* (at 281):

> … Putting out of consideration the fact that Mr Skinner's son got a great advantage, I must say I think, *even if the person who was the ultimate remainderman had been no connection of Mr Skinner, there would have been ample ground to set aside this deed, considering that Mr Skinner was her family solicitor, the person to whom she would naturally go for advice, and that he was also her trustee*. It makes it rather stronger when you see that the effect of this alteration was to make certain, or almost certain, a gift in favour of Mr Skinner's son which was contingent and doubtful until the deed was executed. [emphasis added]

78 The third and final case which we refer to is the decision of the Privy Council in *Bank of Montreal v Jane Jacques Stuart and another* [1911] AC 120, which concerned an action by the plaintiff to set aside a series of transactions against the defendant bank. Those transactions were entered into ostensibly for the benefit of a company which the plaintiff's husband had an interest in and which was in poor financial health at the time. The solicitor who advised the plaintiff on the impugned transactions, Mr Bruce, was also the solicitor for the bank, the solicitor for the husband, and, in addition, himself a director, secretary, shareholder, and creditor of the company. The Privy Council set aside the transactions, which, in their totality, had left the wife without any means of her own.

79 In entering into the transactions, the wife was found to have operated under the undue influence of her husband. But, more importantly for present purposes, the court also set aside the transactions on the basis that, given the varying capacities in which Mr Bruce acted in the matter and the multiple conflicts among the interests of the parties whom he represented, he was patently not in a position to advise the plaintiff fairly as to her interests. In these circumstances, it was inequitable for the bank to rely on the transactions as against the plaintiff. Lord Macnaghten, delivering the judgment of the Board, observed as follows (at 137–138):

> It may well be argued that when there is evidence of overpowering influence and the transaction brought about is immoderate and irrational, as it was in the present case, proof of undue influence is complete. However that may be, *it seems to their Lordships that in this case there is enough, according to the recognized doctrine of Courts of Equity, to entitle Mrs Stuart to relief. Unfair advantage of Mrs Stuart's confidence in her husband was taken by Mr Stuart, and also it must be added by Mr Bruce.* Their Lordships do not attribute to Mr Bruce intentional unfairness, but *Mr Bruce was in a position in which it would have been almost impossible for any man to act fairly*. *He was [the] solicitor for the bank. He was the legal adviser of Mr Stuart. He took upon himself to enter into negotiations with his fellow shareholders on behalf of Mrs Stuart. Above all, he had, as the managers of the bank well knew, a strong personal interest in procuring Mrs Stuart to give the guarantee.* He knew that all Mr Stuart's means were embarked in the company, and no one knew better than he that unless some one [*sic*] came forward and guaranteed the bank in respect of further advances his own interest and the interest of his associates as shareholders were worth nothing, and his claim as a creditor in all probability equally valueless. He and his associates other than Mr Stuart were unwilling to risk their own moneys. … *No man in his senses with any regard to the interest of Mrs Stuart or the interest of Mr Stuart could have advised Mrs Stuart to act as her husband told her to do. The bank left everything to Mr Bruce and the bank must be answerable for what he did.* … [emphasis added]

80 In our judgment, one principle which emerges from these authorities is this: where, in a given matter, a solicitor acts for multiple clients (or groups of clients) with conflicting interests, and where one client (or group of clients) enters into a transaction *which prejudices him and benefits the conflicting interests of another client (or group of clients) who is also represented by the same*

solicitor, that transaction will be regarded as suspect and will be liable to be set aside in the absence of clear evidence that the solicitor did in fact fully advise the client (or group of clients) who was prejudiced as to the terms and effect of the transaction.

(3) Analysis of the solicitors' conduct in the present case

81 In the light of this general principle as well as the notable features that we have highlighted in relation to the present case, we turn to examine the conduct of the solicitors, in particular, whether they had done enough in the circumstances to bring home to the Three Siblings the nature, effect and consequences of what they were signing when they executed the RBI Deed.

82 Having examined the evidence, we are satisfied that the solicitors did *not* take sufficient steps to address the various concerns we have set out at [67] above when the Appellants executed the probate papers on 27 February 2004. In particular, because they did not take care to make clear the distinction between the RBI Deed and the RPER Deed, we find that the Three Siblings signed the RBI Deed under the mistaken impression that it related to Dawood's appointment as the sole administrator of Father's estate.

83 In analysing the evidence which bears out this view, we have not confined ourselves to the evidence of what happened on 27 February2004 alone. Rather, we have found it necessary to widen our lens and bring into view the events leading up to the time of the execution of the probate documents. That is crucial to understanding the mindset of the solicitors (in particular, Mr Singh) at the time of the meeting on 27 February 2004. It must be stressed that this was the *only* time the solicitors met and communicated with the Appellants directly. As will become apparent shortly, the evidence in this regard, when analysed in the round, reveals that the solicitors were themselves not alive to the potential dangers surrounding the Three Siblings' purported renunciation of their respective interests in Father's estate in the circumstances. For this reason, we find great difficulty in accepting the solicitors' evidence that Mr Singh "must have" fully explained the nature and consequences of the RBI Deed to the Three Siblings.

84 On that note, we turn to examine the relevant chronology of events, beginning with Dawood's first meeting with the solicitors on 19 February 2004.

(A) 19 February 2004: The first meeting

85 The solicitors' evidence of what happened at their first meeting with Dawood on 19 February 2004 is as follows. First, they said that Dawood had approached them to apply for letters of administration in respect of Father's estate. They also said that Dawood had informed them that he had three siblings and had handed them the identity cards of all the Appellants on that occasion. It further appears from their oral evidence that Dawood showed them the First Certificate at this first meeting. This, as we have noted at [11] above, is confirmed by Ms Kaur's handwritten attendance note. According to Mr Singh, he noticed that the First Certificate was "incomplete" as it only listed Mother and Dawood as beneficiaries without mentioning the Three Siblings. That being the case, Mr Singh then advised Dawood that a fresh Certificate of Inheritance would have to be applied for by the firm.

86 We find it significant that Mr Singh had testified that he *knew* the process involved in obtaining a Certificate of Inheritance. In particular, he knew that it involved the applicant providing information on the family members of the deceased to the Syariah Court, which would then, relying on this information, issue the Certificate of Inheritance. Indeed, that was what the First Certificate said on its face, namely, that it was issued "based on information regarding the beneficiaries *given by*

Mr Dawood Sultan, vide letter dated 13th July 2000" [emphasis added] (see also [7] above). This is also true in relation to the Second Certificate, in respect of which the information was provided by Mr Singh (see [12] above). It must follow from this that Mr Singh would have known that the First Certificate, which he politely described as "incomplete", must have been issued on the basis of information supplied by Dawood that was inaccurate. Notwithstanding this, Mr Singh said under cross-examination that his suspicions were not aroused by the omission of the Three Siblings from the First Certificate. As a result, he did not ask Dawood about the circumstances in which the First Certificate had been obtained; nor did he ask to see the 13 July 2000 letter which Dawood had presented to the Syariah Court.

87 We have serious doubts over the accuracy of Mr Singh's account of what happened at the meeting on 19 February 2004. In particular, we doubt that Dawood had even mentioned the existence of his other siblings or handed over their (as well as Mother's) identity cards at this first meeting. This is a point which we will return to shortly; but, leaving it aside for the moment and taking Mr Singh's evidence at face value, we find it highly problematic that *if* he did come to know of the existence of the Three Siblings at this meeting, he did not then, despite his knowledge of the process of applying for a Certificate of Inheritance from the Syariah Court, ask about the glaring omission of the Three Siblings from the First Certificate. Mr Singh said that he treated the entire family as his clients. However, the distinct impression that one derives from his own version of this first encounter on 19 February 2004 is that he did not appear to have been concerned about the Appellants' interests and, flowing naturally from this, what the protection of those interests demanded.

88 In our judgment, the very least Mr Singh should have done was to ask Dawood how the First Certificate came to be issued; and then, quite naturally thereafter, to have asked for a copy of the 13 July 2000 letter which had been furnished to the Syariah Court. However, neither of these steps was taken. It is clear from Mr Singh's evidence that this was because the possibility that Dawood might have practised some deception when obtaining the First Certificate *never even crossed his mind*, even though there were some inescapable and very disturbing concerns that had to be addressed if one were to approach this from the perspective of the Three Siblings.

89 When cross-examined on this point, Dawood said that the Three Siblings were not mentioned in the First Certificate because, when a member of the Syariah Court's staff had asked him who was then living in the Property, he responded that he and Mother were the only ones living there. Dawood therefore described the First Certificate as having been obtained as a result of a "mistake". However, we find this explanation implausible. First, Dawood never explained how he *knew* his alleged conversation with the Syariah Court's staff to be the basis on which the First Certificate had been issued; nor did he explain when or why he made any inquiry of the Syariah Court as to the basis on which the First Certificate had been issued. On the contrary, what is clear from the face of the First Certificate is that it had been prepared based on information that Dawood had provided in the 13 July 2000 letter. If that letter had named all the members of the family, it is inconceivable that the First Certificate would then have been issued based not on what was set out in the letter, but on some alleged and seemingly irrelevant conversation between Dawood and a member of the Syariah Court's staff. There is simply *nothing* in the First Certificate that suggests it was issued based on information which had been gathered from Dawood orally.

90 Further, Dawood also said that sometime prior to his obtaining the First Certificate, he had learnt from a mosque elder that each of the family members would have a share in Father's estate (see [53] above). If this is true, then even assuming that there was a wholly innocent explanation for the procurement of the First Certificate, Dawood must have realised that the First Certificate had been issued in error when he had sight of it. Yet, he presented it to the solicitors at their first meeting, apparently suggesting that it was valid (see [11] and [56] above).

91 We note that the First Certificate was only belatedly produced by Dawood in the course of his cross-examination (see above at [8] as well as the GD at [15]). Attempting to cast this as an oversight, Dawood explained that he had forgotten about having applied for the First Certificate, and that it was only after his then counsel had reminded him of it that he searched for and produced it in the interests of "completeness and transparency". We find this explanation unconvincing. It is simply inconceivable that Dawood could have forgotten about the existence of the First Certificate when he had, of his own accord, gone through the process of applying for it from the Syariah Court, taken it to the solicitors' office to obtain advice on it, and, finally, been informed that it was erroneous in having omitted his siblings. In our judgment, the circumstances in which the First Certificate had been obtained were suspicious and no explanation was put forward by Dawood, who alone knows why and how he applied for and obtained it in terms that were *overwhelmingly and wrongly in his favour.* But, what is material at this stage is that we cannot see how Mr Singh could have entirely missed this and been wholly unperturbed by the First Certificate if he considered it from the perspective of the Three Siblings, whom he says he was told about at the 19 February 2004 meeting and whom he regarded as his clients.

92 We return here to the point which we mentioned earlier at [87] above as to the solicitors' evidence that Dawood had told them about the existence of the Three Siblings at that meeting as well as handed them the Appellants' identity cards on that occasion. In our judgment, if this were true, it gives rise to the unanswered questions we have noted in the preceding paragraph. But, more importantly, this account is simply incompatible with the only two handwritten attendance notes of the 19 February 2004 meeting taken by the solicitors themselves, neither of which made any mention whatsoever of the Three Siblings, either individually or collectively. Ms Kaur's note merely recorded that: (a) the First Certificate had been obtained; (b) the only asset left behind by Father was the Property, all bank accounts having been closed and there being no fixed deposits; and (c) Dawood was to be the administrator, with Mother renouncing her right of administration. As can be seen, there was not the slightest trace of any mention of the Three Siblings in that note. It beggars belief in these circumstances that Dawood had also told the solicitors of the existence of the Three Siblings for, if he had indeed done so, why were the Three Siblings not mentioned as prospective beneficiaries or persons who also had to renounce their respective rights to administer Father's estate?

93 The information in Mr Singh's handwritten note was comparatively sparse; but, significantly, in connection with the subject "Cert of Inheritance", he had scribbled various references to persons who, it seems, might take as beneficiaries under such a certificate, including "mother", "client", and "grandparent(?)". This last reference to "grandparent(?)" is telling because it suggests that a wide circle of family members appears to have been considered or discussed at the meeting – and yet, there is no trace at all of any mention of the Three Siblings.

94 Based on the solicitors' handwritten notes of the first meeting, we find it far more probable than not that Dawood had not mentioned the Three Siblings at all at that meeting; nor had he handed the solicitors the Appellants' identity cards on that occasion. We are mindful that the evidence of the solicitors was to the contrary, but they were recalling events which took place some ten years ago. In this regard, it is apposite to repeat the observation we made in *Sandz Solutions (Singapore) Pte Ltd and others v Strategic Worldwide Assets Ltd and others* [2014] 3 SLR 562 ("*Sandz*") at [50] that "a witness's ability to recollect the material events and the accuracy of his recollections are inversely proportional to the length of time that has elapsed from the occurrence of the events to his appearance on the witness stand". Moreover, the solicitors' evidence here relates to matters done in the ordinary course of business. Their ability to retrieve from memory the details of one particular transaction which are not recorded in the attendance notes they kept of that meeting must be viewed with a high degree of caution.

95 In our judgment, it is more likely than not that Dawood informed the solicitors that he had three siblings only at some stage *after* the 19 February 2004 meeting. This would account for two things – first, the fact that the solicitors had at some point been handed the Appellants' identity cards, which they then made photocopies of; and, second, the decision to apply for the Second Certificate on the basis that the First Certificate was incomplete. We pause here to observe that the date of the first meeting, 19 February 2004, fell on a Thursday. The request for the Second Certificate was made by Mr Singh on 24 February 2004, which fell on the following Tuesday. In our judgment, Dawood most likely communicated the existence of the Three Siblings to Mr Singh on or just before 24 February 2004, and this prompted the application for the Second Certificate. Nothing else that has been placed before us satisfactorily accounts for the five-day time lag between the date of the first meeting and the date on which Mr Singh initiated the process of obtaining the Second Certificate. On this basis, the potential conflict that Mr Singh was faced with would have been seriously exacerbated, and his failure to inquire into how and why the First Certificate had been applied for and obtained becomes wholly indefensible.

96 Although we are satisfied that Dawood did not mention the Three Siblings at his first meeting with the solicitors on 19 February 2004, nothing ultimately turns on this because, regardless of whether the existence of the Three Siblings was conveyed to the solicitors on that occasion or only subsequently, it is clear to us that there was sufficient reason for Mr Singh to have been concerned to ensure that the Three Siblings' interests were properly and adequately safeguarded. What is *also* clear is that, on either footing, Mr Singh would have had no reason to think that the Three Siblings were giving up their interests in Father's estate at that stage. Indeed, that was the reason why Mr Singh had advised Dawood at some stage to apply for a fresh Certificate of Inheritance – he *knew* that the Three Siblings, as a matter of Muslim succession law, were each entitled to at least some share of Father's estate.

(B) 24 February 2004: The Second Certificate is obtained

97 As mentioned above at [12]–[13], Mr Singh applied for the Second Certificate on 24 February 2004 and informed Dawood once it had been obtained by his firm on the same day. Mr Singh could not recall whether he had communicated this to Dawood over the telephone or in person, and, more fundamentally, could not state for certain whether such a conversation had even taken place. In the absence of any contemporaneous notes documenting this conversation, he is left to say that this conversation must have taken place because, otherwise, there was no other explanation for the fact that he then proceeded to prepare the probate papers which were subsequently executed on 27 February 2004. We digress to record our concern at the disturbing lack of attendance notes in this case and also to reiterate the importance, as a matter of professional practice, of solicitors diligently keeping a record of their communications with their clients. We return to make further observations on this aspect of the present case later in this judgment, in particular, at [105] and [155] below.

98 While Mr Singh was unable to recall precisely how the issuance of the Second Certificate was conveyed to Dawood, it is clear from Dawood's evidence that this was by way of a telephone call (see [13] above). We accept Dawood's evidence on this point since all that Mr Singh set out to do was to convey the fact that the Second Certificate had been received. This would not have required the personal attendance of Dawood at the solicitors' office. According to Dawood, he instructed Mr Singh during the same conversation to prepare the necessary documents for him to become the sole administrator of Father's estate. Importantly, it also appears from Dawood's AEIC that it was during this telephone conversation that he *first* mentioned to Mr Singh that "the [Three Siblings] had agreed to give up their share in the Property to [Mother] and [himself]" (see also [55(b)] above). This would have been a dramatic development on any basis. If Mr Singh's evidence that he knew of the Three Siblings' existence from the time of the first meeting on 19 February 2004 is accepted, then it

could not have escaped him that the new instruction that the Three Siblings had in the meantime agreed to give up their interests in the Property in favour of Mother and Dawood was an important point that needed to be verified with the Three Siblings themselves. On the other hand, if, as we find, the Three Siblings had not even been mentioned at that first meeting, then the situation would have been untenable without detailed and careful inquiries being made at this stage. However, none of this appears to have struck Mr Singh. When cross-examined on how he reacted when he heard of this new development, Mr Singh's answer was that he had "no reaction" because Dawood had told him "a little bit of the family … history", such as how Dawood had given up his university education to help out at the mutton stall when Father suffered a stroke, and how Dawood had been taking and was going to take care of Mother for the rest of her life. From this brief conversation, Mr Singh said that he then formed the view that "there was … equality in the family", and that the family was "not say generous but I mean, a really nice family, they have a nice, close-knit family, a very understanding family". On this footing, Mr Singh said that he "felt very comfortable" with Dawood's instructions as to the Three Siblings' intended renunciation of their interests in the Property, and proceeded to prepare the probate documents accordingly.

99 With respect, we reject this evidence entirely. It is simply incredible that Mr Singh could recall all this detail a decade or so after the event when his own evidence of whether such a conversation with Dawood had even taken place was based not on his independent recollection, but rather, on what, as he now says, must have transpired (see [97] above). In our judgment, this was no more than Mr Singh's attempt to rationalise the events after the fact, having studied the evidence again in preparation for cross-examination. Moreover, this account is utterly incompatible with the only attendance notes that Mr Singh and Ms Kaur kept of their first meeting with Dawood on 19 February 2004. On the evidence, that was the *only* occasion (prior to the telephone conversation on 24 February 2004) on which Mr Singh communicated with Dawood; and if all these details had indeed been forthcoming at that first meeting, then their omission from both Mr Singh's and Ms Kaur's attendance notes is inexplicable (see also our observations at [87]–[89] above).

100 Mr Singh also stated under cross-examination that, even after being informed by Dawood that the Three Siblings had agreed to renounce their interests in Father's estate in favour of Mother and Dawood:

(a) he did not see any potential conflict of interest among the clients;

(b) he did not verify Dawood's instructions independently with the Appellants; and

(c) he did not document the Three Siblings' consent to renounce their interests in Father's estate.

101 In our judgment, Mr Singh's conduct in the circumstances was woefully inadequate. First, not having met the rest of the family at this time, we find it impossible to understand how he could have formed any view as to the fairness of the situation. This leads us to the crux of our concern. Mr Singh's duty to the rest of the client group required him to remain vigilant to the possibility that their interests might be compromised. Instead, if we accept his evidence at face value, Mr Singh was fed a story by Dawood, and he unthinkingly accepted it as wholly true and fair. Prior to 24 February 2004, there had not been the slightest hint, as far as Mr Singh was concerned, that the Three Siblings intended to give up their beneficial interests in the Property in favour of Mother and Dawood. Then, on that day, when Mr Singh's firm received the Second Certificate (which did indeed reflect, as he presumably must have expected, that each of the siblings was to get a share of Father's estate), the instructions which he *immediately* received upon informing Dawood of the same was that an agreement had somehow been reached in the intervening period since the first meeting on

19 February 2004 to the effect that the Three Siblings were now taking *a contrary position* and wanting to give up their respective beneficial interests in the Property in favour of Dawood and Mother.

102 We have observed above that this was a dramatic development. Not only that, it crystallised the potential clash in the interests of the various members of the client group. This had now clearly, and quite suddenly, become a situation in which, in essence, one member of the group stood to benefit from a sudden and unusual divestment of interests by some of the other members of the group, and that particular member was also the one giving Mr Singh instructions on behalf of the whole group. In these circumstances, Mr Singh was *bound* to take measures to ensure that all the interested parties were fully informed of the nature and significance of what they purported to do so that he could ascertain whether the conflict was real or only apparent. It would be the latter if Mr Singh was able to establish, with due safeguards, that this was in fact what all the parties desired to do. The problem, however, was that Mr Singh had completely overlooked the significance of this change in circumstances. And so, he remained content to communicate with, and accept his instructions from, Dawood alone. Some *independent* verification of those instructions with the ostensibly disadvantaged parties was unquestionably called for. Yet, Mr Singh took no steps to do that.

103 Mr Singh also did not pause to ask Dawood *when* the alleged agreement involving the Three Siblings' renunciation of their respective interests in Father's estate had been reached. On our analysis, it is reasonable to expect him to have applied his mind to this point because there were two possible periods, on either side of 19 February 2004, during which the alleged agreement could have been formed, *neither* of which was free from difficulty. If the alleged agreement had been reached *before* 19 February 2004, then that begged the question as to why it had not been mentioned by Dawood at his first meeting with the solicitors on that date. If, however, the alleged agreement had been reached *after* 19 February 2004, then a reasonably competent solicitor acting for the Three Siblings would have been concerned that there had been a very recent, very significant, and seemingly detrimental change of position by persons whom he was also representing (but had never met) in favour of the person who was instructing him; and he must have realised, at this point, the importance of ascertaining that the Three Siblings understood what their respective entitlements to Father's estate were, and that they were intentionally and voluntarily giving those entitlements up. On either view, there were serious questions surrounding the formation of the alleged agreement that needed to be clarified. However, Mr Singh took no steps to do so with Dawood, much less with the Three Siblings, whose interests, ultimately, were being placed at obvious risk.

104 The foregoing analysis gives us a window into Mr Singh's state of mind when the RBI Deed finally came to be executed on 27 February 2004. Up to this point, the effect of Mr Singh's evidence is that he was under an impression, gathered only from his communications with and the instructions received from Dawood on 24 February 2004, that all the members of the family were aligned in their wish and interests to have the Property held by Mother and Dawood as joint tenants. In keeping with this, Mr Singh never questioned a single thing he was told by Dawood during their conversation on 24 February 2004. But, if this was indeed the mindset that he carried into the meeting three days later on 27 February 2004, then there is no reason to imagine that he would specifically set out to draw out and impress upon the Three Siblings the full significance of what they would be doing by executing the RBI Deed, especially since, as we have noted, it was just one among several probate documents signed on that day. To put it another way, having come to this point assured that all was well, there is nothing to suggest that, by the time of the meeting on 27 February 2004, Mr Singh would suddenly assume the mantle of the robust and scrupulous guardian of the interests of the rest of the family; or that Mr Singh, having uncritically swallowed everything that Dawood had told him up to this point, even thinking it fair and commendable, would suddenly develop a healthy scepticism of

what he had been told.

(C) 27 February 2004: The probate documents are signed

105 Turning to the crucial meeting on 27 February 2004, we first note the troubling absence, once again, of any attendance notes. The explanation which Ms Kaur gave for this was that the solicitors ran "a very small practice" and so, it was unnecessary to minute everything, unlike in a big firm. We find this manifest disregard for proper standards appalling. As Professor Tan Yock Lin has observed in *The Law of Advocates and Solicitors in Singapore and West Malaysia* (Butterworths, 2nd Ed, 1998) ("*Tan Yock Lin*") at p 951, the main purpose of a solicitor keeping proper records is to advance *the client's* interests as such a practice may protect against a different or faulty recollection of a particular transaction and help to avoid unnecessary disputes over the retainer. This sound rationale must apply equally across all firms, whether big or small. All firms, regardless of their size and stature, place themselves at the service of their clients and charge a fee for doing so.

106 In the absence of any attendance notes by Mr Singh and Ms Kaur, we are left with their oral evidence of what they say must have transpired at that meeting. They say that the probate documents "must have" been explained to the Appellants because that was their usual practice. It is clear that this evidence is essentially conjectural in nature. Indeed, Mr Singh could only state in his AEIC that it was "highly unlikely" for him not to have explained the RBI Deed to the Three Siblings; and, when cross-examined on this, he accepted that he could not say as a matter of fact that he had indeed explained the document to them.

107 There are inherent difficulties with accepting the solicitors' assertion at face value. First, there is the inevitable toll that the passage of time takes on the human memory. This explains why, in the absence of attendance notes, the solicitors were reduced to speculation and conjecture as to what "must have" happened. But, there is a critical difference between what ought, as a matter of good practice, to have transpired, and what, as a matter of fact, actually took place. There is no necessary reason to assume the latter based on the former; and this is especially so where, as here, there has been a demonstrable and consistent failure by the solicitors to adhere to the expected professional standards in numerous respects. This leads us to the next point, which is the real possibility that the solicitors' memories were, subconsciously or otherwise, distorted by their evident self-interest in painting themselves in a better light than might in fact have been the actual case (see *Sandz* at [51]). It would have been adverse to the solicitors' own interests to say anything other than that a proper explanation of the probate documents had been provided to the Appellants. In other words, the solicitors' evidence was plainly self-serving. That, in our view, is reason enough to treat it with due circumspection. However, the Judge, with respect, appeared to have overlooked these points when he said that he had no good reason to reject the solicitors' evidence (see [32] above).

108 More importantly, we have considerable reservations in accepting the solicitors' conjecture as to how Mr Singh "must have" explained the probate documents to the Appellants because, as we have already observed, there had thus far been an alarming lack of appreciation on Mr Singh's part as to the risks involved in the face of an obvious conflict of interest. Mr Singh had inexplicably overlooked the dubious circumstances in which the First Certificate had been obtained as well as the abrupt, stark and unquestioned change in the asserted position of the Three Siblings once the Second Certificate had been obtained. Moreover, his own evidence is that he thought the proposed arrangement was fair and saw no sign of conflict among the family members at all.

109 The solicitors also said at the trial that they could not detect any sign of disharmony or dissent amongst the family members at the meeting on 27 February 2004. In Mr Singh's description, they

seemed to be "very cordial", "very friendly", and "close-knit". With the waters appearing calm, Mr Singh said that he did not see any conflict of interest – all the parties were in unison and so, this made it unnecessary to advise the Appellants on the possibility of seeking independent legal advice. If this is all true, then it points to the likelihood of less rather than more care and anxiety on the part of the solicitors in assessing the position of the Appellants.

110 It seems that Mr Singh was ready to rule out any possibility of conflict by relying purely on the expressions and interactions of the clients before him as confirmation that all must have been well, and that they must all have been content to vest the Property in the joint names of Mother and Dawood. But, this was seriously misguided. Mr Singh had a duty, first, to verify Dawood's instructions *directly* with the Appellants. That was a conversation which should have taken place without Dawood being present so that the Appellants could speak and ask questions freely to find out exactly what had been said on their behalf, where they stood, and what they were apparently about to do.

111 Mr Singh also failed to recognise the danger of proceeding on the basis of the seeming solidarity among the family members because there were *two* quite possible but diametrically different explanations for this. First, it could well have been that the Three Siblings were indeed all pleased to renounce their interests in Father's estate so as to benefit Dawood and Mother. But, alternatively, it could have been that they had no idea what they were about to do. This precisely is what the solicitors were obliged to verify. Mr Singh said he had *already* perceived the family to be a close-knit one from his earlier telephone conversation with Dawood on 24 February 2004 (see [98] above). On this basis, when he met the rest of the family and saw how well they seemed to get along, it would only have *reinforced* his belief in what Dawood had told him about the alleged agreement of the Three Siblings to renounce their interests in Father's estate in favour of Mother and Dawood. In other words, on the basis of Mr Singh's evidence, the entire course of events suggests that he had a false sense of security because, by the time of the meeting on 27 February 2004, it was inconceivable to him that what he had been told by Dawood might be incorrect. We find it noteworthy that Mr Singh never once said in his evidence that he was troubled or perplexed by the instructions he had been given by Dawood. This would inevitably have coloured just how he "must have" explained the probate documents to the Appellants when they went to his office to execute those documents on 27 February 2004.

112 Before we pull the various threads together, we wish to make one final observation. This concerns the fact that, by his own admission, Mr Singh *unilaterally* altered three of the probate documents, including both the RBI Deed and the RPER Deed, after they had been signed and filed with the Registry of the State Courts (then known as the Subordinate Courts). The original documents had been rejected by the Registry for errors of one sort or another. For example, Father's name had been stated incompletely in the RBI Deed and the RPER Deed. Mr Singh therefore corrected the errors as pointed out by the Registry and submitted the revised versions, but he did so without even informing his clients. This may only be a formality; but it reinforces our view of the casual way in which Mr Singh had approached the entire matter.

A summary of the evidence and our findings on the execution of the RBI Deed

113 In light of our analysis of the evidence above, we think the following picture emerges in respect of the events which unfolded between 19 and 27 February 2004.

114 First, it is undisputed that, on 19 February 2004, the First Certificate was shown to the solicitors. For the reasons we have already articulated, we prefer the view that the existence of the Three Siblings was not made known to the solicitors at the meeting, although it is evident that the solicitors did become aware of this at some stage on or just prior to 24 February 2004, when the

Second Certificate was sought and then obtained. On either view, Mr Singh took a perfunctory approach towards the First Certificate. On his own evidence, he did not stop at any point to inquire into its origins. This makes his position untenable because, having also admitted that he was familiar with the process of applying for a Certificate of Inheritance from the Syariah Court, it should have occurred to him that the omission of the Three Siblings from the First Certificate was traceable to Dawood, who, in the absence of any other explanation, could likely have been improperly motivated to exclude his siblings from Father's estate.

115 Next, it is evident that the Second Certificate was obtained on 24 February 2004; that Mr Singh conveyed this to Dawood; and that Mr Singh was then told of the Three Siblings' desire to give up their interests in the Property in favour of Mother and Dawood. Mr Singh was instructed to prepare the necessary probate papers to give effect to this, and he admits to having done so without taking any steps to communicate with the Appellants in order to verify Dawood's instructions. He was happy to act solely on the basis of what Dawood had told him as he did not see any actual or potential conflict of interest in the situation; indeed, his evidence was that, based on what Dawood had told him, this curious decision of the Three Siblings to renounce their interests in the Property was fair in the circumstances. Mr Singh was evidently untroubled by the fact that Dawood's fresh instructions on 24 February 2004 signalled a dramatic change in the Three Siblings' position to their obvious detriment and to Dawood's benefit. He was oblivious to any concerns as to when such an agreement could or might have been formed. In these circumstances, to put it at its lowest, Mr Singh remained blissfully ignorant of the risks to the Three Siblings' interests that attended their execution of the RBI Deed.

116 Finally, we come to the crucial point, which is the signing of the RBI Deed (among other probate papers) on 27 February 2004. On the one hand, the solicitors say that Mr Singh "must have" explained the document to the Three Siblings. However, that is a bare assertion against which the following factors have to be considered – first, there were no contemporaneous notes supporting the solicitors' assertion; second, the solicitors' assertion was based on their recollection of matters which took place ten years ago in the ordinary course of business; third, the assertion was itself self-serving; and, fourth, all the evidence up to this critical juncture points towards the fact that the solicitors were oblivious to the conflict in the interests of the parties, which, ultimately, sheds light on how poorly focused their minds would have been on the need to explain the grave consequences contemplated by the RBI Deed and how that differed from the quite different agreement to constitute Dawood as the sole administrator of Father's estate. In our view, the collective weight of these factors leads us to infer that, on balance, it is more probable than not that whatever explanation did take place did not draw out to the Appellants each of the points identified at [67] above. Specifically:

(a) In respect of the concerns at [67(a)] and [67(b)], we find it improbable that Mr Singh had sufficiently brought home to the Appellants the very *distinct* nature of, on the one hand, the renunciation of their rights to be administrators of Father's estate and, on the other hand, the Three Siblings' renunciation of their beneficial interests in the Property. These matters required the Appellants to be informed of entirely separate considerations: in the former, their minds had to be drawn to the question of whether they trusted Dawood to be the sole administrator of the estate; while, in the latter, what the Three Siblings had to appreciate was that they were giving up their property rights entirely and that part of their rights would benefit Dawood. However, there is nothing to show that Mr Singh was alive to the importance of ensuring that the Appellants fully understood all aspects of the two distinct decisions to be made. The only attendance notes which exist relate solely to the solicitors' first meeting with Dawood on 19 February 2004, and, more importantly, do not even mention the existence of the Three Siblings, let alone any issue of their renouncing their beneficial interests in Father's estate. In addition, Mr Singh's evidence suggests that he was operating under the impression, formed on

the strength of Dawood's instructions alone, that the parties had all *already* reached an understanding, prior to the meeting on 27 February 2004, on *both* the appointment of Dawood as the sole administrator of Father's estate and the Three Siblings' renunciation of their interests in the estate.

(b) In respect of the concern at [67(c)], we are satisfied that Mr Singh did not explain the significance of the precise manner in which the Property was to be held by Mother and Dawood and the possible consequences flowing therefrom. This seemed to have been accepted by Mr Singh, who testified that he saw "no difference" between a joint tenancy and a tenancy in common because, prior to the Court of Appeal's decision in *Shafeeg bin Salim Talib and another v Fatimah bte Abud bin Talib and others* [2010] 2 SLR 1123 ("*Shafeeg*"), his understanding in so far as property in a Muslim estate was concerned had been that a surviving joint tenant would be entitled to only a half-share of the property, as opposed to the whole of the property by operation of the right of survivorship at common law. However, it is clear from *Shafeeg* itself (at [50]) that there had, until that decision, been no settled position as to whether the common law concept of the right of survivorship could apply in matters governed by Muslim personal law. The point is significant because, given Mother's advanced years, there was a reasonable prospect that, under a joint tenancy, Dawood would end up with the entirety of the Property due to the operation of the right of survivorship. In any case, if Mr Singh's intention and understanding was that the interests of Dawood and Mother were to be kept separate rather than possibly be merged, it begs the question of why he did not suggest that the Property be put in their names as tenants in common rather than as joint tenants.

(c) Finally, in respect of the concern at [67(d)], it is clear from Mr Singh's own evidence that at no point did he see the necessity to check with the Appellants separately that the factual instructions conveyed by Dawood accurately represented their intentions. In our judgment, Mr Singh simply *assumed* this to be the case, having unquestioningly accepted Dawood's instructions throughout the course of the retainer; and, when he saw that those instructions were consistent with the seemingly cordial interaction among the family members at the meeting on 27 February 2004, he was assured as to the correctness of the impressions he had already formed. Not having even appreciated the possibility of a potential conflict of interest up to this stage, there was simply no prospect of Mr Singh suddenly being alive to a real conflict.

117 In the premises, we find, on balance, that the Three Siblings did not fully appreciate the nature and effect of the document which they were signing when they executed the RBI Deed. Instead, they executed it in the mistaken belief that it was an instrument necessary to appoint Dawood as the sole administrator of Father's estate. Accordingly, on the basis of the principle we have set out at [80] above, we hold that the RBI Deed should be set aside. There is no injustice in this. If any party has been *innocently* prejudiced by the solicitors' shortcomings in the circumstances, that party may well have a cause of action against them, although that, of course, is not a matter which is before us.

Recourse to the doctrine of non est factum

118 Before proceeding to examine the consequences which flow from our decision to set aside the RBI Deed, we note that this decision may also be supported on the ground of *non est factum*.

119 *Non est factum* is a specific category of mistake that operates as an exception to the general rule that a person is bound by his signature on a contractual document even if he did not fully understand the terms of the document. If successfully invoked, the transaction entered into by the document so signed is void. Two requirements need to be established for this doctrine to apply, as may be gathered from the leading decision of the House of Lords in *Saunders (Executrix of the Will of*

Rose Maud Gallie, Deceased) v Anglia Building Society [1971] AC 1004 ("*Saunders*") (see also *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2012) at paras 10.239–10.245). First, there must be a radical difference between what was signed and what was thought to have been signed. Second, the party seeking to rely upon the doctrine must prove that he took care in signing the document, that is, he must not have been negligent.

120 The point was taken below and the Judge considered the application of this doctrine, but found that neither of the above requirements had been made out (see the GD at [180]–[187]). With respect, we disagree.

121 First, we have found that, on balance, the Three Siblings are more likely than not to have signed the RBI Deed in the mistaken belief that it had some connection to the Appellants' agreement to appoint Dawood as the sole administrator of Father's estate. Whether described as "fundamental", "radical", "substantial" or "serious" (see *Saunders* at 1017 *per* Lord Reid), we think that this difference between what they had intended and the actual outcome produced by the RBI Deed was of such a kind that the Three Siblings' mental assent could not be said to have accompanied their respective signatures on that document. As we have stressed in this judgment, the renunciation of the Appellants' rights to be co-administrators of Father's estate and the renunciation of the Three Siblings' beneficial interests in the estate were completely distinct matters that bore no correlation to one another. Instead, they involved radically different legal outcomes. For this reason, we are satisfied that this is a case in which the Three Siblings could call in aid the doctrine of *non est factum*, subject, of course, to proof that they had not been negligent in signing the RBI Deed. It is to this second requirement that we now turn.

122 We disagree with the Judge that the Three Siblings had been negligent in signing the RBI Deed (see the GD at [184]). This was not a case where the Three Siblings were either "too busy" or "too lazy" to read the document before appending their respective signatures. Had that been the case, we would have echoed Lord Reid's view in *Saunders* (at 1016) that a plea of *non est factum* must fail. This was a case, instead, where a group of lay and unsophisticated clients had gone to the solicitors in the expectation that the latter were looking out for and would advise them properly as to their interests in connection with the execution of a document that formed part of a set of probate papers dealing with a somewhat complicated arrangement. This reliance on the solicitors was not at all unreasonable. Indeed, as the following oft-cited passage in *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR(R) 308 at [68] highlights, there is in fact a natural dependency which solicitors must generally expect when they have conduct of legal matters, especially where unsophisticated or vulnerable lay clients are involved:

> … *[T]he public rely upon lawyers for wise and effective counsel. This is especially the case when clients are particularly vulnerable. This could be due to a number or variety of reasons – or, indeed, a combination thereof. These include impecuniousness, a lack of schooling and/or language and (invariably, with the exception of legally-trained persons) a lack of legal knowledge.* In this last-mentioned regard, it is not merely an absence of legal knowledge. To many laypersons (even highly educated ones), the law constitutes a morass of technical – even arcane – rules. Many even fear the law when the precise opposite should be the case. … The present proceedings illustrate all the dangers that must be assiduously avoided. *Lawyers must convey what the precise legal situation is with limpid clarity, taking into consideration the fact that their clients may not always share the same language, intellectual or legal facility as them.* The legitimacy of the law in general and of legal personnel in particular depends on this. Still less must laypersons be lulled into a false sense of security and/or into a situation of misinformation. Whenever in doubt, lawyers should clarify. *They must begin from the assumption that laypersons are more likely to rely upon them than not – if only because they are professionals schooled in*

the law and whose calling is therefore to advise on the law in all its various aspects. They must, wherever applicable, advise laypersons to seek independent legal advice if they are unable to assist – for example, because of a possible conflict of interests. … [emphasis added]

123 To be clear, we should not be understood as saying that lay clients can rely on their solicitors unthinkingly, or that they are relieved of their duty of basic care whenever they sign documents in the presence of their solicitors. That is not the case. The doctrine of *non est factum*, as the Judge was right to point out, is a narrow one (see the GD at [185]–[186]). It will only be successfully raised in exceptional circumstances, and so, much will depend on the facts of each case. Where a client signs a document in the presence of his solicitor, such facts as we consider to be important in determining whether or not a plea of *non est factum* can be raised include the nature of the transaction, the level of sophistication of the client, the extent of the solicitor's duty to explain the document, and the actual advice rendered by the solicitor. If, for example, an elderly and poorly educated client enters into a complex transaction by signing a set of documents without receiving adequate legal advice on those documents, it is unlikely that he would be precluded from raising a plea of *non est factum* even if he had read the documents, simply because he would be unlikely to have understood them in the circumstances. In this regard, we echo the views of Viscount Dilhorne in *Saunders* (at 1023):

> … *I do not think it can be said that in every case failure to read a document by a literate person amounts to carelessness. Should the same standard of care be expected of an elderly spinster who might, if she read the document, be none the wiser and who might not be able to distinguish between a mortgage and a conveyance? I am inclined to think not. In* National Provincial Bank of England v. Jackson *(1886) 33 Ch.D. 1, two sisters executed deeds relating to their property without reading them and without having them read to them and explained. They did so in reliance upon their brother, a solicitor. Cotton L.J. said that they could not have been said to have been guilty of negligence in so doing.* It was held that their plea of non est factum failed as they knew that the deeds they signed dealt in some way with their houses. In every case the person who signs the document must exercise reasonable care, and *what amounts to reasonable care will depend on the circumstances of the case and the nature of the document which it is thought is being signed*. It is reasonable to expect that more care should be exercised if the document is thought to be of an important character than if it is not. [emphasis added]

124 In our judgment, the facts of the present case are exceptional. As we have highlighted at [65] above, the Appellants had only modest education and the transaction which they had engaged the solicitors for was not straightforward. In these circumstances, we do not think that the mistaken belief which the Three Siblings had been labouring under when they signed the RBI Deed can properly be attributed to any negligence or carelessness on their part. Instead, we find that it was due to the inadequate discharge by the solicitors of their duties.

Two remaining issues

125 Having found the RBI Deed to be invalid, there remain two issues for us to deal with. The first concerns whether the Appellants' claim should be denied on the ground of laches. This entails a continuation of the analysis which we commenced earlier at [42]–[45] above. The second concerns the effect which our decision to set aside the RBI Deed has on the registered title to the Property. Should the land register be rectified as a result to reflect the last position of the parties, which was that as set out in the Second Certificate? Or is Dawood able to assert the indefeasibility of his registered title notwithstanding the setting aside of the RBI Deed? We deal with these issues in turn.

Whether the Appellants' claim is barred by laches

126 To recapitulate the earlier discussion on the issue of laches, it is important to ascertain when the Appellants realised the true manner in which the Property was being held because that is the reference point from which any delay on their part in bringing their claim against Dawood must be assessed.

127 Given our finding that the Appellants did not appreciate the effect of the RBI Deed which the Three Siblings signed, it follows that they would not have expected the Property to be transferred into the joint names of Mother and Dawood. And, based on the evidence, it appears that they continued to be in the dark about this until 2011, when Mr Ibrahim informed Aysha of the true state of affairs (see [19] above). The solicitors never sent the Appellants a copy of the new title deed to the Property after the RBI Deed had been acted on. In fact, they did not take any steps to follow up with the Appellants after the transfer of the Property to Mother and Dawood had been registered (see [16] above). No oral or written updates were conveyed to the Appellants to inform them of the transfer; nor were any copies of the new title deed sent to them as a matter of good order. Had any of these steps been taken by the solicitors, it would have been difficult for the Appellants to maintain their position that they did not know of the transfer until much later.

128 We note that Dawood claimed in his oral evidence that he had shown Mother the new title deed at the conclusion of the probate matter; and that he had told her he would hold on to the title deed for safekeeping, and if she wanted to see it, it would be in his room. However, this aspect of Dawood's evidence is self-serving, and nowhere does he mention such a conversation in his AEIC despite its obvious significance. Even if we were inclined to accept Dawood's evidence that he had shown Mother the new title deed, we doubt that Mother on her own would have understood its contents for her suspicions to be aroused. In the circumstances, we find that the Appellants remained ignorant of what the true position was until 2011.

129 The Appellants commenced their action in March 2013. This was more than a year after they found out about the transfer of the Property and, hence, were in a position to commence such an action. That is hardly a delay that can be described as unconscionable. This is especially so, considering that the Appellants did not remain idle in the intervening period, but sought and acted on the advice of Mr Ibrahim to lodge (in the names of the Three Siblings) a caveat against the Property. In the circumstances, we hold that the Appellants' claim is not barred by the operation of laches.

Whether Dawood is able to assert indefeasibility of title

130 This leaves us to consider what the position should be in respect of the registered title to the Property now that the RBI Deed has been set aside.

131 Ms Koh submitted, in response to a question from the Bench, that even if the RBI Deed were set aside, Dawood would nonetheless remain entitled to keep his half-share of the Property to the exclusion of the Appellants. She submitted that this arose from the operation of s 46(1) of the LTA, which confers on a registered proprietor indefeasible title unless the claimant can bring himself within one of the exceptions in s 46(2). She stressed the narrow scope of these exceptions and pointed out that the only ground which appeared tangentially relevant was s 46(2)(*a*). Yet, there was, in this connection, no "fraud" or "forgery" on which the Appellants could rely since they did not plead fraud in their case (see [21] above).

132 We think that this submission is misconceived. Ms Koh has missed a more fundamental provision which restricts the class of persons who are entitled to assert indefeasibility of title in the first place. This is found in s 46(3) of the LTA, which provides as follows:

> Nothing in this section shall confer on a proprietor claiming *otherwise than as a purchaser* any better title than was held by his immediate predecessor. [emphasis added]

133 As observed by the learned authors of Tan Sook Yee, Tang Hang Wu & Kelvin F K Low, *Tan Sook Yee's Principles of Singapore Land Law* (LexisNexis, 3rd Ed, 2009) at para 14.26, this section "indirectly … means that only a purchaser has the advantage [of indefeasibility] conferred by section 46(1)". The rationale for this exception to the principle of indefeasibility of title is explained by John Baalman, the draftsman of the Land Titles Ordinance 1956 (Ord 21 of 1956) (the earliest predecessor of the LTA), in his commentary *The Singapore Torrens System* (The Government of the State of Singapore, 1961) at p 86:

> *The Torrens System of land registration is predominantly a purchaser's system.* Its aim is to facilitate the transfer of land as a commercial commodity by removing most of the risks of financial loss which beset purchasers under the general law. *As a transferee who does not give value for his land is not exposed to that risk, there is no need to protect him.* But the Torrens statutes have not always said so in plain words; in many of them it has simply been left to necessary implication. While the Courts have consistently drawn that implication, this Ordinance … relieves them of the necessity to do so by the express enactment of s 28(3) [which is *in pari materia* to s 46(3) of the LTA]. … [emphasis added]

134 A "purchaser" is defined in s 4 of the LTA as a person who, in good faith and "for valuable consideration", acquires an interest in land. In the present case, the Judge found that Dawood's Agreement had not been proved. As stated earlier, we are not disturbing that finding. However, the Judge also held that the RBI Deed had been validly executed by the Three Siblings (see [32] above). For the reasons we have given, we have set aside that decision by the Judge. Dawood has not been able to establish that he provided good consideration for the transfer of the Property into his name as a joint tenant. On this view, he is a mere volunteer and so cannot avail himself of s 46(1) of the LTA to assert indefeasibility of title against the Appellants.

135 In our judgment, it follows, from our having set aside the RBI Deed and having affirmed the Judge's finding that there was no other agreement between the parties as to the Three Siblings' renunciation of their respective interests in Father's estate, that the land register must be rectified to reflect the position under the Second Certificate.

Conclusion

136 In the premises, we allow the Appellants' appeal in respect of their claim against Dawood. We set aside the RBI Deed and order that the land register be rectified to reflect that the Property is held by the parties as tenants in common in the following proportions under the Second Certificate:

(a) Jahir – $^{14}/_{48th}$ share;

(b) Dawood – $^{14}/_{48th}$ share;

(c) Mother's estate – $^{6}/_{48th}$ share;

(d) Aysha – $^{7}/_{48th}$ share; and

(e) Noorjahan – $^{7}/_{48th}$ share.

137 It must follow from this that we also allow the Appellants' appeal against the Judge's decision on Dawood's counterclaim. The Three Siblings are therefore not liable for the costs which Dawood incurred as a result of their lodgement of the caveat against the Property. As for the other relief sought in Dawood's counterclaim (see [29] above), which the Judge did not have to deal with, it is similarly unnecessary for us to deal with this, although for somewhat different reasons. It is not controversial that an administrator who has personally incurred reasonable and proper expenses for the benefit of the estate will be entitled to be indemnified by the estate. But, what may be controversial in this case is the precise nature and extent of the expenses that Dawood says he incurred in connection with the Property and whether they were proper and reasonable in the circumstances. It is not evident that this was adequately canvassed below, and we therefore prefer to leave this open in the event any of the parties might wish to pursue this.

138 It follows from our foregoing conclusions that the order for costs that the Judge made in favour of Dawood is to be set aside. The Appellants are to have their costs of the appeal and of the proceedings below, and these are to be taxed if not agreed. There will also be the usual consequential order for the payment out of the security deposit provided by the Appellants.

Coda: Solicitors' duties when acting for multiple clients with potentially conflicting interests

139 This case underlines the many possible pitfalls that face a solicitor who agrees to act in a particular transaction for multiple clients with divergent and potentially conflicting interests. We therefore take this opportunity to provide some practical guidance on the steps which solicitors should take when faced with such circumstances.

140 We begin by observing that, despite the many attendant risks involved, there is no blanket prohibition against solicitors accepting a brief for concurrent representation of multiple parties in non-contentious work. The law recognises that such concurrent representation may hold many attractions for clients such as economy, efficiency, and speed, among a range of other potential benefits (see *Spector v Ageda* [1973] 1 Ch 30 at 47; see also *Tan Yock Lin* at p 957). There is therefore no absolute bar against a solicitor acting, for instance, for both the vendor and the purchaser in a conveyancing transaction, or both the lender and the borrower in connection with a financing arrangement, or both the lessor and the lessee in respect of a lease of land. In all of these scenarios, however, what the law *does* impose is a duty on the solicitor to obtain the *informed consent* of all the clients to his acting for them jointly, notwithstanding the apparent conflict of interest. This was made clear in *Clark Boyce v Mouat* [1994] 1 AC 428 ("*Clark Boyce*"), where Lord Jauncey of Tullichettle, delivering the judgment of the Privy Council, said as follows (at 435) (see also *Lie Hendri Rusli*, which cited these observations with approval at [48] and [58]):

> There is no general rule of law to the effect that a solicitor should never act for both parties in a transaction where their interests may conflict. Rather is the position that he may act provided that he has obtained the informed consent of both to his acting. Informed consent means consent given in the knowledge that there is a conflict between the parties and that as a result the solicitor may be disabled from disclosing to each party the full knowledge which he possesses as to the transaction or may be disabled from giving advice to one party which conflicts with the interests of the other. If the parties are content to proceed upon this basis the solicitor may properly act. …

141 We note that this common law position is also broadly reflected in r 28 of our Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed) ("LPPCR"), which provides that a solicitor may act for multiple parties with different interests in the context of commercial or conveyancing transactions, but that he "shall", in such circumstances, "advise each party of the potential conflict

of interests and of the advocate and solicitor's duty if such conflict arises".

142 With the propriety of the solicitor's representation in such circumstances resting on whether there is "informed consent" by the clients to his acting for them jointly despite the potential conflict of interest, the question that then arises is how the solicitor should go about obtaining such consent.

143 In our judgment, it is of the first importance, and at the bare minimum, that the solicitor communicates with the diversely interested clients *directly*. How else is he expected to furnish them with all the information necessary to bring home the risks of joint representation, and to receive and deal with their queries in that connection? And, in his direct communication with the clients, the solicitor should take pains to explain to them how their respective interests may diverge, how he may be constrained not to disclose confidential information obtained from one client to another client despite its relevance to the matter for which he has been retained, and how he may be prevented from giving to one client advice that prejudices another client. He should also inform them that he will have to discharge himself from the matter if, in the course of the retainer, he reaches a point where he has difficulty advising on and dealing with their divergent interests competently, evenly, and consistently (see *Lie Hendri Rusli* at [49]). This alerts the parties at the outset to the fact that their expected savings in costs and time by opting for joint representation is at some risk of being erased in the course of such representation, and so, should encourage them to think more carefully about whether separate representation might be more beneficial instead. Further, in exploring these matters, the solicitor will be bound to ascertain precisely what the intention of each of the parties is.

144 It is even more imperative for the solicitor to communicate directly with all the clients where (as in the present case) he has been approached by only one of them who, quite obviously, is the party that stands to benefit from the intended transaction. The solicitor would be seriously mistaken if he believes that he has the informed consent of *all* the clients based only on the word of *one* of them. In these circumstances, what the solicitor must do is communicate directly with the ostensibly disadvantaged clients and confirm with them that the instructions which he has received are indeed reflective of their intentions. And, it goes without saying that this cannot be treated as a mechanical exercise. The solicitor must assiduously explain to the potentially disadvantaged clients what their existing position is and how exactly this will be altered to their detriment by the purported transaction.

145 The recent English Court of Appeal decision of *Newcastle International Airport Ltd v Eversheds LLP* [2014] 1 WLR 3073 ("*Newcastle International Airport Ltd*") is instructive in highlighting just how unsatisfactory it is for a solicitor representing multiple clients in the same transaction to act solely on the instructions of one of them whose interests are advanced by those instructions. And, this is so *even if* the instructing party has been authorised to give instructions on behalf of the potentially disadvantaged party.

146 In *Newcastle International Airport Ltd*, the claimant company ("NIAL") retained the defendant firm ("Eversheds") to draft new service contracts between itself and two of its executive directors by way of variations to their existing contracts. The solicitor from Eversheds who did most of the work on the matter, Mr Gorringe, took his instructions from one of the two directors, Mr Parkin, who had been authorised by NIAL to instruct Eversheds. The contracts so drafted by Eversheds, and which were eventually signed by NIAL and the directors, contained a change entitling the directors to receive unusually large bonuses. Importantly, Mr Gorringe never took steps to independently clarify the measure of the directors' bonuses with NIAL in the course of drafting the contract. Rimer LJ (with whom Moore-Bick and Underhill LJJ concurred) was particularly critical of this aspect of the solicitor's conduct and found him negligent. It was abundantly clear to the learned judge that because the personal interests of the directors in this case were in direct conflict with those of NIAL, Mr Gorringe

had a duty to obtain clarifying instructions from NIAL in the drafting exercise (see [80]–[82]):

> 80 … I readily accept that *in a conventional case* in which a company authorises one of its executives to instruct a solicitor in relation to a company matter, being one in which the executive has *no personal interest conflicting* with that of the company but can simply be regarded as a human organ of the company, there will ordinarily be no need for the solicitors to give advice as to the matter … to anyone other than the executive. Advice to him will stand as advice to the company.
>
> 8 1 *That, however, was manifestly not this case. Eversheds were instructed, under considerable time pressure …, to produce draft contracts for their client, NIAL, but were being so instructed exclusively by the proposed counterparties, principally Mr Parkin. The executives' personal interests in the drafting exercise were clear.* The exercise was also not one that Eversheds could perform by simply translating into legal form a set of unambiguous terms bearing the imprimatur of the [remuneration committee of NIAL]. It was more complicated than that, principally in relation to the meaning of "refinancing" and the "proceeds of the refinancing"; and as to that, Mr Gorringe needed express additional input, which he sought from Mr Parkin by an email of 18 January 2006 (timed at 22.17). For [the] reasons given, I consider that he was entitled so to seek such input, since Mr Parkin was NIAL's authorised channel of communication. The following day, at 12.42, Mr Parkin emailed Mr Gorringe saying that he would call him, but that in the meantime the refinancing definition was "the total value of any refinancing of the company minus the value of any pre-existing bank bond or loan notes debt."
>
> 82 There followed, at 1.15pm, a telephone call between Mr Gorringe and Mr Parkin, of which we have the former's attendance note. It covers several matters and reflects aspects of the drafting upon which Mr Gorringe sought, and obtained, clarification. Mr Davidson [counsel for NIAL] submitted that one inference from its language was that Mr Parkin was giving instructions as to what he personally wanted rather than what NIAL had agreed or wanted. That is a possible inference, but not the only one. *The more significant point, however, is that this was an instance in which Mr Gorringe had to obtain clarifying instructions in relation to the measure of the executives' refinancing bonuses from one of the two executives in line for such a bonus. Since NIAL, and not Mr Parkin, was the client, that ought to have rung cautionary bells with Mr Gorringe.*
>
> [emphasis added]

147 Direct communication with the potentially disadvantaged clients also guards against a more invidious concern, which is the possibility that these clients may have been either misled or unduly influenced by the instructing party. In this regard, we note that in the somewhat analogous situation where a client is referred to a solicitor by a third party, r 11A(2)(*f*) of the LPPCR specifically provides that the solicitor "shall … communicate directly with the client to obtain or confirm instructions in the process of providing advice and at all appropriate stages of the transaction". There is certainly good reason for mandating such a practice. As the Court of Three Judges explained in *Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2013] 3 SLR 875 at [61]:

> … [I]t is both logical as well as commonsensical to require the advocate and solicitor concerned to undertake a *personal responsibility* to communicate directly with the referred client to ensure that everything is in order – particularly since there is a greater danger that such a client might be *in a vulnerable position*. The advocate and solicitor, with "his position as a fiduciary and his standing as a professional" (see Jeffrey Pinsler, *Ethics and Professional Responsibility: A Code for the Advocate and Solicitor* (Academy Publishing, 2007) at para 17-002) must *personally* ensure

> that the referred client's interests are not in any way undermined by those of the referror. … [emphasis in original]

148 In our judgment, the ostensibly disadvantaged client in the present context stands in no less vulnerable a position than the client who is referred by a third party to a solicitor. In both scenarios, there is a fear that the trust which such clients have placed in another party may be misplaced or abused. It is in that sense that their interests are liable to be undermined. The solicitor must therefore personally ensure that there is nothing untoward about the transaction by verifying the position directly with the apparently disadvantaged clients. Furthermore, such advice, as we mentioned at [110] above, should also be rendered in the absence of the instructing client because his very presence may, in the ordinary course of things, have an inhibiting influence on the potentially disadvantaged clients.

149 Having pointed out the underlying conflict to the parties, apprised them of its consequences on the retainer, and verified the instructions directly with each of them, the solicitor should then advise them to seek independent legal advice as part of his duty to obtain informed consent (see also *Uthayasurian Sidambaram* at [52(b)]). If the clients decline to do so, the solicitor should record this in writing. Perhaps more prudently, the solicitor should also consider asking the clients to confirm their refusal to seek independent legal advice by signing a form which reflects clearly that decision. This was done, for example, in *Clark Boyce*, where, having turned down the solicitor's advice on various occasions to seek independent legal advice, the client signed a form to that effect (see 433).

150 At the end of the above process, the solicitor should also seek to obtain from each party a *written* acknowledgement of that party's informed consent to his acting concurrently in the same transaction for other parties with potentially conflicting interests. While there is no express stipulation under the LPPCR for this to be done by the solicitor, we consider that such a practice is prudent. We draw inspiration from the American Bar Association's Model Rules of Professional Conduct, r 1.7 of which expressly provides that a solicitor may represent multiple clients, notwithstanding a concurrent conflict of interest, but only if, among other things, "each affected client gives informed consent, *confirmed in writing*" [emphasis added]. Paragraph 20 of the accompanying commentary to r 1.7 further explains that this requirement is not merely a formal or technical one – instead, it is a substantive rule that serves a twofold purpose:

> … [T]he writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of writing.

151 The solicitor should not regard his task as being complete even after he has observed the above measures and obtained the parties' informed consent to his acting for them concurrently. Instead, he remains under a *continuing* obligation to be vigilant of potential conflicts of interest *throughout* the course of the retainer. In this regard, we emphasise that the onus of identifying the potential conflict is on *the solicitor* and not the client. The following passage in G E Dal Pont, *Lawyers' Professional Responsibility* (Lawbook Co, 5th Ed, 2013) at para 7.25 (footnotes omitted) is particularly instructive:

> The potential consequences of a concurrent conflict [which the author describes at para 7.10 as acting for multiple clients with conflicting interests] require alertness to the possibility of conflict arising, especially when the retainer is first contemplated. Reliance on client perceptions is no substitute for the exercise of professional judgment; it cannot be assumed that clients – who may actually perceive multiple representation to be in their interests … – are necessarily well positioned to discern the existence or prospect of conflict at that stage. *Alertness to conflict,*

even if not realistically foreseeable at the outset, remains a lawyer's ***continuing obligation*** *. Client perceptions cannot be trusted uncritically here either; after all, due to her or his training and exposure to the matter*, ***the lawyer is best positioned to identify a conflict*** *.* As explained by Byrne J in *Marron v J Chatham Daunt Pty Ltd* [[1998] VSC 110 at [33]]:

> [W]here a party is contemplating retaining a solicitor who acts for another … the party will often not recognise a conflict which is possible, pending or even then existing. It is the solicitor who should in the normal course be the first to apprehend this. And so the parties rely upon the solicitor, not only to have the integrity to withdraw when conflict arises, but also the perception to sense its pendency before it arises in fact. The solicitor, then, must be constantly vigilant and alert to perceive the possible emergence of a conflict of interest.

[emphasis added in italics and bold italics]

152 It concerned us in the present case that Mr Singh, who had primary carriage of the matter, did not seem to appreciate this point. It is clear from our analysis of the events which took place from 19 to 27 February 2004 that Mr Singh remained oblivious to the fact that he was acting for parties with divergent and potentially conflicting interests throughout. Further, when cross-examined by Mr Sahagar about whether he would have kept an eye out for potential conflicts of interest, Mr Singh said that he would have done so, but this, we find, is belied by his subsequent suggestion that it was for *the Appellants* to inform him of any conflict:

> Q … [D]o you keep an eye out for potential conflict of interest?
>
> A Yes, definitely I would.
>
> Q You do?
>
> A Yup.
>
> Q And as a usual practice –
>
> A I mean, of course, er, if I may move on to add also, *if there is any conflict of in – conflict, anything, I think the – believe, er, the other parties have to also inform us*. I mean we don't mind read clients. I mean if there is going to be any dispute, if there are [*sic*] unhappiness, they should also voice their – their unhappiness and say, "No, this is not, this is not. …"

[emphasis added]

153 Such an approach effectively reverses the solicitor's continuing obligation to remain vigilant onto the client. That cannot be correct. It was for Mr Singh, for example, to be astute and alive to the alleged change in the Three Siblings' position after the issuance of the Second Certificate so as to recognise that he was likely faced with a real conflict when he received Dawood's instructions that the Three Siblings had purportedly agreed to renounce their respective interests in the Property in favour of Dawood himself and Mother (see [102] above). It is difficult to fathom how one can reasonably expect lay clients to be the ones to raise such concerns when they may not even be aware of representations that have been made on their behalf or appreciate the significance of such representations.

154 This case also illustrates two further practices that solicitors should observe as a general rule.

155 First, a solicitor should always keep proper contemporaneous records of all instructions received from, and advice rendered to, the client. While there is again no express ethical rule in the LPPCR which imposes such a requirement, we note that this is a sensible and prudent practice that has been strongly endorsed by the courts in a series of notable disciplinary cases (see, in this regard, *Lie Hendri Rusli* at [63]–[64] and [71]; *Law Society of Singapore v Tan Phuay Khiang* [2007] 3 SLR(R) 477 ("*Tan Phuay Khiang*") at [82]–[85]; and *Uthayasurian Sidambaram* at [52]–[53]). As the High Court observed in *Tan Phuay Khiang* at [83], the practice of keeping contemporaneous attendance notes, for example, may prove to be particularly useful to "assist a solicitor in persuading the court on the veracity of his testimony". In the present case, the absence of any contemporaneous notes of the crucial meeting on 27 February 2004 was a great handicap to the solicitors. They were constrained to say only that Mr Singh "must have" advised the Appellants on the probate documents before the latter executed them because that was the firm's usual practice, although, for the reasons we have already given, we reject that.

156 Second, a solicitor should also always be diligent in following up appropriately with the client. In this regard, we note r 17 of the LPPCR, which imposes on solicitors the obligation to "keep the client reasonably informed of the progress of the client's matter". As stated in *Pinsler* at para 14-018, what this rule essentially requires is that the solicitor "must maintain a reasonable level of communication with his client so that the latter is never left in the dark about any significant matter or development". In the present case, the registration of the conveyance of the Property to Mother and Dawood was one such significant matter. From that moment on, the Property was jointly owned by Mother and Dawood. It represented the culmination of the entire probate matter, and we think it only appropriate that the solicitors should have informed the Appellants about this. However, Mr Singh did not take any steps in this regard. He did not send the Appellants copies of the new title deed or inform them of the fact of the registration of the conveyance. The Appellants were therefore left in the dark about this until they discovered what the true position was in 2011.

157 We sum up the foregoing discussion by distilling the following propositions without derogating from the fuller description in the preceding paragraphs:

(a) First, the starting point is that there is no blanket prohibition against solicitors acting in the same matter for multiple clients with ostensibly conflicting interests. However, solicitors are under a duty to obtain the *informed consent* of all the clients before so acting (see [140]–[141] above).

(b) In obtaining such informed consent, it is of the first importance that the solicitor *communicate directly* with the clients and, in so doing, explain to them the nature of the potential conflict and the constraints on the solicitor in such a situation (see [143] above).

(c) This need to communicate directly with the clients is even more pressing where, as in the present case, the solicitor receives instructions from only one of the clients, who is in fact the party that stands to benefit from the intended transaction. In these circumstances, the solicitor should communicate directly with the potentially disadvantaged clients to *verify the instructions* and to *remove any doubts* that they might have been misled by or under the undue influence of the instructing party (see [144]–[148] above).

(d) The solicitor should then advise the clients to seek *independent legal advice*, and, if this is turned down, it should be recorded in writing (see [149] above).

(e) Once the solicitor has earnestly taken the above steps, he should obtain the clients' informed consent *in writing* to his acting for them concurrently despite their potentially conflicting

interests. This impresses upon the clients the risks involved in concurrent representation and also protects the solicitor from future allegations of impropriety (see [150] above).

(f) Having accepted the retainer, the solicitor remains under a *continuing obligation* to be vigilant of potential conflicts throughout the course of the retainer. The *onus is on him* to draw such conflicts to the clients' attention (see [151]–[153] above).

(g) Throughout the course of the retainer, the solicitor should also be mindful of the importance of:

(i) keeping *proper contemporaneous records* of all instructions received from and advice rendered to the clients; and

(ii) keeping the clients *reasonably informed* of the progress of the matter (see [154]–[156] above).

158 For the avoidance of doubt, we should state in closing that the broad steps set out above are not intended to be exhaustive. Potential conflicts of interest within a client group can occur in a myriad of scenarios and therefore throw up a host of different challenges. Clearly, not all of these can satisfactorily be anticipated and spelt out in a judgment such as this. In every case, the solicitor is obliged to be vigilant to the possibility of a conflict of interest, and do all that is necessary to ensure that no client is disadvantaged by the fact of his concurrent representation of clients with divergent and potentially conflicting interests. This will invariably be a matter of diligence, common sense and basic judgment.