IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 178

Suit No 1077 of 2017

Between

Ang Bee Yian

… *Plaintiff*

And

Ang Siew Fah

… *Defendant*

Between

Ang Siew Fah

… *Plaintiff in Counterclaim*

And

Ang Bee Yian

… *Defendant in Counterclaim*

JUDGMENT

[Contract] — [Breach]
[Equity] — [Fiduciary relationships] — [Constructive and resulting trusts]
[Limitation of Actions] — [Particular causes of action] — [Contract and trust]

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v
Ang Siew Fah

[2019] SGHC 178

High Court — Suit No 1077 of 2017
Ang Cheng Hock JC
22, 25–28 February 2019; 17 May 2019

31 July 2019 Judgment reserved.

Ang Cheng Hock JC:

Introduction

1 These are proceedings brought by a younger sister against her elder sister. The younger sister seeks the repayment of moneys arising from foreign currency investments, which had been invested by the elder sister on the younger one's behalf. The younger sister also seeks orders relating to her 25% share in a condominium unit, which share is held in the name of the elder sister. In response, the elder sister claims that the younger sister is liable for her share of significant losses arising from margin trading with a private bank, such trading having been allegedly funded by the elder sister at the younger sister's request.

2 I would describe the case as an unfortunate one, not only because of the number of serious allegations made by the sisters against each other, but also

because they were previously close and now have fallen out with each other over money. Not only that, the version of events posited by the plaintiff and defendant on some material aspects of the case are diametrically opposed. It is this court's unenviable task to decide which sister is telling the truth and which sister is not.

Facts

The parties

3 The plaintiff in this case is also referred to as "Jessie". Her highest educational qualifications are GCE "A" levels, which she completed in 1979.[1] She is the youngest of five siblings.[2] She presently works as an administrative officer in an electronics company. She had previously worked for a number of years in the treasury department of a foreign bank in Singapore as part of its trade settlement team. Her job was to check that there were no discrepancies in relation to the trades and to make sure that payments were effected. The nature of her work at the bank was administrative in nature and she did not carry out any trading or make any investment decisions as part of her job.[3]

4 The defendant is the plaintiff's elder sister and the third of the five siblings. She is also referred to as "Diana". She graduated with a degree in accountancy from the University of Singapore in 1977. In her career, she has

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1 Combined Bundle of Affidavits of Evidence-in-Chief, Tab 3 ("Defendant's AEIC"), para 6.

2 Defendant's AEIC, para 3.

3 Defendant's AEIC, para 8.

worked as an accountant in a number of well-known companies in Singapore.[4] She is an experienced investor, having started trading in stocks and shares in the 1990s.[5]

5 There is another sister that features in this dispute, in relation to the plaintiff's claim concerning the condominium unit. She is Mdm Ang Siew Chin, and is also referred to as "Eunice" ("Eunice"). In terms of age, she is between the plaintiff and defendant. She is the fourth of the five siblings.[6] Eunice was not a party to these proceedings, but was called by the plaintiff as a witness.

Background to the disputes

6 I first set out the background to the property investment dispute involving the plaintiff's share in the condominium unit since the property in question was purchased in the late 1990s, well before the plaintiff and defendant made the foreign currency investments that were the subject of the plaintiff's other claim.

7 Since 1983, the plaintiff's and defendant's mother has been living with the defendant. The plaintiff and Eunice would visit the defendant's home to see their mother. So, the defendant would often be around to chat with them when they visited.[7]

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4 Defendant's AEIC, para 4.

5 Defendant's AEIC, para 5.

6 Defendant's AEIC, para 3.

7 Defendant's AEIC, para 15.

8 During one of these visits in late 1995 or early 1996, the defendant, Eunice and the plaintiff talked about buying a unit in a condominium called Northvale, located in Choa Chu Kang, as an investment.[8] The three of them eventually agreed to go ahead with the purchase of the unit ("the Northvale property") with their agreed ownership interests being 50% for the defendant and 25% each for Eunice and the plaintiff.[9] The purchase price was paid by each of them in proportion to their ownership interests.

9 The plaintiff paid S$200,582.00 in cash for her share, which was 25% of the purchase price.[10] However, the Northvale property was only registered in the names of the defendant and Eunice as tenants in common in the proportion of 75:25 when the certificate of title was issued in 2001.[11] The reasons for the omission of the plaintiff's name are disputed. What is not in dispute is that the defendant held a 25% interest in the Northvale property on trust for the plaintiff.

10 The Northvale property was rented out from about October 1999.[12] It is not seriously disputed that the shared intention of the three sisters was that all the relevant taxes, outgoings and other expenses relating to the property were to be borne by them in the proportion of their beneficial ownership interests. Correspondingly, the net rental proceeds were also to be shared by them in this proportion.

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8 Defendant's AEIC, para 16.

9 Defendant's AEIC, para 18; Combined Bundle of Affidavits of Evidence-in-Chief, Tab 4 ("Plaintiff's AEIC"), para 17.

10 Plaintiff's AEIC, para 18; Defendant's AEIC, para 20.

11 Plaintiff's AEIC, p 143.

12 Defendant's AEIC, para 24.

11 From October 2008, the defendant would periodically prepare and send spreadsheets by email to the plaintiff and Eunice setting out calculations showing the share of net rental proceeds payable to each of the three sisters, after deduction of expenses and other amounts that the defendant had paid on behalf of the plaintiff and Eunice,[13] starting from the period beginning October 1999, when the property was first rented out. This was her way of providing an account of the rental proceeds from the Northvale property. A total of almost S$71,000 has been paid by the defendant to the plaintiff as her share of the net rental proceeds from October 1999 to July 2016.[14]

12 In August 2016, the defendant stopped paying the plaintiff her share of the net rental proceeds and also stopped providing her with an account of the rental earned on the Northvale property.[15] Just three months earlier, in May 2016, the plaintiff had demanded that the defendant transfer 25% of the legal ownership of the property to her, or that the property be sold and the sale proceeds distributed amongst the three sisters.[16]

13 I move now to the foreign currency investments. During one of the plaintiff's visits in late 2008 or early 2009 to the defendant's house, the defendant asked the plaintiff whether the latter was interested in making money from foreign currency investments. The plaintiff expressed her interest. Over further discussions, it was agreed that the plaintiff would entrust the defendant with her funds and that the latter would invest them in foreign currencies. The

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13 Plaintiff's AEIC, pp 148, 149, 158–284.

14 Defendant's Bundle of Documents ("DB"), p 15; Plaintiff's AEIC, para 27.

15 Defendant's AEIC, para 31.

16 Plaintiff's AEIC, para 22.

plaintiff transferred S$300,000 to the defendant in May 2009, and the defendant transferred that sum to a Dual Currency Investment account with CIMB bank ("DCI account") which had been opened in their joint names.[17]

14 A few months later, in September 2009, there was a transfer of a further S$150,000 to the DCI account.[18] Although this sum was transferred from a joint account in both the names of the plaintiff and defendant, it is not disputed that the S$150,000 belonged solely to the plaintiff. So, in total, the plaintiff had invested S$450,000 in the DCI account.

15 It is disputed whether the defendant was in sole charge of deciding how to manage the funds, that is, whether it was the defendant who decided which foreign currency to invest in, the tenor and other terms of the deposit, and the trades carried out. The plaintiff claims that the defendant was in sole charge of decision-making, while the defendant claims that the decisions were all made jointly with the plaintiff.

16 There were some modest returns from these foreign currency investments. Leaving aside some small sums of interest for which the plaintiff is not claiming, the amounts contributed by the plaintiff to the DCI account, and the returns, were eventually converted to the sum of US$313,827.30. It was not disputed that this amount was due to the plaintiff.[19] This amount was transferred to the defendant's CIMB Fixed Deposit account sometime near the end of

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17 Plaintiff's AEIC, paras 8–9 and p 81.

18 Plaintiff's AEIC para 9(2) and p 97.

19 Agreed Bundle of Documents ("AB"), p 31.

2009.[20] It was then placed in fixed deposits to earn interest. The defendant claims that this was done with the plaintiff's consent.[21] According to the plaintiff, she was informed after the fact about the transfer, and had not authorised it. However, she did not demand the return of her money and appeared content, at least initially, for her money to be placed in fixed deposits for interest to be earned.[22]

17 In 2010 and 2011, the defendant sent several emails to the plaintiff explaining how the figure of US$313,827.30 was derived from the various trades that had been made through the DCI account, and also informing her about the interest that was being earned from having placed the money in fixed deposits.[23] Then, in September 2012, the plaintiff wrote an email to ask for the amount to be placed in an account in the plaintiff's own name.[24] This request was not complied with, nor was this amount ever repaid despite repeated demands by the plaintiff in 2013.[25]

The parties' cases

The plaintiff's claim

18 The plaintiff seeks the return of US$313,827.30 from the defendant, which is the sum retained by the latter after the maturity of the foreign currency

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20 Plaintiff's AEIC, para 11.

21 Defendant's AEIC, para 64.

22 Plaintiff's AEIC, para 12(5)–12(8).

23 Plaintiff's AEIC, pp 103–111.

24 Plaintiff's AEIC, p 112.

25 Plaintiff's AEIC, para 12(14)–12(17).

investments. She alleges that the defendant is liable to her in contract because one of the terms of their agreement, either express or implied, is that the defendant would return the plaintiff her initial investment and the investment gain within a reasonable time after the maturity of the foreign currency investments.[26] Further, the plaintiff also alleges that the defendant is her fiduciary and is in breach of her fiduciary duties by refusing to repay what is due to the plaintiff. Hence, apart from personal remedies, the plaintiff claims that the defendant holds the sum US$313,827.30 on constructive trust, and is also liable to account for any profits made on that sum.[27]

19 As for the Northvale property, the plaintiff alleges that there is an agreement between the plaintiff, defendant and Eunice that, amongst other things, the three of them would hold title in the property as tenants-in-common in their agreed shares, that the defendant would be the one who would solely manage the property and that she would distribute the share of the net rental proceeds to Eunice and the plaintiff.[28] The plaintiff claims that there is a breach of this agreement because she later discovered that her name was not included as a registered owner on the title deeds of the property.[29] She claims that the defendant has failed to give her an account of the rental proceeds or pay her 25% share of the net rental proceeds from August 2016 to date.[30] The plaintiff also complains that the defendant has failed to give an accurate account of the expenses incurred in relation to the Northvale property in the period from

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26 Statement of Claim (Amendment No. 1) ("SOC"), paras 3, 4 and 13(1).

27 SOC, para 13(2).

28 SOC, para 15.

29 SOC, para 17.

30 SOC, para 20.

October 1999 to July 2016 because she had made improper deductions relating to property tax, MCST charges, real estate agent fees and other miscellaneous amounts.[31]

20 Although the plaintiff alleges breach of contract and also breach of trust in relation to the Northvale property investment,[32] the remedies sought are in substance similar. She seeks an order that the registered title to the property be rectified so that she is properly reflected as the 25% owner of the property;[33] alternatively, she seeks an order that the Northvale property be sold and that the proceeds (to which she will be entitled to a 25% share) be distributed to the beneficial owners.[34]

21 As for the rental proceeds, the plaintiff seeks an order that the defendant account for the rental proceeds from the Northvale property from August 2016 to date, and pay over her share of the net rental proceeds.[35] She also wants the defendant to provide a proper account of the expenses incurred in relation to the property from October 1999 to July 2016, and pay over her rightful share of any amounts that were wrongfully deducted.[36]

The defendant's defence and counterclaim

22 The defendant does not accept the plaintiff's version of the agreement

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31 SOC, para 21.

32 SOC, paras 21 and 22.

33 SOC, para 22(2)(a).

34 SOC, para 22(2)(a).

35 SOC, paras 21 and 22.

36 SOC, paras 21 and 22.

in relation to the foreign currency investments with CIMB bank. However, the defendant does not deny having received the amount of S$300,000 from the plaintiff which was then placed by her in the DCI account with CIMB Bank.[37] She also agrees that another S$150,000 was deposited by the plaintiff in the DCI account.[38] These two amounts were used to conduct trades and the eventual figure of US$313,827.30 was generated to which the plaintiff was entitled, leaving aside some interest amounts which do not form part of the plaintiff's claim. With the plaintiff's consent, the defendant transferred the sum to her personal account and placed it in fixed deposits.[39] The defendant denies that she was a fiduciary *vis-à-vis* the plaintiff insofar as the sums transferred by the plaintiff for foreign currency investments are concerned.[40]

23 As for the Northvale property, while the defendant denies that she agreed to manage the property for the benefit of the plaintiff and Eunice, she accepts that she initially held a 25% share of the Northvale property on trust for the plaintiff.[41] The defendant also accepts that she did give statements of account to the plaintiff and paid the plaintiff her share of the net rental proceeds until July 2016.[42]

24 The defendant's main defence is that both her debt to the plaintiff (arising from the foreign currency investments) and the latter's 25% share in the

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37 Defence and Counterclaim (Amendment No. 1) ("DCC"), para 20

38 DCC, para 22.

39 DCC, para 25; Defendant's AEIC, paras 64 and 65.

40 DCC, para 34.

41 DCC, paras 43, 49.

42 DCC, paras 43, 47.

Northvale property have been extinguished by reason of set-off.[43]

25 The alleged set-off arises because she and the plaintiff had collectively engaged in foreign currencies and derivatives trading with IG Asia Pte Ltd ("IG Asia"), which is a private bank.[44] However, as the plaintiff's funds were tied up in other investments, the parties agreed that the defendant would fund the plaintiff's trading first, and that the plaintiff would repay the defendant when funds became available.[45] According to the defendant, the plaintiff additionally agreed that the amount that she owed the defendant, for funding her trading, could be set-off by the defendant against the plaintiff's 25% interest in the Northvale property.[46] As for the US$313,827.30 that was owed to the plaintiff, the plaintiff had intended and was aware that the sum would be and had been applied by the defendant towards the plaintiff's share of payments into the IG Asia trading accounts.[47]

26 Pursuant to the parties' agreement to engage in trading with IG Asia, the defendant provided the sum of S$92,891.54 for the plaintiff's trading through an IG Asia account that had been opened in the plaintiff's sole name ("the IG Asia sole account"). Also, the defendant funded the sums of US$1,443,275.00 and S$46,998.02 for the plaintiff's trading through an IG Asia account in the joint names of both the plaintiff and defendant ("the IG Asia joint account").[48]

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43 DCC, paras 27, 37, 49.

44 DCC, paras 6–8, 11–12, 14–15.

45 DCC, para 14.

46 DCC, paras 9–10, 14(c), 49.

47 DCC, paras 27, 37.

48 DCC, para 49(c).

All these amounts were used by the plaintiff for trading from 2006 to 2016, and were completely lost.[49] The defendant claims that she was owed the full sum she paid into the plaintiff's sole account with IG Asia and half the amounts paid into the joint account at IG Asia. These debts owed by the plaintiff were set-off against the plaintiff's 25% interest in the Northvale property and the sum of US$313,827.30 due to the plaintiff, and thus provides a complete defence to the plaintiff's claims.[50]

27 Alternatively, the defendant argues that, by virtue of the doctrine of proprietary estoppel, the plaintiff's 25% interest in the Northvale property now belongs to the defendant and she seeks a declaration from the court to this effect. This arises from alleged representations made by the plaintiff that the defendant could set-off what was owed by the plaintiff against her interest in the property.[51]

28 The defendant also relies on various provisions in the Limitation Act (Cap 163, 1996 Rev Ed) ("Limitation Act") and asserts that the plaintiff's claims are, in any event, time-barred.[52] Alternatively, she submits that the plaintiff is barred from bringing her claims, pursuant to the doctrine of laches.[53]

29 As part of her counterclaim, the defendant seeks an order that, in the event she is not entitled to a set-off or to invoke proprietary estoppel in aid of her position, the court should order the plaintiff to repay her for the amount she

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49 DCC, paras 14, 17(d).

50 DCC, paras 9, 17, 27, 37.

51 DCC, para 49.

52 DCC, paras 51 and 53.

53 DCC, paras 37(e), 42, 54, 56.

paid into the IG Asia sole account and half the amount she paid into the IG Asia joint account.[54]

The plaintiff's response

30 Simply put, the plaintiff's case is that the defendant's allegations of the agreements in relation to the trading in the IG Asia accounts have been cooked up and are completely unsupported by any documentary evidence or contemporaneous documents. According to the plaintiff, the defendant has fabricated this elaborate story about the funding of the IG Asia accounts for the plaintiff to trade and the set-off in order to avoid having to return what is properly due to the plaintiff.[55]

31 As for the issue of limitation, the plaintiff's case is that the defendant has clearly acknowledged the debt due to her, as well as her rightful share of the Northvale property, not only in the correspondence between the parties but also in the pleadings filed in these proceedings. This then re-set the limitation period of six years. Thus, no defence of limitation can be raised in this case.[56]

Issues to be determined

32 While the parties have raised numerous allegations against each other and have filed lengthy closing submissions dealing with many points of contention, I am of the view that the essential issues that the court has to decide in this case can be distilled to the following questions.

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54 DCC, para 61.

55 Reply and Defence to Counterclaim (Amendment No 1) ("RDCC"), para 8.

56 RDCC, paras 46 and 48.

33 First, what is the nature of the plaintiff's claims against the defendant in relation to the sum due under the foreign currency investments and the plaintiff's unregistered interest in the Northvale property? Are they based only on contract or does the plaintiff have a claim for breach of fiduciary duties? This is relevant to whether proprietary equitable remedies are available to the plaintiff if she succeeds in this action.

34 Second, was there an agreement that the defendant would fund the plaintiff's trading with IG Asia ("the funding agreement")? If so, did the parties agree that the defendant would be entitled to set-off what was due from the plaintiff against the sum of US$313,827.30 and the plaintiff's 25% share of the Northvale property (the "set-off agreement")? The associated point is whether the defendant can raise the doctrine of proprietary estoppel in support of its assertion that the plaintiff's 25% interest in the Northvale property has been extinguished.

35 Third, are the various claims brought by the plaintiff barred under the Limitation Act or by the doctrine of laches?

36 As the issues above will conclusively dispose of the matter in relation to the parties' respective claims for (a) the foreign currency investments, (b) the plaintiff's interest in the Northvale property and the proceeds thereof, and (c) the sums provided under the funding agreement, I do not think it is necessary to consider all other contentions raised by the parties.

The nature of the plaintiff's claims against the defendant

The claim arising from the foreign currency investments

37 Quite apart from her claim in contract, the plaintiff submits that the arrangements between her and the defendant in relation to the sum of S$450,000 which was placed invested in foreign currency investments with CIMB Bank was such that the defendant became her fiduciary. This was because the defendant had agreed to solely manage the moneys she transferred over and the trades to be made, and the plaintiff had entrusted the moneys to her on this basis.[57]

38 The defendant disputes that it was ever agreed that she would be one to solely invest and manage the moneys provided by the plaintiff. She alleges that the plaintiff was privy to the decisions made in relation to the foreign currency investments and the trades that were conducted in the DCI account. In other words, it was a joint endeavour by the parties.[58]

39 The parties' submissions did not deal assist me very much on this issue of whether the defendant became the plaintiff's fiduciary in respect of the foreign currency investments. The documentary evidence and the exchange of correspondence between the parties on the foreign currency investments were also limited. Most of the evidence on this issue was based on the affidavit evidence and oral testimony of the plaintiff and defendant.

40 In *Tan Yok Koon v Tan Choon Suan and another and other appeals*

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57 Plaintiff's AEIC, para 8.

58 Defendant's AEIC, para 58.

[2017] 1 SLR 654 ("*Tan Yok Koon*"), the Court of Appeal recognised several important principles in relation to fiduciary duties:

> (a) First, "the hallmark of a fiduciary obligation is that the fiduciary is to act in the interests of another person". In this regard, the "*distinguishing obligation of a fiduciary is the obligation of loyalty* … This core liability has several facets. ***A fiduciary must act in good faith*** … ***he may not act for his own benefit or the benefit of a third person*** *without the informed consent of his principal.* …" [emphasis in original] (*Bristol and West Building Society v Mothew* [1998] Ch 1 ("*Bristol*") at 18, cited in Tan *Yok Koon* at [192]).
>
> (b) Second, a person "is not subject to fiduciary obligations because he is a fiduciary; it is because he is subject to them that he is a fiduciary" (*Bristol* at 18, cited in *Tan Yok Koon* at [192]). In other words, whether a person is a fiduciary "is a *conclusion* which is reached only once it is determined that particular duties are owed" [emphasis in original] (James Edelman, "When do Fiduciary Duties Arise" (2010) 126 LQR 302 at 316, cited in *Tan Yok Koon* at [193]).
>
> (c) Third, "*fiduciary obligations are* ***voluntarily*** *undertaken* … the undertaking arises where the fiduciary *voluntarily places himself in a position* where the law can ***objectively*** impute an intention on his or her part to undertake those obligations" [emphasis in original] (*Tan Yok Koon* at [194]).

41 Hence, to determine whether the defendant was the plaintiff's fiduciary with respect to the investments, the appropriate query is whether the defendant had voluntarily placed herself in a position where the law can objectively impute

an intention on her part to undertake fiduciary obligations *vis-à-vis* the plaintiff.

42 On my analysis of the evidence, it did not appear to me that the plaintiff was familiar with how the defendant had invested the money in foreign currencies, or what trades had been carried out by the defendant. For example, in the emails they exchanged in July 2010, it was the plaintiff who was asking the defendant for information about the amounts that were due to her.[59] The defendant then provided the plaintiff with the figure and explained how it had been derived from various foreign currency trades.[60] While this is not determinative, it provides some support for the plaintiff's evidence that she was unfamiliar with the investments made, and she left it to the defendant to manage them. Also, the defendant's detailed response is consistent with her considering that she had an obligation to account to the plaintiff for the use of her moneys in these foreign currency investments.

43 I also noted that the defendant's arguments on this issue focused on the plaintiff being aware that the eventual amount due to her was placed in fixed deposits and that the plaintiff did inform the defendant whether she wanted to withdraw the interest earned or to roll the deposits together with the interest earned, such that the endeavour was a joint one.[61] In her written closing submissions, the defendant relied on the following aspect of the plaintiff's oral testimony:[62]

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59 AB, pp 19–20.

60 AB, pp 26–28.

61 Defendant's Closing Submissions ("DCS"), paras 264, 265.

62 DCS para 264; Transcripts (22 Feb 2019), p 96, line 27 – p 97 line 4 and p 97, lines 24–30.

> Q: But, Mdm Ang, if you look at your terms of the oral agreement, it would be---she would be the one to solely invest and manage the monies. Correct?
>
> A: Yes.
>
> Q: Within that term, it would---would I be right to say that the defendant could just---could make all the decisions without consulting you? And roll it?
>
> A: No.
>
> Q: She couldn't. So the---your case to say that the defendant would be the one to solely invest and manage the monies has some caveats or read---or have some clarification, would that be correct?
>
> A: Mm-hm. Yes.
>
> …
>
> A: What is [*sic*] discussed is that after the maturity, she will inform me whether it's converted or not converted. Then I will decide whether to roll the interest take out or roll together with the interest.
>
> Q: So, you would be the one to decide?
>
> A: Yes.
>
> Q: Not the defendant.
>
> A: No.

This suggests that, while it was up to the plaintiff to decide what to do with the proceeds of the foreign currency investments, it was the defendant who would make the decisions on what foreign currency deposits to make and what trades to carry out, and she would inform the plaintiff when there was an opportunity to withdraw the interest earned. In my view, this is evidence that the defendant had undertaken to manage the plaintiff's investments on her behalf.

44 There was also a degree of trust reposed by the plaintiff in the defendant to properly invest and manage her moneys. This can be seen by the fact that the

plaintiff had initially transferred S$300,000.00 to the defendant's sole Standard Chartered Bank account, which indicates that she was simply entrusting her moneys to the defendant, and leaving her to decide how to place the moneys into the appropriate foreign currency investments. Given the reliance that the plaintiff placed on the defendant, I find that the defendant had agreed to assume responsibility to act in the plaintiff's interests as far as these foreign currency investments were concerned.

45 For these reasons, I find that the defendant had voluntarily undertaken fiduciary duties *vis-à-vis* the plaintiff to act honestly, in good faith and in the best interests of the plaintiff, and to account to the plaintiff in relation to the use of her moneys for these foreign currency investments.

The claim arising from the Northvale property

46 As for the plaintiff's investment in relation to the Northvale property, the position is far clearer. There is no dispute that the plaintiff paid in full for her 25% share in the property by paying an amount of S$200,582.00 to the defendant.[63] I also find that there was really no satisfactory explanation by the defendant or Eunice as to why the plaintiff was not reflected as one of the registered owners of the property. There was some suggestion that the plaintiff wanted to hide her ownership of the property from her husband at the time because she was undergoing divorce proceedings. However, the plaintiff's ex-husband gave evidence that he was fully aware of her investment in the Northvale property at the material time.[64] That meant that there was no reason

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63 Defendant's AEIC, para 20.

64 Transcripts (26 Feb 2019), p 153, lines 11–14.

for the plaintiff to have wanted to keep her 25% share in the property a secret.

47 Also, from October 2008, the defendant sent emails giving regular statements of account of the expenses and rental from the Northvale property to the plaintiff and Eunice.[65] This substantially supports the plaintiff's evidence that the defendant had agreed to manage the Northvale property and distribute the net rental proceeds to the plaintiff and Eunice. It also demonstrates that the defendant was aware that the plaintiff never had the intention to make a gift of her contribution towards the purchase price of the property to the defendant.

48 As such, it is quite clear that the defendant held a 25% share of the Northvale property on resulting trust for the plaintiff. While it is not the case that every resulting trustee owes fiduciary duties (see *Tan Yok Koon* at [196]–[200]), the conduct of the parties in this case shows that the defendant had voluntarily assumed fiduciary duties to the plaintiff, including the duty to account for the expenses and rental, and to pay the net rental proceeds to the plaintiff.

Did the parties agree to funding and set-off arrangements in relation to the margin trading with IG Asia?

The plaintiff's version of events

49 Before the opening of the two IG Asia accounts which involved the plaintiff, the defendant was already executing margin trades through her own accounts with IG Asia.[66] The plaintiff's case is that, sometime in 2006, the

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65 Plaintiff's AEIC, pp 148, 149, 158–284.

66 Plaintiff's AEIC, para 46. Defendant's AEIC, para 35.

defendant told her that IG Asia would offer existing customers some incentives if they could refer new customers to IG Asia. The defendant persuaded the plaintiff to open a trading account with IG Asia. When the plaintiff said that she had no experience in trading and had no intention to trade, the defendant told her that she did not have carry out any trading, and she just had to open the account. The plaintiff agreed and the IG Asia sole account was opened in her name in October 2006.[67]

50 In the account opening form for the IG Asia sole account, the plaintiff's email address was put down as "jess_ang59@yahoo.com.sg". Her evidence was that she was told to put down this email address by the defendant. This was an email address that the defendant had created and controlled. The plaintiff's evidence was that she had never had access to or control over that email address. Her email address that she has always used was "abyjessie@yahoo.com".[68] That was the email address at which the defendant would write to her.[69]

51 After the IG Asia sole account was opened, the defendant informed the plaintiff that some trading had to be carried out on the account for the defendant to get the incentives from IG Asia, but the plaintiff did not want to do any trading given her lack of experience.[70] Then, sometime in October 2007, the defendant told the plaintiff that she had executed a power of attorney on the plaintiff's behalf to authorise the defendant to carry out trading on the IG Asia

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67 Plaintiff's AEIC, para 47.

68 Plaintiff's AEIC, para 48.

69 Plaintiff's AEIC, pp 166–196.

70 Plaintiff's AEIC, para 50.

sole account.[71] When the defendant showed the plaintiff a copy of the power of attorney, she saw that the defendant had forged her signature on the document.[72] The defendant then assured the plaintiff that she would handle the trading on the account herself. The plaintiff understood this to mean that the defendant would only trade so much as was necessary for her to obtain the incentives from IG Asia, and that she would be fully liable for her own trading losses, if any.[73]

52 In early 2008, after they just had lunch in the CBD area, the defendant unexpectedly asked the plaintiff to open a joint account with her at IG Asia. The defendant gave the same reason that IG Asia was offering incentives to her if she could refer new customers. She told the plaintiff that the IG Asia sole account had been closed due to lack of activity.[74] Again, the defendant assured the plaintiff that the latter would not have to trade on the joint account. Hence, the plaintiff expected that the defendant would just do enough trading for the incentives to be earned.[75]

53 The defendant then immediately brought the plaintiff to the offices of IG Asia to sign the account opening forms for the IG Asia joint account. The plaintiff's evidence was that the defendant took charge of filling up the forms, and even forged the plaintiff's signature in her presence.[76]

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71 Plaintiff's AEIC, para 51.

72 Plaintiff's AEIC, para 51.

73 Plaintiff's AEIC, para 51.

74 Plaintiff's AEIC, para 55.

75 Plaintiff's AEIC, para 56; Transcripts (26 Feb 2019), p 47, lines 22–24.

76 Plaintiff's AEIC, para 57.

54 The plaintiff's evidence was that she never received any emails or other communications from IG Asia for either of these two accounts. She had never agreed to trade on these accounts or share in the losses from the trading carried out by the defendant. She had never authorised the defendant to trade on her behalf.[77] In fact, she had never been informed, whether by IG Asia or the defendant, about the extent of the trading that the defendant carried out on these two accounts from the period of 2006 to 2016 *until* these legal proceedings started.[78]

The defendant's version of events

55 The defendant's case is that the plaintiff intended to open the IG Asia sole account on her own, without the defendant's involvement.[79] She denied having persuaded the plaintiff to open the account so that she could get incentives from IG Asia.

56 Sometime in September 2006, during a visit to the defendant's home, the plaintiff asked her to transfer moneys to her IG sole account so that she could trade. The defendant's evidence was she knew that this IG Asia sole account was a trading account, with margin trading facilities.[80] The plaintiff gave the reason that her funds were all tied up in fixed deposits. The plaintiff assured the defendant that since "[the defendant] was holding the S$200,000 for her in the [Northvale property]", the moneys to be transferred by the defendant to the

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77 Plaintiff's AEIC, para 58; Transcripts (26 Feb 2019), p 44, lines 6–12.

78 Plaintiff's AEIC, para 61.

79 Defendant's AEIC, para 35.

80 Defendant's AEIC, para 38.

IG sole account could be set-off against the plaintiff's 25% beneficial interest in the property, if the transferred moneys were not returned to the defendant.[81]

57 The defendant agreed to the funding arrangement and the set-off arrangement. So, from November 2006 to August 2008, she transferred a total of S$82,360.41 to the IG Asia sole account, whenever the plaintiff requested for funds.[82] In February 2009, she also paid S$10,531.13 to IG Asia to settle margin calls and the plaintiff's trading losses, at the plaintiff's request.[83] According to the defendant, between October to December 2009, she asked the plaintiff on more than one occasion to pay her back S$92,891.54, but the plaintiff told her to "take" the amount from the plaintiff's 25% interest in the Northvale property.[84]

58 In the meantime, sometime in January 2008, the defendant's evidence is that the plaintiff persuaded her to join the plaintiff in trading in FX (foreign exchange) and CFD (contract for difference). The plaintiff told the defendant that she "had accumulated a wealth of knowledge and experience in such trades from her 17 years of working in various investment banks".[85] However, the plaintiff needed the defendant to pay for her share of the funds necessary for trading because her funds were tied up in other investments. The plaintiff also assured the defendant that whatever funds she contributed to the plaintiff's trading would be set-off against the 25% share in the Northvale property, if the

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81 Defendant's AEIC, para 35.

82 Defendant's AEIC, para 39.

83 Defendant's AEIC, para 40.

84 Defendant's AEIC, para 41.

85 Defendant's AEIC, para 42.

moneys were not repaid to the defendant.[86]

59 The defendant was convinced and so the two of them opened the IG Asia joint account. They agreed that the defendant would pay all the moneys needed for the trading first, with the plaintiff contributing her half-share later. Also, all profits and losses from trading on the IG Asia joint account would be borne equally.[87]

60 From the time the IG Asia joint account was opened in February 2008, pursuant to oral requests by the plaintiff and IG Asia, the defendant paid a net total US$1,443,275.00 and S$46,998.02 into the IG Asia joint account by 2016. These sums were completely depleted through trading.[88]

61 The defendant claimed to have herself only carried out a handful of trades relating to stock market indices, and that the bulk of the approximately 20,000 trades carried out over a period of about six years on the IG Asia joint account were carried out by the plaintiff alone.[89] Over the years, the defendant asked the plaintiff *orally* on various occasions to pay for her share of the losses on the account, but the plaintiff never made any payment. The defendant's evidence is that she put a stop to the funding arrangement in July 2016 in a phone call with the plaintiff. She informed the plaintiff she would be taking repayment in the form of the plaintiff's 25% share of the Northvale property in

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86 Defendant's AEIC, para 43.

87 Defendant's AEIC, para 44.

88 Defendant's AEIC, para 53.

89 Defendant's AEIC, para 49.

its entirety, which the defendant regarded as "vesting" in her as of July 2016.[90]

The defendant's access to the IG Asia accounts

62 I must first decide whether it was indeed true that it was the defendant who was in control of the IG Asia sole account (in the plaintiff's name) and the IG Asia joint account.

63 The plaintiff submits that she never received any email updates from IG Asia because it was the defendant who was in control of and had access to the email address "jess_ang59@yahoo.com.sg".[91] It was the defendant who set up this email address. She then used this email to send instructions to IG Asia and signed off in the name of the plaintiff.[92]

64 This submission is borne out by the evidence. All the emails sent by the plaintiff relating to the foreign currency investments with CIMB Bank and the Northvale property investment were sent from "abyjessie@yahoo.com".[93] It also does not make any sense to me why the plaintiff would have set up a separate email address, "jess_ang59@yahoo.com", just for the IG Asia accounts. The plaintiff's explanation that this latter email address was set up by the defendant is more consistent with the way the parties communicated with each other during the material time.

65 There was evidence of emails sent from "jess_ang59@yahoo.com.sg"

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90 Defendant's AEIC, paras 54–55.

91 Plaintiff's AEIC, para 48.

92 Plaintiff's AEIC, para 61.

93 Plaintiff's AEIC, pp 147–283.

to IG Asia, with the name of the plaintiff stated below.[94] But, in what appears to be a slip up by the defendant, on at least one occasion in November 2007, she sent an email from her own email address, "dtptl@yahoo.com.sg", to IG Asia to inform them about a transfer of moneys, but signed off *in the name of the plaintiff*.[95] There is no dispute that the email address "dtptl@yahoo.com.sg" is the defendant's email address which she uses regularly.

66 There were also several emails from the email address "jess_ang59@yahoo.com.sg" which were sent to staff at IG Asia relating to transactions on the IG Asia sole account, without seemingly being copied to any other person on the face of those emails.[96] But yet, it was *the defendant* who was able to produce these documents in discovery, and not the plaintiff. There is no credible explanation how the defendant could get hold of these emails. Although the defendant claimed on the witness stand that she was a "bcc" recipient of the emails,[97] I do not accept this belated explanation which did not appear in her affidavit of evidence-in-chief and was only given during cross-examination. It was open to the defendant to produce the native format of those emails to show that she was actually a "bcc" recipient but she chose not to do so. In my view, the inference must be that it was the defendant who was in control of and had access to the email address "jess_ang59@yahoo.com.sg".

67 There was evidence of emails from IG Asia to the defendant that showed

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94 Plaintiff's AEIC, para 63(1) and (2).

95 Plaintiff's AEIC, para 63(3).

96 AB 374.

97 Transcripts (27 February 2019) p 43 lines 1–8.

that she was in communications with the bank when there were margin calls.[98] It was the defendant who the bank's officers called on the phone for margin calls.[99]

68 Not only that, when the plaintiff contacted IG Asia after these proceedings commenced to ask about information in relation to the sole account, IG Asia responded on 27 February 2018 to state that:[100]

> The following information are [*sic*] currently registered on your trading account:
>
> Name: Bee Yian Ang [*i.e.*, the plaintiff]
>
> Email: dtptl@yahoo.com.sg
>
> Phone: XXXX2962
>
> Address:
>
> Blk XX Telok Blangah Heights
>
> #XX-317
>
> Singapore 100XXX

Apart from the name of the plaintiff, it is not disputed that all the contact information that IG Asia had on file belonged to the defendant. There was no explanation proffered by the defendant as to how this came to be. It appears that, at some point, IG Asia's records for the IG Asia sole account were updated with the defendant's email, home address and mobile phone number. The only reasonable inference I can draw was that it was *the defendant* who was in control of the IG Asia sole account and it was she who was in communications with IG

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98 AB 375–376.

99 AB 376.

100 Plaintiff's AEIC, para 61, p 374.

Asia all this while.

69 This is also supported by the evidence of the power of attorney of 3 October 2007 in the defendant's favour giving her full authority to operate the IG Asia sole account, including authority to trade on that account.[101] As to the reason for this power of attorney, the defendant claimed it was not her idea. She gave evidence, for the first time under cross-examination, that the plaintiff got her to sign the power of attorney by telling her this was necessary so that the defendant could keep funding the plaintiff's trading with the IG Asia sole account.[102] However, this makes no sense whatsoever because the terms of the power of attorney do not mention funding by third parties.

70 Under cross-examination, when the defendant was asked why the plaintiff would want to give her authority to trade on the IG Asia sole account by granting the power of attorney, the defendant could not give any sensible explanation save to claim that the plaintiff had the foresight in 2007 of planning to blame the defendant as the person who carried out the trading if the plaintiff were to make losses from the trading.[103] I find this attempt to attribute preternatural foresight to the plaintiff to be quite incredible.

71 As for the IG Asia joint account, it is undisputed that *only* the defendant's email address, "dtptl@yahoo.com.sg", was reflected in the account opening form for that joint account.[104] This appeared to be the email address for

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101 Plaintiff's AEIC, pp 379–380.

102 Transcripts (27 Feb 2019) p 69, lines 23–26.

103 Transcripts (27 Feb 2019) p 75 line 1 to p 76 line 7.

104 AB 378–380.

communications from the bank throughout the material time because, when IG Asia was asked to provide details that it had on file for this account in February 2018, the details provided were:[105]

> Name: Ms Ang Siew Fah & Ang Bee Yian
>
> Email: dtptl@yahoo.com.sg
>
> Phone:
>
> Day Phone: XXXX8543
>
> Evening Phone: XXXX3735
>
> Additional banners: Ang Siew Fah XXXX2962 / XXXX8543, Ang Bee Yian XXXX9556
>
> Address:
>
> XXX Bukit Batok St XX
>
> XX-110
>
> Singapore 650XXX

The plaintiff's unchallenged evidence is that, while the address was her home address, none of these phone numbers were hers.[106] Again, there was no explanation proffered by the defendant as to how these records came to reflect her email address and not the plaintiff's. In my judgment, it is quite clear that, from the time the IG Asia joint account was opened, it was the defendant who was in control of that account and in touch with the bank in relation to trades or other matters relating to that account.

72 Accordingly, I find that it was the defendant who was in control of the IG Asia sole account (in the plaintiff's name) and the IG Asia joint account.

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105 Plaintiff's AEIC, para 61(5).

106 Transcripts (26 February 2019) p 76, lines 15–30.

The margin trading on the IG Asia accounts

73 By the defendant's own admission, she was already carrying out margin trading with IG Asia before the plaintiff's IG Asia sole account was opened.[107] In the IG Asia joint account opening form which was filled up in January 2008, the defendant indicated under her "investment experience" that she traded in equities, foreign exchange, indices and commodities "daily" for ten years.[108] The defendant also accepted that she had the log-in details for the IG Asia joint account, and thus was in a position to trade on the account,[109] although she claimed belatedly on the witness stand that these details were given to her by the plaintiff.[110] As for the IG Asia sole account, while the defendant denied knowing the log-in details,[111] correspondence with IG Asia clearly shows that IG Asia treated the defendant as the account holder of the IG Asia sole account (in the plaintiff's name), and the margin calls in this regard were all directed at the defendant's email address, "dtptl@yahoo.com.sg".[112]

74 In contrast, the plaintiff has denied ever receiving any of these log-in details[113] and the defendant has not been able to show otherwise.

75 It was also undisputed that the defendant had signed three user

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107 Defendant's AEIC, para 35.

108 AB 379.

109 Defendant's AEIC, para 50.

110 Transcripts (27 Feb 2019), p 145, lines 21–25; p 150, lines 5–8.

111 Defendant's AEIC, para 50.

112 AB 375–377.

113 Plaintiff's AEIC, para 60.

agreements giving the two IG Asia accounts access to live market data.[114] As such data was important for trading, this is certainly consistent with the plaintiff's case that it was the defendant who was in control of the two IG Asia accounts and, without her knowledge at that material time, had been regularly trading on the two accounts.

76 I find that the evidence strongly suggests that it was the defendant who was the one who had been margin trading using both the IG Asia accounts. As mentioned above, it was her that IG Asia would contact on matters such as margin calls, and it appears that she was the only person in communication with the bank in relation to both the accounts. When one views this in light of the fact that the defendant was an experienced investor by her own admission, it is far more likely that she was the one who was responsible for the over 20,000 trades carried out on the two IG Asia accounts over the course of the approximately ten years from 2006.[115]

The funding agreement

77 An analysis of the contemporaneous events during the period when this margin trading took place shows the defendant's claim that there was a funding agreement with the plaintiff to be quite tenuous. On the IG Asia sole account, the defendant made 27 deposits of various sums to the account over a period of 3 years from November 2006 to October 2009 amounting to a net total of S$92,891.54.[116] Her evidence was that all these transfers were done at the

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114 AB 388–392.

115 Plaintiff's AEIC, para 61(10), pp 383–388.

116 AB 343.

plaintiff's requests to fund her trading.[117] She claimed that she continued transferring moneys to the plaintiff even though the trading was not going well and losses were consistently suffered by the plaintiff. Eventually, the entire amount was lost. The defendant's explanation under cross-examination was that she functioned only as a funder.[118] She did not care how the plaintiff traded. She did not care whether the plaintiff made losses or profits. She claimed that she was unconcerned because, at least initially, she felt that she was using the plaintiff's funds because she owed US$313,827.30 to her and held her 25% share in the Northvale property.[119]

78 There is a similar story in relation to the IG Asia joint account, except on a far grander scale. Initially, there was an amount of S$46,998.02 deposited by the defendant into the IG Asia joint account in various transfers from February 2008 to October 2009 to fund the plaintiff's margin trading.[120] This amount was completely lost. Subsequently, the defendant made 32 transfers totalling US$1,443,275.00 from February 2010 to October 2015 to this joint account.[121] All these were supposedly at the plaintiff's request to fund her trading. Some transfers were quite significant in amount. For example, there were six separate transfers that were equal to or more than US$100,000.[122] All these US dollar funds were eventually lost through margin trading.[123]

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117 Transcripts (27 February 2019), p 36, lines 2–27.

118 Defendant's AEIC, para 39–41; Transcripts (27 Feb 2019) p 59 lines 14–25.

119 Transcripts (27 Feb 2019) p 88 lines 2–18; Defendant's AEIC, para 41, 52.

120 AB p 365.

121 AB pp 364–365.

122 AB pp 364–365.

123 Defendant's AEIC, para 53.

79 Despite the mounting losses over the years, the defendant's evidence was that she dutifully complied with each request of the plaintiff for money without question or complaint. Under cross-examination, she said that she loved her sister and wanted to support her, despite her consistent failure to make money from trading.[124] While more and more funds were needed as the losses got progressively worse, the defendant claimed that she was not disappointed with the plaintiff, despite having to bear half of the losses on the IG Asia joint account. She claimed her confidence in the plaintiff was not shaken. She encouraged the plaintiff to try to do better.[125]

80 I find the defendant's evidence to be quite incredible. What makes her evidence particularly hard to accept is that, throughout this entire period of almost ten years of funding the plaintiff's trading and despite the significant losses, there is no evidence in the form of any email, text message, letter or any written communication which shows that the plaintiff ever asked her to fund the IG Asia accounts, or that the defendant had informed the plaintiff that she was going to transfer funds to the accounts pursuant to a request. There is not even any documentary evidence to show that the plaintiff and defendant had ever communicated about trading in the IG Asia accounts or about transfers of funds to those accounts. In other words, the defendant's case in this regard is based entirely on alleged *oral* discussions with the plaintiff over the years. I find this state of affairs to be most unusual, if it were true, in view of the number of transfers and the large sums involved. Also, the lack of any written evidence is quite inexplicable given that the two sisters communicated regularly through

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124 Transcripts (28 Feb 2019) p 153, lines 12–22.

125 Transcripts (28 Feb 2019) p 20, lines 19–27.

emails and text messages.

81 Some of the amounts deposited into the IG Asia accounts were also very specific in quantum. As examples, for the IG Asia sole account, in October 2007, there was a deposit of S$1,988.88 and, in November 2007, there was a deposit of S$1,995.55.[126] For the IG Asia joint account, there was a deposit in July 2010 for the amount of US$55,555.00.[127] When the defendant was asked in cross-examination how she could remember such details as to precisely how much to transfer since the plaintiff only made oral requests for funding and never sent anything to her in writing, the defendant's evidence was nothing short of astonishing. She claimed that the plaintiff would give her an approximate number over the phone, and she would then just add a bit more to the requested amount. The additional amount would make the transferred amount add up to a figure ending in "5" or "8" and this was done deliberately because those numbers had special significance to her.[128]

82 The defendant's evidence about the funding agreement for the IG Asia accounts is highly implausible. Her evidence is not only unsupported by the contemporaneous documentary evidence, but also contradicted by the emails exchanged between the parties during the material time.

83 Since late 2012 to 2013, the plaintiff had been sending emails to the defendant to pester her to return the US$313,827.30.[129] The defendant's

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126 AB p 343.

127 AB p 365.

128 Transcripts (27 Feb 2019) p 38 line 19–p 39 line 4.

129 Plaintiff's AEIC, para 12(9).

evidence during cross-examination was that the US$313,827.30 had been regarded as the plaintiff's contribution to the IG Asia joint account.[130] However, she also admitted that by December 2011, the US$313,827.30 that was owed to the plaintiff had been exhausted, as the defendant herself had injected more than US$630,000 to the IG Asia joint account,[131] half of which was on the plaintiff's behalf.[132] Yet, after December 2011, the defendant continued to fund the IG Asia joint account to the tune of hundreds of thousands of dollars[133] without a single email or text message from her, in reply to the plaintiff's increasingly agitated demands, referring to how it was actually the plaintiff who was indebted to her as a result of the funding arrangement.

84 To the contrary, in an exchange of SMS messages between the plaintiff and defendant in September and October 2013, the defendant clearly acknowledged that she owed the US dollar amount from the CIMB Bank foreign currency investments to the plaintiff:[134]

> [the plantiff]: I m not a fool anymore. U cheat me but u cant God. God know all yr dirty deeds. Come to money u got no conscience. I want my money back. (15 September 2013)
>
> [the defendant]: I guarantee u that in jan 13, when the fd is due, u get back yr usd and u return the sgd to me in exchange. (15 September 2013)
>
> …
>
> [the plaintiff]: What is e Usd FD rate n period. My money in FD since which yr. (20 September 2013)

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130 Transcripts (28 Feb 2019) p 21 line 5–p 22 line 4.

131 AB 343, 364–365.

132 Transcripts (28 Feb 2019) p 21, lines 10–31; AB 364–365.

133 AB 364–365.

134 AB 409; Plaintiff's Bundle of Documents, 6.

> [the plaintiff]: Can u confirm yr promise to return me e usd 300++ I hv paid for it. I m broke now. Unless SC can return me. (3 October 2013)
>
> [the defendant]: How many times u want me to promise? I already promise and once is enough. cc Eunice (3 October 2013)
>
> [the plaintiff]: Pls inforrm when u retturn me (3 October 2013)
>
> [the defendant]: In end jan 2014, u repay me the sgd and I return u the usd. (3 October 2013)
>
> [the plaintiff]: E usd300++ was debit fm my sgd ac. Why still wan me to give sgd. (3 October 2013)
>
> [the defendant]: There's a lot of yr usd that i m holding for u cos the bank debit my sgd bank a/c. U promise to return the sgd to me in exchange for that lot of usd. FYI, i m poorer than u as SC has caused me to lose all my sgd savings. (3 October 2013)

85 Several points in relation to the above exchange of SMS messages were made clear when the defendant was cross-examined. First, the defendant accepted that the first reference to "January 2013" was in error and should be to "January 2014".[135] Second, she accepted that she and the plaintiff were discussing the return of the amount of US$313,827.30 that was due to the plaintiff. Third, she insisted that she was only offering to return the amount of US$313,827.30 if the plaintiff paid her back the equivalent in Singapore dollars, that is, approximately S$450,000, based on the exchange rate prevailing at that time.[136]

86 On this third point, I do not accept that the defendant was telling the truth. This can be seen from her last response sent on 3 October 2013 that is quoted above. That made it clear that, when she was referring to the plaintiff having to return her Singapore dollars, she was actually referring to an issue that

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135 Transcripts (28 Feb 2019) p 113, lines 26–28.

136 Transcripts (28 Feb 2019) p 113, lines 16–23.

had arisen about two years earlier in 2011. In August 2011, the defendant had sent an email to the plaintiff to inform her that CIMB Bank had in 2009 wrongly debited S$100,000 from her savings account, instead of the plaintiff's savings account, when she asked for a conversion to US dollars from the foreign currency investments.[137] As a result, US$69,832.40 was being held by the defendant for the plaintiff, in respect of which the defendant expected the plaintiff to repay her S$100,000, the Singapore dollar equivalent.

87 This issue was then resolved when the two of them agreed that the defendant would keep the US$69,832.00, thus reducing the amount that was owed to the plaintiff from US$383,659.70 to US$313,827.30. This can be seen from the difference in the figures set out by the defendant in her emails to the plaintiff as being owed to the latter in 2010 as compared to in 2011.[138] The defendant also accepted under cross-examination that the issue of the wrongful debit of her savings account by S$100,000 to convert to US$69,832.40 was something that had been "settled".[139]

88 For the above reasons, I find that the defendant must have been referring to the settled issue of the wrongful debit of her CIMB Bank account when she referred to the returning of Singapore dollars by the plaintiff in the SMS exchange of September and October 2013. It is possible that the defendant might have forgotten at that time that the issue had been resolved. Or, she might have been trying to obfuscate. Whatever might be the case, I am satisfied that the SMS messages sent by her constitute a clear admission of the debt of

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137 AB 35.

138 AB 26–34.

139 Transcripts (28 Feb 2019) p 117, lines 45–9.

US$313,827.30 owed to the plaintiff.

89 The following SMS exchange on 3 January 2014 between the plaintiff and defendant only serves to confirm my conclusion:[140]

> [the plaintiff]: Pls credit rental n send excel file. You promise to return my usd on Jan 13 2014. Pls send details of update. I need to go bank to open usd ac. Pls confirm date.
>
> [the defendant]: I said by jan 2014.
>
> [the defendant]: When did I said 13 jan

90 Quite clearly, the defendant was acknowledging that the US dollar amount from the foreign currency investments had to be repaid to the plaintiff in January 2014. I can find no sensible reason for the defendant not to have raised in all these SMS messages the sizable amounts allegedly owed by the plaintiff to the defendant if it were at all true that the defendant had funded the plaintiff's margin trading. I do not accept the defendant's explanations about sisterly love, support and restraint because it is quite clear from the tone of the messages that the relationship between the two of them was quite strained at that time and, in fact, got progressively worse. The only conclusion I can draw from the complete absence of any reference to this funding agreement is that the defendant has concocted this story to frustrate the plaintiff's claim.

The set-off agreement

91 The alleged set-off agreement had two parts. In relation to the US$313,827.30, the defendant claimed that she had informed the plaintiff that the sum would be applied to set-off what was owing to the defendant pursuant

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140 AB 410.

to the funding agreement.[141] As for the plaintiff's 25% share in the Northvale property, the plaintiff allegedly gave assurances to the defendant that it could be set-off against the debts which the plaintiff owed to the defendant under the funding agreement.[142] On my analysis of the evidence, the defendant's explanations cannot withstand scrutiny.

92 As explained at [83] above, the defendant accepted that, by December 2011, the amount the plaintiff allegedly owed her as a result of the funding of the IG Asia accounts exceeded the amount of US$313,827.30 owed to the plaintiff.[143] Despite this, the defendant did not mention this and did not protest when she received the plaintiff's incessant demands for the return of US$313,827.30 in late 2012 and through 2013.

93 As regards the Northvale property, the defendant accepted under cross-examination that, if one were to treat the plaintiff's 25% share of the property as being valued at S$200,000, then by January 2012, the defendant would have been entitled to appropriate the plaintiff's interest in the Northvale property in satisfaction of the debts owed by the plaintiff.[144] However, the defendant continued to pay the plaintiff her 25% share of the net rental proceeds after January 2012[145] and allegedly continued to fund her trading by depositing another US$420,555 in the IG Asia joint account in 2015.[146] Given the

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141 Transcripts (28 Feb 2019) p 21 line 5–p 22 line 4; Defendant's AEIC, para 65.

142 Transcripts (27 Feb 2019) p 26 line 31–p 27 line 9.

143 AB 343, 364–365.

144 Transcripts (28 Feb 2019) p 91 line 26–p 92 line 6.

145 Defendant's AEIC, para 30.

146 AB 364.

defendant's insistence in her oral evidence that she was not concerned about funding the plaintiff's trading activities because of her right of set-off,[147] she was asked in cross-examination why she did not express any concern in any written communication *after* January 2012 when the funding she provided exceeded the value of her alleged set-off rights. To this, she struggled to give any coherent explanation.[148]

94 Further, the defendant's evidence that she only decided to exercise her right of set-off and appropriation of the plaintiff's property interest in July 2016 after the plaintiff asked her for more funds to continue margin trading[149] is also completely unsupported by any documentary evidence or written communications.

95 The defendant's own conduct when she dealt with the distributions of the net rental proceeds to the plaintiff and Eunice is enlightening. As already mentioned, from October 2008 to July 2016, the defendant sent regular emails to her two sisters to inform them about the net rental proceeds. In many of these emails, when she calculated the net amounts she would pay to the plaintiff and/or Eunice, the defendant would make very precise deductions of relatively small amounts that she had paid on behalf of her sisters.

96 For example, in an email in September 2012, the defendant informed the plaintiff that she had transferred the sum of S$988.73 to the plaintiff as her share

147 Transcripts (27 Feb 2019) p 29 lines 22–26.

148 Transcripts (28 Feb 2019) p 93 lines 4–26.

149 Defendant's AEIC, para 54.

of the Northvale property net rental proceeds for May to August 2012.[150] The defendant explained in that email that this was "$1024 share of rental for May to Aug 12 less 35.27 paid on 8 Sep to Starhub for Brandon's mobile". Brandon is the plaintiff's son. In another email sent in October 2012, the defendant informed the plaintiff that she had transferred S$647 as the "Sep 2012 rental for Northvale",[151] explaining that this was "$671 share of rental for Sep 12 less $24 share for paymt of Aug 12 Starhub TV".

97 The meticulous manner in which the defendant would regularly set-off these small amounts owed to her against the plaintiff's share of the net rental proceeds is completely at odds with the defendant's evidence that she was unconcerned about the sizable amounts owed by the plaintiff to her. It also puts paid to her repeated assertions in her oral evidence that she was unconcerned about people owing her money,[152] and that "[d]ollars and cents don't come into blood relations".[153] In short, I find her evidence about the set-off agreement to be quite unbelievable. Her conduct betrays the true picture.

98 Ultimately, I have to assess the credibility of the plaintiff and defendant when it came to the question of who actually carried out the trades in the two IG Asia accounts. The trades that had been conducted were of a sophisticated nature. For example, the IG Asia joint account had been utilised to conduct foreign exchange trading on margin.[154] Trading on margin involves the investor

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150 AB 137.

151 AB 139.

152 Transcripts (27 Feb 2019) p 27, lines 24–29; p 29, lines 15–30; p 88, lines 2–18.

153 Transcripts (27 Feb 2019) p 32, line 32.

154 AB pp 350–351.

paying for only a percentage of the security or asset, while borrowing the remainder from the bank. The bank acts as a lender and the securities and/or assets which remain in the investor's account act as collateral for the bank's loan. As the value of these securities and/or assets fall, the investor may be required to top up the account to a minimum level before further trades may be conducted. In so doing, risk to the bank is minimised.

99 In my judgment, the plaintiff did not come across as someone who was sophisticated or knowledgeable about margin trading. Her evidence was that she was not experienced in investing and was not a risk-taker.[155] While she had declared in the account opening form for the IG Asia joint account that she understood the nature and risks of margined transactions and that she had experience in such trades, I accept her explanation that she had made these declarations on the defendant's instructions.[156] Her answers to the open-ended questions in the form were exactly the same as the defendant's, which gave credence to her explanation that she had acted entirely on the defendant's instructions. For example, both of them declared in their respective forms that they had traded in "Equities, FX, Indices, Commodities daily for 10 yrs", and that they had dealt with the *same* stockbrokers, namely "Philip Securities, DBS, UOB".[157] There was no evidence before me which suggested that the plaintiff was untruthful about her lack of trading experience. She came across as a candid witness who was genuinely troubled by the defendant's conduct.

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155 Transcripts (22 Feb 2019) p 84, lines 27–29.

156 Transcripts (26 Feb 2019) p 112, lines 24–25.

157 AB pp 379 and 381.

100 In contrast, the defendant was a seasoned investor.[158] In the course of conducting margin trades on IG Asia's platform, the defendant also received multiple emails requesting for her to deposit money to the IG Asia joint account so as to bring the account back up to the minimum value to continue trading.[159] Between the two of them, the defendant quite clearly dominated when it came to questions of trading and investments. The defendant also struck me as being an extremely clever individual, who was always ready with a glib answer for any question that was asked of her in cross-examination, as one can see from the examples I have cited above. There is little difficulty to conclude that between the two of them, the plaintiff was the more credible witness.

101 For the above reasons, I have no hesitation in rejecting the defendant's evidence about the set-off agreement with the plaintiff.

Does a proprietary estoppel arise to extinguish the plaintiff's 25% share of the Northvale property?

102 To recapitulate, the defendant's case in this regard is that the plaintiff made oral representations to her that she could appropriate the plaintiff's 25% interest in the Northvale property if the plaintiff could not pay her what was owed arising from the funding agreement.

103 Given my findings above that there were no funding or set-off agreements to which the parties had agreed, there is no basis for this claim of proprietary estoppel. In short, I do not accept that the plaintiff had made the representation to the defendant as alleged. In any event, I have my doubts that

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158 Transcripts (27 Feb 2019) p 156, lines 1–8.

159 AB pp 375–377.

the doctrine of proprietary estoppel could apply on the facts as asserted by the defendant, *even if* those facts were established. But, given that it is no longer necessary for me to express a view in this respect, I shall say no more about it.

Are the plaintiff's claims barred?

104 The defendant's case in this respect is that the plaintiff's claims in relation to the sum of US$313,827.30 and her 25% share in the Northvale property are barred under various provisions of the Limitation Act or by the doctrine of laches. The plaintiff denies this. She also argues, in any event, that the defendant has admitted her claims so there is no issue of time bar.

The claims in relation to the sum of US$313,827.30

105 The defendant relies on ss 6(1)(*a*) and/or 6(7) of the Limitation Act to argue that the plaintiff's claims for breach of contract and fiduciary duties are time-barred. These provisions are set out as follows:

> 6.—(1) Subject to this Act, the following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued:
>
> (*a*) actions founded on a contract or on tort; …
>
> (7) Subject to sections 22 and 32, this section shall apply to all claims for specific performance of a contract or for an injunction or for other equitable relief whether the same be founded upon any contract or tort or upon any trust or other ground in equity.

106 The defendant submits that the plaintiff's causes of action accrued in or around December 2009 when the defendant transferred the proceeds from the foreign currency investments from the DCI account, which was a joint account, to her personal account in CIMB Bank. Since this suit was only commenced on 21 November 2017, after the six-year limitation period, the plaintiff's claims are time-barred.

107 I am unable to agree with the defendant's argument as to when the plaintiff's causes of action for the recovery of the US$313,827.30 accrued. On my analysis of the evidence of both parties, I find that the positions of the plaintiff and defendant in relation to this US dollar amount are actually more nuanced. It is true that the parties had agreed that the defendant would invest the plaintiff's money in foreign currency investments with CIMB Bank, and return the proceeds to the defendant when the investments matured. It is also true that the defendant, for reasons best known to herself, deposited the proceeds from the maturity of the investments into her personal account with CIMB Bank, without first seeking the plaintiff's consent, sometime in or around December 2009.

108 However, when the plaintiff first discovered that this had happened, she did not immediately demand the return of her money. Instead, after the defendant explained to the plaintiff that the money had been converted to US dollars and placed in fixed deposits that were rolled over periodically, the plaintiff appeared content to leave the money with the defendant for the time being.[160] The defendant would then provide the plaintiff with occasional updates on the interest being earned by placing her money on short-term fixed deposits that were rolled over every month.[161] The plaintiff would also occasionally send emails to ask the defendant for updates on the amount of interest being earned and the US dollar exchange rates.[162] This suggests to me that the parties had reached an agreement, through their conduct, that the defendant would hold the

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160 Plaintiff's AEIC, para 12(5)–12(8).

161 AB 30–31.

162 AB 32.

plaintiff's money for the time being in fixed deposits to earn interest, until such time that the plaintiff asked for the money to be returned to her. From the written evidence, the first time that the plaintiff asked the defendant for the return of her monies is sometime in September 2012.[163] This was not complied with. In my judgment, this was when the plaintiff's causes of action for the return of the sum of US$313,827.30 arose. As the suit was commenced on 21 November 2017, the proceedings were thus commenced within the six-year limitation period, and the plaintiff's claims are not time-barred.

109 In the alternative, the plaintiff relies on s 26(2) of the Limitation Act,[164] which restarts the limitation period at the time the debtor acknowledges the debt or liquidated pecuniary claim. This provision states:

> Where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to the personal estate of a deceased person or to any share or interest therein, and the person liable or accountable therefor acknowledges the claim or makes any payment in respect thereof, the right shall be deemed to have accrued on and not before the date of acknowledgment or the last payment.

110 On this point, section 27(1) of Limitation Act is also relevant. That sub-section provides that "[e]very such acknowledgement as is referred to in section 26 shall be in writing and signed by the person making the acknowledgement".

111 In *Ang Sin Hock v Khoo Eng Lim* [2010] 3 SLR 179, the Court of Appeal held that a written undertaking that the respondent would pay the sums owed constituted an acknowledgment of the debt, which effected an extension from

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163 AB 36.

164 Plaintiff's Closing Submissions, para 20.

which the six-year time period started to run. Here, for the reasons I have set out at [84] to [90] above, I similarly find that the defendant has made a clear acknowledgement of the debt of US$313,827.30 owed to the plaintiff in the SMS exchanges in September to October 2013, and again in January 2014.

112 The defendant submits that the SMS messages do not fulfil the requirement in s 27(1) of the Limitation Act of being "in writing and signed by the person making the acknowledgement". The defendant points out that the SMS messages are not signed by the defendant since her name did not even appear. I do not accept this submission.

113 "As a matter of general principle, a document is deemed signed by the maker of it when his name or mark is attached to it in a manner which indicates, objectively, his approval of the contents": *Singapore Civil Procedure* vol 2 (Chua Lee Ming gen ed) (Sweet & Maxwell, 9th Ed, 2019) at para D/27/3. In *SM Integrated Transware Pte Ltd v Schenker Singapore (Pte) Ltd* [2005] 2 SLR(R) 651, the court held that where a line reading "From: 'Tan Tian Tye' <tian-tye.tan @schenker.com>" was appended to near the start of an email, this constituted a signature, even though the party did not append his name at the end of the email. The omission to type in his name was "due to his knowledge that his name appeared at the head of every message … so clearly that there could be no doubt that he was intended to be identified as the sender" (at [92]).

114 The defendant does not dispute that it was she who was corresponding with the plaintiff by SMS messages. These SMS messages were sent by the defendant from her mobile phone, and would have appeared as such on the plaintiff's mobile phone. In my view, the requirement of the SMS messages being "signed" is fulfilled by how the SMS messages were sent by the defendant

from her mobile phone and the fact that the defendant's name was appended in front of each message, the plaintiff evidently having saved the defendant's number in her phone under "Diana". That this was how the messages would appear to the plaintiff was obviously something the defendant knew. This suffices to indicate the defendant's objective approval of the contents of the SMS messages, *which she does not dispute in any case*. I draw support from the Malaysian Federal Court of Appeal decision in *Yam Kong Seng & Anor v Yee Weng Kai* [2014] 4 MLJ 478, where the same view was taken by the court in deciding that SMS messages were "signed" acknowledgements in the context of an *in pari materia* statutory provision on limitation.

115 Quite apart from the acknowledgement of the debt of US$313,827.30 via the SMS messages, a review of the defence and counterclaim filed by the defendant also shows quite clearly that there is really no arguable issue of time-bar. In her defence and counterclaim, as I have already explained at [22] to [26] above, the defendant does not deny that she owed the sum of US$313,827.30 to the plaintiff. The thrust of her defence is that this sum had been set-off against what was owed by the plaintiff to the defendant arising from the funding and set-off arrangements.[165] I am of the view that this pleading itself was an acknowledgment of the debt owed by the defendant, notwithstanding how the defendant does go on to plead that the debt had been extinguished by reason of a set-off. That a pleading may contain an acknowledgment of a claim for the purposes of re-setting the time bar is not controversial. An example was in the case of *Murakami Takako (executrix of the estate of Takashi Murakami Suroso, deceased) v Wiryadi Louise Maria and others* [2007] 4 SLR(R) 565

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165 DCC, paras 25–27, 37.

("*Murakami*"), where the Court of Appeal found that an earlier version of a statement of claim, which had then been amended, had acknowledged the defendant's claim to an interest in certain real property in Singapore. The effect was that the defendant's counterclaim was accordingly not time-barred: *Murakami* at [39]–[40].

116 For the above reasons, I am unable to accept the defendant's submission that the plaintiff's causes of action are time-barred under ss 6(1) and 6(7) of the Limitation Act.

117 But that is not the end of the inquiry. I have found at [37] to [45] above that the defendant had assumed fiduciary duties *vis-à-vis* the plaintiff insofar as the proceeds from the foreign currency investments were concerned, that is, the sum of US$313,827.30. In breach of her fiduciary duty, the defendant failed to account for this sum by not returning the said sum to the plaintiff when there was a demand for this to be done. In such a case, a constructive trust arises by operation of law, as the circumstances in which the defendant came into ownership of the sum of US$313,827.30 make it unconscionable for her to assert her own beneficial interest and to deny the beneficial interest of the defendant in the sum: *Paragon Finance plc v D B Thakerar & Co (a firm)* [1999] 1 All ER 400 ("*Paragon Finance*") at 409. As explained in *Snell's Equity* (John McGhee ed) (Sweet & Maxwell, 33rd Ed, 2015) at para 21-024:

> … A constructive trust commonly arises where it would be unconscionable for the owner of property to assert his own beneficial ownership in the property and deny the beneficial interest of another. The effect of the trust is to make the defendant give restitution of property that he had acquired by an equitable wrong …

Hence, due to her breach of fiduciary duty, the sum of US$313,827.30 is held

on constructive trust for the plaintiff, and the defendant is liable to give restitution to the plaintiff for such sum.

118 The plaintiff's cause of action for recovery of this sum held on constructive trust by the defendant is potentially impacted by s 22 of the Limitation Act,[166] which provides:

> 22.—(1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action —
>
> (*a*) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy to; or
>
> (*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.
>
> (2) Subject to subsection (1), an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of 6 years from the date on which the right of action accrued.

119 In *Yong Kheng Leong and another v Panweld Trading Pte Ltd and another* [2013] 1 SLR 173 ("*Panweld*"), the Court of Appeal explained that there are two classes of constructive trusts, and that only the first of the two classes, termed Class 1 constructive trusts, fall within the ambit of s 22 of the Limitation Act (at [51]). Hence, for s 22 of the Limitation Act to even apply, it must first be determined that the defendant holds the sum of US$313,827.30 as a Class 1 constructive trustee. The distinction between the two classes were explained by Millett LJ in *Paragon Finance* at 409 (cited in *Panweld* at [45]):

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166 DCC, para 36; Defendant's Closing Submissions, para 305.

> … In the first class of case … the constructive trustee really is a trustee. He does not receive the trust property in his own right but by a transaction by which both parties intend to create a trust from the outset … His *possession of the property is coloured from the first by the trust and confidence by means of which he obtained it, and his subsequent appropriation of that property to his own use is a breach of that trust.* …
>
> The second class of case is different. It arises when the defendant is implicated in a fraud. Equity has always given relief against fraud by making any person sufficiently implicated in the fraud accountable in equity. In such a case he is traditionally though I think unfortunately described as a constructive trustee and said to be 'liable to account as constructive trustee'. Such a person is not in fact a trustee at all, even though he may be liable to account as if he were. …
>
> [emphasis added]

120 The distinction between the two classes of constructive trustees was applied to the facts of *Panweld.* In that case, a company director paid his wife salary out of the company's assets for over 17 years even though she was never an employee of the company. In the circumstances, the court held that he was a Class 1 constructive trustee. This was because "[h]e was, by virtue of his directorship, lawfully able to deal with [the company's] assets, albeit in accordance with his fiduciary duties" as a director (*Panweld* at [48]). By thereafter unlawfully disposing of the company's assets to his wife, he was in breach of the trust and confidence placed in him as a director, and he fell squarely within the description of a Class 1 constructive trustee.

121 Similarly, in the present case, the plaintiff entrusted her moneys with the defendant for the purposes of the foreign currency investments, and the resulting proceeds was the sum of US$313,827.30. In breach of her fiduciary duties in respect of that sum, the defendant refused to return the sum to the plaintiff when the plaintiff so requested. The defendant is accordingly a Class 1 constructive trustee, and s 22 of the Limitation Act therefore applies.

122 Applying s 22 of the Limitation Act, the plaintiff's claim that the defendant is a constructive trustee for the sum of US$313,827.30 will be time-barred unless she is able to establish fraud or a fraudulent breach of trust, or that the defendant has converted the trust property to her own use, or is still in possession of the trust property. In my judgment, since it is the defendant's own evidence that she had regarded the sum of US$313,827.30 as the plaintiff's contribution to the funding arrangement which I have found to be concocted (at [90]), the sum clearly has been converted to the defendant's own use. Hence, I find that no time bar arises in relation to this proprietary claim.

The claims in relation to the Northvale property

123 For the Northvale property, the plaintiff seeks a declaration that she is a 25% owner of the property and for an order that the land-register be rectified to reflect her ownership. The relief can be granted given my earlier finding at [48] that the defendant holds the plaintiff's 25% interest in the property on a resulting trust. No issue of time bar arises in this regard, as s 22(1)(*b*) of the Limitation Act prescribes an exception in cases where a beneficiary seeks recovery of trust property in the possession of the trustee.

124 However, the plaintiff also seeks an order that the defendant give an account of the expenses and rental proceeds arising from the Northvale property. The defendant relies again on s 6(7) of the Limitation Act, which has been referred to above, to argue that the cause of action for an account is time-barred. The defendant submits that the plaintiff's cause of action for an account of rental proceeds accrued in or around October 2008. That was when the defendant started providing statements of account for the expenses incurred and the rental proceeds earned from the Northvale property to the plaintiff. The

defendant argues that, if there were any shortfall in the rent due to her or any improper deductions, the plaintiff should have been aware of it by then and commenced any proceedings within six years.[167]

125 In response, the plaintiff relies on s 22(1) of the Limitation Act, which has been set out above at [118], to argue that her claim for an account of the rental proceeds *prior to* 21 November 2011 (six years before the present suit was commenced on 21 November 2017) is not time-barred.[168] Section 22(1) of the Limitation Act deals, *inter alia*, with situations where there has been a fraud or a fraudulent breach of trust, or where there is an action to recover trust property from the trustee which has been converted by the trustee.

126 The plaintiff submits that both s 22(1)(*a*) and (*b*) would apply. This is because there was a fraudulent breach of trust by the defendant in dishonestly overcharging the plaintiff for the upkeep of the Northvale property. Also, by making unnecessary and inappropriate deductions from the gross rental proceeds, the defendant had converted a portion of the rental proceeds, which constitutes trust property.

127 While I agree that s 6(7) of the Limitation Act is relevant because, as pointed out by the defendant's counsel, it refers to all claims for equitable relief, including the obligation to account to the beneficiary for income earned from trust property, I have some difficulty with the defendant's submissions on this issue of time-bar. In particular, I disagree with the defendant that the cause of action accrued from as early as 2008, when she started sending statements of

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167 Defendant's Closing Submissions, para 209.

168 Plaintiff's Opening Submissions, para 24.

account, and when the plaintiff was in a position to ask for an account if she felt that what was being provided was inadequate.[169]

128 In this regard, s 6(2) of the Limitation Act states that "[a]n action for an account shall not be brought in respect of any matter which arose more than 6 years before the commencement of action". In *Ang Toon Teck v Ang Poon Sin* [1998] SGHC 67, it was held that a cause of action for an account arises when the accounting party has assets of the claimant in his hands for which he is liable to account, unless there is an agreement or other arrangement between them that the liability to account would only arise at a later time (at [67]–[68]). Applying that principle, the defendant's equitable obligation to account to the defendant for the rental proceeds would accrue from the time she received the rental income earned from the Northvale property. Considered with s 6(2) of the Limitation Act, the defendant would *prima facie* only be liable to account for the rental received in the six years prior to the commencement of this suit.

129 As for the plaintiff's reliance on s 22(1) of the Limitation Act, I find her arguments in that regard to be unsustainable. In relation to s 22(1)(*a*), there is simply insufficient evidence before me to show that there was fraud on the part of the defendant in the manner in which she accounted for the expenses and net rental proceeds. The evidence showed that there might be a difference of opinion as to what the defendant was entitled to deduct as expenses in computing the net rental proceeds, or that the defendant might inadvertently have made some errors in her deductions because she relied on estimates, for example, of property tax payable rather than the actual figures. Such conduct

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169 Defendant's Closing Submissions, para 209.

does not amount to fraud. Dishonesty must be established by the plaintiff, which has not been done. As Vinodh Coomaraswamy J stated at [196] of *Lim Ah Leh v Heng Fock Lin* [2018] SGHC 156, when discussing the requirement of fraud:

> The meaning of "fraud" and "fraudulent" for the purposes of s 22(1)(*a*) is well established. In *Armitage v Nurse and Others* [1998] Ch 241 at 260F ("*Armitage*"), Millett LJ held that for the purposes of s 21(1)(*a*) of the English Limitation Act 1980 (which is *in pari materia* with s 22(1)(*a*) of our Limitation Act), ***"fraud" requires dishonesty*** and that dishonesty is defined as follows (at 251E–F): "[i]f [a trustee] acts in a way which he does not honestly believe is in the interests of the beneficiaries then he is acting dishonestly". [emphasis added in bold italics]

130 As for s 22(1)(*b*) of the Limitation Act, I do not accept that it has been shown on the evidence that the defendant has converted a part of the rental income to her own use, or still retains possession of that portion of the rental income that should have been paid over. It is alleged that the defendant made an over-deduction of expenses, for example, by deducting a sum as property tax which is higher than what was actually levied by the Comptroller,[170] but it does not follow from this that the excess amount charged has been converted by the defendant or is still in the possession of the defendant. This has not been established on the evidence. Therefore, the exceptions in s 22(1)(*b*) do not assist the plaintiff in overcoming the six-year limitation period for an action for an account.

131 On my analysis of the evidence and the parties' respective positions, I find that the plaintiff's real complaint is that she wants the defendant to continue

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[170] Plaintiff's Opening Submissions, paras 66–67; Plaintiff's Closing Submissions, para 124.

giving an account of the rental proceeds from the Northvale property. This was what the defendant was doing up to July 2016. Throughout the period when accounts were furnished from October 2008 to July 2016, there was no evidence that the plaintiff had raised any complaint that the accounts were inaccurate or wrong, or that there had been any wrongful deductions from the gross rental proceeds. It is only from July 2016 that the defendant stopped giving an account of the rental proceeds. That was when the plaintiff raised her complaint. Further, it was only then that the plaintiff looked carefully at the expenses that had been deducted over the years, giving rise to the allegations in these proceedings that the defendant had made improper deductions. However, as per s 6(2) of the Limitation Act, she is limited to an account only for the six years prior to the date she commenced these proceedings given her inability to establish fraud, or that the wrongfully withheld rental proceeds are still in the possession of the defendant, or had been converted by the latter.

132 I thus find that the plaintiff is entitled to an account of the expenses and rental proceeds from the Northvale property from 21 November 2011, being six years before the commencement of this suit. The expenses and outgoings in relation to the property must be shared between the three sisters in proportion to their ownership shares. The same manner of division applies to the net rental proceeds. After a proper and full account is given, the defendant must pay over to the plaintiff her share of the net rental proceeds, insofar as such payment has not already been made.

Doctrine of laches inapplicable

133 For completeness, I find that the plaintiff's causes of action are not barred by the doctrine of laches. In *Chng Weng Wah v Goh Bak Heng* [2016] 2

SLR 464 at [44], the Court of Appeal affirmed the following principles in *Cytec Industries Pte Ltd v APP Chemicals International (Mau) Ltd* [2009] 4 SLR(R) 769 at [46]:

> Laches is a doctrine of equity. It is properly invoked where essentially there has been a *substantial lapse of time* coupled with circumstances where it would be *practically unjust to give a remedy* either because the party has by his conduct done that which might fairly be regarded as *equivalent to a waiver* thereof; or, where by his conduct and neglect he had, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him, if the remedy were afterwards to be asserted … [emphasis added]

134 As seen from the above, the defendant has been able to tender a significant amount of documentary evidence in her attempt to defend the plaintiff's claims, be it in the form of email correspondence or documents relating to the Northvale property and the rental proceeds thereof. Insofar as no documentary evidence was tendered in relation to the alleged funding agreement and set-off agreement, it was the defendant's own evidence that she had funded the IG Asia accounts based on the plaintiff's *oral* instructions,[171] and that the set-off had been based on *oral* representations on the plaintiff's part.[172] Hence, the lack of documentary evidence with regard to the funding and set-off agreements is not caused by the lapse of time, as no documentary evidence in fact existed for those agreements. Accordingly, it would not be practically unjust to give the plaintiff the remedies sought, in particular as her conduct cannot be regarded as having been equivalent to a waiver of her claims. From as early as 2012, the plaintiff had repeatedly sent emails and SMS messages to the defendant, pestering her for the return of the US$313,827.30 and the

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171 Defendant's AEIC, paras 39, 40, 47.

172 Defendant's AEIC, paras 47, 55, 66.

proceeds thereof.[173] Also, it had never been disputed that the plaintiff had paid for her 25% share in the Northvale property, and the defendant dutifully paid over the plaintiff's share in the net rental proceeds of the property until July 2016.[174] The matters relating to the property only came into issue in May 2016, when the plaintiff asked for her name to be reflected on the land register,[175] and the defendant subsequently stopped providing tabulated accounts and paying the plaintiff her share of the rental proceeds.[176]

Remedies and conclusion

135 For the reasons set out above, I allow the claims of the plaintiff as follows.

136 In relation to the foreign currency investments, I order the defendant to pay the sum of US$313,827.30 to the plaintiff, and interest at the usual rate from the date of the writ. I also declare that the defendant holds the said sum of US$313,827.30 (with interest), and all traceable proceeds or assets thereof, on constructive trust for the plaintiff. In this regard, I order the defendant to provide the plaintiff with an account from 6 September 2012 in respect of the said sum and all its traceable proceeds; 6 September 2012 is the date when the plaintiff first asked for the return of the sum after initially acquiescing to placing the sum in the defendant's personal account to earn interest.[177]

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173 Plaintiff's AEIC, para 12(5)–12(9).

174 Plaintiff's AEIC, para 26.

175 Plaintiff's AEIC, para 22.

176 Plaintiff's AEIC, paras 26–27.

177 Plaintiff's AEIC, para 12(1)–12(9).

137 In relation to the Northvale property, I declare that the defendant holds a 25% share of the property on resulting trust for the plaintiff. I order that the defendant takes immediate steps, at her own cost, to rectify the land-register to properly reflect that the plaintiff is a tenant-in-common at law with a 25% share of the property, with the defendant and Eunice holding 50% and the remaining 25% respectively.

138 I decline to make an order that the property be sold because, if such a remedy was desired, Eunice should have been made a party to these proceedings.

139 I also order that the defendant is to give an account of the expenses and rental proceeds from the Northvale property commencing from 21 November 2011. After the account is given, insofar as the plaintiff has not been paid her rightful 25% share of the net rental proceeds, the defendant is ordered to pay over such amount to her.

140 Given that my orders above effectively cover the reliefs that the plaintiff has sought in her alternative claim in unjust enrichment,[178] I do not find it necessary to deal with her arguments regarding that cause of action.

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178 SOC, paras 13(3), 22(3).

141 Needless to say, given my findings, the defendant's counterclaims are dismissed in their entirety.

142 I will hear parties separately on the question of costs.

Ang Cheng Hock
Judicial Commissioner

Ng Yi Ming Daniel and Chan Wai Kit Darren Dominic (Characterist LLC) for the plaintiff;
Tan Sia Khoon Kelvin David, Vicki Heng Su Lin and Sara Ng Qian Hui (Vicki Heng Law Corporation) for the defendant.