

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

**[2023] SGHC(A) 32**

Appellate Division / Civil Appeal No 74 of 2022

Between

Tan Siew Hui

*... Appellant*

And

- (1) Lim Lai Soon
- (2) Tan Hong Sin
- (3) Koh Choon Heong

*... Respondents*

Appellate Division / Civil Appeal No 77 of 2022

Between

- (1) Tan Hong Sin
- (2) Philip Tan Pei Yeanz

*... Appellants*

And

- (1) Lim Lai Soon
- (2) Koh Choon Heong
- (3) Tan Siew Hui

*... Respondents*

In the matter of Suit No 704 of 2018

Between

Lim Lai Soon

*... Plaintiff*

And

- (1) Tan Hong Sin
- (2) Friendlypack Sdn Bhd
- (3) Duramin Sdn Bhd
- (4) Friendlypack (S) Pte Ltd
- (5) Friendly Pack (Thailand) Co  
Ltd
- (6) Koh Choon Heong
- (7) Tan Siew Hui
- (8) Teo Eng Wah
- (9) Philip Tan Pei Yeanz

*... Defendants*

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## **JUDGMENT**

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[Companies — Shares]

[Trusts — Beneficiaries — Rights]

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**Tan Siew Hui**

**v**

**Lim Lai Soon and others and another appeal**

**[2023] SGHC(A) 32**

Appellate Division of the High Court — Civil Appeals Nos 74 of 2022 and 77 of 2022

Woo Bih Li JAD, Valerie Thean J and Quentin Loh SJ

17 July 2023

10 October 2023

Judgment reserved.

**Valerie Thean J (delivering the judgment of the court):**

### **Introduction**

1 Family enterprises evolve in varied forms; little is said, even less is written. In the present case, Tan Hong Sin (“Johnny”), having lost his employment in Singapore, returned to Malacca. In September 2000, he set up Friendlypack Sdn Bhd (“FP Malaysia”) with the help of his father (“the Father”) and extended family members. In time, the business acquired three other companies in Malaysia, Singapore and Thailand: Duramin Sdn Bhd (“Duramin”), Friendlypack (S) Pte Ltd (“FP Singapore”) and Friendly Pack (Thailand) Co Ltd (“FP Thailand”) (all four companies are collectively referred to as “the Companies”).

2 The first respondent (“Mdm Lim”) and Johnny were married on 16 January 1993. On 22 June 2017, Mdm Lim initiated divorce proceedings

against Johnny in Singapore. Interim judgment was granted on 9 January 2018. In subsequent ancillary proceedings, parties disagreed over whether the shares in the Companies formed part of the pool of matrimonial assets to be divided. Mdm Lim took the position that Johnny was the beneficial owner of most, if not all, of these shares. In contrast, Johnny contended that he owned no beneficial interest even in the shares that are registered in his name because his sister, Tan Siew Hui (“Mary”), and other relatives had provided the seed capital for FP Malaysia and the shares in that company were held on trust for relatives who had provided such seed capital. Johnny also disputed that he owned the shares in the other three companies. Mary filed an affidavit in support of his position.

3 Mdm Lim therefore filed HC/S 704/2018 (“Suit 704”) and sought declaratory relief that Johnny is the beneficial owner of all the shares in the Companies. Mdm Lim’s initial claim included a claim that Johnny was the beneficial owner of two patents which have expired; these are not relevant to these appeals.

4 A Judge sitting in the General Division of the High Court (the “Judge”) held that Johnny’s beneficial interest in respect of the Companies was:

- (a) 92.33% of FP Malaysia;
- (b) 100% of Duramin;
- (c) 100% of FP Singapore; and
- (d) 49% of FP Thailand.

Declaratory relief was granted accordingly: see *Lim Lai Soon v Tan Hong Sin and others* [2022] SGHC 289 (the “GD”).

5 Two appeals ensued. AD/CA 74/2022 (“AD 74”) is an appeal brought by Mary, who was the seventh defendant in Suit 704. AD/CA 77/2022 (“AD 77”) is an appeal filed by Johnny, the first defendant, and his nephew, Philip Tan Pei Yeanz (“Philip”), the ninth defendant in Suit 704. In this judgment, we refer to Johnny and Philip collectively as the “AD 77 Appellants”.

6 These appeals concern the beneficial ownership of the shares of the Companies registered or held in the names of various persons. These registered shareholders will be referred to as having the legal interest in the shares. This is contrasted with the beneficial interest or ownership of the shares. In these appeals, the main company in contention is FP Malaysia; the other three support its work. Mdm Lim’s case is that Johnny is the beneficial owner of most, if not all, of the FP Malaysia shares in question. The appellants in AD 74 and AD 77, on their part, contend that Johnny’s beneficial interest in FP Malaysia is limited to a single initial subscription share. Mary’s case, broadly, is that she is the beneficial owner of 92.33% of the shares. The AD 77 Appellants’ case is that various relatives including Mary (“the Relatives”) are the beneficial owners of the same 92.33%.

### **Background**

7 The Companies are in the business of the manufacturing and selling and/or leasing of metal crates and pallets for the packing and transportation of natural rubber. FP Malaysia, the second defendant in Suit 704, was incorporated in September 2000. Duramin, the third defendant in Suit 704, is a Malaysian company that was acquired sometime in or around 3 July 2009. FP Singapore, the fourth defendant in Suit 704, was acquired on 27 April 2005 and its name was changed from Fusion Cuisine & Catering Pte Ltd. FP Thailand, the fifth defendant in Suit 704, is a Thai joint venture first incorporated in 2004.

8 Mdm Lim filed Suit 704 on 12 July 2018. On 25 July 2018, two weeks after Suit 704 was filed, Johnny made two share transfers of shares in FP Malaysia and in Duramin to Mary. First, all but one share of Johnny’s shares in FP Malaysia were transferred to Mary, such that Mary then owned 92.33% of the shares. Second, all but one share of Johnny’s shares in Duramin were transferred to Mary, resulting in Mary becoming the 99.99% shareholder of Duramin. This was followed on 24 September 2018 with a transfer by Mdm Teo Eng Wah (“Mdm Teo”) of her shares in FP Malaysia to her son and Johnny’s nephew, Philip. Johnny’s Defence was filed thereafter on 28 December 2018. The table below reflects these transfers.

	Before the 2018 transfers			After the 2018 transfers		
	Registered shareholding	Number of shares held	By percentage (%)	Registered shareholding	Number of shares held	By percentage (%)
<b>FP Malaysia</b>	Johnny	124,001	41.33 (rounded)	Johnny	1	0.0003 (rounded)
	Mary	153,001	51.00	Mary	227,001	92.33
	Mdm Teo	22,998	7.67 (rounded)	Philip	22,998	7.67 (rounded)
<b>Duramin</b>	Johnny	99,999	99.999	Johnny	1	0.001
	Mary	1	0.001	Mary	99,999	99.99
<b>FP Singapore</b>	Koh Choon Heong	2	100	Koh Choon Heong	2	100
<b>FP Thailand</b>	Johnny	1,800	45	Johnny	1,800	45
	Mary	160	4	Mary	160	4
	Puriwaj Sarawiroj	2,040	51	Puriwaj Sarawiroj	2,040	51



9 It is not disputed that Johnny is responsible for the day-to-day operations of the Companies. He is also a director of FP Malaysia, Duramin and FP Thailand. Koh Choon Heong (“Mr Koh”) is the sole director and shareholder of FP Singapore. Mr Koh was the sixth defendant in Suit 704, the third respondent in AD 74 and the second respondent in AD 77. Puriwaj Sarawiroj (“Mr Sarawiroj”) is a Thai national who is one of the shareholders in FP Thailand. Eventually, Mdm Lim’s claim was focused on 49% of the shares in FP Thailand and not on the 51% held by Mr Sarawiroj.

10 After Mdm Lim discovered the share transfers, she applied for injunctions against Johnny, Mary and FP Singapore in the divorce proceedings. A Mareva injunction was subsequently granted against Johnny on 18 December 2018 in respect of his Australian property; money held in four bank accounts; his Central Provident Fund (“CPF”) account in Singapore; and his Kumpulan Wang Simpanan Pekerja account (the CPF equivalent in Malaysia). A Mareva injunction was granted against Mary on 20 September 2019 against further disposal of the FP Malaysia and Duramin shares transferred to her on 25 July 2018.

***Decision below***

11 The Judge disregarded the 25 July 2018 transfers of shares from Johnny to Mary. He held that these transfers were designed to pre-empt the court’s determination of the ownership rights of the shares in dispute in Suit 704 (GD at [43]). We agree that the 25 July 2018 transfers should be disregarded for the purpose of determining the beneficial ownership of shares. The arguments before us also focused on what had transpired before these transfers.

12 In so far as Mdm Teo transferred her 22,998 shares to Philip, this was done after 25 July 2018. Philip is a party in the action. Mdm Lim discontinued the action against Mdm Teo while maintaining at the trial below that Philip's shares were also beneficially owned by Johnny. Hence, for convenience, we will continue to refer to the 22,998 shares as being registered in Philip's name, but the focus remains on who the beneficial owner of these shares was before the transfer to him.

13 The defence of the AD 77 Appellants and of Mary was that the beneficial ownership of FP Malaysia was held in proportion to the Relatives' financial contributions. Likewise, the beneficial ownership of the other three companies belonged to the Relatives. The Relatives are the Father, Mary and others, *ie*, (a) Tan Hong Kee and his wife Mdm Teo; (b) Tan Hong Chai; and (c) Tan Cheng Pow @ Tan Chin Pow ("Tan Cheng Pow"), Susan Lim ("Susan") and Tan Ee Lean. For convenience, the last two persons are considered together with Tan Cheng Pow as they are part of his immediate family.

14 Because some of the Relatives like Tan Hong Chai and Tan Cheng Pow were not parties to the action, the AD 77 Appellants contended below and on appeal that Mdm Lim should have joined all the Relatives as parties in her action, failing which she was not entitled to the declaratory relief she was seeking, *ie*, that Johnny is the beneficial owner of all the shares in the Companies. We say more about this argument later.

15 The Judge dismissed the argument that the requirements for the grant of a declaration had not been met because Mdm Lim had failed to join all persons whose interests might be affected by Suit 704. The defendants had failed to prove that others not before the court would likely have any claim (GD at [35]).

16 The Judge was satisfied that Mdm Lim had made out a substantial part of her claim against Johnny (GD at [31]). He was of the view that Mary's position in court departed from her pleadings and affidavit of evidence-in-chief (GD at [36]). Further, the contradiction between the evidence of Mary and Johnny could not be explained away and also significantly undermined the strength and veracity of their claims (GD at [41]).

17 In the result, for FP Malaysia, the Judge found that the shares registered in Johnny's name were held for his own benefit and the shares registered in Mary's name were held beneficially for Johnny. Thus, Johnny was the beneficial owner of 92.33% of the shares. The Judge arrived at this conclusion for the following reasons:

- (a) The Relatives' financial contributions were not coterminous with the issuance of shares in FP Malaysia (GD at [47]).
- (b) There was no agreement that the Relatives' contributions would be considered as financial contributions for the purpose of a presumed resulting trust in favour of the Relatives (GD at [48]).
- (c) The Relatives' financial contributions were in the nature of loans or working capital, as opposed to investments (GD at [47]).
- (d) Moneys were returned to some of the Relatives who made financial contributions, and the defendants were unable to prove that there was a tacit understanding or agreement that the Relatives would retain their beneficial interests despite the return of their moneys (GD at [49]).

(e) Johnny was unable to specify the beneficial interest of each Relative (GD at [50]).

(f) Several of the contributions relied upon by Mary to assert her beneficial shareholding were recorded as loans by Mary herself (GD at [51]). The evidence did not support Mary's contention that her loans to FP Malaysia were subsequently capitalised such that she acquired 92.33% of the shares in FP Malaysia (GD at [52]).

(g) The Relatives' entitlement to dividends was decided by Johnny and was not based on their beneficial ownership (GD at [54]).

(h) The majority of the dividends declared appeared to overwhelmingly benefit Johnny (GD at [55]).

18 22,998 shares were initially registered in the name of Tan Hong Kee, who was referred to as "Late Brother", and then transferred to his wife Mdm Teo and then to Philip. The Judge did not find sufficient evidence to conclude that the beneficial interest was held other than according to the registered shareholding (GD at [58]), *ie*, the shares were beneficially owned by Late Brother, then Mdm Teo and eventually by Philip.

19 Regarding Duramin, the Judge found that on the evidence, there was nothing to disturb the registered shareholding held by Johnny (GD at [61]).

20 Regarding FP Singapore, the Judge held that the registered shareholder, Mr Koh, held two issued shares on trust for Johnny following Mr Koh's execution of a trust deed dated 13 July 2011 (the "First Trust Deed") (GD at [63]). A second trust deed which was executed in favour of Mary (instead of Johnny) in 2018 but backdated to 13 July 2011 had no legal effect.

21 Regarding FP Thailand, the Judge accepted that Johnny was the beneficial owner of both the shares registered in his name and those in Mary's name amounting to 49% (but not the shares registered in the name of Mr Sarawiroj). The shares in Mary's name were, on the evidence, best explained as acquired by Johnny (GD at [64]).

22 Accordingly, the Judge declared Johnny the beneficial owner of the shares in the Companies in the following proportions (GD at [67]):

- (a) FP Malaysia: 92.33%;
- (b) Duramin: 100%;
- (c) FP Singapore: 100%; and
- (d) FP Thailand: 49%.

23 On 4 August 2022, the Judge ordered indemnity costs to be paid by Mary and Johnny to Mdm Lim in the light of their conduct of the case, fixed at \$260,680. As Mdm Lim failed to establish that the shares in FP Malaysia which were registered in Philip's name belonged beneficially to Johnny, the Judge ordered Mdm Lim to pay Philip \$20,000 in costs, taking into account the overlap with the other parts of the case.

## **Parties' cases on appeal**

### ***Mary's case***

24 Mary is the registered holder of 153,001 shares in FP Malaysia comprising 75,000 shares allotted to her and another 78,001 shares transferred to her by the Father.<sup>1</sup>

25 As mentioned, her Defence was that the shares in the Companies were held beneficially by the Relatives. However, this changed in her oral evidence during the trial to an allegation that the shares are beneficially owned by the registered shareholders in the Companies. It was not clear whether she was referring to the registered shareholders before or after the transfers on 25 July 2018 although it appeared to be the latter.

26 On appeal, Mary appeals against the whole of the judgment below. She argues that she is the beneficial owner of the 153,001 shares as well as 124,000 FP Malaysia shares registered in Johnny's name. The 153,001 shares and 124,000 shares total 277,001 shares and constitute 92.33% of the shares in FP Malaysia. However, her case is complicated and indeed contradicted by her other allegation that the 78,001 shares were transferred by the Father to her to be held by her on trust for his grandchildren.<sup>2</sup>

27 Mary further contends that the beneficial ownership of Duramin belongs to FP Malaysia, or alternatively, to the shareholders of FP Malaysia.<sup>3</sup> The

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<sup>1</sup> Appellant's Case for AD/CA 74/2022 ("AC 74") at para 3.

<sup>2</sup> AC 74 at para 4(f).

<sup>3</sup> AC 74 at paras 126 and 133.

beneficial ownership of FP Singapore mirrors the beneficial ownership of FP Malaysia or FP Singapore is beneficially owned by FP Malaysia.

28 As for FP Thailand, Mary argues that the Judge ignored Johnny's evidence that FP Thailand is a joint venture between the beneficial shareholders of FP Malaysia and Mr Sarawiroj,<sup>4</sup> and argues that the beneficial ownership of shares in FP Thailand which were registered in her name and in Johnny's name belongs to the shareholders of FP Malaysia.

29 On costs, Mary contends the Judge should not have imposed indemnity costs against her (and Johnny).

***Johnny and Philip's case***

30 The AD 77 Appellants again contend that Mdm Lim had failed to join all interested parties to Suit 704, and was therefore not entitled to declaratory relief.<sup>5</sup> Aside from this, their primary case is that the shares in FP Malaysia belong beneficially to the Relatives who made financial contributions to the company.

31 However, for the shares registered in Mary's name, the AD 77 Appellants defer to Mary's position in AD 74.<sup>6</sup> The AD 77 Appellants also argue that the Judge's finding that Philip is the beneficial owner of the shares registered in his name sits uneasily with the rest of the GD.<sup>7</sup>

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<sup>4</sup> AC 74 at para 136.

<sup>5</sup> Appellants' Case in AD/CA 77/2022 ("AC 77") at paras 23–33.

<sup>6</sup> AC 77 at para 48.

<sup>7</sup> AC 77 at para 56.

32 Regarding FP Singapore, the AD 77 Appellants submit that FP Malaysia is the beneficial owner of FP Singapore based on a resulting trust.<sup>8</sup> The Judge was wrong to conclude that the trust deeds executed by Mr Koh had the effect of conferring beneficial ownership of the shares on Johnny.<sup>9</sup>

33 As for Duramin, the AD 77 Appellants submit that since FP Malaysia paid for the acquisition of Duramin, there is a common intention among the Relatives that Duramin be owned by the Relatives in accordance with their respective financial contributions.<sup>10</sup> Alternatively, FP Malaysia beneficially owns the shares in Duramin under a purchase price resulting trust. In the further alternative, Johnny and Mary hold their shares in Duramin on a presumed resulting trust for Mr Yong Hang Seng and Susan, who paid for the shares in Duramin and were the registered shareholders before transferring their shares to Johnny and Mary.<sup>11</sup>

34 Regarding FP Thailand, the AD 77 Appellants aver that the Judge failed in his judicial duty to give reasons for his findings on the shares in FP Thailand.<sup>12</sup> It is more likely than not that FP Malaysia also paid for the incorporation of FP Thailand, which means that under the framework in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 (“*Chan Yuen Lan*”), a presumed resulting trust arises in favour of FP Malaysia.<sup>13</sup> This presumption is displaced by a common

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<sup>8</sup> AC 77 at para 134(a).

<sup>9</sup> AC 77 at para 128.

<sup>10</sup> AC 77 at paras 136, 146 and 149.

<sup>11</sup> AC 77 at paras 147 and 149.

<sup>12</sup> AC 77 at para 151.

<sup>13</sup> AC 77 at para 153.



intention among the Relatives that they would have an interest in FP Thailand in accordance to their respective financial contributions.<sup>14</sup>

35 Johnny and Philip also appeal against their respective costs orders. For Johnny, he argues that indemnity costs should not have been ordered against him (and Mary). For Philip, he argues that the costs awarded to him should be higher than \$20,000.

***Mdm Lim’s case***

36 Mdm Lim maintained a position in the suit below that was consistent with the position taken in her divorce ancillary proceedings, *ie*, that Johnny was the beneficial owner of most, if not all, of the shares in FP Malaysia and its associated companies. She did not, however, file any appeal against the Judge’s finding on Philip’s shares and seeks to uphold the Judge’s orders in entirety in these appeals. She points out that the AD 77 Appellants’ and Mary’s cases on appeal are inconsistent with each other and different from their pleaded cases at trial.<sup>15</sup> Mdm Lim contends that the Judge premised his findings on the beneficial shareholding of FP Malaysia on positive evidence. In particular, the Judge correctly considered the evidence showing that: (a) the Relatives contributed money for the running of FP Malaysia; (b) Johnny overwhelmingly benefitted from the majority of dividends declared; and (c) the dividends received by the Relatives were not decided by reference to their beneficial ownership, but at

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<sup>14</sup> AC 77 at para 154.

<sup>15</sup> Respondent’s Case (Mdm Lim) (Amendment No. 1) dated 13 June 2023 (“RC”) at paras 21–26.

Johnny's whim.<sup>16</sup> The Judge was also correct to give weight to the contradictions in Johnny's and Mary's evidence.<sup>17</sup>

37 Regarding the shares in the remaining companies, Mdm Lim points out that any assertion that the Relatives own these companies in the same proportions as their contributions to FP Malaysia because these companies were set up with moneys from FP Malaysia ignores the trite principle that shareholders in a company do not own the company's assets.<sup>18</sup>

### **Decision**

38 As we explain below, we dismiss the appellants' appeals in respect of Johnny's beneficial ownership of FP Malaysia, FP Singapore and Duramin. The appeals are allowed in part in relation to the beneficial ownership of FP Thailand. We hold that Johnny is the beneficial owner of 45% of the shares in FP Thailand, rather than 49%.

### **Parties to be joined**

39 We first address the issue of whether Mdm Lim was obliged to join those persons from the Relatives who were not parties to the action.

40 As mentioned, we consider Tan Cheng Pow, Susan and Tan Ee Lean together as they are said to have contributed moneys as a family. Tan Cheng Pow is an uncle of Johnny and Mary. He had given evidence at the trial so he is aware of the dispute. Since he chose not to apply to include himself or his family members as parties, it is not for Mdm Lim to do so.

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<sup>16</sup> RC at para 106.

<sup>17</sup> RC at para 126.

<sup>18</sup> RC at para 130.

41 Likewise for Tan Hong Chai who is a cousin of Johnny and Mary and was also a witness.

42 Tan Hong Kee is Late Brother. As mentioned, Mdm Teo is the wife of Late Brother. Both are parents of Philip whose claim to shares in FP Malaysia is through the shareholding of first his father and then his mother. Late Brother has passed away and, as mentioned, the action against Mdm Teo was discontinued by Mdm Lim. In any event, Philip is the current registered holder of 22,998 shares, remains as a defendant and Mdm Teo has not insisted on remaining as a party.

43 In so far as it is suggested by the appellants that the shares transferred to Mary by the Father are held on trust for his grandchildren, Mary would be the trustee and she is already named as a party, although not formally in her capacity as trustee. She has chosen not to add herself as a party to the action in her alleged capacity as trustee of shares for the grandchildren.

44 The AD 77 Appellants rely on two cases: *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd and another appeal* [2006] 1 SLR(R) 112 (“*Karaha Bodas*”) and *Aavanti Offshore Pte Ltd (in creditors’ voluntary liquidation) v Bab Al Khail General Trading and another* [2020] SGHC 50 (“*Aavanti*”). We are of the view that *Karaha Bodas* and *Aavanti* merely reflect a general proposition that any person whose interests might be affected by a declaration should be before the court. This does not mean that a plaintiff must join everyone whom a defendant alleges has an interest. Otherwise, a defendant could easily put obstacles in a plaintiff’s way by making all kinds of allegations about the interests of others. The facts in each case must be carefully considered and it is for the court to decide whether a declaration sought by a plaintiff is appropriate in principle in the circumstances of each case. Here, the other

Relatives were aware of Mdm Lim’s claim. In addition, Johnny could have applied to join them as parties to the action but did not do so.

45 Accordingly, we are of the view that Mdm Lim need not join any of the other Relatives to seek the declaration in question.

### **Legal context**

46 The case of *Chan Yuen Lan* frames the legal context of these appeals. The starting point would be the legal interest. Absent a declaration of trust or express intention, the financial contribution, common intention and conduct of parties must be considered as guided by the Court of Appeal at [160]:

(a) The first question is whether there is sufficient evidence of the parties’ respective financial contributions to the purchase price of the property. If the answer is “yes”, the presumption of resulting trust arises and parties are presumed to hold the beneficial interest in the property in proportion to their respective contributions to the purchase price. If the answer is “no”, it will be presumed that the parties hold the beneficial interest in the same manner as the legal interest.

(b) The second question is whether there is sufficient evidence of an express or inferred common intention that the parties should hold the beneficial interest in the property in a proportion different from that set out in (a). If the answer is “yes”, the parties will hold the beneficial interest in accordance with that common intention instead of in the manner set out in (a).

(c) If the answer to both (a) and (b) is “no”, the parties will hold the beneficial interest in the property in the same manner as the manner in which they hold the legal interest.

(d) If the answer to (a) is “yes” but the answer to (b) is “no”, is there nevertheless sufficient evidence that the party who paid a larger part of the purchase price of the property intended to make a gift to the other party?

(e) If the answer to (d) is “no”, does the presumption of advancement nevertheless operate to rebut the presumption of resulting trust in (a)?

(f) Notwithstanding the situation at the time the property was acquired, is there sufficient and compelling evidence of a *subsequent* express or inferred common intention that the parties should hold the beneficial interest in a proportion different from that at the time the property was acquired?

47 An additional point to consider in the present case is the burden of proof. In alleging a beneficial interest beyond the legal shareholding, that party bears the burden of proof. The party seeking to rebut the various presumptions also bears the burden of proving so (*Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 at [57] and [147]).

48 It is convenient at this juncture to discuss briefly a contention made in both appeals that the Judge reversed the burden of proof when he found that Johnny and Mary had failed to prove their defences.<sup>19</sup>

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<sup>19</sup> AC 77 at paras 34–36, AC 74 at paras 121–122.

49 In *Cooperatieve Centrale Raiffeisen-Boerenleenbank BA (trading as Rabobank International), Singapore Branch v Motorola Electronics Pte Ltd* [2011] 2 SLR 63, the Court of Appeal affirmed the distinction between the legal and evidential burden of proof (at [30]). The former is an obligation to prove that a particular fact in dispute exists and never shifts, while the latter is an obligation to produce evidence, and can and may shift. Sections 103 and 105 of the Evidence Act (Cap 97, 1997 Rev Ed) (the “Evidence Act”), which place the burden of proving a fact on the party who asserts the existence of any fact in issue or relevant fact respectively, concern the legal rather than the evidential burden of proof (at [30]). The starting point in determining where the burden of proof lies is the parties’ pleadings and the facts which they claim to be true in their pleadings. The *legal* burden of proving a pleaded defence rests on the proponent of the defence, unless the defence is a bare denial of the claim (at [31]).

50 In her Statement of Claim, Mdm Lim pleaded that “Johnny is the beneficial owner of most, if not all, the shares” of the Companies.<sup>20</sup> The legal burden of proving this fact rested on Mdm Lim. If Mdm Lim had adduced sufficient evidence to support her case, the evidential burden then shifted to her opponents to counter her evidence. Primarily because of the history of the dividend distribution, the Judge was of the view that Johnny was the beneficial owner; and Johnny and Mary were unable to meet the evidential burden which passed to them. Moreover, in his Defence, Johnny took the position that he was not the beneficial owner of *any* of the shares (save for the one initial subscription share in FP Malaysia that he paid RM 1 for) as the shares were held on trust for

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<sup>20</sup> Joint Record of Appeal (“JRA”) Vol II p 132 (Statement of Claim (Amendment No. 4) at para 8).

the Relatives.<sup>21</sup> Under the Evidence Act, Johnny bore the legal burden of proving this defence. The Judge found that this legal burden was not discharged. We therefore do not agree with the appellants that the Judge reversed the burden of proof when he found that Johnny and Mary had failed to prove their defences. Regarding the Judge's finding, we turn to consider the evidence in relation to each company below.

### **FP Malaysia**

51 The facts relating to FP Malaysia's incorporation and share issuances provide useful background. It is not disputed that FP Malaysia was incorporated by Johnny and the Father in September 2000. One share of RM 1 was issued to each of them and both formed the board of directors. Over the course of the next few years up until 2004, the Father, Mary, Late Brother and the other Relatives financially contributed in some way. It is alleged by the appellants that altogether, Johnny paid RM 1, the Father contributed RM 92,001, Mary contributed RM 455,000, Late Brother contributed RM 22,998, Tan Cheng Pow (and his family) contributed RM 50,800 and Tan Hong Chai contributed RM 35,000. The paid-up capital of FP Malaysia was further increased on two occasions on 31 December 2003 and 10 March 2004:

- (a) On 31 December 2003, Johnny was issued 105,000 shares and the Father was issued 78,000 shares.
- (b) On 10 March 2004, Johnny was issued another 19,000 shares, Mary was issued 75,000 shares and Late Brother was issued 22,998 shares.

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<sup>21</sup> JRA Vol II pp 149–150 (Defence of the 1st Defendant (Amendment No. 3) at para 6).

52 After these allocations, there were four registered shareholders in FP Malaysia: Johnny held 124,001 shares, the Father held 78,001 shares, Mary held 75,000 shares, and Late Brother held 22,998 shares. As mentioned, Late Brother subsequently transferred his entire shareholding to Mdm Teo on 28 June 2016 before his demise on 2 July 2016. Mdm Teo transferred her shares to Philip.

53 Johnny was appointed managing director with a salary of RM 5,000 from March 2005. On 31 December 2008, after a board resolution, the Father's shares were transferred to Mary, who also replaced the Father as a director on the same date.

54 The various payments, share allocations and transfers in FP Malaysia are reflected in the table below:

<b>Person</b>	<b>Date</b>	<b>Contribution (RM)</b>	<b>Share allocation</b>
<b>Father</b>	September 2000	1	1
	10 August 2001	5,000	-
	6 November 2001	2,000	-
	1 September 2001	2,000	-
	22 April 2002	5,000	-
	23 December 2003	78,000	
	31 December 2003		78,000
	31 December 2008		Transferred to Mary
<b>Total</b>		<b>92,001</b>	-
<b>Johnny</b>	September 2000	1	1
	31 December 2003	0	105,000
	10 March 2004	0	19,000
<b>Total</b>		<b>1</b>	<b>124,001</b>
<b>Mary</b>	11 June 2001	5,000	-
	1 August 2003	18,000	-



	5 December 2003	7,000	-
	10 December 2003	75,000	-
	[Total paid prior to 2003 share allocation]	[105,000]	
	24 February 2004	50,000	-
	3 March 2004	50,000	-
	[Total paid prior to 2004 share allocation]	<b>[205,000]</b>	
	10 March 2004		<b>75,000</b>
	29 March 2004	30,000	-
	2 April 2004	50,000	-
	6 April 2004	50,000	-
	7 April 2004	40,000	-
	9 April 2004	50,000	-
	20 April 2004	30,000	-
	[Total paid after 10 March 2004]	<b>[250,000]</b>	
	31 December 2008		<b>78,001</b>
	<b>Total (250,000 and 205,000)</b>	<b>455,000</b>	<b>153,001</b>
<b>Late Brother</b>	4 March 2003	6,000	-
	11 March 2004	16,998	22,998
	28 June 2016	Late Brother transfers shares to Mdm Teo.	
	24 September 2018 <sup>22</sup>	Mdm Teo transfers shares to Philip.	
<b>Total</b>	<b>22,998</b>	<b>22,998</b>	
<b>Tan Chin Pow and family</b>	25 July 2001	2,600	
	24 August 2001	5,000	-
	30 August 2001	5,400	-
	31 June 2002	5,000	-
	14 January 2003	3,000	-
	25 January 2003	2,000	-
	23 September 2003	2,000	-
	3 December 2003	10,000	-

<sup>22</sup> JRA Vol III Part L at pp 9–10, Mdm Teo’s AEIC at para 20.

	4 December 2003	2,000	-
	24 December 2003	10,000	-
	30 December 2003	2,000	-
	19 February 2004	300	-
	20 February 2004	1,500	-
<b>Total</b>		<b>50,800</b>	<b>0</b>
<b>Tan Hong Chai</b>	13 March 2004	20,000	-
	March 2004	15,000	-
<b>Total</b>		<b>35,000</b>	<b>0</b>

55 These payments listed above are largely undisputed. What was in dispute was the *character* of these payments, whether these were loans to Johnny, the company, or payment for beneficial interest or equity in the company.

56 We first make a preliminary point on the evidence in this case. In the arguments, various allegations were made by the appellants as to who paid for the shares in FP Malaysia. Mdm Lim had no personal knowledge and could only present her case based on whatever documents she had or were disclosed by the appellants.

57 It is important to mention at the outset that where money is paid by a person to a company, this does not necessarily mean that the money was received by the company for that person's account. For example, even if Mary had provided some money which was received by FP Malaysia, this would not necessarily mean that the company had treated the money as coming from Mary. FP Malaysia could have treated the funds as coming from Johnny and there could have been an arrangement between Johnny and Mary as to whether the funds from Mary were a gift or a loan from Mary to Johnny which Johnny then lent to FP Malaysia or used to acquire shares in FP Malaysia.

58 Therefore, the accounting records of the companies, especially FP Malaysia, were important. They would show how the moneys received by FP Malaysia were treated: for example, to whose account was the money credited, whether Mary or Johnny or some other person? For what purpose was the money received by the company, such as whether it was a loan to the company or payment for equity?

59 Significantly, no such accounting records were produced at trial by Johnny who was running FP Malaysia. He could have produced them but he did not. Furthermore, notwithstanding the inquiries of this court about such records which we referred to as the source documents, none was produced.

60 Hence the Judge below and this court were left with indirect evidence which we analyse below. It is pertinent to note at the outset, that the contention that Johnny had no beneficial ownership in 92.33% of FP Malaysia effectively reduced Johnny to a salaried worker for the company despite his essential role. The AD 77 Appellants and Mary have differing reasons as to why Johnny is allegedly in this position, and we deal with each in turn.

***AD 77 Appellants' account***

61 The AD 77 Appellants' case is that the shares in FP Malaysia are held for the Relatives who made some form of financial contribution to FP Malaysia. We reject this contention for the following reasons.

62 In so far as the AD 77 Appellants argue that money from the Relatives was advanced to FP Malaysia and also suggest that each and every one of the Relatives has a beneficial interest in the issued shares of FP Malaysia, the AD 77 Appellants have not been able to match the incoming money from every one of the Relatives with a corresponding issue of shares from FP Malaysia. Instead,

the evidence suggests that money from the Father, Mary and Late Brother may be matched to a corresponding issue of shares which was contemporaneous with or subsequent to the receipt of the money. In other words, the money from the other Relatives could not be so matched. Therefore, there is no question of a resulting trust of shares for these other Relatives but there is still a question of who “paid” for the shares which were issued.

63 Next, in so far as the AD 77 Appellants rely on a constructive trust based on a common intention among the Relatives that the shares in FP Malaysia were to be held on trust for each and every one of them, we reject this argument because clearly there was no such intention. We state our reasons below.

64 First, in the matrimonial proceedings, Johnny and Mary had alleged that Mary was the beneficial owner of 92.33% shares in FP Malaysia, *ie*, excluding the shares held by Philip.

65 Second, it was only after Mdm Lim commenced her action that the AD 77 Appellants and Mary initially took the position that every one of the Relatives had a beneficial interest in the shares.

66 Third, even then, Mary departed from this position during the trial, when she asserted that only the registered shareholders held beneficial interests in the shares. This undermines the case which the AD 77 Appellants are still maintaining.

67 Fourth, neither Johnny nor any of the other Relatives identified the quantity of the shares said to be held on trust for each of the Relatives.

68 Related to this point is the fact that neither Johnny nor any of the other Relatives could say from whose registered shareholding their shares were to come from. For example, if Tan Hong Chai was supposed to be entitled to 100 shares, were his shares supposed to come from those registered in the name of Johnny, Mary, or Philip?

69 It is no answer to say that there was a loose family arrangement and that the beneficial shareholding would be subject to agreement among the Relatives. It could not have been so loose that no one knew how many shares were held beneficially by each of the Relatives at a given time.

70 Fifth, when dividends were declared, the other registered shareholders often assigned their portion to Johnny. While it is alleged that he used some of the dividends to repay the other Relatives their advances, they were not paid according to any proportionate shareholding.

### ***Mary's account***

71 On the other hand, Mary claims that she is the beneficial owner of all 277,001 shares comprising:

(a)	Johnny's	124,000 shares
(b)	Mary's	75,000 shares
(c)	Father's	78,001 shares
Total:		277,001 shares

Alternatively, the 78,001 shares are held by her on trust for the Father's grandchildren.

***Our decision***

*Johnny's 124,001 shares*

72 In our judgment, Johnny is the beneficial owner of the 124,001 shares registered in his name. It is undisputed that he is the beneficial owner of the one share that he paid RM 1 for. The key question is the beneficial ownership of the remaining 124,000 shares. Although the legal burden was on Mdm Lim to establish that Johnny is also the beneficial owner of these shares, she started with the evidential advantage that he is the registered shareholder. Hence, the evidential burden is on Mary to show that Johnny is *not* the beneficial owner of these shares.

73 Mary claims that she made loans to FP Malaysia, which were capitalised through the issuance of 75,000 shares registered in her name and 124,000 shares registered in Johnny's name, and which Johnny holds on trust for her.

74 A detailed table setting out the payments made, allocations of shares and transfers is set out above at [54]. The 124,000 shares registered in Johnny's name were issued to him in two tranches: 105,000 and 19,000. According to Mary, the first 105,000 shares issued to Johnny on 31 December 2003 can be traced to moneys provided by Mary. Between 11 June 2001 and 10 December 2003, Mary contributed RM 105,000 in four tranches: RM 5,000, RM 18,000, RM 7,000 and RM 75,000.<sup>23</sup> The AD 77 Appellants also proceed on the premise that the money came from Mary. So does Mdm Lim. Hence, we need not consider an alternative argument by the AD 77 Appellants that the RM 105,000 might have come partly from Mary and partly from Tan Cheng Pow.

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<sup>23</sup> Joint Appellants' Core Bundle Volume II ("JACB II") 3.

75 There is no bank statement pertaining to the first payment of RM 5,000 which was apparently by cash. However, bank statements pertaining to the other three payments, which were made by cheque, were adduced as evidence. Pertinently, Mary’s bank statements relating to these transfers included her handwritten annotations. These annotations state or suggest that her payments were *loans to Johnny*, not to FP Malaysia:

- (a) the payment of RM 18,000 on 12 August 2003 was annotated as “*Loan to Johnny Tan (Bal)*” [emphasis added];<sup>24</sup>
- (b) the payment of RM 7,000 on 6 December 2003 was annotated as “contra for Uncle Chin Pow dep for JT (FP)”;<sup>25</sup> and
- (c) the payment of RM 75,000 on 10 December 2003 was annotated as “(*Loan to JT*) Friendly Pack” [emphasis added].<sup>25</sup>

76 During cross-examination, Mary accepted that the above payments were part of the RM 455,000 she had allegedly extended to FP Malaysia.<sup>26</sup> She explained that these contributions were mentioned as loans to Johnny but for the purpose of FP Malaysia’s working capital as FP Malaysia did not have a bank account at the time.<sup>27</sup> However, her assertion that FP Malaysia had no bank account was belied by the following. First, Mary accepted during cross-examination that at the time she made payment of RM 7,000 on 6 December

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<sup>24</sup> JACB II 5.

<sup>25</sup> JACB II 7.

<sup>26</sup> JRA Vol III Part V at pp 51–52 (Transcript 26 October 2021 at p 44 line 8 to p 45 line 13).

<sup>27</sup> JRA Vol III Part V at p 53 (Transcript 26 October 2021 at p 46 lines 4–24).

2003, FP Malaysia already had its own bank account.<sup>28</sup> More importantly, if she had believed that FP Malaysia did not have a bank account, she would not have made the company the payee as was apparently done. Second, FP Malaysia's financial statement for financial year 2003 did not state that it owed any loans under "current liabilities".<sup>29</sup>

77 Having regard to the evidence before us, we find that Mary's alleged loans to FP Malaysia were in fact loans to Johnny personally and, in turn, the money from her would have been credited in the books of FP Malaysia as having come from Johnny, for example, either as a loan or payment for equity. Mary's handwritten annotations are key. Mary, being a chartered accountant, would have been careful about how she treated in her own records the money she was advancing. These annotations show that Mary herself did not treat her contributions as equity or even as loans to FP Malaysia. Indeed, Mary clarified during cross-examination that her affidavit of evidence-in-chief, which indicated that her RM 455,000 contribution was payment for equity in FP Malaysia, was in error.<sup>30</sup> Furthermore, her counsel stressed during the hearing of the appeals that her payments were initially as loans, and not equity, to FP Malaysia.

78 There is also no evidence from the company's records of the conversion of any loan from Mary for the issuance of these shares.

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<sup>28</sup> JRA Vol III Part V at pp 54–55 (Transcript 26 October 2021 at p 47 line 18 to p 48 line 20).

<sup>29</sup> JRA Vol V Part O at p 41.

<sup>30</sup> JRA Vol III Part V at p 41 (Transcript, 26 October 2021 at p 34 lines 1–10).



79 In our judgment, Mary’s payments were loans to Johnny personally who then used the money for his own account vis-à-vis FP Malaysia. Therefore, the first 105,000 shares issued to Johnny beneficially belong to Johnny.

80 The same inference can be drawn for the 19,000 shares issued to Johnny on 10 March 2004. Following the share issuance on 31 December 2003 and before the subsequent share issuance on 10 March 2004, Mary contributed another RM 50,000 on 24 February 2004 and RM 50,000 on 3 March 2004. In a similar vein, the payment of RM 50,000 on 24 February 2004 was annotated by Mary as “Loan to JT (Friendly Pack)”.<sup>31</sup> However, the payment of the RM 50,000 on 3 March 2004 had a more neutral annotation “Friendly Pack” [emphasis added].<sup>32</sup> Again, there is no document of FP Malaysia showing that the moneys were recorded as coming from Mary or the subsequent conversion of her loan to equity. Thus, Mary lent Johnny the money for the 19,000 shares issued, and Johnny is the beneficial owner of the 19,000 shares.

81 In our judgment, the appellants have failed to prove that the beneficial interest in the 124,000 shares registered in Johnny’s name is held in a different manner from the legal interest. We therefore hold that Mdm Lim has proved that Johnny is the beneficial owner of the 124,001 shares registered in his name.

*Mary’s 153,001 shares*

82 We turn to Mary’s 153,001 shares in FP Malaysia and Mary’s arguments for why she is the beneficial owner of the shares. Mary acquired her shareholding in two tranches. 75,000 shares were issued to her and registered in her name on 10 March 2004. 78,001 shares were initially held by the Father,

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<sup>31</sup> JACB II 8.

<sup>32</sup> JACB II 9.

who contributed RM 92,001 and assisted Johnny as a director. These shares were transferred to Mary following a board resolution on 31 December 2008. Mary's claim to the former arises from part of her RM 455,000 contribution to the set-up of FP Malaysia, which she claims to be a loan that was partly capitalised into shares. Her shares were issued to her on the same day that Late Brother was allotted 22,998 shares. For the 78,001 shares that were initially registered in the Father's name, the appellants argue, in the alternative, that the shares were transferred to Mary to be held on trust for the Father's grandchildren and the beneficial interest in those shares does not reside with Johnny.

83 We consider the two tranches of shares in turn.

(1) 75,000 shares issued to Mary

84 Mary's narrative on the 75,000 shares registered in her name is as follows. Initially, she extended loans to FP Malaysia. When FP Malaysia could not repay the loan, it was discussed between Mary, Johnny and Late Brother that her loans should be capitalised. Therefore, out of her RM 455,000 loan, RM 199,000 was capitalised by the issuance of 75,000 shares to her and 124,000 to Johnny.<sup>33</sup>

85 No direct evidence was provided in support of this argument. Instead, the appellants sought to rely on indirect evidence to prove that Mary's loans were capitalised, namely an audit confirmation request from the auditors of FP Malaysia showing a balance brought forward of a RM 250,000 loan due to Mary. Both counsel for the appellants admitted that there is no evidence in the

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<sup>33</sup> Transcript 17 July 2023 at p 19 lines 17–29.

books of FP Malaysia as to whether all the payments from Mary were recorded by FP Malaysia as a loan or equity injection and from whom.

86 We dismiss Mary’s argument that she is the beneficial owner of the 75,000 shares issued in her name based on a loan of RM 455,000 by her to FP Malaysia and the subsequent capitalisation of her loan to FP Malaysia.

87 First, up to the time of issue of the 75,000 shares to Mary, Mary was not recorded as a lender to FP Malaysia in the company’s books. Instead, all Mary has produced in support of her capitalisation argument is a “Nil” audit confirmation request sent on 22 August 2007 for the purpose of the accounts of FP Malaysia. According to Mary, the audit confirmation request shows her running account with FP Malaysia, and that as at 22 August 2007, by which time she had paid RM 455,000, there was a balance brought forward of a loan due to her in the sum of RM 250,000. This loan was fully repaid by FP Malaysia by way of three cheques for RM 100,000 dated 19 May 2006, RM 50,000 dated 28 June 2006 and RM 100,000 dated 4 October 2006.<sup>34</sup> As such, there was a “Nil” balance due to her as of 31 December 2006. According to her, the amount of RM 250,000 represents the balance of her RM 455,000 contributions, less RM 199,000 which was capitalised by the allotment of 124,000 shares to Johnny in 2003 and 2004 and 75,000 shares to her in 2004.<sup>35</sup>

88 Mary’s reliance on the “Nil” audit confirmation request to support her argument that her earlier loans amounting to RM 199,000 were loans to the company and then capitalised by the allotment of 124,000 shares to Johnny and 75,000 shares to her does not withstand scrutiny.

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<sup>34</sup> AC 74 at para 37.

<sup>35</sup> AC 74 at para 38.

89 First, as already discussed, the money for the first 105,000 shares allotted to Johnny did not come from a loan by Mary to the company but a loan by Mary to Johnny.

90 As for the 75,000 shares issued to her, we refer to [80] above. We have mentioned that Mary advanced two sums of RM 50,000 each on 24 February 2004 and 3 March 2004. Part of the total of RM 100,000 was likely used for the issuance of 19,000 shares to Johnny which we previously discussed making a total of  $105,000 + 19,000 = 124,000$  shares. It is likely that the balance of RM 81,000 was used to issue 75,000 shares to Mary. It will also be recalled that there is a handwritten notation for the first RM 50,000 stating that it was a loan to Johnny. While the annotation for the second RM 50,000 was neutral, we infer that it was also a loan to Johnny like the earlier payments. Hence while the money for her 75,000 shares appeared to come from her, that money was also a loan by her to Johnny and not to the company. Johnny used the money to cause FP Malaysia to issue shares to Mary.

91 The audit confirmation request which Mary relied on merely pertained to the amount of RM 250,000 as at a certain date. It did not show that Mary had lent the difference between RM 455,000 and RM 250,000 to FP Malaysia earlier.

92 It also does not show any capitalisation of any prior loan (from Mary to the company) to equity.

93 As already mentioned, if there was any prior loan from Mary to the company which was capitalised, Johnny could and should have produced the company's records to establish this directly.

94 The fact that such evidence was not produced leads to the inference that it does not exist because the money was not recorded as a loan to FP Malaysia from Mary in the first place. This supports Mdm Lim's point that Mary's earlier contributions were loans to Johnny and not FP Malaysia.

95 Having reviewed the evidence, therefore, we dismiss Mary's submission that she is the beneficial owner of the 75,000 shares registered in her name. We find that Mdm Lim has proved that these shares belong beneficially to Johnny.

(2) 78,001 shares issued to the Father and transferred to Mary

96 In our judgment, the 78,001 shares which were initially issued to the Father and which were transferred to Mary also beneficially belong to Johnny, for two reasons.

97 First, we deal with the Father's contribution of RM 92,000 to FP Malaysia. On the evidence before us, this payment was not an equity contribution but a loan. When we questioned counsel on how the Father's contribution was recorded in the books of FP Malaysia, counsel for the AD 77 Appellants could only point to evidence that RM 78,000 was *received* by FP Malaysia as a credit in its bank account.<sup>36</sup> However, the fact that FP Malaysia received the moneys from the Father is undisputed. There is no direct evidence on how the Father's contributions were *described* in the books of the company.

98 The available evidence points to the RM 92,000 being a loan to Johnny. During cross-examination, Johnny explained that around RM 80,000 (out of the RM 92,000) was eventually used for a study loan which was extended to

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<sup>36</sup> JACB II 29.

Philip.<sup>37</sup> There is also a WhatsApp message dated 21 May 2015 from Mary to Mdm Lim stating that “[t]he monies from father was a loan and Johnny duly record this in his personal note book”.<sup>38</sup> Therefore, on Johnny and Mary’s own evidence, the moneys from the Father were not used to pay directly for his shares. The message also suggests that the loan from the Father was to Johnny and not to FP Malaysia as otherwise the loan would be recorded in the books of FP Malaysia as such, and there would have been no need for Johnny to record it in his personal notebook. Consequently, it would be Johnny who used the money to issue 78,000 shares in the Father’s name. Some RM 80,000 of the Father’s loan was subsequently used for Philip’s benefit.

99 Second, there is a WhatsApp message dated 15 October 2014 from Mary to Mdm Lim stating that “JT transferred father shares to me as Trustee for the grandchildren without my knowledge”.<sup>39</sup> Although it is not disputed that this transfer was effected by a board resolution also signed by the Father, the point to note is that Mary herself acknowledged that it was Johnny who was the person who initiated the transfer of the shares and not the Father. This suggested Johnny’s beneficial ownership.

100 Mary’s later WhatsApp messages shed further light on the reasons for this transfer. In a WhatsApp message to Mdm Lim on 21 May 2015, Mary stated that Johnny did not want the shares to be transferred to him because doing so would cause jealousy and strife within the family.<sup>40</sup>

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<sup>37</sup> JRA Vol III Part S at p 197 (Transcript 5 October 2021 at lines 5–17).

<sup>38</sup> JRA Vol V Part X at p 61.

<sup>39</sup> JRA Vol V Part X at p 22.

<sup>40</sup> JRA Vol V Part X at pp 47–48.

101 The AD 77 Appellants argue that if Johnny was the beneficial owner of the shares, there would be no reason for jealousy or strife within the larger family in the first place that would cause him to arrange for the shares in the Father's name to be transferred to Mary. Hence, that message was inconsistent with the argument that Johnny is the beneficial owner of the shares. However, we are of the view that this is not a necessary conclusion. It is equally possible that Johnny was the beneficial owner but the others were jealous of his success and they wanted Johnny to share the fruits of his success.

102 There is also another sentence in the same WhatsApp message from Mary to Mdm Lim on 21 May 2015 where Mary said she reminded Late Brother "that FP is Johnny's". This is a telling statement because Late Brother was a registered shareholder. This reinforces the conclusion that Johnny owned FP Malaysia (or at least most of it).

103 The appellants rely upon several WhatsApp messages where Mdm Lim purportedly acknowledged that these shares are beneficially owned by the Father. On 15 October 2014, Mdm Lim stated that "father's share is meant for all his grandchildren (a total of 8 and not 3)" and "[i]f father did not leave behind any will regarding his share in FP, then his share should be equally distributed to his 4 children".<sup>41</sup> In a subsequent message sent on 21 May 2015 to Mary, Mdm Lim wrote that "[i]f [the Father] passed on without a legal will, then his assets (i.e. father's shares in the company) should be distributed equally among his 4 children. [Philips' Father] cannot claim all for himself and his children".<sup>42</sup> During cross-examination, Mdm Lim explained that when she sent these WhatsApp messages, she believed that the Father's shares were meant for his

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<sup>41</sup> JRA Vol V Part X at pp 25–26; AC 77 at paras 58 – 60.

<sup>42</sup> JRA Vol V Part X at p 53; AC 77 at para 59; AC 74 at paras 52–58.

grandchildren. However, she revisited her assumption when she discovered the evidence on how the dividends of FP Malaysia were distributed.<sup>43</sup> We will turn to the evidence of the dividends later. Suffice it to say for present purposes that the distribution of dividends formed a reasonable basis for Mdm Lim to revisit her assumption as to the 78,001 shares and, in any event, she is not bound by what she had said earlier because she has no personal knowledge as to who the beneficial owner of these shares is.

104 In so far as the AD 77 Appellants argue that the 78,001 shares are now held by Mary on trust for the Father's grandchildren, we accept that there is a WhatsApp message dated 15 October 2014 from Mary to Mdm Lim referring to this purpose (see [99] above). Also, as mentioned above, Mdm Lim and Mary did discuss the Father's intention for the shares in his name to be given to his grandchildren. Nevertheless, any allegation of a trust of the shares for the Father's grandchildren does not sit well with the primary contention of the AD 77 Appellants that all the shares are held beneficially for the Relatives. This would exclude the grandchildren.

105 In fact, both the Defences of Mary and Johnny do not plead such a trust for the Father's grandchildren.

106 An argument was also made by the AD 77 Appellants that the Father's transfer of shares to Mary should be presumed to be a gift to her unless a contrary intention is proven.<sup>44</sup> For the reasons stated above, we are of the view

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<sup>43</sup> JRA Vol III Part R at pp 188–189 (Transcript 29 September 2021 at p 181 line 12 to p 182 line 4).

<sup>44</sup> AC 77 at para 67.



that the contrary has been established. The shares were not the Father's in the first place.

107 Accordingly, we find that Mdm Lim has proved that the 78,001 shares initially held by the Father and which were transferred to Mary are also beneficially owned by Johnny.

### ***Dividends***

108 The above views are strengthened by the evidence in relation to the distribution of the dividends in FP Malaysia, which formed a significant part of the Judge's analysis. While the Judge placed much emphasis on the distribution of dividends, we consider that as one of the reasons, among others, to conclude that Johnny is the beneficial owner of the shares discussed. In our judgment, the distribution of the dividends further supports the conclusion that Johnny is the beneficial owner of his and Mary's shares in FP Malaysia.

109 A detailed analysis of the dividend distribution shows that save for occasional instances, dividends attributable to the other shareholders (Mary and Philip's mother, Mdm Teo) were assigned to Johnny, such that the entire dividend sum declared was received by Johnny. In some instances, Johnny used the payouts for the business of FP Malaysia. The following table traces the first dividends in July 2009 to January 2017 which was the last dividend payment prior to the filing of Suit 704:

S/N	Date	Amount	Description
1	13 July 2009	RM 1,000,000 <sup>45</sup>	Paid into a fixed deposit account in the joint names of Johnny and Mary, for the release of an overdraft in the name of Jimmy Tan, Mary's godfather.
2	3 June 2011	RM 1,617,164.25 <sup>46</sup>	RM 1,405,164.25 used to set off against director's loans (used to repay relatives)  RM 99,000 used to pay for Johnny's salary in 2011  RM 80,000 paid to Philip as a study loan <sup>47</sup>
3	15 May 2012	RM 202,000	Paid to Johnny <sup>48</sup>
4	11 March 2013	RM 199,001	Paid to Mary <sup>49</sup>
5	12 March 2013	RM 180,000	Paid to Johnny <sup>50</sup>
6	28 January 2014	RM 210,000	Paid to Johnny (RM 99,998 went towards increasing the share capital of Duramin) <sup>51</sup>

<sup>45</sup> JRA Vol V Part Q at pp 111–120.

<sup>46</sup> JRA Vol III Part J at pp 30–35; JRA Vol V Part Q at pp 124–129; JRA Vol V Part R at p 16.

<sup>47</sup> JRA Vol III Part J at pp 17–18.

<sup>48</sup> JRA Vol III Part J at pp 38–40.

<sup>49</sup> JRA Vol III Part J at pp 36–38.

<sup>50</sup> JRA Vol III Part J at pp 41–42.

<sup>51</sup> JRA Vol III Part I at pp 226–232.

S/N	Date	Amount	Description
7	5 March 2015	RM 210,000	Paid to Johnny <sup>52</sup>
8	17 October 2016	RM 3,180,000 <sup>53</sup>	Paid to Johnny (around half used to purchase land for the construction of a factory in the name of Duramin) <sup>54</sup>
9	17 January 2017	RM 14,078.50 <sup>55</sup>	Paid to Philip's mother, Mdm Teo

110 It is not disputed that in so far as Johnny received more dividends than the shares registered in his name would have entitled him, this was because the other registered shareholders had agreed to this. At the hearing below and on appeal, the appellants claim that the dividends were paid to Johnny to supplement his income, as opposed to increasing his salary directly. This arrangement was done merely to reduce Johnny's tax liability and the assignment of dividends was not accordingly attributable to Johnny's beneficial ownership. This explanation, which rested on a desire to pay less income tax, would be equally applicable if Johnny were the beneficial owner of the company. It does not account for why the other shareholders did not regularly receive their share of the dividends.

111 What is clear from the table above is that Johnny was often receiving all the dividends. Not only did the dividend declarations overwhelmingly benefit Johnny, Johnny also appeared to have unfettered control over the dividends. As

<sup>52</sup> JRA Vol III Part J at pp 43–45.

<sup>53</sup> JRA Vol V Part R at pp 59–75.

<sup>54</sup> JRA Vol III Part S at p 253 lines 4–7; JRA Vol V Part U at p 130.

<sup>55</sup> JRA Vol III Part L at p 37.

the Judge rightly noted, for the dividend declaration in 2016 of about RM 3,000,000, the full sum was assigned to Johnny. After RM 1,957,666.49 was used to offset director's loans,<sup>56</sup> Johnny received an aggregate of RM 1,047,042.51. He eventually received a net amount of RM 1,008,260.89 after distributing RM 38,781.62.

***Philip's 22,998 shares***

112 The Judge found that there was insufficient evidence for him to conclude that the beneficial interest in Philip's 22,998 shares was held other than according to the legal shareholding (GD at [58]). The AD 77 Appellants point out that there may be some logical inconsistency between the Judge's finding on the beneficial interest in Philip's shares and the finding that Johnny owned the beneficial interest in Mary's shares. The analysis regarding the dividends applies to both equally.

113 Nevertheless, as we have mentioned, the dividends constitute one reason only. There is other evidence that suggests that the shares issued to Johnny and to Mary were from loans by Mary to Johnny. The shares issued to the Father were likely from loans by the Father to Johnny. Such evidence is not available vis-à-vis the money from Late Brother although it is true that there is no accounting record from FP Malaysia to show how the money from Late Brother was recorded in its books. Furthermore, if there is an inconsistency in the Judge's reasoning based on the dividends, that inconsistency does not necessarily mean that Johnny is not the beneficial owner of the 277,001 shares. It could mean that Johnny is the beneficial owner also of the 22,998 shares held by Philip. The remaining one share initially issued to Johnny is indisputably his.

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<sup>56</sup> JRA Vol III Part M at pp 102–103.

In any event, Mdm Lim has not appealed against the Judge's finding on Philip's shares and we need say no more on this, save in so far as it impacts FP Singapore and Duramin, as we explain below.

114 Since we have concluded that Johnny is the beneficial owner of the shares held in the names of Johnny and Mary, *ie*, about 92.3% of FP Malaysia, there is less importance to the parties whether FP Malaysia or Johnny is the beneficial owner of FP Singapore or Duramin or 45% or 49% of FP Thailand. Mdm Lim had argued that Johnny is the beneficial owner of the shares in question of these three companies because she could not be certain whether she could establish that FP Malaysia was owned entirely or mostly by Johnny. Conversely, the appellants had argued, contrary to their pleadings, that FP Malaysia, and not Johnny, is the owner of the shares in FP Singapore, Duramin, and FP Thailand because they were hoping to persuade the court that FP Malaysia is not owned wholly or mostly by Johnny.

115 In any event, since Johnny is the beneficial owner of only 92.3% of the shares in FP Malaysia, the court still has to decide whether FP Malaysia or Johnny owns the shares in FP Singapore, Duramin and FP Thailand.

### **FP Singapore**

116 FP Singapore was originally incorporated on 13 October 2003 as Fusion Cuisine & Catering Pte Ltd. It was acquired and renamed to FP Singapore on 27 April 2005 using S\$1,000 from profits from FP Malaysia. FP Singapore was set up to complement FP Malaysia's business: FP Singapore's role was to buy the metal pallets FP Malaysia produced and to thereafter lease them to customers. This arrangement was necessary because FP Malaysia needed to *sell* the metal pallets it produced to its customers (as opposed to merely leasing

them) in order to maintain its “pioneer” status and tax exemptions from the Malaysian government. However, as FP Malaysia’s customers were only interested in leasing the pallets, FP Singapore was acquired to buy the metal pallets from FP Malaysia before leasing them to FP Malaysia’s customers.<sup>57</sup>

117 The Judge gave effect to the First Trust Deed made by Mr Koh in favour of Johnny in respect of two issued shares of (\$1 each) in FP Singapore. It is not disputed that Mr Koh was at all times only a nominee and therefore unable to dispose of any beneficial interest to a volunteer. The appellants seek to rely on the case of *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem and others* [2023] SGHC 6 (“*KPN*”) to argue that: (a) a presumption of resulting trust arose in favour of FP Malaysia when it paid for the acquisition costs of FP Singapore; and (b) this presumption stands unrebutted as there was no donative intent to benefit Johnny personally.<sup>58</sup>

118 The facts of *KPN* are as follows. The plaintiff in *KPN* brought a suit to assert his rights as a beneficial owner of a portion of the shares in a company. The plaintiff relied on a written declaration of trust executed by the second defendant, who was a lawyer and a nominee director, that the second defendant held the shares in the company on trust for the plaintiff, the first defendant and another party in equal proportions. Only three subscriber shares were issued at US\$1 per share. Later, another 9,997 shares were issued at US\$0.01 per share. They were all held in the name of the second defendant. The first defendant contended that the trust deed was ineffective and was no more than a temporary arrangement intended to last only until negotiations had concluded and a shareholders’ agreement could be executed (*KPN* at [35]–[36]). Vinodh

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<sup>57</sup> JRA Vol III Part G at pp 112–114 (Johnny’s AEIC at paras 52–58).

<sup>58</sup> AC 77 at paras 129–134.

Coomaraswamy J referred to *FanmailUK.com Ltd and others v Cooper and others* [2008] All ER (D) 183 (“*Fanmail*”) and held that the court must have regard to the true economic substance of the parties’ transaction seen in its wider context (at [79]). On the authority of *Fanmail*, Coomaraswamy J noted that the sum to pay for the initial three subscriber shares could be said to be *de minimis* both in absolute terms and also relative to the fees and disbursements paid for the incorporation of the companies (at [90]). In *KPN*, the first defendant had paid for both the three subscriber shares and the fees and disbursements, but the point was that the fees and disbursements were given more weight than the payment for the three subscriber shares. Thus, the court found that notwithstanding the execution of the trust deed, there was a presumed resulting trust over the three subscriber shares in favour of the first defendant who had borne the consideration for the incorporation of the company, having paid the fees and disbursements of the company’s incorporation and having contributed the company’s initial paid-up capital (*KPN* at [84]).

119 On the facts, the presumption of resulting trust in favour of the first defendant stood unrebutted because the first defendant had no donative intent with respect to the shares (*KPN* at [109]). The only evidence of the first defendant’s donative intent was the trust deed and the first defendant’s instructions regarding the execution of the trust deed (*KPN* at [111]). In the circumstances of the case, the terms of the trust deed were intended only as a stop gap measure, to last only until negotiations on the investment structure of the project were concluded (*KPN* at [109]). Accordingly, the trust deed did not confer any proprietary rights on the plaintiff because the plaintiff was not equity’s darling, did not acquire a legal interest in the shares, was not a purchaser and gave no value for the benefits conferred by the trust deed (*KPN* at [117]). For other reasons, the court also found that there was a presumed

resulting trust over the other 9,997 shares in favour of the first defendant who had also paid for those shares.

120 In this case, there is evidence that FP Malaysia paid the professional fees for the acquisition of FP Singapore although it is unclear who paid for the shares in FP Singapore. Nevertheless, in our view, the latter is *de minimis* given that only S\$2 was paid for the two shares in FP Singapore.<sup>59</sup>

121 The primary difficulty with the appellants' argument that FP Malaysia is the beneficial owner of the shares in FP Singapore is that this was not pleaded by them. Neither did FP Malaysia make any claim to the shares although it is a party in the action. Any suggestion that the shares are held directly by the shareholders of FP Malaysia ignores the point that FP Malaysia is a separate legal entity from its shareholders.

122 That said, this court is mindful that the burden of proof is on Mdm Lim to prove that Johnny is the beneficial owner of the shares. While Mr Koh signed the first of the two trust deeds to hold the two shares on trust for Johnny, he was merely doing what he was apparently told by Mary. The court is also mindful that even if FP Malaysia is not the beneficial owner, this does not necessarily mean that Johnny is the beneficial owner of the shares in FP Singapore. However, there is no other logical contention in play after our conclusion made above that Johnny is the beneficial owner of 92.33% of the shares in FP Malaysia.

123 What the analysis on FP Malaysia indicates is that Johnny is the true beneficial owner of most of FP Malaysia and directed its business as his own.

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<sup>59</sup> JACB II 39–43; Transcript 17 July 2023 at p 104 lines 20–31.



FP Singapore is no more than an extension of FP Malaysia's business. Johnny took pains to ensure that the shares in FP Singapore are not held by FP Malaysia and the appellants themselves did not initially contend that FP Malaysia is the beneficial owner of shares in FP Singapore. FP Malaysia has itself not asserted any claim to FP Singapore. In the absence of more evidence and since FP Malaysia did not claim any of the shares in FP Singapore, we are of the view that Mdm Lim has established that Johnny is the beneficial owner of the shares in FP Singapore. Therefore, we hold that the beneficial ownership of FP Singapore is held 100% by Johnny.

### **Duramin**

124 Prior to the 25 July 2018 transfers, Johnny held 99,999 shares comprising 99.99% of the shareholding in Duramin. The Judge found no reason to deviate from the legal holding and granted a declaration that Johnny was the 100% beneficial owner of the company.

125 Duramin was acquired sometime around 3 July 2009 using profits from FP Malaysia of RM 2,400. There is evidence of payment by FP Malaysia to a corporate secretarial company for the acquisition of Duramin, including an invoice, a payment voucher and a bank statement.<sup>60</sup> The appellants say that the purpose of acquiring Duramin was to obtain government grants, and that Duramin was subsequently used to purchase land upon which a factory for FP Malaysia could be built. At the time of trial, the factory was about 80% complete.<sup>61</sup> These factors weigh in favour of FP Malaysia being Duramin's beneficial owner.

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<sup>60</sup> JACB II 44–47.

<sup>61</sup> JRA Vol III Part G at p 120 para 81.

126 Nevertheless, Johnny was the registered owner of 99.99% of the shares prior to 25 July 2018. There is also evidence that suggests that Johnny is the beneficial owner of Duramin instead. In 2014, Duramin’s share capital increased from two to 100,000 shares. In 2016, Duramin purchased land at Taman Teknologi Cheng, Melaka. Both of these were financed out of dividend assignments to Johnny. The land was financed by an unsecured loan from Johnny (and these dividends, on Mary’s evidence, were a means to increase Johnny’s income). The funds for the increase in paid-up capital came from two separate sources: 65% of the funds amounting to RM 65,000 came from a joint trust account maintained by Mary and Johnny which funds originated from FP Malaysia, while the remaining RM 34,998 came from dividends assigned to Johnny on 28 January 2014. Johnny explained it was necessary that the funds appear to come from him to distance Duramin from FP Malaysia in order to obtain “pioneer” status. In that sense, Johnny was merely a “bridge”, and the fact that the moneys came from dividends assigned to him did not reflect any beneficial shareholding. While his explanation was plausible, it was equally plausible that he paid the sums because he was the beneficial owner of Duramin. Duramin’s records showed an amount owing to *Johnny* as director of RM 1,748,936.<sup>62</sup> On the stand, Johnny confirmed that Duramin owed him this money and *not* FP Malaysia.<sup>63</sup>

127 Again, the primary difficulty with the appellants’ argument that FP Malaysia is the beneficial owner of the shares in Duramin is that this was not pleaded by them. Neither did FP Malaysia make any claim to the shares although it is a party in the action. There is insufficient reason to deviate from

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<sup>62</sup> JRA Vol V Part U p 118.

<sup>63</sup> JBNE at p 101 lines 9 to 19.

the legal holding prior to 25 July 2018. We hold that Johnny is the beneficial owner of Duramin.

### **FP Thailand**

128 The dispute in respect of FP Thailand is whether the 45% held by Johnny and the 4% held by Mary in FP Thailand:

- (a) belong to FP Malaysia;
- (b) belong to Johnny; or
- (c) belong to Johnny and to Mary in accordance with the registered shareholding.

129 The appellants argue that the 49% shareholding belongs to FP Malaysia while Mdm Lim argues that it belongs to Johnny, although in the course of arguments her counsel indicated that it would not matter much to her if the court were to conclude that Johnny is the beneficial owner of 45%, instead of 49%, of the shares.

130 FP Thailand was incorporated in 2004. While the AD 77 Appellants submitted at the hearing that FP Malaysia paid for its incorporation, it was conceded that there is no evidence to this effect. Prior to 25 July 2018, its legal ownership was 45% Johnny's and 4% Mary's. The Judge reasoned that Mary's 4% was best explained as having been acquired by Johnny although he did not state how or when this beneficial interest was acquired. Mdm Lim's case relied on the Judge's reasoning but also did not articulate how or when that beneficial interest was acquired.

131 At trial, Johnny’s evidence was that FP Thailand was used to import pallets into Thailand, whenever there was a need to do so. There was no office in Thailand and he had run FP Thailand for the last five years with the help of a bookkeeper without consulting Mr Sarawiroj.<sup>64</sup>

132 In the absence of more evidence and since FP Malaysia did not make any claim to these shares, we find that the beneficial ownership follows the legal ownership. Therefore, we find that Johnny is the beneficial owner of 45% of FP Thailand, and not 49% as found by the Judge. There is no valid basis to say that he acquired Mary’s 4%.

#### **Costs below**

133 Following costs submissions by the parties, the Judge ordered that Johnny and Mary pay Mdm Lim costs on an indemnity basis because of their conduct of their cases. The resulting sum of \$260,680 was calculated on a base figure of \$196,000, representing \$60,000 in pre-trial work, \$96,000 for trial work and \$40,000 for post-trial work. The Judge further ordered that Mdm Lim pay Philip costs of \$20,000, “taking into account the overlap with the other parts of the case”.<sup>65</sup>

134 Costs are at the discretion of the Judge. Mary and Johnny have not shown that the Judge erred in ordering indemnity costs against Johnny and Mary in view especially of the changing positions of Johnny, as between his position in the matrimonial proceedings and in Suit 704, and of Mary, as between her position in the matrimonial proceedings, in pleadings in Suit 704 and then in

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<sup>64</sup> JRA Vol III Part T at pp 95–97 (Transcript 6 October 2021 at p 88 line 16 to p 90 line 15).

<sup>65</sup> JRA Vol I at pp 32–33.

oral evidence. While we have partially allowed AD 77 in respect of FP Thailand, we decline to vary the costs ordered below as the issue in question is not a significant one in the context of the entire case.

135 Finally, regarding the costs order of \$20,000 in favour of Philip, this was reasonable as Philip was represented by Johnny's lawyer and his Defence aligned closely with Johnny's.

### **Conclusion**

136 For all the above reasons, we dismiss the appeals against the Judge's decision on FP Malaysia, FP Singapore and Duramin. In relation to FP Thailand, we allow the appeals in part and vary the decision below in that we grant a declaration that Johnny is the beneficial owner of 45% of the shares and not 49%.

137 Counsel have intimated that they may wish to be heard on the costs of the appeals. After taking their suggestions into account, we direct the following:

- (a) Parties are to confirm, by letter to the court, whether they wish to make further submissions on the costs of the appeals within seven days from the date of this decision.
- (b) If any party wishes to make such submissions, such submissions are to be in writing. The submissions (limited to five pages excluding the cover page) and any accompanying bundles of authorities shall be filed and exchanged within 14 days from the date of this decision.
- (c) If any party wishes to make such submissions, permission is given to that party to annex a copy of the relevant correspondence

engaged by those submissions, but no other documentary evidence is to be annexed.

Woo Bih Li  
Judge of the Appellate Division

Valerie Thean  
Judge of the High Court

Quentin Loh  
Senior Judge

Khoo Kah Lip Michael SC and Low Miew Yin Josephine (Michael Khoo & Partners) for the first appellant in AD/CA 74/2022 and the third respondent in AD/CA 77/2022;  
Lok Vi Ming SC, Qabir Singh Sandhu and Clara Lim Ai Ying (LVM Law Chambers LLC) for the first respondent in AD/CA 74/2022 and AD/CA 77/2022;  
Ling Daw Hoang Philip, Chua Cheng Yew and Low Ziron (Wong Tan & Molly Lim LLC) for the second respondent in AD/CA 74/2022 and the appellants in AD/CA 77/2022;  
Sam Hui Min Lisa (Lisa Cen Hui Min) (Lisa Sam & Company) for the third respondent in AD/CA 74/2022 and the second respondent in AD/CA 77/2022.