

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 144

Suit No 601 of 2016

Between

Red Star Marine Consultants Pte Ltd

... Plaintiff

And

1. The Personal Representatives of the Estate of
Satwant Kaur d/o Sardara Singh (deceased)

2. Manjit Kaur d/o Sardara Singh

... Defendants

GROUNDS OF DECISION

[Equity] — [Fraud]

[Trusts] — [Recipient liability]

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Red Star Marine Consultants Pte Ltd
v
**Personal Representatives of the Estate of Satwant Kaur d/o
Sardara Singh, deceased and another**

[2019] SGHC 144

High Court — Suit No 601 of 2016
Woo Bih Li J
15–18, 22–25, 29 January 2019; 31 January 2019

4 June 2019

Woo Bih Li J:

Introduction

1 The plaintiff, Red Star Marine Consultants Pte Ltd, commenced Suit No 601 of 2016 on 8 June 2016 against the first defendant (“D1”), the personal representatives of the estate of Satwant Kaur d/o Sardara Singh (“the Deceased”), for the alleged fraud of the Deceased, who was its employee between 2001 and 2012. The claim amount was originally S\$1,741,812.03 but this was later reduced to S\$1,633,875.20.¹ The personal representative of the Deceased’s estate is the executor, Mr Sarjit Singh s/o Sardara Singh (“Sarjit”), who is the Deceased’s brother.

¹ Statement of claim (amendment no 1) at para 28(A)–(D), NE 31 Jan 19, p 58 at lines 10–16.

2 Some ten months later on 29 May 2017, the second defendant (“D2”), who was a sister of the Deceased, was added to the present proceedings.² The plaintiff eventually claimed the same amount of S\$1,633,875.20 against D2 on the grounds of knowing receipt.

3 At the conclusion of the trial on 31 January 2019, I delivered an *ex tempore* judgment dismissing the plaintiff’s claims against both D1 and D2. The plaintiff has filed an appeal to the Court of Appeal and I now set out below the written grounds of my decision.

Background to the dispute

4 I first set out the background to the dispute.

5 The plaintiff is a company engaged in the business of marine consultancy. Dhanvinder Singh s/o Karam Singh (“DS”) and his wife, Ms Rappa Kathelene Wilhemina (“Kathelene”), are the two directors and shareholders of the plaintiff.³ DS is the managing director of the plaintiff. At the material time, Kathelene did not work at the plaintiff’s office and went there only occasionally when called upon by DS.⁴

6 The plaintiff’s main business is ship inspection, which is conducted for clients by third party service providers (“vendors”).⁵ These vendors invoice the

² See writ of summons dated 29 May 2017.

³ Notes of Evidence (“NE”) 15 Jan 19, p 21 at lines 5–7.

⁴ NE 15 Jan 19, p 22 at lines 23–26, p 25 at lines 28–32.

⁵ NE 16 Jan 19, p 110 at lines 13–21.

plaintiff for conducting ship inspections and their charges are recorded in the plaintiff's accounts as "Survey Charges".

7 The Deceased was employed by the plaintiff from 2001 to 2012 as the personal secretary to DS. At all material times, she and DS were the only two employees of the plaintiff.⁶

8 Between 2006 and 2012, the Deceased obtained a sum of S\$1,633,875.20 from the plaintiff.⁷ This was done by utilising cash cheques signed by DS. These cash cheques were accompanied by payment vouchers stating that the cash cheques were to pay the plaintiff's vendors' invoices for services rendered.⁸

9 The Deceased utilised these moneys to purchase and/or pay the premiums for a number of insurance policies.⁹ The Deceased also purchased properties which were registered in her sole name utilising these moneys:¹⁰

⁶ DS's affidavit of evidence-in-chief ("AEIC") at para 15 read with NE 16 Jan 19, p 64 at lines 5–13.

⁷ NE 31 Jan 19, p 58 at lines 10–16.

⁸ Satjit's AEIC p 39 at para 5.

⁹ D1's bundle of documents ("1DBOD") vol 2 at pp 24–25.

¹⁰ NE 23 Jan 19, p 102 at lines 5–6, p 106 at lines 24–29, p 110 at lines 20–22.

Property	Year Purchased
26 Bayshore Road, #13-05, Singapore (“the 26 Bayshore Property”)	2006
34 Marine Crescent, #04-41, Singapore	2007
41 Geylang Lorong 21, #03-05, Singapore	2012

10 Apart from these, two other properties were purchased:

Property	Ownership	Year Purchased
7 Rivervale Link #13-36, Singapore (“the Rivervale Property”)	D2	2008
70 Bayshore Road, #21-11, Singapore (“the 70 Bayshore Property”)	D1 and D2 as joint tenants ¹¹	2010

11 Although D2 was the registered owner of the Rivervale property, the Deceased was a co-borrower on the loan and had further pledged a fixed deposit with Oversea-Chinese Banking Corporation Limited (“OCBC”).¹²

12 The exact contribution of the Deceased and D2 toward the properties mentioned above at [10] was disputed and will be discussed below.

¹¹ NE 29 Jan 19, p 66 at lines 14–18.

¹² D2’s AEIC at para 34–39.

13 On 29 August 2012, the plaintiff’s offices were shifted from 420 North Bridge Road, #06-11, Singapore (“the Old Office”), to 45 Kallang Pudding Road, #09-09, Singapore (“the New Office”). Kathelene oversaw the move as DS was overseas for business and the Deceased was in India on a religious pilgrimage.¹³

14 According to the plaintiff, the Deceased’s fraud was discovered soon after the plaintiff’s move to the New Office. On or about 5 September 2012, Kathelene was unpacking at the New Office when she discovered incriminating documents belonging to the Deceased such as her insurance policies, a bankbook for an account held with OCBC and other documents pertaining to properties of the Deceased indicating that she had substantial wealth. Kathelene informed DS, who was not in Singapore then, of this discovery.¹⁴

15 When DS returned to Singapore, he went to the plaintiff’s New Office on or about 7 or 8 September 2012 to look at the incriminating documents. He left Singapore on or about 8 September 2012 and told Kathelene not to allow the Deceased entry into the New Office.¹⁵

16 On 13 September 2012, the Deceased and D2 broke into the plaintiff’s New Office. They did so by engaging a locksmith to break the locks.¹⁶ Whether

¹³ NE 15 Jan 19, p 23 at lines 24–28.

¹⁴ DS’s at para 36–44; Kathelene’s AEIC at para 24.

¹⁵ NE 22 Jan 19, p 21 at lines 17–23; DS’s AEIC at para 52–62.

¹⁶ NE 29 Jan 19, p 97 at lines 13–25.

the Deceased took anything from the plaintiff's New Office during the break-in is disputed.

17 On 14 September 2012, Kathelene attempted to gain entry into the New Office but the locks had been changed. From her inquiries with neighbouring occupants, she believed that the Deceased and D2 had hired a locksmith to change the locks and gain entry.¹⁷ Kathelene called the police to report the incident.¹⁸ Kathelene's evidence was that many documents were missing.¹⁹

18 Also on 14 September 2012, the Deceased lodged her own police report claiming that she visited the plaintiff's New Office and found that the keys left for her by Kathelene in the letter box of the Old Office did not work. She was unable to contact DS or Kathelene and thus engaged a locksmith to change the locks to the office. She then entered the office to work and perform prayers. The Deceased stated that her reason for making the police report was that DS had called her earlier that day and accused her of breaking into the office.²⁰

19 The Deceased also tendered her resignation from the plaintiff by mail dated 14 September 2012. Her resignation letter stated that her reason for doing so was DS's abusive language and violent behaviour in the office, which made her fearful of working with him.²¹

¹⁷ NE 16 Jan 19, p 7 at line 17 to p 8 at line 21.

¹⁸ Vol 2 Agreed Bundle ("AB") at p 612.

¹⁹ Kathelene's AEIC at para 35.

²⁰ 2AB at p 613–614.

²¹ Vol 2 AB at p 615–616.

20 On 15 September 2012, DS lodged a police report alleging that the Deceased had misappropriated the plaintiff's moneys.²²

21 Police investigations commenced and the Deceased's assets were frozen.²³ In the trial, counsel agreed that the Deceased gave a total of eight statements to the police between 1 October 2012 and 24 March 2014, although only seven were adduced in evidence.²⁴

22 In the statements given by the Deceased to the police, she admitted that she had received various sums of money from the plaintiff. However, she alleged that this was with the consent of DS, who was the one who instructed her what to state on payment vouchers for the cheque payments and to prepare the cash cheques. Some of the money was paid as some sort of commission to her. In any event, she was entitled to use the money as she thought fit. DS had wanted to evade goods and services tax and income tax. Also, DS did not want Kathelene to know that the plaintiff was making huge profits as their marriage was on the verge of divorce. The Deceased had used the moneys to buy insurance policies and properties and DS was aware of her purchases. When DS needed money, he would ask the Deceased to withdraw money from her personal account to lend to his friends or for his own use. DS had also demanded that she buy expensive items for him.²⁵

²² DS's AEIC at p 553.

²³ NE 24 Jan 19, p 77 at line 6.

²⁴ Vol 12 AB at p 5125–5154.

²⁵ Vol 12 AB at p 5125–5154.

23 The Deceased was eventually charged by the police in October 2014²⁶ and claimed trial to seven charges of criminal breach of trust by clerk or servant under s 408 of the Penal Code (Cap 224, 2008 Rev Ed) and one charge under s 47(1)(c) and punishable under s 47(6)(a) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed).²⁷

24 Before the trial took place, the Deceased was granted a discharge not amounting to an acquittal (“DNAQ”) on 25 January 2016 on the application of the Prosecution.²⁸

25 The Deceased passed away from cancer on 8 May 2016 at the age of 49 years.²⁹

26 On 8 June 2016, the plaintiff filed the present action. There was no prior letter of demand sent to the Deceased or D1. There was a disposal inquiry in the State Courts on 12 and 17 January 2017 in respect of the Deceased’s assets that were frozen by the police. On 17 January 2017, the plaintiff applied for and obtained a Mareva injunction against D1 to restrain him from disposing of assets up to \$2 million.³⁰

²⁶ NE 31 Jan 19, p 18 at lines 3–16.

²⁷ Vol 2 AB at p 665–672.

²⁸ Satjit’s AEIC at p 26.

²⁹ Vol 2 AB at p 686.

³⁰ DS’s AEIC at para 139 and pp 829–830.

27 The plaintiff joined D2 in the action some ten months after the suit was filed on 29 May 2017.³¹ The basis of this claim was that D2 had used moneys from the Deceased to buy the Rivervale Property and the 70 Bayshore Property. The plaintiff alleged that D2 knew that the moneys had been wrongfully obtained by the Deceased from the plaintiff. D2's defence was that the two properties were bought using her own money and that, in any event, she was not aware that any money from the Deceased came from the plaintiff.³²

The parties' cases

The plaintiff's case

28 The plaintiff's pleaded case was that the Deceased owed fiduciary duties to it by virtue of her duties in the company. According to the plaintiff, the Deceased was responsible for liaising extensively with its clients, service providers and suppliers. The Deceased also handled all administrative matters of the plaintiff including consolidating invoices issued to the plaintiff by its vendors, preparing cheques and payment vouchers for DS to sign, and banking in payments received by the plaintiff into its bank accounts.³³

29 The Deceased breached her fiduciary duties by:³⁴

³¹ Statement of claim (amendment no 1)

³² D2's defence at para 6.

³³ Statement of claim (amendment no 1) at para 9-13.

³⁴ Statement of claim (amendment no 1) at para 15.

- (a) Inducing DS to sign cash cheques for the payment of duplicate invoices before encashing them and pocketing the moneys;³⁵
- (b) Cashing some of the cheques for her own benefit instead of making payments to the plaintiff's vendors;
- (c) Inducing DS to sign further cash cheques to pay for invoices that had already been paid for by the cheques that the Deceased had cashed for her own benefit; and
- (d) Deliberately delaying some payments to the plaintiff's vendors in order to buy time to induce DS to sign the cash cheques referenced above at [(c)].

30 Through this, the Deceased was able to obtain the sum of S\$1,633,875.20 from the plaintiff (see [8] above).

31 The plaintiff's primary witness was DS. According to him, he became suspicious of the Deceased sometime after 5 September 2012 when Kathelene discovered the Deceased's insurance policies, bankbook and other documents indicating substantial personal wealth.³⁶ This was far in excess of the Deceased's remuneration from the plaintiff which consisted of a monthly salary of S\$2,500 plus occasional commissions of between S\$500 and S\$3,000.³⁷

³⁵ Plaintiff's closing submissions (a) at para 9–10.

³⁶ DS's AEIC at para 35–44; Kathelene's AEIC at para 24.

³⁷ DS's AEIC at para 41; NE 22 Jan 19, p 76 at lines 1–25.

32 Subsequently, on 8 September 2012, DS went to the plaintiff’s New Office to check its accounts and discovered that there were many duplicate payments to various vendors (see [15] above).³⁸ DS then told Kathelene not to allow the Deceased to enter the New Office. Kathelene had the locks changed and informed the Deceased via a phone call not to return to the New Office unless told to by DS.³⁹ At this time, many of the Deceased’s personal belongings including numerous insurance policies were still in the New Office.

33 Following the break-in on 13 September 2012, Kathelene discovered on 14 September 2012 that many of the Deceased’s possessions which had been in the New Office had been taken away, including some of the insurance policies.⁴⁰ She suspected that the Deceased and D2 were attempting to conceal and dispose of evidence linking the Deceased with losses suffered by the plaintiff.⁴¹

34 DS testified that sometime in September 2012, he discovered payment vouchers made out to two of the plaintiff’s vendors, Mr Amarjit Singh (“Amarjit”) and Mr Mukhtiar Singh (“Mukhtiar”) for the payment of invoices. He checked with both of them whether they had received the particular cheques reflected in the payment vouchers but was told that they had not.⁴²

³⁸ DS’s AEIC at para 52.

³⁹ Kathelene’s AEIC at para 30.

⁴⁰ Kathelene’s AEIC at para 35.

⁴¹ Kathelene’s AEIC at para 36.

⁴² NE 17 Jan 19, p 33 at lines 13–27, p 38 at lines 1–11.

35 DS also testified that he had conducted his own audit of the plaintiff's finances in September 2012 which was completed within five or six months.⁴³ This audit allowed him to estimate that the plaintiff's loss was about S\$1.7m.⁴⁴

36 The plaintiff produced numerous cheque images and payment vouchers which it claimed evidenced the Deceased's fraud.⁴⁵

37 DS's position was that the Deceased's *modus operandi* was to utilise invoices submitted by the plaintiff's vendors to persuade DS to sign multiple cash cheques over a period of time. The Deceased would first mislead DS into thinking that the plaintiff's vendor had requested for a cash cheque. She would then prepare the cheque and an accompanying payment voucher reflecting the serial number(s) of the invoice(s) to be paid before presenting them to DS. By re-using the same invoices to obtain multiple payments from the plaintiff, the Deceased was able to pay the plaintiff's vendors while at the same time pocketing the difference.

38 Using the figures from the eight charges which had been pressed against the Deceased, DS presented a table of the sums of money wrongfully taken by the Deceased from the plaintiff.⁴⁶ The money was either in the currency of Singapore or the United States of America. The exchange rate agreed to by the parties was US\$1=S\$1.43, which is used to make the points below.

⁴³ NE 23 Jan 19, p 62 at lines 19–31.

⁴⁴ NE 23 Jan 19, p 66 at lines 7–31.

⁴⁵ Vol 12 AB at p 5154 to Vol 15 AB at p 6950.

⁴⁶ DS's AEIC at para 79; 6AB at p 2460–2466.

39 In my *ex tempore* judgment, I mentioned that the figures from the eight charges showed that the Deceased had taken the following amounts from the plaintiff:⁴⁷

From February 2006 – December 2006	About S\$180,000
From January 2007 – November 2007	About S\$340,000
From January 2008 – November 2008	About S\$345,000
From January 2009 – November 2009	About S\$370,000
From March 2010 – December 2010	About S\$240,000
From January 2011 – December 2011	About S\$150,000
From January 2012 – August 2012	About S\$ 89,000

40 The above table refers to approximate amounts. More detailed information is found below at [66].

41 Apart from the charges, the plaintiff also relied heavily on the statements which the Deceased gave to the police (see [22] above). The Deceased had set out the various sums in detail and, apparently, the sums in the charges which were also the subject of the plaintiff's claims were based on figures which she had provided to the police.⁴⁸

42 As for how the Deceased managed to hide the fraud, DS explained that as a private exempt company, there was no requirement for the plaintiff's

⁴⁷ DS's AEIC at para 79; 6AB at p 2460–2466.

⁴⁸ Vol 12 AB at p 5125–5154.

financial statements to be audited.⁴⁹ However, the plaintiff had engaged the services of an outside accountant named Abdul Jabbar (“Jabbar”) to prepare its financial statements.⁵⁰ DS had signed the financial statements each year. According to DS, the money which the Deceased had wrongfully taken from the plaintiff was hidden under an expense item called “Survey Charges”. In other words, money which she had wrongfully taken was treated in the accounts as part of “Survey Charges” and this item or expense was wrongly inflated accordingly. Consequently, the profit for each of the years was correspondingly reduced.⁵¹ The table at [66] below sets out the amounts the Deceased had admitted taking and the “Survey Charges” and the Profits before Tax for 2006 to 2012.

43 As against D1’s limitation defence, the plaintiff claimed that s 22 of the Limitation Act (Cap 163, 1996 Rev Ed) (“LA”) applied as the moneys obtained by the Deceased from the plaintiff were trust property.⁵² In the alternative, the plaintiff submitted that it was entitled to rely on s 29(1) of the LA as it could not have discovered the Deceased’s fraud up until 15 September 2012, the date on which DS first made a police report claiming that the Deceased had misappropriated the plaintiff’s moneys.⁵³

44 The plaintiff’s case against D2 was in knowing receipt. According to the

⁴⁹ NE 16 Jan 19, p 83 at lines 1–6.

⁵⁰ NE 16 Jan 19, p 92 at lines 13–14.

⁵¹ NE 16 Jan 19, p 118 at lines 9–27.

⁵² Plaintiff’s closing submissions (b) at para 3–4.

⁵³ Plaintiff’s closing submissions (b) at para 6–22.

plaintiff, D2 did not have the necessary financial means⁵⁴ and, together with the Deceased, had used the plaintiff's moneys to purchase the Rivervale Property in October 2008 in D2's name and the 70 Bayshore Property in April 2010 as joint tenants.⁵⁵

45 To demonstrate D2's lack of financial means to purchase the Rivervale Property, the plaintiff relied on:

- (a) D2's notices of assessment for the years 2004 to 2009;⁵⁶
- (b) D2's default on a renovation loan of S\$18,000 owed to OCBC on 26 May 2004, which was only repaid about four years later on 11 April 2008;⁵⁷ and
- (c) D2's affidavit in a separate matter where she stated that her business was dormant in mid-2008 and that she was unable to pay for a van.⁵⁸

46 The plaintiff relied on the following evidence to show that D2 lacked the financial means to purchase the 70 Bayshore Property:⁵⁹

⁵⁴ Plaintiff's closing submissions (c) at para 19–61.

⁵⁵ Statement of claim (amendment no 1) at para 18.2–18.3.

⁵⁶ NE 31 Jan 19, p 86 at lines 19–26.

⁵⁷ NE 31 Jan 19, p 85 at lines 20–24.

⁵⁸ NE 31 Jan 19, p 85 at lines 25–31.

⁵⁹ Plaintiff's closing submissions (c) at para 70–87.

(a) D2 only had S\$4,519.17 in her personal bank account on 30 April 2010, some ten days before a sum of S\$62,200 was due for the exercise of the option to purchase the property;

(b) A sum of S\$62,200 was withdrawn from the Deceased's bank account on 10 May 2010⁶⁰ which D2 admitted was subsequently deposited into her bank account and used for the purchase of the 70 Bayshore Property;⁶¹ and

(c) D2 was suddenly able to obtain S\$223,435.75, which was deposited into her bank account on 28 June 2010 and used to complete the purchase of the 70 Bayshore Property on 2 July 2010.

47 The plaintiff also claimed that D2 held certain joint accounts with the Deceased into which the plaintiff's moneys were deposited.⁶²

48 According to the plaintiff, the circumstances surrounding the purchase of the Rivervale Property in 2008 and the 70 Bayshore Property in 2010 meant that the moneys used to purchase both properties came from the moneys misappropriated from the plaintiff by the Deceased.

49 The plaintiff also claimed that D2 knew or ought to have known that the Deceased's contribution to the purchase of both the Rivervale Property and the 70 Bayshore Property was traceable to her breaches of fiduciary duties owed to

⁶⁰ Vol 12 AB at p 5105.

⁶¹ D2's supplementary AEIC at para 22–23.

⁶² Statement of claim (amendment no 1) at para 18.1.

the plaintiff for several reasons:⁶³

- (a) D2 was extremely close to the Deceased;
- (b) The plaintiff and D2's companies shared an office for a number of years;
- (c) D2 would have had sight of the Deceased's income documents during the purchase of the various properties mentioned above at [10]; and
- (d) D2 had introduced the Deceased to DS and knew that the Deceased was earning a low salary.

50 There are two other issues in relation to the plaintiff's pleadings which bear discussing. First, in the plaintiff's pleadings, there was mention of a claim in unjust enrichment.⁶⁴ I did not think that a cause of action in unjust enrichment was adequately pleaded. The statement of claim (amendment no 1) pleaded (at para 26):

The Defendants are liable to account to the Plaintiff for the sum of SGG\$1,741,812.03 as constructive trustee on the grounds of unjust enrichment.

51 The plaintiff's claim simply asserted that the defendants were liable to it in unjust enrichment without identifying a particular recognised unjust factor or event which would give rise to a claim. As the Court of Appeal stated in *Wee*

⁶³ Plaintiff's closing submissions at para 88–91.

⁶⁴ Statement of claim (amendment no 1) at para 26.

Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another [2013] 3 SLR 801 at [134]:

It is important to reiterate that there is no freestanding claim in unjust enrichment on the abstract basis that it is “unjust” for the defendant to retain the benefit – *there must be a particular recognised unjust factor or event which gives rise to a claim*. The following observations by Prof Birks in a seminal article are, in this regard, apposite (see Peter Birks, “The English recognition of unjust enrichment” [1991] LMCLQ 473 (at 482)):

‘Unjust’ is the generalization of all the factors which the law recognizes as calling for restitution. Hence, at the lower level of generality *the plaintiff must put his finger on a specific ground for restitution, a circumstance recognized as rendering the defendant’s enrichment ‘unjust’ and therefore reversible*.

[emphasis added]

52 In my view, this failure was fatal to the plaintiff’s claims against D1 and D2 in unjust enrichment.

53 Second, the plaintiff advanced arguments which were unpleaded and thus irrelevant for the purposes of the present proceedings:

(a) In its closing submissions, the plaintiff submitted that it ought to succeed in its claim against D1 even if DS was privy to the Deceased’s fraud. This was on the basis that the plaintiff was a separate legal entity from DS.⁶⁵ However, its case before the closing submissions were made was based entirely on the premise that DS was unaware of the conduct of the Deceased. If its case had been on the basis that it would succeed even if DS was privy to the Deceased’s conduct, it would have been

⁶⁵ NE 31 Jan 19, p 91 at lines 22–29.

open to D1 to have pleaded and argued that the plaintiff is bound by the conduct and knowledge of DS.

(b) There was also some suggestion that the plaintiff was entitled to succeed in its claim as Sarjit, the executor of the Deceased's estate, admitted that the Deceased had an arrangement with DS whereby DS would be able to reclaim moneys obtained from the plaintiff whenever he wanted.⁶⁶ However, again, the premise of the plaintiff's claim was not pursuant to an agreement or arrangement between the Deceased and DS but rather that the Deceased had acted contrary to DS's knowledge.

The case of each defendant

54 D1's case was that the plaintiff had not discharged its burden of proving its case on a balance of probabilities as DS was aware at all times of the payments to the deceased. The moneys alleged to have been misappropriated by the Deceased were in reality paid to her by DS.⁶⁷ These moneys were reflected as "Survey Charges" in the plaintiff's accounts. Given that the amounts alleged to have been taken by the Deceased resulted in a significant decrease in the plaintiff's profits, DS must have had full knowledge of the Deceased's actions.⁶⁸

⁶⁶ NE 31 Jan 2019, p 68 at lines 22–25.

⁶⁷ D1's defence (amendment no 2) at para 16–19.

⁶⁸ D1's closing submissions at para 21–32.

55 D1 also argued that the Deceased would not have openly left incriminating documents in the office if she was indeed defrauding the plaintiff.⁶⁹

56 D1 further called several witnesses who testified that DS was paying the Deceased substantial amounts of money and was aware that she was purchasing various properties. The evidence of these witnesses is discussed below (at [79]).

57 As regards D1's limitation defence, D1 took the position that all payments to the Deceased up to and including 7 June 2010 were time-barred. D1 took the position that s 22 of the LA did not apply as the Deceased did not owe any fiduciary duties to the plaintiff. As for the application of s 29(1) of the LA, D1's position was that there was no act of "deliberate concealment" on the part of the Deceased and that the plaintiff could have in any case discovered any fraud with reasonable diligence.⁷⁰

58 D2's case was that she had paid for the Rivervale Property on her own.⁷¹ As for the 70 Bayshore Property, the Deceased contributed a sum of S\$62,200, of which S\$22,600 was to repay D2 for having paid the same towards the Deceased's purchase of the 26 Bayshore Property in 2006.⁷²

59 To demonstrate that she had the financial means to purchase the Rivervale Property and 70 Bayshore Property, D2 testified that she had been

⁶⁹ D1's closing submissions at para 20(g)

⁷⁰ D1's closing submissions at para 39–47.

⁷¹ D2's closing submissions at para 66.

⁷² D2's closing submissions at para 67.

earning between S\$50,000 and S\$200,000 a year between 2004 and 2012 from India which she had failed to declare to the Comptroller of Income Tax, resulting in her notices of assessment failing to accurately reflect her income.⁷³ She also testified that she was in the habit of keeping large amounts of this Indian income in a drawer in her office. This averaged approximately S\$80,000 to S\$100,000 between 2004 to 2008 and could go up to S\$200,000 at times.⁷⁴

60 D2 also submitted that the plaintiff had not proved that the Deceased had defrauded it in the manner stated in its pleadings.⁷⁵ The plaintiff had also not made out its claim against D2 in knowing receipt as it had not proven that she had actual knowledge or wilfully avoided knowledge that any moneys used in the purchase of the Rivervale Property or 70 Bayshore Property were traceable to any fraud or breach of trust/fiduciary duty committed by the Deceased.⁷⁶

Issues to be determined

61 The following issues thus arose for my determination:

- (a) Whether the plaintiff had made out its claim against D1 for the Deceased's fraud;
- (b) Whether any part of the plaintiff's claim against D1 was time-barred under the LA; and

⁷³ NE 25 Jan 19, p 59 at line 30 to p 60 at line 23.

⁷⁴ NE 29 Jan 19, p 22 at lines 5–31.

⁷⁵ D2's closing submissions at para 77–87.

⁷⁶ D2's closing submissions at para 130–131.

- (c) Whether the plaintiff had made out its claim against D2 in knowing receipt.

My decision

Claim against D1

62 I was of the view that the plaintiff had not made out its claim against D1 as it had not discharged its burden of proving on a balance of probabilities that the Deceased had committed fraud in the alleged manner.

63 It was clear to me that DS was aware of and consented to the Deceased's taking of moneys belonging to the plaintiff.

64 As mentioned above at [37], the plaintiff's case was that the Deceased utilised invoices submitted by the plaintiff's vendors to persuade DS to sign multiple cash cheques over a period of time. The moneys obtained by the Deceased from the plaintiff were hidden in its accounts by reflecting them as "Survey Charges".⁷⁷

65 However, this did not explain how the Deceased was able to perpetrate the alleged fraud over such an extended period of time (from 2006 to 2012) given that it would have been patently obvious from the plaintiff's accounts.

66 The proportion of the plaintiff's "Survey Charges" (as reflected in its accounts), together with its profits, when compared to the moneys allegedly fraudulently obtained by the Deceased (as reflected in the charges against her

⁷⁷ NE 18 Jan 19, p 70 at lines 1–16.

which the plaintiff relied on) are set out in the following table for the years 2006 to 2012:⁷⁸

Year	Amount the Deceased admitted obtaining from the plaintiff	Total “Survey Charges”	Profit before tax
2006	S\$182,584.76	S\$342,829	S\$20,201
2007	S\$339,649.86	S\$443,943	S\$27,006
2008	S\$343,934.80	S\$370,189	S\$29,385
2009	S\$372,587.62	S\$358,549	S\$20,408
2010	S\$242,130.45	S\$327,006	S\$14,776
2011	S\$149,220.46	S\$747,650	S\$43,039
2012	S\$ 88,850.40	S\$907,615	S\$49,910

67 As can be seen, the amounts which the Deceased had received for each of the five years from 2006 to 2010 was more than half of the “Survey Charges”. Indeed, in 2008, the amount she had received was more than 90% of the “Survey Charges”. In 2009, the amount she received was even more than the “Survey Charges”.

68 In addition, the amounts received by the Deceased for each of the five years from 2006 to 2010 far exceeded the profit before tax by about nine to ten times or even more than ten times.

⁷⁸ Vol 4 AB at pp 1742, 1749, 1756, 1763, 1770, 1777, 1783, 1790, 1796, 1803, 1809, 1816.

69 The plaintiff is a small company that employed DS and the Deceased as the only employees at the material time. DS initially admitted that even though he was busy, as a businessman he would have a rough idea of the amount of profit that the plaintiff was generating each month and each year.⁷⁹ He further admitted that before signing the financial statements of the plaintiff for each year, he would also have looked at the amount of “Survey Charges”.⁸⁰

70 In my view, DS would have realised that the “Survey Charges” could not have been so high if indeed he was initially unaware that the Deceased had inflated the “Survey Charges” as alleged.

71 DS then subsequently said during the trial that he only looked at the profit figures for each year, but this too did not help the plaintiff. Even if he had only looked at the plaintiff’s profit figures for each year, it could not have escaped his attention that the profit figures for each year, especially the years 2006 to 2010, were much lower than what he would have expected them to be. In other words, he would have realised that the profits could not have been so low and that something was amiss, if indeed it was true that the Deceased had taken the money without his consent.

72 Unfortunately for the plaintiff, DS could not give any adequate explanation as to why he was unaware that something was amiss in the light of the profit figures stated in the financial statements.

⁷⁹ NE 16 Jan 19, p 100 at line 12 to p 101 at line 30.

⁸⁰ NE 16 Jan 19, p 124 at lines 12–19.

73 There were also other aspects of the plaintiff's case and DS's testimony which led me to conclude that the latter was not a truthful witness on the main issue of whether the Deceased had committed the alleged fraud.

74 First, DS said that the Deceased had fraudulently used the same invoice to issue duplicate or multiple vouchers to obtain cash cheques signed by DS.⁸¹ This would suggest that the Deceased did pay the vendor on the invoice and took the additional payment for herself. Yet, DS said that some vendors were not paid. This did not make sense. If the Deceased had fraudulently obtained duplicate or multiple payments using the same invoice of the vendor, she would have ensured that the vendor concerned was paid so that there would be no inquiry from the vendor.

75 Second, DS failed to call several witnesses who would have been able to give important evidence on the main issue:

- (a) In so far as DS identified Amarjit and Mukhtiar as two vendors who had not been paid (see [34] above), he did not call them as witnesses. This was understandable for the latter who had passed away.⁸² As for Amarjit, DS said he had contacted him on 8 September 2012 and Amarjit claimed he had not been paid for the last three to four months.⁸³ Amarjit informed DS that he did not contact DS about the non-payment as the Deceased told Amarjit not to call DS on this, or she would not

⁸¹ Statement of claim (amendment no 1) at para 15.

⁸² DS's AEIC at para 57.

⁸³ NE 17 Jan 19, p 25 at lines 7–19.

give Amarjit any more work.⁸⁴ However, there was no other evidence that the Deceased was in a position to decide who to give work to. More importantly, DS did not call Amarjit as a witness to confirm his discussion with the Deceased.

(b) Similarly, the plaintiff failed to call any of the vendors whose invoices the Deceased allegedly used to carry out her fraud as a witness.⁸⁵ DS testified that when the Deceased informed him that certain vendors wanted their invoices to be paid in cash (see [37] above), he had checked with these vendors before agreeing to sign the cash cheques.⁸⁶ The Deceased was to encash these cash cheques and deposit the moneys obtained into the vendor's bank account.⁸⁷ The reason for this was that it would otherwise take one or two days for the vendor to withdraw the money if the cheque was deposited into the vendor's bank account. The vendor did not want to wait for that interim period.⁸⁸ Yet, on the other hand, DS was saying that there were vendors like Amarjit who did not complain directly to him even though they had not been paid for three to four months.⁸⁹ In my view, it was unlikely that various vendors could not even wait for one or two days such that it became a practice for cash cheques to be issued by the plaintiff. The failure to call any of these

⁸⁴ NE 17 Jan 19, p 25 at lines 19–24.

⁸⁵ NE 17 Jan 19, p 39 at lines 9–13.

⁸⁶ NE 23 Jan 19, p 91 at lines 9–20.

⁸⁷ NE 23 Jan 19, p 91 line 24 to p 92 at line 20.

⁸⁸ NE 23 Jan 19, p 95 at lines 8–26.

⁸⁹ NE 17 Jan 19, p 48 at lines 15–21.

vendors to give evidence as to the existence of this arrangement undermined DS's credibility.

(c) DS also testified that the plaintiff's accounts were prepared by Jabbar (see [42] above). In the light of the fact that the Deceased had allegedly hidden her fraud from DS by inflating the plaintiff's "Survey Charges", Jabbar would have been well placed to shed light on how the Deceased managed to hide the alleged fraud for so long. This was especially so given that the plaintiff's profits before tax were reduced by upwards of 90% in some years (see [67] above). Yet, the plaintiff declined to call Jabbar as a witness. The plaintiff's original explanation for not doing so was that D1 was calling Jabbar as a witness.⁹⁰ However, after D1 informed the court that it was not calling Jabbar as a witness, the plaintiff still did not apply to court for leave to call Jabbar as a witness.⁹¹

76 Finally, there was no good explanation as to why the plaintiff had delayed so long before commencing proceedings. According to DS, he needed evidence and wanted to wait for the criminal proceedings against the Deceased to be completed before commencing civil proceedings against her so as to have an easier time in establishing his claim.⁹² However, DS's own evidence was that he had completed his investigations within five or six months after 2012 and was able to estimate the amount the plaintiff had been defrauded of (see [35]

⁹⁰ NE 16 Jan 19, p 99 at lines 1–19.

⁹¹ NE 25 Jan 19, p 1 at lines 11–16.

⁹² NE 23 Jan 19, p 58 at lines 6–14, p 65 at lines 21–22.

above).⁹³ By this time, he had double checked the plaintiff's payment vouchers with its bank statements and had further spoken with its vendors.⁹⁴ If, as DS sought to portray, he was already able to establish that the Deceased had committed the fraud after he had done his own investigations, then there was no reason to wait for the prosecution to be completed. Furthermore, there was not even a letter of demand sent to the Deceased when she was alive.

77 In addition, even if I were to accept DS's explanation that he was waiting for the prosecution to be completed, this still would not explain why legal proceedings were not commenced in January 2016, when the Deceased was given a DNAQ, but rather only on 8 June 2016, a month after the Deceased had passed away. In my view, this inexplicable delay further undermined DS's credibility.

78 While the plaintiff only called Kathelene and DS as witnesses, D1 called other persons as witnesses. The evidence of D1's witnesses contradicted the plaintiff's case that the Deceased was only paid a monthly salary of S\$2,500 with occasional commissions between S\$500 and S\$3,000 (see [31] above).

79 D1 called a total of five witnesses who testified that DS was paying significant sums of money to the Deceased:

- (a) Sarjit, the brother of the Deceased and the executor of her estate;

⁹³ NE 23 Jan 19, p 62 at lines 19–28.

⁹⁴ NE 17 Jan 19, p 38 line 27 to p 39 at line 13.

- (b) Uttam Singh s/o Bakhshish Singh (“Uttam”), a childhood friend of DS;
- (c) Mr Peter John Jalal @ Muhammad Jalal (“Mr Jalal”), a friend of DS;
- (d) Abid Hussain Mir (“Mr Mir”), a businessman who delivered carpets and furniture to the Deceased’s 26 Bayshore Property; and
- (e) Raj Kumar (“Mr Kumar”), an employee of D2.

80 I will first deal with the evidence of Sarjit, Uttam and Mr Jalal. All three of them testified that they were aware that DS was paying significant sums to the Deceased and that he was doing so because he was having marital problems with his wife, Kathelene. DS did this because he was worried that Kathelene would file for divorce and wanted to keep her from being able to access his assets. In return for paying these moneys to the Deceased, DS would have a say as to how they were to be utilised.⁹⁵

81 The plaintiff’s position was that little weight should be accorded to the evidence of Sarjit, Uttam and Mr Jalal. For Sarjit, the plaintiff’s position was that he stood to personally benefit should the claim against D1 be dismissed. For Uttam, the plaintiff’s position was that DS had made his son a bankrupt and therefore he was a partial witness against DS. For Mr Jalal, the plaintiff’s

⁹⁵ Uttam’s AEIC at paras 4–5; Mr Jalal’s AEIC at paras 3–4; Sarjit’s AEIC at paras 10–11.

position was similarly that he himself had been made a bankrupt by DS and therefore was a partial witness against DS.

82 I agreed with the plaintiff that the evidence of Sarjit (given his vested interest) ought to be approached with caution. In the case of Uttam, his testimony on the stand at times contradicted his affidavit of evidence-in-chief (“AEIC”) and led me to conclude that he was not a witness deserving of credit. For example, during cross-examination, he stated that he did not know of any arrangement between DS and the Deceased whereby the former could direct the latter to do certain acts with the moneys paid to her from the plaintiff, such as make loans to others.⁹⁶ In contrast, his AEIC stated that DS himself had told him about his arrangement with the Deceased.⁹⁷ The contradiction suggested that Uttam held a grudge against DS and was willing to tailor his evidence to contradict the plaintiff’s case.

83 However, I did not agree that Mr Jalal’s testimony was not credible. He appeared to be a candid and honest witness and did not hesitate in admitting that DS had made him a bankrupt. He mentioned that if he was holding a grudge against DS, then he would not have agreed to a previous request from DS to sign an affidavit for DS in an unrelated matter even after he had been made a bankrupt by DS.⁹⁸ It was not disputed that he did sign the affidavit for DS. Mr Jalal did not strike me as a witness out to obtain revenge against DS and I was of the view that his evidence was credible.

⁹⁶ NE 24 Jan, p 115 at lines 16–25.

⁹⁷ Uttam’s AEIC at paras 4–5.

⁹⁸ NE 24 Jan 19, p 131 at line 27 to p 132 at line 4.

84 The evidence of Mr Mir was that he had come to know the Deceased as both of them did volunteer work at the same temple.⁹⁹ Mr Mir said that he had previously delivered some carpets and furniture to the 26 Bayshore Property sometime in 2010. On this occasion, the Deceased, D2 and DS were present. The Deceased introduced DS to Mr Mir as her boss. The Deceased remarked that DS was a good and kind man and that DS had given her big commissions and a very good salary which enabled her to buy the property. In response to this, DS just smiled.¹⁰⁰ Mr Mir was able to successfully identify DS in court.¹⁰¹

85 It was not disputed that Mr Mir was an independent witness without a motive to lie. Indeed, the plaintiff seemed uncertain as to how to handle Mr Mir's evidence. There seemed to be some confusion by the plaintiff as to whether its position was that DS was not present in the 26 Bayshore Property at that time, or whether he was present but did not hear the exchange between Mr Mir and the Deceased.¹⁰² I was of the view that Mr Mir was a credible witness and that DS was indeed present during this conversation.

86 The final witness, Mr Kumar, was an employee of D2's company, Job Consultancy Global Pte Ltd. His evidence was that in 2010 or 2011, he was sitting in the rear seat of a car driven by D2 and DS was the front passenger. D2 was giving DS a lift and DS was smelling of alcohol. He overheard DS telling D2 that DS was paying the Deceased a good salary and very high commissions

⁹⁹ Mr Mir's AEIC at para 4.

¹⁰⁰ Mr Mir's AEIC at paras 6–7.

¹⁰¹ NE 24 Jan 19, p 87 at lines 23–32.

¹⁰² NE 24 Jan 10, p 95 at lines 6–27.

such that she could afford to buy properties.¹⁰³ Although Mr Kumar was not an independent witness, he was steady in his evidence. I gave some weight to his evidence but, even without this evidence, there was still the evidence of Mr Jalal and Mr Mir.

87 The general tenor of D1's witnesses' testimonies corroborated the Deceased's police statements. The Deceased's statements mentioned that DS agreed to the moneys being paid to her and directed her as to how the cash cheques were to be prepared. Several reasons were provided for his doing so, namely preventing his wife from finding out about the assets and to avoid paying tax. The Deceased's statements likewise suggested that DS had some say as to how she would spend the moneys paid to her.¹⁰⁴

88 Further, it seemed strange that the Deceased would have kept documents evincing her substantial personal wealth in the plaintiff's office, if indeed she had been defrauding the plaintiff without the knowledge of DS. The Deceased's insurance policies, documents relating to properties owned by her and her OCBC bankbook were kept in the office (where they were discovered by Kathelene after being moved to the New Office).¹⁰⁵ I add that there was no suggestion by the plaintiff that the Deceased was unaware of the plans to move and that this would be done when she was in India.

¹⁰³ Mr Kumar's AEIC at paras 5–8; NE 24 Jan 19, p 146 at line 14 to p 148 at line 11.

¹⁰⁴ Satjit's AEIC at pp 38–66.

¹⁰⁵ Kathlene's AEIC at paras 17–18, 24.

89 Finally, as regards the Deceased's breaking into the plaintiff's New Office on 13 September 2012, the plaintiff's position was that the Deceased had broken in to conceal evidence of her wrongdoing.¹⁰⁶ As against this, Sarjit said that the Deceased had informed him that she had broken in to perform religious rites in order to bless the office.¹⁰⁷

90 To my mind, this explanation of the Deceased did not make sense. It seemed to me a wholly disproportionate response to call a locksmith to break into the plaintiff's office if the Deceased's only intention was to bless the New Office. I found it more likely that the Deceased had broken in for her own reasons which had nothing to do with blessing the New Office.

91 Be that as it may, I was of the view that the weight of the evidence in this case showed that DS knew and had consented to the moneys being taken by the Deceased. The plaintiff thus failed to make out its claim against D1. It was irrelevant whether in fact the arrangement between the Deceased and DS was that the Deceased was to hold the money on trust for DS as no such arrangement had been pleaded by the plaintiff.

92 Having already determined that the plaintiff had not made out its claim against D1, the question of whether the plaintiff's claim was time-barred was an academic one. I briefly consider the issue below.

¹⁰⁶ DS's AEIC at paras 63–66.

¹⁰⁷ Sarjit's AEIC at para 41; NE 24 Jan 19, p 15 at lines 4–17.

93 As mentioned at [43] above, the plaintiff provided two alternative reasons why its claim was not time-barred: (a) that s 22 of the LA applied; and (b) in the alternative, that the plaintiff was entitled to avail itself of s 29(1) of the LA.¹⁰⁸

94 Section 22 of the LA states:

Limitation of actions in respect of trust property

22.—(1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action —

(a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; 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.

95 The plaintiff seemed to take the position that if the Deceased owed fiduciary duties to it, any breach of those fiduciary duties would bring the plaintiff within s 22(1) of the LA; its claim would thus not be subject to the usual time bar of six years. I would have been of the view that the plaintiff’s interpretation of s 22 of the LA was incorrect.

96 The exception in s 22(1) of the LA only applies to “an action by a beneficiary under a trust”. Since there was no question of there having been an express trust with the Deceased serving as trustee, the only other trust which the plaintiff could rely on to invoke the exception was a constructive trust.

¹⁰⁸ Plaintiff’s closing submissions (b) at para 5–6.

97 In *Yong Kheng Leong and another v Panweld Trading Pte Ltd* [2013] 1 SLR 173 (“*Yong Kheng Leong*”), the Court of Appeal at [46] differentiated between “Class 1” and “Class 2” constructive trusts:

46 ... If a person holds property in the position of a trustee (and there is no doubt that a director is regarded as a trustee over the company’s property...) and deals with that property in breach of that trust, he will be a Class 1 constructive trustee; whereas a wrongdoer who fraudulently acquires property over which he had never previously been impressed with any trust obligations, may, by virtue of his fraudulent conduct, be held liable in equity to account as if he were a constructive trustee... the latter is not a case of someone who had ever in reality been a trustee of that property; and it is only by virtue of equity’s reach that such a person is regarded as a Class 2 constructive trustee.

98 Only Class 1 constructive trusts potentially fall within the ambit of s 22(1) of the LA; Class 2 constructive trusts are subject to the usual time bar of six years (*Yong Kheng Leong* at [51]).

99 Here, I would not have thought that the Deceased would be considered to have been a Class 1 constructive trustee over the plaintiff’s property. She was not a director of the plaintiff and had no ability to deal with its property. Any cheques drawn on the plaintiff’s bank account had to be signed by DS.

100 Therefore, the plaintiff would not have been able to rely on the exception in s 22(1) of the LA to defeat D1’s limitation defence.

101 The same analysis would have applied to the plaintiff’s claim against D2. The plaintiff’s claim against D2 was in knowing receipt and she would be considered a Class 2 constructive trustee if the plaintiff succeeded in its claim. However, as D2 did not plead the defence of limitation against the plaintiff’s claim, I need not say more.

102 The next issue was whether s 29(1) of the LA applied.

103 Section 29(1) of the LA states:

Postponement of limitation period in case of fraud or mistake

29.—(1) Where, in the case of any action for which a period of limitation is prescribed by this Act —

(a) the action is based upon the fraud of the defendant or his agent or of any person through whom he claims or his agent;

(b) the right of action is concealed by the fraud of any such person as aforesaid; or

(c) the action is for relief from the consequences of a mistake, the period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake, as the case may be, or could with reasonable diligence have discovered it.

104 As applied to the facts of this case, s 29(1) of the LA would prevent the period of limitation from beginning to run until the plaintiff had discovered the Deceased’s fraud, or could have with reasonable diligence have discovered it.

105 The plaintiff’s position was that the Deceased’s fraud could not have been discovered until 15 September 2012.¹⁰⁹ I would not have agreed. I would have been of the view that DS would have discovered any fraud committed by the Deceased from the plaintiff’s accounts with reasonable diligence.

106 First, the use of cash cheques would have caused him to be more careful even if the vendors had requested this mode of payment. Indeed, DS claimed that he had informed the Deceased to retain the deposit slip to evidence the

¹⁰⁹ Plaintiff’s closing submissions (b) at para 6.

payment into the vendor's bank account, but yet he did not ask the Deceased to show him the deposit slip after the cash was deposited. If he had been careful enough to advise the Deceased to get the deposit slip, he ought to have been careful enough to ask for it thereafter to verify that the deposit had been made.

107 Second, the low profits would also have put DS on notice given that they fell far short of what he would have been expecting to earn, if he was unaware of the payments to the Deceased (see [66]–[69] above). This would have been readily apparent from the date on which the plaintiff's accounts for the year 2006 were signed.

108 I was of the view that the period of limitation would have begun to run from the date on which the plaintiff's accounts for the year 2006 were signed. As the present proceedings were commenced on 8 June 2016, the plaintiff's claim was time barred in respect of payments before 8 June 2010.

Claim against D2

109 I now turn to the plaintiff's claim against D2, which was in knowing receipt.

110 A preliminary issue was whether a claim in knowing receipt could even be made against D2.

111 The requirements for a claim in knowing receipt are set out in the Court of Appeal's decision in *George Raymond Zage III and another v Ho Chi Kwong and another* [2012] 2 SLR 589 at [23]:

- (a) A disposal of the plaintiff's assets in breach of fiduciary duty;

(b) The beneficial receipt by the defendant of assets which are traceable as representing the assets of the plaintiff; and

(c) Knowledge on the part of the defendant that the assets received are traceable to a breach of fiduciary duty.

112 While D2 conceded that a breach of the duty of fidelity owed by employees to their employer would be sufficient to found a claim in knowing receipt (and thus negate the need to find a breach of fiduciary duty),¹¹⁰ I did not need to make a finding on this point.

113 The plaintiff's claim against D1 was for fraud committed by the Deceased. If the plaintiff were to succeed in proving the Deceased's fraud, a constructive trust would arise over the fraudulently obtained moneys. Lord Browne-Wilkinson observed in *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 at 716C:

I agree that the stolen moneys are traceable in equity. But the proprietary interest which equity is enforcing in such circumstances arises under a constructive, not a resulting, trust. Although it is difficult to find clear authority for the proposition, when property is obtained by fraud equity imposes a constructive trust on the fraudulent recipient: the property is recoverable and traceable in equity.

114 While Lord Browne-Wilkinson's reasoning has been questioned (see, eg, *Shalson v Russo* [2005] 1 Ch. 281 at [111]), the proposition that a fraudster holds the proceeds of the fraud on constructive trust for the victim appears fairly

¹¹⁰ NE 31 Jan 2019, p 53 at lines 5–20.

well entrenched. *Snell's Equity* (John McGhee QC ed) (Sweet & Maxwell, 33rd Ed, 2015) comments at para 26-012:

(b) Fraudulent taking. A distinction must be drawn between fraud consisting in the outright taking of a person's property, wholly without his consent, and a transaction induced by a fraudulent misrepresentation. In the first case, it has been said that a thief who steals the property of another holds it on constructive trust for the claimant. The thief's possessory title is subject to the claimant's equitable entitlement to have the property specifically restored to him so that he holds it as a constructive trustee...

115 I was of the view that, on the facts, a claim in knowing receipt could potentially have been made out against D2 if fraud on the part of D1 were proved and the knowledge requirement on the part of D2 satisfied.

116 Given this, my finding that the plaintiff has not made out its case against D1 is sufficient to dispose of the matter as a claim in knowing receipt is premised on the existence of a breach of trust or fiduciary duty (see [111(a)] above).

117 Nevertheless, as much time was spent on D2's financial ability to purchase the Rivervale Property and 70 Bayshore Property without any assistance from the Deceased and I had agreed with the plaintiff that D2 had been untruthful about the state of her finances, I will elaborate on my reasons for that conclusion.

118 I will deal first with the purchase of the Rivervale Property, which was purchased in October 2008.

119 According to D2, she was able to afford to purchase the Rivervale property as she had substantial savings from her previous job as a property agent and earnings from her other businesses. The Deceased was only included as a co-borrower so that she would be able to get a mortgage for a higher percentage of the purchase price.¹¹¹

120 However, this was at odds with the documentary evidence that was before the court.

121 First, D2’s income tax documents in the years leading up to the purchase of the Rivervale Property suggested that she did not have the means to purchase the Rivervale Property on her own. D2’s income as reflected in her income tax documents is set out in the following table for the years of assessment 2004 to 2009:¹¹²

Year of Assessment	Income
2004	S\$36,084.70
2005	S\$ 98.56
2006	S\$30,185.00
2007	No return filed
2008	S\$30,064.00

¹¹¹ D2’s AEIC at para 38.

¹¹² D2’s bundle of documents (“2DBOD”) at p 9–13.

2009	S\$30,001.00
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122 D2's explanation was that she had under declared her income in those years and that she had been earning significant amounts of income from her business of bringing in workers from India to Singapore. Each worker approved by the Ministry of Manpower would pay her an average of S\$6,000 in cash, with an average of 100 approved workers per year.¹¹³ Her estimated Indian income was:

Calendar Year	Income from India
2004	S\$ 50,000
2005	S\$100,000
2006	S\$150,000
2007	S\$150,000
2008	S\$150,000

123 D2 also claimed that she had understated her income as a property agent, which was approximately S\$20,000 per year from 2004 to 2008.¹¹⁴

¹¹³ NE 25 Jan 19, p 57 at lines 25–31.

¹¹⁴ NE 25 Jan 19, p 85 at lines 11–28.

124 In my view, D2's testimony as regards her Indian income was an afterthought and untrue. While there may have been reasons for D2 not to declare her Indian income to the Comptroller of Income Tax, there was no mention of this source of income anywhere in her AEIC even though she knew that her financial ability was in question. It would have occurred to her to mention this source of income in her AEIC if it were true given that the alleged Indian income constituted the bulk of her income for the years leading up to the purchase of the Rivervale Property. D2's Indian income was only brought up in her supplementary AEIC.¹¹⁵

125 There was also no documentary proof of such income. Both D2's personal bank statements and those of her sole proprietorship at the material time, Job Consultancy Dot Com ("JCDC"), were not produced in the present proceedings. Neither was there any evidence of the approvals given by the Ministry of Manpower for the workers brought into Singapore from India by D2.

126 D2 also gave the unconvincing explanation that she did not deposit any of her Indian income into a bank account and that she was in the habit of keeping large amounts of money earned from India in an office drawer between 2004 and 2008 (see [59] above). This was to segregate moneys earned from India from those earned from her clients in Singapore and would explain the lack of a paper trail of the Indian income.¹¹⁶ This explanation did not make sense to me. D2 could have banked any Indian income into a separate personal bank account,

¹¹⁵ D2's supplementary AEIC at para 15.

¹¹⁶ NE 29 Jan 19, p 19 at lines 26–31.

with moneys earned from JCDC being banked into the sole proprietorship's bank account. There was no reason for her to keep such large amounts of cash in the office.

127 Second, as mentioned above at [45(b)], D2 was unable to repay a renovation loan of S\$18,000 from 26 May 2004 to 11 April 2008, a duration of some four years.¹¹⁷ D2's explanation for this was that the loan had been incurred by her ex-husband, who was financially dependent on her. Although she was a guarantor of the loan, she did not want to repay the loan on his behalf.¹¹⁸

128 I did not find this explanation to be credible. The evidence was that OCBC had obtained a writ of seizure and sale against D2 and her ex-husband.¹¹⁹ This would have caused some inconvenience to her. It seemed unlikely that she would refuse to pay off a relatively small debt, despite having the means to do so, just because the loan was that of her ex-husband. In my view, this was strong evidence of D2's financial weakness between 2004 and 2008.

129 Third, if D2 had the cash, then there would be no need to include the Deceased as a co-borrower to purchase the Rivervale Property (see [119] above).

130 The mortgage agreement with OCBC stated that one of the conditions was that the Deceased's bank account with OCBC containing at least S\$65,000

¹¹⁷ See Exhibit P5.

¹¹⁸ NE 25 Jan 19, p 107 at lines 6–15.

¹¹⁹ See Exhibit P5.

be used as collateral. It was evident that the bank required additional security before it would be willing to extend the desired loan to D2, which came from the Deceased.¹²⁰

131 Fourth, the circumstances surrounding the payment for the option to purchase (“OTP”) and the payment of the balance moneys due on completion of the purchase suggested that some of the moneys came from the Deceased. The evidence of D2 was that both the payment for the OTP of S\$6,500 on 2 October 2008 and the balance moneys due on completion of S\$98,451.15 on 3 December 2008 were paid from JCDC’s bank account.¹²¹

132 Yet, a perusal of the cheque register or cheque butt contradicted D2’s account. On the cheque butt, the cheque which D2 claimed was used to pay the balance of S\$98,451.15 on 3 December 2008 bore the serial number 516395 and the amount was stated to be for S\$150,000.¹²² This was sequentially before the cheque for S\$6,500 used to pay for the OTP bearing serial number 516399 and which was reflected as being drawn on 16 October 2008, although D2 stated that it should state 2 October 2008. It seemed strange that the cheque allegedly used for the payment of the balance would be drawn before the cheque used for payment of the OTP was even issued and that it should be for a sum of S\$150,000, which was S\$51,548.85 greater than the balance of S\$98,451.15 actually due.

¹²⁰ D2’s AEIC at pp 98–104.

¹²¹ D2’s AEIC at paras 35 and 41.

¹²² 2DBOD at p 55.

133 More importantly, D2's affidavit in a separate suit stated that in mid-2008, her business, JCDC, was dormant.¹²³ Furthermore, D2's declared income from JCDC for the years 2004 to 2008 (*ie*, years of assessment 2005 to 2009) was S\$126,433.26 (see [121] above). It was unlikely that the source of money for the cheque of S\$150,000 came from JCDC since the amount was higher than JCDC's total income since inception in 2004.

134 Coincidentally, the Deceased's OCBC account statement reflected a cash withdrawal of S\$150,000 on 6 June 2008, which was the exact same amount withdrawn by cheque from JCDC's UOB bank account by the cheque bearing serial number 516395.¹²⁴ None of the statements for JCDC's UOB bank account were produced as apparently it was past the bank's retention date.¹²⁵

135 To my mind, the circumstances taken together suggested that D2's financial ability was not as strong as she would have had the court believe and that the Deceased was at least partially responsible for the payment for the Rivervale Property.

136 I come now to the servicing of the mortgage on the Rivervale Property from 2008 to 2014 (as it was sold in December 2014).¹²⁶ D2's evidence was that this was funded by D2 through her companies, Job Consultancy Pte Ltd and Job Consultancy Global Pte Ltd, and rental income from the Rivervale Property.¹²⁷

¹²³ See Exhibit P6.

¹²⁴ Vol 12 AB at p 5096.

¹²⁵ D2's AEIC at pp 109–110.

¹²⁶ D2's AEIC at para 46–48.

¹²⁷ D2's AEIC at pp 111–164.

D2's financial standing seemed to have markedly improved from 2009 onwards as reflected in her income tax documents. Her notices of assessment for the years 2010 and 2011 (*ie*, financial years 2009 and 2010) showed income of S\$154,635 each year.¹²⁸ As against this, there was no evidence which suggested that the mortgage payments were made by D2 using money from the Deceased.

137 I now turn to the purchase of the 70 Bayshore Property.

138 As mentioned above at [46], the plaintiff's claim that the 70 Bayshore Property was purchased with its moneys was primarily based on D2 being financially weak. As I understood it, the plaintiff's claim was that certain major cash deposits into D2's bank account which were used to purchase the 70 Bayshore Property came from the Deceased.¹²⁹ This would include:

- (a) S\$41,760 and S\$62,200 on 10 May 2010; and
- (b) S\$233,250 on 28 June 2010.

139 D2's position was that only the deposit of S\$62,200 came from the Deceased. Of this, S\$22,600 was to repay D2 for a prior loan to help the Deceased purchase the 26 Bayshore property. This meant that the Deceased only contributed S\$39,600 to the purchase of the 70 Bayshore Property. It should be noted that D2 only took this position in her supplementary AEIC filed on 18 January 2019, after the commencement of the trial and after D2 had to disclose certain bank statements to the plaintiff. In her initial AEIC, D2 did not

¹²⁸ 2DBOD at pp 14–15.

¹²⁹ Plaintiff's closing submissions (c) at para 70-87.

mention the fact that the Deceased had contributed S\$62,200 and merely stated instead that the moneys were paid from her own personal bank account.¹³⁰

140 As for the remaining sums, D2's position was that this was taken from cash in her office.¹³¹

141 I was of the view that apart from the sum of S\$62,200, the plaintiff had not shown that D2 had used the Deceased's money to purchase the 70 Bayshore Property.

142 The plaintiff did not adduce any evidence to show that any of the other cash deposits into D2's account came from the Deceased. The evidence in this case showed that D2's financial position had improved in 2009 and 2010 (see [136] above). While I had doubted D2's account of keeping large sums of cash in the office (see [126] above), this did not discharge the plaintiff's burden of proving its case on a balance of probabilities.

143 As regards the mortgage payments for the 70 Bayshore Property, D2's evidence was that the mortgage payments were serviced from July 2010 to September 2011 by renting out the 70 Bayshore Property. D2 then moved into the 70 Bayshore Property in September 2011 and serviced the mortgage payments on her own.¹³² D2 admitted that some mortgage payments between September 2011 and November 2012 were deducted from the Deceased's bank

¹³⁰ D2's AEIC at para 54.

¹³¹ D2's supplementary AEIC at para 13, 33.

¹³² D2's AEIC at para 61-68.

account but claimed that she had reimbursed the Deceased. While D2 produced records of some payments to the Deceased, it was unclear that they were to reimburse the Deceased for making the mortgage payments on D2's behalf.¹³³

144 On the other hand, the plaintiff did not lead any evidence to show that D2 was financially weak when the mortgage repayments were made and that they were paid by D2 using moneys from the plaintiff. The plaintiff also did not pursue this argument in closing submissions.

145 To sum up, the evidence suggested that D2 was financially weak in 2008 and that the Deceased was likely responsible for part of the down payment for the Rivervale Property.¹³⁴ As for the 70 Bayshore Property, only the sum of S\$62,200 likely came from the Deceased.

146 It was unnecessary for me to make a finding on the exact extent of the Deceased's contribution to the purchase of either property given that the first requirement for a claim in knowing receipt was not made out (see [116] above).

Summary

147 Ultimately, the plaintiff bore the burden of proving its case on a balance of probabilities. It failed to do this against either D1 or D2.

Conclusion

148 I dismissed the plaintiff's claims against both D1 and D2.

¹³³ D2's AEIC at pp 209-211.

¹³⁴ NE 29 Jan 19, p 40 at lines 12-32, p 41 at lines 1-2.

149 After hearing parties on costs, I awarded D1 and D2 costs fixed at S\$100,000 and S\$20,000 respectively with disbursements to be agreed or fixed by the court.

Woo Bih Li
Judge

Mahmood Gaznavi s/o Bashir Muhammad (Mahmood Gaznavi &
Partners) for the plaintiff;
Satwant Singh s/o Sarban Singh (Satwant & Associates) for the first
defendant;
Lim Tahn Lin Alfred and Lye May-Yee Jaime (Fullerton Law
Chambers LLC) for the second defendant.
