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

[2022] SGHC 189

Originating Summons No 1014 of 2020

Between

Zaiton Binte Adom

… *Plaintiff*

And

(1) Nafsiah Bte Wagiman
(2) Safie Bin Jantan

… *Defendants*

GROUNDS OF DECISION

[Trusts] — [Constructive trusts] — [Institutional constructive trusts] — [Remedial constructive trusts]
[Trusts] — [Resulting trusts]
[Trusts] — [*Quistclose* trusts]
[Restitution] — [Unjust enrichment] — [Proprietary restitution]
[Equity] — [Relief] — [Equitable lien]

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Zaiton bte Adom
v
Nafsiah bte Wagiman and another

[2022] SGHC 189

General Division of the High Court — Originating Summons No 1014 of 2020
Vinodh Coomaraswamy J
11, 25 August, 16 September 2021

22 August 2022

Vinodh Coomaraswamy J:

Introduction

1 By this application, the plaintiff seeks to recover $205,359.80 from either or both defendants on a wide variety of personal and proprietary grounds. I have dismissed all the plaintiff's claims save one. I have ordered the second defendant to pay $205,359.80 to the plaintiff as restitution for his unjust enrichment.

2 Both the plaintiff and the second defendant have appealed against my decision. I now set out my grounds.

Background facts

The relationships between the parties

3 The defendants married each other in 1985.[1] They divorced in 2018.[2] The second defendant then married the plaintiff in 2019.[3]

4 In 2002, the defendants purchased a Housing and Development Board ("HDB") flat ("the Flat") as joint tenants to be their matrimonial home.[4] As is usual, the defendants paid the purchase price by borrowing money from the HDB ("the HDB Loan") and from each of their Central Provident Fund ("CPF") accounts.[5] In the usual way, all three loans were secured on the Flat by charges.

5 The defendants purchased the Flat at a price of $298,000.[6] The second defendant contributed the sum of just over $23,000 towards the down payment for the Flat. He borrowed this sum from his own CPF account.[7] With the interest that has accrued on that loan over the past 20 years, he now owes about $34,000 to his CPF account.[8] He contributed virtually nothing after 2002 towards servicing the HDB Loan. The first defendant has serviced the HDB Loan virtually alone.

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1 Plaintiff's 13 October 2020 affidavit, p 16, para 1; First defendant's 30 November 2020 affidavit, paragraph 5; *cf* the second defendant's affidavit of 9 July 2021.

2 Plaintiff's 13 October 2020 affidavit, at pp 37-39.

3 Plaintiff's 13 October 2020 affidavit, at paras 3 and 11; 1DS, at para 4.

4 First defendant's 30 November 2020 affidavit, at para 8; the plaintiff's 13 October 2020 affidavit, at para 7; First defendant's submissions ("1DS"), at para 4.

5 Plaintiff's 13 October 2020 affidavit, p 27 para 5.

6 First defendant's 30 November 2020 affidavit, p 23.

7 Plaintiff's 13 October 2020 affidavit, p 32.

8 Plaintiff's 13 October 2020 affidavit, p 32.

6 In 2015, the second defendant procured $205,359.80 from the plaintiff. He then handed it to the first defendant. The first defendant used part of that money to repay the HDB Loan in full. She thereby secured the total discharge of the HDB's charge on the Flat.

7 The defendants' marriage was not a happy one, certainly in its later years. In 2010, the second defendant pronounced a first *talak* on the first defendant.[9] In 2013, while the second defendant was still married to the first defendant, he entered into what is described as an "unregistered marriage" with the plaintiff.[10] I take that to mean that they entered into a relationship akin to marriage which was not recognised as a marriage under their personal law.

8 In 2019, after the defendants' divorce, the second defendant and the plaintiff "registered their marriage".[11] I take that to mean that they entered into a relationship of marriage which is recognised under their personal law.

9 All three parties are employees of the HDB. Further, the plaintiff and the first defendant have known each other since at least 2015.[12] The plaintiff and the first defendant are therefore known to each other as colleagues and acquaintances.[13]

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9 Plaintiff's 13 October 2020 affidavit, at para 10; Second defendant's 9 July 2021 affidavit, at p 8, para 3(b).

10 Plaintiff's 13 October 2020 affidavit, at paras 9 and 11.

11 Plaintiff's 13 October 2020 affidavit, at paras 3 and 11; 1DS, at para 4.

12 Plaintiff's 13 October 2020 affidavit, at paras 8 and 9; First defendant's 30 November 2020 affidavit, para 6.

13 First defendant's 30 November 2020 affidavit, at para 6; Plaintiff's 6 July 2021 affidavit, at paras 5.2.1 and 5.2.2.

The $205,359.80

10 In early 2015, the plaintiff came into a substantial sum of money from two sources. First, she realised a profit of a little over $163,000 when she sold her own HDB flat.[14] Second, she withdrew a lump sum from her CPF account.[15]

11 Knowing this,[16] the second defendant told the plaintiff:[17] (a) that the defendants had fallen into arrears in servicing the HDB Loan on the Flat; and (b) that he intended to buy the first defendant's interest in the Flat from her, thereby making him the Flat's sole owner. He asked the plaintiff to hand him enough money, in the plaintiff's own words, "to allow him to deposit the same into the 1st Defendant's CPF funds such as to allow the 2nd Defendant to buy over the Flat".[18] The plaintiff agreed to hand $205,359.80 to the second defendant for this purpose.[19]

12 I use the neutral verb "hand" rather than "give" so as not to imply that the plaintiff made a gift of the money to the second defendant. Whether she did so is an issue in contention on this application.

13 The plaintiff handed the money to the second defendant in two tranches, on both occasions at the second defendant's request.

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14 Plaintiff's 18 May 2021 affidavit, at para 3.1 and p 4.

15 Plaintiff's 13 October 2020 affidavit, at para 14.

16 Plaintiff's 13 October 2020 affidavit, at paras 12 and 14.

17 Plaintiff's 13 October 2020 affidavit, at para 15.

18 Plaintiff's 13 October 2020 affidavit, at para 17; Notes of Argument, 16 September 2021, p 24.

19 Plaintiff's 13 October 2020 affidavit, at paras 19 to 22.

14 First, in February 2015, the plaintiff procured a cheque in the sum of $7,256.68 drawn in favour of "CPF" and handed it to the second defendant.[20] The second defendant in turn handed the cheque to the first defendant. He instructed her to deposit it into her CPF account.[21] She did so, for the further credit of her CPF special account.[22]

15 Second, in March 2015, the plaintiff procured a DBS cashier's order in the sum of $198,103.12 drawn in favour of "CPF BOARD"[23] and handed it to the second defendant. Once again, the second defendant handed the cashier's order to the first defendant and instructed her to deposit it into her CPF account.[24] But this time, she did not do so immediately. In April 2015, the second defendant completed and presented to the first defendant the CPF form necessary for the deposit. He instructed her again to deposit the cashier's order into her CPF account. This time, she did so, to the further credit of her CPF ordinary account.[25]

16 This total sum of $205,359.80 is what the plaintiff now seeks to recover from the defendants.

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20 Plaintiff's 13 October 2020 affidavit, at paras 20 to 22 and p 24; First defendant's 30 November 2020 affidavit, at para 11, p 27.

21 Plaintiff's 13 October 2020 affidavit, p 56 para 21; First defendant's 30 November 2020 affidavit, at paras 11 and 13.

22 First defendant's 30 November 2020 affidavit, at para 13; AB Grounds of Decision at [18(a)] (PBOA at p 559).

23 Plaintiff's 13 October 2020 affidavit, at paras 20 to 22 and p 24; First defendant's 30 November 2020 affidavit, at para 11, p 27.

24 First defendant's 30 November 2020 affidavit, at paras 11 and 13.

25 First defendant's 16 June 2021 affidavit, at paras 11 and 15; AB Grounds of Decision at [18(b)] (PBOA at p 559).

Two minor points

17 I should mention two minor points at this stage.

18 First, the cheque which the plaintiff handed to the second defendant in February 2015 was not drawn on an account in the plaintiff's name. It was instead drawn on an account in the name of a company.[26] The evidence does not make clear the plaintiff's connection to the company. Nevertheless, the parties have treated the cheque and its proceeds as the plaintiff's property for all purposes. I shall do the same.

19 Second, the parties consistently but incorrectly refer to the cheque and the cashier's order collectively as two cashier's orders.[27] Nothing turns on whether the instrument which the plaintiff handed the second defendant in February 2015 was a cheque or a cashier's order. For continuity and ease of exposition, therefore, I too will refer to these two instruments collectively as two cashier's orders.

The first defendant's transactions

20 After paying the two cashier's orders into her CPF account, the first defendant carried out two transactions.[28] First, in September 2015, she withdrew $125,717.15 from her CPF ordinary account in order to repay the HDB Loan in full.[29] The result was the total discharge of the HDB's charge on the Flat.

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26 Plaintiff's 13 October 2020 affidavit, at pp 24, 36 and 81.

27 Plaintiff's 13 October 2020 affidavit, p 27 para 6; p 28 paragraph 10; p 30 para 16(c); p 42 para 6; p 45 para 22(a); First defendant's 30 November 2020 affidavit, at para 11.1.

28 Plaintiff's 13 October 2020 affidavit, at para 28.

29 Plaintiff's 13 October 2020 affidavit, p 35; AB Grounds of Decision at [18(c)] (PBOA at p 559).

Second, in February 2016, she transferred $30,002.68 from her CPF ordinary account to her CPF investment account.[30]

21 On the evidence before me, the first defendant withdrew no funds from her CPF account other than the sum of $125,717.15 paid to the HDB in September 2015. It therefore appears that, out of the $205,359.80 which the plaintiff handed to the second defendant, a notional $79,642.65 remains in the first defendant's CPF account. That sum comprises: (a) $7,256.68 which remains in the first defendant's CPF special account (see [14] above); (b) $30,002.68 which remains in her CPF investment account (see [20] above); and (c) $42,383.29 which remains in her CPF ordinary account (being $205,359.80 less the sums of $7,256.68, $125,717.15 and $30,002.68). These figures ignore the interest which will have accrued on these sums since 2015.

The first defendant discovers the truth

22 At some time in 2016, the plaintiff's brothers visited the Flat demanding to see the second defendant. Their intention was to recover $205,359.80 from him. The second defendant was not present at the Flat. The first defendant was.

23 As a result of this visit, the first defendant questioned the second defendant about the source of the two cashier's orders. The first defendant's evidence is that it was only then that the second defendant revealed to her for the first time: (a) that the plaintiff was the ultimate source of the two cashier's orders; and (b) that he had entered into an unregistered marriage (see [7] above) with the plaintiff in 2013.

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30 AB Grounds of Decision at [18(d)] (PBOA at p 559).

24 The first defendant's evidence is that, as a result of these disclosures, she assumed that the plaintiff had made a gift of the two cashier's orders to the second defendant because he did not say anything to the contrary.[31] I accept the first defendant's evidence. The second defendant does not suggest that he told the first defendant anything about the origin of the two cashier's orders before 2016 and, in particular, at the time he handed them to her. Further, it would be natural for the first defendant to assume that the plaintiff, having entered into an unregistered marriage with the second defendant three years earlier, would as a result be prepared to make a gift of such a large sum to him.

The defendants' divorce proceedings

25 In May 2017, the first defendant commenced divorce proceedings against the second defendant in the Syariah Court.[32] In April 2018, at the first hearing of the divorce proceedings, the first defendant volunteered to the court that she had used money originating from the plaintiff to repay the HDB Loan in full.[33] The Syariah Court therefore held the divorce proceedings in abeyance to allow the plaintiff an opportunity to apply to intervene in the divorce proceedings and to assert a claim.[34]

26 In September 2018, the first defendant secured directions to permit the divorce proceedings to continue[35] on the basis that the plaintiff had failed to

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31 First defendant's 30 November 2020 affidavit, at para 17; First defendant's 15 June 2021 affidavit, at para 12.

32 First defendant's 30 November 2020 affidavit, at para 18.

33 Plaintiff's 13 October 2020 affidavit, p 51 para 5.2; p 56, para 15; Plaintiff's 15 June 2021 affidavit, at paras 16 and 17; Second defendant's 9 July 2021 affidavit, at p 15 para 21(ii).

34 Plaintiff's 13 October 2020 affidavit at para 30; p 51 at para 5.2; First defendant's 30 November 2020 affidavit, at para 19(2); Plaintiff's 15 June 2021 affidavit, at para 17.

35 First defendant's 30 November 2020 affidavit, at para 19(3).

intervene in the divorce proceedings. The plaintiff's submission is that she had failed to do so simply because the first defendant failed to tell her about the Syariah Court's directions.[36]

The property division order

27 In December 2018, the Syariah Court issued a divorce decree dissolving the defendants' marriage.[37] The decree included an order dividing the defendants' matrimonial property under s 52(3)(*d*) of the Administration of Muslim Law Act (Cap 3, 2009 Rev Ed) ("the AMLA").

28 The property division order required the Flat be sold forthwith and awarded the first defendant 100% of the net proceeds of sale.[38] The order also awarded the first defendant $30,000 out of the $34,000 which the second defendant would have to repay to his CPF account out of the proceeds of sale (see [5] above).[39]

29 The property division order made no provision for the plaintiff. In particular, it took no account of the $205,359.80 which the second defendant had obtained from the plaintiff and handed to the first defendant or that part of it which the first defendant had used to repay the HDB Loan in full.

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36 Plaintiff's 13 October 2020 affidavit, at para 33.

37 First defendant's 30 November 2020 affidavit, at para 5; Plaintiff's 13 October 2020 affidavit, at pp 37-39.

38 Plaintiff's 13 October 2020 affidavit, pp 16–17, para 5(a).

39 Plaintiff's 13 October 2020 affidavit, p 17 para 8; p 32; pp 55 to 56 at paras 11 to 13; p 76.

30 That is not surprising.[40] The plaintiff herself had not intervened in the divorce proceedings and therefore had made no claim to any interest in the Flat. Further, the second defendant had filed no affidavits[41] and took no substantive part in the divorce proceedings.[42] He also failed to attend, whether by counsel or in person, the hearings at which the divorce decree was issued, and the property division order was made.[43]

31 The second defendant took this approach in the divorce proceedings even though he had, by then, entered into an unregistered marriage (see [7] above) with the plaintiff. He would therefore be expected to have had a natural incentive to protect if not advance the plaintiff's interests over the first defendant's interests. Despite this, the second defendant supplied no evidence and made no submissions to the court about the legal consequences of the first defendant having used money which originated from the plaintiff to repay the HDB Loan in full.

The variation

32 It was only when the second defendant learned of the terms of the property division order that he acted to protect and advance the plaintiff's interests. That was when he applied to the Syariah Court under s 52(6) of the AMLA to have the order varied in two material respects:[44] (a) by ordering that the plaintiff be paid $205,359.80 plus interest out of the net proceeds of the sale

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40 Second defendant's 9 July 2021 affidavit, at pp 13 to 14, at [19]–[20].

41 Plaintiff's 13 October 2020 affidavit, p 53 para 6.

42 Plaintiff's 13 October 2020 affidavit, paras 25 and 29; p 51 at para 5.1; p 53, para 5.5.

43 AB Grounds of Decision at [6] (PBOA at PDF p 555); Plaintiff's 13 October 2020 affidavit, at p 33, para 4.

44 Plaintiff's 13 October 2020 affidavit, p 21 to 23.

of the Flat on the basis that she had a proprietary interest in the Flat;[45] (b) and by ordering that the second defendant be paid 15% of the net proceeds of sale by virtue of his contribution to the down payment (see [5] above).[46]

33 At the same time, the second defendant asked the plaintiff to intervene in the divorce proceedings and assert her claim.[47] The plaintiff did so.

34 In May 2019, the plaintiff secured leave with the defendants' consent to intervene in the divorce proceedings.[48] In her affidavit filed in May 2019, on legal advice,[49] she framed her claim as a proprietary claim arising from a direct contribution of $205,359.80 towards the acquisition of the Flat. By her calculations, $205,359.80 represented 47% of the combined direct contributions of all three parties towards the acquisition of the Flat.[50] But the plaintiff did not go so far as to ask the Syariah Court to award her 47% of the Flat's net proceeds of sale. Instead, she asked the court to order the first defendant to pay her $205,359.80 plus accrued interest out of the net proceeds of sale.[51] The plaintiff accepted that the first defendant was entitled to set off against this sum of $205,398.80 an unrelated debt of $11,888 which she admitted owing to the first defendant.[52]

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45 Plaintiff's 13 October 2020 affidavit, at p 34 para 11 and p 35 para 15; AB Grounds of Decision at [10] (PBOA at p 556).

46 Plaintiff's 13 October 2020 affidavit, at para 40; p 35, paras 13(c) and 14; p 68 at para 16.

47 Plaintiff's 13 October 2020 affidavit, at para 40.

48 Plaintiff's 13 October 2020 affidavit, at p 48.

49 Plaintiff's 13 October 2020 affidavit, para 41.

50 Plaintiff's 13 October 2020 affidavit, p 42, para 7(c); p 43, para 10.

51 Plaintiff's 13 October 2020 affidavit, at para 41; p 42, para 7(c) to 8; p 44, para 14.

52 Plaintiff's 13 October 2020 affidavit, at p 45, para 19(c).

35 The first defendant quite naturally resisted the second defendant's variation application. In May 2019, she filed an affidavit in support of her position.[53] In the affidavit, she accepted that she *prima facie* had an obligation to pay $205,359.80 to the plaintiff (see [123(d)] below). But at the same time, she claimed to be entitled to set off against the $205,359.80 certain debts which the second defendant allegedly owed her. Effecting that set off left her liable to pay only $53,653.80 to the plaintiff. The first defendant concluded her affidavit by confirming that she was prepared to pay the plaintiff $53,653.80 out of the Flat's net proceeds of sale, less a sum of $3,500 for legal costs which she claimed from the plaintiff.[54]

36 The plaintiff denied[55] and continues to deny[56] both: (a) that she is liable to the first defendant for any of the debts of the second defendant which the first defendant seeks to set off against the $205,359.80; and (b) that the first defendant has any legal basis to set these debts off against the sum of $205,359.80.

37 In October 2019, the Syariah Court rendered its decision on the variation application.[57] The court agreed with the first defendant that the property division order should not be varied in so far as it related to the second defendant's rights (see [32] above). Thus, the first defendant remained entitled to 100% of the net proceeds of sale as against the second defendant.

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53 Plaintiff's 13 October 2020 affidavit, at pp 56 to 57, paras 16 to 17; p 59 para 24.

54 Plaintiff's 13 October 2020 affidavit, at pp 61 to 62, paras 33 to 34.

55 Plaintiff's 13 October 2020 affidavit, at para 39; p 44 at para 15 to 18.

56 First defendant's 13 July 2021 affidavit, at para 4.

57 Plaintiff's 13 October 2020 affidavit, pp 19 to 20.

38 However, the Syariah Court agreed in part with both the second defendant and the plaintiff that the property division order should be varied in so far as it related to the plaintiff's rights. The court held that: (a) the first defendant had failed to show that the plaintiff was liable for any of debts which the first defendant claimed to be entitled to set off against the $205,359.80; (b) the first defendant would be unjustly enriched in the sum of $125,717.15 (see [20] above) if she did not account to the plaintiff for that sum out of the net proceeds of sale; and (c) the plaintiff's claims for the remainder of the $205,359.80 were unrelated to the Flat and would have to be decided by an ordinary civil claim in the ordinary civil courts rather than in matrimonial proceedings in the Syariah Court.[58]

39 The Syariah Court therefore ordered the first defendant to pay the plaintiff $138,917.15 out of the net proceeds of sale.[59] That figure represents only the sum which the first defendant used to repay the HDB loan, *ie*, $125,717.15 (see [20] above), plus $13,200 in accrued interest.[60]

The appeal

40 The plaintiff appealed against the variation order to the Appeal Board constituted under the AMLA. Her case on appeal was that the court should have ordered that she be paid the sum of $205,359.80 in full out of the net proceeds of sale.[61] The plaintiff's case was that she had a proprietary interest worth $205,359.80 in the Flat. That meant that the Flat was, to that extent, no longer

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58 Second defendant's 9 July 2021 affidavit, at p 16 at [23]–[24].

59 Plaintiff's 13 October 2020 affidavit, at para 42; pp 19 to 20.

60 Syariah Court's GD For SUM 52062 at [26] (Plaintiff's Bundle of Authorities filed 10 August 2021 ("PBOA") PDF p 550); Second defendant's 9 July 2021 affidavit, at p 12.

61 AB Grounds of Decision at [19] (PBOA at p 559).

matrimonial property which the court had any power to divide between the first defendant and the second defendant upon divorce.[62]

41 The first defendant did not appeal against the variation order. She was prepared to pay the plaintiff $138,917.15 out of the net proceeds of sale as required by the varied property division order "for the sake of closure".[63]

42 In August 2020, the Appeal Board dismissed the plaintiff's appeal.[64] But the Appeal Board went on of its own motion to set aside the variation order. The result of the Appeal Board's decision was to restore the original property division order (see [27]–[29] above). Therefore, even though the first defendant had chosen not to appeal against the variation order, she found herself no longer under any obligation to pay any part of the Flat's net proceeds of sale to the plaintiff.[65]

43 The Appeal Board arrived at its decision by analogy with the decision of the Court of Appeal in *UDA v UDB and another* [2018] 1 SLR 1015. In brief, the Appeal Board held that a Syariah Court does not have jurisdiction to vary a property division order in favour of non-party to the marriage (in this case, the plaintiff). The Appeal Board rested its decision on two grounds. First, a Syariah Court, when exercising matrimonial jurisdiction under s 35(2) and s 52 of the AMLA, does not have personal jurisdiction or power to determine the substantive rights of a non-party to the marriage even if the non-party had obtained leave to intervene in the matrimonial proceedings.[66] Second, given that

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62 AB Grounds of Decision at [30]–[31] (PBOA at PDF pp 561 to 562).

63 AB Grounds of Decision at [36] (PBOA at p 563).

64 First defendant's 30 November 2020 affidavit, at p 87 to 88.

65 First defendant's 30 November 2020 affidavit, at p 87; 1DS at para 13.

66 AB Grounds of Decision at [74]–[76] (PBOA at PDF pp 574 to 575).

the foundation of the plaintiff's claim was a proprietary interest in the Flat to the extent of $205,359.80, that interest was not "property" within the meaning of s 52(14) of the AMLA and was therefore not susceptible to a Syariah Court's power to make orders for the disposition or division of "property" in the exercise of its matrimonial jurisdiction under s 52(3) of the AMLA.[67]

44 The Appeal Board expressly stated that its decision was simply that the plaintiff had asserted her claim in the wrong court and not that her claim lacked merit. As a result, the Appeal Board said that nothing in its decision precluded her from vindicating her claim for $205,359.80 in full through an ordinary civil claim in the ordinary civil courts.

45 Taking her cue from the Appeal Board, the plaintiff commenced these proceedings in October 2020, claiming $205,359.80 in full from one or both of the defendants.

46 The property division order remains in force to this day. But it has yet to be implemented. The Flat has yet to be sold. The defendants continue to co-own it as joint tenants. The first defendant continues to live in the Flat together with one of the defendants' three children.[68] The Flat's estimated value is now between $350,000 and $438,000.[69]

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67 AB Grounds of Decision at [77]–[78] (PBOA at PDF pp 576).

68 First defendant's 30 November 2020 affidavit, at paras 5 and 9.

69 Plaintiff's 13 October 2020 affidavit, para 44.2; p 29 at para 13(a); p 43 at para 13(e) and 14(a); Second defendant's 9 July 2021 affidavit, p 9, para 6(h).

The plaintiff's claims

47 Arising from these facts, the plaintiff seeks to recover $205,359.80 from one or both of the defendants under the following heads of substantive relief:[70]

> 1. A declaration that the Defendants jointly or severally hold the sum of $205,359.80 as constructive trustee for the Plaintiff under institutional and/or remedial constructive trust.
>
> 2. In the alternative a declaration that the Defendants jointly or severally hold the traceable proceeds of and/or the value of the sum of $205,359.80 as constructive trustee for the Plaintiff under institutional and/or remedial constructive trust.
>
> 3. Further or in the alternative a declaration that the Defendants are jointly or severally liable to pay the Plaintiff the sum of $205,359.80 or the traceable proceeds of and/or the value of the sum of $205,359.80 as unjust enrichment and/or as proprietary restitution.
>
> 4. A declaration that the Plaintiff is beneficially entitled to the eventual sale proceeds of the Flat in the sum of $205,359.80 under institutional and/or remedial constructive trust.
>
> 5. In the alternative a declaration that the Plaintiff is beneficially entitled to the eventual sale proceeds of the Flat in the sum of $205,359.80 under resulting *Quistclose* trust.
>
> 6. In the alternative a declaration that the Plaintiff is beneficially entitled under institutional and/or remedial constructive trust and/or resulting *Quistclose* trust to the eventual sale proceeds of the Flat in such sums as this Court deems just.
>
> 7. In the alternative a declaration that the Plaintiff is beneficially entitled under institutional and/or remedial constructive trust and/or resulting *Quistclose* trust to the traceable proceeds of and/or the value of the sum of $205,359.80.
>
> 8. A tracing order pursuant to the above declaration.
>
> 9. The eventual sale proceeds of the Flat be divided on such terms as this Court deems just pursuant to the above declaration.
>
> 10. The surrender of the eventual sale proceeds of the Flat to the Plaintiff pursuant to the above declaration.

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70 HC/OS 1014/2020.

> 11. An equitable lien be imposed on the Flat pursuant to the above declaration on such terms and in such manner as this Court deems just.

48 At the outset of his oral submissions, plaintiff's counsel confirmed that the plaintiff's case against the second defendant is that he is a trustee for the plaintiff only under a *Quistclose* trust[71] or a remedial constructive trust,[72] and not, therefore, under a constructive trust or a presumed resulting trust. But at a later point in his oral submissions, plaintiff's counsel appeared to argue that the second defendant is a trustee for the plaintiff also under a constructive trust[73] and a presumed resulting trust.[74]

49 Plaintiff's counsel also submitted that the plaintiff's proprietary claim is aimed only at the first defendant's CPF account or the Flat's net proceeds of sale.[75] The prayers in this application are therefore deliberately and carefully framed to claim no proprietary interest in the Flat, at most only an equitable lien on the Flat.

50 With these points in mind, the plaintiff's 11 heads of principal substantive relief can be distilled into the following seven claims:

(a) One or both of the defendants holds $205,359.80 on constructive trust for the plaintiff.

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71 Notes of Argument, 11 August 2021, p 16 lines 1 to 14.

72 Notes of Argument, 11 August 2021, p 18 lines 17 to 27; *cf* lines 1 to 6.

73 Notes of Argument, 11 August 2021, p 19 lines 15 to 18.

74 Notes of Argument, 25 August 2021, p 15 lines 2 to 7.

75 Notes of Argument, 25 August 2021, p 23 lines 26 to 29; p 26 lines 15 to 17; p 28 lines 3 to 8.

(b) The court should impose a remedial constructive trust on one or both of the defendants in favour of the plaintiff for the sum of $205,359.80.

(c) One or both of the defendants holds $205,359.80 on a presumed resulting trust for the plaintiff.

(d) The second defendant holds $205,359.80 on a *Quistclose* trust for the plaintiff.

(e) One or both of the defendants is liable to the plaintiff for the sum of $205,359.80 in unjust enrichment.

(f) One or both of the defendants is liable to the plaintiff in the sum of $205,359.80 as proprietary restitution.

(g) The plaintiff is entitled to an equitable lien on the Flat.

Findings as to each party's knowledge and intention

51 Before turning to a consideration of each of these seven claims, it is convenient to make my findings of fact as to each party's knowledge and intention in February and March 2015, at the time the second defendant handed the two cashier's orders to the first defendant.

52 I start by analysing the second defendant's knowledge and intention. I start with the second defendant because I find that it was he who conceived and executed the plan which has given rise to this dispute. The plaintiff did not conceive or initiate the plan which has given rise to this dispute. Her evidence (see [63] below) is that it was the second defendant who repeatedly asked her to hand him $205,359.80, knowing that she had come into a substantial sum of

money in early 2015. The second defendant does not deny this aspect of the plaintiff's evidence. I accept the plaintiff's evidence. Equally, the first defendant did not conceive or initiate the plan which has given rise to this dispute. Her evidence is that she did not at any time ask the second defendant to give her any part of this $205,359.80.[76] The second defendant does not deny this aspect of the first defendant's evidence.[77] I accept the first defendant's evidence.

53 This dispute has arisen only because of a plan conceived and executed by the second defendant. I therefore begin by analysing the second defendant's knowledge and intention in February and March 2015.

The second defendant's knowledge and intention

54 The second defendant's evidence is that his "initial plan" was as follows:[78]

> 5. The initial plan was for the Plaintiff to *acquire and purchase* the flat *through me* from the 1st Defendant. The payments made by the Plaintiff was [*sic*] to enable the 1st Defendant and I [*sic*] as the joint owners then to pay off the outstanding loan to HDB and for the 1st Defendant to be able to purchase another flat as we were on the verge of divorce.
>
> [Emphasis added]

55 I find that the second defendant's "initial plan" comprised the following six steps. First, the second defendant would persuade the plaintiff to hand $205,359.80 to him. Second, he would hand the money to the first defendant and direct her to deposit it into her CPF account. Third, he would persuade the first defendant to do as he directed. Fourth, the first defendant would use part of

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76 Plaintiff's 13 October 2020 affidavit, p 58, para 21.

77 Second defendant's 9 July 2021 affidavit, at para 7(b), p 16 para 21(i).

78 Second defendant's 14 June 2021 affidavit, para 5.

the money to repay the HDB Loan in full and thereby discharge the HDB's charge on the Flat.[79] Fifth, the second defendant would persuade the first defendant to transfer her interest in the Flat to him. Finally, the first defendant would apply the remainder of the $205,359.80 in her CPF account towards purchasing a new flat to house herself and the defendants' child.

56 In my view, the second defendant's use of the word "purchase" (see [54] above) means that he intended the $205,359.80 which he was to hand the first defendant in the second step of his plan to be the consideration for her transfer to him of her interest in the Flat in the fifth step. This has three consequences. First, it means that he did not intend the $205,359.80 to be a gift from him to the first defendant. He expected something in exchange. Second, it means that he did not expect her to make a gift to him of her interest in the Flat. He intended to give her something in exchange. Third, it means that he did not expect to pay her anything more than $205,359.80 in order to secure her transfer of her interest in the Flat to him and in consideration of the transfer.

57 Several points puzzled me about the second defendant's plan. Why did the second defendant ask the plaintiff for the precise figure of $205,359.80? Why did he not just ask the plaintiff for the $125,717.15 necessary to repay the HDB Loan and instead ask for about $80,000 more? And why did the money have to be paid into the *first* defendant's CPF account rather than into the *second* defendant's CPF account (to fund his purchase of the first defendant's share of the Flat in the fifth step) or directly in cash to the HDB (to repay the HDB Loan)?

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79 Plaintiff's 13 October 2020 affidavit, at paras 15 to 18.

58 None of the parties offered a direct answer to these questions in evidence or in submissions. And the answer is ultimately immaterial to the issues I have to decide. But purely by way of background, it appears that the answer to both questions is related to the fact that the first defendant's CPF account was "depleted"[80] in February 2015. The second defendant therefore intended the $205,359.80 to "replenish"[81] the first defendant's CPF account.[82] He apparently believed that doing so was a condition precedent under the rules and regulations of the CPF Board for the first defendant to transfer her interest in the Flat to him.[83]

59 It is true that $205,359.80 is very close to the total of the sums necessary to repay in full: (a) the HDB Loan; and (b) the amount which the first defendant had borrowed (*ie*, withdrawn with an obligation to repay with interest) from her CPF account to purchase the Flat, together with accrued interest. The actual discharge of the HDB's charge and a credit balance in the first defendant's CPF account of funds sufficient to discharge her CPF charge would permit her to transfer her interest in the Flat to the second defendant[84] subject only to his existing CPF charge.

60 In any event, as I have said, the reason the second defendant conceived and executed this plan is ultimately immaterial because the steps of the plan are clear.

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80 Notes of Argument, 16 September 2021, p 26 lines 27 to 28; lines 22 to 23.

81 Notes of Argument, 16 September 2021, p 26 lines 27 to 28; lines 22 to 23; line 28; lines 18 to 19.

82 Plaintiff's 13 October 2020 affidavit, p 27 para 8(a).

83 Plaintiff's 13 October 2020 affidavit, p 27 at para 8(a); First defendant's 30 November 2020 affidavit, at p 64 at para 5; Notes of Argument, 16 September 2021, p 26 line 27 to 28 and p 27 line 22 to p 28 line 21.

84 Plaintiff's 13 October 2020 affidavit, p 64 at para 5.1.

61 I now turn to consider the plaintiff's knowledge and intention.

The plaintiff's knowledge and intention

62 It is useful to consider the plaintiff's knowledge and intention from two perspectives: (a) as against the first defendant; and (b) as against the second defendant.

As against the first defendant

(1) The plaintiff's knowledge of the second defendant's plan

63 I first consider the plaintiff's knowledge and intention as against the first defendant. The plaintiff's evidence is as follows:[85]

> 17. … [the] 2nd Defendant repeatedly requested that I handed to him monies to allow him to deposit the same into the 1st Defendant's CPF funds such as to *allow 2nd Defendant to buy over the Flat*, that being the specific reason informed to me as opposed to the details of the same I now reason, ie the purchase of the defendant's interest in the Flat.
>
> 18. Faced with 2nd Defendant's said repeated requests, I then reasoned that any monies handed to 2nd Defendant by me would be returned to me in some way, one of them being upon the subsequent sale of the Flat by the 2nd Defendant; I did not think through the means or ways by which the said monies were to be returned save that I did not intend to gift the money to the 2nd Defendant or the Defendants, that at all times I had desired for the said sum to be returned to me.
>
> [Emphasis added]

64 I find that the plaintiff knew the second defendant's plan when she handed the two cashier's orders to the second defendant in 2015. I say that for two reasons. First, in the passage I have cited at [63] above, the plaintiff accepts

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[85] Plaintiff's 13 October 2020 affidavit, paras 17 to 18.

that she knew the first to fifth steps of the second defendant's plan (see [55] above) when she handed the two cashier's orders to the second defendant.

65 As for the sixth step of the second defendant's plan, it is true that this passage does not go so far as to accept that the plaintiff knew that step. But I find on the balance of probabilities that she also knew the sixth step.[86] She knew each of the five preceding steps of the plan. She knew that, if these five steps were carried out, the first defendant would need a flat to house herself and the defendants' child. It is therefore likely that the plaintiff also knew that the first defendant would have to purchase another flat for that purpose. Further, the plaintiff was in an unregistered marriage with the second defendant at that time. There was no reason for him to be candid with her about the first five steps of his plan but to withhold from her the sixth step.

66 I therefore find that all six steps of the plan which the second defendant conceived and executed was the common intention of both the second defendant and the plaintiff. I find that this was their common intention, at the very latest, from the time the second defendant procured the cheque from the plaintiff in February 2015.

An apparent discrepancy

67 At this stage, I deal with an apparent discrepancy between the plaintiff's evidence and the second defendant's evidence of his plan. The second defendant's evidence is that the plan was for the *plaintiff* to "acquire and purchase" the Flat "through" the second defendant (see [54] above), *ie*, that the outcome of the plan would leave the *plaintiff* the sole owner of the Flat. The plaintiff's evidence is that the plan was for the *second defendant* to "buy over"

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86 Second defendant's 14 June 2021 affidavit, at para 5.

the Flat from the first defendant (see [63] above), *ie*, that the outcome of the plan would leave *the second defendant* the sole owner of the Flat.

68 The second defendant does not explain what he means by the phrase "for the Plaintiff to acquire and purchase the flat through me" (see [54] above). It could suggest that he was to hold the Flat as a nominee for the plaintiff.[87] That would be a potential contravention of s 51 of the Housing and Development Act (Cap 129, 2004 Rev Ed). That is because the evidence shows that the plaintiff was not eligible to own an interest in an HDB flat before December 2014 (when she sold her own HDB flat) or after October 2015 (when she purchased a replacement HDB flat).[88] The second defendant repaid the HDB Loan in full only in September 2015. That leaves only a window of only about a month, from September to October 2015, in which the plaintiff was eligible to own an interest in an HDB flat.

69 The discrepancy may be more apparent than real. The plaintiff's evidence can be reconciled with the second defendant's evidence by taking both their evidence as referring to the possibilities I identify at [75] below as ways in which the second defendant could account to the plaintiff for the $205,359.80.

70 In any event, in so far as there is an unreconciled discrepancy in the evidence on this point, I am inclined to accept the plaintiff's evidence. Her evidence is consistent with the second defendant's first account of his plan, which he gave to the Syariah Court in the variation application.[89] In that affidavit, he makes no reference to the plaintiff acquiring the Flat through him.

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87 First defendant's 13 July 2021 affidavit, para 5.

88 Plaintiff's 18 May 2021 affidavit, at para 3.

89 Plaintiff's 13 October 2020 affidavit, p 27, para 6.

He says simply that he obtained the money from the plaintiff and handed it to the first defendant in order for *him* to "take over the [Flat] and reimbursed [*sic*] the [first defendant's] CPF money".

71 Even if I am wrong on this, I consider it to be ultimately immaterial to my findings as to the parties' knowledge and intention. Whichever account is true, it was their common intention that one or other of them was to become the sole owner of the Flat in the fifth step of the plan, in exchange for and in consideration of the plaintiff's $205,359.80. This apparent discrepancy therefore does not alter my finding that carrying out the second defendant's six-step plan was the common intention of the second defendant and the plaintiff from, at the latest, February 2015.

As against the second defendant

72 I now turn to consider the plaintiff's knowledge and intention as against the second defendant.

73 I begin by finding that the second defendant and the plaintiff did not discuss what, if anything, the plaintiff was to receive from the second defendant in return for the two cashier's orders, let alone agree or arrive at any understanding to that effect. I make that finding because the plaintiff and the second defendant give no evidence whatsoever of any contemporaneous discussion, agreement or understanding between them in February and March 2015 as to whether the two cashier's orders: (a) were or were not a gift from the plaintiff to the second defendant; (b) were or were not a loan from the plaintiff to the second defendant; or (c) would or would not yield in favour of the plaintiff a proprietary interest in the Flat.

74 The plaintiff's evidence on this point is that she did not intend $205,359.80 to be a gift to the second defendant because she "reasoned that any monies handed to 2nd Defendant by [her] would be returned to [her] in some way" (see [63] above). I make two points about this. First, this is the plaintiff's evidence of her contemporaneous internal rationalisation to herself of her decision to hand the two cashier's orders to the second defendant. It is not her evidence of a discussion, agreement or understanding with him that this was the basis on which she was doing so. Second, this is a self-serving statement which she now makes with the benefit of hindsight, knowing that the second defendant's plan has gone awry at the fifth step.

75 On the basis of the plaintiff's own evidence, I find that she handed the two cashier's orders to the second defendant in total reliance on her subjective, self-engendered expectation that he would return $205,359.80 to her in some way. There are many means by which the second defendant could do this. He could become the sole owner of the Flat, sell it and pay $205,359.80 to the plaintiff out of the Flat's net proceeds of sale. She expressly refers to this means of returning the money to her in her evidence (see [63] above). But she also expressly describes this as only one of the "means or ways" by which he could "return" $205,359.80 to her. Although she does not elaborate upon the other means, it is not difficult to posit them. He could simply pay her $205,359.80 at some point in the future. He could become the sole owner of the Flat and add her as a co-owner for no additional consideration. He could abandon the fifth step of the plan and procure the first defendant to transfer the Flat to the plaintiff and the second defendant as joint owners. He could acquire the first defendant's interest in the Flat, discharge his own CPF charge and transfer the Flat to the plaintiff's sole name. He could leave the Flat to the plaintiff in his will. The important point is that neither the plaintiff nor the second defendant have given

any evidence that any of these ways or means was actually the subject of any discussion, agreement or even understanding between the second defendant and the plaintiff at any time.

76 I therefore find that the plaintiff handed the two cashier's orders to the second defendant in 2015 relying on and induced by nothing more than: (a) his request for the money as her husband in an unregistered marriage; and (b) her faith in him, as her *de facto* husband, that he would do the right thing and return $205,359.80 to her by some unspecified means and at some unspecified time in the future. In that sense, she handed the two cashier's orders to the second defendant as an advance to the second defendant to enable him to acquire the first defendant's interest in the Flat, but with no agreement or even expectation as to the manner or time the second defendant would return it.

77 I find further that this subjective and self-engendered expectation is all that the plaintiff means when she says that she did not intend the two cashier's orders to be a gift to the second defendant (see [63] above).

78 I turn now to consider the knowledge and intention of the first defendant.

The first defendant's knowledge and intention

79 The first defendant's evidence is that: (a) she did not know until 2016 that the plaintiff was the source of the two cashier's orders;[90] (b) she never knew the second defendant's "initial plan" (see [54] above);[91] and (c) the second

90 First defendant's 16 June 2021 affidavit, para 9.

91 First defendant's 16 June 2021 affidavit, at paras 11, 30.

defendant told her that the money was his unpaid share of the monthly payments to service the HDB Loan.[92] Her evidence is as follows:[93]

> 10. I state that sometime in February and March 2015, the 2nd Defendant had physically handed over to me two (02) cashier's orders, both of which were payable to CPF. He informed me that the monies he was handing over to me were his share of the monthly mortgage payments. I had asked the 2nd Defendant where the monies came from as it was a huge sum of money and he insisted that he borrowed it from a friend and refused to answer any further questions in relation to the same. At this juncture, I wish to inform this Honourable Court that since the 2nd Defendant and I purchased the Flat, I was the one solely paying for the repayment of the mortgage of the Flat.

80 In an affidavit filed in a failed attempt to strike out the plaintiff's application, the first defendant said this:[94]

> 14. I state that at the material time of receiving the Cashier's Orders from the 2nd Defendant, I was neither aware of the relationship between the Plaintiff and the 2nd Defendant, nor of the fact that the Cashier's Orders were issued by the Plaintiff. I had merely trusted the 2nd Defendant's intentions and instructions pertaining to the Cashier's Orders.
>
> 15. I wish to inform this Honourable Court that I had only discovered the source of the Cashier's Orders sometime in 2016, when three persons appeared at the Flat while I was at home, demanding to see the 2nd Defendant. The 2nd defendant was not around at that time but the three men informed me that the 2nd Defendant had taken substantial of monies from their sister. They had said that their sister had recently sold her Clementi flat and had given the proceeds thereof to the 2nd Defendant. They had also demanded that the 2nd Defendant repay all those monies owed to their sister.
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> 16. After this incident, I had questioned the 2nd Defendant on the sources of the Cashier's Orders. It was upon my insistent questioning that the 2nd Defendant informed me that he had married the Plaintiff and that the Cashier's Orders were given

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92 Plaintiff's 13 October 2020 affidavit, p 57 paras 19 to p 58, para 20; First defendant's 30 November 2020 affidavit, at para 12.

93 First defendant's 16 June 2021 affidavit, at para 10.

94 First defendant's 30 November 2020 affidavit, at paras 14 to 17.

> to the 2nd Defendant by the Plaintiff. I was also informed that these were monies derived from the Plaintiff's sale proceeds of her previous flat in Clementi.
>
> 17. I state that the 2nd [defendant] had at no point during the marriage informed me or made any representations which would cause me to believe that the Cashier's Orders were a loan or debt to the 2nd Defendant. As far as I was concerned and relying on the 2nd Defendant's narratives, the Cashier's Orders were gifted to the 2nd Defendant by the Plaintiff.

81 I accept the first defendant's evidence. In particular, I accept that the first defendant did not know until 2016 at the earliest: (a) that the second defendant had entered into an unregistered marriage with the plaintiff; (b) that the plaintiff was the ultimate source of the two cashier's orders; (c) that the second defendant had conceived and was executing his six-step plan; and (d) that executing that plan was the common intention of the second defendant and the plaintiff.

82 I accept also that the second defendant told the first defendant that: (a) the two cashier's orders were to make up to the first defendant for the second defendant's failure to make any substantial contribution to servicing the HDB Loan; and (b) he had borrowed the money from friends and that she should not ask him any further questions.[95]

The consequences of these findings

83 These findings have four important consequences.

84 The first consequence is that the plaintiff's intention in handing the two cashier's orders to the second defendant was not vitiated or defective in any way. She was not induced to hand the two cashier's orders to him by a fraud

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95 First defendant's 16 June 2021 affidavit, at para 10.

which he perpetrated on her. Plaintiff's counsel confirmed several times that the plaintiff makes no allegation of fraud against the second defendant. Further, she was not induced to hand the two cashier's orders to him by any kind of mistake. Neither of these points form any part of the plaintiff's case.

85 As I have found, the second defendant was honest with the plaintiff about his plan. The plaintiff knew all six steps of his plan. The second defendant and the plaintiff formed a common intention to execute the plan. And she handed the two cashier's orders to him with that knowledge and intention. She was labouring under no deception or mistake.

86 The second consequence is the plaintiff did not intend to make a loan of the $205,359.80 to the second defendant. A loan entails a legal obligation on the second defendant to repay the money to the plaintiff. On my findings, neither the plaintiff nor the second defendant intended any such legal obligation. When the plaintiff handed the two cashier's orders to the second defendant, she was induced by and relied on only her own subjective, self-engendered expectation that the second defendant would return $205,359.80 in some unspecified way and at some unspecified time. She did not do so induced by, in reliance on or in exchange for his undertaking to repay $205,359.80 to her.

87 The third consequence is that the plaintiff intended to part with her property in the two cashier's orders and their proceeds when she handed them to the second defendant. I say that for two reasons. First, the third, fourth and fifth steps of the plan (see [55] above) could be carried out only if the plaintiff parted with her property in the two cashier's orders and their proceeds. Second, as I have found, the plaintiff's evidence that she did not intend the two cashier's orders to be a gift to the second defendant means only that she had a subjective, self-engendered expectation that he would return $205,359.80 to her in some

unspecified way and at some unspecified time. Her evidence that the two cashier's orders were not a gift does not suggest that she intended in some way to retain property in the two cashier's orders or their proceeds.

88 The fourth consequence of these findings is that what the first defendant did with the two cashier's orders and their proceeds did not in any way deceive the second defendant or in any way defeat the common intention of the second defendant and the plaintiff. What the first defendant did with the two cashier's orders and their proceeds was exactly what the second defendant and the plaintiff intended her to do with them: she paid them into her CPF account and used the proceeds in part to repay the HDB Loan and secure the total discharge of the HDB's charge on the Flat.

89 It is true that the first defendant has not transferred her interest in the Flat to the second defendant. Instead, she commenced divorce proceedings against him, in the course of which she secured for herself the entire interest in the Flat. But, on the basis of my findings at [81] to [82] above about the second defendant's knowledge and intention, that failure is not a breach of any obligation by the first defendant. Nor is it unconscionable behaviour warranting the intervention of equity. Indeed, the second defendant does not allege that he disclosed his plan to the first defendant let alone that he reached any agreement or even understanding with her that she would transfer her interest in the Flat to him. That is no doubt why neither the plaintiff nor the second defendant suggests that, by commencing the divorce proceedings and by securing the entire interest in the Flat for herself by way of the property division order, the first defendant has breached any legal obligation to them, defrauded them or even acted unconscionably towards them warranting the intervention of equity.

90 I now turn to consider each of the plaintiff's claims against the defendants.

Issue 1: Institutional constructive trust

91 I deal first with the plaintiff's claim that the first defendant holds $205,359.80 on an institutional constructive trust for the plaintiff.

Parties' cases

The plaintiff's case

92 The plaintiff rests her case on this claim on four submissions:

(a) The foundation of an institutional constructive trust lies in unconscionability.[96] The general principle which underpins when an institutional constructive trust arises in equity is therefore a recipient of property behaving unconscionably in relation to that property.[97]

(b) The knowledge which a recipient of property must have to make her conduct unconscionable and to give rise to an institutional constructive trust can be knowledge acquired either before or after the recipient receives the property.[98]

(c) In 2018 (see [25] above), in the course of her divorce proceedings against the second defendant, the first defendant: (i) acknowledged that the two cashier's orders and their proceeds were

96 Plaintiff's submissions ("PS") at para 18.4.

97 PS at para 18.2.

98 PS at para 18.5; Notes of Argument, 11 August 2021, p 12 line 17 to p 13 line 32.

the plaintiff's property; and (ii) confirmed her intention to return $205,359.80 in full to the plaintiff.[99]

(d) In 2019, the first defendant behaved unconscionably in one of two ways, thereby constituting her a trustee of $205,359.80 for the plaintiff under an institutional constructive trust:[100]

(i) the first defendant asserted in her May 2019 affidavit that she would not return the $205,359.80 in full to the plaintiff but would instead return only $53,653.80, thereby resiling from her earlier acknowledgments and confirmations (see [35] above);[101]

(ii) Alternatively, the first defendant refused in her May 2019 affidavit to return $205,359.80 to the plaintiff knowing full well that the plaintiff was the source of the two cashier's orders.[102]

The first defendant's case

93 The first defendant submits that no institutional constructive trust arose in the plaintiff's favour for three reasons.

(a) First, the allegedly unconscionable conduct on which the plaintiff relies does not fall into any of the categories which equity has

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99 PS at paras 18.6 to 18.7.

100 PS at paras 18.7 to 18.9.

101 PS at para 18.8; Notes of Argument, 11 August 2021, pp 12 lines 17 to 27, p 17 lines 10 to 13.

102 PS at 18.9.

recognised as being capable of giving rise to an institutional constructive trust (see [104] below).[103]

(b) Second, an institutional constructive trust arises only if the recipient of property behaves unconscionably at or before the time she receives the property.[104] It is not the plaintiff's case that the first defendant behaved unconscionably when she received the two cashier's orders from the second defendant.[105]

(c) Third, what the first defendant did with the two cashier's orders was precisely what the second defendant and the plaintiff intended the first defendant to do with them.[106]

94 For the reasons which follow, I accept each of the first defendant's submissions.

Two assumptions

95 In the analysis which follows, I make two assumptions.

96 First, I assume that equity treats the balance standing to the credit of the first defendant in her CPF account in the same way as it would treat the balance standing to her credit in an ordinary bank account, *ie*, as a debt which the CPF Board owes her. That is not, however, the true legal relationship between the CPF Board and its members. In law, the CPF Board holds the credit balances in all of its members' accounts as a single fund on a single trust for all members

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103 1DS at paras 31, 33 and 35.

104 1DS at para 32.

105 1DS at para 32.3; Notes of Argument, 16 September 2021, p 11.

106 1DS at para 32.1.

(see s 6(2) of the Central Provident Fund Act 1953 (2020 Rev Ed) ("the CPF Act")).

97 The trust on which the CPF Board holds the credit balance in a member's account is a *sui generis* trust in two fundamental respects. First, it is established by statute, not by the voluntary act of a settlor. Second, Parliament has heavily modified the duties of the CPF Board as trustee and the rights of a CPF member as the *cestui que trust* by the provisions of the CPF Act and the regulations made under it. But the fact remains that the CPF Board is not the debtor of a CPF member for the credit balance in her account.

98 I consider this assumption to be immaterial to the analysis. If the plaintiff cannot succeed if the two cashier's orders are assumed to have increased a debt which the CPF Board owed to the first defendant at common law, *a fortiori* the plaintiff cannot succeed if the two cashier's orders are treated as an accretion to a single trust fund which the CPF Board holds on an express *sui generis* trust for all members, including but not limited to the first defendant, in equity.

99 The second assumption I make is that the proceeds of the two cashier's orders remain somehow sufficiently identifiable in the CPF Board's hands as to be capable of being the subject matter of any sort of trust, whether express or implied and whether institutional or remedial. That assumption operates in the plaintiff's favour in two senses.

100 First, on the available evidence, only $79,642.65 out of the proceeds of the two cashier's orders remains even notionally identifiable in the first defendant's CPF account (see [21] above). The remainder of the $205,359.80 (being $125,717.15) was paid out of the first defendant's CPF ordinary account to the HDB to repay the HDB Loan in full. That sum is no longer capable of

being the subject matter of a trust. The plaintiff's repeated reference to the "traceable proceeds" of the two cashier's orders do not assist her. That sum was not used to acquire the Flat in 2002 but was used instead to repay the HDB Loan in full in 2015. Plaintiff's counsel confirmed that she does not rely on backwards tracing.[107]

101 Second, even the $79,642.65 which remains in the first defendant's CPF account is only notionally identifiable in that account. It is in fact held by the CPF Board together with the credit balances of all other CPF members commingled in a single fund on trust for all CPF members. It is not held as a discrete or identifiable chose in action vested in the first defendant and enforceable at her instance against the CPF Board.

102 With those two assumptions in mind, I now set out my reasons for accepting the first defendant's three submissions at [93] above.

No unconscionability in any recognised sense

The plaintiff's foundational proposition is misconceived

103 The plaintiff's foundational proposition is that an institutional constructive trust arises whenever a recipient of property (T) behaves unconscionably in relation to that property as against the beneficiary (B).[108] As authority for this proposition, the plaintiff relies on the *dictum* of Millett LJ (as he then was) in *Paragon Finance plc v DB Thakerar & Co* [1999] 1 All ER 400,

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107 Notes of Argument, 11 August 2021, p 22 lines 9 to 26.

108 PS at paras 18.2.

cited in *Guy Neale and others v Nine Squares Pty Ltd* [2015] 1 SLR 1097 ("*Guy Neale (CA)*") at [124]–[125]:

> A constructive trust arises by operation of law whenever the circumstances are such that it would be unconscionable for the owner of property (usually but not necessarily the legal estate) to assert his own beneficial interest in the property and deny the beneficial interest of another.

104 The plaintiff's foundational proposition is fundamentally misconceived. A constructive trust is not equity's response to conduct by T which is unconscionable only in the general sense of being conduct which is either not right or reasonable or which is contrary to good conscience. Unconscionability in that general sense is a necessary but not a sufficient condition for a constructive rust to arise. The Court of Appeal made that clear in *Guy Neale (CA)* (at [124]) by framing Millett LJ's *dictum* as merely a *general* definition of an institutional constructive trust rather than a comprehensive definition. It is significant that the Court of Appeal went on to situate the facts of *Guy Neale (CA)* within one of the specific categories and circumstances in which an institutional constructive trust arises, *ie*, a person making a profit in breach of his fiduciary duty (at [126]).

105 In my view, T holds her rights in property on constructive trust for B if, and only if, a set of circumstances have transpired in relation to those rights which equity recognises by accretion of judicial decision are sufficient to render it unconscionable for T to exercise those rights as she sees fit, disregarding B. Equity responds to the unconscionability by burdening T's rights in the property with a set of equitable duties to B. This set of duties includes, at the very least, the core duties of a fiduciary, *ie*, the duty not to make a profit out of his fiduciary position and duty not to put himself in a position where his own interests and

his duty to his principal are in conflict (*Ho Yew Kong v Sakae Holdings Ltd and other appeals and other matters* [2018] 2 SLR 333 ("*Ho Yew Kong*") at [135]).

106 The reciprocal of this set of equitable duties is a set of reflected equitable rights vested in B. This set of rights is persistent in the sense that it is capable in equity of following T's rights in the property as she transfers those rights to third parties. As a result, lawyers and judges are accustomed to thinking of B's rights under an institutional constructive trust as being proprietary rights against a particular asset enforceable against the world at large. That serves as a useful model for most practical purposes, although it is not entirely accurate conceptually. The more accurate conceptual model is to think of B's equitable rights as personal rights which burden T's rights in the property in a manner which is capable in equity of surviving T's transfer of those rights to a third party.

107 The specific categories of unconscionability which equity recognises as being capable of giving rise to an institutional constructive trust were helpfully enumerated in *Low Heng Leon Andy v Low Kian Beng Lawrence (administrator of the estate of Tan Ah Kng, deceased)* [2011] SGHC 184 (at [53], cited with approval in *Guy Neale and others v Nine Squares Pty Ltd* [2013] SGHC 249 at [141]):

(a) fraud;

(b) the retention of property acquired as a result of a crime causing death;

(c) a profit in breach of a fiduciary duty;

(d) the retention of property by a vendor after the vendor had entered into a specifically enforceable contract to sell the property;

(e) the changing of a will by the survivor of two persons who had entered into a contract to execute wills in a common form;

(f) the acquisition of land expressly subject to the interests of a third party;

(g) the assertion of full entitlement to property after a common intention to share property had been formed (also known as a "common intention constructive trust").

108 This list of categories is not of course closed. And each category in this list is not of course so rigid as to be incapable of development. But there is a very strong policy imperative, both at common law and in equity, for rights in property to be stable and for the law to allocate and alter those rights only in a manner which is transparent, consistent and predictable. Equity therefore develops each category within this list incrementally, by analogy to existing cases within the category. Equally, it adds categories to this list incrementally, by analogy to the existing categories. And this development and addition is done in the usual way: by accretion of judicial decision. Equity does not develop or add to these categories in an unprincipled and *ad hoc* way, turning on a particular judge's subjective opinion in a particular case as to whether T has engaged in conduct which is or is not unconscionable in some general sense of the word.

109 Two consequences follow from this conception of an institutional constructive trust.

110 First, an institutional constructive trust arises in real time, without any need for B to have resort to a court of equity. Thus, T will hold her rights in particular property on institutional constructive trust for B by reason of and

upon the requirements of that specific category of unconscionability being satisfied. An institutional constructive trust is not imposed by the court, *ie*, it is not created by judicial decree following litigation (as opposed to a remedial constructive trust). The court's function is merely to declare that an institutional constructive trust arose at a specific time in the past: *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 ("*Westdeutsche*") at 714–715, cited in *Ching Mun Fong (executrix of the estate of Tan Geok Tee, deceased) v Liu Cho Chit* [2001] 1 SLR(R) 856 ("*Ching Mun Fong*") at [35].

111 Second, an institutional constructive trust arises independently of any intention on B's or T's part to create a trust or to constitute T a fiduciary for B. That is so whether the intention is approached from the perspective of: (a) a bilateral or unilateral intention held subjectively by T and B *ex ante*; (b) an intention which the court can ascertain objectively from T's and B's conduct; and even (c) an intention which the court is prepared to impute to T or B *ex post facto*. Their intention is relevant only in so far as it goes towards establishing the specific head of unconscionability at [107(g)] above, *ie*, what is commonly referred to as the common intention constructive trust.

The first defendant's conduct is not within any recognised category of unconscionability

112 The plaintiff's case is that an institutional constructive trust arose in her favour only in May 2019, when the first defendant filed her affidavit in the variation proceedings, and at no other time. That is when the first defendant either: (a) unconscionably claimed to be entitled to return only $53,653.80 to the plaintiff after having earlier indicated her intention to return $205,359.80 to the plaintiff in full; or (b) unconscionably refused to return $205,359.80 in full

to the plaintiff despite knowing that the plaintiff was the source of the two cashier's orders.

113 That necessarily means that it is *not* the plaintiff's case that the first defendant behaved unconscionably on any occasion before May 2019. In particular, it is not her case that the first defendant behaved unconscionably: (a) in February and March 2015, when she received the two cashier's orders;[109] (b) in February and September 2015 when she paid the two cashier's orders into her CPF account;[110] (c) in September 2015, when she used the proceeds of the two cashier's orders to repay the HDB Loan in full and secure the discharge of the HDB's charge; (d) in 2017, when she commenced divorce proceedings against the second defendant; (e) in December 2018, when she secured a property division order which made no provision for her to return $205,359.80 to the plaintiff; (f) at any time after learning that the plaintiff was the source of the two cashier's orders and before May 2019, merely by failing (as opposed to refusing) to return $205,359.80 to the plaintiff; (g) at any time, by failing to transfer her interest in the Flat to the second defendant.

114 In any event, the first defendant's conduct at any point in time cannot conceivably fall within categories (b), (d) or (e) at [107] above. It does not require any analysis to come to that conclusion. That leaves only categories (a), (c), (f) and (g) which require further analysis.

115 Category (a) simply cannot apply. A transfer of property procured by fraud gives rise to an institutional constructive trust as against the fraudulent transferee: *Westdeutsche* at 716; *Snell's Equity* (John McGhee & Steven Elliott

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109 Notes of Argument, 11 August 2021, pp 4 line 33 to p 5 line 1 and lines 17–20.

110 1DS at para 39.

eds) (Sweet & Maxwell, 34th Ed, 2020) ("*Snell's Equity*") at paras 26-011 and 26-013. But, as I have mentioned, the plaintiff disavows any allegation of fraud as against the second defendant. The position must be *a fortiori* as against the first defendant. There is no suggestion of any direct dealing between the plaintiff and the first defendant at the time the second defendant handed the two cashier's orders to the first defendant in 2015.

116 In any event, on the plaintiff's own case, the time to assess whether the first defendant's intent was fraudulent is May 2019 (see [112] above). The first defendant made no fraudulent statement to the plaintiff in May 2019. Even if I go beyond the plaintiff's case and assume that the first defendant was fraudulent *before* May 2019 (*ie* in April 2018) in falsely acknowledging and confirming her intention to return $205,359.80 to the plaintiff in full, there is still no fraud. The elements of inducement, reliance and detriment are all absent. The first defendant did not induce the plaintiff to do anything to her own detriment at any time.

117 Category (c) simply cannot apply. This category requires a fiduciary relationship between T and B which pre-dates and is independent of the institutional constructive trust which is now said to have arisen. The plaintiff does not allege that the first defendant owed fiduciary duties to her *before* May 2019 or in some way independently of the first defendant's conduct in May 2019.

118 Category (f) simply cannot apply. The first defendant did not acquire any interest in land which was subject to the plaintiff's interests. The only interest in land which the first defendant acquired arose upon, and by termination of, the HDB's charge on the Flat, leaving the Flat unencumbered. Neither the Flat nor the charge was at any time subject to any interest of the

plaintiff. The Flat was owned at all times only by the first defendant and the second defendant, both at law and in equity.

119 Category (g) requires the following conditions to be satisfied: (a) that T and B share a common intention that the beneficial interest in a property is to be shared; and (b) B relies to his detriment on this common intention (see *Lai Hoon Woon (executor and trustee of the estate of Lai Thai Lok, deceased) v Lai Foong Sin and another* [2016] SGHC 113 at [141]; *Sumoi Paramesvaeri v Fleury, Jeffrey Gerard and another* [2016] 5 SLR 302 ("*Sumoi*") at [62]). The common intention in (a) may be express or inferred (*Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [160(b)] and [160(f)]). If these conditions are satisfied, equity will not permit T to exercise her rights in the property in a manner which is inconsistent with T's and B's common intention. The plaintiff does not allege that there was any common intention as between her and the first defendant. The plaintiff did not at any time act in reliance on any common intention as between her and the first defendant. The plaintiff relied only on (as I have found) her faith in the second defendant as her *de facto* husband. There being no common intention, the issue of detriment does not even arise.

120 The first defendant's conduct at any time, including in May 2019, does not come within any of the categories of unconscionability which equity has recognised by accretion of judicial decision as giving rise to an institutional constructive trust. Further, none of these categories can be developed incrementally or by analogy to encompass the first defendant's conduct in a way which is consistent with the policy imperative for rights in property to be stable and for the law to allocate and alter those rights only in a manner which is transparent, consistent and predictable.

121 I therefore hold that the first defendant did not become an institutional constructive trustee for the plaintiff as the plaintiff alleges or at all.

No unconscionability in the general sense

122 In case I am wrong in this, I find also that the first defendant did not behave in any way which was unconscionable in the general sense.

No unconscionability in resiling from statements

123 The plaintiff's case on her first ground of unconscionability in the general sense proceeds as follows. On five occasions the first defendant made statements expressly: (a) acknowledging that the two cashier's orders were the plaintiff's property; (b) confirming either that she was not entitled to retain $205,359.80 out of the net proceeds of sale or that she was obliged to return $205,359.80 to the plaintiff out of the net proceeds of sale.[111]

> (a) First, when the first defendant commenced the divorce proceedings, she filed a Case Statement in the Syariah Court under r 9(3) of the Muslim Marriage and Divorce Rules (2001 Rev Ed). In the Case Statement, she proposed that the Flat be sold and that *second defendant* be "refunded" $205,359.80 out of the net proceeds of sale.[112] The plaintiff and the second defendant rely on this as an admission by the first defendant that she was not entitled to retain $205,359.80 out of the net proceeds of sale and was obliged to return it, albeit to the second defendant instead of to the plaintiff.

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111 First defendant's affidavit in Reply in Syariah Court Summons No 52062/VO/01 dated 28 May 2019 at para 16 (in the plaintiff's 13 October 2020 affidavit at p 57).

112 Second defendant's 9 July 2021 affidavit, at p 10; PS, at para 11.

(b) Second, the first defendant asked the plaintiff directly in 2017 if she had given the two cashier's orders to the second defendant.[113] The plaintiff confirmed that she had. The plaintiff's case is that the first defendant then told the plaintiff that the first defendant intended to return $205,359.80 to the plaintiff, albeit without specifying the manner or time it would be returned.[114] The first defendant's account is consistent with this but adds that the first defendant also told the plaintiff that, before returning the money, she would deduct certain sums which she claimed that the second defendant owed to her.[115]

(c) Third, in April 2018, at the first hearing in the divorce proceedings, the first defendant volunteered to the Syariah Court that the money she had used to discharge the HDB's charge on the Flat had in fact come from the plaintiff.[116]

(d) Fourth, in May 2019, after the plaintiff had secured leave to intervene in the divorce proceedings by consent, the first defendant filed an affidavit opposing the second defendant's variation application. In that affidavit, the first defendant acknowledged that the $205,359.80 did

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113 Plaintiff's 13 October 2020 affidavit, at para 27.

114 Plaintiff's 13 October 2020 affidavit, at para 27.

115 First defendant's 16 June 2021 affidavit, at paras 14 and 23.

116 Plaintiff's 13 October 2020 affidavit, p 51 para 5.2; p 56, para 15; First defendant's 16 June 2021 affidavit, at paras 16 and 17; Second defendant's 9 July 2021 affidavit at p 15 para 21(ii).

not belong to the first defendant and confirmed her intention to return $205,359.80 to the plaintiff:[117]

> THE INTERVENER'S CONTRIBUTION
>
> 15. At the outset, I wish to reiterate that it was me, and not [the second defendant], who had informed [the Syariah Court] of the Intervener's contributions towards the … Flat.
>
> 16. I state that I had done so because I genuinely wanted to return the money [the Intervener] had paid towards the Flat and I did not wish to retain monies that do not rightfully belong to me.
>
> 17. However, given the Intervener's failure to file an intervener's application in a timely manner during the divorce proceedings, my solicitors had … asked for the [Syariah Court] to proceed on the basis that there are no third party contributions to the … Flat. As the Intervener and I are colleagues, I had initially intended to return her money privately and without the need for an Order of Court requiring me to do so after the sale of the … Flat.

(e) Fifth, in August 2019, at the hearing of the second defendant's application to vary the property division order, first defendant's counsel argued that she would not be unjustly enriched if the order were not varied in the plaintiff's favour because the first defendant intended to pay the plaintiff $205,359.80 voluntarily out of the net proceeds of sale:[118]

> On the unjust enrichment alleged, the Plaintiff intends to return the money to [the Intervener]. At the OS stage, it wasn't ordered to be returned to her because she was not a party to the proceedings. But this hasn't been done yet as flat has not been sold.

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117 Plaintiff's 13 October 2020 affidavit, at pp 56 to 57, paras 15 to 17; p 59 para 24.

118 Second defendant's 9 July 2021 affidavit, p 18E.

124 Despite making these express statements, including in the first defendant's May 2019 affidavit, she claimed in that very same affidavit to be entitled to set off substantial sums against the $205,359.80 (see [123(b)] above) leaving only $53,653.80 to be returned to the plaintiff. This, the plaintiff submits, is unconscionable in the general sense and constitutes the first defendant an institutional constructive trustee of $205,359.80 for the plaintiff.

125 I do not accept that the first defendant behaved unconscionably in taking the position that she did in May 2019. I say that for three reasons.

126 First, the plaintiff does not allege that any of statements on any of these five occasions was made fraudulently. The plaintiff therefore accepts that each statement was made honestly in the sense that the statement reflected accurately the first defendant's true intention at the time she made the statement.

127 Second, none of these statements rises to the level of a promise to the plaintiff. A promise is a bilateral statement of intention as to future conduct expressed by a promisor to a promisee: see *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2012) at paras 03.021 and 04.001. None of these statements satisfies that test. None of them is: (a) an express or implied representation that the first defendant's intention would never change; or (b) an express or implied undertaking to carry out that intention in the future. It cannot be unconscionable in a general sense, and thereby give rise to an institutional constructive trust, for T to act contrary to a statement of intent which was not made fraudulently, and which does not rise to the level of a promise. To hold otherwise would subvert the entire fabric of the law of obligations.

128 Third, the result is the same even if I take the plaintiff's case at its highest and construe these statements as the first defendant's irrevocable and unqualified promises to return $205,359.80 to the plaintiff in full. First of all, the plaintiff did not in any way rely on these presumed promises to her detriment. The only detriment which the plaintiff ever suffered was suffered in 2015, when she handed the two cashier's orders to the second defendant. In suffering that detriment, as I have found, she was induced by and relied only on her faith in the second defendant as her *de facto* husband. The plaintiff could not, in 2015, have relied to her detriment in any way on these presumed promises made in 2019. Nor did the plaintiff give any consideration in 2019 for these presumed promises. A breach of a promise made by T which is unsupported by consideration, or at the very least which does not induce detrimental reliance, cannot be sufficient unconscionability to constitute T a constructive trustee for B. Once again, to hold otherwise would subvert the entire fabric of the law of obligations.

129 Separately, the first defendant's breach in May 2019 of a promise to return $205,359.80 to the plaintiff cannot give rise to a constructive trust. The plaintiff handed the two cashier's orders to the second defendant in 2015. He handed them to the first defendant in 2015. She deposited them into her CPF account in accordance with the common intention of the second defendant and the plaintiff. There is no unconscionability in the general sense in the first defendant claiming to be entitled to return only $53,653.80 in May 2019 even if I assume that she promised to return $205,359.80 in full to the plaintiff at some time before that.

No unconscionability after the first defendant learned the truth

130 The alternative way in which the plaintiff puts her case on unconscionability is that the first defendant acted unconscionably when she insisted in May 2019 on retaining $205,359.80, even in part, with knowledge that the plaintiff was the source of the two cashier's orders.[119]

131 The plaintiff relies on the case of *Chase Manhattan Bank NA v Israel-British Bank (London) Ltd* [1981] 1 Ch 105 ("*Chase Manhattan*") as authority for the proposition that equity will impose a constructive trust where: (a) property is transferred *absent* a mistake by the transferor or fraud by the transferee; and (b) the transferee later makes a gratuitous promise to return said property but reneges. The plaintiff's submission is entirely misconceived. In my judgment, *Chase Manhattan* (assuming it is good law, a point which I explore later), stands for the more limited proposition that if B transfers property to T under a factual mistake and T knows of the mistake but retains the property, T will be a constructive trustee of the property for B: see Lynton Tucker, Nicholas Le Poidevin & James Brightwell, *Lewin on Trusts* (Sweet & Maxwell, 20th Ed, 2020) ("*Lewin*") at para 8-028.

132 In *Chase Manhattan*, B made a duplicate payment to T by mistake. T became aware of or ought to have become aware of the mistake but took no steps to return the duplicate payment to B (at 115). T then went into insolvent liquidation. B brought an action against T seeking to trace and recover the duplicate payment. On these facts, Goulding J held that T was a constructive trustee of the duplicate payment for B on the basis that "a person who pays money to another under a factual mistake retains an equitable property in it and

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119 PS at 18.9.

the conscience of that other is subjected to a fiduciary duty to respect his proprietary right" (at 119).

133 *Chase Manhattan* does not support the plaintiff's case for two reasons.

134 First, the plaintiff did not make any payment to the first defendant. She handed the cashier's orders to the second defendant. In that sense, she made a payment to the second defendant and only to the second defendant. It was the second defendant who made the payment to the first defendant. It cannot be said that the second defendant was acting as the plaintiff's agent in procuring the two cashier's orders and handing them to the first defendant. It was the second defendant who conceived the entire plan which has led to this dispute. He was at all times acting as principal, not agent.

135 Second, even if I were to treat the second defendant as being merely the plaintiff's agent, the fact remains that the plaintiff was not labouring under any mistake when she handed the cashier's orders to the second defendant. Whether B is labouring under a mistake must be determined by reference to B's state of mind and the state of facts or the law at the time at which B made the transfer (see also Tang Hang Wu, *Principles of the Law of Restitution in Singapore* (Academy Publishing, 2019) ("*Law of Restitution in Singapore*") at para 04.011). Lord Hope made this very point in *Kleinwort Benson Ltd v Lincoln City Council* [1999] 2 AC 349 at 409:

> The approach of the common law is to look for an unjust factor, something which makes it unjust to allow the payee to retain the benefit: *Birks, An Introduction to the Law of Restitution*, 2nd ed. (1989), pp. 140 et seq. It is the mistake by the payer which, as in the case of failure of consideration and compulsion, renders the enrichment of the payee unjust. …
>
> … one must have in mind both the ***state of mind*** of the payer and the ***state of the facts or the law*** about which there is said to have been a mistake. The state of mind of the payer must be

> related to the ***time when the payment was made***. So also must the state of the facts or the law. That is the time as at which it must be determined whether the payment was or was not legally justified. …
>
> The inquiry will not be a difficult one, where the mistake is said to have been one of fact, if the facts have not changed since the date of the payment and the payer is able to show that he paid due to a misunderstanding of them, to incorrect information or to ignorance. In such a case the requirements for recovery will normally be satisfied. Nor is it difficult to deal with the case ***where the facts have changed. In such a case proof that the alleged state of the facts at the time did not emerge until afterwards will usually be sufficient to show that there was, at the time of payment, no mistake***. …
>
> [emphasis added in bold italics]

Although Lord Hope made these remarks in analysing mistake as an unjust factor in the law of unjust enrichment, this must also be the basis for analysing mistake for the purpose of establishing a constructive trust. If unjust enrichment does not afford B a personal remedy for a mistake, it would be surprising if equity were to provide B a *proprietary* remedy for the very same mistake.

136 I have found that the plaintiff knew the second defendant's plan when she handed the two cashier's orders to him. And the second defendant acted entirely in accordance with that plan in handing the two cashier's orders to the first defendant. And the first defendant acted entirely in accordance with that plan by depositing the two cashier's orders into her CPF account and by using part of the proceeds to repay the HDB Loan in full. What motivated the plaintiff to hand the two cashier's orders to the second defendant was her faith in the second defendant, that he would do the right thing and return $205,359.80 to her by some unspecified means and at some unspecified time in the future.

137 *Chase Manhattan* does not support the plaintiff's submission that the first defendant holds $205,359.80 for her as an institutional constructive trustee,

because she behaved unconscionably after learning that the plaintiff was the true source of the two cashier's orders.

No admission

138 Finally, I do not accept that any of the statements made by the first defendant and which I have summarised above amounts to an admission that either: (a) the two cashier's orders and their proceeds were *not* the first defendant's property when she received and used them in 2015; or (b) the two cashier's orders or their proceeds (or indeed, their traceable proceeds) were the plaintiff's property in 2018 or today.

139 The proprietary consequences of the second defendant's plan are all questions of law. No "admission" on this question of law by either party carries any weight in the purely legal analysis which is necessary to determine these questions of law.

Conclusion

140 For all of these reasons, I reject the plaintiff's submission that the first defendant holds $205,359.80, or any part of it, on an institutional constructive trust for the plaintiff. This claim is dismissed.

Issue 2: Remedial constructive trust

141 A remedial constructive trust arises "where the court imposes a constructive trust *de novo* on assets which are not subject to any pre-existing trust as a means of granting equitable relief in a case where it considers just that restitution should be made": *per* Slade LJ in *Metall und Rohstoff AG v Donaldson Lufkin & Jenrette Inc* [1990] 1 QB 391 at 478, cited in *Ching Mun Fong* at [34].

142 The plaintiff asks me to impose a remedial constructive trust on both defendants.[120] Her submission is that the imposition of a remedial constructive trust is warranted as a response to conduct which is unconscionable in some general sense.[121] Specifically, the plaintiff points to the first defendant's "retention [of] or refusal to return"[122] $205,359.80 to the plaintiff: (a) despite having indicated on several occasions her intention to pay $205,359.80 in full to the plaintiff; and (b) despite discovering that the plaintiff was the ultimate source of the two cashier's orders. In support of this argument, the plaintiff relies on *National Bank of Oman SAOG Dubai Branch v Bikash Dhamala and others* [2020] SGHC 199 ("*National Bank of Oman*") and *Ching Mun Fong*.[123]

143 In response, the first defendant submits that no remedial constructive trust should be imposed because her conscience is unaffected in all the circumstances.[124] To support that submission, the first defendant argues that:[125]

> (a) The plaintiff does not allege any dishonest receipt or unconscionability by the first defendant at the time the second defendant handed $205,359.80 to her. The first defendant's case is that the second defendant informed her at that time that the $205,359.80 was his contribution towards his share of the loan repayments for the Flat, to which he had made virtually no contributions up to that point.

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120 Notes of Argument, 11 August 2021, p 18 lines 17 to 23.

121 Notes of Argument, 11 August 2021, p 17 lines 25 to 33.

122 PS at para 19.2.

123 PS at paras 19.3 to 19.5.

124 1DS at para 38.

125 1DS at paras 38 to 43; Notes Argument, 16 September 2021, p 11.

(b) The plaintiff does not allege that the first defendant knew, when she received the two cashier's orders, either: (i) that the plaintiff was the ultimate source of the funds; or (ii) the private arrangements or representations between the plaintiff and the second defendant.

(c) There is no longer an identifiable fund on which a remedial constructive trust may operate. By procuring the two cashier's orders to be drawn in favour of the CPF Board, the plaintiff acknowledged that she anticipated their proceeds were going to be mixed with money already in the first defendant's CPF account. The plaintiff never intended for the $205,359.80 to be kept distinct.

144 I accept the first defendant's submissions.

145 The power to impose a remedial constructive trust is one said to be vested in the court to award a constructive trust as a judicial remedy for a civil wrong, long after the wrong was committed and as relief in legal proceedings relating to the wrong. But I have reservations about whether the remedial constructive trust forms part of Singapore law (see also *Sumoi* at [61]) or should form part of Singapore law (see *Snells' Equity* at para 26-015). The remedial constructive trust allows the court to create and destroy property rights by decree. That undermines the policy imperative for rights in property to be stable and for the law to allocate and alter those rights only in a manner which is transparent, consistent and predictable: see *National Provincial Bank Ltd v Ainsworth* [1965] AC 1175 at 1247–1248. Once a system of law recognises a power to impose a remedial constructive trust – at least, if the remedial constructive trust is not kept within very strict constraints – it has the capacity to subvert this policy imperative.

146 I am conscious that the Court of Appeal in *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 ("*Anna Wee*") (at [182]) accepted, albeit *obiter*, that the power to impose a remedial constructive trust is part of Singapore law and constrained it by saying that it "is not simply a response to some broad notion of unconscionability". Thus, the Court of Appeal said that a remedial constructive trust cannot be imposed unless there is "unconscientiousness or unconscionability (as the conclusion of a process of legal reasoning in the main claim) affecting the knowledge of the recipient of the assets in question" (at [182]).

147 But it is the difficulty in determining when the necessary degree of unconscientiousness or unconscionability arises that carries the greatest risk to the stability of property rights. Indeed, Lord Neuberger, speaking extra-judicially, went so far as to say that the remedial constructive trust was one "discretion too many in a Chancery judge's locker": Lord Neuberger, "The Remedial Constructive Trust – Fact or Fiction" (Banking Services and Finance Law Association Conference, Queenstown, August 2014). In a similar vein, Lord Sumption in *Bailey and another v Angove's PTY Ltd* [2016] UKSC 47 ("*Bailey*") said at [27] that (see also *Lewin* at para 8-026):

> English law is generally ***averse to the discretionary adjustment of property rights***, and ***has not recognised*** the remedial constructive trust favoured in some other jurisdictions, notably the United States and Canada. It has recognised only the institutional constructive trust: *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669, 714-715 (Lord Browne-Wilkinson), *FHR European Ventures LLP v Cedar Capital Partners LLC* [2015] AC 250, at para 47.
>
> [emphasis added in bold italics]

148 It is true, of course, that the Court of Appeal in *Anna Wee* said that the remedial constructive trust must be developed incrementally (at [175] and [182]). And therefore, the remedial constructive trust could be said to create little more risk of instability in property rights than the institutional constructive trust itself. And the institutional constructive trust is remedial in the sense that it is an equitable remedy, and therefore can be withheld in the discretion of the court in favour of a purely personal remedy. But it remains true that a power to create or extinguish property rights as a judicial act is conceptually different from a power to recognise their existence as a historical fact.

149 In any event, for present purposes, I assume in the plaintiff's favour that the remedial constructive trust forms part of Singapore law. Even on that assumption, I would not be prepared to impose a remedial constructive trust on any property of the first defendant in favour of the plaintiff.

150 This is because as the name suggests, a remedial constructive trust is a remedy and not a cause of action. To secure a remedial constructive trust, it is not sufficient for a plaintiff to show merely that a defendant has behaved unconscionably or that a defendant's conscience is affected by her conduct in a past transfer of property. The plaintiff must first establish a cause of action against a defendant, *ie*, a confluence of facts recognised by law as capable of yielding a remedy. Only then can the court even begin to consider whether a remedial constructive trust is the appropriate remedy to award the plaintiff on the facts of a particular case.

151 In this regard, the Court of Appeal in *Ching Mun Fong* (at [36]) characterised a remedial constructive trust as a "restitutionary *remedy* which the court, in appropriate circumstances, gives by way of equitable relief" [emphasis added]. In a similar vein, in *Anna Wee*, the appellant brought a claim against the

second respondent in restitution and unjust enrichment and sought the *remedy* of a remedial constructive trust for both causes of action (at [22]). Thus, the Court of Appeal described the availability of a remedial constructive trust as "parasitic" on the success of the appellant's unjust enrichment claim (at [169]). To be clear, the Court of Appeal did not hold in that case that a remedial constructive trust was available as a remedy for unjust enrichment. On the contrary, the Court of Appeal said it would be hesitant to recognise the remedial constructive trust as a remedy for a claim in unjust enrichment because its availability depends on fault, whereas liability in unjust enrichment is strict and not fault-based: *Anna Wee* at [182].

152 In my judgment, the plaintiff has failed to establish any cause of action against the first defendant. Even assuming in the plaintiff's favour that para 16 of the first defendant's May 2019 affidavit (see [123(d)] above) amounts to the first defendant's promise to the plaintiff to return $205,359.80 in full to the plaintiff, reneging on that promise does not establish a cause of action or even amount to an estoppel. At law, it is a gratuitous promise and is therefore unenforceable as a contract. In equity, it is incapable of amounting to a declaration of trust. And, even if it were possible for an estoppel to found a cause of action, it is not the plaintiff's case that she relied on that promise in any way to her own detriment. The plaintiff suffered her detriment in 2015, not 2019. There being no cause of action against the first defendant (see also my conclusion on unjust enrichment at [183]-[190] below), there is no basis on which to award the plaintiff any remedy against the first defendant, let alone a remedial constructive trust.

153 Further, even if the plaintiff did have a cause of action against the first defendant, I would hold that merely resiling in 2021 from a gratuitous promise

which the first defendant made in 2019 does not taint the first defendant's conscience to an extent that warrants imposing a remedial constructive trust.

154 As against the second defendant, I explain below why he is personally liable to restore $205,359.80 to the plaintiff in unjust enrichment. Is a remedial constructive trust available as a remedy for the plaintiff's successful claim in unjust enrichment against the second defendant? As I have outlined at [151] above, the Court of Appeal expressed reservations in general as to whether the remedial constructive trust is available as a remedy for a claim in unjust enrichment. But even if the remedial constructive trust were an available remedy for unjust enrichment, I would decline to impose one on the second defendant.

155 That is because the second defendant no longer has any economic interest in the Flat whatsoever. That is the result of the Appeal Board's order. The second defendant has no economic interest in the Flat even if he continues, in some formal or notional sense, to have proprietary rights in the flat until they are extinguished by implementing the Appeal Board's order. The result is that awarding the plaintiff a remedial constructive trust would prejudice the first defendant's ultimate economic interests, even if the trust is confined to any notional share which the second defendant continues to own in the Flat. As the authors in *Lewin* say at para 8-025:

> … Almost as important as the discretion to impose a remedial constructive trust on property at the discretion of the court, is the discretion not to do so where in the circumstances of the case the imposition of a constructive trust would in the view of the court cause ***injustice***, for instance because of the effect on ***third parties***. Lord Browne-Wilkinson, referring to this purely remedial trust, said:
>
> > 'Although the resulting trust is an unsuitable basis for developing proprietary restitutionary remedies, the remedial constructive trust, if introduced into English

> law, may provide a more satisfactory road forward. The court by way of remedy might impose a constructive trust on a defendant who knowingly retains property of which the plaintiff has been unjustly deprived. Since the remedy can be tailored to the circumstances of the particular case, ***innocent third parties would not be prejudiced*** and restitutionary defences, such as change of position, are capable of being given effect. However, whether English law should follow the United States and Canada by adopting the remedial constructive trust will have to be decided in some future case when the point is directly in issue.'
>
> [emphasis added in bold italics]

156 Also cited in *Lewin* (at para 8-025) is *Grimaldi v Chameleon Mining NL (ACN 098 773 785) (No 2) and another* (2012) 287 ALR 22, wherein Finn, Stone and Perram JJ state at [583] that:

> … As is well accepted, a constructive trust ought not to be imposed if there are other orders capable of doing full justice: see *John Alexander's Clubsat* [128] and the cases there footnoted. Such could be the case, for example, where a bribed fiduciary, having profitably invested the bribe, is then bankrupted and, apart from the investment, is hopelessly insolvent. In such a case a lien on that property may well be sufficient to achieve 'practical justice' in the circumstances. This said, a constructive trust is likely to be awarded as of course where the bribe still exists in its original, or in a traceable, form, and ***no third party issue*** arises.
>
> [emphasis added in bold italics]

157 For all of these reasons, I decline to award the plaintiff a remedial constructive trust as against either defendant.

Issue 3: Resulting trust

158 The plaintiff cites *Westdeutsche* and *Vandervell v Inland Revenue Commissioners* [1967] 2 AC 291 for the proposition that a resulting trust arises

if B transfers property to T with no intention to benefit T.[126] Her case is that she handed the two cashier's orders to the second defendant gratuitously, with no intention that the two cashier's orders or their proceeds would benefit either of the defendants. She stresses that, at all times, she expected the proceeds of the two cashier's orders to be returned to her in some way. Accordingly, the plaintiff argues that a presumed resulting trust arises.[127]

159 The plaintiff goes on to submit that there is no presumption of advancement in favour of the second defendant to rebut the presumed resulting trust.[128] She also argues that she did not intend the two cashier's orders as a *loan* to the defendants. In this regard, the plaintiff cites *Yong Ching See v Lee Kah Choo Karen* [2008] 3 SLR(R) 957 ("*Yong Ching See*"). There, B was found *not* to have made a loan to T even though B had signed a statement indicating that the monies were "a friendly loan" (see [56]–[60]).[129] The plaintiff contrasts *Yong Ching See* with *Re Sharpe* [1980] 1 WLR 219 ("*Re Sharpe*"), in which a promissory note was held to have expressly provided for the moneys to be repayable and was thus in the nature of a loan, not a gift.[130]

160 The first defendant's submissions in response were unhelpful. They do not address the key issues. It is therefore unnecessary and unhelpful to summarise her submissions.

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126 PS at paras 21.8 to 21.10.

127 Plaintiff's supplemental submissions ("PSS") at paras 3.6 and 3.10.

128 PSS at paras 3.11 to 3.13.

129 PSS at para 3.7.

130 PSS at para 3.8.

161 The grounds on which a resulting trust may arise are summarised by Aedit Abdullah J in *Moh Tai Siang v Moh Tai Tong and another* [2018] SGHC 280 ("*Moh Tai Siang*") at [71]–[72]:

> 71 There are generally two ways in which a resulting trust is ***presumed*** to arise. The first is where there has been no exhaustion or transfer of the beneficial interest because of some ***failure or omission*** (typically, in cases where the express trust fails), and the second is where there has been ***unequal contribution*** towards the acquisition of property or the transfer of property as a gift: *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 ('*Lau Siew Kim*') at [34]. Pausing here, the term 'presumed' here is used in a broad sense to denote a trust that arises by operation of law as a response to a set of presumed factual incidents, and not in the distinction between presumed and automatic resulting trusts.
>
> 72 A resulting trust may also arise independent of the presumption of resulting trust so long as it can be shown that the ***transfer was not intended to benefit the recipient***. In the same vein, a resulting trust may not necessarily arise even if there were no consideration, if it can be shown that the transfer was indeed intended to benefit the recipient: *Lau Siew Kim* at [35]; *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ('*Chan Yuen Lan*') at [43]. While the doctrinal basis of the resulting trust has not been fully settled, there appears to be agreement coalescing around the idea that a resulting trust arises from a ***lack of intention*** to benefit the recipient of the property: *Chan Yuen Lan* at [44]–[48].
>
> [emphasis added in bold italics]

162 I will assume in the plaintiff's favour that the presumption of a resulting trust did arise when the plaintiff handed the two cashier's orders to the second defendant in 2015. I therefore consider whether the presumption was rebutted.

163 The presumption of advancement does not rebut the presumed resulting trust. As the law stands, the presumption of advancement only operates against a husband and in favour of the wife: see *Lau Siew Kim* at [70]. It cannot operate against a wife in favour of a husband. In any event, the second defendant and the plaintiff were not husband and wife in 2015 (see [7]–[8] above). There is

therefore no presumption that the plaintiff intended to make a gift of the two cashier's orders to the second defendant.

164 As I have found, the plaintiff knew the second defendant's plan when she handed the two cashier's orders to him. To carry out that plan, it was necessary that she part with her entire interest in the two cashier's orders and their proceeds. Even if, as between *de facto* husband and wife, the plaintiff had an expectation that he would later allow her to acquire an interest in the Flat for no additional consideration, as the first defendant's counsel put it, the plaintiff took the risk that that her expectation would be defeated.[131] Her intention to hand the two cashier's orders to the second defendant for him to carry out his plan rebuts the presumption of a resulting trust.

165 In my view, *Yong Ching See*, in which B was found not to have intended a loan, is distinguishable. The plaintiff's evidence in the present case is that she parted with the two cashier's orders and their proceeds in the expectation that the second defendant would use the money to carry out their common intention and *return* the money to her in some unspecified way and at some unspecified time in the future. But the common intention of the second defendant and the plaintiff entailed the second defendant becoming the *sole* legal and beneficial owner of the Flat. Before the plaintiff handed the two cashier's orders to the second defendant, the second defendant and the first defendant held the Flat as joint tenants in law. The plaintiff consistently maintained that the second defendant wanted the $205,359.80 to "buy over the Flat" and to "purchase [the first defendant's] interest in the Flat".[132] In fact, in oral submissions, plaintiff's

131 Notes of Argument, 16 September 2021, p 12.

132 Plaintiff's 13 October 2020 affidavit, at paras 17 to 19; Plaintiff's reply affidavit dated 6 July 2021 ("Plaintiff's 6 July AIR") at paras 5.3, 6.1.1, 6.1.2.

counsel confirmed repeatedly that the plaintiff handed the two cashier's orders to the second defendant to enable him to become the sole legal *and* beneficial owner of the Flat.[133] The second defendant's counsel also confirmed this.[134]

166 Put simply, the second defendant's and the plaintiff's common intention squarely contradicts the plaintiff's case on resulting trust. She had to relinquish property in the two cashier's orders and their proceeds to the second defendant immediately and unconditionally in order to carry out their common intention. This rebuts any presumption of a resulting trust.

167 The plaintiff's claim on a resulting trust fails.

Issue 4: *Quistclose* trust

168 The plaintiff's next claim is based on a *Quistclose* trust She cites *Bieber and others v Teathers Ltd (In Liquidation)* [2012] EWCA Civ 1466 ("*Bieber*") at [14] for a summary of the requirements to establish a *Quistclose* trust:

> 14 These principles were reviewed by the House of Lords in *Twinsectra Ltd v Yardley* [2002] UKHL 12, [2002] 2 AC 164, [2002] 2 All ER 377 and the judge directed himself in accordance with the following summary of the law:
>
> > '16 First, the question in every case is whether the payer and the recipient intended that the money passing between them was to be at the free disposal of the recipient: *Re Goldcorp Exchange* [1995] 1 AC 74 and *Twinsectra* at 74.
> >
> > 17 Second, the mere fact that the payer has paid the money to the recipient for the recipient to use it in a particular way is not of itself enough. The recipient may have represented or warranted that he intends to use it in a particular way or have promised to use it in a particular way. Such an arrangement would give rise to

133 Notes of Argument, 25 August 2021, pp 4–7, 12; Notes of Argument, 16 September 2021, p 6.

134 Notes of Argument, 16 September 2021, p 24.

personal obligations but would not of itself necessarily create fiduciary obligations or a trust: *Twinsectra* at 73.

18 So, thirdly, it must be clear from the express terms of the transaction (properly construed) or must be objectively ascertained from the circumstances of the transaction that the mutual intention of payer and recipient (and the essence of their bargain) is that the funds transferred should not be part of the general assets of the recipient but should be used exclusively to effect particular identified payments, so that if the money cannot be so used then it is to be returned to the payer: *Toovey v Milne* (1819) 2 B & A 683 and *Quistclose Investments* at 580B.

19 Fourth, the mechanism by which this is achieved is a trust giving rise to fiduciary obligations on the part of the recipient which a court of equity will enforce: *Twinsectra* at 69. Equity intervenes because it is unconscionable for the recipient to obtain money on terms as to its application and then to disregard the terms on which he received it from a payer who had placed trust and confidence in the recipient to ensure the proper application of the money paid: *Twinsectra* at 76.

20 Fifth, such a trust is akin to a 'retention of title' clause, enabling the recipient to have recourse to the payer's money for the particular purpose specified but without entrenching on the payer's property rights more than necessary to enable the purpose to be achieved. It is not as such a 'purpose' trust of which the recipient is a trustee, the beneficial interest in the money reverting to the payer if the purpose is incapable of achievement. It is a resulting trust in favour of the payer with a mandate granted to the recipient to apply the money paid for the purpose stated. The key feature of the arrangement is that the recipient is precluded from misapplying the money paid to him. The recipient has no beneficial interest in the money: generally the beneficial interest remains vested in the payer subject only to the recipient's power to apply the money in accordance with the stated purpose. If the stated purpose cannot be achieved then the mandate ceases to be effective, the recipient simply holds the money paid on resulting trust for the payer, and the recipient must repay it: *Twinsectra* at 81, 87, 92 and 100.

21 Sixth, the subjective intentions of payer and recipient as to the creation of a trust are irrelevant. If the properly construed terms upon which (or the objectively

> ascertained circumstances in which) payer and recipient enter into an arrangement have the effect of creating a trust, then it is not necessary that either payer or recipient should intend to create a trust: it is sufficient that they intend to enter into the relevant arrangement: *Twinsectra* at 71.
>
> 22 Seventh, the particular purpose must be specified in terms which enable a court to say whether a given application of the money does or does not fall within its terms: *Twinsectra* at 16.
>
> 23 It is in my judgment implicit in the doctrine so described in the authorities that the specified purpose is fulfilled by and at the time of the application of the money. The payer, the recipient and the ultimate beneficiary of the payment (that is, the person who benefits from the application by the recipient of the money for the particular purpose) need to know whether property has passed.'

169 She argues that these requirements are satisfied on the facts of this case. She parted with the two cashier's orders for the "express purpose and objective" informed to her by the second defendant and did not intend to make a gift to him of the two cashier's orders or their proceeds.[135]

170 In response, the first defendant submits that the requirements of a *Quistclose* trust are not satisfied because:[136]

(a) The plaintiff had no clear intention to create a *Quistclose* trust. She did not obtain an undertaking or express agreement from the second defendant. The plaintiff merely gave in to the second defendant's repeated requests for the money.

(b) There was no clear property identified to be the subject of the trust because the plaintiff had handed the second defendant the two

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135 PS at para 20.7.

136 1DS at para 53.3; Notes of Argument, 16 September 2021, p 20.

cashier's orders but expected in return a share of the net proceeds of sale of the Flat.

(c) The plaintiff did not clearly identify the beneficiary of the *Quistclose* trust when she handed the two cashier's orders to the second defendant, nor did she establish with the second defendant that the proceeds of the two cashier's orders could be applied only for a specified purpose. The plaintiff had no intention whatsoever to prevent the proceeds of the two cashier's orders from being at the free disposal of the second defendant.

171 I hold that a *Quistclose* trust did not arise when the plaintiff handed the two cashier's orders to the second defendant.

172 The plaintiff's and the second defendant's common intention is not, without more, sufficient to establish a *Quistclose* trust. As Lord Millett held in *Twinsectra Ltd v Yardley* [2002] 2 AC 164 at [73] and [74], a *Quistclose* trust does not arise merely because money is paid for a particular purpose. Rather, the determinative question is whether the parties intended the money to be at the free disposal of the recipient:

> 73 A *Quistclose* trust ***does not necessarily arise merely because money is paid for a particular purpose***. A lender will often inquire into the purpose for which a loan is sought in order to decide whether he would be justified in making it. He may be said to lend the money for the purpose in question, but this is not enough to create a trust; once lent the money is at the free disposal of the borrower. Similarly payments in advance for goods or services are paid for a particular purpose, but such payments do not ordinarily create a trust. The money is intended to be at the free disposal of the supplier and may be used as part of his cashflow. ***Commercial life would be impossible if this were not the case***.
>
> 74 The question in every case is whether the parties intended the money to be at the ***free disposal*** of the recipient: *In re Goldcorp Exchange Ltd* [1995] 1 AC 74, 100 per Lord

> Mustill. His freedom to dispose of the money is necessarily excluded by an arrangement that the money shall be used *exclusively* for the stated purpose, for as Lord Wilberforce observed in the *Quistclose* case [1970] AC 567, 580:
>
> > 'A necessary consequence from this, by a process simply of interpretation, must be that if, for any reason, [the purpose could not be carried out,] the money was to be returned to [the lender]: the word 'only' or 'exclusively' can have no other meaning or effect.'
>
> [emphasis in original in italics; emphasis added in bold italics]

(see also, *Snell's Equity* at para 25-034 and *Lewin* at para 9-048).

173 In this case, there is no indication that the second defendant undertook to apply the proceeds of the two cashier's orders *solely* to carry out his plan. Further, there is no evidence that the plaintiff ever imposed a limiting condition to that effect on the second defendant (see *Snell's Equity* at para 25-034). The plaintiff's evidence is simply that she agreed to provide the second defendant with the money he asked for, "for the purpose that he had informed, *ie*, to buy over the Flat from [the first defendant]".[137] She procured the two cashier's orders to be drawn in favour of the CPF Board. He could therefore have deposited them into *anybody's* CPF account, including his own. She handed the two cashier's orders to him without imposing any conditions limiting his use of them. As protection for her interests, she relied only on her faith in him as her *de facto* husband. The result is that she put the two cashier's orders at his free disposal.

174 I am fortified in my decision by Andrew Ang SJ's decision in *Toh Eng Tiah v Jiang Angelina* [2020] SGHC 65 ("*Toh Eng Tiah*") at [145]. Ang SJ held that a loan agreement which expressly stated that "[t]he purpose of the [loan] is for the purchase of [9 Hillcrest Road]" did not prevent the defendant from making free use of the loan. The decisive factor for Ang SJ was the absence of

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137 Plaintiff's 13 October 2020 affidavit, at para 19.

any agreement that the sum advanced was not to be at the defendant's free disposal. He noted that there was no express term in the loan agreement and no understanding between parties which restricted the defendant's right to apply the sum advanced or which provided that the defendant was not to have free disposal of the loan (at [145]). No *Quistclose* trust arose in that case.

175 In *Twinsectra*, the borrower gave an express undertaking to use the sum lent "*solely* for the acquisition of property *and for no other purpose*" [emphasis in original]: at [75] and [103].

176 Similarly, in *Quistclose Investments Ltd v Rolls Razor Ltd* [1970] AC 567 ("*Quistclose Investments*"), a lender made a loan to a borrower for the sole purpose of enabling the borrower to pay dividends it had declared. The exclusive purpose for which the monies were to be applied was evident in the terms of a letter from the borrower to the appellant bank with whom the loan monies were to be deposited. This letter, before transmission to the bank, was sent to the lender under open cover in order that the cheque for the loan might be (as it was) enclosed in it (at 580). Thus, the common intention of the parties was that the sum advanced should not become part of the assets of the borrower but should be used *exclusively* for payment of the dividend.

177 Unlike *Toh Eng Tiah*, *Twinsectra* and *Quistclose*, there is no evidence in the present case that the second defendant ever undertook an obligation to the plaintiff or even had an understanding with the plaintiff that he would use the proceeds of the two cashier's orders for the *sole* purpose of carrying out his plan. No *Quistclose* trust can therefore arise in respect of the two cashier's orders or their proceeds.

178 Further, there is no evidence that the plaintiff and the second defendant ever formed an intention that the proceeds of the two cashier's orders would be held by the second defendant but *not* form part of the second defendant's general assets. Indeed, they never even addressed their minds to whether the proceeds of the two cashier's orders should ever or should never form part of the second defendant's general assets. That is because it was instead their common intention that the proceeds of the two cashier's orders would be credited directly to the first defendant's CPF account and be mixed with her CPF money there (*cf* [96] above).

179 In contrast, in *Quistclose Investments*, Lord Wilberforce found that the lender and the borrower had always intended that the sum advanced would be held by the borrower but "should not become part of the assets" of the borrower and instead "should be used exclusively for payment of a particular class of its creditors, namely, those entitled to the dividend" (at 580). The borrower therefore opened a separate and dedicated account in its own name with the appellant bank to hold the proceeds of the loan (at 579).

180 I therefore find that no *Quistclose* trust arose in the plaintiff's favour because the plaintiff intended the proceeds of the two cashier's orders to be at the free disposal of the second defendant and because the plaintiff and the second defendant did not intend to segregate the proceeds of the two cashier's orders from either the second defendant's or the first defendant's general assets.

Issue 5: Unjust enrichment

181 To succeed in a claim in unjust enrichment, a plaintiff must prove that (*Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and another and another appeal* [2011] 3 SLR 540 at [110]; *Anna Wee* at [98]):

(a) the defendant has been enriched;

(b) the enrichment was at the plaintiff's expense;

(c) an unjust factor is present which makes it is unjust to allow the defendant to retain the enrichment; and

(d) the defendant has no defences available to it.

182 I will analyse whether the first defendant and the second defendant were unjustly enriched in turn.

The first defendant

183 I dismiss the plaintiff's claim in unjust enrichment against the first defendant. The plaintiff has failed to establish any unjust factor between herself and the first defendant.

184 The plaintiff submits that the first defendant was unjustly enriched because she had "no basis to retain" the proceeds of the two cashier's orders.[138] This is not an unjust factor. I shall therefore treat this submission as the plaintiff's reliance on failure of consideration or failure of basis as the unjust factor.

185 In my view, there is no failure of basis to speak of between the plaintiff and the first defendant. I have accepted the first defendant's evidence that, in 2015: (a) she did not know that the plaintiff was the ultimate source of the two cashier's orders; (b) she believed the second defendant when he told her that the two cashier's orders were to make up for his failure to make any substantial

138 PSS at para 13.6.

contribution to servicing the HDB Loan; and (c) she believed the second defendant when he told her that he had borrowed the money from friends.[139]

186 The concept of failure of basis is summarised in Charles Mitchell, Paul Mitchell & Stephen Watterson, *Goff & Jones: The Law of Unjust Enrichment* (Sweet & Maxwell, 9th Ed, 2016) *("Goff & Jones*") at para 12-01, as follows:

> … The core underlying idea of failure of basis is simple: a benefit has been conferred on the ***joint understanding*** that the recipient's right to retain it is conditional. If the condition is not fulfilled, the recipient must return the benefit. …
>
> [emphasis added in bold italics]

187 The inquiry as to whether there is a failure of basis proceeds in two parts: first, what was the basis for the transfer in respect of which restitution is sought; and second, whether that basis has failed: *Benzline Auto Pte Ltd v Supercars Lorinser Pte Ltd and another* [2018] 1 SLR 239 ("*Benzline*") at [46].

188 The inquiry as against the first defendant fails at the first hurdle. There was never any "joint understanding" between the plaintiff and the first defendant as to the basis on which the first defendant was to receive the two cashier's orders. As the first defendant submits, she did not receive the two cashier's orders directly from the plaintiff and only came to know that the plaintiff was the source of the two cashier's orders in 2016.[140] Indeed, there were no communications between the plaintiff and the first defendant in 2015 out of which any such joint understanding could have arisen.

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139 First defendant's 16 June 2021 affidavit, at para 10; Notes of Argument, 16 September 2021, pp 15–16; First defendant's AIR at paras 10 to 11.

140 1DS at para 49; Notes of Argument, 16 September 2021, p 15.

189 In fact, the first defendant's evidence is that she discovered that the plaintiff was the ultimate source of two cashier's orders only in 2016. Even then, the first defendant maintains that she "was never informed that the cashier's orders were a loan to [the second defendant] by [the plaintiff], or that there was any other agreement between them".[141] Even further still, the plaintiff's evidence is that it was only in 2017 that the first defendant first asked the plaintiff whether the plaintiff was the ultimate source of the $205,359.80.[142]

190 The plaintiff's claim against the first defendant in unjust enrichment must fail.

The second defendant

191 The plaintiff made no written submissions as to whether the second defendant was unjustly enriched. But the plaintiff's application seeks a declaration that the defendants are "jointly or severally liable" in unjust enrichment. And the plaintiff did not, in oral submissions, withdraw her intention to assert a claim against the second defendant in unjust enrichment.[143] I therefore now consider this cause of action as against the second defendant.

192 In my judgment, the claim in unjust enrichment against the second defendant succeeds. I begin by noting that the second defendant conceded that in 2015, he owed a personal obligation to return $205,359.80 to the plaintiff.[144] I will address each element of this cause of action in turn.

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141 First defendant's AIR at para 12; Second defendant's AIR to the first defendant at para 6; First defendant's AIR to the second defendant at para 6.

142 Plaintiff's 6 July AIR at para 5.2.3.

143 Notes of Argument, 16 September 2021, p 3, lines 4 to 10.

144 Notes of Argument, 16 September 2021, pp 26–27.

193 First, the second defendant has been enriched by $205,359.80. As I explained at [173] above, once the plaintiff handed the two cashier's orders to the second defendant, their proceeds were at his free disposal, through the medium of his or someone else's CPF account. In this regard, where a defendant receives the plaintiff's money, there is no question that the defendant is enriched: *Law of Restitution in Singapore* at para 03.006, citing *BP Exploration Co (Libya) Ltd v Hunt (No 2)* [1979] 1 WLR 783 at 799. That the second defendant chose to direct the first defendant[145] to deposit the two cashier's orders into her CPF account does not detract from his enrichment. The second defendant was enriched when the plaintiff handed him the two cashier's orders. The fact that he handed them on to the first defendant may afford him a defence but does not negate the enrichment.

194 Second, the enrichment was at the plaintiff's expense. The Court of Appeal has described the second element as "the requirement of a nexus between the value that was once attributable to the claimant and the benefit received by the defendant, *ie*, the defendant has received a benefit from a subtraction of the claimant's assets" (*Anna Wee* at [113]). The court went on to elaborate that the plaintiff must prove that he lost a benefit to which he is *legally entitled* or *which forms part of his assets* and which is reflected in the recipient's gain (at [128]). That nexus is clear on the facts. The plaintiff's evidence is that *she* procured the two cashier's orders and that the $205,359.80 was obtained by *her*.[146] The plaintiff then submits that she parted with *her* monies in favour of the second defendant.[147]

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145 First defendant's AIR at para 11.

146 Plaintiff's 13 October 2020 affidavit, at paras 18 to 20.

147 PSS at para 13.5.

195 Third, the second defendant's enrichment was unjust because there was a failure of basis. On the first stage of the two-part test in *Benzline*, the relevant "basis" was the second defendant's and the plaintiff's common intention for the second defendant to become the Flat's sole legal and beneficial owner. And, on the second stage of the two-part test, the second defendant failed to bring about that intended result. The Flat remains registered in the names of the second defendant and the first defendant as joint tenants.[148] And the Appeal Board's order has awarded 100% of the Flat's net proceeds of sale to the first defendant. The basis on which the plaintiff handed the two cashier's orders to the second defendant has failed. It is not to the point that it failed without any fault on the second defendant's part.

196 Failure of basis is not inconsistent with my rejection of the *Quistclose* trust on the grounds that the two cashier's orders were at the second defendant's free disposal. As Lord Millett held in *Twinsectra* at [73], a lender "will often inquire into the purpose for which a loan is sought in order to decide whether he would be justified in making it. He may be said to lend the money for the purpose in question, but … once lent the money is at the free disposal of the borrower." Thus, although, as a matter of *fact*, the second defendant and the plaintiff had a common intention as to the basis on which the plaintiff was handing the two cashier's orders to the second defendant, the *legal* question as to whether they agreed to make that basis the *sole or exclusive* purpose for which the monies could be used is a separate question.

197 Finally, the second defendant has not raised any defence to the claim in unjust enrichment in his written submissions or oral submissions. I find that he has no defence available. For instance, the defendant cannot rely on the defence

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148 Second defendant's AIR at para 8(a).

of change of position. In *Management Corporation Strata Title Plan No 473 v De Beers Jewellery Pte Ltd* [2002] 1 SLR(R) 418 at [35], the Court of Appeal recognised that the three elements to the defence are that: (a) the payee has changed his position; (b) the change is *bona fide*; and (c) it would be inequitable to require him to make restitution or to make restitution in full. Even if the second defendant's position "changed" when the first defendant deposited the two cashier's orders in her CPF account and used the proceeds in part to repay the HDB Loan, requiring him to make restitution is *not* inequitable. The first defendant's repayment of the HDB Loan in full resulted in extinguishing his personal liability for the balance of the loan. It also increased the value of his equity of redemption in the Flat.

198 The fact that the Appeal Board's order has now ordered him to transfer the entire value of that equity of redemption to the first defendant and left him with no economic interest in the Flat is again not to the point.[149] *Even if* the Appeal Board's order has immediate proprietary effect such that it operated the moment it was made to disenrich him by divesting him of his entire unencumbered proprietary interest in the Flat and vesting it in the first defendant (an issue on which I express no view), that does not give the second defendant access to the defence of change of position. In so far as the second defendant has been disenriched, it is by virtue entirely of the Appeal Board's order. And that disenrichment is not causally connected to his enrichment, whether in fact or in law (*Rahmah v Abacha* [2006] EWCA 1492 at [56], [85]; *Lipkin Gorman (a firm) v Karpnale Ltd* [1991] 2 AC 548 ("*Lipkin Gorman*") at 560; *Scottish Equitable v Derby* [2001] 3 All ER 818 at [31]).

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149 Notes of Argument, 16 September 2021, pp 27 and 30.

199 In so far as part of the second defendant's enrichment remains in the first defendant's CPF account (see [21] above), that is the residue of the sum of money which the second defendant paid to the first defendant as part of his own plan, one which he conceived and executed. There is therefore nothing inequitable about requiring the second defendant to make restitution of $205,359.80 in full to the plaintiff even if $79,642.65 out of that sum remains in some notional sense with the first defendant in her CPF account.

200 For all of these reasons, the second defendant is liable to make restitution to the plaintiff of the sum of $205,359.80 by which he has been unjustly enriched.

Issue 6: Proprietary restitution

201 The plaintiff prays for a declaration that the defendants are jointly or severally liable to pay her the proceeds of the two cashier's orders or their traceable proceeds as "proprietary restitution". The term "proprietary restitution" is used in at least two senses (*Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 ("*Alwie*") at [116]):

> 116 … To Prof [Graham] Virgo, the essence of a proprietary restitutionary claim is the existence of a continuing – or retention of – ***proprietary interest in property*** in the hands of the defendant: *Virgo* at pp 580–581. The remedy for such a claim can be personal or proprietary: *Virgo* at pp 575–576. Prof [Andrew] Burrows, on the other hand, appears to take the position that ***proprietary restitution is a proprietary remedy for a claim for unjust enrichment***. In other words, unlike a proprietary restitutionary claim where the basis of the claim is subsisting property rights, Prof Burrow's conception of proprietary restitution reversing unjust enrichment suggests that property rights can be created to reverse unjust enrichment. As with any claim for unjust enrichment, an unjust factor is still required for the awarding of the proprietary remedy: *Burrows* at pp 432–433.
>
> [emphasis in original omitted; emphasis added in bold italics]

202 The plaintiff cannot succeed in a proprietary restitution claim as understood by Prof Graham Virgo. She has no continuing proprietary interest in the two cashier's orders or their proceeds, nor has she somehow retained any such interest. As I have held, she parted with her entire property in the two cashier's orders and their proceeds in favour of the second defendant, and ultimately the first defendant. That leaves no room for any free-standing proprietary claim. I have held that the circumstances have rebutted the presumption of resulting trust which arose. I have also refused to declare a remedial constructive trust or a *Quistclose* trust in the plaintiff's favour.

203 It appears that what the plaintiff means by "proprietary restitution" is a proprietary remedy to reverse unjust enrichment. In support of this claim, she cites *Foskett v McKeown and others* [2001] 1 AC 102 ("*Foskett*"). *Foskett* does not assist the plaintiff. In that case, a trustee fraudulently used trust moneys to pay premiums of a life insurance policy. By a majority, the House of Lords upheld the claim by the beneficiaries to a proportionate beneficial interest in the proceeds of the insurance policy. The majority in *Foskett* was emphatic that the beneficiaries' equitable title in the traceable proceeds of the breach of trust arose from a vindication of their initial property rights under the trust and *not* as a remedy in the law of unjust enrichment: *per* Lord Browne-Wilkinson at 109, Lord Hoffman at 115 and Lord Millett at 127 (see also *Law of Restitution in Singapore* at paras 01.031–01.033). Nevertheless, academic opinion remains divided as to whether *Foskett* is best explained as a vindication of the plaintiff's continuing property rights (as the majority held) or as a proprietary remedy reversing the defendants' unjust enrichment at the claimants' expense: *Goff & Jones* at para 37-05.

204 In any event, on the reasoning by the majority in *Foskett*, the plaintiff can have no claim. That is because she parted with her entire property in the two

cashier's orders and their proceeds in favour of the second defendant, and ultimately the first defendant. But even on the latter explanation of *Foskett*, the second defendant's unjust enrichment cannot yield a proprietary remedy.

205 The latter explanation of *Foskett* raises the more difficult question of whether proprietary restitution is available as a remedy for unjust enrichment. The Court of Appeal in *Alwie* did not resolve this issue, preferring to leave the point to be decided in future (see [115]–[121]). In particular, the court refrained from deciding whether *Lipkin Gorman* was a case in which a proprietary remedy was awarded to reverse an actionable unjust enrichment. In *Lipkin Gorman*, a partner in a firm of solicitors withdrew cash from its client account and gambled it away at a casino. The House of Lords allowed the firm's claim against the casino for money had and received. The Court of Appeal in *Alwie* noted that the firm succeeded in *Lipkin Gorman* because the money taken by the rogue partner remained the *property* of the firm. Yet, the Court of Appeal refrained from concluding that the claim in *Lipkin Gorman* did not award a proprietary remedy for an actionable unjust enrichment. This is because several Law Lords in *Lipkin Gorman* expressly recognised the firm's claim as being founded on the law of unjust enrichment (see *Alwie* at [119], citing Lord Bridge at 558, Lord Ackner at 568 and Lord Goff at 578).

206 This area of law is developing, certainly in Singapore. It appears that the law does allow proprietary remedies to reverse an actionable unjust enrichment in *some* circumstances: see *Bailey* at [30]; *Goff & Jones* at para 37-026. But the English Supreme Court and academic commentators have cautioned against awarding proprietary restitution where the unjust enrichment arises from a failure of basis. Lord Sumption in *Bailey* at [30] sounded the death knell for proprietary restitution where the unjust enrichment is reversed by reason of a failure of consideration, *ie* a failure of basis:

> The exact circumstances in which a restitutionary proprietary claim may exist is a controversial question which has given rise to a considerable body of judicial comment and academic literature. For present purposes it is enough to point out that where money is paid with the intention of transferring the entire beneficial interest to the payee, the least that must be shown in order to establish a constructive trust is (i) that that intention was vitiated, for example because the money was paid as a result of a fundamental mistake or pursuant to a contract which has been rescinded, or (ii) that irrespective of the intentions of the payer, in the eyes of equity the money has come into the wrong hands, as where it represents the fruits of a fraud, theft or breach of trust or fiduciary duty against a third party. … The right to the restitution of money paid on a consideration which has wholly failed is simply a process of contractual readjustment, giving rise like the contract itself to purely personal obligations. ***If an actual total failure of consideration does not give rise to a proprietary restitutionary right, I do not see how a prospective one can do so***.
>
> [emphasis added in bold italics]

207 The authors of *Goff & Jones* also cast doubt on whether a proprietary remedy is available to reverse an actionable unjust enrichment where a plaintiff transfers money to a defendant intending the money to be at the defendant's free disposal and there is subsequently a failure of basis. The preliminary point which the authors make is that whether proprietary remedies are available in a claim for unjust enrichment should turn on whether the plaintiff voluntarily undertook the risk of the defendant's *insolvency*. A plaintiff who had the opportunity to bargain for security but did not take it should not be entitled to a proprietary remedy if the defendant fails to return to him the value of the benefits he conferred on the defendant: *Goff & Jones* at para 37-18; see also Andrew Burrows, *The Law of Restitution* (Oxford University Press, 3rd Ed, 2011) ("*Burrows*") at pp 174–179. In this context, the authors go further to explain at para 37-19 that (see also *Burrows* at p 177):

> … [The 'voluntary assumption of risk' argument] is consistent with the common assumption that where a contracting party has paid money or transferred some other asset to a contractual

> counterparty, on terms such that the money or asset is at the recipient's ***free disposal***, the circumstance that the consideration for the payment ***wholly fails*** will only give rise to a ***personal*** restitutionary remedy. …
>
> [emphasis added in bold italics]

Goff & Jones cites *Bailey* at [30] for this specific observation on failure of consideration.

208 The same point is made in Elise Bant and Michael Bryan, "A Model of Proprietary Remedies" in *Principles of Proprietary Remedies* (Elise Bant & Michael Bryan eds) (Thomson Reuters (Professional) Australia Limited, 2013) at para 12.170. They point out that a personal remedy for unjust enrichment will usually be entirely adequate to effect corrective justice between the parties for cases involving the transfer of *non-unique* chattels such as money. They explain that personal restitution in such cases: (a) is sufficient to enable the plaintiff to obtain a replacement asset if so desired; and (b) is the most efficient and least invasive of corrective remedies.

209 Lusina Ho in "Proprietary Remedies for Unjust Enrichment: Demystifying the Constructive Trust and Analysing Intentions" in *The Restatement Third: Restitution and Unjust Enrichment*, *Critical and Comparative Essays* (Hart Publishing, 2013) argues that intention at the time of the enrichment should be the litmus test for deciding whether an unjust enrichment yields a proprietary remedy. Ho argues that a proprietary remedy is generally not available where the plaintiff manifests an intention at the time of the unjust enrichment to transfer the enrichment to the defendant outright, but the basis of the transfer later fails. She calls these "qualified intent" cases. Ho points out that the plaintiff's intention, although qualified, is entirely unimpaired. All that happens where unjust enrichment arises from a failure of basis is that the plaintiff's expectations about the future are defeated. In cases

of qualified intent, there is no justification for taking into account what the plaintiff intends at a later point in time, *ie* the plaintiff's intention at the time that the basis of the transfer fails (at 225).

210 This survey shows that proprietary restitution is an extremely difficult and unsettled area of the law, both for the courts and for academics and both in terms of what it means and what it requires. The plaintiff has not attempted to grapple with any of these difficulties or to present any grounds sufficient in law to justify making the second defendant's obligation to make restitution of the proceeds of the two cashier's orders more than a purely personal one.

211 As I have held, the plaintiff parted with her entire property in the two cashier's orders and their proceeds in favour of the second defendant, and ultimately the first defendant. She offers no reason why a "contractual readjustment" (see *Bailey* at [30] cited at [206] above) by way of a personal remedy for the unjust enrichment which I have found is insufficient to achieve corrective justice (see [208] above). She has not shown, in accordance with Lord Sumption's guidelines (see [206] above), that her intention for an outright transfer was vitiated or that the proceeds of the two cashier's orders fell into the wrong hands in the eyes of equity. That is because she cannot. As I have found, she willingly put the two cashier's orders in the second defendant's hands, and at his free disposal, from the moment she handed them to him. She did that knowing what the second defendant intended to do with them. She has also not shown, *per* the guidance in *Goff & Jones* (see [207] above) that she did *not* undertake the risk of the second defendant's insolvency. She could have asked for security when making the advances but did not.

212 The plaintiff's claim for proprietary restitution against both defendants therefore fails.

Issue 7: Equitable lien

213 The plaintiff finally prays for an equitable lien to be imposed on the Flat. I decline to do so.

214 The plaintiff cites in support of this prayer Debbie Ong J's *dictum* in *Philip Antony Jeyaretnam and another v Kulandaivelu Malayaperumal and others (Thirumurthy Ayernaar Pamabayan, third party; Pramela d/o Govindasamy and another, non-parties)* [2020] 3 SLR 738 ("*Jeyaretnam*") at [35] that:

> 35 Where a claimant seeks a claim against a substituted asset which exists in the hands of the trustee, the claimant may elect between remedies, whether it be by way of an equitable lien or the entire beneficial ownership of the substituted asset under a constructive trust. …

215 This *dictum* means only that a plaintiff who has traced trust property into a substituted asset which the trustee continues to hold may choose to take his relief either in the form of an equitable lien on the substituted asset or a constructive trust over the substituted asset. *Jeyaretnam* was a case in which the plaintiff elected to take an equitable lien because the "more effective remedy of a constructive trust [over a HDB flat was] expressly prohibited by statute" (at [37]). *Burrows* at p 432 similarly explains that "[a]n equitable lien is a charge imposed by law over the ***traced property*** to secure a certain sum of money" [emphasis added] (see also *Lewin* at paras 44-028 and 44-032). On my analysis above, the plaintiff does not now and has never had any proprietary interest in the two cashier's orders or their proceeds from the time she handed each of them over to the second defendant. There is therefore nothing which she can trace into the Flat to support any remedy whatsoever, whether an equitable lien or a constructive trust. *Jeyaretnam* does not even begin to suggest that an equitable lien is available as a remedy for an unjust enrichment where the enrichment has

been paid towards a HDB flat, let alone where it has been paid to discharge a loan secured on the flat.

216 *Goff & Jones* does outline two situations in which an equitable lien is available even though a plaintiff has no proprietary interest in the subject matter of the lien. These two situations are: (a) where the plaintiff's money can be traced into repairs or improvements to the defendant's property; and (b) where an insured receives money from a third party in diminution of a loss for which he has already been indemnified by his insurer (see paras 37-42 to 37-43). The present case does not fall into any of these categories.

217 There are no grounds for awarding the plaintiff an equitable lien over the Flat.

218 The plaintiff does not pray for any equitable lien to be imposed on the first defendant's CPF account. I need therefore not consider that alternative. In any event, the plaintiff has no viable claim against the first defendant at common law or in equity to support an equitable lien over her CPF account.

Conclusion

219 I have dismissed all of the plaintiff's prayers for relief in this application, with only one exception. That exception is that on prayer 3, I have declared that the second defendant is personally liable to pay to the plaintiff the sum of $205,359.80 as restitution for unjust enrichment.

220 As for the costs of this application, I have ordered:[150]

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150 Notes of Argument, 16 September 2021, p 38.

(a) the plaintiff to pay to the first defendant the costs of an incidental to this application, such costs fixed at $25,000, including disbursements; and

(b) the second defendant to pay to the plaintiff costs of an incidental to this application, such costs fixed at $15,000, including disbursements.

Vinodh Coomaraswamy J
Judge of the High Court

Mohamed Hashim Bin Abdul Rasheed (A Mohamed Hashim) for the plaintiff;
Abdul Rahman Bin Mohd Hanipah and Mohammad Shafiq Bin Haja Maideen (Abdul Rahman Law Corporation) for the first defendant;
Syed Ahmed Jamal Chishty (A C Syed & Partners) for the second defendant.