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

[2023] SGHC(A) 40

Appellate Division / Civil Appeal No 117 of 2022

Between

(1) Salaya Kalairani (legal representative of the estate of Tey Siew Choon, deceased)
(2) Salaya Kalairani

… *Appellants*

And

(1) Appangam Govindhasamy (legal representative of the estate of T Govindasamy, deceased)
(2) Subbaiyan Govindasamy (legal representative of the estate of T Govindasamy, deceased)
(3) Kalaichelvi C w/o Chidambaram M (co-administrator of the estate of T Govindasamy, deceased)
(4) Selvadurai Manickam (co-administrator of the estate of T Govindasamy, deceased)

… *Respondents*

Appellate Division / Civil Appeal No 118 of 2022

Between

(1) Appangam Govindhasamy (legal representative of the estate of T Govindasamy, deceased)
(2) Subbaiyan Govindasamy (legal representative of the estate of T Govindasamy, deceased)
(3) Selvadurai Manickam (co-administrator of the estate of T Govindasamy, deceased)
(4) Kalaichelvi C w/o Chidambaram M (co-administrator of the estate of T Govindasamy, deceased)

… *Appellants*

And

(1) Salaya Kalairani (legal representative of the estate of Tey Siew Choon, deceased)
(2) Salaya Kalairani

… *Respondents*

In the matter of Suit No 107 of 2022

Between

(1) Appangam Govindhasamy (legal representative of the estate of T Govindasamy, deceased)

(2) Subbaiyan Govindasamy (legal representative of the estate of T Govindasamy, deceased)
(3) Selvadurai Manickam (co-administrator of the estate of T Govindasamy, deceased)
(4) Kalaichelvi C w/o Chidambaram M (co-administrator of the estate of T Govindasamy, deceased)

… *Plaintiffs*

And

(1) Salaya Kalairani
(2) Salaya Kalairani (legal representative of the estate of Tey Siew Choon, deceased)

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure — Limitation]
[Equity — Defences — Acquiescence]
[Equity — Defences — Laches]
[Trusts — Resulting trusts — Presumed resulting trusts]
[Trusts — Constructive trusts — Common intention constructive trusts]

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v
Appangam Govindhasamy (legal representative of the estate of T Govindasamy, deceased) and others and another appeal

[2023] SGHC(A) 40

Appellate Division of the High Court — Civil Appeals Nos 117 of 2022 and 118 of 2022
Woo Bih Li JAD, Valerie Thean J and Andre Maniam J
29 September 2023

7 December 2023

Valerie Thean J (delivering the grounds of decision of the court):

Introduction

1 The late Mdm Tey Siew Choon ("Tey") and the late Mr T Govindasamy ("TG") purchased 24 Cuff Road, Singapore (the "Property") as tenants-in-common in equal shares on 28 May 1970. This was a two-storey property and the upper level was referred to informally as 24A Cuff Road. TG passed away on 10 October 1993, while Tey passed away on 24 May 2015.

2 After both TG and Tey had passed away, two of TG's children and two of his grandchildren commenced HC/S 107/2022 ("Suit 107") in their capacities as the legal representatives and co-administrators of TG's estate against Mdm Salaya Kalairani ("Kalairani"). Kalairani is the sole executrix and trustee

of Tey's will. Kalairani was sued in two different capacities in Suit 107: her personal capacity and as legal representative of Tey's estate. References to Kalairani in these grounds of decision are to both these capacities.

3 In these grounds of decision, we refer to TG's children and grandchildren in their substantive capacity as "the plaintiffs". In Suit 107, the plaintiffs sought: (a) an order for the sale of the Property and the distribution of the proceeds of sale; and (b) an account and inquiry of all rental proceeds of the Property received since TG's death from Kalairani. Kalairani counterclaimed for a declaration that TG held his half-share in the Property on trust for Tey and an order for TG's half-share to be transferred to Tey's estate.

4 The judge below (the "Judge") allowed the plaintiffs' claim in part and dismissed Kalairani's counterclaim. The Judge ordered for the Property to be sold and the net proceeds to be distributed equally between TG's estate and Tey's estate. At the same time, he dismissed the plaintiffs' claim for an account and inquiry of the rental proceeds received by Kalairani after TG's death, finding that this claim was barred by laches. The Judge explained the reasons for his decision in *Appangam Govindhasamy (legal representative of the estate of T Govindasamy, deceased) and others v Salaya Kalairani and another* [2023] SGHC 91 (the "GD").

5 Both sides filed appeals against the Judge's decision:

(a) AD/CA 117/2022 ("AD 117") was Kalairani's appeal against the Judge's order that the Property be sold and his dismissal of her counterclaim;

(b) AD/CA 118/2022 ("AD 118") was the plaintiffs' appeal against the Judge's finding that their claim for an account and inquiry of the rental proceeds was barred by laches.

6 On 29 September 2023, having heard the parties' submissions, we dismissed AD 117 and allowed AD 118 in part. We ordered Kalairani to account to the plaintiffs for rent received from the Property from 24 September 2015, and to pay to the plaintiffs half of the rent after deduction of reasonable expenses in respect of the Property and the rental thereof. These are the reasons for our decision.

Facts

7 Tey and her late husband, Mr Salaya s/o Vengdalamandor ("SV"), married in 1960. SV and TG were good friends. After SV's death in 1969, TG informally adopted Tey as his daughter and Tey's four children as his grandchildren.

8 Tey and TG bought the Property for $40,000 as tenants-in-common in equal shares on 28 May 1970. In the course of the years after its purchase, mortgages were taken out and lodged against the Property on 12 September 1975, 15 April 1983 and 2 August 1984. Each time, TG stood as surety and both Tey and TG assumed joint and several liability for the loan.

TG's death, and the 1993 and 1995 Powers of Attorney

9 Following TG's death on 10 October 1993, in late 1993, Tey visited his family in India with a power of attorney dated 28 December 1993 (the "1993 POA"). This POA was signed by Mdm Rethinathammal (TG's wife) and TG's three sons: the 1st respondent, ("Appangam"), Manickam Govindasamy

("Manickam") and the 2nd respondent ("Subbaiyan") in their personal capacities. Manickam passed away in 2011 and the 3rd and 4th respondents are his children and hence grandchildren of TG. The 1993 POA described Tey as a "daughter of [TG] and one of the beneficiaries of [TG's] estate". The 1993 POA stated, among other things, that the signatories:

(a) were the beneficiaries of TG's estate;

(b) were "desirous in having the Grant of Letters of Administration in order to crystalize the assets and to realize same"; and

(c) appointed Tey as their attorney to, among other things:

(i) apply for and obtain the Grant of Letters of Administration to TG's estate in Singapore; and

(ii) sell any property of TG in Singapore, "especially the property located at and known as No. 24A Cuff Road"; it was undisputed that 24A Cuff Road referred to the second floor of the Property.

10 In late 1995, Tey brought another power of attorney to India (the "1995 POA"). The 1995 POA was similar to the 1993 POA, save that it no longer described Tey as TG's daughter and one of the beneficiaries of TG's estate. Tey was said to have informed Appangam and Subbaiyan that a new power of attorney was needed because the 1993 POA had not been accepted by the Singapore court. Manickam did not want to sign this POA and it remained unsigned. In July 1996, Manickam gave notice to Tey, through his lawyer, that he was revoking the 1993 POA.

Tey's will, death and estate

11 On 28 February 2002, Tey executed a will (the "Will"), in which she appointed Kalairani as sole executrix and trustee of her Will. Tey did not make provision for her eldest son because she had given him another property at 33 Mulberry Avenue in her lifetime. Tey bequeathed 19A Puay Hee Avenue to her second son and 19 Puay Hee Avenue to her youngest son. Clause 6 of the Will provided that:

> 6. I give my aforesaid daughter [Kalairani] my share in the land and premises known as No.24 Cuff Road, Singapore and the lands and premises known as No.10 Veerasamy Road, Singapore and No.4 Norris Road, Singapore for her absolute use and benefit …

Kalairani is also the beneficiary of Tey's residuary estate under cl 7 of the Will.

12 On 24 May 2015, Tey passed away. On 23 June 2015, Kalairani obtained a Grant of Probate of the Will. On 21 October 2015, the three mortgages over the Property were discharged and Tey's half-share in the Property was transferred to Kalairani as beneficiary under the Will. The land register reflected that Kalairani and TG hold equal shares in the Property as tenants-in-common.

Commencement of action

13 On 23 October 2020, the plaintiffs obtained a Grant of Letters of Administration of TG's estate. Subsequently, on 24 September 2021, the plaintiffs commenced HC/OS 971/2021 which was later converted into Suit 107.

Decision below

14 The Judge made the following decisions:

(a) dismissed the counterclaim on the basis that Kalairani had failed to prove that TG held his registered half-share in the Property on a resulting trust or a common intention constructive trust in favour of Tey;

(b) dismissed Kalairani's defence of acquiescence;

(c) ordered the Property to be sold and the net proceeds to be distributed equally between TG's estate and Tey's estate;

(d) dismissed the plaintiffs' claim for an account and inquiry of rental proceeds received by Kalairani and Tey after TG's death, on the basis that this claim was barred by laches; and

(e) ordered costs against Kalairani.

15 First, on the resulting trust claim, the Judge held that Kalairani had failed to prove that Tey had paid the full purchase price of the Property such that TG held the Property on a purchase price resulting trust for Tey (GD at [43]). There was no direct evidence of Tey's ability to pay the full purchase price, or TG's inability to pay half of the full purchase price (GD at [44]–[45]). The Judge further found that the objective evidence showed that Tey did not treat TG's half-share as her own. The inference to be drawn was that Tey did not pay the full purchase price of the Property (GD at [64]). As for the common intention constructive trust claim, Kalairani had failed to prove that TG and Tey shared a common intention for TG to hold his half-share in the Property on trust for Tey (GD at [117]). Such a common intention constructive trust was contradicted by the 1993 and 1995 POAs (GD at [108]–[109]).

16 Second, the Judge dismissed Kalairani's defence of acquiescence for being unclear (GD at [123]). In any event, there was insufficient evidence of acquiescence (GD at [122]).

17 Third, the Judge held that the plaintiffs were barred by laches from pursuing their claim for an account of the rental received by Kalairani. After the 1995 POA was not signed and the 1993 POA was revoked, it would have been clear to the plaintiffs that the Property would not be sold. Yet, the plaintiffs did nothing with regard to the rental of the Property until after 2018 (GD at [127]).

18 Fourth, the Judge agreed with the plaintiffs that partitioning the Property was not feasible, given that the relationship between the parties had deteriorated (GD at [130]). Subdivision of the Property was also unlikely given the Conservation Guidelines issued by the Urban Redevelopment Authority ("URA") (GD at [131]). Therefore, the Judge ordered that the Property be sold in the open market and the net sale proceeds be distributed equally between the plaintiffs and Kalairani (GD at [132]).

19 Finally, the Judge ordered costs against Kalairani fixed at $130,000, plus disbursements to be fixed by the court (GD at [136]).

Parties' cases on appeal

AD 117

20 Kalairani contended that the Judge was wrong to have dismissed the counterclaim on the basis that there was no resulting trust or common intention constructive trust in Tey's favour.[1] Kalairani raised three arguments in support:

[1] Appellants' Case in AD/CA 117/2022 ("AC 117") at paras 57–90.

(a) First, the Judge failed to draw the proper inferences from the evidence regarding the purchasing ability of Tey and TG, and took into account irrelevant factors such as the fact that Tey had borne four children from 1960 to 1965.[2] There was also insufficient evidence for the Judge to have inferred that TG could have paid for his half-share of the Property.[3]

(b) Second, the Judge erred in preferring the evidence of the plaintiffs' witnesses over the evidence of Kalairani's witnesses.[4]

(c) Third, the Judge erred in finding that the objective evidence contradicted Kalairani's case on trust. The drafting of the 1993 and 1995 POAs was consistent with Tey's intention to realise the Property for her benefit, and was accordingly consistent with the understanding that TG's registered half-share was held on trust for Tey.[5]

21 Against these arguments, the plaintiffs sought to argue on appeal what they contended to be a new point of law: that a resulting and/or constructive trust cannot function as an exception to indefeasibility of title.[6]

22 The second main thrust of Kalairani's appeal was that the Judge was wrong to dismiss her defence of acquiescence, for three reasons:

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2 AC 117 at paras 58–63.

3 AC 117 at paras 68–69.

4 AC 117 at paras 74–82.

5 AC 117 at paras 83–86.

6 Respondents' Case in AD/CA 117/2022 ("RC 117") at paras 75–80.

(a) On the law, the Judge overlooked the fact that unconscionability is "the touchstone for the operation of the defence of acquiescence".[7] His decision to reject her defence of acquiescence was also inconsistent with his decision to disallow the plaintiffs' claim for an account of the rental because of laches.[8]

(b) On the pleadings, contrary to the Judge's finding, the Defence had clearly set out Kalairani's pleaded case to establish the defence of acquiescence.[9] This pleaded case was that the plaintiffs, by failing to bring any claim associated with TG's co-ownership of the Property within reasonable time despite having knowledge of the relevant facts, had acquiesced in Kalairani and Tey's collection and retention of all the rental proceeds collected from the Property.[10]

(c) On the evidence, the weight of the evidence established the defence of acquiescence, and the Judge erred when he failed to consider such evidence.[11] Conversely, the Judge took into account irrelevant considerations, namely TG's own alleged delay in bringing the counterclaim and the indefeasibility of TG's registered title.[12]

23 In response, the plaintiffs contended that the Judge was correct to reject the defence of acquiescence.[13] The Judge was correct to find that this defence

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7 AC 117 at para 19.

8 AC 117 at para 44.

9 AC 117 at paras 20–21.

10 AC 117 at para 25.

11 AC 117 at paras 43–46.

12 AC 117 at para 55.

13 RC 117 at para 7.

was not at all clear and in any event baseless.[14] Moreover, Kalairani's new case on acquiescence on appeal bore no resemblance to her pleaded case and the case run below.[15] The effect of Kalairani's defence of acquiescence, if allowed, would be to deprive the plaintiffs of asserting TG's registered title to half of the Property. As a matter of law, an indefeasible title cannot be defeated in this way.[16]

24 The plaintiffs argued that there was no inconsistency in the Judge's rejection of Kalairani's defence of acquiescence and the Judge's finding that the plaintiffs' claim for an account of rental proceeds was barred by laches. The latter was decided on the basis that it was inequitable to require Kalairani to account for rentals since 1993, while the former was decided on the basis that Kalairani's case on acquiescence was unclear.[17] The Judge also did not err in finding that Kalairani had failed to prove that TG held his half-share in the Property on trust for Tey.[18]

25 Finally, and in any event, Kalairani submitted that the Property should not be sold, but partitioned. The Judge, in ordering for the Property to be sold, overlooked the Property's personal and emotional importance to Kalairani.[19] The Judge also failed to properly consider that URA's conservation guidelines permit subdivision of a shophouse in the Little India Historic District if the Property is an Art Deco and Modern style conserved building with certain

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14 RC 117 at para 7.

15 RC 117 at paras 8, 23–48.

16 RC 117 at paras 55–69.

17 RC 117 at paras 70–74.

18 RC 117 at para 9.

19 AC 117 at para 93.

features.[20] The plaintiffs asserted, on the other hand, that the Judge correctly ordered a sale of the Property in lieu of partition.[21]

AD 118

26 Initially, the main plank of the plaintiffs' appeal in AD 118 was that the Judge had erred in finding that their claim for an account of rental was barred by laches.[22] The plaintiffs' entitlement to the rental proceeds flowed from their legal and beneficial ownership of TG's half-share in the Property.[23] Kalairani's pleaded case on laches rested on the allegation that TG's sons had, at TG's funeral, acknowledged that TG's half-share in the Property was beneficially owned by Tey. The Judge, having found that there was no such acknowledgment by TG's sons, should have rejected Kalairani's case on laches.[24] The mere fact of the plaintiffs' delay in bringing an action, without more, should not be sufficient to invoke the operation of laches.[25]

27 On the other hand, Kalairani submitted that AD 118 should be dismissed for two reasons. First, the plaintiffs had failed to plead material facts supporting Kalairani's alleged duty to account.[26] Second, the plaintiffs' claim for an account of rental was barred by both laches and acquiescence.[27] Acquiescence featured in Kalairani's arguments in both AD 117 and AD 118. Kalairani

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20 AC 117 at para 94.

21 RC 117 at paras 10, 127–136.

22 Appellants' Case in AD/CA 118/2022 ("AC 118") at paras 49–81.

23 AC 118 at para 76.

24 AC 118 at paras 49–55.

25 AC 118 at paras 60–62.

26 Respondents' Case in AD/CA 118/2022 ("RC 118") at para 8.

27 RC 118 at para 9.

contended that the Judge was correct to place weight on the plaintiffs' 28-year delay in asserting an entitlement to the rental proceeds,[28] and correctly applied his mind to the circumstances which rendered it inequitable to require Kalairani to now account for rentals received since 1993.[29]

28 In their Reply, the plaintiffs sought permission to raise a new point that s 73A of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) ("CLPA") formed the basis of Kalairani's duty to account.[30] Laches and acquiescence, they argued, were not applicable to such a statutory claim. At the same time, the plaintiffs also clarified that the basis for their claim for an account of rental was in equity based on the authority of *Strelly v Winson* (1685) 23 ER 480 ("*Strelly*") and argued that this duty to account was sufficiently pleaded.[31]

Our decision

29 Three issues arose for our determination in AD 117:

(a) Was Kalairani's argument for a resulting and constructive trust precluded by the concept of the indefeasibility of title, and if not, was Tey and consequently Kalairani the beneficiary of a resulting or constructive trust and the owner of the beneficial interest of the entire Property?

(b) If not, were the plaintiffs precluded by acquiescence from seeking a sale of the Property?

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28 RC 118 at para 72.

29 RC 118 at para 71.

30 Appellants' Reply in AD/CA 118/2022 ("AR 118") at para 14.

31 AR 118 at paras 10–13.

(c) In the event that the first two issues were not decided in favour of Kalairani, should the Property be partitioned?

30 If either one of the questions at [29(a)] or [29(b)] above had been decided in Kalairani's favour, the plaintiffs' claim for an order that the Property be sold would have fallen away. Likewise, AD 118 would have become irrelevant because AD 118 was premised on the plaintiffs having a right to assert a half-share in the Property, and not being barred from exercising this right because of any defences. However, we answered the two questions in the negative. We therefore dismissed AD 117.

31 AD 118 accordingly arose for our determination. The relevant issues were these:

(a) Were the plaintiffs entitled to an account of the rental received under an equitable duty to account, and/or, could they raise and rely on s 73A of the CLPA?

(b) If there was an entitlement to an account, could Kalairani rely on the defences of laches, acquiescence or limitation?

32 We allowed the plaintiffs to seek an account of rent under s 73A of the CLPA and for Kalairani to plead and rely upon the defence of limitation under s 6(2) of the Limitation Act (Cap 163, 1996 Rev Ed). We therefore allowed AD 118 in part by limiting the account to commence from 24 September 2015 being six years prior to the date the action was filed.

AD 117

33 We state our reasons for dismissing AD 117.

Did Tey own the beneficial interest of the entire Property?

(1) Section 46(2) of the LTA

34 Below, Kalairani's counterclaim was based on the argument that TG held his half-share in the Property on trust for Tey, and that Tey therefore owned the beneficial interest of the entire Property. Kalairani also made this submission on appeal. However, on appeal, the plaintiffs sought to raise a new point of law. They contended that Kalairani could not argue that TG held his half-share in the Property on trust for Tey because of the indefeasibility of title under the Land Titles Act (Cap 157, 1994 Rev Ed) ("LTA"). The statutory exceptions in s 46(2) of the LTA are not wide enough to include the alleged resulting and/or constructive trust.[32]

35 The relevant portion of s 46 of the LTA reads as follows:

> **Estate of proprietor paramount**
>
> **46.**—(1) Despite —
>
> (*a*) the existence in any other person of any estate or interest, whether derived by grant from the State or otherwise, which but for this Act might be held to be paramount or to have priority; and
>
> (*b*) any failure to observe the procedural requirements of this Act,
>
> any person who becomes the proprietor of registered land, whether or not that person dealt with a proprietor, and despite any lack of good faith on the part of the person through whom that person claims, holds that land free from all encumbrances, liens, estates and interests except such as may be registered or notified in the land-register …
>
> …
>
> (2) Nothing in this section shall be held to prejudice the rights and remedies of any person —

32 RC 117 at para 76.

> (*a*) to have the registered title of a proprietor defeated on the ground of fraud or forgery to which that proprietor or that proprietor's agent was a party or in which that proprietor or that proprietor's agent colluded;
>
> (*b*) to enforce against a proprietor any contract to which that proprietor was a party;
>
> (*c*) to enforce against a proprietor who is a trustee the provisions of the trust;
>
> (*d*) to recover from a proprietor land acquired by him or her from a person under a legal disability which was known to the proprietor at the time of dealing; or
>
> (*e*) to recover from a proprietor land which has been unlawfully acquired by him or her in purported exercise of a statutory power or authority.

36 The plaintiffs relied on the holding of the Court of Appeal in *United Overseas Bank Ltd v Bebe bte Mohammad* [2006] 4 SLR(R) 884 ("*Bebe*"), at [81], that s 46(2)(*c*) of the LTA only applies to express trusts, and its *obiter dicta* at [91], that the court should be slow to engraft onto the LTA personal equities that were not referable directly or indirectly to the exceptions in s 46(2) of the LTA. Professor Tang Hang Wu's ("Professor Tang") articles, *Beyond the Torrens Mirror: A Framework of the In Personam Exception to Indefeasibility* (2008) 32 Melbourne Law Review 672 at 684-686 ("the first reference") and *The Constructive Trust in Singapore: Five Persistent Puzzles* (2010) 22 SALJ at [49] ("the second reference"), were also cited in support of the proposition that a title based claim in equity is incompatible with the Torrens system of indefeasibility.

37 In our view, the plaintiffs had read s 46(2) of the LTA and *Bebe* out of context. A plain reading of the opening words of s 46(2) – "[n]othing … shall be held to prejudice the rights and remedies…" – reflects that it operates to preserve rights. The list is *not* expressed as a comprehensive list that *excludes*

other rights. *Bebe* states likewise. At [91], in referring to the commentary of John Baalman, the draftsman of the original Land Titles Act, the Court of Appeal in *Bebe* stated that Baalman did not go as far as to suggest that the exceptions were exhaustive of all claims, and *it was in this specific context* that the court stated it should be slow to graft onto the LTA *personal* equities that were not referable directly or indirectly to the exceptions in s 46(2) of the LTA. More to the point, the Court of Appeal has expressly considered resulting and constructive trusts in *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 and set out, in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 (at [160]), a framework for dealing with common intention constructive trusts. That such trusts may exist within the registered land context is well-established. As the Court of Appeal mentioned in *Loo Chay Sit v Estate of Loo Chay Loo, deceased* [2010] 1 SLR 286 at [14] (and cited by the Judge at [40] of his GD), the indefeasibility of title is a presumption, and it is open to parties to prove that the facts reflect evidence of a resulting or constructive trust.

38 The plaintiffs had further misread Professor Tang's articles. In the first reference, Professor Tang is dealing with constructive trusts within the *in personam* exception that arise due to the trustee's unconscionable behaviour such as knowing receipt, not common intention constructive trusts held by registered owners on behalf of beneficial owners pursuant to that intention. The same error is made in the second reference, but here the misreading is plain from the second half of the *very same paragraph* that the plaintiffs have cited. The paragraph reads as follows:

> 49. Does a declaration of a constructive trust remain a possibility after *United Overseas Bank v Bebe*? I have argued elsewhere that not all forms of constructive trust claim are inconsistent with indefeasibility of title. The key issue is to determine whether the claim detracts from the general principle of indefeasibility. Constructive trust claims are tricky because they arise in a myriad of circumstances. It is my suggestion that

> not all forms of constructive trust undermine the principle of indefeasibility. For example, constructive trusts which are declared on the basis of wrongdoing by the defendant are not precluded by the Torrens statute. This is because indefeasibility of title was never meant *to protect the registered proprietor from his or her own wrongful conduct. Indefeasibility of title was devised to protect the registered proprietor from a prior title-based claim.* ***On this analysis, constructive trusts which arise from situations such as commonly intended beneficial ownership or proprietary estoppel clearly do not detract from the principle of indefeasibility. Indefeasibility of title does not make the registered proprietor immune from claims stemming from such conduct as the formation of a common intention to share property with the plaintiff*** *or the making representations to the plaintiff which the latter has relied on to his or her detriment. However, the Torrens statute properly precludes a constructive trust claim by a plaintiff who seeks to vindicate his or her equitable title against a registered proprietor who has paid value. This is because such a claim is essentially a title-based claim which detracts from the principle of indefeasibility of title.*
>
> [emphasis added in italics and bold italics]

39 We therefore rejected the plaintiffs' argument based on s 46(2) of the LTA.

(2) Resulting trust

40 We turn, then, to the factual contentions. The Judge held that the defendants had failed to prove that Tey paid the full purchase price of the Property, such that TG held his half-share in the Property on a resulting trust for Tey. In respect of Kalairani's arguments that Tey had the ability to pay and that TG did not, the Judge held there was no direct evidence to either effect.

41 In our view, the Judge did not err in rejecting the argument that he should infer that Tey paid the full purchase price of the Property on the (speculative) evidence presented. Tey ran a business cooking and delivering food. While she subsequently bought and sold many properties through the years, the Property was her first property purchase. It was undisputed that SV had not left her

substantial assets at the time of his death a year prior to the purchase of the Property. TG, on the other hand, was senior in years, and a supervisor with the Public Works Department. The plaintiffs also adduced evidence that TG had carried out private contracting for landscaping in Singapore and owned land, property and a business in India. There was no evidence that Tey had paid for the Property in its entirety.

42 Furthermore, if Tey had done so, there was no valid reason for TG to have been named as a tenant-in-common in equal share at the time of purchase. Kalairani's argument that TG was included as a co-owner so that he could be a surety was not logically defensible: the loans were secured against the Property.

43 Therefore, we agreed with the Judge's finding that Kalairani had not proven her argument based on a resulting trust.

(3) Common intention constructive trust

44 The Judge also held that Kalairani had failed to prove a common intention on the part of Tey and TG that TG was to hold his half-share in the Property on trust for Tey. In our view, the Judge did not err in so finding. The documentary evidence and Tey's conduct weighed against any finding of such a constructive trust. For the mortgages taken in 1975, 1983 and 1984, both Tey and TG assumed joint and several liability. The expressed purpose of the 1993 POA was to grant Tey the power "to sell ... any property whatsoever of [TG] … especially the property located at and known as No. 24A Cuff Road". It was quite clear that the POA was given to realise the assets of TG and not to transfer TG's half-share to Tey. This was important as it was Tey who produced the 1993 POA to the donees to sign it. If Tey had genuinely believed that the entire

Property was hers, the 1993 POA would have been drafted to state this fact. Likewise for the 1995 POA (which was not signed).

45 In addition, cl 6 of Tey's Will bequeathed to Kalairani Tey's "share" of the Property. If Tey had believed that she was the beneficial owner of the entire Property, she would not have referred to her "share" of the Property. In so far as Kalairani argued that TG's share was dealt with under Tey's residuary estate, this argument was not cogent. If Tey had believed that she owned the entire Property, she would have dealt with the entire Property in cl 6 of the Will. Tey would also have stated in her Will specifically that TG's half-share belonged to Tey so that anyone reading the Will would know what to do. In addition, Tey would have taken steps to get TG's half-share transferred to her, especially since Kalairani argued that TG had informed Tey that his sons were not to be trusted. Yet, Tey took no steps in TG's lifetime to get his half-share transferred to her. Even after TG's death, the 1993 POA was drafted on the premise that 24A Cuff Road belonged to TG, militating against any suggestion that TG's half-share belonged to Tey.

46 Pertinent to this issue was also Kalairani's lawyers' first response dated 27 July 2021 to the plaintiffs' first letter of demand for rent (the "27 July Letter"). The 27 July Letter only mentioned that Tey had paid the full purchase price for the Property. Although the 27 July Letter stated that the response was without prejudice to Kalairani's legal rights and remedies, it was telling that it did not mention at that time anything about a common intention outside of the registered interests or Tey being led to believe that she was the owner of the entire Property or entitled to keep the entire rent for herself.

47 We therefore agreed with the Judge's finding that Kalairani had not proven her case on a common intention constructive trust.

48 For completeness, we deal briefly with Kalairani's contention that the Judge erred in preferring the evidence of the plaintiffs' witnesses over the evidence of Kalairani's witnesses. In our view, this argument was unfounded. In arriving at his decision that the evidence was insufficient to conclude that there was a resulting or common intention constructive trust, the Judge's analysis was based substantially on the objective evidence, such as the 1993 and 1995 POAs and Tey's Will. We agreed with his findings on these issues.

Did acquiescence apply?

(1) Law on acquiescence

49 A central question was whether acquiescence could be invoked against a statutory claim, or could it function as a defence only against a claim in equity? This question is relevant to both appeals.

50 The plaintiffs relied on the High Court holding in *Teh Siew Hua v Tan Kim Chiong* [2010] 4 SLR 123 ("*Teh Siew Hua*") at [45]–[46] that, first, acquiescence and laches were inapplicable to a claim for a statutory remedy under s 112(4) of the Women's Charter (Cap 353, 2009 Rev Ed) as the defences only operate against claims for equitable relief; and second, the defences could not apply because s 112(4) contemplated that the power that the statute confers may be exercised by the court "at any time". *Teh Siew Hua* was referred to in *BMI v BMJ* [2018] 1 SLR 43 ("*BMI*"), where the Court of Appeal affirmed at [6] that "the express words of s 112(4) preclude the application of the time-bars under the Limitation Act as well as the equitable defences of acquiescence or laches". While no such statutory exclusion is applicable to s 73A of the CLPA, the plaintiffs argued that the Court of Appeal did not disagree with *Teh Siew Hua*, which is authority for the proposition that acquiescence is inapplicable to a statutory claim.

51 However, in the earlier case of *Genelabs Diagnostics Pte Ltd v Institut Pasteur and another* [2000] 3 SLR(R) 530 ("*Genelabs Diagnostics*"), the Court of Appeal considered acquiescence as a defence against a claim for patent infringement under the Patents Act (Cap 221, 1995 Rev Ed) and damages for the patent infringement. *Genelabs Diagnostics* was not cited in *Teh Siew Hua*.

52 In *Tan Yong San v Neo Kok Eng* [2011] SGHC 30 ("*Tan Yong San*"), a claim involving s 216 of the Companies Act (Cap 50, 2006 Rev Ed), a second High Court judge compared the doctrines of acquiescence and laches, and held that while laches was confined to resisting claims for equitable relief, acquiescence was not. The full text of [112]–[114] is set out here as the discussion on laches is relevant also to AD 118:

> 112. The defence of acquiescence is described in the following manner in Halsbury's Laws of England vol 16 (4th Ed Reissue) at para 924, which was cited by the Court of Appeal in Genelabs (supra) at [76]:
>
> > The term acquiescence is... properly used where a person having a right and seeing another person about to commit, or in the course of committing an act infringing that right, stands by in such a manner as really to induce the person committing the act and who might otherwise have abstained from it, to believe that he consents to its being committed; a person so standing-by cannot afterwards be heard to complain of the act. In that sense the doctrine of acquiescence may be defined as quisence under such circumstances that assent may reasonably inferred from it and is no more than an instance of the law of estoppel by words or conduct...
>
> 113. Acquiescence is frequently pleaded together with the defence of laches because both defences are based on the inaction of the party against whom the defence is invoked. As a result, some cases have tended to conflate both concepts. However, they are separate and distinct defences with different consequences. This is explained more fully by Patten LJ in Lester v Woodgate (supra) at [21]–[22]:
>
> > 21. The word laches is also sometimes used to denote the type of passive conduct which can amount to

> acquiescence and so found an estoppel when it can be shown that the party standing by has induced the would-be defendant to believe that his rights will not be enforced and that other party has, as a consequence, acted in a way which would make the subsequent enforcement of those rights unconscionable.
>
> 22. But where the conduct relied on consists of no more than undue delay, it operates only to bar the grant of equitable relief such as an injunction. It does not extinguish the claimants' legal right or bar its enforcement by, for example, the award of common law damages.
>
> 114 Thus, laches in its strict sense refers only to delay on the part of the plaintiff coupled with prejudice to the defendant. As explained above at [96]–[100], laches can only be used as a defence against a claim for equitable relief. Acquiescence on the other hand is premised not on delay, but on the fact that the plaintiff has, by standing by and doing nothing, made certain representations to the defendant in circumstances to found an estoppel, waiver, or abandonment of rights: see *Orr v Ford* (supra) at 337–338. *Unlike laches, the defence of acquiescence is not limited to resisting claims for equitable relief*.
>
> [emphasis added]

53 In *Koh Wee Meng v Trans Eurokars Pte Ltd* [2014] 3 SLR 663 ("*Koh Wee Meng*") at [121]–[122], a third High Court judge also considered that acquiescence could function as a defence against a statutory claim under the Sale of Goods Act (Cap 393, 1999 Rev Ed).

54 In *Ho Yew Kong v Sakae Holdings Ltd and other appeals and other matters* [2018] 2 SLR 333 ("*Sakae Holdings*"), the Court of Appeal dealt with a claim for minority oppression under the Companies Act. Sundaresh Menon CJ, delivering the decision of the court, cited with approval *Genelabs Diagnostics* at [76] and *Tan Yong San* at [112] and [114] in the following terms (at [188]):

> 188 … The essence of acquiescence is that a plaintiff who knows about the conduct which it complains of and yet does nothing to object to or prevent such conduct may be taken to have made

> a representation to the defendant that it does not object to that conduct, which representation may found an estoppel, a waiver or an abandonment of rights: see *Tan Yong San v Neo Kok Eng* [2011] SGHC 30 at [112] and [114] and *Genelabs Diagnostics Pte Ltd v Institut Pasteur* [2000] 3 SLR(R) 530 at [76]...

55 In the light of *Tan Yong San*, *Koh Wee Meng*, *Genelabs Diagnostics* and *Sakae Holdings*, it appeared to us that acquiescence may be used as a defence against statutory claims.

56 In this context we note that the term acquiescence has been used in varying contexts by many courts and for that reason has been described as possessing "a chameleon-like quality" (see *Orr v Ford* [1989] 84 ALR 146 at 157) or a "mongrel concept that is drawn from other doctrines, but does not have a distinct breed of its own" (see Lusina Ho, "The Importance of Being Earnest: The Doctrines of Laches and Acquiescence" in *Defences in Equity* (Paul S Davies, Simon Douglas and James Goudkamp eds (Oxford: Hart Publishing, 2018) at p 326). For the purposes of these grounds of decision, we define acquiescence as the Court of Appeal defined it in *Sakae Holdings*, as circumstances founding an estoppel, a waiver or an abandonment of rights. In *Sakae Holdings*, the Court of Appeal held at [188] that "[t]he essence of acquiescence is that a plaintiff who knows about the conduct which it complains of and yet does nothing to object to or prevent such conduct may be taken to have made a representation to the defendant that it does not object to that conduct, *which representation may found an estoppel, a waiver or an abandonment of rights*" [emphasis added]. Therefore, in considering whether acquiescence was made out on the facts, we considered the key question to be whether the plaintiffs had made a representation which may found an estoppel, a waiver or an abandonment of rights.

(2) Facts necessary to found acquiescence

57 Before we considered whether the present circumstances founded an estoppel, a waiver or an abandonment of rights, we considered some cases on the same.

58 In *Audi Construction Pte Ltd v Kian Hiap Construction Pte Ltd* [2018] 1 SLR 317, the Court of Appeal laid down instructive principles on the doctrine of waiver. First, the Court of Appeal defined the term, and held at [54] that waiver, in its true sense, means a voluntary or intentional relinquishment of a known right, claim or privilege. While the term "waiver" has been observed to bear different meanings, the Court of Appeal held that on this definition, the only form of waiver that befits that label is waiver by election. The Court of Appeal described waiver by election as follows (at [54]):

> This doctrine concerns a situation where a party has a choice between two inconsistent rights. If he elects not to exercise one of those rights, he will be held to have abandoned that right if he has communicated his election in clear and unequivocal terms to the other party. He must also be aware of the facts which have given rise to the existence of the right he is said to have elected not to exercise. Once the election is made, it is final and binding, and the party is treated as having waived that right by his election …

59 Second, the Court of Appeal distinguished waiver by election from waiver by estoppel; the latter is sometimes referred to as the doctrine of equitable (or promissory) estoppel, or the doctrine of equitable forbearance. The Court of Appeal noted that waiver by estoppel "requires an unequivocal representation by one party that he will not insist upon his legal rights against the other party, and such reliance by the representee as will render it inequitable for the representor to go back upon his representation" (at [57]).

60 The Court of Appeal also explained that the requisite representation is different as between waiver by election and equitable estoppel (at [57]):

> A party making an election is communicating his choice whether or not to exercise a right which has become available to him. By contrast, a party to an equitable estoppel is representing that he will in future forbear to enforce his legal rights. And as the Judge observed, this doctrine is premised on inequity, not choice, hence the requirement of reliance …

61 Third and most pertinently, the Court of Appeal held that mere silence or inaction will not normally amount to an unequivocal representation. Mere silence may amount to such a representation in certain circumstances, particularly where there is a duty to speak (at [58]). Whether there is a duty to speak is a question that must be decided "having regard to the facts of the case at hand and the legal context in which the case arises". The expression "duty to speak" refers to circumstances in which a failure to speak would lead a reasonable party to think that the other party has elected between two inconsistent rights or will forbear to enforce a particular right in the future, as the case may be (at [61]).

62 Similarly, in *Abraham Aaron Issac v Management Corporation Strata Title Plan No 664* [1999] 2 SLR(R) 287, the Court of Appeal viewed waiver as a form of estoppel. The court held, however, that no estoppel could be invoked on the facts because there was no clear or unequivocal assurance or representation, and further no detrimental reliance. Mere silence on the appellant's part could not operate as an estoppel against him (at [25]–[28]).

63 Waiver has also been described as a form of abandonment, being an "abandonment of a right in such a way that the other party is entitled to plead the abandonment by way of confession and avoidance if the right is thereafter

asserted" (Sean Wilken QC and Karim Ghaly, *The Law of Waiver, Variation, and Estoppel* (Oxford University Press 2012) at para 4.28).

64 In *Meng Leong Development Pte Ltd v Jip Hong Trading Co Pte Ltd* [1983–1984] SLR(R) 668, the Privy Council (on appeal from the Court of Appeal of Singapore) equated abandonment with the doctrine of election, holding that "[t]he facts which raise an estoppel are that the purchaser demanded and accepted payment of the damages, and thus acted in a manner which was … only consistent with abandonment of the right to appeal against the decision" (at [21]). The Privy Council also summarised the doctrine of election as follows (at [12], citing George Spencer Bower & Alexander Kingcome Turner, *The Law relating to Estoppel by Representation* (Butterworths, 3rd Ed, 1977) at para 310):

> Where A, dealing with B, is confronted with two alternative and mutually exclusive courses of action in relation to such dealing, between which he may make his election, and A so conducts himself as reasonably to induce B to believe that he is intending definitely to adopt the one course, and definitely to reject or relinquish the other, and B in such belief alters his position to his detriment, A is precluded, as against B, from afterwards resorting to the course which he has thus deliberately declared his intention of rejecting.

65 These authorities reflect that for the doctrines of waiver, equitable estoppel or abandonment to be successfully invoked as a defence, there must be an unequivocal representation on the part of the plaintiff, and reliance by the defendant.

(3) Application to the facts

66 Delay, therefore, is not sufficient; the plaintiff must have, by standing by, made representations to found estoppel, waiver or abandonment to induce

the other person to believe that there was consent: *Tan Yong San* at [114], as cited by *Sakae Holdings* at [188].

67 In our judgment, the Judge did not err in finding that acquiescence was not made out. There was nothing more than delay on the part of the plaintiffs in failing to enforce TG's legal title. Kalairani's pleaded case on acquiescence relied primarily on an allegation that TG's sons had acknowledged that TG's half-share belonged to Tey during TG's funeral in October 1993. However, Kalairani could not prove this allegation, which was, more fundamentally, inconsistent with Tey's conduct. As we described at [44]–[45] above, Tey's conduct in respect of her Will and the 1993 and 1995 POAs showed that she viewed herself as only owning a half-share in the Property. Moreover, as the Judge rightly observed at [109] of the GD, the 1993 and 1995 POAs were dated *after* TG's funeral in October 1993. Had TG's sons indeed acknowledged Tey as the beneficial owner of TG's registered half-share, the 1993 and 1995 POAs would not have been drafted the way they were, as mentioned at [44]. On the contrary, it could be inferred from the language used in the 1993 and 1995 POAs that Tey regarded TG as both the beneficial and legal owner of the half-share in the Property held in his name.

68 We deal with two arguments made on appeal. First, Kalairani contended that the Judge's rejection of her defence of acquiescence was inconsistent with the Judge's finding that laches applied to bar the plaintiffs from claiming the rental.[33] We disagreed. We deal with laches below, at [83]–[87]. In this context, it suffices for us to point out that the Judge's reason for concluding that there was laches on the plaintiffs' part has no bearing on the issue of *legal title*.

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[33] AC 117 at para 16.

69 Second, Kalairani argued that the Judge had overlooked unconscionability.[34] However, it was not argued *how*, on the facts, it could be unconscionable for the plaintiffs to exercise their legal right to the title of a half-share or to seek a sale of the Property. To the contrary, Tey benefitted from use of the Property and the rental collected since TG's death. There was nothing unconscionable about the plaintiffs recovering legal title or seeking a sale of the Property.

70 Therefore, in our judgment, Kalairani could not rely on acquiescence to prevent the plaintiffs from seeking a sale of the Property.

Should the Property be sold or partitioned?

71 Having failed in her various defences, Kalairani's argument that the Property be partitioned became relevant. This relief was not pleaded. Further, in our view, the Judge did not err in finding that Kalairani ought not to be allowed a partition of the Property based on the principles elucidated by the Court of Appeal in *Su Emmanuel v Emmanuel Priya Ethel Anne and another* [2016] 3 SLR 1222. In particular, the parties were unlikely to be able to cooperate in future. The plaintiffs were in India with no interest in retaining any interest in the Property which was in Singapore. Kalairani's allegation about an emotional attachment to the Property was in itself not sufficient to preclude a sale. The plaintiffs' Statement of Claim included an alternative for Kalairani to purchase their half-share, and Kalairani did not explain why she did not take up this offer. Having regard to the circumstances of this case, we agreed with the Judge's decision to order a sale of the Property.

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[34] AC 117 at paras 18-19.

72 In the circumstances, it was not necessary to deal with the plaintiffs' argument that partition was not possible because of conservation guidelines from the URA.

Conclusion on AD 117

73 To summarise, we dismissed AD 117. The plaintiffs' new argument on appeal that Kalairani could not assert beneficial ownership based on trust because of s 46(2) of the LTA was without merit. Nevertheless, we agreed with the Judge's findings that Kalairani was unable to prove her case that TG held his half-share on a resulting or common intention constructive trust for Tey. We also agreed with the Judge's decision to reject Kalairani's defence of acquiescence and order a sale of the Property.

AD 118

74 The effect of dismissing AD 117 meant that the plaintiffs *could* seek an account of rental based on TG's half-share in the Property. We address this issue.

Was there an entitlement to account?

75 Below, the Judge and the parties appear to have assumed that Kalairani was under an equitable duty to account. The basis for this duty, however, was not meaningfully discussed or considered. In our view, this was the case because the plaintiffs had not pleaded the material facts forming the basis of an equitable duty to account. The plaintiffs merely pleaded the fact of TG's ownership and Kalairani assumed that this was sufficient. This was, however, not so. In *Aw Chee Peng v Aw Chee Loo* [2022] 5 SLR 451 ("*Aw Chee Peng*"), Philip Jeyaretnam J made clear (at [37]–[39]) that no fiduciary relationship arises

merely from the relationship of co-owners. More is required beyond the fact of co-ownership.

76 In their Appellants' Reply in AD 118, the plaintiffs belatedly raised two bases for Kalairani's duty to account. The plaintiffs first argued that Tey was liable to account as a co-owner on the basis of *Strelly*. The case of *Strelly* concerned a ship owned by three different owners and which was lost in a voyage. The English court held that the loss of the ship should be equally borne by all three owners; equally, where one tenant-in-common received all the profits from the property, he shall account in the court as bailiff to the other two for two-thirds. The plaintiffs averred that *Strelly* is authority for the proposition that a co-owner is liable in equity to account to other owners for profits received from the shared property.

77 However, the continued application of *Strelly* has been doubted by various courts. For instance, in *Forgeard v Shanahan* (1994) 35 NSWLR 206, the New South Wales Court of Appeal declined to follow *Strelly* as it had not been subsequently relied on or noticed. In a similar vein to *Aw Chee Peng*, the Hong Kong Court of Final Appeal in *Cheung Lai Mui v Cheung Wai Shing and others* [2021] HKCFA 19 held at [104] that there is "no new, free-standing 'modern approach'" to claims by one co-owner against another for an account of rent. The co-owner seeking an account must prove some operative agreement which rendered the other co-owner an agent or bailiff so as to come under a duty to account to the other (at [82]–[83], [104]–[106]). Notably, the Hong Kong court had the benefit of considering *Strelly*, but found it to be "an outlier of very uncertain authority" and declined to follow it (see [68] footnote 38). In our view, *Aw Chee Peng* (see [75] above) correctly summarises the law.

78 In their Reply, the plaintiffs also raised for the first time that s 73A of the CLPA entitled them to an account of the rental proceeds. Section 73A of the CLPA reads as follows:

> Co-owner liable to account.
>
> **73A.** A joint tenant or tenant in common shall be liable to account to his co-owner for receiving more than his share or proportion of any rents or profits arising from the property.

79 We agreed with the plaintiffs that the claim for an account and inquiry of the rental proceeds ought to have been premised on s 73A of the CLPA. Section 73A of the CLPA provides co-owners with a remedy against their fellow co-owners for rental income from co-owned property where there would otherwise be none: see *Aw Chee Peng* at [29]–[30]. However, the plaintiffs did not initially raise s 73A of the CLPA, and in the Appellants' Reply, sought leave to do so.[35] In contrast, in their earlier Appellants' Case in AD 118, they argued that Tey knew she was in the position of trustee vis-à-vis the rental proceeds, with a corresponding and continuing duty to account to TG's estate for the trust proceeds.[36]

80 The plaintiffs did not plead s 73A of the CLPA. However, where material facts have been pleaded, the particular result flowing from the material facts and propositions of law need not be pleaded: *How Weng Fan and others v Sengkang Town Council and other appeals* [2023] SGCA 21 at [19]. We were of the view that in the Statement of Claim, the plaintiffs had pleaded the material facts in support of their claim for an account and inquiry of the rental proceeds

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35 AR 118 at para 14.

36 AR 118 at para 59.

even though there was an insufficient plea of facts to support an allegation of an equitable duty to account. The Statement of Claim alleged:[37]

> 33 The Plaintiffs aver that the late Mdm Tey and/or the 1st Defendant had, subsequent to the late T Govindasamy's demise, rented 24 Cuff Road and collected rental proceeds therefrom.
>
> 34 The Plaintiffs aver that neither the late T Govindasamy nor his Estate ever received any rental proceeds therefrom, which is inconsistent with his legal and beneficial ownership of the half (1/2) share of 24 Cuff Road.

81 Therefore, although the plaintiffs did not plead s 73A of the CLPA and also did not rely on it in the court below, we allowed them to rely on s 73A of the CLPA for three reasons. First, the law need not be pleaded unless there is a specific requirement to do so. Second, the material facts underlying the claim had been pleaded. Third, no further evidence was needed from either side. Kalairani did not allege that she would have adduced more evidence if she had known that the plaintiffs were relying on s 73A of the CLPA.

Was there an applicable defence?

82 If Kalairani failed to prove the counterclaim for TG's half-share of the Property, and the plaintiffs were allowed to rely on s 73A, there was no dispute by Kalairani that there was a statutory duty by Tey (or Kalairani herself) to account for any rent received by her which was more than her half-share of the Property. The next issue was whether there was any defence available to Kalairani. The Judge found that the plaintiffs' claim for an account of rental was barred by laches.

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37 Joint Record of Appeal Vol II at p 30.

(1) Laches

83 Allowing the plaintiffs to rely on s 73A of the CLPA as the basis for their claim for an account of rental resulted in a change to the entire complexion of AD 118. One of these changes was that the doctrine of laches would no longer apply. We arrived at this conclusion for two reasons.

84 First, as a matter of law, Kalairani could not rely on laches as a defence to the plaintiffs' claim for an account of rental under s 73A of the CLPA. The law is clear that laches does not apply in respect of statutory claims (*Aw Chee Peng* at [65]).

85 Second, coming to the facts of the present case, the Court of Appeal summarised the doctrine of laches as follows in *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [44]: there must be a substantial lapse of time and it would be practically unjust to give a remedy either because there is conduct equivalent to a waiver or the conduct and neglect has put the other party in a situation in which it would not be reasonable to allow the claim. There must be some change of position or similar prejudice on the part of the defendant or injustice to blameless third parties (David W Oughton, John P Lowry and Robert M Merkin, *Limitation of Actions* (LLP, 1998) at p 18, citing *Lindsay Petroleum Co v Hurd* (1874) LR 5 PC 221). Ultimately, the basis for equitable intervention by way of the doctrine of laches is found in unconscionability, and involves a fact-sensitive approach.

86 The Judge explained his factual finding on laches at [127] of the GD:

> In my view, the plaintiffs were barred by laches from pursuing their claim for an account of the rentals received by the defendants. The plaintiffs refused to sign the 1995 POA and the 1993 POA was revoked in 1996. It would have been clear by then that Tey could not proceed to obtain the letters of

> administration in respect of TG's estate and that consequently the Property would not be sold. Yet, the plaintiffs did nothing with regards to the rental of 24A Cuff Road, until after 2018. It was inequitable to require the defendants to now account for rentals received since 1993.

87 In our view, these facts were not pleaded by Kalairani as material facts forming the basis for the application of laches. Specifically, Kalairani did not plead that the plaintiffs knew that Tey could not proceed to obtain the letters of administration for TG's estate at the material time of 1995 to 1996. Neither did she say that because of delay in obtaining the letters of administration, the Property could not be sold and somehow that made it inequitable for Tey to account for rent collected in the meantime. There was nothing on the facts to suggest that it would be unjust or unconscionable for the plaintiffs to seek an account of rent. Kalairani's main defence was that there was delay and that TG's three sons had acknowledged that his half-share belonged to Tey. The former reason was not sufficient in and of itself, and Kalairani was not able to prove the latter acknowledgment (see [67] above).

(2) Acquiescence

88 We have dealt with acquiescence and its distinction from laches at [49]–[56]. The definition to be applied in AD 118 was that used by the Court of Appeal in *Sakae Holdings*, which is to assess whether the circumstances found waiver, abandonment or estoppel.

89 The facts to consider in the context of rental were different from the context of legal title. Of relevance was the fact that the entitlement to rental was the very right that the plaintiffs refrained from enforcing for many years. The plaintiffs were aware that rental was collected from the time of TG's death, but did not make any formal demand for rent until 23 June 2021. While there had been no representation about future rent, a question arose as to whether the

plaintiffs may have waived or abandoned their right to past rental collected prior to their first formal demand. In other words, the question was whether the plaintiffs had, by their conduct in not claiming for rent for 28 years despite having full knowledge that Tey was collecting and retaining rent, represented to Kalairani that they would not be pursuing an account for past rent.

90 Nevertheless, estoppel, waiver and abandonment of rights were not relevant because there was no assertion even of reliance on the part of Kalairani. Nor had Kalairani shown that the "standing by" on the part of the plaintiffs had raised an *unequivocal representation* that they waived or abandoned their right to all rental collected prior to their demand on 23 June 2021.

(3) Limitation

91 It was in this context that we dealt with the issue of limitation. This was not pursued below as the plaintiffs' case then was premised on an equitable duty to account.

92 Section 6(2) of the Limitation Act provides a limitation period of six years to a cause of action brought under s 73A of the CLPA (see *Aw Chee Peng* at [74(a)]. Neither of the exceptions to limitation contained in ss 22 or 29 of the Limitation Act was applicable. On the other hand, s 4 of the Limitation Act states that, if limitation is not pleaded, limitation cannot operate as a defence.

93 Nevertheless, as we allowed the plaintiffs to rely on s 73A of the CLPA, it appeared just to also allow Kalairani to plead and rely on a new defence of limitation based on s 6(2) of the Limitation Act. In our view, this was fair because no further evidence was required from either side. The plaintiffs also did not allege that they would have adduced more evidence if they had known that Kalairani would rely on s 6(2) of the Limitation Act. Indeed, the plaintiffs

accepted that Kalairani should be entitled to raise s 6(2) of the Limitation Act in the light of their late reliance on s 73A of the CLPA. Furthermore, the plaintiffs agreed at the hearing that they would not pursue any rental in the period prior to six years before the filing of the writ. This would address to some extent any prejudice arising from the plaintiffs having run a different case in the court below. Despite the plaintiffs' concession, Kalairani still sought leave to amend her pleadings, for good order. We therefore granted permission to Kalairani to plead s 6(2) of the Limitation Act in the terms proposed by her counsel. The amended pleading was to be filed and served by 5pm on 3 October 2023. In the circumstances, we ordered Kalairani to account for the rent received from the Property from 24 September 2015, six years prior to the date the action was filed.

Conclusion on AD 118

94 AD 118 was therefore allowed in part. We allowed the plaintiffs to rely on s 73A of the CLPA as the basis for their claim for an account of rental, and also allowed Kalairani to plead and rely on s 6(2) of the Limitation Act. We accordingly ordered Kalairani to account for the rent received but from 24 September 2015.

Conclusion

95 In the result AD 117 was dismissed and AD 118 was allowed in part.

96 The directions for sale granted by the Judge below (GD at [132]) were ordered to stand with the following amendments:

(a) For [132(a)], the valuation of the Property was to be as at 30 September 2023. The valuation was to be obtained by the plaintiffs by 24 November 2023.

(b) For [132(f)], the following sentences were added after the first sentence:

(i) "The price at which the Property or TG's half-share in the Property is to be sold may be agreed between the parties."

(ii) "The deadline to sell the Property mentioned in [132(d)] may also be extended by agreement between the parties."

(c) The words "or by the court" in [132(f)] were deleted as they were not necessary.

97 In addition, we ordered Kalairani to account to the plaintiffs for rent received from the Property from 24 September 2015, and to pay to the plaintiffs half of the rent after deduction of reasonable expenses in respect of the Property and the rental thereof. For the avoidance of doubt, we stated that the account pertained to either the whole or part of the Property that was rented out. In other words, whether only a half or the whole of the Property was rented out, Kalairani was required to account for the rent received. Kalairani was also jointly and severally liable in each of her capacities in respect of the various orders made against her: as Tey's beneficiary, and as executrix of Tey's estate.

98 Both parties were of the view that the costs order below should remain undisturbed. For the appeal, costs followed the event and Kalairani was responsible for the costs of both appeals. However, the plaintiffs' new argument on s 46(2) of the LTA was unmeritorious and their new argument on s 73A of the CLPA was raised extremely late. We took these matters into account.

Kalairani was ordered to pay the plaintiffs costs, fixed at $45,000, including disbursements. The usual consequential orders applied.

Woo Bih Li
Judge of the Appellate Division

Valerie Thean
Judge of the High Court

Andre Maniam
Judge of the High Court

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