

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

[2023] SGHC 309

Suit No 1071 of 2016

Between

Mahmud Ebrahim Kasam Munshi

... Plaintiff

And

Mohamed Saleh

... Defendant

FOUNDATIONS OF DECISION

[Trusts — Express trusts — Certainties — Whether there is a subjective intention to create an express trust over property]

[Trusts — Constructive trusts — Institutional constructive trust]

[Trusts — Constructive trusts — Common intention constructive trust]

[Trusts — Constructive trusts — Remedial constructive trust]

[Trusts — Resulting trusts — Presumed resulting trust]

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Mahmud Ebrahim Kasam Munshi

v

Mohamed Saleh

[2023] SGHC 309

General Division of the High Court — Suit No 1071 of 2016
Vinodh Coomaraswamy J
15, 16 November 2022, 16, 31 January 2023

27 October 2023

Vinodh Coomaraswamy J:

Introduction

1 The parties to this action are brothers. The plaintiff is the defendant’s younger brother.

2 This action is merely the latest instalment in serial and acrimonious¹ litigation involving the parties that has taken place over the past decade in the State Courts, in the Family Justice Courts and now in the High Court.² The subject of the litigation was the parties’ mother (“the Mother”) and her property.

¹ Plaintiff’s Bundle of Affidavits dated 7 November 2022 (“Bundle of Affidavits”) Vol 2 at pp 50, 92, 96, 128 and 140–149.

² Statement of Claim (Amendment No. 1) dated 13 April 2022 (“SOC”) at para 4; Defence (Amendment No. 1) dated 27 April 2022 (“Defence”) at paras 80–107 and 137.

3 In August 2016, in the course of that litigation, the plaintiff was appointed the deputy under the Mental Capacity Act (Cap 177A, 2010 Rev Ed) (the “MCA”) in respect of the Mother.³ In October 2016, the plaintiff commenced this action against the defendant in the Mother’s name and for her benefit.⁴ In August 2017, the Mother died.⁵ This action was held in abeyance while the parties litigated a probate dispute.⁶ In October 2021, the plaintiff secured letters of administration with the will annexed in respect of the Mother’s estate (the “Estate”).⁷ In April 2022, the plaintiff secured leave to carry on this action in his own name, as administrator of the Estate.⁸ In November 2022, the action was tried before me.

4 The plaintiff’s case in this action is that the defendant holds two assets on trust for the Estate: (a) the money in a joint bank account that the defendant opened in 1997 with the Mother; and (b) a flat that the Mother and the defendant purchased in 1999 as joint tenants in a development known as JC Court (the “JC Court Property”).

5 I have held that the defendant holds on trust for the Estate only the following assets: (a) a sum of \$200,000 in “emergency money” that he withdrew from the joint account in 1999; and (b) 58.22% of the beneficial interest in the JC Court Property. I have also held that the defendant is liable to account to the

³ Bundle of Affidavits Vol 1 at PDF p 3/247, para 3.

⁴ SOC at para 1.

⁵ Bundle of Affidavits Vol 1 at PDF p 3/247, para 3.

⁶ Bundle of Affidavits Vol 1 at PDF p 6/247, para 11.

⁷ Bundle of Affidavits Vol 1 at PDF p 7/247, para 16.

⁸ HC/ORC 1962/2022 dated 13 April 2022, extracted 13 April 2022.

Estate for 58.22% of the net rental income that the JC Court Property earned or could have earned from the Mother’s death until judgment.

6 Both parties have appealed against my decision. I now set out the grounds for my decision.

Background facts

7 The background facts are largely undisputed.

8 The Mother had five children.⁹ In order of birth, they are: (a) the defendant; (b) Mr Ahmad Munshi; (c) Ms Fatima Bibi (“Fatima”); (d) the plaintiff; and (e) Ms Aisha Ebrahim (“Aisha”).¹⁰

9 The Mother was, at all material times, entirely dependent on others to conduct her legal and financial affairs. Her dependence was initially because of a lack of literacy and sophistication. She was of Gujarati ethnic origin and spoke and understood only Gujarati and Malay. She could not read or write in any language.¹¹ But a number of years before 2016, her dependency became more profound by reason of her dementia. In April 2016, a psychiatrist diagnosed the Mother as lacking mental capacity as defined in ss 4 and 5 of the MCA by reason of dementia.¹² In July 2017, the same psychiatrist opined that it was very

⁹ SOC at para 2; Defence at paras 4–5.

¹⁰ Defence at para 5.

¹¹ Certified Transcript dated 16 November 2022 at p 35 lines 24–32.

¹² Plaintiff’s Bundle of Documents dated 9 November 2022 (“PBOD”) Vol 3 at pp 165–167.

probable that the Mother had been suffering from dementia for a number of years before 2017.¹³

10 In 1994, Aisha and Fatima convinced the Mother to transfer her house in Koon Seng Road to Aisha and her husband¹⁴ without receiving from them any part of the agreed purchase price of \$800,000.

11 In May 1995, in view of the Mother's dependence, the defendant asked her to live with him.¹⁵ His stated intention was to look after her welfare and her best interests after she had been taken advantage of by Aisha and Fatima.¹⁶ In April 2016, the mother was hospitalised. After her discharge from hospital until her death in August 2017, the Mother lived with the plaintiff and his wife.¹⁷

12 The defendant opened the joint account in 1997 with an initial deposit of \$800,000.¹⁸ That \$800,000 comprised a sum of \$700,000 and a sum of \$100,000 that the Mother had recovered from Aisha and Fatima¹⁹ following successful litigation.²⁰ That litigation was commenced in the mother's name to recover the purchase price of the Motner's house in Koon Seng Road.²¹ The

¹³ PBOD Vol 3 at p 168.

¹⁴ Defence at paras 18 and 27.

¹⁵ Defence at para 32.

¹⁶ Defence at paras 26–32.

¹⁷ Bundle of Affidavits Vol 2 at p 5, para 5 and p 21 para 7.10.

¹⁸ Defence at paras 39–40 and 139.2.

¹⁹ Defence at para 39.

²⁰ Defence at para 39.

²¹ Defence at paras 35–36.

defendant directed and controlled the conduct of the litigation.²² He also paid the legal fees for the litigation.

13 The defendant put the \$800,000 in a joint account with the Mother in order to prevent the Mother from being cheated of her money again.²³ No sums could be withdrawn from the joint account unless both the defendant and the Mother signed the withdrawal instructions.²⁴

14 At all times after the defendant opened the joint account in 1997, the Mother had no money of her own that did not originate from the joint account.²⁵ The defendant did not mingle any of money of his own with the Mother's money in the joint account.

15 In 1999, the defendant and the Mother purchased the JC Court Property as joint tenants.²⁶ The defendant directed and controlled the purchase.

16 The purchase price of the JC Court Property was \$688,000.²⁷ The defendant applied money belonging to both the defendant and the Mother to purchase the property.

²² Defence at paras 35–39.

²³ Defence at para 40.

²⁴ Defence at para 139.2; Certified Transcript dated 16 November 2022 at p 20 lines 19–22.

²⁵ Defence at para 33.

²⁶ SOC at para 9.3.

²⁷ Defence at para 41.

17 The defendant applied \$300,000 from his own funds towards the purchase.²⁸ He borrowed \$196,800²⁹ out of this \$300,000 and withdrew the rest from his Central Provident Fund (“CPF”) account. Both the bank and the CPF Board took a charge against the JC Court Property. The bank’s charge was discharged in May 2008.³⁰ The CPF Board’s charge subsists to this day. As at 30 March 2017, the defendant was obliged to repay \$480,679.11 to his CPF account in order to discharge of the CPF Board’s charge.³¹

18 The defendant withdrew a total of \$480,000 from the joint account on the occasion of the purchase. Out of this \$480,000, he applied: (a) \$388,000 as the Mother’s contribution to the purchase;³² (b) \$30,000 to pay the stamp duty and legal costs associated with the purchase; and (c) \$62,000 to pay for renovations and furnishings.³³

19 As I have mentioned (see [3] above), the Mother died in August 2017. In September 2017, the defendant procured his registration as the sole owner of the JC Court Property as the surviving joint tenant.³⁴ He estimates that the JC Court Property is now worth \$1.6m.³⁵

²⁸ Defence at para 139.4.

²⁹ Bundle of Affidavits Vol 2 at p 102.

³⁰ Bundle of Affidavits Vol 5 at p 7.

³¹ Bundle of Affidavits Vol 2 at p 103.

³² Defence at para 139.4.

³³ Defendant’s Additional Written Submissions dated 19 January 2023 (“DAWS”) at para 10.

³⁴ Bundle of Affidavits Vol 1 at PDF p 190/247.

³⁵ Certified Transcript dated 31 January 2023 at p 24 line 20.

20 The plaintiff’s case requires me to determine simply whether – and if so to what extent – these largely undisputed facts render the defendant a trustee of any sort of the joint account or of the JC Court Property.

21 I examine each asset in turn.

Moneys in the joint account

22 I begin with the money in the joint account.

23 The defendant held his legal interest in the joint account on a presumed resulting trust for the Mother. A presumed resulting trust arises when: (a) property is transferred to a person by or at the direction of another, (b) in circumstances in which the transferor lacks the intention to benefit the transferee (*Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 (“*Lau Siew Kim*”) at [35]).

24 The defendant himself concedes that he opened the joint account and deposited the Mother’s \$800,000 into it solely for her benefit. That concession suffices to raise the presumption of a resulting trust. That concession also leaves no scope for the presumption of advancement to operate.

25 The defendant’s legal interest in the joint account was therefore subject to a presumed resulting trust in favour of the Mother from the time the joint account was opened.

The plaintiff’s case

26 As a presumed resulting trustee, the defendant has a duty to account to the Mother for the sums withdrawn from it.

27 It is common ground that the joint account held at least the \$800,000 that the Mother received from Aisha and Fatima (see [13] above).³⁶ The plaintiff presents his case against the defendant on the joint account by asserting a notional opening balance, establishing that the defendant withdrew certain sums from it and seeking an order that the defendant account to the Estate for the balance. The plaintiff quantifies that balance at over \$560,000.³⁷

28 I analyse the plaintiff's case in the same way.

Notional opening balance

29 The plaintiff's case is that the notional opening balance in the joint account should be \$900,000, not \$800,000.³⁸ The additional \$100,000 arises in the following way.

30 It is common ground that the Mother owned a property in Kuala Lumpur (the "KL Property") in the early 1990s.³⁹ It is also common ground that the KL Property was sold in 1995.⁴⁰ The plaintiff's case is that the sale of the KL Property took place at the defendant's direction and control and that the defendant received the net proceeds of sale.⁴¹ The defendant denies that the KL Property was sold at his direction or under his control and that he received the net proceeds, whether in the joint account or in any other way.

³⁶ SOC at para 6; Defence at para 139.2; Bundle of Affidavits Vol 2 at p 10, para 1.6.

³⁷ Plaintiff's Closing Submissions dated 5 January 2023 ("PWS") at para 8(b).

³⁸ Bundle of Affidavits Vol 2 at p 15, para 4.3.

³⁹ Bundle of Affidavits Vol 2 at p 15, para 4.1.

⁴⁰ Bundle of Affidavits Vol 2 at p 15, para 4.2.

⁴¹ SOC at paras 5–6.

31 In order for the plaintiff to establish that the defendant is any sort of trustee for this \$100,000, he must prove on the balance of probabilities that the defendant received the net proceeds of sale of the KL property. The plaintiff has failed to discharge this burden. More precisely, he has failed to prove any one of these three necessary propositions: (a) that the defendant directed or controlled the sale of the KL Property in 1995; (b) that the defendant deposited the net proceeds of sale into the joint account; or (c) that the defendant received the net proceeds of sale by some other means or in some other account.

32 The plaintiff cannot prove any of these three propositions from his personal knowledge or from the personal knowledge of any witness he called at trial. He is therefore unable to prove these propositions by direct evidence as defined in s 62(1) of the Evidence Act 1893 (2020 Rev Ed) (the “EA”). The plaintiff therefore has no alternative but to attempt to prove these propositions by relying on two categories of non-direct evidence: (a) circumstantial evidence; and (b) oral statements which the Mother made to the plaintiff’s wife from March to May 2013.⁴²

33 For the reasons which follow, neither of these categories of evidence proves that the defendant received the net sale proceeds of the KL Property.

Circumstantial evidence

34 The circumstantial evidence that the plaintiff relies on to discharge his burden of proof is as follows. The defendant has detailed knowledge of the Mother’s assets going as far back as the 1970s.⁴³ The Mother lived with the

⁴² Affidavit of Evidence In Chief of Mariam bte Alias dated 25 July 2017 (“Mariam’s AEIC”) at para 17.

⁴³ Certified Transcript dated 16 November 2022 at p 15 lines 19–32 to p 16 line 13.

defendant from May 1995 to April 2016.⁴⁴ During that time, she was dependent on the defendant to manage her legal and financial affairs. The defendant admits that he advised the Mother to sell the KL Property during this time.⁴⁵ The conveyancing documents for the sale of the KL Property were sent by courier to Singapore for the Mother to sign while the Mother was living with the defendant and was under his care.⁴⁶

35 I do not give any weight to the circumstantial evidence that the plaintiff relies on. I accept that all of those circumstances are true. But in my view, those circumstances do not make it more likely than not that the defendant received the net proceeds of sale of the KL Property. The logical connection between each of these facts and the defendant's alleged receipt of \$100,000 is too tenuous. That is so whether these circumstances are taken separately or together.

The Mother's oral statements

36 The Mother's oral statements that the plaintiff relies on to discharge his burden of proof came about as follows. Between March and May 2013, the Mother had lengthy conversations with the plaintiff's wife. The plaintiff's wife made an audio recording of these conversations. The recordings and transcripts of them were produced at trial. The plaintiff's wife gave evidence and proved the recordings. The defendant does not allege that the recordings or the transcripts are an inaccurate record of the contents of these conversations.

37 The conversations covered a number of topics. The critical conversation for present purposes took place in April 2013. The transcript of this conversation

⁴⁴ Defence at para 32.

⁴⁵ Defence at para 139.

⁴⁶ PWS at paras 27(c) and 32.

records the Mother making four statements of relevant fact to the plaintiff's wife. First, the Mother did not want to sell the KL Property and wanted to continue to earn rental income from it. Second, it was the defendant who persuaded her to sell the KL Property. Third, the defendant directed and controlled the sale of the KL Property. Finally, the defendant used the net proceeds of sale to buy a property in Johor Bahru in the Mother's name.⁴⁷

38 The plaintiff relies on the Mother's statements as evidence that the contents of those statements are true. I assume in the plaintiff's favour that the recording of the conversation and its transcript are admissible to prove the truth of the contents of those statements under s 32(1)(j)(i) of the EA read with s 32(4)(b) of the EA and the notice procedure under O 38 r 4 of the Rules of Court (2014 Rev Ed).

39 I do not give any weight to the Mother's statements of fact for four reasons.

40 First, the plaintiff himself accepts that the Mother had no personal knowledge of what exactly happened to the net proceeds of sale of the KL Property.⁴⁸ If the Mother had been alive and able to give evidence at trial, her evidence would have been inadmissible to prove that the defendant had received the net proceeds of sale. Although her oral statements in April 2013 may now be admissible by reason of her death, her lack of personal knowledge continues to be a strong factor attenuating the weight I should attach to those statements.

⁴⁷ PBOD Vol 1 at pp 17–19.

⁴⁸ PWS at para 33.

41 Second, there is some evidence that the Mother’s mental faculties were already failing by the time this conversation took place in April 2013. There is the psychiatrist’s opinion I have already referred to (see [9] above) opining that the Mother had been suffering from dementia for a number of years before 2017. Furthermore, the plaintiff’s wife gave evidence that, even by the middle of 2012, the Mother “talked to herself a lot” and “had at least four imaginary friends”.⁴⁹

42 Third, the Mother herself acknowledged in the conversation that her memory was already failing her, both generally⁵⁰ and in the specific context of what had happened to the net proceeds of sale of the KL Property.⁵¹

43 Fourth, the Mother alleged that the defendant used the net proceeds of sale of the KL Property to purchase a property in Johor Bahru in the Mother’s name. This contradicts the plaintiff’s case. His case is that the defendant squandered the money speculating on foreign currency.⁵²

44 For all of these reasons, I consider the Mother’s statements to the plaintiff’s wife to be of insufficient weight to prove on the balance of probabilities that the defendant received the net proceeds of sale of the KL Property, whether in the joint account or in some other way.

The defendant’s direct evidence

45 Unlike the plaintiff, the defendant is capable of giving evidence on this issue from his own personal knowledge. In cross-examination, plaintiff’s

⁴⁹ Mariam’s AEIC at para 10.

⁵⁰ PBOD Vol 1 at p 20, rows 7 and 13.

⁵¹ PBOD Vol 1 at p 21, row 1.

⁵² SOC at paras 5, 6 and 9.1; Bundle of Affidavits Vol 2 at p 16, para 5.1.

counsel put it to the defendant that the defendant had taken it upon himself to sell the KL Property in order to prevent the Mother from being cheated of her money.⁵³ The defendant denied it. The defendant also denied that he had ever had access to the net proceeds of sale of the KL Property.⁵⁴ Even though these denials are undoubtedly self-serving, they are the only direct evidence before me on this aspect of the plaintiff's case.

46 For this additional reason, I find that the plaintiff has failed to prove on the balance of probabilities that the defendant received the net sale proceeds of sale of the KL Property allegedly amounting to \$100,000.

47 Given that the plaintiff has failed to discharge his burden of proof, it is unnecessary for me to analyse the defendant's positive case that it was Fatima and her husband who directed and controlled the sale of the KL Property.⁵⁵ The defendant bears no burden of proof on this aspect of the plaintiff's case.

48 The defendant has a duty to account to the Estate as a presumed resulting trustee for only the sum of \$800,000, and not for the sum of \$900,000 as the plaintiff alleges.

Deductions from the notional opening balance

49 It is common ground that the Mother agreed that the defendant could deduct \$40,000 from the \$100,000 that Fatima paid to the Mother as the Mother's contribution to the legal fees for the litigation. That leaves the sum of \$760,000 for which the defendant must account to the Estate.

⁵³ Certified Transcript dated 16 November 2022 at p 24 line 24 to p 25 line 10.

⁵⁴ Certified Transcript dated 16 November 2022 at p 48 lines 1–13.

⁵⁵ Certified Transcript dated 16 November 2022 at p 25 lines 11–18.

50 The defendant accounts for this sum of \$760,000 as follows. First, he withdrew \$480,000 on the occasion of the purchase of the JC Court Property. This sum comprised the \$388,000, \$30,000 and \$62,000 I have referred to at [18] above. Second, he transferred \$200,000 into an account in his sole name as “emergency money”, *ie*, as a provision against the anticipated future costs of the Mother’s medical and long-term care. Finally, he transferred \$80,000 to an account in the Mother’s sole name.⁵⁶

51 The defendant’s account is given from his personal knowledge. It is therefore direct evidence of how he applied the sum of \$760,000. The plaintiff cannot adduce any direct evidence – either from himself or from any other witness – to prove the plaintiff’s alternative account. Nor is the plaintiff able to adduce any non-direct evidence on this issue. Indeed, he did not even attempt to do so. In so far as the plaintiff’s alternative account differs from the defendant’s account, the plaintiff has failed to discharge his burden of proving those aspects of his alternative account.

52 I find that the defendant has no duty to account to the Estate for the sum of \$80,000. I accept the defendant’s evidence that he withdrew this sum and dealt it on the Mother’s instructions. I further accept the defendant’s evidence that he had no access to and did not control the account in the Mother’s sole name into which he transferred the \$80,000.

53 I find also that the defendant has no duty to account to the Estate for the \$62,000 spent on renovations and furnishings. I accept the defendant’s evidence that he withdrew and dealt with this sum with the Mother’s consent or for her benefit. It therefore does not advance the plaintiff’s case to allege, as he does,

⁵⁶ DWS at para 38; DAWS at para 10.

that the defendant made no renovations to the JC Court Property⁵⁷ or that the defendant squandered the money in speculative trading in foreign currency.⁵⁸ The plaintiff has failed to discharge his burden of proof on both these points.

54 The only two sums for which the defendant has a duty to account to the Estate are therefore: (a) the emergency money of \$200,000; and (b) the \$418,000 that the defendant withdrew as the Mother's contribution towards the purchase of the JC Court Property.

The emergency money

55 I first address the emergency money. The defendant has given conflicting accounts in the serial litigation as to whether the emergency money has been spent or remains intact in a segregated account in the defendant's name. I assume, in the defendant's favour, that the latter is true.⁵⁹

56 I accept the defendant's evidence as to his reason for withdrawing the emergency money. I therefore find that he withdrew the emergency money and deposited it in his account for the Mother's benefit, *ie*, in order to make provision for the anticipated future costs of her medical and long-term care.

57 Nevertheless, there is no doubt that the defendant has a duty to account to the Estate for the emergency money. It is not his case that he withdrew the emergency money on the Mother's instructions or with her consent. His case is only that he did so for her benefit. I have accepted that aspect of his case. But that means simply that he did not act in breach of trust by transferring the

⁵⁷ Bundle of Affidavits Vol 2 at p 8, para 1.2, last sub-para and p 11, para 1.9.

⁵⁸ Bundle of Affidavits Vol 2 at p 14, para 3.1.

⁵⁹ Bundle of Affidavits Vol 2 at p 17, para 6.5.

emergency money into his account. It does not relieve him of his obligation to account to the Estate for the emergency money.

58 The defendant denies any liability to account for the emergency money by asserting that he is entitled to set it off against expenses at least \$200,000 that he incurred out of his own money for the benefit of the mother in looking after her during her lifetime. I do not accept that he is entitled to exercise any such set-off. A trustee cannot exercise self-help in this way, *ie*, by appropriating trust property, or the traceable proceeds of trust property, for a particular purpose and then, when asked to account for it, claiming a right to set it off against expenses that the trustee has incurred for that same purpose.

59 The trustee can, of course, exercise a set off with the beneficiary's consent. In the absence of consent, the trustee can bring a claim – or, in an action such as this, a counterclaim – for that sum to be paid to him out of the trust property. The defendant has not done either of these things. He is therefore liable to account to the Estate for the emergency money in full.

60 The only relief that the plaintiff prays for in relation to the emergency money is an order for the defendant to return the money to the Estate together with simple interest under s 12 of the Civil Law Act 1909 (2020 Rev Ed). That is a purely personal claim against the defendant. Of course, the defendant's liability to account for the emergency money has both personal and proprietary consequences. The Estate could, in principle, assert a proprietary right in the traceable proceeds of the emergency money in the hands of a defendant or even a third party in accordance with the equitable rules of tracing, following, and accessory liability.

61 The plaintiff has not established the factual basis for any such proprietary claim and, in any event, does not pursue any such proprietary claim. The plaintiff suggested in evidence, and suggests in submissions, that the defendant used the emergency money to purchase a property in Vietnam in the name of a third party. These are mere suggestions. He has far from proven on the balance of probabilities that the suggestion is in fact true. In any event, the plaintiff had not joined the third party as a defendant to this action. I am therefore unable to make any orders with proprietary consequences in relation to the emergency money. Nor is the plaintiff seeking to recover from the defendant as a personal claim the equivalent of any capital appreciation in the value of the Vietnam property.

62 The plaintiff's pursuit of only personal relief against the defendant amounts to abandoning any proprietary claim against him. So too, the plaintiff's prayer for only simple interest on the emergency money amounts to abandoning any claim for compound interest on it in equity on the principle in *Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] 1 AC 669).

63 In relation to the emergency money, the plaintiff is therefore entitled to the following orders:

- (a) a declaration that that the defendant holds on trust for the Estate the sum of \$200,000;
- (b) an order that the defendant pay to the Estate the sum of \$267,260.22 being the principal sum of \$200,000 together with simple interest at the rate of 5.33% per annum from the date this action was commenced to the date of judgment.

The \$418,000

64 The remaining sum in the joint account for which the defendant must account to the Estate is the sum of \$418,000 that the defendant withdrew as the Mother's contribution towards the purchase of the JC Court Property.

65 I shall analyse the Estate's claim to this sum together with my analysis of its claim to the JC Court Property.

The JC Court Property

66 The plaintiff claims that the defendant holds the entire beneficial interest in the JC Court Property on trust for the Estate. He makes this claim despite accepting that the defendant applied \$300,000 of his own funds towards the purchase of the property.

67 The basis of the plaintiff's claim is his allegation that the Mother intended to and instructed the defendant to purchase the JC Court Property in her *sole* name and using *only* her money from the joint account.⁶⁰ From the plaintiff's perspective, therefore, the defendant knowingly applied his own funds towards the purchase of the JC Court Property contrary to the Mother's express intent and instruction. It is on this basis that the plaintiff denies that the defendant holds any part of the beneficial interest in the JC Court Property at all for himself, even a beneficial interest that is merely proportionate to the funds of his own that he applied towards the purchase. The plaintiff does accept, however, that the defendant should be entitled to the return of the sum of \$300,000 which he applied from his own funds towards the purchase, together

⁶⁰ SOC at para 9.3; Bundle of Affidavits Vol 2 at p 8, paras 1.1–1.2 and p 11, para 1.10.

with interest that has accrued on it as at 30 March 2017, which he claims totals \$390,898.84 (*cf*[17] above).⁶¹

68 The plaintiff’s claim that the defendant holds the entire beneficial interest in the JC Court Property on trust for the Estate rests on four alternative varieties of trust: (a) an express trust; (b) an institutional constructive trust; (c) a remedial constructive trust; and (d) a presumed resulting trust.

69 For the reasons which follow, I do not accept the plaintiff’s case that the defendant holds the entire beneficial interest in the JC Court Property on trust for the Estate. I do however accept that the defendant holds 58.22% of the beneficial interest in the JC Court Property on a presumed resulting trust for the Estate.

70 I analyse in turn the four varieties of trust that the plaintiff relies on.

Express trust

71 I do not accept that the defendant holds any part of the JC Court Property on an express trust for the Estate.

72 An express trust is created only where three certainties coincide: certainty of the intention of the settlor, certainty of the subject matter of the trust and certainty of the objects of the trust (*Guy Neale and others v Nine Squares Pty Ltd* [2015] 1 SLR 1097 (“*Guy Neale*”) at [51]).

73 An express trust cannot arise unless the settlor has a sufficiently certain intention to create a trust. The intention that is necessary is an actual *subjective*

⁶¹ PWS at para 8(b).

intention (*Guy Neale* at [50]). There must be clear evidence that it was the settlor's actual intention to subject the trust property to trust obligations, as opposed to any other form of binding legal relationship (*The State-Owned Company Yugoimport SDPR (also known as Jugoimport-SDPR) v Westacre Investments Inc and other appeals* [2016] 5 SLR 372 at [55]).

74 To ascertain the settlor's intention, the court will examine the substance and effect of his words against the background of any relevant surrounding circumstances (*Guy Neale* at [52]). However, where a settlor declares a trust by contract, the usual objective intention necessary to form a contract will suffice to satisfy this certainty and give rise to an express trust (see Lynton Tucker, Nicholas Le Poidevin and James Brightwell, *Lewin on Trusts* (Sweet and Maxwell, 20th Ed, 2020) at para 5-014). It is not the plaintiff's case that the defendant was ever contractually bound to create a trust over the JC Court Property in favour of the Mother.

75 For the plaintiff to succeed on this aspect of his case he must establish that the defendant had a subjective intention to create an express trust over the JC Court Property in favour of the Mother when the JC Court Property was purchased. That is because it is not the plaintiff's case that the Mother and the defendant became absolute joint tenants of the JC Court Property upon purchase and that the defendant, only at some *later* date, declared an *express* trust of the JC Court Property in favour of the Mother.

76 The plaintiff submits that there was sufficient certainty of intention on the defendant's part at the time of purchase for an express trust to arise.⁶² I do not accept this submission.

⁶² PWS at paras 14–16.

77 The plaintiff submits that certainty of intention is clear from a letter of undertaking that the defendant signed in September 2001.⁶³ The plaintiff also adduced in evidence an earlier undertaking that the defendant signed in January 2000. But the plaintiff accepts that the January 2000 undertaking is too imprecisely worded to establish certainty of intention.⁶⁴ I therefore do not need to consider the January 2000 undertaking any further.

78 The terms of the September 2001 undertaking are as follows:

I, Mohamed Saleh ... wishes [*sic*] to state that I am ... a joint owner of the apartment at ... JC Court, with [the Mother] **as her trustee only**.

[emphasis in bold and underline]

79 The first point I make is that the September 2001 undertaking came two years after the Mother and the defendant purchased the JC Court Property. The question I must now decide is whether the defendant's intention to subject the JC Court Property to a trust obligation was sufficiently certain at the time it was purchased, *ie*, in 1999. Having a sufficiently certain intention to subject the JC Court Property to a trust obligation in 2001 cannot create an express trust of it in 1999.

80 The only evidential use to which the plaintiff can put the September 2001 undertaking is therefore as circumstantial evidence of the defendant's intention at the time of purchase. This requires me to: (a) find that the defendant had the necessary certainty of intention in September 2001; and (b) to infer from that that he had had the same intention at the time of purchase. It is this use of the September 2001 undertaking that I now examine.

⁶³ PWS at para 13; PBOD Vol 3 at p 110.

⁶⁴ Plaintiff's Opening Statement dated 10 November 2022 at p 8.

81 The defendant’s case is that the September 2001 undertaking does not reflect his true intention in September 2001 because he signed it under “duress”. As I told the defendant at trial and during oral closing submissions, duress as a legal concept is a very narrow one, quite different from the ordinary meaning of the word and quite different also from the defendant’s apparent understanding of the word. Duress as a legal concept is a vitiating factor in the law of contract. In that context, it is confined to duress of the person, *ie*, to an outward manifestation of a person’s consent secured by actual or threatened violence against that person.

82 The defendant’s evidence is that the duress he faced when he signed the September 2001 undertaking was “duress of losing his job”.⁶⁵ What the defendant is actually referring to is not duress of the person but economic duress. Economic duress is a contractual doctrine which does not vitiate a contract. Instead, it renders a contract voidable, and even then only if a party can establish that: (a) the counterparty applied pressure which amounted to compulsion of that party’s will; and (b) the pressure that the other party exerted was illegitimate (*E C Investment Holding Pte Ltd v Ridout Residence Pte Ltd and another (Orion Oil Ltd and another, interveners)* [2011] 2 SLR 232 at [48]). I do not accept that the defendant has discharged his burden of proving that he signed the September 2001 undertaking under economic duress such that it would, if it were a contract, be voidable.

83 I nevertheless accept the factual basis of the defendant’s submission of economic duress, *ie*, that he signed the September 2001 undertaking in circumstances in which affixing his signature did not represent his genuine

⁶⁵ Bundle of Affidavits Vol 5 at p 4, para 14.

subjective intention. This finding suffices to exclude the subjective intention required to establish certainty of intention in September 2001. The September 2001 undertaking therefore is no evidential basis whatsoever from which I can draw any inference as to the defendant's intention when he signed it in 2001, let alone at the time of purchase in 1999.

84 Without certainty of intention, there can be no express trust. It is therefore unnecessary for me to consider certainty of subject matter and certainty of objects. Nevertheless, for completeness, I find that the other two certainties are satisfied. The subject matter of the trust is sufficiently certain: it is the JC Court Property. The object of the trust is also sufficiently certain: it is the Mother. Contrary to the plaintiff's submission, the objects of a trust are the persons who are to benefit from the trust, and not the objectives or the purposes of the trust (*Guy Neale* at [60]).

85 The plaintiff having failed to prove certainty of intention, I reject the plaintiff's claim that the defendant holds the entirety of the beneficial interest in the JC Court Property on express trust for the Estate.

Constructive trust

86 The plaintiff's alternative submission is that the defendant holds the entirety of the beneficial interest in the JC Court Property on constructive trust for the Estate. This submission proceeds on two alternative grounds. First, the plaintiff alleges that the defendant was a fiduciary for the Mother and earned a secret profit by withdrawing \$418,000 from the joint account to purchase the JC Court Property with himself as a joint tenant. Second, the plaintiff alleges that the defendant and the Mother had a common intention that the defendant was to

hold the entirety of the beneficial interest in the JC Court Property on trust for the Mother.

87 For the reasons which follow, I reject both alternatives.

Secret profit in breach of fiduciary duty

88 As the Court of Appeal held in *Guy Neale* at [126], a constructive trust arises when a fiduciary uses his position to gain a benefit for himself contrary to his fiduciary obligations:

The basis for arguing that an institutional constructive trust should be imposed in the present circumstances is more specific and arises in a class of its own – namely, where there has been an abuse of a fiduciary position. The principle underlying the imposition of an institutional constructive trust in these circumstances is that a person must not use his position to gain a benefit for himself when he owes obligations of the utmost good faith and loyalty to another. This area of the law is not without controversy, and much ground has been traversed in England both in judicial and academic discourse.

[emphasis in underline]

89 I am prepared to assume in the plaintiff’s favour that the defendant was an *ad hoc* fiduciary for the Mother (*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 at [20]–[21]). In any event, as I have found, he was a resulting trustee of the joint account for the Mother. He was therefore, in that sense, a fiduciary for the Mother.

90 I do not accept that the defendant earned a secret profit in breach of either an *ad hoc* fiduciary duty or a breach of his fiduciary duty as a resulting

trustee of the joint account by withdrawing \$418,000 from the joint account and applying it towards the purchase of the JC Court Property.

91 The \$418,000 was not any sort of a profit, secret or otherwise. The money in the joint account was trust property. When the defendant withdrew the \$418,000 from the joint account, it retained its character as trust property. It did not, in any sense of the word, become a “profit” that he earned from his status as a fiduciary.

92 The defendant withdrew the \$418,000 from the joint account in order to purchase the JC Court property for the Mother. That is a purpose for the Mother’s benefit, even if the defendant was to be a joint tenant with her. The withdrawal is therefore not, in itself, a breach of the fiduciary duty that he owed to the Mother. It would have been a breach of his fiduciary duty if he had withdrawn the \$418,000 to purchase the JC Court Property for his *sole* benefit. In that situation, the increase in the value of the JC Court Property from 1999 to 2023 would be a profit that the defendant had earned in breach of trust. If that is what happened, the defendant would today hold the entirety of the beneficial interest in the JC Court Property on trust for the Estate as a constructive trustee. But that is not what happened.

93 The plaintiff accepts that the defendant applied \$418,000 from the joint account for the Mother’s benefit when he purchased the JC Court Property. His submission is that the defendant breached his fiduciary duty to the Mother by applying *only* \$418,000 from the joint account towards the purchase and by purchasing the property in *joint* names. The plaintiff submits that the defendant should instead have paid for the JC Court Property *in full* from the joint account and should have purchased the Property for the Mother as its *sole* owner.

94 To succeed in this submission, the plaintiff would have to advance a case that the mere *opportunity* to buy the JC Court Property in 1999 itself “belonged” – in some notional sense in equity – to the Mother such that that the defendant held that *opportunity* subject to an equitable obligation to exploit it for the sole benefit of the Mother. The diversion of that opportunity to his benefit, even in part, would then be a breach of his fiduciary duty to his mother⁶⁶ (see, eg, *Mona Computer Systems (S) Pte Ltd v Singaravelu Murugan* [2014] 1 SLR 847). But there is no factual or legal basis for any submission that that the mere *opportunity* to buy JC Court in 1999 “belonged” to the mother in any sense in equity. In any event, that is not the plaintiff’s case.

95 For these reasons, I do not accept that a constructive trust over the JC Court Property arose from the defendant’s failure to purchase the Property with *only* the Mother’s money and with the Mother as its *sole* owner.

Common intention constructive trust

96 The alternative basis on which the plaintiff claims that the defendant holds the entirety of the beneficial interest in the JC Court Property on a constructive trust for the Mother is that the defendant and the Mother shared a common intention that the defendant would use *only* the Mother’s money to purchase the JC Court Property, with the Mother becoming its sole owner.⁶⁷ The plaintiff also alleges this common intention was shared by the plaintiff and Fatima.

⁶⁶ Bundle of Affidavits Vol 2 at p 10, para 1.6.

⁶⁷ SOC at para 9.3; PWS at paras 35–39.

97 The plaintiff's and Fatima's intentions are irrelevant to the existence of a common intention constructive trust. Neither the plaintiff nor Fatima claim any interest in the JC Court Property under a common intention constructive trust. The sole beneficiary of that trust is alleged to be the Mother. The only money used to purchase the JC Court Property came from the Mother and the defendant. The only relevant intentions are therefore the Mother's and the defendant's.

98 The common intention necessary to support a common intention constructive trust is an intention that the property is to be shared beneficially (*Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*") at [96] citing *Lloyds Bank plc v Rosset* [1991] 1 AC 107 at 132. The common intention must subsist at the time the property is purchased (*Chan Yuen Lan* at [114] and [153]) or exceptionally, and only in relation to the quantification of their interest, at a later date. But there must be sufficient and compelling evidence of any such change in their common intention (*Chan Yuen Lan* at [114], [153], [160(f)]).

99 The plaintiff has not discharged his burden of proving that the Mother's intention was an intention that she held in common with the defendant at the time the JC Court Property was purchased (*Ng So Hang v Wong Sang Woo* [2018] SGHC 162 ("*Ng So Hang*") at [42]). I find that the Mother subjectively intended – at all times from the time the joint account was opened in 1995 until her death in 2017 – that *only* her money should be used to purchase a residence for her and to make her its *sole* owner. I also find that the defendant held that intention in common with the Mother at some point before the JC Court Property was purchased. But it is clear that, by the time the JC Court Property was purchased and at all times thereafter, the defendant had abandoned any such

intention. That is why he used \$300,000 of his own money towards the purchase. Any such intention therefore and thereby ceased to be a common intention at the time the JC Court Property was purchased.

100 Further, the intention that the defendant had, at some time before the JC Court Property was purchased, held in common with his Mother on my assumption was not formed in any manner which obliged him, either at law or in equity, not to abandon it unilaterally. Using *only* \$418,000 of the Mother's funds to purchase the JC Court Property was not, in itself, a breach of any fiduciary duty to the Mother. He therefore committed no legal or equitable wrong by abandoning that intention. The defendant's conduct in abandoning an intention held in common with the Mother does not confer any right on the Mother in equity to the entirety of the beneficial interest in the JC Court Property. As I have already pointed out, the mere opportunity to buy JC Court was not, in itself, an opportunity which "belonged" in equity to the Mother.

101 There being no common intention at the time the JC Court Property was purchased, there is no basis for a common intention constructive trust over it. No constructive trust having arisen over it, there is no basis for any inquiry as to whether there was a change in the parties' common intention as to the quantification of their respective beneficial interests in it.

Resulting trust

102 The plaintiff next submits that the defendant holds the entire beneficial interest in the JC Court Property on a resulting trust for the Mother. I accept that the defendant holds the JC Court Property on a presumed resulting trust for the Mother, but only in proportion to her contribution to the purchase of the property.

103 I begin my analysis by determining the Mother’s and the defendant’s contributions to the purchase of the JC Court Property.

104 The Mother’s contribution to the purchase of the JC Court Property is the sum of \$418,000. This comprises: (a) her contribution of \$388,000 to the purchase price; and (b) her contribution to pay in full the stamp duty and legal costs of \$30,000.

105 The \$62,000 which the defendant claims to have paid from the Mother’s money for renovations and furnishings cannot be included as the Mother’s contribution (*Neo Hui Ling v Ang Ah Sew* [2012] 2 SLR 831 (“*Neo Hui Ling*”) at [17]–[18]). This is because only direct contributions to the purchase are relevant for the resulting trust analysis (*Lau Siew Kim* at [114], citing Robert Pearce and John Stevens, *The Law of Trusts and Equitable Obligations* (Oxford University Press, 4th Ed, 2006) at p 243). The \$62,000 could be treated as a direct contribution by the Mother if the renovations had been carried out contemporaneously with the purchase and increased the value of the property (*Lau Siew Kim* at [126]). But that is not the plaintiff’s case. The plaintiff denies that the defendant spent any such sum on renovations or furnishings at all. Even if that were the plaintiff’s case, there is no evidence before me as to: (a) what proportion of the \$62,000 was spent on renovations as opposed to furnishings; and (b) whether the renovations increased the value of the JC Court Property.

106 The \$30,000 paid from the Mother’s money for the stamp duty and legal fees must be included as the Mother’s contribution. This is because payment of that sum had causative force in vesting legal title to the JC Court Property in the defendant and the mother as joint tenants at law.

107 The total cost of purchasing the JC Court Property was \$718,000. The Mother's contribution to the purchase is limited to \$418,000. The defendant's contribution is the remaining \$300,000.

108 The Mother and the defendant therefore made unequal contributions to the purchase of the JC Court Property. Upon purchase as joint tenants at law, they held the beneficial interest in the property as tenants in common in equity in proportion to their contributions. Calculated to two decimal places for convenience, their contributions are 58.22% by the Mother and 41.78% by the defendant.

109 The defendant submits that the operation of his right of survivorship at common law entitles him to the entire beneficial interest in the JC Court Property. This is a misunderstanding of a right of survivorship. The right of survivorship has two facets. First, it operates at common law to vest the legal interest of the dead joint tenant in the surviving joint tenants. The interest of the dead joint tenant disappears, and the surviving joint tenants continue to hold the property at common law as joint tenants (*Ng So Hang* at [47]). Survivorship does not affect any underlying beneficial interests which may subsist in the co-owned property, whether they arose during the lifetime of the joint tenants (*Neo Hui Ling* at [39]) or after one joint tenant died (*Ng So Hang* at [46]).

110 The Mother's death therefore effected no change in the beneficial interests in the JC Court Property. The defendant is no doubt now recorded on the register of titles as the sole owner of the JC Court Property.⁶⁸ But that is only at common law, by operation of the right of survivorship under the joint tenancy at law. The Mother's 58.22% beneficial interest in the JC Court Property

⁶⁸ Bundle of Affidavits Vol 1 at p 188.

remains unaffected by the defendant's acquisition of legal title in his sole name. The Mother's beneficial interest has simply devolved upon her Estate. So too, the defendant's 41.78% beneficial interest in the JC Court Property remains unaffected by his registration as its sole owner.

111 The defendant is therefore correct when he says that he became the sole legal owner of the JC Court Property upon and by reason of the Mother's death in August 2017. But the defendant is wrong when he says that he thereby now also owns the entire beneficial interest in the JC Court Property. The Mother's death had no effect on the beneficial interest she acquired in the JC Court Property by reason of her unequal contribution to its purchase in 1999.

112 In the analysis thus far, I have assumed to be true the defendant's evidence that he withdrew the Mother's contribution of \$418,000 from the joint account for the Mother's benefit, and therefore not in breach of trust. But even if I assume that the defendant did so in breach of trust, the practical result is the same. On that assumption, the Estate is now entitled to trace the \$418,000 into the JC Court Property. On either alternative, therefore, the ultimate result is that the Mother is entitled in equity to 58.22% of the value of the JC Court Property today.

The defendant's alternative submission

113 The defendant submits in the alternative that – even if the Mother's larger contribution gave rise to a presumed resulting trust in her favour and a tenancy in common in equity of the JC Court Property – it was nevertheless the Mother's and his common intention when purchasing the JC Court Property that the entire beneficial interest in the property should go to the surviving joint owner.

114 Although the defendant did not put his alternative submission in this way, and did not support it with the relevant authority, it amounts to a submission that the presumed resulting trust arising from the Mother's larger contribution to the purchase of the JC Court Property gave her a beneficial interest in proportion to her contribution only during her lifetime and did not extend to the remainder which was free of any trust and therefore passed to him at common law upon the Mother's death under his right of survivorship.

115 Authority for the defendant's alternative submission can be found in an *obiter dictum* of the Court of Appeal in *Lau Siew Kim*. In that case, at [105], the Court of Appeal suggested that the presumption of a resulting trust need not relate to the entire beneficial interest in the trust property such that, for example, it is possible for one joint owner: (a) to hold the life interest free of any trust while holding the remainder on a presumed resulting trust for the joint owner who made the larger contribution; or (b) to hold the life interest on a presumed resulting trust for the joint owner who made the larger contribution while holding the remainder free of any trust:

105 ...[A] resulting trust need not necessarily relate to the entire interest in the property. The presumption of *resulting trust* may be rebutted as to a life interest, but may still operate in respect of the interest in remainder: see, for example, *Napier v Public Trustee* (1980) 32 ALR 153. Conversely, the intention may be that the contributing party should receive the income from the purchased property during his life – to this extent the resulting trust prevails, but the property should belong to the benefiting party after his death, *ie*, the resulting trust is rebutted as to the remainder: see, for example, *Young v Sealey* [1949] Ch 278.

[emphasis in original]

116 I am prepared to assume in the defendant's favour, without deciding the issue, that this *dictum* is indeed authority for the proposition that the right of survivorship arising under a joint tenancy at law is capable of being the subject

matter of a trust, whether resulting or otherwise, and is therefore a proprietary right of some sort. But even on that assumption, I do not consider that the defendant's alternative submission makes any difference to my conclusion that the defendant now holds 58.22% of the beneficial interest in the JC Court Property on a presumed resulting trust for the Estate. I say that for three reasons.

117 First, for me to entertain this submission at this stage would operate unfairly to the plaintiff. The defendant made this assertion belatedly, only in the course of his oral closing submissions. But in substance, his assertion amounts to evidence of fact. He ought therefore to have given evidence of this alleged common intention on oath or affirmation in chief. And the plaintiff ought to have had an opportunity to cross-examine the defendant on this evidence at trial. The defendant cannot take advantage of his status as a litigant in person to advance evidence of this contentious and self-serving assertion of fact unsworn from the bar and without submitting to cross-examination. I consider that it would be irretrievably unfair to the plaintiff to allow the defendant to add an alternative case in this belated way.

118 Second, and in any event, I do not accept as being true the defendant's assertion that it was the Mother's and his common intention when the JC Court Property was purchased that the entire beneficial interest in the property should go to the surviving joint owner. The assertion is a self-serving afterthought. The defendant made it at a very late stage: after pleadings, after affidavits of evidence in chief, after trial, after written closing submissions and even after presenting his case in his oral closing submissions. It emerged only in response to a leading question from me during his oral closing submissions. Further, the assertion is contrary to the inherent probabilities. The defendant asserts that the Mother and he formed *one* intention as to how the JC Court Property was to be

held during their lifetimes and formed a *separate* intention as to how it was to be held after either one of them died. Lay persons, particularly family members, do not generally think about the manner in which they are to hold the beneficial interest in property at all, let alone at such depth and in such sophisticated terms.

119 Third, the defendant's entire case in this action has been that there is no trust whatsoever in relation to the JC Court Property. He takes this position even in the additional written submissions I allowed him to file in support of his alternative submission based on this belated assertion of fact. In those written submissions, he continues to reiterate that his and the Mother's joint tenancy took effect absolutely, without any equitable constraints on either the Mother's or the defendant's right of survivorship.

120 I therefore find that both the Mother and the defendant formed no intention as to how the beneficial interest in the JC Court Property was to be held when they made their unequal contributions to its purchase in 1999. Accordingly, the Mother lacked the intention to benefit the defendant by her larger contribution to the purchase of the property. This is precisely the situation that the presumption of resulting trust is intended to cater for.

121 Accordingly, I find that the beneficial interests dictated by the presumption of resulting trust bind the parties in equity. The Estate is therefore entitled to 58.22% of the beneficial interest in the JC Court Property and the defendant to a 41.78% interest in it.

Presumption of advancement

122 I turn to consider whether the presumption of advancement arises to rebut the presumption of resulting trust (*Chan Yuen Lan* at [160(e)]).

123 The presumption of advancement applies in Singapore in favour of a child and against a parent regardless of whether the parent is a father or a mother (*Lau Siew Kim* at [62]–[68]). That was not always the case. The presumption of advancement developed as the law’s recognition of a man’s moral or equitable obligation, in traditional societies, to provide financially for his wife and children (*Low Gim Siah and others v Low Geok Khim and another* [2007] 1 SLR(R) 795 at [44]). But in modern societies, women invariably share the burden of providing financially for their children (*Lau Siew Kim* at [63]). The Singapore courts have accordingly extended the presumption of advancement to cover the mother-child relationship and not just the father-child relationship. The Court of Appeal has even held that the presumption of advancement applies in the context of a joint tenancy between a father, a mother, their son and their daughter-in-law (*Low Yin Ni and another v Tay Yuan Wei Jaycie (formerly known as Tay Yeng Choo Jessy) and another*) [2020] SGCA 58 at [1] and [8]).

124 The presumption of advancement in a parent-child relationship is capable of applying in favour of a child who is an adult and who is no longer dependent on the parent (*Tan Chin Hoon and others v Tan Choo Suan (in her personal capacity and as executrix of the estate of Tan Kiam Toen, deceased) and others and other matters* [2015] SGHC 306 at [235]). The Court of Appeal considered this question briefly in *Lau Siew Kim* (at [68]). The consideration was *obiter dictum* because *Lau Siew Kim* was a case between spouses, not between parent and child. But the Court of Appeal did indicate in *dictum* that it was more inclined to apply the presumption of advancement to all transfers from a parent to a child, even if the child was an adult and even if the child was no longer dependent on the parent (*Lau Siew Kim* at [68]). The court at [68] cited with approval the minority view of Abella J in *Pecore v Pecore* [2007] 1 SCR 795 (“*Pecore*”). In her decision, Abella J regarded the presumption of

advancement as emerging from both dependency and natural affection. The natural affection being an enduring one, the presumption therefore arises in all gratuitous transfers from a parent to a child, regardless of how old the child is and regardless of whether the child is then dependent on the parent (*Lau Siew Kim* at [68], citing *Pecore* at [90]–[103]).

125 The two justifications for the presumption of advancement – dependency and affection – underlie the two key elements that are crucial in determining the strength with which the presumption of advancement arises in any given case: (a) the nature of the relationship between the parties; and (b) the state of the relationship between the parties (*Lau Siew Kim* at [78]). The first element allows a consideration of the degree of dependency between the parties, bearing in mind the source of the obligation from which the dependency arises. The second element allows a consideration of the degree of affection between the parties at the time of the gratuitous transfer, bearing in mind whether the relationship is at that time a close and caring one or more formal.

126 On the facts of this case, I hold that the presumption of advancement arises only weakly and has been rebutted by the evidence.

127 The key elements are to be assessed at the time of the gratuitous transfer, *ie*, in 1999 when the JC Court Property was purchased.

128 On the key element of dependency, it was the Mother who was dependent on the defendant in 1999. Although the Mother had a substantial sum of money in the joint account, the evidence is clear that she was dependent on the defendant to manage her affairs, including her financial affairs, and to cater for her day-to-day needs. Further, it is the defendant’s own case that he decided to use the Mother’s money to purchase the JC Court Property so that the Mother

would have a home of her own. This indicates that the Mother was dependent on the son to manage her financial affairs.

129 On the key element of affection, it is relevant to consider the number of children that a parent has. The more children a parent has, the less likely it is that the parent intended to make a gift to only one of the children without making similar provision for the other children (*Lau Siew Kim* at [68]). But this proposition is not writ in stone. If one child is unique in some respect, the fact that the parent had other children will not necessarily operate to the detriment of that one child (*Ranjit Singh s/o Ramdarsh Singh (suing as co-executor of the estate of Ramdarsh Singh s/o Danukdhari Singh (alias Ram Darash Singh), deceased and as a beneficiary of the estate) v Harisankar Singh (sued as co-executor of the estate of Ramdarsh Singh s/o Danukdhari Singh (alias Ram Darash Singh) deceased and in his personal capacity)* [2021] SGCA 66 (“*Ranjit Singh*”) at [5]). In *Ranjit Singh*, a father had six children. All of the children were adults. Three were sons and three were daughters. But only one child was in a unique position in that he was present with the father in Singapore throughout and was financially dependent on the father for his living. Given that this child was in a unique position, the fact that the father had six children, and the fact that the unique child was one of three sons, did not operate to the detriment of that child. The Court of Appeal therefore agreed with the trial judge that the presumption of advancement in favour of this child was not weakened (at [4]–[5]).

130 The presumption of advancement arises in favour of the defendant, but only weakly. The defendant is only one of the Mother’s five children. Although the Mother lived with him from 1995 to 2016, there is no evidence that the Mother considered him unique in any way amongst her five children. Even if I

assume that the defendant owed an *ad hoc* fiduciary duty to the Mother (see [89] above), and even if it was the defendant on whom the Mother was dependent, there is no evidence that the Mother had greater affection for the defendant than for her four other children.

131 As against this, there is clear and unqualified evidence that the Mother intended that her money in the joint account be used to purchase the JC Court Property to belong to her solely. As I have found, this intention was no longer a common intention at the time of purchase in the sense that the defendant had abandoned it unilaterally. But my finding as to the Mother’s intention is nevertheless sufficient to rebut any presumption of advancement in respect of the Mother’s money which the defendant used to make the larger contribution towards the purchase the JC Court Property.

132 For the foregoing reasons, I find that the presumption of advancement in favour of the defendant arises only weakly and has been rebutted.

Remedial constructive trust

133 The plaintiff next submits that I should impose a remedial constructive trust on the defendant over the entire beneficial interest in the JC Court Property. For this submission, the plaintiff relies on the decision of the Court of Appeal in *Ching Mun Fong (executrix of the estate of Tan Geok Tee, deceased) v Liu Cho Chit* [2001] 1 SLR(R) 856 at [34].⁶⁹

134 The plaintiff’s case is that I ought to impose this remedial constructive on the defendant as a remedy for the defendant’s “most egregious” breach of

⁶⁹ PWS at para 42.

his fiduciary and trusteeship duties.⁷⁰ I have thus far made three critical findings. First, the defendant did not breach any fiduciary duty by purchasing the JC Court Property, in part, with his own money (see [89]–[94] above). Second, I have found that the defendant is under a duty to account to the Estate for the emergency money (see [55]–[59] above). Third, I have found that the defendant holds 58.22% of the JC Court Property on a resulting trust for the Estate (see [108]–[112] above). There is no remaining wrong by the defendant for me to remedy by imposing a constructive trust on the entire beneficial interest in the JC Court Property.

135 For the same reasons as I have dismissed the plaintiff’s claims of an express trust (see [71]–[85] above) and an institutional constructive trust (see [86]–[100] above), I decline to impose a remedial constructive trust over the entire beneficial interest in the JC Court Property.

Income from the JC Court Property

136 The plaintiff seeks an account of the rent that the defendant earned or ought to have earned from the JC Court Property from the date of the Mother’s death in August 2017 to the date the defendant delivers vacant possession of the JC Court Property to the Estate. In his oral closing submissions, plaintiff’s counsel confirmed that the plaintiff claims an account of rent only to the date of the judgment, *ie*, 31 January 2023.⁷¹ In correspondence with the court, plaintiff’s

⁷⁰ PWS at para 43.

⁷¹ Certified Transcript dated 31 January 2023 at p 1 lines 27–30.

counsel indicated that he had no comments to an order to that effect in the judgment to be entered in this action.⁷²

137 The Estate is entitled to an account of rent. I therefore order the defendant to account to the Estate for the rent which the defendant did earn or ought to have earned on the JC Court Property from 14 August 2017 to 31 January 2023.

138 As the Estate has only a 58.22% beneficial interest in the JC Court Property, the Estate is entitled only to 58.22% of the rent that the defendant did earn or could have earned during this period.

Conclusion

139 For the foregoing reasons, I have entered judgment for the plaintiff against the defendant in the following terms:⁷³

- (a) I have declared that the defendant held the emergency money on trust for the plaintiff;
- (b) By reason of that declaration, I have ordered the defendant to pay to the Estate the sum of \$267,260.22 being the emergency money of \$200,000 plus interest at 5.33% per annum from the date this action was commenced to the date of judgment;
- (c) I have declared that the beneficial interest in the JC Court Property was, from the moment it was conveyed to the Mother and the

⁷² Letter from the Legal Registry to both parties dated 27 February 2023 enclosing draft terms of judgment; letter from plaintiff's counsel to the court dated 1 March 2023, para 3.

⁷³ HC/JUD 100/2023 dated 31 January 2023, extracted 15 March 2023.

defendant as joint tenants at law, and has always thereafter been held as follows under a presumed resulting trust:

(i) The plaintiff is and has always been the beneficial owner of 58.2172702% (the “Estate’s Proportion”) of the JC Court Property; and

(ii) The defendant is and has always been the beneficial owner of 41.7827298% (the “Defendant’s Proportion”) of the JC Court Property.

(d) I have declared that the defendant holds his legal interest in the JC Court Property on trust for the Estate as to the Estate’s Proportion and for himself as to the Defendant’s Proportion.

(e) I have ordered that the JC Court Property be sold and the proceeds of sale, after deducting the costs of and occasioned by the sale, be distributed to the Estate in accordance with the Estate’s Proportion and to the defendant in accordance with the Defendant’s Proportion.

(f) I have given the Estate sole conduct of the sale of the JC Court Property and given directions to the defendant to assist and cooperate in the sale.

(g) I have ordered the defendant to account to the plaintiff, in a separate phase of this action, for the Estate’s Proportion of the income, net of all expenses of and incidental to earning that income, which was earned or could have been earned if the JC Court Property had been let to a tenant at a fair market rent from the date on which the Mother died until the date of judgment.

- (h) I have dismissed all other claims brought by the plaintiff against the defendant in this action.
- (i) I have ordered the defendant to pay to the plaintiff its costs of and incidental to this action, such costs fixed at \$135,676.58.
- (j) I have deemed the plaintiff's costs of and incidental to this action to be costs of the administration of the Estate and to be paid out of the Estate after taking into account the costs paid to the plaintiff by the defendant under this judgment.

140 In an effort to minimise further satellite litigation, I have ordered the Estate to recover all sums which the defendant has been or will be adjudged liable to pay to the plaintiff in this action only by way of deducting those sums from the Defendant's Proportion of the net proceeds of sale of the JC Court Property unless the court grants leave to do so otherwise.

141 Following my decision, plaintiff's counsel sought clarification by letter as to whether the sums secured by the CPF Board's charge on the JC Court Property should be repaid out of the gross proceeds of sale of the property or out of the defendant's share of the net proceeds of sale.⁷⁴ Given that the CPF Board's charge secures the sum which the defendant alone is obliged to repay to his own CPF account, I considered it obvious that that sum should be deducted from the defendant's share of the net proceeds of sale of the JC Court Property. I therefore declined to include an express provision to that effect.

142 I have also given the plaintiff and the defendant liberty to apply for directions in relation to the interpretation or implementation of my judgment.

⁷⁴ Letter from plaintiff's counsel to the court dated 1 March 2023, para 9.

Vinodh Coomaraswamy
Judge of the High Court

Mohammad Shafiq bin Haja Maideen (M Shafiq Chambers LLC)
for the plaintiff;
The defendant unrepresented.
