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

[2023] SGHC 38

Suit 554 of 2021

Between

(1) Er Kok Yong
(2) Lim Soon Hwa Lawrence

… Plaintiffs

And

(1) Tan Cheng Cheng (as co-administratrix of the estate of Spencer Tuppani, deceased)
(2) Tan San San (as co-administratrix of the estate of Spencer Tuppani, deceased)
(3) Keh Lay Hong(as co-administratrix of the estate of Spencer Tuppani, deceased)

… Defendants

GROUNDS OF DECISION

[Evidence — Adverse Inferences]
[Trusts — Constructive Trusts]
[Trusts — Resulting Trusts]
[Trusts — Resulting Trusts — Presumed Resulting Trusts]

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Er Kok Yong and another
v
Tan Cheng Cheng (as co-administratrix of the estate of Spencer Tuppani, deceased) and others

[2023] SGHC 38

General Division of the High Court — Suit No 554 of 2021
Mavis Chionh Sze Chyi J
4–6, 10–13, 17–19 May, 29 August, 1 November 2022

17 February 2023

Mavis Chionh Sze Chyi J:

Introduction

1 HC/S 554/2021 ("Suit 554") was heard together with HC/S 438/2021 ("Suit 438") in the same trial before me. Both suits centred on assets held in the sole name of one Spencer Tuppani ("Spencer"), who passed away on 10 July 2017 after being stabbed by his father-in-law. It was after Spencer's passing that the Plaintiffs Er Kok Yong ("Jason") and Lim Soon Hwa Lawrence ("Lawrence") sought to lay claim to some of the assets held in Spencer's sole name. In Suit 554, Jason and Lawrence claimed that they each had beneficial ownership of a one-third share in the property at 31A Lorong Mambong, Singapore 277689 (the "Property") which was registered in Spencer's sole name. In Suit 438, Jason claimed that he was the sole beneficial owner of a BMW M6 vehicle ("the Vehicle") which was registered to Spencer. Lawrence was not a

party to Suit 438, although he gave evidence as one of Jason's witnesses in that suit.

2 The Defendants in both suits are the same parties. All three Defendants are the co-administratrix of Spencer's estate and are sued in that capacity. The 1st Defendant ("Shyller") was Spencer's wife at the time of his passing. The 2nd Defendant is Shyller's sister-in-law. The 3rd Defendant is Spencer's former wife. In Suit 438, apart from resisting Jason's claim on the Vehicle, the Defendants also brought a counter-claim against Jason for monies totalling more than S$1 mil, which he was said to have received from Spencer on various occasions between August 2014 and May 2017, and which he allegedly held on a "presumed resulting trust" for Spencer.

3 Both suits were ordered to be heard in the same trial before the same trial judge. There was an overlap in the witnesses to be called for the two suits. In correspondence exchanged with the court registry and at the JPTC conducted by me prior to the trial, counsel for the parties in the two suits confirmed that parties had agreed to evidence led in respect of one suit standing as evidence in the other (subject to the rules of evidence, including relevance). The only exception was in respect of Mr Andy Chiok ("Mr Chiok"), counsel for the Defendants in Suit 438, who was called as a factual witness in Suit 554. As Mr Chiok was called to give evidence on issues pertaining solely to Suit 554, it was generally agreed that his testimony would not be relevant to Suit 438.

4 This set of written grounds deals with the Plaintiffs' claim in Suit 554. I dismissed the Plaintiffs' claim at the conclusion of the trial; and they have lodged an appeal. In setting out the grounds for my decision, I first set out a summary of the facts which were not in dispute.

The background

Facts

5 By way of background, the Plaintiffs had been friends with Spencer for some years prior to his death. On the Plaintiffs' telling, the trio shared similar interests and were also always on the lookout for potential business and investment opportunities.[1] It was not disputed that they had set up a number of businesses together. These included Cashmi Ltd, a fintech company which was set up in 2015; as well as Orion Group Pte Ltd, a company incorporated in 2016 and allegedly involved in the sale of ceiling fans.[2] There had also been plans to set up a franchise to introduce bespoke, limited-edition Bamford watches into Singapore (the "Bamford Watch Project"), but this project apparently never took off despite some initial steps having been taken.[3] The Plaintiffs claimed that it was in connection with the Bamford Watch Project that they had each handed over S$99,000 in cash to Spencer; and that when the project failed to materialise, Spencer "continued to hold these sums of S$99,000.00 on trust" for the Plaintiffs.[4]

6 Sometime around late 2016, Spencer became interested in purchasing the Property.[5] At that time, the Property was tenanted to Wala Wala Café Bar Pte Ltd ("Wala Wala"). Spencer eventually decided to purchase the Property from one Mr Goh Eng Leong and one Mr Goh Ek Huat for the sum of S$4.8m. This sum of S$4.8m was reduced to S$4.6m, purportedly to set off a loan of

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1 Plaintiffs' Closing Submissions at paras 5 and 8.

2 Plaintiffs' Closing Submissions at para 8.

3 Plaintiffs' Closing Submissions at para 9.

4 Plaintiffs' Closing Submissions at para 22.

5 Statement of Claim ("SOC") at para 5; Plaintiffs' Closing Submissions at para 12.

S$200,000.00 which Spencer had given Goh Eng Leong.[6] The conveyance of the Property took place in the following manner:

(a) On 15 December 2016, Spencer's solicitors issued a cheque for the sum of S$92,000.00 representing 2% of the Property's purchase price – this was the option fee.

(b) On 16 March 2017, Spencer's solicitors issued the following:

(i) A cashier's order in favour of "Matthew Chiong Partnership – CVY" for the sum of S$98,000.00. This was the balance of the 5% deposit that had to be paid pursuant to the option to purchase (less S$40,000.00 as agreed between Spencer and the sellers).

(ii) A cheque for the sum of S$132,600.00 to the Commissioner of Stamp Duties. This was for payment of the buyer's stamp duty.

(c) On 8 May 2017, the amount owing to the sellers was further reduced by S$44,610.00, pursuant to an agreement between Spencer and the sellers for the agent's commission of S$24,610.00 to be borne by the latter, and for the set-off of a S$25,000.00 cash loan given by Spencer to Goh Eng Leong.

(d) On 9 May 2017, a sum of S$886.45 (representing the reimbursement of property tax for the period 20 May 2017 to 31

6 SOC at para 7(a).

December 2017) was added to the outstanding amount owed to the sellers.

(e) On 9 May 2017, the outstanding amount owed to the sellers was further reduced by a sum of S$40,645.17. Out of this sum, S$36,000.00 represented the rental deposit paid by Wala Wala, with the remaining S$4,645.27 being the reimbursement of rent from 20 May 2017 to 31 May 2017.

(f) On 19 May 2017, Spencer's solicitors issued the following cashier's orders for the total sum of S$4,280,631.28 being the completion monies:

(i) A cashier's order for the sum of S$2,171,001.58 in favour of the "Maybank Account of Goh Eng Leong and Goh Ek Huat".

(ii) A cashier's order for the sum of S$100,000.00 issued in favour of "Credit Xtra Pte Ltd".

(iii) A cashier's order for the sum of S$250,000.00 issued in favour of "VM Capital Pte Ltd";

(iv) Four cashier's orders for the total sum of S$760,000.00 in favour of Goh Ek Huat.

(v) Two cashier's orders for the total sum of S$999,629.70 in favour of Goh Eng Leong.

7 In addition to the original purchase price of $4.8m, the Plaintiffs alleged that Spencer told them a further sum of S$485,600.00 was required for the purchase of the Property, of which S$350,000.00 was to be deposited with

Malayan Bank Berhad Singapore ("Maybank") as collateral for the mortgage loan on the Property, while the balance S$135,600.00 was to pay the stamp fee.[7]

8 I next outline each side's respective case as to the beneficial ownership of the Property.

The Plaintiffs' case

9 The Plaintiffs' case was that during the course of multiple discussions in late 2016, it was orally agreed between the Plaintiffs and Spencer that they would purchase the Property for a sum of S$4.8m. The three of them allegedly shared a common intention that:[8]

(a) While the legal title to the Property was to be registered in Spencer's sole name, the Property was to be beneficially owned by Spencer and the Plaintiffs in equal shares (*ie*, one-third share each);

(b) Spencer would hold the Plaintiffs' combined two-thirds share of the Property on their behalf;

(c) Spencer and the Plaintiffs would contribute equally towards the purchase price.

10 Pursuant to the oral agreement between Spencer and the Plaintiffs, each of them was to contribute S$535,200.00 to the purchase of the property, with the outstanding balance being paid by way of a loan from Maybank (the "Maybank Loan") which took a legal mortgage over the Property.

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7 SOC at para 8.

8 SOC at para 6.

11 Both the Plaintiffs claimed that they did not know whether Spencer had contributed any money at all towards the purchase of the Property. They also claimed that they had each contributed S$535,200.00 towards the purchase price.[9] As for the Maybank Loan, it was said that they had orally agreed with Spencer for the mortgage repayments to be financed by the rental proceeds from the Property; and to facilitate this, Spencer executed a deed of assignment of rental proceeds to Maybank.[10]

12 Sometime in early May 2017, Spencer asked his lawyer Mahtani Bhagwandas ("Mahtani"), to prepare a trust deed (the "Trust Deed") declaring that Spencer held two-thirds of the beneficial interest in the Property on trust for the Plaintiffs in equal shares.[11] Mahtani's law firm, LegalStandard LLP ("LegalStandard") prepared the Trust Deed which was to be signed and executed by Spencer and the Plaintiffs. As at the time of Spencer's death on 10 July 2017, however, only Lawrence had signed the Trust Deed.[12]

13 The Plaintiffs relied on two alternative bases for their claims in Suit 554. The first was that of a common intention constructive trust – specifically, that there was a common intention amongst the three of them to share the Property beneficially in equal parts, and that this common intention was evident from the following facts:

(a) The oral agreement between the three of them (see [9] – [10] above);

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9 SOC at para 10.

10 SOC at para 10.

11 SOC at para 11.

12 SOC at para 12.

(b) The financial contributions which they had made to the purchase price of the Property;

(c) The unexecuted Trust Deed.

14 In the alternative, the Plaintiffs contended that the unexecuted Trust Deed demonstrated that Spencer and the Plaintiffs had acknowledged their respective equal contributions to and interests in the Property.

15 The second legal basis advanced by the Plaintiffs was that of a resulting trust.[13] The Plaintiffs alleged that they had made direct financial contributions towards the purchase price of the property. As for the rental which was to have gone towards "covering" the mortgage repayment, the Property had been leased to Wala Wala Café Bar Pte Ltd since the Property was purchased,[14] but the Plaintiffs said they had no idea how much had been received in rental income.

16 *Per* their Statement of Claim, the Plaintiffs sought the following reliefs:[15]

(a) A declaration that the Defendants jointly and individually hold the Property on trust for the benefit of the Estate and the 1st and 2nd Plaintiffs as beneficial tenants in common in equal shares;

(b) An order that the Defendants (whether jointly, or individually) take all necessary steps to execute all necessary documents to reflect the 1st and 2nd Plaintiff's interests in the Property within 14 days from the date of the order to be made;

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13 SOC at paras 16 – 21.

14 SOC at para 18.

15 SOC at pp 6 – 7.

(c) In the event the Defendants (whether jointly, or severally) failed or refused to execute all necessary documents to reflect the Plaintiffs' interests in the Property within 7 days from the date of the order to be made hereon, an order be made to empower the Registrar of the Supreme Court to execute all necessary documents on behalf of and in the name of the Defendants to vest the legal or beneficial title of the Property in equal proportions among the Plaintiffs and the Estate, pursuant to s 14(1) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed);

(d) An injunction restraining the Defendants (whether jointly or individually), their servants, nominees or agents or otherwise from disposing of or dealing with the Property in any manner whatsoever;

(e) An order for accounts to be taken for the rental income and/or revenue collected by the Defendants and/or utilised and/or retained by the Defendants in respect of the Property and for payment of any sums due thereunder;

(f) Damages in lieu or in addition to the orders in reliefs sought above or such other sums as this court assesses to be fit;

(g) Interest;

(h) Costs; and

(i) Such further or other relief as the court deems fit to award.

The Defendants' case

17 In response, the Defendants denied the existence of a common intention between Spencer and the Plaintiffs for the latter to have a two-thirds share of the Property. The Defendants took the position that Spencer was, at all material

times, the beneficial and legal owner of the Property,[16] and that there was no oral agreement between him and the Plaintiffs for him to hold the latter's share of the Property on trust.[17]

18 The Defendants denied that the Plaintiffs had contributed S$535,200.00 each towards the purchase price of the Property.[18] They contended, *inter alia*, that the Plaintiffs had failed to produce any evidence of the amounts allegedly paid towards the purchase of the Property.[19]

Issues to be determined

19 These were the two main issues which fell for my determination in the present suit:

(a) Whether the Plaintiffs and Spencer had a common intention that the Property would be purchased in Spencer's sole name but beneficially owned by all three of them in equal shares, with Spencer holding the Plaintiffs' combined two-third share on their behalf;

(b) Whether there was a resulting trust in the Plaintiffs' favour whereby each Plaintiff was entitled to a one-third share of the Property.

16 Defence at para 1.

17 Defence at paras 3 and 14.

18 Defence at para 9.

19 Defence at para 10.

My decision

20 I set out below the reasons for my dismissal of the Plaintiffs' claim, starting with a summary of the general legal principles applicable to the determination of the disputed issues.

The general legal principles applicable

21 As the High Court noted in *Buthmanaban s/o Vaithilingam v Krishnavanny d/o Vaithilingam (administratrix of the estate of Ponnusamy Sivapakiam, deceased) and another* [2015] SGHC 35 ("*Buthmanaban*" at [62]), an owner of a legal estate in land is presumed to be absolutely entitled to every incident of ownership of that land to the extent reflected in the legal title:

> Equitable interests are not inherent in property, created and existing automatically and in parallel with legal interests: *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] 1 AC 669 ("*Westdeutsche*") at 706. An equitable interest in property comes into existence only when one of a limited number of sets of events takes place which are legally significant in that equity attaches consequences to them which have proprietary effect.

22 In *Buthmanaban*, the High Court dealt with two sets of "legally significant events" capable of bringing into existence an equitable interest in property: the purchase money resulting trust and the common intention constructive trust. Both are relied upon by the Plaintiffs in the alternative in the present case.

23 Resulting trusts are presumed to arise in two sets of circumstances. In the first, **A** makes a voluntary payment to **B** or pays either wholly or in part for the purchase of a property which is vested in **B's** name solely or in their joint names. In this scenario, as the High Court explained in *Buthmanaban* (at [66]):

> The legally significant event which equity responds to in this case is the payment made by a person for the purchase of property for which he does not receive a corresponding part of the legal title. That event gives rise to a rebuttable presumption of law that A did not intend to pass a beneficial interest to B. The result is that B holds his legal title to the property on trust for A such that A's beneficial interest in the property is of the same proportion to the whole of the property as A's contribution was to the whole of the purchase price (*Lau Siew Kim* at [46]). This presumption of law can be rebutted by evidence that A had a contrary intention (for example, either that A intended to benefit B by the advance or that A intended the advance to be a loan following which B would be liable to A *in personam* for the payment of a debt).

Resulting trusts of this type are what the High Court has referred to as "purchase money resulting trusts" or "purchase price resulting trusts" (eg, *Buthmanaban* at [66], see also *Lai Hoon Woon (executor and trustee of the estate of Lai Thai Lok, deceased) v Lai Foong Sin and another* [2016] SGHC 113 ("*Lai Hoon Woon*") at [92]). They are also referred to as "presumed resulting trusts" (eg, *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*") at [34]).

24 The second scenario where resulting trusts may arise is where **A** transfers property to **B** on an express trust but the trust does not exhaust the whole of the beneficial interest. In that scenario, the resulting trust "operates to "fill the gap" in the beneficial ownership of property where the express trust fails" (*Lau Siew Kim* at [34]). I say no more about this second type of resulting trust as it is not relied on by the Plaintiffs in their pleaded case.

25 In respect of the purchase money resulting trust, the Court of Appeal ("CA") in *Lau Siew Kim* has explained that the presumption of resulting trust "is based on a traditional common-sense presumption that, outside of certain relationships, an owner of property never intends to make a gift, and by extension, that a person who provides the money to purchase a property intends to obtain an equivalent equitable interest in the property acquired". Under a

purchase money resulting trust, the parties' beneficial interests are created at the time the property is acquired: the extent of their beneficial interests must be determined at the time when the property was purchased and the trust created (*Lau Siew Kim* at [112], *Buthmanaban* at [67]). As the CA in *Lau Siew Kim* noted (at [113]), this type of resulting trust is "in theory, strictly based on the parties' respective contributions to the *purchase price* of the property, and each party's entitlement to the beneficial interest of the property is the *exact mathematical equivalent* of his or her contribution".

26 For the purpose of a purchase money resulting trust, only direct contributions to the purchase price will give rise to a presumption of resulting trust in favour of the contributor (*Lau Siew Kim* at [114], *Buthmanaban* at [68]). In *Lau Siew Kim*, the CA noted (at [115]) the various authorities in which it had been held that payment of mortgage instalments should not be regarded as a direct contribution to the purchase price of a property, citing for example the observation of Mason and Brennan JJ in *Calverley v Green* [1984] 155 CLR 242 that the payment of mortgage instalments was "not a payment of the purchase price but a payment towards securing the release of the charge which the parties created over the property purchase". The CA held, however, that a distinction could be drawn between "contributions made to the repayment of a mortgage on the basis of an agreement made when the mortgage is taken out" and "subsequent payments of mortgage instalments". The former would be "direct" contributions to the purchase price and would give rise to a resulting trust, on the basis that the court would and should give effect to any agreement between the parties at the time of the property purchase as to the ultimate source of funds for the purchase – but in the absence of any such agreement, the payment of mortgage instalments or other financial contributions subsequent to the initial acquisition of the property would not give rise to any beneficial interest by way of resulting trust (*Lau Siew Kim* at [116] – [117]).

27 In *Su Emmanuel v Emmanuel Priya Ethel Anne and another* [2016] 3 SLR 1222 ("*Su Emmanuel*"), the CA noted that *per* its decision in *Lau Siew Kim*, the "critical question [was] whether the parties were in agreement, at the time of the acquisition of the property, as to what liability each party would undertake in respect of the mortgage". The CA went on to elaborate:

> 89 In our judgment, it is correct to analyse the position by reference to the responsibility that is undertaken by each party for loan repayments at the time the property is acquired. When a mortgage is taken out, the crucial consideration is the parties' intentions, at the time the property is acquired, as to the ultimate source of the funds for purchase of that property (see *Lau Siew Kim* at [116] and *Bertei v Feher* [2000] WASCA 165 at [44]). Actual mortgage payments made at a later time would therefore only count as direct contributions to the purchase price where these are referable to, and in keeping with, a prior agreement between the parties as to who would be liable to repay the loan. It is, as we have said earlier, the parties' agreement at the time of acquisition that is critical.
>
> 90 Many factors are engaged in the determination of the precise agreement or understanding between the parties as to who would repay the mortgage. The focus should not lie exclusively on who took on liability for the mortgage as against the bank. Often such liability will be joint because the bank would like to have the widest choice of the parties against whom it can enforce the liability under the mortgage. Rather, the question will turn on what the operating agreement was between the co-owning parties at the time the loan was taken out. In this regard, subsequent conduct may be relevant to the extent that it sheds light on such an agreement (if any) between the co-owners. Thus, in *Chan Yuen Lan*, despite the fact that liability for the loan fell on the wife, the court found that the agreement between the parties was for the husband to repay the loan and therefore the loan amount of $400,000 was attributed to the husband as his direct contribution to the acquisition of the property (at [81]–[87]).
>
> 91 In most cases, the context in which the loan was taken out would show what the understanding between the parties was…. However, in a case where there is no evidence of what the operating agreement was between the parties as to who would repay the mortgage, then each party may be attributed a portion of the loan amount in accordance with the liability assumed to the bank as was done in *Curley v Parkes*.

> 92 In contrast, actual repayments that are not referable to the parties' agreement as to how they intend to service the mortgage should not be taken into account for determining the ownership interest on a resulting trust analysis because, as we have said, the interest under a resulting trust crystallises at the time of purchase. If such subsequent payments were computed as part of the parties' contributions to the purchase price, it would mean that the parties' interests under the resulting trust are in a state of flux, increasing or decreasing as the case may be when one party makes repayment of the mortgage. In our judgment, this would be wrong in principle.

28 As the High Court in *Buthmanaban* and *Lai Hoon Woon* have pointed out, therefore, there are "inherent inflexibilities" in the purchase money resulting trust: namely, that "the assessment of beneficial interest is based on direct final contributions at the time of the acquisition" of the property, and that subsequent financial contributions are disregarded unless referable to a prior agreement at the time of the acquisition as to the ultimate source of funds for the property.

29 Turning to the common intention constructive trust, this is a remedy that is applied where it is clear that there is a common intention among the parties as to how their beneficial interests are to be held. The common intention constructive trust is "an institutional constructive trust" that arises by operation of law from the date of the circumstances giving rise to it: the court merely declares that such a trust has arisen in the past (see *Sumoi Paramesvaeri v Fleury, Jeffrey Gerard and another* [2016] 5 SLR 302 ("*Sumoi*") at [61] and [62] citing *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 at 714G). The common intention (which may subsist either at, or subsequent to, the time the property was acquired) between the parties may either be express or inferred. To successfully invoke the common intention constructive trust, there must be *sufficient and compelling evidence* of the express or inferred common intention (*Su Emmanuel* at [83]).

30 Unlike the purchase money resulting trust, the common intention constructive trust allows the parties' beneficial interests to be quantified in accordance with their common intention (whether express or inferred), rather than in line with a "strict arithmetic calculus" (*Buthmanaban* at [82], *Lai Hoon Woon* at [95]).

31 Importantly, in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*"), the CA agreed with Lord Neuberger's approach in *Stack v Dowden* [2007] 2 AC 432 ("*Stack*"), where at [125] – [127] of *Stack*, Lord Neuberger drew a distinction between an *inferred* and an *imputed* common intention:

> 125 While an intention may be inferred as well as express, it may not, at least in my opinion, be imputed. That appears to me to be consistent both with normal principles and with the majority view of this House in *Pettitt v Pettitt* [1970] AC 777, as accepted by all but Lord Reid in *Gissing v Gissing* [1971] AC 886, [at] 897H, 898B-D, 900E-G, 901B-D, 904E-F, and reiterated by the Court of Appeal in *Grant v Edwards* [1986] Ch 638, [at] 651F-653A. The distinction between inference and imputation may appear a fine one (and in *Gissing v Gissing* [1971] AC 886, [at] 902G-H, Lord Pearson, who, on a fair reading I think rejected imputation, seems to have equated it with inference), but it is important.
>
> 126 An inferred intention is one which is objectively deduced to be the subjective actual intention of the parties, in the light of their actions and statements. An imputed intention is one which is attributed to the parties, even though no such actual intention can be deduced from their actions and statements, and even though they had no such intention. Imputation involves concluding what the parties would have intended, whereas inference involves concluding what they did intend.
>
> 127 To impute an intention would not only be wrong in principle and a departure from two decisions of your Lordships' House in this very area, but it also would involve a judge in an exercise which was difficult, subjective and uncertain. (Hence the advantage of the resulting trust presumption). [sic] It would be difficult because the judge would be constructing an intention where none existed at the time, and where the parties may well not have been able to agree. It would be subjective for obvious

> reasons. It would be uncertain because it is unclear whether one considers a hypothetical negotiation between the actual parties, or what reasonable parties would have agreed. The former is more logical, but would redound to the advantage of an unreasonable party. The latter is more attractive, but is inconsistent with the principle… that the court's view of fairness is not the correct yardstick for determining the parties' shares…

32 In *Chan Yuen Lan*, the CA held that Lord Neuberger's approach had much to commend it because (*inter alia*) it prevented the court from imputing to the parties an intention which they never had in relation to the quantification of their respective beneficial interests in the property concerned. In other words, the court should not foist upon the parties "an intention which they never had in order to achieve a "fair result": the common intention constructive trust should not be "used as a smokescreen for the courts to effect "palm tree" justice in an unprincipled and arbitrary manner" (*Chan Yuen Lan* at [156]).

33 For the purposes of establishing a common intention constructive trust, an inferred common intention may – in "exceptional situations" – arise from forms of conduct other than direct financial contributions to the purchase price of the property, although, as the CA made clear in *Geok Hong Co Pte Ltd v Koh Ai Gek and others* [2019] 1 SLR 908 ("*Geok Hong Co*" at [80]), "the focus remains very much on the financial contributions of the parties". In *Ong Chai Soon v Ong Chai Koon and others* [2022] 2 SLR 457 ("*Ong Chai Soon*"), the CA found the case before it to be such an exceptional situation. *Ong Chai Soon* involved a shophouse property registered in the sole name of the appellant. Part of the property premises were occupied by a hairdressing salon called Red Point, which was set up as a sole proprietorship also registered in the appellant's name. A dispute arose between the appellant and his siblings (the respondents) as to whether the latter had equal beneficial shares in the shophouse property and its sale proceeds. The High Court held that all the siblings did have equal beneficial shares in the property and its proceeds; and that the property should be sold and

the net sale proceeds divided among the siblings in equal shares. On appeal, the High Court's orders were upheld by the CA. In the CA's view, neither the appellant nor the respondents could be said to have made any direct financial contributions to the purchase price of the property "in the typical manner, such as by using moneys from their personal bank accounts or Central Provident Fund ("CPF") accounts". Nevertheless, the CA held that there was sufficient detrimental reliance to establish a common intention constructive trust: the respondents had worked at the Red Point salon for nearly three decades, taking relatively meagre salaries, and had done free carpentry work for the space which the salon would occupy in the property, because they regarded Red Point's business and the property as family assets; and they had also consented to Red Point's earnings being used to pay the mortgage instalments for the property (at [36] – [40]) of *Ong Chai Soon*).

34 As to how the courts are to determine the beneficial interests in a property when it is alleged that such beneficial interests have come into existence, the CA in *Chan Yuen Lan* – following a detailed analysis of caselaw from England and the Commonwealth relating to both purchase money resulting trusts and common intention constructive trusts – set out a step-by-step approach to determining such beneficial interests in cases where parties contributed unequal amounts to the purchase price and did not execute an declaration of trust. The CA held (at [160]) that such cases could be analysed using the following steps in relation to the available evidence:

> (a) Is there sufficient evidence of the parties' respective financial contributions to the purchase price of the property? If the answer is "yes", it will be presumed that the parties hold the beneficial interest in the property in proportion to their respective contributions to the purchase price (ie, the presumption of resulting trust arises). If the answer is "no", it will be presumed that the parties hold the beneficial interest in the same manner as that in which the legal interest is held.

> (b) Regardless of whether the answer to (a) is "yes" or "no", is there sufficient evidence of an express or an inferred common intention that the parties should hold the beneficial interest in the property in a proportion which is different from that set out in (a)? If the answer is "yes", the parties will hold the beneficial interest in accordance with that common intention instead, and not in the manner set out in (a). In this regard, the court may not impute a common intention to the parties where one did not in fact exist.
>
> (c) If the answer to both (a) and (b) is "no", the parties will hold the beneficial interest in the property in the same manner as the manner in which they hold the legal interest.
>
> (d) If the answer to (a) is "yes" but the answer to (b) is "no", is there nevertheless sufficient evidence that the party who paid a larger part of the purchase price of the property ("X") intended to benefit the other party ("Y") with the entire amount which he or she paid? If the answer is "yes", then X would be considered to have made a gift to Y of that larger sum and Y will be entitled to the entire beneficial interest in the property.
>
> (e) If the answer to (d) is "no", does the presumption of advancement nevertheless operate to rebut the presumption of resulting trust in (a)? If the answer is "yes", then: (i) there will be no resulting trust on the facts where the property is registered in Y's sole name (ie, Y will be entitled to the property absolutely); and (ii) the parties will hold the beneficial interest in the property jointly where the property is registered in their joint names. If the answer is "no", the parties will hold the beneficial interest in the property in proportion to their respective contributions to the purchase price.
>
> (f) Notwithstanding the situation at the time the property was acquired, is there sufficient and compelling evidence of a subsequent express or inferred common intention that the parties should hold the beneficial interest in a proportion which is different from that in which the beneficial interest was held at the time of acquisition of the property? If the answer is "yes", the parties will hold the beneficial interest in accordance with the subsequent altered proportion. If the answer is "no", the parties will hold the beneficial interest in one of the modes set out at (b)–(e) above, depending on which is applicable.

35 It is clear from the *Chan Yuen Lan* framework that the starting point for the analysis is the purchase money resulting trust. The presumption of a resulting trust in this scenario can, however, be displaced if there is evidence demonstrating a common intention that the parties should hold the beneficial

interest in the property in a proportion that is different from the proportion in which they have contributed to the purchase price. That being said, *Chan Yuen Lan* did not appear to prescribe a rigid formulaic approach; and indeed, in several subsequent cases, the courts have not strictly adhered to the sequential order set out in *Chan Yuen Lan*: see *eg*, *Ng So Hang v Wong Sang Woo* [2018] SGHC 162 ("*Ng So Hang*"); *Sumoi* at [31] – [33]. This may be because – as the court in *Ng So Hang* observed (at [24]) – "in practice the foremost claim that is put forward is usually the common intention constructive trust, with an alternative basis relied upon of a proprietary estoppel; the resulting trust is usually the backstop claim".

36 In the present case, it will be recalled that the Plaintiffs invoked both a purchase money resulting trust and a common intention constructive trust. From their pleadings, it was apparent that the Plaintiffs relied on their alleged direct financial contributions to the purchase price of the Property as a key piece of evidence for the purposes of establishing both trusts. I started therefore by examining whether there was sufficient evidence of their respective financial contributions to the purchase price of the Property.

Whether there was sufficient evidence of the Plaintiffs' financial contributions to the purchase price of the Property

37 Having scrutinised the evidence put before me, I found the evidence adduced by the Plaintiffs of their alleged financial contributions to the purchase price to be riddled with inconsistencies and unexplained gaps, and generally lacking in credibility. I set out below the reasons why I made this finding.

38 According to the Plaintiffs' pleaded case, the original purchase price of the Property was S$4,800,000.00.[20] They were subsequently informed by Spencer that in addition to the purchase price of S$4,800,000.00, a further sum of S$485,600.00 was required; that out of this further sum, S$350,000.00 was to be deposited with Maybank as collateral for the grant of the mortgage loan for the Property; and that the remaining S$135,600.00 was for the stamp fee. This meant that a total amount of S$5,285,600 had to be paid for the purchase of the Property. *Per* the Plaintiffs' pleaded case, each of the three men was to contribute S$535,200.00 towards the total amount of S$5,285,600, leaving the balance of S$3,680,000.00 to be "paid by way of a loan from Maybank which took a legal mortgage over the Property".

39 At the outset, I agreed with the Defendants that the computations which the Plaintiffs relied on to claim they had each contributed one-third of the contributions required for the purchase of the property appeared to be internally inconsistent and unreliable.[21] On the one hand, as *per* their pleadings, the Plaintiffs claimed that the total amount required for the purchase was $5,285,600. On the other hand, based on their own evidence, it was subsequently revealed post Spencer's death that he (Spencer) had inflated the stamp duty amount by $3,000, as the actual stamp fee paid for the purchase totalled only $132,600; and as for the $350,000 which was described in the pleadings as the amount required to be deposited with Maybank as collateral for the mortgage loan, it transpired from both Plaintiffs' evidence that "there was no collateral that had to be deposited with Maybank".[22] At the same time, based on the

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20 SOC at paras 8 and 9.

21 Defendants' Closing Submissions at para 38.

22 Er Kok Yong AEIC at para 35; Lim Soon Hwa AEIC at para 34.

Plaintiffs' evidence,[23] it was also clear that their computation of the total amount to be paid for the purchase omitted the legal fees charged by LegalStandard for their work in respect of the conveyancing of the Property.

40 Moreover, even assuming for the sake of argument that the Plaintiffs were correct in asserting $5,285,600 as the total amount required for the purchase of the Property, their own pleadings stated only that "the First Plaintiff [Jason], the Second Plaintiff [Lawrence] and the Deceased [Spencer] were each to have contributed S$535,200.00 *and the remaining S$3,680,000.00 was paid by way of a loan from Maybank which took a legal mortgage over the Property*". Assuming again for the sake of argument that each Plaintiff did contribute $535,200.00 towards the total amount of $5,285,600 required for the purchase, based on a strict mathematical calculus, the amounts they (allegedly) contributed would not be enough to establish a resulting trust in their favour for a two-thirds beneficial interest in the Property. Insofar as the balance $3,680,000.00 was concerned, as seen from the CA's judgment in *Su Emmanuel*, mortgage payments may amount to a direct contribution to the purchase price for the purpose of establishing a resulting trust, depending on the "responsibility that is undertaken by each party for loan repayments at the time the property is acquired": the "crucial consideration is the parties' intentions, at the time the property is acquired, as to the ultimate source of the funds for purchase of that property" (*Su Emmanuel* at [86] – [89], citing *Lau Siew Kim* at [116]). In the present case, the Maybank mortgage was indisputably taken out in Spencer's *sole* name. In the Plaintiffs' pleadings, no mention was made of any prior agreement between the three men as to the precise manner in which liability for the mortgage repayments was to be apportioned amongst them.

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[23] Transcript dated 6 May 2022 at p 78, ln 18 – 24.

41 Indeed, although both Plaintiffs made vague general statements in their affidavits of evidence-in-chief (AEICs) about a "shared understanding and agreement in late 2016" to "put in equal amounts of money to fund the purchase of the Property",[24] it was clear to me from their testimony in cross-examination that there was never any discussion held between them and Spencer regarding the manner in which liability for the mortgage repayments would be apportioned – much less any agreement reached on this issue by the time the Property was acquired. While the Plaintiffs tried to suggest at trial that the monthly mortgage instalments would have been paid by the rental derived from the Property, they never actually pleaded the existence of a prior agreement with Spencer that each of them would have an equal share of the rental proceeds – and that each would apply his share of these proceeds towards the payment of the monthly mortgage instalments. Nor was any such prior agreement described in their AEICs. For that matter, the Plaintiffs also did not plead any prior agreement with Spencer as to how shortfalls between the monthly rental and the monthly mortgage repayments would be addressed – nor was any such agreement described in their AEICs.

42 In cross-examination, the 1st Plaintiff Jason claimed that Spencer had told him, "roughly", the rental derived from the Property "can cover the mortgage". I found these claims frankly unbelievable because Jason also conceded under cross-examination – in virtually the same breath – that prior to the purchase of the Property, he did not know how much the monthly mortgage repayment would be, nor did he know how much rental was being received from the tenant at the Property.[25] In fact, at the time the Property was acquired, Jason did not even

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24 Er Kok Yong AEIC at para 25; Lim Soon Hwa AEIC at para 26.

25 Transcript dated 5 May 2022 at p 154 ln 23 – p 156 ln 20.

know how long the existing lease was for.[26] His ignorance of the mortgage repayment and rental amounts was telling, as was his apparent indifference. If the Plaintiffs and Spencer had indeed agreed on the apportionment of liability for the mortgage repayments by the time of the purchase of the Property, it was incredible that Jason should have been completely unaware of both the quantum of the monthly mortgage instalments and the quantum of the rental proceeds available to pay those instalments.

43 Further, despite stating that Spencer had assured him the rental from the Property could "roughly… cover the mortgage", Jason contradicted himself in the next breath, claiming that Spencer had also told him:

> …the shortfall or if there's a shortfall, it won't be more than thousand two to thousand five and if there's a profit, it also won't be more than 1,000. So he say if split among three of us, each of us only need to fork out a few hundred dollars. That's why I never asked much.

44 When further cross-examined, Jason admitted that it was only after the purchase of the Property that he knew of the shortfall between the amount of rental collected from the Property and the amount of the monthly mortgage repayment.[27] Jason alleged that following Spencer's death, he had asked Mahtani to "ask Shyller to give us account so we can contribute to the shortfall".[28] This evidence made no sense to me: as counsel for the Defendants pointed out, there was no reason why Jason could not have asked Shyller the same question himself, especially since he had – according to Lawrence – been in contact with Shyller up until end-2017 when she stopped replying to his messages.[29] In any

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26 Transcript dated 5 May 2022 at p 157 ln 4 – 8.

27 Transcript dated 5 May 2022 at p 157 ln 20 – p 158 ln 8.

28 Transcript dated 5 May 2022 at p 161 ln 22 – 23.

29 Transcript dated 4 May 2022 at p 128 ln 13 – 14.

event, when Mahtani took the witness stand, no evidence was adduced from him to corroborate Jason's allegation.

45 Given the inconsistent and often incoherent nature of Jason's testimony, I was convinced that he was making things up as he went along: it was clear that there was no prior agreement between the Plaintiffs and Spencer as to the apportionment of liability for the mortgage repayments, but it was equally clear that Jason was loath to admit it.

46 The 2nd Plaintiff, Lawrence, fared no better. Insofar as the monthly mortgage repayments were concerned, Lawrence claimed that he, Jason and Spencer had calculated this to be "around 13,000, 14,000 instalment". He then had difficulty explaining how he had arrived at this instalment amount when – on his own admission – he was not shown the mortgage documents and did not know the tenure of the mortgage loan. He claimed that they had simply done some "rough calculations", and that these calculations, despite being "rough", had somehow – apparently fortuitously – been based on a 30-year loan tenure. At the same time, he also admitted that he knew right from the start, the rental from the Property was not enough to pay for the mortgage[30] – but he did not know the actual rental amount. He said that there was a shortfall of "thousand or thousand-plus" in respect of the first mortgage instalment, and that he, along with Jason and Spencer, had paid for this shortfall – but conceded that this evidence was never mentioned in his AEIC.[31] There was also no evidence produced of his or Jason's purported cash contribution towards the first mortgage instalment.

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30 Transcript dated 4 May 2022 at p 133 ln 11 – 14.

31 Transcript dated 4 May 2022 at p 134 ln 6 – 7.

47 Further, Lawrence admitted that when Spencer passed away shortly after the first mortgage instalment payment, he and Jason made no attempt to top up any cash for subsequent mortgage payments – despite his avowed knowledge of the shortfall between the rental proceeds and the mortgage payments right from the start. When cross-examined about their failure to top up the shortfall in the mortgage repayments, he gave a number of inconsistent and illogical responses. First, he claimed that they had not topped up the shortfall because they did not have their "name in the property", and they needed to "meet Shyller to discuss about it".[32] Then he claimed that "*(w)e want to top up but we don't know how to top up*".[33] This was quite absurd, since either he or Jason could obviously have asked Shyller at any point in time how they could top up the shortfall. Then, in re-examination,[34] he agreed with counsel that "they" (by which he apparently meant the Defendants) "didn't ask" him to anything in relation to the Property and that he was willing to pay for "whatever shortfalls" – but this simply begged the question as to why he made no attempt at all to pay in the period after Spencer's death.

48 I found Lawrence's evidence about the mortgage repayments to be as lacking in credibility as Jason's. Having considered the evidence of both Plaintiffs as well as the case actually put forward in their pleadings, I concluded that there was never any prior agreement between the Plaintiffs and Spencer as to the apportionment of liability for the mortgage repayments. In any event, they had no evidence to support their claims as to having topped up the first mortgage instalment payment; and they themselves accepted that following Spencer's death, they did not contribute at all towards mortgage repayments. In other

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32 Transcript dated 4 May 2022 at p 136 ln 3 – p 137 ln 7.

33 Transcript dated 4 May 2022 at p 137 ln 23 – 24.

34 Transcript dated 5 May 2022 at p 121 ln 10 – p 122 ln 16.

words, based on the Plaintiffs' own case, the only direct financial contribution to the purchase price which each of them could lay claim to was the payment of $535,200.00 – which amount, as earlier noted, could not have given rise to a resulting trust in each man's favour for a one-third beneficial interest in the Property.

49 Even in respect of the $535,200.00 which each Plaintiff claimed to have paid, I found that the evidence relied on in support of their claims was woefully inadequate. To begin with, each Plaintiff claimed that out of his total financial contributions of $535,200, a sum of $99,000 was derived from money which Spencer already held on their behalf arising from the Bamford Watch Project. Unfortunately, apart from their own bare assertions, the Plaintiffs produced no evidence at all of their having each paid $99,000 to Spencer for this project. It was said that the Bamford Watch Project (and most importantly, Spencer's receipt of $99,000 from each Plaintiff) had been extensively discussed by the three men in their WhatsApp group chat (a group chat titled "SUP") – but no trace remained of these alleged WhatsApp discussions by the time of the trial because both Plaintiffs claimed to have deleted the entire group chat shortly after Spencer's death. Neither Plaintiff could proffer any coherent explanation as to how the figure of $99,000 was derived in the first place. Nor was any explanation proffered as to why and how – despite the three men's allegedly "common" practice of passing each other "cash, even for cash amounts exceeding S$100,000"[35] – the two cash amounts of $99,000 remained untouched in Spencer's possession between the termination of the Bamford Watch Project sometime in December 2016[36] and the purchase of the Property in May 2017. No

35 Er Kok Yong AEIC at para 37; Lim Soon Hwa AEIC at para 36.

36 Transcript dated 6 May 2022 at p 41 ln 17.

evidence was given as to when it was decided to apply the two cash amounts of $99,000 towards the purchase price of the Property.

50 As for those other payments which the Plaintiffs claimed had been made in cash and/or via cash cheques, I found the Plaintiffs' evidence highly unreliable and implausible as well. In respect of the 1st Plaintiff Jason, he claimed that in addition to the cash amount of $99,000 from the Bamford Watch Project, he had paid cash to Spencer in the following amounts on the following dates:

Date	**Medium of payment**	**Amount (in S$)**
Sometime between December 2016 and April 2017	Cash to Spencer	100,000
Sometime between December 2016 and April 2017	Cash to Spencer	280,000
9 May 2017	Cash to Spencer	56,200

51 Having examined the evidence which Jason purported to rely on, I was not satisfied that any of these above sums was paid towards the purchase price of the Property. In respect of the first lump sum payment of $100,000, Jason claimed that he had paid this amount by giving Spencer a cash cheque.[37]

[37] Er Kok Yong AEIC at p 83; Transcript dated 6 May 2022 at p 43 ln 9 – p 44 ln 14; 1ABOD at p 144.

However, the cheque which he claimed represented this payment was in fact issued to a company named Eurohub Asia Pte Ltd – a company owned by the 2nd Plaintiff Lawrence. When asked about this in cross-examination, Jason claimed that he had been told by Spencer to leave the payee's name blank when issuing the cheque, and that it must have been Spencer who had then filled in the payee's name as "Eurohub Asia Pte Ltd". This made no sense. According to Jason, Spencer was the one who had requested that Jason make the payment via cash cheque and that he leave the payee's name blank. If the cheque had indeed been meant as Jason's direct financial contribution to the purchase price of the Property, there was no reason for Spencer to have filled in the payee's name as "Eurohub Asia Pte Ltd". No evidence was led from Lawrence either as to what was done with the $100,000 cheque made out to his company. There was therefore no evidence to prove that the $100,000 had gone towards paying the purchase price of the Property.

52 In respect of the payment of $280,000, Jason claimed that this payment actually came in two parts. Part of this amount of $280,000 – a sum of $96,000 – allegedly came from a cheque issued by Jason's father (one Mr Er Tian Ho) to LegalStandard in December 2016.[38] However, Mr Er Tian Ho was not called as a witness; and even though the $96,000 was alleged to have constituted a payment by Jason towards the purchase price of the Property, it emerged from Mahtani's testimony[39] that $4,000 of this $96,000 was actually applied towards payment of Spencer's legal bills with LegalStandard, not just for the work done in respect of the Property but also for work done in respect of the purchase of a Leedon Residences property by Spencer's father and his girlfriend's father. As

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38 Er Kok Yong AEIC at paras 30 and 38, Tab EKY 4; Transcript dated 6 May 2022 at p 51 ln 19.

39 Transcript dated 10 May 2022 at p 30 ln 10 – p 31 ln 14.

for the balance of the $280,000 payment, Jason claimed that it came from a cash cheque of $199,509 – which was plainly different from and considerably in excess of the balance $184,000 required. Upon being pressed about this discrepancy during cross-examination, Jason claimed that the difference of $15,509 represented payment of monies he owed Spencer for an Hermès bag the latter had helped him to purchase for his sister.[40] This explanation appeared to me to be highly contrived – not least because it was never even alluded to in Jason's AEIC, which had simply presented the $280,000 as a lump sum payment and glossed over the (purported) breakdown of the amount. In short, there was no evidence to prove that the alleged $280,000 payment was a direct financial contribution by Jason to the purchase price of the Property.

53 In respect of the final payment of $56,200 in cash on 9 May 2017, Jason claimed that the payment was made after Spencer's "calculation" in May 2017 showed a shortfall of this amount on his (Jason's) part. According to Jason, the cash came from a withdrawal he made via cheque from his UOB bank account on 9 May 2017.[41] However, an examination of his bank statements for the same period showed that the withdrawal referred to was actually for an amount of $74,250 – and not the alleged shortfall of $56,200.[42] When asked to explain this discrepancy, Jason had no answer. In fact, he ended up claiming that it was *Spencer* who had called him to "say he need this number".[43] Yet again, this made no sense. Jason himself claimed that it was Spencer who had informed him of the shortfall of $56,200; and there appeared to be no reason – nor was any reason suggested by the defence – for Spencer subsequently to demand a cheque for

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40 Transcript dated 6 May 2022 at p 52 ln 5 – 9.

41 Transcript dated 6 May 2022 at p 55 ln 4 – 25.

42 Transcript dated 6 May 2022 at p 56 ln 1 – 25; Er Kok Yong AEIC at Tab EKY-10.

43 Transcript dated 6 May 2022 at p 58 ln 11.

$74,250 instead. Further, despite the purported demand having been for a sum some $18,000 in excess of the alleged shortfall, Jason claimed that he had simply issued the cheque without finding out the reason for the sizeable discrepancy. This wholly incurious and indifferent attitude was, in my view, so anomalous as to be unbelievable. I concluded that there was no evidence to support his assertion that he had made a contribution of $56,200 towards the purchase price of the Property.

54 As for the 2nd Plaintiff Lawrence, I found his evidence regarding his alleged financial contributions to be equally unreliable and contrived. According to Lawrence, apart from the $99,000 cash which he had already given Spencer for the Bamford Watch Project, he had made multiple contributions towards the purchase price of the Property as follows:

Date	**Medium of payment**	**Amount in S$**
Sometime between December 2016 and April 2017	Cash to Spencer	55,000
Sometime between December 2016 and April 2017	Cash to Spencer	41,703
4 May 2017	Cash to Spencer	40,000

5 May 2017	Cash to LegalStandard LLP (Mahtani's law firm)	20,937.50
12 May 2017	Cash to LegalStandard LLP	55,000
15 May 2017	Cash to LegalStandard LLP	40,000
16 May 2017	Cash to LegalStandard LLP	40,000
17 May 2017	Cash to LegalStandard LLP	30,000
18 May 2017	Cash to LegalStandard LLP	19,000
18 May 2017	Cash to LegalStandard LLP	31,000
May 2017	Cash to Spencer	63,559.40

55 In his AEIC, Lawrence glossed over the details of the above payments. Those details which did eventually emerge at trial painted a disconcertingly odd picture of his behaviour and created in my mind serious doubts about the true nature and purpose of the payments.

56 First, it must be highlighted that on Lawrence's own evidence, he paid a total of $339,497 in cash (including two cashier's orders) over a few weeks in May 2017. Yet, despite having allegedly paid such a substantial amount of cash within a short period of time, Lawrence produced no evidence at all that the cash had actually come from him. In cross-examination, he conceded that if he had actually paid this amount of $339,497 in May 2017, his bank statements would have shown that the money came from him; yet he did not disclose his bank statements in the course of these proceedings – and he offered no explanation for the omission.[44]

57 Indeed, whilst in his AEIC, Lawrence claimed that he had paid one of the sellers (one Goh Ek Huat) $50,000 on 18 May 2017 via two cashier's orders for $19,000 and $31,000 respectively, it emerged at trial that the two cashier's orders were purchased, not by Lawrence, but by *Mahtani using funds from the latter's personal bank accounts*. This was quite stunning because Lawrence himself had initially stated in his AEIC that he was the one who had handed LegalStandard LLP the two cashier's orders for Goh Ek Huat; and then at trial, he had claimed not to remember whom the cashier's orders came from.[45] Mahtani stated that he had arranged to purchase the cashier's orders with his own funds in order to help Lawrence and that he had authorised his staff to collect the cashier's orders "against the cash received from Lawrence Lim".[46] This begged the question as to why – if Lawrence had indeed possessed the $50,000 in cash at the material time – he could not have purchased the cashier's orders himself. In short, the evidence regarding the source of funds for the cashier's orders for $19,000 and $31,000 was hopelessly confused and incoherent: I was unable to accept that

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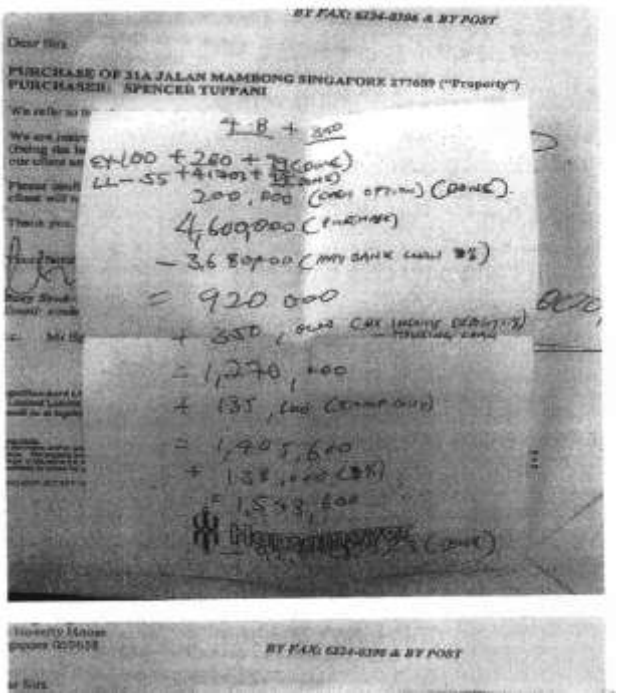
44 Transcript dated 5 May 2022 at p 17 ln 1 – p 18 ln 22.

45 Lim Soon Hwa AEIC at para 41; Transcript dated 5 May 2022 at p 1 ln 6 – 18.

46 Transcript dated 10 May 2022 at p 51 ln 7 – p 52 ln 17.

these cashier's orders represented a direct financial contribution by Lawrence towards the purchase price of the Property.

58 In respect of the alleged cash payment of $55,000 to Spencer sometime between December 2016 and April 2017, there was no evidence to establish where this cash had come from, when exactly it was paid to Spencer – and whether it was even paid in one lump sum (as Lawrence's AEIC intimated). Lawrence purported to rely on a handwritten note which he claimed showed an acknowledgement by Spencer of the Plaintiffs' contributions towards the purchase of the Property. More precisely, he purported to rely on a photograph of the note,[47] as the original of the note was never produced in these proceedings:



47 Lim Soon Hwa AEIC, Exhibit LL-7.

59 In my view, this note did not take Lawrence's case very far. First, it was unclear what the notation "Done" referred to. Leaving aside Lawrence's self-serving allegations, there was no basis for me to conclude that the word "Done" as used in this note signified direct financial contributions by him to the purchase price of the Property. Mahtani claimed that the handwritten note was produced by Spencer after a meeting between Spencer and the Plaintiffs at the LegalStandard office to "do the accountings for their contributions to the property".[48] Mahtani claimed too that Spencer had asked for a piece of paper on LegalStandard's letterhead showing the Property in the subject-heading, apparently with the intention of photographing the handwritten note against the backdrop of the LegalStandard letterhead. However, Mahtani also admitted that although the meeting with the three men took place at his office premises, he himself did not join in their meeting, and he was not privy to their discussions on the "accountings for their contributions to the property".[49] In the circumstances, I did not consider Mahtani to have been in any position to explain the purpose of the handwritten note and the meaning of the scribbled contents. I found that Lawrence was unable to prove he had directly contributed $55,000 towards the purchase of the Property sometime between December 2016 and April 2017.

60 In respect of the $41,703 allegedly paid in cash to Spencer sometime between December 2016 and April 2017, it transpired during Lawrence's testimony at trial that only $40,000 cash was (allegedly) given to Spencer.[50] As for the balance amount of $1,703, Lawrence claimed that this actually represented an "accumulated" amount which Spencer owed him for "dinner" and

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48 Transcript dated 10 May 2022 at p 36 ln 7 – 14.

49 Transcript dated 10 May 2022 at p 36 ln 11 – 13.

50 Transcript dated 4 May 2022 at p 152 ln 25 – p 153 ln 25.

"drinks". According to Lawrence, on the occasion when he "passed" $40,000 cash to Spencer, he had told the latter that there was no need to repay him this $1,703 in cash; and Spencer had instead "topped up" this amount to Lawrence's "fund" for the purchase of the Property.[51]

61 I did not find the above evidence from Lawrence sufficient to prove a direct contribution of $41,703 towards the purchase price of the Property. Once again, there was no evidence to support his assertion that he had contributed a lump sum of $40,000 in cash towards the purchase of the Property. There was also no evidence of the $1,703 "debt" allegedly owing from Spencer to Lawrence, which I found suspicious: considering the very specific amount involved, it seemed incredible that Lawrence should have apparently retained no records at all of how this amount came about. There was no evidence as well of Spencer "topping up" this amount of $1,703 to Lawrence's "fund" for the purchase of the Property.

62 Apart from the above payments, five of Lawrence's alleged financial contributions were said to have been made in the form of cash paid to LegalStandard on Spencer's instructions.[52] While much reliance was placed by Lawrence on the receipts issued by LegalStandard, I did not find the evidence sufficient to establish that these were contributions made by him towards the purchase price of the Property. Importantly, although Mahtani agreed that monies paid towards the purchase price were conveyancing monies *required* under the relevant professional conduct rules to be deposited in his firm's conveyancing account, he testified that *on Spencer's instructions*, these cash payments from Lawrence were never deposited into the firm's conveyancing

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51 Transcript dated 4 May 2022 at p 150 ln 7 – p 154 ln 3.

52 Transcript dated 5 May 2022 p 8 line 12 – 14.

account but were instead deposited into *the firm's client's account for Spencer*. This was significant: as the Defendants pointed out,[53] the Conveyancing and Law of Property (Conveyancing) Rules 2011 ("Conveyancing Rules") set out strict rules which law firms and lawyers must comply with when handling conveyancing money. In particular, s 5(1) of the Conveyancing Rules stipulates that conveyancing monies must be paid into a *segregated* account. It was therefore telling that *the monies from the 2nd Plaintiff had been deposited into LegalStandard's client account as opposed to the firm's conveyancing account*; further, that this was done *pursuant to Spencer's instructions to Mahtani to "hold the funds" in the client's account "pending further instructions" from Spencer*.[54] Indeed, according to Mahtani, of the cash payments that his firm received from Lawrence, Spencer himself had apparently taken away cash of $40,000:[55] Equally telling was the fact that Spencer did not tell Lawrence he had taken the $40,000 cash, nor was Lawrence informed of the reasons for his actions: it was the LegalStandard staff who informed Lawrence about Spencer taking the money, and *Lawrence raised no objections when he found out*, even though – according to him – the money formed part of his direct financial contribution to the purchase price of the Property.

63 In respect of the final payment of $63,559.50, Lawrence claimed that this was paid in cash after the completion of the purchase, when he realised that he "still had to contribute" this sum.[56] However, he was apparently unable to remember the date on which he paid up this not inconsiderable sum. No bank

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53 Defendants' Closing Submissions at paras 71 and 72.

54 Transcript dated 10 May 2022 at p 108 ln 24 to p 109 ln 6.

55 Transcript dated 10 May 2022 at p 48 ln 13 to ln 15.

56 Lim Soon Hwa AEIC at para 42; Transcript dated 5 May 2022 at p 12 ln 18 – p 13 ln 10.

statements and/or or other documentary evidence were produced to support his bare assertion as to having paid this sum of cash. He could not even remember whether the cash was handed to Spencer or to Jason. As for Jason, he said nothing in his evidence about having received receiving this payment from Lawrence as the latter's financial contribution towards the purchase price of the Property. As there was no evidence at all to corroborate Lawrence's bare assertion and as Lawrence himself could not even recall the date or the recipient of the alleged payment, I found that this final alleged contribution to the purchase price was also not proven.

The alleged resulting trust

64 To sum up, therefore: having scrutinized the Plaintiffs' evidence and having also considered the other evidence available before me, I was satisfied that they were both unable to discharge the burden of proving that they had each made direct financial contributions of $535,200 towards the purchase price of the Property. Further, even assuming for the sake of argument that they could prove these direct financial contributions, as I explained earlier (at [38] – [48]), the alleged total contributions of $1,070,400 could not have given rise to a resulting trust in each Plaintiff's favour for a one-third beneficial interest in the Property: not only did they fail to plead any prior agreement between them and Spencer as to the apportionment of liability for the mortgage repayments, the evidence available militated against any such prior agreement. Their pleaded case for a resulting trust in their favour over two-thirds of the beneficial interest in the Property was entirely baseless and devoid of merit.

The alleged common intention constructive trust

The Plaintiffs' pleaded case

65 I address next the Plaintiffs' alternative claim of a common intention constructive trust. To recapitulate: according to the pleaded case set out in the amended Statement of Claim, the Plaintiffs and Spencer had orally agreed following multiple discussions in late 2016 that they would purchase the Property for a consideration of S$4,800,000.00.[57] *Per* the Plaintiffs' pleaded case, all three of them shared the common intention that:

(a) Whilst the Property "would be conveyed into [Spencer's] sole name", Spencer "would hold two-thirds of the shares in the Property on behalf of the Plaintiffs for one-third share each";

(b) The Plaintiffs and Spencer "would contribute equally towards the purchase price"; and

(c) The Property "was to be beneficially owned by the Plaintiffs and [Spencer] in equal shares".

66 As noted earlier in these grounds, the Plaintiffs' pleaded case was that a total amount of S$5,285,600 had to be paid for the purchase of the Property. This was because they were subsequently informed by Spencer that in addition to the purchase price of S$4,800,000.00, a further sum of S$485,600.00 was required; that out of this further sum, S$350,000.00 was to be deposited with Maybank as collateral for the grant of the mortgage loan for the Property; and that the remaining S$135,600.00 was for the stamp fee. This meant that *per* the Plaintiffs' pleaded case, each of the three men was to contribute S$535,200.00,

[57] SOC at paras 5 and 6.

leaving the balance of S$3,680,000.00 to be "paid by way of a loan from Maybank which took a legal mortgage over the Property".

67 In the present case, there was no real dispute between the parties as to the law on common intention constructive trusts. The real contest was in relation to the facts: specifically, whether the Plaintiffs could produce "sufficient and compelling" evidence to prove that they had shared a common intention with Spencer for each of them to have a one-third beneficial interest in the Property and for Spencer to hold the Plaintiffs' combined two-thirds share on trust for them. Having had the opportunity to see and hear the witnesses during the trial and having examined the evidence led, I found that the Plaintiffs were unable to produce sufficient and compelling evidence of this alleged common intention. I set out below the reasons for my findings.

Express Common Intention: The alleged oral agreement between the Plaintiffs and Spencer

68 The Plaintiffs' starting point appeared to be that there was an express common intention shared by them and Spencer by virtue of an "oral agreement" which – according to the Plaintiffs – the three of them had entered into. In this connection, leaving aside their own bare assertions of such an "oral agreement", the Plaintiffs relied in the main on the Trust Deed as evidence of their agreement.

The Trust Deed

69 It must be noted that the Trust Deed was only ever signed by the 2nd Plaintiff Lawrence: it was never signed by either Spencer himself or by the 1st Plaintiff Jason, and thus remained unexecuted up to the time of Spencer's passing on 10 July 2017. The Plaintiffs argued that even though it was never executed, the Trust Deed "unambiguously identified" each Plaintiff as the

beneficial owner of a one third share in the Property and constituted proof (according to the Plaintiffs) of the agreement for Spencer to hold their two-thirds share in the Property on trust.[58]

70 In tandem with their attempt to rely on the unexecuted Trust Deed, the Plaintiffs tried to rely on the testimony of Mahtani regarding Spencer's instructions to him to draft the Trust Deed, which (according to the Plaintiffs) established the existence of such a common intention between the three men. On close scrutiny, however, Mahtani's testimony did not in fact establish the common intention pleaded by the Plaintiffs. In examination-in-chief, Mahtani gave the following evidence as to Spencer's instructions on the purchase of the Property:[59]

> Q: Can you first recollect when and how you were instructed in relation to this purchase of the Lorong Mambong property?
>
> A: Your Honour, I believe it was in early December 17 2016 when **Spencer Tuppani approached me to say that he was buying the Lorong Mambong property**. He had actually -- I believe he had actually asked me to do a search on the property to see who are the owners and after I -- I did the search, we conveyed to him that there are two owners and a few days later, we got -- we got a facsimile transmission from Matthew Chiong, the lawyers acting for the sellers, informing us that his clients were selling the property to Spencer Tuppani. This would have been in December 2016, your Honour.
>
> [emphasis added]

71 It was telling that according to Mahtani, when Spencer first notified him of the intention to purchase the Property in December 2016 and instructed him to conduct searches on the ownership of the property, Spencer had informed

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58 Plaintiffs'Closing Submissions at para 69.

59 Transcript dated 10 May 2022 at p 21 line 13 to p 22 line 3.

Mahtani that he (*ie*, Spencer) was the one intending to purchase the property. Spencer did not instruct or even mention to Mahtani that the purchase of the property was to be a joint investment by him together with the two Plaintiffs and/or that the Plaintiffs were each to have beneficial ownership of a one-third share of the property. The omission to inform Mahtani of these material facts was telling because according to the Plaintiffs, they had already discussed with Spencer in late 2016 the purchase of the Property as a joint investment opportunity;[60] Mahtani and his firm LegalStandard were instructed by Spencer to act for him in the purchase of the Property; and moreover Mahtani was also good friends not only with Spencer but with both the Plaintiffs at that time.[61] In other words, there was every reason for Spencer to inform Mahtani of the Plaintiffs' alleged beneficial share of the property, and no reason for him to conceal it – and yet, inexplicably, Spencer said nothing to Mahtani until nearly half a year later on 2 May 2017, when – in the course of a WhatsApp exchange – he asked Mahtani to "prepare a simple trust letter" for the Property to show that he was holding it on behalf of the Plaintiffs.

72 The Plaintiffs made much of Mahtani's testimony that Spencer had instructed him to prepare a Trust Deed to reflect that the Plaintiffs and Spencer would each have a one third share. I first set out below those portions of Mahtani's testimony that the Plaintiffs sought to rely on:[62]

> A: Well, apart from the WhatsApp message, there were oral conversations on the terms of the trust deed.
>
> COURT: WhatsApp messages from whom to whom?

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60 SOC at paras 5 and 6; Plaintiffs' Closing Submissions at paras 12 and 13.

61 Transcript dated 10 May 2022 at p 91 ln 16 to p 92 ln 8.

62 Plaintiffs' Closing Submissions at para 70; Transcript dated 10 May 2022 at p 121 ln 15 to p 123 ln 5.

A: From Spencer Tuppani to me, your Honour.

MR YEO: And what would these WhatsApp messages say?

A: I don't have the exact wording but it's on my phone.

COURT: Have you still got your phone?

A: Yes, your Honour, I have.

COURT: Would you have a look at it and then I'll ask you to pass it to counsel as well.

A: Yes. It says "Prepare a simple trust letter for the Holland Village shophouse property --

COURT: Sorry, hold on. Hold on. Prepare a simple what?

A: "Trust letter for the Holland Village shophouse property holding on behalf of Lawrence and Jason tomorrow."

COURT: "Holding on behalf of Lawrence and Jason tomorrow"?

A: "Thanks."

COURT: Yes.

A: "They will go then --

COURT: Who will go?

A: They will go, that means Lawrence --

COURT: They will go, yes.

A: "Then you let them sign."

COURT: Yes.

A: And I said, "Okay".

COURT: You mean your reply message?

A: Yes, your Honour. I said, "Okay".

COURT: Yes.

A: Then he said, "No need complicated, then I also can show Shyller. This is theirs not mine".

COURT: Sorry, "No need complicated"?

A: Then --

COURT: "Then I also can show"?

A: "Shyller, this is theirs not mine."

COURT: Yes.

A: "He is threatening me very badly. I'll speak to you tomorrow."

73 In their zeal to rely on the above testimony, however, what the Plaintiffs overlooked was the *context* in which Spencer had instructed Mahtani to prepare the Trust Deed. I set out below the relevant portions of the evidence given by Mahtani under cross-examination:[63]

MR YEO: Grateful, your Honour. seen the messages of 3 May. Can I just trouble you to scroll up on your phone and read us the WhatsApp exchange between you and Mr Tuppani from 1 May onwards?

COURT: Were there messages on 1 May between you and Mr Tuppani?

A: Your Honour, in April there were but then it starts from 2 May 2017.

COURT: Nothing on 1 May, but on 2 May, there were messages?

A: That's right.

COURT: Yes.

MR YEO: Can I trouble you to read to us --

A: So the first message is: "So … what makes on the divorce matter?"

COURT: Who sent this?

A: Spencer to me.

COURT: Spencer sent to you the message: "So … what makes on the divorce matter?"

A: My reply was: "Boss, call you tomorrow. Court whole day."

COURT: You replied: "Call you tomorrow. Court whole day"?

63 Transcript dated 10 May 2022 at p 126 ln 24 to p 132 ln 2.

A: Yes, your Honour.

COURT: Yes.

A: Then 3 May it starts with, "Boss", the first message, then following that:

So what's your reply to MK?"

"MK" would mean Michael Khoo.

COURT: Who sent this?

A: Spencer.

COURT: He messaged you to say:

"So what's your reply to MK?"

A: That's right.

COURT: Meaning Michael Khoo?

A: Michael Khoo & partners.

COURT: Yes.

A: So at this point in time there were a lot of exchange between Michael Khoo & Partners and us on the --

COURT: "Us" meaning?

A: LegalStandard LLP.

COURT: Yes.

A: On the matrimonial matter, your Honour.

COURT: Yes.

A: And then the next message was from me:

"Will draft and send you soon."

COURT: "Will draft and send you soon", yes.

A: Then he sends me a picture which I can't – I can't download now I think in real time. Then he says:

"I sent this yesterday so that she knows she's implicating the house."

COURT: Sorry, his message was:

"I sent this yesterday so that she knows what"?

A: She knows she's implicating the house.

COURT: She's what?

A: She's implicating the house.

COURT: Implicating?

A: Yes, that's what it says. The house, I believe, would be the Sennett house:

"... and how the cash came about to finance her. She will know that this in turn will have some implications to the family."

Next paragraph:

"Will they ask to show proof and also with my income?"

COURT: Sorry, will what?

A: The next message is:

"Will they ask to show proof ..."

COURT: From him, next message from him, yes.

A: " ... and also with my income? How do I sustain such high expenses every month?"

COURT: Yes.

A: Then my message was:

"If they succeed. We stick to agreement, ie, the deed."

COURT: "If they succeed we stick to the agreement."

A. Yes:

"If they succeed. We stick to agreement, ie deed."

COURT: Yes.

A: Then after that he starts with a message "Shag", that means tired, your Honour.

COURT: Yes.

A: That's when he starts "Prepare a simple trust".

COURT: He said, "shag" meaning tired.

A: That's right.

COURT: Then the next message was:

"Prepare simple trust document."

And so on.

A: That's right.

COURT: Trust letter, sorry.

A: That's right.

COURT: Yes.

MR YEO: Yes, your Honour.

COURT: Yes?

MR YEO: Sir, thank you for that. Will you agree with me that on 2 May 2017, the day which you just read out those messages, your WhatsApp exchange with Mr Tuppani was about his very likely divorce with Ms Shyller Tan?

A: At this point in time if you look at the correspondence which is definitely available from Michael Khoo & Partners, there was a lot of dispute as to the kids, the children of the marriage, as well as I believe how Shyller was spending money.

Q: Yes. So you agree with me that the WhatsApp messages that you were exchanging with Mr Tuppani on 2 May 2017 was in relation to his very likely divorce with Ms Shyller Tan?

A: At that point in time, there were no divorce as yet.

Q: Yes, correct.

A: They were fighting --

Q: Impending divorce?

A: Yes, possible impending. Agree.

Q: And at that time there was a flurry of exchange between Mr Tuppani's lawyer, who is yourself, and Shyller Tan's lawyer who was, at that time, Michael Khoo & Partners?

A: That's correct, your Honour.

Q: And will you agree with me that by that time, a dispute over the ancillary matters of a likely impending divorce would have crystallised?

A: Yes, that's possible, your Honour.

74 Seen in its proper context, what was telling about this request in May 2017 by Spencer to Mahtani to prepare the Trust Deed was the timing. It was clear from Mahtani's testimony that sometime in early 2017, Spencer and his wife (the 1st Defendant, Shyller) had discussed making changes to a deed of separation which they had entered into in 2014 and which dealt *inter alia* with matters relating to the couple's assets and their children. Although Mahtani claimed that by May 2017 Spencer and Shyller were mostly quarrelling over the children, the contents of Spencer's WhatsApp messages to Mahtani on 2 May 2017 revealed that he was chiefly preoccupied with his assets. For example, Spencer had alluded to Shyller "implicating the house" (by which, according to Mahtani, he meant the matrimonial home at Sennett Lane),[64] and he had asked Mahtani whether he would be required to show "proof of his income". What also emerged from the WhatsApp exchange, which was read out in court and the extract of which I have reproduced *in extenso* above, was that Spencer wanted a trust deed prepared so that he could "*show Shyller*" that the Property was the Plaintiffs' and not his ("…*theirs not mine*"). Read in context, I agreed with the Defendants that Spencer's request to Mahtani to draft the Trust Deed was made "in consideration of the impending divorce with the 1st Defendant and the anticipated fight on ancillary matters"[65] which would include the division of matrimonial assets. It was clear to me that Spencer's request to Mahtani to draft the Trust Deed was *not* made pursuant to a common intention he shared with the Plaintiffs for each to have a one-third beneficial interest in the property and for him to hold the Plaintiffs' two-thirds share on trust.

75 That the Trust Deed was drafted for Spencer to "show" Shyller in anticipation of an anticipated tussle over assets, and not to give effect to a

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64 Transcript dated10 May 2022 at p 129 ln 10 – 11.

65 Defendants' Closing Submissions at para 103.

common intention he shared with the Plaintiffs vis-à-vis their beneficial interest in the Property, would explain why Jason and Spencer himself were completely apathetic about signing the Trust Deed once it was prepared. The Plaintiffs argued that there were "legitimate reasons" why Spencer and Jason never signed the Trust Deed: Jason claimed that he was busy "moving house" whereas Spencer was said to have been "travelling very frequently" at the material time.[66] In my view, these explanations were no more than flimsy excuses – and false excuses at that. There was a gap of more than 2 months between the date when the Trust Deed was prepared and the date of Spencer's passing. I did not believe that Jason could have been so immersed in "moving house" for more than two months that he found it practically impossible to find time to sign the Trust Deed. As for Spencer's alleged travel activity, it was not disputed that most of his travel took place in the month of June, leaving him ample time between 3 May 2017 and 10 July 2017 to sign the Trust Deed.

76 It should also be noted that both Plaintiffs were at pains to emphasize repeatedly how much they had trusted Spencer. According to the Plaintiffs, they had left it to Spencer to negotiate the purchase of the Property; they made no protests when notified by him of an additional $485,600 to be paid on top of the original purchase price; and they complied with his instructions for payment without demur. In cross-examination, Lawrence accepted the description of the "agreement" between the three of them as a very "informal" one. It was also not disputed that even as at April 2017, when Spencer produced the handwritten note during a meeting among the three of them at the LegalStandard office,[67] there was no talk of getting Mahtani to document their "agreement" about the

66 Plaintiffs'Closing Submissions at para 76.

67 Lim Soon Hwa AEIC at Exhibit LL-7.

beneficial ownership of the Property. Indeed, when asked about this, Lawrence had this to say:[68]

COURT:	Mr Yeo is asking you why didn't you ask LegalStandard to draw up, to prepare legal documents, to record the agreement that the three of you have?
A:	***Because we three trusted -- trust each other***, then we don't think -- ***we don't need, like, lawyer to come up to help us to do such like document*** for –
MR YEO:	Then why did you sign the trust deed later?
A:	Because I recall Spencer keep calling or Spencer or Jason keep calling me because they don't have time to ask; ask me go and sign.
Q:	Why was the trust deed even prepared in the first place?
A:	Sorry?
Q:	***Why was LegalStandard engaged to prepare the trust deed in the first place, do you know?***
A.	***Because Spencer -- okay, Spencer later part told LegalStandard -- he told us that he will instruct LegalStandard to draft a trust deed so that our name will be -- will hold one-third of the share.***
Q:	***When was this?***
A:	***Around May 2017.***
Q:	***But in April, you didn't need?***
A:	***Because April is like -- we just only counting among ourselves of our share.***
Q:	***Yes. So in April a Post-it note is sufficient, is that what you are saying?***
A:	***I'm sorry, I don't get you.***
Q:	***So in April, the Post-it note, a handwritten note, is enough?***

[68] Transcript dated 5 May 2022 at p 43 ln 11 – p 44 ln 17.

A: ***Yes.***

[emphasis added]

77 In other words, between December 2016 and early May 2017, there was no attempt at all by Spencer and/or the Plaintiffs to get legal documents drawn up to reflect their respective one-third shares in the Property – and based on the Plaintiffs' own evidence, no perceived need either for any legal documentation. It should be added that from Mahtani's evidence, it was clear that Spencer himself was all along aware of the concept of a trust, as he was the one who had – without any prompting – instructed Mahtani on 2 May 2017 to "[p]repare simple trust document".[69] Given these circumstances, one must ask what event could have triggered Spencer's sudden decision to get a trust deed drafted – and as I have pointed out above, the evidence before me pointed to the possibility of a divorce and the attendant fight over assets as the trigger.

The Report on Title submitted to Maybank

78 Leaving aside Spencer's instructions to Mahtani on the drafting of the Trust Deed, it was also telling that although LegalStandard was acting for both Spencer and the mortgagee bank Maybank in the purchase of the Property, in the Report on Title submitted by LegalStandard to Maybank, LegalStandard did not notify Maybank of the existence of any trust in favour of the Plaintiffs for their

[69] Transcript dated 10 May 2022 at p 130 ln 15.

purported two-thirds share of the property:[70]

- We are not aware of any fact or information (including but not limited to any knowledge of any trust) which may be unfavourable to the Bank or may adversely affect the Bank's security over the Mortgaged Property.
- We hereby certify that the security obtained by the Bank is/are good and enforceable by the Bank.
- We confirm that we will update all necessary searches and ensure that they are in order prior to release of the loan/advance. Where applicable, we have procured the undertaking of the Mortgagor's/Chargor's lawyer to register the requisite Statement Containing Particulars of Charge at the ACRA or we will effect the lodgement of such charge(s), obtain the requisite consent(s)/approval(s), give notice(s) of assignment to the relevant parties in good time and/or ensure that the purchaser's obligation in respect of the purchase price is fulfilled as well as ensure that the conditions precedent to disbursement of banking facilities have been satisfied.

Yours faithfully

Signature: _____

Name of solicitor-in-charge: Boey Souk-Tann

Name of law practice: LegalStandard LLP

79 Ms Boey Souk-Tann, the LegalStandard conveyancing partner who had handled the conveyancing paperwork and signed off on the Report on Title, gave the following evidence:

Q.	Before submitting this Report on Title, you would have gone through, item by item, just to check?
COURT:	You mean Ms Boey personally?
MR YEO:	Yes, Ms Boey personally.
A:	Yes. If there was anything that is out of the ordinary, yeah.
Q:	Can I trouble you to turn to the next page at page 468. At the bottom of the page, that is your signature?
A:	Yes, it is.
Q:	That is a wet ink signature?
A:	Yes, it is.
Q.	If I can trouble you to go above your signature, cast your eye three bullet points above, the paragraph starting: "We are not aware of any fact or information (including but not limited to any knowledge of any trust) which may be unfavourable to the

[70] Agreed Bundle of Documents Vol 1 at p 468.

> Bank or may adversely affect the Bank's security over the Mortgaged Property."
>
> What this sentence means is that at the time when you submitted this Report of Title, you were not aware of any trust in relation to the Lorong Mambong property, correct?
>
> A: Correct.
>
> Q: Will you agree with me that as a matter of general practice, consumer banks, like Maybank, will not grant loans to finance properties to be bought on trust?
>
> A: Yes, they will be cautious.
>
> Q: Yes. Will you also agree with me that the reason for that is that the bank does not want to be part of an arrangement that may potentially circumvent rules like ABSD or bypassing TDSR limits; is that a fair statement?
>
> A: I think it's more so that they don't want to get involved in the internal arrangements between parties and be dragged into other claims.
>
> I don't know if it is because of the TDSR --
>
> Q: Sure.
>
> A: -- or other reasons.
>
> Q: Will you agree with me it is -- the bank's reluctance to grant financing for properties to be purchased on trust is part of its own risk management consideration, is that fair?
>
> A: Yes.

80 From Ms Boey's testimony, it was clear that consumer banks such as Maybank would generally be "cautious" about granting loans to finance properties to be bought on trust, and that the banks would want information as to whether the property over which they were granting a mortgage was being held on trust. Ms Boey testified that when she submitted the Report on Title, she was not made aware of any trust in relation to the Property. In other words, not only did Spencer fail to sign the draft Trust Deed he had asked Mahtani to

prepare, he obviously also never instructed Ms Boey that the Property would be held on trust. In this connection, while Ms Boey did say that she did not have personal contact with Spencer and that the instructions for the purchase of the Property were relayed to her by Mahtani,[71] Mahtani himself did not give any evidence of any instructions from Spencer to disclose to the mortgagee bank the existence of a trust in the Plaintiffs' favour over the Property. Again, therefore, the evidence of Spencer's behaviour at the time of the acquisition of the Property militated against the existence of the common intention pleaded by the Plaintiffs.

The alleged reason for putting the Property in Spencer's sole name

81 It should also be highlighted that the Plaintiffs' case was that although all three of them were to have an equal one-third share each in the Property, legal title to the Property would be registered in Spencer's sole name because following their "computation" of Spencer's "total debt servicing ratio ("TDSR") as against the total outstanding debt obligations of the Plaintiffs and [Spencer] combined", they had "concluded" that the banks' "assessment of [their] collective repayment ability would be unfavourable (*ie*, the grant of any loan facility would be a lower quantum)"; whereas "should [Spencer] apply for a property loan in his sole name, his status as a director at TNS Ocean Lines (S) Pte Ltd, coupled with lower debt obligations, would result in him being assessed as a lower risk profile".[72]

82 *Per* the Plaintiffs' own assertions, therefore, prior to entering into the agreement to purchase the Property as a joint investment and to have it held in Spencer's sole name, the Plaintiffs and Spencer had taken care to work out their respective TDSRs before assessing that their combined TDSRs would not allow

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71 Transcript dated 11 May 2022 at p 98 ln 1 – p 102 ln 20.

72 Lim Soon Hwa AEIC at para 27; Er Kok Yong AEIC at para 26.

for favourable loan terms from the banks. Even if they did not undertake a "rigorous mathematical calculation",[73] they must at the very least have been aware of each other's respective TDSR figures in order to conclude that the best way to obtain favourable loan terms was to take out the loan in Spencer's name. After all, they were the ones who had narrated in their AEICs their "computation" and "calculations" of the TDSRs and their discussions about the banks' likely reaction. However, when cross-examined, the Plaintiffs were unable to keep their story straight as between the two of them. Although Lawrence said in cross-examination that "TDSR" was a concern which all three of them shared,[74] I reproduce below Jason's evidence in cross-examination:[75]

Q.	Around the time in late December 2016, what was your TDSR?
A:	What do you mean my TDSR?
Q:	I don't know. You tell us. You say that because your TDSR was high, you could not get a loan. That's why you agreed for Mr Tuppani to hold your one-third share in the property on trust for you. So you tell us now what was your TDSR as at December 2016
A:	At the time I owned three property.
Q:	No. What was your TDSR?
A:	I cannot recall.
Q:	Do you know Mr Lawrence Lim's TDSR?
A:	I don't know.
	…..
Q.	**How do you calculate TDSR?**

[73] Plaintiffs' Closing Submissions at para 16.

[74] Transcript dated 5 May 2022 at p 80 ln 5 – p 81 ln 2.

[75] Transcript dated 6 May 2022 at p 12 ln 21 to p 13 ln 9, p 19 ln 14 to p 23 ln 24.

A: **I don't know how to calculate**.

Q: Then how do you know that your TDSR was too high to buy the one-third share of the Wala property?

A: Because my banker say it will be hard to get loan.

.....

Q. I see. **What was Mr Tuppani's TDSR as at December 2016?**

A: **I don't know.**

Q: **Did he ever tell you?**

A: **No.**

Q: **Did Mr Lawrence Lim ever tell you his TDSR as at December 2016?**

A. **No.**

Q: Mr Er, your reason for Mr Tuppani to buy the Wala property and to hold it on trust for you and Mr Lawrence Lim, based on this TDSR reason, is false, agree?

A. Disagree.

COURT: Sorry, can you explain to him why you say it is false?

MR YEO: Yes. It is false because you did not know your TDSR, you did not know Mr Lawrence Lim's TDSR, and you did not know Mr Tuppani's TDSR; it is false because of these three reasons.

A: I disagree.

Q: **How do you reach the conclusion that it would be easier for Mr Tuppani to get a loan because he has a lower TDSR, when you don't even know Mr Tuppani's TDSR, Mr Lawrence Lim's TDSR, and your own TDSR?**

A: **Because Spencer say he can get the loan. This is what he tell me and Lawrence, and if he tell me, why should I go and check? He say he can, then means okay what, right or not?**

…

COURT:	**Can you explain why, according to you, you believed that Spencer Tuppani had a lower TDSR compared to you and Lawrence Lim, since you say that you didn't know Lawrence Lim's TDSR, you didn't know Spencer Tuppani's TDSR, and you also am not sure of your own as at 2016?**
A:	No, because Lawrence -- **because Spencer say** he can get the -- **it will be easier for him if put under his name, he can get the loan easier.**
COURT:	Is there any other reason why you thought that as at December 2016, Spencer Tuppani had a lower TDSR than you and Lawrence, apart from what you have just told us?
A:	Sorry, your Honour, can you repeat your question?
COURT:	I asked you why you said you thought that Spencer Tuppani had a lower TDSR than you and Lawrence Lim, since you say you don't know what his TDSR was, you don't know what Lawrence's TDSR was, and you were not sure of your own either as at December 2016, right? So you don't know all three TDSR figures, why did you think Spencer's was lower and you said, "because Spencer said he could get the loan easier"?
A:	Yes. He told me and Lawrence, say he can get.
COURT:	Is there any other reason why you thought that Spencer's TDSR was lower apart from him telling you that he could get the loan easier?
A:	No, your Honour.

[emphasis added]

83 In other words, on Jason's evidence, neither Spencer nor Lawrence had told him what their TDSRs were. Further, on Jason's evidence, he had concluded that his own TDSR was too high to get favourable loan terms and that Spencer's TDSR was lower than his and Lawrence's, not because of any "computation" exercise they had undertaken, but because his own banker had told him it would be "hard" for him to get a loan, whereas Spencer had said he could "get the loan easier". On Jason's evidence, he had also not bothered to do any checks himself

once Spencer said he could "get the loan easier". This evidence was entirely contrary to the version of events narrated in both Plaintiffs' AEICs, in which all three of them had calculated Spencer's TDSR against their collective TDSRs before drawing the conclusion that Spencer would be best placed to take a loan. The glaring contradiction between Jason's testimony and the Plaintiffs' affidavit evidence showed that the story about their TDSR "computation" having led to the agreement to put the Property in Spencer's sole name was simply a pack of lies. Clearly, these lies were concocted by the Plaintiffs in a desperate attempt to bolster their story about the "common intention" they shared with Spencer to invest jointly in the Property.

Inferred common intention: the Plaintiffs' reliance on their alleged contributions to the purchase price of the Property

84 In respect of their claim of a common intention constructive trust, the Plaintiffs also appeared to advance an alternative case of inferred common intention. In this connection, as noted earlier (at [29] – [34]), the CA has held that the court's focus in assessing any claims of an inferred common intention should be on the direct financial contributions to the purchase price made by the person claiming the beneficial interest; and that although an inferred common intention may arise from other forms of conduct, this is only in "exceptional situations": *Ong Chai Soon* at [35] citing *Geok Hong Co* at [80].

85 Insofar as the Plaintiffs purported to rely on their alleged payment of $535,200 each towards the purchase price of the Property, I have explained earlier (at [49] – [64]) the reasons why I found that most of these alleged payments could not be proved and that none of them could be shown to be a contribution towards the purchase price of the Property. For the same reasons, I rejected the argument that these alleged payments constituted evidence of an

inferred common intention for the Plaintiffs and Spencer to share the beneficial interest in the Property in equal proportions.

86 In the interests of completeness, I add that the Plaintiffs did not put forward a case of detrimental reliance apart from direct financial contributions.

Inferred common intention: The Plaintiffs' conduct subsequent to Spencer's death

87 The Plaintiffs' own conduct subsequent to Spencer's death also militated against there having been any such common intention. As I noted earlier (at [41] and [48]), by the time Spencer passed away on 10 July 2017, both Jason and Lawrence were aware that the monthly rental from the Property was insufficient to cover the mortgage instalment payments. Yet neither of them made any effort to top up the shortfall. Their various explanations for their apparent nonchalance – *eg*, they did not know how to go about topping up, they were waiting for the Defendants to "add" their names to the Property, they were waiting for Shyller to tell them the "account" to top up, etc. – were wholly unbelievable. Since they knew the Property was mortgaged to a bank, if they were truly co-owners of the Property, one would have expected them to take action to verify the status of the mortgage repayment and to contribute towards topping up any shortfall. Their attempt to shift responsibility to Shyller / the Defendants by claiming that they were waiting for some sort of overture from the latter was particularly disingenuous: there was no evidence at all of their having even offered to help with the mortgage repayment; and as I have noted earlier (at [44]), Jason's vague assertion that he had told Mahtani to ask Shyller for "the account" made no sense since he himself could easily have reached out to Shyller for the information. Instead, it was Shyller who took action to pay for the shortfall in the mortgage instalment payments following Spencer's death and to renegotiate the tenancy agreement.

The 1st Defendant Shyller's alleged acknowledgment of the Plaintiffs' beneficial interest in the Property

88 I next address three remaining points regarding the evidence. First, the Plaintiffs alleged that the 1st Defendant Shyller had acknowledged at the meetings on 24 July 2017 and 23 August 2017 that they were co-owners of the Property.[76] A fair amount of time was expended by parties on the factual issue of whether Shyller had attended a meeting with Mahtani and the Plaintiffs on 24 July 2017, separately from and subsequent to a meeting between her, Mr Andy Chiok and Mahtani on the same date. I did not find it necessary to come to any conclusive finding on this issue because ultimately, the allegations about Shyller's "acknowledgement" of the Plaintiffs' interest in the Property – whether made at these two meetings or for that matter, to other witnesses such as Tan Meng Chuan Kevin[77] ("Kevin", a friend of the Plaintiffs and Spencer) – were of no assistance in advancing their case. This was because the Plaintiffs' case of a common intention constructive trust was premised on the common intention having been formed between them and Spencer prior to the purchase of the Property. On the Plaintiffs' own case, Shyller was not privy to the oral agreement reached between them and Spencer in December 2016: indeed, on the Plaintiffs' own evidence, Spencer would not have discussed his investment projects with Shyller.[78] Whatever Shyller had to say in the aftermath of Spencer's death was thus of no use to the Plaintiffs in their attempt to prove the alleged common interest constructive trust.

89 In the interests of completeness, it should also be noted that based on their pleadings and testimony, it was *not* the Plaintiffs' case that Shyller had –

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76 Transcript dated 5 May 2022 at p 123 ln 8 – p 124 ln 14.

77 Tan Meng Chuan Kevin AEIC at para 14.

78 Lim Soon Hwa AEIC at para 14; Er Kok Yong AEIC at para 14.

on behalf of the estate – made them some promise or other that was actionable as a separate and distinct cause of action.

Other witnesses' evidence about statements allegedly made by Spencer

90 The second point concerns the evidence given by other witnesses such as Kevin[79] of statements allegedly made by Spencer about the "joint investment" in the Property. In the first place, statements which were made out of court, and which are tendered in court as evidence of the truth of the content therein, are inadmissible as hearsay: see in this respect *Soon Peck Wah v Woon Che Chye* [1997] 3 SLR(R) 430 ("*Soon Peck Wah*") at [26]; *Chan Sze Ying v Management Corporation Strata Title Plan No 2948 (Lee Chuen T'ng, intervener)* [2021] 1 SLR 841 ("*Chan Sze Ying*") at [95]. The Plaintiffs did not make it clear whether they were relying on the exception in s 32(1)(*j*)(i) of the Evidence Act 1893 (2020 Rev Ed). However, even assuming for the sake of argument that the Plaintiffs had invoked this exception to the rule against the admissibility of hearsay, I was not inclined to give any weight to the witnesses' allegations about Spencer's out-of-court statements, given the objective evidence which existed of Spencer's conduct and which I have earlier found to militate against the finding of the pleaded common intention.

Adverse inference drawn against the Plaintiffs: Deletion of the WhatsApp group chat "SUP"

91 Finally, I add that in respect of the unavailability of the WhatsApp group chat "SUP", I found the Plaintiffs' attempts to explain its unavailability to be wholly lacking in credibility. I agreed with the Defendants that an adverse inference should be drawn against the Plaintiffs pursuant to s 116, Illustration

79 Tan Meng Chuan Kevin AEIC at para 12.

(g) of the Evidence Act 1893 (2020 Rev Ed): *ie*, it should be presumed that evidence of this WhatsApp group chat – if given – would have been unfavourable to the Plaintiffs' claims about their "agreement" with Spencer to acquire the Property as a joint investment and to have him hold their two-thirds beneficial interest on trust. I set out below my reasons for coming to this conclusion.

92 In the first place, on the Plaintiffs' own admissions, the WhatsApp group chat "SUP" was a key mode of communication between the three men in relation to their various joint investments and business ventures – including, indisputably, the purchase of the Property and their financial contributions to that purchase. The WhatsApp group chat would therefore have been a vital piece of evidence for the purposes of the Plaintiffs' claim to the Property. Thus, for instance, Lawrence testified as follows:[80]

MR YEO:	So the WhatsApp group chat had negotiations about the Wala property, is that what you're saying?
A.	Yes.
…	
MR YEO:	… "Following the securing of the loan, the Deceased informed me that, while the original purchase price of the Property was [S$4.8 million], an additional sum of S$485,600 was required, and had to be paid by the three of us." Correct? How did Mr Tuppani tell you that an additional sum of $485,600 was required? How?
A:	He told us that 350,000 had to pay as a deposit to Maybank.
Q:	No, sorry --
COURT:	You mean whether it was a phone call, face-to-face or what?

[80] Transcript dated 4 May 2022 at p 104 ln 1 – 4 and p 143 ln 2 to p 144 ln 3.

MR YEO: Yes.

COURT: Did he tell you all face-to-face, or was it a phone call, a text message, or what?

A: I think it's a text message.

MR YEO: Yes, the WhatsApp group message.

A: Yes.

Q: In that WhatsApp group message that Mr Tuppani told you, that an additional $485,600 was required, he broke down the two sums which we see at paragraph 33(a) and 33(b) of your AEIC, 350,000 and 135,600, correct?

A: Correct.

Q: That was in the WhatsApp group message?

A: Yes.

93 As for Jason, he too agreed that the WhatsApp group chat would have shown the trio discussing the Bamford Watch Project and the need for each of them to contribute $99,000 towards that project. Most critically of all, Jason agreed that the WhatsApp group chat would also have shown that Spencer did in fact receive from each Plaintiff the $99,000 cash which he subsequently applied towards the purchase price of the Property with the Plaintiffs' consent:[81]

Q. When you all were talking about the Bamford project, you all would have communicated through the WhatsApp group chat, correct?

A: We also can communicate over the dinner.

Q: Sure.

A: When we meet around coffee, we also can discuss so I cannot remember it's over the group chat or our meeting.

Q: Sure. Will you agree with me that there would be at least some of these discussions on the Bamford project in the WhatsApp group chat?

[81] Transcript dated 6 May 2022 at p 39 ln 20 to p 40 ln 24.

A: Yes.

Q: Will you agree with me that the WhatsApp group chat messages would show why 99,000?

A: Sorry, can you repeat the question?

Q: The WhatsApp group messages would show why each person had to come up with $99,000, agree/disagree?

A: Agree.

Q: The WhatsApp group messages would also show that Mr Tuppani received $99,000 in cash from you, agree?

A: Agreed.

Q: As well as Mr Tuppani received $99,000 in cash from Mr Lawrence Lim, agree?

A: Agreed.

Q. For the Bamford project, were there any email correspondence between Mr Tuppani, Mr Lawrence Lim and yourself?

A: No.

94 Astonishingly, despite the clear importance of the WhatsApp group chat to their claim of two-thirds beneficial interest in the Property, both Plaintiffs supposedly deleted the group chat after Spencer's passing – and for reasons which did not stand up to scrutiny. In their AEICs, both Plaintiffs had originally stated that they no longer had access to the WhatsApp group chat because they had changed their phones "multiple times since [Spencer's] passing" and that the "data in the WhatsApp Group was also not backed up".[82] However, their story changed when they took the witness stand: they claimed, instead, that they had deleted the WhatsApp group chat because they felt "sad" whenever they looked at it. This abrupt volte-face was highly suspicious and suggested to me that the

[82] Lim Soon Hwa AEIC at para 8; Er Kok Yong AEIC at para 9.

Plaintiffs were attempting to conceal the real reason as to why messages from the WhatsApp group chat were not produced in evidence at trial.

95 Moreover, the Plaintiffs' evidence in cross-examination was that they had deleted the group chat sometime in late July or early to mid-August 2017.[83] However, according to Mahtani, as at 19 July 2017,[84] he had already reached out to Shyller to ask if she could meet with the Plaintiffs to discuss (*inter alia*) the Property. In other words, going by Mahtani's testimony, the Plaintiffs were already prepared – as at 19 July 2017 – to discuss with Shyller their claim to beneficial co-ownership of the Property. In the circumstances, it made no sense for them to delete the entire WhatsApp group chat in late July or early August 2017, without even seeking to preserve the crucial messages relating to their "joint investment" in the Property and their alleged financial contributions.

96 Having regard to the above reasoning, I was satisfied that this was not a case where the evidence was not adduced because it was unavailable: rather, it was because the Plaintiffs had something to hide; a case, in short, eminently suitable for the application of the presumption in s 116, Illustration (g) of the Evidence Act.

Conclusion

97 For the reasons set out at [37] to [9696], I held that the Plaintiffs were unable to prove their claims of a resulting trust and/or a common intention constructive trust and dismissed Suit 554 accordingly.

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83 Transcript dated 4 May 2022 at p 100 ln 10 – 13.

84 Transcript dated 10 May 2022 at p 136 ln 3 – 25.

98 As costs should follow the event, the costs of the proceedings in Suit 554 were awarded to the Defendants, to be paid by the Plaintiffs. Parties were to agree on the quantum of the costs, failing which either side was to be at liberty write in to ask that I fix the costs.

Costs

99 Parties were unable to agree on costs and wrote in to ask that I fix costs.[85] Having considered the submissions from both sides, I agreed with the Plaintiffs that the Suit 554 Defendants' submission of $180,000 for party-&-party ("P&P") costs appeared to have been premised, *inter alia*, on the assumption that the costs for the trial portion of these proceedings be awarded on the basis of a 9-day trial. This was not correct because a perusal of the trial transcript would show that Suit 554 was heard together with Suit 438 within the same trial; witnesses who were common to both suits were cross-examined by counsel in both suits at one go, *ie* without having to take the stand twice; and in any event, due to the scheduling constraints in relation to certain witnesses and other factors, several of the 9 hearings days were not full hearing days. Based on my own perusal of the trial transcript, I accepted the Plaintiffs' computation of the time taken for the examination, cross-examination and re-examination of the Suit 554 witnesses.

100 On the other hand, while I thought the Defendants' proposed costs figure of $180,000 too high, I also found the Plaintiffs' suggested figure of $113,000 to be on the low side. Taking into account all relevant factors including the nature of the issues in contention, the level of complexity involved, and the amount of work that appeared to have been done, I awarded the Suit 554 Defendants

[85] Defendant's Letter dated 11 October 2022; Plaintiffs' Letter dated 14 October 2022.

$135,000 in legal costs (excluding disbursements). As for the disbursements, since the Plaintiffs confirmed that they took no issue with the disbursements claimed by the Defendants, I allowed the Defendants' disbursements totalling $5,199.07.

Mavis Chionh Sze Chyi
Judge of the High Court

Oommen Mathew and See Wern Hao (Omni Law LLC) for the plaintiffs.
Yeo Lai Hock Nichol and Qua Bi Qi (Solitaire LLP) for the defendants.