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

[2023] SGHC 6

Suit No 663 of 2020

Between

Kotagaralahalli Peddappaiah Nagaraja

… *Plaintiff*

And

(1) Moussa Salem
(2) Serene Phey Sai Lin
(3) SLI Developments Pte Ltd

… *Defendants*

JUDGMENT

[Trusts — Express trusts]
[Trusts — Resulting trusts — Presumed resulting trusts]
[Companies — Shares]

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v
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6 January 2023 Judgment reserved.

Vinodh Coomaraswamy J:

Introduction

1 The plaintiff brings this suit seeking to vindicate his rights either as the beneficial owner of one-third of the shares in the third defendant or as the beneficial owner of one share in the third defendant. The beneficial interest which the plaintiff claims is said to arise under or by reason of a written declaration of trust which the second defendant executed on 23 July 2015 ("the 2015 Trust Deed"). By the express terms of the 2015 Trust Deed, the second defendant declared that she held one-third of the shares in the third defendant on trust for the plaintiff. I shall refer to all of the shares in the third defendant from time to time and at any given time as "the Shares".

2 The first defendant opposes the plaintiff's claim. His case is that the second defendant holds all the Shares on trust for the first defendant on a

resulting trust. The resulting trust is said to arise from the first defendant's payment: (a) to a law firm in Singapore of all the fees and disbursements necessary for the law firm to incorporate the third defendant; and (b) to the third defendant of all of the capital payable on the Shares upon its incorporation.

3 The second and third defendants take the position that the first defendant is the beneficial owner of all of the Shares. But they have taken no active part in this litigation and have indicated only that they will abide by any order the court may make in respect of the Shares. They have, however, reserved their rights as to recovering the costs which they have incurred in this action.

4 This action is therefore in substance entirely between the plaintiff and the first defendant. Having considered the evidence they have led and the submissions they have advanced, I find against the plaintiff and in favour of the first defendant. I therefore hold that the second defendant holds the Shares on resulting trust for, and only for, the first defendant.

5 I now set out my reasons.

Background facts

The parties

6 The plaintiff is a businessman. He is a citizen of India but has resided in Sri Lanka since 2003.[1] During that time, it appears, he has built up in Sri Lanka a considerable network of contacts there, in particular, with the Government of Sri Lanka ("the GOSL") and its arms.

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[1] Statement of Claim (Amendment No. 4) ("SOC") at para 1; Kotagaralahalli Peddappaiah Nagaraja's Affidavit of Evidence-in-Chief dated 2 March 2022 ("KPN") at para 2.

7 The first defendant is a businessman. He is a citizen and a resident of the United Kingdom.[2] He is in the business of real estate and product distribution. In the course of his business, he has invested in a large number of ventures worldwide.[3] This dispute arises from one such venture. The third defendant was incorporated to be the investment vehicle for this venture.

8 The second defendant is a Singapore citizen[4] and a resident of Singapore. She was and continues to be an employee of Infinitus Law Corporation ("ILC"), a law firm practising in Singapore. In the course of her employment, she accepts appointment as a nominee director of companies which ILC incorporates for its clients. Some of ILC's clients need a nominee director to satisfy s 145 of the Companies Act 1967 (2020 Rev Ed) ("the Companies Act"). That section requires every company incorporated in Singapore to have at least one director who is resident in Singapore. The second defendant also accepts appointment as a nominee shareholder in companies which ILC incorporates for its clients. This is how the second defendant came to hold the Shares. She therefore accepts that she holds the Shares on trust and thus has no beneficial interest whatsoever in the Shares.[5] The question in this action is for whom she holds the Shares on trust.

9 The third defendant was incorporated in Singapore in 2015. ILC carried out the incorporation. It did so in circumstances which I describe more fully below. The third defendant's incorporation documents name: (a) the second

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2 SOC at paras 2 and 3; Defence (Amendment No. 2) ("Defence") at para 6.

3 Moussa Salem's Affidavit of Evidence-in-Chief dated 6 March 2022 ("MS") at para 2.

4 SOC at para 4; Defence at para 6.

5 Plaintiff's Opening Statement ("POS") at para 3.

defendant as its initial and sole subscribing shareholder: and (b) the plaintiff, the first defendant and the second defendant as its initial directors. The third defendant's directors now are the second defendant and one Mr Mendel Gluck ("Mr Gluck").

10 The term "shareholder" as I use it in this judgment will always mean a member of the third defendant whose name appears in the electronic register of the third defendant's members kept and maintained by the Registrar of Companies under s 196A of the Companies Act. My use of the term "shareholder" will therefore say nothing as to where lies the beneficial interest in the shares attributed to that shareholder in the electronic register.

11 It is now necessary to introduce Mr Gluck. He is a citizen and resident of the United Kingdom. As I have mentioned, he was one of the initial directors of the third defendant. He has remained a director of the third defendant to date.[6] The plaintiff named Mr Gluck as a defendant when he commenced this action. His original statement of claim sought relief against both Mr Gluck and the first defendant for breach of contract, in the tort of conspiracy and for minority oppression under the Companies Act.[7] I struck out all of these claims before trial.[8] I allowed this action to proceed to trial only in so far as he claimed that the second defendant held one-third of the Shares on an express trust for him under or by reason of the 2015 Trust Deed. That claim does not involve Mr Gluck in any way. As a result, the plaintiff voluntarily discontinued this action

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6 SOC at para 3.

7 Statement of Claim (Amendment No. 2) dated 16 November 2020 at paras 23–25, 28–29,32–34 and 48–49.

8 Certified Transcript, 11 December 2020.

against Mr Gluck. Mr Gluck is therefore no longer a defendant to this action. He was, however, a key witness for the first defendant at trial.

12 I now set out the background to the parties' dispute.

Background to the dispute

13 In 2011, the GOSL invited bids for a project to revive the then-defunct Kantale Sugar Factory ("the Project") in Sri Lanka.[9] The plaintiff was at that time a shareholder and director of KPN Hong Kong Limited ("KPN HK"). He decided to put in a bid for the Project using KPN HK as his vehicle.[10] The plaintiff was introduced to Mr Gluck. The two men entered into a joint venture agreement to bid for the Project. The lead technical collaborator for KPN HK's bid was Prabhulingeshwar Sugars and Chemical Limited ("Prabhu Sugars").[11] The bid put in by the plaintiff's consortium was successful. However, the GOSL decided not to proceed with the Project.

14 Despite this setback, the plaintiff did not give up on the Project. By 2015, he had persuaded the GOSL to consider reviving it. He then approached Mr Gluck to see whether he was still interested in investing in it. In May 2015, Mr Gluck indicated interest, subject to due diligence.[12] Mr Gluck's legal adviser

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9 SOC at para 7.

10 SOC at para 8.

11 SOC at para 11.

12 Mendel Gluck's Affidavit of Evidence-in-Chief dated 6 March 2022 ("MG") at para 11; POS at para 16.

for this purpose was Mr Aaron Jordan, a partner in the law firm Holman Fenwick Willan LLP.[13]

15 The difficulty was that the GOSL now required the successful bidder to invest US$100m in the Project and to furnish a performance guarantee of US$10m. These were substantial sums beyond the capacity of the joint venture which the plaintiff had entered into with Mr Gluck in 2011. They had to find additional investors.[14]

16 In June 2015, the GOSL formally awarded the Project to the plaintiff's consortium.[15] Following discussions with the GOSL, it was decided that the corporate structure for the Project would be as follows:[16]

(a) a Sri Lankan entity would be incorporated as a special purpose vehicle to carry out the Project ("Project Co");

(b) the GOSL would hold 51% of the shares in Project Co while the entity providing the US$100m investment for the Project ("Investor Co") would hold the remaining 49% of the shares in Project Co; and

(c) Project Co, Investor Co and the GOSL would then enter into a shareholders' agreement to govern their rights and obligations as shareholders in Investor Co and as participants in the Project.

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13 Aaron Jordan's Affidavit of Evidence-in-Chief dated 7 March 2022 ("AJ") at paras 1 and 4.

14 SOC at para 15; POS at para 15.

15 POS at para 17; Agreed Bundle Volume 1 ("1AB") 50.

16 MG at para 14; SOC at para 20; Defence at paras 37 and 45.

17 In July 2015, the plaintiff set up the corporate structure for the Project. MG Sugars Lanka (Private) Limited ("MG Sugars") was incorporated in Sri Lanka to serve as Project Co.[17] MG Holdings Lanka (Pvt) Limited ("MG Holdings") was also incorporated in Sri Lanka to serve as Investor Co.[18]

18 In the meantime, Mr Gluck had approached the first defendant and his brother to see whether they were interested in investing in the Project. In July 2015, they indicated interest.[19] Mr Gluck's adviser for this purpose was Mr Richard Baldock ("Mr Baldock") of Stonehage Fleming.[20] Mr Baldock is a business consultant, not a lawyer, and Stonehage Fleming is a multifamily office, not a law firm. Nevertheless, it appears that Mr Baldock provided commercial and tax advice to Mr Gluck in the same way that a lawyer would, without going so far as to provide legal advice.

19 Mr Baldock advised the first defendant that it would be more tax efficient to invest in the Project through a company incorporated in Singapore.[21] That company would then hold 49% of the Project with the GOSL holding the other 51%. It was accordingly decided to incorporate a company in Singapore to be the vehicle for investing in the Project.[22] The company incorporated pursuant to this decision was the third defendant.

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17 SOC at para 18; Defence at para 23.

18 MG at para 16.

19 Defence at para 36.

20 Defence at paras 37–38.

21 MG at para 34; Richard Michael Baldock's Affidavit of Evidence-in-Chief dated 6 March 2022 ("RB") at para 8.

22 MG at para 38.

20 Mr Baldock was assisted by Mr Paul Weldon ("Mr Weldon"), also of Stonehage Fleming. On 22 July 2015, Mr Weldon instructed ILC to incorporate the third defendant.[23] On 22 July 2015 and 23 July 2015, Ms Pamela Chong ("Ms Chong"), a lawyer at ILC, carried out the usual preparatory steps for incorporating a company in Singapore. As a result, a number of events took place on 23 July 2015 which I now describe individually and in sequence.

21 On the morning of 23 July 2015, ILC issued a tax invoice for its professional fees and disbursements for the incorporation.[24] The invoice was addressed personally to the first defendant. That afternoon, it was decided to simplify the corporate structure for the Project by eliminating MG Holdings. The third defendant would now hold 49% of MG Sugars with the GOSL holding the other 51%.[25] That evening, the first defendant duly paid ILC's tax invoice in full. That night, the third defendant was duly incorporated under the Companies Act. That event caused the third defendant to commence existence as a legal person and called the Shares into existence as property. The third defendant's initial share capital comprised three shares of US$1 each ("the Subscriber Shares"). As I have mentioned, the second defendant held all of the Subscriber Shares as the sole subscriber to the third defendant's share capital.

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23 AJ at para 32.

24 Defence at para 38.

25 MG at para 40.

22 Also on 23 July 2015, the second defendant executed the 2015 Trust Deed.[26] By its express terms, she declared that she held the Subscriber Shares on trust for the plaintiff, the first defendant and Mr Gluck in equal shares:[27]

> **THIS DECLARATION OF TRUST** is made the 23rd day of July 2015
>
> **BY**
>
> **[The second defendant] (hereinafter referred to as "the Nominee")** c/o 77 Robinson Road #16-00 Singapore 06889
>
> **IN FAVOUR OF**
>
> **[The first defendant], [Mr Gluck] and [the plaintiff], (hereinafter collectively referred to as "the Beneficiaries").**
>
> **WHEREAS:-**
>
> (A) [The third defendant] ("the Company") Registration No. 201529781Z is a company incorporated in Singapore on 23 July 2015 with its registered office at 77 Robinson Road #16-00 Singapore 068896.
>
> (B) As at the date of incorporation on 23 July 2015, the Nominee was registered as the owner of 3 Shares in the Company (hereinafter collectively referred to as "the Shares").
>
> (C) The Nominee acknowledges that notwithstanding that the Shares are registered in her name, the Shares are held by the Nominee upon trust for the Beneficiaries in equal shares.
>
> **NOW THIS DEED WITNESSETH AS FOLLOWS:-**
>
> 1. **Declaration of Trust**
>
> The Nominee declares that she holds the Shares and all dividends, interest accrued or to accrue and other distributions and benefits in respect of the Shares or any further Shares she may hold for and on behalf of the Beneficiaries, upon trust for the Beneficiaries in equal shares absolutely…

[emphasis in bold and underline in original]

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26 1AB 439–441.

27 1AB 439.

23 There is no practical difference for present purposes between the second defendant declaring that she held the three Subscriber Shares for the first defendant, Mr Gluck and the plaintiff in equal shares and the second defendant declaring that she held one of the three Subscriber Shares on trust for the plaintiff. I shall therefore treat the 2015 Trust Deed as the second defendant's declaration that she held one of the Subscriber Shares on trust for the plaintiff.

24 Clause 2.2 of the 2015 Trust Deed sets out the second defendant's acknowledgment that Mr Gluck was the plaintiff's authorised representative on all matters concerning the Subscriber Shares:

> 2.2 The [second defendant] confirms the BENEFICIARIES have appointed [Mr Gluck], to be the authorised representative of the BENEFICAIRIES. The [second defendant] confirms and undertakes that she will act upon the written instructions of [Mr Gluck] on all matters concerning the [Subscriber] Shares held pursuant to this trust for and on behalf of the Beneficiaries.

25 Also on 23 July 2015, the plaintiff, the first defendant and Mr Gluck executed a letter of indemnity. By the letter of indemnity, the three of them empowered the second defendant to act in accordance with instructions from Mr Gluck alone on all matters concerning the Subscriber Shares ("the Letter of Indemnity"):[28]

> **From:**
>
> **[The first defendant], [Mr Gluck], and [the plaintiff]** (hereinafter collectively referred to as "**BENEFICIARIES**", which term shall mean and include its Successors and permitted assigns) and
>
> **To:**

[28] 1AB 313–314; MS at paras 26–27.

> Infinitus Law Corporation, of 77 Robinson Road #16-00 Singapore 068896 (hereinafter referred to as "ILC" which term shall mean and include its officers, agents, employees and its successors and permitted assigns)
>
> **Whereas** ILC shall provide the services to BENEFICIARIES as shareholder and director of [the third defendant] ("Company") and to do such acts and things in relation thereto.
>
> **And whereas** the BENEFICIARIES instruct and confirm that ILC may act upon instructions on all matters concerning the shareholding held by ILC's employee in trust for the Beneficiaries pursuant to the Declaration of Trust dated 23 July 2015, from [Mr Gluck].
>
> **IT IS HEREBY AGREED AS FOLLOWS:-**
>
> 1. In consideration of ILC performing the above acts, BENEFICIARIES agrees (sic) to release, defend, indemnify, fully protect and hold harmless ILC, its officers, directors, employees and its successors and permitted assigns (herein individually and collectively referred to as "Indemnified Parties"), from and against any and all claims, demands and causes of action, liabilities and expenses (including reasonable legal expenses) made against the Indemnified Parties arising out of the above mentioned acts and things.
>
> [emphasis in bold and underline in original]

26 By November 2016, over a year later, the relationship between the plaintiff, the first defendant and Mr Gluck had irretrievably broken down. As a result, in November 2016, the plaintiff was removed as a director of the third defendant.[29]

27 Further, in December 2016, an additional 9,997 shares in the third defendant were duly allotted and issued to the second defendant at US$0.01 per share ("the Additional Shares"). This increased the number of Shares from three shares to 10,000 shares[30] and increased the third defendant's share capital from

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29 MG at para 3.

30 SOC at para 33A; Defence at para 64.

US$3.00 to US$102.97. This also had the effect, at least on one view, of diluting the plaintiff's interest in the Shares.

28 In November 2017, the second defendant executed a trust deed declaring that she held the Shares as trustee for and on behalf of the first defendant alone. This deed was backdated to 8 December 2016. I shall therefore refer to it as "the 2016 Trust Deed.[31] This had the effect, at least on one view, of terminating any beneficial interest the plaintiff may have had in the Shares.

29 The second defendant executed the 2016 Trust Deed on the instructions of Mr Baldock, on behalf of Mr Gluck. The material parts of the 2016 Trust Deed read as follows:[32]

> **THIS DECLARATION OF TRUST** is made the 8th day of December 2016.
>
> **BY**
>
> **[The second defendant] (hereinafter referred to as "the Nominee")** c/o 77 Robinson Road #16-00 Singapore 06889
>
> **IN FAVOUR OF**
>
> **[The first defendant] (hereinafter referred to as "the Beneficiary").**
>
> **WHEREAS:-**
>
> (A) [The third defendant] ("the Company") … is a company incorporated in Singapore on 23 July 2015 ….
>
> (B) As of 8 December 2016, the Nominee was registered as the owner of 10,000 Shares in the Company (hereinafter collectively referred to as "the Shares").
>
> (C) The Nominee acknowledges that notwithstanding that the Shares are registered in her name, the Shares are held by the Nominee upon trust for the Beneficiary in equal shares as follows:

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31 SOC at para 33A; Defence at para 53; Agreed Bundle Vol 2 ("2AB") 672–674.

32 2AB 672.

Beneficial Owner	**Ordinary shares @ US$1.00**	**Ordinary shares @ US$0.01**	**Total Shareholding**
[The first defendant]	3 shares (US$3.00)	10,000 shares (US$102.97)	10,000 shares (US$102.97)

[emphasis in bold in original]

The parties' cases

The plaintiff's case

30 The plaintiff's case is as follows.

31 The plaintiff became the beneficial owner of one-third of the Subscriber Shares (*ie*, one Subscriber Share) in July 2015 by the plain words of the 2015 Trust Deed.[33] When the second defendant became the legal owner of the 9,997 Additional Shares in December 2016, the plaintiff became the beneficial owner of one-third of the Additional Shares by virtue of cl 1 of the 2015 Trust Deed and Article 47 of the third defendant's articles of association ("Article 47"). Article 47 confers on the plaintiff rights of pre-emption in relation to one-third of the Additional Shares, *ie*, rights in the Additional Shares which are proportionate to his beneficial interest in one-third of the Subscriber Shares.[34]

32 The plaintiff's subsisting beneficial interest in the Shares was unaffected by the 2016 Trust Deed. The 2016 Trust Deed could not extinguish the plaintiff's beneficial interest in one-third of the Shares. Nor could the 2016 Trust

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33 Plaintiff's Closing Submissions dated 15 June 2022 ("PCS") at para 148.

34 PCS at paras 153–154.

Deed somehow have conveyed the plaintiff's beneficial interest in the Shares to the first defendant. Any such conveyance would have required a written disposition of the plaintiff's beneficial interest under s 7(2) of the Civil Law Act 1909 (2020 Rev Ed) ("CLA").[35] There was never any such disposition.

The first defendant's case

33 The first defendant's case is as follows.

34 The second defendant holds the beneficial interest in the Shares on a presumed resulting trust for the first defendant. The presumed resulting trust attached at the moment the Subscriber Shares and the Additional Shares were called into existence as property in July 2015 and December 2016 respectively.[36] The presumed resulting trust arose because the first defendant provided all of the consideration for all of the Subscriber Shares and the Additional Shares.

35 The second defendant could not have vested the beneficial interest in the Subscriber Shares in the plaintiff by executing the 2015 Trust Deed.[37] That is because the second defendant did not hold the beneficial interest in the Subscriber Shares at the time she executed the 2015 Trust Deed. That beneficial interest was already vested in the first defendant under the presumed resulting trust.

36 The 2015 Trust Deed is not evidence of any objective intention that the plaintiff was to have a beneficial interest in one of the Subscriber Shares. The

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35 PCS at paras 169–170.

36 1st Defendant's Closing Submissions dated 15 June 2022 ("DCS") at paras 196–203.

37 DCS at paras 212–213.

2015 Trust Deed was no more than a temporary arrangement, intended to last only until the negotiations with the GOSL concluded and a shareholders' agreement could be executed. Mr Gluck and the plaintiff are named as beneficiaries in the 2015 Trust Deed only to avoid giving the GOSL the incorrect impression that Mr Gluck and the plaintiff had withdrawn from involvement in the Project.[38]

37 Even if the 2015 Trust Deed was somehow effective to create an express trust in favour of the plaintiff over one of the Subscriber Shares, which was somehow extended to encompass the Additional Shares, Mr Gluck terminated that trust in November 2017 when he, through Mr Baldock, instructed the second defendant to execute the 2016 Trust Deed.[39] Clause 2.2 of the 2015 Trust Deed and the terms of the plaintiff's Letter of Indemnity gave Mr Gluck authority on the plaintiff's behalf to terminate any express trust which may have been created by the 2015 Trust Deed.[40]

38 Section 7(2) of the CLA has no application.[41] In any event, even if it did, its requirements were satisfied because the plaintiff's Letter of Indemnity amounted to his written direction to the second defendant to act according to Mr Gluck's instructions on all matters concerning the Shares.[42] In the alternative, the plaintiff cannot use s 7(2) of the CLA as an instrument of fraud

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38 DCS at paras 98–99.

39 DCS at para 235.

40 DCS at paras 217–219.

41 DCS at paras 236–240.

42 DCS at para 241.

by claiming an interest in the Shares when there was no objective intention that he was to have any such interest.[43]

39 Additionally, the plaintiff failed to plead the basis for his claim for a beneficial interest in one-third of the Additional Shares.[44] The plaintiff nowhere pleaded reliance on Article 47. In any case, the plaintiff was not a member of the third defendant and was not entitled to enforce any rights arising under an article in the third defendant's articles of association.[45]

40 Finally, the plaintiff is estopped from claiming any interest in the Shares because he promised the first defendant or represented to the first defendant by words and conduct that the first defendant was the ultimate and sole beneficial owner of the Shares.[46]

Issues to be determined

41 Arising from this summary of the parties' cases, the issues before me are as follows:

(a) Did the second defendant hold the Subscriber Shares on a presumed resulting trust for the first defendant?

(b) Does the second defendant hold one of the Subscriber Shares on an express trust for the plaintiff by reason of the 2015 Trust Deed?

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43 DCS at para 242.

44 DCS at paras 246–247.

45 DCS at paras 255–256.

46 DCS at paras 260–262.

(c) Does the second defendant hold one-third of the Additional Shares on an express trust for the plaintiff?

(d) Is the plaintiff estopped from claiming a beneficial interest in any of the Shares?

42 Before analysing these issues in turn, I set out my findings on the parties' negotiations in relation to the Project right up to the moment their relationship broke down in 2017.

The parties' pre-incorporation negotiations

43 The parties led a great deal of oral evidence and adduced a great deal of documentary evidence about the three-way negotiations between the plaintiff, the first defendant and Mr Gluck from May 2015 up until their relationship broke down in November 2016 and the Additional Shares were issued in December 2016. It is not necessary or even useful to recite or summarise all of that evidence. I explore the state of their negotiations in July 2015 below. It suffices for present purposes simply to set out my findings of fact arising from the evidence of those negotiations from May 2015 to December 2016.

44 The plaintiff, the first defendant and Mr Gluck made the following contributions to the Project:

(a) The plaintiff brought to the Project the underlying business opportunity, his local knowledge of Sri Lanka and his connections to the GOSL and its arms. I accept the plaintiff's evidence detailing how he liaised with the relevant arms of the GOSL leading to the GOSL

awarding the Project to his consortium.[47] The key point, however, is that the plaintiff did not remotely have the US$100m necessary to undertake the Project or even access to investors with that sort of capital.

(b) Mr Gluck brought to the Project his own capital but more importantly his access to the considerable further capital to make up the US$100m necessary to undertake the Project. The first defendant was the source of the further capital.

(c) The first defendant brought to the Project his considerable capital.

45 In short, the plaintiff could not undertake the Project without Mr Gluck's and the first defendant's capital. And Mr Gluck could not undertake the Project without the plaintiff's business connections in Sri Lanka and without the first defendant's capital. And the first defendant could not undertake the Project without the plaintiff's business connections.

46 Against this backdrop, the plaintiff, the first defendant and Mr Gluck had protracted negotiations from May 2015 up to December 2016 as to how the plaintiff would be compensated for his past and future contributions to the Project, *ie* his contributions in: (a) identifying the business opportunity and bringing it to the attention of Mr Gluck and, through him, to the attention of the first defendant; (b) taking the business opportunity forward to the point where the GOSL awarded the Project to his consortium; (c) launching the Project; and (d) running the Project once launched.

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47 SOC at para 13; KPN at para 50.

47 I have summarised the parties' relative contributions to the Project (see [44] above). The important point, however, is that Mr Gluck and the first defendant are serial investors. The Project was not of especial significance to them. On the other hand, the Project was the principal substantial business opportunity which the plaintiff was pursuing at this time. This meant that, during all of these negotiations, all of the bargaining power rested with the first defendant and none with the plaintiff. In other words, the plaintiff was throughout a supplicant; and the first defendant was throughout in a position to walk away from the Project for any reason or for no reason. And Mr Gluck was in the middle: trying his best to put the plaintiff's case to the first defendant and the first defendant's case to the plaintiff in order to keep the Project together and moving forward.

48 At certain times during these negotiations, the first defendant or Mr Gluck on his behalf indicated an intention to offer the plaintiff a proprietary interest in the Project and therefore a corresponding and proportionate share of its profits.[48] But at other times, the first defendant or Mr Gluck on his behalf indicated an intention to compensate the plaintiff merely as an employee of the Project, perhaps even a well-paid employee, but with no proprietary interest in the Project and therefore no share of its profits.

49 Two points are clear about these three-way negotiations.

50 The first point is that the parties never agreed how the plaintiff would be compensated for his past and future contributions to the Project, whether in terms of a binding contract, whether in terms of a factual *consensus ad idem*

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[48] 1AB 79.

falling short of a contract or even in terms of an understanding not rising to the level of a *consensus ad idem*. Any suggestion to the contrary was wholly unsustainable factually. That was clear on the affidavit evidence alone, well before trial. This is why I struck out all of the plaintiff's claim against Mr Gluck and the first defendant apart from the claim now before me (see [11] above). The plaintiff did not appeal my order striking out his other claims. He thereby implicitly accepted that they were correctly struck out and should not proceed to trial.

51 The second point is connected to the first point. The reason the parties never agreed how the plaintiff was to be compensated was because, for the reasons I have already given (see [47] above), the bargaining power throughout the negotiations rested entirely and solely with the first defendant. Because of this, the plaintiff was prepared to continue his work on the Project even though he had reached no agreement in any sense of the word about his compensation for his past and future contributions to the Project. To put it simply, the plaintiff consciously ran the risk that nothing would ever be agreed and that all of his efforts would go uncompensated. That risk has eventuated. The plaintiff's unhappiness at being uncompensated is at the root of this action.

52 It is against the context supplied by these findings that I now turn to consider the issues I have identified (see [41] above).

Resulting trust over the Subscriber Shares

53 The first issue is whether the second defendant held the Subscriber Shares on a presumed resulting trust for the first defendant. On this issue, I find in the first defendant's favour largely for the reasons which he advances (see [34] above).

The presumption of resulting trust

54 If one person (B) furnishes the consideration for property and directs that the property be conveyed to another person (T), and if B later claims that T holds the property on resulting trust for B, the first question is whether there is any clear evidence that B intended to make a gift of the property to T (*Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*") at [52]). If there is such evidence, the inquiry ends there. B has made a gift of the property to T. T is the owner of the property at law. Equity follows the law. There is simply no scope for equity to intervene in B's favour. T's ownership is absolute.

55 If there is no clear evidence of B's donative intent in favour of T, *ie* if the available evidence is unsatisfactory or equivocal, the court will apply the evidential presumption of resulting trust (*Chan Yuen Lan* at [52], citing *Lim Chen Yeow Kelvin v Goh Chin Peng* [2008] 4 SLR(R) 783 at [116]). This presumption, as well as the presumption of advancement, should be treated as "an evidential instrument of last resort" (*Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*") at [59], affirmed in *Chan Yuen Lan* at [50]–[51]).

56 One of the circumstances in which equity will presume a resulting trust to arise is indeed in the hypothetical I have posited (see [54] above): *ie*, when B furnishes the consideration for property and directs that it be conveyed to T (see *Lau Siew Kim* at [34] endorsing Lord Browne-Wilkinson's *dictum* in *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669). The effect in equity of these circumstances (and the other circumstances which give rise to the presumption) is to presume that T's legal title to the property has been separated from the beneficial interest in it, which results, *ie* springs back, to B. As the Court of Appeal held more recently in *Koh*

Lian Chye and another v Koh Ah Leng and another and another appeal [2021] SGCA 69 (at [24]):

> *Where there is no relationship between the parties, it is presumed that the payer or the transferor intended to retain the beneficial interest in the property in proportion to his financial contributions toward the acquisition of the property*. This is the presumption of resulting trust and it constitutes the transferee (who holds the legal interest in the property) a trustee of the property for the benefit of the transferor or the payer to the extent of the aforesaid beneficial interest. In other words, this presumption divorces the equitable (*ie*, beneficial) interest in the property from the legal interest …
>
> [emphasis added]

57 The presumption of resulting trust may be rebutted either by evidence that B intended to make a gift of the property to T or by the counter-presumption of advancement. Given that clear evidence of B's donative intent would have made it unnecessary to consider the presumption in the first place, analysing whether the presumption has been rebutted requires the court to make findings of fact in the usual way on equivocal or unsatisfactory evidence. As for the presumption of advancement, that applies where the parties are in certain recognised categories of relationships, such as a spousal relationship or the relationship between a child and a parent or someone in *loco parentis* to the child (*Lau Siew Kim* at [60]–[82]). There is obviously no scope for the presumption of advancement in any of its varieties in the present case.

58 If the court finds that the presumption of resulting trust is rebutted, the effect is that there is, once again, simply no scope for equity to intervene by separating the beneficial interest in the property from legal title to it (*Lau Siew Kim* at [56]–[57]). T's ownership of the property at law is unconstrained by equity.

59 In this case, of course, there was no transfer of property to the second defendant. The Subscriber Shares were called into existence as property by operation of law under ss 19(3) to s 19(6) of the Companies Act. The Additional Shares were called into existence as property by operation of law under s 63 of the Companies Act. In both cases, the second defendant became the owner of the Shares not by way of transfer but from the very commencement of the Shares' life as property.

60 For the purposes of the resulting trust analysis, however, the creation of property must stand in the same position as the transfer of property. The moment to apply the resulting trust analysis is moment on 23 July 2015 at which the Subscriber Shares were called into existence as property. As Professor Tan Yock Lin has said, proprietary rights in the shares of a corporation vest upon its incorporation; specifically, "when the corporation is brought into existence by incorporation under law and co-instantaneously by the issue of capital stock according to a system of registration established by the corporation as issuer" (Tan Yock Lin, *Personal Property Law* (Academy Publishing, 2014) ("*Personal Property Law*") at para 19.018).

61 As any claim to a beneficial interest in the Subscriber Shares is logically and legally anterior to a claim to a beneficial interest in the Additional Shares, I shall begin by applying the resulting trust analysis to the Subscriber Shares.

62 I begin with the presumption of resulting trust rather than by looking for clear evidence of donative intent. I do that for three reasons. First, this is not the usual dispute between B and T. T in the present case is the second defendant. It is accepted by everyone, including the second defendant herself, that nobody ever had any donative intent in favour of her. Second, it is not clear whether I

should look for clear evidence of the plaintiff's donative intent in favour of the first defendant or the first defendant's donative intent in favour of the plaintiff. Choosing to examine donative intent from one party's perspective amounts to accepting that party's case without analysis. Finally, for the reasons I have already given, the plaintiff and the first defendant never had a single common intention. Their intentions diverged and varied over time (see [43]–[51] above). That is simply because they never reached an agreement in any sense of the word (see [50] above).

63 It appears to me, therefore, that this is a case which leaves me no alternative but to begin by ascertaining whether the evidential presumption of a resulting trust arises and then considering whether it has been rebutted.

Fanmail

64 In ascertaining whether the presumption of resulting trust arose and has been rebutted, the first defendant relies heavily on the English case of *FanmailUK.com Ltd and others v Cooper and others* [2008] All ER (D) 183 ("*Fanmail*"). In my view, the reliance is justified. *Fanmail* is very strong authority in favour of the first defendant.

65 In *Fanmail*, the shareholders of a company called FanmailUK.com Ltd ("FanmailUK") incorporated a second company (C2) to pursue a business idea created and developed using FanmailUK's financial and human resources (at [214]). But C2 was not incorporated, as one would expect in these circumstances, as a wholly owned subsidiary of FanmailUK. Instead, all of C2's shares (with one immaterial exception) were issued upon incorporation directly to FanmailUK's shareholders. FanmailUK therefore did not own C2. FanmailUK then became insolvent (at [191]). It brought proceedings against

C2's shareholders (who were also FanmailUK's shareholders) claiming that they held their shares in C2 on a presumed resulting trust for FanmailUK.

66 Sales J (as he then was) held that: (a) a rebuttable presumption arose upon the incorporation of C2 that its shareholders held the shares in C2 on resulting trust for FanmailUK (at [206]); and (b) that presumption was unrebutted on the facts. He accordingly held that C2's shareholders held their shares in C2 on trust for FanmailUK.

67 It is instructive to follow Sales J's reasoning step by step. He first considered who provided the direct consideration for the shares in C2 to see whether the presumption of resulting trust arose. He then looked at the wider context to see whether that shed any light on whether the presumption of resulting trust arose. Finally, he examined the objective intention of the parties to see whether the presumption of a resulting trust was rebutted. I now describe each step of Sales J's reasoning.

Direct consideration

68 At the first step, Sales J held that it was C2's shareholders, and not FanmailUK, who had borne the direct consideration for the shares. He noted that it was undisputed that C2 had allotted and issued its shares upon incorporation as unpaid shares. Indeed, even at the time of the litigation and even the judgment, neither the shareholders (at [198]) nor FanmailUK (at [201]) had ever paid to C2 the capital of £1 payable on each share. However, by subscribing for the unpaid shares, C2's shareholders undertook a personal obligation to meet C2's call for the unpaid capital by paying £1 on each share

to C2 (at [202]). This personal obligation was the direct consideration for the shares.

69 Sales J then noted that this finding appeared to take FanmailUK's case outside the scope of Lord Simond's *dictum* in *Shephard v Cartwright* [1955] AC 431 at 445. The import of that *dictum* is that, for the purposes of ascertaining whether the presumption of resulting trust arises in favour of B, shares allotted by a company to T where it is B who pays the capital due to the company on the shares are to be treated in exactly the same way as shares purchased by T from a third party where it is B who pays the purchase price of the shares to the third party (at [200]).

70 On the facts of *Fanmail*, Lord Simonds' *dictum* seemed to suggest that no presumption of resulting trust arose because it was not FanmailUK who provided the direct consideration to C2 for the shares allotted and issued to its shareholders.

Wider context

71 At the second step, Sales J held (at [203]) that the fact that FanmailUK did not provide the direct consideration for the shares in C2 was not dispositive of whether the presumption of resulting trust arose in favour of FanmailUK.

72 Sales J held (at [203]) that the "whole tenor of the transaction was that it was assumed that [FanmailUK] was giving the instructions for [C2] to be set up and would bear all the costs of doing that". Thus, it was FanmailUK who instructed an accounting firm to incorporate C2. Further, it was FanmailUK who

thereby assumed liability to pay the accounting firm's fee for incorporating C2. And it was FanmailUK who duly paid the fee (at [197]).

73 Sales J accordingly held that the consideration given by the shareholders for their shares (*ie*, their personal obligation to meet C2's call for unpaid capital of £1 on each share) was *de minimis* and could not be regarded as governing the beneficial ownership of the shares (at [205]). As Sales J put it, the consideration provided by the shareholders was "tiny in comparison with the real economic cost of setting up" C2, which was the fee which the accounting firm had invoiced to FanmailUK and which FanmailUK had duly paid (at [203]). Therefore, examining the true economic substance of the entire transaction as part of the wider context, the act or event which had causative force in vesting the shares in C2's shareholders was FanmailUK's payment of the fee for C2's incorporation. It was that payment which caused the shares in C2 to be called into existence as property and to vest in C2's shareholders, and not their *de minimis* agreement to assume a personal obligation to meet C2's call for unpaid capital of £1 on each share. FanmailUK's payment of this fee was the true consideration for the shares and gave rise to a presumption of resulting trust in favour of FanmailUK.

74 Sales J then explained why it was legitimate to look at the true economic substance of the entire transaction as part of the wider context to determine whether the presumption of a resulting trust arose in favour of B (at [205]–[206]):

> 205. Is it legitimate, then, for the purposes of working out where the beneficial ownership of the … shares in [C2] lies and whether a resulting trust arose, to assess the position in the light of this wider context? In my judgment, it is. *Whether a resulting trust arises or not is based on the court's assessment of the true, or most likely, objective intention to be ascribed to the*

> *parties to a transaction involving the acquisition of property as to the ownership of that property, based on* ***a factual presumption taken to arise from the identity of the person who pays for the property****. The presumption is rebuttable, and its force and whether it is rebutted or not have to be assessed in the light of the particular circumstances of the specific case. That being the nature of the presumption, it is appropriate in my view for the court to consider its application in the light of indications from the evidence about* ***how the parties regarded the true economic substance*** *of the relevant transaction.* [At the date of C2's incorporation] all parties regarded [C2] as a company set up by [FanmailUK] and at its cost. For all practical purposes, [FanmailUK] was regarded as the person who had paid for [C2] to be established.
>
> 206. Therefore, I conclude that a rebuttable presumption arose upon the formation of [C2] that the shares in it were to be held beneficially upon a resulting trust for [FanmailUK]. I consider below whether that presumption was rebutted on the facts of this case, and conclude that it was not …
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> [emphasis in original omitted; emphasis added in italics and bold italics]

The objective intentions of the parties

75 In his third and final step, Sales J held that the presumption of resulting trust was unrebutted even after examining the objective intentions of parties as to the ownership of the shares in C2 (at [206]). Indeed, the evidence available to him reinforced rather than rebutted the presumption. Thus, he found that the parties' objective intention was that the shares in C2 should be held in such a way as to allow C2 to be treated as part of the FanmailUK association of companies (at [220]). That was in part because the business idea that C2 had been incorporated to develop and exploit had itself been created and developed using FanmailUK's financial and human resources (at [214]).

76 *Fanmail* was affirmed on appeal in *FanmailUK.com Ltd v Cooper and others* [2009] EWCA Civ 1368. The Court of Appeal held at [79] that in deciding the beneficial ownership of the shares, Sales J had properly taken into

account the wider context and circumstances surrounding the incorporation of C2 and, having done so, had been entitled to conclude that all of this pointed to C2's shareholders holding their shares in C2 on resulting trust for FanmailUK.

Fanmail is followed in a later English case

77 In *Smith and others v Hinchliffe and others* [2010] EWHC 396 (Ch), HHJ Hazel Marshall QC followed *Fanmail* in considering what objective intention could be found regarding the ownership of shares in a company when applying the resulting trust analysis (at [220]–[221]). She found that there was an agreement or understanding to the effect that beneficial ownership of the company should be entirely with the plaintiffs and that the defendant, although the holder of all of the shares in the company, should have no beneficial interest in those shares. She therefore held that the defendant had acted in breach of trust by exercising the voting rights on those shares without consulting the plaintiffs.

78 The English High Court refused the defendant leave to appeal against this judgment. The English Court of Appeal refused a renewed application for leave to appeal (*Smith and others v Hinchliffe and others* [2010] EWCA Civ 1561). In doing so, the court cited *Fanmail* with apparent approval.

True economic substance

79 *Fanmail* is clear authority that, in analysing whether the presumption of resulting trust arose over certain property in favour of B, it is legitimate – and may even be necessary – to have regard to the true economic substance of the parties' transaction seen in its wider context. The dispositive factor is who, in true economic substance, bore the consideration under the transaction which caused the property to vest in T. This approach allows the court to discount, if

not to disregard, any contribution which is in economic substance *de minimis* (*Fanmail* at [203]). If the property in question is shares in a company which are allotted and issued to T as subscriber shares rather than purchased by T from a third party, and if T's contribution or obligation to contribute to the company's capital arising from those shares is *de minimis* when the true economic substance of the parties' transaction is seen in its wider context, the presumption of resulting trust will arise in favour of the person who undertakes a contractual obligation to pay the fees and disbursements associated with incorporating the company or who actually pays those fees and disbursements.

80 An example of this focus on the true economic substance of the parties' transaction seen in its wider context is the purchase money resulting trust which arises in favour of B when B does no more than undertake a contractual obligation to repay a loan to a bank for the purchase price of the property conveyed to T. In *Andrew Curley v Nicola Parkes* [2004] EWCA Civ 1515 ("*Curley*"), the English Court of Appeal held that, in the absence of a contrary intention, B is treated in these circumstances as having provided the purchase price of the property, thereby raising the presumption of resulting trust in B's favour (at [14]):

> … The relevant principle is that *the resulting trust of a property purchased in the name of another, in the absence of contrary intention, arises once and for all at the date on which the property is acquired. Because of the liability assumed by the mortgagor* in a case where monies are borrowed by the mortgagor to be used on the purchase, *the mortgagor is treated as having provided the proportion of the purchase price attributable to the monies so borrowed.* Subsequent payments of the mortgage instalments are not part of the purchase price already paid to the vendor, but are sums paid for discharging the mortgagor's obligations under the mortgage …
>
> [emphasis added]

The Court of Appeal approved and applied *Curley* in *Lau Siew Kim* at [119].

81 The result in *Curley* is consistent with principle. Although it is the bank who actually provides the purchase price under the transaction which has causative force in vesting the property in T, there is no objective intention that the bank should acquire any proprietary interest in the property in consideration for doing so other than a pure security interest. Indeed, it could be said that the objective intention is a positive intention that bank should *not* acquire any proprietary interest in the property by reason of providing the purchase price other than a pure security interest. The consideration for the bank providing the purchase price is B's contractual obligation to pay to the bank by instalments over time an amount equivalent to the purchase price plus interest, as stipulated in the terms of their contract of loan. In those circumstances, the true economic substance of the transaction is that it is B's agreement to undertake that contractual obligation to the bank which has causative force in vesting the property in T.

82 Similarly, there may be circumstances in which it may be legitimate to have regard to other transaction costs in a conveyance of property in the resulting trust analysis, so long as they are of economic substance and not *de minimis*. Thus, in *Currie v Hamilton* [1984] 1 NSWLR 687, the Supreme Court of New South Wales held that the parties' contributions to the cost of acquiring property was not merely their contribution to the purchase price, but also included transaction costs such as "incidental costs, fees and disbursements". The Supreme Court of New South Wales recently reiterated this in *Cong v Shen (No 3)* [2021] NSWC 947. In that case, Ward CJ noted that "[i]n identifying the purchase moneys, a 'broader concept' is to be applied than simply the stipulated consideration for the purchase". Therefore, "[r]egard may be had to the

incidental costs of the purchase, such as legal expenses, stamp duty and registration" (at [1704]).

83 The Appellate Division of the High Court considered and approved these authorities in *Tay Yak Ping and another v Tay Nguang Kee Serene* [2022] SGHC(A) 22 ("*Tay Yak Ping*"). In *Tay Yak Ping*, the court held that the resulting trust analysis should include transaction costs such as stamp duty which are *necessary ancillary* costs to cause the property to vest in T (at [68]):

> … It seems to us to be at least arguable that…monetary contributions towards stamp duty should be included by the court in determining the parties' respective beneficial shares under a resulting trust. It is relevant to bear in mind that the classic description of purchase money resulting trusts in *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 at 708 refers to a presumption of resulting trust arising where one party "pays (wholly or in part) for the purchase of property which is vested either in [the other party] alone or in the joint names of [both parties]" [emphasis added]. On this formulation of the doctrine of purchase money resulting trusts, **the analysis is not limited to the purchase price of the property, but is instead broad enough to encompass stamp duty payable on the purchase of the property in question**. Moreover, we find quite persuasive McLelland J's reasoning in *Currie* that **what matters is the cost to the purchasers of acquiring the property (which would include not only the purchase price, but also necessary ancillary costs such as stamp duty)**, rather than the benefit to the vendor (which is limited to the purchase price) (see [63] above). This makes sense given that the focus of the resulting trust analysis is on the proper apportionment of the beneficial interest in a property between those claiming to have acquired an interest in that property *inter se*, and not on the apportionment of any interest as between those parties and the vendors of the property …
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> [emphasis in original in italics; emphasis added in bold]

Direct consideration

84 Returning to the facts of the present case, I find that a presumption of resulting trust arose in favour of the first defendant in all of the Subscriber Shares: (a) because he assumed a contractual obligation to pay the necessary ancillary costs of the third defendant's incorporation; and (b) because he contributed the paid-up capital payable to the third defendant on the Subscriber Shares.[49]

85 At all material times in the course of setting up the corporate structure for the Project, Mr Baldock acted as agent for the first defendant. The plaintiff accepts this.[50] Mr Weldon was Mr Baldock's assistant. He was therefore Mr Baldock's agent and the first defendant's sub-agent. Mr Baldock and Mr Weldon were agents for the first defendant alone. There is no suggestion that either man acted concurrently as agent for any other person: not for Mr Gluck, not for the second defendant and certainly not for the plaintiff.

86 The first defendant personally undertook sole liability to pay the fees and disbursements which ILC incurred in connection with incorporating the third defendant. On 22 July 2015 at 5.42pm, the first defendant's agent (Mr Weldon) emailed Ms Chong to engage ILC's services for the first defendant in incorporating the third defendant with the first defendant as its sole beneficial owner.[51] The first defendant's agent (Mr Weldon) also asked Ms Chong to invoice the first defendant for ILC's fees and disbursements for

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49 Certified Transcript 17 May 2022 at p 90 line 1 to 9.

50 Certified Transcript 6 May 2022 at p 5 line 9 to p 6 line 21; p 11 line 16 to p 12 line 6.

51 1AB 333.

incorporating the third defendant.[52] The first defendant was ILC's sole client in the incorporation of the third defendant. As such, the first defendant assumed sole responsibility for paying ILC's fees and disbursements for incorporating the third defendant.

87 ILC invoiced the first defendant personally, directly and alone for these fees and disbursements. It did so by an invoice dated 23 July 2015 in the sum of S$8,093.46.[53] The narrative in the invoice shows that ILC charged the first defendant S$7,150.00 out of this total sum as professional fees for legal and other services which ILC had rendered to the first defendant in connection with the third defendant's incorporation up to the date of the invoice. The narrative describes these services under three heads: (a) S$1,500 for incorporating the third defendant; (b) S$5,000 for services rendered by the second defendant in serving as both a nominee director and a nominee shareholder of the third defendant; (c) S$600 for drafting the 2015 Trust Deed. The invoice also covers the disbursements which ILC incurred in rendering these services. These disbursements amounted to S$384.50 for charges payable to the Accounting and Regulatory Authority of Singapore ("ACRA") on the occasion of incorporating the third defendant and S$50 for miscellaneous incidentals. The remainder of the invoice is for goods and services tax at the prescribed rate of 7%.

88 The first defendant did in fact pay these fees and disbursements to ILC. ILC sent the invoice to the first defendant's agent (Mr Baldock) in the afternoon of 23 July 2015. That night, Mr Baldock forwarded the invoice to the first

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52 1AB 342.

53 MS at p 45.

defendant, asking him to pay the sum due to ILC.[54] Within an hour, the first defendant replied to Mr Baldock saying that he could "make this [payment] now".[55] The first defendant duly paid ILC's fees that day. Within an hour of the payment, ILC received notification from ACRA that the third defendant had been duly incorporated. It was this event which caused the Subscriber Shares to be called into existence as property.

89 The first defendant's contractual obligation to pay ILC's fees in connection with incorporating the third defendant and his discharge of that obligation by actually paying the fees when invoiced was the real consideration for the Subscriber Shares.

90 The paid-up capital due to the third defendant on the Subscriber Shares upon its incorporation was US$3. It is true that this sum was the direct consideration for the Subscriber Shares. But, on the authority of *Fanmail*, it is immaterial who bore this direct consideration. It is *de minimis* both in absolute terms and also relative to ILC's fees and disbursements for incorporating the third defendant when the true economic substance of the parties' transaction is seen in its wider context. It was the first defendant's payment of ILC's fees and disbursements which, in economic substance, had causative force in calling the Subscriber Shares into existence and vesting them in the second defendant. *Fanmail* is authority that that suffices for a presumption of resulting trust to arise in favour of the first defendant regardless of who bore the direct consideration for the Subscriber Shares.

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54 MS at p 40.

55 MS at p 35.

91 In any event, the first defendant's evidence is that he paid the US$3 to Mr Baldock in London on the occasion of the third defendant's incorporation.[56] Mr Baldock gave evidence to the same effect. He confirmed that he received US$3 in cash from the first defendant, not in his own right, but as the third defendant's property and for and on behalf of the third defendant.[57] Although I expressed some scepticism at trial about this feature of the first defendant's and Mr Baldock's evidence, I am prepared to extend the benefit of the doubt to them and accept it as true. In any event, the plaintiff himself accepted in cross-examination that it was the first defendant who contributed the paid-up capital payable to the third defendant on the Subscriber Shares.[58]

92 On these findings, the first defendant paid the direct consideration for the Subscriber Shares. He also undertook and discharged the contractual obligation to ILC which had causative force in vesting the shares in the second defendant when the true economic substance of the parties' transaction is seen in its wider context. All of this was in place before the third defendant's incorporation called the Subscriber Shares into existence as property. Accordingly, the presumption of resulting trust operated in the first defendant's favour at the moment the Subscriber Shares came into existence as property. The presumption operated in the *scintilla temporis* after the moment the Shares were called into existence as property and before the moment at which any express trust created by the 2015 Trust Deed could attach to the Subscriber Shares.

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56 MS at para 21.

57 Certified Transcript 17 May 2022 at p 87 line 9 to p 90 line 17; p 111 line 12 to p 112 line 8.

58 Certified Transcript 5 May 2022 at p 137 line 11 to p 138 line 12.

The first defendant's intent

93 The next issue is whether there is any evidence available of a donative intention on the first defendant's part when the Subscriber Shares were called into existence to rebut the resulting trust presumed in his favour. In my view, there is no such evidence. In particular, there is no evidence that the first defendant ever intended to make a gift of his beneficial interest in one of the Subscriber Shares in favour of the plaintiff. Rather, the entire tenor of the negotiations and communications is that the first defendant's never had a donative intent in favour of the plaintiff.

94 I have previously noted that the protracted negotiations from May 2015 to December 2016 failed to yield any agreement in any sense of the word as to how the plaintiff was to be compensated for his past and future contributions to the Project. That failure extended to any agreement as to whether, and if so to what extent, the plaintiff was to have a proprietary interest in the Project, *ie* by being a beneficial owner of shares in the third defendant.

95 At this point, it is useful to look in more detail at the parties' communications by email on 22 July 2015 and 23 July 2015. To preserve the true sequence of these email communications, I have adopted the first defendant's synchronisation of the time stamps on these emails to Singapore time. Synchronisation is necessary because the plaintiff was then in Sri Lanka; the first defendant, Mr Baldock and Mr Weldon were then in London; Mr Jordan was then in Melbourne; and Ms Chong was then in Singapore.

The first defendant was to be sole beneficial owner of the third defendant

96 On 22 July 2015 and all the way up to 2.52 pm on 23 July 2015, the first defendant's intent was that the plaintiff was to have no proprietary interest in the Project. That is clear from six emails which the parties exchanged during that period.

97 First, at 8.08 am on 22 July 2015, Mr Jordan sent the plaintiff and Mr Gluck a checklist of items relating to the Project, asking the plaintiff to review the checklist.[59] One of the items on the checklist was a call option which the plaintiff was to execute in Mr Gluck's favour upon the incorporation of the third defendant. At that time, the third defendant was to be a wholly owned subsidiary of MG Holdings. The call option obliged the first defendant, once the option was exercised, to give up the shares which he was to hold in MG Holdings (and therefore his interest in the third defendant) for purely nominal consideration.[60] The effect of the call option was to render the plaintiff's apparent proprietary interest in MG Holdings, and therefore in the Project, purely illusory. The plaintiff went through the checklist, albeit briefly, but raised no protest about the call option.

98 Second, at 5.42 pm on 22 July 2015, Mr Weldon instructed Ms Chong to incorporate the third defendant with the first defendant as its sole beneficial owner.[61] The first defendant had no donative intent in relation to any of the Subscriber Shares.[62]

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59 1AB 279.

60 AJ at para 29.

61 1AB 333.

62 MG at para 41.

99 Third, at 1.38 am on 23 July 2015, Mr Baldock asked Ms Chong to send copies of several documents to Mr Jordan as soon as the third defendant had been incorporated. Amongst these documents was a deed of trust under which the second defendant was to declare that she held her shares in the third defendant in favour of the first defendant alone.[63] The first defendant had no donative intent in relation to any of the Subscriber Shares.

100 Fourth, at 1.44 pm on 23 July 2015, Mr Jordan told the plaintiff that his understanding was that Mr Gluck, the plaintiff and Prabhu Sugars would hold no shares in the third defendant, which would instead be owned entirely by the first defendant.[64] Mr Jordan was concerned that not having Mr Gluck and the plaintiff appear as owners of the third defendant would be a major departure from the terms of the Project as approved by the GOSL. He asked the plaintiff to comment on this concern. The plaintiff raised no protest at having no proprietary interest in the third defendant. Instead, he simply told Mr Jordan that he would reply on this point later that evening.[65]

101 Fifth, at 2.31 pm on 23 July 2015, the plaintiff asked Mr Jordan for a number of documents relating to the third defendant. One of the documents was evidence that Mr Gluck and the plaintiff were both directors and shareholders of the third defendant.[66] Mr Jordan replied to the plaintiff's email at 2.43 pm. His comment on the plaintiff's request was: "Refer to my earlier email. My understanding is that neither [Mr Gluck] or you will be shareholders" [capital

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63 Defendant's Bundle of Documents Vol 1 ("1DB") 63; Certified Transcript 17 May 2022 p 84 lines 1 to 7.

64 1DB 25.

65 KPN at para 50.

66 KPN at para 53.

font in the original text removed].[67] Once again, the plaintiff raised no protest. He responded at 3.23 pm simply noting Mr Jordan's comment and asking Mr Jordan to tell him the name of the third defendant and its registered address.[68]

102 Finally, at 2.52 pm on 23 July 2015, Ms Chong replied[69] to Mr Baldock's email (see [99] above)[70] agreeing to execute a declaration of trust in favour only of the first defendant.

103 At trial, the plaintiff claimed that his failure to protest on 22 and 23 July 2015 was not evidence that he accepted that he was to have no proprietary interest in the third defendant. Regarding his response at [100] above, the plaintiff claimed that he sent a short response without reading the email in detail as he was busy shuttling between the offices of various arms of the GOSL to advance the Project.[71] Regarding his response at [101] above, the plaintiff gave a similar explanation. In his affidavit of evidence in chief, the plaintiff claimed that he did not read Mr Jordan's email in detail and intended to send only a holding response. His evidence is that he was not aware of the substance of Mr Jordan's comment until shortly before commencing this action.[72] But the plaintiff gave a different explanation for his failure to protest to this email in cross-examination. His evidence at first was that he did not protest to Mr Jordan because all his discussions about his shareholding in the third defendant and his compensation for his contributions to the Project were only with Mr Gluck and

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67 1DB 41.

68 1DB 46.

69 1DB 65–66.

70 1DB 63–64.

71 KPN at para 50; PCS at para 72.

72 KPN at para 55.

not with Mr Jordan or the first defendant.[73] After being pressed on his explanation, he changed his evidence and claimed that it was Mr Gluck who had told him not to discuss the third defendant's ownership structure with anyone other than him.[74]

104 Another reason the plaintiff gave for not protesting during the email communications to which he was privy on 22 July 2015 and 23 July 2015 was because he claimed to have been reassured by two separate phone calls which he had had with Mr Gluck and with Mr Jordan on 22 July 2015. It is the plaintiff's evidence that during his phone call with Mr Gluck, Mr Gluck agreed that the shareholding of the third defendant would be split equally between the defendant, Mr Gluck and the plaintiff.[75] It is also the plaintiff's evidence that, during his phone call with Mr Jordan, the plaintiff told Mr Jordan that he and Mr Gluck would be shareholders in the third defendant.[76]

105 I do not accept the plaintiff's evidence about the contents of these phone calls. His evidence is contradicted by the evidence of both the first defendant and Mr Gluck. I prefer their evidence for the following reasons. Their evidence is consistent with all of the emails up to 2.52 pm on 23 July 2015 which I have summarised at [96]–[102] above. Those emails show that the first defendant had no donative intent with regard to any of the Subscriber Shares, whether in favour of the plaintiff or in favour of Mr Gluck. The plaintiff's evidence is also contrary to the inherent probabilities. If Mr Gluck or Mr Jordan had indeed told the plaintiff what he now alleges that they did, the reasonable reaction of a

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73 Certified Transcript 5 May 2022 at p 152 line 25 to p 153 line 9.

74 Certified Transcript 5 May 2022 at p 156 lines 5–12.

75 KPN at para 46(b).

76 PCS at paras 76–77.

businessman in the plaintiff's position would have been to record these points in these emails.

Instructions to execute the 2015 Deed of Trust

106 I have thus far considered the position only up to 2.52 pm on 23 July 2015. I have found that the first defendant had no donative intent in relation to the Subscriber Shares, whether in favour of the plaintiff or Mr Gluck. It is true that the first defendant's instructions to ILC on this issue changed after 2.52 pm on 23 July 2015. The question is whether that change arose from a change in his donative intent. In my view, it did not.

107 On 23 July 2015, the plaintiff told Mr Gluck that the GOSL would want to see that both the plaintiff and Mr Gluck owned the third defendant because the GOSL had been negotiating only with the plaintiff and Mr Gluck and had had no dealings whatsoever with the first defendant.[77] The plaintiff's stated fear that introducing the first defendant now as the sole shareholder of the third defendant could alarm the GOSL and jeopardise the Project.

108 In the afternoon of 23 July 2015, Mr Gluck, Mr Jordan and Mr Baldock had a discussion and reached an agreement about how the ownership of the third defendant should be reflected.[78] Following that agreement, at 3.34 pm on 23 July 2015, Mr Baldock accordingly instructed Ms Chong that "[a] change of plan on the beneficial owner has been agreed" and instructed her to declare that she

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77 MG at para 42; Transcript 5 May 2022, at p 159 line 2 to p 163 line 5.

78 Certified Transcript of 12 May 2022, at p 44 line 20 to p 47 line 16.

holds the Subscriber Shares on trust in equal shares for the plaintiff, Mr Gluck and the first defendant.[79]

109 Looking at the evidence in totality and in context, I find that this is not evidence of any donative intent on the part of the first defendant. I accept the first defendant's evidence that the terms of the 2015 Trust Deed were intended only as a stop gap measure: to last only until the first defendant, Mr Gluck and the defendant had concluded their negotiations on the investment structure of the Project and to be adjusted thereafter in accordance with the outcome of those negotiations.[80]

110 As I have found at [50]–[51] above, the plaintiff was at all times a supplicant, prepared to continue his work on the Project even though he had reached no agreement in any sense of the word with the first defendant about his compensation for his past and future contributions to it. This view is supported by his evidence both in his affidavit of evidence in chief and in cross-examination that he left the allocation of proprietary interests in the third defendant to Mr Gluck and the first defendant.[81] My view is also supported by Mr Gluck's evidence denying any agreement between him and the plaintiff about his compensation.[82] If there had been some agreement or "mutually agreed points" to that effect (as the plaintiff avers),[83] one would expect the plaintiff to have made references to that agreement or those to those agreed

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79 1 DB 67.

80 MS at para 18.

81 KPN at para 55; Certified Transcript 6 May 2022 at p 20 lines 12–18.

82 MG at para 31.

83 KPN at para 46(b).

points in his correspondence with Mr Gluck and Mr Jordan, particularly on 22 July 2015 and 23 July 2015. He did not.[84]

111 The 2015 Trust Deed and the instructions to ILC preceding it therefore stand alone in the evidence before me as indications of the first defendant's donative intent and go against the weight of the evidence. The weight of the evidence is that there was no such intention, even after the "change of plan" at 3.34 pm on 23 July 2015. In my view, the only change in the first defendant's intention which this email and the terms of the 2015 Trust Deed establish is an intent to reflect the plaintiff as a beneficial owner of one of the Subscriber Shares as a stop gap measure to reassure the GOSL without any intent to make a gift of that beneficial interest to the plaintiff.

112 For all of these reasons, I am satisfied on the balance of probabilities the first defendant had no donative intent with respect to any of the Subscriber Shares. I therefore find that the presumption of resulting trust in his favour over the Subscriber Shares stands unrebutted. Accordingly, I hold that the second defendant held all of the Subscriber Shares on a presumed resulting trust for the first defendant from the time they were called into existence as property.

The effect of the 2015 Trust Deed

113 I have found that the 2015 Trust Deed and the "change of plan" leading up to its execution is not evidence of an objective intention which would rebut the presumption of resulting trust arising from the circumstances in which the third defendant was incorporated. But the 2015 Trust Deed is also an express statement in writing that the second defendant intended to hold one of the

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[84] Certified Transcript 5 May 2022 at p 72 lines 8–14 and p 75 lines 16–21.

Subscriber Shares on trust for the plaintiff at the time she executed the deed. The second issue which I must consider (see [41(b)] above), therefore, is whether the second defendant holds one of the Subscriber Shares on an express trust for the plaintiff under the terms of the 2015 Trust Deed. On this issue, I accept that she does not, albeit for a slightly different reason than that put forward by the first defendant.

114 On this issue, the first defendant submits that at the time the second defendant executed the 2015 Trust Deed, she did not hold the beneficial interest in the Subscriber Shares because that interest had already resulted to the first defendant at the moment of the third defendant's incorporation under a presumed resulting trust. I have already made a finding to this effect. The first defendant then submits that *ipso facto* the 2015 Trust Deed could not have constituted the second defendant an express trustee of the beneficial interest in one of the Subscriber Shares for the plaintiff.[85] Although the first defendant does not put it this way, this amounts to a submission that *nemo dat quod non habet*: no one can give what she does not have. The second defendant did not have the beneficial interest in one of the Subscriber Shares and therefore could not have given it to the plaintiff under an express trust.

115 I do not accept that the fact that the beneficial interest in trust property is not vested in the trustee means *ipso facto* that a trustee cannot convey the beneficial interest in the trust property to a third party. A trustee is by definition the legal owner of trust property. A trustee is capable at common law of conveying legal title to trust property to a third party. Whether any such conveyance is consistent with the trust or is a breach of trust is a separate matter.

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[85] DCS at paras 213–216.

The important point is that the conveyance is capable of being valid to vest title to the trust property in the third party, even if it is a breach of trust. The personal consequences of a conveyance in breach of trust will be determined in accordance with the terms of the trust (*Halsbury's Laws of Singapore* vol 9(3) (Butterworths Asia, 2018) at para 110.426). The proprietary consequences of a conveyance in breach of trust will be determined by the rules of equity.

116 One of the rules of equity is that a conveyance of trust property in breach of trust to a *bona fide* purchaser of a legal interest in the trust property for value without notice that it is trust property, and therefore without notice of the subsisting beneficial interests in it, is as effective to vest title to the property in the purchaser as it would be if the trustee could vest beneficial title in the purchaser (*Independent Trustee Services Ltd v GP Noble Trustees Ltd and others (Morris intervening); Morris v Morris (Independent Trustee Services Ltd and another intervening)* [2013] Ch 91 at [106]). Once that conveyance takes place, the *bona fide* purchaser's legal title to what was formerly trust property defeats any beneficial interest which may have subsisted in the property up to that point (*MKC Associates Co Ltd and another v Kabushiki Kaisha Honjin and others (Neo Lay Jiang Pamela and another, third parties; Honjin Singapore Pte Ltd and others, fourth parties)* [2017] SGHC 317 at [292]). The beneficiary's only recourse is against the trustee or the proceeds of sale, not against the former trust property or its bona fide purchaser.

117 Conceptually, therefore, it does not follow that a trustee cannot convey the beneficial interest in trust property to another person simply because the trustee does not own the beneficial interest in the property. If that were the position, equity would be unable to protect equity's darling. The first defendant's argument is therefore not so much incorrect as it is incomplete. If

the plaintiff were a *bona fide* purchaser of a legal interest in the Shares for value without notice of the first defendant's subsisting equitable interest under the presumed resulting trust, it is possible for the second defendant to vest absolute title to one of the Subscriber Shares in him. But the plaintiff is not equity's darling. He did not acquire a legal interest in the Shares. He was not a purchaser. He gave no value for the benefits conferred by the 2015 Trust Deed. It is for this reason that the plaintiff cannot claim any interest in the Subscriber Shares which defeats the first defendant's interest in them under the presumed resulting trust. The 2015 Trust Deed conferred no proprietary rights whatsoever on the plaintiff.

118 Although the express intention which the second defendant manifested by executing the 2015 Trust Deed was clear on its face (*ie* to declare an express trust over one of the Subscriber Shares in favour of the plaintiff), her intention did not have any legal effect. To my mind, even on the plaintiff's best case, the 2015 Trust Deed is nothing more than an imperfect gift by the first defendant to the plaintiff. Equity will not assist the plaintiff, being a volunteer, to perfect the imperfect gift (*Personal Property Law* at paras 10.074–10.075).

The Additional Shares

The second defendant holds all the Additional Shares on a presumed resulting trust for the first defendant

119 The third issue which I must consider (see [41(c)] above) is whether the second defendant holds one-third of the Additional Shares on an express trust for the plaintiff.

The plaintiff's claim fails with his claim on the Subscriber Shares

120 The plaintiff's case for a beneficial interest in one-third of the Additional Shares stands or falls with his claim for a beneficial interest in one of the Subscriber Shares. I have found that the plaintiff has no beneficial interest in any of the Subscriber Shares. His claim for a beneficial interest in one-third of the Additional Shares necessarily also fails.

121 Even assuming in the plaintiff's favour, and contrary to my holding, that he had a beneficial interest in one of the Subscriber Shares, I would have rejected his claim for a beneficial interest in one-third of the Additional Share for the reasons advanced by the first defendant (see [34] above).

The first defendant paid the direct consideration for the Additional Shares

122 The Additional Shares comprised 9,997 shares of US$0.01 each in the third defendant. The obligation to contribute to the third defendant's capital for these 9,997 shares was therefore an obligation to pay the third defendant US$99.97. It is undisputed: (a) that the first defendant paid Mr Baldock US$100 as direct consideration for the Additional Shares on the occasion of their allotment and issue; and (b) that Mr Baldock received US$99.97 out of that US$100 from the first defendant and held it for an on behalf of the third defendant as the capital payable on the Additional Shares.[86] This sum of $99.97 (like the US$3 payable to the third defendant for the Subscriber Shares) is *de minimis* in absolute terms. However, the true economic substance of the transaction leading to the allotment and issuance of the Additional Shares seen in its wider context shows that this sum is not *de minimis* in relative terms. There

[86] Certified Transcript 10 May 2022 at p 27 lines 15–20; RB at para 34.

is no evidence of any fees, disbursements or other transaction costs associated with the allotment or issuance of the Additional Shares as in the case of the Subscriber Shares. Looking at the true economic substance of the entire transaction as part of the wider context, the first defendant's payment of the capital payable on the Additional Shares was, on the evidence before me, 100% of the consideration which had causative force in calling the Additional Shares into existence. Therefore, on the authority of *Fanmail*, the presumption of resulting trust arose in favour of the first defendant when the Additional Shares came into existence in the same manner and for the same reasons as it did in relation to the Subscriber Shares.

123 Further, by this time, nothing had changed in terms of the first defendant's donative intent. The plaintiff on the one hand and the first defendant and Mr Gluck on the other had still not reached any agreement in any sense of the word as to how the plaintiff was to be compensated for his past and future contributions to the Project. The first defendant continued to have no donative intent in favour of the plaintiff. The presumption of resulting trust over the Additional Shares in the first defendant's favour again stands unrebutted.

124 I therefore hold that the second defendant held all of the Additional Shares on a presumed resulting trust for the first defendant alone.

The plaintiff fails even if he had succeeded on the Subscriber Shares

125 The plaintiff contends that a beneficial interest in one-third of the Additional Shares vested in him by reason of his beneficial interest (which I am now assuming in his favour) in one of the Subscriber Shares by the operation of

cll 1 and 1.2 of the 2015 Trust Deed and Article 47 of the third defendant's articles of association:

(a) Clause 1 of the 2015 Trust Deed provides that the second defendant "holds the [Subscriber] Shares and … *any further Shares* she may hold for and on behalf for the Beneficiaries, upon trust for the Beneficiaries in equal shares absolutely" [emphasis added].[87]

(b) Clause 1.2 of the 2015 Trust Deed provides that the second defendant "shall hold all and any Shares so offered to [her] in respect of the Shares and subscribed for by her upon trust for the Beneficiaries".[88]

(c) Article 47 confers on members of the third defendant rights of pre-emption in proportion to their existing number of shares.[89]

126 According to the plaintiff, the 2015 Trust Deed operates in conjunction with Article 47 such that, as soon as the Additional Shares were allotted and issued to the second defendant, the beneficial interest in one-third of the Additional Shares vested in the plaintiff.[90]

127 The first defendant argues that the plaintiff's claim in respect of the Additional Shares cannot succeed because he has failed to plead any material facts giving rise to a link between his beneficial interest in one of the Subscriber Shares and a beneficial interest in one-third of the Additional Shares.[91] I accept

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87 1AB 439.

88 1AB 439.

89 1AB 383.

90 PCS at para 6(b).

91 DCS at para 246–254.

the first defendant's submission. Article 47 is the crucial link the plaintiff now relies on to establish a connection between his beneficial interest in one of the Subscriber Shares and in one-third of the Additional Shares. Yet, the plaintiff pleads no reliance on Article 47 in his statement of claim. The plaintiff did plead reliance in the statement of claim on the other provision on which he relies: cl 1 of the 2015 Trust Deed.[92] But this is certainly not the crucial provision on which he relies on for his claim to a beneficial interest in one-third of the Additional Shares. Thus, the plaintiff's written closing submissions and oral closing submissions abandon reliance on cl 1 of the 2015 Trust Deed and rely *only* on Article 47 and *Chiang Sing Jeong and another v Treasure Resort Pte Ltd and others* [2013] SGHC 126 ("*Chiang Sing Jeong*") to establish this claim.[93]

128 Nevertheless, I prefer not to decide this issue on a point of pleading. As an indulgence to the plaintiff, I consider his argument on Article 47 and *Chiang Sing Jeong* on the merits. In *Chiang Sing Jeong*, a trustee (T) executed two declarations of trust over shares in a company (C) in favour of a nominee of the alleged ultimate beneficiary (B). One of the issues was whether B's beneficial interest was in 25% of the shares in C based on the number of shares in C at the time of trial or in the number of shares in C at the time T declared the trust (at [75]).

129 Tan Lee Meng J held that the declaration of trust made B the beneficial owner, not only of 25% of the shares in C that had been allotted and issued on the date of the declaration, but also of the rights attached to that 25% of those

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92 SOC at paras 33A–44; Plaintiff's Reply Closing Submissions dated 7 July 2022 at para 71(b).

93 PCS at paras 152–154.

shares. That included the right to be offered new shares in C in accordance with the rights of pre-emption in C's articles of association (at [77]–[78]):

> 77 In the present case, when the trust was created by [T] sometime after August 2005, [B] became the beneficial owner of 25% of the … shares [in C] that had been issued on that date … *as well as all the rights and obligations attached to those shares* on trust for [B]. Those rights included the right to be offered new shares in accordance with…[C's]…Articles of Association…which reads as follows:
>
> > Subject to any direction to the contrary that may be given by the company in general meeting, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled.
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> 78 The right … to be offered new … shares [in C] in proportion to a shareholder's current percentage of shareholding in [C] was thus an incident of ownership of [B's] original shareholding. As such, each time [T] exercised the right…to purchase additional…shares [in C] on the basis of [B's] original shareholding in [C]…, it did so as [B's[trustee. These …shares were impressed with the trust as soon as they were registered in [T's] name. Viewed as such, [the]…shares cannot be viewed as future property.
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> [emphasis in original]

130 The plaintiff submits that *Chiang Sing Jeong* is "on all fours" with the present case.[94] I do not accept the submission. The purpose of rights of pre-emption, such as those conferred by Article 47, is to give a shareholder the right to maintain her proportionate shareholding in a company despite the allotment and issue of additional shares in the company. The second defendant is and has always been the sole shareholder of the third defendant. Neither the plaintiff nor the first defendant have ever been shareholders in the third defendant. There are therefore no other shareholders in the third defendant for the second defendant

94 PCS at para 153.

use rights of pre-emption to maintain her proportionate shareholding against. No pre-emption rights arose at any time in respect of the Additional Shares. The third defendant simply allotted and issued the Additional Shares to the second defendant under Article 48 of its articles of association. There was never any basis for the offer mechanism in Article 47 to be invoked or applied. *Chiang Sing Jeong* is of no assistance to the plaintiff in establishing a claim to a beneficial interest in the Additional Shares, even if he is assumed to have a beneficial interest in one of the Subscriber Shares.

131 Since I have found that the second defendant holds the Subscriber Shares and Additional Shares on trust for the first defendant and not for the plaintiff, there is no need for me to deal with the plaintiff's arguments on s 7(2) of the CLA and the 2016 Trust Deed. There is also no need for me to deal with the first defendant's argument that the trust under the 2015 Trust Deed was validly terminated when Mr Gluck exercised his authority under Clause 2.2 of the 2015 Trust Deed to terminate the trust (which was granted to him by the Letter of Indemnity) by instructing the second defendant (through Mr Baldock) to execute the 2016 Trust Deed in November 2017.[95]

Estoppel

132 I have found in favour of the first defendant on his primary defence (the presumed resulting trust). There is therefore no need for me to make a finding on his alternative defence of estoppel. But for completeness, I should record that I reject the first defendant's estoppel defence.

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95 DCS at para 235.

133 The first defendant raised the defence of promissory or proprietary estoppel, estoppel by representation and estoppel by convention.

134 To establish a promissory or proprietary estoppel, the first defendant has to prove that the plaintiff made an objectively clear and unequivocal representation that caused the first defendant to take a certain course of action in circumstances that render it unconscionable for the plaintiff to resile from his promise (*Day, Ashley Francis v Yeo Chin Huat Anthony and others* [2020] 5 SLR 514 ("*Ashley Francis*") at [188]).

135 To establish an estoppel by representation, the first defendant has to prove: (a) that the plaintiff made a clear and unambiguous representation of fact to the first defendant; and (b) the first defendant relied on the representation to his detriment (*Ashley Francis* at [196]).

136 To establish an estoppel by convention, the first defendant has to prove: (a) that there was a course of dealing between the first defendant and the plaintiff in a contractual relationship; (b) that the course of dealing was such that both parties proceeded on the basis of an agreed interpretation of their contract; and (c) that it is unjust or unconscionable to allow either party to go back on the agreed interpretation (*Ashley Francis* at [197])

137 I am prepared to assume in the plaintiff's favour that the doctrine of proprietary estoppel in Singapore law is not confined to land and can be asserted over shares (*Ashley Francis* at [190]–[191]). I also bear in mind that being too ready to give greater scope to the doctrine of proprietary estoppel in commercial contexts carries with it a real risk of undermining commercial certainty and the law of contract (*Ashley Francis* at [192]).

138 In *Ashley Francis*, Aedit Abdullah J found that no estoppel of any variety had been established because the "various correspondences and statements made were not finalised, but were proposals and negotiations working towards a future agreement". Moreover, "[t]he matters between the parties also remained fluctuating with the proposed shareholding changing constantly" (at [205]). That is precisely my finding in relation to the parties' negotiations up to and including 23 July 2015. I have already observed that there was no agreement in any sense of the word as to how the plaintiff was to be compensated for his past and future contributions to the Project. This was so even after the third defendant was incorporated in July 2015 and even when the Additional Shares were issued in December 2016. Accordingly, there was no contract, let alone an agreed interpretation or understanding which could form any basis for an estoppel by convention.

139 I also find that the plaintiff did not make any clear and unambiguous representations of fact that to the first defendant that the first defendant would be the sole beneficial owner of the third defendant. While the plaintiff acquiesced in the proposal to grant Mr Gluck a call option over the plaintiff's shareholding in the Project for nominal consideration, acquiescence is not the same as a clear and unambiguous representation of fact. For estoppel by acquiescence to be established, it must be shown that the party estopped stood by while knowing full well that an innocent party was mistaken as to his rights (*Keppel Tatlee Bank Ltd v Teck Koon Investment Pte Ltd and others* [2000] 1 SLR(R) 355 at [27]). Estoppel by acquiescence was neither pleaded nor put in issue by the first defendant. Therefore, there was no basis for the first defendant's arguments in support of promissory or proprietary estoppel, or even estoppel by representation.

140 In any case, even if the plaintiff had made any such clear and unambiguous representation, there was no evidence that the first defendant had relied on the representation or had therefore suffered any form of detriment which would warrant equity's intervention in his favour. There is no evidence that the first defendant relied on the plaintiff's representations to invest time or money in the Project. What drew the first defendant to the Project was the fact that the Project was related to the fast-moving consumer goods businesses he was already involved in.[96] There was nothing to suggest that the first defendant's investment in the Project was *conditional* on him having sole beneficial ownership of the third defendant. Indeed, the first defendant stated in his affidavit of evidence in chief that he was reflected as the beneficial owner of the third defendant *because* he had decided to commit the necessary funds for the Project,[97] not the other way around.

141 Therefore, if I had found that the plaintiff was beneficially entitled to one of the Subscriber Shares or to one-third of the Additional Shares, the first defendant would not have been able to make out his estoppel defences.

Conclusion

142 For all of the foregoing reasons, I hold that the second defendant holds all the Shares on a presumed resulting trust for the first defendant alone. The plaintiff has failed to establish his case that he has a beneficial interest in one of the Subscriber Shares or in one-third of the Additional Shares. The plaintiff's claim is therefore dismissed.

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96 MS at para 8.

97 MS at para 13.

143 I will now hear from the parties, including the second defendant and the third defendant, on the issue of costs.

Vinodh Coomaraswamy
Judge of the High Court

Ramesh Kumar s/o Ramasamy, Afzal Ali and Edmond Lim (Allen & Gledhill LLP) for the plaintiff;
Koh Swee Yen SC, Lin Chunlong and Chiam Yunxin (WongPartnership LLP) for the first defendant;
Leo Cheng Suan and Lee Shu Xian (Infinitus Law Corporation) for the second defendant;
Chua Sui Tong and Gan Jhia Huei (Rev Law LLC) for the third defendant.