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

[2023] SGHC 90

Suit No 498 of 2020

Between

(1) Ho Soo Tong
(2) Ho Soo Whatt
(3) Ho Liew Leng @Edwin

… *Plaintiffs*

And

(1) Ho Soo Fong
(2) Ho Soo Kheng
(3) Invest Ho Properties Pte. Ltd.

… *Defendants*

JUDGMENT

[Civil Procedure – Pleadings]
[Trusts – Express trusts – Certainties]

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Ho Soo Tong and others
v
Ho Soo Fong and others

[2023] SGHC 90

General Division of the High Court — Suit No 498 of 2020
Mavis Chionh Sze Chyi J
4-7 October, 11-13 October, 18-19 October, 16 December 2022, 6 January 2023

6 April 2023 Judgment reserved.

Mavis Chionh Sze Chyi J:

Introduction

1 HC/S 498/2020 involves a dispute between brothers over ownership of a family enterprise. The protagonists in this suit are five brothers of the Ho family who are locked in a dispute over the ownership of shares in a company known as Invest Ho Properties Pte Ltd ("Invest Ho"). In gist, three of the brothers – the three Plaintiffs – claim that the five brothers as well as their nephew (one Hoo Peng Zuo) have equal ownership stakes in Invest Ho, which the Plaintiffs characterise as a family business. On the other hand, two of the brothers – the 1st and 2nd Defendant – claim that Invest Ho is owned by only the two of them and that it is not a family business.

2 The trial was heard before me over nine days. The Plaintiffs were represented by counsel while the Defendants' counsel discharged themselves

on the first day of trial. The Defendants then acted in person. At the conclusion of the trial, closing submissions were tendered by both sides on 16 December 2022, and reply submissions were tendered on 6 January 2023.

3 Having reviewed the evidence adduced and considered the submissions made, I now give my decision.

Facts

The parties

4 The 1st, 2nd and 3rd Plaintiffs in this suit are Ho Soo Tong ("**HST**"), Ho Soo Whatt ("**HSW**") and Ho Liew Leng Edwin ("**Edwin**"). The 1st and 2nd Defendants are Ho Soo Fong ("**HSF**") and Ho Soo Kheng ("**HSK**") respectively. The five of them had an elder brother,[1] one Ho Ann Swee ("**HAS**"), who passed away in 2013. I will refer to all six brothers of the Ho family (including HAS) collectively as the ("**Ho Brothers**"). Invest Ho, the company whose shares are the subject-matter of the present dispute, is joined as the nominal 3rd Defendant in this suit.

5 The seniority of the five brothers involved in the present dispute is as follows: HSK is the oldest, followed by HST, followed by HSF, followed by HSW, followed by the youngest Edwin. Hoo Peng Zuo ("**Peng Zuo**") is the son of HAS.[2] He is not joined as a party in this suit.

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1 AEIC of HST at para 8.

2 AEIC of HST at para 9.

Background to the dispute

6 By way of background, Invest Ho was incorporated in Singapore on 4 April 1986. Invest Ho has an issued and fully paid-up capital of 2,500,000 ordinary shares of $1 each.[3] Sometime in the middle of 2019, the Plaintiffs discovered from searching the records of the Accounting and Corporate Regulatory Authority ("ACRA") that the shareholding of Invest Ho had changed. On discovering the changes in shareholding, the Plaintiffs issued a letter of demand to the Defendants, requesting that they rectify the shareholding position so as to uphold an alleged agreement between the Ho Brothers. The Defendants did not accede to the Plaintiffs' request. Following failed attempts to resolve the matter, the Plaintiffs commenced the present suit.[4]

The Plaintiffs' pleaded version of events

Early years working together

7 I first summarise the Plaintiffs' version of events. The Plaintiffs' position is that the Ho Brothers had begun working together from a young age, with the youngest brother, Edwin, joining the family business last in 1995.[5] According to the Plaintiffs, the working relationship between the Ho Brothers was one in which assets generated or acquired in the course of their work were beneficially owned by the brothers in equal shares. Over the years, the Ho Brothers established and were involved in several businesses, such as Ho Tong Seng Engineering Works Co ("**HTS Engineering**")[6] and Ho Pak Kim

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3 AEIC of HSF at para 5.

4 Statement of Claim (Amendment No 1) at paras 24-31.

5 Statement of Claim (Amendment No 1) at para 5-9; AEIC of Edwin at para 8.

6 Statement of Claim (Amendment No 1) at para 5.

Enterprise Co ("**HPK Enterprise**")[7]. In the course of their working relationship, various properties were also acquired, such as the property at 179 Syed Alwi Road, a four-story mixed-development property ("**Syed Alwi Property**")[8].

Founding of Invest Ho

8 Invest Ho was originally set up in April 1986 by persons unrelated to the present suit. The Plaintiffs' case is that sometime in 1995, Patrick Ho and Steven Ho (who were not related to the Ho Brothers) wanted to partner HSK, HST, HSF and Edwin in a joint venture to develop a property at 1 Mactaggart Road. Discussions were held between the Plaintiffs, the Defendants, Patrick Ho and Steven Ho. HAS did not participate in these discussions as he was not on good terms with HSF and HSK at the time. According to the Plaintiffs, they and the Defendants agreed to enter into a "50/50 joint venture with Patrick and Steven" Ho, and to use Invest Ho as the joint venture company instead of incorporating a new company.[9] Based on their discussions, the agreement between the Plaintiffs and the Defendants at that time was for 50% of the total shares in Invest Ho to be issued to HSK and HSF, with HSK and HSF holding the shares on trust for themselves and for the three Plaintiffs in equal proportions of 1/5 share per each brother ("**1995 Agreement**").[10] HAS and Peng Zuo were not party to the 1995 Agreement.[11]

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7 Statement of Claim (Amendment No 1) at para 6.

8 Statement of Claim (Amendment No 1) at para 6-8

9 AEIC of HST at para 29.

10 Statement of Claim (Amendment No 1) at paras 10-11; AEIC of HST at para 30.

11 AEIC of HST at para 31.

9 The Plaintiffs' case is that the five brothers' shares in Invest Ho were paid for by a loan from the Bank of East Asia which was in turn secured against the Syed Alwi Property.[12]

10 Subsequently, in the period around 2006 to 2007, Patrick Ho and Steven Ho exited Invest Ho and ceased being joint venture partners with the Ho Brothers. From the ACRA records and other documents provided, it appeared that Patrick Ho and Steven Ho ceased being shareholders of Invest Ho sometime in 2007.[13] This left HSK and HSF as the sole registered shareholders of Invest Ho. The Plaintiffs' case is that at this stage, HSK and HSF continued to hold all their shares in Invest Ho on trust for the five brothers (*ie* not including HAS or his son Peng Zuo) in equal proportions.[14]

Inclusion of HAS / Peng Zuo

11 The Plaintiffs' case is that they received constant verbal reassurances from HSK over the years between 2007 and 2012 that he and HSK would transfer to the Plaintiffs their respective shares in Invest Ho. These communications were not documented because of their familial relationship.[15] As at 2012, no share transfer had taken place. Sometime in 2012, therefore, the three Plaintiffs and the two Defendants held a meeting, during which they agreed to record their agreement that the shares in Invest Ho which were held in HSF's and HSK's names belonged equally to each of them.[16]

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12 Statement of Claim (Amendment No 1) at para 13.

13 AEIC of HST at p 93-104.

14 Statement of Claim (Amendment No 1) at para 15.

15 AEIC of HST at para 37.

16 AEIC of HST at para 38.

12 At this meeting, it was agreed that since Invest Ho had been built up as a result of the contributions from all the brothers in the Ho family, the shares in Invest Ho belonged equally to each and every one of the brothers, including the eldest brother HAS (who had not been included in the 1995 Agreement). HSF himself proposed that they include HAS "by allocating to him an equal portion of shares in recognition of [HAS's] contributions to Invest Ho".[17] This was agreed to by all five brothers.[18] As HAS was in ill health at this stage, HSK proposed – and the others agreed – that the shares allocated to HAS be given to the latter's son Peng Zuo.[19]

13 HAS, on being asked, also agreed to the above arrangement ("**2012 Agreement**"). Thereafter, the Plaintiffs, the Defendants and Peng Zuo each executed a document, "*Company Resolution (07 August 2012*)" ("**2012 Company Resolution**") prepared by HSF, wherein it was documented that all 2,500,000 Invest Ho shares were to be equally divided among the six of them. The paid up and issued shares in Invest Ho totaled 2,500,000, so this meant that the six of them would each own 416,666.67 shares.[20]

14 On or around 28 February 2012, the Plaintiffs and Defendants also started a United Kingdom company known as Forward Realty Limited ("**Forward Realty**") which developed properties in the UK. The Plaintiffs' position is that in keeping with the agreement of equal ownership between them,

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17 AEIC of HST at para 38.

18 Statement of Claim (Amendment No 1) at para 18A.

19 AEIC of HST at paras 38-39; AEIC of HSW at para 23.

20 Statement of Claim (Amendment No 1) at para 18.

the Plaintiffs, the 1st and 2nd Defendants, and Peng Zuo each held one share in Forward Realty.[21]

Contributions of HST, HSW and Edwin Ho to Invest Ho

15 The Plaintiffs' case is that in line with the agreement and understanding that the Ho Brothers each had an equal share in the family businesses, Invest Ho had been operated by the Ho Brothers collectively since 1995, with each of them making contributions and efforts towards the running of the company. *Inter alia*, the Plaintiffs assert that HST and Edwin had contributed and/or advanced and/or loaned their personal funds to Invest Ho in the period 2007 to 2020. These monies had come from their personal bank accounts; and these contributions or advances were made to assist Invest Ho in its business operations and to meet its liabilities and expenses – especially in respect of the re-development of 22 Hillside Drive. These monies were also used to redeem the loan in respect of 1 Mactaggart Road.[22] In total, the funds contributed by HST and Edwin to Invest Ho amounted to around $4,654,11.00.[23]

16 As another example of their contributions to Invest Ho, the Plaintiffs point to HST and Edwin having used their own company to take loans in order to assist Invest Ho in the payment of development charges to URA for the 22 Hillside Drive development. HST and Edwin jointly owned a company called M Design & Build Pte Ltd ("**M Design**") which was incorporated in October

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21 Statement of Claim (Amendment No.1) at para 18E.

22 AEIC of HST at para 52, p 138-205.

23 Statement of Claim (Amendment No 1) at para 16.

2009 and whose business was principally that of general building contractors. M Design lent to Invest Ho – interest-free – a sum of $2,193.674.14.[24]

17 As yet another example, the Plaintiffs assert that HSW agreed to mortgage his property at 82 Boundary Road as collateral to obtain an overdraft loan facility of $1,925,00.00 for Invest Ho.[25] HSW states that to date, 82 Boundary Road remains a security for this facility while he remains a guarantor in respect of this facility.[26]

Transfer of shares and present conflict

18 Following the 2012 Agreement, HSF and HSK did not transfer to the Plaintiffs and Peng Zuo their respective shares in Invest Ho. In light of their familial relationship, the Plaintiffs did not insist. They also felt reassured by the existence of the 2012 Agreement.[27]

19 Sometime in late 2016, the Plaintiffs and HSF had a meeting during which HSF agreed that out of his shareholding of 1,550,000 Invest Ho shares, he would transfer 310,000 shares to each of the Plaintiffs and Peng Zuo. HSF informed the Plaintiffs that HSK was unwilling to transfer any shares to them. However, as HSF claimed that he "had a way to persuade [HSK]" to do so, the Plaintiffs left it to HSF to speak to HSK.[28]

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24 Statement of Claim (Amendment No 1) at para 16; AEIC of HST at paras 5, p 209-211.

25 Statement of Claim (Amendment No 1) at para 16; AEIC of HSW at para 31.

26 AEIC of HSW at para 31.

27 AEIC of HST at para 43.

28 AEIC of HSW at paras 28-29; AEIC of HST at paras 44-45.

20 On 1 March 2017, HST transferred 310,000 shares each to HST, HSW, Edwin and Peng Zuo. This made for a total of 1,240,000 shares transferred from HST.[29] HSF and HSK – who were then the directors and registered shareholders of Invest Ho – passed a resolution on 1 March 2017 stating that the transfer of the 1,240,000 shares by HSF to the Plaintiffs and Peng Zuo was approved.[30] These share transfers and the updated shareholding positions were duly reflected in Invest Ho's ACRA business profile ACRA the following day (2 March 2017). ACRA records showed these changes as having been lodged by Invest Ho's company secretary Chew Lee Sam ("**Mdm Chew**").[31] The Plaintiffs' position is that there were no monies to be paid to HSF for the transfer of the shares.[32] Each of the share transfer forms did, however, state that there was "consideration" of $4030.00. This amount was written by Mdm Chew. Mdm Chew based this calculation on the total net asset value of Invest Ho being $32,487.00 and therefore, the net asset value per share (at a total of 2,500,000 shares) being $0.01299 (rounded up to $0.013). Stamp duty of $18 was paid on each of the share transfers.[33]

21 HSK did not at any time transfer to the Plaintiffs and Peng Zuo any of the shares registered in his name. The Plaintiffs contend that HSK failed, refused and neglected to transfer his shares despite demands by HST and HSW

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29 Statement of Claim (Amendment No 1) at paras 20-22; AEIC of HST at para 48, p 131-133.

30 AEIC of HST at p 134.

31 AEIC of HST at 224-226.

32 AEIC of HST at para 50; AEIC of HSW at para 30.

33 Statement of Claim (Amendment No 1) at para 22; Transcript of 13 Oct at p 31 ln 5 to p 32 ln 3.

that he do so. The Plaintiffs' case is that HSK continues to hold the Plaintiffs' respective shares in Invest Ho on trust for them.[34]

22 According to the Plaintiffs, they found out about the unlawful change in their shareholding position sometime in July 2019, when HSW obtained a copy of Invest Ho's ACRA business profile.[35] From the ACRA business profile, the Plaintiff discovered that their 930,000 shares (310,000 shares per each Plaintiff) had been transferred to HSF without their knowledge, consent or authorization. This left HSF as the largest shareholder in Invest Ho with 1,240,000 shares, while HSK held 950,000 shares and Peng Zuo continued to hold 310,000 shares. When questioned, HSF admitted that he had changed the ACRA records, but failed to give the Plaintiffs any reasonable or cogent explanation as to why he had brought about this wrongful transfer of the Plaintiffs' shares.[36] Further investigations showed that the transfers of HST's, HSW's and Edwin's shares to HSF were lodged by HSF personally on 22 October 2018, *ie* not by Invest Ho's company secretary.[37]

23 The Plaintiffs' subsequently engaged lawyers and made a demand for the wrongfully transferred shares to be returned to them, as well as for HSK to transfer to them the shares he was still holding on trust for them.[38] They commenced these proceedings after failing to reach any agreement with the two Defendants.[39]

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34 Statement of Claim (Amendment No.1) at para 23.

35 AEIC of HSW at para 32, p 57-60.

36 AEIC of HSW at paras 33-35.

37 Statement of Claim (Amendment No.1) at paras 24-26; AEIC of HST at p 212-214.

38 AEIC of HST at paras 61-65.

39 Statement of Claim (Amendment No.1) at paras 27-31.

The Defendants' pleaded version of events

Early years

24 I next summarise the Defendants' version of events. In gist, the Defendants' case is that the Ho Brothers were never involved in any family business or family enterprise: the businesses and/or properties which were acquired over the years belonged to the Defendants, and the Plaintiffs had no part in them. The Defendants' position, therefore, is that HPK Enterprise belonged to them (the Defendants) and was run by them despite the fact that HPK Enterprise was initially registered in HSK's name only.[40]

25 As for HTS Engineering, the Defendants' position is that HTS Engineering was never involved in the development of the Syed Alwi Property, and no funds belonging to HTS Engineering were utilized for the purchase of that property. Instead, the Defendants claim that they utilized monies they had earned from HPK Enterprise to purchase the Syed Alwi Property. The Defendants also deny that HSW contributed monies to purchase the adjacent plot of land next to the Syed Alwi Property: according to the Defendants, HSW was very young at that time, and had neither income nor financial capacity to contribute.[41]

26 The Defendants further deny that there was ever any agreement between the Plaintiffs and HSF to purchase the Syed Alwi Property together and to hold it in HSF and HSK's name on trust for the Ho Brothers.[42]

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40 AEIC of HSF at paras 19-21.

41 Defence (Amendment No.2) at paras 4-5.

42 Defence (Amendment No.2) at para 6.

Invest Ho joint venture

27 The Defendants deny the existence of the 1995 Agreement. It is their case that the Plaintiffs were never part of the discussions concerning the joint venture in Invest Ho with Patrick Ho and Steven Ho. According to the Defendants, the Plaintiffs had no involvement whatsoever in the affairs of HTS Engineering; and the 1st and 2nd Defendants thus had no reason to involve them in any discussion regarding the joint venture.[43] The Defendants' position is that HSW and HST only became involved in Invest Ho's business when they were appointed as directors in 2017 and 2018 respectively – whereas Edwin had no intention of participating in the affairs of Invest Ho as he had set up a sole proprietorship himself.[44]

No contributions by HST, HSW and Edwin towards Invest Ho

28 The Defendants deny that the development charges for the 22 Hillside Drive development were paid by contributions from HST and Edwin. Instead, the Defendants claim that Invest Ho paid for these development charges itself "by refinancing 5 units of factories situated at 1 Mactaggart Road with Maybank and/or from Lei Shing Hong Capital (Singapore) Pte Ltd ["**LSH Capital**"] by using the property at 25 and 27 Lorong 104 Changi Road".[45] The Defendants' position is that although the loans were taken in HST's and Edwin's names, it was actually "done on behalf of [HSF]".[46]

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43 Defence (Amendment No.2) at para 8.

44 Defence (Amendment No.2) at para 8.

45 Defence (Amendment No.2) at para 10.

46 Defence (Amendment No.2) at para 10.

Transfer of shares and present conflict

29 Not surprisingly, the Defendants also deny the existence of 2012 Agreement. Their position is that the transfer of shares by HSF to the Plaintiffs and Peng Zuo in March 2017 came about as a result of HSF having decided to *sell* some of his shares to the Plaintiffs and Peng Zuo. In fact, in his affidavit of evidence-in-chief, HSF claims that at the 2012 meeting, both he and HSK had proposed selling "a portion of [their] 2.5 million shares" to the Plaintiffs and Peng Zuo at $2.50 per share. At that point, HSF held 1,550,000 shares in Invest Ho and HSK held 950,000 shares.[47] HSF claims that the Defendants' intention in offering to sell their shares was "for the entire 2.5 million shares in Invest Ho to be split equally amongst the six of [them]" (*ie* the three Plaintiffs, the two Defendants and Peng Zuo), "in exchange for the payment" to the Defendants of a total sale price of $4,166,666.67 (at $2.50 per share).[48] The Plaintiffs were the ones who allegedly backed away from proceeding with the purchase of the shares in 2012 due to uncertainty over the Hillside Development; and the 2012 sale of shares was accordingly "aborted".[49]

30 As to how the transfer of shares to the Plaintiffs and Peng Zuo came about in 2017, the Defendants claim that at a meeting which they had with the Plaintiffs in March 2017, HSF "revisited the possibility of selling and distributing [his] shares to the Plaintiffs and Peng Zuo, to raise funds for the Hillside Development". This time, HSK refused to sell any of his shares as he was worried that the Plaintiffs would not pay him after obtaining the shares.[50]

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47 AEIC of HSF at para 41.

48 AEIC of HSF at para 42.

49 AEIC of HSF at paras 45-46.

50 AEIC of HSF at para 56.

31 According to HSF, his offer at the March 2017 meeting was for his 1,550,000 shares to be "split equally" between himself, the Plaintiffs and Peng Zuo. This was how he came to transfer 310,000 shares each to the Plaintiffs and Peng Zuo – for which he was to be paid a total sum of $3,100,000 (at $2.50 per share for 1,240,000 shares in total).[51] This meant that the Plaintiffs and Peng Zuo were each obliged to pay him $775,000 for the 310,000 shares transferred to each of them. HSF claims that he also attached a number of "requirement[s]" to his offer to sell shares, such as a requirement that he would "continue to be responsible for dealing with the architect, consultant and surveyor for the Hillside Development".[52]

32 HSF claims that it was the Plaintiffs who provided the share transfer forms to him for signing – and that when he signed the share transfer forms, they were blank save for "certain typewritten portions".[53] HSF's position is that he does not know how the handwritten figure of $4,030 as the "consideration" for each transfer of shares came about.[54] In any event, HSF claims that the Plaintiffs and Peng Zuo never paid him this stated sum of $4,030 each – much less the sale price of $775,000 each.[55]

33 Despite the non-payment of the alleged sale price, HSF proceeded to effect the transfer of his shares to the Plaintiffs (and Peng Zuo) because they were brothers and he trusted the Plaintiffs.[56] According to the Defendants, no

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51 AEIC of HSF at para 58.

52 AEIC of HSF at para 60.

53 AEIC of HSF at para 62.

54 AEIC of HSF at para 64.

55 AEIC of HSF at para 65.

56 Defence (Amendment No 2) at para 12.

share scrips were ever issued to the Plaintiffs precisely because they failed to pay HSF for the shares.[57] Subsequently, HSF transferred the Plaintiffs' 930,000 shares back to himself "due to a failure to provide consideration on their end".[58] The Defendants deny, therefore, that the subsequent change in shareholding effected by HSF was unlawful.

The parties' respective arguments

34 I summarise below the key arguments put forward by the parties.

The Plaintiffs' key arguments

35 The Plaintiffs' case is that they are the beneficial owners of 416,666.67 Invest Ho shares each, on the basis of an express trust, or alternatively, a common intention constructive trust.[59] The Plaintiffs contend, in the first place, that the shares in Invest Ho are held by the Defendants on trust in equal shares, for the benefit of the Defendants themselves, the Plaintiffs, and Peng Zuo, pursuant to the 1995 Agreement. According to the Plaintiffs, this 1995 Agreement is further evidenced by way of a written document signed by the Ho Brothers and Peng Zuo pursuant to the 2012 Agreement.[60]

36 In the alternative, the Plaintiffs contend that they are the beneficial owners of 416,666.67 shares each, based on a common intention constructive trust. In this connection, they point to the following factors:[61]

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57 Defence (Amendment No.2) at para 12; AEIC of HSF at para 62.

58 AEIC of HSF at para 85.

59 Plaintiffs' Closing Submissions at para 32.

60 Plaintiffs' Closing Submissions at p 19 and p 31.

61 Plaintiffs' Closing Submissions at p 20.

(a) The Ho Brothers collectively contributed to the family business over the years;

(b) Pursuant to the 1995 Agreement, the Plaintiffs and the Defendants were to be equal beneficial owners of the Invest Ho shares registered in the names of the 1st and 2nd Defendants;

(c) Pursuant to the 2012 Agreement, the Defendants were to hold the Invest Ho shares on trust for the Ho Brothers and Peng Zuo in equal parts;

(d) The Plaintiffs had repeatedly asked for their shares to be transferred to them;

(e) In 2017, the 1st Defendant HSF had transferred a total of 1,240,000 Invest Ho shares to the Plaintiffs and Peng Zuo (310,000 shares each), without demanding payment from them;

(f) The parties did not enter into any sale and purchase agreement in respect of the shares transfers;

(g) As the beneficial owners of Invest Ho, the Ho Brothers (including HAS) had all contributed significantly to Invest Ho as its beneficial owners.

37 In their closing submissions, the Plaintiffs also argue that the Defendants are precluded from advancing a positive case premised on the Plaintiffs' agreement to purchase the Invest Ho shares from HSF because the Defendants

have in their pleadings merely denied the claims of the Plaintiff without making any mention of the purported sale of the shares to the Plaintiffs.[62]

The Defendants' key arguments

38 The Defendants contend that:

(a) Invest Ho is not a family business of the Ho Brothers;[63]

(b) There was no agreement in 1995 for the Plaintiffs to be equal beneficial owners of Invest Ho shares;[64]

(c) The 2012 resolution for shares to be distributed equally amongst the Plaintiffs, the Defendants and Peng Zuo was not a valid agreement;[65]

(d) The 2017 share "transfer" was actually a sale of shares by HSF to the Plaintiffs and Peng Zuo. HSF later took back the shares from the Plaintiffs because they failed to pay the sale price;[66]

(e) None of the Plaintiffs had contributed significantly to Invest Ho. The properties they allegedly utilised for the benefit of Invest Ho were in fact owned by HSF and HSK: the arrangement amongst the Ho Brothers was for the properties to be utilised based on HSF's instructions.[67]

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62 Plaintiffs' Closing Submissions at paras 150-153.

63 Defendants' Closing Submissions at p 17.

64 Defendants' Closing Submissions at p 25-26.

65 Defendants' Closing Submissions at p 18.

66 Defendants' Closing Submissions at p 23-24.

67 Defendants' Closing Submissions at p 26.

39 In their Closing Submissions, the Defendants have also attempted to put forward hitherto unpleaded allegations and to introduce new exhibits.[68] The new exhibits annexed to the Defendant's closing submissions include, *inter alia*, a deed of mortgage,[69] parts of what appears to be a mortgage loan document,[70] and character testimonials for HSF[71].

Issues to be determined

40 The following issues arose for my determination:

(a) Whether the Plaintiffs' pleadings are sufficient for them to mount an alternative claim of common intention constructive trust;

(b) Whether the new allegations and evidence advanced by the Defendants in their Closing Submissions may be considered by this Court;

(c) Whether there was an express trust over the disputed shares in the Plaintiffs' favour, whereby each Plaintiff would be entitled to 416,666.67 shares in Invest Ho;

(d) Whether alternatively, there was a common intention constructive trust in the Plaintiffs' favour, whereby each Plaintiff would be entitled to 416,666.67 shares in Invest Ho.

41 In the paragraphs that follow, I address these issues *seriatim*.

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68 Defendants' Closing Submissions at p 33-51.

69 Defendants' Closing Submissions at p 39-41.

70 Defendants' Closing Submissions at p 42-44.

71 Defendants' Closing Submissions at p 45-50.

Issue 1: Whether the Plaintiffs' pleadings are sufficient for them to mount an alternative claim of common intention constructive trust

42 As a preliminary point, I find that although the Plaintiffs' pleadings did not expressly mention the doctrine of common intention constructive trust, their pleadings are still sufficient to allow them to mount an alternative claim of common intention constructive trust. This is because the statement of claim contains the material facts required to establish the elements of a claim of common intention constructive trust.

43 It is trite law that parties are bound by their pleadings, and the court is precluded from deciding on matters that have not been put into issue by the parties (*V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 ("*V Nithia*") at [38]; *OMG Holdings Pte Ltd v Pos Ad Sdn Bhd* [2012] 4 SLR 231 ("*OMG Holdings*") at [21]). However, if a legal result is to be relied on, the legal result does not need to be pleaded specifically (*MK (Project Management) Ltd v Baker Marine Energy Pte Ltd* [1994] 3 SLR(R) 823 at [26]; *AAHG, LLC v Hong Hin Kay Albert* [2017] 3 SLR 636 at [68]; *Multistar Holdings Ltd v Geocon Piling & Engineering Pte Ltd* [2016] 2 SLR 1 at [34]; *Management Corporation Strata Title Plan No 2911 v Tham Keng Mun and others* [2011] 1 SLR 1263 at [63]). What is necessary is that the pleadings disclose – at the minimum – the material facts which support the cause of action relied on. This is so as to give the opponent fair notice of the substance of the claim (*V Nithia* at [43]; *Shi Wen Yue v Shi Minjiu and another* [2016] 4 SLR 911 at [10]). Ultimately, as the Court of Appeal ("CA") has observed on more than one occasion, the underlying consideration of the law of pleadings is to prevent surprises from arising at trial (*SIC College of Business and Technology Pte Ltd v Yeo Poh Siah and others* [2016] 2 SLR 118 at [46]; *Lu Bang Song v Teambuild*

Construction Pte Ltd and another and another appeal [2009] SGHC 49 ("*Lu Bang Song*") at [17]).

44 In the present case, I find that although the doctrine of common intention constructive trust has not been specifically mentioned in the statement of claim, the material facts which support a claim of common intention constructive trust have been pleaded by the Plaintiffs. The Plaintiffs have pleaded the 1995 Agreement, pursuant to which it was "understood and agreed" that the five brothers would each own a 1/5 share of the Invest Ho shares registered in the Defendants' names; that the Defendants would hold "on trust" the shares belonging to the Plaintiffs; and that the Plaintiffs relied on this understanding and agreement to their detriment. The Plaintiffs have also pleaded the 2012 Agreement, pursuant to which it was "discussed and agreed" amongst all the brothers that the shares in Invest Ho "belonged equally to each and every one of the Ho Brothers including [HAS]", and that HAS' shares be given to Peng Zuo.

45 *Inter alia*, the Plaintiffs have pleaded that:

(a) Consistently from the start of the family businesses, HSF, HSK and HST had held their respective interests in the various businesses and properties (*eg* HPK Enterprise, Syed Alwi Property and Invest Ho) on trust for all the Ho Brothers (except HAS);[72]

(b) Sometime around 2012, the Plaintiffs and the Defendants had discussed and agreed that the shares in Invest Ho belonged equally to each and every one of the Ho Brothers (including HAS) because Invest

[72] Statement of Claim (Amendment No.1) at paras 6-17.

Ho had been built up as a result of the contribution and efforts from all the Ho Brothers.[73] HAS had consented to this arrangement.

(c) The Plaintiffs had contributed their personal funds to Invest Ho over the years, from 2007 to 2020, on the understanding that they were beneficial owners of the Invest Ho shares;[74]

(d) The 2012 Agreement was documented; and in accordance with this agreement, partial transfer of the shares was carried out by HSF sometime in March 2017.[75]

46 In light of the matters set out at [42] to [45] above, I am satisfied that the Plaintiffs have pleaded the material facts necessary for their alternative claim of a common intention constructive trust – and that the Defendants had fair notice of the substance of the Plaintiffs' claim. I should point out that the Defendants' defence is the same whether the Plaintiffs rely on an express trust or a common intention constructive trust: as seen earlier, in essence, the Defendants allege that they own all the shares in Invest Ho; that they do not hold any shares on trust for the Plaintiffs; and that the Plaintiffs' claims of having made contributions to Invest Ho are unfounded. I should also point out, moreover, that this point on pleadings is not ultimately critical in light of my decision on the main claim of an express trust (see [105]).

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73 Statement of Claim (Amendment No.1) at para 18.

74 Statement of Claim (Amendment No.1) at para 16.

75 Statement of Claim (Amendment No.1) at paras 18-20.

Issue 2: Whether the new allegations and evidence advanced by the Defendants in their Closing Submissions may be considered by this Court

47 I next consider whether the new allegations and evidence advanced by the Defendants in their Closing Submissions may be considered by this Court. At the outset, I note that the Plaintiffs have argued that the Defendants are precluded from advancing a positive case (*ie* that the Plaintiffs had agreed to purchase the Invest Ho shares from HSF, first in 2012, and then in 2017). The Plaintiffs argue that the Defendants have merely denied the claims of the Plaintiffs but made no mention of the alleged sale.

48 Having reviewed the amended Defence filed by the Defendants, I find no merit in the Plaintiffs' argument on this point. It is clear from the Defence that the Defendants did in fact plead that the transfer of shares from HSF to the Plaintiffs was pursuant to a sale of the shares. I reproduce below the material parts of the Defence for ease of reference:[76]

> 11. …Soo Fong had transferred his shares, as part of the said sale of shares to the Plaintiffs, in the following manner to the respective parties:
>
> a. Soo Tong to have 310,000 shares;
>
> b. Soo Whatt to have 310,000 shares;
>
> c. Liew Leng to have 310,000 shares; and
>
> d. Peng Zuo to have 310,000 shares.
>
> 12. …The 1st and 2nd Defendant aver that no consideration and/or no monies were paid by the Plaintiffs to the 1st Defendant for the alleged transfer of shares (that which is denied). The particulars are as follows:
>
> …

[76] Defence (Amendment No.2) at paras 11-12.

> b. …Notably, no share scrips were issued to the Plaintiffs as the 1st Defendant had not received any payment from the Plaintiffs for the said sale of shares.
>
> c. The consideration that is to be paid by each of them at that time was $775,000.
>
> …
>
> e. At that time, although Soo Fong had not receive payment for the shares sold to the Plaintiffs yet, Soo Fong was prepared to effect the transfer of his shares first because the Plaintiffs were Soo Fong's brothers and Soo Fong trusted them completely.
>
> …

49 Having regard to the above extract from the Defence, it is clear that there is no basis for the Plaintiffs' argument about the Defendants' failure to plead the alleged sale of the shares.

50 What is regrettably true, however, is that the Defendants attempted in their Closing Submissions to introduce new allegations and purported new evidence.[77] Most notably, the Defendants sought in their Closing Arguments to put forward new arguments and purported new evidence pertaining to a property at 7 Jalan Chorak. The Defendants claimed that they owned the property at 7 Jalan Chorak;[78] that this property was used as collateral to obtain an overdraft from OCBC; that the OCBC overdraft was to be used according to HSF's instructions;[79] and that these funds partially contributed to the financing of many of the other properties the Plaintiffs held, such as 1 Mactaggart Road[80] and 25 and 27 Lor 104 Changi Road[81]. The Defendants also sought to put in an entire

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77 Defendants' Closing Submissions at p 32-51.

78 Defendants' Closing Submissions at p 4-6.

79 Defendants' Closing Submissions at p 4-6.

80 Defendants' Closing Submissions at p 8.

81 Defendants' Closing Submissions at p 13.

sheaf of new exhibits by way an Annex to their Closing Submissions. As noted earlier, these new exhibits include documents such as land title deeds, a document titled "Deed of Confirmation", parts of what appears to be a mortgage loan document and character testimonials for HSF from various sources.[82]

51 I am unable to allow the Defendants to introduce new allegations and purported new evidence at this late stage, as it causes significant prejudice to the Plaintiffs.

52 It is trite law that a "court may not make a finding or give a decision based on facts not pleaded and a finding or decision so made will be set aside" (*Wei Ho-Hung v Lyu Jun* [2022] 2 SLR 1066 at [62]-[63]; *China Construction (South Pacific) Development Co Pte Ltd v Shao Hai* [2004] 2 SLR(R) 479 ("*China Construction*") at [26]; *Lu Bang Song* at [16]). This is in line with the well-established principle that facts material to a party's claim or a party's defence must be pleaded (*Multi-Pak Singapore Pte Ltd (in receivership) v Intraco Ltd and others* [1992] 2 SLR(R) 382 ("*Multi-Pak*") at [22]-[23]). As the High Court noted in *UJT v UJR* (at [48]):

> "Material" means necessary for the purpose of formulating a complete cause of action…And even if the facts are not material to the cause of action, they may be facts that must be pleaded to avoid surprise at trial: see *Millington v Loring* (1881) 6 QBD 190 at 195 *per* Lord Selbourne LC.

53 This principle is also encapsulated in O 18 r 7(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) which states:

> **Facts, not evidence, to be pleaded** (O.18, r.7)
>
> 7.—(1) Subject to this Rule and Rules 10, 11 and 12, every pleading must contain, and contain only, a statement in a

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82 Defendants' Closing Submissions at p 32-51.

> summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits.

54 The rationale behind this principle is to define the issues in dispute between the parties, so as to prevent surprises arising at trial (*Lu Bang Song* at [17]; *UJT v UJR* at [48]) and to inform the opposing party in advance of the case to be met, so that the opposing party would have adequate opportunity to prepare and present his own case (*China Construction* at [26]; *Multi-Pak* at [22]-[23]).

55 Departure from the general principle is permitted in limited circumstances. While a court has the discretion to permit an unpleaded point to be raised, this happens primarily where no prejudice is caused to the other party in the trial or where it would be clearly unjust for the court not to give its permission.

56 In *Malayan Banking Bhd v ASL Shipyard Pte Ltd and others* [2019] SGHC 61 ("*Malayan Banking*"), for example, a bank which had granted credit facilities to a shipbuilder claimed an interest in a vessel known as Hull 1118 by virtue of a debenture which created a fixed charge and a floating charge over the shipbuilder's undertaking. The defendants to the bank's claim were parties who had the benefit of the shipbuilding contract with the shipbuilder. One of the preliminary issues which the court had to consider was whether the bank's claim was limited to Hull 1118, as the bank argued that its pleadings were sufficient to claim an interest in both Hull 1118 and Hull 1117. In rejecting the bank's argument, the court held (at [42]) that the defendants would be prejudiced if the bank's claim were to be extended to Hull 1117, as the defendants had quite reasonably taken the bank's pleadings at face value, and those pleadings had asserted a claim only in respect of Hull 1118 whereas Hull

1117 was referred to in merely as background. The court further noted (at [43]) that the end of trial was too late an occasion for the bank to resile from its pleaded position: allowing the bank to do so at that stage would have deprived the defendants of all opportunity to rebut the bank's case on Hull 1117 and would have caused them real prejudice.

57 In the present case, having reviewed the Defendants' pleadings and also their affidavits of evidence-in-chief ("AEIC"), while the Defendants did allude very briefly in their pleaded Defence to challenging the Plaintiffs' characterisation of the loan facilities obtained for Invest Ho's benefit[83] and while HSF did in his AEIC challenge the Plaintiffs' ownership of the 25 and 27 Lorong 104 Changi Road properties[84], there was no mention in the Defendants' pleadings or even in their AEICs of the 7 Jalan Chorak property, nor of the allegation that the OCBC overdraft obtained by the use of that property as collateral had been used by the Defendants to pay for the properties held in the Plaintiffs' name. In the circumstances, it is plain that the Plaintiffs will sustain grave and irreparable prejudice if the Defendants are allowed to put forward at the end of trial new allegations and purported new evidence in respect of the 7 Jalan Chorak property and the OCBC overdraft said to have been obtained from providing the property as collateral. This is because the Plaintiffs will not have had time to prepare their case properly to meet the Defendants' claims and to gather the necessary evidence to refute the purported new material facts now put forth by the Defendants.

58 As for the purported new "exhibits" in the Annex to the Defendants' Closing Submissions, the relevance of most of the documents – such as the

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83 Defence (Amendment No.2) at para 10.

84 AEIC of HSF at paras 68-72.

character testimonials – appears to me to be seriously in doubt. Some of the documents are not even legible. In any event, it is plain that allowing the Defendants to introduce at the end of trial these purported new "exhibits" will cause grave and irreparable prejudice to the Plaintiffs. This is because the Plaintiffs will have had no opportunity to inspect, investigate and rebut the purported new evidence at this very belated stage of proceedings.

59 For these reasons, I disallow the Defendants' attempt to put forward in their Closing Submissions new allegations and purported new evidence in respect of the property at 7 Jalan Chorak and the OCBC overdraft said to have been secured by the property. I also disallow the Defendants' attempt to introduce new "exhibits" by way of the Annex to their Closing Submissions.

60 As a final point, I should point out that even if the Defendants' new evidence and claims about the 7 Jalan Chorak property and OCBC overdraft credit line are considered, they do not materially impact my findings in this case and will not change the outcome. I explain in greater detail vis-à-vis Issues 3 and 4 below.

Issue 3: Whether there was an express trust over the disputed shares in the Plaintiffs' favour, whereby each Plaintiff would be entitled to 416,666.67 shares in Invest Ho

61 I next address the issue of whether there was an express trust over the disputed shares in favour of the Plaintiffs (and Peng Zuo), whereby each of them would be entitled to 416,666.67 shares in Invest Ho. I first outline the legal principles applicable to express trusts.

The law on express trusts

62 There are three certainties that must be present for the creation of an express trust: certainty of intention; certainty of subject matter; and certainty of the objects of the trust (*Guy Neale and others v Nine Squares Pty Ltd* [2015] 1 SLR 1097 ("*Guy Neale*") at [51]; *The State-Owned Company Yugoimport SDPR (also known as Jugoimport-SDPR) v Westacre Investments Inc and other appeals* [2016] 5 SLR 372 at [55]; *TWG Tea Co Pte Ltd v Murjani Manoj Mohan* [2019] 5 SLR 366 ("*TWG Tea*") at [41]).

63 The first certainty, certainty of intention, requires that there be proof that a trust was intended by the settlor. This can be derived from what was said or done by the settlor, and there must be clear evidence of an intention to create a trust (*Guy Neale* at [52]). *Per* the CA in *Guy Neale*, no particular form of expression is necessary for such an intention to be evinced. In determining if there is certainty of intention, the focus of the courts is "on whether it was possible and appropriate to infer an intention to create a trust by looking at evidence not only of the alleged settlor's words and conduct, but also of the surrounding circumstances and the interpretation of any agreements that might have been entered into" (*Guy Neale* at [58]).

64 In *TWG Tea*, for example, one of the issues before the court was whether the ex-CEO of the plaintiff TWG Tea (one "Manoj") held the domain name www.twgtea.com on express trust for TWG Tea. The court found (at [41]-[53]) that there was certainty of intention to create a trust. In so finding, the court had regard to evidence of a meeting between Manoj and other officers of TWG Tea, where it was agreed to set up a separate entity for the tea business named TWG Tea – and where Manoj informed the other officers that the domain name "TWG Tea" was registered, even though he had registered the domain name in his

personal capacity previously. In the court's view, the evidence showed that Manoj "had regarded the Domain Name would and did belong to TWG Tea, consistent with the parties' intentions and agreement to treat it as such" (at [43]). This was because Manoj had emailed the other officers to state that he had "renewed *our* domain www.twgtea.com for 3 years"; he had registered other domain names that benefitted TWG Tea and informed the other officers that those other domains were "registered for *us*"; he had signed a declaration letter stating that the domain www.twgtea.com was the property of TWG Tea and that he would transfer the ownership of the domain name to TWG Tea; and TWG Tea had invested significant time and resources in building the website at the domain "TWG Tea", and anchored all their online business activities there.

65 In contrast, in *Lau Yaw Ben v Lau Ween Hion and another* [2022] SGHC 130, the court found (at [25]) that there was no express trust created in the plaintiff's favour over the disputed property, as the plaintiff had failed to adduce any evidence in writing to support a declaration of such a trust – and could only rely on his averments in his own affidavit to support the claim of an express trust.

66 As for certainty of subject matter, this requires that the trust must define with sufficient certainty the assets which are to be held on trust and the kind of interest that the beneficiaries are to take in them. For the definition to be sufficiently certain, it must enable the trustees or the court to execute the trust according to the settlor's intention (*Guy Neale* at [59]).

67 The third certainty, certainty in the definition of the objects of the trust, requires that the intended beneficiaries be identifiable, so that it is possible to ascertain the people who have the standing to enforce the trustee's duties under the trust (*Guy Neale* at [60]).

Whether an express trust was created over the disputed shares pursuant to the 1995 Agreement

68 In the present case, the Plaintiffs posit first of all that it was pursuant to the 1995 Agreement that an express trust was created over the disputed shares in their favour (and Peng Zuo's). I do not think this is correct. It is clear from the Plaintiffs' own pleadings that the 1995 Agreement did not involve Peng Zuo or his late father HAS. The Plaintiffs' pleaded position in relation to the 1995 Agreement was that the Defendants would hold the shares on trust for the *Plaintiffs*: *ie*, the 1995 Agreement excluded HAS and did not contemplate him – or his son Peng Zuo – having any share of Invest Ho.[85] This being the case, the 1995 Agreement cannot constitute the basis of the express trust which the Plaintiffs now claim the benefit of. This is because *per* the Plaintiffs' case, the express trust in this case includes 416,666.67 shares for Peng Zuo as well.[86]

69 Further, and in any event, it is clear from the Plaintiffs' own pleadings and evidence that the 1995 Agreement was superseded by the 2012 Agreement, in which it was agreed that Invest Ho belonged equally to each and every one of the Ho Brothers, including HAS – and pursuant to which HAS consented to the others' proposal that his share of Invest Ho be given to his son Peng Zuo.[87]

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85 Statement of Claim (Amendment No.1) at para 11.

86 Plaintiffs' Closing Submissions at para 32.

87 Statement of Claim (Amendment No.1) at para 18.

Whether an express trust was created over the disputed shares pursuant to the 2012 Agreement

Certainty of subject matter and certainty of object

70 I next consider, therefore, whether an express trust was created over the disputed shares in the Plaintiffs' (and Peng Zuo's) favour pursuant to the 2012 Agreement. In this connection, I agree with the Plaintiffs that certainty of subject matter and certainty of object are readily established.[88] In respect of subject matter, the alleged trust clearly centers around the shares in Invest Ho; specifically, on the 416,666.67 shares which the Plaintiffs assert each of them (and Peng Zuo) is entitled to. Certainty of object is also not in issue because the intended beneficiaries of the alleged trust are clearly identified – *ie* the Plaintiffs and Peng Zuo.

Certainty of intention

71 Insofar as certainty of intention to create a trust is concerned, I have to consider the Plaintiffs' and Defendants' competing versions of events in respect of the 2012 Agreement, the 2017 share transfers, and the Plaintiffs' alleged contributions to Invest Ho.

(1) The 2012 Agreement

72 I accept the Plaintiffs' version of the 2012 Agreement and reject the 1st and 2nd Defendants' version. My reasons are as follows.

73 First, it will be recalled that the Plaintiffs' version is that at a meeting in 2012, they and the Defendants agreed that since Invest Ho had been built up as a result of the contributions and efforts of all the Ho Brothers, the shares in

[88] Plaintiffs' Closing Submissions at para 22.

Invest Ho belonged equally to each and every one of the Ho Brothers, including HAS; further, that HAS had given his consent to their proposal that his (HAS') share be given to his son Peng Zuo.[89]

74 I find that the Plaintiffs' version of events relating to the 2012 Agreement is corroborated by and consistent with the documentary evidence. In particular, the 2012 Company Resolution which was signed by the Plaintiffs, the Defendants and Peng Zuo expressly stated that it had been "agreed by all parties during the meeting dated on the 7th of August, 2012, that all 2.5 million shares of Invest Ho Properties Pte Ltd [were] to be divided equally" amongst the six of them. For ease of reference, I reproduce below the material contents of the 2012 Company Resolution:[90]

Company Resolution (07-August-2012)

It was agreed by all parties during the meeting dated on the 7th of August, 2012, that all 2.5 million shares of INVEST-HO PROPERTIES PTE LTD are to be divided equally amongst six (6) people, namely:-

- Ho Soo Kheng
- Ho Soo Tong
- Ho Soo Fong
- Ho Soo Whatt
- Ho Liew Leng @ Edwin
- Hoo Peng Zuo

The statement in the 2012 Company Resolution that all 2.5 million shares in Invest Ho were to be "divided equally amongst" the six named individuals – and the fact that all six individuals signed the document – clearly support the Plaintiffs' version of the 2012 Agreement.

89 Statement of Claim (Amendment No.1) at para 18.

90 1ABOD at p 156.

75 Conversely, the documentary evidence is at odds with the Defendants' version of the 2012 Agreement. It will be recalled that the Defendants claim the agreement reached between the parties in 2012 was for the entire 2.5 million shares in Invest Ho to be split equally amongst the Plaintiffs, the Defendants and Peng Zuo, "in exchange" for the Plaintiffs and Peng Zuo paying the Defendants a total amount of $4,166,666.67 (at $2.50 per share), within six months of the shares being transferred.[91] Critically, however, the 2012 Company Resolution fails to make any mention at all of payment having to be made by the Plaintiffs and Peng Zuo for their shares. Further, the phrase "all 2.5 million shares… are to be divided equally" is incongruous with the shares being sold to the Plaintiffs and Peng Zuo at the price of $2.50 per share.

76 In addition, Peng Zuo – whom I find to be an honest witness without any obvious axe to grind – gave evidence which supports the Plaintiffs' version of the 2012 Agreement. In his AEIC, Peng Zuo stated that in relation to the 2012 Agreement, he recalled being asked to attend a meeting at Invest Ho's office, which was also attended by his uncles (*ie* the three Plaintiffs and the two Defendants). Peng Zuo stated that he was given the 2012 Company Resolution, and that Edwin informed him that they had obtained HAS's consent to give HAS's shares in Invest Ho to Peng Zuo. It was on the basis of this understanding that Peng Zuo signed the document.[92] Peng Zuo's affidavit evidence is therefore consistent with the Plaintiffs' version of events, where the Invest Ho shares were to belong equally to all the Ho Brothers (with HAS' portion going to Peng Zuo), and where the shares were to be transferred to the Plaintiffs and Peng Zuo without any payment.

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91 AEIC of HSF at paras 41-42; Defence (Amendment No.2) at paras 11-12.

92 AEIC of Peng Zuo at paras 6-7.

77 Peng Zuo's affidavit evidence regarding the 2012 Agreement was not challenged in cross-examination by HSF. Peng Zuo further corroborated the Plaintiffs' version of the 2012 Agreement in cross-examination when he asserted that he was not aware of any alleged agreement in 2012 for shares to be *sold* to him and the Plaintiffs. I reproduce below the relevant portions of Peng Zuo's cross examination by HSF:[93]

> HSF: In your affidavit in-chief, you said in your para 6 - - paragraph 6 of your affidavit in-chief, on page 2, you did attend a meetings at 1 MacTaggart Road. So at that meeting, 2012, agreement was signed by Ho Soo Fong and Ho Soo Kheng including the transfer form. At that times, I understand that we agreed - - Ho Soo Fong and Ho Soo Kheng agreed to sell the share, but, of course, not to the payment stage and these are to pay later. Do you aware that why Ho Liew Leng, Ho Soo Tong and Ho Soo Whatt disagreed to send this document to registration at that time 2012, the resolution share transfer was signed? "Yes" or "no".
>
> Court: Sorry, you are telling him that when you and Ho Soo Kheng signed the 2012 agreement, what you agreed to was to sell the shares, payment to come later; correct?
>
> HSF: Payment never said anything but is understood that payment will pay later.
>
> Court: Okay, and you are also telling him that Ho Liew Leng, or Edwin, refused to send the share transfer for registration?
>
> HSF: He disagreed to send these for registration, the three of them.
>
> Court: The "three of them", the three plaintiffs?
>
> HSF: Ho Liew Leng, Ho - - the three plaintiff. The plaintiff disagreed to send for registration. Do you - -
>
> Court: You are asking Mr Hoo Peng Zuo if he knows why the plaintiffs disagreed about sending the share transfers for registration, it it?
>
> HSF: Yes, your Honour.
>
> Court: My Hoo, can you answer that question?
>
> Peng Zuo: I'm not aware of that, ma'am.

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93 Transcript of 4 Oct at p 23 ln 4 to p 24 ln 10.

78 While the Defendants have insisted that the 2012 Agreement involved the Plaintiffs and Peng Zuo having to cough up a total amount of $4,166,666.67 "in exchange" for the Invest Ho shares, it is telling that in his cross-examination of Peng Zuo, HSF advanced the position that at the time of these arrangements in 2012, "payment never said anything but is understood that payment will come later". This appeared to me to be a disingenuous attempt to explain away the absence of any reference to payment in the 2012 Company Resolution signed by all six individuals. Had there truly been a sale of shares by the Defendants to the Plaintiffs and Peng Zuo, it is entirely unbelievable that a $4,166,666.67 sale price should have gone completely unmentioned – especially when, on the Defendants' own telling, this significant amount was to have been paid "within 6 months of the day that the shares were transferred".[94]

79 For the reasons set out above, I accept the Plaintiffs' version of events relating to the 2012 Agreement and reject the Defendants' version. I should add that the subsequent transfer of shares from HSF to the Plaintiffs and Peng Zuo in 2017 provides further support for the Plaintiffs' version of events and militates against the Defendants' story of an agreement to sell shares in 2012.

(2) The 2017 share transfers

80 The Plaintiffs' case is that the 2017 share transfers represented parties' efforts to give (at least partial) effect to the 2012 Agreement, which was in gist an agreement that the Plaintiffs and Peng Zuo each had beneficial ownership of the same number of shares as each of the Defendants. The Defendants, on the other hand, claim that the 2017 share transfers came about as a result of HSF

94 AEIC of HSF at para 42; AEIC of HSK at para 35.

deciding to sell shares to the Plaintiffs and Peng Zuo following the allegedly abortive attempt at a sale in 2012.

81 I accept the Plaintiffs' version of the 2017 share transfers and reject the Defendants' version. My reasons are as follows.

82 Firstly, the Plaintiffs' version of events is largely consistent with the documentary evidence relating to the 2017 share transfer. The signed share transfer forms which were adduced in evidence showed that 310,000 shares were to be transferred to HST, HSW, Edwin and Peng Zuo each.[95] These share transfer forms, which were dated 1 March 2017 described HSF as the transferor in each case, while the Plaintiffs and Peng Zuo were described as the transferees: *ie*, HSF was not described as the seller, nor were the Plaintiffs and Peng Zuo described as the purchasers, of the shares. Additionally, HSF and HSK signed a company resolution dated 1 March 2017 in their capacity as directors of the company, approving of these transfers.[96] Again, no mention was made in this company resolution of a *sale* of the shares by HSF. Certainly, nothing was said about a sale price to be paid by the Plaintiffs and Peng Zuo for the shares transferred to them – much less the sale price pleaded by the Defendants of $775,000 payable per person.[97]

83 Although each of the share transfer forms did refer to a "consideration" of $4,030, the evidence adduced from the company secretary Mdm Chew revealed that this figure was never intended by the parties to be the sale price payable per person. From Mdm Chew's evidence, it is clear that she was never

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95 1ABOD at p 262-265.

96 1ABOD at p 266.

97 Defence (Amendment No.2) at para 12(c).

told by HSF or by anybody else that the shares were being sold to the Plaintiffs and Peng Zuo; and she was certainly never told about a sale price of $775,000 payable per person. Instead, *per* Mdm Chew's evidence, HSF simply gave her the draft accounts of the company, without mentioning a sale or a sale price of $775,000 per person.[98] Her understanding was that she needed to work out how much each share was worth – which was what she proceeded to do, by taking the company's net asset value ("NAV") of $32,487, dividing it by the total number of shares (2,500,000), rounding up the figure of 0.01299 thus derived to 0.013, and then multiplying that by the number of shares which each transferee was getting (310,000).[99] Although the printed share transfer form itself contained the term "consideration", it did not appear that Mdm Chew understood the figure of $4,030 to be the price at which each transferee was *buying* the shares.

84 More fundamentally, in any event, the Defendant's pleaded case – and HSF's own evidence – was that each of the named transferees was to pay him $775,000 (not $4,030) as the purchase price of the shares transferred; and in this connection, Mdm Chew testified that she did not recall being told that the transferees were each to pay HSF $775,000 for their shares.[100] I consider this highly damaging to the Defendants' pleaded case: if there had in fact been a sale of the shares by HSF at $775,000 each to the Plaintiffs and Peng Zuo, it was astonishing – indeed, unbelievable – that HSF should have said nothing about the sale or the sale price to Mdm Chew when he knew full well that she was following up on the necessary documentation for the share transfers.

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98 Transcript of 13 October 2022 at p 7 ln 7 to p 8 ln 3.

99 Transcript of 13 October 2022 at p 7 ln 7 to p 8 ln 3 and p 31 ln 5 to p 32 ln 3.

100 Transcript of 13 Oct 2022 at p 35 ln 4 to ln 10.

85 For the record, I should make it clear that I reject HSF's allegation that nothing was handwritten on the share transfer forms at the time he signed them and that the handwritten portions were "added in by the Plaintiffs to scam [him] of [his] shares". From Mdm Chew's evidence, it was clear that *she* filled in the handwritten portions of the forms – including the figure of $4,030; and that she did so prior to getting the parties to sign the forms. Mdm Chew was also firm in asserting that as part of her practice as company secretary, she would never have given the parties blank printed forms to sign: instead, she would have ensured that the forms were appropriately and accurately filled in before getting the parties' signatures.[101]

86 It should further be pointed out that the Defendants' characterization of the 2017 share transfers as another sale of shares[102] was inconsistent with the documentary evidence put forward by the Defendants themselves. For example, in replying to the letter of demand from the Plaintiffs' solicitors on 30 March 2020, HSF said nothing about a sale of the shares to the Plaintiffs at the sale price of $775,000 each. Instead, HSF expressly stated that the shares were *given* to the Plaintiffs on "good will only subject to [the Plaintiffs]" being "grateful and hopefully they and their children can jointly expanding the company bigger [*sic*]". I reproduce below the relevant passages from the said letter:[103]

> 3 Your paragraph 8, In so far I Ho Soo Fong did not hear any words from your clients as regard to the shares refer to Invest Ho. ***It is me myself Ho Soo Fong in personal opinion with good will due to Brothers at that times agreed to give to your client's shares*** and later I took back all their shares are refer to the above paragraph 1.
>
> a. ***I, HO SOO FONG transfer my shares to your clients are good will only subject to your client are to be grateful***

101 Transcript of 13 Oct 2022 at p 37 ln 1 to p 38 ln 4.

102 AEIC of HSF at paras 56-61.

103 2ABOD at p 694-695.

> ***and hopefully they and their children can jointly expending the Company bigger***.
>
> b. ***I, Ho Soo Fong taken back all my shares from your clients are refer to your client are ungrateful*** (refer to above paragraph 1)
>
> c. I, HO Soo Fong did not take back my nephew's shares are because he are young and I believed he was being instigated by your client to ignored me and further he did not put any action to against me anything.
>
> 4 Your paragraph 9, 10, 11 are not true and are a plan of cheat. Although preliminary HO SOO KHENG agreed to give and later Ho Soo Kheng disagree are due to his personal reason and opinion as regard to your clients bad characters or bad behaviour.
>
> [emphasis added]

From HSF's letter, it is clear that the Defendants' position when confronted with the Plaintiffs' letter of demand in March 2020 was that HSF had transferred the shares to the Plaintiffs based on "goodwill". From HSF's letter, it is also clear that as at March 2020, his stated reason for taking back the shares from the Plaintiffs was because they had been "ungrateful" – not because they had failed to pay him the sale price of $775,000 each, as he later claimed at trial.[104]

87 HSF's reply to the Plaintiffs' letter of demand is also highly damaging to the Defendants' pleaded case, which asserts that the 2017 share transfers constituted a sale of the shares by HSF. If HSF had in fact sold the Plaintiffs' 310,000 shares each at a price of $775,000 per person, and if he had in fact taken back the shares because of their failure to pay the sale price, it was again astonishing – indeed, unbelievable – that he should have said nothing about this in his reply.

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104 AEIC of HSF at para 85.

88 I should add that in his reply to the Plaintiffs' letter of demand, HSF included an attachment[105], which was essentially a rehash of an earlier letter sent to the Plaintiffs on 11 August 2018.[106] Tellingly, however, although HSF leveled multiple accusations and allegations against the Plaintiffs in that letter, there was no mention at all of a share *sale* agreement or of a *sale price* of $775,000 payable from each of the Plaintiffs.[107]

89 Next, I find that Peng Zuo's testimony also supports the Plaintiffs' version of events in respect of the 2017 share transfers. In his AEIC, Peng Zuo testified that during a visit to Singapore in or around end 2016, he was told by his uncles (although he could not recall specifically which uncle) that he would "be formally transferred shares from Invest Ho"; and he recalled signing the share transfer form. During cross-examination, Peng Zuo maintained his position, explaining that he came back somewhere around the end of 2016, and he recalled that one of his uncles had asked him to sign the form.[108] From Peng Zuo's evidence, it was plain that he was not told that he would be *buying* 310,000 Invest Ho shares at the price of $775,000. Moreover, as the Plaintiffs have pointed out, there is no dispute that HSF never followed up to demand payment from Peng Zuo for the $775,000, nor did HSF reclaim the shares from Peng Zuo despite the lack of any payment.[109] Indeed, as the Plaintiffs has pointed out, in the event of a share sale, Peng Zuo would not have been able to afford

105 2ABOD at p 697-718.

106 2ABOD at p 568-588.

107 2ABOD at p 572-573.

108 Transcript of 4 October 2022 at p 24 ln 21 to p 25 ln 14.

109 Plaintiffs' Closing Submissions at para 70.

the purchase.[110] HSF was unable to offer any reasonable explanation for this point in cross-examination.[111]

90 Finally, I note that in her cross-examination, Mdm Chew confirmed that before the share transfer forms were signed, she was present in a meeting with HSF, HSW and Edwin. Mdm Chew testified that she did not recall any discussion about payment of $775,000 having to be made to HSF for the share transfer.[112]

91 For the reasons set out above, I accept the Plaintiffs' submission that the 2017 share transfers represented the parties' efforts to put into effect (at least partially) the 2012 Agreement regarding the beneficial ownership of the Invest Ho shares.

(3) The contributions of HST, HSW and Edwin to Invest Ho

92 Next, I accept the Plaintiffs' submission that collectively, they made contributions to Invest Ho over the years and that these contributions constituted evidence of the parties' common understanding that the Ho Brothers had equal beneficial ownership of the Invest Ho shares, which common understanding was documented in the 2012 Agreement. My reasons are as follows.

93 First, it is not disputed that all three Plaintiffs have stood as personal guarantors for a loan obtained by Invest Ho from Maybank.[113] Second, the documentary evidence showed that from March 2007 to March 2020, HST and

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110 Plaintiffs' Closing Submissions at para 72(c).

111 Plaintiffs' Closing Submissions at para 72(c).

112 Transcript of 13 Oct 2022 at p 34 ln 18 to p 35 ln 10.

113 Plaintiffs' Closing Submissions at paras 134-136; 2ABOD at p 454.

Edwin had contributed, advanced and/or loaned personal funds amounting to at least $4,479,111 to Invest Ho.[114]

94 HST and Edwin also allowed their company M Design to take on a loan facility of $3.2 million which was used for Invest Ho's business purposes.[115] In addition, HST and Edwin had mortgaged their personal properties (25 and 27 Lorong 104 Changi Road) so as to enable Invest Ho to obtain loans.[116]

95 In this connection, the Defendants argued that the monies contributed to Invest Ho were entirely HSF's and not the Plaintiffs'[117]; that *all* the properties alleged used by the Plaintiffs for the benefit of Invest Ho were really owned by the Defendants; and that the arrangement amongst the Ho Brothers was for all the brothers to use the properties according to HSF's instructions.[118] I do not find any merit in these arguments, as the Defendants were unable to point to any concrete evidence to support their arguments.

96 Instead, the Defendants purport to rely on WhatsApp messages sent by HSF on the family group chat[119] and the 11 August 2018 letter sent by HSF to the Plaintiffs[120]. The Defendants argue that because the Plaintiffs never raised any objections to HSF's assertion of ownership of the various properties in the

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114 Plaintiffs' Closing Submissions at para 122; 3ABOD at p 1438-1441; AEIC of HST at p 122-204.

115 Plaintiffs' Closing Submissions at paras 125-130; 1ABOD at p 273-274; Transcript of 13 Oct at p 134 ln 9 to ln 15.

116 Plaintiffs' Closing Submissions at paras 131-132; 1ABOD at p 289-292.

117 Plaintiffs' Closing Submissions at para 123; Transcript of 11 Oct at p 63 ln 23 to p 64 ln 15.

118 Defendants' Closing Submissions at p 26, p 9 and p 13.

119 AEIC of HST at p 262-263.

120 AEIC of HST at p 239.

WhatsApp group chat and in his letter, this proves that the properties belonged to the Defendants.[121] I find no merit in this argument. In my view, there was no reason for the Plaintiffs to engage HSF vis-à-vis his WhatsApp messages and his 11 August 2018 letter because these communications were clearly the outpouring of a great deal of anger and resentment by HSF against the Plaintiffs – a tirade, in short. I do not think the Plaintiffs' decision not to respond to such communications could or should be taken as an indication of their agreement with his accusations.

97 As for the new allegations and evidence which the Defendants tried to introduce *via* their closing submissions, I have made clear my views and findings on this matter (see [50]-[60] above).

98 In my view, the Plaintiffs' contributions to Invest Ho constitute evidence tending to support their claim of equal beneficial ownership of Invest Ho. In the absence of a shared understanding as to this equal beneficial ownership, there would have been no reason for the Plaintiffs to take on risks and potential liabilities which only benefited Invest Ho.

99 In the interests of completeness, I should make it clear that in considering the Plaintiffs' contributions to Invest Ho, I did not ultimately take into account HSW's assertion that 82 Boundary Road had always been his personal property and that his act of putting this property up as security for a loan from LSH Capital to Invest Ho represented his personal contribution to Invest Ho[122]. In my view, the documentary evidence available tended to support the Defendants' contention that HSW had from the outset held 82 Boundary

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121 Defendants' Closing Submissions at p 13-14 and p 25.

122 Plaintiffs' Closing Submissions at paras 137-138.

Road on trust for them and that the trust was revoked only in order to comply with LSH Capital's requirements vis-à-vis the security to be put up for the loan. From the records available, it would appear that although 82 Boundary Road was transferred from the two Defendants to HSW pursuant to a sale and purchase agreement,[123] there was no documentary evidence of HSW actually paying the stipulated sale price of $750,000. On the same day that the sale and purchase agreement was executed (27 November 2002), HSW also signed a declaration of trust declaring that he held 82 Boundary Road on trust for the Defendants, and that in the event of a sale, he was to return to the Defendants the net profits from such sale. This document was witnessed by a solicitor.[124] The exchanges which the solicitors conducting the conveyancing had with the Commissioner for Stamp Duties further confirmed that no payment actually took place.[125] Additionally, while the parties subsequently executed statutory declarations on 24 July 2018 declaring that HSW no longer held the property on trust for the Defendants, it is suggestive that these statutory declarations came about shortly after LSH Capital's offer of the term loan facility to Invest Ho.[126] To my mind, the timing of these statutory declarations tends to support the Defendants' narrative, *ie* that they had retained beneficial ownership of 82 Boundary Road even after the sale and purchase agreement of 27 November 2002, and had only executed the statutory declarations of 24 July 2018 in order to facilitate the use of the property as security for the LSH Capital loan.

100 I should stress that given the evidence available of other contributions by the Plaintiffs to Invest Ho (see [92]-[98] above), the views I express in the

123 1ABOD at p 61-64.

124 1ABOD at p 65-66.

125 AEIC of HSF at p 269-271.

126 2ABOD at p 551-553.

preceding paragraph have no material effect on my finding that the Plaintiffs did collectively contribute to Invest Ho.

(4) Certainty of intention to create a trust: Summary of findings

101 In light of my findings at [72]-[100] above in relation to the 2012 Agreement, the 2017 share transfers and the Plaintiffs' contributions to Invest Ho, I find that the Plaintiffs have established the element of certainty of intention required for proving an express trust.

An express trust in favour of the Plaintiffs

102 In respect of the Plaintiffs' claim of an express trust, therefore, my findings are as follows:

(a) Pursuant to the 2012 Agreement, the Plaintiffs and the Defendants had agreed that the Invest Ho shares were to be divided equally amongst the five of them and Peng Zuo. The Defendants, as the registered shareholders, were to hold the others' shares on trust for them;

(b) The 2017 share transfers were carried out in order to honour and to implement the 2012 Agreement. They were not carried out pursuant to an agreement for the sale of the shares by HSF;

(c) The Plaintiffs made various contributions to Invest Ho over the years. This supported their claim of equal beneficial ownership of Invest Ho, as they would not have made these contributions if they had no beneficial interest at all.

103 I add that although the word "trust" was not used by the Plaintiffs and Defendants in a legal sense in the relevant documentation, this is not fatal to the

Plaintiffs' claim of an express trust. After all, the CA has held in *Guy Neale* (at [52]) that no particular form of expression is necessary to establish an express trust.

104 As the three certainties of an express trust have been met in the present case, I find that an express trust exists in favour of the Plaintiffs, such that the Defendants hold on trust for each Plaintiff 416,666.67 shares in Invest Ho.

Issue 4: Whether there was a common intention constructive trust in the Plaintiffs' favour, whereby each Plaintiff would be entitled to 416,666.67 shares in Invest Ho

105 Given my findings on the Plaintiffs' claim of an express trust, it is not necessary for me to make any findings on their alternative claim that a common intention constructive trust arises over the disputed shares.

Conclusion

106 In conclusion, for the reasons given above, I allow the Plaintiffs' claim as follows. First, to recap, I find that an express trust did arise pursuant to the 2012 Agreement, whereby it was agreed that the three Plaintiffs, the two Defendants and Peng Zuo would each own an equal number of shares in Invest Ho; further, that the Defendants – as the registered shareholders – would hold the others' shares on trust for them. I therefore grant the Plaintiffs' prayer for a declaration that each Plaintiff is the beneficial owner of 416,666.67 shares in Invest Ho.

107 In respect of the Plaintiffs' prayer that the Defendants transfer to them these shares, it is not practicable for me to order that the Defendants transfer to each Plaintiff *416,666.67* Invest Ho shares. At the same time, rounding up this figure to 416,667 shares each is not possible, simply because there will not be

enough shares to go around (there being a total of 2,500,000 issued shares in Invest Ho).

108 In the circumstances, I am of the view that the practical thing to do is to order that the Defendants procure a capital reduction for the purpose of cancelling four (4) Invest Ho shares. This will result in there being 2,499,996 Invest Ho shares, of which a 1/6 share works out to exactly 416,666 shares. No capital will be returned to the shareholders, which means that the value of the four cancelled shares is absorbed equally into the 416,666 shares that make up each equal 1/6 share that the Plaintiffs and the Defendants (as well as Peng Zuo) are each beneficially entitled to.

109 I add that this exercise of rounding-down should not in my view prejudice any of the parties because the value of the four shares to be cancelled should be *de minimis*. On the basis of the previously reported NAV of Invest Ho ($32,487 – see [83] above), one share would be worth $0.013. Even if a higher value were arguably to be attributed to the Invest Ho shares, given that each party's 1/6 share of Invest Ho is being rounded down by only 0.667 shares, I remain of the view that there is no prejudice to the parties.

110 I also make the following directions in respect of the transfer of shares by the Defendants to the Plaintiffs:

(a) Following the cancellation of four shares of Invest Ho, the Defendants are jointly to transfer to each of the Plaintiffs 416,666 Invest Ho shares;

(b) The Defendants may decide as between themselves the number of Invest Ho shares which each Defendant is to transfer to each Plaintiff;

(c) The costs and expenses of the transfer (including any stamp duty) shall be jointly borne by the Defendants;

(d) The Defendants are to complete the process of cancelling four Invest Ho shares and transferring 416,666 Invest Ho shares to each Plaintiff within four (4) weeks from today;

(e) In the event that the Defendants fail to do so within the stipulated four weeks from today, having regard to the provisions of O 45 rule 8 of the Rules of Court (Cap. 332, R 5, 2014 Rev Ed), and s 14 of the Supreme Court of Judicature Act (Cap. 322) ("**SCJA**"), the Registrar and/or any Assistant Registrar of the Supreme Court of Singapore shall be empowered to execute all necessary documents on the Defendants' behalf;

(f) Pending the completion of the transfer of Invest Ho shares to the Plaintiffs, the Defendants are not to encumber or dispose of the Invest Ho shares registered in their names;

(g) Pending the completion of the transfer of Invest Ho shares to the Plaintiffs, the Defendants are not to issue any new Invest Ho shares;

(h) The Plaintiffs and the Defendants have liberty to apply to court in respect of the working out of the transfer of the Invest Ho shares.

111 In respect of Peng Zuo, he currently has 310,000 Invest Ho shares registered in his name. Given that he is not a party to this suit, I make no orders in relation to his shareholding position. It remains open to him to seek legal advice on his next steps (if any).

112 As the Plaintiffs have succeeded in making out their case for an equal 1/6 share each of the Invest Ho shares, costs should follow the event; and I therefore award the Plaintiffs the costs of the proceedings, to be paid by the Defendants. Costs are to be taxed if not agreed between the parties within two weeks from today.

Mavis Chionh Sze Chyi
Judge of the High Court

Sim Puay Jain Edwin (Lexton Law Corporation), Muk Chen Yeen Jonathan and Clara Lim Ai Ying (LVM Law Chambers) (assisting) for the 1st, 2nd and 3rd plaintiffs;
The 1st and 2nd defendants in person;
The 3rd defendant absent and unrepresented.