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

[2024] SGHC 181

District Court Appeal No 42 of 2023

Between

(1) Tan Cheng Cheng (Chen Qingqing)
(2) Tan San San (Chen Shanshan)
(3) Keh Lay Hong (Guo Lihong)
(as the administratrices of the estate of Spencer Tuppani, deceased)

… *Appellants*

And

(1) Shamlal s/o Tuppani Bisaysar
(2) Tham Poh Kwai

… *Respondents*

JUDGMENT

[Tort — Conversion]
[Evidence — Admissibility of evidence]

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v
Shamlal s/o Tuppani Bisaysar and another

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27 March, 14 May 2024

12 July 2024 Judgment reserved.

Mavis Chionh Sze Chyi J:

Introduction

1 When a person dies intestate, the deceased's personal belongings inevitably fall into the custody of third parties, including their bereaved family members. However, these personal belongings remain the property of the deceased's estate, which vest immediately in the Public Trustee, and then in the administrator upon the grant of letters of administration (see s 37 of the Probate and Administration Act 1934 and the Court of Appeal's decision in *Teo Gim Tiong v Krishnasamy Pushpavathi (legal representative of the estate of Maran s/o Kannakasabai, deceased)* [2014] 4 SLR 15 ("*Teo Gim Tiong*") at [21]). Upon the extraction of the order of the grant, the administrator may seek recovery from a wrongdoer who has seized or converted the goods during the intervening period between the deceased's passing and the grant of letters of administration (see the Court of Appeal's decision in *Tacplas Property Services*

Pte Ltd v Lee Peter Michael (administrator of the estate of Lee Ching Miow, deceased) [2000] 1 SLR(R) 159 ("*Tacplas Property*") at [44]). In the interim, however, there may exist a state of affairs where there is uncertainty as to who may validly receive the personal belongings of the deceased, and the interim custodians may then be faced with a decision as to what they are to do with the deceased's personal belongings.

2 The appellants in the present case are the administratrices of the deceased's estate. In the District Court suit commenced by them, they sued the respondents, who are the parents of the deceased. The appellants claimed that the respondents were liable for the conversion of a watch belonging to the deceased at the time of his death. Whether either of the respondents – or both – should be liable for conversion is the key question to be determined in the present appeal.

Background facts

The parties

3 The deceased is one Mr Spencer Sanjay s/o Shamlal Tuppani ("the Deceased"). The 1st respondent, Mr Shamlal s/o Tuppani Bisaysar ("Mr Tuppani"), is the Deceased's father. The 2nd respondent, Mdm Tham Poh Kwai ("Mdm Tham"), is the Deceased's mother. Mr Tuppani and Mdm Tham have been divorced since 2013.[1] The 1st appellant, Mdm Tan Cheng Cheng (Chen Qingqing) (also known as Shyller, hereinafter "Mdm Tan"), is the Deceased's lawful widow. It is not disputed that prior to the Deceased's passing, he and Mdm Tan had come to an agreement to file for divorce.[2] The Deceased was by

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1 Record of Appeal ("ROA") 3A at p 6 (AEIC of Tan Cheng Cheng dated 28 March 2022 ("Tan's AEIC") at para 5).

2 ROA 3B at pp 68–69 (NE 21/04/23 at p 4 lines 23–26, p 5 lines 1–13).

then in a long-term relationship with another woman, one Mdm Yeo Gek Lin (also known as Joan, hereinafter "Mdm Yeo"), with whom he had two children; and although he apparently still maintained a household with the 1st appellant Mdm Tan, he spent parts of the week living with Mdm Yeo in a condominium unit located at Leedon Residence.[3] It appears that Mdm Tan herself became aware of the Deceased's long-term relationship with Mdm Yeo only a few months before the Deceased's passing.[4]

4 The 2nd appellant is Mdm Tan's sister. The 3rd appellant, Mdm Keh Lay Hong (Guo Lihong) ("Mdm Keh"), is the ex-wife of the Deceased.

5 The appellants obtained the grant of letters of administration of the Deceased's estate on 10 July 2018 and extracted the same on 20 November 2018.[5]

Events leading to the dispute

Mr Tuppani received the Watch from the police

6 On 10 July 2017, the Deceased was fatally stabbed along Boon Tat Street by Mr Tan Nam Seng, who was the Deceased's father-in-law and Mdm Tan's father. It is not disputed that Mr Tan Nam Seng subsequently pleaded guilty to a charge of culpable homicide.[6]

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3 ROA 3A at p 33 (AEIC of Shamlal s/o Tuppani Bisaysar dated 28 March 2022 ("Tuppani's AEIC") at para 4); ROA 3B at p 69 (NE 21/04/23 at p 5 lines 1–22).

4 ROA 3B at pp 68 (NE 21/04/23 at p 4 lines 27–31).

5 ROA 3A at p 61 (Tuppani's AEIC at p 30).

6 ROA 3A at p 33 (Tuppani's AEIC at para 5).

7 At the time of his death, the Deceased was wearing a Richard Mille watch (the "Watch"). The exact model of the Watch is disputed.

8 Mdm Tan and Mr Tuppani both went to Boon Tat Street upon being informed of the stabbing. Mdm Tan claims that when she arrived at the site in question, she was pulled away by a friend of the Deceased who wanted to prevent her from seeing the Deceased's body.[7] Mr Tuppani, on the other hand, states that he rushed to the site and ensured that the Deceased was conveyed to the hospital. The Deceased succumbed to his injuries in the hospital.[8]

9 On the same day, Mr Tuppani identified the body of the Deceased at the hospital.[9] Mdm Tan accepts that Mr Tuppani was present at the hospital.[10] Mdm Tan herself was brought to the hospital by her friends, where she was informed by a police officer that the Deceased had passed away. However, she did not actually see the Deceased.[11] Mdm Tan does not dispute that the police told her at the hospital that they had the Deceased's belongings.[12] She recalls the police mentioning the Deceased's wallet but cannot recall whether they said anything about the Watch.[13] According to Mr Tuppani, at the hospital, Mdm Tan "refused to take charge" of the formalities relating to the Deceased's body, such as confirming the Deceased's identity; and it fell to him to do so.[14] Mdm Tan has

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7 ROA 3A at p 6 (Tan's AEIC at para 7); ROA 3B at p 73 (NE 21/04/23 at p 9 lines 14–32).

8 ROA 3A at p 35 (Tuppani's AEIC at paras 11–12).

9 ROA 3A at p 35 (Tuppani's AEIC at para 12).

10 ROA 3A at p 7 (Tan's AEIC at para 9).

11 ROA 3B at p 75 (NE 21/04/23 at p 11 lines 3–20).

12 ROA 3A at p 7 (Tan's AEIC at para 10).

13 ROA 3B at p 76 (NE 21/04/23 at p 12 lines 22–30).

14 ROA 3A at p 35 (Tuppani's AEIC at para 12).

not refuted Mr Tuppani's assertion that he was the one who handled the formalities at the hospital: her evidence is that at that point, she was in a state of shock due to the tragedy which had occurred and was thus unable to answer the police's queries. She left the hospital shortly after being informed of the Deceased's demise.[15]

10 The following day (11 July 2017), Mr Tuppani was contacted by the police, who told him to collect the Deceased's body from the mortuary and thereafter to head over to the Criminal Investigation Department ("CID") of the Singapore Police Force. Mr Tuppani testified that he was contacted by the police to do so because he was the one who had identified the Deceased at the hospital, and the police informed him that they could not locate Mdm Tan.[16] When Mr Tuppani arrived at CID, the police informed him that they would be releasing the Deceased's belongings to him and asked him to "sign" for the belongings.[17] He was handed a plastic bag containing a wallet, a car key and a bloodstained Richard Mille watch (*ie*, the Watch).[18]

Mr Tuppani left the Watch at Leedon Residence

11 On the same day, after allowing the undertakers to take the Deceased's body away to prepare for the wake, Mr Tuppani went to the home which the Deceased had shared with Mdm Yeo at Leedon Residence. He went there to update Mdm Yeo and Mdm Tham on what had transpired at the mortuary and

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15 ROA 3A at p 7 (Tan's AEIC at paras 11–12).

16 ROA 3B at pp 203–204 (NE 14/08/23 at p 63 line 27 to p 64 line 12).

17 ROA 3B at p 205 (NE 14/08/23 at p 65 lines 1–10).

18 ROA 3A at p 35 (Tuppani's AEIC at para 13).

at CID.[19] By this point, Mdm Tham, who had previously been staying with Mdm Tan's family, had moved in with Mdm Yeo.[20]

12 In his affidavit of evidence-in-chief ("AEIC"), Mr Tuppani states that at the Leedon Residence apartment, he "handed the plastic bag containing [the Watch], the car key and the wallet containing $1.60, to [Mdm Yeo]".[21] At the trial below, Mr Tuppani explained further what he actually did: he left the bag of items on a table in the Leedon Residence apartment and told Mdm Yeo that these were the items recovered from the Deceased ("*These are Spencer's things*") before he left the apartment.[22] At the material time, he was in a state of "unbearable grief" over his son's death: he had no intention to hold on to the bag of items; even looking at them caused him "terrible pain".[23] While he agreed in cross-examination that he had considered Mdm Yeo to be the Deceased's wife and "the closest to [the Deceased]", he denied the suggestion that he had *given* the Watch to Mdm Yeo and/or that he had done so because he considered her to be the person closest to the Deceased.[24] Instead, he was "very distraught" and "traumatised" at that juncture.[25] At the same time, he was also pre-occupied with figuring out how to arrange for the Deceased's funeral in a neutral location such that family members from both his side and Mdm Tan's side would be able to attend.[26] In his own words, his "mind was all upset" and he was "not in [his]

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19 ROA 3A at p 36 (Tuppani's AEIC at para 15).

20 ROA 3B at p 195 (NE 14/08/23 at p 55 lines 24–32).

21 ROA 3A at p 36 (Tuppani's AEIC at para 15).

22 ROA 3B at pp 190 and 194 (NE 14/08/23 at p 50 lines 26–31, p 54 lines 10–12).

23 ROA 3A at p 36–37 (Tuppani's AEIC at para 17).

24 ROA 3B at pp 191–193 (NE 14/08/23 at p 51 lines 1–20, p 52 lines 7–12, p 53 lines 7–19).

25 ROA 3B at pp 190 (NE 14/08/23 at p 50 lines 26–31).

26 ROA 3B at p 191 (NE 14/08/23 at p 51 lines 11–20).

good self"; and he simply "hand[ed] [the Watch] down there" on the table.[27] He did not tell Mdm Yeo that the Deceased's belongings were being "given" to her;[28] and he did not apply to his mind to what he "expected" Mdm Yeo to do with the said belongings: he simply had "no idea".[29]

13 After leaving Leedon Residence, Mr Tuppani "totally forgot" about the Watch until Mdm Keh (the 3rd appellant) contacted him sometime in November 2019, which was prior to the appellants' commencement of the proceedings in the court below. Mdm Keh asked what had happened to the Watch, at which point Mr Tuppani contacted Mdm Yeo in turn to relay the query. According to Mr Tuppani, he was told by Mdm Yeo that the Deceased's mother Mdm Tham (the 2nd respondent) had taken the Watch.[30] He then relayed this information to Mdm Keh and suggested that the latter should contact Mdm Yeo.[31]

14 On 4 February 2020, the appellants sent a letter of demand to Mr Tuppani, demanding *inter alia* that he return the Watch to the estate. Mr Tuppani contends that he never received the letter, and thus could not have replied to it.[32]

15 The appellants originally filed this suit in the High Court against Mr Tuppani on 6 March 2020, claiming *inter alia* that he had committed conversion of the Watch. By the parties' consent, the action was transferred to the District

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27 ROA 3B at pp 190–192 (NE 14/08/23 at p 50 lines 27–28, p 51 lines 18–20, and p 52 line 10).

28 ROA 3B at p 194 (NE 14/08/23 at p 54 lines 10–12).

29 ROA 3B at p 194 (NE 14/08/23 at p 54 lines 20–21).

30 ROA 3A at p 37 (Tuppani's AEIC at para 20); ROA 3B at p 201 (NE 14/08/23 at p 61 lines 19–24); ROA 3C at p 30 (NE 13/06/23 at p 23 lines 21–32).

31 ROA 3B at p 201 (NE 14/08/23 at p 61 lines 14–18).

32 ROA 3A at p 37 (Tuppani's AEIC at para 19).

Court. Subsequently, the appellants obtained an order joining Mdm Tham as a co-defendant on 8 December 2020.

Mdm Tham allegedly possessed and sold the Watch

16 *Per* Mr Tuppani's AEIC, after the proceedings in the court below were commenced against him, his solicitors wrote to Mdm Yeo who replied to confirm that Mr Tuppani had handed the Watch to her on the same day on which he received it from the police, and that the Watch had since been "passed" to Mdm Tham.[33]

17 At trial, Mdm Tan gave evidence about two telephone calls which she said had taken place sometime in March or April 2020 when Mdm Tan, Mdm Yeo, and Mdm Keh were together inside a meeting room at the Singapore Mediation Centre ("SMC"). The first call was between Mdm Yeo and Mdm Tham, while the second call was between Mdm Keh and Mdm Tham. According to Mdm Tan, the two calls took place "within 5 minutes" of each other;[34] and both calls were over speakerphone, such that all three women in the SMC meeting room could hear what was being said. Mdm Tan claimed that in the course of the two calls, Mdm Tham admitted that Mdm Yeo had "passed" her the Watch and that she (Mdm Tham) had sold it to someone named "Tony".[35]

18 In cross-examination, Mdm Tan's evidence was that she did not actually recall ("*I forgot*") whether, during these two calls, Mdm Tham had mentioned

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33 ROA 3A at p 52 (Tuppani's AEIC at p 21).

34 ROA 3C at p 35 (NE 13/06/23 at p 28 line 5).

35 ROA 3C at pp 34–38 and 72–73 (NE 13/06/23 at pp 27–31 and 65–66).

selling the Watch for $160,000.[36] However, Mdm Tan sought to rely on a number of WhatsApp messages which she had exchanged with her sister, the 2nd appellant, on 22 April 2020. In these messages, Mdm Tan appears to inform the 2nd appellant that Mdm Tham "already told everyone on the phone [that] she sold the watch on the day on [*sic*] mediation… for 160k".[37]

19 As the above evidence was not brought up in Mdm Tan's AEIC, Mdm Tham subsequently filed a supplementary affidavit in which she deposed that sometime in early August or end July 2017, she had confided in Mdm Yeo about her concerns over the rent she would have to pay, as she was then planning to move out of Leedon Residence into a condominium known as Hundred Trees.[38] She was told by Mdm Yeo not to worry as the latter would "sell a watch to help [her]".[39] Sometime in late August 2017, "a person" called Mdm Tham to ask if he could come over to hand her money from the sale of a watch.[40] A man later arrived at her home and handed her $160,000 in cash.[41] According to Mdm Tham, she accepted the money because prior to the man's arrival, Mdm Yeo had already informed her that someone would be coming to deliver the money to her.[42] However, she had no idea what watch Mdm Yeo had sold or how much

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36 ROA 3C at p 72 (NE 13/06/23 at p 65 lines 30–32).

37 ROA 4 at p 7 (Exhibit P2); ROA 3C at pp 59, 106 (NE 13/06/23 at p 52; NE 16/06/23 at p 2).

38 ROA 3A at p 251 (Supplementary AEIC of Tham Poh Kwai dated 14 June 2023 ("Tham's Supplementary AEIC") at para 12); ROA 3B at p 227 (NE 14/08/23 at p 87 lines 5–17).

39 ROA 3A at p 251 (Tham's Supplementary AEIC at para 13); ROA 3B at p 235 (NE 14/08/23 at p 95 lines 19–31).

40 ROA 3A at p 252 (Tham's Supplementary AEIC at para 15).

41 ROA 3A at p 252 (Tham's Supplementary AEIC at paras 15–16); ROA 3B at p 227 (NE 14/08/23 at p 87 lines 18–22).

42 ROA 3B at p 235 (NE 14/08/23 at p 95 lines 1–31).

she had sold it for – or for that matter, whether a watch was in fact sold.[43] Mdm Tham stressed that she had taken the position from the outset that she never received a watch: accordingly, she could not have sold a watch, nor could she have told Mdm Yeo – or anyone else – that she (Mdm Tham) had sold a watch.[44]

20 In the proceedings below, counsel for Mr Tuppani also filed an affidavit sworn by Mdm Yeo, in which she stated *inter alia* that Mr Tuppani had "passed" her "a plastic bag containing a Richard Mille watch, car keys and a wallet" at the Leedon Residence apartment on 11 July 2017; that the watch in question had subsequently been "passed" to Mdm Tham; and that she had informed Mr Tuppani of this, though she could not remember when she did so.[45] Mdm Yeo was listed as one of Mr Tuppani's witnesses in an order of court dated 16 December 2021. Mdm Yeo was apparently scheduled to take the witness stand on 14 August 2023; and from the trial transcript, it appeared that Mr Tuppani and his counsel had fully expected her to show up for the hearing: prior to the lunch break on 14 August 2023, Mr Tuppani's counsel had informed the District Judge ("DJ") that Mdm Yeo would be taking the stand in the afternoon that day.[46] Following the lunch break, however, Mr Tuppani's counsel informed the DJ that Mdm Yeo would not be turning up for the trial after all.[47] Counsel did not proffer any explanation for Mdm Yeo's failure to appear; and neither the DJ nor Mdm Tan's then counsel asked for an explanation.

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43 ROA 3A at p 252 (Tham's Supplementary AEIC at para 20).

44 ROA 3A at p 251 (Tham's Supplementary AEIC at paras 18–19).

45 ROA 3A at p 98 (AEIC of Yeo Gek Lin (Yang Yulin) dated 28 March 2022 ("Yeo's AEIC") at paras 8-9).

46 ROA 3B at p 213 (NE 14/08/23 at p 73 lines 12–13).

47 ROA 3B at p 213 (NE 14/08/23 at p 73 lines 24–30).

The decision below

21 In the proceedings below, the DJ had to consider three main issues: (a) whether the appellants had the requisite capacity to sue for conversion of the Watch; (b) whether Mr Tuppani and/or Mdm Tham had committed an act of conversion; and (c) if the first two questions were answered affirmatively, what the appropriate remedy should be. His judgment can be found in *Tan Cheng Cheng (Chen Qingqing) and others (as the administratrices of the estate of Spencer Tuppani, deceased) v Shamlal s/o Tuppani Bisaysar and another* [2023] SGDC 293 (the "Judgment").

The appellants' standing to sue for conversion

22 On the issue of the appellants' capacity to sue for conversion, the respondents contended that the appellants had failed to establish the model of the Watch, and further, that the appellants had failed to establish the Deceased's ownership of the Watch. The DJ dismissed both these arguments and held that the appellants had the requisite capacity to sue for conversion.

23 As a preliminary point, the DJ noted that while the right to sue for conversion must generally exist at the time of the alleged conversion, the principle of relation back would apply so as to entitle a personal representative to sue for dealings in respect of the goods which occurred between the time of the deceased's passing and the grant of probate or letters of administration (Judgment at [12]).

24 Next, while the DJ found that there was some ambiguity as to the exact model of the Watch, this was not fatal to the appellants' standing to sue, because it was not disputed that the subject matter of the appellants' claim was a Richard Mille watch (Judgment at [22]). He considered that the exact model of the

Watch would only be relevant in so far as the quantum of damages was concerned (Judgment at [23]).

25 As for the Deceased's ownership of the Watch, the DJ also did not find this to be relevant for the purposes of establishing the appellants' standing to sue. As the DJ pointed out, the capacity to sue for conversion derives from actual possession or the immediate right to possession of the property, and *not from ownership* (Judgment at [25]).

Whether Mr Tuppani committed an act of conversion

26 As to whether the appellants were able to prove conversion of the Watch by Mr Tuppani, the DJ noted by way of general principle that an act of conversion would comprise two elements: (a) a course of dealing that affected the claimant's possessory interests; and (b) the intention to assert an interest that was inconsistent with that of the claimant (Judgment at [13], citing Gary Chan Kok Yew and Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) ("*The Law of Torts in Singapore*") at para 11.005).

27 The DJ found that Mr Tuppani's act of delivering the Watch to Mdm Yeo satisfied the first element of conversion (*ie*, a course of dealing that affected the claimant's possessory interests) (Judgment at [28]). He held, however, that the act of delivering the Watch was not intended by Mr Tuppani as an exercise of dominion over the chattel and that it therefore did not constitute a conversion. In so holding, the DJ relied on the evidence of Mr Tuppani, citing the latter's testimony that at the time he handed the Watch to Mdm Yeo, he was very traumatised by the events surrounding his son's death and simply did not apply his mind to the question of who was entitled to the Watch (Judgment at [30]–[31]). Further, given that there was in fact no one to whom Mr Tuppani could have rightfully handed the Watch at the material time (as the letters of

administration had not been applied for as at 11 July 2017 and would only eventually be granted on 10 July 2018), Mr Tuppani's actions were capable of an innocent explanation (Judgment at [36]): Mdm Yeo was the person closest to the Deceased at the point of his demise; and to a lay person, she was not someone who was clearly *not* entitled to receive the Watch (Judgment at [36]).

Whether Mdm Tham committed an act of conversion

28 In respect of the claim against Mdm Tham, the DJ found Mdm Yeo's absence from the trial to be fatal to the appellants' case. In so far as the appellants sought to rely on Mdm Yeo's out-of-court statements to Mr Tuppani and to Mdm Tan about having "passed" the watch to Mdm Tham, this was hearsay evidence which had not been shown to be legally relevant – and thus admissible – under any of the provisions of the Evidence Act 1893 ("EA") (Judgment at [43] and [48]). The DJ also found Mdm Tan's evidence unconvincing, because her allegations about Mdm Tham's alleged admissions over the two telephone calls had been raised at a belated stage of the trial, were not corroborated by any other evidence, and were moreover contradicted by other documents she herself had submitted in the course of these proceedings (Judgment at [45]). There was thus no credible evidence to rebut Mdm Tham's evidence that she had never come into possession of the Watch (Judgment at [49]).

29 Further, the DJ drew an adverse inference against the appellants pursuant to s 116 of the EA for their failure to call Mdm Yeo as a witness. In his view, the appellants should have made their own application to call or to subpoena Mdm Yeo once it became clear that she would not be taking the witness stand as Mr Tuppani's witness (Judgment at [53]). The appellants having failed to do so, the DJ inferred that the version of events set out in Mdm

Yeo's affidavit was untrue (Judgment at [54]). Finally, the DJ considered that even if Mdm Yeo's out-of-court statements were admissible, he would give greater weight to (and would prefer) the evidence of Mdm Tham, since – unlike Mdm Yeo – she had made herself available for cross-examination (Judgment at [58]).

The appropriate remedy

30 Given that the DJ found against the appellants on the issue of liability, the issue of the appropriate remedy did not arise for determination (Judgment at [60]).

The issues requiring determination in this appeal

31 The issues which arise for determination in this appeal are: (a) whether Mr Tuppani and/or Mdm Tham committed an act of conversion in respect of the Watch; and (b) if so, what the appropriate remedy ought to be.

32 For the purposes of the present appeal, the DJ's decision on the appellants' standing to sue for conversion is not challenged by the respondents. For the record, in any event, I agree with the DJ's decision. While the general rule is that letters of administration do not relate back to the time of death (see *Teo Gim Tiong* at [21]), the doctrine of relation back operates as an exception to this rule: it permits the title of the administrator to relate back to the time of the death of the deceased so as to give validity to certain acts done by an administrator before the letters of administration are extracted (*Tacplas Property* at [44]; see also *Williams, Mortimer and Sunnucks on Executors, Administrators & Probate* (Alexander Learmonth *et al* eds) (Sweet & Maxwell, 21st Ed, 2018) at para 5-16). It has been said that the rationale for this rule is that there would otherwise be no remedy for wrongs committed against the

estate of the deceased in the period between his death and the grant of letters of administration (*Foster, administrator of Edward Pollard, deceased v Bates and others* (1843) 12 M&W 226 at 233). In other words, where third parties wrongfully deal with the estate of the deceased, the grant will usually relate back because it is objectively necessary to safeguard the assets of the estate. The doctrine of relation back therefore entitles administrators to recover against a wrongdoer who has seized or converted goods before the grant of letters of administration. In the present case, as the DJ noted, it is necessary that the appellants be deemed to have the immediate right to possession of the Watch in order that they may safeguard the estate against any wrongful dealings in respect of the Watch.

33 I also agree with the DJ that ownership of the Watch is not relevant for the purposes of establishing the claim in conversion. This is because the common law applies the concept of *relativity of title*. In an action for conversion, what the claimant needs to prove is that he has a superior right to possession as against the defendant (see the High Court's decision in *Aero-Gate Pte Ltd v Engen Marine Engineering Pte Ltd* [2013] 4 SLR 409 at [145]).

34 In the next section of this judgment, I set out each party's case in respect of the first issue in contention: *ie*, whether either respondent (or both) should be held liable for conversion of the Watch.

The appellants' case on the issue of liability for conversion

35 As against Mr Tuppani, the appellants claim that the DJ erred in finding that he did not have any intention to assert an interest over the Watch which was inconsistent with the rights of the appellants. Citing the High Court's decision in *Thomas Teddy and another v Kuiper Pte Ltd* [2013] SGHC 7 ("*Thomas Teddy*"), the appellants argue that Mr Tuppani did in fact have such an intention,

as evinced by his unconditional and unjustified refusal to return the Watch upon being sent a letter of demand on 4 February 2020.[48] Moreover, according to the appellants, Mr Tuppani's testimony in cross-examination showed that he knew he should have handed the Watch to Mdm Tan, since she was the Deceased's lawful widow. The appellants contend that there can be no innocent explanation for Mr Tuppani to hand the Watch to Mdm Yeo because the latter "was only the Deceased's mistress – an appellation with no legal significance or effect in the present matter".[49]

36 In addition to the above points, I had also – in the course of this appeal – asked parties to consider whether Mr Tuppani could avail himself of any defence to the tort of conversion based on involuntary bailment. The appellants answer this question in the negative in their further submissions, arguing that Mr Tuppani was not an involuntary bailee because he had "voluntarily accepted the Watch from the police and gave his effective consent, if only through the voluntary action of extending his hand and accepting it from the police".[50] Even if Mr Tuppani could be considered an involuntary bailee, the appellants contend that in handing the Watch to Mdm Yeo without making any inquiries to determine who would be entitled to apply for letters of administration of the Deceased's estate, Mr Tuppani was acting without reasonable care and therefore in breach of his duty as an involuntary bailee.[51] Further, and in any event, the appellants argue that an involuntary bailment does not operate as a defence to conversion where the involuntary bailee creates an unauthorised sub-bailment

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48 Appellants' Case dated 27 January 2024 at paras 30–35.

49 Appellants' Case dated 27 January 2024 at paras 38–47.

50 Appellants' Supplemental Written Submissions dated 2 May 2024 at para 13.

51 Appellants' Supplemental Written Submissions dated 2 May 2024 at para 22.

without the consent of the bailor.[52] The appellants appear to assume for the purposes of this argument that the putative bailor in this case would be the appellants. For good measure, the appellants also argue that the material facts relating to Mr Tuppani's alleged involuntary bailment were insufficiently pleaded in his defence.[53]

37 As against Mdm Tham, the appellants claim that the DJ erred in preferring her evidence instead of accepting Mdm Yeo's affidavit and out-of-court statements which the appellants had sought to rely on at trial. The appellants argue that an adverse inference ought not to have been drawn against them for failing to call Mdm Yeo as a witness, because it was Mr Tuppani who had originally listed Mdm Yeo as a witness for Mr Tuppani: according to the appellants, they only found out on the last day of the trial that Mdm Yeo would not be turning up for the trial and were "completely blindsided" by her non-appearance.[54]

38 In respect of Mdm Yeo's affidavit and out-of-court statements, the appellants argue that these are admissible pursuant to s 32(1)(*c*) EA, because the evidence in question contains admissions which would have exposed Mdm Yeo to liability for conversion.[55] Assuming these statements are admissible, the appellants also argue that the court should not exercise its discretion to exclude this evidence pursuant to s 32(3) EA. According to the appellants, the statements are highly probative of the events that led to Mdm Tham receiving $160,000 in

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52 Appellants' Supplemental Written Submissions dated 2 May 2024 at para 9.

53 Appellants' Supplemental Written Submissions dated 2 May 2024 at para 8.

54 Appellants' Case dated 27 January 2024 at para 55.

55 Appellants' Case dated 27 January 2024 at paras 61–62.

cash.[56] The risk that the statements are unreliable is mitigated by the fact that the statements were made against the interest of the statement-maker, *ie*, Mdm Yeo.[57] Further, the appellants contend that it was Mdm Tham who bore the onus of summoning Mdm Yeo as a witness; and that in failing to do so, she took on the risk of Mdm Yeo's affidavit being admitted as evidence in the trial.[58]

39 Drawing these threads together, the appellants claim that Mdm Tan's testimony was corroborated by Mr Tuppani's evidence and Mdm Yeo's affidavit; and that accordingly, there is enough credible evidence to rebut Mdm Tham's contention that she was never in possession of the Watch.[59] In this connection, the appellants contend that Mdm Tham's explanation as to how she came to receive the sum of $160,000 was inherently unbelievable and, on balance, likely to be untrue.[60]

40 Finally, the appellants seek damages amounting to $389,205.13. They rely on the evidence of their expert witness, Mr Eric Lester Ong, who gave evidence in the trial below on the values of watches of similar make and model as the Watch.[61]

Mr Tuppani's case on appeal

41 Mr Tuppani denies committing any act of conversion vis-à-vis the Watch. He asserts that while he did hand the Watch to Mdm Yeo on the day he

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56 Appellants' Supplemental Written Submissions dated 2 May 2024 at para 41.

57 Appellants' Supplemental Written Submissions dated 2 May 2024 at paras 33–34.

58 Appellants' Supplemental Written Submissions dated 2 May 2024 at paras 37–38.

59 Appellants' Case dated 27 January 2024 at para 63.

60 Appellants' Case dated 27 January 2024 at paras 68 and 72.

61 Appellants' Case dated 27 January 2024 at paras 82–85.

was given the Deceased's belongings by the police, this was done at a time just after the Deceased had been killed by Mdm Tan's father: he had minimal contact with Mdm Tan and the other two appellants (*ie*, Mdm Tan's sister and the Deceased's ex-wife Mdm Keh) right after the killing; and the three appellants were not the appointed representatives of the Deceased's estate at that time – nor, for that matter, were there any appointed representatives of the estate at that time.[62] Further, according to Mr Tuppani, Mdm Tan herself had refused to attend to the Deceased at the hospital and/or at the mortuary and/or to carry out any of the necessary formalities: it was in these circumstances that the police had released the Deceased's body to Mr Tuppani and handed him the plastic bag containing the Deceased's belongings.[63] Mr Tuppani argues that taking into account all the circumstances, his act of handing the Watch to Mdm Yeo merely changed the position of the Watch and not the property therein.[64]

42 Mr Tuppani also notes that in filing his defence, he had denied having received any correspondence from the appellants' solicitors seeking the return of the Deceased's belongings; and his position on this point was never challenged by the appellants at trial.[65] *Per* his pleaded case, in November 2019, when the 3rd appellant Mdm Keh asked him what he had done with the Watch, he told Mdm Keh that he had handed it to Mdm Yeo and that the latter had subsequently informed him about passing it to Mdm Tham.[66] Mr Tuppani

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62 ROA 2 at pp 41–42 (1st Respondent's Defence (Amendment No. 3) dated 12 August 2021 at para 8).

63 ROA 2 at pp 37–38 (1st Respondent's Defence (Amendment No. 3) dated 12 August 2021 at para 4).

64 1st Respondent's Case dated 28 February 2024 at paras 65–70.

65 1st Respondent's Case dated 28 February 2024 at paras 35–36.

66 ROA 2 at p 39 (1st Respondent's Defence (Amendment No. 3) dated 12 August 2021 at para 5.

submits that there was no unconditional and unjustifiable refusal to return the Watch on his part, because he was no longer in possession of the Watch at the time the demand was made by the appellants' then solicitors, and was thus in no position to return it.[67] Indeed, he had been forthcoming and had sought to assist the appellants to locate the Watch from the very first time that they asked him about it.[68] The appellants, on the other hand, had failed to seek the return of the Watch from Mdm Tham or to seek confirmation of the facts from Mdm Yeo prior to commencing the suit against him on 6 March 2020.

43 On the defence of involuntary bailment, Mr Tuppani submits that at the time he received the Watch from the police, he was merely complying with the directions of the police; and he had no choice but to collect the Deceased's belongings given Mdm Tan's absence and refusal to attend to the necessary formalities.[69] His unwillingness to take custody of the Deceased's belongings was further evinced by the fact that he had sought to divest himself of the belongings almost immediately after he collected them from the police.[70]

44 As an involuntary bailee, according to Mr Tuppani, his duty was only to act reasonably. In particular, an involuntary bailee is not prohibited from removing the goods to a different location, especially if the bailee suffers detriment by holding on to the goods.[71] Mr Tuppani contended that in the present case, having regard to the pain and trauma he was experiencing at the material time, it was reasonable for him not to hold on to the Watch and to hand it over

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67 1st Respondent's Case dated 28 February 2024 at para 33.

68 1st Respondent's Case dated 28 February 2024 at paras 34 and 37.

69 1st Respondent's Further Submissions dated 2 May 2024 at paras 12–16.

70 1st Respondent's Further Submissions dated 2 May 2024 at paras 17–19.

71 1st Respondent's Further Submissions dated 2 May 2024 at paras 46–47.

to Mdm Yeo at the Leedon Residence apartment.[72] He did not act negligently in doing so, firstly, because far from being a stranger, Mdm Yeo was someone who had been in a long-term relationship with the Deceased and was sharing a household with him at Leedon Residence at the time of his death; (b) Leedon Residence was, moreover, the place which contained many of the other personal belongings owned by the Deceased.[73]

Mdm Tham's case on appeal

45 As for Mdm Tham, she submits that the appellants had the onus of proving their case at trial, and since they chose not to call a material witness (*ie*, Mdm Yeo) whose testimony was central to their case, the DJ was justified in drawing an adverse inference against them.[74]

46 Further, according to Mdm Tham, the evidence given by the witnesses at trial casts doubt on the veracity of the out-of-court statements which the appellants seek to refer to.[75] In this connection, the appellants' reliance on s 32(1)(*c*) EA is untenable because they had "clearly determined not to sue Mdm Yeo or seek to expose her to criminal prosecution", despite their claiming that it was Mdm Yeo who had given the Watch to Mdm Tham.[76]

47 Mdm Tham also submits that in any event, the court should exercise its discretion under s 32(3) EA to exclude Mdm Yeo's affidavit and out-of-court

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72 1st Respondent's Further Submissions dated 2 May 2024 at para 48.

73 1st Respondent's Further Submissions dated 2 May 2024 at para 49.

74 2nd Respondent's Case dated 28 February 2024 at paras 19–30.

75 2nd Respondent's Case dated 28 February 2024 at paras 33–39.

76 2nd Respondent's Case dated 28 February 2024 at paras 42–48.

statements because they are procedurally irregular,[77] and have been controverted by the testimonies of all three witnesses who were cross-examined at trial;[78] and as a result, their admission would result in substantial prejudice to Mdm Tham.

My analysis of the law and the facts

The applicable threshold for appellate intervention

48 In considering parties' submissions on appeal, I bear in mind the principles concerning the applicable threshold for appellate interference with the decision of a trial judge. Generally, appellate intervention is warranted if the decision was based on an error of law or principle. Where the matter on appeal relates to findings of fact, the appellate court's power of review is limited because the trial judge is "generally better placed to assess the veracity and credibility of witnesses, especially where oral evidence is concerned" (*Tat Seng Machine Movers Pte Ltd v Orix Leasing Singapore Ltd* [2009] 4 SLR(R) 1101 ("*Tat Seng*") at [41]). Where, however, it can be established that the trial judge's assessment is "plainly wrong or against the weight of the evidence", the appellate court can and should overturn any such finding. Where a particular finding of fact is not based on the veracity or credibility of the witness, but instead, is based on inferences drawn from the facts or the evaluation of primary facts, the appellate court is "in as good a position as the trial judge" to carry out the same assessment, and in so doing, will evaluate the cogency of witnesses' evidence "by testing it against inherent probabilities or uncontroverted facts" (*Tat Seng* at [41]).

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77 2nd Respondent's Further Written Submissions dated 2 May 2024 at paras 41–42.

78 2nd Respondent's Further Written Submissions dated 2 May 2024 at paras 22–34.

The tort of conversion: the applicable legal principles

49 As the appellants' case against Mr Tuppani turns on whether his actions in handing the Watch to Mdm Yeo at the Leedon Residence apartment amount to an act of conversion, I also summarise below the key principles relevant to a consideration of the tort of conversion. As the CA observed in *Tat Seng* (at [45]):

> Generally, an act of conversion occurs when there is unauthorised dealing with the claimant's chattel so as to question or deny his title to it (*Clerk & Lindsell* at para 17-06). Sometimes, this is expressed in terms of a person taking a chattel out of the possession of someone else with the "intention of exercising a permanent or temporary dominion over it" (RVF Heuston and RA Buckley, *Salmond & Heuston on the Law of Torts* (Sweet & Maxwell, 21st Ed, 1996) ("*Salmond & Heuston on Torts*") at p 99)… Inconsistency is the gist of the action, and thus there is no need for the defendant to know that the goods belonged to someone else or for the defendant to have a positive intention to challenge the true owner's rights (*Halsbury's Laws of England* vol 45(2) (Butterworths, 4th Ed Reissue, 1999) at para 548).

50 Liability for the tort of conversion is strict, such that it is no defence for a defendant to say that he acted with the honest and reasonable belief that the goods in question were his to dispose of. In *Francis Hollins v George Fowler* (1874–5) LR 7 HL 757, for example, *H* purchased cotton from *B*. It was not disputed that *H* had acted as brokers for *M*, one of his ordinary clients; and after *M* accepted the cotton, *H* was paid a broker's commission rather than a trade profit on the sale. It was held that *H* had made himself a principal, and his act of transferring the cotton to *M* amounted to an act of conversion for which he was liable to *F*, the real owner of the cotton. Blackburn J, in his judgment, noted that this was "hard" on *H*, but explained (at 769):

> The case against [H] does not rest on their having merely entered into a contract with [B], or merely having assisted in changing the custody of the goods, but on their having done both. They knowingly and intentionally assisted in transferring

> the dominion and property in the goods to [M], that [M] might dispose of them as their own, and the Plaintiffs [F] never got them back. It is true they did it as brokers for [M], and not for any benefit for themselves; but that is not material…

51 Blackburn J went on to cite the judgment of Lord Ellenborough in *Stephens v Elwall* (1815) 4 M&S 259 ("*Stephens*"), where it was held that the defendant clerk had acted "under an unavoidable ignorance and for his master's benefit when he sent the goods to his master, but nevertheless his acts may amount to a conversion; for a person is guilty of a conversion who intermeddles with my property and disposes of it, and it is no answer that he acted under authority from another, who had himself no authority to dispose of it". In Blackburn J's view, there was no distinction between *H*'s case and the case of *Stephens* (at 770):

> The conversion in the present case [by H] consists in, by means of the delivery order, transferring the goods from [B] to [M] with intention to transfer de facto [B's] property to [M]. [B's] title was bad against the now Plaintiffs, though of that the Defendants were ignorant.

52 Whether an act amounts to conversion depends upon the degree in which the act or dealing encroaches upon the possessory or proprietary rights of the claimant. In *Kuwait Airways Corporation v Iraqi Airways Co (Nos 4 and 5)* [2002] 2 AC 883 ("*Kuwait Airways*"), Lord Nicholls noted (at [39]) that for the tort of conversion to be made out:

> …the conduct [must be] so extensive an encroachment on the rights of the owner as to exclude him from use and possession of the goods. The contrast is with lesser acts of interference. If these cause damage they may give rise to claims for trespass or in negligence, but they do not constitute conversion.

53 As Lord Nicholls pointed out (at [41]), "[w]hether the owner is excluded from possession may sometimes depend upon whether the wrongdoer exercised dominion over the goods". The intention with which the acts were done may

thus be material (*Kuwait Airways* at [41]). The authors of *The Law of Torts in Singapore* explain this succinctly as follows (at para 11.008):

> The requirement for proof of an intention to assert a superior possessory right may appear, at first sight, to conflict with the understanding of conversion as a strict-liability tort. But that is not so… [L]iability is strict only in the sense that the defendant need not be aware or, not intend to interfere with the claimant's rights. In contrast, the state of mind that is material in the present context is that which relates to the chattel. Its relevance lies not in the proof of fault on the part of the defendant, but in determining the legal quality of his act, i.e. whether his conduct does, in fact, amount to an assertion of a superior possessory right.

54 A case commonly cited as exemplifying the operation of the above principles is *Fouldes v Willoughby* (1841) 8 M&W 540 ("*Fouldes*"). In *Fouldes*, the plaintiff had boarded a ferry managed by the defendant and had also brought two horses onto the ferry. The plaintiff allegedly misbehaved himself after coming on board but refused to leave the ferry despite being requested to do so by the defendant. The defendant then took the two horses from the plaintiff, who was then holding one of the horses by the bridle, and put them on shore at the landing strip. This, according to the defendant, was done in order to induce the plaintiff to follow the horses on shore, although in fact, the plaintiff chose to remain on the ferry. Thereafter, the horses were seen in the stable of a nearby hotel kept by the defendant's brother, but the hotel rejected the plaintiff's demand for the return of the horses, which were later sold at auction. The plaintiff's claim against the defendant for conversion of the horses succeeded at first instance but on appeal, the first instance decision was overturned. The court held (at 544–545) that "a simple asportation of a chattel, without any intention of making any further use of it, although it may be a sufficient foundation for an action of trespass, is not sufficient to establish a conversion", and as a result, the crucial error made by the first instance judge was in failing to direct the jury

to "consider what was the intention of the defendant in so doing". As the court pointed out (at 548–549):

> Any asportation of a chattel for the use of the defendant, or a third person, amounts to a conversion; for this simple reason, that it is an act inconsistent with the general right of dominion which the owner of the chattel has in it, who is entitled to the use of it, at all times and places. When, therefore, a man takes that chattel, either for the use of himself or of another, it is a conversion. So, if a man has possession of any chattel, and refuses to deliver it up, this is an assertion of a right inconsistent with my general dominion over it, and the use which at all times and in all places, I am entitled to make of it; and consequently amounts to an act of conversion. So the destruction of the chattel is an act of conversion, for its effect is to deprive me of it altogether. But the question here is, where a man does an act, the effect of which is not for a moment to interfere with my dominion over the chattel, but on the contrary, recognising throughout my title to it, can such an act as that be said to amount to a conversion? I think it cannot. Why did this defendant turn the horses out of his boat? Because he recognised them as the property of the plaintiff. He may have been a wrongdoer in putting them ashore, but how is that inconsistent with the general right which the plaintiff has to the use of the horses? It clearly is not; it is a wrongful act done, but only like any common act of trespass, to goods with which the party has no right to meddle.

55 Just as the mere taking or asportation of a chattel will not *per se* amount to an act of conversion unless the defendant had the intention to assert a possessory title superior to that of the claimant, so too the mere act of delivery of a chattel will not amount to conversion unless the act of delivery discloses an intention of exercising dominion over the chattel to the exclusion of the owner. In *Tat Seng*, for example, the appellant company had removed a machine owned by the respondent from the Toh Guan premises where it was originally stored and delivered it to the Hock Cheong warehouse, before eventually taking it to their own premises and storing it there. Subsequently, the director of the company which had leased the machine from the respondent – one Crispian – obtained redelivery of the machine and apparently arranged illegally to sell the machine to other parties. The respondent sued the appellant successfully for

conversion, but on appeal, the judgment against the appellant was overturned by the Court of Appeal.

56 The Court of Appeal held (at [68]) that the appellant's conduct in removing the machine from the Toh Guan premises and delivering it to the Hock Cheong warehouse did not constitute conversion, as it was purely ministerial. The appellant had simply changed the location of the machine entrusted to it and did not assist in the sale of the machine or take any step amounting to the transfer of or interference with ownership. In this connection, the Court of Appeal considered a number of English authorities, including *Marcq v Christie Manson & Woods Ltd* [2004] QB 286 ("*Marcq*"). In *Marcq*, the plaintiff's painting was stolen; and later, one *S* handed the painting to the defendant for sale at an auction. The defendant catalogued, advertised, and offered the painting for sale, but when it remained unsold, they returned it to *S*. The plaintiff's claim against the defendant for conversion of the painting was struck out by the lower court, and the striking out was affirmed on appeal by the English Court of Appeal, which held (at [24]) that the defendant had "only acted ministerially" and "merely changed the position of the goods and not the property in them". Based on the facts in *Tat Seng*, the Court of Appeal held that the circumstances which the appellant found itself in were similar to those faced by the defendant in *Marcq*.

57 The Court of Appeal also found that neither the appellant's act of storing the machine at its premises nor its subsequent act of redelivering the machine to Crispian could amount to conversion. In respect of the former act, the appellant had stored the machine at its premises without charge for only a few days: there was no evidence or suggestion that the appellant had intended to use or keep the machine as its own or to withhold the machine from its true owner (*Tat Seng* at [71]); and the Court of Appeal found it "quite probable" that the

appellant had rendered the service of temporary storage to build up goodwill. In respect of the latter act, the respondent had failed to particularise how the appellant had notice of the competing claims to the machine vis-à-vis the lack of or inadequacies in the documentation or in the manner in which the machine was redelivered (*Tat Seng* at [77]).

58 By way of contrast, in *Hiort v Bott* (1874) LR 9 Exch 86, the defendant was found liable for conversion of the plaintiffs' barley on the following facts. One *G* (a rogue), who habitually acted as the plaintiffs' broker, had arranged for a quantity of barley to be sent by the plaintiffs to the defendant, together with an invoice which stated that the barley was "sold by [*G*] as broker between buyer and seller", and a delivery order which made the barley deliverable "to the order of consignor or consignee". *G* then called on the defendant, who informed him that this was a mistake, as he had not bought any barley from the plaintiffs. Upon *G*'s request, the defendant proceeded to indorse the delivery order to *G* (no doubt with the intention of returning the barley to the plaintiffs), who later absconded after disposing of the barley. In holding that the plaintiffs' claim for conversion against the defendant was made out, the court pointed out that the defendant – having "the indicia of title" (*ie*, the delivery order) – had "transferred that title to the possession of [*G*]" when he had no title whatsoever to the goods and no need to interfere in any manner in their disposal (*per* Cleasby B at 92). While he had acted "innocently", it was undeniable that his act of indorsing the delivery order to *G* "was assuming a control over the disposition of these goods, and a causing them to be delivered to a person who deprived the plaintiffs of them" (*per* Bramwell B at 89); and it was on this basis that conversion was found to be made out.

59 Whether a defendant has acted so as to question or deny the claimant's title to the chattel will usually be a matter for the court to determine based on

its evaluation of the evidence available. There are some cases where such an intention will be obvious: as the CA pointed out in *Tat Seng*, "[w]here the defendant takes or uses the goods as his owns, or sells goods not belonging to the person who transferred possession of the goods to him, the intention to do an act inconsistent with the owner's right is necessarily present, even if the defendant does not know or intend to challenge the property or possession of the owner" (*Tat Seng* at [46], citing *Salmond & Heuston on Torts* at p 98).

60 In other cases, there may be what Allsop P in *Bunnings Group Limited v CHEP Australia Limited* [2011] NSWCA 342 ("*Bunnings Group*") called "capacity for difference of view as to the quality of the act as an interference or not". *Penfolds Wines Proprietary Limited v James Peter Elliott* [1946] 74 CLR 204 ("*Penfolds Wines*") is an example of such a case. In *Penfolds Wines*, the plaintiff made wine which it sold in bottles. The plaintiff retained ownership of these bottles, which were embossed with its name and a statement that the bottles "always" remained the property of the plaintiff. The defendant, a hotelkeeper, sold wine from time to time to customers who provided bottles in which to carry the wine away, and in so doing, filled some bottles which were so embossed by the plaintiff, without having taken steps to check whether the bottles were or were not owned by the plaintiff. On appeal, a majority of the High Court of Australia affirmed the decision of the lower court to dismiss the plaintiff's application to restrain an alleged trespass by the respondent to its goods. What is interesting is the differences in opinion between several members of the High Court of Australia as to whether the defendant's actions amounted to conversion of the bottles. Latham CJ, one of the two judges who dissented from the majority's decision, opined that a taking of the bottles without any intention to exercise permanent or temporary dominion over them, "though it might be a trespass, would not be a conversion", but that in this case, the defendant had committed conversion of the bottles because he had "handled

and used the plaintiff's bottles for the purpose of exercising what he regarded as his right to use them for containing any liquid that he chose to put in them, for that purpose until he delivered them, with their contents, to his customers" (*Penfolds Wines* at 218). Dixon J, on the other hand, considered that the defendant's use of the bottles was not an act of conversion because the act of supplying wine to the customers who brought the bottles to receive such wine did not involve "any deprival or impairment of property in the bottles, that is of the immediate right to possession". In other words, the redelivery of the bottles to the customers who had brought them could not amount to a conversion because "though involving a transfer of possession, its purpose was not to confer any right over the property in the bottles, but merely to return or restore them to the person who had left them to be filled" (*Penfolds Wines* at 229).

61 Commenting on the differences in opinion seen in *Penfold Wines*, Allsop P in *Bunnings Group* noted that the "differences between the judges in *Penfolds Wines* were of the assessment of the quality and character of the acts" and not of "expression of operative legal principle" (at [143]). He cautioned (*Bunnings Group* at [127]):

> It is important to appreciate that the intention as to the act or dealing should be assessed in the real … context in which the act takes place. To paraphrase the words of Thesiger LJ in *Hiort v London & North Western Railway* Co (1878-1879) LR 4 Ex D 188 at 199, conversion has been surrounded in technicality, but the courts will attempt to apply commonsense in its application.

62 I add that as a matter of trial procedure, it is the claimant in an action for conversion who bears the legal burden of proving there has been an act of conversion by the defendant, and correspondingly, the evidential burden of adducing some (not inherently incredible) evidence of the existence of such fact

(ss 103 and 105 of the EA; see also the Court of Appeal's judgment in *Britestone Pte Ltd v Smith & Associates Far East, Ltd* [2007] 4 SLR(R) 855 at [58]–[60]).

63 In the present case, in respect of Mr Tuppani, the appellants rely on two distinct alleged acts of conversion: first, Mr Tuppani's alleged refusal to return the Watch to the appellants upon being served with a letter of demand on 4 February 2020; and second, his actions in handing the Watch to Mdm Yeo at Leedon Residence on 11 July 2017.

Whether Mr Tuppani committed an act of conversion

Whether Mr Tuppani's alleged refusal to return the Watch was an act of conversion

64 As to the first, I note that Mr Tuppani has from the outset denied receiving the letter of demand dated 4 February 2020; and his evidence to this effect was not challenged in the trial below.[79] Nor is there any evidence adduced by the appellants to prove his receipt of the letter: while the letter of demand is exhibited in Mdm Tan's AEIC,[80] there is no acknowledgement of receipt by Mr Tuppani, or for that matter, any documentary evidence of service. As a preliminary point, therefore, it does not appear to me that the appellants are even able to prove Mr Tuppani's receipt of the letter of demand.

65 Even assuming for the sake of argument that the letter of demand was duly served on Mr Tuppani in February 2020, I find that the appellants' reliance on his alleged refusal to deliver the Watch upon being served with the letter is misconceived. As a matter of principle, where the goods have been delivered to a third party before the date of the demand, it is the prior wrongful delivery that

79 ROA 3A at p 37 (Tuppani's AEIC at para 19).

80 ROA 3A at p 15 (Tan's AEIC at p 11).

may constitute conversion, and not the subsequent refusal to comply with the demand (*General and Finance Facilities v Cooks Cars (Romford) Ltd* [1963] 1 WLR 644 at 649).

66 By the time the appellants sent the letter of demand to Mr Tuppani, the Watch had not been in his possession for more than two and a half years. The appellants do not dispute this; indeed, it is their case that Mr Tuppani "gave" the Watch to Mdm Yeo on *11 July 2017*. In the circumstances, Mr Tuppani's (alleged) refusal to return the Watch in February 2020 does not disclose any intention on his part to assert an interest over the Watch and cannot amount to an act of conversion.

67 In this connection, the appellants' reliance on *Thomas Teddy* is misplaced. In *Thomas Teddy*, the respondent remained indisputably in possession of the file server which formed the subject matter of the appellants' claim for conversion at the point when the latter's solicitors sent a letter demanding its return. It should be noted that Quentin Loh J (as he then was) found that the respondent had in fact agreed to the appellants coming to its premises to collect the server, and that the respondent's subsequent email on 28 August 2012 simply put forward a suggestion that the collection date be postponed pending resolution of the issue of possible damage (*Thomas Teddy* at [25]). Loh J also found that the respondent were not unjustified in turning away the appellants' workmen on 29 August 2012; that having turned the workmen away that day, the respondent should have responded within the next three days (*ie*, by 2 September 2012) at the most to propose a resolution; and that having regard to their lack of response until 7 September 2012, the respondent was "liable for conversion for unlawful detention of the [server] for that short period of 6 days between 2 to 7 September 2012" (*Thomas Teddy* at

[28]). Importantly, Loh J held that this was "a very technical commission of the tort"; the appellants were awarded nominal damages of $1.

68 In sum, therefore, the appellants fail in their claim in respect of the first alleged act of conversion; and the decision in *Thomas Teddy* is of no assistance at all to their case.

Whether Mr Tuppani's act of handing the Watch to Mdm Yeo at Leedon Residence was an act of conversion

69 I address next the second alleged act of conversion relied on by the appellants, *ie*, Mr Tuppani's act of handing the watch to Mdm Yeo when he met her at the Leedon Residence apartment on 11 July 2017.

70 The undisputed facts are that on 11 July, after collecting the Deceased's body from the mortuary, Mr Tuppani was asked by the police to go to CID, where he was given a plastic bag of the Deceased's belongings, including the Watch.[81] Mr Tuppani then proceeded to the Leedon Residence apartment. At the apartment, Mr Tuppani placed the plastic bag containing the Deceased's belongings on a table and told Mdm Yeo, "*These are Spencer's things*".[82]

71 The question is whether the above conduct constituted "so extensive an encroachment on the rights of the owner as to exclude him from use and possession of the goods" (*per* Lord Nicholls in *Kuwait Airways* at [39]).

72 At the outset, I note that in the proceedings below, the DJ's finding was that based on the evidence before him, Mr Tuppani simply had not applied his

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81 ROA 3A at p 35 (Tuppani's AEIC at para 13); ROA 3B at p 203 (NE 14/08/23 at p 63 lines 12–17).

82 ROA 3B at p 194 (NE 14/08/23 at p 54 lines 16–19).

mind to the question of who was entitled to the Watch (Judgment at [31]). I agree with this finding of fact. However, this finding is not *in itself* sufficient to show that there was no assertion of a right inconsistent with the appellants' superior possessory title. To illustrate: a person who sells and delivers to the buyer a chattel belonging to another, without applying his mind to the question of who was entitled to the chattel, will nevertheless be guilty of conversion. Thus, the key question in respect of Mr Tuppani is whether his conduct *in itself* disclosed an intention to deny the appellants' right to the Watch or to assert a right inconsistent with the appellants' right. The appellants allege that such an intention is disclosed because – according to them, Mr Tuppani *gave* the watch to Mdm Yeo when he went to Leedon Residence on 11 July 2017, when he knew that he was not entitled to do so: *ie*, according to the appellants' case, he purported to confer some right in the property to Mdm Yeo.[83] The appellants, being the claimants, bear the legal and evidential burden of proving this allegation. Further, in considering the evidence, I bear in mind Allsop P's reminder (in *Bunnings Group* at [127]) that "the intention as to the act or dealing should be assessed in the real … context in which the act takes place", and that the court has to "apply commonsense in its application".

73 Having reviewed the evidence, I find that the appellants have failed to prove that Mr Tuppani's conduct at the Leedon Residence apartment on 11 July 2017 purported to confer some right in the property on Mdm Yeo. My reasons are as follows.

74 First, while the appellants placed heavy reliance on Mr Tuppani's statement in his pleaded defence and his AEIC that he had handed the Watch to Mdm Yeo on 11 July 2017, this statement was clarified and explained in his

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[83] Appellants' Case dated 27 January 2024 at paras 40–41, 43.

testimony at trial. As seen earlier, Mr Tuppani testified that he actually left the plastic bag of the Deceased's belongings – including the blood-stained Watch – on a table in the Leedon Residence apartment, while informing Mdm Yeo that those were the Deceased's "things". Importantly, it was put to Mr Tuppani several times in cross-examination that what he had done was to *give* the Watch to Mdm Yeo; and each time, he categorically denied *giving* the Watch to her. Instead, his evidence was that he had simply left the Watch (and the other items in the plastic bag) on the table because he was too traumatised by the circumstances of his son's death and was also at that juncture pre-occupied with having to arrange a funeral for the Deceased. I reproduce below relevant excerpts from the transcript of Mr Tuppani's cross-examination in the proceedings below:[84]

> Q: Now, when you received that watch, that bag with the watch on the 11th of July, was it?
>
> A: Yes, 11th of July.
>
> Q: 11th of July. Why did you not give the watch to Shyller?
>
> A: At that time, I settled the mortuary thing, sent my---get the casket people to arrange for [the Deceased] to be embalmed and then, you know, get a coffin and all that.
>
> Q: Yes.
>
> A: So, I have---I go back to Joan's place.
>
> Q: You went to Joan's place---
>
> A: Because my---
>
> Q: ---on the 11th of July?
>
> A: Yah, my ex-wife was staying there … So, went there, I was actually very distraught, upset. **I'm not in my good self, [I was] very sad [and] traumatised by what I saw, and then I just take the bag and leave it on the table, and I told Joan, this is what [the police] gave me**

[84] ROA 3B at pp 190–193, 197–198 (NE 14/08/23 at p 50 lines 14–31, p 51 lines 11–20, p 52 lines 7–14, p 53 lines 7–11, p 57 lines 28–31, p 58 lines 1–2).

from what he recovered from Spencer, and I left the place.

…

A: **I put [the Watch] down there is because at that time I was traumatised. … I was trying to figure out how to arrange a funeral so that both party, you know, from Shyller side and my side can all attend. Not to get into trouble [and problems] with the wake. So my mind was all upset to set up [the wake]. So, you think I have that time to bother who take the watch or who do what with the watch?**

…

Q: So, now, the point is this, that **you made a decision because you considered Joan to be Spencer's wife, you gave her the watch. Yes or no?**

A: **No, I hand it down there.**

Q: **Yes or no, please?**

A: **No, no.**

Q: Alright, then why did you not hold on to the watch?

A: **I was traumatised by the blood, everything.**

…

Q: Alright? Now I'm asking you, why did you give that watch to Joan?

A: **I didn't give it to her---**

Q: You, yourself---

A: **I hand it over to her.**

…

Q: **So, did you think you were entitled to hand the watch to Joan? Yes?**

A: **No. I hand over the thing to her and just said, "These are Spencer's things." There was never a time I mentioned that this is given to you.** No, I did not mention that.

…

Q: So, I still don't understand, Mr Sam, why did you bring that watch to Joan and [leave] it on the table for her?

> A: **Because after [going to] the police there and the mortuary the next place was to the house. So, I just go there and left it and I was very distraughted [*sic*], upset and I left to continue doing my---the funeral things, so there was that---**
>
> …
>
> [emphasis added]

75 There is no question that Mr Tuppani would have had to place the Watch *somewhere* after collecting it from the police. He could not have kept the Watch indefinitely on his person. And clearly, if he had placed the Watch in his own home, there would have been no question of conversion. To Mr Tuppani, however, the most natural and logical thing to do was to bring the Watch back to the Leedon Residence apartment, where the Deceased had been residing with Mdm Yeo – the person "closest" to him – prior to his death (and where, incidentally, the Deceased had kept a number of other watches).[85] In my view, Mr Tuppani's act of leaving the Watch on the table at Leedon Residence simply did not encroach so extensively on the appellants' rights in respect of the Watch as to constitute an act of conversion. Though Mr Tuppani's act may be said to have involved a bare transfer of possession, its purpose was not to confer on Mdm Yeo any right over the property in the Watch, but merely to return or restore the Watch to the Deceased's last place of residence.

76 In this connection, the context in which Mr Tuppani acted also has to be considered. Due to Mdm Tan's apparent inability to attend to the formalities of collecting the Deceased's body at the material time, Mr Tuppani found himself in the position of having first to collect his dead son's body and then to receive his blood-stained belongings from the police. Undeniably, therefore, Mr Tuppani came into possession of the Watch in tragic – indeed, horrifying –

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85 ROA 3B at pp 80–81, 191 (NE 21/04/23 at p 16 lines 1–32, p 17 lines 1–3; NE 14/08/23 at p 51 line 3).

circumstances. In Mr Tuppani's words, he was "traumatised by the blood" and was "not going to hold on to something" he could "keep on looking at".[86] In the circumstances, it was neither illogical nor inappropriate for Mr Tuppani to seek to put physical distance between himself and the Watch.

77 Further, it must be highlighted that having placed the Watch and the other belongings on the table at Leedon Residence, Mr Tuppani expressly informed Mdm Yeo before he left the apartment that these were "*Spencer's [the Deceased's] things*". That he made this express statement to Mdm Yeo fortifies my conclusion that his purpose in leaving the Watch at Leedon Residence was not to confer on her any right over the property in the Watch, but merely to return the Watch – together with the other belongings – to the Deceased's last place of residence.

Conclusion on Mr Tuppani's liability

78 For the reasons I have given, I would uphold the DJ's decision that Mr Tuppani's conduct did not amount to conversion of the Watch.

79 I am of the view that my conclusions on the nature of Mr Tuppani's conduct, and in particular, on the absence of any intention on his part to assert a superior possessory right, sufficiently dispose of the appellants' claim against him for conversion. As such, I do not find it necessary to pronounce further findings on whether his receipt of the Watch from the police amounted to an involuntary bailment, and whether on the evidence available, such involuntary bailment afforded him a defence to the claim of conversion. For the record, I am grateful to counsel for their submissions on this issue.

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86 ROA 3B at p 192 (NE 14/08/23 at p 52 lines 14–17).

Whether Mdm Tham committed an act of conversion

80 I next address the issue of whether Mdm Tham committed an act of conversion of the Watch. To recap, the appellants' case is that Mdm Tham received the Watch from Mdm Yeo, sold it, and pocketed the sale proceeds.

Whether Mdm Yeo's out-of-court statements are admissible

81 In seeking to prove their case, the appellants submit that they should be permitted to rely on Mdm Yeo's out-of-court statements as evidence of the truth of its contents. The appellants accept therein that this would amount to hearsay evidence (see the Court of Appeal's decision in *Soon Peck Wah v Woon Che Chye* [1997] 3 SLR(R) 430 at [26]), but argue that such hearsay evidence is nevertheless legally relevant pursuant to s 32(1)(*c*) EA.[87]

82 Having reviewed parties' submissions, I reject the appellants' contention that Mdm Yeo's out-of-court statements fall within the scope of s 32(1)(*c*) EA. My reasons are as follows.

83 For a hearsay statement to be admissible under s 32(1)(*c*) EA, it must be shown that the person who made the statement was conscious that what he said was against his own interest (see *Velstra Pte Ltd v Dexia Bank NV* [2005] 1 SLR(R) 154 at [40]). Leaving aside the appellants' bare assertion in their submissions, no evidence has been adduced to show that Mdm Yeo was conscious that her statements were against her own interest.

84 Indeed, there is no evidence even of the existence of a risk of criminal prosecution and/or a suit of damages which Mdm Yeo should have been alive

[87] Appellants' Case dated 27 January 2024 at para 59.

to. The appellants have alleged that Mdm Yeo's out-of-court statements would have exposed her to damages for the conversion of the Watch because of her act of transferring possession of it to Mdm Tham. Curiously, however, Mdm Yeo was never joined as a defendant to the appellants' action for conversion; and as more than six years have now elapsed since Mdm Yeo's alleged transfer of the Watch to Mdm Tham, the appellants' claims against Mdm Yeo would almost certainly be time-barred. Counsel for Mdm Tham has submitted that throughout these proceedings, the appellants have shown themselves apparently determined not to sue Mdm Yeo;[88] and the above facts do lend a degree of credibility to counsel's submission. I should also add that in respect of criminal liability, there has been no evidence adduced of any police investigations against Mdm Yeo, or even of a police report having been filed against her.

85 Even if Mdm Yeo's out-of-court statements were admissible, the court is entitled, pursuant to s 32(3) EA, to exclude otherwise admissible evidence on the grounds that it would not be in the interests of justice to treat the statement as relevant and admissible evidence. In *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 686 ("*Gimpex*"), the Court of Appeal held that there were several factors which the court could take into account when determining whether a relevant statement should nevertheless be excluded pursuant to s 32(3) EA (at [106]):

> Ideally, the court would balance the significance of the evidence (its probative value or importance to one or more of the issues) against any factors that militate against its admission. That is, the admissible evidence may be excluded if it does not justify the disadvantages that would result from its admission. Such disadvantage would include the danger of unreliability or other harm which might compromise fair adjudication, additional costs (as when a hearsay statement is not necessary because it essentially duplicates other evidence in the case), delay in the proceedings (where additional time is needed to adduce the

88 2nd Respondent's Case dated 28 February 2024 at para 44.

> evidence or the proceedings have to be postponed), the distraction of the court and/or the parties (where the evidence raises collateral issues that require undue attention), its tendency to confuse or its misleading effect (as when there are doubts about authenticity and good faith), lack of reliability (where the circumstances of the author of a statement or in which the statement was made raise concerns about its truthfulness) and prejudice (in the sense of evidence that would have the effect of being substantively unjust or procedurally oppressive). It seems to be clear that the less significant or probative the statement, the less forceful the countervailing factors would need to be to justify exclusion. Nevertheless, as the evidence is declared to be admissible by s 32(1) of the EA, the court should not normally exercise its discretion to exclude the statement unless the countervailing factors clearly outweigh the benefit that would be gained by its admission.

86 In the present case, even if Mdm Yeo's out-of-court statements were admissible, I would exclude the evidence in the interests of justice. There is, in my view, a clear danger of unreliability. The interests of Mdm Yeo and Mdm Tham are diametrically opposed: if the statements actually expose Mdm Yeo to liability for conversion as the appellants claim, then it would be within Mdm Yeo's interests to seek a contribution from other parties who may also be jointly and severally liable for conversion, and she would thus have a vested interest in ensuring that Mdm Tham is held liable for conversion as well. As Mdm Tham's evidence has expressly called into question the veracity of Mdm Yeo's statements by, the former's inability to cross-examine the latter on her statements renders the admission of these statements highly prejudicial.

Whether there is credible evidence supporting the appellants' case

87 I should also reiterate that as the claimants in these proceedings, the appellants have the legal and evidential burden of proving that Mdm Tham received the Watch from Mdm Yeo and that she subsequently sold it. In this connection, Mdm Yeo's out-of-court statements were central to the appellants' case. The onus was therefore on the appellants to subpoena Mdm Yeo as a

witness in support of their case. The appellants' argument that *Mdm Tham* was the one who should have subpoenaed Mdm Yeo is wholly misconceived. Mdm Tham did not rely on Mdm Yeo's statements in support of her defence: there was no reason why she should have been required to call Mdm Yeo as a witness in order to *disprove* her out-of-court statements.

88 I accept that as the appellants were only informed of Mdm Yeo's absence on the last day of trial, their failure to call Mdm Yeo as a witness may have simply been an oversight because they were taken by surprise. An adverse inference should not be drawn pursuant to s 116 (read with Illustration (*g*)) EA, if the court is satisfied that there is some credible explanation for the witness's absence (see the Court of Appeal's decision in *Thio Keng Poon v Thio Syn Pyn* [2010] 3 SLR 143 (at [43]), citing *Wisniewski v Central Manchester Health Authority* [1998] PIQR P324 at 340).

89 However, the drawing of an adverse inference has little bearing on the outcome of this appeal. Apart from Mdm Yeo's out-of-court statements, the only other evidence which the appellants relied on in support of their case against Mdm Tham comprised: (a) Mdm Tan's testimony regarding the telephone calls she overheard sometime in March or April 2020, and (b) the WhatsApp message exchanged between Mdm Tan and her sister, the 2nd appellant, on 22 April 2020.

90 I agree with the DJ's reasons for placing little weight on the above evidence. Not only was the evidence brought up belatedly by the appellants, but it was also not corroborated by any evidence from the other participants to the conversations; and it was moreover inconsistent with several statements made

on oath by Mdm Tan herself (see Judgment at [45]). An excerpt from the evidence is reproduced below:[89]

> A: … the first call by Joan Yeo because it was on speaker phone that's why we were all quiet. We did not ask any question, but it was between---conversation between Joan and [Mdm Tham]. And Joan said something like pass the watch to the 2nd defendant. Yah and she admitted. And she said something like---I---sorry, I can't remember. But I remember the---within 5 to 10 minutes later, [Mdm Tham] call back, but this time called to the [3rd appellant]. And [3rd appellant] put her on speaker phone in front of us. And she said that the watch was---was sold to someone called---some Tony(?) I think. Sold to a Tony---yah, Tony.

In addition, the WhatsApp message exchange reads: "florence already told everyone on the phone tt she sold the watch on the day on mediation", and "florence told felicia andy JY me over speaker that she sold the watch for 160k".[90]

91 The appellants are seeking to rely on the phone calls and WhatsApp messages as evidence of Mdm Tham's admission to having sold the Watch. However, based on Mdm Tan's testimony and the WhatsApp message exchanged, it is not clear what exactly was said by Mdm Tham during those phone calls; indeed, even Mdm Tan admitted that she could not remember exactly what was said. In the absence of any clarifications, the evidence put forward by the appellants is at best equivocal on the issue of Mdm Tham's possession of the Watch. It is entirely possible, for example, that Mdm Tham simply admitted to having received from Mdm Yeo the proceeds from the sale of a watch, as opposed to having received the Watch directly from Mdm Yeo. Based on the evidence put forward by the appellants, I am unable to conclude

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89 ROA 3C at p 35 (NE 13/06/23 at p 27 lines 10–19).

90 ROA 4 at p 7 (Exhibit P2).

that it is more likely than not that Mdm Tham received the Watch from Mdm Yeo.

92 Ultimately, insofar as the appellants needed to prove the transfer of the Watch from Mdm Yeo to Mdm Tham, the only person who would have been able to provide clear and direct evidence of this transfer was Mdm Yeo. The absence of any testimony from Mdm Yeo is fatal to the appellants' case because in the absence of her testimony, there is simply no credible evidence to support the appellants' case.

Conclusion on Mdm Tham's liability

93 For the reasons I have given, I would uphold the DJ's decision that Mdm Tham did not commit an act of conversion.

Conclusion

94 For the reasons set out in these written grounds, I dismiss the appeal in its entirety.

95 As the appellants have failed in their appeal, they should pay the respondents the costs of the appeal. I will hear parties on the issue of quantum of costs.

Mavis Chionh Sze Chyi
Judge of the High Court

Yeo Lai Hock Nichol, Qua Bi Qi and Leong Wen Jia Nicholas (Nine Yards Chambers LLC) for the appellants;
Joseph Ignatius and Suja Susan Thomas d/o B Thomas (Ignatius J & Associates) for the first respondent;
David Nayar (David Nayar and Associates) for the second respondent.