7-2016

Equity and trusts [2015]

Hang Wu TANG
Singapore Management University, hwtang@smu.edu.sg

15. EQUITY AND TRUSTS

TANG Hang Wu
LLB (National University of Singapore),
LLM, PhD (Cambridge);
Advocate and Solicitor (Singapore);
Professor, School of Law, Singapore Management University.

Express trust

15.1 *MF Global Singapore Pte Ltd v Vintage Bullion DMCC* [2015] 4 SLR 831 ("*MF Global*") is an important decision on the principles of the certainties required to settle an express trust. This case dealt with the aftermath of the insolvency of MF Global Singapore Pte Ltd ("MFGS"). Some customers had invested in MFGS and the issue was whether these investments were held on trust for these customers. Clause A15.1 of the Master Trade Agreement with the customer provided:

> 15. TRUST ACCOUNT
>
> 15.1 MFGS shall keep all funds and other assets held by MFGS on trust for the Customer separate from the funds and assets of MFGS. The Customer's funds and assets shall be placed into a trust account, where they may be held commingled with excess funds or assets of other Customers in accordance with Applicable Laws.

15.2 Hoo Sheau Peng JC made the following pertinent observations in relation to the principles applicable in determining whether there was a valid express trust. Her Honour said:

> (a) "an intention to create a trust may be inferred by examining evidence of the alleged settlor's words and conduct as well as the circumstances surrounding the alleged express trust, and through the interpretations of any agreements that the parties might have entered into" (*MF Global* at [172]);
>
> (b) the commercial context of the parties' relationship must be considered;
>
> (c) generally, the courts are disinclined to find a trust in everyday commercial context;
>
> (d) in order to displace the general disinclination, there must be clear evidence of an intention to create a trust; and
>
> (e) mere segregation of money by itself is not conclusive as to an intention to create a trust.

15.3 On the facts, Hoo JC held that MFGS's intention to create an express trust for the customers in terms of the unrealised profits and forward value had not been proven.

15.4 A dispute over a private equity arrangement gave rise to the decision of *Cheong Soh Chin v Eng Chiet Shoong* [2015] SGHC 173. In this case, the plaintiffs transferred more than US$100m to the defendants to invest in some private equity funds and direct investments. These investments were structured through a web of special purpose vehicles ("SPVs") controlled by the defendants. Unfortunately, the relationship between the parties soured and the plaintiffs sought from the defendants, *inter alia*, the following orders: (a) transfer of all the moneys and properties including the SPVs; (b) an account of all the moneys transferred to the defendants and SPVs; (c) a tracing order; and (d) a judgment of moneys due after the account. The learned judge held that the plaintiffs were entitled to (a), (b) and (d) but not the tracing order because this was premature. Vinodh Coomaraswamy J found that the defendants were the plaintiffs' trustees either on a presumed resulting trust or an agency relationship to hold and manage the investments. As such, the defendants were under a duty to account to the plaintiffs.

15.5 The express trust was also considered in *Westacre Investments Inc v The State-Owned Company Yugoimport SDPR* [2015] 4 SLR 529 ("*Westacre Investments*"). This case is significant because it suggests that a judgment creditor may garnish a bank account held by a bare trustee for a beneficiary who is a judgment debtor. *Westacre Investments* was a long running dispute and the plaintiff in this case obtained a judgment against the defendant in the English High Court for £41m. This judgment was registered in Singapore after the plaintiff discovered that the defendant's subsidiary, Deuteron, maintained bank accounts in Singapore. The plaintiff contended that the money in this bank account was held on trust for the defendant. The plaintiff therefore garnished these bank accounts on the ground that the moneys belonged to the defendant. During the garnishee proceedings, three parties ("other parties") claimed, *inter alia*, that the moneys belonged to them because there was an express trust in their favour. After examining the facts of the case, Edmund Leow JC held that the other parties merely had a contractual claim against the defendant. Furthermore, the relationship between the parties was governed by foreign law and there was no concept of beneficial interest under Yugoslav or Serbian law. It was unlikely that the parties intended for a trust relationship to arise. Even if Singapore law governed the relationship, Leow JC was not prepared to hold that there was sufficient certainty of intention to infer an express trust of the moneys for the other parties. The fact that the moneys were mixed and shifted between accounts demonstrated that there was no requisite certainty of intention to create a trust for the

other parties. On the facts, the learned judicial commissioner held that Deuteron was a bare trustee of the moneys for the defendant. In other words, the defendant had a right to collapse the trust *vis-à-vis* Deuteron. Therefore, Leow JC ordered that the garnishee order against Deuteron's bank be made absolute.

15.6 The issue of mental capacity to declare a trust came to the fore in *Re BKR* [2015] 4 SLR 81. This decision is a landmark decision on mental capacity and undue influence involving an elder. For the purposes of the review in this part, "P" refers to the person whose mental capacity to declare a trust was in question. This decision will no doubt be of interest to trust companies and banks that work with elderly clients. In *Re BKR*, the Court of Appeal could not discern any good reason for settling the trust concerned. P already had a pre-existing trust with another bank that could accomplish the stated purpose of the new trust. Sundaresh Menon CJ thought that P could achieve the same purposes by drawing up an appropriate will. Menon CJ was very careful to say that an unwise or imprudent decision to settle a trust did not mean that P lacked the capacity to declare a trust. The learned Chief Justice gave the following guidance on the mental capacity to declare a valid trust (*Re BKR* at [177]):

> But it is less clear whether she has the ability to use and weigh the information relevant to her decision to set up the Trust. What this requires of her is an ability to engage with the countervailing considerations relevant to the decision – pros and cons, costs and benefits – and to measure them one against another in a non-arbitrary manner. This is not to suggest that feelings and intuition ought never to play a part in the process of decision-making; taking for instance a man who spends a great deal of money participating in a lottery which he knows he has a miniscule chance of winning because he has a strong intuition that it will be his lucky day, we would not necessarily conclude that such a man lacks the ability to use and weigh the information relevant to the decision he has made. Human experience shows that we do make decisions on the basis of rational reasons as well as irrational impulses or instincts or feelings; and even though these rational and irrational factors may be incommensurables, the reality is that we have nonetheless to reckon with them in the same decision-making equation. What matters is the ability to engage with *all* these factors, rather than allowing one or some of them to dominate the decision-making process such that the other relevant factors are effectively excluded from that process.

15.7 On the facts, P could not explain the reason for settling the trust. In fact, P's primary reason for settling the trust was because she believed her son, CK, was after her money and would leave her bereft and destitute. On the facts, there was simply no evidence to support this belief. Therefore, Menon CJ surmised that the trust was motivated by an unfounded paranoid belief which arose due to P's mental impairment.

15.8 *Tanaka Lumber Pte Ltd v Datuk Haji Mohammad Tufail bin Mahmud* [2015] SGHC 276 was a dispute on whether there was a trust over moneys which were transferred by the plaintiff company to the defendants who were directors of the plaintiff. The dispute between the parties was about the moneys that were transferred between 27 May 1992 and 26 March 1996 from the plaintiff company, Tanaka Lumber Pte Ltd's ("Tanaka"), HSBC accounts to the defendants. Tanaka claimed that the moneys were to be held on trust by the defendants for the purposes of Tanaka's investments in Malaysia pursuant to two oral shareholders' agreements in 1993 and 1994 to invest those moneys in two Malaysian companies. In contrast, the first defendant contended that the moneys were transferred to him as the beneficial owner and also made a counterclaim that there was a conspiracy to injure him. Edmund Leow JC found that the evidence adduced by both sides was unreliable and lacking credibility in material respects. Therefore, the judge dismissed both the claim and counterclaim.

Resulting trust

15.9 *Ishak bin Abdul Kadir v Khoo Hui Ying* [2015] SGHC 181 was a dispute over a condominium in Keppel Bay. The plaintiff and defendant were in a relationship and bought the property together for $1.568m. It was registered in both their names as joint tenants. A loan for 80% of the purchase price was procured from UOB by the parties as joint mortgagors. The remainder 20% of the purchase price was paid from the plaintiff's Central Provident Fund ("CPF") ($46,100), the defendant's CPF ($15,900) and cash ($251,600). It should be noted that the plaintiff and defendant had bought an earlier apartment together and made a profit from the sale of that apartment. Some of these proceeds were used to buy the Keppel Bay condominium. Unfortunately, their relationship broke down soon after they acquired the Keppel Bay condominium. The learned judge accepted the defendant's version of the events. According to the defendant, the plaintiff offered the defendant joint ownership of the earlier property whereby the plaintiff would make all payments for the property (including the loan, property tax and maintenance) and the defendant would contribute in terms of utility bills and broadband subscription. The proposal was made because the plaintiff needed the defendant to become the co-borrower of the loan. By the time the Keppel Bay condominium was acquired, the parties' relationship had become strained. The defendant permitted the proceeds of the earlier apartment to be used to acquire the Keppel Bay condominium on the agreement that should the relationship come to an end, the defendant would not lay a claim for a half share of the Keppel Bay condominium; instead, the plaintiff would pay the defendant a half share of the sale proceeds from the earlier property. In contrast, the plaintiff disavowed any prior

agreement and said that he did not understand the significance of agreeing to register the Keppel Bay condominium in joint names. Lee Seiu Kin J placed emphasis on the fact that the implications of a joint tenancy were explained to the plaintiff when the Keppel Bay condominium was bought. In particular, the plaintiff signed a form where a detailed explanation of the concept of joint tenancy and tenancy in common was clearly stated. The learned judge did not allow the plaintiff's resulting trust claim. Lee J ordered the plaintiff to repay the defendant's CPF moneys and also the proceeds of the sale from the earlier apartment. Once this was done, the defendant would have to convey the property to the plaintiff.

15.10 *Lim Giok Boon v Lim Geok Cheng* [2015] SGHC 208 was a dispute between sisters who had joint business and property interests over a long period of time. One sister, Una, had extended some money to the other sister, Lena, in relation to the purchase of a condominium in a development called Edelweiss. The property was bought and registered solely in Lena's name. One of the issues was whether a resulting trust arose in this context. Turning to the beneficial interest claimed in the flat, Vinodh Coomaraswamy J emphasised the general rule in *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 that "contributions have to be applied towards the purchase price". On this ground, the plaintiff's claim based on a resulting trust failed as the contributions were made to assist the defendant with her purchase, by reducing the amount of mortgage interest payable. Further, the purchase was intended as an investment for the defendant and for her to own it absolutely at law and in equity. The contributions were therefore more appropriately characterised as loans which do not attract proprietary consequences. There was no question of a resulting trust arising in Una's favour.

15.11 *Lee Yee Mui v Chau Hong Loan* [2015] SGHC 314 involved a claim by the plaintiff, who was the mother-in-law of the defendant. The plaintiff and the defendant bought a unit in Toh Tuck Lodge in 2003 and registered it in joint tenancy. Subsequently, the plaintiff severed the joint tenancy in 2011. The plaintiff's case was that there was no clear evidence of (a) the defendant's direct financial contributions towards the purchase price; or (b) any common intention that the beneficial interest was to be held differently from the legal interest. Accordingly, the plaintiff argued that she was entitled to a half share of the property. In contrast, the defendant contended that she had contributed to the entire amount of the purchase price of the property. On the evidence before the court, the learned judge agreed with the plaintiff's case. Chua Lee Ming JC held that the plaintiff was entitled to a half share of the net proceeds of the sale of the property.

15.12 In *Kua Tee Beng v Ye Caiyan* [2015] SGHC 53, the plaintiff and defendant were engaged in a two-year intimate relationship. When the relationship ended, the plaintiff commenced proceedings against the defendant seeking, *inter alia*, a resulting trust over a property registered in the defendant's name. It is undisputed that the plaintiff contributed $295,000 to the purchase of the property registered in the defendant's sole name. George Wei JC applied *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 and found that the presumption of a resulting trust was rebutted in this case. The court was not persuaded by the plaintiff's uncorroborated evidence that his contribution to the property was intended to serve as an investment. Instead, the evidence revealed that the plaintiff did not display any interest in the property at the point of acquisition and, in the light of the parties' romantic relationship, it was not implausible that the plaintiff had intended to benefit the defendant with the entire $295,000. Therefore, the plaintiff's claim for a resulting trust failed.

15.13 *Tan Chin Hoon v Tan Choo Suan* [2016] 1 SLR 1150 ("*Tan Chin Hoon*") (see [2015] SGHC 306 for the complete text of the unreported version of the judgment) was a lengthy and protracted family dispute. This case is significant for the consideration of the evidential rule in *Shephard v Cartwright* [1955] AC 431 and the limitation period in relation to a resulting trust claim. In the past, it was thought that a "well-settled principle" was that only events constituting part of the original transaction can be admitted into evidence to displace the presumption of advancement (see Lynton Tucker, *et al*, *Lewin on Trusts* (Sweet & Maxwell, 19th Ed, 2015) at para 9-036 and *Snell's Equity* (John McGhee ed) (Sweet & Maxwell, 33rd Ed, 2014) at para 25-013), as the inquiry is directed at whether a gift was intended at the time of the transaction. Evidence of future dealings and statements should be excluded. Such evidence often does not relate to the state of mind of the parties at the material time. This strict rule was highlighted in *Shephard v Cartwright* (for a fuller exploration of this issue, see M Yip & J Lee, "'Less than Straightforward' People, Facts and Trusts: Reflections on Context" [2013] Conv 431). In *Shepard v Cartwright*, a father purchased shares in the name of his children. He dealt with these shares and the proceeds of those shares without the informed consent of his children (though he occasionally did get their signatures). After his death, his children sought an account. His executors sought to prove that the presumption of advancement was rebutted and that the shares and their proceeds really belonged to the estate. Among the evidence was a course of dealings, starting from five years after the shares were purchased, where the father consistently dealt with a substantial portion of the shares and their proceeds as though they were his own. The House of Lords considered this evidence to be inadmissible, as it was not connected with the original transaction. It

did not go to show that at the point of purchase, the father (or his children) did not consider the purchase to be a gift.

15.14 However, in *United Overseas Bank Ltd v Giok Bie Jao* [2012] SGHC 56 at [16], Belinda Ang J suggested that a looser approach should be adopted, approving the following passage from *Snell's Equity* (John McGhee ed) (Sweet & Maxwell, 32nd Ed, 2010) at para 25-013:

> The preferable approach nowadays may be to treat the parties' subsequent conduct as admissible even in their own favour, and to leave the court free to assess its probative weight. This approach would be consistent with the looser significance attached to the presumptions of resulting trust and of advancement in the modern authorities.

15.15 In *Tan Chin Hoon*, Vinodh Coomaraswamy J was supportive of Belinda Ang J's approach. Coomaraswamy J sensibly commented (*Tan Chin Hoon* at [195]):

> [Ang J's] approach is not inconsistent with the general rule insofar as it accommodates the caution with which a court must approach subsequent self-serving declarations, because of the risk of a party using post-transaction declarations with hindsight to recast their initial intent in order to bolster the case they now advance. The principle that self-serving evidence is of little probative value underpins both the established approach which excludes it entirely and the new approach which makes its self-serving potential ultimately a matter of weight.

15.16 Another important point about *Tan Chin Hoon* is that Vinodh Coomaraswamy J held that claims for resulting trusts are not subject to the six-year limitation period in s 22(2) of the Limitation Act (Cap 163, 1996 Rev Ed) as they fall within the scope of s 22(1)(*b*) of the Limitation Act.

15.17 *Tien Choon Kuan v Tien Chwan Hoa* [2016] SGHC 16 ("*Tien Choon Kuan*") is a difficult case dealing with the relationship between a joint tenancy and resulting trust. This decision is an interlocutory judgment where Choo Han Teck J refused to give judgment in default of appearance. There are several important aspects of the case although these observations are *obiter dicta*. First, the learned judge correctly said that the severance of a joint tenancy at law through unilateral declaration pursuant to s 53 of the Land Titles Act (Cap 157, 2004 Rev Ed) does not preclude a court from declaring that the co-owners hold the property in shares proportionate to their initial contributions to the purchase price in equity. Second, Choo J said that there are legislative and social policies which might contradict the use of a resulting trust over Housing and Development Board flats (see generally H W Tang, "Housing and Development Board Flats, Trust and Other Equitable Doctrines" (2012) 24 SAcLJ 470). These issues must be

determined at trial and cannot be swept aside under an application for default judgment. Third, the issue of the intention of the parties is crucial in determining a claim based on resulting trust. Since the evidence on the current facts was sparse and untested by cross-examination, Choo J declined to enter judgment on default of appearance. Finally, Choo J also observed tentatively (*Tien Choon Kuan* at [13]):

> [I]n an appropriate case, a conscious decision to unilaterally sever a joint tenancy as tenants in common in equal shares may give rise to an inference of fact that the purchaser had always intended to give to the other party a 50% share of the property, even though that party may have contributed less to the purchase price.

15.18 The issues identified by Choo Han Teck J are unfortunately very common in these disputes. No doubt these issues will have to be ventilated more fully in another forum.

Fiduciary relationships

15.19 *Nava Bharat (Singapore) Pte Ltd v Straits Law Practice LLC* [2015] SGHC 146 is a decision which traverses many areas of the law. In this review, the focus is on the breach of fiduciary duty claim. The plaintiff had sued his lawyer, R, for, *inter alia*, a breach of fiduciary duty because the counterparty was represented by his brother-in-law, C. This was argued to be a conflict of interests. Lee Seiu Kin J went through the law methodically and held that there was no breach of fiduciary duty in this context. The learned judge said that the cases on conflict may be divided into two categories: (a) conflict of duty and interest; and (b) conflict of duty and duty. With regard to conflict of duty and interest, the cases may be seen as a duty not to make unauthorised remuneration, engage in self-dealing and engage in fair-dealing. The latter category of conflict of duty and duty deals with the issue of double employment where the fiduciary acts for two principals with conflicting interests. Lee J said that a mere assertion of conflict of interests is not sufficient. The plaintiff must be able to identify the conflict of interests. On the facts, the learned judge could not find a conflict of interests just because R and C were brothers-in-law. It should be noted that the Court of Appeal dismissed the appeal.

15.20 *Dynasty Line v Sukamto Sia* [2015] SGHC 286 considered the issue of equitable compensation payable by a fiduciary to his principal for a breach of fiduciary duty. In this case, the fiduciaries, Sia and Lee, were the only two directors of a British Virgin Island ("BVI") company called Dynasty Line. Sia used Dynasty Line to acquire the shareholding of a Hong Kong listed company, CDC. Although only a fraction of the purchase price was paid, the vendors of the CDC shares transferred the

shares to Dynasty Line. Sia subsequently caused the shares in CDC to be pledged to various financial institutions as security for loans to Sia and his business associates. It must be noted that Lee did not sign any of these pledges save for a pledge to Commerzbank. The vendors of the CDC shares obtained judgment against Dynasty Line for the unpaid shares. Dynasty Line was wound up and its liquidators brought an action against Sia and Lee for breach of fiduciary duty. The claim was successful and the present proceeding was to consider the amount of compensation that Sia and Lee would have to pay Dynasty Line. As a matter of English and BVI law, Lai Siu Chiu SJ said that the law imposes joint and several liabilities on company directors. The learned judge did not agree with the BVI expert's contention that it was possible to apportion liability between company directors where one director is more culpable than the other directors. Another important aspect of this case is the issue of causation, *ie*, did Lee's breach of fiduciary duty cause the loss to Dynasty Line? Lee contended that even if he did not sign the Commerzbank pledge, Sia would have been able to execute the mortgage. Lee pointed out that Sia had executed mortgages for other financial institutions without his signature. It is interesting to note that Lai SJ thought that BVI law was the same as English law which requires a plaintiff to demonstrate a causal connection between the fiduciary breach and the loss complained of. The learned judge applied the "but for" test of causation in this context. Lai SJ held that the "but for" cause in this case was satisfied since Lee signed the Commerzbank pledge. Lai SJ characterised Lee's defence as being based on a "hypothetical loss" situation. In other words, even if Lee did not sign the Commerzbank pledge, Sia would have executed the pledge by himself. On the evidence, Lai SJ did not accept that the "hypothetical loss" situation was proven.

15.21 Having dealt with the causation point, the learned judge then went on to deal with the thorny issue of the time at which the compensation should be assessed. It was accepted that if the CDC shares were not pledged away, Dynasty Line would have sold those shares. The question was this: what is the date on which the shares would have been sold? The liquidators contended that the relevant date was the date on which the shares were pledged away whereas Lee argued that the relevant date was the date on which the vendors of the CDC shares entered judgment against Dynasty Line. Lai SJ reviewed the facts very carefully and thought that it was very unlikely that Sia and Lee would have sold the shares off earlier. The learned judge held that the shares would be pegged to the date of April 2011, *ie*, the date on which the vendors of the CDC shares entered judgment against Dynasty Line.

Unconscionable receipt and dishonest assistance

15.22 *M+W Singapore Pte Ltd v Leow Tet Sin* [2015] 2 SLR 271 is an illustration of how a company director may be personally liable if the company acted in breach of trust. In this case, the plaintiff company was a construction company employed by another company called JDD to construct a data centre. The defendants were the only two directors of JDD and joint signatories to its bank account. JDD was in financial trouble and an arrangement was reached whereby JDD provided the plaintiff with a debenture. Under the terms of the debenture, JDD agreed that the plaintiff would have a first fixed charge over all JDD's "monetary claims" and the money would be placed in a claims account. After the debenture was granted, the Inland Revenue Authority of Singapore ("IRAS") paid JDD a goods and services tax ("GST") refund of over $6m. These moneys were not put in a separate bank account but instead mixed with JDD's own bank account. JDD subsequently became financially distressed and a receiver and manager was appointed. In earlier court proceedings, the court found that the legal effect of the debenture was that JDD had given a fixed charge over the GST to the plaintiff. Since JDD did not pay the GST refund into a separate bank account, it held the moneys on constructive trust for the plaintiff. In this action, the plaintiff sued the defendant directors of JDD for, *inter alia*, dishonest assistance of a breach of trust. Judith Prakash J applied the test set out in *George Raymond Zage III v Ho Chi Kwong* [2010] 2 SLR 589 at [22], *ie*, a person must have knowledge of the irregular shortcomings of the transaction that ordinary honest people would consider it to be a breach of honest conduct if he or she failed to enquire about them. Prakash J affirmed that the test with regard to dishonesty is an objective one. The learned judge said that there is a two-stage analysis for dishonest assistance: (a) what did the person know of the transaction; and (b) did participation in the transaction with that knowledge offend ordinary standards? It is only when both elements are satisfied that a person would be guilty of dishonest assistance. On the facts, Prakash J held that the defendants knew of the breach of the terms of the debenture and their conduct offended ordinary standards. Therefore, the learned judge held that the defendants were guilty of dishonest assistance of a breach of trust.

Proprietary estoppel

15.23 The law of pleadings in relation to a claim in proprietary estoppel was considered in *V Nithia v Buthmanaban s/o Vaithilingam* [2015] 5 SLR 1422 ("*V Nithia*"). In this case, the High Court reached a decision based on proprietary estoppel which was not specifically pleaded by the respondent. Instead, the respondents pleaded resulting trust. At the end of the trial, the trial judge invited the parties to submit

their case on the basis of a claim in proprietary estoppel. After hearing the submissions, the trial judge dismissed the claim on resulting trust but upheld a claim premised on proprietary estoppel. The Court of Appeal reversed the High Court's decision and held that "proprietary estoppel should be pleaded expressly and the facts relevant to each element should be pleaded specifically". Chan Sek Keong SJ pointed out that there were significant differences in the factual underpinnings between a case of resulting trust and proprietary estoppel and that these differences were not simply a matter of law. Unlike proprietary estoppel, a resulting trust did not require an assurance or representation by the defendant. The appellant suffered prejudice because the trial and cross-examination would have taken on a different turn had proprietary estoppel been pleaded. Chan SJ said that this did not mean that a judge must always bite his or her tongue and never invite the parties to reframe their pleadings. The learned judge gave the following guidance as to when this is permitted (*V Nithia* at [61]):

> The court may express its wish that the parties reframe the issues so that the case may be better decided. However, if a court raises a new issue or a new cause of action on its own motion after hearing the evidence at trial, good order requires that the court invite the parties to amend their pleadings and for the party affected by this issue be allowed to re-examine the witnesses and/or to call rebuttal evidence on the hereinbefore unexplored point. However, the court must bear in mind that such a step may not be taken if it causes irreparable damage to the other party, *ie*, damage that cannot be compensated by an order for costs thrown away.

15.24 *V Nithia* is also interesting because it hints at the relationship between the application of equitable principles and relevant statutory provisions (see the framework proposed in H W Tang, "Equity in the Age of Statutes" (2015) 9 Journal of Equity 214 ("H W Tang")). The appellant tried to argue that a claim in proprietary estoppel was precluded by ss 6(*d*) and 7 of the Civil Law Act (Cap 43, 1999 Rev Ed). Without expressing any final views on this issue because the Court of Appeal had found in the appellant's favour on the grounds of pleading, Chan SJ said (*V Nithia* at [74]):

> The issue of the court subverting or repealing the statutory formalities does not arise unless the policy as expressed in the legislation is so clear that there can only be one answer to the question. Equity cannot contradict a statute, but only when the statute may not be contradicted. This is an issue of statutory interpretation to determine what the legislative policy is. A claim based on proprietary estoppel may or may not be consistent with the policy of the legislation.

15.25 *Tan Bee Hoon v Quek Hung Heong* [2015] SGHC 229 ("*Tan Bee Hoon*") is noteworthy because Aedit Abdullah JC distinguished between three different kinds of estoppel: (a) cause of action estoppel/issue

estoppel; (b) proprietary estoppel; and (c) promissory estoppel. The learned judicial commissioner said that in category (a), the estoppel deals with the binding effect of a previous decision. According to Abdullah JC (*Tan Bee Hoon* at [13]):

> Proprietary estoppel operates to give effect to what is held out even to the extent of affecting the proprietary rights of the implicated party. Promissory estoppel protects an expectation of forbearance in an existing relationship.

15.26 The learned judicial commissioner said that while these doctrines might share some common elements like representation, reliance and detriment, it is inadvisable to conflate the various forms of estoppel because there are significant differences between them. On the facts of this case, the plaintiff was not entitled to bring a claim in proprietary estoppel because this was a claim that the plaintiff could have brought up in an earlier proceeding. Even if the plaintiff could raise a claim in proprietary estoppel, Abdullah JC thought that the elements of the claim were not satisfied in the present case.

Quistclose trust/application of trust principles to a town council

15.27 The case *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2015] 4 SLR 474 ("*Aljunied-Hougang-Punggol East Town Council*") is a case dealing primarily with the financial affairs of a town council. However, the High Court made some interesting observations about the jurisprudential basis of the *Quistclose* trust. In this case, the plaintiff, the Ministry of National Development ("MND"), took the defendant, a town council, to task over the state of the town council's financial affairs. MND who provided grants to the town council filed an application to the court to appoint independent accountants to audit the affairs of the town council. Much of the case deals with the intricacies of the Town Council Act (Cap 329A, 2000 Rev Ed) and will not be reviewed here. The pertinent part of the judgment is MND's reliance on *Barclays Bank Ltd v Quistclose Investments Ltd* [1970] AC 567 for the proposition that MND had an interest in the funds disbursed with the mutual intention that the money would be used for a specific purpose. Quentin Loh J adopted Lord Millett's rationalisation of the *Quistclose* trust in *Twinsectra Ltd v Yardley* [2002] 2 AC 164 ("*Twinsectra*"). The learned judge also went on to consider the jurisprudential basis of the *Quistclose* trust. Loh J helpfully summarised the principles governing the *Quistclose* trust as follows (*Aljunied-Hougang-Punggol East Town Council* at [114]):

> (a) Whenever a donor transfers money to a recipient for a specified purpose, a *Quistclose* trust may arise. In a *Quistclose* trust, the donor possesses the beneficial interest in the money, but this is subject to a power or duty on the recipient's part to use the money for

the specified purpose. If the recipient is unwilling or unable to use the money for the specified purpose, the money is to be returned to the donor. Such a trust may be either express or resulting.

(b) For a *Quistclose* trust to arise, the twin certainties of subject matter and objects must be present. In particular, the purpose must be stated with sufficient clarity for a court to determine if it is still capable of being carried out or if the money has been misapplied.

(c) For an express *Quistclose* trust, the settlor-donor must intend to constitute the recipient as a trustee, and confer a power or duty on the recipient-trustee to apply the money exclusively in accordance with the stated purpose.

(d) For a resulting *Quistclose* trust to arise, the donor must have a lack of intention to part with the entire beneficial interest in the transferred money. The recipient must not have free disposal of the money (*Twinsectra* at [73]) and must be under a power or duty to apply the money exclusively in accordance with the stated purpose (*Twinsectra* at [74]).

15.28 On appeal, the Court of Appeal (*Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 ("*Aljunied-Hougang-Punggol East Town Council* (CA)")) rejected MND's plea using private law principles in this context. Sundaresh Menon CJ held that the entire relationship between MND and the town council arose from the Town Council Act and therefore this relationship could only be analysed by reference to the Town Council Act. The Chief Justice said (*Aljunied-Hougang-Punggol East Town Council* (CA) at [123]):

> [W]e do not think that it can fundamentally alter the very basis of the relationship from one founded in and regulated by statute to one in trust, agency or any other private law concept. It is not appropriate, on the facts of the present case, to add such private law overlays to the statutory relationship between the Minister and the Town Councils. Indeed, there is nothing at all in the TCA to suggest otherwise.

15.29 The Court of Appeal's decision illustrates the tricky interplay between statute and equitable principles. Evidently, in certain circumstances, it is not appropriate to overlay private law concepts onto statutory relationships (explored in H W Tang (above, para 15.24)). Since the Court of Appeal rejected the application of private law concepts in this context, it is also unclear as to the precedential effect of Quentin Loh J's observations on the *Quistclose* trust. No doubt this difficult topic will have to be reconsidered in a future decision, especially the issue of discovering the intention of the parties in the creation of the *Quistclose* trust (see J Penner, "Lord Millett's Analysis in *The Quistclose Trust: Critical Essays*" (Hart Publishing, 2004) at 41 and A See, "The *Quistclose* Trust in Singapore" (2014) 20(4) Trusts and Trustees 362. See also the High Court of Australia's recent judgment in

Korda v Australian Executor Trustees (SA) Ltd [2015] HCA 6 on certainty of intention to create a trust in a commercial context).