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Equity and trusts [2016]

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15. EQUITY AND TRUSTS

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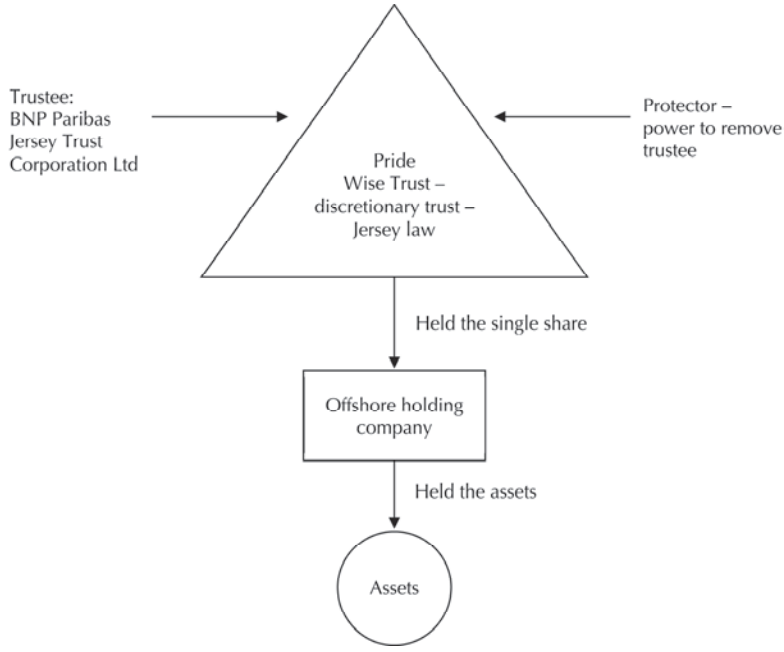
Express trusts

15.1 *Kuntjoro Wibawa v Harianty Wibawa*[1] is an interesting case which deals with the world of offshore trusts in relation to modern wealth management. The Wibawa family was a wealthy Indonesian family. The family patriarch died in 2000 and the matriarch, Harianty Wibawa, was appointed to be the sole executrix and trustee of the patriarch's Will. While the Will provided for the patriarch's property to be distributed to Harianty and their sons and daughters, the distribution never took place. Instead, Harianty settled a trust called the Pride Wise Trust. The Pride Wise Trust was set up because the family received letters from the Indonesian tax authorities inviting the family to attend at their offices in Jakarta to discuss their US-dollar denominated assets. The structure of the Pride Wise Trust is shown in the diagram below:



1 [2016] SGHC 109.

15.2 The Pride Wise Trust was a discretionary trust governed by Jersey law. It had a total asset value of US$33m and the potential beneficiaries included members of the Wibawa family. The plaintiff who was one of the sons, Kuntjoro Wibawa, was named the first protector and a potential beneficiary. Harianty's planning objectives for setting up the trust was to facilitate a family succession plan, asset protection, privacy, and avoiding of probate. Belinda Ang Saw Ean J explained the rationale of the trust succinctly as follows:[2]

> … As is the usual way with an offshore discretionary trust, the beneficiaries would not be regarded as having any direct legal rights over any particular portion of the trust fund; they only had a right to be considered when the trustees exercised their discretion. In such trusts, the paramount desire and expectation is for financial information to be kept private and confidential. The use of a discretionary trust in conjunction with an underlying company was designed to protect assets in a tax haven. This combination would interpose an additional layer of confidentiality in the chain of ownership of the trust fund …

15.3 Subsequently, Kuntjoro had a fallout with his mother, Harianty, and brought the present suit against her. Kuntjoro's primary complaint was that he had not received his inheritance and he sued Harianty for failing to apply for grant of probate and withholding his inheritance from his late father. After a careful review of the evidence, Ang J dismissed Kuntjoro's claim because her Honour found that Kuntjoro had consented to the setting up of the Pride Wise Trust. In fact, Ang J said that Kuntjoro was instrumental in setting up the Pride Wise Trust and he knowingly transferred assets belonging to the patriarch's estate to the offshore company in order to enable Harianty to set up the trust. The learned judge held that by virtue of the defence of concurrence, Kuntjoro was estopped from claiming against Harianty for settling the estate's assets into the Pride Wise Trust.

15.4 *The State-Owned Company Yugoimport SDPR v Westacre Investments Inc*[3] contains useful observations in relation to the requirements of an express trust. The following passage by Sundaresh Menon CJ explaining the certainty of intention appears destined to be regarded by lawyers and law students as the primary definition:[4]

> [C]ertainty of intention … requires clear evidence of an intention on the part of the alleged settlor to create a trust and to subject the trust property to trust obligations, as opposed to creating any other form of

2 *Kuntjoro Wibawa v Harianty Wibawa* [2016] SGHC 109 at [40].
3 [2016] 5 SLR 372.
4 *The State-Owned Company Yugoimport SDPR v Westacre Investments Inc* [2016] 5 SLR 372 at [55].

> binding legal relationship (for example, a contractual relationship). The intention of the alleged settlor must be to dispose of the property so that somebody else *to the exclusion of the disponent* acquires the beneficial interest in the property … [emphasis in original]

15.5 On the facts, the learned Chief Justice held that there was no trust because the agreement was entered on the basis of Yugoslav law rather than Singapore law. Yugoslav law had no concept of the trust as a legal mechanism and, hence, the parties could not have contemplated that they were creating a trust. Furthermore, the parties could not have intended to create a trust given they had no knowledge of Singapore law and did not seek Singapore legal advice prior to signing the agreement.

15.6 This case is also important because the Court of Appeal discussed the beneficiary's entitlement to sue third parties in relation to trust property. The judgment creditor was a company called Westacre Investments Inc ("Westacre"), and the judgment debtor was a state-owned company called The State-Owned Company Yugoimport SDPR ("Yugoimport"). Yugoimport wholly owned a subsidiary called Deuteron (Asia) Pte Ltd ("Deuteron"), which was a Singapore company. Deuteron had funds in the Singapore branch of a bank called DnB Nor Bank. Westacre obtained provisional garnishee orders against Yugoimport and DnB Nor Bank and sought to make these garnishee proceedings absolute. In order for Westacre to succeed in obtaining a garnishee order against Deuteron, Westacre must show there was a debt owing from Deuteron to Yugoimport. Westacre argued that Deuteron owed Yugoimport a debt because Deuteron held some funds on a bare trust for Yugoimport. It was argued that this gave rise to a debt. Looking at the various financial documents, Menon CJ found that Deuteron did hold the funds on a bare trust for Yugoimport. The learned Chief Justice also held that a bare trustee was "obliged to convey the moneys it holds on trust for the beneficiary as and when the beneficiary demands for them".[5] His Honour accepted the submission that a bare trustee owes the beneficiary a debt in equity once the beneficiary has demanded that the trust moneys be handed over to him. In other words, the bare trustee and beneficiary are simultaneously in a debtor–creditor relationship and a trustee–beneficiary relationship. On the facts, Deuteron owed an equitable debt to Yugoimport which could be garnished.

15.7 With regard to the garnishee order against the DnB Nor Bank, the Chief Justice refused to make the garnishee order absolute. His Honour reasoned that in garnishee proceedings, a pre-existing debt must be shown to exist and the judgment creditor merely intercepted

5 *The State-Owned Company Yugoimport SDPR v Westacre Investments Inc* [2016] 5 SLR 372 at [107].

the debt already owing to the judgment debtor. Here, DnB Nor Bank only owed a debt to the legal owner of the accounts, that is, Deuteron and not Yugoimport. The fact that a legal procedure known as the *Vandepitte*[6] procedure existed, whereby Yugoimport as a beneficiary could sue Deuteron and join DnB Nor Bank as a party to the action, did not have the effect of making DnB Nor Bank the debtor of Yugoimport. Therefore, there was no basis for the garnishee order.

Resulting trusts

15.8 The case law on resulting trusts this year is full of examples of family disputes over property. *Chia Hang Kiu v Chia Kwok Yeo*[7] involved a dispute between siblings over a bungalow in Jalan Kechubong ("bungalow"). The bungalow was initially registered in the names of the late father, the late mother, and their fourth son who is called Chia Kok Weng as tenants in common in equal shares. A series of transfers over the years resulted in the property now being registered in the names of Chia Kwok Yeo (the third son) and his wife, Ng Chui Guat ("Angie"). In the present suit, the estate of the late father was suing Angie and Yeo claiming that there was a resulting trust of the bungalow in favour of the estate. Consolidated with this suit was the action that Weng was taking against Angie and Yeo, claiming one-third beneficial interest in the bungalow. This claim arose from the fact that Weng had transferred his one-third share of the property to Yeo for a purported price of S$126,000. The parties did not dispute that this sum was not paid. With regard to the estate's claim, it was asserted that the late father's sole intention in transferring the property to Yeo was to prevent the bungalow from being seized by creditors since the late father's business was in financial difficulty. In fact, the late father was made bankrupt. After a careful review of the evidence, Valerie Thean JC found that Yeo had provided full consideration for the late father's share of the bungalow by taking up a fresh loan in his own name. Therefore, any claim based on resulting trust in this context failed. Similarly, there was no common intention to hold a share of the bungalow for the late father and, hence, the claim for common intention constructive trust also failed. With regard to Weng's claim, Thean JC found that Weng had intended an outright transfer to Yeo. Two factors persuaded the learned judicial commissioner to reach this conclusion. First, Weng applied for a Housing & Development Board ("HDB") flat and declared that he did not own any interest in private property. Second, Yeo's conduct in investing substantial amounts of money to rebuild the bungalow was consistent with Yeo being the absolute owner of the bungalow. An

6 *Vandepitte v Preferred Accident Insurance Corp of New York* [1933] AC 70.
7 [2016] SGHC 198.

interesting and unexplored issue in this case is whether the declaration to HDB that Weng did not own any private property might give rise to a plea of illegality in relation to a trust claim over the bungalow. No doubt, this is an issue which will arise in subsequent cases.

15.9 *Chin Kim Yon v Chin Kheng Hai*[8] was a dispute between a father and a son over ownership of a property. The father paid for the purchase of a Hillview condominium and registered it initially in the names of his daughter and son. Subsequently, the son refused to sell the property or transfer the property to his father. The son relied on the presumption of advancement in his favour to resist a resulting trust claim by his father. Tan Lee Meng SJ reviewed the case law and state and nature of the relationship to determine whether the presumption of advancement was relevant in the present context. In the end, Tan SJ held that a presumption of advancement applied in the present case. This decision is notable because the presumption of advancement was applied in a situation of a parent and an adult offspring.

15.10 *Chau Thi Thanh Lang v Lo Lai Heng*[9] is yet another case dealing with a family dispute. The dispute was essentially between Mdm Chau Thi Thanh Lang ("Mrs Leo"), who was the widow of Mr Leo Wey Jack ("Mr Leo"), and Mdm Lo Lai Heng ("Mdm Lo"), who was Mr Leo's mother. Mr Leo and Mdm Lo owned an HDB flat as joint tenants. When Mr Leo passed away, Mdm Lo registered herself as the sole owner of the flat. Mrs Leo filed a *caveat* and instituted the present proceedings against Mdm Lo. Mrs Leo asserted that Mr Leo had contributed 91.79% towards the purchase price of the flat and, therefore, there was a presumption of resulting trust in favour of Mr Leo's estate. In response, Mdm Lo resisted the claim on the ground that Mr Leo had been unhappy with Mrs Leo and intended to give the property to Mdm Lo instead. Chua Lee Ming JC (as his Honour then was) held that these allegations were unfounded and that a resulting trust over the property did arise in favour of the estate.

Constructive trusts

15.11 *Sumoi Paramesvaeri v Fleury, Jeffrey Gerard*[10] was a dispute between a widow and her daughter and son-in-law. The plaintiff (the widow) and defendants (the daughter and son-in-law) purchased a private property at Jansen Road. The plaintiff was registered as having 10% legal interest while the daughter and son-in-law had 90% interest.

8 [2016] SGHC 2.
9 [2016] SGHC 13.
10 [2016] 5 SLR 302.

Subsequently, the relationship between the parties broke down. The plaintiff claimed that she was entitled to either 10% share or a share proportional to her financial contribution to the purchase price, which exceeded 10%. In contrast, the defendants argued that they were entitled to all or part of the plaintiff's share by reason of a common intention constructive, proprietary estoppel, or resulting trust. Aedit Abdullah JC declared that the plaintiff held a 10% beneficial interest in the property and ordered a sale in lieu of partition. The learned judicial commissioner considered that the evidence did not support the plaintiff's claim for more than 10% since she could not demonstrate that she had contributed more than 10% of the purchase price. Similarly, the defendants' claims for common intention constructive trust, proprietary estoppel, or resulting trust were dismissed on lack of evidence. The significant portion of this decision is the discussion on the elements in relation to the common intention constructive trust. Abdullah JC observed:[11]

> … The incurring of detriment provides a reasoned basis for unconscionability and hence enforcement, but may arise later. Hence if detriment is not incurred, the constructive trust is effectively not enforceable even against the promisor. If detriment is incurred, the equitable interest in the property is given effect, even against third parties unless they are purchasers of the legal interest for value without notice.

15.12 The passage above, albeit only *dicta*, suggests that detriment (and reliance) remains relevant in analysing the common intention constructive trust in Singapore. In England, it is unclear whether the law has moved on from the requirement of detriment and reliance, at least in cases where the property is registered in joint names. Indeed, in *Jones v Kernott*,[12] Lord Walker and Baroness Hale of Richmond appeared to endorse that once common intention is established, the shares of the parties are determined by observing "that each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property". Thus, the inquiry under English law, at least in joint name cases, is not cast in terms of requiring detriment and reliance. However, there is also a fairly recent English Court of Appeal case dealing with a single name case where the claim failed because of the lack of detriment and reliance.[13] No doubt, this issue will require clarification from the Singapore Court of Appeal in the future.

11 *Sumoi Paramesvaeri v Fleury, Jeffrey Gerard* [2016] 5 SLR 302 at [62].
12 [2012] 1 AC 776 at [32].
13 See *Curran v Collins* [2015] EWCA Civ 404.

15.13 *Simgood Pte Ltd v MLC Barging Pte Ltd*[14] is a refreshingly short judgment by the Court of Appeal. In this case, Simgood Pte Ltd ("Simgood") had sued MLC Shipbuilding Sdn Bhd ("MLC Shipbuilding") for a breach of contract to construct and deliver a vessel. Apart from this contractual action, Simgood sued eight other defendants comprising, *inter alia*, affiliate companies, shareholders, and directors of MLC Shipbuilding and its affiliate companies for, *inter alia*, a remedial constructive trust. The claim on remedial constructive trust was dismissed because Simgood did not stipulate who was to be the constructive trustee or provide any legitimate reason or basis to justify the invocation of the doctrine of remedial constructive trust.

15.14 *Lai Hoon Woon v Lai Foong Sin*[15] involved a bitter family feud over the Will and property of the family patriarch when he passed away. This review will only focus on the trust aspects of the case. Kannan Ramesh JC (as his Honour then was) had to grapple with the tricky relationship between resulting trusts and the common intention constructive trusts. After reviewing the Singapore jurisprudence, Ramesh JC said that the steps may be summarised in four broad strokes. First, where the parties' financial contributions are different from their registered legal interests, there is a presumption of resulting trust that the parties' beneficial interests are held in proportion to their respective financial contributions. Second, the preceding analysis will be displaced if there is evidence of a common intention that the parties should hold the beneficial interests in the property in a proportion that differs from what is presumed. However, care must be taken not to impute a common intention on the parties. Third, where a purchase price resulting trust arises absent evidence of a common intention, the presumption of a resulting trust may be displaced if one party intends the financial contribution to be a gift to the other party. Finally, "the court must ascertain whether there is compelling evidence of a common intention, express or inferred, *subsequent* to the acquisition to alter the beneficial interest held at the time of the acquisition. If there is, the beneficial interest will be held in accordance with that subsequent … intention" [emphasis in original].[16] It is also significant that the learned judicial commissioner observed that while the Singapore jurisprudence appeared to have endorsed a selection of factors wider than just financial contributions, "financial contributions would lay down a clear if not the clearest marker of a common intention".[17] With these principles in mind, Ramesh JC reviewed the evidence and found that there was no evidence of a common intention in the case.

14 [2016] SGCA 46.
15 [2016] SGHC 113.
16 *Lai Hoon Woon v Lai Foong Sin* [2016] SGHC 113 at [101].
17 *Lai Hoon Woon v Lai Foong Sin* [2016] SGHC 113 at [114].

15.15 *Ong Bee Dee v Ong Bee Chew*[18] was yet another family dispute over the property of the deceased family patriarch. It was argued that there was a resulting or common intention constructive trust because: "(a) the [family patriarch] did as he saw fit with the family companies[;] (b) the [family patriarch] considered that the family companies [as belonging to him;] and (c) there was a common understanding and intention based on Chinese culture and tradition that 'it was not the [children]'s place to question [their father]'".[19] Thean JC did not accept that there was a trust over the shares. Instead, her Honour held that the disputed shares in the family companies were transferred over to one branch of the family as a gift.

Fiduciary relationships

15.16 *Singapore Swimming Club v Koh Sin Chong Freddie*[20] is a case predominantly on the law of unjust enrichment. The present review will only consider the discussion on fiduciary relationships. In this case, Mr Freddie Koh Sin Chong ("Mr Koh"), who was the former president of the Singapore Swimming Club ("Club"), was sued for defamation by four members of the immediately preceding management committee. A resolution was passed by the members of the Club to assume liability arising from any legal action brought against members of the management committee as a result of their discharge of duties and responsibilities to the Club. The High Court dismissed the defamation action against Mr Koh. However, the Court of Appeal reversed the High Court on 21 November 2011 and found Mr Koh liable for defamation. Furthermore, the Court of Appeal held that Mr Koh had acted with malice and, therefore, could not rely on the defence of qualified privilege. After the release of the Court of Appeal's judgment, the club paid S$1.2m to various parties in relation to Mr Koh's legal cost. On the facts, the Court of Appeal held that Mr Koh had acted in breach of his fiduciary duties to the Club by procuring the payment. The Court of Appeal reasoned that Mr Koh intended to further his own interest rather than the interest of the Club. Chao Hick Tin JA said that in view of the conflict of interests, Mr Koh should have asked the vice president of the Club to take control of this matter. Mr Koh could have called for a meeting of the management committee or an extraordinary general meeting to discuss the appropriate action to take after the Court of Appeal's judgment. Mr Koh's act of handing the invoices to the treasurer and financial controller was not something that he should have done.

18 [2017] 3 SLR 579.
19 *Ong Bee Dee v Ong Bee Chew* [2017] 3 SLR 579 at [88].
20 [2016] 3 SLR 845.

Thus, the Court of Appeal found that Mr Koh had acted in breach of fiduciary duty in this context.

15.17 *Dynasty Line Ltd v Sukamto Sia*[21] is the latest series of a long running litigation. The plaintiff, Dynasty Line Limited ("Dynasty"), a British Virgin Islands ("BVI") company, through its liquidators, sued Dynasty's only two directors, Mr Lee Howe Yong ("Lee") and Mr Sukamto Sia ("Sia"), for a breach of fiduciary duty. Dynasty had acquired a block of shares in China Development Corporation Limited and Dynasty, subsequently, pledged almost all of the shares to various financial institutions in four transactions as security for loan facilities granted to Sia and his business associates. The first pledge to Commerzbank (South East Asia) Limited ("Commerzbank") was executed by Lee and Sia while the later three pledges were executed solely by Sia. The first issue before the Court of Appeal was whether there was joint and several liability for Lee and Sia for the Commerzbank pledge. It should be noted that this matter is governed by BVI law and the Court of Appeal was, therefore, interpreting BVI law. Chao JA thought that joint liability, while not mandatory for every breach of fiduciary duty, is and remains the starting point though it is possible to depart from this general principle. On the facts, Chao JA rejected the argument that the principle of joint liability should be departed from in the present case for several reasons. First, the Commerzbank pledge was signed by both Lee and Sia. It is axiomatic that there is joint liability for parties who jointly sign a legal document. Second, it was not demonstrated to the Court of Appeal that there is any principle under BVI law that the "conceiver" of the breach should be held to be more culpable. Third, Lee had received some benefit as a result of the pledge. The Court of Appeal held that Lee was accorded subtle benefits by doing Sia's bidding. Finally, there was no reason to place liability solely on the absconding director. Chao JA asked rhetorically, "why should the burden of pursuing an absconding director be placed on the victim when the culpable co-director, who had the means of preventing the wrong occurring, went along in participating in the wrongdoing?"[22] This case is also important because it dealt with the issue of causation and valuation of the shares in awarding equitable compensation. The parties in this case appeared to have accepted that causation was applicable in the context of a claim for equitable compensation for breach of fiduciary duty. Dynasty argued that the date of valuation should be the date on which the shares would have been sold had there been no breach of fiduciary duty, that is, the date of the pledge, 23 April 1996. On the facts, the Court of Appeal found that a

21 [2016] 5 SLR 505.
22 *Dynasty Line Ltd v Sukamto Sia* [2016] 5 SLR 505 at [40].

more appropriate date for valuation would be April 2001. Significantly, Chao JA held that:[23]

> The relevant date is that on which the shares *would* have been sold had there been no breach of fiduciary duty. In undertaking this exercise, the court need not 'stop the clock' if it has evidence to justify an inference as to what *would* have been done. In coming to such inferences, the court must have in mind the principle that the principal is fundamentally entitled to a fiduciary's performance of his duties. In that sense, the court may disregard what *would* have been done if it amounts to another breach of fiduciary duty and instead put the principal back in a position before the breach occurred. [emphasis in original]

15.18 The topic of causation for equitable compensation for a breach of fiduciary duty continues to be a vexed one.[24] *Beyonics Technology Ltd v Goh Chan Peng*[25] is the latest instalment to the debate. Hoo Sheau Peng JC reviewed the various approaches to causation and used the following approach in relation to a breach of a core duty of a well-established category of a fiduciary relationship. Her Honour thought that once the principal adduces some evidence to connect the breach to the loss, the evidential burden on causation will shift to the breaching fiduciary. Hoo JC observed that:[26]

> [W]here there is a culpable breach of a core duty of a well-established category of fiduciary relationship, the burden-shifting function of the *Brickenden* rule is sensible in that it does not hold the fiduciary liable for all losses linked in some way to his breach (as would occur if the fiduciary was not afforded the chance of exonerating himself from liability), but nonetheless deters breaches of core fiduciary duties …

15.19 With respect, the current Singapore authorities on causation in relation to equitable compensation which are all at the High Court level appear to be over-refined and difficult to apply. One wonders whether it is possible or desirable to classify breaches of fiduciary duties into different categories and then to apply different rules of causation to different kinds of breaches. Central to the Singapore High Court's approach is the assumption that equitable compensation for breach of fiduciary duties is meant to serve a deterrent function which justifies a different rule of causation. The present reviewer suggests that this is not an accurate view of equitable compensation. Equitable compensation is

23 *Dynasty Line Ltd v Sukamto Sia* [2016] 5 SLR 505 at [45].

24 See Yip Man & Goh Yihan, "Navigating The Maze: Making Sense of Equitable Compensation and Account of Profits for Breach of Fiduciary Duty" (2016) 28 SAcLJ 884.

25 [2016] 4 SLR 472.

26 *Beyonics Technology Ltd v Goh Chan Peng* [2016] 4 SLR 472 at [137]; see also *Brickenden v London Loan & Savings Co of Canada* [1934] 3 DLR 465.

meant primarily to compensate the principal and not to deter fiduciary breaches. Other remedies such as an account of profits or a declaration of a constructive trust are more appropriate devices to further the deterrence function associated with a breach of fiduciary duty. No doubt, this issue will have to be clarified in the future by the Singapore Court of Appeal.

15.20 In *Max-Sun Trading Ltd v Tang Mun Kit*,[27] a claim for breach of fiduciary duty by creditors of an insolvent company was instituted against the directors of the insolvent company. Judith Prakash JA made short shrift of this claim and said that this claim was legally misconceived. As a matter of law, a director of a company did not owe any fiduciary duties to the company's creditors. Hence, this claim was dismissed.

Unconscionable receipt and dishonest assistance

15.21 *Heinrich Pte Ltd v Lau Kim Huat*[28] dealt, *inter alia*, with a claim for dishonest assistance of a breach of fiduciary duty. Abdullah JC confirmed that a claim for dishonest assistance could operate without property being involved – it was sufficient for the assistance to relate to a breach of fiduciary duties. On the facts, Abdullah JC did not find any evidence of dishonesty.

Accounts and equitable accounting

15.22 *Chng Weng Wah v Goh Bak Heng*[29] dealt with a trustee's duty to account. In this case, the appellant held certain shares on trust for the respondent. The respondent brought an action against the appellant to provide an account in respect of the shares or such moneys or funds representing the sale proceeds of those shares. The Court of Appeal observed that in the present context, the parties were concerned with the accounting of funds, specifically that of a general or common account. There are three stages inherent in a claim for a common account, namely:[30]

(a) whether the claimant has a right to an account;

(b) the taking of the account; and

(c) any consequential relief.

27 [2016] 5 SLR 815.
28 [2016] SGHC 116.
29 [2016] 2 SLR 464.
30 *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [22].

However, these three stages are not necessarily always discrete inquiries. Chao JA observed that in the course of proceedings based on the evidence which had been led, "the court [might] be able to draw an inference, on a balance of probabilities, that settled accounts [had] *already been provided* (*ie*, at some earlier point in time)" [emphasis in original].[31] Chao JA dismissed this claim on the basis of laches.[32] In this case, the length of delay was almost 13 years. On the facts, the Court of Appeal thought that the appellant and other potential witnesses might not be in a position to recall the sequence of events or to make sense of the documentary evidence available. Furthermore, this was not a case involving a straightforward claim for an ascertained property in the trustee's possession. Therefore, the Court of Appeal held that it was unconscionable for the respondent to seek an account from the appellant after such an inordinate delay, especially where both parties had conducted their affairs on a relatively informal basis with limited documentation.

15.23 *Su Emmanuel v Emmanuel Priya Ethel Anne*[33] ("*Su Emmanuel*") is certain to be an extremely influential decision in Singapore and, possibly, other parts of the Commonwealth. This case dealt with the tricky relationship between resulting trust, constructive trust, and equitable accounting. This is a rare decision in the Commonwealth where the doctrine of equitable accounting is fully fleshed out. In this case, a dispute arose between, Philip, Su, and Priya. Philip was married to Su, and Priya was his sister. The dispute was about the ownership of a flat in Braddell Hill. The flat was initially owned by Philip and Su in their joint names. They fell into financial difficulty and Priya decided to help the couple out. Specifically, she purchased 49% of the property from Philip. Therefore, the resultant ownership of the flat was Priya at 49%, Philip at 1%, and Su at 50%. All three of them took a fresh mortgage over the property and they undertook to repay the new loan. However, as matters turned out, Priya almost single handedly paid the mortgage instalments. Subsequently, Priya fell into financial difficulty and she brought the current proceedings for an order of sale and a determination of her beneficial interest in the property. Priya argued that there was a resulting trust in excess of 49% over the property in her favour due to her payment towards the mortgage. Menon CJ rejected this argument and observed forcefully that "no presumption of resulting trust can possibly arise in this case because it was not possible for Priya to have *purchased* more than 49% of the Property" [emphasis in

31 *Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [39].

32 *Cf* Lim Sing Yong, "Laches Unleashed: How (Not) to Bar A Claim for a Common Account; '*Chng Weng Wah v Goh Bak Heng*' [2016] 2 SLR 464" (2016) 28 SAcLJ 680.

33 [2016] 3 SLR 1222.

original].[34] The learned Chief Justice observed astutely that the fact that "Priya later contributed to the mortgage repayments could not alter the beneficial interest which she had obtained at the time of her purchase of a share in the Property".[35] Similarly, there could not be a common intention for the beneficial interest to deviate from the registered interest of the parties.

15.24 However, this did not mean that Priya did not have any recourse with regard to the moneys she had paid towards the mortgage. Priya could resort to the principles of equitable accounting in respect of these sums. This judgment is significant because it provides a lucid and insightful analysis of equitable accounting. Quoting a well-known textbook, Menon CJ accepted the following definition of equitable accounting between co-owners of land as "the process by which the financial burdens and benefits of land shared by co-owners are adjusted between them".[36] The Chief Justice also pointed out that equitable accounting "has been applied in a variety of contexts to take account of such things as mortgage repayments, improvements and repairs to the property and rents and profits derived".[37] In relation to contribution towards mortgage payments, the Chief Justice said succinctly:[38]

> [T]he extent to which each party is expected to contribute to mortgage repayments will largely depend on the common understanding or agreement between the parties at the time the mortgage is taken out … this will usually affect the beneficial interests of the parties. If there is a *material* departure from that common understanding, and one party repays more of the mortgage than was initially envisaged, then equitable accounting may be brought into play, unless it is shown that at the time the mortgage repayments were made, *the payor had the intention to benefit the other co-owners*. This follows from the fact that the basis underlying the remedy of equitable accounting is a notional request to contribute so as to restore the parties to what had been their common understanding at the time the mortgage was taken out; but if the evidence is that the payor intended to benefit the other co-owners, there would be no room for any such notional request for contribution to be inferred. In these circumstances, equity will not require a co-owner to contribute. [emphasis in original]

15.25 On the facts, the common understanding was that Priya and Philip would jointly pay off the mortgage instalments. Since there was a

34 *Su Emmanuel v Emmanuel Priya Ethel Anne* [2016] 3 SLR 1222 at [80].
35 *Su Emmanuel v Emmanuel Priya Ethel Anne* [2016] 3 SLR 1222 at [81].
36 *Su Emmanuel v Emmanuel Priya Ethel Anne* [2016] 3 SLR 1222 at [96].
37 *Su Emmanuel v Emmanuel Priya Ethel Anne* [2016] 3 SLR 1222 at [97].
38 *Su Emmanuel v Emmanuel Priya Ethel Anne* [2016] 3 SLR 1222 at [105].

deviation from this common understanding, Priya was entitled to call in aid the doctrine of equitable accounting.

15.26 The influence of *Su Emmanuel* was felt almost immediately. In *Foo Jee Boo v Foo Jee Seng*,[39] Debbie Ong JC applied the principles of equitable accounting and allowed a party to be reimbursed the sums paid in excess of his own agreed share of the obligations. Significantly, Ong JC held that the additional payment to the mortgage instalments by one party did not make the beneficial interests different from the registered interests.

15.27 *Foo Jee Boo v Foo Jhee Tuang*[40] is an example where the High Court had to delve into the minutiae of a duty to account in relation to a trust and estate claim. George Wei J had to painstakingly go through many expenses to determine whether these expenses were justified on the facts.

Quistclose trusts

15.28 In *CCM Industrial Pte Ltd v Chan Pui Yee*,[41] a *Quistclose* trust was alleged in the proceedings. Chua JC (as his Honour then was) said that for an express *Quistclose* trust, it must be sufficiently certain that the settlor-donor intends to constitute the recipient as a trustee and to confer a power or duty on the recipient-trustee to apply the money exclusively for the stated purpose. In the present case, there was no *Quistclose* trust because there was no certainty of subject matter as the funds were not segregated. Furthermore, there was no connection between the loan and the actual moneys disbursed for the stated purpose.

15.29 *Verona Capital Pty Ltd v Ramba Energy West Jambi Ltd*[42] also involved a failed *Quistclose* trust. Abdullah JC helpfully restated the principles when determining whether such a trust exist as follows:[43]

> (a) It was intended that the money was at the free disposal of the recipient[.]
>
> (b) A representation by the recipient that it intends to use the money for a particular purpose is insufficient[.]
>
> (c) The express terms are, or the objective position is, that it was the mutual intention of the parties, and the essence of their bargain,

39 [2016] SGHC 225.
40 [2016] SGHC 260.
41 [2016] SGHC 231.
42 [2016] SGHC 55.
43 *Verona Capital Pty Ltd v Ramba Energy West Jambi Ltd* [2016] SGHC 55 at [88].

> that the funds should not be part of the general assets of the recipient but used exclusively for identified payments, so that if the money cannot be so used, it is to be returned.

15.30 On the facts, Abdullah JC did not find the following features in the contractual agreement between the parties and, hence, no *Quistclose* trust arose.