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### Equity and trusts

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## 15. EQUITY AND TRUSTS

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### I. Express trust

15.1 *Jocelyn Rita d/o Lawrence Stanley v Tan Gark Chong*<sup>1</sup> (“*Jocelyn Rita v Tan Gark Chong*”) is an example of an attempt to set aside a trust deed in the wake of *BOM v BOK*.<sup>2</sup> This case takes place in the context of a husband and wife relationship. As the wife was not a Singaporean citizen at the time of purchase of two properties, the two properties were registered in the husband’s name. Years later, the husband signed a trust deed to state that he held them on trust for his wife, and that the rental income would go into their joint bank account. When the parties divorced, the husband tried to set aside the trust deed on the grounds of duress and illegality. Audrey Lim JC (as her Honour then was) refused to set the trust aside, distinguishing it from *BOM v BOK* as *BOM v BOK* was not a duress case, and continued to uphold the high threshold for setting aside trust deeds. On the facts, Lim JC found that there was no duress. The learned judge considered the following factors: (a) that the husband had the presence of mind to claim he registered an objection about the terms of the trust deed, but he still signed it anyway; (b) that the husband had refused to sign a previous version of the trust deed before but signed the version that was litigated in court; (c) that the husband had not taken any steps to set aside the trust deed after having signed it; and (d) that the husband would have been able to obtain independent legal advice if he wanted to as his son was a practising lawyer and he also had a close friendship with a senior lawyer at a distinguished law firm.<sup>3</sup> The trust deed was also not set aside on the ground of illegality. Lim JC held that the trust deed created a fresh trust at the time it was signed and did not evidence a trust created from the time of purchase of the properties. Although the wife was not a Singaporean at the time of purchase of the

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1 [2019] SGHC 125.

2 [2019] 1 SLR 349.

3 *Jocelyn Rita d/o Lawrence Stanley v Tan Gark Chong* [2019] SGHC 125 at [19]–[24].

properties, by the time the trust deed was signed, the wife had become a Singaporean citizen.<sup>4</sup>

15.2 *Jocelyn Rita v Tan Gark Chong* also discusses the duties of an express trustee who holds land on trust for an absolute beneficiary. Under the trust deed (which was found to be valid and binding), the husband stated that he held the properties on trust for his wife and agreed that the rental income would go into their joint bank account. When the husband and wife divorced, the husband refused to let the trust property out, and the wife wished to compel her ex-husband to rent out the property for rental income. Lim JC held that an express trustee who holds land on trust for an absolute beneficiary owed a duty at general law to let the trust property out to derive income for the beneficiary. Such a duty arises even if the trust deed does not provide for such a duty, unless the facts and circumstances otherwise indicate that the parties intended the trustee to be a mere repository for the trust property.<sup>5</sup> In doing so, the court upheld the High Court of Australia's decision<sup>6</sup> of *Byrnes v Kendle*,<sup>7</sup> which is also the position in English law.<sup>8</sup> Lim JC reasoned:<sup>9</sup>

The High Court of Australia held that the respondent was under a duty to let the property and collect rent. The rationale was that absent such a duty, the beneficiary would derive no benefit from the interest conferred upon her under the trust, and the trustee with the legal title was the only one who had the power to grant a lease of the property to another and thus derive income for the beneficiary (at [22]). The High Court held at [67] and [119] that '[a]s a general proposition, where the trust estate includes land, it is the duty of the trustee to render the land productive by leasing it, and this is so even if the trust instrument does not expressly so provide' and '[e]ven if there is no direction in the trust instrument that the trust property be invested'.

15.3 Thus, as a trustee, the husband had a duty to let out the property. Lim JC also held that even if it was not a general duty, such a duty arose on the facts.<sup>10</sup> The relevant factors to determine this duty were (a) the terms of the trust deed; (b) whether the parties had consistently treated the properties as either a matrimonial home or letting to generate income; and (c) the admission of the parties themselves.<sup>11</sup>

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4 *Jocelyn Rita d/o Lawrence Stanley v Tan Gark Chong* [2019] SGHC 125 at [36]–[46].

5 *Jocelyn Rita d/o Lawrence Stanley v Tan Gark Chong* [2019] SGHC 125 at [55].

6 *Jocelyn Rita d/o Lawrence Stanley v Tan Gark Chong* [2019] SGHC 125 at [52].

7 (2011) 243 CLR 253.

8 *Brudenell-Bruce v Moore* [2014] EWHC 3679 (Ch).

9 *Jocelyn Rita d/o Lawrence Stanley v Tan Gark Chong* [2019] SGHC 125 at [52].

10 *Jocelyn Rita d/o Lawrence Stanley v Tan Gark Chong* [2019] SGHC 125 at [56].

11 *Jocelyn Rita d/o Lawrence Stanley v Tan Gark Chong* [2019] SGHC 125 at [56]–[57].

15.4 *Lilyana Alwi v John Arifin*<sup>12</sup> is a significant case in relation to joint bank accounts and trust. This involved a dispute between Lilyana Alwi, who was the plaintiff, and her eldest son, the defendant, over moneys held in a joint bank account in both their names. The plaintiff alleged that there was an oral agreement between her and the son constituting an express trust in favour of the plaintiff over a Citibank joint bank account. Her case was that the son had acted in breach of trust and/or fiduciary duty in relation to six disputed payments and an alleged unaccounted sum of the money. In analysing the claim, Woo Bih Li J affirmed the requirement that the three certainties must be present for the creation of an express trust – (a) certainty of intention; (b) certainty of subject matter; and (c) certainty of the objects of the trust.<sup>13</sup> On the facts, the plaintiff was unable to prove the existence of the alleged oral agreement on a balance of probabilities. A particularly damaging piece of evidence was that that during cross examination, the plaintiff did not understand the concept of a trustee. Furthermore, the fact that the defendant was managing the joint account did not necessarily mean there was an express trust as the defendant's e-mails did not demonstrate any legally enforceable duties of a trustee, an important requirement of an express trust according to *Snell's Equity*.<sup>14</sup> Woo J described the e-mail exchanges as follows:<sup>15</sup>

The available evidence suggested that dealings between the defendant on one hand and the plaintiff and Mr Arifin on the other were often conducted informally. The defendant incurred expenses on behalf of the plaintiff and Mr Arifin and allowed Mr Arifin to draw on his overdraft facility over the years, all without any written agreement or promise of being paid back.

15.5 Instead, Woo J suggested in passing that their legal relationship could have been one of agency (which was not pleaded). As the express trust was not established, the plaintiff's claim against the defendant for breach of fiduciary duties failed. Nevertheless, Woo J found that even if the express trust had been made out, the son did not breach his fiduciary duties towards the plaintiff as the plaintiff had authorised the disputed payments in question.

15.6 Woo J's holding that there was no express trust between mother and son because their affairs were often conducted informally is potentially significant in the context of familial relationships. This holding demonstrates that the court may not be willing to find an express trust relationship in these familial relationships and impose onerous fiduciary obligations on the parties. However, the unanswered question

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12 [2019] SGHC 113.

13 *Lilyana Alwi v John Arifin* [2019] SGHC 113 at [60].

14 John McGhee, *Snell's Equity* (Sweet & Maxwell, 33rd Ed, 2015) at para 22-013.

15 *Lilyana Alwi v John Arifin* [2019] SGHC 113 at [25].

here is that if the son was not an express trustee for the plaintiff, how does one characterise his relationship *vis-à-vis* his mother in relation to the joint bank account? A possible unexplored characterisation is that the son was a bare trustee over the bank account. Hence, the son's duties were limited only to not making unauthorised withdrawals and a duty to transfer the money to the mother when demanded.<sup>16</sup> Woo J's passing observation about the son being an agent also needs some unpacking. Usually, an agent would owe his or her principal fiduciary obligations. Perhaps, Woo J meant that the son was his mother's agent in a "loose sense" without necessarily owing her the gamut of fiduciary duties associated with a more formal agency relationship. Such an interpretation is supported by the well-known case of *Kennedy v De Trafford*,<sup>17</sup> where Lord Herschell said:<sup>18</sup>

No word is more commonly and constantly abused than the word 'agent'. A person may be spoken of as an 'agent', and no doubt in the proper sense of the word may properly be said to be an 'agent', although when it is attempted to suggest that he is an agent under such circumstances as create the legal obligations attaching to agency that use of the word is only misleading.

## II. Resulting trust

15.7 *Lilyana Alwi v John Arifin*<sup>19</sup> also considered the issue of a resulting trust over a joint bank account between the mother and son. The disputed funds in the joint account were proceeds from a sale of a property in Simprug, Indonesia ("the Simprug Property") owned by the plaintiff's late husband. The plaintiff was allowed to withdraw half of the moneys by virtue of her joint ownership and the issue was whether the plaintiff was also entitled to the other half of the moneys in the account. Relying on *Lim Chen Yeow Kelvin v Goh Chin Peng*,<sup>20</sup> Woo J reasoned that if there was a clear intention on the part of the late husband to benefit the plaintiff when he sold the Simprug Property and paid the money into the joint account, the presumption of resulting trust in favour of the late husband would not arise. However, if the court was unable to discern a clear intention on the part of the plaintiff's husband, then the presumption of resulting trust or the presumption of advancement would be applied. In ascertaining the husband's intentions, little weight was placed on his wills, which purportedly bequeathed the Simprug Property to the plaintiff as there was serious concerns with the reliability of the wills. Nevertheless, the savvy businessman husband's act of causing the proceeds from the

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16 See *Tan Yok Koon v Tan Choo Suan* [2017] 1 SLR 654 on duties of a bare trustee.

17 [1897] AC 180.

18 *Kennedy v De Trafford* [1897] AC 180 at 188.

19 See para 15.4 above.

20 [2008] 4 SLR(R) 783.

sale to be paid into the joint account instead of one of his personal bank accounts, combined with clear evidence suggesting that the defendant himself never believed that he had any beneficial interest in the moneys despite being a joint owner of the account, led the court to conclude that on a balance of probabilities, the husband had intended the moneys to solely benefit his wife and not the defendant. As the husband's intentions were clear, the court did not need to consider both presumptions of resulting trust and advancement.

15.8 Even if the husband's intentions were not clear, the presumption of advancement *vis-à-vis* the plaintiff would displace the presumption of resulting trust in favour of the husband. The only evidence which could be used to rebut the presumption of advancement towards the plaintiff was her authorisation of payments from the joint accounts to repay her husband's loans. However, relying on the Privy Council case of *Commissioner of Stamp Duties v Byrnes*,<sup>21</sup> the court held that the recipient of a property consenting to the use of the property or fruit of the property according to the donor's wishes does not necessarily rebut the presumption of advancement. In addition, contrary to *Low Gim Siah v Low Geok Khim*,<sup>22</sup> where the presumption of advancement was rebutted as the joint account was completely controlled by the father, the plaintiff in the present case could use the moneys in the joint account as she deemed fit. Thus, the presumption of advancement towards the plaintiff was not rebutted. The court also considered the presumption of advancement towards the son but this was rebutted by virtue of the late husband's clear intention to not benefit the defendant.

### III. Constructive trust

15.9 *Geok Hong Co Pte Ltd v Koh Ai Gek*<sup>23</sup> ("*Geok Hong Co Pte Ltd*") is destined to be an influential case on the common intention constructive trust in Singapore. This was a case where the claim for both the express and inferred common intention constructive trust failed. A dispute arose between a family-owned company, Geok Hong Company Pte Ltd ("the Company") and the family of the managing patriarch's late third son, Tan Tiong Luu ("TTL") over a property at 17 Glasgow Road ("the Property"). The property was owned by the Company at all material times since 1975 but TTL bequeathed the Property to his wife in his will. The issue in court was whether the Property was vested in equity in TTL's estate. Prior to his passing, TTL made a statutory declaration, alleging

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21 [1911] 1 AC 386.

22 [2007] 1 SLR(R) 795.

23 [2019] 1 SLR 908.

that the patriarch Tan Geok Chuan (“TGC”) orally represented to TTL at the time of purchase that the Company was holding the Property on trust for TTL. The trust was to ensure that TTL’s wife would not get a share of the Property in the event of a divorce. Relying on the oral representation, the respondents, TTL’s family, claimed that a common intention constructive trust or, in the alternative, proprietary estoppel arose, conferring beneficial ownership of the Property onto TTL.

15.10 However, the Court of Appeal, contrary to the High Court, found that the existence of the oral representation could not be proven on a balance of probabilities as there was, *inter alia*, a total absence of any documentary evidence of the oral representation, exacerbated by the fact that the only two persons (TTL and TGC) who could provide evidence on the oral representation had passed on at the time of trial. The Court of Appeal found it troubling that TTL did not, during his lifetime, inform any of his siblings or the Company about the oral representation or his alleged beneficial interest in the Property. In addition, the alleged aim of the trust arrangement to render the Property “divorce-proof” was inherently unattainable as TTL’s beneficial interest in the Property would still be treated as a matrimonial asset available for division. While Steven Chong JA acknowledged that parties could have been unaware of the implications flowing from the alleged trust arrangement, the legitimacy of the oral representation was nevertheless undermined. As the existence of the oral representation could not be proven, the claim based on *express* common intention constructive trust and proprietary estoppel did not succeed. For completeness, the Court of Appeal held that even if the existence of the oral representation was proven, TTL did not suffer any detriment. Adopting the reasoning in *Sledmore v Dalby*,<sup>24</sup> any equity that had arisen by virtue of the renovation works TTL and his family undertaken had been extinguished by living in the property rent-free for 40 years. Any loss of opportunity to make capital gains as a result of TTL’s withdrawal of the Housing and Development Board (“HDB”) flat application was also too speculative to constitute a detriment. Hence, the proprietary estoppel claim would fail in any event.

15.11 *Geok Hong Co Pte Ltd* is important because of Chong JA’s observations on the inferred common intention constructive trust. Chong JA said:<sup>25</sup>

... that an inferred common intention can arise from direct financial contributions towards the *purchase price of the property* by the person claiming a beneficial interest. Although this court did state that an inferred common intention may arise from other forms of conduct in ‘exceptional situations’,

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24 [1996] 72 P & CR 196.

25 *Geok Hong Co Pte Ltd v Koh Ai Gek* [2019] 1 SLR 908 at [80]–[81].

the focus remains very much on the financial contributions of the parties ... Therefore, in finding an inferred common intention, the emphasis should be directed at the direct financial contribution to the purchase price by the person claiming the beneficial interest. [emphasis in original]

15.12 These observations are critical because it potentially represents an extremely restrictive approach to the inferred common intention constructive trust in Singapore. In fact, Chong JA's approach is reminiscent of Lord Bridge's restrictive approach to the inferred common intention in *Lloyds Bank plc v Rosset*<sup>26</sup> which focuses mainly on financial contribution.<sup>27</sup> Significantly, the Court of Appeal did not refer to Lady Hale's wider approach in *Stack v Dowden*<sup>28</sup> which allows for the consideration of a variety of factors in establishing the common intention. If this reading of *Geok Hong Co Pte Ltd*<sup>29</sup> is correct, then this means that the inferred common intention may only succeed in Singapore if the plaintiff is able to show some form of financial contribution.

15.13 In *Geok Hong Co Pte Ltd*, an inferred common intention constructive trust did not arise as (a) TTL did not make any direct financial contributions towards the purchase price and the renovation works on the property had not been undertaken at or around the same time of acquisition of the property such that the renovation costs were regarded as part of the total "acquisition cost" of the property; and (b) the respondent's argument that the renovation works done to the Property allowed TTL to acquire a beneficial interest in property was rejected as this argument was based on an incorrect interpretation of *Chan Yuen Lan v See Fong Mun*<sup>30</sup> ("*Chan Yuen Lan*"). The Court of Appeal clarified the proposition the respondents relied on in *Chan Yuen Lan* to mean the following: renovation works on a property may alter a party's share of an existing beneficial interest to the property, but not used as a means to acquire a beneficial interest.

15.14 The Court of Appeal also had interesting observations in relation to the ambulatory common intention constructive trust, that is, a situation where "parties' common intention to share in the beneficial interest of a property changes over time". According to Chong JA: "Compelling evidence is needed before one can infer that, subsequent to the acquisition of the home, the parties intended a change in the shares

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26 [1991] 1 AC 107.

27 *Lloyds Bank plc v Rosset* [1991] 1 AC 107 at 133.

28 [2007] AC 432 at [69].

29 See para 15.9 above.

30 [2014] 3 SLR 1048 at [114], citing *Stack v Dowden* [2007] 2 AC 432 at [139].



in which the beneficial ownership is held.”<sup>31</sup> Chong JA accepted that one way such a change of intention may be inferred is where an extension or substantial improvement to the property is undertaken. Chong JA said:<sup>32</sup>

[W]e acknowledge that there may be situations where such renovation works are undertaken in reliance on an express discussion between the parties that they are to share in the beneficial interest in the property. In such cases, it might be open to argue that a new common intention constructive trust has crystallised upon that express discussion or, in the alternative, that proprietary estoppel has been made out. However, the key is that there must be a common intention for parties to hold beneficial interest in the property in a proportion which differs from their legal interest in the property. One party undertaking renovation works to the property would not, without more, indicate that there was such a common intention.

15.15 On the present facts, Chong JA held that the evidence showed that the renovation works were made for the enjoyment of TTL and his family who were living there and not pursuant to a common intention that TTL would have a share in the Property. Lastly, the doctrine of laches would have, in any event, barred the respondent’s claims as TTL had no reasonable explanation for the 40 years delay before asserting an alleged beneficial interest in the property. Coupled with the fact that the oral representation was only privy to TGC and TTL who could not be cross examined due to their passing, the circumstances were extremely prejudicial to the Company in proving their case.

15.16 In *Estate of Yang Chun v Yang Chia-Yin*,<sup>33</sup> the plaintiff was the representative of the estate of a deceased lady, Sun, while the defendant was the nephew of Sun’s husband (“the husband”). It is important to note that the defendant was the executor and beneficiary of the husband’s will. This dispute arose from the defendant’s management of the couple’s joint bank account. When Sun’s husband died, the defendant withdrew \$515,000 from the couple’s joint accounts and paid it into the defendant’s personal account without telling the banks. It was not disputed that Sun’s consent was not obtained with respect to the withdrawals. Accordingly, the issue centred on who was the beneficial owner of the moneys in the joint account after the husband’s death. The plaintiff claimed that the moneys in the joint accounts were beneficially owned by Sun upon her husband’s passing by reason of survivorship. The plaintiff also argued that since the defendant was aware the moneys in the joint account were beneficially owned by Sun, the defendant was a constructive trustee of the sums withdrawn. On the other hand, the defendant argued that Sun

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31 *Geok Hong Co Pte Ltd v Koh Ai Gek* [2019] 1 SLR 908 at [138], citing *Stack v Dowden* [2007] 2 AC 432.

32 *Geok Hong Co Pte Ltd v Koh Ai Gek* [2019] 1 SLR 908 at [85].

33 [2019] 5 SLR 593.

held the moneys in the joint account on a resulting trust for her husband's estate and the defendant was entitled to deal with the moneys due to the fact that the defendant was the executor of the husband's will.

15.17 Ang Cheng Hock JC (as his Honour then was), in an incisive and comprehensive judgment, gave an extensive overview of when a resulting trust would arise, the operation of the presumption of advancement as well as the factors influencing the strength of the presumptions.<sup>34</sup> On the facts, Sun only made a one-off contribution as opposed to her husband's consistent contributions to the joint account. The presumption of resulting trust thus arose due to the unequal contributions. However, the presumption of resulting trust was displaced by the presumption of advancement towards Sun. In this case, the presumption of advancement was strengthened due to (a) the "traditional nature" of their marriage, in the sense that Sun was a homemaker and was financially dependent on her husband, which was one of the original rationales behind the spousal presumption; (b) the couple's close and caring relationship; and (c) existence of terms in the bank documents declaring the operation of survivorship in favour of Sun upon the husband's death. Ang JC reiterated that while these factors were not conclusive of the operation of survivorship, it imposed a higher burden on the defendant to rebut the presumption of advancement, which the defendant had failed to discharge in the present case. Furthermore, Sun was not as disconnected with the management of the joint accounts as the defendants claimed; thus, the husband's level of control over the joint accounts did not weaken the presumption of advancement. Accordingly, the presumption of advancement was applicable and, on the basis of survivorship, Sun was the beneficial owner of the joint account.

15.18 Ang JC framed the remedy against the defendant as follows:<sup>35</sup>

89 ... Where there is conduct which amounts to a legal or an equitable wrong, an institutional constructive trust may arise by operation of law. Although there is no fixed test to determine when such a trust arises, 'the fundamental question is whether the conscience of the recipient is bound in such a way as to justify equity in imposing a trust on him' (*per* Megarry VC in *In Re Montagu's Settlement Trusts* *Duke of Manchester v National Westminster Bank Ltd* [1987] Ch 264 at 277. The requirement that the defendant's conscience must be affected means that he cannot be held to be a trustee if he is ignorant of the facts that would have affected his conscience (*per* Lord Browne-Wilkinson in *Westdeutsche* ([55] *supra*) at 705).

90 Discounting the certainty of intention, the other certainties required of private trusts also apply to constructive trusts. Accordingly, the trustee or

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34 *Estate of Yang Chun v Yang Chia Yin* [2019] 5 SLR 593 at [57] and [61].

35 *Estate of Yang Chun v Yang Chia Yin* [2019] 5 SLR 593 at [89]–[90].

beneficiary must be defined with sufficient certainty (John McGhee (gen ed), *Snell's Equity* (Sweet & Maxwell, 33rd Ed, 2015) ('Snell's Equity') at [26-004]) and there must be identifiable trust property. However, the scope of the constructive trustee's duties is narrower than that of a trustee who has given an express undertaking to hold the property on trust. He is not subject to the irreducible core of fiduciary obligations, to perform the trust honestly and in good faith for the benefit of the beneficiary, owed by express trustees. This is because the trust is created by law and it would be unreasonable to impose such obligations on constructive trustees. Indeed, a constructive trust is 'very often a bare trust and, as such, only requires the trustee to convey the trust property when called upon to do so' (*Tan Yok Koon v Tan Choo Suan* [2017] 1 SLR 654 ('*Tan Yok Koon*') at [190]).

15.19 As the defendant knew the moneys in the joint account belonged to Sun, his conduct of withdrawing the sums without Sun's authorisation or consent was unconscionable, making him a constructive trustee of the sums withdrawn. This knowledge was inferred from the defendant's rushed withdrawal of moneys from the joint account after the husband's death and his election to not disclose his death to the banks in fear of the banks prohibiting the defendant from making the withdrawals. The defendant was further found to be in breach of his duties as a constructive trustee for concealing the details of the joint accounts from Sun's extended family. Ang JC held that the defendant had to account for the amount of \$515,000 withdrawn from the joint accounts.

15.20 The learned judge held that the defendant was a constructive trustee, in a proprietary sense, over the unauthorised withdrawals. The learned judge was no doubt bound by the way the plaintiff pleaded and argued his case. The difficulty with the way the claim was framed by the plaintiff is that there is technically no equitable element in this claim. According to the plaintiff's case, when Sun's husband died, the moneys in the bank account would devolve to her by reason of survivorship. In other words, the moneys belonged to her absolutely in law as a full beneficial owner. In such circumstances, it is meaningless to analyse Sun's interest in the joint account as separate legal and equitable titles. As Lord Browne-Wilkinson said in *Westdeutsche Landesbank Girozentrale v Islington London Borough Council*:<sup>36</sup>

A person solely entitled to the full beneficial ownership of money or property, both at law and in equity, does not enjoy an equitable interest in that property. The legal title carries with it all rights. Unless and until there is a separation of the legal and equitable estates, there is no separate equitable title.

15.21 A more conventional method of framing the claim is to say (a) the claim against the defendant is a vindication of Sun's proprietary

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36 [1996] AC 669 at 706.

right;<sup>37</sup> or (b) the claim against the defendant is in unjust enrichment.<sup>38</sup> Both claims would yield a personal remedy and not a proprietary remedy in constructive trust.<sup>39</sup>

#### IV. Tracing

15.22 *Estate of Yang Chun v Yang Chia-Yin*<sup>40</sup> also raised a tracing point. The defendant claimed that he should not be liable to account for the portion of the withdrawn sum expended on the care and maintenance of Sun. This was rejected as the way in which the defendant subsequently expended the sums is irrelevant in establishing his liability to account. Even if it was relevant, the expenses incurred on Sun came from the defendant's personal account, which was a mixture of the defendant's own moneys and the moneys withdrawn from the joint accounts. It was impossible for the defendant to establish that the sums incurred were moneys withdrawn from the joint accounts. Furthermore, the presumption is that any expenditure from a mixed fund is first regarded as the trustee's personal money, applying *Re Hallett's Estate*.<sup>41</sup> Hence, Ang JC held that the defendant cannot assert that Sun's expenses were paid with the moneys the defendant withdrew from the joint accounts.

#### V. Equitable lien

15.23 In *Philip Antony Jeyaratnam v Kulandaivelu Malayaperumal*,<sup>42</sup> the plaintiffs were the executors of a paediatrician's ("Dr Paul") estate. The defendant was a construction worker who befriended Dr Paul before moving in with her in mid-2009. In the main suit, the court found that the defendant had exerted influence over Dr Paul, at a time when she

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37 See Graham Virgo, *The Principles of the Law of Restitution* (Oxford: Oxford University Press, 3rd Ed, 2015) at pp 11–17. See also, *Armstrong DLW GmbH v Winnington Networks Ltd* [2013] Ch 156 at [84] to [94], citing *Trustee of the Property of FC Jones & Sons v Jones* [1997] 1 Ch 159 (see especially 164G and 168D–168G). It is not clear whether vindication of proprietary rights is part of Singapore law. See *Alwie Handoyo v Tjong Very Sumito* [2013] 4 SLR 308 at [116]–[121].

38 See, eg, *Armstrong DLW GmbH v Winnington Networks Ltd* [2013] Ch 156 at [95] to [98].

39 See, eg, *Trustee of the Property of FC Jones & Sons v Jones* [1997] 1 Ch 159 at 168D and 170F (where the court held that the common law remedy for the plaintiff was in debt, not a proprietary remedy). See also *Armstrong DLW GmbH v Winnington Networks Ltd* [2013] Ch 156 at [62]–[63], where the court held that for both a proprietary restitutionary claim and an unjust enrichment claim, the remedy is still a personal remedy.

40 See para 15.19 above.

41 [1880] 13 Ch D 696.

42 [2020] 3 SLR 738.

had no mental capacity, into making cash to the defendant gifts totalling to \$2m. The defendant subsequently used \$329,812.55 of the \$2m to purchase an HDB flat, held with his wife as joint tenant. The plaintiffs thus sought to establish either an institutional or remedial constructive trust over the interest in the HDB represented by \$329,812.55. The difficulty with this claim is that, no constructive trust can arise over the interest in the HDB in favour of someone who is ineligible to own an HDB flat. This is because s 51(10) of the Housing and Development Act<sup>43</sup> (“HDA”) prohibits a party who is ineligible to own an HDB property from having any interest in the HDB by way of a resulting or constructive trust. It was undisputed that the plaintiffs were ineligible persons under the HDA. Instead of a constructive trust, Debbie Ong J declared an equitable lien over the HDB flat for \$329,812.55. Ong J reasoned that an equitable lien was not precluded by s 51(10) of the HDA as the interest does not take the form of a resulting or constructive trust. However, s 51(6) of the HDA provides that an HDB flat cannot be attached in execution of an order (for example, an order of sale in this case) save for two exceptions. Ong J held that an equitable lien does not necessarily result in an order for sale and is thus consistent with the policy behind s 51(6) of the HDA of preserving the home if an order for sale is not immediately made. On the facts, the court refused to order an immediate sale as the defendant’s wife was also a joint owner of the HDB flat. The resultant effect of Ong J’s judgment would mean that when the defendant and his wife decide to sell the HDB flat, they must first satisfy the equitable lien in favour of the plaintiffs.

## VI. Fiduciary duties

15.24 *Aljunied-Hougang Town Council v Lim Swee Lian Sylvia*<sup>44</sup> is a wide-ranging case on fiduciary duties and remedies. Kannan Ramesh J allowed, in part, claims made by Aljunied-Hougang Town Council (“AHTC”) and Pasir Ris-Punggol Town Council (“PRPTC”) against the town councillors and senior employees of AHTC, for breaches of fiduciary duties and improper payments.

### A. *Whether fiduciary duties were owed to Aljunied-Hougang Town Council*

15.25 In a comprehensive judgment, Kannan Ramesh J held that the first to fifth defendants owed fiduciary duties to AHTC by virtue of being town councillors. Ramesh J held that private law obligations (such as fiduciary duties) can arise if the legal relationship, despite being created

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<sup>43</sup> Cap 129, 2004 Ed.

<sup>44</sup> [2019] SGHC 241.

by statute and involving the exercise of statutory powers, had a legal character independent of public law. In this case, s 5 of the Town Councils Act<sup>45</sup> (“TCA”) provides that the Town Council is to be a body corporate. Accordingly, the relationship between the Town Council and its town councillors has a legal character independent of public law and well known to private law – that of a body corporate and its officers. Hence, private law obligations such as fiduciary duties arose in this case.<sup>46</sup> In short, town councillors are subject to both (a) the standards of conduct imposed by public law; and (b) fiduciary duties imposed by private law, to manage the estate and serve the interests of their Town Council with a single-minded loyalty and for proper purposes.<sup>47</sup>

**B. Whether claims of breach of fiduciary duties were time barred**

15.26 Kannan Ramesh J dealt with the trust related exception under s 22(1) of the Limitations Act since there was a claim which fell outside the six-year limitation period. The court adopted the approach in *Yong Kheng Leong v Panweld Trading Pte Ltd*,<sup>48</sup> that s 22(1)(a) of the Limitation Act<sup>49</sup> – which disapplied the limitation period – is relevant only to a Class 1 constructive trustee but not a Class 2 constructive trustee. Company directors are treated as Class 1 constructive trustees as the directors are in possession of the company’s assets from the outset. Hence, any claim against directors for fraudulent misapplication of assets will be subject to no limitation by virtue of s 22(1)(a) of the Limitation Act, even if the director did not misappropriate to himself.<sup>50</sup> Applying this analysis to the facts, the claims against the first, second and sixth defendants were not time barred. Against the seventh and eighth defendants, the claim was time barred because they were not Class 1 constructive trustees. Their liability in relation was more properly characterised as dishonest assistance and knowing receipt. Hence, they were Class 2 constructive trustees and s 22(1) was not engaged.

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45 Cap 329A, 2000 Ed.

46 *Aljunied-Hougang Town Council v Lim Swee Lian Sylvia* [2019] SGHC 241 at [191]–[193].

47 *Aljunied-Hougang Town Council v Lim Swee Lian Sylvia* [2019] SGHC 241 at [216].  
48 [2013] 1 SLR 173.

49 Cap 163, 1996 Ed.

50 *Aljunied-Hougang Town Council v Lim Swee Lian Sylvia* [2019] SGHC 241 at [477]–[479].

### C. Remedies for breach for the breach of custodial fiduciary duties

15.27 Following the decisions of the House of Lords in *Target Holdings Ltd v Redferns*<sup>51</sup> (“*Target Holdings*”) and the UK Supreme Court in *AIB Group (UK) plc v Mark Redler & Co Solicitors*<sup>52</sup> (“*AIB*”), the same approach to equitable compensation ought to apply to the remedy for a breach of a fiduciary duty, whether or not this is preceded by the taking of a common account.<sup>53</sup> In other words, the legal principles of equitable compensation are no different whether the defendants were trustees (who are clearly custodial fiduciaries) or merely custodial fiduciaries in general.<sup>54</sup>

15.28 Ramesh J held that town councillors, akin to company directors, are custodial fiduciaries. This meant that they have custodial duties over their Town Council’s assets, and may be ordered to reconstitute those assets if they misapply them.<sup>55</sup> In the assessment of loss to determine equitable compensation, the court should not be concerned so much with the fact of the misapplication of the trust property and assess the matter through the lens of what it takes to reconstitute the trust assets, but rather what is the true or proper loss that was suffered. In the present case, all the disbursements under certain contracts could be said to have involved the misapplication of AHTC’s moneys. However, each and every cent disbursed under the impugned contracts was not necessarily a loss to AHTC as AHTC had received some services which the AHTC town councillors were obliged to procure in their capacity as fiduciaries. Hence, the proper loss flowing from the misapplication (if any) is *prima facie* the difference between the value of the trust property (or moneys) misapplied and the value of the net benefits actually obtained by the beneficiaries (AHTC, in this case). In other words, the High Court was clear in rejecting the default remedy of substitutive compensation in *Agricultural Land Management Ltd v Jackson (No 2)*,<sup>56</sup> which is independent of the actual loss sustained.<sup>57</sup>

15.29 The legal and evidential burden of proving AHTC’s loss fell upon the plaintiffs. However, equity will draw an adverse inference against

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51 [1996] 1 AC 421.

52 [2015] AC 1503.

53 *Aljunied-Hougang Town Council v Lim Swee Lian Sylvia* [2019] SGHC 241 at [563].

54 *Aljunied-Hougang Town Council v Lim Swee Lian Sylvia* [2019] SGHC 241 at [533].

55 *Aljunied-Hougang Town Council v Lim Swee Lian Sylvia* [2019] SGHC 241 at [536], [539] and [543].

56 (2014) 285 FLR 121.

57 *Aljunied-Hougang Town Council v Lim Swee Lian Sylvia* [2019] SGHC 241 at [563], [564], [566], [568] and [572].



the defaulting party if there is reason to believe that the transaction in question is dubious in nature, shifting the evidential burden to the defendants under certain situations. The plaintiffs must also prove that the defendants' breach was the but-for cause of their loss. The High Court's position in *Winsta Holding Pte Ltd v Sim Poh Ping*<sup>58</sup> (which follows the position in *Target Holdings* and *AIB*) that but-for causation must be proven for all breaches of fiduciary duties was preferred over (a) the *Brickenden v London Loan & Savings Co of Canada*<sup>59</sup> rule, which holds that causation is inapplicable in every such case; and (b) the middle ground sought by the *Then Khek Koon v Arjun Permanand Samtani*<sup>60</sup> approach (refined in *Beyonics Technology Ltd v Goh Chan Peng*),<sup>61</sup> which provided scenarios of breaches of fiduciary duties where but-for causation had to be proven, and those that did not require so.<sup>62</sup>

15.30 *MCH International Pte Ltd v YG Group Pte Ltd*<sup>63</sup> (“*MCH International v YG Group*”) involved a claim for the breach of a company director's fiduciary duties. One of these issues concerned equity's approach to “loss of a chance”, which is more often considered at common law (especially for contract and tort claims), than in equitable claims. The fact that the claim was pleaded as a “loss of chance” is somewhat surprising given that an account of profits is an already recognised remedy for a breach of fiduciary duty. It might be strategically more advantageous for a principal to claim for an account of profits for a breach of fiduciary duty instead of loss of a chance. Among other things, a party subject to a duty to account as a result of having engaged in misconduct may bear the burden in proving that the transactions he had carried out were within the scope of his duties and powers.<sup>64</sup> In the present case, a company director was alleged to have, *inter alia*, breached his fiduciary duties by not disclosing to his fellow company directors certain corporate opportunities that had been open to the company. The company argued that, as a result, it lost the chance to make a profit on those opportunities. After considering previous loss of a chance cases like *Asia Hotel Investments Ltd v Starwood Asia Pacific Management Pte Ltd*<sup>65</sup> (“*Asia Hotel v Starwood*”), Valerie Thean J framed the test for liability to provide loss of a chance as follows:<sup>66</sup>

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58 [2018] SGHC 239.

59 [1934] 3 DLR 465.

60 [2014] 1 SLR 245.

61 [2016] 4 SLR 472.

62 *Aljunied-Hougang Town Council v Lim Swee Lian Sylvia* [2019] SGHC 241 at [576], [579], [592] and [595]–[597].

63 [2019] SGHC 43.

64 *Cheong Soh Chin v Eng Chiet Shoong* [2019] 4 SLR 714 at [84], citing *Ong Jane Rebecca v Lim Lie Hoa* [2005] SGCA 4 at [55].

65 [2005] 1 SLR(R) 661.

66 *MCH International Pte Ltd v YG Group Pte Ltd* [2019] SGHC 43 at [219].



- (a) The defendant's breach of duties caused the plaintiff to lose a chance to enter into the lost opportunity.
- (b) The plaintiff can prove on the balance of probabilities that it would have availed itself of the chance if the defendant had not breached its duties.
- (c) The chance lost was a real and substantial chance (as opposed to speculative).

15.31 These criteria were met on the facts.<sup>67</sup> In relation to quantum of loss, Thean J provided valuable clarification on the method used to calculate the assessment of loss of chance. Citing *Quality Assurance Management Asia Pte Ltd v Zhang Qing*<sup>68</sup> ("QAM v Zhang Qing"), the court took (a) the probability of the event of the lost chance occurring; and multiplied it by (b) the value of the lost chance, in order to ascertain the value of the loss.<sup>69</sup> This was consistent with the approach taken in the assessment of damages decision in *Asia Hotel v Starwood*.<sup>70</sup> Thean J also noted that the in assessment of lost chances, in view of the various contingencies that would require estimates, absolute precision is not possible and certainty is impossible of attainment.<sup>71</sup> This case was subsequently appealed to the Court of Appeal.<sup>72</sup> The Court of Appeal did not disturb the High Court's approach to loss of a chance in equitable claims, but noted that the High Court was "not laying down a general approach applicable to all cases involving loss of a chance in a commercial context" but rather a "nuanced approach".<sup>73</sup>

15.32 *Innovative Corp Pte Ltd v Ow Chun Ming*<sup>74</sup> is an interesting illustration of the remedy of an account of profits in relation to a breach of a director's fiduciary duties. The case explicates the issue of when a director may be liable for a "maturing business opportunity" that develops from a mere chance into a substantial business opportunity. In the present case, a director of the plaintiff company acquired knowledge about a valuable development project involving several houses near Holland Road. Subsequently, the director resigned from the plaintiff company, incorporated his own corporate vehicle, and acquired the

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67 *MCH International Pte Ltd v YG Group Pte Ltd* [2019] SGHC 43 at [220]–[225].

68 [2013] SGHC 96.

69 *MCH International Pte Ltd v YG Group Pte Ltd* [2019] SGHC 43 at [226].

70 *MCH International Pte Ltd v YG Group Pte Ltd* [2019] SGHC 43 at [227], citing *Asia Hotel v Starwood* [2007] SGHC 50.

71 *MCH International Pte Ltd v YG Group Pte Ltd* [2019] SGHC 43 at [227].

72 *MCH International Pte Ltd v YG Group Pte Ltd* [2019] 2 SLR 837; see also *Sim Poh Ping v Winsta Holding Pte Ltd* [2020] 1 SLR 1199 at [145], [146], [239] and [242].

73 *MCH International Pte Ltd v YG Group Pte Ltd* [2019] 2 SLR 837 at [89].

74 [2020] 3 SLR 943.

opportunity for his own company. Eventually, the defendant director procured his corporate vehicle to sign a joint venture agreement to carry out the development project. The plaintiff company claimed against the former director (the first defendant) for breach of fiduciary duty and unconscionable receipt against the first defendant's company (the second defendant) for diversion of the business opportunity. In addition, the plaintiff also brought a claim for dishonest assistance of breach of fiduciary duty against the second defendant.

15.33 Ang Cheng Hock JC synthesised the law in relation to fiduciary duty and business opportunities as follows:<sup>75</sup>

... A director is not allowed to obtain for himself any property or business advantage which 'properly belongs to his company or for which it has been negotiating' ... This duty is a confluence of the rules that a director must not place himself in a position where his personal interests would conflict with his duty to the company and that a director must not abuse his position to make an unauthorised profit. This fiduciary obligation of loyalty is an inflexible one that persists even after the director's resignation. A former director would be in breach of his duties to a company in respect of his resigning to procure a corporate opportunity of the company, if three conditions are satisfied, as explained by the Supreme Court of Canada in the oft-cited *Canadian Aero Service Ltd v O'Malley* (1973) 40 DLR (3d) 371 at 382 ('*Canadian Aero Service*');

- (a) first, there must be a 'maturing business opportunity';
- (b) secondly, the company must have been 'actively pursuing' that opportunity; and
- (c) thirdly, the director's resignation may 'fairly be said to have been prompted or influenced by a wish to acquire for himself' that opportunity.

15.34 On the facts, Ang JC found that the first defendant had breached his fiduciary duties owed to the plaintiff as the chance to take on the valuable development project was a "maturing business opportunity".<sup>76</sup> The learned judge held that the plaintiff would be entitled to an account for all the profits made by the first defendant in relation to the development of the project. According to Ang JC, "the purpose of a disgorgement of profits is not to compensate the plaintiff but to ensure that the fiduciary does not profit from his breach of duty".<sup>77</sup>

15.35 *Ding Auto Pte Ltd v Yip Kin Lung*<sup>78</sup> is a sad tale of a man who trusted his friend, only to be betrayed. Ding opened an automobile

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75 *Innovative Corp Pte Ltd v Ow Chun Ming* [2020] 3 SLR 943 at [72].

76 *Innovative Corp Pte Ltd v Ow Chun Ming* [2020] 3 SLR 943 at [73]–[78].

77 *Innovative Corp Pte Ltd v Ow Chun Ming* [2020] 3 SLR 943 at [138].

78 [2019] SGHC 243.

accident repair workshop (the plaintiff company), but as he was ignorant about business operations, the defendant who owned a rival automobile shop offered to help him with the back-end operations amongst other things, in exchange for referring business to the defendant. Ding gratefully accepted his help as he had a poor command of English and did not understand business paperwork. The defendant told Ding to sign papers to start the company, which Ding did not understand but signed anyway as he trusted the defendant. These turned out to be a share transfer form and a procurement of Ding's resignation as director from his own company. The defendant then made loans in the plaintiff's name which the defendant kept for his own benefit without Ding's knowledge. When Ding wished to take back control of his company's finances and administrative operations, the defendant withdrew all back-end assistance to hold him ransom and denied Ding access to computers, crippling the plaintiff's operations and leaving the plaintiff to be chased by business creditors and staff.

15.36 Mavis Chionh JC found that the defendant was an agent of the plaintiff and thus owed fiduciary duties to the plaintiff as defendant had put in place arrangements to ensure he had full control of the plaintiff's accounts and financial operations, by being able to sign off on cheque payments with himself as sole signatory and his approval was required before any payments could be made.<sup>79</sup> Further, Chionh JC found that this included the duty to keep and provide records of the financial transactions entered into on behalf of the plaintiff,<sup>80</sup> citing the English case of *Yasuda Fire and Marine Insurance v Orion Marine Insurance*.<sup>81</sup> This was an obligation to provide "an accurate account in the fullest sense", because as an agent, the defendant had the authority to affect the plaintiff's legal rights and obligations in respect of the fund in its bank account.<sup>82</sup> The plaintiff was thus entitled to know exactly how its legal rights and obligations in respect of its funds had been affected and be provided with such records since they were "created for preserving information as to the very transactions which the agent was authorised to enter into".<sup>83</sup> Moreover, the standard of such a duty was more than "simply throwing at his principal voluminous records with no explanation as to how these records may be understood".<sup>84</sup> This had been breached on the facts: despite many requests from the plaintiff, the defendant only returned the plaintiff's accounting and financial records in the course

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79 *Ding Auto Pte Ltd v Yip Kin Lung* [2019] SGHC 243 at [125].

80 *Ding Auto Pte Ltd v Yip Kin Lung* [2019] SGHC 243 at [138].

81 *Yasuda Fire and Marine Insurance Co of Europe Ltd v Orion Marine Insurance Underwriting Agency Ltd* [1995] QB 174 at 185; [1995] 3 All ER 211 at 219.

82 *Ding Auto Pte Ltd v Yip Kin Lung* [2019] SGHC 243 at [138].

83 *Ding Auto Pte Ltd v Yip Kin Lung* [2019] SGHC 243 at [138].

84 *Ding Auto Pte Ltd v Yip Kin Lung* [2019] SGHC 243 at [146].

of the proceedings in multiple lists in different stages and with no explanation, of which the fifth list, which amounted to 3,900 pages, was disclosed a mere six working days before the trial.<sup>85</sup> There was an appeal against this case which was dismissed by the Court of Appeal.<sup>86</sup>

## VII. Unconscionable receipt and dishonest assistance

15.37 Besides its contribution to the jurisprudence on breach of fiduciary duties, *Innovative Corp Pte Ltd v Ow Chun Ming*<sup>87</sup> is an important decision on the equitable actions of unconscionable receipt and dishonest assistance. A crucial element of a claim for unconscionable receipt is that a defendant must have received trust assets or property impressed with a fiduciary duty. For the second defendant to be liable for unconscionable receipt, it had to be decided whether “maturing business opportunities” are regarded as trust assets. Ang JC held that business opportunities are considered a trust asset of the plaintiff company for the purposes of unconscionable receipt,<sup>88</sup> accepting the English decision of *Ultraframe (UK) Ltd v Fielding*.<sup>89</sup> Nevertheless, the learned judge held that the plaintiff could not prove beneficial receipt of the plaintiff’s assets by the second defendant. Ang JC reasoned:

The next question is whether there was a beneficial receipt of the plaintiff’s assets by the second defendant. This is key to a finding of liability for knowing receipt – receipt of traceable trust assets ... All the plaintiff had was a chance or opportunity to have participated as a developer for the Project. While this opportunity was appropriated by the first defendant when he tendered for the Project, the second defendant cannot be said to have received that same opportunity. Instead, the second defendant entered into a joint venture agreement with, amongst others, FYTA in October 2010 and was appointed as the developer for the Project. By doing so, the second defendant acquired a bundle of contractual rights that were enforceable against FYTA. But, these rights are conceptually quite different from the opportunity that the plaintiff had. It cannot be equated with that opportunity. Neither can it be said that the second defendant’s contractual rights against FYTA are traceable to the opportunity that the plaintiff had in the period from September 2009 to April 2010. Rather, the rights spring from the contract between the second defendant and FYTA. In my judgment, I find that the plaintiff has not shown that the second defendant received a trust asset for the purpose of the claim in knowing receipt.

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85 *Ding Auto Pte Ltd v Yip Kin Lung* [2019] SGHC 243 at [145].

86 *Yip Kin Lung v Ding Auto Pte Ltd* [2020] SGCA 34.

87 See para 15.33 above.

88 *Innovative Corp Pte Ltd v Ow Chun Ming* [2020] 3 SLR 943 at [122]–[123].

89 *Ultraframe (UK) Ltd v Fielding* [2005] EWHC 1638 (Ch).

15.38 In other words, the plaintiff's original opportunity was no longer the same trust asset received by the second defendant (as a joint venture agreement), and thus not traceable against the second defendant.<sup>90</sup> Another way of reaching the same result is to reject the suggestion in *Ultraframe (UK) Ltd v Fielding* that a corporate opportunity is regarded as property belonging to the company. The concept of a corporate opportunity appears to be too open-ended to be recognised as a form of property and the resultant difficulty in the ensuing inquiry as to whether the second defendant received traceable assets illustrates the complication of treating a corporate opportunity as a species of property.

15.39 On the facts, Ang JC held that the second defendant was liable to the plaintiff for dishonest assistance of the first defendant's breach of fiduciary duties. According to the learned judge:<sup>91</sup>

... the second defendant's liability 'duplicates the liability of the trustee whose breach of trust [it] assisted' (Charles Mitchell, *Constructive and Resulting Trusts* (Hart Publishing, 2009) at p 150).

Ang JC held that the second defendant must account to the plaintiff for all its profits. The result of this case illustrates equity's harsh profit stripping remedies. The first and second defendants had to account for all their profits in relation to the project.

## VIII. Charities

15.40 *Singapore Shooting Association v Singapore Rifle Association*<sup>92</sup> contains valuable observations on charities, namely, on when it is proper for a dispute to be litigated in the High Court in accordance with ss 24 and 31 of the Charities Act.<sup>93</sup> While the charities concerned in this case were not trusts, the same principles should be applicable in relation to charitable trusts. The Court of Appeal was concerned about the fact that the suit was commenced by Singapore Rifle Association ("SRA"), which was a charity, in the High Court at first instance as the damages only amounted to \$60,000. Furthermore, these costs and damages claimed by the SRA were the legal fees of their lawyer in pursuing the case. The lawyer argued that ss 24 and 31 of the Charities Act obliged him to start the dispute in the High Court.

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90 *Innovative Corp Pte Ltd v Ow Chun Ming* [2020] 3 SLR 943 at [124]–[127].

91 *Innovative Corp Pte Ltd v Ow Chun Ming* [2020] 3 SLR 943 at [139].

92 [2020] 1 SLR 395.

93 Cap 37, 2007 Rev Ed.

15.41 The Court of Appeal held that proceedings that constituted “charity proceedings” under s 31 of the Charities Act are “those which involve the proper administration of a charity”.<sup>94</sup> In giving the judgment of the Court of Appeal, Chao Hick Tin SJ distilled six propositions from readings ss 24 and 31 together. First, Chao SJ held that “charity proceedings” as defined in s 31 also applied to s 24, applying the presumption in *Tan Cheng Bock v Attorney-General*,<sup>95</sup> that, where an identical expression is used in a statute, it should presumptively have the same meaning.<sup>96</sup> Second, the jurisdiction of the Charity Commissioner is more limited than that of the High Court, since the jurisdiction of the Charity Commissioner is only the same as that of the High Court in the three situations as set out at ss 24(1)(a) to 24(1)(c).<sup>97</sup> Third, the Charity Commissioner is mandated by statute to defer to the High Court, as s 24(4) provides that he cannot exercise his jurisdiction if the matter is more appropriately adjudicated in the High Court.<sup>98</sup> Fourth, the Charity Commissioner’s role was that of an adjudicator at first instance.<sup>99</sup> Fifth, charity proceedings in the High Court are not to be commenced unless the taking of proceedings was authorised by order of the Charity Commissioner, and the Charity Commissioner cannot authorise the taking of charity proceedings if he could deal with the case himself.<sup>100</sup> Finally, the Charities Act was careful to use “charity proceedings” as a term of art. It was “charity proceedings” and not all legal proceedings involving charities, whatever their nature, which was mandated by the Charities Act to be litigated before the Commissioner or the High Court.<sup>101</sup>

15.42 Chao SJ applied a strict approach to the requirement of obtaining the authorisation of the Commissioner of Charities before a party could start “charity proceedings” in the High Court, relying on English decisions.<sup>102</sup> Where authorisation from the Commissioner was

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94 *Singapore Shooting Association v Singapore Rifle Association* [2020] 1 SLR 395 at [171].

95 [2017] 2 SLR 850.

96 *Singapore Shooting Association v Singapore Rifle Association* [2020] 1 SLR 395 at [144].

97 *Singapore Shooting Association v Singapore Rifle Association* [2020] 1 SLR 395 at [145].

98 *Singapore Shooting Association v Singapore Rifle Association* [2020] 1 SLR 395 at [146].

99 *Singapore Shooting Association v Singapore Rifle Association* [2020] 1 SLR 395 at [147].

100 *Singapore Shooting Association v Singapore Rifle Association* [2020] 1 SLR 395 at [148].

101 *Singapore Shooting Association v Singapore Rifle Association* [2020] 1 SLR 395 at [149].

102 *Amrik Singh v Virender Pal Singh Sikka* (2 December 1998); *Dean v Patience Burne* [2009] EWHC 1250 (Ch).

required for “charity proceedings”, the Commissioner’s authorisation had to be obtained with regard to the specific head of claim or relief of “charity proceedings” being commenced. A subsequent claim that was brought after the Commissioner’s authorisation had been obtained was not authorised for the purposes of s 31 of the Charities Act “unless it [the subsequent claim] clearly falls within the scope of authorisation [of the Commissioner of Charities] that has already been given”.<sup>103</sup> The reasons for this approach were as follows: (a) it would preserve a charity’s funds and assets for its charitable purposes rather than on wasteful litigation; (b) it would discourage plaintiffs who would mount frivolous or ill-founded claims on the back of legitimate ones; (c) it would help strengthen the Commissioner’s role in regulating charities generally; and (d) it would help ensure that the duties and responsibilities of the Commissioner and High Court are distributed in accordance with Parliament’s intention.<sup>104</sup> The SRA had brought two distinct claims in court, but had only obtained the Commissioner’s authorisation for one of them. The Court of Appeal found that although the SRA did get the Commissioner’s prior approval to commence proceedings in the High Court for the claim for declaratory relief relating to the Singapore Shooting Association’s *ultra vires* acts in breach of its constitution, this authorisation did not extend to SRA’s separate conspiracy claim against the Singapore Shooting Association.<sup>105</sup> SRA would not have gained any benefit as a charity from having the conspiracy claim litigated in the High Court, unlike a claim that would have ensured better administration or governance such as the claim for declaratory relief.<sup>106</sup>

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103 *Singapore Shooting Association v Singapore Rifle Association* [2020] 1 SLR 395 at [161].

104 *Singapore Shooting Association v Singapore Rifle Association* [2020] 1 SLR 395 at [162].

105 *Singapore Shooting Association v Singapore Rifle Association* [2020] 1 SLR 395 at [164] and [165].

106 *Singapore Shooting Association v Singapore Rifle Association* [2020] 1 SLR 395 at [167].