Hu Lee Impex Pte Ltd *v* Lim Aik Seng (trading as Tong Seng Vegetable Trading) [2013] SGHC 142

Case Number	: Suit No 190 of 2012
Decision Date	: 26 July 2013
Tribunal/Court	: High Court
Coram	: Andrew Ang J
Counsel Name(s)	: Wong Tze Roy (Goh JP & Wong) for the plaintiff; Chow Weng Weng (Chow Ng Partnership) for the defendant.
Parties	: Hu Lee Impex Pte Ltd — Lim Aik Seng (trading as Tong Seng Vegetable Trading)

LAND

26 July 2013 Judgment reserved.

Andrew Ang J:

Introduction

1 The plaintiff, Hu Lee Impex Pte Ltd, seeks an order that the defendant Lim Aik Seng assigns the tenancy of a shop unit located at Block 11, Wholesale Centre #01-572, Singapore (the "Shop Unit") pursuant to certain oral agreements. The Shop Unit is currently being rented by the defendant from the Housing and Development Board ("HDB").

Facts

Undisputed background

2 Both the plaintiff and defendant are wholesalers dealing with fruits and vegetables. Tan Soon Huat ("PW1") is the plaintiff's managing director. The defendant, with one Tan Cheng Tong ("the deceased"), had registered Tong Seng Vegetable Trading ("TSVT") as a business name for their partnership in March 1998. The plaintiff had carried on part of its wholesale business at the Shop Unit since about 1992, and had been renewing tenancy agreements in respect of the same with the HDB since then. A few months after May 2006, the plaintiff assigned the tenancy of the Shop Unit to TSVT, with TSVT subsequently entering into a tenancy agreement dated 7 November 2006 directly with HDB for the Shop Unit.

Purported oral agreements

3 The parties materially disagree on the circumstances surrounding the assignment of the Shop Unit to TSVT. The plaintiff alleges that the Shop Unit was assigned pursuant to a specific oral agreement (elaborated upon at [5] below) ("the 2006 Agreement"). The defendant denies that there was ever such an agreement.

4 Early in 2011, the deceased learnt that he was terminally ill from cancer. A meeting was held at the deceased's home in May 2011, where discussions were held regarding the Shop Unit ("the May 2011 Meeting"). The plaintiff alleges that another oral agreement was concluded (elaborated upon at [7] below) ("the 2011 Agreement"). The defendant denies that there was such an oral agreement.

The deceased subsequently passed away on 1 June 2011.

Pleadings

5 The plaintiff avers that the 2006 Agreement was made on the following express terms:

(a) The plaintiff would assign to the deceased or TSVT all its rights and interest in the Shop Unit under the tenancy agreement with the HDB dated 21 December 2004;

(b) The sole purpose of the assignment was to enable the deceased to carry on a vegetable wholesale business at the Shop Unit;

(c) The plaintiff would not charge the deceased and/or TSVT any fee for the assignment; and

(d) The Shop Unit would have to be reassigned to the plaintiff upon the plaintiff's request or the deceased ceasing to operate a vegetable wholesale business at the Shop Unit.

6 In contrast, the defendant avers that the plaintiff had relocated its business to new premises at Chin Bee Avenue and had no further need for its then three shop units (of which the Shop Unit was one) at the Pasir Panjang Wholesale Centre, all of which had cold rooms installed by the plaintiff. The plaintiff had approached the defendant and the deceased sometime in May 2006 for TSVT to take over two of the units without any payment required. In return, the plaintiff would take over the tenancies of two stalls in the same wholesale centre from the defendant and the deceased. The defendant and the deceased understood that it was cheaper and easier for the plaintiff to assign the units (inclusive of the cold rooms) without requiring any payment, as surrendering the units back to the HDB would entail reinstatement of the same involving the removal of the cold rooms. The defendant and the deceased subsequently agreed that they would only take the Shop Unit. Notably, the plaintiff assigned the second unit to a third party which to-date is still occupying the same. The third unit was reinstated and surrendered to the HDB.

7 As regards the 2011 Agreement, the plaintiff avers that PW1 had at the May 2011 Meeting informed the deceased, the deceased's wife (one Seow Sai Gek), and the defendant that the plaintiff would require the Shop Unit to be reassigned to it immediately. Although the plaintiff was not bound to do so, it offered to help the deceased (or the deceased's wife) and the defendant by operating a vegetable wholesale business at the Shop Unit after the assignment, and share the profits therefrom with them. The defendant instead requested for the plaintiff to allow the defendant's son to operate the vegetable wholesale business. The plaintiff agreed to this on the following conditions:

(a) The plaintiff would defer requiring the assignment of the Shop Unit back to it, and would allow specifically the defendant's son to join the defendant in operating the vegetable wholesale business at the Shop Unit;

(b) No other party apart from the defendant's son would be allowed to operate and/or join the defendant in the vegetable wholesale business at the Shop Unit;

(c) The defendant and/or his son would have to pay over to the deceased (or the deceased's wife) their share of the profits made from the vegetable wholesale business at the Shop Unit; and

(d) The Shop Unit would have to be assigned back to the plaintiff if the defendant's son ceased to operate the vegetable wholesale business at the Shop Unit, or if the defendant breached any of the other terms of the 2011 Agreement.

8 The plaintiff alleges that the 2011 Agreement was breached on two counts. First, the defendant's son did not operate the wholesale business at the Shop Unit. Instead the defendant allowed one Choi Chin Foong ("Choi") and one Wong Yew Choong ("Wong") to operate and/or join in the defendant's business. Second, the defendant had not paid to the deceased (or the deceased's wife) their share of the profits.

9 As stated earlier, the defendant denies that there was any such agreement. The defendant denies that the plaintiff had asked for the Shop Unit to be reassigned, and also avers that it would not have made any commercial sense for the plaintiff to offer to operate the business at the Shop Unit sharing the profits therefrom with the defendant and the deceased (or the deceased's wife). There was also no commercial sense in the plaintiff's insistence upon the defendant's son being the only person allowed to operate the business, as TSVT was the lawful tenant and was fully entitled to decide how it should operate its business.

10 The defendant further submits, in the alternative, that both the 2006 Agreement and the 2011 Agreement (hereinafter "the Agreements") are unenforceable as they do not meet the requirements of s 6(*d*) of the Civil Law Act (Cap 43, 1999 Rev Ed) ("s 6(*d*)"). The plaintiff has several rebuttals to this. First, s 6(*d*) only applies to contracts which create an interest in immovable property, which the Agreements do not. Second (and this appears to be in similar vein), the Agreements are not assignments but agreements to assign. Agreements to assign do not transfer or dispose of any interest in immovable property at the time of agreement, but at a future time or subject to the fulfilment of conditions. The Agreements confer rights *in personam*, which are not caught by s 6(*d*). Third, even if s 6(*d*) were applicable, the doctrine of part performance would apply.

Issues

11 Accordingly, the issues raised are: first, whether there were oral agreements concluded in 2006 and 2011 and; second, assuming *arguendo* that there were such oral agreements, whether they meet the requirements of s 6(*d*). I shall deal with the second issue first.

Are the requirements of s 6(*d*) met?

12 Section 6(*d*) provides as follows:

> **Contracts which must be evidenced in writing**
>
> 6. No action shall be brought against —
>
> …
>
> (*d*) any person upon any contract for the sale or other disposition of immovable property, or any interest in such property; or
>
> …
>
> unless the promise or agreement upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith or some other person lawfully authorised by him.

13 The UK Law Commission, in its report *Transfer of Land Formalities for Contracts for Sale etc. of Land* (Law Com No 164, 1987) (Chairman: Mr Justice Beldham) ("UK Law Commission Report"), set out

succinctly the justification for requiring contracts dealing with land to comply with certain requirements. They can be summarised as follows:

(a) There is a need for certainty. The existence and terms of oral contracts are always difficult to establish and the resulting confusion would lead to increased litigation. The availability of reliable and incontrovertible evidence of the existence and terms of a transaction would minimise disputes (at para 2.7).

(b) The evidential function of writing also assists the prevention of fraud and goes some way to ensuring that parties are not bound in the absence of actual agreement (at para 2.8).

(c) The requirement of writing would warn the consumer about the gravity of the transaction into which he is about to enter and give him time to reflect and (if need be) seek legal advice. At least, it prevents a person from being bound without realising it since most people are aware that signing a written document imports some binding effect (at para 2.9).

(d) Without formalities, it may be difficult to ascertain the exact time when a contract is created, and this would lead to confusion. Pre-contract negotiations would be unnecessarily uncertain and hazardous (at para 2.10).

(e) Formalities perform a "channelling" function by marking off transactions from one another and creating standardised transactions. The identification and classification of certain types of transaction are facilitated, enabling them to be dealt with routinely (at para 2.11).

(f) Each piece of land is unique; interests in or rights over it should not be created or disposed of casually. The remedy of specific performance for contracts relating to land recognises this (at para 2.12).

14 In my view, the plaintiff's first two contentions are unsustainable for reasons set out below.

15 The plaintiff first argues that s 6(*d*) of the Act only applies to contracts which create an interest in immovable property, and relies on *Joseph Mathew v Singh Chiranjeev* [2010] 1 SLR 338 ("*Joseph Mathew (CA)*") where the Court of Appeal held at [23] that s 6(*d*) applies to an option to purchase because such an option creates in favour of the option holder an equitable interest in the land. The purported grant of an open-ended obligation to assign a tenancy back to the plaintiff upon the fulfilment of certain conditions (*ie*, at a future date) undoubtedly involves the disposition of *an interest* in immovable property within the meaning of s 6(*d*). Indeed, the person entitled to the assignment of the tenancy at a future date has a proprietary interest termed an *interesse termini*: see *Cathay Theatres Pte Ltd v LKM Investment Holdings Pte Ltd* [1998] 1 SLR(R) 234 at [19] and [38]. I should add that it would be illogical for the law to distinguish between different types of contracts pertaining to land on the arbitrary basis of whether the buyer is able to point to a vested proprietary interest: see [16] below.

16 The plaintiff next argues that s 6(*d*) does not apply to agreements to assign (as opposed to assignments) because they do not transfer or dispose of any interest in immovable property at the time of agreement but at a future time or subject to the fulfilment of conditions. The plaintiff relies on *Choong Wai Phwee (Trustees of Cheng Liam Um Vegetarian Temple) v Chileon Pte Ltd* [2000] 2 SLR(R) 637 at [39], where the High Court held that there is a distinction between a contract, which creates rights *in personam*; and a conveyance, which creates rights *in* rem. In my view, such distinction is irrelevant and does not address the issue. The requirement for the formality of writing is not predicated on the contract pertaining to land creating rights *in rem* from the outset. Formalities

are required precisely because the contract deals with *land* (without the need for anything on top of this) and certain policy considerations peculiar to land underlie the requirement of evidence in writing as enumerated at [13] above.

17 The formal requirements of s 6(*d*) have thus not been met. This leads to the question whether part performance applies to mitigate the rigour of s 6(*d*).

Does the doctrine of part performance apply?

18 In the alternative, the plaintiff argues that even if s 6(*d*) were to apply, there has been part performance of the Agreements.

19 It is well-settled that part performance is part of Singapore law. *Joseph Mathew (CA)* held as follows at [48]:

> Part performance is, of course, an exception to the requirements under s 6(*d*). It is equitable in origin and was intended to prevent, *inter alia*, this very statutory provision from *itself* being utilised as an engine of fraud (and see, *eg*, [*Steadman v Steadman* [1976] AC 536] at 558 as well as the oft cited observations of Farwell J in the English High Court decision of *Broughton v Snook* [1938] 1 Ch 505 at 513). Indeed, Lord Hoffmann, in the House of Lords decision of *Actionstrength Ltd (t/a Vital Resources) v International Glass Engineering IN.GL.EN SpA* [2003] 2 AC 541 ("*Actionstrength*"), observed (at [22]) that part performance was introduced "[v]ery soon after" the 1677 UK Act. [emphasis in original]

20 However, there remains some difference of opinion as to how the doctrine of part performance ought to apply. *The Law of Contract in Singapore* (Andrew Phang Boon Leong ed) (Academy Publishing, 2012) notes at para 08.145: "Singapore authority on the application of the doctrine [of part performance] is scanty, and reference to its actual operation has generally been brief." The contributors go on to note at para 08.151 as follows:

> ... [Sir Edward] Fry set out two slightly different propositions as to when a promisee's acts might amount to sufficient "part performance" so as to justify compulsion of a promisor to specifically perform what would otherwise be an unenforceable contract.
>
> Fry first set out the proposition that the promisee's acts of part performance had to be referable, "to a contract such as that alleged, but *to no other title*" [emphasis added]. However, Fry then made a slightly different proposition, that:
>
> > The true principle, however, of the operation of acts of part performance seems only to require that the acts in question be such as must be referred to *some* contract, and may be referred to the alleged one; that they prove the existence of *some* contract, and are *consistent with* the contract alleged.
>
> [emphasis in original, footnotes in original omitted]

21 In this regard, there are two diametrically opposed English cases, namely, *Elizabeth Maddison v John Alderson* (1883) 8 App Cas 467 ("*Maddison*") and *Steadman v Steadman* [1976] AC 536 ("*Steadman*"). The former case embodies Sir Edward Fry's first and stricter approach, while the latter embodies his second and more liberal approach.

22 In the seminal House of Lords' case of *Maddison*, the appellant served as a housekeeper for an

owner in fee simple of a freehold estate without wage for many years in consideration of the owner leaving to the appellant a life interest in the estate. The owner had a will prepared for that purpose but the will failed for want of due attestation. The appellant alleged that she was entitled to a life interest in the estate by virtue of a parol agreement which, though unenforceable due to s 4 of the Statute of Frauds 1677 (Chapter 3, 29 Cha 2), was performed on her part. A majority of the House of Lords denied relief on the ground that the appellant's acts were not unequivocally referable to the alleged parol contract. The Earl of Selborne LC held at 478–479 that:

> The doctrine, however, so established has been confined by judges of the greatest authority within limits intended to prevent a recurrence of the mischief which the statute was passed to suppress. The present case, resting entirely upon the parol evidence of one of the parties to the transaction, after the death of the other, forcibly illustrates the wisdom of the rule, which requires some evidentia rei to connect the alleged part performance with the alleged agreement. There is not otherwise enough in the situation in which the parties are found to raise questions which may not be solved without recourse to equity. It is not enough that an act done should be a condition of, or good consideration for, a contract, unless it is, as between the parties, such a part execution as to change their relative positions as to the subject-matter of the contract.
>
> Lord Hardwicke in *Gunter v. Halsey* [Amb 586] said: "As to the acts done in performance, ***they must be such as could be done with no other view or design than to perform the agreement*** " ("the terms of which," he added, "must be certainly proved") … ***All the authorities shew that the acts relied upon as part performance must be unequivocally, and in their own nature, referable to some such agreement as that alleged .*** …
>
> [emphasis added in bold italics]

Lord O'Hagan agreed, and opined at 485 as follows:

> But there is no conflict of judicial opinion, and in my mind no ground for reasonable controversy as to the essential character of the act which shall amount to a part performance, in one particular. *It must be unequivocal.* It must have relation to the one agreement relied upon, and to no other. It must be such, in Lord Hardwicke's words, "as could be done with no other view or design than to perform that agreement." *It must be sufficient of itself, and without any other information or evidence, to satisfy a Court, from the circumstances it has created and the relations it has formed, that they are only consistent with the assumption of the existence of a contract the terms of which equity requires, if possible, to be ascertained and enforced*. [emphasis added, footnote omitted]

Lord FitzGerald also agreed, and held at 491 as follows:

> ... The Lord Chancellor has well laid down that the acts relied on as performance to take the case out of the statute must be unequivocally and in their own nature referable to some such agreement as that alleged, and I may add must necessarily relate to and affect the land the subject of that agreement. ...

23 Thus, on a classical interpretation of the doctrine of part performance, the acts that are relied upon must unequivocally point towards the existence of a contract fitting the description of the oral contract alleged to exist. However, this requirement was not strictly applied in the later House of Lords case of *Steadman* ([21] *supra*). In that case, the marriage of the appellant-wife and the respondent-husband was dissolved in 1970; they were then joint owners of a house. Prior to the divorce, the husband had been ordered to pay certain weekly sums for maintenance of both the wife

and their child, but was in arrears. The wife applied for an order for the sale of the house and division of the proceeds. Before the hearing, the parties reached an oral agreement with regard both to the maintenance and the house. The husband was to pay £1,500 to the wife and the wife would transfer to the husband her interest in the house. The husband had borrowed £1,500 from a building society and paid that sum to his solicitor, who prepared a deed of transfer of the wife's interest and sent it for her signature. The wife pleaded that the compromise agreement was unenforceable due to s 40 of the Law of Property Act 1925. The House of Lords held that the husband's acts constituted part performance of the oral contract. Lord Reid doubted *Maddison*, and at 541G–542A opined as follows:

> I am aware that it has often been said that the acts relied on must necessarily or unequivocally indicate the existence of a contract. It may well be that we should consider whether any prudent reasonable man would have done those acts if there had not been a contract but many people are neither prudent nor reasonable and they might often spend money or prejudice their position not in reliance on a contract but in the optimistic expectation that a contract would follow. *So if there were a rule that acts relied on as part performance must of their own nature unequivocally show that there was a contract, it would be only in the rarest case that all other possible explanations could be excluded.*
>
> *In my view, unless the law is to be divorced from reason and principle, the rule must be that you take the whole circumstances, leaving aside evidence about the oral contract, to see whether it is proved that the acts relied on were done in reliance on a contract: that will be proved if it is shown to be more probable than not*.
>
> [emphasis added]

Lord Simon of Glaisdale was in agreement, and held at 564B as follows:

> ... I am therefore of opinion not only that the facts relied on to prove acts of part performance must be established merely on a balance of probability, but that it is sufficient if it be shown that it was more likely than not that those acts were in performance of some contract to which the defendant was a party.

Lord Salmon was less unequivocal, but nonetheless held at 566H–567A:

> ... One rule, however, emerges clearly: a parol contract relating to land cannot be enforced unless the acts relied on as part performance, of themselves, establish a prima facie case that they were done in the performance of a contract. Then, but only then, may parol evidence of the contract be accepted. In order to discover the significance of the alleged acts of part performance, the circumstances in which they were performed must, I think, clearly be relevant. ...

24 On the views expressed in *Steadman*, the acts relied on to establish part performance no longer need to point unequivocally towards the existence of a particular oral contract. The doctrine of part performance is satisfied if, on an analysis of all the circumstances (but leaving aside evidence of the purported oral contract), the court is satisfied that more probably than not the acts relied upon were done in reliance on the oral contract.

25 The true position in Singapore has yet to be definitively decided. *The Law of Contract in Singapore* ([20] *supra*) at para 08.150 notes that the standard is:

> … shrouded in some difficulty because there are, in the literature, two possible conceptions of

referability. Moreover, at least as a matter of Singapore law, there is yet to be any clear local authority setting out which of the two conceptions is applicable in Singapore.

Joseph Mathew (CA) ([15] *supra*) merely states that part performance is part of the legal landscape in Singapore but does not spell out the exact standard required as the issue did not arise in that case. The High Court case of *Midlink Development Pte Ltd v The Stansfield Group Pte Ltd* [2004] 4 SLR(R) 258 does not assist as the distinction was not raised before the court.

26 Nevertheless, on one interpretation of *Joseph Mathew (CA)*, Andrew Phang JA might be construed to have adopted the standard espoused in *Maddison* ([21] *supra*) at [64]:

> Although it used to be the case that the payment of money could never amount to part performance, this is no longer the case. However, the converse does not necessarily follow inasmuch as the payment of money *per se* will not *automatically* result in a finding of part performance **as such payment might be equivocal in nature**. Much will depend on the surrounding circumstances. … [emphasis in original in italics; emphasis added in bold italics]

27 The Straits Settlements Court of Appeal case of *Khoo Keat Lock v Haji Yusop* [1929] SSLR 210 ("*Khoo Keat Lock*") is also of limited assistance. Three judgments were delivered; Shaw CJ merely held that there was part performance of the two verbal agreements in question but did not touch on the standard required, while Reay J did not comment on the doctrine of part performance at all. Brown J cited Lord O'Hagan's judgment in *Maddison* (the identical passage is cited above at [21]), and held that the act relied upon must be unequivocal. *Khoo Keat Lock* is not determinative of the current position in Singapore for two reasons. First, the court did not unanimously adopt the standard in *Maddison*. Second, and more importantly, the case predates *Steadman*, and was decided at a time when the principles concerning part performance were *relatively settled.* As such, Brown J could quote verbatim from Lord O'Hagan's judgment without exploring the normative justification for the requirement of unequivocality.

28 The current position in England is clear. The doctrine of part performance has been legislatively abolished. Following the recommendations of the UK Law Commission Report ([13] *supra*), Parliament repealed s 40 of the Law of Property Act 1925 (Chapter 20, 15 and 16 Geo 5). In its stead, s 2 of the Law of Property (Miscellaneous Provisions) Act 1989 (Chapter 34) was introduced. It is apposite to set out both sections *in extenso*. Section 40 of the Law of Property Act 1925 read:

> Contracts for sale, &c. of land to be in writing.
>
> 40.—(1) No action may be brought upon any contract for the sale or other disposition of land or any interest in land, unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged or by some other person thereunto by him lawfully authorised.
>
> (2) This section applies to contracts whether made before or after the commencement of this Act and does not affect the law relating to part performance, or sales by the court.

In contrast, s 2 of the Law of Property (Miscellaneous Provisions) Act 1989 provides:

> Contracts for sale etc. of land to be made by signed writing.
>
> 2.—(1) A contract for the sale or other disposition of an interest in land can only be made in writing and only by incorporating all the terms which the parties have expressly agreed in one

document or, where contracts are exchanged, in each.

(2) The terms may be incorporated in a document either by being set out in it or by reference to some other document.

(3) The document incorporating the terms or, where contracts are exchanged, one of the documents incorporating them (but not necessarily the same one) must be signed by or on behalf of each party to the contract.

…

29 Any agreement not complying with the formal requirements of s 2 of the Law of Property (Miscellaneous Provisions) Act 1989 is void (see, *eg*, *Yaxley v Gotts and Another* [2000] Ch 162 at 175B), and not merely unenforceable. *A priori*, if oral agreements pertaining to land are void, there is no contract for either party to partially perform, see also the UK Law Commission Report at para 4.13 ([13] *supra*). The English Court of Appeal in *Yaxley v Gotts* confirmed at 172F that the doctrine of part performance did not survive the introduction of s 2 of the Law of Property (Miscellaneous Provisions) Act 1989.

30 Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 was enacted following the UK Law Commission Report which had recommended reform because of perceived defects in the law as it stood after the decision of *Steadman*. Chief amongst these are:

(a) The virtual impossibility of discovering with acceptable certainty, prior to proceedings, whether a contract will be found to be enforceable under statutory requirements (at para 1.8); and

(b) *Steadman* leaving the doctrine of part performance in an uncertain state. Taking the case at its highest, it appears that an oral contract for sale can be readily and unilaterally be made enforceable (for instance, in *Steadman* by instructing solicitors to prepare and submit a draft conveyance), in effect rendering s 40 of the Law of Property Act 1925 a dead letter (at para 1.9; and para 3.23 of Appendix D).

31 I note that *The Law of Contract in Singapore* ([20] *supra*), after an extensive analysis of English case law, states at para 08.164 that:

Based on the above, the general view is that as a matter of English law [the learned contributors cite *Steadman v Steadman* in the footnotes at this point], there is a bare majority in favour of the more "relaxed" view as to the question of referability. However, in Singapore, nothing was said in the recent Court of Appeal decision of *Joseph Mathew v Singh Chiranjeev* to supplement the holding of the Court of Appeal of the Straits Settlements in *Khoo [Keat] Lock v Haji Yusop*. The best one can do, then, is to assume that it may well be that a similar approach to that taken in *Steadman v Steadman* will be adopted by the Court of Appeal when the opportunity presents itself. [footnotes omitted)

While it is open to the Singapore court to follow *Steadman*, the learned contributors did not take cognisance of the fact that *Steadman* no longer represents the position in English law. Indeed, *Steadman* was the very impetus for, and was trenchantly criticised in, the UK Law Commission Report ([13] *supra*). To reiterate, the UK Law Commission Report eventually led to the passage of the Law of Property (Miscellaneous Provisions) Act 1989 which abolished the doctrine of part performance.

32 In my view, the recommendations of the UK Law Commission are highly persuasive. A wide interpretation of the doctrine of part performance would defeat the *raison d'être* of s 6(*d*) by undermining certainty and increasing the potential for litigious disputes. Parties to a land transaction would find it difficult to know exactly when a binding contract has been concluded, and could find themselves unwittingly bound by the unilateral acts of their counterparties. An overly liberal interpretation of *Steadman* would be akin to judicial abolition of s 6(*d*). Lord Morris of Borth-Y-Gest, in his dissenting speech in *Steadman* alluded to much the same thing at 547E: "Courts of equity did not set out to make the terms of an Act of Parliament virtually nugatory."

33 In my view, the approach in *Maddison* ([21] *supra*) is to be preferred to that in *Steadman*. To reiterate, the acts relied upon as evidence of part performance of a purported oral contract must unequivocally and of themselves point to the contract as alleged.

34 The acts relied upon by the plaintiff do not unequivocally and in their own nature refer to the purported oral agreements:

(a) The plaintiff states that it had offered another unit to the defendant initially, and that it was the deceased and the defendant who had requested for the Shop Unit. This does not show that the parties had agreed that the plaintiff was to have an indefinite right of reassignment.

(b) The plaintiff also states that PW1 had informed the other parties at the May 2011 Meeting that the plaintiff would require the Shop Unit to be returned, but did not insist on this after the defendant's request for the defendant's son to operate the wholesale business. However, the doctrine of part performance requires evidence of *acts* which manifestly speak for themselves. Contested evidence of what allegedly transpired at a meeting is manifestly inadequate to cross the hurdle of unequivocality.

(c) The plaintiff further states that the defendant was able to, and did continue using, the Shop Unit on the basis of the 2011 Agreement. However, this argument is wholly untenable as the doctrine of part performance requires the court to disregard the alleged oral agreement.

35 For the sake of completeness, I would like to add that even if the more permissive test in *Steadman* were to apply the plaintiff would still not succeed in showing part performance. To reiterate, even under the *Steadman* approach, the court must leave aside evidence about the oral contract (see [22] above). The common thread throughout the plaintiff's submissions regarding this issue is that of forbearance – in short, the plaintiff avers that it had the right to request for reassignment of the Shop Unit but did not do so and had made certain concessions to the defendant. Forbearance is not a positive act but a mere passive stance of refraining from doing something. Looking at all the circumstances of the case, it cannot be said that the passive stance of refraining was, on a balance of probability, in reliance on a contract. Indeed, the plaintiff's acts can only be properly termed as "forbearance" if the contract is presupposed; otherwise, the plaintiff would simply not be doing anything.

36 The requirements for invocation of the doctrine of part performance having not been met, s 6(*d*) therefore applies and the purported oral agreements for the reassignment of the Shop Unit are unenforceable.

Were there oral agreement(s) for the Shop Unit to be reassigned to the plaintiff?

37 I preface my findings with an observation by Lord Nicholls of Birkenhead in *In re H and others (Minors) (Sexual abuse: standard of proof)* [1996] AC 563 at 586G with regard to the standard of

proof:

> … the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established. ...

38 The plaintiff essentially avers that it had a right, for an indefinite period, to require the tenancy of the Shop Unit to be reassigned to it upon demand or upon the fulfilment of certain conditions. This right stems from one or both of the oral agreements allegedly concluded in 2006 and 2011.

39 I pause to observe that the plaintiff's evidence in support of the purported oral agreements left many questions unanswered. While I accept the common aphorism that one should not look a gift horse in the mouth, it seems strange that TSVT would have been willing to conduct its wholesale business on the basis that the plaintiff could call for its lease of the Shop Unit to be reassigned to the plaintiff at any time. The ostensible gift had also benefited the plaintiff: the plaintiff would have had to pay for the cost of reinstatement if the Shop Unit was surrendered to the HDB instead. The assignment of the tenancy of the Shop Unit was in reality a mutually beneficial transaction, and it would be surprising for the defendant to have agreed to such a one-sided condition.

40 PW1 had also initially stated in his affidavit of evidence-in-chief at para 15.2 that were the plaintiff to be reassigned the Shop Unit, it would "pay over the profits to the deceased [or the deceased's wife], and to the Defendant". PW1 later changed his evidence on the stand to state that the plaintiff would not hand over all the profits, but that only two-thirds of the profits would be paid to the deceased's wife and the defendant. Most pertinently, when I asked PW1 for the duration of the profit-sharing arrangement, he replied that they did not touch on this issue.

41 I also note that the plaintiff's initial Statement of Claim did not state that the plaintiff had a right to be reassigned the tenancy of the Shop Unit on demand. This was only added to the Statement of Claim by way of an amendment on the last day of trial, after PW1 had testified at trial that the plaintiff had such a contractual right. It is surprising, to say the least, that a central plank of the plaintiff's case was not pleaded at all till then.

42 On the other hand, I should also mention certain discrepancies in the defendant's evidence. The defendant had consistently maintained that Choi and Wong were mere employees, and that their employment had started in November 2011. Yet, the plaintiff had sent his letter of demand on 13 October 2011 objecting to their participation in the defendant's business. This raised the question as to how the plaintiff knew of Choi and Wong's involvement (howsoever characterised) in the business prior to the purported commencement of their employment in November 2011. The defendant could not adequately explain this, and essentially made two points in cross-examination. First, that the plaintiff had drafted the letter and it was up to the plaintiff how it wanted to word it. Second, that the plaintiff was probably "going around to find out if I was going to engage his employee" and that Choi and Wong were already "walking round in the area" at the material time. [note: 1] The defendant then said "I told them that if they were finding it difficult to run the business, they could come over to help me with mine", [note: 2] inconsistently implying that Choi and Wong had actually started to work for the defendant at an earlier date.

43 More significantly, the fact that the defendant was at pains to emphasise that Choi and Wong were mere employees seems to lend credence to the plaintiff's evidence that he had stipulated that only the defendant's son could join the defendant in the latter's business at the Shop Unit. The defendant's counter that the plaintiff's objections to Choi and Wong's involvement in the defendant's

business arose from the PW1's ill-will towards Choi and Wong (who were the plaintiff's former employees) is not an altogether satisfactory rebuttal.

44 Nevertheless, this is insufficient to lead me to the conclusion that the Agreements exist on the specific terms alleged by the plaintiff. The evidence falls far short of establishing the *specific terms of the allegedly legally binding* 2011 Agreement. Especially critical is PW1's concession on the stand that he had not given thought to the duration of the profit-sharing arrangement with the deceased's wife.

45 I thus hold that the plaintiff has not discharged its burden of proving, on a balance of probability, that the parties did enter into the Agreements.

Conclusion

46 In the result, the plaintiff's claim is dismissed for two reasons. First, the purported oral Agreements are unenforceable by reason of s 6(*d*). The doctrine of part performance does not apply to the facts of the case because the acts relied upon by the plaintiff do not unequivocally and in their own nature refer to the purported oral Agreements. Second, and in any event, the plaintiff has not proven on a balance of probability that the Agreements exist.

47 I will hear the parties on costs. In particular, I invite submissions on the question whether costs to the defendant should be reduced on the basis that the defendant should have applied under O 14 r 12 of the Rules of Court (Cap 322, R5, 2006 Rev Ed) for a summary determination whether s 6(*d*) applies to the purported oral contracts or, alternatively, for the plaintiff's claim to be struck out pursuant to O 18 r 19 of the Rules of Court.

[note: 1] Transcript dated 24 Apr 2013, lines 21-28.

[note: 2] Transcript dated 24 Apr 2013, lines 4-8.