

Chung Khin Chun K (by her deputy Mok Chiu Ling Hedy) v Yang Yin and others
[2015] SGHC 215

Case Number : Suit No 839 of 2014 (HC/Summons Nos 158 and 1424 of 2015)
Decision Date : 14 August 2015
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Peter Doraisamy and Andrew Lee (Selvam LLC) for the plaintiff; Joseph Liow and Daniel Zhu (Straits Law Practice LLC) for the first defendant; The second to fourth defendants in person (not present).
Parties : CHUNG KHIN CHUN K — suing by Mok Chiu Ling Hedy as deputy under the Mental Capacity Act and pursuant to an Order of Court dated 1 August 2014 obtained from the State Courts in OSF 309/2014, appointing her as deputy. — YANG YIN — WENG YANDAN — YANG SANNAN — HE XIANGLAN — ONG GEK LIE

14 August 2015

Judith Prakash J:

Introduction

1 On 5 August 2014, I made an order (“the Injunction”) against the first defendant (“Mr Yang”) prohibiting him from:

- (a) removing from Singapore any of his and/or the plaintiff’s assets which are in Singapore, whether in his own name or not, and whether solely or jointly owned; and
- (b) disposing of or dealing with or diminishing the value of any of his and/or the plaintiff’s assets whether they are in Singapore or outside Singapore and whether in his own name or not and whether solely or jointly owned.

2 Among the other provisions of the Injunction, was an order that Mr Yang inform the plaintiff in writing, via an affidavit, of all his and/or the plaintiff’s assets, whether in or outside Singapore, and whether in his own name or not and whether solely or jointly owned, giving the value, location and details of all such assets. The Injunction further provided that Mr Yang was not prohibited from spending \$1,500 a week on legal advice and representation, and a further \$1,500 a week on his living expenses.

3 On 19 August 2014, Mr Yang filed an affidavit (“the Disclosure Affidavit”) in which he set out details of what he said were all his assets, as required by the Injunction. Amongst the assets disclosed were two insurance policies over Mr Yang’s life (“the Policies”). The Policies were single premium policies and, at the time of the Disclosure Affidavit, one had a surrender value of \$48,021.80 while the other had a surrender value of \$50,107. Also disclosed were several bank accounts in Singapore in Mr Yang’s name with OCBC Bank and UOB Bank. Additionally, Mr Yang set out his assets in China which included three bank accounts with total deposits of RMB 22,000 and two real properties in China, viz, a shop unit owned solely by him and an apartment owned jointly by him and his parents.

4 At the time the Injunction was granted, Mr Yang was not in Singapore. He returned shortly thereafter and events then moved swiftly. Mr Yang became involved in civil proceedings, apart from the present suit, and was also arrested. Various criminal charges have been laid against Mr Yang and, as his bail application has been denied, he is currently on remand.

The applications before me

5 After the issue of the Injunction, Mr Yang was unable to obtain access to any of his bank accounts.

6 On 12 January 2015, Mr Yang took steps to try and procure release of funds from two bank accounts with OCBC and one with UOB. He filed Summons No 158 of 2015 ("Sum 158") by which he asked for an order that unless the plaintiff informed OCBC and UOB in writing within seven days that Mr Yang was entitled to withdraw from certain specified accounts such funds as provided for pursuant to the Injunction, the Injunction would be discharged in its entirety.

7 In his affidavit in support of the application, Mr Yang stated that he had not been allowed to make any withdrawal of funds from any of his bank accounts since the Injunction had been issued. During this time, all his ordinary living expenses and expenses incurred for legal advice and representation had been financed by personal loans that he had managed to obtain from his family and friends in China. He said that he had exhausted the avenue for obtaining such loans and he required funds to pay for legal advice and representation for both the civil and criminal matters.

8 With reference to what he had previously stated in the Disclosure Affidavit, Mr Yang said he wanted to clarify that the moneys contained in his various personal OCBC bank accounts did originate from the plaintiff's bank accounts and unit trust accounts initially, but these moneys were given by the plaintiff to him as a gift on or around 1 December 2010. The aforesaid was not conveyed accurately in the Disclosure Affidavit due to a combination of factors, namely, language. In December 2010, the plaintiff had transferred a substantial sum of money to Mr Yang and told him that this was a gift from her to him. Although he accepted the gift it was always understood by Mr Yang that he would also use that money to take care of the plaintiff. At that time, in December 2010, the plaintiff had already accepted Mr Yang as her grandson and he had been taking care of her for some time. He continued to look after her until 2014 when the plaintiff was taken away from his care by her niece, Mdm Mok.

9 I first heard Sum 158 on 24 February 2015. Counsel for the plaintiff objected to the application on various grounds. One of these was that Mr Yang had not established that he had no other source of funds apart from the money in OCBC and UOB. Mr Yang had to give the court a full and frank account of his finances and unless he did so there was no basis at all to consider his application. The application was part-heard and came up again two days later. I then made an order granting Mr Yang leave to file a further affidavit to disclose (a) his other sources of income/assets if any, and, if not, why not; and (b) all circumstances which would allow Mr Yang to argue that the money in whichever account he wanted to operate was his money and not the plaintiff's.

10 Mr Yang filed the further affidavit on 19 March 2015. About a week later, he filed a further application, Summons No 1424 of 2015 ("Sum 1424"). By this application, he asked that the order of court dated 5 August 2014 (*ie*, the Injunction order) be varied so as to allow him to:

- (a) withdraw \$6,000 every month from his OCBC savings account and pay the moneys to Mdm Mok for the same to be applied for the upkeep of the plaintiff; and

(b) surrender the Policies and pay the proceeds of the same to the solicitors to be held on trust and utilised towards his legal fees.

11 Both of Mr Yang's applications came up for hearing before me on 13 April 2015. After hearing arguments, I made no order on Sum 158, except that costs were to be in the cause. As for Sum 1424, whilst I made no order in respect of the prayer for withdrawal of funds to support the plaintiff, I ordered that Mr Yang be at liberty to surrender the Policies and pay the proceeds to his lawyers to be held on trust towards payment of his legal fees. I further ordered that all bills for legal fees had to be taxed before any moneys so held could be applied by Mr Yang's lawyers towards their professional fees. They would, however, be entitled to apply funds to pay reasonable disbursements prior to any taxation. I refer to these orders collectively as "the 13 April Order".

Events subsequent to the 13 April Order

12 On 17 April 2015, the plaintiff's solicitors wrote and asked to be allowed to make further arguments. The basis of this request was that the plaintiff's solicitors had written to the Commercial Affairs Department ("CAD") to ascertain whether Mr Yang had used misappropriated funds to purchase the Policies and, if so, whether the proceeds of the Policies, being the fruit of the misappropriation, ought not to be released to Mr Yang pending the determination of the criminal charges brought against him. Subsequently, the plaintiff's solicitors forwarded to the court a letter dated 20 April 2015 from the CAD stating that disposal of or dealing in the Policies had been prohibited pursuant to s 35 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC").

13 Having received this correspondence, it was clear that further arguments were required regarding the status of the Policies and the implementation of the 13 April Order in the light of the seizure effected under s 35 of the CPC. A date for further hearing was fixed and I directed that the CAD attend the hearing in order to submit on the legal position from its perspective.

14 Assistant Superintendent of Police Lim Miao Qing Jane ("ASP Lim") affirmed an affidavit on 4 May 2015 on behalf of the CAD. ASP Lim is the officer in charge of investigations in relation to criminal offences alleged to have been committed by Mr Yang. She explained that under s 35(1) of the CPC, police officers have the discretion to seize or prohibit the disposal of or dealing in any property in respect of which an offence is suspected to have been committed. In the case of property held in an account in a financial institution, as the Policies are, a police officer of the requisite rank may direct the financial institution not to allow any dealings in respect of the property in such account. On 21 November 2014, ASP Lim exercised her powers under the section and ordered Great Eastern Holdings Ltd not to allow any dealings in the Policies because she suspected that they were relevant to her investigations.

15 ASP Lim explained that there are certain reporting requirements in the CPC regarding property seized under s 35 of the CPC. Under s 370(1) of the CPC, she has to make a report on the seizure to a Magistrate's Court when, *inter alia*, such property is no longer relevant for the purposes of any investigation. CAD had initially taken the position that the Policies were relevant for the pending criminal proceedings against Mr Yang. However, sometime after 20 April 2015, she had been advised by the Attorney-General's Chambers that the Policies were no longer relevant for this purpose. She would therefore be making a report on their seizure to a Magistrate's Court as required under s 370(1) once the necessary paperwork had been prepared. Further, under s 35(7) of the CPC, a person who has been prevented from dealing with property because of an order made under s 35(2) may apply to court for the release of the property.

16 ASP Lim gave an account of how the Policies came to be purchased as revealed by her

investigations. Apparently, on 4 August 2009, an OCBC officer who looked after the plaintiff's banking needs, one Huang Yi Yao ("Mr Huang"), facilitated the adding of Mr Yang as an authorised signatory to the plaintiff's OCBC Bank Account 536xxx ("Account 536") and overheard the plaintiff telling Mr Yang to use the moneys to take care of her. On 16 March 2010, at a meeting with the plaintiff and Mr Yang, Mr Huang introduced endowment plans to them as they were looking for investment products, the plaintiff was too old to be covered by the insurance policy and, after discussion, she and Mr Yang decided to purchase two endowment plans to be placed in Mr Yang's name. On 16 March 2010, money from Account 536 was transferred into Mr Yang's account and on the same day Mr Yang paid a total \$160,000 to Great Eastern Holdings Ltd for the purchase of two endowment plans, bearing policy numbers 71765504 and 15622571. The first policy expired in March 2013 and from its proceeds \$50,000 were used to purchase another plan bearing policy number 74275658. The endowment plans seized by ASP Lim were plans 15622571 and 74275658. It was ASP Lim's belief that since the money in Account 536 was to be used by Mr Yang to look after the plaintiff, the Policies purchased with such money were held on trust for the plaintiff by Mr Yang.

17 The hearing of the further arguments took place on 5 May 2015. The CAD was represented by two deputy public prosecutors ("the DPPs"). The DPPs informed me that ASP Lim was preparing her report on the seizure and would thereafter apply to the State Courts so that the Magistrate's Court could decide what should be done about the Policies. So far no application had been made under s 35(7) for their release. It was clear that ASP Lim was no longer interested in the Policies. Counsel for the plaintiff indicated that it was unlikely that his client would oppose the release of the Policies if such application was made.

18 On the basis that it was likely that the Policies would be released from the seizure, once an application was made and that there was no longer any potential for conflict between the 13 April Order and the seizure, I ordered that the 13 April Order should stand. I now give my reasons for making that order in the first place.

The case asserted against Mr Yang and his response

19 The statement of claim is fairly long with many allegations being made against Mr Yang and the other defendants. Mr Yang's response is appropriately lengthy. What I say below is a bare summary of the main thrust of each pleading.

20 The plaintiff has brought this claim against Mr Yang to, amongst other things, recover from him money which she says belonged to her until he wrongfully misappropriated it. It is the plaintiff's case that all the money standing to Mr Yang's credit in his various bank accounts in Singapore, totalling about \$1.1m according to the figures in the Disclosure Affidavit, in fact belongs to her having been derived either directly from her accounts and investments or from the proceeds of investments which Mr Yang had purchased with the plaintiff's funds. She also asserts that Mr Yang had exerted undue influence on her in order to procure the transfer of money from her to him and the execution of a will in which he was made the sole beneficiary. It is common ground that the Policies were purchased with funds that emanated from the plaintiff.

21 Mr Yang's response is that what he has was given to him by the plaintiff as an outright gift as she considered him to be her grandson and he looked after her as a grandson would. He also says that in respect of the bank accounts, he understood that although the money was given to him, he should use some of it to maintain the plaintiff. Mr Yang emphasises that the money provided to him by the plaintiff was a gift for his use in the context of the relationship in which the plaintiff and Mr Yang had adopted each other as grandmother/grandson. While Mr Yang had benefited financially from his relationship with the plaintiff, he had given up his vocation as a tour guide in 2009 and from that day

until late 2014 he had provided care and concern for the plaintiff and had spent all his time with her, save on the few occasions when he was away.

The applications

22 The basis of both Sum 158 and Sum 1424 was that Mr Yang needed funds to conduct his defence of this action. Mr Yang averred that he had no money because all his bank accounts had been frozen pursuant to the Injunction and he had exhausted his ability to borrow money from family and friends. He therefore wanted, initially, to enforce the provision in the Injunction allowing him to spend certain sums weekly for personal expenses and legal fees. When this application (Sum 158) was opposed, he then proposed that the Policies be liquidated so that the proceeds could be used to fund his defence.

23 The main issue canvassed at the hearing was as to the proper approach that the court should adopt in considering Mr Yang's applications. In the usual case of a Mareva injunction, the injunction granted by the court restricts a defendant from dealing with his own assets. This is a draconian step because it deprives the defendant, to a greater or lesser extent depending on the limits of the injunction, of the use of his own money to pay for his lifestyle and his defence. It is therefore standard that such injunctions are made subject to terms that allow the defendant to periodically use up to a specified amount of money from the frozen assets for these purposes. When the plaintiff here applied for the Injunction, the plaintiff used the standard form and proposed the amounts that Mr Yang would be able to withdraw monthly for living expenses and legal fees.

24 At the hearing of the applications, the plaintiff changed her position somewhat. She pointed to the English Court of Appeal decision of *Ostrich Farming Corporation Ltd v Ketchell and another* [1997] EWCA Civ 2953 ("*Ostrich Farming*") as authority for the proposition that the Injunction was not a normal Mareva injunction and had to be approached differently. This was because the Injunction was designed not merely to preserve Mr Yang's assets so as to be available to meet a judgment but was put in place to protect the plaintiff from having her property used by Mr Yang for his own benefit.

25 In *Ostrich Farming*, the plaintiff company made a claim against its directors for, *inter alia*, breach of fiduciary duties and misappropriation of the plaintiff's money. The plaintiff claimed proprietary relief in relation to the sum of approximately £3.2m which the directors had allegedly misappropriated as well as an inquiry as to what had become of the money and what money or property now represented the same. A worldwide Mareva injunction was granted against the directors who subsequently applied to vary the injunction to permit them to spend money frozen by it on their legal expenses. The English Court of Appeal held that there was a two-step process that a defendant had to satisfy when asking to have access to money to which the plaintiff had a proprietary claim. The first step was that proper evidence had to be submitted to establish that the defendant had no other funds beyond those to which the plaintiff was laying such claim which were available to him for the payment of his legal fees. The second step was that the defendant had to show that there was an arguable case for his having recourse to the funds in question. If he could not show an arguable claim on his part to the funds, he would have no right to use the money. In laying down the two-stage test, the judges cited and adopted the principles enunciated by Bingham MR in *Fitzgerald v Williams* [1996] 2 All ER 171.

26 I accepted the plaintiff's submission that in considering Mr Yang's application, I should apply the two-step test as set out in *Ostrich Farming*. I had therefore to consider:

- (a) whether Mr Yang had shown that there was no fund of his own on which he could draw; and

(b) whether Mr Yang had an arguable case for his having recourse to the funds claimed by the plaintiff.

Mr Yang's financial position

27 Mr Yang made two affidavits in relation to the applications. In January 2015, he averred that since the Injunction had been made he had not been able to make any withdrawal of funds from his bank accounts. During this time his living and legal expenses had been financed by personal loans from his family and friends in China. This avenue of funds was exhausted.

28 The second affidavit, filed on 19 March 2015, was made in response to the order I gave at the first hearing of Sum 158. I had ordered Mr Yang to, first, disclose his other sources of income/assets and, if there were none, to state why not; and second, to state the relevant circumstances to show that the moneys in the various bank accounts belonged to him.

29 In relation to the first point, Mr Yang reiterated that he had exhausted all avenues of obtaining loans from his family and friends. He repeated that he did not have access to any alternative sources of funds due to the operation of the Injunction. He also replied to the plaintiff's allegations that he had transferred \$500,000 from her account to that of his father, the third defendant herein, in Hangzhou, China, in February 2010, and had deposited \$300,000 in his own bank account in December 2010. As far as the sum of \$500,000 was concerned, Mr Yang said that this money was remitted to the third defendant's bank account for the purpose of buying a painting by a well-known Chinese artist named Xu Beihong. This painting was previously in his possession in Singapore but it had been seized by the Commercial Affairs Department in September 2014. As for the sum of \$300,000, that had been utilised as payment towards the purchase of a condominium unit in Amber Road, a property that he had purchased on behalf of the plaintiff in December 2010 as a form of investment for her. The property had been sold subsequently and the proceeds deposited in one of his accounts with OCBC Bank.

30 Mr Yang also said that he left everything behind in China and moved to Singapore in 2009 to look after the plaintiff at her request. What he left behind included his job as a tour guide, his wife and children and his aged parents. During the time that he was taking care of the plaintiff from 2009 to 2014, Mr Yang said that he did everything for her from being her chauffeur to keeping her company.

31 The plaintiff submitted that Mr Yang had been evasive and had refused to inform the plaintiff of the identities of the individuals who had given him funds. Her counsel referred to the observations of the Chief Justice in *Public Prosecutor v Yang Yin* [2015] SGHC 3 ("*PP v Yang*") that there was cogent evidence that Mr Yang had transferred \$500,000 from the plaintiff's bank account to his father's account in China and that he had been less than candid before the court in the criminal proceedings. The Chief Justice also considered that Mr Yang would have the means to live comfortably if he absconded and that despite the existence of the Mareva injunction he had been able to meet other expenses.

32 The observations of the Chief Justice were made in the context of a bail application and in the light of the evidence before the court for that application. I do not know if the Disclosure Affidavit was used in the bail proceedings. In any case, the considerations relevant to a bail application are far removed from those that applied to Sum 1424.

33 In so far as Mr Yang had been less than forthcoming earlier, by the time of the application before me, he had remedied most if not all deficiencies. His counsel explained that because of his detention in prison it was very difficult to see him often enough and for sufficient time to take full

instructions. When I told counsel that Mr Yang had to deal with the query regarding the transfer of the \$500,000 to his father, he responded with the evidence regarding the painting by Xu Beihong. This is apparently now in the custody of the CAD. So far that has not been controverted by the plaintiff who has been in contact with the CAD.

34 Looking at all the evidence before me which included the Disclosure Affidavit and the further affidavits filed in support of Sum 158 and 1424, I was satisfied that Mr Yang had given a full account of his assets/assets in his name. From the undisputed background facts, Mr Yang was not a man of great means before he came to live in Singapore and, after residing here, his main source of income was the plaintiff. He did have a company here but there is no evidence that that company made much money. Once the Mareva injunction was issued, Mr Yang had no access to any funds in any of his accounts here and after his arrest and subsequent detention pending trial, he had no means of earning an income. His family is in China. There is no evidence of great wealth there. Although Mr Yang owns property in China, there was no evidence that he would be able to organise a sale or mortgage from his present position in prison. His counsel submitted that this would be very difficult if not impossible. That was a common sense submission that I accepted. Further, one of the properties is a residence co-owned with his parents and he would not be able to force them to sell or mortgage it.

35 On an overall assessment of the situation, I was satisfied that as of the date of the application Mr Yang's external resources had dried up and that he had no access to funds to conduct his defence. Whilst he may have been able to meet his expenses earlier, his evidence was that this was achieved by borrowing from relatives and that they were not willing to lend him more money. In view of the deep trouble Mr Yang is in, facing the prospect of a lengthy period in jail if convicted on the criminal charges, it is only too obvious why previously generous lenders may no longer be willing to advance funds to him even if they still have funds available.

Mr Yang had an arguable case

36 The plaintiff contended that Mr Yang could not put up an arguable case that any of the assets affected by the Mareva injunction belonged to him beneficially. Her counsel pointed out that in the Disclosure Affidavit Mr Yang had indicated that the credit balances in his various bank accounts, although in his name, were moneys which belonged to the plaintiff. At the time the Disclosure Affidavit was made, Mr Yang had engaged his solicitors and had the benefit of legal advice. The content of the affidavit were interpreted to him in Mandarin and he confirmed that he understood the contents of the affidavit. It was only five months later in his affidavit dated 9 January 2015 that Mr Yang changed his story and alleged that all the moneys in the accounts were given to him by the plaintiff as a gift in December 2010. Even in this affidavit he had confirmed that it was always understood by him that he would also use the money to take care of the plaintiff. Thus, even taking Mr Yang's claim at its highest, he was merely holding the moneys on trust for the benefit of the plaintiff. Based on his own admissions, the bank account balances belonged to the plaintiff and Mr Yang should not be allowed to use her money to fund his own defence.

37 Mr Yang had referred to three documents as evidence of the plaintiff's alleged intention to make him a gift of her money:

- (a) An OCBC bank document dated 1 December 2010 showing the transfer of the plaintiff's moneys to Mr Yang's bank account ("the OCBC Document");
- (b) A will dated 16 December 2010 bequeathing the plaintiff's estate to Mr Yang ("the 2010 Will"); and

(c) The Lasting Power of Attorney.

38 In respect of the OCBC Document, the plaintiff submitted that it did not provide any evidence of an intention to give money to Mr Yang. All it showed was that money was transferred from her account to Mr Yang's account. Mr Yang himself had stated that the plaintiff had transferred money to him to take care of her. The plaintiff's position was that the OCBC Document had been procured by undue influence exerted by Mr Yang on her.

39 As for the Lasting Power of Attorney, the plaintiff had revoked the same and the Family Court had ruled on 24 November 2014 that she possessed the necessary mental capacity to revoke the same. The 2010 Will was also procured by undue influence and by her deputy, the plaintiff had started proceedings to revoke it and replace it by a statutory will pursuant to s 23(1)(i) of the Mental Capacity Act (Cap 177A, 2010 Rev Ed).

40 The plaintiff's arguments had force. I was mindful, however, that Mr Yang did not have to show that his defence would succeed at trial; what he had to show at this stage was that he had an arguable case. I was also mindful that the strength of his case might be different depending on the assets involved and the time at which they were transferred to him. His assets in Singapore were derived, ultimately, from the plaintiff. This did not mean that either all his assets actually belonged to her or that none of her assets belonged to her. The strength of his defence that they were gifts to him could conceivably vary from asset to asset. As for the assertion of undue influence intended to counteract any proved intention to make a gift, not only would that need to be proved in court but it might also need to be established that such undue influence was operative in respect of each separate gift.

41 It is a legal truism that a transfer of property without consideration from the owner of the same to a third party can have different legal consequences depending on the intention behind the transfer. On the one hand, the transfer may result in making the transferee the trustee of the property for the transferor. On the other, providing the appropriate intention can be proved, the transferee can become the legal and beneficial owner of the property, having been gifted it by the transferor. Which result is arrived at in any particular situation depends on the evidence before the court. Whilst generally the presumption will be that a transfer of property which is not supported by value will constitute the transferee a trustee, that presumption can be displaced by evidence showing that the intention was to make a gift. The burden of proving the gift will lie on the transferee who can rely on all the circumstances in which the transfer was made to establish the true intention of the transferor. If undue influence is asserted in response to a contention of a gift, then the burden will be on the transferor to show that his will was overborne by undue influence exerted by the transferee.

42 Counsel for Mr Yang submitted that there was an arguable case that the plaintiff had made gifts to Mr Yang in 2010. The plaintiff had signed the OCBC Document transferring money to his account and she had also agreed to the purchase of the Policies which named Mr Yang as the life assured and the insured. Mr Yang's case was that both these transactions were gifts to him because of the plaintiff's love and affection for him. In the 2010 Will, she had referred to him as someone whom she regarded and loved as a grandson. Whilst the plaintiff could of course put forward the undue influence contention, this would have to be proved and, in the meantime, Mr Yang had an arguable case. Counsel also explained Mr Yang's assertion in the Disclosure Affidavit that the moneys in his Singapore bank accounts belonged to the plaintiff on the basis that he was acknowledging that they had come from her and that he had agreed to use part of them to continue to take care of her. This acknowledgment did not negate the gifts which the plaintiff had intended to make to Mr Yang.

43 I agreed with the plaintiff that the OCBC Document did not prove that the transfer of funds to Mr Yang's accounts was a gift. In my view, it did not establish a trust either; rather it was neutral with other evidence being required to explain why it was executed. However, I note it was not strictly necessary to transfer funds to Mr Yang in 2010 in order to enable him to look after the plaintiff given that she had earlier, in August 2009, made him an authorised signatory to at least one of her bank accounts.

44 Apart from the disputed transactions in 2010, there was evidence that the plaintiff had indeed made gifts to Mr Yang. In 2008, the plaintiff and her friend Mdm Chang had made a trip to Beijing. During that trip Mr Yang acted as their guide and got on very well with the plaintiff. Sometime after the Beijing trip, while Mr Yang was still living in China, the plaintiff made two remittances to him: one of \$4,000 and the other of \$40,000. Subsequently, in April 2009 she sent him a further \$12,000 as a "hong bao". These three remittances, which the plaintiff has not denied, support Mr Yang's story that she was fond of him and expressed her feelings by gifts of money. They also supported his evidence that she wanted him to come and live in Singapore and take care of her. Further, subsequently she agreed to provide the capital for him to start a company in Singapore so that he could obtain an employment pass and live here with her on a long-term basis. In late 2009, the plaintiff also executed a new will, leaving almost all her estate to Mr Yang. This was later superseded by the 2010 Will.

45 Looking at the events that occurred from 2008 until the end of 2010, I was satisfied that Mr Yang had an arguable case of gift in response to the plaintiff's claim. I am cognisant that the plaintiff will cast all these events in a different light at trial. I must make it clear that I am not examining the merits of Mr Yang's case (or indeed the plaintiff's) at this stage: I am simply looking at the circumstances in the round to ascertain if Mr Yang can put forward an argument. Whether this argument succeeds will depend on how the evidence develops at trial, including in relation to the undue influence contention.

46 When the matter came on for further hearing, the plaintiff relied on the affidavit of ASP Lim to establish that the Policies were purchased for the purpose of benefiting the plaintiff and were held on trust by Mr Yang for her. I did not accept this argument because the evidence in ASP Lim's account of her investigations was hearsay. She had come to certain conclusions on the basis of information given to her by Mr Huang and she was entitled to do this for the purpose of her investigations. However, ASP Lim's conclusions did not bind me and I had to make my own determination on the basis of the evidence before me. Whatever Mr Huang told ASP Lim was not directly before me in a sworn statement from him. Accordingly, I did not consider that the affidavit of ASP Lim had an adverse impact on the arguability of Mr Yang's case. I should also mention that, in any case, Mr Huang's evidence if given to this court would have to be tested by cross-examination.

Conclusion

47 I was satisfied therefore that the two requirements of *Ostrich Farming* had been met. I was not, however, prepared to allow Mr Yang to withdraw money periodically from his accounts to meet his legal expenses. In my view, his case in relation to the Policies was somewhat stronger in that the money tied up there would only be available on maturity of the Policies, unless they were surrendered earlier, and therefore it was less likely that the plaintiff intended him to use those moneys to look after her. I therefore considered that those funds could be more properly released for the purpose of meeting Mr Yang's legal fees and for that purpose only. I therefore made the 13 April Order.