

IN THE GENERAL DIVISION OF  
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 162

Suit No 778 of 2021

Between

Quek Peng Hock Henry (suing  
by his deputy and litigation  
representative, Quek Lee  
Tiam)

*... Plaintiff*

And

Chia Swee Hun

*... Defendant*

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**JUDGMENT**

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[Equity — Conversion]  
[Gifts — Inter vivos]  
[Trusts — Resulting trusts]  
[Trusts — Constructive trusts]

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**Quek Peng Hock Henry (suing by his litigation representative,  
Quek Lee Tiam)**

**v**

**Chia Swee Hun**

**[2023] SGHC 162**

General Division of the High Court — Suit No 778 of 2021

Audrey Lim J

20–23, 27–29 September, 3–4, 21 November 2022; 20 March 2023

1 June 2023

Judgment reserved.

**Audrey Lim J:**

1 The plaintiff, Mr Henry Quek (“Henry”) is a 62-year-old Singaporean. He suffered from a stroke on 26 June 2020 (“the first stroke”) and again on 8 October 2020 (“the second stroke”). On the application of his sister Mdm Quek Lee Tiam (“Judy”), the court determined on 4 August 2021 that Henry lacked capacity in relation to his personal welfare, property and affairs and appointed Judy as his deputy pursuant to the Mental Capacity Act 2008 (2020 Rev Ed) (“the MCA”).

2 Judy commenced this suit (“the Suit”) as Henry’s litigation representative to claim various assets (“Assets”) from the defendant, Ms Chia Swee Hun (“Chia”) which Judy claims Chia holds on trust for Henry. Judy also claims that if Henry had gifted any of the Assets to Chia, such a gift is invalid as: (a) Henry lacked capacity at the material time; (b) it was made under Chia’s

undue influence; or (c) it was an unconscionable transaction. Further, Judy claims that some of the Assets were converted by Chia.

3 The Assets claimed by the plaintiff are as follows:

<b>S/N</b>	<b>Description</b>	<b>Value</b>
1	A property in Kuala Lumpur, Malaysia (“KL Property”) purchased in June 2015	RM479,050 (purchase price)
2	Bonds issued in February 2018 (“Bonds”)	\$1,050,000
3	Coupon paid on the Bonds in February 2021 (“Coupon”)	\$64,268.40
4	Proceeds from the sale of shares in MM2 Asia Ltd (“MM2 Shares”) in March 2021	\$56,446.32
5	Cash taken from Henry’s safe at his home (“The Tiara”) purportedly in October 2020	\$800,000
6	Moneys withdrawn from a UOB Time Deposit Account, held jointly by Henry and Chia (“Joint TD A/C”), between November 2020 to April 2021	\$744,122.74
7	Moneys withdrawn from Henry’s POSB Account (“Henry’s POSB A/C”) in February 2021	\$800,000
8	Moneys withdrawn from Henry’s UOB Account (“Henry’s UOB A/C”) on 16 and 24 February 2021 of \$500,000 each	\$1,000,000
9	A sum paid to the Commissioner of Stamp Duties for the transfer of The Tiara to Chia, from Henry’s UOB A/C around 18 February 2021	\$218,600

10	The Tiara	\$3,128,000 (approximately)
11	Henry’s watches and jewellery (“Watches and Jewellery”)	\$943,000

4 For the purposes of the Suit, there are four accounts pertaining to Henry which are of significance, namely: (a) Henry’s POSB A/C; (b) Henry’s UOB A/C; (c) Joint TD A/C held with Chia; and (d) a UOB i-Account held jointly with Chia (“Joint i-A/C”).

**Background and relationship between Henry and Chia**

5 Henry and his wife divorced in 2005 and they have three children, namely Mr Jordan Quek (“Jordan”), Mr Jerrold Quek (“Jerrold”) and Ms Joey Quek (“Joey”). Henry started the Far Ocean Group (“FOG”), comprising Far Ocean Holdings Pte Ltd (“FOH”) and its subsidiaries including Far Ocean Sea Products Pte Ltd (“FOSP”). Jordan was appointed the Chief Executive Officer of FOG from 27 July 2020 and Jerrold was appointed its Chief Operating Officer from 1 January 2019.<sup>1</sup>

6 Chia is a Malaysian citizen. She started working in Singapore in around 2003 as a hairdresser at a salon, where she met Henry. It is not seriously disputed that Henry and Chia later entered into a romantic relationship and that Chia moved into Henry’s home, The Tiara, either in 2011 (as claimed by Chia) or in 2013 (as claimed by Judy). This is despite Judy initially asserting that Henry and Chia were never in a “committed, loving or romantic relationship” and that

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<sup>1</sup> Judy’s AEIC at [7]–[8]; Jerrold’s AEIC at [1], [9].

Chia was merely Henry’s “caregiver”.<sup>2</sup> The fact remains that: (a) Chia had cohabitated with Henry at The Tiara from at least 2013 until she returned to Malaysia in early 2020;<sup>3</sup> (b) Henry had given Chia large sums of money and other items which are not being claimed by Henry’s family;<sup>4</sup> (c) Henry had allowed Chia to use two supplementary credit cards;<sup>5</sup> (d) Henry had opened joint bank accounts with Chia; (e) Henry had placed some of the Assets in Chia’s name even before he suffered the first stroke; and (f) Henry had sent messages to Chia in 2019 that showed he “love[d] [her] very much”.<sup>6</sup> Pertinently, after Henry had suffered the second stroke, Judy asked Chia to return to Singapore to care for him. If Henry merely needed a “caregiver”, Judy could have easily engaged someone else to do the same.

7 In around March 2020, Chia returned to Malaysia to attend to personal matters. She claims she did not return to Singapore until 13 October 2020 because of travel restrictions due to the COVID-19 pandemic. However, the evidence shows that by end 2019, her relationship with Henry was strained and they were speaking about going their separate ways. Henry’s calendar recorded that they quarrelled on 25 and 28 December 2019, that Chia “left” on 30 December 2019, and that they “broke off” on 31 December 2019.<sup>7</sup>

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<sup>2</sup> Reply (Amendment No. 1) (“Reply”) at [5]; Judy’s AEIC at [17], [20]; Chia’s AEIC at [11]–[12].

<sup>3</sup> Judy’s AEIC at [36]–[37]; Chia’s AEIC at [42].

<sup>4</sup> Judy’s AEIC at [20]–[24].

<sup>5</sup> 20/9/22 NE 62–63; 2AB 638, 640.

<sup>6</sup> Judy’s AEIC at 163 (s/ns 13, 14).

<sup>7</sup> Chia’s AEIC at [42]–[43], [51]–[52]; 1AB 124–126, 554.

8 Whilst Chia claims she still had a strong relationship with and cared deeply for Henry;<sup>8</sup> and that they kept in daily contact and “religiously sent text and audio messages to each other” whilst she was in Malaysia, there is no evidence to support this. Nevertheless, I find Henry continued to have feelings for Chia and was concerned for her, even if Chia did not reciprocate in the same manner or to the same degree. This can be seen from the audio messages between them from July to September 2020, and by Judy’s conduct in reaching out to Chia on 12 October 2020 (after Henry had suffered the second stroke) to ask her to return to Singapore to support Henry.<sup>9</sup>

***Events after Chia returned to Singapore in October 2020***

9 Chia returned to Singapore on 13 October 2020 and stayed with Henry at The Tiara. Whilst she claims she was concerned for Henry’s well-being, Judy claims the subsequent events showed that Chia “was busy lining her pockets with Henry’s moneys and assets over [a] short period of less than 6 months” and she completely neglected to take care of Henry. This resulted in Henry losing a tremendous amount of weight and developing paranoia and persecutory delusions against his family. Judy exhibited audio messages from Chia to show that Chia did not care about Henry despite his mental impairment.<sup>10</sup>

10 The relationship between Chia and Henry’s family came to a head on 6 April 2021. That morning, Henry told Jerrold that he wanted to “jump from” The Tiara. Henry was then admitted to the Institute of Mental Health (“IMH”), and Judy and Jerrold stayed at The Tiara to arrange for the installation of CCTV

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<sup>8</sup> Chia’s AEIC at [40]–[41].

<sup>9</sup> Quek’s AEIC at [45], [48]–[49]; 1AB 126–130.

<sup>10</sup> Judy’s AEIC at [58], [69].

cameras and locks on the windows, to monitor and ensure Henry’s safety when he returned home.<sup>11</sup>

11 In the evening of 6 April 2021, Judy and Jerrold were joined at The Tiara by Jordan, Joey and Henry’s ex-wife. Chia also returned to The Tiara accompanied by Ms Tammy Tan (“Tammy”) and Mr Li Nanxing (who are Henry’s friends) at Chia’s request.<sup>12</sup>

12 The CCTV footages of events at The Tiara that evening (“CCTV Footages”) showed Chia apologising to Judy for not taking good care of Henry. Judy was then upset with and berated Chia.<sup>13</sup> Thereafter, Henry’s family and Chia agreed that Chia would stop seeing Henry and vacate The Tiara in exchange for being allowed to keep various assets that she claimed to have received from Henry. Chia thus signed a “Deed of Settlement” (“6/4/21 Document”) drafted by Joey. I reproduce the salient portions of it:<sup>14</sup>

**LIST OF ITEMS HENRY QUEK GAVE TO ME, CHIA SEE HUN,  
DURING MY TIME SPENT WITH HIM UP UNTIL TODAY 6  
APRIL 2021**

Annexure A

1. Diamond Pendant
  2. Watch – Roger Dubis
  3. Diamond Earrings
  4. Rolex Watch
  5. Necklace (gold)
- S\$800,000 – Oct 2020. Cash.
- Tiara Apt –

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<sup>11</sup> Judy’s AEIC at [83], [90]; Jerrold’s AEIC at [31]–[33], [35].

<sup>12</sup> Judy’s AEIC at [92]; Jerrold’s AEIC at [36]; 3/11/22 NE 49

<sup>13</sup> 21/9/22 NE 8–10.

<sup>14</sup> Joey’s AEIC at [33]; Judy’s AEIC at [96] at exhibit QLT-12; Chia’s AEIC at [71].

S\$500,000 – 16/2/21  
S\$500,000 – 24/2/21 } \$1 million MM2 Shares

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THE \$1,000,000 dollars are in lieu [of] the \$1 million (mm2) shares. (Certificate) 2018/13 upon maturity the convertible bond will assigned to Jerrold Quek I/C No.

Other than the heading “LIST OF ITEMS ...” in bold above, the rest of Annexure A was written by Tammy.<sup>15</sup>

13 While the parties agree that the 6/4/21 Document is not enforceable, the plaintiff relies on it to show that Chia had removed \$800,000 from Henry’s safe at The Tiara in October 2020.<sup>16</sup>

### **Two letters purportedly signed by Henry**

14 I deal first with two letters: (a) the first dated 5 March 2018 purportedly signed by Henry and witnessed by Jordan and Jerrold (“5/3/18 Letter”); and (b) the second dated 20 March 2018 purportedly signed by Henry and witnessed by Jordan (“20/3/18 Letter”) (collectively “the Two Letters”).<sup>17</sup> Judy relies on them to support that: (a) the KL Property, Bonds and MM2 Shares were held on trust for Henry; and (b) the moneys in the Joint TD A/C and Joint i-A/C belonged to Henry. Chia disputes the authenticity of the Two Letters and Mr Cheong (Chia’s counsel) submits in Closing Submissions that they were not pleaded, but only raised in Judy’s affidavit of evidence-in-chief (“AEIC”) to prove a trust. Thus,

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<sup>15</sup> Joey’s AEIC at [33]–[34]; 20/9/22 NE 80–81; 3/11/22 NE 45, 48.

<sup>16</sup> Statement of Claim (Amendment No. 1) (“SOC”) at [30]–[31].

<sup>17</sup> 1PB 4, 6–7.

the court is precluded from relying on the Two Letters as the parties have not put them into issue.<sup>18</sup>

15 I reject Mr Cheong’s submission that the court cannot rely on the Two Letters. First, Judy’s claim of a trust pertaining to various Assets was expressly pleaded, and the Two Letters constitutes the evidence on which the plaintiff relies to prove his case. Second, Chia has not been caught by surprise. The Two Letters were already exhibited in Judy’s application for a Mareva injunction (“Mareva Application”), filed at the commencement of the Suit. In the Mareva Application, Judy referred to the Two Letters to show that Henry did not intend to give Chia more assets (to support a Mareva injunction against some of the Assets which included the KL Property and the Bonds).<sup>19</sup> The Two Letters were further disclosed by Judy in general discovery in December 2021, long before the parties filed their AEICs. I agree with Mr Narayanan (the plaintiff’s counsel) that Chia came to trial fully prepared to address the issue, as she even challenged the authenticity of the Two Letters by calling expert evidence on Henry’s purported signatures on them. Chia had put the matter into issue and knew the case she had to meet. There was no prejudice to her and so I reject Mr Cheong’s belated submissions in this regard made only after the close of the trial.<sup>20</sup>

16 Turning to the authenticity of the Two Letters, the burden lies on the party asserting forgery (a type of fraud) to prove it on a balance of probabilities (*Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 at [157] and [161]). I find the Two Letters were authentic and signed

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<sup>18</sup> Chia’s Closing Submissions (“DCS”) at [30]–[31].

<sup>19</sup> Plaintiff’s Reply Submissions (“PRS”) at [9]; Judy’s 1<sup>st</sup> affidavit dated 17 May 2021 filed in SUM 4373/2021 at [80], [84], [86].

<sup>20</sup> Chia’s Reply Closing Submissions (“DRS”) at [3].

by Henry. The authenticity of the Two Letters was corroborated by Jordan and Jerrold at the material time.

17 Jordan attested that: (a) the 5/3/18 Letter was drafted by the secretary; (b) he witnessed Henry sign it on the same day at the office; (c) Jerrold was also present and both Jerrold and him then signed the document after Henry had signed it; and (d) Henry then told him to pass the document to Judy. Jerrold attested to the same. Jordan also attested that he subsequently passed the document to Judy, which Judy confirmed.<sup>21</sup> As for the 20/3/18 Letter, I likewise accept Jordan’s testimony that: (a) it was prepared by the secretary; (b) he witnessed Henry signing it on the same day at the office; (c) he then signed it after Henry did; and (d) he subsequently passed the letter to Judy. Judy also stated she had received this document from Jordan.<sup>22</sup> Jordan, Jerrold and Judy’s accounts were consistent, and I saw no reason to disbelieve them even if they had an interest in the matter. That Jordan and/or Jerrold witnessed Henry signing the Two Letters supports on balance that the letters were authentic.

18 Next, the evidence of Ms Shikshita Khanna (“Shikshita”), Chia’s expert, did not support Chia’s case. Shikshita opined it was “highly probable that the [Two Letters] were manipulated”.<sup>23</sup> I give no weight to her opinion.

19 In reaching her opinion, Shikshita compared the Two Letters with only *one* document signed by Henry, namely a cheque dated March 2016 (“S-001”). She admitted it would have been usual to compare the disputed signature with a few other undisputed specimen signatures, but she did not because she found

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<sup>21</sup> 20/9/22 NE 51; 21/9/22 NE 39, 74–75; 22/9/22 NE 17–20.

<sup>22</sup> 21/9/22 NE 75; 22/9/22 NE 21–22.

<sup>23</sup> Shikshita’s Report at p 7.

“sufficient dissimilarity” between the signatures in S-001 and the Two Letters to provide an opinion on the matter. However, she agreed that there are natural variations in a person’s signature and no two signatures by the same person will be exactly the same. I agree with Mr Narayanan that Shikshita should have examined more specimen signatures of Henry’s to do a proper analysis.<sup>24</sup>

20 Further, Shikshita did not see the original of the Two Letters in conducting her examination. She agreed that the details of certain features of a person’s signature may not be observable or shown adequately in a reproduction, such as the pen pressure, fine details of pen movement and stroke formation.<sup>25</sup> The analysis of such matters in a signature has been accepted as part of the salient findings that are made in the handwriting analysis process (*Sudha Natrajan v The Bank of East Asia Ltd* [2017] 1 SLR 141 at [47]).

21 Pertinently, in court, when shown further specimens of Henry’s signature on documents relied on by Judy’s expert, which documents Chia do not dispute were signed by Henry (“Other Documents”), Shikshita admitted it was possible that Henry had signed the Two Letters.<sup>26</sup> She came to this conclusion after the unreliability of her comparison of the Two Letters with merely S-001 was pointed out to her. I set out a few examples:

- (a) Shikshita agreed Henry’s signatures on a lease agreement dated 1 December 2018 were similar to the signatures on the Two Letters.<sup>27</sup>

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<sup>24</sup> 4/11/22 NE 29.

<sup>25</sup> 4/11/22 NE 31.

<sup>26</sup> Lee Gek Kwee’s AEIC at [4]; 2PB Tabs 1–6 and 11–13; 22/9/22 NE 3; 4/11/22 NE 36, 49.

<sup>27</sup> 2PB 48–52; 4/11/22 NE 37.

(b) Shikshita stated in her report that the lower body of the first letter of the signature in S-001 crossed below the “baseline” unlike in the Two Letters, to conclude that the Two Letters were not signed by Henry. But in court, she admitted that a tenancy agreement dated 1 July 2010 signed by Henry showed that the lower body of the first letter did not fall below the “baseline” and looked more like the signature in the Two Letters rather than the signature in S-001.<sup>28</sup>

(c) As to the execution of the first letter of Henry’s signature, Shikshita observed that S-001 showed a greater distance between the terminal arm of the first letter with the second letter, compared to in the Two Letters. There was also a “hook” at the end of the first letter in S-001, but not in the Two Letters. However, Shikshita agreed during cross-examination that in some of the Other Documents, Henry’s signatures did not have a “hook” at the end of the first letter, and the distance between the first and second letters was very close. These showed that the signatures in the Other Documents were more similar to those in the Two Letters rather than in S-001.<sup>29</sup>

(d) On the execution of the second letter of Henry’s signature in S-001, Shikshita observed that the initial arm forming a curve-like structure was more “straight”, whereas the structure was more rounded in the Two Letters. But she admitted in court that some of the Other Documents showed the formation of the second letter in Henry’s signature to also be more rounded, and in some of those documents they do not even look like what is in the Two Letters or S-001.<sup>30</sup>

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<sup>28</sup> Shikshita’s Report at p 11; 2PB 21; 4/11/22 NE 38–40.

<sup>29</sup> Shikshita’s Report at pp 10, 12; 4/11/22 NE 42–44.

<sup>30</sup> Shikshita’s Report at p 13; 4/11/22 NE 44–45.

22 In the final analysis, Shikshita agreed that there was a fair amount of variation in Henry’s signatures when she saw the Other Documents, and it was possible that he had signed the Two Letters.<sup>31</sup> Shikshita’s admission thus supports that the Two Letters could have been signed by Henry.

23 I accept the analysis of Mdm Lee Gek Kwee (“Gek Kwee”), the plaintiff’s expert, to be reliable. Gek Kwee had compared the signatures in the Two Letters to the Other Documents which comprised nine documents that Henry signed between 2005 to 2018. In particular, the documents Henry signed in 2018 were contemporaneous with the Two Letters. She also analysed the original Two Letters, to examine the pen pressure and stroke formation. She then concluded that Henry had signed the Two Letters.

24 Even if I disregard Gek Kwee’s opinion, the fact remained that Shikshita’s initial opinion was found to be unreliable when she was cross-examined in court (see [21]–[22] above). More importantly, that Henry signed the Two Letters was witnessed by Jordan or Jerrold.

### **Henry’s loss of mental capacity**

25 I next deal with when Henry loss capacity to make decisions as to his property or affairs because of an impairment, or a disturbance in the functioning, of his mind or brain within the meaning of s 4 of the MCA (“mental capacity”). The finding on this issue affects the plaintiff’s claims to some of the Assets.

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<sup>31</sup> 4/11/22 NE 49, 52.

***Parties' respective cases***

26 The plaintiff called Dr Calvin Fones (“Dr Fones”) and Dr Ho King Hee (“Dr Ho”) whilst Chia called Dr Alistair Burns (“Dr Burns”) in this regard. Dr Ho is a consultant neurologist and physician in private practice. He was the attending neurologist who examined Henry after he suffered the two strokes in June and October 2020. Dr Fones is a consultant psychiatrist in private practice and an adjunct Clinical Associate Professor at the Yong Loo Lin School of Medicine at the National University of Singapore. He examined Henry on 15 April 2021, after he was admitted to IMH for suicidal behaviour, and again on 20 June 2022. Dr Burns is a Professor of Old Age Psychiatry at the University of Manchester and is based in the United Kingdom.

27 It is undisputed that Henry lacked mental capacity at least from 15 April 2021, when Dr Fones examined him on that day and concluded as such.<sup>32</sup>

28 Judy, however, claims that Henry lacked mental capacity from 9 October 2020 (after the second stroke). In particular, Dr Fones, after examining Henry on 15 April 2021, concluded that Henry suffered from Major Neurocognitive Disorder and severe aphasia. He opined that Henry “has likely been lacking in mental capacity since 9 Oct 2020” and that his level of cognitive impairment would in all likelihood have been severe enough to render him impaired in most respects.<sup>33</sup> Chia claims that Dr Fones’ views on when Henry lost mental capacity cannot be accepted, as there was no mental capacity assessment carried out on Henry between October 2020 and April 2021.

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<sup>32</sup> Agreed List of Issues at [2]; Dr Fones’ 19/4/21 Report at [21]; 20/9/22 NE 11, 30.

<sup>33</sup> Dr Fones’ 19/4/21 Report at [30], [32] and [35].

***My decision***

29 Section 4(1) of the MCA provides that an individual lacks capacity if he is “unable to make a decision for himself” because of an impairment, or a disturbance in the function, of the mind or brain. Section 5(1) provides that an individual is considered to be “unable to make a decision for himself” if he is unable: (a) to understand information relevant to that decision; (b) to retain that information; (c) to use or weigh that information as part of the process of making the decision; or (d) to communicate his decision.

30 The test for mental capacity in s 4(1) of the MCA involves a functional and a clinical component. On the functional aspect, the individual in question (P) must be unable to make a decision, and on the clinical aspect, this inability must be caused by a mental impairment. The court would require the assistance of expert evidence on the clinical component, to apprise the court whether P has a mental impairment, what that impairment is, and what effect it has on P’s cognitive abilities. As for the functional component, this is a question for the court to determine (see *Re BKR* [2015] 4 SLR 81 at [134]).

31 I accept on balance that Henry had lost mental capacity from about 9 October 2020. This is supported by the plaintiff’s expert evidence in relation to the clinical component. As for the functional component, the testimony of individuals who interacted with Henry after the second stroke and the contemporaneous evidence show that he had been unable to make decisions as he could not understand or weigh the information relevant to so doing.

*The expert evidence*

32 I begin by considering the expert evidence.

33 I find Dr Burn’s opinion unhelpful in supporting Chia’s position. Dr Burns did not see Henry or interview Henry’s friends and family members, and his opinion is based solely on medical information provided by Chia’s lawyers, including Dr Fones’ medical report. In fact, Dr Burns did not outrightly disagree with Dr Fones’ assessment that Henry likely did not have mental capacity from 9 October 2020. Instead, Dr Burns was unable to say “with certainty” or conclude with “one hundred percent certainty” that Henry had lost mental capacity on 9 October 2020 because he had not examined Henry.<sup>34</sup>

34 Dr Fones, however, was clear in his assessment (after examining Henry and considering other evidence such as Dr Ho’s inputs and the medical records) that Henry likely did not have mental capacity after the second stroke.<sup>35</sup> Dr Fones had examined Henry twice (albeit some months after he suffered the second stroke) to determine his mental capacity, whilst Dr Ho had attended to Henry after each of his strokes.

35 In this regard, Dr Ho had observed that after the second stroke, “there was a significant loss of language capacity”; that this loss “worsened” in the interval between Henry’s visits to Dr Ho on 9 October and 15 October 2020; and that on 15 October 2020 Henry had lost the ability to text, write and speak and he did not cooperate with two-stage commands. Dr Ho stated that he could not (on 5 September 2022 when he prepared his report) ascertain Henry’s mental capacity as at 15 October 2020 as no formal assessment of such was done on that occasion, and any such formal assessment attempted in October

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<sup>34</sup> Dr Burn’s 17/8/22 Report at [2.4], [6], [10.21]; 4/11/22 NE 78, 80.

<sup>35</sup> Dr Fones’ 19/4/21 Report at [21], [24], [30]–[32].

2020 would likely have been unsuccessful because of Henry’s stroke-related aphasia as Henry clearly had major problems with language then.<sup>36</sup>

36 As for Dr Fones, he stated the defining event that caused the impairment to Henry’s brain/mind function to be the second stroke. He had reviewed the MRI imaging of Henry’s brain, which coincided with the onset of marked cognitive and behavioural changes also observed by Dr Ho. Dr Fones assessed that Henry suffers from “Major Vascular Neurocognitive Disorder with [b]ehavioural disturbance” which came about after the second stroke. Henry suffered from aphasia, the loss of the ability to produce or comprehend language, which occurred because of brain damage from the stroke.<sup>37</sup> I reproduce relevant extracts from Dr Fones’ report:

... [Henry] has both Receptive and Expressive Aphasia in that he has both the inability to understand or communicate with others.

He has what is termed ‘Fluent Aphasia’, where he has trouble understanding the speech of others, while he is able to speak in complete sentences, with normal articulation and rhythm but with little meaning or content. He generally does not realise that he is not making any sense to his audience, even as he continues on his discourse.

37 In essence, Dr Ho and Dr Fones agree that Henry’s ability to comprehend and speak was severely impacted as a result of the second stroke.

38 Additionally, Dr Fones opined (when he saw Henry in April 2021) that Henry’s mental condition did not improve much since October 2020. Henry was “unable to communicate or comprehend even very simple instructions” on 15 April 2021. This was although Dr Fones took “all practical steps ... to enhance

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<sup>36</sup> Dr Ho’s 5/9/2022 Report; 27/9/22 NE 51.

<sup>37</sup> Dr Fones’ 19/4/21 Report at [11], [16], [19], [30], [32], [33] and [35]; Dr Ho’s 5/9/22 Report.

[Henry’s] understanding and communication” such as “using simple language, multiple languages (English, Teochew, Mandarin), visual aids/pictures, written instructions”. In court, Dr Fones elaborated that when he examined Henry on 15 April 2021, Henry’s communication ability remained “very poor” and he was unable to engage in any conversation. Dr Fones further stated that most improvements, if at all, would occur in the first three months following a stroke, *which Dr Burns also accepted*, and that it would be “very unusual to see any dramatic improvements after 6 months”.<sup>38</sup>

39 The upshot of these observations is that Henry’s mental condition after the second stroke would have been no better than when he was examined by Dr Fones on 15 April 2021. Hence, if Henry had been assessed to have no mental capacity around 15 April 2021, he would more likely than not also have no mental capacity in October 2020 after the second stroke. As Dr Fones stated, after a stroke, a patient might see some improvement before he reaches a steady state, and the patient’s position *before* reaching that steady state would have been *the same or worse*.<sup>39</sup>

40 Pertinently, while Dr Ho did not assess Henry for mental capacity, he had similarly opined that if there had been no improvement in Henry’s position after the second stroke, it is likely that the second stroke would have resulted in significant loss of ability to understand information and to express himself. In cross-examination, Dr Ho opined that when he examined Henry on 15 October 2020, Henry’s mental state was “not normal” based on his demeanour and loss of language capacity at that time.<sup>40</sup>

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<sup>38</sup> Dr Fones’ 19/4/21 Report at [23], [31]; 20/9/22 NE 23, 31–32; 4/11/22 NE 80.

<sup>39</sup> 20/9/22 NE 43.

<sup>40</sup> Dr Ho’s 5/9/22 Report; 27/9/22 NE 53–54.

41 Finally, Dr Fones opined that Henry’s level of cognitive impairment as of 9 October 2020 was so severe as to render him incapable of making *inter vivos* gifts, contracting, appointing a lasting power of attorney and writing a will; and that given Henry’s mental state, “he would have been very vulnerable to financial abuse and undue influence”.<sup>41</sup>

42 I thus accept Dr Fones’ opinion that Henry had likely lost mental capacity in October 2020 after the second stroke, and Dr Burns has not outrightly stated the contrary. I do not find Dr Fones’ opinion, which is supported by Dr Ho’s observations of Henry in October 2020, to be lacking in defensibility.

*The factual circumstances*

43 Next, the factual circumstances at the material time also support that Henry had lost mental capacity from about 9 October 2020.

44 For instance, the audio messages from Henry to Chia a few days after the second stroke showed Henry to be repeating himself and sounding largely incoherent. On 12 October 2020, Henry kept saying he was “very scared”, he asked Chia whether he could “study” with her, and mentioned studying “Primary 1”, “Primary 2”, “Primary 3”, then said that Chia “didn’t study” and that she had to “spell, spell, spell”. Then on 13 October 2020, he asked if Chia had studied and finished studying her “ABC” and told her to “spell slowly”. In court, Chia agreed that Henry sounded very weak and scared, that she did not know what Henry meant as she was not studying, and that he was incoherent.

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<sup>41</sup> Dr Fones’ 19/4/21 Report at [33]–[34].

Dr Burns also agreed that Henry was “scared” and in “distress” and his messages did not make sense.<sup>42</sup>

45 Further, the audio messages of 19 January 2021 showed Henry repeatedly asking Chia to visit him. But Chia was living with Henry, and in the earlier part of that conversation, had informed him that she was “[going] out for a while”. This showed that Henry was unable to retain or understand recent information conveyed to him and supports his lack of mental capacity. As Dr Burns stated, Henry was showing signs of distress.<sup>43</sup> Henry’s messages on 29 January 2021 also showed that he was incoherent and rambling to Chia.<sup>44</sup> This was more than three months after the second stroke, when most improvements, if at all, would have occurred such that Henry’s condition should have reached a steady state (see [38] and [39] above).

46 Next, Henry’s family members testified to a drastic change in his cognitive abilities after the second stroke. Judy deposed that Henry became a completely different man, he could not talk and his speech was severely impaired. Jerrold attested that Henry lost his speech capabilities and started to behave like a different person; and he became depressed, reclusive and would be aggressive at times.<sup>45</sup>

47 I accept the testimony of Henry’s family members, although I am cognisant that they have an interest in the Suit. Their observations of Henry are corroborated by the testimony of individuals unrelated to Henry that his mental faculties appeared to have been severely diminished after the second stroke.

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<sup>42</sup> 1AB 131–132 (s/ns 36–43, 51–55); 29/9/22 NE 18–23; 4/11/22 NE 83.

<sup>43</sup> 1AB 143/143A; 4/11/22 NE 84–85.

<sup>44</sup> 1AB 146–148 (s/ns 1–9); 29/9/22 NE 57.

<sup>45</sup> Judy’s AEIC at [45]; Jerrold’s AEIC at [24] and [26].

(a) Ms Deborah Yong (“Deborah”), who was hired as Henry’s personal assistant on about 16 February 2021, stated that it was not easy working for Henry as “his words were not very clear” and he “would behave in a manner that was at times perplexing”. She deposed that “Henry did not seem to have the self-awareness to help himself in terms of his daily needs” and that he relied on Chia for his basic needs, such as food. She also observed that Henry “was very lost and did not know what he could do” whenever Chia acted up and that Henry would behave “like a child pleading” for Chia’s attention when she ignored him.<sup>46</sup>

(b) Mr Peter Chong (“Chong”), who was Henry’s conveyancing lawyer in the transfer of The Tiara to Chia, conceded during cross-examination that, between October 2020 and April 2021, there were a few occasions when Henry “rambled on things” and was incoherent, and “[Henry] sometimes ... talks funny ... I think you probably have his recorded messages. You will know what I am saying, you know.”<sup>47</sup>

(c) Pertinently, Chia acknowledged Henry’s mental issues in the audio messages. For instance, on 29 January 2021, she said Henry “made [her] so confused” and that she could not take care of him anymore. She told him that he had “a problem” and needed “to see a doctor for [his] problem”, and if it continued to persist, it would “torture [her] to [her] death”. On 1 March 2021, Chia again told Henry to see a doctor or psychiatrist if he had a problem or was crazy.<sup>48</sup>

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<sup>46</sup> Deborah’s AEIC at [4], [8], [10]–[12].

<sup>47</sup> 27/9/22 NE 38–39.

<sup>48</sup> 1AB 146–147 (s/ns 3 and 5) and 156–157 (s/ns 10–12).

*Conclusion*

48 In the round, I find both the clinical and functional aspects of the test for mental capacity in s 4(1) of the MCA are made out and that Henry had lost mental capacity from around 9 October 2020 or shortly after the second stroke.

**The Assets claimed**

49 I turn to deal with the Assets, which can be divided into three categories:

(a) The first category are Assets transferred before Henry suffered the second stroke, namely: (a) the KL Property; (b) the Bonds (and the Coupon payment subsequently made); and (c) the MM2 Shares.

(b) The second category are Assets transferred after the second stroke but to which Henry's mental capacity may be irrelevant. They are: (a) the moneys Chia withdrew from the UOB Joint TD A/C of \$744,122.74; (b) the \$800,000 cash purportedly removed from Henry's safe in the Tiara in October 2020; and (c) the Watches and Jewellery.

(c) The third category are Assets transferred after the second stroke and where Henry's mental capacity may be relevant to the transfer ("Category 3 Assets"). They are: (a) the moneys withdrawn from Henry's UOB A/C and Henry's POSB A/C of \$1,218,000 and \$800,000 respectively; and (b) the transfer of The Tiara to Chia.

### **KL Property – Purchased in June 2015**

50 The KL Property, a two-bedroom condominium unit, was purchased in June 2015, with vacant possession obtained in April 2019. Henry paid the purchase price of RM479,050 but the property was registered in Chia’s name.<sup>49</sup>

51 Judy claims that Henry intended the KL Property to be a family holiday home. She relied on the 20/3/18 Letter, where Henry stated that the KL Property was held on trust for him, that it would be the “family holiday home” and that Chia would be the “caretaker”. Moreover, Henry had gifted a larger four-bedroom condominium unit in Selangor, Malaysia, to Chia. There was thus no reason why Henry would give her another property. Hence, the KL Property was held on a resulting trust or on an express trust for Henry.<sup>50</sup>

52 Chia claims that Henry had purchased the KL Property as a gift for her, because he wanted her to live in Kuala Lumpur, Malaysia, with her family for the rest of her life, whilst renting out The Tiara, as the cost of living in Malaysia was more affordable. Henry thus arranged for the purchase of the property. Chia claims that she arranged for the design of the property, paid for renovations, and has been paying for the subsequent upkeep and maintenance of the property.<sup>51</sup>

### ***Law on express trusts, resulting trusts and gifts***

53 For an express trust to be created, there must be certainty of intention, subject matter and object of the trust. Additionally, the requirements under s 7 of the Civil Law Act 1909 (2020 Rev Ed) must be met where a trust is created

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<sup>49</sup> Judy’s AEIC at [115]; Chia’s AEIC at [23], 27/9/22 NE 88.

<sup>50</sup> Judy’s AEIC at [117]–[120]; SOC at [9]; Plaintiff’s Closing Submissions (“PCS”) at [69]–[70], [79]; PRS at [22].

<sup>51</sup> Chia’s AEIC at [18]–[25]; 27/9/22 NE 88; 28/9/22 NE 3; DCS at [58], [65].

over immovable property. As an express trustee owes fiduciary duties to the beneficiary, the intention to create a trust must be communicated by the settlor to the trustee,<sup>52</sup> for the trustee to accept or disclaim the office of trusteeship. This is because the fiduciary duties of an express trustee are voluntarily taken (*Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 (“*Tan Yok Koon*”) at [205]).

54 A resulting trust arises where a transferor transfers property to a recipient in circumstances where the transferor does not intend to benefit the recipient. Where a person (X) pays for the purchase of a property which is vested in another person (Y) or in joint names of X and Y, there is a presumption that X did not intend to make a gift to Y, and the money or property is thus held on trust for X proportionate to his contribution (*Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 at [34]–[35]). It is the intention of the transferor that is relevant. Hence, if there is evidence to prove the transferor’s intention or from which the intention can be inferred, the court will not resort to the presumption of a resulting trust (*Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [43], [51]–[52]). To rebut the presumption of a resulting trust, what the transferee needs to prove is not that the transferor did not have an intention to retain a beneficial interest but that he had the donative intent to benefit the transferee (*Chia Kok Weng v Chia Kwok Yeo and another* [2017] 2 SLR 964 at [49]).

55 As for gifts, a valid *inter vivos* gift is made where there is an intent to gift followed by the proper conveyance of the precise subject matter to be given (*Lee Hiok Tng (in her personal capacity) v Lee Hiok Tng and another (executors and trustees of the estate of Lee Wee Nam, deceased) and others* [2001] 1

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<sup>52</sup> PRS at [17]–[18]; DRS at [7]–[8].

SLR(R) 771 at [35]). The court assesses the subjective intention of the donor at the time of the transfer (*Tan Yok Koon* at [83]).

***My findings***

56 I do not find there to be an express trust. The expression of a “trust” in the 20/3/18 Letter was conveyed to *Judy*, but it is not evidence to support that Henry had conveyed to *Chia* that she was holding the KL Property on trust. However, I find the property is held on a resulting trust for Henry as he paid the purchase price and the evidence also supports that Henry did not intend to benefit *Chia* when the property was purchased or even thereafter.

57 The 20/3/18 Letter, which I have found was signed by Henry, shows that he did not intend to gift the KL Property to *Chia*, but instead intended that it was to be held on trust for him. The Two Letters were prepared when Henry had not yet suffered a stroke or lost his mental capacity. There is also no evidence that Henry changed his mind after he had signed the 20/3/18 Letter.

58 Further, after vacant possession of the KL Property was obtained in April 2019, the documents (which authenticity was not disputed) show that: (a) in May 2019, Henry paid RM30,000 to Mr Gary Chia (*Chia*’s brother) who was engaged as the contractor for the property; and (b) in September 2019, Henry (through FOSP) paid a “renovation deposit” of RM10,000 to E Style Furniture Decoration.<sup>53</sup> This contradicts *Chia*’s assertion that she paid for the renovations, an assertion which was unsubstantiated despite *Chia* being given time by the court to produce documentary evidence which she claimed she had.<sup>54</sup>

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<sup>53</sup> *Judy*’s AEIC at [125]; 1AB 50, 402; 2AB 722–725.

<sup>54</sup> 28/9/22 NE 3–4.

59 As for maintenance of the KL Property, Judy adduced evidence to show that Henry (through “FarOcean”) paid for a “TNB meter deposit” on 30 August 2018.<sup>55</sup> Chia had, even on 9 April 2020, messaged Henry with invoices for utility and quit rent pertaining to the KL Property for RM6 and RM15.80 respectively. I accept Judy’s explanation that Chia was asking Henry to pay these charges although they were small amounts, because Chia did not wish to pay for them as the KL Property did not belong to her.<sup>56</sup> Chia’s conduct thus contradicts her assertion that she made all the utilities and maintenance payments.

60 Indeed, Chia has not shown evidence that she contributed to the improvement of the KL Property or its upkeep, to support her claim that the property was a gift to her.

61 First, Chia claimed she paid for the renovations, but adduced no evidence in support. Next, whilst Chia claimed she paid for the maintenance, she only adduced a statement showing various charges (*eg*, service charges, sinking fund, water charges and maintenance fee) from 31 August 2020 until 1 October 2021 (“2021 Statement”).<sup>57</sup> But the 2021 Statement does not show who made the payments or that the source of the funds came from Chia. That the 2021 Statement was issued to Chia is neutral, as she was the registered owner of the KL Property. At trial, Chia was given the opportunity to produce documents to show she made such payments even before August 2020, which she claimed she had,<sup>58</sup> but she did not do so.

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<sup>55</sup> 2AB 691–693.

<sup>56</sup> Judy’s AEIC at [128]; 1AB 351–353.

<sup>57</sup> 2AB 741–742.

<sup>58</sup> 28/9/22 NE 4; 29/9/22 NE 43.

62 To salvage the situation, Mr Cheong in Reply Submissions produced documents to show Chia had paid the maintenance and upkeep of the KL Property (“New Documents”). These were transfers made from Maybank to Best Boulevard Sdn Bhd (the developer) (“Best Boulevard”)<sup>59</sup> for September 2019 to January 2021, purportedly for maintenance fees, building fire insurance, water bills and quit rent.<sup>60</sup> I disregard these documents. In reliance on the court’s directions dated 1 March 2023, Mr Cheong claims the court had given Chia leave to produce the documents. But this is disingenuous as the court did not give leave to any party to adduce further evidence not already adduced at trial. The court merely directed parties to “submit on” the existing documents to support their respective assertions on the payments for maintenance and upkeep of the property, *ie*, to make their submissions on this point. The court gave parties the opportunity to file further submissions, to reply to issues in the opposing party’s earlier submissions but based on the evidence already adduced. This was not a backdoor means for fresh evidence to be adduced without leave and where the opposing party would not have the opportunity to deal with such evidence in cross-examination. Indeed, the court had, during the trial, given Chia the opportunity to adduce further evidence, but she did not produce the New Documents despite having more than a month between two tranches of trial dates to do so.<sup>61</sup>

63 In any event, the reliability of the New Documents is doubtful. Whilst some of the New Documents show the transfers from Chia’s Maybank account

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<sup>59</sup> 1AB 490.

<sup>60</sup> DRS at [12]–[13] and Annex 1.

<sup>61</sup> 28/9/22 NE 3; 29/9/22 NE 67.

(account 1121xxx797) to Best Boulevard<sup>62</sup> (namely one transaction each in September and October 2019 and four transactions in April 2020), there were five transactions in total in July 2020, October 2020 and January 2021 that do not show whose account the moneys were transferred from.<sup>63</sup> It is also unclear what each of the transfers from Chia's Maybank account (particularly the October 2020 and January 2021 transfers) correlate to in the 2021 Statement. Further, despite Chia producing (by the New Documents) bank transfers of *earlier* payments purportedly for the maintenance of the KL Property, she was strangely unable to produce documents of *later* payments pertaining to the period in the 2021 Statement. Thus, the New Documents (even if considered) do not support that Chia paid for the renovations or maintenance of the property.

64 Next, Chia asserts that none of Henry's family members has ever viewed the KL Property or shown any interest in it until the present proceedings. I reject this assertion as an attempt to shore up her case that the property was a gift to her, which was why Henry's family members did not take an interest in it. Chia's assertion flew in the face of the evidence (and her admission in court) that Judy went to view the KL Property in June 2019, which Judy stated was to assist with its renovations at Henry's request.<sup>64</sup>

65 I deal with a final point, and that is Mr Cheong's submission in court that in the alternative, Henry had gifted the KL Property to Chia *after* he had gone for his kidney treatment in Cambodia (*ie*, in March 2018 after the Two Letters were signed). But this is not Chia's pleaded case, nor did she attest to

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<sup>62</sup> Chia's 1st and 2nd affidavits dated 7 and 13 October 2021 filed pursuant to the Mareva order in Summons 4411/2021.

<sup>63</sup> DRS at pp 36–45.

<sup>64</sup> Judy's AEIC at [119]; 27/9/22 NE 88.

this. Her case is that the KL Property was gifted to her from the outset.<sup>65</sup> There was also no evidence to support Mr Cheong’s submission.

### **Sale proceeds of the MM2 Shares (purchased in February 2018)**

66 I turn to the MM2 Shares. The shares were purchased in two tranches on 2 and 19 February 2018 for \$326,582.25 in total and in Chia’s name; but Henry paid for them. Then, on 15 March 2021, Henry caused the shares to be sold for \$56,446.32.<sup>66</sup>

67 Judy claims the MM2 Shares are held on trust by Chia for Henry as he paid for them and she relies on the Two Letters where Henry expressed the trust.<sup>67</sup> Hence when the shares were sold, the sale proceeds belonged to him.

68 Chia claims in her AEIC that Henry: (a) arranged for her to open a trading account so that he could help her with investments; (b) purchased the MM2 Shares and registered them in her name; (c) made all the arrangements with the share broker on her behalf; and (d) intended the shares to be an investment for or a gift to her.<sup>68</sup> In other words, Chia claims the MM2 Shares were a gift to her *from the outset*.

69 I find insufficient evidence to support an express trust as there is no evidence that Henry informed Chia to hold the MM2 Shares (or sale proceeds) on trust for him. However, I find the MM2 Shares to be held on a resulting trust

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<sup>65</sup> 20/9/22 NE 55–56; Defence (Amendment No. 1) (“Defence”) at [12]–[13].

<sup>66</sup> SOC at [13A] and [13C]; Defence at [18A] and [18D]; DCS at [85]; Judy’s AEIC at [141]–[143]; Chia’s AEIC at [34]; 28/9/22 NE 36.

<sup>67</sup> Judy’s AEIC at [147]–[148].

<sup>68</sup> Chia’s AEIC at [33]–[37].

for Henry as he paid for the shares, and the evidence supports that he did not intend to give the shares (or the sale proceeds) to Chia.

70 The Two Letters evince Henry’s intention that the shares were his and never meant to be given to Chia. In particular, the 5/3/18 Letter was signed by Henry shortly after the second tranche of the MM2 Shares was purchased.

71 Moreover, in court, Chia claimed that *she was unaware when Henry purchased the shares* in February 2018. She further claimed she did not know how Henry paid for the shares, although her signature was found on the cheque issued to the brokerage for \$117,936.83 for the second tranche (which signature she claimed Henry had forged).<sup>69</sup> Chia also claimed that Henry sold the MM2 Shares in March 2021 *without her knowledge* and without consulting her beforehand, and she only knew about this a few days later when Henry forwarded to her the messages between him and the broker whereby he had instructed the broker to sell the shares. Chia claimed essentially that she knew nothing about the MM2 Shares, but she had received the sale proceeds by way of a cheque which she deposited into her bank account.<sup>70</sup> By Chia’s testimony, Henry made all the decisions to purchase and then sell the MM2 Shares without her knowledge. Although I disbelieve Henry had forged Chia’s signature on the \$117,936.83 cheque, nevertheless Chia’s testimony shows that she left everything to Henry and she did not even know what the cheque was for.

72 Chia’s testimony (that she did not know what was purchased, when the shares were purchased and for how much) contradicted her claim that Henry had gifted the shares to her from the outset. Moreover, if the shares belonged to

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<sup>69</sup> 28/9/22 NE 35–36; 1AB 33, 195; 2AB 664, 666.

<sup>70</sup> 28/9/22 NE 35–37; Chia’s AEIC at [38]–[39], and exhibit CSH-7 (at Tab 7); 1AB 369.

Chia, it was strange that Henry did not inform her before he sold them, and particularly when they were sold *at a substantial loss*. Indeed, the picture Chia painted in court of her complete ignorance regarding the shares, was different from the impression conveyed in her AEIC that she *was* aware of the purchase and subsequent sale of the shares at the material time.

73 Hence, I find the MM2 Shares belonged to Henry. His conduct of having dealt with the shares freely and Chia’s ignorance of the matter show that Henry never treated the shares (or the proceeds of their sale) as belonging to Chia. Although the sale proceeds were paid to Chia’s name, this is neutral as the shares were registered in her name. I add also that when the MM2 Shares were sold in March 2021, Henry had (as I have found) lost mental capacity.

#### **The Bonds (issued in February 2018) and Coupon**

74 It is undisputed that the Bonds worth \$1,050,000 were issued on around 7 February 2018 to Chia. It is also undisputed that on about 8 February 2021, a Coupon of \$64,268.40 was paid into a UOB account held jointly by Chia and Ms Wong Siew Yin, Chia’s uncle’s wife (“Chia-Wong A/C”).<sup>71</sup>

75 Judy claims that Henry contributed the entire purchase price of \$1,050,000 with moneys from the Joint i-A/C, and by way of a cheque signed by Chia issued on 26 December 2017. Chia thus held the Bonds and Coupon on an express or a resulting trust for Henry, and Judy also relies on the Two Letters. Chia claims that she paid for the Bonds partly with moneys which Henry had gifted to her in 2015 and partly with her own moneys. Hence, the Bonds belonged to her because she used *her* money to pay for them.

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<sup>71</sup> 1AB 529; Judy’s AEIC at [140]; Chia’s AEIC at [31].

76 I find the Bonds were paid using Henry's (and not Chia's) money, and there was no intention by Henry to gift the Bonds (or the Coupon) to Chia.

***Inconsistency in Chia's case***

77 First, Chia's own case is inherently inconsistent.

(a) Chia pleads that: (i) *she* purchased the Bonds, using \$1m which Henry had gifted to her and which Henry had deposited into the Chia-Wong A/C; (ii) alternatively, *Henry* had purchased the Bonds in Chia's name as he intended to gift the Bonds to her.<sup>72</sup>

(b) In her AEIC, Chia attests that in 2017, Henry informed her that it would be beneficial to invest in the Bonds and that *he* would provide the funds for this investment. Chia further attests that in around June 2017, she transferred \$900,000 from the Chia-Wong A/C to MM2 Asia Ltd as partial payment for the Bonds and the remainder was paid with moneys she withdrew from a fixed deposit in *her* name. Further, even if the Bonds were paid with moneys gifted by Henry, he had intended the Bonds to be an investment for or a gift to her.<sup>73</sup>

(c) In court, Chia claimed that in 2015, Henry gave her \$1m, which she placed into the Joint TD A/C. She then withdrew \$900,000 from that account and placed it into the Chia-Wong A/C, which she then used to purchase the Bonds. The remaining purchase price of \$50,000 and \$100,000 came from the Joint i-A/C and Joint TD A/C respectively.<sup>74</sup>

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<sup>72</sup> Defence at [10], [15], [17]–[18].

<sup>73</sup> Chia's AEIC at [26]–[28]; 28/9/22 NE 22–24; 4/11/22 NE 64.

<sup>74</sup> 28/9/22 NE 19, 22–24, 32–33; 29/9/22 NE 30–32; 2AB 657.

78 Chia's claim is inherently inconsistent and showed up her credibility. Either she purchased the Bonds with her own money (albeit gifted from Henry as she claimed) or Henry purchased the Bonds and paid for them. Further, her claim that she purchased the Bonds with her money morphed along the way. In her Defence, she pleaded that *Henry* deposited \$1m into the *Chia-Wong A/C*, and she used that \$1m to purchase the Bonds. In her AEIC and in court, she claimed that Henry gave her \$1m which *she* placed into the *Joint TD A/C*, then transferred \$900,000 from that account and placed it into the *Chia-Wong A/C*, and subsequently withdrew the \$900,000 to purchase the Bonds with the remaining \$150,000 paid from moneys she withdrew from a fixed deposit account *in her name*. In the same vein, she claimed the remaining \$150,000 was paid from moneys in the *Joint i-A/C* and *Joint TD A/C*. In Reply Submissions, Mr Cheong subsequently clarified Chia's case to be that Henry had provided the \$1m to her in 2015 which she then used to purchase the Bonds.<sup>75</sup>

***Chia's explanation on the source of funds to pay for the Bonds***

79 In any event, Chia's claim regarding the source of funds to pay for the Bonds is unsupported and does not add up.

80 First, Chia claims that \$900,000 was paid to MM2 Asia Ltd in June 2017 by a cashier's order from the *Chia-Wong A/C*,<sup>76</sup> and the remaining purchase price of \$50,000 and \$100,000 came from the *Joint i-A/C* and *Joint TD A/C* respectively. But the evidence shows the Bonds were not purchased in this manner.

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<sup>75</sup> DRS at [16]–[17].

<sup>76</sup> Chia's AEIC at [27] and Exhibit CSH-7 (at Tab 4).

(a) It is undisputed that the \$900,000 paid in June 2017 was for an *earlier issue* of convertible debt securities in July 2017 (“Earlier Bonds”), which were then cancelled in October 2017 and the subscription repaid. This redemption amounted to \$1,051,651 and was made by cheque and paid into the Joint i-A/C.<sup>77</sup>

(b) There is no evidence that the next \$50,000 payment came from the Joint i-A/C. Chia’s claim also contradicts her earlier assertion (which is also unsupported) that it was paid from her fixed deposit account.

(c) As for the remaining \$100,000 payment which Chia claims came from the Joint TD A/C, this is contradicted by her earlier assertion that this sum emanated from her fixed deposit. Chia claims this \$100,000 (specifically \$100,024.38) was withdrawn prematurely from the Joint TD A/C on 28 June 2017, transferred to the Chia-Wong A/C, and then utilised in June 2017 to pay for the bonds (which as it turns out was to pay for the Earlier Bonds).<sup>78</sup> Pertinently, this \$100,000 formed *part of the \$900,000* which Chia subsequently withdrew from the Chia-Wong A/C on 28 June 2017.<sup>79</sup> Hence, Chia’s explanation of the source of the remaining \$100,000 (of the \$1,050,000) to pay for the Bonds (or even the Earlier Bonds) cannot be correct.

81 On the contrary, Mr Narayanan tendered the cheque and bank statements to show that the last \$150,000 (to purchase the Earlier Bonds) was paid to MM2 Asia Ltd from Henry’s UOB A/C, in June or July 2017.<sup>80</sup> Mr Cheong did not

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<sup>77</sup> DCS at [79], [82(k)], [82(l)]; 28/9/22 NE 15, 26; 5PB 102–105, 118; DCS at [82(m)].

<sup>78</sup> 4DB 20; 2AB 657; 5PB 151 (item no. 151); 28/9/22 NE 32.

<sup>79</sup> 5PB 151 (item nos. 151–155).

<sup>80</sup> 6PB 3–5; 4/11/22 NE 58.

dispute this payment nor cross-examine Judy on it although he had the opportunity to do so (as she was recalled to the stand thereafter).

82 Second, Chia’s claim that Henry had given her \$1m in 2015 which she first placed into the *Joint TD A/C* before withdrawing \$900,000 from that account to place in the Chia-Wong A/C (see [77(c)] above) is not supported by evidence. The undisputed evidence shows that the \$1m emanated from Henry’s UOB A/C which was transferred to the *Joint i-A/C* in January 2015.<sup>81</sup> The moneys in Henry’s UOB A/C belonged to Henry, and there is no evidence that he intended to gift the \$1m to Chia when it was transferred to the Joint i-A/C. The objective evidence thus demolishes Chia’s pleaded case that Henry deposited the \$1m into the Chia-Wong A/C.

83 Third, in Closing Submissions, Mr Cheong attempted to show the \$1m (purportedly gifted to Chia in 2015) was placed in various accounts, including in Chia’s sole name, before some \$900,000 from these accounts were transferred to the Chia-Wong A/C (which she then used to purchase the Bonds). In other words, the \$900,000 to purchase the Earlier Bonds came from this \$1m in 2015. Mr Cheong’s attempt to explain the flow of funds (“Funds Flow”) merely showed up the unreliability of Chia’s pleaded case and testimony.

(a) According to the Funds Flow, in June 2015, Chia placed \$1m (purportedly gifted to her in 2015) into the Joint TD A/C, as two deposits of \$500,000 each (“TD001” and “TD002”). At the expiry of TD001 and TD002, \$507,885.62 (which included interest) each from TD001 and TD002 was debited into the Joint i-A/C.<sup>82</sup>

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<sup>81</sup> SPB 110, 113; Judy’s AEIC at [167(a)]; DCS [82(a)].

<sup>82</sup> DCS at [82(b)].

(b) Mr Cheong claimed that Chia then transferred \$500,000 each (originally from TD001 and TD002) into the Joint TD A/C as two new time deposits (“TD003” and “TD004”). Chia prematurely withdrew the moneys from TD004 on 28 June 2017 and placed them into the Chia-Wong A/C. However, the \$500,000 in TD003 was not withdrawn until 20 October 2017 (ie, at the maturity of the deposit).<sup>83</sup>

84 The Funds Flow showed that the \$500,000 in TD003 did not form part of the \$900,000 in the Chia-Wong A/C and could not have been used even to purchase the Earlier Bonds. More importantly, there is no evidence to support that *Chia* took the sole decision to place the moneys (at [83(a)] and [83(b)] above) into the Joint TD A/C, then transfer the moneys into the Joint i-A/C before transferring them into the Joint TD A/C again, and then withdrawing \$500,000 from TD004. This is the next point I deal with.

***Control and ownership of moneys in the Joint TD A/C and Joint i-A/C***

85 The evidence supports that the moneys in the Joint TD A/C belonged to Henry and that he was (at least until he suffered the second stroke) controlling the account.

86 I disbelieve Chia’s claim in court that she solely controlled and operated the Joint TD A/C, and that Henry never put any moneys into or operated the account. I also disbelieve that all the moneys in the Joint TD A/C belonged to Chia as they were from her savings and investments. Her claims were inconsistent with her admission in court that she was unaware of various transfers made between the Joint i-A/C and the Joint TD A/C. In particular Chia claimed to be unaware of: (a) two significant transfers (of \$700,000 and

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<sup>83</sup> DCS at [82(c)]–[82(d)]; 4DB 20–21.

\$350,000) from the Joint i-A/C to the Joint TD A/C on 11 October 2017; and (b) two significant withdrawals from the Joint TD A/C and paid into the Joint i-A/C of \$507,052.05 on 20 October 2017 and \$700,031.64 on 13 November 2017.<sup>84</sup> She also could not give a logical and consistent explanation on the source of the funds to purchase the Earlier Bonds and, as will be seen later, the Bonds.

87 I also find that Henry was the owner of the moneys in, and was controlling, the Joint i-A/C at the material time. Chia admits that Henry used the money in the Joint i-A/C.<sup>85</sup> It is also undisputed that Henry paid for the MM2 Shares and payment for the second tranche on 19 February 2018 of \$117,936.83 came from this account. Despite claiming to be a beneficial owner of the moneys in the Joint i-A/C, Chia claimed she was unaware when moneys were withdrawn from that account (see [86] above), she was not informed by Henry that the Earlier Bonds had been redeemed, and she was unaware that the redemption proceeds from the Earlier Bonds were paid into the Joint i-A/C.<sup>86</sup>

88 Hence, I find the moneys in the Joint i-A/C and Joint TD Account belonged to Henry, and that Chia knew this. It was he who decided how the moneys would be used, and he would instruct Chia on what to do with his moneys. As Chia stated, Henry even *instructed her* to withdraw the \$900,000 *from the Chia-Wong A/C* to pay for the Earlier Bonds.<sup>87</sup>

89 Mr Cheong's attempt to reconstruct Chia's case (by the Funds Flow only in Closing Submissions) does not assist Chia. I accept Mr Narayanan's

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<sup>84</sup> 28/9/22 NE 26–29; 29/9/22 NE 30, 33, 40; 5PB 118, 120.

<sup>85</sup> 28/9/22 NE 31; 29/9/22 NE 33.

<sup>86</sup> 28/9/22 NE 19, 26.

<sup>87</sup> 28/9/22 NE 21.

submission that this was an attempt to reformulate Chia's case through the backdoor as this was neither Chia's pleaded case nor her testimony. The plaintiff did not have the opportunity to explain the Funds Flow or to cross-examine Chia on the source of moneys that were placed into the various bank accounts.<sup>88</sup> The Funds Flow also contradicts Chia's testimony. For instance, Mr Cheong claimed, by the Funds Flow, that *Chia* transferred the \$700,000 and \$350,000 from the Joint i-A/C to the Joint TD Account,<sup>89</sup> which is inconsistent with her testimony that she knew nothing about these transfers. The Funds Flow also contradicts Chia's testimony that the \$900,000 used to pay for the Earlier Bonds all originated from the purported \$1m gift in 2015.

***The \$900,000 withdrawn from the Chia-Wong A/C on 28 June 2017***

90 To complete my analysis of Chia's case, I further make some observations regarding the source of the \$900,000 (or \$900,005 to be precise) withdrawn from the Chia-Wong A/C on 28 June 2017. This \$900,005 came from five separate sums credited into that account on the same day.<sup>90</sup>

(a) It is undisputed that \$500,747.95 emanated from the Joint TD A/C (*ie*, TD004 (see [83(a)] above)) and \$100,024.38 came from the same account ("TD005").<sup>91</sup> I have found that Henry was the person in control of this account and the moneys therein belonged to him solely.

(b) Based on the Funds Flow, the other three sums of \$210,000, \$40,748.02 and \$56,215.67 would seem to emanate from Chia's

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<sup>88</sup> 4/11/22 NE 69, 71.

<sup>89</sup> DCS at [82(m)].

<sup>90</sup> 5PB 151 (line items 149–154).

<sup>91</sup> 2AB 657; 4DB 20; 5PB 151 (line items 151, 152).

account. However, I reiterate that this backdoor attempt to show that it was Chia's money cannot be accepted as there was no opportunity to test the evidence. In particular, Chia has not shown the source of these three amounts that were placed in her own account before they were then transferred to the Chia-Wong A/C.<sup>92</sup>

91 I find that the three sums (at [90(b)] above) also belonged to Henry. Chia confirmed in court that Henry provided the funds to purchase the Bonds. Also, there was no reason for Henry to "instruct" Chia to withdraw the sum of \$900,000 (from the Chia-Wong A/C) to purchase the Earlier Bonds, if the moneys belonged to Chia.<sup>93</sup> I have further found that the remaining \$150,000 (to pay for the Earlier Bonds) came from Henry's *sole* account (see [81] above). That all the moneys to purchase the Earlier Bonds belonged to Henry is further supported by the fact that the proceeds from their redemption were not credited into the Chia-Wong A/C or an account solely in Chia's name, but into the Joint i-A/C, and which transaction Chia claimed *she was not even aware of*.<sup>94</sup>

***Plaintiff's evidence on source of payments for the Bonds***

92 I turn to Judy's version of events, which I find supports the claim that Henry had paid for the Bonds with his moneys in the Joint i-A/C.

93 Judy exhibited a cheque dated 26 December 2017 (purportedly signed by Chia) for \$1,050,000 made to MM2 Asia Ltd ("Bond Payment") and the bank statement from the Joint i-A/C to show the corresponding withdrawal.<sup>95</sup>

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<sup>92</sup> 5PB 151 (line items 149, 150 and 153).

<sup>93</sup> 28/9/22 NE 6–7, 21.

<sup>94</sup> 5PB 118; 28/9/22 NE 19, 26; DCS at [82(m)].

<sup>95</sup> Judy's AEIC at [136]; 1AB 193.

Mr Cheong attempted to show (via the Funds Flow) that it was *Chia* who provided the money for the Bonds as *she* controlled the movement of funds in and out of the accounts<sup>96</sup> – which again I disbelieve as *Chia*’s own testimony shows otherwise. I set out the source of the Bond Payment.

(a) After the redemption proceeds of the Earlier Bonds were paid into the Joint i-A/C on 5 October 2017, \$700,000 and \$350,000 were withdrawn and placed in the Joint TD A/C (see [86] above), leaving about \$25,000 in the Joint i-A/C. *Chia claims that she was unaware of these transactions*. In particular, the \$700,000 placed in the Joint TD A/C formed deposit placement “TD007”.

(b) On 20 October 2017, \$507,052.05 representing the maturity sum from TD003 was transferred from the Joint TD A/C to the Joint i-A/C (see [83(b)] and [86] above). Again, *Chia claims that she was unaware of this transaction*, despite claiming that all the moneys in the Joint TD A/C belonged to her and she solely operated that account.<sup>97</sup>

(c) On 13 November 2017, \$700,031.64 representing the maturity sum from TD007 (see [(a)] above) was transferred from the Joint TD A/C to the Joint i-A/C. *Chia claims she has no recollection of this transfer*.<sup>98</sup>

(d) The sums of \$507,052.05 and \$700,031.64 above provided the funds for the Bond Payment of \$1,050,000, which was subsequently withdrawn (by cheque) from the Joint i-A/C. In this regard, the cheque

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<sup>96</sup> DCS at [82(m)] and [82(n)].

<sup>97</sup> 5PB 118; 28/9/22 NE 26, 28–29.

<sup>98</sup> 5PB 120; 28/9/22 NE 29.

bore Chia’s signature, but Chia claims that Henry had signed her name on the cheque because *he* issued all cheques from this account.<sup>99</sup>

94 The above showed that Chia had no idea how the Bonds were paid for and when the payment was made. These support my finding that Henry controlled the movement of funds in the Joint i-A/C and Joint TD A/C and this was because the moneys therein belonged to him.

***Whether Henry intended to gift the Bonds to Chia***

95 Having found that Henry paid for the Bonds, I further find that he did not intend to gift the Bonds to Chia at any time. The Two Letters, executed fairly contemporaneously with the purchase of the Bonds, make clear that Henry regarded the Bonds as his, as he stated that they were “paid by” and “held in trust” for him. There is no evidence that he changed his mind after the Two Letters were executed.

96 Chia’s claim of a gift is not borne out by the documents or her testimony which is inherently inconsistent. Indeed, Chia claimed in court that she did not know what sort of investment the Bonds were.<sup>100</sup> She admitted that all the moneys to purchase the Bonds came from Henry, she did not know when the Earlier Bonds were redeemed or that the redemption proceeds had been paid into the Joint i-A/C (see [87] above), and she did not know the source of funds for the Bond Payment (see [93] above).

97 I thus find the Bonds were held on a resulting trust for Henry. For completeness, I find there is no express trust as there is no evidence that Henry

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<sup>99</sup> 28/9/22 NE 29–31.

<sup>100</sup> 28/9/22 NE 6.

had communicated his intention to Chia to hold the Bonds on trust for him. It follows thus that the Coupon paid on the Bonds also belongs to Henry and that Chia was aware of this.

**\$744,122.74 withdrawn from the Joint TD A/C between November 2020 to April 2021**

98 I deal next with moneys withdrawn from the Joint TD A/C. It is undisputed that there were five deposits totalling \$801,385.99, and of which four deposits were withdrawn by Chia (“Four Withdrawals”), as follows:<sup>101</sup>

<b>Time Deposit</b>	<b>Maturity Date</b>	<b>Principal Amount</b>	<b>Amount Withdrawn (Date)</b>
000017 (“TD017”)	3 November 2020	\$240,000	\$240,000 (3 November 2020)
000015 (“TD015”)	8 March 2021	\$50,710.27	\$50,000 (19 March 2021)
000014 (“TD014”)	8 March 2021	\$121,704.66	\$120,000 (19 March 2021)
000012 (“TD012”)	22 April 2021	\$338,338.18	\$334,122.74 (7 April 2021)
000016 (“TD016”)	10 June 2021	\$50,632.88	
<b>Total</b>		<b>\$801,385.99</b>	<b>\$744,122.74</b>

<sup>101</sup> SOC at [34]–[35]; Defence at [42]–[43]; 1 AB 63–64, 273; 29/9/22 NE 34–36.

99 Judy claims that as the moneys in Joint TD A/C and Joint i-A/C belonged to Henry, Chia holds them on a resulting or constructive trust for Henry.<sup>102</sup>

100 Chia claims the moneys in the Joint TD A/C were from her investments and moneys transferred from her own accounts. She claims she solely operated, transferred and used the moneys in the Joint TD A/C; and Henry never interfered with the operation of that account or dealt with the moneys therein. Henry had suggested being a joint holder of the account purely to prevent queries by the bank, as the amounts therein were quite significant and it was less likely for the bank to raise issues as he was a successful businessman.<sup>103</sup>

101 Essentially Chia claims that she made the Four Withdrawals on her own accord without Henry's knowledge or needing his approval. As such, the issue of Henry's mental capacity at the time of the Four Withdrawals is immaterial.

102 In Closing Submissions, Mr Cheong claims that the funds for the Four Withdrawals came from the following sources:

(a) The \$240,000 for TD017 originated from the Joint i-A/C and Chia had placed the moneys into time deposits before putting them into TD017.<sup>104</sup>

(b) The moneys in TD015 came from an initial sum of \$50,000 which Chia placed into the Joint TD A/C on 31 July 2018, which time

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<sup>102</sup> Judy's AEIC at [151], [166]; SOC at [46] and [54]; PCS at [126].

<sup>103</sup> Chia's AEIC at [88]–[89].

<sup>104</sup> DCS at [152(a)] and (b)].

deposit was then renewed until it was subsequently placed into TD015. However, there is no evidence of the source of the initial \$50,000.<sup>105</sup>

(c) The moneys in TD014 came from a sum of \$120,000 which Chia placed into the Joint TD A/C on 9 July 2018, although she is unable to show the source of this amount.<sup>106</sup>

(d) The moneys in TD012 came from the proceeds of redemption of the Earlier Bonds of \$1,051,651 deposited into the Joint i-A/C (see [80(a)] above), and from which *Chia* on 11 October 2017 transferred out \$700,000 and \$350,000 into the Joint TD A/C (as TD007 and TD008 respectively). Mr Cheong claims that when TD008 matured, Chia renewed it and the bulk of the moneys therein was subsequently transferred into TD012.<sup>107</sup>

103 I find Mr Cheong attempting again to reconstruct Chia's case after the close of trial. The plaintiff had no opportunity to explain the flow of funds nor cross-examine Chia on this. Pertinently, Mr Cheong's explanation for the flow of the funds merely showed up Chia's lack of credibility in the matter.

(a) Where the \$240,000 for TD017 originated from the Joint i-A/C, I have found Henry to be the owner of the moneys in the Joint i-A/C.

(b) As for TD015 and TD014, which sources Mr Cheong states as emanating from the Joint TD A/C, there is no evidence that the moneys deposited into that account belonged to Chia or that she made the initial deposits leading to the eventual sums in TD015 and TD014. There is

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<sup>105</sup> DCS at [152(c)].

<sup>106</sup> DCS at [152(d)] and [152(e)].

<sup>107</sup> DCS at 182(f) and p182(g).

also no evidence to support Chia's claim that the source of funds came from her accumulated savings or moneys Henry had gifted to her.<sup>108</sup>

(c) Pertinently, for TD012, Mr Chia's submission that *Chia* had transferred moneys from the Joint i-A/C and placed them into time deposits (as TD007 and TD008), and which moneys in TD008 were eventually transferred to TD012, is contradicted by Chia's testimony that she was unaware of the \$700,000 and \$350,000 transfers from the Joint i-A/C to the Joint TD A/C (see [86] and [93(a)] above).

104 Chia has not shown that, prior to Henry's second stroke, she was managing the Joint TD A/C to Henry's exclusion or knowledge. I have earlier found her claim as such to be unbelievable. She had admitted to being unaware of various transactions in the account and the evidence showed that she did not and could not have provided the funds in the Joint TD A/C (or Joint i-A/C). I reiterate my findings at [82] and [85] to [94] above.

105 There is also no evidence that supports the funds in the Joint TD A/C came from *Chia's* savings or investments. Chia did not know what sort of investment the Bonds were or of its returns, claiming that Henry did everything for her. She also claimed not to know anything about shares or investments.<sup>109</sup> It was improbable for Chia to have amassed savings of her own of no less than \$801,385.99 in the Joint TD A/C based on her employment history. She worked as a hairdresser for about seven years between 2003 and 2010 where she claimed her salary was above \$1,000. This was not a substantial sum. As for her employment at ATEC Design & Construction Pte Ltd (which Judy claims was

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<sup>108</sup> DCS at [182(c)] and [182(d)].

<sup>109</sup> 28/9/22 NE 6, 34–35.

a sham), even if I accept that it was a genuine employment, Chia’s notice of assessment of income shows her total income for 2017 to be only \$36,000.<sup>110</sup>

106 Finally, Chia’s assertion that she placed all her moneys into the Joint TD A/C with Henry to avoid queries from the bank regarding significant sums held by her is unconvincing. There is no evidence that the bank had raised any issues with the fact that Chia had originally placed moneys in accounts in her sole name. Hence, it made no sense to then transfer the moneys into a joint account with Henry. When queried in court, Chia could not give an explanation.<sup>111</sup> Her assertion is also contradicted by her affidavit filed on 13 October 2021 pursuant to the court order made in the plaintiff’s Mareva Application, where she disclosed three bank accounts in Singapore held in her sole name (two of which are with UOB) and which contained more than \$2.34 million in total.

107 In conclusion, I find the moneys in the Joint TD A/C (including the five deposits at [98] above) belonged to Henry and he never intended to gift them to Chia, and that Chia knew this. This is supported by the Two Letters where Henry stated that the “UOB Joint Account with Chia” was to be held on trust for him and that all the funds were provided by him. Although Henry had in the Two Letters referred to a “Joint Account” or “UOB Joint Account”, I accept that he was referring to the Joint i-A/C and Joint TD A/C collectively. The bank statements show that the Joint TD A/C was part of the joint accounts held by Henry and Chia in UOB.<sup>112</sup>

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<sup>110</sup> 27/9/22 NE 79, 72; 1AB 531.

<sup>111</sup> 29/9/22 NE 40–42.

<sup>112</sup> PCS at [123(a)]; 1AB 63–64, 66–67.

108 Chia had made the Four Withdrawals on her own when she knew she could not do so without Henry’s knowledge or approval, and she has thus fraudulently misappropriated Henry’s money. There was (as I further find at [117] below) also a relationship of trust and confidence between Chia and Henry at the material time. Apart from the fact that the Four Withdrawals were thus held on a resulting trust for Henry, Chia was also a constructive trustee of the moneys.

### **Category 3 Assets and undue influence**

109 I turn to deal with the Category 3 Assets (s/ns 7 to 10 at [3] above). The plaintiff’s claims proceed on two bases – that Henry lacked the mental capacity to make any *inter vivos* gifts at the time of the transfers, and that the transfers should be set aside for undue influence and unconscionability.

110 I had earlier found that Henry lacked the requisite mental capacity since around 9 October 2020. As the Category 3 Assets were transferred to Chia or procured for her benefit between January and March 2021, any such transactions should be set aside. Chia thus holds the Category 3 Assets on a resulting trust for Henry given the lack of intention on his part to pass the beneficial interest of these assets to her.

111 Nevertheless, I deal with whether the plaintiff’s claim can also succeed on the ground of undue influence or unconscionability.

112 A gift procured by undue influence can be vitiated and set aside. There are essentially two classes of undue influence, namely actual and presumed (*BOM v BOK and another appeal* [2019] 1 SLR 349 at [101]–[102]). In the present case where the plaintiff (P) is essentially relying on presumed undue influence (or “Class 2” undue influence), P has to show: (a) a relationship of

trust and confidence between him and the defendant (D); (b) the relationship was such that it could be presumed that D abused P’s trust and confidence in influencing P to enter into the impugned transaction; and (c) the transaction was one that calls for an explanation. A “Class 2” undue influence can be further divided into “Class 2A” and “Class 2B”. In particular, under “Class 2B”, P must prove a relationship of trust and confidence and that the transaction calls for an explanation. This then gives rise to a rebuttable presumption of undue influence.

***\$800,000 withdrawn from Henry’s POSB A/C in February 2021***

113 I deal first with the \$800,000 transferred from Henry’s POSB A/C to Chia’s POSB account (“Chia’s POSB A/C”) on 10 February 2021 (“\$800,000 Transfer”). It is undisputed Chia had accompanied Henry to the Tiong Bahru branch of POSB (“the Bank”) where the \$800,000 Transfer was made.<sup>113</sup>

114 Judy attested that Henry only deposited into and never withdrew from Henry’s POSB A/C, as this was his personal savings account. As such, the \$800,000 Transfer was made only because of Chia’s undue influence on Henry. The plaintiff submits that there was a relationship of trust and confidence between Henry and Chia and the surrounding transfer calls for closer scrutiny. The plaintiff essentially asserts that a “Class 2B” rebuttable presumption of undue influence arose, which Chia has not rebutted.<sup>114</sup>

115 Chia denies there was a relationship of trust and confidence between her and Henry. She claims Henry gave her the \$800,000 as a gift. Chia attests that in February 2021, Henry informed her that he wanted to transfer the money to

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<sup>113</sup> Chia’s AEIC at [94]; 3/11/22 NE 10–11; 1AB 105.

<sup>114</sup> SOC at [36]; Judy’s AEIC at [183]; PCS at [151]–[155].

her so that she would have enough money to spend in the future. Hence, on 10 February 2021, Henry took her to the Bank to make the transfer.<sup>115</sup>

*My findings*

116 I find the \$800,000 Transfer was procured by undue influence (*ie*, “Class 2B”) and furthermore, there was no donative intent by Henry in making the transfer to Chia.

*Whether there was a relationship of trust and confidence*

117 I find there was a relationship of trust and confidence between Henry and Chia at the material time and that Henry relied on Chia physically and emotionally.

118 I accept Judy’s evidence that Henry was unable to care for himself after the second stroke and was dependent on Chia for basic needs such as food and medication. As Judy was concerned for Henry’s well-being, she thus asked Chia to return to Singapore to care for him. Chia similarly attested that Judy had contacted her around 12 October 2020, told her that Henry had suffered a stroke, then asked if she could return to Singapore to support him.<sup>116</sup>

119 Then, 12 October 2020, shortly after the second stroke, Henry told Chia over the phone that he was “very scared” and kept asking for her. Chia then replied that she wanted to “come back and see [Henry]”, be with him and take care of him until he was well. In court, Chia repeatedly confirmed that Henry had trusted and depended on her to care for him after the second stroke – this included taking care of his meals and medical appointments, and being there for

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<sup>115</sup> Defence at [45]; DCS at [140], [158]; Chia’s AEIC at [93]–[94].

<sup>116</sup> Judy’s AEIC at [47]–[48], [51]; Chia’s AEIC at [51]–[52].

him emotionally.<sup>117</sup> Chia was essentially Henry’s main caregiver and she stayed with Henry at The Tiara throughout. The audio messages from Henry to Chia after he suffered the second stroke (from January to March 2021) show that he was in a weak state; he kept asking for her; he was reliant on and needed her; he did not wish for her to be angry with him; and he did not wish to upset her or quarrel with her.<sup>118</sup> Henry also continually apologised to her and kept reaffirming his love for her. In court, Chia admitted Henry’s messages showed that he was seeking for her love and attention and desperate to please her.<sup>119</sup>

*Whether the \$800,000 Transfer calls for an explanation*

120 It is undisputed that Henry’s POSB A/C is his personal savings account where his salary was credited to. The documents show that for almost two years since 25 February 2019, no moneys were withdrawn until the \$800,000 Transfer made on 10 February 2021.<sup>120</sup> That such a sudden and huge withdrawal was made from that account invites scrutiny as to the purpose of the transaction.

121 Indeed, Chia’s claim that the \$800,000 was a gift to her is not supported by the evidence. Mr Ricky Ng (“Ricky”), the assistant manager at the Bank who assisted in the transfer, and who was Chia’s witness,<sup>121</sup> contradicted her case. Ricky explained that on 10 February 2021, Henry and Chia went to the Bank and approached the counter staff to make the \$800,000 Transfer. Because of the large sum, Ricky did a verification with Henry as to his identity and to confirm his instructions regarding the transfer. Ricky attested that the purpose of the

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<sup>117</sup> 1AB 131–132; 29/9/22 NE 24–26.

<sup>118</sup> 1AB 143, 143A, 146–158,

<sup>119</sup> 29/9/22 NE 54–55.

<sup>120</sup> 23/9/22 NE 21–23; 1AB 42–46.

<sup>121</sup> 23/9/22 NE 3.

transfer to Chia’s account was for Chia to “manage the fund”. This was based on the bank’s standard form in which the customer would declare the purpose of the withdrawal or transfer of the moneys, and which contents of the form Ricky saw (although he was not involved in filling up the form).<sup>122</sup>

122 Ricky’s testimony supports that Henry did not have a donative intent when he made the \$800,000 Transfer. Hence, even if Henry had mental capacity when he made the transfer (which I have found he did not), Ricky attested that the transfer was for Chia to “manage” the money.

123 I thus find the surrounding circumstances are such that the \$800,000 Transfer clearly call for an explanation by Chia. Henry had always treated Henry’s POSB A/C as his savings account, with moneys deposited but not withdrawn until the \$800,000 Transfer on 10 February 2021 that removed most of his accumulated savings (being some \$868,000 before the transfer).

*Whether presumption of undue influence is rebutted*

124 I find that Chia has not rebutted the presumption of undue influence. Her claim that Henry wanted to give her the money and had told her so sometime in February 2021<sup>123</sup> is unsupported by any evidence. This is despite the numerous phone messages between them. On the contrary, the audio messages before and after the \$800,000 Transfer show Henry was vulnerable (physically, mentally and emotionally) and kept trying to appease Chia (see [119] above). Even after the purported \$800,000 gift to Chia, the messages show that Chia was unhappy and Henry was still appeasing and apologising to her. This is in addition to two \$500,000 sums made to Chia, via cheques dated 16 and 24 February 2021 from

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<sup>122</sup> 23/9/22 NE 4–7, 26.

<sup>123</sup> 3/11/22 NE 65.

Henry’s UOB A/C, which she claims were also gifts to her. I will return to the two cheques later. I first set out some of the audio messages.

(a) On 31 January and 1 February 2021 (before the \$800,000 Transfer), Henry sent voice messages to Chia apologising profusely.<sup>124</sup>

(b) On 11 February 2021 (a day after the \$800,000 Transfer), Henry was still apologising profusely to Chia and asking her not to be angry.<sup>125</sup>

(c) On 17 February 2021 (a day after a \$500,000 cheque was issued from Henry’s UOB A/C to Chia), Henry was again apologising to Chia and asking to “make up”, and said he was not feeling well and was afraid that he would “collapse”. Chia admitted, in court, that they had had an argument.<sup>126</sup>

(d) Chia responded two days later on 19 February 2021 to say that she could not take care of “so many people”, that it was “very tiring” and that she needed to rest and needed her own space.<sup>127</sup>

(e) In a series of messages on 20 February 2021, Henry again repeatedly apologised to Chia, said to her not to quarrel anymore, and kept asking her not to be angry. He also said that he could not hear and asked her to call the doctor for him. Interspersed with Henry’s messages on that day were merely two short replies from Chia stating that she “[did not] want to go home” and that she was “[v]ery tired”.<sup>128</sup>

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<sup>124</sup> 1AB 148–149 (s/ns 19–21).

<sup>125</sup> 1AB 149 (s/ns 22–23).

<sup>126</sup> 1AB 149 (s/n 24); 203; 3/11/22 NE 15–16.

<sup>127</sup> 1AB 149–150 (s/n 25).

<sup>128</sup> 1AB 150–152 (s/ns 28–37).

125 It is strange that they were still quarrelling or that Chia was still upset with Henry after he had (purportedly) given her large sums of moneys, unless she was taking advantage of his vulnerable state. I agree with Mr Narayanan that Chia was making Henry feel guilty for having to take care of him.<sup>129</sup>

126 Hence, I find Chia has not rebutted the presumption of undue influence. In this regard, I mention briefly that whilst Ricky attested that he had approved the \$800,000 Transfer because he assessed Henry to have been aware of his actions, this does not change my view that Henry had by that time lost mental capacity or that the transfer was nevertheless procured under undue influence. Ricky was not performing an assessment of Henry’s mental capacity but merely verifying his identity and asking him a basic question as to whether he wanted to make the transfer to Chia’s account.<sup>130</sup>

***Two withdrawals of \$500,000 each from Henry’s UOB A/C in February 2021***

127 In February 2021, two \$500,000 sums were withdrawn from Henry’s UOB A/C (“Two Sums”), via cheques dated 16 February 2021 and 24 February 2021 (“Second Cheque”) respectively. Chia wrote the cheques which Henry then signed, and she then deposited the moneys into the Chia-Wong A/C.<sup>131</sup>

128 The plaintiff claims that Chia had exercised actual or presumed undue influence over Henry in procuring the transfer of the Two Sums to her. Chia did not contribute any moneys to Henry’s UOB A/C or provide consideration for the Two Sums. Chia claims that Henry gave her the Two Sums, as he wanted

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<sup>129</sup> 29/9/22 NE 64.

<sup>130</sup> 23/9/22 NE 8, 19–20.

<sup>131</sup> 3/11/22 NE 11–14, 26–27; 1AB 78–79, 120–121, 203, 205, 209.

her to have enough money to spend should anything untoward happen to him. Chia claims that Henry also suspected that his children wanted to sell his businesses and keep his money for themselves.<sup>132</sup>

*My findings*

129 Again, I find the transfer of the Two Sums was procured by undue influence, at least of “Class 2B”.

130 I have found a relationship of trust and confidence between Henry and Chia at the material time. Further, the circumstances and proximity of the transactions call for an explanation. It is curious that, after purportedly gifting the \$800,000 Transfer to Chia (on 10 February 2021), Henry would purportedly give Chia another \$500,000 in a week (on 16 February 2021) and then another \$500,000 a week thereafter (on 24 February 2021).

131 Even if Henry suspected his children wanted to sell the family businesses and take his money, it made no sense for him to transfer moneys from his personal account out of his children’s reach<sup>133</sup> or to transfer them to Chia as a gift (instead of merely for safekeeping). Henry was then a minority shareholder in the family companies (holding about 30% of the shares through FOH), with Jordan and Jerrold as the majority shareholders and (even before Henry’s second stroke) the ones managing the companies.<sup>134</sup> Additionally, if Henry was afraid of his children selling the businesses and taking the moneys, this merely supports his mental state at that time and his lack of mental capacity to appreciate the actual situation and effect of the decisions he was making.

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<sup>132</sup> PCS at [156]–[160]; Chia’s AEIC at [98]–[99]; 3/11/22 NE 13.

<sup>133</sup> 3/11/22 NE 13.

<sup>134</sup> 4AB 1; Quek’s AEIC at [14(d)] and [14(e)].

132 Further, I disbelieve that Chia did not question Henry’s intentions at the time the Two Sums were transferred because they were in a “romantic relationship”. The audio messages show that their relationship was deteriorating and in fact one-sided, with Henry often attempting to placate Chia who was seemingly unhappy with him (see [119] and [124] above). I repeat my observations above that the messages show Henry to be vulnerable and in a weak physical and emotional state, and he was dependent on Chia and constantly trying to appease her. The messages also show that Henry still had feelings for Chia. I also find that Chia knew Henry was unwell not only physically, but mentally. The following messages are especially relevant.

(a) On 29 January 2021 (before the \$800,000 Transfer and the withdrawal of the Two Sums), Chia told Henry that he had “a problem” and that he needed to see a doctor for his problem.<sup>135</sup> I disbelieve Chia’s explanation in court that she believed Henry was “normal” and did not have any problems, and that she was merely throwing a tantrum. The audio messages at the material time show that Henry was not behaving normally. Indeed, Chia herself told Henry that her “brain [was] damaged” from Henry’s constant messages to her, that he had “problems” and that she could not save him.<sup>136</sup>

(b) On 1 March 2021 (after the above transactions), Chia again told Henry to see a doctor or psychiatrist if he had a problem or was crazy; that she was afraid of him; and if things continued in that way, she would leave him or “jump”. Again, I disbelieve Chia was merely throwing a tantrum.<sup>137</sup>

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<sup>135</sup> 1AB 147 (s/n 5).

<sup>136</sup> 29/9/22 NE 61–62; 1AB 146 (s/n 3).

<sup>137</sup> 1AB 156–157 (s/ns 10–12); 3/11/22 NE 33–35.

133 I find Chia was taking advantage of Henry’s condition and feelings at the material time to procure the issue of the cheques for the Two Sums, which Chia had written for Henry to sign, and the \$800,000 Transfer to her.

134 Pertinently, Henry had procured a transfer of \$181,000 from a bank account held jointly with his mother, Mdm Lum (“HL A/C”), to Henry’s UOB A/C just a day before the Second Cheque was issued to Chia. It was undisputed that Henry was appointed as Mdm Lum’s attorney (pursuant to a power of attorney) to manage her bank accounts and that he held the moneys in the HL A/C for Mdm Lum’s benefit.<sup>138</sup> But for this transfer of \$181,000, the Second Cheque for \$500,000 could not have been issued to Chia. Henry’s conduct in taking his mother’s money so that he could “give” Chia \$500,000 by way of the Second Cheque can only be explained by the fact that he was under Chia’s undue influence and could not understand the consequences of his action.

135 In the round, I find that there was at least “Class 2B” undue influence which taints the transfer of the Two Sums to Chia, and Chia has failed to rebut the presumption of undue influence.

136 A resulting trust also arises in relation to the Two Sums as Chia did not contribute any moneys to Henry’s UOB A/C (from which the Two Cheques were made). She claimed that she did not know the precise source of the funds and did not know anything about Henry’s accounts held in his sole name.<sup>139</sup> Given Henry’s lack of mental capacity at the material time, he would also have lacked the intention to benefit Chia with the Two Sums.

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<sup>138</sup> Judy’s AEIC at [197].

<sup>139</sup> Chia’s AEIC at [99]; 3/11/22 NE 25–26.

***Transfer of The Tiara and the \$218,600 cheque***

137 By a Deed of Gift (“Deed”) dated 19 January 2021, Henry transferred The Tiara to Chia. The instrument of transfer dated 1 March 2021 (“Transfer Instrument”) was registered on 8 March 2021. The stamp duty of \$218,600 was paid by a cheque dated 18 February 2021 (“\$218,600 Cheque”) drawn from Henry’s UOB A/C.<sup>140</sup>

138 Chia claims that Henry had informed her that he would transfer The Tiara to her to provide her with a permanent place of residence in Singapore, should anything happen to him. Henry wanted to make her feel secure and The Tiara was meant to be their permanent home. It was only on 1 March 2021 that she realised Henry had engaged Chong to effect the transfer of The Tiara to her, when Chong visited them with documents for Henry to sign.<sup>141</sup>

139 Chong attested as follows. On 11 January 2021, he received a phone call from Henry saying he wanted to give The Tiara to Chia. Chong advised Henry to do the transfer by a deed of gift, which he prepared on Henry’s instructions. He then explained the legal effect and consequences of the Deed to Henry and was satisfied that Henry understood him.<sup>142</sup>

140 On 19 January 2021, Chong went to The Tiara with the Deed and explained its contents to Henry and Chia. Henry and Chia signed the Deed. Henry also signed the “Seller’s Confirmation for Withholding Tax Purposes” and the “Seller’s Stamp Duty for Residential Properties”. Chong explained the effect of the two documents to Henry and was satisfied that Henry understood

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<sup>140</sup> 2PB 58–60; 3/11/22 NE 39; 1 AB 79, 205, 207, 562–565; Judy’s AEIC at [209].

<sup>141</sup> Chia’s AEIC at [100]–[102].

<sup>142</sup> 27/9/22 NE 8–10.

them before he signed them. Henry was also very clear that he would pay the stamp duty on Chia’s behalf. Hence, for the \$218,600 Cheque, Henry signed a blank cheque and Chong filled up the cheque on Henry’s request. Chia also signed the “Additional Buyer Stamp Duty Declaration Form”.<sup>143</sup>

141 On 1 March 2021, Chong went to The Tiara with the Transfer Instrument for Henry and Chia to sign. He explained the effect of the document to Henry and was satisfied that Henry understood this because he signed the document.<sup>144</sup>

*My findings*

142 Similarly, I find the transfer of The Tiara to Chia was procured by undue influence (of “Class 2B”).

143 Although Chong was of the view that Henry understood the documents that he signed, this does not affect my decision that Henry lacked mental capacity at the material time. Chong accepted that he was not a doctor and that he would defer to medical opinion.<sup>145</sup> In fact, whilst Chong claimed that he did not notice anything wrong with Henry, he agreed that there were a few occasions when Henry “rambled”, was incoherent and “talk[ed] funny” (see [47(b)] above). I agree with Mr Narayanan that Henry’s lack of mental capacity to effect the transfer of The Tiara was all the more apparent from the fact that he disregarded his lawyer’s advice to include a protective clause in the Deed (for him to have a life interest in or to reside at The Tiara) and that he did not seem to be concerned about whether he had a place to live after he transferred the

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<sup>143</sup> 27/9/22 NE 6–7, 12–16, 19–20, 22, 25, 38, 42; 1AB 556, 558–560.

<sup>144</sup> 27/9/22 NE 16.

<sup>145</sup> 27/9/22 NE 31.

property to Chia.<sup>146</sup> This is also given Chia's claim that Henry intended The Tiara to be *their* permanent home.

144 Having found there to be a relationship of trust and confidence between Henry and Chia, the transfer of The Tiara to Chia called for an explanation.

145 The Tiara, purchased in 2007, had been Henry's home for more than 13 years before it was transferred to Chia. The transfer occurred just a few months after he suffered the second stroke and Chia returned to live with him. Chia's claim that Henry intended to give her a permanent place of residence in Singapore is contradicted by her claim that Henry gifted the KL Property to her because he wanted her to live in Malaysia as the cost of living there was lower.

146 Pertinently, the audio messages during the transfer of The Tiara to Chia reveal a rocky relationship. On the morning of 19 January 2021, *the day the Deed was signed*, the messages showed that Henry was vulnerable and afraid that Chia would break up with him, and that Chia was manipulating Henry's vulnerability:

- Chia: Henry, I go out for a while. I'm going to see my friend for a short while, hor.
- Henry: Honey I miss you hor, BB. (If you) have time, come see Ah Hock hor. Come see Ah Hock hor.
- Chia: *I know you and your children (sobbing) want to harm me. (sobbing) Make me go to the mental hospital. (sobbing) I know you and your children conspire...*
- Henry: Only you one person. B, every day day day day be with BB only. *I'll give you everything.* (If you) have time, come see Ah Hock hor. Don't be like this. Relax, relax, relax hor. I am at home. Ok. I'm very weak. I can't, my feet. My feet cannot walk. Come see Ah Hock hor. (If you) have time ... *Please, I beg you, BB hor.*

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<sup>146</sup> PCS at [42(b)]; 27/9/22 NE 20–21.

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When you're free, come and visit Ah Hock. Ah Hock is ok. Forever, forever, forever, forever, hor? I'm all right. I'm all right. Later, you relax and come visit Ah Hock hor. *Don't break up* ... Come visit Ah Hock later, ok? Relax relax hor.

[emphasis added]

147 Then, on 1 March 2021, the day on which Henry and Chia signed the Transfer Instrument, the audio messages show Chia was still unhappy with Henry. This is despite Henry having (in January 2021) started to effect the transfer of The Tiara to Chia and, in February 2021, caused substantial transfers of moneys to her (*ie*, the \$800,000 Transfer and the Two Sums). Chia was telling Henry, among other things, not to frustrate her; that he was making her feel awful; that he was nagging her to the point that she felt that he wanted to kill her or take her life; that he should see a doctor or psychiatrist if he was unwell or crazy; that he should get off her back and “go bother Judy”; and that if things continued the way they were, she would leave him or “jump”. I agree with Mr Narayanan that Chia was giving Henry the cold shoulder and threatening to leave him.<sup>147</sup> The messages show Chia attempting to play the victim and making Henry feel he was the cause of her unhappiness and frustration.

148 Notably, Chong stated that when he went to The Tiara on 1 March 2021 to get Henry to sign the Transfer Instrument, Henry was “rushing [Chong] to complete this matter”.<sup>148</sup> It is unclear why Henry was in such a hurry to transfer The Tiara, unless Chia had been taking advantage of his vulnerability at the time when he was physically and emotionally reliant on her.

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<sup>147</sup> 1AB 155–158; 3/11/22 NE 33–35.

<sup>148</sup> 27/9/22 NE 17.

149 I thus find Chia has failed to rebut the presumption of undue influence in relation to the transfer of The Tiara to her, and that “Class 2B” undue influence is made out. Indeed, Chia attempted to distance herself from having influenced Henry in the transfer. She lied about having discovered the transfer only on 1 March 2021, when she had signed the Deed in January 2021.<sup>149</sup>

150 Consequently, the \$218,000 Cheque (comprising buyer’s and additional buyer’s stamp duties) made to the Commissioner of Stamp Duties was made by Henry on Chia’s behalf and would have been procured at the time when Henry had lost mental capacity and been operating under Chia’s undue influence.

***Conclusion on the Category 3 Assets***

151 In conclusion, I find Henry lacked mental capacity during the transactions pertaining to the Category 3 Assets; furthermore, the transactions were procured under undue influence and thus should be vitiated and set aside.

152 The timing of these transactions was shortly after Chia returned to Singapore to live with Henry in mid-October 2020 (after Henry suffered the second stroke), and all within a few months. The audio messages from January to March 2021 show that Henry was vulnerable and weak (physically and emotionally) and Chia was manipulating and influencing Henry. I infer that Henry made the transactions because he was afraid Chia would abandon him and out of feeling guilty that he was causing her to be unhappy.

153 There was, as I have found, a relationship of trust and confidence at the material time, where Henry relied on Chia for his physical and emotional needs and where Chia voluntarily undertook to look after him. There was thus a

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<sup>149</sup> 3/11/22 NE 39–40.

fiduciary relationship. Chia had subsequently abused the trust reposed in her by procuring from Henry the transfer of the Category 3 Assets (for her profit) by undue influence. Henry also did not have an intention to benefit Chia given his lack of mental capacity at the time when the transactions were made. Hence an institutional constructive trust, or alternatively, a resulting trust, arose over the Category 3 Assets received by Chia.

154 As I have found the transactions were procured by undue influence, it is unnecessary to consider the plaintiff’s claim in unconscionability.

#### **\$800,000 cash purportedly removed from The Tiara in October 2020**

155 I turn to the sum of \$800,000 in cash purportedly removed from Henry’s safe at The Tiara in October 2020. Judy relies on the 6/4/21 Document which Chia signed (see [12] above) as evidence that Chia had taken this sum from Henry.<sup>150</sup> Chia claims the document was prepared without her inputs and she signed it under duress or “intense pressure” from Henry’s family; in any event she did not take this sum from Henry’s safe or at all.<sup>151</sup>

#### ***Whether the 6/4/21 Document was signed under duress***

156 It is not disputed that the list of items under Annexure A of the 6/4/21 Document was written by Tammy. The CCTV Footages and contemporaneous recordings before and during the signing of the 6/4/21 Document and Chia’s own testimony showed Chia did not sign the document under duress. Contrary to her claim that the document was prepared without her inputs, she stated in court that the items listed in Annexure A were written on her instructions. It is

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<sup>150</sup> SOC at [30]–[31]; Judy’s AEIC at [150].

<sup>151</sup> Defence at [35], [37], [39]; Chia’s AEIC at [85]–[86]; 4/11/22 NE 8–9.

also not disputed that after the 6/4/21 Document was prepared, Tammy translated it to Chia in Mandarin or Teochew and Chia accepted the list in Annexure A was accurate, except that she did not say “Oct 2020 cash” and “\$1 million MM2 Shares”.<sup>152</sup>

157 Moreover, Mr Cheong accepted, based on the CCTV Footages and recordings played in court, that none of Henry’s family members were observed to be making threats or putting pressure on Chia. In fact, it was observed that when Tammy was explaining the 6/4/21 Document to Chia, Chia was nodding her head from time to time and even recording on her handphone what was taking place. It was further observed that after Tammy translated the 6/4/21 Document to Chia, Tammy then asked Chia whether she understood what had been translated, whereupon Chia said “yes”.<sup>153</sup>

158 Even if I were to accept that Chia was pressured into signing the 6/4/21 Document (which I do not), she nevertheless admitted that she had accurately told Tammy what was reflected in Annexure A, save that she did not say the words “Oct 2020 cash” and “\$1 million MM2 Shares”.

***Whether Chia obtained \$800,000 of Henry’s money in October 2020***

159 That said, I find the plaintiff has not proved on balance that Chia obtained \$800,000 from Henry in October 2020. I accept that Chia did not say to Tammy “Oct 2020” or “cash” as found in Annexure A.

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<sup>152</sup> 20/9/22 NE 94–95; 21/9/22 NE 31; 3/11/22 NE 45–48, 51.

<sup>153</sup> 21/9/22 NE 20, 21, 31, 33.

160 First, there was no independent evidence to corroborate that \$800,000 in cash was either removed from Henry’s safe or procured from Henry in around *October 2020*.<sup>154</sup>

161 Second, and pertinently, when Tammy translated the 6/4/21 Document to Chia and particularly Annexure A, she did not mention “Oct 2020” or “cash” to Chia, such that Chia could have confirmed that this amount was obtained by her on that date. The transcripts of the audio show Tammy saying to Chia (when running through the items in Annexure A) “this watch, Rolex, necklace, *800 thousand, everything is yours*” [emphasis added].<sup>155</sup>

162 Third, I accept Chia’s explanation that she was referring to the \$800,000 Transfer in February 2021, when she mentioned a sum of \$800,000 to Tammy. Chia explained that when Tammy asked her to list down the items that Henry had given to her, she searched in her handphone and then told Tammy that she had received two \$500,000 cheques and a sum of \$800,000, but Tammy did not ask her about the date of the latter transaction.<sup>156</sup>

163 The genesis of Annexure A must be seen in light of the preparation of the 6/4/21 Document, which was a sudden and an unplanned event for Chia and happened on the day after Henry threatened to commit suicide and was brought to IMH, and when Henry’s family members descended at The Tiara (see [10] above). As Chia stated, she had Tammy and Mr Li Nanxing accompany her to The Tiara because she was afraid. I accept that she was then “emotionally shaken” and she felt rushed to come up with a list of items that she had obtained

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<sup>154</sup> 4/11/22 NE 7.

<sup>155</sup> 3AB 1179; 4/11/22 NE 10.

<sup>156</sup> 3/11/22 NE 45–46, 48–50; 4/11/22 NE 13.

from Henry.<sup>157</sup> That the \$800,000 sum being “cash” obtained in “Oct 2020” could have been a mistake or not been uttered by Chia is supported by the fact that the two \$500,000 sums (listed in Annexure A) as stated to pertain to the “\$1 million MM2 Shares” (which Chia claims she also did not utter these words) was also inaccurate as these clearly referred to the Two Sums which are unrelated to the Shares.

164 Ultimately, the plaintiff bears the burden of proving his case, which I find the plaintiff has not discharged on balance. Tammy was not called as a witness to support Henry’s case that Chia had said that she had obtained \$800,000 in cash and in October 2020.

### **Watches and jewellery**

165 Finally, I deal with the Watches and Jewellery, which Judy claims Chia had converted by taking them from Henry. Jerrold attested that Henry kept various watches and jewellery in his safe at The Tiara as he had personally seen them. In September 2021, he came across Chia’s profile on Carousell (a re-selling platform) which was set up on 10 September 2021 under the username “hun\_chia”, which is an abbreviation of her name (“Carousell Account”). The Carousell Account listed The Tiara and the Watches and Jewellery for sale.<sup>158</sup>

166 Chia’s case is one of bare denial. She claims she was unaware of the contents of Henry’s safe and did not convert or attempt to sell any of the Watches and Jewellery. She claims the Carousell Account was set up by Henry’s children, thus impersonating her, and she had lodged a police report on

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<sup>157</sup> 3/11/22 NE 46–49.

<sup>158</sup> SOC at [43]; 4/11/22 NE 6–7; Jerrold’s AEIC at [54]–[59]; 4AB 2.

10 October 2021 (“Police Report”) to report that someone had used her name and was listing watches, handbags and “[her] apartment”.<sup>159</sup>

***Whether Chia converted the Watches and Jewellery***

167 As Chia does not dispute that Henry never gave her any of the Watches or Jewellery and she claims she did not take them,<sup>160</sup> Henry’s mental capacity is irrelevant. In this regard, I find Chia had converted the Watches and Jewellery.

168 I find, contrary to Chia’s claim, that the Carousell Account belonged to her. Her story of Henry’s family members impersonating her (thereby suggesting that they were trying to set her up)<sup>161</sup> is unbelievable and baseless. First, I find the username “hun\_chia” is an abbreviation of Chia’s name. Chia has a Facebook account in the name of “hun chia” and an email address “hun\_chia@hotmail.com”, and her friends also know her as “hun”.<sup>162</sup> Second, Chia does not dispute that The Tiara was listed for sale, and pictures of it were displayed, on the Carousell Account.<sup>163</sup> By September 2021, Chia had legal title to The Tiara, and it was inconceivable that a person without title to the property would have attempted to put it up for sale.

169 In fact, The Tiara was also concurrently listed on PropertyGuru. Mr Desmond Liew (“Desmond”), the property agent who listed The Tiara, attested on affidavit (in support of the plaintiff’s application for leave to commence committal proceedings against Chia for purported breaches of the Mareva

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<sup>159</sup> Defence at [58]; 3/11/22 NE 66; Chia’s AEIC at [107]–[112]; 1AB 582–583.

<sup>160</sup> 3/11/22 NE 54; 4/11/22 NE 3.

<sup>161</sup> DCS at [221]–[222].

<sup>162</sup> 3/11/22 NE 66; 21/11/22 NE 39; DCS at [223]; Jerrold’s AEIC at [57(b)]; Bundle of AEICs (Vol 2) at pp 128, 142–143.

<sup>163</sup> 3/11/22 NE 56.

injunction) that he had corresponded with “Yun” at hunchia83@gmail.com (“Gmail Account”). “Yun” had on 14 September 2021 attached photos of “my home” and asked Desmond to “proceed to list and sell it” and gave her number as “9836 3015” (“Phone Number”).<sup>164</sup>

170 Chia claims she never communicated with Desmond nor put The Tiara on sale, and the Gmail Account was created by Henry’s children who impersonated her. She admits that the Phone Number was subscribed by Henry for her but that Henry’s family cancelled the line on 8 April 2021.<sup>165</sup>

171 I find Chia did communicate with Desmond to sell The Tiara, and her claim that Henry’s family had set up the Gmail Account and impersonated her to be preposterous. Although Desmond was not called to testify, the emails between “Yun” and Desmond, coupled with the fact that the Phone Number was Chia’s, point to Chia being the Gmail Account holder. Chia admits she is also known as “Yun” and the email to Desmond attached photographs of The Tiara.<sup>166</sup>

172 Further Chia’s assertion that the phone line for the Phone Number was cancelled on 8 April 2021 is contradicted by the phone bills which showed that mobile data usage for this number continued for the months of April and May 2021, which included data roaming for Malaysia, and that the phone line was only suspended from June to 13 September 2021.<sup>167</sup> There was also no evidence of the suspension of the line being caused by Henry’s family. Judy attested that she did not know of the status of this phone line at the material time, as she was

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<sup>164</sup> 1AB 275–282.

<sup>165</sup> 3/11/22 NE 57, 66; DCS at [213].

<sup>166</sup> 3/11/22 NE 57, 66.

<sup>167</sup> 5AB 4, 6, 10–23.

only made Henry’s deputy (pursuant to the MCA) in August 2021. I also accept that the SIM card for the Phone Number was always with Chia. Deborah attested that Chia had on about 8 April 2021 asked her to collect a replacement SIM card for the Phone Number because Chia had lost her phone, and to place the SIM card in The Tiara letterbox.<sup>168</sup>

173 As I have found that Chia had advertised The Tiara on the Carousell Account (and caused it to be listed on PropertyGuru), it follows that the listing of all the items on the Carousell Account (including the Watches and Jewellery) was caused by Chia. The Watches and Jewellery would have belonged to Henry, and, in the Police Report, Chia also stated that some of the items (on the Carousell Account) “belonged to her boyfriend”. Jerrold also attested to having seen the items before because Henry had showed him the contents of his safe. In the round, I find Chia had converted the Watches and Jewellery.

174 The measure of damages for a claim in conversion is the value of the goods converted. This is determined by either its market value at the date of conversion or the cost of replacing the item (*Marco Polo Shipping Co Pte Ltd v Fairmacs Shipping & Transport Services Pte Ltd* [2015] 5 SLR 541 at [29], [30] and [33]).

175 The plaintiff has shown there was an available market for the Watches and Jewellery. Shortly after Chia set up the Carousell Account, the items were sold as reflected on the account.<sup>169</sup> The available market here must be seen in view of the goods being offered to the market, namely second-hand luxury goods which may be of limited quantity. I further accept the last listing price of

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<sup>168</sup> 21/11/22 NE 17, 35.

<sup>169</sup> 2AB 1108; 4AB 2; 4/11/22 NE 4–5.

the items as reflected on the Carousell Account as the price at which they were sold and as the market value of the Watches and Jewellery at the time of conversion. It is unlikely that their value would have fluctuated greatly (and downwards) in a short span of time between Chia's conversion and the sale.

176 It is clear that substantial loss has been incurred, as the Watches and Jewellery were luxury goods. Hence whilst the plaintiff bore the burden of proving the quantum of loss, that an assessment is difficult is in itself not a reason not to award damages or to award merely nominal damages. The difficulty in assessing the precise quantum is because of Chia's wrongful conversion of the items, such that only Chia would know how much they were sold for.

177 Hence, I award damages of \$943,000, as the market value of the Watches and Jewellery based on the final listed prices on the Carousell Account.

### **Conclusion**

178 Having found Chia liable for the Assets (except for s/n 5 at [3] above), I make the following orders.

179 I set aside the Deed pertaining to The Tiara, and order that Chia transfer The Tiara to Henry. Chia is also to bear the costs and expenses relating to the transfer. In this regard, as I find the \$218,000 Cheque was a payment procured from Henry for Chia's benefit, where a refund is made by the relevant tax authority to Chia, this sum would be held on trust for Henry. Alternatively, Chia is to compensate Henry the sum of \$218,000.

180 Chia is to transfer the KL Property to Henry, as I have found the KL Property to be held on a resulting trust for him. Likewise, Chia is to bear the costs and expenses relating to the transfer.

181 Chia is to return \$64,268.40 to Henry, being the value of the Coupon paid on the Bonds.

182 As for the Bonds itself, Mr Narayanan has stated that there were new developments in that the Bonds had been restructured.<sup>170</sup> I will make the necessary orders in relation to this, after hearing from both parties.

183 As for: (a) the sale proceeds on the MM2 Shares amounting to \$56,446.32; (b) the Four Withdrawals (amounting to \$744,122.74 withdrawn from the Joint TD A/C); (c) the \$800,000 withdrawn from Henry's POSB A/C; and (d) the \$1m in total withdrawn from Henry's UOB A/C, I order as follows:

(a) Chia is to account to Henry for these moneys including the use of the moneys (with details of to whom such moneys were paid/transferred, when such moneys were paid/transferred, the quantum of payment/transfer and the reasons for payment/transfer) and any property, benefit or assets obtained from the use of such moneys.

(b) There be an inquiry to trace the assets or proceeds into which these moneys have been converted.

184 Finally, Chia is to pay damages of \$943,000 pertaining to the Watches and Jewellery to Henry.

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<sup>170</sup> PRS at [30]–[32].

185 I will hear parties on costs and to deal with any consequential orders to be made on the above Assets.

Audrey Lim  
Judge of the High Court

Nicholas Narayanan (Nicholas & Tan Partnership LLP) (instructed),  
Yeo Lai Hock Nichol and Qua Bi Qi (Nine Yards Chambers LLC)  
for the plaintiff;  
Cheong Yon-Wen Jeremy, Chia Wei Lin Rebecca and Markus Kng  
Tian Sheng (JCP Law LLC) for the defendant.

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