Chan Gek Yong v Chan Gek Lan
[2008] SGHC 167

Case Number : Suit 287/2007

Decision Date : 02 October 2008

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Chan Gek Yong, plaintiff in person; Koh Hai Keong (Koh & Partners) for the defendant

Parties : Chan Gek Yong — Chan Gek Lan

Restitution

29 September 2008 Judgment reserved.

Woo Bih Li J:

Introduction

1 The plaintiff, Chan Gek Yong ("the plaintiff") and the defendant, Chan Gek Lan ("the defendant") are sisters. The defendant is the eldest child in the family, while the plaintiff is the second eldest. They have six other surviving siblings. Their parents are deceased.

2 The plaintiff and the defendant are co-owners of Blk 253, Serangoon Central Drive, #01-233, Singapore 550253 ("the Serangoon property"). The Serangoon property was purchased on 17 January 1990 for $440,000. Contributions to the purchase price by the defendant are disputed, but there is common ground that the plaintiff contributed $120,000 from her CPF account and a further $100,000 in cash.

3 From 1 April 1990 to 30 June 1992, the Serangoon property was leased to the younger brother of the plaintiff and the defendant, Chan Joo Hock ("CJH"). CJH practised as a dentist under the name and style of "Chan Dental Clinic and Surgery" ("the Clinic") at the Serangoon property. The monthly rental for the lease was $4000.

4 On or about 1 July 1992, the plaintiff and her younger sister Chan Gek Keow ("CGK") formed a partnership to operate the Clinic, under the same name, at the Serangoon property. They employed CJH as a dentist. Accordingly, the Serangoon property was leased to the Clinic from 1 July 1992 to sometime in August 1999 at a monthly rental of $4000.

5 During this time, monthly salaries for the plaintiff, CGK and CJH were paid out by the Clinic. Initially, the plaintiff's monthly salary was $2,355; CGK's was $1,021, while CJH's was $1,570. These amounts were later revised upwards from August 1994 to $2,400, $1,040 and $1,600 respectively.

6 The Serangoon property was originally held as a joint tenancy between the plaintiff and the defendant. On 2 August 2000, a declaration to sever the joint tenancy was executed by the defendant and purportedly sent to the plaintiff, leaving the plaintiff and the defendant to hold the Serangoon property as tenants-in-common in equal shares. The plaintiff disputed the validity of the severance.

Plaintiff's claims and defendant's counterclaim

7 The plaintiff pursued four (4) claims against the defendant in this suit. As summarized in the plaintiff's closing submissions ("PCS"), these comprised:

> 84 …
>
> (a) Claim for $236,520 being the Plaintiffs [*sic*] claim for her 73% share of the rentals collected for the Serangoon property for the period April 1990 to December 1996.
>
> (b) The claim for $21,555 being some of the salaries of the Plaintiff which the Defendant had received or taken pursuant to 3 cheques, issued by the clinic for her salary.
>
> (c) The claim for $39,000 being the total of 3 sums withdrawn from the Plaintiffs [*sic*] said joint POSB savings Account with her mother.
>
> (d) The claim for $10,000 being the amount paid to the Plaintiff by her brother CKH which the Defendant took for her own use.

8 The defendant, in turn, made a counterclaim against the plaintiff for the defendant's half-share of the rental from the Serangoon property between 1 January 1997 and 31 August 1999. According to the defendant, this amounted to $64,000 in total.

9 An issue of the statutory time-bar under the Limitation Act (Cap 163, 1996 Rev Ed) was raised. This applies equally to all the claims involved, as the events in question had all occurred more than six years before any of the claims were first brought.

10 I will refer to the notes of evidence as "NE" followed by the page number and an affidavit of evidence-in-chief as "AEIC".

Plaintiff's first claim: $236,520 being her alleged 73% share of the rental of Serangoon property from 1 April 1990 to 31 December 1996

11 Paragraph 3 of the plaintiff's Statement of Claim states:

> From 1st April 1990 until 31st December 1996, the Defendant received and/or was in possession of the Plaintiff's 73% share of all the rentals paid by the clinic as tenant, but the Defendant did not account to the Plaintiff for her share of the rental as co-owner, amounting to the sum of $236,520.00.

12 Two issues merit consideration here. In the first place, was the alleged severance of joint tenancy on 2 August 2000 of any relevance to the division of rental, and if so, had there been a valid severance of the joint tenancy by the defendant on 2 Aug 2000? Second, were the contributions to the purchase price of the Serangoon property by the plaintiff and the defendant uneven, and even if so, what is the consequence in the circumstances?

Validity and relevance of joint tenancy severance by the defendant

13 Much has been made by the defendant of the purported severance of the joint tenancy between the plaintiff and the defendant on 2 August 2000. It is difficult, however, to see how the alleged severance is relevant to the plaintiff's claim for rental collected between 1 April 1990 and 31 December 1996 – that is, rental that was due to her long *before* 2 August 2000. The plaintiff is correct when she says at PCS [497]-[498]:

> 497. … in this case concerning my claim for my share of the rents between 1990 and 1996 we are dealing with an earlier period when I and the Defendant were holding the interest in the Serangoon property as joint tenants. …
>
> 498. … at the material time when these rentals were collected by the Defendant we shared the interest in the Serangoon property as joint tenants. …

14 The question of the validity of the severance allegedly effected on 2 August 2000 thus becomes moot, and as such should not factor into consideration of the appropriate division of rental. In the circumstances, it is not necessary for me to decide whether it is too late for the plaintiff to challenge the severance of the joint tenancy in view of the proceedings in Originating Summons 1496 of 2005 and a ruling made by Belinda Ang J therein on the sharing of the sale proceeds of the Serangoon property.

Contributions to the purchase price of the Serangoon property

15 It is trite law that the four unities – unity of possession, unity of title, unity of time and unity of interest – must be present for a joint tenancy to properly subsist. This principle of joint tenancy would mean that the rental of a property is to be divided equally between the joint tenants (see Megarry and Wade, *The Law of Real Property*, 7th Ed (2008) at [13.006]) unless, for example, one joint tenant is holding her interest or part thereof on a resulting trust for the other.

16 The plaintiff's claim for a share larger than 50% of the rental suggested that she was claiming that the defendant was holding part of her own interest in the Serangoon property on a resulting trust for the plaintiff. *Prima facie*, if the plaintiff paid more than half of the purchase price of the Serangoon property, there would be a presumption that the defendant held part of her interest on a resulting trust for the plaintiff.

17 It should be noted here that there exists no presumption of advancement between siblings; the presumption exists strictly as between husband and wife, as well as parents and children. This position does not look to be changing anytime soon: see the judgment of V K Rajah JA in the recent decision of *Lau Siew Kim v Yeo Guan Chye Terence and Anor* [2008] 2 SLR 108 at [74]. It is therefore not open to the defendant to rely on such a presumption in the present case. MacKinnon JA, delivering the judgment of the Ontario Court of Appeal, is more directly on point in *Gorog v Kiss* [1977] 16 OR (2d) 569:

> There is no presumption of gift by way of advancement as between brother and sister, as happens in the husband-wife, father and child cases relied on by the appellant.

The above passage was cited with approval by Gopal Sri Ram JCA in the recent Malaysian case of *Loo Hon Kong v Loo Kim Lim @ Loo Kim Leong* [2004] 4 AMR 591, where an elder brother paid for property which he had caused to be registered in the name of his impecunious younger brother. It was held by the Malaysian Court of Appeal that the relationship was not one to which the presumption of advancement applied, and that accordingly the younger brother held the property on resulting trust for the elder.

18 The plaintiff had contended that over and above her undisputed contribution of $220,000 to the purchase price of the Serangoon property, an additional $34,700 was also financed by her, although apparently without her knowledge or consent. She alleged that the defendant had deceived their mother to issue a cashier's order for $34,700 from the plaintiff's joint account with their mother. This cashier's order was then used to pay the mortgage loan which was supposed to be the defendant's

contribution towards the purchase price of the Serangoon property.

19 Although denying that she had deceived their mother to issue the cashier's order, the defendant agreed that the $34,700 had come from the plaintiff. As such, the undisputed contribution by the plaintiff to the purchase price of the Serangoon property was at least $254,700. This amount works out to approximately 58% of the purchase price.

20 However, on the present facts, I am led to the conclusion that the intention was that plaintiff and defendant were to have equal rights to the Serangoon property.

21 A disputed fact during trial was whether or not the rental had been paid out in two cheques of $2,000 each in favour of the plaintiff and the defendant respectively, or in one cheque of $4,000 in favour of both. However, the evidence demonstrates that the plaintiff was, until the time she made her claim for 73% of the rental, quite content for the defendant to receive 50% of the rental over the years.

22 There is one piece of evidence on this point which I would like to mention. At [26] of the plaintiff's AEIC, the plaintiff stated:

> As there were to be unequal contributions to the purchase price of $440,000 by our mother, myself and the Defendant, our mother instructed for the manner of holding to be changed from "tenants-in-common in equal shares" to "Joint Tenancy" on the HDB Agreement for HDB Lease dated 17 January 1990. However, in the year 2000, the Defendant had made a declaration to sever the "Joint Tenancy" and changed it back to "tenants-in-common in equal shares." Until today, she had failed and or [*sic*] refused to produce the postal receipt evidencing that the documents of the severance had been sent to me.

23 This paragraph was telling for two reasons. One, it illustrated that the *mother* of the two parties was the one who actually oversaw the entire purchase transaction. Secondly, it showed that the plaintiff already knew about the unequal contributions toward the purchase price but was content to abide by the mother's wishes for the parties to have the same interest in the Serangoon property. The alleged change from an initial intention to hold as tenants in common in equal shares to a joint tenancy did not help the plaintiff because under a joint tenancy, there is unity of interests as elaborated above.

24 In the circumstances, I conclude that the plaintiff is not entitled to more than 50% of the rental for the period she was claiming.

The first claim for plaintiff's share of rental

25 The plaintiff alleged that the defendant, as the eldest child, had been appointed by their father, and later their mother, to handle all the banking transactions of the family. The plaintiff further alleged that during the period between 1 April 1990 and 31 December 1996, the defendant had kept the bank passbooks of family members, including the plaintiff's bank passbook. As such, during that period the defendant had received the plaintiff's share of all the rentals paid by the Clinic as tenant, but had failed to account to the plaintiff for the latter's share.

26 According to the plaintiff, the Clinic's practice was to issue five cheques every month:

(a) one for $4,000 to pay the rental for the Clinic;

(b) one for $3,000 in favour of the mother to pay for family expenses;

and

(c) three cheques for the salaries of CGK, CJH and the plaintiff.

The cheque for $4,000 for the Clinic's rental was made payable to the plaintiff and the defendant. The defendant received the cheques and deposited them into a joint account held by the plaintiff and the defendant, and thereafter withdrew the money without her knowledge.

27 In order to prove that the defendant was the party in receipt of all the rental cheques, the plaintiff relied on the testimony of CGK, her only witness. However, CGK's evidence was that all five cheques, once brought back to the family home by either her or CJH, were handed over to their mother. They were not, as asserted by the plaintiff, handed directly to the defendant – at least not by CGK's account.

28 However, the defendant accepted that she had received *some* rental cheques for $4,000 each between 1 July 1992 and 31 September 1996 (see NE 308), apparently from the mother (NE 300), although she also said that some rental cheques were for $2,000 each. It was however not clear from her evidence whether such cheques were cash cheques or issued in favour of the plaintiff and the defendant respectively or some were cash and others were non-cash cheques. The defendant's evidence also vacillated on the point as to which account she had deposited the money into. In evidence she suggested they had been deposited into one of three accounts – the defendant's joint account with her mother, the defendant's joint account with the plaintiff, and/or the defendant's own personal account (NE 300 to 301).

29 An examination of some banking records did not help much. Between January 1993 and May 1996, sums in multiples of $4,000 were paid out of the Clinic's bank account (POSB account number 893- XXXXX -X), which was an account opened in the names of the plaintiff and CGK. Of the 41 months in that period, sums in multiples of $4,000 were paid out for 33 of those months. However, only *three* sums – each for $8,000, totalling $24,000 (six months' rental) – could be traced to any of the defendant's accounts. Specifically, the payments on 7 June 1993, 7 March 1994 and 5 August 1994, for $8,000 each, were all paid into the defendant's joint account with her mother (OCBC account number 511-X-XXXXX) on the same day that the exact same amounts were withdrawn from the Clinic's account. Even then, this did not address the question as to who made use of the money. The plaintiff had made a number of assumptions, *ie*, that the defendant received all the rental cheques for the period of the plaintiff's claim and that the cheques were all banked in by the defendant into accounts which she controlled and that the defendant made use of the plaintiff's share of rental.

30 As for the defendant's evidence, it did not shed much more light. It was unreliable although it seems to me that this was not because she was being duplicitous. From her demeanour, she appeared to me to be a person with a simple mind who was not able to grapple with details of transactions which happened many years ago and which she executed on the instructions of the mother, as I shall elaborate on below. Why was rental being deposited into a *joint* account between the defendant and the mother? Why did so many joint accounts with the mother exist, if she was already receiving $3,000 as allowance every month? Indeed, why did the cheques for the rental (from a property jointly owned by the plaintiff and defendant) have to be brought home first instead of being handed over directly to the intended payees?

31 To my mind, the answer to all of these questions lies with one individual: the siblings' mother.

She might have been illiterate, but she was previously manning a provision shop at 35/35A Tai Thong Crescent. The defendant was helping the mother at the provision shop. According to the plaintiff, the mother also set aside some of her own savings for the defendant and for CGK who had also helped out at the provision shop at the time.

32 Furthermore, according to the plaintiff, it was the mother who directed that the Serangoon property be held as a joint tenancy, as opposed to a tenancy-in-common: see PCS at [76]. The mother also helped fund a significant proportion of the purchase price of the Serangoon property ($120,000 – see PCS at [73]). I accept the plaintiff's evidence that the bank passbooks of family members were held by the defendant, but why was this so? Although the defendant was the eldest sibling there was no suggestion that the rest of the siblings had looked up to her to that extent or that she was domineering over them. Indeed her demeanour at trial suggested otherwise. It seems to me that the siblings allowed her to hold the passbooks because that was the mother's instruction. The opening of various joint accounts – some held by two siblings and some held by the mother and one child – must have also been done on the mother's instructions. I also accept CGK's evidence that all five cheques issued by the Clinic for the payment of rental, allowance and salaries each month were first given over to the mother, presumably for her directions.

33 Even if I were to infer that the defendant had received the rental cheques, the defendant was not in control of the various bank accounts. The plaintiff has also failed to establish that the defendant made use of her share of the rental.

Plaintiff's request to amend Statement of Claim

34 The plaintiff had also sought the leave of the court, during closing submissions, to amend her statement of claim to include the period between 1 January 1997 and 31 August 1999 ("the Second Period") in her claim for the rental. According to the plaintiff, the evidence that came to light allegedly showed that rental was in fact paid and collected for this period, contrary to what she had thought.

35 The relevant provision here is O 20, r 5(1) of the Rules of Court:

> **Amendment of writ or pleading with leave (O. 20, r. 5)**
>
> **5.** —(1) Subject to Order 15, Rules 6, 6A, 7 and 8, and this Rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

36 The plaintiff alleged that "the evidence of CGK in Court confirmed that rentals were in fact collected for the [Second Period]"(PCS at [612]). This is strictly true, but unfortunately for the plaintiff, the evidence of CGK on this issue did not point to any liability on the defendant's part. CGK's evidence was that the cheques for payment of rental were cash cheques. CGK had deposited the cheques into a joint bank account held by CGK and the plaintiff. This meant that only CGK or the plaintiff could withdraw money from this account. Yet, each denied she had withdrawn the balance in the account. In any event, it was not the defendant. Significantly, the defendant is claiming her share of the rental from the plaintiff for the same period, *i.e.*, the Second Period.

37 Accordingly, there was no basis for the plaintiff to amend her Statement of Claim to claim her share of rental for the Second Period from the defendant and I disallow such an application.

38 I now turn to the defendant's counterclaim.

Defendant's counterclaim: $64,000 being rental paid on the Serangoon property for the Second Period

39 Paragraph 2.4 of the defendant's Defence and Counterclaim states:

> From 1st January 1997 to August 1999, the rentals for the Serangoon Property amounting to $128,000-00 ($4,000-00 x 32 months) were collected by the Plaintiff and some of the rentals were banked into the Plaintiff's POSB Joint Account (N.B. Account No. 193-XXXXX-X) with CGK without accounting to the Defendant for her for the sum of $64,000-00 being her entitlement of half (1/2) share thereof.

40 The defendant had asserted at paragraph 19 of an earlier affidavit, dated 8 February 2006 and filed in OS 1496/2005, that after the death of the mother in September 1996, neither the plaintiff nor the defendant had collected any rental from CJH or from the Clinic. The defendant only subsequently brought the counterclaim after being informed by CGK that rental had apparently been paid into CGK's joint account with the plaintiff during the period after their mother's death.

41 The defendant alleged that CJH had paid all the rentals for the Serangoon property (amounting to $128,000) to the plaintiff during the Second Period. Subsequently, the Clinic was closed (NE 138). According to the defendant, the rentals had been banked into the plaintiff's joint account with CGK. This was supported by the testimony of CGK at trial. Accordingly, the defendant brought this counterclaim for her half-share amounting to $64,000.

42 However, the defendant was unable to produce any evidence to show that the plaintiff had banked in any rentals into the plaintiff's joint account with CGK or had withdrawn the same. The defendant was only able to show, firstly, that the rental cheques had been cash cheques (see NE at 172); and second, that the cheques had been deposited by CGK into the joint account and the account had been closed, but not by whom.

43 The plaintiff maintained that during the Second Period, she was unable to go to the Clinic as Chan Mui Hock ("CMH"), another brother of the siblings, had threatened her and told her not to visit the Clinic. As such, the plaintiff would have been unable to collect any rentals from CJH or the Clinic during that period. The plaintiff's evidence was corroborated to the extent that CGK's evidence was that it was CGK who banked in the rental cheques during this period.

44 Given the above, the defendant's counterclaim suffers the same fate as the plaintiff's claim for rent, see [33] above.

Plaintiff's second claim: $21,555 being her salary paid by the Clinic from 1 July 1992 to 31 December 1995

45 Paragraph 4 of the plaintiff's Statement of Claim states:

> From July 1992 to December 1995, the Defendant received and/or was in possession of the Plaintiff's salaries from the clinic amounting to S$21,555.00 but the Defendant did not bank them into the Plaintiff's POSB Joint Savings Bank Account No. 033-XXXXX-X ("POSB account").

46 This claim was based on three (3) of the plaintiff's salary cheques, totalling $21,555 in all. The details of the cheques are as follows:

(1) POSB Cheque No. 692230 for $2,355, withdrawn on 17 November 1993 from the Clinic's

POSB account (account number 893-XXXXX-X, jointly in the plaintiff's and CGK's name).

(2) POSB Cheque No. 797275 for $7,200, withdrawn on 13 October 1994 from the Clinic's POSB account (account number 893-XXXXX-X, jointly in the plaintiff's and CGK's name).

(3) Far Eastern Bank Ltd. Cheque No. 00065073 for $12,000, withdrawn on 6 March 1996 from the Clinic's Far Eastern Bank account (account number 504-XXX-XXX-X, in the name of "Chan Dental Clinic & Surgery").

The plaintiff's claim rested primarily on the bank statements from POSB and Far Eastern Bank, which reflected that on the three specified dates above, the specific sums of money were indeed withdrawn from the two separate Clinic accounts.

47 An examination of the banking records presented before the court shows that on 16 November 1993, a sum of $2,355 was deposited into an OCBC joint account held between the plaintiff and the defendant (account number 511-XXXXXX-XXX) via a late cheque (this explained the one day discrepancy in withdrawal and deposit dates). The date of deposit and amount deposited tallied with the date of withdrawal and the amount withdrawn from the Clinic's POSB account via the first POSB Cheque No. 692230 above. The defendant herself admitted that she had banked in this cheque herself. However, she claimed that it was the plaintiff who had instructed her to do so (see defendant's AEIC at [28]).

48 Further examination of the records also show that on 12 October 1994, a sum of $7,200 was deposited into another OCBC joint account held between the plaintiff and the defendant (account number 547-X-XXXXXX) via another late cheque. The date of deposit and amount deposited tallied with the date of withdrawal and amount withdrawn from the Clinic's POSB account via the second POSB Cheque No. 797275 above. However, there was no evidence as to who deposited this cheque.

49 There was no evidence as to where the third cheque for $12,000 might have been deposited.

50 It is more important to consider what these sums of money had been used for. The plaintiff appears to have had some knowledge. The defendant's AEIC at [28] to [30] stated:

28 As far as I can recall, there was indeed, one isolated occasion whereby the Plaintiff handed me a said clinic's POSB Bank Cheque No. 692230 *dated 16-11-1993* for the sum of $2,355-00 and requested me to bank it into the Joint OCBC Bank Current Account No. 511-XXXXXX-XXX opened under the names of the Plaintiff and myself (N.B. Please see page 65 of the Plaintiff's affidavit filed on 11th October 2007). …

29 The instruction from the Plaintiff at that time was that I were to issue a cheque from the [*sic*] our said Joint OCBC Current Account *a few days later* to meet the Plaintiff's as well as our younger sister, Chan Gek Keow's income tax payment (N.B. The Plaintiff's share being $4,488-36 and Chan Gek Keow's share being $1,573-32). The Plaintiff was unable to issue a cheque from her Joint POSB Savings Account No. 033-XXXXX-X because it has no cheque facility.

3 0 *On 23-11-1993*, as instructed by the Plaintiff, I issued a cheque from the said OCBC Bank Joint Current Account bearing No. XXXXXX (N.B. Please see page 64 of the Plaintiff's affidavit filed on 11th October 2007) for the sum of $6,061-68 to the "Comptroller of Income Tax". A copy of the relevant cheque butt recording the said payment by me is enclosed herein.

[emphasis added]

Considering the defendant's demeanour at trial, I am of the view that the defendant's evidence in her AEIC was based more on the documentary evidence than on recollection. The counterfoil of the chequebook had notations written by the plaintiff herself indicating that cheque no. 147083 had been issued for $6,061.68 to pay for the income tax of CGK and the plaintiff, *ie*, $1,573.32 and $4,488.36 respectively. There was only a week's difference in time between the deposit of the $2,355 into the joint account and the withdrawal of the $6,061.68 from the same account. Significantly, it was an account that the plaintiff had claimed in her submissions to have been "unaware of … all along" (See PCS at [539]: "I had no knowledge of this account earlier.").

51 On balance, it seems to me that the plaintiff has not established her claim for the $2,355 or the other two sums of $7,200 and $12,000. There is no evidence that the defendant made use of the plaintiff's three sums for her own benefit. From time to time, various sums were being deposited into and withdrawn from various accounts for various purposes. The plaintiff expressly or impliedly consented to the way things were being done. I do not think it is right for her to make this claim against the defendant several years later.

Plaintiff's third claim: $39,000 being withdrawn from her joint account with her mother without authorization

52 Paragraph 5 of the plaintiff's Statement of Claim states:

> From 1988 to 1995, the Defendant received and/or was in possession of the Plaintiff's POSB account, which was in the joint name of the Plaintiff and her mother, and the Defendant, without the Plaintiff's permission, withdrew a sum of S$39,000.00 from the Plaintiff's POSB account.

53 This claim was based on three (3) withdrawals from the plaintiff's joint account with her mother, an account to which the defendant was not a signatory. The plaintiff alleged that the defendant had, between 14 September 1988 and 2 November 1995, made use of their mother to make three unauthorized withdrawals amounting to $39,000 from the said joint account. These three withdrawals are detailed as follows:

> (1) Withdrawal of $10,000 on 14 September 1988 from plaintiff's joint account with her mother (account number 033-XXXXX-X).
>
> (2) Withdrawal of $13,000 on 17 August 1995 from plaintiff's joint account with her mother (account number 033-XXXXX-X).
>
> (3) Withdrawal of $16,000 on 2 November 1995 from plaintiff's joint account with her mother (account number 033-XXXXX-X).

54 As evidence that the first withdrawal of $10,000 had been converted by the defendant to her own use, the plaintiff cited a handwritten note by the defendant on the joint account bank passbook. The handwritten note, in Chinese, indicated that the sum of $10,000 was transferred to an OCBC fixed deposit account. It was not disputed that the handwriting was the defendant's. It was, however, unclear as to whose fixed deposit that was and what had become of the $10,000.

55 The handwritten note only served to prove that the defendant had indicated, in her own handwriting, that a sum of $10,000 was deposited into an OCBC fixed deposit account. The defendant contended that it was her mother who had instructed her to make the notation. In view of the mother's influence, I accept this contention. The notation did not prove that the $10,000 had been received by and converted to the defendant's own use.

56 Aside from the evidence mentioned, the plaintiff had not adduced any other evidence pertaining to this sum and the other two unauthorized withdrawals countenanced under this claim. The plaintiff's bare assertion that CGK (NE 103) would bear out her claim that the defendant had made use of their mother to withdraw monies from the plaintiff's joint account was not pursued with CGK when CGK took the stand. I am of the view that it was the defendant who carried out the mother's instructions. It was not a case of the mother being deceived by the defendant.

Plaintiff's fourth claim: $10,000 being a cheque issued in favour of Chan Gek Yong

57 Paragraph 6 of the plaintiff's Statement of Claim states:

> On 5th October 1995, the Defendant received and/or was in possession of a cheque which was issued in favour of the Plaintiff for the sum of S$10,000.00 and the Defendant did not bank the cheque into the Plaintiff's POSB account.

58 According to the plaintiff, a cheque for $10,000 (OCBC Cheque No. 191852) had been issued by Chan Kay Hock ("CKH"), brother to the parties, on 5 October 1995. This was purportedly in repayment of a loan taken by CKH from the plaintiff earlier in 1987, for the purpose of helping CKH buy a car. The plaintiff alleged that the said cheque had been handed over to CGK by CKH, and that CGK had in turn handed it to the defendant. The latter had then failed to bank it into the plaintiff's joint account with their mother.

59 It is interesting to note that the plaintiff herself did not seem aware of the loan that she had given CKH. In the NE at 106, the plaintiff stated that CKH had asked their mother *directly* for $10,000 to buy a second-hand car. In the plaintiff's closing submissions, she further stated at [571]:

> … when this cheque was first issued to me by CKH in 1995 I was unaware of it, as he had handed the cheque to CGK to hand to the Defendant to bank it into my said POSB joint account with my mother. It was only sometimes [*sic*] in 2002 when there was a quarrel between me and the Defendant over my monies that I was informed or told that CKH had issued a cheque for $10,000 to me sometimes [*sic*] in 1995.

The repayment for the loan was apparently initiated *upon the mother's instructions*: see NE at 106. The plaintiff was able to make a photocopy of the cheque issued by CKH, and yet she did not bank in the cheque herself because "it's the practice in [the] family" to "bring back the cheque" to the home "to do the banking in" (NE at 107). In other words, the siblings' mother would be the one directing the monetary transactions from home (as has been discussed earlier at [31]-[32]): what amounts to be deposited where, who to pay what on behalf of whom and so on and so forth.

60 On this claim by the plaintiff, however, there was once more a failure of proof. The plaintiff did not manage to adduce any documentary or oral evidence to prove that the $10,000 had been converted by the defendant. Indeed, CGK, the plaintiff's witness, testified that CKH had not passed the said cheque to her (CGK), but had instead passed it directly to the siblings' mother. It might then have been passed to the defendant with instructions from the mother, but there was no specific evidence as to whether the mother had given instructions for this cheque and what those instructions were, although it appears likely to me that she must have given some instructions about it.

61 It should also be noted that the cheque for $10,000 from CKH was an account payee cheque (see plaintiff's AEIC at 100) issued in favour of the plaintiff. It could only have been banked into the plaintiff's own bank account or her joint account with someone else. There was no evidence as to which account it was banked into, if at all any.

62 The plaintiff can only assert that the defendant received the cheque and there was a duty owed by her to the plaintiff to bank the cheque in on the plaintiff's behalf, and that the defendant had been in breach of that duty. But *did* the defendant owe such a duty in the first place?

63 According to the plaintiff, the cheque had been issued by CKH, who then passed it to CGK, who then passed it to the plaintiff, who then made a photocopy and passed it back to CGK, who *then* passed it to the defendant for banking in. CGK's evidence was that the cheque was handed to the mother and not directly to the defendant.

64 Assuming that the defendant received the cheque, whether from CGK or the mother, it is arguable whether she was under a duty, to the plaintiff, to bank the cheque to an account or joint account of the plaintiff.

65 Even if the defendant were under such a duty, she must have performed it if the cheque was cleared, as appears to be the plaintiff's case.

66 The defendant was not able to say what then happened to the money. Neither was the plaintiff, presumably because of the lapse of time.

67 One question remained as to whether or not the plaintiff had suffered any harm or loss in this transaction. According to the plaintiff, CMH, another brother, had tried to settle the matter by presenting the plaintiff with a separate cheque for $10,000, dated 16 June 2002. It will be re-called that CMH is the same brother who allegedly had threatened the plaintiff and told her not to visit the Clinic during the Second Period, see [43] above. The plaintiff said she chose not to accept CMH's cheque. She stated that she felt that it was "not fair to take from Chan Mui Hock" (NE 114).

68 While the plaintiff was not obliged to accept the $10,000 cheque from CMH, it is arguable whether she can, in the circumstances, claim she suffered a loss.

69 In any event, I am of the view that the plaintiff has not established this claim against the defendant.

Application of the Limitation Act

70 The plaintiff has not established that the defendant had taken the plaintiff's money. The defendant has also not established her counterclaim on the facts. In the circumstances, the question of the application of s 6 of the Limitation Act (Cap 163), as well as s 22 and s 29 thereof, is academic.

71 Incidentally, if laches had been pleaded, each claimant might have run afoul of that.

Conclusion

72 There was a dearth of evidence to establish the plaintiff's claims and the defendant's counterclaim.

73 In the circumstances, I dismiss the plaintiff's claims and the defendant's counterclaim. I will hear the parties on the issue of costs if they are not able to resolve it.