IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 181

Suit No 858 of 2014

Between

Sumoi Paramesvaeri
… Plaintiff / Defendant in Counterclaim
And

(1) Fleury Jeffrey Gerard
(2) Uma Davi d/o Ponnusamy @
Mrs Fleury Jeffrey Gerard
… Defendants / Plaintiffs in Counterclaim

JUDGMENT

[Equity] – [Defences] – [Acquiescence]

[Equity] – [Defences] – [Laches]

[Equity] – [Estoppel] – [Proprietary estoppel]

[Restitution] – [Unjust enrichment]

[Trusts] – [Constructive trusts]

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2 September 2016 Judgment reserved.

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Introduction

1 The relationship and overlap between interests arising on the basis of a constructive trust, resulting trust, proprietary estoppel and legal registration are at issue in this case. The case is brought by Mdm Sumoi Paramesvaeri ("the Plaintiff"), against Mr Jeffrey Gerard Fleury ("the 1st Defendant") and his wife, Mdm Uma Davi d/o Ponnusamy, who is Mdm Sumoi's daughter ("the 2nd Defendant"; collectively, "the Defendants"), in respect of a residential property at Jansen Road ("the Jansen Road Property") where the Plaintiff had previously lived with the Defendants. The Plaintiff holds a 10% legal interest in the Jansen Road Property; the dispute is over whether that

proportion also represents her beneficial interest. The Plaintiff seeks, among other things, a declaration that she holds, on the basis of a resulting trust, a beneficial interest proportional to her financial contributions to the purchase of the Jansen Road Property (which she asserts exceeds 10%), and an order for sale in lieu of partition of that beneficial interest or, alternatively, of the 10% interest registered in her name.

2 The Defendants resist this claim, contending that because the Plaintiff had given a representation, assurance, or promise (which I shall generally refer to, for convenience, as just a "representation") to the 2nd Defendant that the Plaintiff's interest in the Jansen Road Property would be held for the 2nd Defendant and go to the latter upon the Plaintiff's passing, a constructive trust arose, or a proprietary estoppel operated against the Plaintiff, in respect of the Plaintiff's legal interest in the property. Alternatively, the legal interest registered in the Plaintiff's name was funded by the Defendants, so a resulting trust arose in their favour. Additionally, the Defendants are entitled to a reversal of the unjust enrichment obtained by the Plaintiff through the Defendants' paying for her various expenses.

Background

3 The seeds of the dispute seem to lie in the family's situation following the passing of the Plaintiff's husband, the father of the 2nd Defendant, in 1987. A quarrel arose between the family members, the exact cause of which is not material to the present case. What is material is that the Plaintiff and the 2nd Defendant took the same side and became estranged from the Plaintiff's other four daughters. In 1988, the 1st and 2nd Defendants married. The Plaintiff moved in with the Defendants, who at the time lived in a flat at Serangoon Central.

4 Thereafter, in 1993, the two Defendants bought a house in Eden Grove ("the Eden Grove Property"). The two Defendants and the Plaintiff were registered as joint tenants. At least $100,000 from the Plaintiff's CPF account was used to help pay the $590,000 purchase price of the Eden Grove Property. The rest was paid by the Defendants.

5 In 1999, the Plaintiff and the Defendants sold the Eden Grove Property for $970,000 and purchased the Jansen Road Property for $1.09 million. The parties disagree on the amount of the sale proceeds from Eden Grove which were used for the purchase of the Property. They also dispute the respective contributions by the parties.

6 During this time, the Plaintiff lived with the Defendants. The relationship between the two sides however deteriorated over time. Again, the actual cause is not in issue before me. Suffice it to state that allegations were made about the Defendants' treatment of the Plaintiff on the one hand and the Plaintiff's behaviour on the other. A claim was made before the Tribunal for the Maintenance of Parents ("the Tribunal") under the Maintenance of Parents Act (Cap 167B, 1996 Rev Ed) ("the MPA"). Social workers became involved, as did Tan Tock Seng Hospital, to which the Plaintiff was at one point sent for treatment.

7 Eventually, the present claim was launched by the Plaintiff to seek a declaration of her interest in the Jansen Road Property as well as an order for sale in lieu of partition of her share in the Jansen Road Property. She also originally sought the return of various items of jewellery. The Defendants raised a number of contentions in their defence and joined Tan Tock Seng Hospital as a third party in respect of the Plaintiff's claim in relation to the jewellery. Just before the start of the trial, this third party action was dropped.

In the course of the proceedings, the jewellery claim was settled and does not form part of the present decision.

8 The Plaintiff claims that she contributed to the purchase of the Jansen Road Property and sought a declaration of such an interest, which would be in proportion to her contribution. At the very least, she is entitled to her legal registered interest, *ie*, a 10% interest.

9 The Defendants argue that the Plaintiff had made a promise or represented that her legal interest in the Jansen Road Property was to go the 2nd Defendant or to the 2nd Defendant and her children. This gave rise to a constructive trust or proprietary estoppel. Alternatively, as the Plaintiff contributed less than 10% of the purchase price of the Jansen Road Property, with the funding actually coming from the Defendants, they are entitled to a resulting trust.

Plaintiff's Case

10 The Plaintiff seeks at least a 10% share in the Jansen Road Property, if not more, reflecting her financial contributions. Based on that interest, the Plaintiff desires an order for sale of her interest to the Defendants in lieu of partition under s 18(2) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("the SCJA") read with paragraph 2 of the First Schedule to the SCJA.

11 Following *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*"), the parties are to be presumed to hold the beneficial interest in a property in the same manner as the legal or registered interests, subject to being displaced by evidence of either the actual financial contributions to the

property or of a common intention that the parties would hold the beneficial interests in a different manner.

12 The Plaintiff denies the Defendants' contention that there was such a common intention and asserts that that contention is not supported by any documentary evidence. What the Plaintiff did say was that she would bequeath her share to whoever took care of her. The Defendants were also inconsistent in their oral testimony and in their affidavits as to what representations were made by the Plaintiff. The Defendants came up with this claim because they could not properly account for monies from the Plaintiff's CPF account which had been used to purchase the Jansen Road Property. The 2nd Defendant's conduct was also inconsistent with the existence of a common intention or assurance. In contrast, the fact that the Eden Grove Property was registered in the joint names of the parties could be readily explained by reference to their respective contributions. The relative proportion of the registered interests in the Jansen Road Property probably reflected the Plaintiff's actual financial contribution.

13 As it is, the evidence discloses that her interest is more than the 10% registered interest in her name. The burden lies on the Defendants to show that there was no other contribution aside from money from her CPF account, and that the other amounts came from the Defendants. This they could not do on the facts, and a presumption under s 116 of the Evidence Act (Cap 97, 1997 Rev Ed) should apply against them. If neither side discharged their respective burdens, the registered interest would have to be recognised as her share of the property. In any event, the evidence showed that the Plaintiff contributed more than 10% of the purchase price of the Jansen Road Property.

14 Following from the above, the Plaintiff asserts that she should be granted a declaration of her share, which would be 10.85% (reflecting her actual contribution to the purchase price) or at least 10%. Thereafter there should be an order for sale in lieu of partition, with such sale being made to the Defendants, within a strict time frame.

15 As for the Defendants' counterclaim, there is no basis for the Plaintiff to pay for loss and damage. The counterclaim could not be founded on contract as there was no consideration. The Defendants pleaded that the counterclaim would operate only if the Plaintiff's claim was allowed, but allowing her claim would mean that her beneficial right over property would be recognised. This could not give rise to a contractual breach. In any event, the evidence is clear that the 2nd Defendant would have maintained the Plaintiff regardless, and such maintenance therefore could not be attributed to the agreement.

Defendants' case

16 The defendants seek a declaration that the Plaintiff holds her legal interest of 10% in the Jansen Road property on trust for the 2nd Defendant. The basis of this was either a common intention constructive trust or proprietary estoppel. Alternatively, the Defendants seek a declaration that the Plaintiff holds 6.03% of the Jansen Road Property (*ie*, 60.3% of her legal interest of 10%) on a resulting trust for the 2nd Defendant. In addition, the Defendants also want the Plaintiff restrained from enforcing her legal rights in respect of her share, and to transfer that share to the 2nd Defendant, including the execution of necessary documents. Should the Plaintiff be found to have full legal and beneficial ownership of any share in the property, the Court is asked to order the Plaintiff to sell her share to the Defendants at market value

less various expenses borne previously by the Defendants. Finally, the Defendants seek, in the event the Plaintiff's claim is allowed, restitution of monies expended and the set off of previously ordered monthly payments under the MPA.

17 Applying the approach in *Chan Yuen Lan*, and considering the existence of a resulting trust, the Defendants contend that the Plaintiff's contribution to the Jansen Road Property was only 3.97% of the purchase price (*ie*, $43,275.28) drawn from her CPF account. The Defendants paid for the rest of the purchase from their CPF, a mortgage loan of $534,000, and their savings in a POSB joint account of $237,093 (consisting of a 10% deposit of $109,000 and a balance cash amount of $128,093). These were supported by the documentary evidence, including the completion account. Contrary to the assertions of the Plaintiff, the net sale proceeds of the Eden Grove property were not used for the Jansen Road property purchase. The Plaintiff had no knowledge of how the Eden Grove proceeds were used: she was merely speculating. What proceeds from Eden Grove were put into the Defendant' mortgage account were not used to pay for Jansen Road. Those proceeds were used for various expenses relating to the Plaintiff's maintenance and needs. The Plaintiff's contribution was thus only from her CPF, and amounted only to 3.97%. Out of that 10% share, the Plaintiff thus holds 6.03% on a resulting trust for the Defendants.

18 Even if no resulting trust arose, the Plaintiff holds her share on a common intention constructive trust. Common intention can be inferred. Objective evidence was needed in *Chan Yuen Lan* because of the specific facts of that case. It is also not true that the Plaintiff had made a representation that she would hold the property for whoever looked after her. The Defendants claim that the Plaintiff lied and was evasive in her evidence. The objective

evidence went against her, including evidence disclosed by the Plaintiff herself and the conveyancer, Mrs Yu. That evidence showed that the plaintiff was aware of the use of her CPF funds. In truth, the Plaintiff had asked the Defendants to allow her to contribute to the properties from her CPF and to acquire legal interests in these properties. She had promised that in exchange for the Defendants continuing to maintain he, she would hold any legal interest in the property for the benefit of the 2nd Defendant and leave all her other assets to her upon her death. She had repeated her promise several times, and she admitted that she had made the promise under cross-examination. In reliance on the promise, the Defendants had allowed her to contribute to the purchase of the properties and be named as one of the legal owners. If not for her promise, the Defendants would not have allowed her to participate in the purchases. The Defendants suffered detriment by doing so as well as incurring various costs. Proprietary estoppel is also made out on these same grounds. Furthermore, even where part of bargain has not been fulfilled because of the actions of the representor or promisor, the common intention or proprietary estoppel should be effected.

19 The evidence, it is said, supports the Defendants' version of events. The evidence of the social worker, Ms Esther Malar, was that the Plaintiff was insecure about having a place to stay. The Plaintiff in her testimony had lied about various matters. She only admitted late in the day that she had asked to be given a legal interest in the properties.

20 In the present case, a common intention constructive trust should be imposed. Such a trust is imposed wherever detrimental reliance has been incurred. It is not necessary for the claimant to have carried out the full quid pro quo. What was needed for the imposition of a constructive trust was just that the claimant had acted to his detriment or significantly altered his position

in reliance on the agreement: *Lloyd's Bank Plc v Rosset* [1991] 1 AC 107 at [132]–[133]. *HSBC v Dyche* [2009] EWHC 2954 (Ch) is an illustration of this. Furthermore, in the present case, it was the actions of the other party that prevented the performance of the obligations pursuant to the common intention: she made false allegations of abuse and removal of her property and filed false police reports. What is more, the Plaintiff continues to expect the Defendants to support her; the Defendants continue to do so despite her conduct.

21 As for promissory estoppel, the Defendants had incurred a detriment in reliance on the Plaintiff's representation, and it would therefore be inequitable of the Plaintiff to resile from it.

22 Laches applies against the Plaintiff's claim in resulting trust. Acquiescence was applicable as the Plaintiff was aware that she had contributed monies and should have asked for her share when the Eden Grove property was sold. That she did not do so then indicated acquiescence by her.

23 If the Court found that the Plaintiff had an equitable interest in the property, sale in lieu of partition through a buy-out by the Defendants should be ordered, as this was the best solution in the circumstances, with due allowance for the expenses incurred by the Defendants in respect of the property.

24 As the Plaintiff was enriched by the maintenance provided by her, and there was total failure of consideration, the Defendants should be entitled to restitution for such maintenance.

The decision

25 I have concluded that, contrary to the Defendants' contentions, no constructive trust or proprietary estoppel arose. I am not persuaded that the Plaintiff made any such representation as alleged by the Defendants. In addition, the elements giving rise to a constructive trust or proprietary estoppel are not present.

26 As for the resulting trust argument, I cannot accept the contentions of either the Plaintiff or the Defendants that that there was a resulting trust in favour of either of them that would depart from the 10% legal interest registered in the name of the Plaintiff. The evidence, such as there is, does not support either contention. Hence, the only determination that could be made was on the basis of the legal interest.

27 In reaching that conclusion, the burden of proof is of critical importance given the absence of documentary evidence and the lack of corroboration from other sources in this case. The burden lies on the Plaintiff to make out her claim for a share larger than her legal interest. In contesting the Plaintiff's claim, the Defendants must make out on the balance of probabilities that there was a constructive trust or proprietary estoppel; this entails proving as well on the balance of probabilities that there was either a common intention or a representation. Finally, in contesting the resulting trust, the Defendants put forward the positive assertion that the Plaintiff contributed less than 10%. The burden of showing this also falls on them.

28 In the circumstances of this case, I have decided to order sale of the interest in lieu of partition. While the Defendants have asked for various

expenses to be deducted, I am of the view that any such deduction was either not warranted in principle or was not supported by sufficient evidence.

29 Having outlined my decision and its bases, I set out my detailed analysis below.

Analysis

The law on equitable ownership of a purchased home

30 Guidance on determining equitable ownership of a property was given by the Court of Appeal in *Chan Yuen Lan*. A court determining the equitable ownership shares in a property had to consider the evidence of financial contributions, which would give rise to a presumption of a resulting trust; the existence of an inferred common intention, which would create a constructive trust; and whether a gift of a sum larger than the purchase price actually paid. The court stated:

> 160 In view of our discussion above, a property dispute involving parties who have contributed unequal amounts towards the purchase price of a property and who have not executed a declaration of trust as to how the beneficial interest in the property is to be apportioned can be *broadly* analysed using the following steps in relation to the available evidence:
>
> (a) Is there sufficient evidence of the parties' respective financial contributions to the purchase price of the property? If the answer is "yes", it will be presumed that the parties hold the beneficial interest in the property in proportion to their respective contributions to the purchase price (*ie*, the presumption of resulting trust arises). If the answer is "no", it will be presumed that the parties hold the beneficial interest in the same manner as that in which the legal interest is held.
>
> (b) Regardless of whether the answer to (a) is "yes" or "no", is there sufficient evidence of an express or an inferred common intention that the parties should hold

> the beneficial interest in the property in a proportion which is different from that set out in (a)? If the answer is "yes", the parties will hold the beneficial interest in accordance with that common intention instead, and not in the manner set out in (a). In this regard, the court may not impute a common intention to the parties where one did not in fact exist.
>
> (c) If the answer to both (a) and (b) is "no", the parties will hold the beneficial interest in the property in the same manner as the manner in which they hold the legal interest.
>
> (d) If the answer to (a) is "yes" but the answer to (b) is "no", is there nevertheless sufficient evidence that the party who paid a larger part of the purchase price of the property ("X") intended to benefit the other party ("Y") with the entire amount which he or she paid? If the answer is "yes", then X would be considered to have made a gift to Y of that larger sum and Y will be entitled to the entire beneficial interest in the property.
>
> (e) If the answer to (d) is "no", does the presumption of advancement nevertheless operate to rebut the presumption of resulting trust in (a)? If the answer is "yes", then: (i) there will be no resulting trust on the facts where the property is registered in Y's sole name (*ie*, Y will be entitled to the property absolutely); and (ii) the parties will hold the beneficial interest in the property jointly where the property is registered in their joint names. If the answer is "no", the parties will hold the beneficial interest in the property in proportion to their respective contributions to the purchase price.
>
> (f) Notwithstanding the situation at the time the property was acquired, is there sufficient and compelling evidence of a subsequent express or inferred common intention that the parties should hold the beneficial interest in a proportion which is different from that in which the beneficial interest was held at the time of acquisition of the property? If the answer is "yes", the parties will hold the beneficial interest in accordance with the subsequent altered proportion. If the answer is "no", the parties will hold the beneficial interest in one of the modes set out at (b)–(e) above, depending on which is applicable.

31 In short, under the *Chan Yuen Lan* framework, a court determining the equitable ownership shares in a property has to consider matters including the

evidence of financial contributions, which would give rise to a presumption of a resulting trust; the existence of an inferred common intention, which would create a constructive trust; and whether a gift of a sum larger than the purchase price was actually paid.

32 The *Chan Yuen Lan* framework was conceived to deal with the usual interplay between alternative claims and arguments in a dispute between in a domestic setting. Proprietary estoppel was not raised in that case, and was thus not part of the framework laid out. However, the possible overlap between a common intention constructive trust and proprietary estoppel is apparent and, as in the present case, alternative claims may be made.

33 In the present case, issues of resulting trust, constructive trust and proprietary estoppel arose are intertwined as follows:

(a) The Plaintiff relies for her claim on the existence of a resulting trust.

(b) The Defendants in response invoke the existence of a constructive trust, or proprietary estoppel, arising out of a representation made by the Plaintiff.

(c) Alternatively, the Defendants argue that the Plaintiff did not contribute fully to the 10% legal interest registered in her name, and therefore held only 3.97% beneficially for herself.

34 As both the claim for a constructive trust and the claim for a proprietary estoppel are dependent on the existence of a representation, it is convenient for that factual issue to be determined first. The constructive trust

and proprietary estoppel claims will then be considered, before the resulting trusts claimed by both sides are analysed.

Burden of proof

35 The burden lies on the Plaintiff to make out her case that she contributed funds that would entitle her to a larger share than the registered legal interest, *ie*, that a resulting trust had arisen in the Plaintiff's favour in respect of the excess amount. Conversely, the burden lies on the Defendants to make out their case that the Plaintiff's contribution was less than the legal interest, and that a resulting trust had arisen in respect of the contributions that came from them. These propositions flow from the operation of the principle that generally the equitable interest follows the amount contributed (see, *eg*, *Springette v Defoe* [1992] 2 FCR 561), taken together with the general evidentiary principle that he who positively asserts must prove. It is, of course, entirely possible for both parties to fail to prove their positive cases, in which event the default rule will apply. This is captured in the first stage of the *Chan Yuen Lan* framework (at [160(a)], quoted at [30] above), which provides that in the absence of sufficient evidence of the parties' respective financial contributions, the court will presume that the beneficial interests follow the legal interests.

36 On the evidence, I find that although there is *some* likelihood that she contributed a substantial sum, the lack of direct evidence of contribution of that level, either from her own actual knowledge of what happened or from documentary evidence, means that I am left with supposition only. The surrounding facts are not of such a level that I can say that the conclusion, on the balance of probabilities, is that she had given that much.

37 In contradistinction to the Plaintiff's burden to prove a larger beneficial share than her legal interest, the burden (as I earlier stated) lies on the Defendants to show that the Plaintiff had contributed *less* than her 10% registered interest. This the Defendants have failed to do.

38 As for the contention that there was either a common intention constructive trust or a proprietary estoppel, as these are positive assertions by the Defendants, the burden lies upon them to make out these claims: *Robins v National Trust Co* [1927] AC 515 at 520. These claims, if made out, would then serve to defeat the Plaintiff's own claim that she holds a beneficial interest in the Jansen Road Property of either 10.85% or at least 10% (coinciding with the legal interest in her name).

Whether a representation, assurance or promise was made

39 An issue which is common to both the common intention constructive trust and proprietary estoppel was whether any representation, assurance or promise was in fact made by the Plaintiff. In respect of a constructive trust, common intention would be made out by a promise made by the Plaintiff combined with detrimental reliance by the Defendants: *Tan Thiam Loke v Woon Swee Kheng Christina* [1991] 2 SLR(R) 595 at [18]; *Chan Yuen Lan* at [97]. The making of a representation, assurance or promise is also an element of the claim in proprietary estoppel. The burden lies on the Defendants to establish this element. The evidence as a whole does not come down in their favour.

40 The Defendants contend that the Plaintiff wanted a legal right to stay in the property, and asked to be allowed to contribute to the purchase of the property from her CPF. According to the Defendants, the Plaintiff had in fact

promised to hold the property for the 2nd Defendant. This was bolstered by the 2nd Defendant being the only one around she could rely on. The Plaintiff had additionally asked for a letter from the 2nd Defendant that she would take care of the Plaintiff until her death; she had looked to the 2nd Defendant for her care expenses at Tan Tock Seng Hospital; and before the Office of the Commissioner for the Maintenance of Parents she had stated that she wanted maintenance solely from the 2nd Defendant. The Defendants submit that she admitted as much in her testimony in court. Her acceptance of the arrangements was underlined by her not asking for any of the proceeds from the Eden Grove Property when it was sold. The Plaintiff's brother, Mr Ramanathan s/o Karuppiah ("Ramanathan"), also supported the Defendants' position when he stated, in his affidavit of evidence in chief ("AEIC"), that the Plaintiff had told him that everything she owned or saved was meant to go to the 2nd Defendant. Her promise to the 2nd Defendant had been repeated several times and the Defendants had never thought that the Plaintiff would change her mind. The Defendants maintained that the Plaintiff's statement had been relied upon. The 1st Defendant's evidence supports this contention. He testified that he had understood that the Plaintiff's share of the Jansen Road Property would be hers until her death, after which it would go to the 2nd Defendant. The Defendants had thus treated the Jansen Road Property as their property. The Defendants further testified that such a representation, assurance or promise was made in relation to the Eden Grove Property as well. The Plaintiff's allegation that all that she had said was that she would hold it for anyone who took good care of her was something that had arisen late in the day, and should not be believed.

41 On behalf of the Plaintiff, it is argued that no such promise or representation was made. The Plaintiff accepts that she did say that the

property would go to whosoever took care of her. It is argued that this was not an irrevocable promise. It was a statement as to her testamentary intention. The Defendant's contentions were inconsistent:

(a) Initially in cross-examination, the 2nd Defendant testified that this would happen after the Plaintiff passed away, but she resiled from this position subsequently. In contrast, in the 2nd Defendant's affidavit, it was stated that the property would be left to the 2nd Defendant and her children after her death.

(b) The 1st Defendant, in comparison, accepted that the Plaintiff could leave the property to someone else.

(c) There were also inconsistencies in when the representations were first made: in the 2nd Defendant's AEIC, she said that they were first made around the time of the purchase of the Eden Grove Property, but under cross-examination, she claimed that the representations were first made just before the purchase of the Jansen Road Property.

(d) The Plaintiff argues that there was also evidence that the 2nd Defendant wanted a will created that would leave the Plaintiff's share to her, and that she had proposed to buy over the Plaintiff's interest in the Jansen Road Property, which would not have been necessary if indeed the interest was to go to her.

42 Counsel for the Plaintiff further argues that the Defendants only raised this argument in a counterclaim filed in late November 2011. It was therefore an afterthought, and only arose because the Defendants could not explain the use of the Plaintiff's funds in the purchase of the Jansen Road property. Though the Defendants contend that the Plaintiff was registered as a co-owner

because of her promise, the registration was in fact recognition of her actual contribution to the purchase price. In contrast to the allegations by the Defendants, what the Plaintiff accepts she did say was that she would bequeath her share to whoever took care of her.

43 I do note that the Plaintiff's evidence was at times unclear. She initially testified as follows:

> Ct: All right, Mr Joseph's question is that you had an agreement with Sheila that she will maintain you until the end … so in return you will hold your share of the property for her.
>
> A: I have a share but not for … not necessarily for Sheila.
>
> …
>
> Ct: … the question is very specific. The agreement was with Sheila, Sheila would get the property. It's about Sheila, not anyone else. Do you agree or disagree with this?
>
> A: Yes, the agreement was correct.

However, she later testified to a different effect:

> Ct: … But you had told the court that ... you had told Uma Devi that your property will go to whoever takes care of you, correct?
>
> A: I would give the property to the person who looks after me, whether for good or the worse, or if not, I will will it to the temple.

44 Nonetheless, the burden lies on the Defendants to establish on the balance of probabilities that the Plaintiff promised the property to the 2nd Defendant upon her death. While the Defendants rely on a number of facts to support their contention that the Plaintiff had agreed to hold the property on trust for the Defendants, such facts and inferences from these facts do not bring the Defendants across the threshold required to establish on the balance

of probabilities that the representation, assurance or promise was made by the Plaintiff as alleged:

(a) The Plaintiff's statements to (1) Ms Esther Malar, a social worker, that she did not want to see the house deed or jewellery provided the 2nd Defendant wrote a letter to state that she would take care of the Plaintiff until her death; and (2) Ms Siti Nursiah, a social worker for Tan Tock Seng Hospital, that the hospital expenses should be paid for by the 2nd Defendant; and (3) to the Tribunal, that she wanted maintenance from the 2nd Defendant only, did not indicate anything more than the fact that the Plaintiff looked to the 2nd Defendant for support. This reliance on the 2nd Defendant continued despite any estrangement between the parties. Such reliance could not, however, show that the Plaintiff intended to dispose of her property in any particular way.

(b) Ramanathan testified that the Plaintiff did say to him that everything that she owned was to be left to the 2nd Defendant as the Defendants had cared for her and were the only ones who would do so till she died; it was reiterated to him by the Plaintiff that she had no other children. The strength of this evidence was ultimately weak. If indeed such statements were made to him by the Plaintiff, they would not have given rise to any actionable representation or promise as these statements were not made to the Defendants. What I understood, though, was that the Defendants brought in Ramanathan's evidence to corroborate or support their assertions about what the Plaintiff said to them. However, what Ramanathan recounted in his affidavit was not that the Plaintiff told him that she had already promised or represented that she would definitely leave her share in the Jansen Road Property

> for the 2nd Defendant, which was essentially what the Defendants alleged. Rather, what was expressed to Ramanathan was weaker – only that the Plaintiff had a general, prospective intention of leaving her assets for the 2nd Defendant. Therefore, although Ramanathan's evidence is not inconsistent with the 2nd Defendant's version of events, it does not go very far in positively supporting it.

45 In addition to these weaknesses in the Defendants' own evidence in respect of the making of the representation, there are also a number of other issues, highlighted by the Plaintiff, which further weaken the strength of the Defendants' contentions. The Defendants were inconsistent about the details of the representation, specifically (a) its contents and (b) when the representation was made. Moreover, their actions undermine the case for the representation having been made at all.

The contents of the promise or representation

46 The Defendants in their evidence have put forth different versions of the content of the representation. On the one hand, the property was said to be held for the 2nd Defendant. On the other, it was also said to be held for the 2nd Defendant as well as her children. This points to an unsettled or unstable content of the representation or promise invoked by the Defendants. The difference is not a minor or inconsequential detail; the share of the property would be significantly affected. It appears to me that there are three possible explanations for the discrepancy. First, the 2nd Defendant was unable to accurately recall what was said by the Plaintiff. This would call into doubt the accuracy of her recollection of other important details, such as whether there was a firm commitment or merely a provisional intention. Secondly, the Plaintiff expressed both intentions at different points in the conversation or

conversations. This would point to the likelihood that even on the Defendants' version of events, the Plaintiff had not settled on who was to benefit. Thirdly, it may be that no such representations were made at all, and the inconsistency was simply a result of the Defendants' failure to stick to their story. Needless to say, any of these possibilities significantly weakens the Defendants' case.

When the promise or representation was made

47 The other discrepancy was when the representation was made. On the version presented in the Defendants' jointly affirmed AEIC, a representation was given as early as the purchase of the Eden Grove Property in 1993. On another version, which emerged during cross-examination of the 2nd Defendant, the representation was only made in respect of the Jansen Road Property much later, in September 1999. Counsel for the Defendants attempts to smooth over this inconsistency by arguing that the Plaintiff had made representations as to the Eden Grove Property as well the Jansen Road Property. The difficulty with this line of argument is that if the promise had already been made regarding an earlier property, it would have been strange for the Plaintiff to repeat the promise again in the same terms. Instead, it would have been natural for her to state to the 2nd Defendant that she was reiterating or reinforcing what had been said earlier, rather than to state the promise as if the issue was being broached for the first time. I do not see anything of this nature in the evidence coming from the 2nd Defendant – her answers gave the firm impression that it was a standalone promise. This means that the inconsistency I noted earlier cannot be satisfactorily explained. Again, on a point as important as when the representation was made, one would have expected some consistency and definitiveness.

The actions of the Defendants

48 Aside from the 2nd Defendant's account of the representation, the actions of the Defendants also seem to point away from the representation having been made. Specifically, it is telling that the 2nd Defendant had wanted to buy over the Plaintiff's share in the Jansen Road Property. The 2nd Defendant claimed that this was an attempt to resolve the matter. This seems doubtful – the very fact that she sought to buy over the share demonstrated her concern about what was to happen to that portion of the property, which underscores the likelihood that the representation had not in fact been made.

49 The Plaintiff additionally points to evidence from the social workers:

(a) One Ms Ai Ling sent an email to several persons, including the Plaintiff's other daughters, to the effect that the 2nd Defendant would set up a will for the Plaintiff to leave her the property.

(b) There was also evidence from Ms Siti Nursila, recorded in her notes, that the 2nd Defendant was keen to buy over the 10% share held by the Plaintiff, and to use that portion for the upkeep.

50 The Defendants say that the various statements made to social workers were intended to be proposals to resolve the matter between the parties. On behalf of the Plaintiff, it is argued, to the contrary, that Ai Ling's email shows that the 2nd Defendant had tried to set up or create a will so that the Plaintiff's interest could go to the 2nd Defendant; the implication is that the 2nd Defendant was aware that the Plaintiff's share did not (and would not) belong to the 2nd Defendant otherwise. However, Ai Ling did not testify. While a notice to admit hearsay evidence was filed, this email cannot be given much weight: it is entirely possible that Ai Ling was mistaken or that there were

errors in her email, and the likelihood of such mistake or error could not be assessed without the benefit of cross-examination.

51 However, the same reservations do not apply to the evidence from Siti Nursila. Even if the Defendants were seeking a resolution, what was being proposed in terms of the buyout was a total abandonment of the claim of a representation or promise as to the 10% interest. Without further explanation – and there was none proffered – this must cast additional doubt on the Defendants' version. If indeed there was a promise of that 10% share, it would be very odd and contrary to the probabilities for the 2nd Defendant to not only give it up, but pay for that share.

52 Counsel for the Plaintiff also argues that the evidence from the Plaintiff shows that the 2nd Defendant wanted her to sign a will, which was corroborated by an email from the Plaintiff's other daughter to Ai Ling and another social worker. Counsel's reasoning appears to be that pressing for a will went against the likelihood of a promise having been made: if such a promise had indeed been made, there would have been no need for a will. However, it is conceivable that the Defendants wished to make sure of the situation; indeed, few parties would want to be in the uncertain position of having to prove a trust based on an oral promise if they could instead have the certainty provided by a will. Further, in contrast to the offer of buying out, having such a will made would not require the Defendants to incur any substantial detriment in addition to whatever they had supposedly promised the Plaintiff. I think, therefore, that even assuming the 2nd Defendant had indeed pressed the Plaintiff to draw up such a will, this is a neutral fact that does not assist either side.

53 Finally, there is the issue of when the Defendants first raised this allegation of a promise or representation. In response to the Plaintiff's contention that the Defendants' had raised the matter late, the Defendants contend that they raised it in their reply affidavit in December 2014, in Summons 5123 of 2014. To my mind, if indeed such a representation had been made, the Defendants would most likely wish to raise it at the first opportunity, and not only in a reply affidavit. In the absence of a compelling explanation for this delay (which I have not heard), the fact that such a crucial issue was only raised in a reply affidavit casts further doubt on their assertion that the representation was made.

Problems with the Plaintiff's credibility

54 I do note that the Plaintiff's credibility was doubtful in some areas. In particular, she was quite adamant that she had not signed various conveyancing documents, though the objective circumstances showed that she must have signed these. Her readiness to disavow these documents raises concerns about her credit and credibility. For instance, she gave the following testimony under cross-examination:

> Q: Now if you look at that signature just above that, that's your signature correct?
>
> A: That is not mine.
>
> …
>
> Q: Now the witness to the document is the lawyer by the name of James Yu Sin Giap and he signs next to that. Now this is – have you seen this document before?
>
> A: No.
>
> …
>
> Q: So is it your evidence that you did not see this document even after disclosing it at page 140 to 144, you have no idea about this document?

A: I did not know.

No such allegation was made by her before trial.

55 As noted by counsel for the Defendants, the Plaintiff claimed that her signatures had been forged even though these documents would have had to be signed before various lawyers, Commissioners of Oaths, and a Justice of the Peace. Her bare disavowal of her signatures, without any substantiation or support from the various persons who would have witnessed her signing, puts into significant doubt her testimony in this regard.

56 Similar problems arose concerning her use of her funds. She was unclear on parts of her evidence, for instance, on how her CPF funds were used and how she found out about their use. At one point in her testimony, she seemed to claim that she did not know how her CPF money was withdrawn for the purchase of the Eden Grove Property and that she had only found out when a fried read a letter from the CPF and told her there was no money in the CPF accounts. She claimed to have been told that the letter stated that the Defendants had taken her money. She said she no longer had the letter.

57 Her evidence on the above points was surprising. However, lack of credibility in respect of one area of a witness's testimony does not necessarily doom their testimony with respect to other areas: *Sundara Moorthy Lankathran v PP* [1997] 2 SLR(R) 253 at [43]–[44]. Although the Plaintiff's seemingly baseless accusations regarding the signing of documents were serious ones, they ultimately do not relate to the main factual dispute in this case, which concerns the existence and content of the Plaintiff's alleged promise or representation. As far as those key matters were concerned, I found the Plaintiff to be generally consistent and believable. Her testimony that she had not made the representation as claimed by the Defendants was believable

because it was consistent with the probabilities of the situation as noted above. I found nothing that put her evidence in this specific area in doubt.

58 In any event, it is for the Defendants to prove that a representation or promise was made, and not for the Plaintiff to disprove it. Even if I had doubts about the Plaintiff's overall credibility to warrant disregarding her evidence entirely, that would still not be enough to bring the Defendants over the threshold of establishing the representation or promise on the balance of probabilities.

Conclusion on the making of a representation, assurance or promise

59 Viewed in the round, the evidence does not show that it was more likely than not that the representation, assurance or promise was made and was what the Defendants said it was. While no individual item of the evidence I have analysed above would have been fatal to the Defendants' contentions, their cumulative effect was that the Defendants had not established on the balance of probabilities that such a representation as they alleged had been made. On the one hand we have the Defendants' recounting of what was said, but on the other we have the Plaintiff's own version, together with the inconsistencies in the 2nd Defendant's evidence as to the beneficiaries of the promise and when it was given, as well as the implications of the intended buy-out of the Plaintiff's share. All of these severely weaken the Defendants' ability to make out their case on the balance of probabilities. Ultimately, I am unable to conclude that any such representation was in fact made.

The existence of a common intention constructive trust

60 Even assuming, contrary to my findings above, that the Plaintiff promised to hold the Jansen Road Property for the 2nd Defendant until the

Plaintiff passed on, after which it would go to the 2nd Defendant, this would not give rise to a constructive trust. Taking the Defendants' assertion at its highest, the Plaintiff stated that she would hold the property for the 2nd Defendant, that the 2nd Defendant was expected to maintain the Plaintiff until her death, and that the Plaintiff's share of the property would go to the 2nd Defendant when she died. In this version of the representation, the Plaintiff made a statement of *future* action or disposal: she made a promise to do X on her death if Y was done during her lifetime. In the circumstances, it could be nothing more than a promise to so dispose of the property at that future date. The fact that the interest takes reference to a point after her death must in the circumstances mean that any beneficial interest obtained by the 2nd Defendant would only take effect from that date. But that goes against what a common intention is for the purposes of a constructive trust: it is a present commitment, concerning the present holding of property.

61 This flows from the fact that in England (and Wales) and Singapore, the constructive trust is regarded as institutional, meaning it arises out of the operation of law from the facts, and not as the result of the exercise of judicial discretion as in the case of the remedial constructive trust recognised in some common law jurisdictions, such as Canada and Australia. Thus, Lord Brown-Wilkinson stated, in *Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] AC 669 at 714G:

> Under an institutional constructive trust, the trust arises by operation of law as from the date of the circumstances which give rise to it: the function of the court is merely to declare that such trust has arisen in the past.

This is neither the occasion nor the forum to consider whether the remedial constructive trust should be introduced into Singapore law. Suffice it to say that even if it was appropriate for me to consider such an innovation, the

principle of parsimony would seem to lead to the conclusion that, given the recognition of proprietary estoppel, there is no need for the doctrine of the remedial constructive trust to be imported.

62 As the common intention constructive trust is an institutional constructive trust that arises before the declaration by the court, the question that must be confronted next is when the constructive trust actually comes into being. Two candidates present themselves: either when the common intention is formed or when the required detriment is incurred. To my mind, after considering the authorities and commentators, the constructive trust arises once the common intention is formed. The incurring of detriment provides a reasoned basis for unconscionability and hence enforcement, but may arise later. Hence if detriment is not incurred, the constructive trust is effectively not enforceable even against the promisor. If detriment is incurred, the equitable interest in the property is given effect, even against third parties unless they are purchasers of the legal interest for value without notice.

63 This approach gives weight to the common intention as the basis for the trust; if the focus were instead on the incurring of detriment, that would instead emphasise the detriment as being the basis, which would imply that the content of the common intention should not matter as much as the degree of detriment. That to my mind comes too close to treating the constructive trust as being remedial in character. The more principled approach is to look to the point at which the common intention was formed. I believe that this approach would not contradict the approach of the Court of Appeal in *Chan Yuen Lan* or in any other local case.

64 While a common intention constructive trust should generally be formed at the point of acquisition, later conduct may be relevant: John

McGhee QC, *Snell's Equity* (Thomson Reuters, 33rd Ed, 2015) ("*Snell's Equity*") at para 24-051; *Supperstone v Hurst* [2005] EWHC 1309 (Ch). However, acquisition can in practice occur over a prolonged period of time through mortgage financing. In the present case, a sufficient common intention could have been formed even after the legal acquisition of the property. The recognition, at least in England (see *Jones v Kernott* [2012] 1 AC 776 at [14]) of what are termed ambulatory constructive trusts, *ie*, trusts arising out of a common intention that has changed over time, does not go against the notion that the constructive trust arises at the point of the agreement. The common intention between the parties may indeed shift over time, but each shift creates a new basis for the constructive trust.

65 Leaving aside the suitability of a constructive trust in this situation, a common intention is not established in the present case for the reasons given above. Simply put, it has not been proven that there was a promise or a common intention. I should note that I am not here relying on the Plaintiff's argument that the Defendants' contention of a common intention should be disbelieved because it is not supported by any documentary evidence. To the contrary, I am of the view that the absence of documentary evidence is a neutral fact that does not positively assist the Plaintiff. The absence of any documentary record of a representation is the norm in constructive trust cases. One would not expect family discussions, which commonly take place orally, to be minuted, so the absence of a written record is not at all rare or remarkable; one would not expect to see any record being made of most such discussions, save perhaps through communication by the odd letter, email, or text messages.

66 Instead, my basis for rejecting the Defendants' argument (stated more fully at [59]–[60] above) is essentially that the evidence does not establish (1)

that there was any such statement as alleged by the 2nd Defendant and (2) that such a statement as alleged would have demonstrated a common intention as to the *present* holding of the property.

67 In any event, the detriment alleged to have been suffered by the Defendants was insufficient to give rise to a common intention constructive trust. It is correct that the detriment need not be directly attributable to the purchase or acquisition or referable to the property itself: *Grant v Edwards* [1986] 3 WLR 114 at 130. But what was put forward as the detriment in this case was the Defendants allowing the Plaintiff to have a registered legal interest. Doing so was not something that would attract the intervention of equity, or which would render it inequitable for the Plaintiff to go back on her word (assuming she had given it), for reasons which I set out fully at [78]–[80] below. The ingredient of detrimental reliance being missing, the Defendants' argument on this ground must fail.

68 I would note, as an aside, that the Defendant's detriment has not in fact been completed – the Plaintiff has not passed on. However, I am satisfied that the fact that purported detriment was still being incurred, because the Defendants were continuing to support the Plaintiff, would not have negated a common intention constructive trust had it met the other requirements, since most such trusts are concerned with relatively open-ended promises and performance.

Proprietary estoppel

69 Since the claim of the representation, assurance or promise (assuming one existed) about the Plaintiff's legal interest in the property was one as to a future action, including leaving the property to the Defendants by will, the

appropriate doctrine for the Defendants to rely on was proprietary estoppel. The elements of proprietary estoppel are:

(a) A representation or assurance,

(b) Reliance, and

(c) Detriment.

70 It is important to note that proprietary estoppel has a different juridical basis from a common intention constructive trust: it does not act on the property immediately and the discretion of the court can be exercised to better craft a remedy that addresses third party rights or other circumstances of the case. Thus, even where proprietary estoppel is made out, the court may decide to order compensation rather than giving a claimant a share in the property, if that will suffice to satisfy the equity.

71 In this regard, proprietary estoppel is a more apposite and suitable doctrine in respect of the claim that the Plaintiff made a representation, assurance or promise that the property would be held for the 2nd Defendant and go to her (and/or her family) after the Plaintiff had passed on. Proprietary estoppel can affect future interests and future disposition of property and allows calibration of the remedy to suit the unconscionable conduct. Thus, proprietary estoppel is available in respect of representations that property would be left to a claimant under a will, as in the case of *Jennings v Rice* [2003] 1 P & CR 100 ("*Jennings*").

72 However, in the present case, even if the Plaintiff had promised as the Defendants claimed, satisfying the requirement of a representation, promise or assurance, a proprietary estoppel would still not be raised: neither reliance nor detriment has been established.

Reliance

73 For reliance to be made out there must be a sufficient link between the promise and the conduct: see, *eg*, *Wayling v Jones* (1993) 69 P & CR 170 at 173. The reliance must be on a statement which a reasonable person would have understood to be meant to be taken seriously and acted upon: *Thorner v Major* [2009] 1 WLR 776 at [38], [52].

74 In the present case, I have found on the evidence that what was represented, if anything, was that the property would be left to whoever looked after the Plaintiff. Viewed objectively, it was not meant to be acted upon by the Defendants; indeed, it was made at a time when the Defendants were already taking care of the Plaintiff and, by their own account and to their credit, would have continued doing so in any event. All that such a statement could be interpreted as stating was that the Plaintiff would choose to leave her property to whomever she thought was deserving, namely the person who took care of her. This was just a statement of intention rather than anything that would reasonably attract reliance. But even if I am wrong on the question of the nature of the representation, the Defendants have not shown that the Plaintiff's representation or assurance could reasonably have led the Defendants to take action or to omit to do something. Even if the representation can be characterised as the Defendants have attempted to (*ie*, as having promissory content), I am not persuaded on the balance of probabilities that it was reasonable for it to be treated as a serious statement which was intended to be acted upon.

75 In reaching this conclusion, I do recognise that statements about intentions of dispositions of property, including testamentary dispositions can be the basis of proprietary estoppel: the revocability of a will is not a ground

for denying proprietary estoppel. However, much depends on the precise circumstances. The cases generally demonstrate that for reliance to be made out, the representation should be made in a context where subsequent action by the claimant was reasonable. Thus in *Gillett v Holt* [2001] Ch 210 ("*Gillett*"), the representations were made over a long period of time, usually when the family was gathered, and were, at least in the view of Robert Walker LJ (with whom Waller and Beldam LLJ agreed), completely unambiguous: see *Gillett* at 832. Circumstances making the reliance reasonable were also present in *In re Basham, decd* [1986] 1 WLR 1498, in which the claimant, the daughter of the original owner of a business, had continued to help her mother and her step-father to run the business, for no pay, even though she was thinking of seeking employment to supplement her husband's income. Beyond her work for the business, she had also undertaken numerous other time-consuming activities including the preparation of meals, provision of furnishing, and gardening for the home of the step-father. While doing all of this, the daughter and her husband, lived in another property. The reason she had taken this course was that her step-father had repeatedly stated or implied that the plaintiff would receive his property upon his death; in fact, he had used this understanding to persuade the plaintiff and her husband to continue with their arrangement. It was also pertinent that this this was an intestacy situation in which the plaintiff's step-father had reiterated his promise to leave the property to her a few days before his death, with her claim then being made against the administrators upon the intestate death of the step-father. In those circumstances, a determination that there was proprietary estoppel would not be surprising. Similarly in *Jennings,* the claimant had worked for many years for the deceased without pay and had done so on the assurance that she would see him right and that "this [the property] will all be yours one day". A representation made in that context positively invites reliance.

76 The present case stands in stark contrast to those cases. On the Defendants' version, the representation made was only that the Plaintiff, if allowed to be a legal co-owner, would leave such interest to the 2nd Defendant. The only promise that the Plaintiff would then have made was to give to the 2nd Defendant what the 2nd Defendant originally had or would have had. If the Defendants' allegations about the source of funds were to be accepted, that would mean that the Plaintiff would really only be contributing a small portion of the 10% interest registered in her name, and the Defendant would substantially give and take back what was hers anyway. Aside from the difficulties with establishing detriment, which will be considered below, this would not be the sort of representation that invites reasonable action by the Defendants. If a person chooses to act on such a representation then that person cannot invoke equity's aid.

Detriment

77 Detriment is considered at the time when the promisor attempts to resile from his stated position: *Gillett* at 232. The benefits obtained by the promisor as a result of the promise also need to be taken into account: *Lloyds Bank v Carrick* [1996] 4 All ER 630 at 641; *Watts v Storey* (1983) 134 NLJ 631; *Snell's Equity* at para 12-043. What counts as detriment is not limited to financial outlay or matters directly referable to the acquisition of property; the test is whether it would be unconscionable to allow the representor, here the Plaintiff, to resile. But it should be noted that the failure to receive an expected benefit does not in itself constitute detriment: *Snell's Equity* at para 12-043. This is only sensible; otherwise, the element of detriment would be satisfied in proprietary estoppel cases as a matter of course. The real detriment or harm from which the law seeks to give protection is that which would result from the change of position if the assumption were departed from: *Grundt v The*

Great Boulder Pty Gold Mines (1983) 59 CLR 641 at 674–675, cited by Walker LJ in *Gillett* at 29.

78 What the Defendants largely claim as the detriment was giving the Plaintiff the right to have herself registered as a 10% owner and the consequences from that. As noted above, even assuming that the Plaintiff did not contribute any of the 10%, the Defendants would have merely given the Plaintiff something they would retake on her passing. If the Plaintiff had contributed some portion, as the Defendants accept she did, they would obtain her equitable share as well. The only possible exposure that the Defendants would have incurred would have been the Plaintiff being registered as the legal owner of the 10% of a domestic dwelling. It is hard to see, in the context of the Singapore land register system and conveyancing regime, what peril or risk that would have entailed to the Defendants.

79 What the Defendants were really at risk of was the possibility that the Court, in determining the minimum equity as a remedy for such a claim, would give them an award or interest less than the 10% they say they gave up. Such a risk would not be a detriment or attract the court's intervention – the exercise of discretion in this area is paramount and cannot be hamstrung.

80 The other way of looking at the Defendants' claimed detriment is that it lies in their allowing her to contribute to the purchase price, enlarging her interest. The argument is that they would not have allowed her to pay into the purchase without the representation that in the end everything would go to the 2nd Defendant. But that would also not be detrimental reliance – what the Defendants would really be complaining about, in that case, is that they were deprived of the opportunity to obtain the legal and equitable ownership of the whole of the property. The loss of the opportunity to assert entire ownership is

not, under the present circumstances, a detriment that would attract equity's intervention. There is nothing unconscionable in allowing a person who has contributed funds to claim the consequential ownership rights. If that person has not in fact contributed funds to the purchase, then the equitable interest would be in the hands of those who did, which in this case, according to the Defendants, would be them anyway.

81 The Defendants have not in their submissions put forward the expense of maintaining the Plaintiff as a relevant detriment, save for payment of outgoings in relation the property, conveyancing expenses, and repair of various items. If the Defendants had relied on the whole of their expenses, such expenditure could in principle have been sufficient detriment, but any such claim would need to be considered in context. Especially where the relationship between parties is that of a parent and child, the courts would be slow to conclude that such expenditure, whether in relation to the property in question or to the personal maintenance of the promisor, was connected to the representation or promise rather than constituting the general maintenance or support that would be expected of a child for the parent, especially in the latter's old age, or in the home the parent was living in. Much would depend on the type of expenditure, the previous relationship of the parties, and the entire family background; this is not an invitation for a flood of details to be given about the life of the family, but an indication that the task would be difficult. The point of a family is the ties that bind, not the property that it holds.

82 At the end of the proceedings, I asked parties to include in their submissions arguments as to the position where the detriment had not been fully incurred. I thank them for doing so. In respect of constructive trusts, I am of the view that the full constructive trust arises once the common intention is

accompanied by any detriment, subject perhaps to the *de minimis* principle. In respect of proprietary estoppel, I am of the view that the court's discretion could adequately address the issue, as the court could calibrate the remedy to suit the actual detriment incurred. This is seen in the various cases referring to proportionality in the remedy, such as *Jennings*.

83 I should further note that actually, the bargain, so to speak, that the 2nd Defendant claimed was stated by the Plaintiff was for the Plaintiff to hold the property for the 2nd Defendant, in return for the Plaintiff being looked after by the 2nd Defendant until the Plaintiff's passing, at which point the property would go to the 2nd Defendant. This was not what was claimed in the submissions as the relevant detriment.

Resulting trust

84 As neither a constructive trust nor a proprietary estoppel is made out, the next issue is whether a resulting trust arises to enable the Defendants to claim the Plaintiff's share of the property. Resulting trusts are invoked by both sides: the Plaintiff to claim a share larger than her 10% legal interest; the Defendants to claim a significant portion of that 10% interest, leaving the Plaintiff with only 3.97%.

85 The Plaintiff argues that there was a resulting trust arising out of her contributions to the purchase of the Jansen Road Property. These contributions included the proceeds of sale of the Eden Grove Property. The primary evidence relied upon by the Plaintiff was the completion account for the Jansen Road Property. The Plaintiff, however, claims not to know where the money came from. The burden of proving the resulting trust of more than the legal share lies on the Plaintiff.

86 The Defendant's position in respect of the claim by the Plaintiff is that the Plaintiff had only contributed a much smaller proportion of 3.97 % through her CPF contributions. This is a positive assertion of a particular property holding by the Plaintiff, not merely a denial of her claim to 10% or more. The burden of proving a share lower than that of the legal share (*ie*, that there was a resulting trust in favour of the Defendants in respect of a portion of the Plaintiff's legal interest) lies on the Defendants.

The Defendant's contentions on the use of funds

87 Taking first the Defendants' contentions, the Defendants argue that the Plaintiff's contribution to the Jansen Road property was just the approximately $40,000 that came from the CPF account. According to the Defendants, the proceeds from the sale of the Jansen Road Property were put into the bank for use to pay for the expenses of the Plaintiff. The Defendants further allege that part of the funds at least was to be used to help pay for the possible emigration of the family. It is said that the Jansen Road Property was paid for from another account, an account with the POSB.

88 The assertion that the money in the bank account was used for the Plaintiff's expenses and for other family purposes cannot be accepted. There was no documentary evidence presented to support this. While the time that has passed has resulted in an absence of documents, such as records of amounts withdrawn and the frequency of such withdrawals, such absence cannot excuse the Defendants from proving their assertion. There is nothing at all to support the Defendants' version of how these funds were used. The amount used up was significant, running into six figures. In the normal run of things some record would be expected, even if incomplete. The claim that the family was thinking of emigration was raised only in respect of the arguments

made about by the Plaintiff about the use of funds. This allegation that the funds in the UOB account were used to help pay for an aborted emigration of the family is also not supported by any documentary evidence. It is also argued that the money used to pay for the Jansen Road Property must have come from another account, a POSB account. Again, there was no evidence given in support of this.

89 In comparison, the Plaintiff's assertion would accord with the usual outcome of having funds in an account – it would be available and would be used for big ticket purchases. Whether this likelihood crosses the level of probability will be discussed below.

The Plaintiff's contentions on the use of funds

90 The burden of proof lies on the Plaintiff to make out a case for a larger share than the 10% registered in her name. She points to the various payments required for the property and the alleged likelihood that one-third of the proceeds from the sale of the Eden Grove Property was the Plaintiff's. While the calculations and arguments made on behalf of the Plaintiff have some plausibility, they are not sufficient to establish her case on the balance of probabilities. These calculations and arguments involve too much speculation as to what the source of funds could have been.

91 Going back to the purchase of the Eden Grove Property, and then working forwards to the purchase of the Jansen Road Property, a share of 10.85% of the Jansen Road Property is claimed on behalf of the Plaintiff. The Plaintiff says as follows:

(a) She contributed $100,000 from her CPF to the purchase of Eden Grove. Her share would have been one-third of $295,000 or 50%

of the purchase price of $590,000. The other 50% was paid for by a housing loan. The defendants' assertion that the housing loan was $350,000 was wrong as it should have been $295,000, leaving out the interest element.

(b) She would have contributed 10.85% as she would have given one-third of the purchase price. This was derived on the basis that the Plaintiff must have contributed one-third of the deposit for Jansen Road that could be traced to the proceeds of Eden Grove ($97,000), and would have been entitled to one-third of the further cash payment of $128,000.93, which would have been traced back to Eden Grove. Together with the CPF moneys of the Plaintiff, this would add up to $118,396.78, which is 10.85%.

92 The Plaintiff's calculations are based on a number of suppositions which render the conclusions unsafe on the balance of probabilities. First, there is the Plaintiff's share in the Eden Grove Property. While the calculations and assumptions as to her contributions lead to a result that matches her registered interest of a one-third share, it cannot be said, on the preponderance of the evidence, that the alleged contribution was made. Other possibilities remained open. The funds could have come from other sources and the Plaintiff had not closed off these alternatives sufficiently.

93 Taking the next link in the Plaintiff's chain of reasoning, the contributions to the purchase of the Jansen Road Property, the Plaintiff's contentions relied on assumptions that:

(a) Her earlier contribution to the proceeds of the Eden Grove Property gave her a one-third interest in the whole of the proceeds;

(b) The deposit paid for the Jansen Road Property included $97,000 from the deposit received for the Eden Grove Property;

(c) The cash payment of $128,000.93 also came from the Eden Grove Property; and

(d) She was entitled to a one-third share of that $128,000.93.

94 In my view, there is simply too much conjecture in this chain of inference. The choice between conflicting inferences must be more than a mere matter of conjecture: *Bradshaw v McEwans Pty Ltd* (1951) 217 ALR 1, a decision of the High Court of Australia, referred to in Eggleston, "Probabilities and Proof" (1963) 4(2) Melbourne University Law Review 180 at 197."

95 The Plaintiff calculates that she must have contributed 10.85%, on the basis of the proceeds from the Eden Grove Property being available. While the Plaintiff's calculations in respect of the Eden Grove Property give a result that matches her one-third legal interest in that property, the absence of documentary evidence means that it falls short of the required standard. As regards the Plaintiff's interest in the Jansen Road Property, the Plaintiff's calculation requires suppositions to be made as to the source of the cash deposit. Again, while the Plaintiff's calculations are not implausible, that was not sufficient. The Plaintiff has no objective evidence. She was also not involved in the actual payments, and thus has no personal knowledge of them. In the circumstances, it be mere conjecture for me to prefer her hypothesis to the other plausible possibilities; I therefore find that she has not made out her case.

The legal interest

96 Following *Chan Lay Yuen*, if no constructive trust or resulting trust arose, what the court would be left with is the legal interest. If no other right arose, such as that from proprietary estoppel, then the legal interest would continue to prevail. Given the failure of each side to establish their respective positive cases, what I am left with is the registered legal interest, which must be presumed to also represent the equitable interest. Thus, I find that the Plaintiff was beneficially entitled to the 10% share she was registered as the legal owner of.

Consequential orders – sale

97 As to the appropriate order, I am of the view that an order for sale in lieu of partition ought to be granted to the Plaintiff, subject only to a right of first refusal to the Defendants, since they are in occupation of the greater portion of the property. Partition is not at all feasible given that this is a home and the Plaintiff's share is a small part of the whole. In any event, neither party argues in favour of partition.

98 The Defendants argue that various expenses should be deducted, including any outstanding mortgage on the property. Certain expenses going to matters essential to the upkeep of the property would be claimable, as I have noted in my earlier decision in *Tan Bee Hoon (executrix for the estate of Quek Cher Choi, deceased) and anor v Quek Hung Heong and Ors* [2015] SGHC 229. However, the various claims relate not just to maintenance of the property but to the acquisition – such acquisition expenses would generally have been expected to have been accounted for at the point of purchase. They should not usually be part of the claim for partition or sale in lieu of partition. As for the mortgage payments made by the Defendants, these should not be

taken into account since it has been found that the Plaintiff's share is her legal interest: the Defendants have been found not to have any larger equitable share. There was also insufficient evidence of payments going to the perseveration of the property. Thus, of the various payments claimed by the Defendants, what I would allow only are deductions for a proportionate share of the property tax that the Plaintiff would be liable for after the registration in her name.

The counterclaim: unjust enrichment

99 A claim in unjust enrichment requires among other things the identification of a recognised unjust factor which would make the retention of the enrichment unjust: *Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 at [116]. In this case, the Defendants' counterclaim in unjust enrichment is premised on the unjust factor of failure of consideration, namely the failure of the agreement or understanding with the Plaintiff. From the analysis above, the conclusion I have reached is that there was no agreement or understanding of that nature; at best, there was a statement of an intention as to future conduct which did not form the basis of the alleged enrichment. Since that is the conclusion, there could not be any failure of consideration. No other unjust factor has been pleaded, and the counterclaim in unjust enrichment must therefore fail.

100 Even aside from that, I am doubtful that the incurring of general expenses for an elderly parent living with a family would, in the absence of clear evidence of a representation or promise, count as the giving of benefit that could be the subject of a restitutionary claim. This is not a presumption against such a claim, but simply a recognition that expenditure for the care, welfare and enjoyment of an elderly parent is a normal incidence of family life

that is encouraged and expected in society. The contrary case, where a child does not provide such care, is considered so unbecoming that a statutory mechanism in the form of the Tribunal has been established under the MPA to make maintenance orders where parents are left without support. The Defendants themselves accept in the submissions made on their behalf that if there had been no promise, or agreement, they would still have maintained the Plaintiff. That is an additional reason why the enrichment could not have been unjust: it would have been given in any event, and so the alleged promise or agreement cannot be said to have caused the enrichment or formed its basis.

101 Furthermore, the position taken that the maintenance was conferred upon the Plaintiff in return for the promise sits very oddly with the claim that the detriment for the constructive trust and the promissory estoppel was the inclusion of the Plaintiff as a legal owner. Since it is the very same promise at issue, it cannot be that the basis was one thing for one cause of action, and something else entirely for another. Nor were the two different bases put forward as alternatives.

102 Thus, in the present case, even had it been found that a promise or representation been made, the expenditure claimed by the Defendants would not necessarily have been found to be a consequence of such promise or representation. That is, I would not have readily concluded that the expenditure was caused by or linked to the promise or representation, or that the promise or representation was the basis for such payment, giving rise to a claim in unjust enrichment upon the failure of such a promise or representation.

103 The Defendants also claim reimbursement of the money paid under an order by the Tribunal. Any orders made under that order are not properly

before me and, in any event, no basis under the relevant statute has been shown for any reimbursement of such payments in these proceedings. Whether the Defendants have any right to any future adjustment of maintenance is a matter for the Tribunal.

Laches and acquiescence

104 The Defendants raise laches as defence, citing the delay of 15 years since the purchase. They alternatively claim acquiescence. Laches involves unconscionable conduct on the part of the claimant, and the whole of the circumstances should be considered: *Cattley v Pollard* [2007] Ch 353 at [153]–[154]. Here, the Plaintiff is clearly an uneducated person who would not have been fully aware of her rights until recently; the delay was therefore not unconscionable or even intentional. In the circumstances, the defence of laches would not apply. Similarly, the defence of acquiescence arises only where a claimant knew or ought to have known of their rights: *In re Pauling's Settlement Trusts* [1964] Ch 303 at 353. It may be noted that in that case, one of the claimants was legally trained and had practised in well-known chambers, yet that fact was not held against him since the action was complicated and he could not be expected to appreciate his rights as a beneficiary until they had been drawn to his attention. The same reasoning applied with far greater force to the Plaintiff in this case, who would not have been able to understand her rights at all without legal advice. Acquiescence is therefore not made out.

Miscellaneous issues

Mental capacity

105 Earlier in the proceedings, the Defendants raised issues about the condition of the Plaintiff, seeking the exercise of the Court's powers under s 18(2) of the SCJA, read with paragraph 19 of the First Schedule to that Act. As the Defendants' allegations touched on the Plaintiff's ability to give instructions to her counsel, and there was some evidence which could support these allegations, I concluded that she should be examined. Some time was taken in the appointment of a suitable psychiatrist and determining the terms of the examination. In the end, the conclusion of the psychiatrist was that she was able to give instructions and manage her affairs in these proceedings. The appropriate determination of the quantum of the costs here remains to be settled.

Adverse inference

106 Counsel for the Plaintiff argues that an adverse inference should be drawn under s 116 of the Evidence Act against the Defendants for failing to adduce evidence supporting their contentions about the funding of the purchase of the Jansen Road Property. However, any such inference should only be drawn if demanded by the circumstances. Here, bearing in mind the passage of time, I was not of the view that it would be appropriate to draw any such inference.

Conclusion

107 The Plaintiff's claim is allowed, with a declaration that the Plaintiff holds a beneficial interest in the same proportion as her legally registered interest of 10%, and an order for sale in lieu of partition of that 10% interest,

with the right of first refusal given to the Defendants. Such sale is to be made at market value, less any share of property tax that should be borne by the Plaintiff as I have noted above. I will hear parties on what that share should be, the appropriate time frame that should be stipulated and what other conditions may be necessary. The Defendants' counterclaim is dismissed.

108 I will also hear the parties on the issue of costs. The time for appeal is extended until 30 days after costs are determined, subject to any earlier order of this Court.

Aedit Abdullah
Judicial Commissioner

Rajan Sanjiv Kumar, Ramesh Kumar & Lee May Ling (Allen & Gledhill LLP) for the plaintiff;
Joseph Ignatius, Suja Susan Thomas & Chong Xin Yi (Ignatius J & Associates) for the first & second defendants;