

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 48

Suit No 873 of 2015

Between

Ng Yok (sole executor of the
Last Will and Testament of Ng
Soh dated 24 December 2015)

... Plaintiff

And

Ng Geok Lan

... Defendant

GROUND S OF DECISION

[Trusts] — [Constructive trusts]

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**Ng Yok (sole executor of the Last Will and Testament of Ng
Soh dated 24 December 2015)**

**v
Ng Geok Lan**

[2018] SGHC 48

High Court — Suit No 873 of 2015
Kannan Ramesh J
11–12 July; 9, 20 November 2017

6 March 2018

Kannan Ramesh J:

1 This was the tragic case of Mr Ng Soh (“Mr Ng”), who passed away in 2016 at the age of 89, in an apparent suicide, after two disputes that splintered his family. In August 2015, after the second dispute arose, Mr Ng commenced this action against the defendant, Ms Ng Geok Lan, his daughter. Upon his demise, Mr Ng Yok, Mr Ng’s eldest son, became the plaintiff in this suit in his capacity as the executor of Mr Ng’s last will (“the Last Will”).

2 By this action, the plaintiff claimed that the defendant had fraudulently converted and misappropriated Mr Ng’s monies. On 20 November 2017, I allowed the plaintiff’s claim with detailed oral grounds, granting a declaration that the defendant held monies on trust for the plaintiff (in his capacity as the executor) and ordering an account and an inquiry. The defendant has now appealed against my decision. These are the full grounds of my decision.

Facts

Events leading up to the first dispute

3 Mr Ng and his wife, Madam Goh Ah Chah (“Mdm Goh”), were immigrants from Malaysia who came to Singapore in the early 1950s. Mr Ng received a Chinese education up to Primary 6. He was not literate in English.

4 In 1955, Mdm Goh purchased a plot of land in Jalan Raya with her savings. Thereafter, the family moved to Jalan Raya to reside in a zinc-roofed house on the land. Mr Ng and Mdm Goh had ten children, including the plaintiff and the defendant. The plaintiff was the eldest child of Mr Ng and Mdm Goh, and the defendant was one of their three daughters.

5 In 1967, the plaintiff registered a partnership with Mr Ng and his uncle, Mr Ng Teng. The business of the partnership was in building and construction. Apart from working on other projects, the partnership built two semi-detached bungalows on the plot of land in Jalan Raya, in place of the zinc-roofed house. These properties were 34 Jalan Raya, Singapore 368586 and 36 Jalan Raya, Singapore 368588 (collectively, “the Jalan Raya Properties”). The Jalan Raya Properties were registered in the name of Mdm Goh.

6 After the Jalan Raya Properties were completed, the plaintiff, his family, Mr Ng and Mdm Goh resided in 34 Jalan Raya, which was the bigger property. The defendant and some of her other siblings resided in 36 Jalan Raya.

7 In 1975, the plaintiff, Mr Ng and Mr Ng Teng incorporated a company (“the Company”) which replaced the partnership. The business of the Company was similarly in building and construction. Mr Ng held 50% of the shares in the Company, and the plaintiff and Mr Ng Teng held 25% each of the shares. The

plaintiff was the managing director of the Company since its inception. The defendant, whose highest educational qualification was “O” Levels, worked as a clerk in the Company.

8 The Company prospered under the direction of its three shareholders. It built many properties and also won a Construction Excellence Award in 1997.

9 In 1985, Mdm Goh passed away intestate. Her estate comprised the Jalan Raya Properties. In 1996, Mr Ng became the registered proprietor of the Jalan Raya Properties as the administrator of Mdm Goh’s estate. However, Mr Ng did not sell the Jalan Raya Properties and distribute the proceeds to the beneficiaries of Mdm Goh’s estate. Rather, the Jalan Raya Properties continued to be occupied by the same occupants as before Mdm Goh’s passing.

10 In 2002, the Company began to experience financial difficulties. The defendant claimed that at this time, the plaintiff, Mr Ng and Mr Ng Teng were on the brink of bankruptcy (apparently because they had given personal guarantees for loans taken by the Company from banks). The Company then sold most of its properties to pay off its loans. According to the defendant, she and her husband played a vital role in managing the affairs of the Company during this period, from 2002 to 2004. She asserted that it was their financial acumen and business nous that steered the Company out of its troubles. Notably, in 2005, the defendant’s husband was made a bankrupt. The defendant’s husband’s bankruptcy was unconnected to the financial issues of the Company. He was discharged from bankruptcy in 2014.

11 The plaintiff, however, disputed the extent of the role played by the defendant and her husband in the Company during this period.

12 In 2005, the defendant purchased a five-room HDB flat (“the HDB flat”) in Punggol with her husband. However, she continued to reside in 36 Jalan Raya with him.

The first dispute

13 Sometime in early 2009, a dispute arose between the plaintiff, on the one hand, and Mr Ng and Mr Ng Teng, on the other hand, regarding the Company. On 18 February 2009, against the backdrop of this dispute, Mr Ng granted a power of attorney to the defendant (“the Power of Attorney”). By the Power of Attorney, Mr Ng authorised the defendant to exercise all of his rights as a shareholder of the Company and all of his powers as the administrator of Mdm Goh’s estate, including his powers to deal with the Jalan Raya Properties. The grant of the Power of Attorney was an important turn of events.

14 In April 2009, the plaintiff commenced Suit 315 of 2009 (“Suit 315”) against Mr Ng and Mr Ng Teng. This was a minority oppression action, where the plaintiff sought a declaration that Mr Ng and Mr Ng Teng held their shares in the Company on trust for him or, in the alternative, an order for the buy-out of their shares by the plaintiff.

15 On or about 1 July 2009, presumably in view of Suit 315, Mr Ng moved out of 34 Jalan Raya and into 36 Jalan Raya to live with the defendant and her husband.

The sale of the Jalan Raya Properties and the purchase of the Eastwood Property

16 On 9 October 2009, Mr Ng applied for the court to sanction the sale of 34 Jalan Raya. The application was driven by the defendant as the holder of the

Power of Attorney. Critically, it was undisputed that at this point, Mr Ng did not wish to sell 36 Jalan Raya. This was because he wanted a roof over his head. In response to Mr Ng's application, the plaintiff took the position that both of the Jalan Raya Properties should be sold. This was on the basis that the properties would attract a higher value when sold together. On 12 November 2009, an order was made for the sale of both of the Jalan Raya Properties, *against Mr Ng's original wish to retain 36 Jalan Raya* as a roof over his head. This is important. I shall return to this point below.

17 The following key events occurred in December 2009 and January 2010 in quick succession. The chronology of these events was pivotal in this case:

- (a) On 3 December 2009, an option to purchase ("OTP") for the Jalan Raya Properties was granted to a third party at the price of \$3,980,000.
- (b) Six days later, on 9 December 2009, the defendant obtained an OTP for 43 Eastwood Drive, Singapore 486588 ("the Eastwood Property") at the price of \$1,750,000.
- (c) On 11 December 2009, the OTP for the Jalan Raya Properties was exercised.
- (d) On 22 December 2009, the defendant exercised the OTP for the Eastwood Property and paid a 5% deposit for the purchase.

It is relevant that there was no evidence the defendant had any independent means to fund the completion of the purchase of the Eastwood Property. Nor was there evidence that she took steps to sell the HDB Flat at this time, which

could at least have provided her with some funds. Further, her husband was not a source of funds as he was a bankrupt at that time.

18 Shortly after she exercised the OTP for the Eastwood Property, on 4 January 2010, Mr Ng and the defendant opened a joint account at OCBC Bank (“the Joint Account”). On the very same day, Mr Ng made a will (“the First Will”) by which he appointed the defendant as the executor and purported to gift \$1,662,500 to her to purchase the Eastwood Property. It is telling that this was the exact balance of the purchase price for the Eastwood Property after taking into account the monies that were paid under the OTP. Mr Ng later revoked the First Will in the Last Will (see [35] below).

19 On 10 March 2010, the sale of the Jalan Raya Properties was completed.

20 On 15 March 2010, Mr Ng received a cheque of \$1,939,955.50 for (most of) his share of the proceeds of sale of the Jalan Raya Properties in his capacity as Mdm Goh’s spouse, and signed a payment voucher acknowledging receipt. Notably, on 16 March 2010, the cheque was deposited into the Joint Account.

21 Subsequently, Mr Ng signed a cheque dated 17 March 2010 for the sum of \$1,662,500 (“the 17 March 2010 cheque”) in favour of the defendant. (The plaintiff initially claimed that Mr Ng’s signature on the 17 March 2010 cheque had been forged. However, he withdrew this allegation subsequently.) Again, the sum of \$1,662,500 represented the exact balance of the purchase price for the Eastwood Property, which the defendant paid using the proceeds of this cheque.

22 From 18 March to 5 April 2010, a total of \$127,115.78 was deposited into the Joint Account. It was undisputed that this reflected the sum of (1) the balance of Mr Ng's share in the Jalan Raya Properties received in his capacity as Mdm Goh's spouse; (2) Mr Ng's share in the Jalan Raya Properties received in his capacity as a beneficiary of the estate of one of his sons who pre-deceased him and (3) payments Mr Ng made on behalf of Mdm Goh's estate in selling the Jalan Raya Properties. Thus, it was undisputed that Mr Ng was entitled to these monies.

23 On 30 March 2010, the sale of the Eastwood Property was completed.

24 In around May 2010, Mr Ng moved to the Eastwood Property with the defendant and her family to live there. Notably, the *defendant's* evidence was that from 2010 to 2015, she purported to charge Mr Ng a total of \$211,224.90 for expenses he allegedly incurred during his stay at the Eastwood Property. Mr Ng was aware of this. In this regard, the evidence was as follows:

(a) The defendant produced a document which she had prepared that indicated that from 2010 to 2015, Mr Ng's living expenses amounted to \$211,224.90 (from 2010 to 2013, the expenses amounted to \$150,883.90). The sum of \$211,224.90 included the cost of Mr Ng's food, mobile phone, Chinese newspapers, "CNY withdrawal" and his maid (including the cost of the maid levy and repatriating the maid). In relation to the "CNY withdrawal", a fixed sum of \$5,000 was withdrawn for each year between 2010 and 2015, apparently for Mr Ng to provide *ang pows* (red packets). The same document indicated that from 2010 to 2015, Mr Ng's medical expenses amounted to \$6,363.41 (the sum for 2010 to 2013 amounted to \$4,027.78).

(b) According to the defendant, Mr Ng did not pay her for these expenses. Instead, from 2010 to 2013, she withdrew a total sum of \$226,585.05 from the Joint Account for payment of Mr Ng’s “medical and living expenses *and other matters*” [emphasis added]. The last withdrawal for the alleged purpose of paying Mr Ng’s living expenses was effected on 13 May 2013, when the defendant withdrew a total of \$193,172.87 from the Joint Account, leaving barely \$3,000 in it. In other words, this final withdrawal for the alleged purpose of Mr Ng’s living expenses took place in 2013, before Mr Ng actually incurred *any* expenses in 2014 and 2015.

Even on the defendant’s account, the numbers just did not add up. Mr Ng’s alleged medical and living expenses for 2010 to 2013 amounted to a total sum of \$154,911.68 (the sum of \$150,883.90 and \$4,027.78: see [(a)] above). This was far less than the \$193,172.87 that the defendant withdrew on 13 May 2013, let alone the total sum of \$226,585.05 that she withdrew from the Joint Account from 2010 to 2013. She was not able to explain these discrepancies. Clearly, the defendant withdrew significantly more than the amount she alleged Mr Ng had incurred. I set out in a table in Annex A details of the withdrawals from the Joint Account and the defendant’s descriptions of and remarks regarding the same. The defendant admitted that apart from two withdrawals on 17 March 2010 for the total sum of \$1,702,300, which were effected after Mr Ng signed two cheques, she had issued and signed all the other cheques authorising the withdrawals.

25 On 25 January 2011, the parties in Suit 315 settled their dispute by executing a settlement agreement. The settlement provided for the Company to pay a sum of \$420,000 to Mr Ng, and for Mr Ng and Mr Ng Teng to transfer their shares in the Company to the plaintiff for nominal consideration.

26 On or about 9 June 2011, the defendant collected a cheque for \$420,000, reflecting the monies that Mr Ng was entitled to under the Settlement Agreement (see [25] above). This too was deposited into the Joint Account. It should be emphasised that despite Mr Ng depositing a total of \$2,487,071.28 into the Joint Account, by 13 May 2013 when the defendant did the very last withdrawal of \$193,172.87 (see [24(b)] above), the Joint Account was left with only \$3,000. In other words, the Joint Account had been almost completely drained.

27 Sometime in 2011, about a year after she bought the Eastwood Property, the defendant sold the HDB Flat.

The second dispute

28 On 27 March 2015, the plaintiff visited Mr Ng at the Eastwood Property and the parties thereafter reconciled. Shortly thereafter, Mr Ng asked the plaintiff to perform a title search on the Eastwood Property. The plaintiff performed the search and discovered that title to the Eastwood Property was not in Mr Ng's name. The plaintiff's evidence, which I accept, was that Mr Ng was "shocked" when he found out about this.

29 On 4 May 2015, Mr Ng left the Eastwood Property to stay with the plaintiff.

30 On 26 June 2015, Mr Ng's solicitors sent a letter to the defendant ("the Letter") with the heading "Misappropriation of Funds". The Letter asserted in strong language that the defendant had misappropriated and used Mr Ng's monies to purchase the Eastwood Property. The Letter further asserted that the defendant "may be guilty not only of criminal breach of trust but cheating as well as forgery", and invited her to produce evidence to the contrary.

31 On 27 June 2015, Mr Ng filed a police report (“the Police Report”). The Police Report stated as follows:

In the year of 1985, my wife, Mdm Goh, had passed away. ... In the year 2009, all of my sons and daughters decided amongst themselves, with my agreement, to sell both our properties. ...

However, after all the money is distributed, I realised that none of the proceeds is credited into my own bank account. I then asked [the defendant] with regards to the money and she informed me that she had settled everything. [After which], I then started staying with [the defendant] at [the Eastwood Property]. As my daughter never told me about the entitlement of the unit and reassured me that everything was settled, *I was convinced that the new unit was **entitled to me** using the proceeds that was [sic] entitled to me.*

In the year of 2015 at about March, I then found out through my son, Mr Ng Yok, and he verified through SLA, that [the Eastwood Property] was not under my name and was in fact entitled to [the defendant] ever since 30 March 2010, the period whereby all the proceeds were distributed. *[After which], I then started quarrelling with [the defendant] and subsequently, she then chased me out of the unit on [4 May 2015]. ...*

[emphasis added in italics and bold italics]

32 In or around July 2015, around one month after receiving the Letter, the defendant replied to the Letter through her solicitors. In her reply, she did not comment on the serious allegations raised in the Letter. Rather, her solicitors simply stated that they had instructions to accept service of process. I found it strange that the defendant did not see fit to respond to such grave allegations from her father.

33 On 26 August 2015, Mr Ng commenced this action against the defendant.

34 On 15 and 21 December 2015, Dr Ng Li-Ling (“Dr Ng”), a Senior Consultant in the Department of Psychological Medicine at Changi General Hospital, reviewed Mr Ng to assess whether he was mentally capable of making

decisions regarding the present suit. Dr Ng prepared a medical report on Mr Ng (“the Medical Report”). The key parts of the Medical Report are as follows:

[Mr Ng] was able to give details of the case and claimed that he had told his daughter, [the defendant], that *he wanted to buy a house together with her but unfortunately he later found out that she had not put his name in the ownership of the house at Eastwood*. He was able to give details of the house and that *he gave \$1.65 million of his money to her to buy the house ...*

According to Mr Ng, he had quarrelled with [the defendant] and moved out of her house about a year ago. After he had moved out, he found out that the title deeds of the [Eastwood Property] were only in [the defendant’s] name. ... ***He was clear and consistent in his account about the house. On cognitive assessment, there were some deficits found in his short-term memory but he was found to be mentally capable of making decisions regarding the court case where he was taking legal action against [the defendant].***

When last seen on 20 January 2016, his son reported that the court case was in progress and Mr Ng was upset and worried about the case.

[emphasis added in italics and bold italics]

35 On 24 December 2015, Mr Ng executed the Last Will. By this Will, he appointed the plaintiff as the executor and revoked the First Will. The defendant did not challenge the Last Will.

36 As noted at [33] above, on 26 August 2015, Mr Ng commenced this action. However, unfortunately, he was not able to see it through. On 11 February 2016, Mr Ng passed away from multiple injuries which he sustained in an apparent suicide. He was found on a grass patch behind the HDB block where he was living with the plaintiff. The plaintiff subsequently obtained an order that he be added as the plaintiff to this action in his capacity as the executor of the Last Will.

The parties' cases

37 The plaintiff's case was that the defendant had devised a scheme to fraudulently and/or wrongfully convert and/or misappropriate a total sum of \$2,487,071.28 (the aggregate of \$1,939,955.50, \$127,115.78 and \$420,000, the sums referred to in [20], [22] and [25] above) from Mr Ng. The defendant was thus a constructive trustee of the monies in the Joint Account to the extent of the sum of \$2,487,071.28. However, the plaintiff did not claim this full sum from the defendant but the lesser sum of \$1,782,701.32. This sum comprised:

- (a) the sum of \$1,662,500, which the defendant used to purchase the Eastwood Property (see [21] above) and;
- (b) the sum of \$120,201.32, which the defendant did not dispute she used for renovation, improvement and furnishing works ("the Works") carried out to the Eastwood Property.

The plaintiff claimed the defendant had withdrawn these sums from the Joint Account and used them without Mr Ng's knowledge and consent. The plaintiff accordingly sought a declaration that the defendant held these sums on trust for Mr Ng, and both personal and proprietary remedies in respect of these sums.

38 The defendant did not deny that the sum of \$2,487,071.28 was initially due to Mr Ng. Rather, her defence in relation to the sums claimed by the plaintiff was as follows:

- (a) First, Mr Ng had issued the 17 March 2010 cheque to her, for the sum of \$1,662,500, as a gift to fund the purchase of the Eastwood Property. He had done so with the knowledge and the intention that the Eastwood Property would be purchased in her sole name.

- (b) Second, Mr Ng had agreed to give her \$200,000 by way of a gift to carry out the Works. Yet she had only withdrawn \$120,201.32 from the Joint Account to pay for the same.

The defendant therefore maintained that she did not convert or misappropriate the sums claimed; and, that Mr Ng's estate was not entitled to their return.

The issues

39 The dispute in this action centred on the sum of \$1,662,500 which the defendant had used to purchase the Eastwood Property. The plaintiff averred that the defendant had withdrawn this sum from the Joint Account without Mr Ng's knowledge and consent (see [37] above). Nevertheless, the plaintiff retracted his initial claim that Mr Ng's signature on the 17 March 2010 cheque was forged (see [21] above). It was also clear from the following pieces of evidence, and I found, that Mr Ng had known and acknowledged or agreed that the Eastwood Property would be purchased with his monies:

- (a) First, according to the Medical Report, Mr Ng told Dr Ng that he "gave \$1.65 million of his money to [the defendant] to buy the [Eastwood Property]" (see [34] above).
- (b) Second, the Police Report records Mr Ng as having stated that when he was residing with the defendant at the Eastwood Property, he "was convinced that the [Eastwood Property] was entitled to me using the proceeds that was *[sic]* entitled to me" (see [31] above). This showed that Mr Ng knew his monies were used to purchase the Eastwood Property.
- (c) Third, Mr Ng asked the plaintiff to perform a title search on the Eastwood Property in March 2015 (see [28] above). This also indicated

that he knew that the Eastwood Property was purchased with his monies.

40 Thus, the principal issue in this case was the *basis* on which Mr Ng had acknowledged or agreed that the Eastwood Property would be purchased with his monies. Did Mr Ng *gift* the sum of \$1,662,500 to the defendant to fund her purchase of the Eastwood Property? Was the Eastwood Property to be purchased for and registered in Mr Ng’s name? I will refer to this issue as “the Purchase Price Issue”.

41 The second issue, pertaining to the sum of \$120,201.32 which was used for the Works (see [37(b)] above), was whether Mr Ng agreed to gift \$200,000 to the defendant to carry out the Works (“the Renovation Monies Issue”).

The Purchase Price Issue

42 I turned first to the Purchase Price Issue. I began by considering the defendant’s account, before turning to the evidence adduced by the plaintiff.

The defendant’s account of the events

43 According to the defendant, the following events transpired in the lead-up to the signing of the 17 March 2010 cheque:

- (a) On 5 December 2009, the defendant had a conversation with Mr Ng. He told her that he would give her money to buy a bigger house, as a “gesture of gratitude” for supporting and caring for him over the years, helping to save him from bankruptcy in 2003, and rescuing the Company in 2004 and resuscitating its business thereafter.

(b) The defendant then obtained the OTP for the Eastwood Property on 9 December 2009 and exercised it on 22 December 2009 (see [17(b)] and [17(d)] above). After exercising the OTP, she informed Mr Ng that she had purchased the Eastwood Property. Mr Ng approved of the purchase of the Eastwood Property, and told the defendant that he would pay for the balance of the purchase price as a gift to her.

(c) On 4 January 2010, Mr Ng formalised his intention to pay for the balance of the purchase price of the Eastwood Property. He did this by executing the First Will, and expressly stating therein that he gave \$1,662,500 to the defendant for her to purchase the Eastwood Property.

According to the defendant, Mr Ng then duly issued the 17 March 2010 cheque to her as a gift to finance her purchase of the Eastwood Property.

44 Having carefully considered the evidence and the parties' submissions, I did not accept the defendant's evidence. I could not accept that Mr Ng would have given such a substantial gift to the defendant, for two main reasons:

- (a) First, the defendant's account was internally inconsistent.
- (b) Second, I found the defendant's account inherently implausible.

The inconsistencies in the defendant's account

45 The defendant's account was internally inconsistent in several ways.

46 First, the defendant's account that Mr Ng had gifted her \$1,662,500 to purchase the Eastwood Property was inconsistent with her own evidence as to the purpose of the sale of the Jalan Raya Properties. According to the defendant, Mr Ng had wanted to sell 34 Jalan Raya because he had needed money to defend

Suit 315, which the plaintiff brought against Mr Ng and Mr Ng Teng in April 2009 (see [14] above). At trial, the defendant said that Mr Ng opened the Joint Account with her for a similar reason. He wanted her to continue defending Suit 315 in case he passed away. He “[could] not allow the defence to collapse because it [would] affect [Mr Ng Teng]”, who was also a defendant to Suit 315.

47 However, if the primary reason for the sale was to build a war chest for the defence of Suit 315, I found it difficult to believe that Mr Ng would have agreed to make such a substantial gift to the defendant on 5 December 2009, just two days after the OTP for the Jalan Raya Properties was issued, as she claimed (see [43(a)] above). The monies would have had to come from Mr Ng’s share of the proceeds of sale of the Jalan Raya Properties because, as I note at [57] below, that was Mr Ng’s principal source of wealth. In that light, I could not accept that Mr Ng would have agreed to *gift* the defendant such a substantial proportion of the proceeds of the sale on 5 December 2009.

48 The chronology of the events was of vital importance. The OTP for the Jalan Raya Properties was granted on 3 December 2009 (see [17(a)] above). At that stage, Suit 315 was very much alive and in early stages having been commenced in April 2009. I therefore found it difficult to believe that on 5 December 2009, just *two* days after the OTP for the Jalan Raya Properties was issued, Mr Ng would have been prepared to provide a substantial portion of the funds for the acquisition of the Eastwood Property by way of a gift. That would have undermined the very purpose of the sale according to the defendant, that is, to ensure Mr Ng had enough funds to defend Suit 315. Mr Ng did not even know at that stage whether the OTP for the Jalan Raya Properties would be exercised. There would therefore have been little reason for him to have committed to fund a substantial real estate acquisition.

49 On the defendant's account, it appeared that there was no discussion on 5 December 2009 regarding what the exact purchase price of the Eastwood Property would be. The assurance from Mr Ng appeared to be have been made blind, which would not have made sense, even if Mr Ng had anticipated that the OTP would be exercised, given that his only source of wealth was his share in the Jalan Raya Properties. His resources were limited and needed to fund the litigation costs for Suit 315. The sum in question turned out to be \$1,662,500 which amounted to more than 80% of the total sum of \$2,057,848.28 that Mr Ng was to receive from the proceeds of sale of the Jalan Raya Properties.

50 Furthermore, following from the point made in [49] above, if no specific amount was discussed during the alleged conversation on 5 December 2009, on what basis did the defendant proceed to commit to the purchase of the Eastwood Property on 9 December 2009 for the sum of \$1,750,000? The defendant would not have known how much Mr Ng would have been prepared and able to give her. She could not have been confident that he would pay whatever sum was necessary to complete the purchase of the Eastwood Property given the purpose of the sale of the Jalan Raya Properties and the proceeds thereof being Mr Ng's only source of wealth. Again, as noted earlier, there was no evidence that the defendant herself had the means to fund the purchase (see [17] above). In fact, on her own case, she had to draw on a budget promised by Mr Ng to pay for the Works (see [38(b)] above). Of course, if the defendant had trained her sights on Mr Ng's share of the proceeds of sale of the Jalan Raya Properties, much of this would be explicable. She would after all have known what Mr Ng's share would be and when it would be paid. The sale process was very much under her control as the grantee of the Power of Attorney. I consider this further below (see [78] below).

51 For these reasons, I found the defendant's account difficult to accept. I sought clarification from her as to why Mr Ng would have gifted such a large sum to her when he sold the Jalan Raya Properties to raise funds to defend Suit 315. She could only say that at the material time, Mr Ng had "already paid quite a lot for the legal fee[s]". I was unable to accept this evidence for three reasons:

(a) First, this response was inconsistent with the defendant's own case. If a substantial portion of the legal fees had already been paid, there would have been no need to sell the Jalan Raya Properties in the first place. The defendant could not have it both ways.

(b) Second, Suit 315 was only about eight months old at the time of the alleged conversation on 5 December 2009. It was still at a fairly early stage and was in fact only settled in early 2011 (see [25] above). The bulk of the legal fees would surely not have been incurred at that stage. No evidence was adduced by the defendant to back up her assertion.

(c) Third, one of the reasons that the defendant offered for the opening of the Joint Account was so that there were funds available to the defendant to continue defending Suit 315 in the event he passed away (see [46] and [54(b)] below). If Mr Ng had paid quite a lot of his legal fees by 5 December 2009, it is difficult to believe that he would have wanted to open the Joint Account for this purpose.

(d) Fourth, for the reasons given in [(b)] above, I found that Mr Ng would not have believed, in late 2009 and early 2010, that he had paid a large proportion of his legal fees for Suit 315. Therefore, it would not have made sense for him to gift a substantial proportion of the proceeds

of the sale of the Jalan Raya Properties to the defendant, if he had indeed sought to raise funds for the defence of Suit 315, as she contended.

I made the points in [(b)] and [(d)] above to the defendant during the trial. She did not give any satisfactory answer.

52 I now come to the second key inconsistency in the defendant's evidence. She claimed that Mr Ng had promised to pay for the Eastwood Property on 5 and 22 December 2009 (see [43(a)]–[43(b)] above). Yet if that were true, why would it have been necessary for Mr Ng to formalise that promise in the First Will? This was after all a promise by her very own father. Further, the Will was ambulatory coming into effect only upon Mr Ng's death. However, the defendant needed funding almost immediately. When the First Will was executed on 4 January 2010, the defendant had already exercised the OTP for the Eastwood Property on 22 December 2009 (see [17(d)] above); and the completion of the sale, which occurred on 30 March 2010 (see [23] above), was imminent.

53 When faced with these difficulties, the defendant, who insisted that the First Will was Mr Ng's idea, could only speculate that he might have feared that he would die within the few months before the sale was completed. I should make clear that I did not accept that Mr Ng was the driver behind the First Will. The evidence indicated that the defendant was the principal mover behind the First Will (see [83] below). In any case, the defendant's account did not make sense.

(a) First, it did not gel with her own case on why the Jalan Raya Properties were sold and why the Joint Account was opened. Critically, the First Will, which provided for the distribution of Mr Ng's entire

estate, *did not provide for a single cent to be set aside for the defence of Suit 315*. It must be remembered that according to the defendant, Mr Ng's reason for selling the Jalan Raya Properties was to obtain monies that he would be able to set aside for the defence of Suit 315 as he "[could] not allow the defence to collapse because it [would] affect [Mr Ng Teng]", his brother (see [46] above). If Mr Ng was concerned that he would pass away imminently, then on the defendant's own case, he would have set aside monies for the defence of Suit 315. However, he did not do so in the First Will.

(b) Second, it was not clear why Mr Ng would have become so concerned about his mortality between 5 December 2009, when he allegedly spoke to the defendant about a gift, and 4 January 2010, when the First Will was made, to the extent that he feared that he would pass on before the completion of the sale of the Jalan Raya Properties took place. Completion of the sale was after all imminent.

54 Finally, there were two other inconsistencies in the defendant's account:

(a) First, the defendant's account of Mr Ng's promises to gift her monies was inconsistent. In her defence, she referred to a single conversation with Mr Ng, on 5 December 2009, in which he allegedly promised to give her money to buy a bigger home. Yet in her affidavit of evidence-in-chief ("AEIC"), she alluded to a second conversation, on 22 December 2009, following the exercise of the OTP for the Eastwood Property, during which Mr Ng allegedly agreed to pay the balance of the price of the Eastwood Property. Also, it is strange that the defendant would have a follow up conversation with Mr Ng about the funding for the purchase of the Eastwood Property on 22 December 2009 when the

OTP was issued on 9 December 2009. Presumably, a second conversation would have taken place just before the OTP for the Eastwood Property was issued as the defendant would then have been able to discuss with Mr Ng the exact amount that was needed from him.

(b) Second, the defendant's account as to why the Joint Account was opened was inconsistent. At trial, she said that Mr Ng had wanted the Joint Account so that she could continue defending Suit 315 in the event that he passed away (see [46] above). However, in her AEIC, she stated that Mr Ng had instructed her to open the Joint Account for the more general reason that she was attending to his personal, business and estate matters under the Power of Attorney. I noted in this regard that the explanation in her AEIC did not sit well with the date on which the Power of Attorney was granted, 18 February 2009, *almost a year* before the Joint Account was opened on 4 January 2010 (see [13] above).

The inherent implausibility of the defendant's account

55 Moreover, leaving aside the internal inconsistencies in the defendant's evidence, I found her account intrinsically implausible for three reasons.

56 First, the defendant received \$290,993.33 from the sale of the Jalan Raya Properties in her own right. Mr Ng would have known that she had received a tidy sum from the proceeds of the sale of the Jalan Raya Properties. In the circumstances, I did not accept that he would have seen fit to bestow such a sizeable gift of money on the defendant as a "gesture of gratitude" for several reasons.

57 To begin with, giving the defendant such a large sum would have left Mr Ng very little for himself. Notably, it appeared that Mr Ng's only source of

wealth was his share of the proceeds from the sale of the Jalan Raya Properties; and at the material time in 2009, Mr Ng was already 82 years old.

58 Furthermore, and critically, at the time, *the defendant owned another property, a five-room HDB flat* (see [12] and [27] above). Having contemplated the prospect of mounting legal costs and applied for the sale of the Jalan Raya Properties to meet them, why would Mr Ng have given the defendant money to buy *another* house as a *gift*? The situation as regards Suit 315 was uncertain at that time. The defendant's explanation in this regard was that Mr Ng had originally desired to move into the HDB flat to live with her and her family. However, upon viewing the HDB flat, Mr Ng found it uncomfortable and thus decided to fund the defendant's purchase of a private property.

59 Yet this did not explain why Mr Ng would have *gifted* the defendant monies to buy a private property *in her own name*. It must be reiterated that barely two months earlier in October 2009, Mr Ng had only desired to sell 34 Jalan Raya. *He wanted to retain 36 Jalan Raya for himself as a roof over his head* (see [16] above). Why would Mr Ng, just after the OTP for the Jalan Raya Properties had been issued, suddenly feel that he needed to make a gift to the defendant when there was no indication that he had intended to make such a gift before? Particularly when (a) she did not need one; and (b) Mr Ng was in need of the monies himself? The defendant did not refer to any occasion before 5 December 2009 when Mr Ng had mentioned such a gift. What prompted the change of heart on 5 December 2009?

60 Both of the Jalan Raya Properties were sold against Mr Ng's original wish because of the court order which was made. Bearing Mr Ng's original intention in mind, it seemed more likely than not that after the sale of the properties, Mr Ng would have wanted to use his share of the proceeds to

purchase a property *in his own name* to have the roof over his head that he originally desired. Notably, during the trial, the defendant conceded that Mr Ng “definitely” wanted a house of his own.

61 For this reason and for the further reasons given in [69] and [73] below, I found that Mr Ng knew and acknowledged or agreed that the Eastwood Property would be purchased with his monies *on the basis that title to the Eastwood Property would be in his (sole) name*. On that premise, if Mr Ng had indeed wished to bestow a gift in the form of the Eastwood Property to the defendant, he would have willed it to her. That would have fulfilled both his desire to own a home, and his alleged wish to express his gratitude to her.

62 I would also add that it was not entirely clear what the defendant had done to warrant such a sizeable gift from Mr Ng. While she claimed that she had played a key role in the affairs of the Company during the period that it faced financial difficulties (from 2002 to 2004), the plaintiff denied this (see [10]–[11] above). It was undisputed that the plaintiff was the managing director of the Company since its inception; while the defendant joined the Company as a clerk (see [7] above). While I was prepared to accept that the latter had assisted in the Company’s affairs from 2002 to 2004, I struggled to accept that the defendant had played the pivotal role in resuscitating the Company that she claimed she did.

63 I now come to the second reason why I found the defendant’s account intrinsically implausible. Her evidence that Mr Ng gave her such a substantial sum as a gift was undercut by the fact that she purported to hold him to account for a staggering \$211,224.90 for expenses that he allegedly incurred during his stay at the Eastwood Property, including the cost of, amongst other things, his food, Chinese newspapers and *ang pows* (see [24(a)] above); and, in fact,

withdrew even more than this sum from the Joint Account (see [24(b)] above). If Mr Ng *had* given the defendant such a sizeable gift for the purchase of the Eastwood Property, why would she have taken his monies for his alleged expenses? And why would Mr Ng have readily accepted this state of affairs? There was no trace of gratitude in the defendant's conduct.

64 When pressed on this point during the trial, the defendant claimed that it had been Mr Ng's idea to pay for these expenses, adding that it had been his practice to give money to Mdm Goh when the family was living in the Jalan Raya Properties. This did not make any sense at all. First, the defendant agreed that Mr Ng had given money to Mdm Goh to run the household for the benefit of *the whole family*, and not for himself alone. She eventually admitted that this was quite different from Mr Ng agreeing to pay for *his* share of the household expenses. Second, and more importantly, the situation was completely different. It beggared belief that if Mr Ng had already gifted her \$1,662,500 to purchase the Eastwood Property, he would then have offered to pay for the expenses the defendant incurred while he lived there. Surely he would not have felt any obligation to the defendant after conferring such a generous gift upon her. I therefore did not accept the defendant's claim that it had been Mr Ng's idea to pay for his expenses. Further, it was significant that this was not a case of Mr Ng giving the defendant monies voluntarily. It was a case of her holding him to account for his expenses, and unilaterally withdrawing sums from the Joint Account and up to a point where it was almost completely drained. I would emphasise that the defendant's evidence on this point was of a piece with her evidence as a whole. I did not find her to be a credible witness at all and I therefore gave very little weight to her evidence.

65 Third, the defendant's account seemed just too convenient to be true. Even if Mr Ng had intended to reward her, I found it difficult to believe that Mr

Ng allegedly made this intention clear on 5 December 2009, just two days after the OTP for the Jalan Raya Properties was granted. Thus, the chronology of the key events in December 2009 undercut the defendant’s evidence.

66 For all the above reasons, I did not accept the defendant’s account. In that light, I turned to consider the evidence adduced by the plaintiff.

The evidence adduced by the plaintiff

67 The evidence adduced by the plaintiff fell into two broad categories:

(a) First, there was evidence in the form of the Letter, the Police Report and the Medical Report of what Mr Ng had told third parties. I shall refer to these three documents as “the Three Statements”.

(b) Second, there was circumstantial evidence which indicated that Mr Ng had not gifted \$1,662,500 to the defendant.

The Three Statements

68 The Three Statements were statements of what Mr Ng had told third parties. The plaintiff relied on these statements for the truth of their contents. The Three Statements were thus hearsay evidence. However, since Mr Ng had passed away, I found that the Three Statements fell within the exception to the hearsay rule in s 32(1)(j)(i) of the Evidence Act (Cap 97, 1997 Rev Ed) (“the Evidence Act”): they were statements made by a deceased person. The plaintiff did not issue the requisite notice under s 32(4)(b) of the Evidence Act read with O 38 r 4 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (“the Rules of Court”). However, the Court of Appeal has ruled that breach of this requirement can be cured under O 2 of the Rules of Court if the opposing party does not suffer prejudice which would render it unfair for the evidence to be admitted:

Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal [2015] 2 SLR 686 at [137]–[138]. In this case, the defendant did not contend that she would suffer such prejudice and I was satisfied that she did not. Thus, I turned to consider the contents of the Three Statements.

69 Though there were minor variations between the Three Statements, there was a common and continuing theme. In each statement, Mr Ng stated that the defendant had misappropriated his monies by using them to purchase the Eastwood Property *in her own name*. Significantly, in the Police Report, Mr Ng stated that he had been “convinced that the new unit was *entitled to me* using the proceeds that were entitled to me” (see [31] above). This indicated that he had acknowledged or agreed that the Eastwood Property would be purchased with his monies on the basis that title would be in his sole name (see [61] above).

70 During the trial, however, counsel for the defendant, Mr Phua Hoon Chong Justin (“Mr Phua”), suggested based on the Medical Report that Mr Ng may have intended to purchase the Eastwood Property with the defendant *jointly*. Mr Phua emphasised the following portion of the Medical Report:

[Mr Ng] was able to give details of the case and claimed that he had told his daughter, [the defendant], that he ***wanted to buy a house together with her*** but unfortunately he later found out that *she had not put his name in the ownership of the house at Eastwood*. He was able to give details of the house and that he gave \$1.65 million of his money to her to buy the house ... [emphasis added in italics and bold italics]

However, Mr Phua then admitted that it was not the defendant’s case (nor the plaintiff’s) that Mr Ng had intended to purchase the Eastwood Property with the defendant jointly. Furthermore, reading the Medical Report in its totality, I did not think it was possible to glean from it that Mr Ng had intended to buy the Eastwood Property with the defendant in their joint names. Mr Ng also did not

take this position in the Letter and the Police Report. As explained at [59] above, the fact that Mr Ng originally desired a house of his own also corroborates the indication in the Police Report (see [69] above) that Mr Ng intended that the Eastwood Property would be purchased in his sole name. Hence, I did not accept that Mr Ng intended to purchase the Eastwood Property with the defendant jointly.

71 I accorded some weight to Mr Ng's account of the events in the Three Statements for the following three reasons:

(a) First, the plaintiff testified that in taking statements from Mr Ng, his solicitors and the police had interviewed Mr Ng alone, without the plaintiff being present. Mr Ng did not rely on a written statement prepared beforehand in making the Police Report. I found the plaintiff to be a credible witness and therefore accepted his evidence on these points.

(b) Second, Dr Ng noted that Mr Ng was "clear and consistent in his account about the house" and found him mentally capable of making decisions regarding this suit (see [34] above). Similarly, there was no challenge to the Last Will, which was made on 24 December 2015 (see [35] above). This implied (which the defendant accepted) that Mr Ng was mentally capable and not under undue influence when he executed the Last Will. The Last Will was made at around the same time as Mr Ng's statements to Dr Ng, and not long after the Letter and the Police Report. The contents of the Letter and the Police Report were broadly consistent with the contents of the Medical Report. I therefore considered that the Three Statements accurately reflected Mr Ng's views regarding the purchase of the Eastwood Property.

(c) Third, in my judgment, in assessing the Three Statements, the following point was crucial. Mr Ng made these very serious allegations to third parties, including the police, against his own flesh and blood. This was about a father pointing the finger at his daughter. The defendant, on her case, had taken Mr Ng in after he fell out with the plaintiff in 2009 and had cared for him over the next few years. This was also the very child who, according to the defendant, saw Mr Ng and the Company through their financial malaise (see [10] above). What reason was there for Mr Ng to falsely malign her? The defendant could only say that the plaintiff persuaded Mr Ng to make false allegations against her. He had convinced Mr Ng, who had promised to gift her the Eastwood Property, to go back on his promise. I found this very difficult to believe. On the defendant's own account, the plaintiff had caused Mr Ng much anguish, taking him to "one of the lowest points in his life", by bringing Suit 315 against him. In this light, it seemed that the plaintiff was the last person who could have persuaded Mr Ng to make these serious and allegedly false claims against his own daughter. Further, it must be remembered that Mr Ng had been living under the defendant's roof at the Eastwood Property, and something must have triggered his departure. It is telling that he left after the results of the title search he had requested became known to him. I consider this further below (see [73] and [74]).

72 Thus, the Three Statements indicated that Mr Ng did not gift \$1,662,500 to the defendant for her to purchase the Eastwood Property *in her own name*. I then turned to the circumstantial evidence, which also indicated that Mr Ng did not gift this sum to the defendant as she claimed.

The circumstantial evidence

73 First, as noted at [28] above, upon meeting the plaintiff in March 2015, Mr Ng asked the latter to perform a title search on the Eastwood Property and was shocked when he found out that title was not in his name. This was critical. If Mr Ng had not intended and expected title to be in his name, there would have been no reason for him to ask the plaintiff to do a title search, let alone reason for him to be shocked when he learnt that title was not in his name. The very fact that he requested the title search indicated that, at least, he wanted confirmation that title to the Eastwood Property was in his name. That implied that he did not issue the 17 March 2010 cheque intending that it would be a gift to the defendant to finance her purchase of the Eastwood Property in her own name.

74 Second, I found it very telling that Mr Ng left the Eastwood Property soon after reuniting with the plaintiff, and after the title search was performed. In my view, the mere fact that Mr Ng and the plaintiff healed the breach between them did not explain why he would have left the Eastwood Property. Having carefully considered the evidence, it appeared that there were two reasons why Mr Ng left. First, the defendant's astonishing conduct in purporting to charge Mr Ng for all of his expenses in the Eastwood Property (see [24] above). Second, and perhaps more importantly, the fact that the title search revealed that title to the Eastwood Property was not in his name. This latter factor must have been the straw that broke the camel's back, driving Mr Ng to leave the Eastwood Property. This is in fact what the Police Report indicates. Mr Ng stated there that upon learning that title to the Eastwood Property was in the defendant's name, he began quarrelling with the defendant and left the Eastwood Property shortly thereafter (see [31] above).

75 For these reasons, I found that Mr Ng did not gift the sum of \$1,662,500 to the defendant to finance her purchase of the Eastwood Property in her own name. I found that he acknowledged or agreed to pay for the Eastwood Property on the basis that title to the property would be *in his sole name*.

76 Furthermore, having reviewed all the evidence, I was driven to several further findings. I shall now set out these findings and my reasons for them.

My further findings

77 The key events regarding the sale of the Jalan Raya Properties and the purchase of the Eastwood Property occurred in very quick succession (see [17] above). The defendant obtained the OTP for the Eastwood Property on 9 December 2009, less than a week after the OTP for the Jalan Raya Properties was granted on 3 December 2009. This attracted grave suspicion. During cross-examination, the defendant insisted that she only began searching for properties on 5 December 2009, after her alleged conversation with Mr Ng. I was unable to accept this for two reasons.

(a) First, I found it difficult to believe that the defendant identified, decided and agreed to make a significant real estate acquisition within *four* days. For the reasons given at [50] above, it is not clear how she would have known at which price point she should search.

(b) Second, there would have been no reason to rush once the alleged promise by Mr Ng was made on 5 December 2009.

78 The short time interval between the OTPs for the Jalan Raya Properties and the Eastwood Property suggested two things to me. First, the defendant had already identified the Eastwood Property and negotiated its purchase even

before the OTP for the Jalan Raya Properties was issued. She was waiting for that OTP to be issued before committing to the purchase of the Eastwood Property. She had her sights trained on Mr Ng's share of the proceeds of sale of the Jalan Raya Properties. In this regard, I noted that control of the sale of the Jalan Raya Properties was with the defendant pursuant to the Power of Attorney (see [13] above). The application for the sale of the Jalan Raya Properties was filed in October 2009, and the court order authorising the sale made on 12 November 2009 (see [16] above). The defendant would thus have had control over the process and could have, to a significant extent, determined when the Jalan Raya Properties would be sold. In those circumstances, she would have been in a position to source for properties such as the Eastwood Property ahead of the sale of the Jalan Raya Properties. Having considered the evidence, and taking into account all the difficulties with the defendant's case, I found that this was in fact what she did.

79 Second, it followed from this finding that the 5 December 2009 conversation did not trigger the search for the Eastwood Property. This in turn meant that the defendant was not truthful in her evidence that the conversation on 5 December 2009 was the trigger for her search for the Eastwood Property. This raised significant doubts over whether the 5 December 2009 conversation had indeed taken place. By the same token, I had serious doubts over whether the alleged conversation on 22 December 2009 took place as well.

80 I noted that the defendant sourced for the Eastwood Property while her family was in financial difficulties. I reiterate the absence of evidence as to her ability to fund the purchase on her own. At the time, her husband was a bankrupt (see [10] above). I thus found that the purchase of the Eastwood Property was entirely dependent on the defendant obtaining monies from Mr Ng.

81 I also noted that the Joint Account was opened on 4 January 2010, not long after the OTPs for the Jalan Raya Properties and the Eastwood Property were exercised (see [18] above). It was not clear why the Joint Account was even necessary. As I have noted (see [54(b)] above), the defendant's evidence on this point was inconsistent. It was undisputed that Mr Ng had his own personal bank account. The plaintiff's evidence was that it was not in "[Mr Ng's] nature to have a joint bank account". This was corroborated by the defendant's evidence that Mr Ng, to her knowledge, did not have any joint account with Mdm Goh.

82 Further, I noted that the First Will was executed on the very same day that the Joint Account was opened. This too was suspicious, given that it was unclear why the First Will was necessary to begin with (see [52]–[53] above).

83 In the light of these points, having carefully reviewed all the evidence, and bearing in mind the quality of evidence that was necessary to prove fraud, I reached the inexorable conclusion that the defendant devised a scheme to appropriate Mr Ng's monies. Her scheme was to use those monies to fund the purchase of the Eastwood Property. The scheme subsequently enlarged to encompass the expenses that she incurred thereafter. I found that she was the driver behind the First Will, and that she procured Mr Ng to sign the 17 March 2010 cheque. She did all this to cloak her plan with the veneer of legality and propriety. In making this finding, I was fortified by the fact that the defendant purported to hold Mr Ng to account for expenses that he allegedly incurred during his stay at the Eastwood Property from 2010 to 2015. Moreover, the defendant's "accounts" of Mr Ng's alleged expenses did not even match the sums that were withdrawn from the Joint Account allegedly as reimbursement for his expenses (see [24] above). In my judgment, all this was further proof of the defendant's scheme to drain her father of his monies.

84 I now turn to the Renovation Monies Issue.

The Renovation Monies Issue

85 The defendant claimed that in April 2010, Mr Ng verbally gave her a budget of \$200,000 as a gift to carry out the Works. The plaintiff denied this; though he admitted that in April or May 2010, the defendant and/or her husband asked Mr Ng for monies for minor works to the Eastwood Property.

86 For similar reasons to those given above, I found that Mr Ng did not agree to give the defendant \$200,000 in April 2010 to carry out the Works:

(a) First, by April 2010, Mr Ng had parted with a substantial sum for the purchase of the Eastwood Property. In that light, I found it very unlikely that he would have agreed to gift \$200,000 to the defendant for the Works. On the defendant's case, he would have been concerned about funding the defence of Suit 315. It is worth pointing out that by April 2010, the total amount that Mr Ng had deposited in the Joint Account was \$2,067,071.28. With the gift for \$200,000, Mr Ng would have been left with only \$204,571.28, hardly sufficient for a war chest for Suit 315 let alone his expenses. But even leaving that aside, I could not accept that Mr Ng gave the defendant a further gift of \$200,000. I noted that the Works included items such as converting a pool to a fish pond, which were hardly urgent or necessary works for the Property. It must be reiterated that the proceeds from the sale of the Jalan Raya Properties constituted the principal asset that Mr Ng had (see [57] above). It is very difficult to believe that he would have agreed to spend what remained on the Works as a further gift to the defendant.

(b) Second, according to the defendant, she had arranged for some of the Works, such as a walking ramp, to make the house comfortable for her father. The thrust of her account in gist was that the Works were carried out of filial piety. But on that premise, I found it strange that Mr Ng would have agreed to pay for the Works.

(c) Third, there was no indication in the Three Statements that Mr Ng agreed to give the defendant \$200,000 as a gift for the Works.

(d) Fourth, as noted above, I did not find the defendant to be a credible witness. I thus gave very little weight to her evidence that Mr Ng gifted her a budget of \$200,000. I would add that the defendant did not adequately explain why there were separate conversations regarding the purchase price of the Eastwood Property and the Works.

87 Having made findings on the Purchase Price Issue and the Renovation Monies Issue, I turned to consider the appropriate orders.

My orders

88 As I have noted at [37] above, the plaintiff's case was that the defendant had devised a scheme to fraudulently convert and/or misappropriate a total sum of \$2,487,071.28 from Mr Ng, and was therefore a constructive trustee of the monies in the Joint Account to this extent. The plaintiff sought a declaration to this effect and both personal and proprietary remedies.

89 To recapitulate, I made the following main findings of fact:

(a) I found that the defendant had devised a scheme to appropriate Mr Ng's monies and, to this end, procured Mr Ng to sign the 17 March 2010 cheque (see [83] above). Mr Ng had agreed or acknowledged that

the Eastwood Property would be purchased with his monies, but on the basis that title to the Property would be in his sole name (see [75] above).

(b) I found that Mr Ng did not agree to give the defendant \$200,000 in April 2010 to carry out the Works (see [86] above).

90 In *Guy Neale and others v Nine Squares Pty Ltd* [2015] 1 SLR 1097 (“*Guy Neale*”) at [124], the Court of Appeal made the following observations regarding (institutional) constructive trusts:

124 An institutional constructive trust arises by operation of law. Generally speaking, it is imposed whenever *the defendant knows that the property in question has been dealt with in an unconscionable manner*. ... Millett LJ ventured to offer a general definition of the doctrine of an institutional constructive trust in *Paragon Finance plc v DB Thakerar & Co* [1999] 1 All ER 400 (“*Paragon Finance*”) at 409:

A constructive trust arises by operation of law whenever the circumstances are such that it would be ***unconscionable for the owner of property (usually but not necessarily the legal estate) to assert his own beneficial interest in the property and deny the beneficial interest of another***.

[emphasis added in italics and bold italics]

91 On the facts, applying the test stated by Millett LJ in *Paragon Finance* which the Court of Appeal endorsed in *Guy Neale*, I found that the defendant held the following sums on constructive trust for the plaintiff:

(a) the sum of \$1,662,500, which the defendant withdrew from the Joint Account and applied towards the purchase price of the Eastwood Property; and

(b) the aggregate sum of \$120,201.32 which the defendant withdrew from the Joint Account and used to pay for the Works.

I accordingly granted a declaration in these terms.

92 In further written submissions, the plaintiff elected to pursue proprietary remedies. The present action was bifurcated. Taking guidance from the order made by the Court of Appeal in *Caltong (Australia) Pty Ltd (formerly known as Tong Tien See Holding (Australia) Pty Ltd) and another v Tong Tien See Construction Pte Ltd (in liquidation) and another appeal* [2002] 2 SLR(R) 94 at [65], I made the following orders:

- (a) I ordered the defendant to account to the plaintiff for the sums in [91(a)] and [91(b)] above, including (1) the use of such monies (with details of to whom such monies were paid, when such monies were paid, the quantum of payment and the reasons for payment) and (2) all properties and/or benefits and/or assets obtained from the use of such monies.
- (b) I ordered an inquiry to trace the assets or proceeds into which the sums in [91(a)] and [91(b)] above have been converted.

93 In relation to costs, the plaintiff claimed costs based on a letter which he claimed was an offer to settle for the purposes of O 22A of the Rules of Court. This proposed as a compromise that a 55% share in the Eastwood Property be transferred to the plaintiff in satisfaction of the claim. I considered that it would not be possible to assess the effect of this letter until after the account and inquiry was heard and decided. I therefore deferred the issue of costs until then.

Shriniwas Rai and Ravi Arumugam (Wong Alliance LLP) for the
plaintiff;
Phua Hoon Chong Justin (Justin Phua Tan & Partners) for the
defendant.

Annex

A.1 The following table shows the withdrawals from the Joint Account between 17 March 2010 and 13 May 2013:

Date	Pre-withdrawal balance	Sum withdrawn	Defendant's description of withdrawal	Defendant's remarks	Post-withdrawal balance
17/03/2010	\$1,940,946.18	\$39,800.00	Messrs William Poh & Louis Lim – Refund of 1% deposit of estate	Signed by Mr Ng	\$1,901,146.18
17/03/2010	\$1,901,146.18	\$1,662,500.00	The Defendant for purchase of the Eastwood house	Signed by Mr Ng	\$238,646.18
19/03/2010	\$258,546.18	\$15,501.00	Messrs Sng & Co – Legal fees for Suit 315	Signed by the defendant	\$243,045.18
24/03/2010	\$243,045.18	\$950.00	Mega discount store	Signed by the defendant – withdrawal from budget	\$242,095.18
25/04/2010	\$349,368.09	\$40,000.00	Reimbursement of good will compensation to resettle 4 tenants	Signed by the defendant	\$309,368.09
25/05/2010	\$309,463.84	\$40,000.00	Contribution to renovation	Signed by the defendant – withdrawal from budget	\$269,463.84
03/06/2010	\$269,544.48	\$16,175.30	Messrs William Poh & Louis Lim – Legal fees for	Signed by the defendant	\$253,369.18

Date	Pre-withdrawal balance	Sum withdrawn	Defendant's description of withdrawal	Defendant's remarks	Post-withdrawal balance
			Suit 315		
23/06/2010	\$253,369.18	\$35,729.00	Contribution to renovation	Signed by the defendant – withdrawal from budget	\$217,640.18
05/07/2010	\$217,703.27	\$13,904.70	Messrs Sng & Co – Legal fees for Suit 315	Signed by the defendant	\$203,798.57
02/08/2010	\$203,850.06	\$1,735.55	IRAS	Signed by the defendant – Mr Ng's expenses	\$202,114.51
24/08/2010	\$202,114.51	\$638.66	SP Services – utilities for the assets	Signed by the defendant	\$201,475.85
27/08/2010	\$201,475.85	\$428.80	Messrs Sng & Co – Legal fees for Suit 315	Signed by the defendant	\$201,047.05
22/09/2010	\$201,097.32	\$17,927.85	Messrs Adept Public Accounting Corporation for Suit 315	Signed by the defendant	\$183,169.47
08/10/2010	\$183,217.36	\$17,400.00	Messrs Sng & Co – Legal fees for Suit 315	Signed by the defendant	\$165,817.36
12/10/2010	\$165,817.36	\$14,679.32	Contribution to renovation	Signed by the defendant – part withdrawal	\$151,138.04

Date	Pre-withdrawal balance	Sum withdrawn	Defendant's description of withdrawal	Defendant's remarks	Post-withdrawal balance
				from budget	
25/10/2010	\$151,138.04	\$460.00	Messrs Sng & Co – Legal fees for Suit 315	Signed by the defendant	\$150,678.04
19/01/2011	\$150,756.31	\$75,916.50	Messrs Adept Public Accounting Corporation for Suit 315	Signed by the defendant	\$74,839.81
21/03/2011	\$74,867.57	\$32,100.00	Messrs Adept Public Accounting Corporation for Suit 315	Signed by the defendant	\$42,767.57
09/06/2011	Deposit of \$420,000.00 (settlement sum)				
14/06/2011	\$462,836.66	\$68,178.90	Messrs William Poh & Louis Lim – Legal fees for Suit 315	Signed by the defendant	\$394,657.76
14/06/2011	\$394,657.76	\$72,681.10	Messrs Cheah Associates LLC – Legal fees for Suit 315	Signed by the defendant	\$321,976.66
16/06/2011	\$321,976.66	\$3,800.00	Kwoi Heng – courtyard roof leak repair	Signed by the defendant – part withdrawal from budget	\$318,176.66
28/06/2011	\$318,176.66	\$3,091.63	CASH	Cash cheque	\$315,085.03

Date	Pre-withdrawal balance	Sum withdrawn	Defendant's description of withdrawal	Defendant's remarks	Post-withdrawal balance
				signed and drawn by the defendant – for Mr Ng's expenses	
01/07/2011	\$315,141.33	\$36,358.31	Ng Teng – Reimbursement for Suit 315	Signed by the defendant – per instruction from Mr Ng for salary in arrears and claims	\$278,873.02
01/07/2011	\$278,873.02	\$26,483.31	The Defendant – Reimbursement for Suit 315	Signed by the defendant – per instruction from Mr Ng for salary in arrears	\$252,299.71
14/07/2011	\$252,299.71	\$623.17	AIA insurance	Signed and drawn by the defendant – Mr Ng's expenses	\$251,676.54
25/07/2011	\$251,676.54	\$1,581.30	Ng Teng – Reimbursement for Suit 315	Signed by the defendant – per Mr Ng's instructions	\$250,095.24

Date	Pre-withdrawal balance	Sum withdrawn	Defendant's description of withdrawal	Defendant's remarks	Post-withdrawal balance
26/07/2011	\$250,095.24	\$2,000.00	Bhudda Bummi Buddhist Centre - donation	Cash cheque signed and drawn by the defendant – per Mr Ng's instructions	\$248,095.24
06/08/2011	\$248,146.29	\$1,332.00	Eden Lifestyle – Landscaping/Plants	Signed by the defendant – part withdrawal from budget	\$246,814.29
23/11/2011	\$246,933.35	\$9,600.00	Onizer pools – convert pool to fish pond	Signed by the defendant – part withdrawal from budget	\$237,333.35
29/02/2012	\$237,392.77	\$4,543.00	Kwoi Heng Renovation Contractor Repair Gate, Driveway	Signed by the defendant – part withdrawal from budget	\$232,849.77
23/04/2012	\$232,877.26	\$26,700.00	The Defendant's reimbursements for allowance from 15-12-2009 to 06-06-2011 17.8 months @\$1500 per	Cash cheque signed and drawn by the defendant	\$206,177.26

Date	Pre-withdrawal balance	Sum withdrawn	Defendant's description of withdrawal	Defendant's remarks	Post-withdrawal balance
			month		
20/07/2012	\$206,225.84	\$632.17	AIA insurance	Signed and drawn down by the defendant – Mr Ng's expenses	\$205,602.67
22/11/2012	\$205,664.94	\$4,880.00	Kwoi Heng Renovation Contractor Repair	Signed by the defendant – part withdrawal from budget	\$200,784.94
06/12/2012	\$200,799.89	\$2,000.00	Water Proofing for the Eastwood House	Cash cheque signed by the defendant – part withdrawal from budget	\$198,799.89
26/12/2012	\$198,799.89	\$2,688.00	Yong Ping Renovation – Household Repair	Cash cheque signed by the defendant – part withdrawal from budget	\$196,111.89
13/05/2013	\$196,172.87	\$193,172.87	The Defendant-Reimbursement for the Plaintiff's cash expenses	Paid and signed by the defendant	\$3,000.00

