

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

**[2021] SGHC 194**

Suit No 1103 of 2019

Between

Tay Nguang Kee Serene

*... Plaintiff*

And

- (1) Tay Yak Ping
- (2) Tay Sia Yong

*... Defendants*

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**JUDGMENT**

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[Trusts] — [Resulting trusts] — [Presumed resulting trusts]  
[Limitation Of Actions] — [Particular causes of action] — [Trust property]  
[Civil Procedure] — [Pleadings]  
[Equity] — [Defences] — [Laches]

## TABLE OF CONTENTS

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<b>FACTS</b> .....	<b>2</b>
<b>THE PARTIES' CASES</b> .....	<b>5</b>
<b>ISSUES TO BE DETERMINED</b> .....	<b>8</b>
<b>ISSUE 1: WHETHER THE PURCHASE OF VALLEY APARTMENT WAS PAID FOR USING THE PROCEEDS OF SERENE LEATHER</b> .....	<b>9</b>
<b>ISSUE 2: WHETHER SERENE LEATHER WAS OWNED SOLELY BY SERENE</b> .....	<b>28</b>
<b>ISSUE 3: WHETHER THE SUM IS HELD ON TRUST FOR SERENE</b> .....	<b>35</b>
<b>ISSUE 4: WHETHER SERENE'S CLAIM IS BARRED BY THE LIMITATION ACT OR THE DOCTRINE OF LACHES</b> .....	<b>38</b>
<b>THE LIMITATION ACT</b> .....	<b>38</b>
<b>THE DOCTRINE OF LACHES</b> .....	<b>43</b>
<b>CONCLUSION</b> .....	<b>49</b>

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**Tay Nguang Kee Serene**  
**v**  
**Tay Yak Ping and another**

**[2021] SGHC 194**

General Division of the High Court — Suit No 1103 of 2019  
Chan Seng Onn J  
6–9, 13, 14 April 2021, 4 June 2021

17 August 2021

Judgment reserved.

**Chan Seng Onn J:**

1 Yet again, this court has the unpleasant task of witnessing a bitter dispute between family members over money. It is not uncommon in such disputes to find that the events are heavily contested, span over several years and lack documentation. This court has to carefully evaluate the credibility of the parties to ascertain the truth from the disparate versions of events presented.

2 In this suit, the plaintiff, Tay Nguang Kee Serene (“Serene”) claims that she started a business selling leather goods, Serene Leather. Since her business was successful, she told her parents, Goh Ah Moi (“Mother”) and Tay Sia Yong (“Father”), to use the proceeds from Serene Leather and purchase an apartment for their family to live in. An apartment at 18 Tong Watt Road (the “Valley Apartment”) was subsequently purchased by her parents and successfully sold in an *en bloc* exercise. In March 2006, a major part of the moneys from the sale

of Valley Apartment was used to purchase another private property, an apartment at 24 River Valley Close (the “Pacific Mansion Property”), in the joint names of the defendants, Serene’s younger brother, Tay Yak Ping (“Yak Ping”) and Father. Subsequently, the Pacific Mansion Property was also sold in an *en bloc* exercise for a sum of \$3,268,739.39 (the “Sum”).<sup>1</sup> She thus seeks a declaration that Yak Ping and Father, collectively referred to in this Judgment as the Defendants, hold the Sum on resulting trust for her. Alternatively, she submits that the Defendants hold the Sum on a common intention construction trust and/or an express trust for her.

3 By the time of this suit, Father had lost mental capacity. Yak Ping acts as Father’s litigation representative. In their defence, Yak Ping claims that Serene Leather was Father’s family business and the moneys used to purchase Valley Apartment and subsequently Pacific Mansion was Father’s own money. Thus, Serene has no claim to the Sum. In the alternative, Yak Ping submits that Serene’s claim is time barred under s 22(2) of the Limitation Act (Cap 163, 1996 Rev Ed) (the “Limitation Act”) and/or the doctrine of laches.

## Facts

4 Father carried on a wholesale bamboo business selling bamboo poles. He also sold bamboo sticks for the making of paper houses and miniature flags during the lunar seventh month festivities.<sup>2</sup> With his income from the bamboo business, Father supported Mother and his seven children. The seven children refers to Tay Yak Hoe (“Yak Hoe”) being the eldest, Tay Jee Soon (“Jee Soon”),

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<sup>1</sup> Affidavit by Tay Yak Ping dated 11 January 2021 (“Yak Ping’s affidavit”) at p 78.

<sup>2</sup> Affidavit by Tay Nguang Kee Serene dated 10 February 2021 (“Serene’s affidavit”) at para 13; Yak Ping’s affidavit at para 2; Affidavit by Tay Nguang Keow dated 10 February 2021 (“Nguang Keow’s affidavit”) at para 8; Affidavit by Tay Lah Moi dated 10 February 2021 (“Lah Moi’s affidavit”) at para 8.

Tay Mui Kiah (“Mui Kiah”), Tay Lah Moi (“Lah Moi”), Tay Nguang Keow (“Nguang Keow”), Serene and Yak Ping being the youngest (in that order). Since 1970, the family lived in the first floor of a rented two-storey shophouse at Mohamed Sultan Road (the “Mohamed Sultan Property”).<sup>3</sup> By 1987, Yak Hoe, Jee Soon, Mui Kiah and Lah Moi had all married and moved out.<sup>4</sup> Unfortunately, Yak Hoe passed away from illness on 14 August 1987.<sup>5</sup>

5 On 12 December 1987, Serene registered Serene Leather as a sole proprietorship.<sup>6</sup> According to the Accounting and Corporate Regulatory Authority (“ACRA”) records, Jee Soon was added as a partner in Serene Leather on 18 December 1987. Father and Yak Ping were added as partners in Serene Leather on 13 April 1988. However, according to Serene’s recollection, Jee Soon was added in March or April 1988 and Father and Yak Ping’s names were added in June or July 1988 but Father “used his accountant to backdate the date”.<sup>7</sup> There was no written partnership agreement between them. Serene Leather operated from a shop at Westin Plaza Hotel from February 1988.<sup>8</sup> Proceeds from Serene Leather were initially banked in. After a few months, the proceeds were brought home to Mother in cash for safekeeping.<sup>9</sup>

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<sup>3</sup> Yak Ping’s affidavit at para 3; Transcript (6 April 2021) at p 87 (lines 10 to 11).

<sup>4</sup> Transcript (6 April 2021) at pp 88 (lines 9 to 32) and 90 (lines 21 to 28).

<sup>5</sup> Exhibit P10.

<sup>6</sup> Agreed Bundle of Documents Volume 1 (“ABOD Vol 1”) at p 208; Serene’s affidavit at para 33.

<sup>7</sup> Transcript (6 April 2021) at p 47 (lines 18 to 25).

<sup>8</sup> Yak Ping’s affidavit at para 5; Serene’s affidavit at paras 25 and 33.

<sup>9</sup> Yak Ping’s affidavit at para 6; Serene’s affidavit at paras 37 to 38; Transcript (6 April 2021) at p 72 (lines 17 to 25).

6 Subsequently, Father, Mother and Yak Ping purchased Valley Apartment. The option for the purchase of Valley Apartment dated 17 September 1988 was initially made out to the Defendants only. The purchase price was \$270,000.<sup>10</sup> Mother's name was subsequently included in the purchase of Valley Apartment.<sup>11</sup> The Overseas Union Bank Limited (the "Bank"), now defunct, granted a five-year mortgage of \$150,000 to the Defendants and Mother.<sup>12</sup> The legal title of Valley Apartment was held by Father, Mother and Yak Ping as tenants-in-common in the following respective 50:25:25 shares.<sup>13</sup> Around end 1988, Father, Mother, Nguang Keow, Serene and Yak Ping moved from the Mohamed Sultan Property to Valley Apartment. By this time, Jee Soon, Lah Moi and Mui Kiah had gotten married and moved out.<sup>14</sup>

7 On 6 May 1994, Mother made a will giving her share of Valley Apartment to Jee Soon, Lah Moi and Yak Ping in equal shares. When she passed away on 20 April 1996, her share of Valley apartment was transferred accordingly to Jee Soon, Lai Moi and Yak Ping. As such, the legal title of Valley apartment was then owned in the following shares by:<sup>15</sup>

- (a) Father (1/2 share);
- (b) Yak Ping (1/3 share);
- (c) Jee Soon (1/12 share); and

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<sup>10</sup> ABOD Vol 1 at p 146.

<sup>11</sup> ABOD Vol 1 at p 148.

<sup>12</sup> ABOD Vol 1 at p 149.

<sup>13</sup> Yak Ping's affidavit at para 9.

<sup>14</sup> Yak Ping's affidavit at para 11; Serene's affidavit at para 58.

<sup>15</sup> Yak Ping's affidavit at para 14 and pp 27 to 41.

(d) Lah Moi (1/12 share).

8 From 1997 to 2004, Serene went overseas to pursue her business interests.<sup>16</sup> In December 2005, Valley Apartment was sold in an *en bloc* exercise for a sum of \$898,403.<sup>18</sup> which was subsequently paid out to Father, Yak Ping, Lai Moi and Jee Soon in accordance with their respective shares stated above.<sup>17</sup>

9 Around March 2006, the Defendants purchased the Pacific Mansion Property for \$670,000.<sup>18</sup> It is undisputed that this was mostly paid from the *en bloc* sale proceeds of Valley Apartment except for a sum of \$44,000 which was paid from Yak Ping’s Central Provident Fund (“CPF”) account. From this CPF sum, \$17,700 was paid towards the stamp fee while \$26,300 was paid towards the purchase price itself.<sup>19</sup> In March 2018, the Pacific Mansion Property was also sold in an *en bloc* exercise for the Sum.<sup>20</sup>

### **The parties’ cases**

10 Serene’s case is that the Defendants hold the Sum on resulting trust for her. Alternatively, she claims a constructive and/or express trust over the Sum. Serene was the sole owner of Serene Leather.<sup>21</sup> While Father, Jee Soon and Yak Ping were included as partners in Serene Leather, they were nominee partners only included for security, tax and administrative purposes.<sup>22</sup> Mother requested

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<sup>16</sup> Serene’s affidavit at paras 77 to 78.

<sup>17</sup> Yak Ping’s affidavit at para 15 and pp 42 to 49.

<sup>18</sup> Serene’s affidavit at paras 109; Yak Ping’s affidavit at para 21.

<sup>19</sup> Yak Ping’s affidavit at para 21.

<sup>20</sup> Yak Ping’s affidavit at para 23.

<sup>21</sup> Plaintiff’s closing submissions dated 20 May 2021 (“PCS1”) at para 4; Plaintiff’s reply submissions dated 4 June 2021 (“PCS2”) at para 2.

<sup>22</sup> PCS1 at para 80.

that the proceeds from Serene Leather be brought home in cash for safekeeping because Mother and Father did not approve of Serene’s boyfriend, a Japanese who was a manager of a Japanese travel agency, (the “Boyfriend”) at that time and were worried that he would cheat her or lead her astray. As Serene was only 25 years old then, she complied with this.<sup>23</sup>

11 Serene Leather did very well and had monthly profits of between \$7,911.31 to \$47,626.80. By Serene’s estimation, she passed around \$2,000,000 to Mother for safekeeping over a period of ten years.<sup>24</sup> Around three to four months after Serene Leather was started, Serene told her parents to use the proceeds from Serene Leather and purchase an apartment for their family to live in. Father and Mother were very happy after finding Valley Apartment which was close in proximity to the Mohamed Sultan Property.<sup>25</sup> They proceeded to purchase Valley Apartment with the moneys from Serene Leather.<sup>26</sup> Father and Mother were afraid that Serene’s Boyfriend would be able to get some share of Valley Apartment if Serene and her Boyfriend married and later divorced. Therefore, they did not want to include Serene’s name in the legal title. Serene consented to this but told her parents that if “anyone’s name was to be added, it would be hers; and if anyone else’s name was to be added, they would have to get her permission”.<sup>27</sup>

12 After Valley Apartment was sold via *en bloc* and its sale proceeds split accordingly between Father, Yak Ping, Lai Moi and Jee Soon, Serene allowed

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<sup>23</sup> Serene’s affidavit at paras 34 to 39.

<sup>24</sup> Serene’s affidavit at paras 46 to 55.

<sup>25</sup> Serene’s affidavit at paras 56 to 57.

<sup>26</sup> Serene’s affidavit at para 58.

<sup>27</sup> PCS2 at para 2.

Jee Soon and Lah Moi to keep their shares of the sale proceeds. However, she wanted the shares of the sale proceeds paid out to Father and Yak Ping to be returned to her since she paid for the whole purchase price of Valley Apartment. At a meeting at Lah Moi's place a few days after the sale proceeds were paid out and in the presence of Lah Moi and Nguang Keow, Father said that having Yak Ping's name in Valley Apartment was useless and the moneys were not his. In the future, it would all be Serene's.<sup>28</sup> Father also said that he wanted to purchase another private property using the Valley Apartment proceeds and that whatever property he purchased would still be Serene's. In reliance of Father's words and Nguang Keow's persuasion to keep the peace in the family, Serene did not pursue a claim for the moneys at that time.<sup>29</sup> The Defendants subsequently purchased the Pacific Mansion Property using the sale proceeds from Valley Apartment.<sup>30</sup>

13 In contrast, Yak Ping claims that there is no resulting and/or constructive and/or express trust over the Sum held for Serene.<sup>31</sup> He claims that Serene Leather was not owned solely by Serene but was Father's family business.<sup>32</sup> Father did not pay for Valley Apartment using the proceeds from Serene Leather.<sup>33</sup> Father said that since he had used some of his money to provide his sons, Yak Hoe and Jee Soon each with a place to live, he would also use some of his money to provide Yak Ping with a place to live. Father paid for Valley

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<sup>28</sup> Transcript (8 April 2021) at p 45 (lines 13 to 21).

<sup>29</sup> PCS2 at para 2.

<sup>30</sup> PCS2 at para 2.

<sup>31</sup> Defendants' closing submissions dated 19 May 2021 ("DCS1") at para 39; Defendants' reply submissions dated 4 June 2021 ("DCS2") at para 4.

<sup>32</sup> DCS1 at paras 14 to 15.

<sup>33</sup> DCS1 at para 36.

Apartment with his own money and included Yak Ping's name in Valley Apartment.<sup>34</sup>

14 In any case, Serene's claim is barred by the Limitation Act and/or the doctrine of laches. Yak Ping submits that s 22(2) of the Limitation Act bars Serene's claim on the basis that six years have elapsed from the date the right of action accrued.<sup>35</sup> Further, since Serene could have sued since 1988 or 2006 but did not do so until the end of 2019, there is a substantial time lapse which has caused prejudice to the defence. Father is no longer able to give evidence, Mother has passed away, relevant documents have been lost and there would be a windfall to Serene from her own delay. Thus, the doctrine of laches also bars Serene's claim.<sup>36</sup>

#### **Issues to be determined**

15 Based on the parties' submissions, four main issues arise for my determination:

- (a) whether the purchase of Valley Apartment was paid for using the proceeds of Serene Leather;
- (b) whether Serene Leather was owned solely by Serene;
- (c) whether the Sum is held on trust for Serene; and
- (d) whether Serene's claim is barred by the Limitation Act or the doctrine of laches.

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<sup>34</sup> Yak Ping's affidavit at paras 8 to 9.

<sup>35</sup> DCS1 at para 66.

<sup>36</sup> DCS1 at para 65.

**Issue 1: Whether the purchase of Valley Apartment was paid for using the proceeds of Serene Leather**

16 I turn first to address the source of funds used to purchase Valley Apartment. Serene submits that the proceeds of Serene Leather were used to purchase Valley Apartment while Yak Ping submits that Father’s own money was used instead.

17 Serene testifies that, three to four months after she started Serene Leather, she told Father and Mother to use the proceeds of Serene Leather to buy an apartment valued below \$500,000 for their family to live.<sup>37</sup> Father and Mother were very happy when they told her that they had found Valley Apartment, which was close to the Mohamed Sultan Property. She recalls going down with Father and Mother to a law office in Colombo Court and issuing a cheque of \$50,000 from Serene Leather as payment for the deposit and option to purchase for Valley Apartment. She again told her parents to use the proceeds from Serene Leather to pay the rest of the purchase price.<sup>38</sup> She said that there was sufficient money to pay the rest of the purchase price and a loan was not required.<sup>39</sup>

18 Due to her parents’ fear that her Boyfriend would be entitled to Valley Apartment should they marry and subsequently divorce, Serene consented to having the legal title of Valley Apartment put in Father and Mother’s names. She told her parents that if “anyone’s name was to be added, it would be hers; and if anyone else’s name was to be added, they would have to get her

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<sup>37</sup> Serene’s affidavit at paras 56 to 59; Transcript (6 April 2021) at p 47 (lines 26 to 28).

<sup>38</sup> Serene’s affidavit at paras 56 to 59 and 65; Transcript (6 April 2021) at p 47 (lines 28 to 31).

<sup>39</sup> Transcript (7 April 2021) at p 111 (lines 10 to 11).

permission”. However, she was unaware that her parents included Yak Ping’s name as an owner of Valley Apartment or that they had taken out a mortgage with the Bank.<sup>40</sup> Not only did Father not have sufficient money to pay the initial cash payment of \$120,000, Serene submits that the repayment of the mortgage instalments were also taken from the proceeds of Serene Leather.<sup>41</sup> She says that based on Father’s bamboo business, he would not have been able to pay the monthly instalments of \$2,800 to \$2,900 for five years without using the proceeds from Serene Leather.<sup>42</sup> Father did not even have \$50,000 to loan Serene to start Serene Leather but had to borrow the money from Hiap Heng, Father’s friend who was a coffin maker and in the funeral business (“Hiap Heng”).<sup>43</sup> Father and Mother were very grateful to Serene for buying Valley Apartment and told her neighbours about that.<sup>44</sup>

19 In contrast, Yak Ping argues that the fact that Father registered himself, Mother and Yak Ping as co-owners of Valley Apartment negates Serene’s assertion that she told Father and Mother to use proceeds from Serene Leather to pay the required purchase price.<sup>45</sup> Instead, this must mean that Father did not regard the money used to pay for Valley Apartment as belonging to Serene.<sup>46</sup> Following the sale of Valley Apartment, Serene requested for money but Father refused her request. This shows that Father used his own money to pay for

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<sup>40</sup> Serene’s affidavit at paras 60 to 63.

<sup>41</sup> Serene’s affidavit at paras 63 to 64; Transcript (7 April 2021) at p 124 (lines 8 to 30) to 125.

<sup>42</sup> Transcript (7 April 2021) at p 113 (lines 5 to 12); Transcript (13 April 2021) at p 53 (lines 3 to 16).

<sup>43</sup> Transcript (7 April 2021) at pp 125 (lines 30 to 32) to 126 (lines 1 to 19).

<sup>44</sup> Transcript (7 April 2021) at pp 123 (lines 23 to 28) and 124 (lines 1 to 7), Transcript (8 April 2021) at pp 76 (lines 14 to 32) to 77 (lines 1 to 4).

<sup>45</sup> DCS1 at paras 16 to 18.

<sup>46</sup> DCS1 at para 31.

Valley Apartment.<sup>47</sup> Additionally, when Lah Moi received her share of the sale proceeds of Valley Apartment, Father asked her to distribute it among the four daughters. This request also implies that Father regarded the money used to purchase Valley Apartment as his.<sup>48</sup>

20 He contends that Father was not poor but simply stingy.<sup>49</sup> He testifies that in 1989, Father paid \$80,000 in cash for a second-hand Mercedes-Benz car (the “Mercedes”) after having just paid \$120,000 in cash for the purchase of Valley Apartment.<sup>50</sup> Father’s bamboo business was very good and he had no competitors.<sup>51</sup> Father also had a warehouse at Kranji Road and a lorry. His business prospered and he exported bamboo products to Malaysia as well.<sup>52</sup> By Yak Ping’s estimation, Father’s bamboo business would make about \$5,000 a month and \$35,000 during the seventh month.<sup>53</sup> He could afford to contribute to Yak Hoe’s medical expenses, funeral expenses and, for a period of time, the upkeep of Yak Hoe’s family after Yak Hoe passed away.<sup>54</sup> He could afford a Mitsubishi car (the “Mitsubishi”) before Serene Leather began operation and indulge in drinking and gambling.<sup>55</sup> Father bought a two-room Housing Development Board (“HDB”) flat for Yak Hoe and another HDB flat for Jee

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<sup>47</sup> DCS1 at para 32.

<sup>48</sup> DCS1 at para 33.

<sup>49</sup> Transcript (13 April 2021) at p 88 (lines 1 to 7).

<sup>50</sup> Transcript (13 April 2021) at pp 87 (lines 27 to 32) to 88 (lines 1 to 2).

<sup>51</sup> Transcript (13 April 2021) at p 89 (lines 6 to 20).

<sup>52</sup> Transcript (13 April 2021) at pp 88 (lines 5 to 7) and 89 (lines 16 to 20).

<sup>53</sup> Transcript (13 April 2021) at p 102 (lines 4 to 11).

<sup>54</sup> Yak Ping’s affidavit at para 4; Transcript (13 April 2021) at pp 88 (lines 27 to 32), 89 (lines 1 to 9).

<sup>55</sup> Transcript (13 April 2021) at pp 73 (lines 7 to 31), 74 (lines 1 to 19), 77 (lines 3 to 32), 114 (lines 2 to 17).

Soon.<sup>56</sup> Further, the fact that the Bank granted Father a loan of \$150,000 must mean that he had income tax notices of several years showing sufficient income to repay such a loan.<sup>57</sup>

21 Finally, Yak Ping argues that Mother’s will which bequeathed her quarter share in Valley Apartment to Jee Soon, Lah Moi and Yak Ping shows that Mother did not think that the money used to pay for Valley Apartment belonged to Serene.<sup>58</sup> He also relies on *Quek Hung Heong v Tan Bee Hoon* [2014] SGHC 17 (“*Quek Hung Heong*”) that the proper inference to draw is that the person making the will was an outright beneficial owner of the property rather than a resulting trustee. Thus, Yak Ping submits that Serene has failed to satisfy her burden of proof to establish that Father used the proceeds from Serene Leather to purchase Valley Apartment.

22 After carefully considering the evidence before me, I am of the view that the proceeds of Serene Leather were used to purchase Valley Apartment for the following reasons.

23 I do not find Yak Ping’s evidence relating to the revenue of Father’s bamboo business believable. At the outset, I note that Yak Ping did not plead clearly in his Defence and Affidavit of Evidence-in-chief (“AEIC”) whether the source of the purchase price of Valley Apartment was from the proceeds of Serene Leather or Father’s bamboo business. In his Defence, he vaguely states that Father purchased Valley Apartment “with his own money” and repaid the

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<sup>56</sup> Transcript (13 April 2021) at pp 107 (lines 26 to 32) to 108 (lines 1 to 28).

<sup>57</sup> DCS1 at para 24.

<sup>58</sup> DCS1 at para 34.

housing loan of \$150,000 “with his own money”.<sup>59</sup> In his AEIC, he repeats the same contentions.<sup>60</sup> It is only at the hearing before me that Yak Ping clearly takes the position that Valley Apartment was paid using moneys from Father’s bamboo business.<sup>61</sup> Yak Ping must have realised that as a young boy of about 23 years old at the time of the purchase of the Valley Apartment, he could not have amassed such a large sum of money to pay for the down payment of Valley Apartment and the housing loan. At trial, he could not demonstrate that he had any occupation that would have enabled him to earn amounts of money sufficient for him to save enough money to pay for the down payment and housing loan for the Valley Apartment. Hence, he had to resort to saying that it was Father’s money from Father’s bamboo business that was used to purchase Valley Apartment.

24 Even then, I note that his evidence is inconsistent and appears calculated to advance his case. Yak Ping says that Father’s business was doing well because there were few competitors. Father and Mother put all their money in the bank. He first says that when they were living at the Mohamed Sultan Property, he would help his parents deposit “a few thousand dollars” to their bank accounts about four to ten times a month. However, upon being asked whether there would be at least \$20,000 deposited per month, Yak Ping recants and says it would be more like \$5,000.<sup>62</sup> His own self-contradiction shows that his recollection of bringing “a few thousands” several times a month to the bank was clearly inaccurate. This also demonstrates his propensity to exaggerate facts favourable to him. Further, Yak Ping’s claim that Father and Mother put all their

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<sup>59</sup> Defence dated 20 December 2019 at para 4a.

<sup>60</sup> Yak Ping’s affidavit at para 9.

<sup>61</sup> Transcript (14 April 2021) at p 52 (lines 25 to 32).

<sup>62</sup> Transcript (13 April 2021) at p 89 (lines 10 to 30), 90 (lines 2 to 25)

money in the bank is also inconsistent with Lah Moi's and Serene's recollection. Serene testifies that Father and Mother kept their money at home because they did not trust the bank.<sup>63</sup> Lah Moi also testifies that Mother kept the cash in the drawer at home and she remembers seeing notes in small denominations. She only saw a little of big bundles of cash with larger denominations during the seventh month.<sup>64</sup> Considering that Father and Mother insisted that Serene bring home the proceeds from Serene Leather instead of depositing it into a bank, I believe Serene and Lah Moi's version of events over Yak Ping's.

25 In Yak Ping's AEIC, he says that about 400 bundles of bamboo were sold at \$15 each every month and the cost of each bundle was only about \$2.<sup>65</sup> Based on an estimated \$5,000 earned each month, Yak Ping says that Father's bamboo business brought in \$95,000 a year inclusive of an additional \$35,000 earned during the seventh month.<sup>66</sup> He even claims that after Father allegedly paid \$120,000 for the purchase of Valley Apartment and \$80,000 for the Mercedes, Father still had savings which lasted him for another 15 years.<sup>67</sup> However, despite claiming repeatedly that Father was rich, Yak Ping has little factual knowledge about Father's financial affairs. He does not offer any persuasive corroboration to support the notion that Father had access to large sums of money. Instead, he simply asserts these facts which are favourable for his case. When questioned about Father's expenditure in supporting their big family and the amount of Father's savings, Yak Ping concedes that he does not

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<sup>63</sup> Transcript (9 April 2021) at p 24 (lines 5 to 11).

<sup>64</sup> Transcript (9 April 2021) at p 24 (lines 19 to 28).

<sup>65</sup> Yak Ping's affidavit at para 2.

<sup>66</sup> Transcript (13 April 2021) at pp 102 (lines 4 to 13) and 105 (lines 15 to 19).

<sup>67</sup> Transcript (13 April 2021) at p 126 (lines 4 to 10); Transcript (14 April 2021) at pp 21 (line 32) to 22 (lines 1 to 9).

know about them.<sup>68</sup> When questioned about the purchase of Valley Apartment, Yak Ping simply asserts that it was possible for Father to have more than \$270,000 in cash in 1988. However, when questioned on why Father needed to take a housing loan if he was rich, Yak Ping states that “[m]aybe he spent a lot of money before this”.<sup>69</sup> These oscillating responses reveal his lack of knowledge with regard to the true state of Father’s financial affairs and a lackadaisical defence of his own case. I note that Yak Ping did not even ask Jee Soon whether documents relating to Father’s bamboo business still exist because he simply took the view that it would no longer be around despite the importance of such documentation to his case.<sup>70</sup> On a whole, I find his evidence to be lacking in credibility.

26 In contrast, I find that Serene, Lah Moi and Nguang Keow are credible witnesses. In giving their testimony, they come across as forthright and honest people. In the absence of any evidence to the contrary, I also note that it is possible for Lah Moi and Nguang Keow to be beneficiaries of Father’s estate should he pass on. However, they have both signed statutory declarations that they will return to Serene any moneys they may inherit from any portion of the Pacific Mansion Proceeds.<sup>71</sup> Lah Moi explains that if Father had purchased Valley Apartment with his own money, she would be rightfully entitled to such an inheritance as his daughter but all of them know that Serene paid for it instead.<sup>72</sup> Nguang Keow also takes the same view and testifies that she believes

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<sup>68</sup> Transcript (13 April 2021) at p 112 (lines 1 to 14).

<sup>69</sup> Transcript (13 April 2021) at p 109 (lines 5 to 11).

<sup>70</sup> PCS2 at para 52; Transcript (14 April 2021) at pp 92 (lines 27 to 32) to 93 (lines 1 to 8).

<sup>71</sup> Lah Moi’s affidavit at para 47; Nguang Keow’s affidavit at para 52.

<sup>72</sup> Transcript (9 April 2021) at p 76 (lines 19 to 30).

any inheritance should be returned to Serene since she paid for Valley Apartment.<sup>73</sup> This indicates their sincerity in assisting the court to ascertain the truth even though it may arguably be against their own financial interests.

27 Further, the objective evidence relating to the family's financial situation before the operation of Serene Leathers entirely contradicts Yak Ping's alleged version of events. At the material period before Valley Apartment was purchased, the family of nine persons stayed at the Mohamed Sultan Property.<sup>74</sup> They rented only the first storey of the Mohamed Sultan Property.<sup>75</sup> In the 1970s, before Yak Hoe, Jee Soon, Lah Moi and Mui Kiah had gotten married and moved out, the sleeping arrangements for the nine of them was very telling as to the kind of lifestyle the family had. There was only one room on the first level of the Mohamed Sultan Property. In this room, Father and Mother slept on the bed. Two sisters would sleep under the bed frame (*ie*, underneath Father and Mother's bed) while another two sisters would sleep on the sides of the bed. Father constructed a small elevated space which allowed two brothers to climb a ladder to that space to sleep while the third brother slept in a hammock downstairs.<sup>76</sup> These sleeping arrangements were not contradicted by Yak Ping. To me, they demonstrate that Father and Mother could not be rich. If they were, they would probably not subject themselves and their children to such poor living conditions.

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<sup>73</sup> Transcript (13 April 2021) at pp 34 (lines 11 to 32) to 35 (lines 1 to 30).

<sup>74</sup> Transcript (6 April 2021) at p 87 (lines 22 to 24).

<sup>75</sup> Yak Ping's affidavit at para 3; Transcript (6 April 2021) at p 87 (lines 10 to 11).

<sup>76</sup> Transcript (6 April 2021) at pp 87 (lines 25 to 32), 88 (lines 5 to 11) and 89 (lines 5 to 15); Transcript (9 April 2021) at pp 113 (lines 1 to 9), 118 (lines 21 to 31) and 119 (lines 1 to 3).

28 In terms of spending, the family lived very modestly. Mui Kiah and Lah Moi were not sent to school because Father had no money.<sup>77</sup> Lah Moi testifies that clothing was passed down from sister to sister. If the clothing were torn, she would be beaten.<sup>78</sup> She recalls that when Mother had some money, she would buy pork but if not, she would buy the intestines.<sup>79</sup> Nguang Keow testifies that the family's financial situation was "very poor" and her parents never brought her to even a theatre to watch a movie.<sup>80</sup> She even followed her classmate's mother to the movies.<sup>81</sup> Dining out at roadside stalls and birthday celebrations only started after Serene Leather began operation.<sup>82</sup> Even Yak Ping admits that Father did not bring them out for meals.<sup>83</sup> Nguang Keow also testifies that when Serene and her were born, Mother contemplated giving them away because Father was an avid gambler and Mother was in charge of expenses.<sup>84</sup> They survived on a "hand-to-mouth" existence and savings were minimal.<sup>85</sup> Considering the totality of the evidence, I believe that Father was, if not poor, at least struggling to support the expenses of such a large family before Serene Leather was started. In my view, it is again inexplicable why the family would have had to endure such living conditions if Father, as per Yak Ping's case, was rich and had substantial savings.

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<sup>77</sup> Transcript (6 April 2021) at pp 83 (lines 5 to 16), 84 (lines 4 to 5) and 87 (lines 5 to 9).

<sup>78</sup> Transcript (9 April 2021) at p 19 (lines 20 to 31).

<sup>79</sup> Transcript (9 April 2021) at p 20 (lines 27 to 30).

<sup>80</sup> Transcript (13 April 2021) at p 42 (lines 26 to 29).

<sup>81</sup> Transcript (13 April 2021) at p 43 (lines 1 to 3).

<sup>82</sup> Transcript (13 April 2021) at p 43 (lines 4 to 11).

<sup>83</sup> Transcript (13 April 2021) at p 107 (lines 16 to 21).

<sup>84</sup> Transcript (13 April 2021) at p 41 (lines 7 to 31).

<sup>85</sup> Lah Moi's affidavit at para 12; Nguang Keow's affidavit at para 12.

29 This is supported by an incident that Nguang Keow recalls sometime around 1975. She suggested to Mother to buy a HDB flat since the children had grown older and the sleeping arrangements at the Mohamed Sultan Property became “not so convenient”. However, Mother said that they did not have money to buy such a property.<sup>86</sup> In my view, it is much more probable that Father and Mother were struggling to make ends meet during those years. That was the reason they could not afford to buy a property but instead had to rent the first storey of the Mohamed Sultan Property despite the space being insufficient for their large family of nine persons. It bordered on the unbelievable that if Father had been earning \$5,000 per month from the Bamboo business and had access to large sums of savings that he would not purchase a property so that his family could live in more comfortable living conditions. When this was put to Yak Ping, he maintains that Father was not poor but merely stingy.<sup>87</sup> He even went so far as to say that “back in those days, it would cost about the same if you lease the premises from others, and you take a loan from the bank. So [in] that era, very few people would buy properties”. I do not find this explanation believable. Even if the cost of rental may be the same as the instalments for the housing loan, there remains a critical difference that the purchase of a property culminates in an asset which can later be sold. I do not believe that Father, as a businessman, was not aware of that. I find it far more probable that Father simply did not have the money to purchase a property at the material time. Father’s bamboo business did not generate sufficient profits to allow Father to have sums of \$120,000 to pay in cash for Valley Apartment and \$80,000 for a Mercedes while still being able to pay \$2,800 to \$2,900 each month for the monthly instalments of the housing loan. That would not be

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<sup>86</sup> Transcript (9 April 2021) at p 22 (lines 16 to 31).

<sup>87</sup> Transcript (13 April 2021) at p 105 (lines 18 to 27).

commensurate with the objective circumstances detailed above relating to the family's livelihood.

30 I also consider that Father had substantial financial commitments at the material time. Aside from living expenses including his warehouse in Kranji, a lorry and the Mitsubishi, he also spent money on drinking, cigarettes and gambling. Yak Hoe and Jee Soon had gotten married and Father and Mother had to contribute to paying for their HDB flats.<sup>88</sup> After Yak Hoe fell ill in or around 1982, a lot of the family's savings went to paying for his medical treatment and expenses.<sup>89</sup> He had to stay in hospital for a total of eight to ten months. Nguang Keow testifies that Father told them that he did not have enough money to pay for medical bills and asked the siblings (*ie*, Nguang Keow, Serene and Lah Moi) to use their Medisave accounts to pay for the medical bills. He also said that if they still did not have enough money, they may have to look for government subsidies and seek help from the welfare departments.<sup>90</sup> Yak Hoe passed away in August 1987. Even Yak Ping concedes that Father spent a lot of money on hospital bills when Yak Hoe was sick.<sup>91</sup> He also paid for the funeral expenses and provided for Yak Hoe's wife and family shortly after his death.<sup>92</sup> Though I note that the sisters who were working did contribute by giving some money to Mother,<sup>93</sup> it is still extremely unbelievable that just one year later, Father had such a large sum of \$120,000 to pay for Valley Apartment from his bamboo business.

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<sup>88</sup> Transcript (9 April 2021) at pp 22 (lines 27 to 31), 23 (lines 1 to 24).

<sup>89</sup> Lah Moi's affidavit at para 10.

<sup>90</sup> Transcript (13 April 2021) at p 46 (lines 2 to 13).

<sup>91</sup> Transcript (13 April 2021) at p 109 (lines 10 to 11).

<sup>92</sup> Transcript (13 April 2021) at p 110 (lines 8 to 20).

<sup>93</sup> Transcript (7 April 2021) at p 84 (lines 1 to 15).

31 Further, I note that at the time Serene wanted to start Serene Leather, she asked Father for a loan of \$50,000 so that she could do renovations for her shop. Father was initially against her starting Serene Leather because of the large capital involved and the risk.<sup>94</sup> Nguang Keow testifies that Father was very shocked that the business was to be opened in a hotel lobby. He scolded her and Serene cried a lot. After many discussions, Father relented and borrowed \$50,000 from Hiap Heng for Serene.<sup>95</sup> Serene says that this shows Father had no money and that is why he had to borrow the money from his friend for Serene.<sup>96</sup> I believe Serene that Father borrowed the \$50,000 and I agree that this strongly suggests that Father did not have substantial access to cash savings above \$50,000.

32 Critically, the timing of the purchase of Valley Apartment was a few months after Serene Leather was started. I observe that Father was operating his bamboo business for many years by that time but still could not afford to purchase a property or living accommodations better than the Mohamed Sultan Property. I do not believe that it was simply a mere coincidence that Valley Apartment was purchased only after the operation of Serene Leather. Instead, this timing can be explained by the high earnings from Serene Leather that came in since its operation. Serene estimates its monthly profits to be between \$7,911.31 to \$47,626.80.<sup>97</sup> When I questioned her on the calculation of these profits at the hearing, Serene explains how she calculated her revenue and profits from the sales memos of Serene Leather's operations. These sales memos appear to be contemporaneous documents and their authenticity is not

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<sup>94</sup> Transcript (7 April 2021) at p 129 (lines 24 to 31).

<sup>95</sup> Transcript (13 April 2021) at p 53 (lines 3 to 16).

<sup>96</sup> Transcript (7 April 20021) at p 125 (lines 4 to 11).

<sup>97</sup> Serene's affidavit at paras 46 to 51.

disputed. On each sales memo, she handwrote certain codes which represent the cost price for that item. However, she gave discount for certain items which is not indicated on the memo but is based on her memory. She also wrote the sale price of the item on the memo. Based on this information, she is able to calculate her net profit for the various items sold.<sup>98</sup> From a review of the sales memos adduced, I am satisfied that her calculations based on the contemporaneous sales memos do provide a good and reliable estimate of the kind of monthly profits that could be generated by Serene Leather. The selling prices recorded on the daily sale memos, less the cost to Serene Leather of the items sold and the summation over the whole month of the daily profits to obtain the monthly profit do corroborate her estimates of Serene Leather's monthly profits. This is important to ascertain whether or not Serene Leather is indeed capable of generating substantial profits to justify Serene's claim that Valley Apartment was purchased using the proceeds from Serene Leather's business.

33 Lah Moi testifies that she started to see more bundles of cash coming in at Valley Apartment and the family's financial situation started to improve.<sup>99</sup> She saw the safes being full of cash, bundled in denominations of 50-dollar, 100-dollar and 1000-dollar notes.<sup>100</sup> Nguang Keow also testifies that with regard to their standard of living, "things only changed after Serene Leather started".<sup>101</sup>

34 Even Yak Ping's testimony corroborates this to some extent. He says that Serene Leather makes about \$10,000 to \$30,000 a month from 1988 to 1989 but after deducting rental, salaries and cost of goods, would only make about a

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<sup>98</sup> Transcript (7 April 2021) at pp 56 to 62.

<sup>99</sup> Transcript (9 April 2021) at pp 24 (lines 29 to 32) and 25 (lines 1 to 6).

<sup>100</sup> Transcript (9 April 2021) at pp 16 (lines 11 to 13) and 17 (lines 6 to 17).

<sup>101</sup> Transcript (13 April 2021) at p 43 (lines 6 to 11).

few thousand dollars to \$20,000.<sup>102</sup> He concedes that Serene Leather did not lose money during that time.<sup>103</sup> He also drew \$600 a month of salary from Serene Leather.<sup>104</sup> In comparison to Father's bamboo business which he claims earns about \$5,000 a month, it is clear that the earnings of Serene Leather was the true reason why Father and Mother could purchase Valley Apartment. Consistent with this timeline, two safes were purchased after a few months of living at Valley Apartment and stored in Mother's room to keep the cash proceeds of Serene Leather.<sup>105</sup> The need to purchase the two safes and the timing of the purchase of Valley Apartment supports my finding that the purchase price of Valley apartment were from the proceeds of Serene Leather.

35 In the light of the reasons above, I find that Father did not have sufficient cash at the time of purchase of Valley Apartment to pay \$120,000 without using the proceeds from Serene Leather.

36 I also accept Serene's case that the proceeds from Serene Leather kept in the safes were used to pay the housing loan for Valley Apartment. I reject Yak Ping's assertion that Father used his own money to pay the instalments. Yak Ping's own evidence is that after moving to Valley Apartment, the profitability of Father's bamboo business declined.<sup>106</sup> Since Father's bamboo business brought in about \$5,000 before the business declined, it was even more unlikely that after this decline, Father could afford to pay the instalments of

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<sup>102</sup> Transcript (14 April 2021) at pp 43 (lines 23 to 31) to 45.

<sup>103</sup> Transcript (14 April 2021) at p 45 (lines 22 to 30).

<sup>104</sup> Transcript (13 April 2021) at p 94 (lines 2 to 20).

<sup>105</sup> Transcript (9 April 2021) at pp 17 (lines 22 to 32) and 18 (lines 1 to 8), 119 (lines 23 to 27).

<sup>106</sup> Transcript (14 April 2021) at p 105 (lines 11 to 16).

\$2,800 or \$2,900 each month without using the proceeds of Serene Leather kept in the safes.

37 Both Lah Moi and Nguang Keow say that it was because of the proceeds of Serene Leather that Father and Mother were able to pay for Valley Apartment.<sup>107</sup> Lah Moi gives compelling evidence that Father and Mother would use the moneys in the safe for other purposes. Father would take money from the safe to gamble.<sup>108</sup> Father and Mother saw that there was so much money that they used the money to purchase gold bars. Mother showed the gold bars to her and told her not to tell anyone about it (including Serene). However, if anything were to happen in the future, at least she knew about it.<sup>109</sup> This is consistent with Serene’s testimony that in 2005, when she went back to Valley Apartment to take money from the safes, Father said that there was no need to open the safes as he had spent all the money and there was no more money in the safe. Serene was terribly upset and started crying. She asked him how he could have spent all her money since Mother was supposed to be safekeeping the money for her. She even called the police but the police told her it was a family matter.<sup>110</sup>

38 Further, Serene testifies that she told Mother to use the proceeds of Serene Leather in the safe to pay the instalments.<sup>111</sup> Lah Moi also testifies that Father would issue the cheque and pass it to Mother who would then pass it to one of her brothers. She was told by Mother that the payment for the housing loan should be done this way so that Serene’s Boyfriend would not make “a fuss

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<sup>107</sup> Lah Moi’s affidavit at paras 17 and 20; Nguang Keow’s affidavit at para 26.

<sup>108</sup> Transcript (9 April 2021) at p 51 (lines 22 to 26).

<sup>109</sup> Transcript (8 April 2021) at p 83 (lines 19 to 32).

<sup>110</sup> Serene’s affidavit at paras 85 to 88; Transcript (8 April 2021) at pp 60 (lines 28 to 32) to 61 (lines 1 to 6).

<sup>111</sup> Transcript (7 April 2021) at p 111 (lines 12 to 15).

over it” in the future.<sup>112</sup> It seems that what she means was that Father and Mother would deposit the moneys from the safe into the bank and then issue a cheque from Father’s account such that the repayments would seem to be from his account instead of Serene. This is why Lah Moi told Mother that what they were doing was incorrect and they “cannot do this”.<sup>113</sup> In the light of all the evidence before me, I find for Serene that Father and Mother, pursuant to their agreement with Serene, used the proceeds of Serene Leather from the safes to pay for the housing loan instalments.

39 I do not agree with Yak Ping that the Bank’s granting of a \$150,000 loan to Father, Mother and Yak Ping necessarily supports his case. While the Bank did grant a \$150,000 loan to Father, it must be noted that due to the large upfront payment of \$120,000, the loan amount was only 55.6% of the purchase price of \$270,000. It is possible for the Bank to have exercised its discretion given that the loan amount was not a high percentage of the total purchase price and decided that Father was nevertheless credit-worthy by considering that he had a bamboo business and had enough cash to pay \$120,000 of the purchase price in cash. Further, the \$150,000 loan was granted based on a mortgage over the entire Valley Apartment. Thus, the fact that the Bank granted the loan to Father, Mother and Yak Ping did not necessarily mean that he must have had a high enough income from his bamboo business to have saved \$120,000 in cash to pay for Valley Apartment at the material time.

40 Finally, Yak Ping also argues that since Father registered the legal title of Valley Apartment in the names of Father, Mother and Yak Ping, and Mother made a will to distribute her share of Valley Apartment, this supports his case

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<sup>112</sup> Transcript (8 April 2021) at p 83 (lines 3 to 13).

<sup>113</sup> Transcript (9 April 2021) at p 83 (lines 3 to 13).

that the parents regarded Valley Apartment as theirs and not Serene's. I reject his argument. I believe Serene's version of events, as supported by Lah Moi and Nguang Keow, that Father and Mother acknowledged that Valley Apartment was purchased by Serene. The reason that the legal title of Valley Apartment was not put in Serene's name was to ensure that she would not be cheated by her Boyfriend. Father constantly suspected that her Boyfriend would cheat her.<sup>114</sup> Due to this fear, Serene consented to having the legal title of Valley Apartment put in Father and Mother's names.

41 Serene claims that a few days after the distribution of the sale proceeds of Valley Apartment in 2006, Serene confronted Father in the presence of Lah Moi and Nguang Keow at Lah Moi's place. At that meeting, Father said that having Yak Ping's name in Valley Apartment was useless and the moneys were not his. In the future, it would all be Serene's.<sup>115</sup> Father also said that he wanted to purchase another private property using the Valley Apartment proceeds and that whatever property he purchased would still be Serene's.<sup>116</sup>

42 This is corroborated by Lah Moi and Nguang Keow. At that meeting, Lah Moi and Nguang Keow recall that Nguang Keow suggested to Father that he should buy a HDB flat to live and return the excess to Serene since she had paid for Valley Apartment and Serene did not have much money at that time. However, Father said that all his relatives knew that he was living in a private apartment and that he would have "lost his face" to downgrade to a HDB flat. He knew that Valley Apartment was paid for by Serene. However, Father insisted that he wanted to buy another private property and that property will

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<sup>114</sup> Transcript (13 April 2021) at p 13 (lines 24 to 30).

<sup>115</sup> Transcript (8 April 2021) at p 45 (lines 13 to 31).

<sup>116</sup> PCS2 at para 2; Serene's affidavit at para 106.

still go to Serene in future.<sup>117</sup> It was on this basis that Nguang Keow persuaded Serene not to have a court battle between family members.<sup>118</sup>

43 Apart from that meeting, it seems that Father and Mother consistently acknowledged that Serene purchased Valley Apartment. Serene testifies that she heard from her neighbours that Father and Mother told them that she was a very good person to have bought Valley Apartment for Father to stay.<sup>119</sup> Nguang Keow testifies that even at home, Father and Mother would say that Valley Apartment was purchased by Serene. She says that “everyone in the family was aware of this”.<sup>120</sup> Lah Moi recalls that whenever there were arguments, Father would say that “in future, it would still go to [Serene]”.<sup>121</sup> I find that Father did acknowledge that Serene paid for Valley Apartment at the meeting and assured her that whatever property he purchased with the proceeds from Valley Apartment, it was still hers.

44 Yak Ping also relies on the case of *Quek Hung Heong* to argue that the proper inference to be drawn from a testamentary disposition is that the person making the will is the outright beneficial owner of the property rather than a resulting trustee. There, the dispute concerned a two-storey bungalow held by five members of one family in equal shares. The property was paid for by the family company, of which all five of the family members were shareholders. The plaintiff argued that there was a family arrangement such that the loan for

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<sup>117</sup> Transcript (9 April 2021) at pp 38 to 40 (lines 1 to 13); Transcript (13 April 2021) at pp 23 (lines 27 to 32) to 24 (lines 1 to 24).

<sup>118</sup> Serene’s affidavit at para 107.

<sup>119</sup> Transcript (7 April 2021) at pp 123 (lines 23 to 28) and 124 (lines 1 to 7), Transcript (8 April 2021) at pp 76 (lines 14 to 32) to 77 (lines 1 to 4).

<sup>120</sup> Transcript (13 April 2021) at pp 7 (lines 29 to 30) and 8 (lines 23 to 27).

<sup>121</sup> Transcript (9 April 2021) at p 25 (lines 21 to 27).

the property would be funded substantially by the family company, registered in the names of the five family members for convenience, and when the plaintiff had repaid the loan in full, each family member was to transfer his or her share in the property to the plaintiff. Thus, the plaintiff claimed for the entire beneficial interest in a property on the basis of a resulting trust and sought to compel the other four members of his family (or their estates) to transfer to him their shares of the property.

45 The High Court dismissed the plaintiff's claim. It held (at [117]) that there was no such alleged family arrangement at that point of time and the plaintiff's resulting trust must necessarily fail. It also stated in *obiter* (at [119]) that the intent of the family members not to separate the beneficial interest of the property from its legal title can be evinced by the wills of the parents and one brother in which they sought to devise their own one-fifth share of the Property separately on the basis that they owned it outright.

46 In my view, the High Court was not setting out any presumption or rule that the proper inference to draw from a testamentary disposition is necessarily that the person making the will is the outright beneficial owner of the property rather than a resulting trustee. I accept that a testamentary disposition may in some cases indicate that the person making the will regarded the property as their own. However, this does not preclude the operation of a resulting trust. The person making the will could well be a mere trustee who is mistaken as regards the beneficial ownership of the property or in exceptional cases, even mischievous. Ultimately, whether a resulting trust is formed and whether it may be rebutted is a fact sensitive inquiry.

47 In this case, I note that Mother made a will and distributed her share of Valley Apartment to Jee Soon, Lah Moi and Yak Ping in equal shares. However,

there is evidence that Mother regarded Valley Apartment as having been purchased by Serene. Lah Moi testifies that Mother knew that the Valley Apartment was not purchased by her.<sup>122</sup> Lah Moi also recalls asking Mother why Serene's name was not in Mother's will for the division of Valley Apartment after Mother told her that she would put Lah Moi's name in her will. Mother replied that, in the event of a divorce between Serene and her Boyfriend who was then her husband, he would not be able to claim Valley Apartment.<sup>123</sup> Mother also thought that Serene was very good in making money and she did not have to worry about Serene in the future.<sup>124</sup> While I do not make any findings on Mother's motivations behind making the will or the correctness of her decision, I do not consider that this undermines Serene's case that Valley Apartment was purchased using proceeds from Serene Leather.

48 Therefore, I find that the purchase of Valley Apartment was paid for using the proceeds of Serene Leather on a balance of probabilities.

## **Issue 2: Whether Serene Leather was owned solely by Serene**

49 I turn next to the issue of the ownership of Serene Leather. Serene claims that she was the sole owner of Serene Leather while the Defendants claim that Serene Leather was Father's family business.

50 Serene testifies that she came up with the business idea, registered the business and operated the business.<sup>125</sup> Father and Mother, who were worried that her Boyfriend may usurp her business, persuaded her to include Jee Soon's

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<sup>122</sup> Transcript (9 April 2021) at p 25 (lines 21 to 27).

<sup>123</sup> Transcript (9 April 2021) at p 4 (lines 7 to 19).

<sup>124</sup> Transcript (9 April 2021) at p 26 (lines 21 to 26).

<sup>125</sup> PCS1 at paras 80 to 81; Serene's affidavit at paras 25 to 34.

name as a partner and co-signatory to Serene Leather's cheques. Father later also persuaded her to add Yak Ping and his names for tax and security considerations. However, they were not required to pay any capital outlay for the business, were not involved in the daily operations and/or running of the business and were never asked to bear any liability for the business. They were nominee partners included for security, tax and administrative purposes and Serene never indicated that she was giving them any share in her business. There was also no written partnership agreement between them.<sup>126</sup>

51 Yak Ping submits that Serene was only 25 years old at the time of starting Serene Leather and did not have any money to start her own business. She asked Father for money and Father gave her \$50,000.<sup>127</sup> Yak Ping says that Father contributed \$20,000 as capital to the business.<sup>128</sup> He claims that it was at this time that Father told Serene to add Father, Jee Soon and his names as partners in the business.<sup>129</sup> Official records show that Serene Leather had four partners and this should be taken to be *prima facie* true and correct.<sup>130</sup> Father handled the accounting and taxation matters of Serene Leather.<sup>131</sup> Serene, Yak Ping and Nguang Keow all drew salaries from Serene Leather and sales proceeds were taken home in cash and given to Mother.<sup>132</sup>

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<sup>126</sup> PCS1 at para 80.

<sup>127</sup> DCS1 at para 7.

<sup>128</sup> Yak Ping's affidavit at para 5.

<sup>129</sup> Transcript (14 April 2021) at p 35 (lines 7 to 9).

<sup>130</sup> DCS1 at para 8.

<sup>131</sup> DCS1 at para 9.

<sup>132</sup> DCS1 at paras 12 to 13.

52 After considering the evidence before me and the parties' submissions, I find that Serene Leather was solely owned by Serene for the following reasons.

53 Serene started Serene Leather as a sole proprietor on her own initiative. In giving her testimony, she was able to explain the origins of Serene Leather cogently. She was initially working at a shop selling leather goods prior to that and made many business contacts in the industry. She found a potential lease opportunity at Westin Plaza Hotel and went for several interviews with the financial controller of the hotel to convince him to give her a chance despite her young age. She came to an arrangement with the wholesalers of the leather goods to allow her to take goods on consignment. She also arranged for her Boyfriend, who was a manager of a Japanese travel agency, to direct his tourists to her shop.<sup>133</sup> She had to pay the deposit for the rental as well.<sup>134</sup> After that, Serene registered the business in her name. In order to do renovations, she then approached Father to get a loan of \$50,000.<sup>135</sup> It is clear that Serene was the founder of Serene Leather and she took the critical steps of sourcing for the goods, negotiating and paying the deposit for the lease and registering the business by herself. The name chosen, Serene Leather, is itself telling. It is undisputed that she operated Serene Leather on a daily basis and made all the major decisions pertaining to the business herself. At the hearing, she is even able to calculate the gross profit of Serene Leather and identify her own codes written on the sales memos though many years have passed.<sup>136</sup>

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<sup>133</sup> Serene's affidavit at paras 21 to 27.

<sup>134</sup> Transcript (6 April 2021) at p 64 (lines 9 to 23).

<sup>135</sup> Transcript (8 April 2021) at p 68 (lines 19 to 26).

<sup>136</sup> Transcript (7 April 2021) at pp 52 to 61.

54 Turning to the loan of \$50,000, Yak Ping claims that Serene asked Father for money and Father gave her \$50,000.<sup>137</sup> Yak Ping also says that Father contributed \$20,000 as capital to the business.<sup>138</sup> On the contrary, Serene claims that Father did not have enough money but borrowed the \$50,000 from Hiap Heng instead.<sup>139</sup> Nguang Keow's testimony confirms that Father borrowed \$50,000 from Hiap Heng.<sup>140</sup> Lah Moi also recalls that Father said that he had contributed to the business in the sense that he helped to borrow \$50,000 from his friend. However, Nguang Keow explained to him that should Serene Leather have failed, it was Serene who bore the liability to repay this loan and not Father.<sup>141</sup> After Serene had earned enough money, she bought fruits for Father's friend and went with Father to return Hiap Heng the loan sum of \$50,000.<sup>142</sup> Considering the family's financial circumstances at the time Serene Leather started, I do not believe Yak Ping's assertions that the sum of \$50,000 was loaned by Father directly and he even gave an additional sum of \$20,000 to Serene as capital for Serene Leather. I note that Father was against Serene starting Serene Leather because of the large capital involved and the risk in the first place.<sup>143</sup> This makes it difficult to believe that Father would contribute capital to the business. I find that Father only acted as an intermediary to help Serene loan the \$50,000 from Hiap Heng. He did not make any capital contribution to Serene Leather. This explains why Serene maintained that the

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<sup>137</sup> DCS1 at para 7.

<sup>138</sup> Yak Ping's affidavit at para 5.

<sup>139</sup> Transcript (7 April 2021) at pp 125 (lines 30 to 32) to 126 (lines 1 to 19).

<sup>140</sup> Transcript (13 April 2021) at p 53 (lines 3 to 16).

<sup>141</sup> Transcript (9 April 2021) at p 38 (lines 3 to 16).

<sup>142</sup> Transcript (7 April 2021) at p 125 (lines 19 to 32).

<sup>143</sup> Transcript (7 April 2021) at p 129 (lines 24 to 31).

liability to repay the loan fell upon her instead of Father because it was her who borrowed the money.

55 To my mind, the addition of Jee Soon, Yak Ping and Father as partners of Serene Leather did not give them ownership of Serene Leather. Serene maintains that she never had any intention to give Serene Leather to Father, Jee Soon and Yak Ping.<sup>144</sup> It is important to note also that these additions occurred only after the registration of Serene Leather. I do not believe Yak Ping's assertion that they were all added at the same time before Serene went to register the business since this is clearly contradicted by the ACRA records (see above at [5]). I accept Serene's explanation of why she was persuaded by Father to include Father, Jee Soon and Yak Ping's names as partners in Serene Leather. She was just 25 years old at that time. She was unfamiliar with accounting and taxation. Since she was told by Father that this was for tax and administrative purposes, she trusted him.<sup>145</sup> Further, the additions appear to be another manifestation of Father's fears and suspicions regarding Serene's Boyfriend. Father was worried that he may usurp her business and persuaded her to include Jee Soon's name as a partner and co-signatory to Serene Leather's cheques.<sup>146</sup> It is possible that Serene acceded to Father's request to ease Father's mind that she would not be cheated of her business by her Boyfriend.

56 The involvement of Father, Jee Soon and Yak Ping in Serene Leather also shows that they were merely nominee partners. They did not make any capital contribution. There is no evidence that they were involved in any of the decision making in running Serene Leather. Neither is there any evidence that

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<sup>144</sup> Serene's affidavit at paras 43 and 45.

<sup>145</sup> Transcript (6 April 2021) at p 108 (lines 10 to 32).

<sup>146</sup> Serene's affidavit at paras 39 to 42.

they were asked to bear liability for anything. Yak Ping concedes that Father, Jee Soon and himself do not know anything about selling leather goods.<sup>147</sup> Yak Ping's case that the addition of their names "were to ensure that the business would succeed as it would be [Father's] family business" does not pass muster since there is no evidence showing any value that Father, Jee Soon and Yak Ping brought to the management of Serene Leather.<sup>148</sup> While I accept that Father helped with accounting and taxation matters of Serene Leather by liaising with an accountant,<sup>149</sup> this involvement does not make Father a partner of Serene Leather. He was simply helping his daughter out with matters that she was unfamiliar with. Nguang Keow testifies that Father "didn't interfere with Serene Leather's matters. He also didn't know how. He didn't know anything about the leather wallets".<sup>150</sup> There is no dispute that Jee Soon did not help with Serene Leather. Yak Ping claims to have helped out with Serene Leather. He says that he helped to open or close the shop occasionally, sell and pack the items, drive the sisters home and bring the cash proceeds home.<sup>151</sup> I note that these assertions was not put to Serene. When questioned on whether Jee Soon and Yak Ping helped out with Serene Leather, Serene said they did not because they were helping Father with his bamboo business.<sup>152</sup> However, Serene accepts that Yak Ping was tasked to take home the proceeds of Serene Leather for Mother to safekeep and he would occasionally help with the opening of the shop.<sup>153</sup> In any case, I consider such involvement to be quite limited and they do not support

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<sup>147</sup> Transcript (14 April 2021) at p 36 (lines 19 to 24).

<sup>148</sup> Yak Ping's affidavit at para 5.

<sup>149</sup> DCS1 at para 9.

<sup>150</sup> Transcript (13 April 2021) at p 15 (lines 19 to 21).

<sup>151</sup> Transcript (13 April 2021) at p 94 (lines 21 to 32).

<sup>152</sup> Transcript (6 April 2021) at p 74 (lines 8 to 25).

<sup>153</sup> Serene's affidavit at para 44.

Yak Ping's case that he was not a nominee partner of Serene Leather. There was also no partnership agreement determining their respective shares of Serene Leather.

57 It is also important to consider Father and Mother's treatment of the sales proceeds from Serene Leather. There is no indication in the evidence that the proceeds of Serene Leather which were kept in the safes were split between Father, Serene, Jee Soon and Yak Ping in any proportion. To the contrary, the sale proceeds were treated as being safekept for Serene to ensure that she was not cheated by her Boyfriend. According to Lah Moi's recollection, there was one incident when Serene became angry because of the difficulty involved when she wanted to take the money out of the safe at Valley Apartment. Father and Mother would worry that she was taking the money out for her Boyfriend. She told Mother and Father that she would no longer bring the cash proceeds of Serene Leather home but would deposit them into a bank instead. However, Mother and Father threatened to commit suicide to force her to bring the moneys back home in cash. Mother also told Serene to come back home and showed her that the moneys in the safe were being safekept for her. Mother assured her that she did not spend any of the money.<sup>154</sup> While Lah Moi was not present at the time, she recalls being told by Serene that this was what happened. This incident shows that it was acknowledged by the family that the sale proceeds of Serene Leather kept in the safe were Serene's solely. Serene testifies that Father told her that since they were safekeeping the money for her, she could go back and take the money whenever she wanted.<sup>155</sup> After Serene returned from pursuing business in China, she asked for \$20,000 from Father and Father gave her the

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<sup>154</sup> Transcript (9 April 2021) at p 15.

<sup>155</sup> Transcript (8 April 2021) at p 22 (lines 1 to 6).

money.<sup>156</sup> After perusing the evidence, none of these reflect any support for Yak Ping's contention that Serene Leather was Father's family business. I am persuaded that the family never understood Serene Leather to be anything other than Serene's own business.

58 Therefore, I find that Serene Leather was owned solely by Serene on a balance of probabilities. Father, Jee Soon and Yak Ping were only nominee partners of Serene Leather and had no ownership over Serene Leather. As such, all the proceeds of Serene Leather belong to Serene.

### **Issue 3: Whether the Sum is held on trust for Serene**

59 The presumption of resulting trust arises where an individual makes a voluntary payment for the purchase of a property that is then vested in the other person or in both of them jointly. The law in this regard is uncontroversial; the *locus classicus* has been regarded as *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 ("*Westdeutsche*"). In *Westdeutsche*, Lord Browne-Wilkinson stated (at 708A):

... where A makes a voluntary payment to B or pays (wholly or in part) for the purchase of property which is vested either in B alone or in the joint names of A and B, there is a presumption that A did not intend to make a gift to B: the money or property is held on trust for A (if he is the sole provider of the money) or in the case of a joint purchase by A and B in shares proportionate to their contributions...

60 Lord Browne-Wilkinson's observations have been accepted locally on numerous occasions: see *Lim Beng Kiat v Mohammad Sarman bin Saidi* [2020] SGHC 253 at [23]; *Estate of Yang Chun (Mrs) née Sun Hui Min, deceased v*

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<sup>156</sup> Transcript (6 April 2021) at p 119 (lines 8 to 14).

*Yang Chia-Yin* [2019] 5 SLR 593 (“*Yang Chia-Yin*”) at [55]; *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 at [34].

61 The considerations undergirding the rule in *Westdeutsche* are important. The court in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 (“*Chan Yuen Lan*”) stated that the presumption of resulting trust is equity’s response to the lack of intention by the transferor to benefit the transferee: at [38] and [44]. As a consequence, equity regards each party as holding a beneficial interest in the property equivalent to their respective financial contributions to the same *at the time the property was acquired*: *Chan Yuen Lan* at [53]. This stands to reason as a matter of principle: a *bona fide purchaser for value* is regarded as equity’s darling.

62 The presumption of resulting trust, and the beneficial interest that accompanies it, can be displaced in several ways, namely, (a) by evidence of the transferor’s intention to make a gift to the transferee (*Chan Yuen Lan* at [160(d)]); (b) due to the operation of the presumption of advancement (*Chan Yuen Lan* at [160(e)]); or (c) by evidence of a common intention of the parties, either at or subsequent to the acquisition, to hold the beneficial interest in a proportion other than that which corresponds with the parties’ respective financial contributions (*Chan Yuen Lan* at [160(b)] and [160(f)]).

63 In the light of my findings above (at [48] and [58]), I find that Valley Apartment was held by the Defendants on resulting trust for Serene because proceeds of Serene Leather, which was solely owned by Serene, were used to pay the purchase price of Valley Apartment. After Valley Apartment was sold in the *en bloc* exercise, the proceeds of the sale were held by the Defendants on resulting trust for Serene. There has never been any intention by Serene to gift

her parents Valley Apartment or its sale proceeds. This is not the Defendants' case, and neither is this argument tenable on the facts.

64 Subsequently, these sale proceeds were used by the Defendants to purchase the Pacific Mansion Property at a purchase price of \$670,000.<sup>157</sup> However, a separate sum of \$44,000 was paid from Yak Ping's CPF account. From this sum, \$17,700 was paid towards the stamp fee for the property purchase while \$26,300 was paid towards the purchase price itself.<sup>158</sup> I note that Yak Ping testifies that Father started contributing to his CPF account from 1997.<sup>159</sup> He also received some CPF contributions from Serene Leather.<sup>160</sup> There is a lack of clear evidence showing that the sum of \$44,000 in Yak Ping's CPF account were from the proceeds of Serene Leather although I do not discount that possibility completely. In the circumstances, I find that Serene has not proven that the sum of \$44,000 from Yak Ping's CPF account was from Serene Leather proceeds. Consequently, Yak Ping did contribute to the purchase of the Pacific Mansion Property to the extent of \$26,300.

65 After subtracting \$26,300 from the purchase price of the Pacific Mansion Property (*ie*, \$670,000), the remaining \$643,700 of the purchase price was paid from the sale proceeds of Valley Apartment which was held on trust by the Defendants for Serene. This constitutes 96.07% of the purchase price. I find that the Defendants hold 96.07% of the Sum on resulting trust for Serene. Yak Ping is entitled to 3.93% of the Sum as a result of his contribution of \$26,300 towards the purchase price of the Pacific Mansion Property. I note that

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<sup>157</sup> Serene's affidavit at paras 109; Yak Ping's affidavit at para 21.

<sup>158</sup> Yak Ping's affidavit at para 21 and pp 63–65.

<sup>159</sup> Transcript (14 April 2021) at p 29 (lines 5 to 9).

<sup>160</sup> Transcript (13 April 2021) at p 94 (lines 2 to 15).

Yak Ping had to refund a total of \$60,289.40 to the CPF Board upon the sale of the Pacific Mansion Property.<sup>161</sup> This comprises the initial withdrawal of \$44,000 and accrued interest of \$16,289.40. While I do not include Yak Ping's contribution of \$17,700 for the payment of the stamp duty as a contribution towards the purchase price of the Pacific Mansion Property, I think it right to order that Serene reimburse Yak Ping the sum of  $\$24,252.78 \times 0.9607 = \$23,299.65$ , comprising her 96.07% share of the \$17,700 initially paid for stamp duty and the accrued interest of \$6552.78 on that amount, to Yak Ping. Given these findings, I need not go further to consider the parties' submissions on a common intention constructive trust and/or an express trust.

**Issue 4: Whether Serene's claim is barred by the Limitation Act or the doctrine of laches**

66 The Defendants' final defences are that Serene's claim is barred by the Limitation Act and/or the doctrine of laches. In my judgment, these defences fail.

***The Limitation Act***

67 The Defendants argue that Serene's claim is time barred under s 22(2) of the Limitation Act since her right of action accrued around 1988 (*ie*, at the time of purchase of Valley Apartment when the legal title was not put in her name) or at least by 2006 (*ie*, at the time of sale of Valley Apartment).<sup>162</sup> Serene submits that the exception in s 22(1)(b) of the Limitation Act applies since her claim is based on a resulting trust.<sup>163</sup>

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<sup>161</sup> Yak Ping's affidavit at p 79.

<sup>162</sup> DCS1 at para 66; Defence (Amendment No. 1) dated 20 December 2019 at para 18.

<sup>163</sup> PCS1 at para 136.

68 Preliminarily, the Defendants also argue that since Serene did not plead s 22(1)(b) of the Limitation Act in her Reply to the Defence (“Reply”), she cannot now rely on this exception.<sup>164</sup> I reject this argument. I am of the view that Serene is not precluded from relying on s 22(1)(b) of the Limitation Act. It is trite that the defence of limitation must be specifically pleaded (see O 18 r 18 of the Rules of Court (2014 Rev Ed)). After the defendant has pleaded the defence of limitation, where it is necessary for the plaintiff to set up an affirmative case of his own in answer to the facts alleged by the defendant, it is good practice for the plaintiff to serve a reply and specifically plead in his reply the facts relevant to defeat the defence of limitation. It has been observed that the better approach, if possible, would be to plead those facts in the statement of claim in the first place (see *Singapore Civil Procedure 2019* vol 1 (Sweet & Maxwell, 9th Ed, 2019) at para 18/3/2). For instance, if the plaintiff wishes to rely on the fraud exception in s 22(1)(a) of the Limitation Act, the facts relating to the said fraud should be clearly set out in the reply if it has not already been set out in the statement of claim.

69 However, in the present case, the essence of Serene’s claim is that there is a resulting trust. This is also the very reason she contends that s 22(1)(b) of the Limitation Act applies. The facts needed to establish this has already been clearly pleaded in her Statement of Claim. At paragraph 20 of Serene’s Reply, she denies the application of the time bar in the Limitation Act albeit without specifying s 22(1)(b). I am guided by the Court of Appeal’s approach to pleadings as stated in *BOM v BOK and another appeal* [2019] 1 SLR 349 at [39]–[40]:

39 It is a trite principle that allegations of fraud must be pleaded with sufficient particularity. This principle finds

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<sup>164</sup> DCS2 at para 58.

statutory expression in O 18 r 12(1) of the Rules of Court (Cap 332, R 5, 2014 Rev Ed). It is a principle of natural justice that the court painstakingly upholds so as to ensure that the defendant knows the case it has to meet: see *Singapore Civil Procedure* vol I (Foo Chee Hock JC, gen ed) (Sweet & Maxwell, 2018) at para 18/12/2. Accordingly, where a plaintiff succeeds on findings of fact that were not pleaded, the Court of Appeal will not allow the judgment to stand: see *Sheagar s/o T M Veloo v Belfield International (Hong Kong) Ltd* [2014] 3 SLR 524 (“Sheagar”) at [95].

40 But one must also be careful not to descend blindly into technicalities when assessing the adequacy of pleadings, and to always bear in mind that their ultimate purpose is to define the scope of the issues arising for the court’s determination and to ensure that the parties are not taken by surprise and deprived of the opportunity to adduce the relevant evidence: see, eg, *Sheagar* at [94] and *Fu Loong Lithographer Pte Ltd v Mok Wing Chong* [2018] 4 SLR 645 at [61]. It is for this reason that we observed in *OMG Holdings Pte Ltd v Pos Ad Sdn Bhd* [2012] 4 SLR 231 that “evidence given at trial can, where appropriate, overcome defects in the pleadings provided that the other party is not taken by surprise or irreparably prejudiced” [emphasis added] (at [18]).

[emphasis added]

In my view, it is a merely a technicality that Serene did not specifically identify s 22(1)(b) of the Limitation Act in her reply. Her case in response to the limitation period is sufficiently clear. I find that there is no surprise or irreparable prejudice to the Defendants by allowing Serene to rely on s 22(1)(b) of the Limitation Act.

70 Turning to the merits of the limitation defence, s 22 of the Limitation Act deals with the limitation of actions in respect of trust property. It provides as follows:

**Limitation of actions in respect of trust property**

22.—(1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action —

(a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or

(b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.

(2) Subject to subsection (1), an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of 6 years from the date on which the right of action accrued.

(3) The right of action referred to in subsection (2) shall not be deemed to have accrued to any beneficiary entitled to a future interest in the trust property until the interest fell into possession.

(4) No beneficiary as against whom there would be a good defence under this Act shall derive any greater or other benefit from a judgment or order obtained by any other beneficiary than he could have obtained if he had brought the action and this Act had been pleaded in defence.

71 *Prima facie*, s 22(2) of the Limitation Act provides that “an action by a beneficiary to recover trust property” shall not be brought after the expiration of six years from the date on which the right of action accrued. However, s 22(1)(b) of the Limitation Act expressly provides an exception that no period of limitation will apply to an action by a beneficiary of a trust against the trustee seeking to recover trust property in the possession of a trustee (*Re Estate of Tan Kow Quee (alias Tan Kow Kwee)* [2007] 2 SLR(R) 417 (“*Re Estate of Tan Kow Quee*”) at [25]). This applies whenever a trustee retains trust property, or its proceeds, in his/her hands (see *Tan Chin Hoon v Tan Choo Suan* [2016] 1 SLR 1150 (“*Tan Chin Hoon*”) at [248]).

72 As provided by s 2(1) of the Limitation Act, the terms “trust” and “trustee” have the same meaning as in s 3 of the Trustees Act (Cap 337, 2005 Rev Ed) (“Trustees Act”) which is as follows:

“trust” does not include the duties incident to an estate conveyed by way of mortgage, but with this exception “trust” and “trustee” extend to implied and constructive trusts, and to cases where the trustee has a beneficial interest in the trust property, and to the duties incident to the office of a personal representative, and “trustee” where the context admits includes a personal representative, and “new trustee” includes an additional trustee; ...

While the definition of “trust” in the Limitation Act and the Trustees Act do not expressly mention resulting trusts, the Singapore High Court, in *Tan Chin Hoon* (at [250]) and *Ng So Hang v Wong Sang Woo* [2018] SGHC 162 at [125], has taken the view that resulting trusts are to be dealt with on the same footing as express and constructive trusts.

73 This is elaborated on in Tucker *et al*, *Lewin on Trusts* (Sweet & Maxwell, 20th Ed, 2020) at paras 50-089 to 50-090:

50-089 Resulting trusts are not expressly included in the definition of “trust” in the 1980 Act but *it is scarcely possible that they were meant to be excluded; indeed, there is authority that they are not*. Resulting trusts arise in two sets of circumstances. First, where a person makes a voluntary payment to another for the purchase of property, which is vested in the other alone or in both of them, there is a presumption that the payment was not intended as a gift, so that the payee holds the property (or an appropriate share of it) for the payer. Secondly, where a settlor transfers property to another as trustee on express trusts which do not exhaust the whole beneficial interest, a trust of the residue results to the settlor.

50-090 In the former case, it is not altogether obvious how the trust should be classified for the purpose of limitation, not least because such a trust may arise even when property is put into the transferee’s name without his knowledge, but *since the trust is based on the payer’s presumed intention, we consider*

*that it is to be treated along with constructive trusts of the first kind, so that section 2(1) will preclude a defence of limitation to claims within its wording. In the latter case, where the transferee has taken property as express trustee at the outset, we consider it obvious that the trust is likewise to be treated along with constructive trusts of the first kind.*

[emphasis added]

74 Thus, if the defendant holds the property on resulting trust for the plaintiff, there will be no limitation bar (*Lim Ah Leh v Heng Fock Lin* [2018] SGHC 156 at [166]).

75 I agree with this position and see no reason to depart from the authorities. I hold that s 22(1)(b) of the Limitation Act applies in the light of my finding above (at [65]). Serene's claim is not subject to the limitation period of six years in s 22(2) of the Limitation Act and is not time barred.

### ***The doctrine of laches***

76 The final remaining issue to be dealt with is the doctrine of laches. The Defendants argue that the doctrine of laches apply to bar Serene's claim. Serene could have sued around 1988, 1991 or in 2006 but she did not. She sued only towards the end of 2019. The time lapse is substantial. As a result, there is prejudice to the defence since Father is mentally incapacitated and unable to give rebuttal evidence, Mother has passed away, relevant documents are lost and there will be a windfall to Serene from her own delay.<sup>165</sup>

77 Serene argues that her cause of action only arose when she discovered that Yak Ping attempted to keep the Sum for himself.<sup>166</sup> There is no

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<sup>165</sup> DCS1 at para 64.

<sup>166</sup> PCS1 at para 159; PCS2 at para 67.

“unexplained delay” on her part in bringing the claim because she relied on Father’s words that the proceeds from the sale of Valley Apartment would still be hers.<sup>167</sup> There is also no prejudice to the Defendants. Yak Ping is able to produce documents relating to Serene Leather and Valley Apartment from over 30 years ago but chose not to even check with Jee Soon if Father’s bamboo business documents still exists.<sup>168</sup> Nguang Keow and Lah Moi are witnesses able to give direct evidence of the events that occurred at the material time and the Defendants did not even attempt to call Jee Soon as a witness.<sup>169</sup> The loss of any relevant documents apply to Serene as much as to the Defendants.<sup>170</sup>

78 The Court of Appeal in *eSys Technologies Pte Ltd v nTan Corporate Advisory Pte Ltd* [2013] 2 SLR 1200 (at [37]–[38]) and *Dynasty Line Ltd v Sukamto Sia* [2014] 3 SLR 277 (at [58]) approved the following elucidation of the doctrine of laches as follows:

Laches is a doctrine of equity. It is properly invoked where essentially there has been a *substantial lapse of time coupled with circumstances where it would be practically unjust to give a remedy* either because the party has by his conduct done that which might fairly be regarded as equivalent to a waiver thereof; or, where by his conduct and neglect he had, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him, if the remedy were afterwards to be asserted (*Sukhpreet Kaur Bajaj d/o Manjit Singh v Paramjit Singh Bajaj* [2008] SGHC 207 at [23]; *Re Estate of Tan Kow Quee* [2007] 2 SLR(R) 417 at [32]). This is a broad-based inquiry and it would be *relevant to consider the length of delay before the claim was brought, the nature of the prejudice said to be suffered by the defendant, as well as any element of*

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<sup>167</sup> PCS2 at paras 56 and 73 to 74.

<sup>168</sup> PCS2 at para 52; Transcript (14 April 2021) at pp 92 (lines 27 to 32) to 93 (lines 1 to 8).

<sup>169</sup> PCS2 at paras 57 and 60.

<sup>170</sup> PCS2 at para 80.

*unconscionability* in allowing the claim to be enforced (*Re Estate of Tan Kow Quee* at [38]). ...

[emphasis added]

79 The basis for equitable intervention by way of the doctrine of laches is ultimately found in unconscionability (*Re Estate of Tan Kow Quee* at [33]). The inquiry should be approached in a broad manner, as opposed to trying to fit the circumstances of each case within the confines of a preconceived formula derived from earlier cases. As such, I do not find it useful to canvass the facts of the precedent cases cited by the parties. The inquiry depends mainly on the particular facts of each case, and to that end, the citation of earlier case authorities with points of similarity will, in most circumstances, be of limited assistance. Finally, it is acknowledged that the defendant bears the burden of proving that the doctrine of laches applies (*Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [44]).

80 I deal first with the timing in which Serene brought her claim. In my view, it would not be logical to expect Serene to have brought her claim any earlier than March 2018 when the Pacific Mansion Apartment was sold in an *en bloc* exercise.

81 While the Defendants contend that she could have sued in 1988 or 1991 because she knew that her name was not in the legal title of Valley Apartment, this argument misses the mark. Serene consented to have the legal title of Valley Apartment put in the names of Father and Mother. She did not insist that her name was to be in the property at all. Her own case is that Father and Mother were afraid that her Boyfriend would be able to get some share of Valley Apartment if they were married and subsequently divorced and therefore did not include Serene's name in the legal title. She only told her parents that if "anyone's name was to be added, it would be hers; and if anyone else's name

was to be added, they would have to get her permission”.<sup>171</sup> However, no such permission was sought from her and she did not know that Yak Ping’s name was included in the legal title. As such, no action could have been taken by her then. There is also no reason to expect that Serene should turn around and sue her parents for not including her name when she *consented* to the exclusion of her name from the legal title of Valley Apartment in the first place.

82 In 2006, after Valley Apartment went *en bloc* and the proceeds were divided amongst Father, Yak Ping, Jee Soon and Lah Moi, it could be said that Serene had basis to sue then since she found out that her parents had added the names of her other siblings instead of hers. She herself testifies that she consulted lawyers and were told to gather evidence that Valley Apartment was purchased with her money.<sup>172</sup> However, Serene explains that she did not bring her claim then because of the following reasons. First, Yak Ping allegedly threatened to report Serene to the authorities for under-declaring the income of Serene Leather if she brought the suit.<sup>173</sup> Second, after speaking to Father, Father said that he wanted to use the proceeds to buy another property and that property would still be Serene’s.<sup>174</sup> Third, Nguang Keow persuaded her not to have a court battle between family members in the light of Father’s words.<sup>175</sup> This is corroborated by Nguang Keow.<sup>176</sup> Since I found for Serene above that Father did assure her that Valley Apartment was still hers (above at [43]), I accept that it was reasonable for Serene not to have brought her claim from 2006 to 2018.

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<sup>171</sup> PCS2 at para 2.

<sup>172</sup> Serene’s affidavit at paras 99 to 101.

<sup>173</sup> Serene’s affidavit at para 102.

<sup>174</sup> Serene’s affidavit at para 106.

<sup>175</sup> Serene’s affidavit at para 107.

<sup>176</sup> Transcript (13 April 2021) at p 24 (lines 22 to 24).

83 It is critical to appreciate that Father did not dispute Serene's claim to the property but represented to her that it belonged to her. This was said in the presence of Lai Moi and Nguang Keow and they testify that it was common knowledge that Serene had paid for Valley Apartment. To Serene's mind, there was no cause to suspect that she would be denied her rightful claim by anyone. While the prudent thing to do might have been to document Father's agreement, the absence of any documentation must be seen in the light of the parties' familial relationship. The High Court in *Quek Hung Heong* (at [90]–[91]) made the following astute observations:

90 It is true that the only evidence which the plaintiff has of the family arrangement described at [20] above is his own oral evidence. He has no documentary evidence of the arrangement. Indeed, he cannot point to a single document in the evidence before me which, in itself, allows me even to draw an *inference* that this arrangement existed.

91 Having said that, I *do not attach much weight to the lack of documentary evidence* in itself in assessing the veracity of his evidence. It is *not unusual for arrangements between family members not to be documented*. That is true – *it may even be especially true – when those arrangements concern money or property rights, always a sensitive subject-matter*. Arrangements of this nature are arrived at in an informal context between individuals of different generations, united by their close and unique relationship as family members and subject to the inevitable deference which younger members accord to older members. It is typical that family members will not feel the same desire or need to document their rights and interests that strangers would. Even if they were to feel the same desire or need to do so, it is also typical that they would feel inhibited in acting upon it. That would have been even more true of the more patriarchal families of 1966 than it is of today's more egalitarian families.

[emphasis added]

These observations apply squarely to the facts of this case. It is understandable that Serene, and her siblings, trusted Father in these circumstances and there was never any consideration for the need to document such arrangements. Since

Serene was content to let Father stay in her property (be it Valley Apartment or the Pacific Mansion Property) after Father's assurance that it remains hers, there is no reason to expect Serene to have brought her claim between 2006 and 2018. No potential future breach of trust by Father, who appeared to be an authoritative figure in the family, could have been anticipated by Serene then.

84 In 2018, when Pacific Mansion Property was to be sold in the *en bloc* exercise, Serene, with the rest of her siblings, were asked by Yak Ping to attend at a law firm to consent to Yak Ping being named as Father's sole deputy. Father had dementia since 2017 and was certified to have lost mental capacity on 7 February 2019.<sup>177</sup> Serene explained that it was at this point that it became clear to her that Yak Ping wanted to collect the entire sale proceeds from the *en bloc* sale and purchase another private residential property as joint tenants between Father and him.<sup>178</sup> Serene and her siblings did not consent to having Yak Ping as the sole deputy.<sup>179</sup> In consideration that Yak Ping wanted to appropriate all of the proceeds from the sale of the Pacific Mansion Property for himself, she brought the claim. Considering the circumstances, I find that her decision to bring the claim in 2019 does not constitute undue delay.

85 I turn now to the alleged prejudice contended for by the Defendants. Since Mother passed away in 1996, she would not have been available to testify even if Serene had brought the claim in 2006. While I accept that the fact that Father has lost mental capacity and the lack of relevant documentation since the material events occurred over a span of 30 years renders it harder for the Defendants to defend the claim, it similarly presents difficulties to Serene in

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<sup>177</sup> Yak Ping's affidavit at paras 22 and 25.

<sup>178</sup> Serene's affidavit at paras 114 to 115.

<sup>179</sup> Yak Ping's affidavit at para 26.

satisfying her burden of proof. Ultimately, since I do not find that Serene had delayed making her claim, such prejudice can only be said to be unfortunate. It is not caused by any undue delay or fault on the part of Serene. In my judgment, I do not think it is unconscionable to allow Serene relief. To the contrary, given the credible evidence presented by Lah Moi and Nguang Keow who are factual witnesses with no interest in claiming any part of this Sum and who are able to testify to the events that occurred at the material time, it would be unconscionable to deny Serene relief on the ground of laches.

86 For the foregoing reasons, I find that Serene's claim is not barred by the Limitation Act and/or the doctrine of laches.

### **Conclusion**

87 In the circumstances, I grant Serene judgment for 96.07% of the Sum with the usual interest from the date of the judgment to the date of payment. I also declare that Yak Ping is entitled to 3.93% of the Sum as a result of his CPF contribution of \$23,600 towards the purchase price of the Pacific Mansion Property. Serene should also return the sum of \$23,299.65, comprising her 96.07% share of the \$17,700 initially paid for the stamp duty and the accrued interest of \$6,552.78 on that amount, to Yak Ping.

88 I will hear the parties on costs if these cannot be agreed.

Chan Seng Onn  
Judge of the High Court

Justin James Zehnder and Kertar Singh s/o Guljar Singh (Kertar &  
Sandhu LLC) for the plaintiff;  
Yeoh Oon Weng Vincent (Malkin & Maxwell LLP) for the  
defendants.