

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 6

Suit No 54 of 2020

Between

Lee Kim Song

... Plaintiff

And

(1) Chan Chee Kien
(2) Ng Siow Hong

... Defendants

JUDGMENT

[Trusts] – [Constructive trusts]
[Trusts] – [Resulting trusts]

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Lee Kim Song
v
Chan Chee Kien and another

[2021] SGHC 6

High Court — Suit No 54 of 2020
Valerie Thean J
27 – 30 October 2020, 30 November 2020

20 January 2021

Valerie Thean J:

Introduction

1 The plaintiff (“Mr Lee”) has been the sole proprietor of a business known as Designline Contracts and Services (“Designline”) since January 2006. By this suit he contends that Designline provided funds for several properties held singly or jointly by the two defendants. He seeks the return of funds loaned, or alternatively, beneficial ownership in the various properties as a result of either a resulting trust or a common intention constructive trust. The first defendant (“Mr Chan”) is the husband of Mr Lee’s sister. The second defendant is Mr Chan’s former wife (“Mdm Ng”). The two defendants are presently engaged in divorce proceedings and the same properties are the subject of those proceedings.

Background to the dispute

2 Mr Chan was employed as a Senior Manager in the Glass Division of Saint Gobain (S) Pte Ltd (“Saint Gobain”), a multi-national company headquartered in Europe, from 1996 to 2017.¹ This division sold glass for use in commercial developments and real estate projects.² As Saint Gobain did not provide before and after sale services, his job scope included the development of local agencies to do so.³ Designline was one such local agency.

3 Designline was first set up by one Tan Chwee Boon (“Mr Tan”) around 18 May 2001.⁴ Around 7 January 2006, Mr Lee took over its business, including all its liabilities and assets.⁵ The dispute involves loans concerning, or the beneficial ownership of, four immovable properties and one motor vehicle (collectively referred to in this judgment as “the Properties”):

(a) 16 St Michael’s Road, #07-03, Singapore 328005 (“the St Michael’s Property”), purchased in 2002 in the names of Mr Chan and Mdm Ng;⁶

¹ Chan Chee Kien’s Affidavit Evidence-In-Chief dated 9 September 2020 (“Mr Chan’s AEIC”) at para 7 and 10.

² Mr Chan’s AEIC at para 9.

³ Mr Chan’s AEIC at para 10-11.

⁴ Mr Chan’s AEIC at para 23 – 24.

⁵ Mr Chan’s AEIC at para 27; Lee Kim Song’s Affidavit Evidence-In-Chief dated 14 September 2020 (“Mr Lee’s AEIC”) at para 18.

⁶ Lee Kim Song’s Affidavit Evidence-In-Chief dated 14 September 2020 (“Mr Lee’s AEIC”) at para 30; 1AB 182.

(b) 120 Lower Delta Road, #02-03, Singapore 169208 (“the Delta Industrial Property”), purchased in 2007 in Mr Chan’s sole name;⁷

(c) 188 Tuas South Ave 2, West Point Bizhub, Singapore 637199 (“the Tuas Industrial Property”), purchased in 2011 in Mr Chan’s sole name;⁸

(d) 2 Pavilion Rise, Singapore 658637 (“the Pavilion Property”), purchased in 2008 in Mr Chan’s sole name;⁹ and

(e) Volkswagen Tiguan R-Line 2.0 TSI, vehicle number SFA3323Y, previously registered in Mdm Ng’s sole name (“the Volkswagen”) on 17 October 2013. This vehicle was deregistered around 19 August 2019 and the proceeds were retained by Mdm Ng.¹⁰

4 It was common ground that funds from Designline were used in the purchase of these Properties.

The parties’ positions and issues arising

5 Mr Lee’s case is that his share of the St Michael’s Property, and the entire beneficial interest in all the other Properties, are held on a resulting trust¹¹ or a common intention constructive trust¹² for his benefit. Alternatively, he

⁷ Mr Lee’s AEIC at para 36.

⁸ Mr Lee’s AEIC at paras 46 – 47.

⁹ Mr Lee’s AEIC at paras 42 - 43.

¹⁰ Mr Lee’s AEIC at para 51; p. 410.

¹¹ Statement of Claim (Amendment No. 1) at paras 16, 22, 28 and 35.

¹² Statement of Claim (Amendment No. 1) at paras 17, 23, 29 and 36.

claims that the funds provided by Designline for purchasing the Properties had been loans repayable on demand.¹³

6 According to Mr Lee, the sole proprietor of Designline was personally liable for the risks that Designline assumed in the course of the project management agreements it took up with Saint Gobain. The Properties had therefore been placed in Mr Chan's name to keep them out of reach of any potential creditors if such creditors sought to invoke the sole proprietor's personal liability.¹⁴ This was the case with Mr Tan, the previous sole proprietor of Designline, and the St Michael's Property purchased during Mr Tan's watch, and similarly the case with Mr Lee and the rest of the Properties.¹⁵ and Mr Lee's case rested on his wariness of creditors created by his personal exposure to liability from his ownership of the Designline sole proprietorship.

7 While Mr Chan denies that any loans were made¹⁶, he agrees with Mr Lee's primary claim, stating that he, and Mdm Ng as the case may be, hold the Properties on trust, subject to Mr Lee's beneficial interests.¹⁷

8 Similar to Mr Chan, Mdm Ng denies that there had been any loans.¹⁸ However, she does not agree that the Properties are held on trust subject to Mr Lee's beneficial interest, and instead contends that Designline was essentially a

¹³ Statement of Claim (Amendment No. 1) at paras 18, 24, 30, 38 and 40.

¹⁴ Statement of Claim (Amendment No. 1) at paras 14, 21, 27 and 34.

¹⁵ Statement of Claim (Amendment No. 1) at paras 14, 21, 27 and 34.

¹⁶ Mr Chan's Defence at paras 3 – 8 and 11.

¹⁷ Mr Chan's Defence at paras 3, 5, 7 and 11.

¹⁸ Mdm Ng's Defence (Amendment No. 1) at paras 32A, 34A, 36A and 44.

“sham”, used by Mr Chan to exploit business opportunities that arose out of his employment with Saint Gobain.¹⁹ Designline was at all times controlled by Mr Chan,²⁰ and he retained the profits earned by Designline as its “de facto owner”.²¹ Designline was always listed under a third party, first, Mr Tan, and then Mr Lee from 2006 onwards, to mask Mr Chan’s involvement. This was because Mr Chan, by his actions, necessarily breached the duties he owed to Saint Gobain by hiring Designline as Saint Gobain’s project management consultant without disclosing his interest, and made personal profits from doing so.²² She thus argues that the Properties were not beneficially owned by Mr Lee, but were the matrimonial assets of the defendants.²³ She also pleaded that the claims were barred by limitation periods.

9 Mr Lee denies that any limitation period applies. Mr Lee and Mr Chan also deny Mdm Ng’s contentions about Designline. They characterise Designline’s role as that of a sub-contractor for Saint Gobain. Mr Chan worked closely with Designline because its success was crucial to the sales strategy of Saint Gobain, for which he was responsible.²⁴

10 Putting aside the limitation defence which only becomes relevant if any of the claims are made out, the issues relevant to Mr Lee’s claims are the following:

¹⁹ Mdm Ng’s Defence at paras 17 – 18.

²⁰ Mdm Ng’s Defence at para 17.

²¹ Mdm Ng’s Defence at para 17.

²² Mdm Ng’s Defence at paras 21 – 23 and 29.

²³ Mdm Ng’s Defence at paras 32(g), 34(g), 36(g) and 43.

²⁴ Mr Chan’s AEIC at para 33.

(a) Were the sums of money advanced as part of a loan agreement?

(b) If not, what were the intention of parties, and does a trust arise?
In this context, the role and use of Designline is crucial to understanding the intent of parties.

11 I start with Mr Lee's claim that the money had been disbursed as loans.

Claim for the return of the loans

12 I find Mr Lee's claims that the monies were loans repayable on demand to be untenable for two main reasons, and thus dismiss this head of claim.

13 First, there are no documents supporting the suggestion that any part of the \$5,557,000 disbursed was a loan. This is a rather large sum of money for the parties at hand, and the Properties were purchased over multiple occasions over a series of years, in 2002,²⁵ 2007,²⁶ 2008²⁷, 2011²⁸ and 2013.²⁹ According to Mr Lee, the absence of documents reflected the high degree of trust between him and Mr Chan.³⁰ I found this to be an unconvincing explanation. It was inconceivable that a loan arrangement involving such a large amount of money on multiple occasions, spanning at least a decade, would have no documentary

²⁵ Mr Lee's AEIC at p 340.

²⁶ Mr Lee's AEIC at p 364.

²⁷ Mr Lee's AEIC at p 383.

²⁸ 2AB 308.

²⁹ Transcript 29 October 2020, p 103 lines 6 – 30.

³⁰ Transcript 27 October 2020, p 56 line 19 – p 57 line 2.

evidence. Even more curiously, prior to the commencement of the present suit on 16 January 2020, no demand for repayment was made.³¹

14 Second, and more fundamentally, Mr Lee conceded during cross-examination that there was no loan. On cross-examination by Mr Chan's counsel, he agreed instead that what he and Mr Chan had was an understanding to hold properties for investment purposes:³²

Q: ... Now, my client's position, I'll put it to you, is that the ---any monies taken from Designline was on trust, okay, for investment. It was never meant to be a loan. There was no loan agreement.

A: No.

Q: That's my client's case.

A: Yah.

Q: Do you agree or disagree?

A: I agree.

15 I turn, then, to the claims in trust.

Claims in trust

16 Mr Lee advanced alternate claims of resulting and common intention constructive trusts. I deal with the legal principles applicable together as they are related and Mdm Ng raises the same defence to both contentions.

³¹ Transcript 30 October 2020, p 13 lines 21 – 24.

³² Transcript 27 October 2020, p 43 lines 18-25.

Legal principles applicable to resulting and constructive trusts

17 The Court of Appeal articulated a structured framework for analysing beneficial interests in a property in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [160] (“*Chan Yuen Lan*”):

160 In view of our discussion above, a property dispute involving parties who have contributed unequal amounts towards the purchase price of a property and who have not executed a declaration of trust as to how the beneficial interest in the property is to be apportioned can be *broadly* analysed using the following steps in relation to the available evidence:

(a) Is there sufficient evidence of the parties’ respective financial contributions to the purchase price of the property? If the answer is “yes”, it will be presumed that the parties hold the beneficial interest in the property in proportion to their respective contributions to the purchase price (*ie*, the presumption of resulting trust arises). If the answer is “no”, it will be presumed that the parties hold the beneficial interest in the same manner as that in which the legal interest is held.

(b) Regardless of whether the answer to (a) is “yes” or “no”, is there sufficient evidence of an express or an inferred common intention that the parties should hold the beneficial interest in the property in a proportion which is different from that set out in (a)? If the answer is “yes”, the parties will hold the beneficial interest in accordance with that common intention instead, and not in the manner set out in (a). In this regard, the court may not impute a common intention to the parties where one did not in fact exist.

(c) If the answer to both (a) and (b) is “no”, the parties will hold the beneficial interest in the property in the same manner as the manner in which they hold the legal interest.

(d) If the answer to (a) is “yes” but the answer to (b) is “no”, is there nevertheless sufficient evidence that the party who paid a larger part of the purchase price of the property (“X”) intended to benefit the other party (“Y”) with the entire amount which he or she paid? If the answer is “yes”, then X would be considered to have

made a gift to Y of that larger sum and Y will be entitled to the entire beneficial interest in the property.

(e) If the answer to (d) is “no”, does the presumption of advancement nevertheless operate to rebut the presumption of resulting trust in (a)? If the answer is “yes”, then: (i) there will be no resulting trust on the facts where the property is registered in Y’s sole name (ie, Y will be entitled to the property absolutely); and (ii) the parties will hold the beneficial interest in the property jointly where the property is registered in their joint names. If the answer is “no”, the parties will hold the beneficial interest in the property in proportion to their respective contributions to the purchase price.

(f) Notwithstanding the situation at the time the property was acquired, is there sufficient and compelling evidence of a subsequent express or inferred common intention that the parties should hold the beneficial interest in a proportion which is different from that in which the beneficial interest was held at the time of acquisition of the property? If the answer is “yes”, the parties will hold the beneficial interest in accordance with the subsequent altered proportion. If the answer is “no”, the parties will hold the beneficial interest in one of the modes set out at (b) – (e) above, depending on which is applicable.

[emphasis in italics in original]

18 Mr Lee’s contentions of resulting trust arise from step (a) of the *Chan Yuen Lan* analysis. He claims that due to Designline’s contribution to the purchase of the Properties, a presumption of resulting trust arises in Designline’s (and therefore, his) favour.³³ This argument, however, does not paint a complete picture of the law. The question of whether a resulting trust arises is not simply resolved by reference to the parties’ respective financial contributions. In *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 at [35] – [36] (“*Lau Siew Kim*”), the Court of Appeal drew a

³³ Statement of Claim (Amendment No. 1) at paras 16, 22, 28 and 35.

distinction between a *presumption* of resulting trust (which looks to the parties' respective contribution to the acquisition of the property in question) and the resulting trust itself. The latter is the equitable instrument that responds to a transferor's lack of intention to benefit the recipient, whilst the former is an evidential tool used to *infer* that lack of intention.

19 Accordingly, where there is *direct evidence* of the intentions of the transferor, there will be no need to resort to presumptions at all: *Chan Yuen Lan*, [49] – [52]. Parties in this case, Mr Lee included, assert that there is direct evidence of parties' intention. In particular, Mr Lee agreed with Mr Chan in the course of the trial that their stated intention was not to own the Properties in the proportion of their financial contributions. Rather, it was to allow Mr Chan or Mdm Ng, as the case may be, to hold the Properties for Designline for investment purposes, and to shield Mr Lee from creditors whilst he was a sole proprietor. In that regard, Mr Lee's case at trial was premised on his alternative claim and his analysis at (b) of *Chan Yuen Lan*, which is that there was a common intention between Mr Chan and himself for Mr Chan to hold the properties as investments.³⁴ His contention of resulting trust could become relevant if he is unable to prove this common intention, but at the same time able to show that in any event, there was no intention to benefit Mr Chan or Mr Chan's family. Mdm Ng's case, on the other hand, rested on an allegation that the intention of parties in utilising Designline funds to purchase the properties were to benefit Mr Chan and his family. On her case, no question of any trusts arose.

³⁴ Statement of Claim (Amendment No. 1) at paras 17, 23, 29 and 36.

20 Analysis of the law, therefore, leads to a sole and central factual issue in this case: the intention of the parties. Their various positions turn up three possibilities:

(a) that, as Mr Lee and Mr Chan contend, there is a common intention for the properties to be held on trust for Designline for investment;

(b) that, as Mdm Ng contends,³⁵ the intention of the parties is for Designline to benefit Mr Chan and Mdm Ng's family; or

(c) that, in the absence of either intention being proved, the Properties are held on resulting trust for Designline because it supplied the funds used to purchase the Properties; and there is no direct evidence suggesting the contrary.

21 I turn, then, to the facts at hand.

Analysis of central factual issue

22 In my view, Designline was not an independent business seeking to make investments with its funds. It was instead an avenue for Mr Chan to earn secret profits by taking advantage of his position within Saint Gobain. Mr Lee was installed by Mr Chan as the sole proprietor of Designline in order to mask Mr Chan's role in supplying business to Designline and ultimately, the profits which he enjoyed by doing so. I explain my views by reference to the following categories of evidence adduced at trial: (i) the (lack of) documentary evidence;

³⁵ Ng Siow Hong's Affidavit Evidence-In-Chief ("Mdm Ng's AEIC") at paras 10 – 12 and 31.

- (ii) the nature of the Designline business; (iii) the nature of the Properties; and
- (iv) Mr Lee’s explanation for purchasing the Properties in Mr Chan’s name.

Lack of documentary evidence

23 At the outset, I would note that despite the value of the Properties, there are no documents particularising any trusts, or alluding to any agreement between parties that the Properties were held on trust.

Nature of the Designline business

24 Three observations about the nature of the Designline business point to Mr Lee being no more than a figurehead.

25 First, the genesis of Mr Lee’s involvement is relevant. Mr Lee was approached by Mr Chan to take over the business from Mr Tan, the original sole proprietor of Designline.³⁶ No mention was made of Mr Tan’s role in handing over Designline to Mr Lee. No consideration was paid by Mr Lee nor was any asked for by Mr Tan. By his own admission, Mr Lee “did not know anything about the glass industry”³⁷. Mr Lee was given to understand that:³⁸

[he] was not required to run the day to day operations because it was business as usual for Designline. The company would continue to run as before save for the change in ownership.

26 Second, because the contentions centre on the issue as to who the business benefitted financially, it is pertinent to examine the flow of finances

³⁶ Mr Lee’s AEIC at para 12.

³⁷ Mr Lee’s AEIC at para 14.

³⁸ Mr Lee’s AEIC at para 17.

from Designline to the Properties. Mr Lee had no grasp of Designline's financial contributions to the purchase of the Properties. His case rests on either bald assertions of Designline's contributions (substantiated by no documentary evidence), or concessions that Mr Chan was the one who held the purse strings. On his own case, Mdm Ng was used as a conduit to channel money for the purchases, through payments of commissions and bonuses to her, in order to veil the trail of money flowing from Designline to Mr Chan. For the Volkswagen, Mr Lee could not provide any details about its purchase.³⁹ It was Mdm Ng who produced a UOB cheque for \$160,000 issued out of Designline's account in September 2013 to purchase the car.⁴⁰ He was equally ignorant about the funding for the St Michael's Property,⁴¹ the Delta Industrial Property,⁴² the Tuas Industrial Property,⁴³ and the Pavilion Property⁴⁴ as well. For the St Michael's Property purchase in particular, Mr Lee was clearly clueless about how the purchase had been funded and what proportion of its purchase price had come from Designline.⁴⁵ This was despite the fact that the St Michael's Property was a liability that he took on at the time that he became the sole proprietor of Designline. Part of that purchase was funded by the rental income generated, but Mr Lee could not proffer any explanation about this, save for a vague acknowledgement that he was aware of such rental income.⁴⁶

³⁹ Transcript, 27 October 2020, p 46 lines 4 – 8.

⁴⁰ Transcript 29 October 2020, p 103 lines 6 – 30.

⁴¹ Transcript, 27 October 2020, p 54 lines 21 – 27; p 55 lines 5 – 19.

⁴² Transcript, 27 October 2020, p 56 lines 11 – 28; p 57 line 27 – p 58 line 2.

⁴³ Transcript, 27 October 2020, p 58 lines 3 – 21.

⁴⁴ Transcript, 27 October 2020, p 59 line 19 – p 60 line 4; p 68 lines 8 – 31.

⁴⁵ Transcript, 27 October 2020, p 55 lines 1 – 19.

⁴⁶ Transcript, 27 October 2020, p 55 lines 1 – 4.

27 In fact, Mr Lee practiced no judgment and exercised no discretion about where or how Designline's funds were applied. Rather, it was Mdm Ng and Mr Chan who chose the vehicle that was purchased,⁴⁷ and it was Mr Chan who proposed⁴⁸ and later handled⁴⁹ the acquisition of the rest of the Properties. Moreover, rather than having control over the funds of the business, Mr Lee was paid by Mr Chan. Every two months or so, he would ask Mr Chan to pay him, and Mdm Ng would then pay him \$10,000 to \$15,000 in cash.⁵⁰

28 I come then to the third and most crucial factor: the operations of Designline. Mr Lee did not manage Designline at all. Even on Mr Lee's evidence,⁵¹ Mr Chan was the one who managed the operations: "I was not personally involved in the actual execution of operational work by Designline";⁵² "[Mr Chan] was the main driving force behind the work channelled into Designline. Designline was almost entirely dependent on Saint Gobain for business".⁵³ At one point during his cross-examination, Mr Lee asked out loud: "must I be involved?"⁵⁴

⁴⁷ Transcript 27 October 2020, p 48 lines 12 – 17.

⁴⁸ Mr Lee's AEIC at paras 26, 33, 41 and 45.

⁴⁹ Transcript, 27 October 2020, p 54 lines 9 – 18; p 56 lines 27 – 30; p 59 lines 19 – 26.

⁵⁰ Transcript, 27 October 2020, p 74 lines 3 – 15; p 78 line 21 – p 79 line 4.

⁵¹ Transcript 27 October 2020, p 46 lines 11 – 23.

⁵² Mr Lee's AEIC at para 21.

⁵³ Mr Lee's AEIC at para 22.

⁵⁴ Transcript 27 October 2020, p 46 lines 28 – 30.

29 Mr Lee initially attested that his role was to sign documents, check and approve monthly claims, and visit construction sites from time to time⁵⁵. It became clear at trial that Mr Lee was no more than a rubber stamp. By his own admission, he had “never see[n]” the accounts.⁵⁶ Instead, he took instructions from Mdm Ng on everything from registering Designline for CorpPass⁵⁷ to signing Designline’s GST reporting forms⁵⁸ and telegraphic transfer forms.⁵⁹ At one point, Mr Lee even signed blank cheques for Mr Chan to fill out at his convenience.⁶⁰ It was clear that Mr Lee deferred to Mr Chan and Mdm Ng in all matters concerning Designline.

30 Mr Lee explained when cross-examined that he knew very little because “everything [was] between [Mr Chan] and [Mdm Ng]”:⁶¹ The figures regarding the St Michael’s Property purchase were “given” to him by Mr Chan;⁶² the purchase of the Delta Industrial Property was handled by Mr Chan;⁶³ and the Pavilion Property was purchased by Mr Chan.⁶⁴ His further explanation for his ignorance (despite being Designline’s sole proprietor) was that he trusted Mr Chan with Designline’s affairs.⁶⁵ This was not a good explanation and did not

⁵⁵ Mr Lee’s AEIC at para 23.

⁵⁶ Transcript, 27 October 2020, p 74 lines 16 – 28.

⁵⁷ 5 AB 1266.

⁵⁸ 5AB 1264.

⁵⁹ 4 AB 1097; 5 AB 1265.

⁶⁰ 5AB 1139 – 1140; Transcript, 27 October 2020, p 73 lines 1 – 28.

⁶¹ Transcript, 27 October 2020, p 46 line 9.

⁶² Transcript, 27 October 2020, p 54 lines 9 – 18.

⁶³ Transcript, 27 October 2020, p 56 lines 27 – 30.

⁶⁴ Transcript, 27 October 2020, p 59 lines 19 – 26.

⁶⁵ Transcript, 27 October 2020, p 54 line 24 – 25, p 57 line 2.

form a sound premise for Mr Lee's trust on operational matters if Designline was his own business. Mr Chan was not his employee and Mr Lee plainly had not made any assessment of Mr Chan's skills in the glass industry. His trust in Mr Chan, on his case, was premised on Mr Chan's position as the brother of his wife who had reliably provided for his wife's mother and Mr Lee's family in the past.⁶⁶ This spoke not to Mr Chan's operational capabilities, but Mr Lee's motivation in agreeing to take on the sole proprietorship at the behest of Mr Chan.⁶⁷

31 I deal, in passing, with Mr Chan's contention that he was expressly required to develop local agencies to work with Saint Gobain.⁶⁸ To that end, he pointed out that he worked with many local agencies, and Designline was only one of these agencies. This was not relevant as it was not the fact that he worked with local agencies that was in issue, but the content of his particular relationship with Designline. Mr Lim Kang Hor, called by Mr Chan as a witness for this purpose, could only discuss Mr Chan's relationship with Fireline Engineering Pte Ltd ("Fireline"). Even in that specific context, Mr Lim's evidence was not useful as he was only an employee of Fireline and could not speak for the whole of its work and interaction with Mr Chan or Saint Gobain.

Nature of the Properties

32 An assessment of the Properties also shows that they were not purchased for investment purposes on Designline's behalf, as contended by Mr Lee and

⁶⁶ Mr Lee's AEIC at para 10.

⁶⁷ Mr Lee's AEIC at para 12.

⁶⁸ Mr Chan's Closing Submissions dated 20 November 2020 at para 97 – 98.

Mr Chan. In my view, the identity and use of the Properties suggests that they were purchased for entirely different reasons. I analyse each property separately in view of counsel's submission in closing responses that the same conclusion as to intention need not be reached for all the Properties as a whole; and that there might be differences for individual properties.⁶⁹

33 I deal first with the two residential properties, the St Michael's Property and the Pavilion Property. Despite Mr Lee's contended beneficial interest, he has not moved into either of these residential properties. While the contention was that these were purchased with the intention of growing Designline's funds through investment, Designline was sufficiently profitable for his family to have resided at either or one of these properties. In fact, it was Mr Lee's evidence that the Pavilion Property was purchased because it was close to his current residence and "would be a place that [his] family [would] already [be] familiar with".⁷⁰ Instead, the Pavilion Property was used as the *Chans'* family home from the time of its purchase. At present, Mr Chan still resides there with two of his three children⁷¹. Mr Lee did not furnish any explanation as to why the Chan family used his property as their family home. There was some suggestion that Mr Lee had given permission to the Chans to move in. However, there was no evidence of such an agreement and no rent was charged either. Mr Lee explained that he did not charge rent since Mdm Ng did not agree to it.⁷² I found this explanation unconvincing. No landlord waives rent because his tenant refuses to pay. The more plausible explanation, in my view, is that Mr Lee was not

⁶⁹ Transcript, 30 November 2020, p 7 lines 3-7.

⁷⁰ Mr Lee's AEIC at para 41.

⁷¹ Mr Chan's AEIC at p 1 and Mdm Ng's AEIC at para 140.

⁷² Mr Lee's AEIC at para 44.

entitled to charge rent for the Pavilion Property. I find it highly improbable that the Pavilion Property was held by Mr Chan as an investment on Designline's behalf.

34 As for the St Michael's property, it was first acquired while it was under construction, and there would typically be an 18-month process prior to the completion of the purchase. Mdm Ng's evidence was that this property was intended for investment purposes for their family.⁷³ This was prior to the setup of Designline.⁷⁴ At commencement, Designline was owned by Mr Tan. If Mr Tan had purchased the St Michael's property as an investment for Designline, discussion about its enhancement in value ought to have featured in the sale of Designline to Mr Lee but this does not appear to be the case (see [25]).

35 In respect of the two industrial properties, Mr Lee pointed to the fact that the offer for the Delta Industrial Property was made in Mrs Lee's name. This, he said, evinced his intention to own the property beneficially; unfortunately, Mrs Lee was a homemaker, and was unable to obtain private banking facilities for the purchase.⁷⁵ According to Mr Lee, that is why the property was eventually bought in Mr Chan's name. In my view, the (initially intended) use of Mrs Lee's name does not assist Mr Lee's case. It says nothing about whether the Delta Industrial Property had been purchased as an investment on Designline's behalf. Mr Chan would have known from the outset that Mrs Lee would be unable to sustain a mortgage application. His putting the initial offer in her name made no difference to his eventual purchase of the property. It would have simply

⁷³ Mdm Ng's AEIC at para 123.

⁷⁴ Mdm Ng's AEIC at para 123.

⁷⁵ Mr Lee's AEIC at para 35 - 36.

masked his interest in the property until such time that it was necessary for him to claim it. Even then, the form initially used for the Delta Industrial Property purchase (submitted under Mrs Lee's name) stated that *Mr Chan* was the contact person for this transaction.⁷⁶ Eventually, the option to purchase was issued to Mr Chan⁷⁷ and he went on to purchase the property under his name, and further took out a loan under his name to purchase it.

36 Further insight may be gleaned from Mr Chan's use of the Delta Industrial Property. As the landlord, Mr Chan rented out the Delta Industrial Property to a company called Glastecnik Pte Ltd.⁷⁸ Suggestion was made that Glastecnik Pte Ltd was a sham company too,⁷⁹ being held in Mr Tan's name, much like how Designline was originally held in the same manner.⁸⁰ Glastecnik later went on to rent some space in the Delta Industrial Property to Saint Gobain.⁸¹ Mdm Ng averred that this too, was an example of Mr Chan's duplicity and that he had merely set up Glastecnik Pte Ltd to enrich himself at Saint Gobain's expense while distancing himself from these transactions.⁸² The documents showed that Mr Chan received some \$6,000/month from this lease to Glastecnik Pte Ltd.⁸³ At the minimum, Mr Chan's collection of the rental was

⁷⁶ 1AB 264.

⁷⁷ Mr Lee's AEIC at p 354.

⁷⁸ 4AB 971.

⁷⁹ Mdm Ng's AEIC at paras 154 – 160.

⁸⁰ 5AB 1374.

⁸¹ 4AB 976.

⁸² Mdm Ng's AEIC at para 159.

⁸³ 4AB 971.

evidence that Mr Chan was the true intended beneficiary of the purchase, rather than Designline.

37 Similarly for the Tuas Industrial Property, the documents suggested that Mr Chan was personally pocketing about \$4,500/month from renting it out to one Eleco Engineering Pte Ltd.⁸⁴ This too, I took as evidence that Mr Chan was the true intended beneficiary of the acquisition, rather than Designline or Mr Lee.

38 As for the Volkswagen, I do not accept that it was intended as an investment. A car such as the one purchased was a depreciating asset and would have been purchased for use, not for investment. If so, the question would turn to whether the Volkswagen was Designline's property, to be used in the course of its business. In his Statement of Claim, Mr Lee pleaded that it was held in Mdm Ng's name because of his concern that it could be seized by creditors.⁸⁵ There is no evidence, however that he drove or otherwise used the Volkswagen at all nor was there any substantiation regarding how Designline benefitted specifically from its use. After Mdm Ng pleaded in her Defence that the Volkswagen was a matrimonial asset,⁸⁶ Mr Lee's Reply stated that her use of the Volkswagen was restricted to her capacity as an employee of Designline.⁸⁷ Similarly, in his affidavit of evidence in chief, he explained its purpose was to facilitate work-related travel for an employee.⁸⁸ Implicit in these assertions was

⁸⁴ 3AB 770.

⁸⁵ Statement of Claim (Amendment No. 1) at para 34.

⁸⁶ Mdm Ng's Defence (Amendment No. 1) at para 43.

⁸⁷ Reply (Amendment No. 1) at para 55.

⁸⁸ Mr Lee's AEIC at para 50.

the suggestion that the Volkswagen had, at all times, been property of Designline.⁸⁹ As stated earlier, Mr Lee produced no proof that the Volkswagen was intended to be Designline's property. To the contrary, he stated in his affidavit that he had no idea whether it was Mr Chan or Mdm Ng "who had main use" of the Volkswagen.⁹⁰ The picture that emerged at trial was that Mr Lee simply did not exercise any oversight over what was supposedly Designline's property, and that it was Mr Chan and Mdm Ng who used the car, regardless of who had "main use" of it.

Mr Lee's personal liability

39 A key plank of Mr Lee's case was that all the Properties were placed under Mr Chan's name to keep them beyond the reach of creditors. This risk was particularly pronounced since Mr Lee, as Designline's sole proprietor, was personally liable for any risks borne by the proprietorship. Mr Lee's narrative was difficult to believe.

40 If Mr Lee saw a risk to remain as a sole proprietor, he did not explain why he continued to maintain Designline as a sole proprietorship. Mr Lee knew about different corporate structures. In fact, as early as 12 July 2006 – just months after he took over Designline – he was a director in Firelution Asia Pte Ltd.⁹¹ When questioned about why he maintains Designline as a sole proprietorship till today, Mr Lee was evasive and unconvincing: "it's my choice,

⁸⁹ Mr Lee's AEIC at para 50.

⁹⁰ Mr Lee's AEIC at paras 48-50.

⁹¹ 5AB 1314.

right?”⁹² Mr Chan stated, without proof or evidence, that Saint Gobain required him to work with sole proprietors. However, Fireline, used by Mr Chan at trial as an example of a company he worked with in his role at Saint Gobain,⁹³ was a private limited company.

41 Coming then to the liability itself, if any clients had approached Designline about “late delivery or defective glass supplied” (a risk which, in Mr Lee’s words, was his to bear),⁹⁴ it was uncertain if Designline would have been liable at all. For one, Mr Lee was unable to explain what this risk would have entailed.⁹⁵ His counsel assisted by referring the court to a typical contractual letter between Designline and Saint Gobain,⁹⁶ but Mr Lee was unable to explain it.⁹⁷ In fact, the same letter carried a clause which stated that Designline would not be liable for defective glass, despite Mr Lee’s averments to the contrary in his affidavit.⁹⁸ The evidence instead suggested that for some of these projects, it was Saint Gobain⁹⁹ or other associated companies¹⁰⁰ that gave the warranties. For the rest, no evidence was produced to support Mr Lee’s case that Designline was directly liable and responsible for five or ten-year warranties. To the contrary, when a dispute arose with Singapore Management University about a

⁹² Transcript, 27 October 2020, p 72 lines 16 – 26.

⁹³ Transcript 28 October 2020, p 23 line 31 – p 24 line 4.

⁹⁴ Mr Lee’s AEIC at para 24.

⁹⁵ Transcript 27 October 2020, p 74 line 29 – p 75 line 18.

⁹⁶ Transcript 27 October 2020, p 75 line 28 – p 76 line 6; Mr Lee’s AEIC at p 73.

⁹⁷ Transcript 27 October 2020, p 76 lines 23 – 31.

⁹⁸ Mr Lee’s AEIC at p 74.

⁹⁹ 6AB 1518.

¹⁰⁰ 6AB 1485.

project that Saint Gobain had undertaken for them, the evidence showed that it was Saint Gobain (rather than Designline) that managed the dispute, the settlement and subsequent insurance claim.¹⁰¹ Mr Chan himself conceded that no letter was sent to Designline regarding the dispute.¹⁰²

42 Mr Chan attempted to clarify the arrangement between Saint Gobain and Designline. He explained that there were various project management agreements between them where Designline undertook five or ten-year after sales service warranties.¹⁰³

43 In contrast, Mdm Ng contended that this after sales service liability was illusory. Her evidence was that customers were not aware of Designline, but thought they dealt with Saint Gobain.¹⁰⁴ Mdm Ng dealt with Designline's customers in the name of Saint Gobain and for this purpose, she used a name card representing that she was a Saint Gobain employee.¹⁰⁵ For example, Diethelm Keller Engineering Pte Ltd wrote to Mdm Ng at *Saint Gobain* in respect of glass supplied.¹⁰⁶ Under those circumstances, it was uncertain how liability could have been traced back to Designline at all.

44 The picture that emerged at trial differed greatly from Mr Chan's or Mr Lee's narrative. Designline was a vehicle of convenience that Mr Chan skilfully

¹⁰¹ 6AB 1507 – 1509.

¹⁰² Transcript 28 October 2020, p 46 lines 16 – 32.

¹⁰³ Mr Chan's AEIC, paras 28 and 39.

¹⁰⁴ Mdm Ng's AEIC at para 65.

¹⁰⁵ Mdm Ng's AEIC at para 86; 5AB 1138.

¹⁰⁶ 6 AB 1464-5.

used. When Mr Chan needed a facade, Designline was a distinct entity, capable of transacting on its own behalf. When instead, he wanted to rely on Saint Gobain's goodwill or corporate might to attract custom or to settle disputes, Designline's separate identity disappeared. A text sent by Mr Chan to Mdm Ng on 16 May 2016 well reflects this. In it, he informed her of organisational changes in Saint Gobain which would no longer allow him to fold Designline into the framework of his role at Saint Gobain, and would necessitate the closure of Designline:¹⁰⁷

Our office will be employing a new person. Once this person starts in the office, you operate from home. I will continue to complete all the existing projects and resign and most probably by March 2016. Design line will stop at the same time when I resign. You may find a job anytime now and design will continue to pay you until I resign and design line stop operation.

Conclusion on the central factual issue

45 In light of these facts, I conclude that Designline was an avenue for Mr Chan to take advantage of his position at Saint Gobain. He engaged Designline to do work he could not properly complete on his own without disclosing his involvement in the same. His object was to extract secret profits for personal benefit. To that end, the Properties were purchased for his benefit. Mr Lee had no oversight on the work and no grasp of the business. For his obliging participation, Mr Lee was separately paid by Mr Chan.

Applying the factual finding to the contentions on trust

46 In these circumstances, Mr Lee's primary contention fails. There was no common intention constructive trust for his benefit, to shield him from creditors.

¹⁰⁷ 5 AB 1245.

Moreover, I find that there was no understanding to invest in the Properties on his behalf. Further, there is no need for me to examine the parties' respective financial contributions to determine if the presumption of resulting trust arises. The presumption, which seeks only to approximate and infer the parties' intentions, is superfluous in light of the clear evidence of parties' intent. My finding on the facts do not establish a resulting trust in favour of Mr Lee. The requisite lack of intention to benefit Mr Chan and Mdm Ng was not established.

47 To the contrary, the evidence shows that the object of Designline was to benefit Mr Chan and his family and the purchase of the Properties was for the same purpose. The St Michael's, Tuas and Delta Industrial Properties were purchased for their investment; the Pavilion Property was for their residence; and the Volkswagen was for Mr Chan and Mdm Ng's use.

Burden of proof and effect on defence pleaded

48 There remains a final issue. Mr Lee contends, nevertheless, that Mdm Ng has not met her burden of proof.

49 The applicable law on the burden of proof was detailed by the Court of Appeal in *Britestone Pte Ltd v Smith & Associates Far East, Ltd* [2007] 4 SLR(R) 855 ("*Britestone*") and *Cooperatieve Centrale Raiffeisen-Boerenleenbank BA(trading as Rabobank International), Singapore Branch v Motorola Electronics Pte Ltd* [2011] 2 SLR 63 ("*Cooperatieve Centrale*"). Three key principles may be distilled:

- (a) First, there is a distinction between a legal and evidential burden of proof. The former is an obligation to persuade the trier of fact, and is placed on the party who asserts the existence of such a relevant fact or

fact in issue. The latter is a ‘tactical onus’ to contradict, weaken or explain away the evidence that has been led: *Britestone* at [59].

(b) Second, the legal burden of proof never shifts while the evidential one does: *Britestone* at [60]. To shift the evidential burden of proof, one must discharge it. To discharge it, evidence that is not inherently incredible must be adduced to raise or meet the issue at hand for the consideration of the trier of fact: *Britestone* at [60].

(c) Third, the placement of the legal burden(s) of proof generally depend(s) upon how parties have pleaded their case. The plaintiff will always have a legal burden to prove his claim. The defendant will likewise have a legal burden of proving a pleaded defence, unless the defence is a bare denial of the claim: *Cooperatieve Centrale* at [31]. This stems from the ancient maxim: “*ei qui affirmat non ei qui negat incumbit probatio*” – the proof lies upon him who affirms, not upon him who denies.

(d) In deciding whether a party is asserting an affirmative such that the *legal* burden of proof rests on that party, regard must be had to the substance of the issue and not merely to the manner in which a fact is grammatically stated in the pleadings: *Cooperatieve Centrale* at [32]. That said, in *most* cases, the pleadings are likely to be a good guide as to whether a party is asserting an affirmative: *Cooperatieve Centrale* at [32], citing *BHP Billiton Petroleum Ltd v Dalmine SpA* [2003] EWCA Civ 170 at [28].

50 Here, Mr Lee's counsel contends that Mdm Ng has made positive assertions and pleaded an affirmative case.¹⁰⁸ He claims that Mdm Ng's positive case was twofold: first, that Mr Chan was the '*de facto*' owner of Designline because he managed, operated and controlled Designline; and second, that the monies from Designline were held on trust by Mr Lee for Mr Chan, by virtue of this alleged *de facto* ownership.¹⁰⁹ I also note the objections raised by counsel for both Mr Lee and Mr Chan, both of whom have signalled that Mdm Ng's case at trial differed from her pleadings. I agree with them on both counts. Mdm Ng has indeed run a positive case on Mr Chan's *de facto* ownership of Designline and beneficial ownership of the monies and in that regard, a legal burden falls on her to prove those facts for these two defences. She has failed to do so. *De facto* ownership, a concept found in company law, has no equivalent in sole proprietorships. Legally, Mr Lee is the same legal entity as the sole proprietorship. A sole proprietorship does not have a distinct and separate legal personality from its owner. Mr Chan cannot be said to own Designline. Mdm Ng's contentions about the beneficial ownership of Designline must fail for the same reason. Regarding the financing of the Properties, Mdm Ng has also run a slightly different case at trial, asserting that she was the one who contributed to the purchase of the Properties, through her commissions and bonuses earned while employed by Designline.¹¹⁰ Parties are, as a matter of procedural fairness, bound by their pleadings. I therefore do not accept Mdm Ng's deviation from her pleaded case.

¹⁰⁸ Mr Lee's Closing Submissions dated 20 November 2020 at para 21.

¹⁰⁹ Mr Lee's Closing Submissions dated 20 November 2020 at para 22.

¹¹⁰ Transcript 27 October 2020, p 38 line 25 – p 39 line 30; Transcript 29 October 2020, p 124 lines 12 – 16; p 127 lines 10 – 12; p 129 lines 7 – 9; p 103 lines 6 – 30.

51 Notwithstanding, applying *Britestone*, Mr Lee bears the legal burden of proving his case as the plaintiff. Insofar as he seeks to persuade the court that there was no intention to benefit Mr Chan, or that Mr Chan held the Properties for his benefit, he bears an evidential burden. He has not discharged his burden of proof because on the facts, I find that neither proposition is made out. On Mdm Ng's part, aspects of her defence amount to a denial of the plaintiff's case. She has denied the existence of any trust¹¹¹, denied that the plaintiff's monies were used for the purchases,¹¹² and denied that the monies used by Designline belonged to Mr Lee.¹¹³ The facts support these denials. Aside from denying Mr Lee's allegations, she has also asserted an affirmative case that Designline, despite being a sole proprietorship owned ostensibly by Mr Lee, was in effect, managed by and for the benefit of, Mr Chan.¹¹⁴ In line with *Cooperatieve Centrale*, she has the legal burden to prove these assertions. I find on the facts that she has discharged this burden. She has shown that Mr Lee's intention, in permitting funds from Designline to be used for the purchase of the Properties, was to benefit Mr Chan and his family. For these reasons, Mr Lee's claim fails.

Limitation Period

52 Mdm Ng raised, by way of further defence, various arguments on the limitation period applicable. In the light of my views on Mr Lee's claim, I find it unnecessary to address these issues.

¹¹¹ Mdm Ng's Defence (Amendment No. 1) at paras 32(f), 34(e), 34(f) and 36(f).

¹¹² Mdm Ng's Defence (Amendment No. 1) at paras 31, 33 and 35.

¹¹³ Mdm Ng's Defence (Amendment No. 1) at paras 33 and 35.

¹¹⁴ Mdm Ng's Defence (Amendment No. 1) at paras 9.1, 13.1(d) and 17 – 30.

Conclusion

53 Plaintiff's claim is dismissed in its entirety. I shall hear parties on costs.

Valerie Thean
Judge

Goh Kim Thong Andrew and Lim Xiao Ping (Andrew Goh
Chambers) for the plaintiff;
Kelvin Lee Ming Hui, Ong Xin Ying Samantha and Tan Zhi Ying
Kikki (WNLEX LLC) for the first defendant;
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