

Jesuraj Daniel v Vadivelu Pandi Devi and another
[2012] SGHC 60

Case Number : Suit No 66 of 2011
Decision Date : 02 April 2012
Tribunal/Court : High Court
Coram : Quentin Loh J
Counsel Name(s) : Mr Kanagavijayan Nadarajan (Messrs Kana & Co) for the plaintiff; Mr Prabhakaran Nair (Derrick Wong & Lim BC LLP) for the first and second defendants.
Parties : Jesuraj Daniel — Vadivelu Pandi Devi and another

Companies – Shares – Transfer

Trusts – Express trusts – Constitution

Trusts – Trustees – Duties

2 April 2012

Judgment reserved.

Quentin Loh J:

Introduction and parties

1 The Plaintiff, Mr Jesuraj Daniel, ("Mr Daniel"), seeks an order for the return of 98,000 shares he owned in the 2nd Defendant, Chennai Ponnusamy Hotels & Restaurant Pte Ltd ("CPR"), and transferred to the 1st Defendant, Vadivelu Pandi Devi ("Mdm Devi"), to hold on trust for him. The Plaintiff also seeks an account from Mdm Devi for CPR's profits, access to CPR's assets, monthly bank statements, the profit and loss statements and the balance sheet from the inception of CPR and further that the Defendants pay to him his share of CPR's profits.

2 CPR was incorporated on 27 June 2008, with Mr Daniel holding 49% and one Ms Violet Lee holding 1% of the issued share capital. Mdm Devi acquired the other 50% of the shares on 5 August 2008. Mr Daniel and Mdm Devi were directors of CPR until Mr Daniel's removal on 28 June 2010.

Facts

3 Mr Daniel initially set up CPR on 22 March 2008 as a sole proprietorship. On 27 June 2008, he incorporated CPR, taking one Mdm Rajalakshimi as a 'partner'. He held 98,000 shares or 49% of the issued share capital; Ms Violet Lee, on whose premises CPR was situated, held 1%; and Mdm Rajalakshimi held 100,000 shares or 50% of the issued share capital.

4 In July 2008, Mdm Rajalakshimi could no longer maintain her shareholding in CPR, and wished to sell these shares. Mr Daniel then approached his friend and ex-colleague, Mr Velusamy Radhakrishnan Pugazhendhi ("Pugal"), to ask if he would like to buy out Mdm Rajalakshimi's share. Pugal counter-proposed that his wife, Mdm Devi, do so instead, as he had a full time job and she had more time to be involved in the management of the business. Mr Daniel agreed. On 5 August 2008, Mdm Rajalakshimi's shares were transferred to Mdm Devi, and the change in shareholdings was

registered with the Accounting and Corporate Regulatory Authority Singapore ("ACRA") on 15 August 2008.

5 It is not disputed that Mr Daniel was having marital problems during this period, and on 21 October 2008, he initiated a transfer of his 98,000 shares to Mdm Devi. It is disputed whether this was done as an outright transfer for value or as a transfer for Mdm Devi to hold the shares on trust for him.

6 The immediate events leading to this dispute occurred in 2010. Mr Daniel claims that he asked for the shares to be returned after he reconciled with his wife in mid 2010. When Mdm Devi refused, citing that the shares had been transferred outright and not on trust, he engaged a lawyer and the lawyer sent a letter dated 26 August 2010 to claim back these shares. As there was no satisfactory response, Mr Daniel filed this writ of summons on 31 January 2011.

Plaintiff's case

7 Mr Daniel claims that the shares were transferred to Mdm Devi to hold the same on trust for him and that she was fully aware of this. While he denies that he made the transfer to hide the assets from his wife, he alleges that he made this decision in order to protect his business partner from the fallout of a potential divorce.

8 After this transfer, Mr Daniel claims that he continued to be actively involved in CPR's business. By contrast, he alleges that Mdm Devi never took part in managing the company, and would "merely stand around" [\[note: 1\]](#). He also disputes the accounts provided by Mdm Devi pursuant to this suit, claiming that this was consistent with Mdm Devi and Pugal's refusal to return his shares out of greed.

Defendants' case

9 The 2nd Defendant's case follows Mdm Devi's case, and for ease of reference, Mdm Devi's position will be taken to represent that of both defendants. Mdm Devi claims, to the contrary, that there was no agreement that the shares would be transferred to her on trust for Mr Daniel. Rather, the shares had been transferred to her in consideration of a discharge of Mr Daniel's debts to the company, a continuation of his paid position as manager (\$2,000 a month), and to match her investment of \$110,000 in CPR.

10 She further alleges that Mr Daniel was preoccupied with his marital problems, and played little or no part in the daily management of the company. He also did not invest monetarily in the company, leaving her to make most of the monetary injections when the company was not doing well financially.

Issue

11 The main issue therefore is whether the 98,000 shares were transferred to Mdm Devi on trust for Mr Daniel or not. Whether Mr Daniel took an active part in the management of the company is relevant insofar as it casts light on the context within which the transfer was made. There is little or no documentation that will be decisive in this case. The entire case will turn on the facts, the witnesses and their evidence, how they fare under cross-examination, what little documentary evidence that exists and the burden of proof on a balance of probabilities.

Findings

12 Having considered the evidence before me, on balance, I find that Mr Daniel has proved that he

transferred his shares in CPR to Mdm Devi for her to hold them on trust for him. Mr Daniel transferred his shares in order to put them out of reach of his wife who had threatened to commence divorce proceedings against Mr Daniel. He also did so to protect the business from disruption by a claim from his wife. He intended that the shares would eventually be returned when he had settled matters with his wife. Mdm Devi agreed to do so.

13 There were only two witnesses for each side. Mr Daniel and Ms Saralah Kannan, ("Ms Kannan"), and Mdm Devi and her husband, Pugal.

14 Mr Daniel subpoenaed Ms Kannan, who was CPR's company secretary, to give evidence on his behalf. Ms Kannan ran her own business providing corporate secretarial services and accounting consultancy. She was appointed company secretary by Mr Daniel and Mrs Rajalakshmi. She also helped CPR do their accounts and looked after CPR's records and filings with ACRA. She had known Mr Daniel for about nine to ten years. She only got to know Mdm Devi after August 2008 when the latter became a director and shareholder of CPR.

15 I find her a witness of truth. She gave her answers in a straightforward manner, seldom hesitating and was quite matter-of-fact. She did not take sides. When she could not remember something, she said so clearly. She had nothing to gain from this case and had to change her date of departure from Singapore because of the hearing. Her evidence was that she prepared the director's resolution [\[note: 2\]](#) approving the transfer of Mr Daniel's 98,000 shares to Mdm Devi and the share transfer form on Mr Daniel's instructions. She gave evidence that sometime in October 2008, Mr Daniel asked her to transfer his shares to Mdm Devi "due to personal reasons" [\[note: 3\]](#) and told her that Mdm Devi will be holding the shares on trust for him. At that point of time she asked him: "How could you trust someone and give all your shares?" She said Mr Daniel replied that Mdm Devi was trustworthy and going to hold the shares "for the namesake until he settle [sic] his personal issues." Ms Kannan advised him to put this in "black and white" so that later on, if there were problems he would be protected. Mr Daniel said it was not necessary as Mdm Devi was trustworthy and he trusted her. Ms Kannan then went on to say: [\[note: 4\]](#)

Q: So---so Mr Daniel---it is your evidence that Mr Daniel had asked you to transfer his 98,000 shares to Pandi Devi for Pandi Devi to hold these shares on trust?

A: Yes.

Q: And do you know why Daniel has asked Ms Pandi Devi to hold the 98,000 shares on trust?

A: Mm, basically this is because of his personal problems. His, er, wife was---had the intention to ask for a divorce, so he worried that later she will claim for this assets [sic] against him.

...

Q: And besides your evidence, do you know if Ms Pandi Devi had given any money to Jesuraj Daniel for the transfer of this shares ---

A: No

Q: --- in her name?

A: No, not that to my knowledge.

Ms Kannan also prepared the share transfer forms. Ms Kannan went on to say that she later told Mr Daniel's wife about this but she could not remember when. She also confirmed that when preparing the accounts, most of the information came from Mdm Devi's husband and Mr Daniel's son. When the dispute between Mr Daniel and Mdm Devi occurred, the latter replaced Ms Kannan with someone else. Ms Kannan said, rather philosophically, without any rancour, that since Mr Daniel had appointed her, when the parties had their disputes and the other partner took over, she was replaced.

16 Ms Kannan's cross-examination was brief. Her evidence was firm and was not shaken by cross-examination. She readily agreed that she had not verified this trust arrangement with Mdm Devi or anyone else independently, but what Mr Daniel had said to her when instructing her to transfer the shares to Mdm Devi was not challenged. Nor was her evidence that to her knowledge no payment was made for the transfer of the 98,000 shares. This tallied with the evidence - it is common ground that Mdm Devi did not pay Mr Daniel \$98,000 cash, contrary to what was stated in the share transfer form. Ms Kannan also confirmed that she did not maintain CPR's accounts on a regular basis and had very little involvement in CPR's company affairs.

17 Ms Kannan's evidence is consistent with Mdm Devi's lawyer's letter of 13 October 2010, [\[note: 51\]](#) which was in reply to Mr Daniel's lawyer's letter of demand for, *inter alia*, the return of the shares alleged to be transferred on trust; the letter was silent on whether the shares had been transferred outright. I find the letter to be carefully crafted to avoid this question, and contained only one line which referenced the transfer:

Suffice to say your client actually agreed to give up his stake in the Company because of his personal family problems and was in fact was [sic] prepared to transfer his share to our client as he was no longer able to contribute the capital needed to run the business.

The statement that Mr Daniel "actually agreed to give up his stake in the company" and "was prepared" to transfer his shares falls short of categorical denial that the shares were not transferred on trust or that Mr Daniel received payment for his shares.

18 Moreover, it is undisputed that there were discussions on the distribution of equitable interests in the company. It was when these discussions broke down that this became a full-blown dispute. If, however, the shares had been transferred outright, there would be no reason to have these discussions on equitable interests, for the simple reason that Mr Daniel would have no claim or interest in the company, whether beneficial or otherwise.

19 Neither Mr Daniel nor Mdm Devi's evidence was entirely satisfactory. As noted below, each of them gave answers or gave answers in a manner which was unsatisfactory. Each of them also embellished their evidence. This especially happened when various aspects of their evidence was, I find, not true when tested against the rest of the evidence. In assessing Mr Daniel's and Mdm Devi's evidence and their cross-examination, Mdm Devi came out the worse for wear. She was the more evasive, she was less direct in answering questions, and ignored the question at times and just put forward her set piece. I now turn to set out in a little more detail why I prefer the evidence of Mr Daniel.

20 I find that Mr Daniel's account, while generally lacking in credibility in some aspects, is fairly consistent when it comes to whether the shares were transferred on trust, with the following exceptions, neither of which are fatal to his case:

(a) He denies that the share transfer was to "hide" the assets from his wife. [\[note: 61\]](#) Yet, he offers no other explanation for why he would have wanted to effect this transfer, or how this

transfer was related to his matrimonial dispute. I find that Mr Daniel had indeed transferred the shares to “hide” his assets in the event of divorce proceedings as well as to ensure that any claim by his wife would not disrupt the business. This has the effect of actually bolstering his claim that the shares had been transferred on trust for this very purpose.

(b) Mr Daniel’s dates do not match. He claimed at first that he reconciled with his wife in April or May and asked for the shares back then. [\[note: 7\]](#) In fact, a settlement was only reached on 8th July 2010, [\[note: 8\]](#) where Mr Daniel and his wife agreed to co-habit, and the divorce suit was only withdrawn in December 2010. I find this mistake to be non-pernicious, however, as Mr Daniel did state clearly when testifying to the April/May dates that he was unsure that these were the accurate dates. Moreover, not being able to recall exact dates does not prejudice his claim, or mean that he did not transfer the shares to her on trust to hold the same for him or that he had not asked Mdm Devi to return the shares. There is also a police report dated 25 August 2010 [\[note: 9\]](#) lodged by Mdm Devi which accuses Mr Daniel and his wife of turning up at the 2nd Defendant’s factory and “using bad language and threatening my workers to go back to India.” Mr Daniel and his wife had clearly settled their differences by then and were working together.

21 In contrast, I find that Mdm Devi’s account on this score is inconsistent and implausible. Most notably, Mdm Devi’s claims in relation to the accounts contains glaring discrepancies which I am unable to ignore.

22 Based on Mdm Devi’s accounts (and assuming that she is right that the amount paid to Mr Daniel is a loan and not a reimbursement), Mr Daniel owed the company \$27,416.50. Mdm Devi claims that she had put in an investment of \$52,073.00, which he would have needed to match. This amounts to \$79,689.50. Yet, Mr Daniel transferred \$98,000 worth of shares to her, and waived consideration for the whole. He had, inexplicably, given her \$18,310.50. This is despite the fact that she was aware that the document she signed for the transfer of the shares stated that the \$98,000 had already been paid. [\[note: 10\]](#) This is consistent with Mr Daniel’s account that the shares were being transferred on trust, and therefore no payment was made. But it is not consistent with Mdm Devi’s account. Accordingly, the onus is on Mdm Devi to support her alternative explanation that Mr Daniel would give her \$18,310.50 in shares, and she does not do so. Mdm Devi provided four reasons why Mr Daniel might have transferred these shares to her without payment of the \$98,000:

- (a) To offset the contribution that he would have had to make to the company’s finances in order to match Mdm Devi’s investment of \$110,000;
- (b) In exchange for a cancellation of his substantial debts to CPR;
- (c) In exchange for a \$2,000 salary per month as a manager;
- (d) In an attempt to “dump” his loss-making shares.

For the reasons set out at [\[23\]](#)-[\[32\]](#) below, I find that none of these four possibilities are supported by common sense or any objective evidence.

Reason 1: Offsetting of Mdm Devi’s contribution

23 Mdm Devi claims that she had invested \$110,000.00, but only names two components (investment sum of \$52,073.00 (undisputed); and money paid to Madam Rajalakshmi for her shares, \$18,000). This adds up to \$70,073.00, with no indication of where the other \$39,927 had gone.

Mdm Devi highlights some numbers deposited in the company account, [\[note: 11\]](#) as an indication of her contribution. Even taking these numbers into account, her contributions total a further \$33,292, leaving \$6,635 unaccounted. In any case, I am unable to accept these numbers as evidence of her contribution, as she gave no evidence or indication as to why these highlighted numbers were singled out from the other regular deposits of customer's cheques. I believe instead Mr Daniel's testimony that the deposits were mainly customer payments: [\[note: 12\]](#)

Ct: So these are monies received by the company for the business transactions i.e. the sale of food?

A: Could be.

Ct: Could be?

Q: Could be.

Ct: Don't you know?

A: Definitely it is.

Ct: So you would have a customer who would pay you as much as \$5,000? For example, see on page 178 [Agreed Bundle], 9th October entry.

A: Yes. Could be.

Ct: Could be?

A: When we supply food for 45 person [sic], the amount will come to 5,000.

This was initially suspicious, as this figure works out to \$111.11 per person for a packet of food for a foreign worker, an implausible sum. However, if we take into account that this could have been for a month's supply of food, as Mr Daniel testified was sometimes the case, [\[note: 13\]](#) dividing this sum by 22 working days in a month, each foreign worker would have to pay \$5.05 per packet of food per day (\$2.52 per meal), which was a plausible sum.

24 I find the assertion that Mdm Devi contributed \$110,000 is unsupported by evidence. This is clear upon examination of the accounts. Mdm Devi was unable to explain why her accounts in April 2010 reflected a profit of \$359,004 and \$358,856, while the final numbers showed a net loss of \$174,030. Her explanation that the numbers reflecting a profit was merely an estimate was thoroughly unconvincing given the wide discrepancy:

Q: So since---you look at---I'm---I'm relating page 93 to AB1, Madam. Since you mentioned that---in relation to page 93, since you mentioned that AB1 is a correct reflection of your estimated amount, how come there is a vast difference in respect of profits when you have calculated and the loss [sic] as of 31st march 2010?

A: As I had said earlier, that the full details of the expenses were not included in AB1. For the financial statement in 93, full details were supplied.

Q: So are you saying---saying that as of 4th June 2010, the company was making a loss when

you signed the document?

A: Yes, at the time on 4th June, I did not know the full details, after the---the list of expenses was given to the secretary then I came know [sic]. [\[note: 14\]](#)

...

Ct: You see, witness, there's a very big difference between saying the total profit as of end April 2010 is 359,004, or on AB2, a total profit of 358,856, to finding out that there is a net loss on page 93 of minus 174,030.

A: As I've explained earlier, the---it's only an estimation. All the expenses is [sic] non-listed, as you can see from the---from the empty columns. [\[note: 15\]](#)

If Mdm Devi had indeed invested \$110,000.00, she could have included this investment to offset the loss in the later document (working with actual figures), but she inexplicably chose not to do so. She also inexplicably chose not to factor in this investment to offset the purported loss from "being cheated" [\[note: 16\]](#). I find the truth to be that such an investment was never made, but was included later to support her contention that Mr Daniel gave her his shares outright because he could not match her investment in CPR.

Reason 2: Discharge of Debts owed to CPR

25 I make the further finding of fact on the evidence before me that Mr Daniel did not owe CPR the sums that Mdm Devi claims, and there was accordingly no occasion for him to transfer his shares in exchange for discharge of these debts. I do not believe Mdm Devi's claim that the \$27,416.50 consisted of sums which had been borrowed by Mr Daniel. She admitted under cross-examination that when he "borrowed" the money, he would give her a receipt for petrol usage, with the caveat that he used the balance for his "own use". [\[note: 17\]](#) If this had all been borrowed money, why would there be a need to submit receipts, or to differentiate or justify the balance as for personal use? The submission of receipts is more consistent with Mr Daniel's version that at least part of the money was reimbursement for what he had done "in the course of business, to bring in business". [\[note: 18\]](#) In these circumstances, I do not accept Mdm Devi's claim that Mr Daniel was willing to waive consideration for his shares in exchange for discharge of these debts. Even if she was right that Mr Daniel had agreed to give her these shares in consideration of a discharge of his debts, these debts were owed to the company, and not to her.

26 What I find to be true is this. On her own evidence, and confirmed by her husband, Pugal, Mdm Devi had no previous experience in this food catering business. Mr Daniel had. I do not accept her bald statement that he had no knowledge of it and she was not sure of his experience in the food catering business. There was evidence that he had other food businesses, including that of his wife, Mrs Malar Daniel. Mr Daniel clearly had business contacts and knew how to get business or secure contracts for the supply of food and he was the one going around sourcing for business.

Reason 3: Monthly Salary of \$2,000

27 I also do not accept Mdm Devi's claim that Mr Daniel was willing to waive consideration for his shares in exchange for a monthly salary of \$2,000. [\[note: 19\]](#) This does not make sense. He was already receiving \$2,000 in monthly payments as manager without needing to sell his shares. He would

not have gained anything by selling his shares, and would have made quite a significant loss (see [\[22\]](#) *supra*). There was not even an indication of how long he would have continued to receive this payment or keep this position. I might have been prepared to accept that the shares were given in consideration of guaranteed payment over a number of years, but this is not Mdm Devi's case. There is only a bare assertion, which I find unsupported by evidence or common sense, that Mr Daniel gave Mdm Devi his shares for a payment he would already receive.

Reason 4: Offloading of shares

28 The Defendants have another string to their bow. They claim that Mr Daniel was eager to offload these shares because the company was operating at a loss. This was denied: [\[note: 20\]](#)

Q: The company only started showing a profit after you had sold your shares.

A: If there's a profit---reason why I appended my signature [to the Statement of cash flow, capital and outstanding amount as of April 2010, found at AB2] is there was a profit that showed subsequently. Sir, my final say is that, I object to what the counsel is saying that I transferred---I transferred it when if---the company was at a loss. There was no loss.

Q: That's not what the document you signed says.

A: I have already explained to the Court that I transferred the shares because of family problems, and counsel is repeatedly saying that there was loss; it is not.

29 I find that there is some support for the suggestion that the company had been making an initial loss. I first deal with Mr Daniel's evidence:

(a) Mr Daniel claims that CPR was doing "so well" that it "reaped huge profits", [\[note: 21\]](#) yet in the statement of claim Mr Daniel stated that there were no dividends; [\[note: 22\]](#)

(b) Mr Daniel claims that the shares were transferred at a time "when the business was running very well", [\[note: 23\]](#) but he eventually admitted that it "could be" the case that he was mistaken when it was pointed out that the space between the registration of the company and the shareholding was only 4 months. He testified that no profit was made in the first 6 months (between July to January 2008), yet the transfer was made before the 6 months was up (October 2008); and

(c) Mr Daniel raises, in support of his claim, charges made against him for the employment of foreign workers without a valid work pass (DAC No. 8799-8802 of 2009). His mitigation plea pursuant to his conviction under those charges claimed that Mr Daniel's business had "taken a toll for the worse" due to a declining client base, [\[note: 24\]](#) indicating that, as of mid November, not long after the transfer of shares, the business was still not doing well. It would thus have been unlikely that, just three weeks before (21st October 2008), when the shares were transferred, that the business would have been doing as well as Mr Daniel claimed.

30 I do not believe, however, that CPR's loss was a motivation for Mr Daniel to offload his shares at a loss. The evidence points to a normal business start up. The statement of cash flow, capital and outstanding amount as of April 2010, [\[note: 25\]](#) which was signed by all three parties on 4 June 2010, shows that from June to October 2008, CPR was losing money each month, viz, -\$3,500, -\$4,700, -\$25,218, -\$7,000 and -\$7,000. In November 2008, there was a slight profit of \$2,000 and by

December 2008 and January 2009, the profits were \$22,719 and \$22,300 respectively. There was a dip in the profits for the next three months, February to April 2009, viz, \$10,500, \$13,700 and \$13,300. This coincides with Mr Daniel's evidence that CPR suffered a loss of customers. After that, except for August and September 2009, (\$13,000 and \$14,300), the monthly profits ranged from \$20,638 (December 2009) to \$48,950 (April 2010). These were figures produced by Mdm Devi and/or Pugal. Whilst these figures might have been rounded-off, I find that they did give a fairly accurate picture of the business and its development from June 2008 to April 2010.

31 To say that the business was not doing all that well is not the same as saying that it had no potential or that Mr Daniel did not expect profits to finally start coming in at some point in the future. Even Mdm Devi was optimistic that there would be profits in future, and factors this in the estimate provided in the statement of cash flow, capital and outstanding amount as of April 2010. [\[note: 26\]](#) Mdm Devi does not claim that Mr Daniel wanted to transfer these shares in an attempt to "dump" an unprofitable business, but maintained in her Affidavit and under cross-examination that the Mr Daniel's primary motivation had been matrimonial problems. Moreover, if Mr Daniel had wanted to "dump" the shares which were loss-making, there is no reason why he would have chosen to do so at the further loss of \$18,310.50, at best, and \$98,000 at worst. The least he could have done in that situation was to sell his shares at the market price and rid himself of a loss-making asset. I find that this notion of "share-dumping" is an *ex post facto* justification of Mdm Devi's position that the shares were transferred outright, and not evidence of that position at all. Further I find that Mdm Devi had no explanation at all for the following piece of evidence - if Mr Daniel was no longer a shareholder, it seems strange that rough-and-ready accounts were drawn up as at end April 2010, signed by Mr Daniel, Mdm Devi and Pugal, and shortly thereafter, Mr Daniel was given a cheque for \$10,000.

32 I also find that Mr Daniel probably knew, at the time he asked for his shares back, that CPR was making profits and he wanted his rightful share. He is a businessman with multiple businesses between him and his wife. He testifies in his Affidavit, [\[note: 27\]](#) and again under cross-examination [\[note: 28\]](#) to having "perused" the accounts for both 2009 and 2010, and proceeded to sign his assent. Nonetheless, he still claims in his Affidavit that these accounts were wrong, and that profits were "much higher" [\[note: 29\]](#), and maintains this under cross-examination: [\[note: 30\]](#)

Ct: Correct. So that is wrong. Counsel is asking you: Look at the next column on the right. For the financial year-end, 31st March 09, 157,630, is that also wrong?

A: This is also wrong.

Q: So that's---

Ct: Yes

Q: ---also wrong, okay. Any other issues with the accounts other than the staff cost?

A: I do not accept the other operating expenses.

Q: For which year? For both years?

A: For both years.

Q: What about the revenue?

A: I---the information given here is all wrong, I would not accept it.

Q: For both years again?

A: Yes, for the both the years, the information given is wrong.

Although Mr Daniel cannot offer valid reasons why these expenses and information are wrong, nor does he provide any figures in response, nor mention how much higher the profits were likely to have been, it is clear that he had some idea of the profits and expenses incurred in CPR. His real problem was that he left the running of the accounts to Mdm Devi and Pugal. That was confirmed by Ms Kannan. I do not accept Mdm Devi's suggestion that Mr Daniel's primary motivation in this whole affair had been dumping unprofitable shares, and attempting to recover them when there was a profit.

33 I find the truth to be that Mdm Devi did invest \$52,073.00 in CPR, and as time went on, put in more and more of the work. But in the beginning months, I find that it was Mr Daniel who found the cooks, had the experience of running the business and knowledge to secure business orders and there would be a lag before the profits started to come in. Some customers had credit terms. But as time went on, there was a need to put in more cash to fund this lag between purchasing the raw materials, cooking and supplying them and then getting payment. When Mr Daniel failed to reciprocate in effort and financial contribution, because he was distracted with his matrimonial problems, Mdm Devi and her husband began to lose patience with him, and became discontent at his failure to perform, despite receiving \$2,000 a month as remuneration for his director's/manager's duties. By the time Mr Daniel asked for the return of his shares, Mdm Devi had had enough, and felt entitled to retain these shares as a reward for all her efforts. I find that she felt that CPR's progress over the latter part of 2009 to its current state of profitability as at June 2010 was mostly her effort. I find it more probable than not that Mr Daniel's efficacy and contribution to CPR, which was considerably above Mdm Devi's in the beginning, began to show a gradual decline over 2009 and 2010 whilst Mdm Devi's was on the rise as she put in money, effort and time. But that is not to say that Mr Daniel did nothing at all; he was still a not insignificant part of the company. The curves, as it were on a graph, flattened out when Mdm Devi started gaining knowledge and experience in the business. The evidence on each side is consistent with this view.

(a) Mr Daniel alleged that Mdm Devi was not involved in the company, [\[note: 31\]](#) yet alleged also that the her husband, Pugal was "involved in the business from the very beginning"; [\[note: 32\]](#) activity he clearly regarded as attributable to Mdm Devi, because he uses their names together and interchangeably in his Affidavit. He confirms this under cross-examination, stating that Pugal had told him that "he will assist [him] and his wife in running the business", [\[note: 33\]](#) and that he was happy with this arrangement. This would have made her inexperience less important. I do not believe Mr Daniel's account that Mdm Devi did nothing but stand around. I find that both Mdm Devi and her husband worked together with Mr Daniel in managing the business of CPR.

(b) Mr Daniel was evasive when asked why he was not the signatory on the bank account, saying first that the bank would not allow him to be a signatory since he had another account, [\[note: 34\]](#) and later changing this to say that his cheques had been dishonoured by the bank and this was the reason why he could not be a signatory. [\[note: 35\]](#) This showed he had an unstable part to his 'contributions', his name was not quite kosher with a bank and operating a bank account at OCBC.

(c) There was also another significant piece of evidence. At a Ministry of Manpower ("MOM") raid in the beginning of December 2008, 4 foreign workers without valid work permits were found at CPR's kitchen. Mr Daniel was charged and pleaded guilty. If he had truly transferred his shares to Mdm Devi, in August 2008, and was no longer a shareholder, I can see no reason why he would take the rap for these workers in a company in which he had no stake. Mdm Devi gave the excuse that when the raid took place, she was away at the time and Mr Daniel was present and therefore answered to the MOM during the raid. [\[note: 36\]](#) I have no hesitation in rejecting this piece of evidence. The charges state that these workers were hired by Mr Daniel and worked from around various dates in November to 5 December 2008. Section 20, Employment of Foreign Workers Act (Cap 91A, 2009 Rev Ed) (which he was charged under) does not provide that only directors or main operators be charged, but charges the individual responsible for that particular offence. This shows that he must have had a part in employing individuals or recommending workers for CPR, which in any event, Mdm Devi admits to. [\[note: 37\]](#)

34 Mdm Devi's evidence on her contributions was more or less consistent in her testimony on this point. Her evidence that she could handle the business despite having to "learn fast" [\[note: 38\]](#) was not beyond belief. It was also not disputed that she had prepared the accounts with some help from her husband. Although the accounts were in a questionable state, it at least shows that she had put in the necessary work.

35 I find that Mdm Devi resisted Mr Daniel's claim to return the shares because she thought that she deserved to own the company and exclude Mr Daniel for her increasing participation in and contributions to CPR's business and Mr Daniel's decreasing participation and increasing lack of contribution over time. Indeed, she already did so on 28 June 2010, when she removed Mr Daniel as director and sent him a letter informing him of the same, and on 20 August 2010, not long after discussions on the variation of equities in the company broke down, by appointing a new Director in replacement. [\[note: 39\]](#) This does not, however, disprove Mr Daniel's account that the shares were transferred on trust.

36 Mdm Devi's only other witness was her husband, Pugal. Pugal and Mr Daniel had known each other for almost 17 years prior to June 2008. Mr Daniel initially invited Pugal to join CPR but as he was in full time employment, Pugal suggested his wife instead. I accept Mr Daniel's evidence on this score, that Pugal promised he would also help out with the business. Pugal quite understandably supported his wife's evidence that Mr Daniel failed to put in capital as required and that led to his surrendering his 98,000 shares to his wife. However his real dilemma was that he was in full time employment as an Assistant Manager with a government-linked company. He was not allowed to engage in other business activities without express permission. His evidence, clearly stated under cross-examination, was therefore that he was not involved in CPR's business, not involved in the accounts, only helped his wife type them out, not involved in the running of CPR, put in no effort for the business of CPR and he only dropped by sometimes when he was free to visit,. [\[note: 40\]](#) Yet at times, he tried to give detailed evidence of the business, for example, who had hired the cooks and workers, that some of whom were introduced by his friends, and that there were people coming up to them asking for jobs as cooks. But Pugal admitted that Mdm Devi had no experience in running a business like CPR and had to depend on Mr Daniel to run the business in the beginning stages.

37 Pugal said he helped Mdm Devi type out the Statement of cash flow, capital and outstanding amount as of April 2010 [\[note: 41\]](#) ("the April Statement") and the figures came from and were written out by her. When Mdm Devi was pressed on some of the figures in the the April Statement, she said counsel should ask Pugal. [\[note: 42\]](#) Yet Pugal clearly said he was "not at all" in charge of the

accounts and said Mdm Devi was the one who was in charge of CPR's accounts. [\[note: 43\]](#) Pugal supported Mdm Devi's evidence that the the April Statement was drawn up to estimate the cash flow, since they had been doing business for about one year and did not know what the cash flow was. Yet the the April Statement is clearly not only a cash flow statement. It is a set of rough and ready accounts. Further, as noted above, if Mr Daniel was no longer a shareholder, it was counter-intuitive to ask him to sign the same and then give him a cheque for \$10,000. Further still, if Pugal was not involved in the business of CPR, it is also difficult to see why he signed the April Statement. Mdm Devi and Pugal's only unconvincing explanation was that Mr Daniel had asked him to sign, so he did so. I therefore found Pugal's evidence quite unreliable and do not accept the same.

Defendant's counterclaim

38 Mdm Devi makes the counterclaim against Mr Daniel for the sum of \$40,700 owing to CPR. I find that this counterclaim has not been substantiated. I find that the sum claimed has been inexplicably inconsistent throughout trial proceedings. This sum was listed as \$40,700 in the Defendants' pleadings and opening statements, without explanation of how the figures had been arrived at, or its particulars. When questioned about the particulars under cross-examination, Mdm Devi confirmed that she had not specified the individual amounts, but gave no explanation as to why she did not do so, other than the bare and unconvincing statement that "I've---I have already given to my counsel those details the form of cheques and how much he---he had borrowed." [\[note: 44\]](#) This sum was further changed to \$37,700 in Mdm Devi's Affidavit, [\[note: 45\]](#) and again to \$27,700 under cross examination when Mdm Devi realised that her allegations surrounding the \$10,000 cheque paid out to Mr Daniel were not going far towards supporting her case. [\[note: 46\]](#) Pugal does not say anything, either his Affidavit or under cross-examination, about the sums under this counterclaim.

39 I find Mdm Devi's claim that the \$10,000 was given to Mr Daniel as a loan to be wholly unconvincing. As noted at [\[37\]](#) *supra*, I find that the \$10,000 was given to Mr Daniel as his share of profits, pursuant to the April Statement. The cheque was drawn up and signed on the same day, 4 June 2010, as the April Statement was signed, and I find the two to be inextricably linked.

40 However, I find that Mr Daniel had agreed that these sums should be deducted from his running account. He had given such an undertaking on the same day, when he signed against the accounts of the \$27,700 which he allegedly owed CPR, stating that "this amount is excluded from the Salary Amount \$2,000 per month taken from the company." [\[note: 47\]](#) He affirmed this in his Affidavit, when he deposed that: [\[note: 48\]](#)

The agreement was that I was not to return this money as this was not considered as loans to me but *deductions would be made* at a later date when my remunerations in my capacity as a Director were to be determined.

[emphasis added]

I find that this weighs against Mr Daniel's claim under cross-examination that this was a mere reimbursement for expenses incurred in the ordinary course of business.

41 I find that the sums included in this \$27,700 consisted of a mixture of reimbursable claims, and sums docked against Mr Daniel's director's account. Under cross-examination, Mr Daniel testified that these sums were "for expenses incurred for the company but it's written as "borrow" which will be settled after---after the profits." [\[note: 49\]](#) Mdm Devi's evidence under cross-examination also seemed

to indicate that her accounts reflected different types of claims: [\[note: 50\]](#)

Q: You look at the page 6, 7 and 8. There are various entries with odd amounts like page 6, a few lines below, it's from the top, \$62; \$32, a few lines below that; it's some odd figures. Why is Daniel borrowing figures that are very odd instead of rounded figures?

A: He will borrow a certain amount of money from me. Thereafter, he will---with receipt---give me a receipt for petrol---would show a receipt for petrol usage. Thereafter, he say [sic] "The balance amount I've taken for my own use."

42 Mdm Devi has the burden of proving her counterclaim. This would have been easy enough for her to do, as she testified under cross-examination that she had "some of the receipts" [\[note: 51\]](#) for petrol usage and such reimbursable claims, and also files containing all the primary documents. [\[note: 52\]](#) Yet, despite the documentary challenges made to her counterclaim, Mdm Devi chose not to adduce any of these receipts or primary documents in support of her claim. I find that, by failing to do so, Mdm Devi has failed to prove that Mr Daniel owed her these sums under her counterclaim, and I accordingly dismiss her counterclaim in full. I pause to note that, in her account to Mr Daniel for profits, there is nothing stopping Mdm Devi from including these documents to deduct sums had been advanced to Mr Daniel and docked against his director's account.

Conclusion

43 Whatever the nature of Mdm Devi's current grievances with Mr Daniel, what is at issue in this case is what was agreed when the shares were transferred. I find, on a balance of probabilities, that the shares were transferred to Mdm Devi on trust for Mr Daniel. I accordingly order that the shares be returned to Mr Daniel.

44 Mdm Devi had admitted that she kept the company's books as well as the primary documents, including monthly bank statements of the company for the year 2009 and 2010. [\[note: 53\]](#) Whether or not Mr Daniel is entitled to an account of CPR's finances from inception as prayed for in Paragraph 12(b) of the Amended Statement of Claim depends on whether he was wrongfully removed as director and can be reinstated. The documentary evidence on this, e.g., the directors' or shareholders' resolutions, are not in the evidence. I note that Article 83 of the Articles of Association [\[note: 54\]](#) require two directors to form a quorum. The evidence transferring 60,000 shares and appointment of a new director are also incomplete and strange, e.g. the resolution appointing Damodara Raju Navin ("Damodara") as director is signed by Damodara, and not by Mdm Devi. However, none of this was pleaded, and therefore not an issue before me. I also make no decisions thereon. Mr Daniel does not have a right *qua* shareholder, as he has been on the facts as presented to me, removed as a director, to inspect the accounts; (see s199(3) Companies Act (Cap 50, 2006 Rev Ed), "the Companies Act"). A right of inspection is given only to directors, and Mr Daniel's position as ex-director does not entitle him to examine the accounts. This is a well known principle and I need only refer to *Walter Woon on Company Law* (Sweet & Maxwell, Revised 3rd Edn, 2009) at 10.46 and 10.47:

The accounting records are open for inspection by any director or, provided an order of court is obtained, by an auditor acting for a director... This is understandable since a director must take all reasonable steps to ensure that the company complies with the Act's requirements as to accounts.

...

This right of inspection may be exercised *only by directors* and not ex-directors, and any order of court authorising an auditor to inspect such records on behalf of a director will be ineffective after the director's removal.

[emphasis added]

He is, however, a shareholder, entitled to view all the audited profit and loss accounts and balance sheets from the inception of CPR. To this extent, Mr Daniel's prayer in paragraph 12(b) of the Amended Statement of Claim is thus allowed in part, and no more. As to Mr Daniel's claim for an account of assets and monthly bank statements, clearly a shareholder is not entitled as of right to demand these or dividends to be paid on his shares. I also note that there is no evidence of a Partnership Agreement, the terms of which may be relevant if they imported a duty of good faith. Even if there were such an agreement, this would have been with the original partner, Mdm Rajalakshmi. Mr Daniel's rights are thus determined solely by the Articles of Association, and this does not entitle him to an account of profits, even as partner. However, as Mdm Devi is a trustee of Mr Daniel's 98,000 shares, she has to account to him for the profits or dividends, if any, paid out on his 98,000 shares.

45 It is evident from the foregoing that these proceedings do not fully resolve the parties' disputes within CPR. Further proceedings are likely to follow. It appears to me far more sensible for the parties to agree to mediation on this aspect of their dispute, and I would suggest that if there are two mediators, perhaps one should be an accountant. It will save them far more in costs than proceeding with a formal inquiry and assessment through the courts.

46 I will hear the parties on costs for the trial of this action or for any other consequential orders they may require.

[\[note: 1\]](#) Jesuraj Daniel's Affidavit of Evidence-in-Chief, 22 July 2011, BA, p6.

[\[note: 2\]](#) AB, p 155.

[\[note: 3\]](#) Notes of Evidence, 16 Aug 201, p 5.

[\[note: 4\]](#) *Ibid.*, p 6.

[\[note: 5\]](#) Jesuraj Daniel's Affidavit of Evidence-in-Chief, 22 July 2011, "J-1", BA, pp. 29 and 30.

[\[note: 6\]](#) Notes of Evidence, 16 August 2011, p 25.

[\[note: 7\]](#) *Ibid.*, pp 25-26.

[\[note: 8\]](#) "P-2"; also see Notes of evidence, 17 August 2011, p 3.

[\[note: 9\]](#) AB, p 166.

[\[note: 10\]](#) Notes of evidence, 17 August 2011, pp 52-53.

[\[note: 11\]](#) AB, pp 174-178.

[\[note: 12\]](#) Notes of Evidence, 16 August 2011, p 36.

[\[note: 13\]](#) *Ibid.*, p 64.

[\[note: 14\]](#) Notes of Evidence, 17 August 2011, p 28.

[\[note: 15\]](#) *Ibid.*, p 29.

[\[note: 16\]](#) Notes of Evidence, 17 August 2011, pp 34-35.

[\[note: 17\]](#) Notes of Evidence, 17 August 2011, p 45.

[\[note: 18\]](#) Notes of Evidence, 16 August 2011, pp 54-56.

[\[note: 19\]](#) Vadivelu Pandi Devi's Affidavit of Evidence-in-Chief, BA, p 59.

[\[note: 20\]](#) Notes of Evidence, 16 August 2011, pp 57-58.

[\[note: 21\]](#) Jesuraj Daniel's Affidavit of Evidence-in-Chief, 22 July 2011, p 6.

[\[note: 22\]](#) Statement of Claim, p 2, para 5.

[\[note: 23\]](#) Notes of Evidence, 16 August 2011, p 38.

[\[note: 24\]](#) BA, p 39.

[\[note: 25\]](#) AB, p 2.

[\[note: 26\]](#) AB, pp 1-3.

[\[note: 27\]](#) Jesuraj Daniel's Affidavit of Evidence-in-Chief, 22 July 2011, BA, p 9.

[\[note: 28\]](#) Notes of Evidence, 16 August 2011, p 49.

[\[note: 29\]](#) Jesuraj Daniel's Affidavit of Evidence-in-Chief, 22 July 2011, BA, p 9.

[\[note: 30\]](#) Notes of evidence, 16 August 2011, pp 42-43.

[\[note: 31\]](#) Jesuraj Daniel's Affidavit of Evidence-in-Chief, 22 July 2011, BA, p 3.

[\[note: 32\]](#) *Ibid.*, p 6.

[\[note: 33\]](#) Notes of Evidence, 16 August 2011, p 21.

[\[note: 34\]](#) *Ibid.*, p 30.

[\[note: 35\]](#) *Ibid.*, p 32.

[\[note: 36\]](#) *Ibid.*, p 50.

[\[note: 37\]](#) Notes of Evidence, 17 August 2011, p 49.

[\[note: 38\]](#) Vadivelu Pandi Devi's Affidavit of Evidence-in-Chief, BA, p 57.

[\[note: 39\]](#) AB, pp 121-126.

[\[note: 40\]](#) Notes of Evidence, 17 Aug 2011, pp 71-72.

[\[note: 41\]](#) AB, pp 1-2.

[\[note: 42\]](#) Notes of Evidence, 17 Aug 2011, p 25.

[\[note: 43\]](#) *Ibid.*, p 71.

[\[note: 44\]](#) Notes of Evidence, 17 Aug 2011, p 22.

[\[note: 45\]](#) Vadivelu Pandi Devi's Affidavit of Evidence-in-chief, BA, p 62.

[\[note: 46\]](#) Notes of Evidence, 17 Aug 2011, pp 44-46.

[\[note: 47\]](#) Vadivelu Pandi Devi's Affidavit of Evidence-in-Chief, VPD-6, BA, p 89.

[\[note: 48\]](#) Jesuraj Daniel's Affidavit of Evidence-in-Chief, BA, p 10.

[\[note: 49\]](#) Notes of Evidence, 16 Aug 2011, p 52.

[\[note: 50\]](#) Notes of Evidence, 17 Aug 2011, p 45.

[\[note: 51\]](#) *Ibid.*, p 45.

[\[note: 52\]](#) *Ibid.*, p 43.

[\[note: 53\]](#) *Ibid.*, p 37.

[\[note: 54\]](#) AB, p 41.