

Chong Sze Pak v Chong Ser Yoong
[2011] SGHC 42

Case Number : Suit No 539 of 2010
Decision Date : 23 February 2011
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Gurdaib Singh (Gurdaib, Cheong & Partners) for the plaintiff; James Joseph (Prestige Legal LLP) for the defendant.
Parties : Chong Sze Pak — Chong Ser Yoong

Trusts

23 February 2011

Judgment reserved.

Woo Bih Li J:

Introduction

1 The plaintiff Chong Sze Pak (“the Plaintiff”) and the defendant Chong Ser Yoong (“the Defendant”) are brothers. The Plaintiff is 18 years older than the Defendant. The Plaintiff claims the net sale proceeds of about \$300,000 from the sale by the Defendant of a Housing and Development Board (“HDB”) flat at Block 108C McNair Road #25-216 Singapore 324108 (“the McNair Road property”) which was registered in the name of the Defendant.

Background

2 In or about 1996 or 1997, the Plaintiff’s property at 44B Starlight Road, Singapore was acquired by the relevant authority and the Plaintiff received about \$400,000 as compensation.

3 In or about 1997, the Defendant sold his HDB flat at Block 77 Commonwealth Drive #04-537, Singapore (“the Defendant’s Commonwealth Drive property”) for \$137,000 and received about \$100,000 from the sale.

4 By an agreement dated 6 June 1997, the Defendant agreed to buy an HDB flat at Block 8 Tronoh Road #02-15, Singapore (“the Tronoh Road property”) for \$286,000 from third parties. The sale and purchase was completed on 9 October 1997. The circumstances leading to the purchase and the beneficial ownership of the Tronoh Road property were disputed.

5 Subsequently, in August 1999, the Tronoh Road property was acquired by the relevant authority as part of a Selective En Bloc Redevelopment Scheme. The Defendant was offered and he accepted a replacement flat, *ie*, the McNair Road property as part of the overall compensation for the acquisition. The McNair Road property was transferred to the Defendant in or about 2004.

6 On 25 November 2009, the Plaintiff lodged a caveat in respect of the McNair Road property. It is not clear whether this was before or after the Defendant had entered into an agreement to sell it to a third party. In any event, upon learning about the caveat, the Defendant agreed that his solicitors would hold the net sale proceeds of the McNair Road property pending the outcome of this

action in exchange for the removal of the caveat so that the sale and purchase of the McNair Road property could be completed. The completion was in 2010.

7 The Plaintiff claimed that when the Defendant acquired the Tronoh Road property in 1997, the parties agreed that if the Plaintiff paid for all the outgoings of that property, including the instalment payments to repay an HDB loan and conservancy charges, the Defendant would hold that property in trust for the Plaintiff. This was evidenced by a Deed of Trust dated 23 June 1997 ("the Trust Deed") executed by the Defendant and also a Power of Attorney ("the PA") dated 14 July 1997 executed by the Defendant in favour of the Plaintiff. In reliance on the agreement, the Plaintiff paid various outgoings for that property which I shall elaborate on later. The Plaintiff also claimed that when the Defendant acquired the McNair Road property, the Defendant again orally assured the Plaintiff that if he continued to pay the outgoings for the McNair Road property, the Defendant would hold that property in trust for the Plaintiff and that when that property was sold, the net sale proceeds would be paid to the Plaintiff.

8 The Plaintiff's pleaded claim to the net sale proceeds was based on an express trust or a resulting or a constructive trust.

9 The Defendant alleged that both the Tronoh Road property and the McNair Road property belonged to him. He also asserted that if there was a trust of these two properties in favour of the Plaintiff, it was void under the Housing and Development Act (Cap 129, 1997 Rev Ed) ("HDA").

The issues

10 There are two main issues:

- (a) firstly, whether the Defendant held the Tronoh Road property and the McNair Road property in trust for the Plaintiff; and
- (b) secondly, even if he did, whether the Plaintiff was entitled to the net sale proceeds of the McNair Road property in view of s 51(4) and (5) of the HDA.

The witnesses

11 The Plaintiff and the Defendant were the two material witnesses. A housing agent, Lim Chin Seng, was a witness for the Defendant but his evidence was immaterial. The solicitor, Mr Ng Cher Yeow ("Mr Ng") who had apparently prepared the Trust Deed and the PA and witnessed the Defendant's execution of both the documents, had passed away.

Whether the Defendant held the Tronoh Road property and the McNair Road property in trust for the Plaintiff

The different versions

12 According to the Plaintiff, it was the Defendant who approached him in June 1997 and told him that he wanted to purchase the Tronoh Road property. The Defendant requested the Plaintiff's financial assistance. The Plaintiff and the Defendant agreed that if the Plaintiff paid for the outgoings of the Tronoh Road property, the Defendant would hold the Tronoh Road property on behalf of the Plaintiff. By "outgoings", the Plaintiff meant, for example, the monthly payments to repay a loan taken from the HDB to purchase the Tronoh Road property and the conservancy charges.

13 The Plaintiff alleged that to assure him that he was the beneficial owner of the Tronoh Road property, the Defendant engaged a solicitor Mr Ng to prepare the Trust Deed which the Defendant executed on 23 June 1997. To further assure the Plaintiff, the Defendant also instructed Mr Ng to prepare the PA from the Defendant to the Plaintiff which allowed the Plaintiff to purchase and manage the Tronoh Road property in the name of the Defendant. The PA was executed by the Defendant on 14 July 1997.

14 The Plaintiff alleged that he paid the following:

- (a) the initial downpayment of \$5,000 for the purchase;
- (b) housing agent's commission of \$2,945.80;
- (c) annual fire insurance premium;
- (d) monthly payments to repay the HDB loan;
- (e) the power supply which was applied for in the Plaintiff's name;
- (f) the monthly conservancy charges.
- (g) \$11,200 on completion of the purchase;
- (h) \$5,138.90 as HDB's conveyancing fee (\$630) and a stamp or registration fee (\$4,490) and also another \$110 as a caveat fee for the Defendant's purchase.

15 The Plaintiff alleged that subsequently, at the Defendant's request, he also paid the outgoings like the monthly payments on the HDB loan and the monthly conservancy charges on the McNair Road property after it was registered in the name of the Defendant. He denied that he used the rent from each of these two properties to pay for outgoings like the monthly payments on the HDB loan and the monthly conservancy charges. He said that he handed the rent to the Defendant through a man whom he referred to as "uncle" but he did not know the actual name of this man who was the Defendant's representative.

16 I should also mention that under the Trust Deed, the Defendant was to transfer the Tronoh Road property to the Plaintiff's son Chong Chin Hock when he attained the age of 35. This was in two years' time (from the date of execution of the Trust Deed), *ie*, 1999. I will set out the terms of the Trust Deed later. The Plaintiff alleged that over the years, the Defendant avoided his obligation many times to transfer the Tronoh Road property to his son but, nevertheless, the Plaintiff expected to recoup what he had spent in respect of the two properties when the Defendant eventually decided to

sell the McNair Road property.

17 The Defendant's version was that it was the Plaintiff who approached him in 1997 to buy the Tronoh Road property to house foreign workers employed by the Plaintiff's business which was a garment factory at Kallang Bahru in Singapore. As the Defendant had sold his Commonwealth Drive property, "he needed to buy another flat" (see Defence at para 5). He was given a grant of \$40,000 pursuant to a housing scheme because the Tronoh Road property was within a certain distance from his mother's residence. With this money and the \$100,000 from the sale of the Defendant's Commonwealth Drive property, he did not need financial assistance from the Plaintiff to buy the Tronoh Road property.

18 He said that the \$40,000 grant was paid into his account with the Central Provident Fund ("CPF") and used to pay the vendor of the Tronoh Road property. Another \$3,000 was used from his CPF account to pay the vendor. That was why when the McNair Road property was sold, about \$57,000 from the sale proceeds thereof was refunded to his CPF account. This was for the principal used and interest.

19 The Defendant did not deny his signature on the Trust Deed. He said that Mr Ng was not engaged by him but by the Plaintiff. He was asked to sign the document and he did so in the presence of Mr Ng without understanding the nature of the document as he did not understand many of the words therein. He said he was educated in Chinese and that his English was not good. No one explained the document to him in Chinese. The first time that he came to learn about the Trust Deed was after the Plaintiff had lodged a caveat in respect of the McNair Road property in November 2009 to prevent him from completing a sale thereof.

20 The Defendant said that in 1997 he was busy in China trying to do business there. He was in Singapore in that year for half the time. From 1998 to 2003, he was in China for 70% to 80% of the time. That was why he gave the PA to the Plaintiff. He accepted that he had signed the PA and understood the nature of that document. In 2003, he visited his son in the United States of America and stayed there for five years, returning to Singapore in about October 2007.

21 In 2004, the Defendant acquired the McNair Road property in exchange for the Tronoh Road property as mentioned above. The Defendant also received \$30,000 cash of which he said he used \$10,000 for renovations.

22 The Defendant alleged that some of the payments made by the Plaintiff like those stated in [14(a), (b), (g) and (h)] above were actually funded from cash which he had handed over to the Plaintiff to make payments on his behalf. As for outgoings like the monthly payments to repay the HDB loan and the monthly conservancy charges, he said that the Plaintiff had managed the Tronoh Road property and then the McNair Road property on his behalf and used the rent from these properties to pay the outgoings although he did not know how much rent had been collected by the Plaintiff. He claimed that he had asked the Plaintiff for information about the rent over the years but did not receive clear information about the same.

23 The Defendant also alleged that even though the Plaintiff's son Chong Chin Hock reached the age of 35 in 1999, the Plaintiff took no step to get the Tronoh Road property or the McNair Road property transferred to the son.

24 On the other hand, the Defendant himself had not taken any step to recover from the Plaintiff the balance of any rent received from the letting out of the two properties, after deduction for the monthly payments for the HDB loan and the conservancy charges. He said he had been advised to

await the outcome of the present action.

The Trust Deed

25 The terms of the PA are not material. The terms of the Trust Deed were as follows:

This Trust Deed is made the 23rd day of June One Thousand Nine Hundred and Ninety-seven (1997).

I, CHONG SER YOONG, NRIC NO. [xxx], ("the Trustee") hereby acknowledge and declare that:-

I am holding my share of the Housing and Development Board ("HDB") flat at Block 8 Tronoh Road #02-15 Singapore 330008 ON TRUST for my brother, CHONG SZE PAK NRIC NO: [xxx] and his son CHONG CHIN HOCK, NRIC NO. [xxx]) as my said brother provided and is providing the full purchase price including stamp and legal fees for the purchase of the Housing and Development Board flat at Blk 8 Tronoh Road #02-15 Singapore 330008.

Upon the said CHONG CHIN HOCK, attaining the age of thirty-five (35) years, I undertake to transfer the said HDB flat to him, with all stamp, legal and HDB administrative fees to be paid by CHONG CHIN HOCK or my brother CHONG SZE PAK.

As can be seen, the terms stipulated that the Defendant was holding the Tronoh Road property in trust for both the Plaintiff and his son Chong Chin Hock and not just for the Plaintiff alone. They also recorded the Defendant's undertaking to transfer the property to Chong Chin Hock when he attained the age of 35.

The court's decision

26 The Plaintiff said that at the time when the Tronoh Road property was purchased in the name of the Defendant, he was not eligible to purchase an HDB flat. Neither was his son until he reached the age of 35 as his son was single then.

27 I should mention that in the Plaintiff's affidavit of evidence-in-chief ("AEIC"), the Plaintiff mentioned (in para 5 thereof) that the Defendant had assured him that the Trust Deed and the PA had been submitted to and approved by HDB. Yet, this was not pleaded in the Statement of Claim or in the Reply. His cause of action against the Defendant was not for misrepresentation. Indeed, the Defendant was not cross-examined on this point although I should also mention that the Plaintiff was also not cross-examined on this point.

28 It is common ground that the HDB did not approve the Trust Deed. It is obvious to me that the Defendant did not represent to the Plaintiff that the HDB had approved the same and there was no question of the Plaintiff having believed and acted upon the same. If the Defendant could hold the Tronoh Road property in trust for the Plaintiff and his son, there was no reason why that property could not instead be registered in the name of the Plaintiff. There would have been no need to use the Defendant's name. It was because the Plaintiff knew that the HDB would not have allowed him to purchase the Tronoh Road property, whether for himself or for his son, that he had to use the name of the Defendant who was then eligible to purchase that property. It was he who approached the Defendant to help him.

29 The Plaintiff's version that the Defendant signed the Trust Deed because the Defendant had obtained financial assistance from him was nonsensical. If the financial assistance was a loan, then

the Defendant's obligation would be simply to repay the loan. However, the Trust Deed was not a security document to repay a loan. It was only compatible with the conclusion that the Defendant's name was being used by the Plaintiff to buy the Tronoh Road property which would eventually be for the benefit of the Plaintiff's son. This was not a case of the Defendant being so grateful to the Plaintiff for his financial assistance that he was prepared to give up a property, which he intended to buy for himself, to the Plaintiff's son. After all, the Defendant had two children of his own then.

30 It was also clear to me that it was the Plaintiff who required the Defendant to sign the Trust Deed. In all probability, Mr Ng was the Plaintiff's solicitor and had prepared the Trust Deed on the Plaintiff's instruction. It was not disputed that the Plaintiff made at least one payment of \$500 to Mr Ng although it was not clear whether this was to pay for the preparation of the Trust Deed or both the Trust Deed and the PA.

31 Therefore, I reject the Plaintiff's version as to why the Tronoh Road property was purchased. I also reject the Defendant's version, *ie*, that the Tronoh Road property was bought for the Defendant's benefit and that he did not understand the nature of the Trust Deed he had executed.

32 It will be recalled that in para 5 of his Defence, the Defendant had pleaded that he "needed" to buy another flat at the material time as he had sold his Commonwealth Drive property. Yet, when I asked him why he sold his Commonwealth Drive property, his instinctive response was that he wanted to use the sale proceeds for his business. It was after giving that evidence that he then said that the Plaintiff had informed him about the Tronoh Road property and he thought it was a good purchase as he would get a \$40,000 grant because it was near his mother's residence. However, there was no suggestion in his evidence that he was actively looking for an alternative property after selling his Commonwealth Drive property. Indeed his evidence was that after the sale of his Commonwealth Drive property, he was staying at a shophouse at Block 46-2 #01-376 Commonwealth Drive, Singapore whenever he was in Singapore. He referred to the shophouse as his father's although the Plaintiff's evidence was that the registered tenants thereof were two of their siblings.

33 As for the Trust Deed, it was a one-page document couched in simple English. While the Defendant alluded to his poor English, he was able to give his oral evidence in English without the aid of an interpreter. Also, he said that he understood his AEIC, which was more complicated than the Trust Deed, after his counsel Mr Joseph explained his AEIC to him in English. Apparently, there was no need for his AEIC to be interpreted to him in Chinese. Yet, he had complained that no one had interpreted the Trust Deed to him in Chinese before he executed it.

34 I add that the Defendant did not suggest that his English had improved markedly after his five years' stay in the USA between 2003 to 2007. Indeed, he said that even after he learned about the Trust Deed in 2009 (after the Plaintiff had lodged his caveat based on the Trust Deed), he still did not understand that document until Mr Joseph and a male Indian friend (who was in court) had explained it to him.

35 I conclude that the Defendant understood the nature and the terms of the Trust Deed when he executed it. He did so because the Tronoh Road property was not bought for him but eventually for the benefit of the Plaintiff's son using his name because the Plaintiff's son and the Plaintiff were not eligible to acquire it then. The Plaintiff and the Defendant were acting in breach of the relevant legislation or rules and that is why each came up with a version which I find to be untrue.

36 There was documentary evidence that some money from the Defendant's CPF account was used to partially pay for the Tronoh Road property. There was a letter dated 9 April 2010 from the HDB stating that about \$57,000 was refunded to his CPF account from the sale proceeds of the

McNair Road property. However, there was no other documentary evidence to establish just how much had been used from his CPF account to acquire the Tronoh Road property. It appears that the \$40,000 grant (see [17] above) was indeed paid into the Defendant's CPF account in 1997 and then used to partially pay the vendor of the Tronoh Road property as the Defendant had alleged. Indeed, this was conceded by the Plaintiff in the closing written submission for the Plaintiff.

37 However, it was unclear whether another \$3,000 was used from the Defendant's CPF account to partially pay for the Tronoh Road property.

38 On the other hand, there was documentary evidence that payment of a \$5,000 deposit and the housing agent's commission and the conveyancing fee, and a stamp or registration fee and caveat paid in 1997 in respect of the Tronoh Road property (see [14(b) and (h)] above) were paid from an account of the Plaintiff's business known as Leng Guan Shirt Co. Indeed, the Defendant did not dispute this as such. His allegation was that he had given the Plaintiff cash to make such payments for him but there was no documentary evidence to substantiate this aspect of the Defendant's allegation.

39 There was also no dispute that the monthly payments to repay the HDB loan and the conservancy charges were paid by the Plaintiff. However, the Defendant said that the Plaintiff used the rent to pay the same. Although the Plaintiff denied using the rent to do so, his initial reason for this denial seemed to be that there was no need to use the rent and also, the rent was not substantial. Yet, after he was cross-examined, he alleged that he had paid the rent to the Defendant over the years through a man referred to as "uncle" who was the Defendant's representative (see [15] above). If this was true, the Plaintiff would have said this at the earliest opportunity to rebut the Defendant's allegation that he had used the rent to make the monthly repayments to HDB and the conservancy charges. It is clear to me that the Plaintiff had kept the rent consistent with the original arrangement that the Defendant was not to have any beneficial interest in the Tronoh Road property (and, subsequently, the McNair Road property).

40 Based on the available evidence, I also conclude that except for payments made from the Defendant's CPF account, he did not make any other payments in respect of the purchase of the Tronoh Road property whether directly or indirectly through the Plaintiff. The other payments were made by the Plaintiff.

41 Not much evidence was given about the alleged oral assurance given by the Defendant to the Plaintiff when the McNair Road property was acquired by the Defendant. I find that the initial oral agreement in 1997 as alleged by the Plaintiff did not exist and also that there was no subsequent oral assurance by the Defendant in 2004 when he acquired the McNair Road property. The parties had simply carried on with the previous arrangement in 1997 stated in [35] above.

42 In the circumstances, I find that the Defendant held the Tronoh Road property, and subsequently the McNair Road property, on an express trust for the Plaintiff and his son Chong Chin Hock. The intended ultimate beneficiary was the son.

The HDA

43 Section 51(4) and (5) of the HDA states:

(4) No trust in respect of any such flat, house or other building [that has been sold by the HDB under Part IV of HDA] shall be created by the owner thereof without the prior written approval of the Board.

(5) Every trust which purports to be created in respect of any such flat, house or other building without the prior written approval of the Board shall be void.

44 Although the Tronoh Road property was not purchased by the Defendant directly from the HDB, it was not disputed that it is a flat that has been sold by the HDB in that HDB was the original vendor.

45 Before I continue, I will first deal with a preliminary point raised for the Plaintiff in respect of this issue. Plaintiff's counsel Mr Gurdaib Singh submitted that the Defendant was not entitled to rely on the relevant provisions of the HDA as illegality was not pleaded by the Defendant.

46 *Singapore Court Practice 2009* (Jeffrey Pinsler, SC) (LexisNexis, 2009) at para 18/8/8 states:

18/8/8. Illegality. Although facts giving rise to illegality are required to be pleaded (see r 8(1); *Clarke v Callow* (1876) 46 LJQB 53; *Lee Pee Eng v Ho Sin Leow* [1958] SCR 18, at 19; cf *Mustafa bin Osman v Lee Chua* [1996] 2 MLJ 141), it would seem that in certain circumstances the court may be prepared to make a finding of illegality in the absence of such a plea. Where the contract appears illegal on its face, as in the case where it clearly contravenes statute or public policy (see *Philips v Copping* [1935] 1 KB 15, at 21), or the evidence adduced by either party indicates illegality, the court may make such a finding in the absence of a plea. ...

...

If the contract does not appear to be illegal on its face, evidence of circumstances showing that it has an illegal object will not be admitted unless those circumstances are pleaded (*North Western Salt v Electrolytic Alkali* [1914] AC 461). For a succinct account of the court's approach to illegality, see the judgment of Devlin J in *Edler v Auerbach* [1950] 1 KB 359, at 371 (accepted as correct by Willmer LJ in *Snell v Unity Finance* [1964] 2 QB 203 and endorsed by the Federal Court in Singapore in *Seven Seas Supply v Rajoo* [1966] 1 MLJ 71 at 74). ...

47 It is true that the Defence did not plead the provisions of the HDA or state specifically that any trust in favour of the Plaintiff was void or illegal as it was in contravention of the HDA.

48 The point was raised later in para 15 of the Defendant's AEIC which referred to s 51(4) and (5) HDA. That para also referred to s 51(6) HDA but that provision was introduced only in 2005 as I shall elaborate on later.

49 Although the Defendant's AEIC was executed on 27 December 2010, no attempt was made to amend his Defence to plead the point.

50 The Opening Statement for the Defendant was filed on 18 January 2011. It stated the following issues:

- a. Whether the Defendant knew he signed the Trust Deed.
- b. Who engaged the lawyer to prepare the Trust Deed/Power of Attorney. The lawyer has since passed away.
- c. Whether the Plaintiff is entitled to claim in equity as Trust Deed is not valid.

51 The third issue was not a reference to the provisions of the HDA but rather a reference to the allegation in para 2a of the Opening Statement that the Defendant was not aware of the nature of

the Trust Deed he had signed.

52 It appears that the Defendant's counsel had lost his way somewhat. First, he should have pleaded in the Defence that any trust in favour of the Plaintiff was void in view of the HDA. Having failed to do so, this point was then raised in the Defendant's AEIC but still no attempt was made to amend the Defence. Then the Opening Statement for the Defendant omitted to make the point.

53 Nevertheless, the Plaintiff was aware of the point. Indeed, the Opening Statement for the Plaintiff set out the issues as follows:

(a) The Defendant claims that he had no knowledge of the Trust Deed executed on 23rd June 1997. The Defendant is English educated and would have known what he was signing for.

(b) The Defendant had engaged his own lawyers to prepare the said Trust Deed and the Power of Attorney both of which were executed closer in time to one another (difference of three (3) weeks).

(c) The HDB Act does not recognize Trust Deed relating to HDB flat. The Plaintiff is making his claims based on equity.

54 The reference in [52(c)] above to the HDB Act was really a reference to the HDA. As can be seen, the Plaintiff acknowledged the statutory prohibition against a trust. He sought to avoid the prohibition by suggesting that while he could not claim either property through the Trust Deed, he could claim the sale proceeds of the McNair Road property in equity.

55 Furthermore, when the Plaintiff was cross-examined as to whether he or his son was eligible to acquire the Tronoh Road property in 1997, Mr Singh did not object to this line of questioning.

56 In the circumstances, I am of the view that the Defendant is not precluded from relying on the relevant provisions of the HDA.

57 It is common ground that neither the Plaintiff nor his son Chong Chin Hock was eligible to acquire the Tronoh Road property at the material time.

58 In the circumstances, the express trust in favour of the Plaintiff and his son is null and void.

59 The Plaintiff's attempt to claim the sale proceeds (of the McNair Road property) under a resulting trust, must also fail, see *Cheong Yoke Kuen and others v Cheong Kwok Kiong* [1999] 1 SLR(R) 1126 ("*Cheong*") at [13] – [19]. As for his claim under a constructive trust, this is not a case of a constructive trust as explained in *Cheong*.

60 In 2005, the HDA was amended to put the matter beyond doubt by the introduction of s 51(6) which states:

(6) No person shall become entitled to any such flat, house or other building under any resulting trust or constructive trust, whensoever created.

Prior to the amendment, Mr Mah Bow Tan, the Minister for National Development said of the relevant bill on 15 August 2005 (see Singapore Parliamentary Debates, Official Report (15 August 2005) vol 80 at col 1252):

Clause 6 of the Bill amends s 51 to *make it clear* that, in addition to prohibiting the voluntary creation of trusts over an HDB flat, the Act also prohibits any person from becoming entitled to a HDB flat under a resulting trust or constructive trust. This will help to prevent a situation where a person who is ineligible to own an HDB flat may become entitled to own one, for example, by paying the purchase price of the flat on behalf of the owner.

[emphasis added]

61 I should mention that para 28 of the closing submission for the Plaintiff referred to a case (*Ho Seek Yueng Novel v J & V Development Pte Ltd* [2006] 2 SLR(R) 742) which was in respect of a loan. It appears that Mr Singh also lost his way somewhat or was acting in desperation. In the present action, the Plaintiff's pleaded claim is not based on a loan.

Conclusion

62 The Plaintiff's claim is dismissed. The Defence claimed an order for the sale proceeds held by the Defendant's solicitors, Messrs James Joseph & Associates to be released to the Defendant solely. This claim should have been formally pleaded as a counterclaim by the Defendant. Nevertheless, as that order is the natural consequence of the failure of the Plaintiff's claim, I will order the net sale proceeds held by the Defendant's solicitors to be released to the Defendant solely.

63 In the circumstances, each party is to bear his own costs of the action.

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