

Ng Ai Tee (administratrix of the estate of Yap Yoon Moi, deceased) v Ng Chee Chuan
[2008] SGHC 40

Case Number : Suit 690/2006
Decision Date : 19 March 2008
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Kelvin Chia Swee Chye (Balkenende Chew & Chia) for the plaintiff; Yoga Sharmini Yogarajah and Ryan Thomas Jacob (Haridass Ho & Partners) for the defendant
Parties : Ng Ai Tee (administratrix of the estate of Yap Yoon Moi, deceased) — Ng Chee Chuan

Civil Procedure

19 March 2008

Judgment reserved.

Judith Prakash J

Background

1 This is, basically, a family dispute. The plaintiff, Mdm Ng Ai Tee, has commenced action as the administratrix of the estate of her mother, Mdm Yap Yoon Moi ("Mdm Yap") against her half brother, the defendant, Ng Chee Chuan, to recover certain moneys due to Mdm Yap under an alleged oral agreement.

2 The plaintiff and the defendant are two of the nine children of one Ng Ah Hing ("NAH") who died on 8 June 1993. NAH had three wives. The defendant and his elder brother, Ng Chee Hua ("Larry Ng"), were the sons of the second wife but, as this marriage ended when the boys were young, they were brought up by NAH's first wife, Mdm Teng, and lived with her and her five children. Mdm Yap was NAH's third wife and she had two children by him, the plaintiff and her younger brother, Alex Ng Tian Poh ("Alex Ng"). Throughout his marriage to Mdm Yap, NAH maintained her and their children in a separate household from that occupied by Mdm Teng and his other children.

3 NAH was an enterprising and successful businessman. When he died, he had assets in Singapore, Malaysia and Hong Kong. Among these assets were 4,688 ordinary shares in a company called Sin Thai Hin Trading Pte Ltd (now known as Sin Thai Hin Holdings Pte Ltd) ("the Company") which served as his main business vehicle. The dispute in this case arose out of the claim that the defendant made on his father's death that 3,913 of those shares ("the trust shares") had been held by NAH on trust for him.

4 NAH died intestate. As a result, under the provisions of the Intestate Succession Act, (Cap 146, 1985 Rev Ed) each of his wives was entitled to inherit 25% of his estate with the remaining 50% being divided amongst his nine children in equal shares. Thus, Mdm Teng and Mdm Yap were each entitled to claim an interest in the trust shares.

5 At a family meeting held on 25 June 1993 ("the 25 June meeting"), however, each of NAH's heirs including his wives and all his children except the defendant executed a deed by which they acknowledged the defendant's claim to the trust shares. Apart from the name and description of the maker of each deed, the contents of all the deeds were identical. Each deed was signed before an

advocate and solicitor who also made an attestation that he had fully explained the nature of the deed to each of the signatories whose signature he witnessed and that such signatory appeared to perfectly understand the contents of the deed. The deed signed by Mdm Yap read as follows:

THIS DEED is made by YAP YOON MOI (holder of NRIC No. 0450212/D) of 25J Jalan Datoh, Singapore 1232 on the 25th day of June One Thousand Nine Hundred and Ninety-Three (1993)

WHEREAS

1. NG AH HING, Deceased (hereinafter called "the Deceased") holder of NRIC No. 0762739/D late of 23 Jalan Raya, Singapore 1336 passed away at 23 Jalan Raya, Singapore 1336 on the 8th day of June 1993.
2. I am the lawful wife and next of kin of the Deceased.
3. The Deceased had at the date of his demise, 4,688 shares in SIN THAI HIN TRADING PTE LTD.
4. The Deceased had made it known that of the said 4,688 shares he held 3,913 shares for the exclusive benefit of the Deceased's lawful son and next of kin NG CHEE CHUAN, holder of NRIC No. 0085765/C.

NOW THIS DEED WITNESSETH that I the abovenamed YAP YOON MOI hereby acknowledge that the Deceased held 3,913 shares in SIN THAI HIN TRADING PTE LTD upon trust for the said NG CHEE CHUAN and further declare I shall have no claim or interest in the said shares.

6 The plaintiff's case is that Mdm Yap signed the deed because, at the defendant's request, she had made an oral agreement with him not to claim her entitlement to the trust shares or to contest the defendant's claim that 3,913 shares were held in trust for him, in exchange for his promise to pay her the sum of \$2,500 per month until the entire value of her 25% stake in the trust shares had been paid off. Payment of the allowance was halted after February 2006. By then, Mdm Yap and her estate had received a total of \$296,500. The plaintiff's claim is that the total amount payable under the oral agreement was \$953,069.85 (being 25% of the net value of the estate of NAH as assessed by the estate duty office) and therefore that, after set-off of the payments already made, the amount of \$656,569.85 was still due and payable to the estate of Mdm Yap.

7 The defendant's case is that there was no such oral agreement. He asserted that his siblings and step-mothers had voluntarily recognised the trust over the trust shares in his favour and had gratuitously relinquished their respective claims to the same after the circumstances had been explained to them at the 25 June meeting. Regarding the payment of \$2,500 per month, he said that he had voluntarily undertaken to procure that the Company and/or its subsidiaries or associates would make a monthly payment of this amount to each of Mdm Teng and Mdm Yap as financial support for his father's widows. There was no agreement to buy over Mdm Yap's interest from her on the basis of the value of the trust shares and when Mdm Yap died, her allowance died with her.

8 It can be seen from the summary above that the dispute herein is a dispute of fact as to whether or not the parties had concluded a contract whereunder in return for payment Mdm Yap had relinquished any interest in the trust shares that she might otherwise have held. In a case like this, where documentation is sparse, credibility of the witnesses and the inherent likelihood of the stories

they tell become decisive. I must therefore recount the evidence in some detail.

The plaintiff's story

Ng Ai Tee

9 The plaintiff is the elder child of Mdm Yap and NAH. She is a professional, having graduated from the National University of Singapore in 1985 with a Bachelor's degree in accountancy. At the time of the trial she was working as a tax consultant in a company owned by herself and her husband.

10 In her affidavit of evidence-in-chief, the plaintiff set out the background of the two families of NAH. The two families lived in separate homes and there was little interaction between them. Mdm Teng owned a house at Jalan Raya whilst Mdm Yap owned an apartment at Jalan Datoh. These homes had been given to them by NAH. Apart from occasional visits during festive occasions, the plaintiff and her family did not spend a great deal of time with Mdm Teng's family.

11 NAH was born into a poor family in China in 1923. He immigrated to Singapore in 1935 and over the years he developed his business interests until he had a variety of businesses. Mdm Yap who did not have formal education was concerned as to how she would be provided for in the event of her husband's death. NAH assured Mdm Yap that she would be adequately taken care of since his shares in the Company were intended for the family. The plaintiff said that NAH had never stated or even hinted that he was holding his shares in the Company on trust for the defendant.

12 NAH died suddenly on 8 June 1993. At that time he held 4,688 shares in the Company out of which 3,913 were the trust shares. The plaintiff said that the number 3,913 was not selected randomly. It was the number of shares that would give the defendant a 51% stake in the Company when added to his own shareholding in the Company at that time.

13 According to the plaintiff, one or two weeks after NAH's death, Larry Ng visited her at her office and asked her to get her side of the family (*ie* Mdm Yap, Alex Ng and herself) to support the proposed transfer of the trust shares to the defendant so that he could become the majority shareholder of the Company. When the plaintiff informed her of this request, Mdm Yap was unhappy. She was reluctant to transfer her shares to the defendant as she was intending to sell them to the Company's shareholders in order to obtain funds to provide for her in her old age. The plaintiff suggested to Mdm Yap that she should receive some payment for the shares if it was necessary for them to be transferred. Mdm Yap then asked the plaintiff to work out a reasonable price for the shares.

14 The plaintiff did so. She knew that NAH had held about 50% of the shares in the Company. She therefore decided to use the Company's most valuable assets (*ie* the Sin Thai Hin building and the freehold land on which it stands) to estimate the value of the shares. She took the cost of the land and building as being \$3.2m on the basis of the Company's audited accounts. She then applied a multiplier of 2.5 to reflect the appreciation in value from the time the building had been constructed (around the late 1980s). The plaintiff derived the approximate value of her mother's share as follows:

$$[50\% \times \$3,200,000 \times 2.5] \times 25\% = \$1 \text{ million}$$

She rounded this figure down to \$900,000 to factor in a possible ten percent margin of error since she was dealing with estimated numbers.

15 The plaintiff informed Mdm Yap that it was not likely that the defendant would be able to pay

\$900,000 in one lump sum. She said that it would be more reasonable to break the compensation down into monthly instalments. At the time, Mdm Yap was 52 years old. Based on a life expectancy of 80 years, she would have 28 years more to live. Working backwards, the plaintiff arrived at a figure that was slightly higher than \$2,600 per month. She then rounded this down to \$2,500 for convenience. Mdm Yap said that this monthly sum would be acceptable to her if she was compelled to relinquish her shares.

16 Shortly thereafter, the defendant had a meeting with Mdm Yap and the plaintiff. During the meeting, he tried to persuade Mdm Yap to relinquish her entitlement to the trust shares. He said that he needed to have the trust shares transferred to him immediately so that he would be able to own a majority stake in the Company. The defendant claimed that this had to be done in order for him to take over from NAH as the operator of the business. He emphasised that the banks might recall the Company's credit facilities if no successor was appointed to NAH. Mdm Yap, while being reluctant to give up her entitlement to the trust shares, did not want to hinder the Company's operations and therefore reached a compromise with the defendant.

17 According to the plaintiff, it was agreed by the defendant and Mdm Yap that she would not make a claim to the trust shares or contest the defendant's claim to the same, in exchange for his promise to pay her \$2,500 per month until the entire value of her 25% stake in the trust shares was paid off. It was agreed that the eventual amount payable by the defendant for the trust shares would be based on market valuation. The defendant then said that he would get his lawyers to prepare the necessary paper work.

18 Subsequently, the defendant, Larry Ng and Mdm Teng's eldest child, Ms Ng Geok Eng ("Ms Ng"), asked all the beneficiaries of NAH's estate to attend the 25 June meeting. During the meeting, the defendant spoke again on why he needed to have a 51% stake in the Company. The beneficiaries – including the plaintiff and Mdm Yap – were then asked to sign deeds to declare that they "shall have no claim or interest in the said shares". Mdm Yap signed the deed because she believed that she already had an oral agreement with the defendant for him to pay her for her shares. As the deed was a one-sided document which made no reference to the defendant's obligation to pay Mdm Yap \$2,500 a month, the plaintiff and her mother confronted the defendant after the meeting. They asked him to document the terms of the agreement but he declined to do so. He said it was unnecessary as he would honour the payment terms as agreed. True to his word, from June 1993, Mdm Yap received her payments of \$2,500 per month.

19 The defendant kept up the monthly payment of \$2,500 for about six years until December 1998. In January 1999, he reduced the monthly instalment to \$2,000 because of financial difficulties caused by the Asian financial crisis of 1997/1998. Mdm Yap agreed to accept \$2,000 per month on the basis that the defendant would reinstate the original amount when his financial position improved. This sum was paid monthly until June 2002.

20 In July 2002, the defendant wanted to reduce the payment to \$1,000 a month. According to the plaintiff, Mdm Yap was informed of his decision by a member of his staff. On 30 July 2002, the plaintiff wrote a letter of protest on her mother's behalf to the defendant. In her letter, she reminded the defendant "that the oral agreement between [my mother] and [him] was that for her to transfer her 25% share of Mr Ng Ah Hing's 3,913 shares in Sin Thai Hin Trading Pte Ltd to [him] ... [he] would pay her a monthly consideration of \$2,500 to her as long as she lives [*sic*]". The plaintiff clarified that when she used the words "as long as she lives", she did not mean that the defendant was only obliged to pay \$2,500 per month until Mdm Yap died. She said that what she actually meant was that the instalment of \$2,500 per month was calculated and intended to stretch over her mother's natural life expectancy.

21 The defendant did not immediately respond to the letter. Instead, from July 2002 onwards, he did not pay Mdm Yap any money at all. On 26 October 2002, Mdm Yap had a stroke and was admitted to hospital. After her discharge, she asked the plaintiff to send another letter to the defendant to demand full payment. This letter which was dated 12 December 2002 and signed by Mdm Yap herself threatened legal action against the defendant if he did not honour the terms of the oral agreement.

22 The defendant responded by sending Mdm Yap two letters. The first letter, dated 7 January 2003, was from Sin Thai Hin Marina Fiesta Pte Ltd ("Marina Fiesta"), a subsidiary of the Company, and enclosed a cheque for the sum of \$6,000 in favour of Mdm Yap "being payment for month of July 2002 to December 2002". The second letter, also dated 7 January 2003, was a personal letter from the defendant to Mdm Yap. He referred to Mdm Yap's letter of 12 December 2002 and the plaintiff's letter of 30 July 2002 and stated:

I refer to your letter of 12th December 2002 and your daughter, Mdm Ng Ai Tee letter dated 30th July 2002.

With due respect, it is untrue that you agreed to the transfer of the shares to me in consideration of my purportedly agreeing to pay you \$2,500.00 monthly for as long as you live.

On 25 June 1993, you had acknowledged, by way of deed, that you had no interest in the shares. You knew that the shares were held by my late father upon trust for my exclusive benefit. Therefore, there was no need in the first place for you and me to enter into any alleged agreement concerning the shares.

It was only out of respect of my late father that the company gave you a monthly allowance and continues to do so. The company is not obliged to do so. Under the adverse economic conditions, the company believes that the monthly sum of \$1,000.00 is reasonable.

23 Mdm Yap was not happy with the defendant's underpayment and wanted to take legal action against him. The plaintiff, however, dissuaded her as the plaintiff was afraid that the stress of litigation would cause Mdm Yap to suffer another stroke. From then on, the sum of \$1,000 per month was sent to Mdm Yap until April 2006 when the defendant stopped all payments.

24 On 7 April 2006, the plaintiff received a letter from the defendant and his wife in which the defendant claimed to have just found out that Mdm Yap had died sometime in June 2004. Mdm Yap had actually died on 24 June 2004. The defendant did not attend her wake or funeral but the plaintiff assumed this was due to his travel or work engagements. She had also thought that Mdm Teng's family was represented by one of her half-brothers, Ng Chee Yuen (also known as Gary Ng), who did attend the funeral. Representatives from the Company's subsidiary companies, Grouping Shipbuilding Pte Ltd and Grouping Marine Sea Services Pte Ltd had also attended the wake.

25 On 20 April 2006, the plaintiff wrote to the defendant. Her letter was headed "Outstanding payments due to estate of Yap Yoon Moi". She reminded him to make the April 2006 payment by the end of the month and then wrote two paragraphs setting out the position of the estate and the estate's claim to a total sum of \$953,069.85 less all payments made to that date. She stated that if no payment was made at all, she would take it that the defendant was renouncing his payment obligations to Mdm Yap's estate and, in that event, the plaintiff said, the estate would terminate the instalment payment arrangement and claim the balance due of \$656,569.85.

26 The defendant responded on 15 May 2006. In his letter, he denied the existence of the oral agreement and claimed that all payments made were *ex gratia* and had been made by the Company

and not by the defendant himself. No further payments were made by the defendant or the Company or any of its subsidiaries and the plaintiff commenced this action on 17 October 2006. It should be noted that in the meantime, the Company had written to the plaintiff as administratrix of Mdm Yap's estate seeking refund of the sum of \$22,000 being the total amount that had been paid to her during the period from July 2004 to February 2006.

Tan Peck Leng Irving

27 Mr Tan Peck Leng Irving is the plaintiff's husband. He is a certified public accountant and carries on business as such in his own firm.

28 Mr Tan deposed that he had known NAH since 1984 when he was courting the plaintiff. In late 1992 the Company was owned by NAH, some family members and some third party shareholders. NAH informed Mr Tan that he was in the process of buying over shares from the third party shareholders and that, thereafter, he would have the largest stake in the Company.

29 NAH's intention was to groom the defendant as his successor in the Company. He was, however, concerned that the defendant might not look after the welfare of the other family members if the defendant were to own and control the Company. According to Mr Tan, NAH asked him what could be done to ensure that his shares in the Company would benefit all the family members. Mr Tan proposed various ideas to NAH. NAH did not implement the ideas that they had discussed. One thing that was clear to Mr Tan, however, was that NAH did not consider himself to be holding any of these shares on behalf of the defendant. His intention was to benefit the entire family.

30 Mr Tan also asserted that Mdm Yap had been very unhappy with the defendant for reducing the amount of the monthly payment to her and that he had informed the defendant of this. He said that Mdm Yap would complain to him every now and again that she had been cheated by the defendant of her shares in the Company. When talking about the monthly payments, Mdm Yap always referred to the same as being payments which the defendant had agreed to make in exchange for his getting her shares in the Company. She never described the payment as a living allowance given to her out of goodwill.

Gary Ng

31 Gary Ng is one of the children of Mdm Teng and NAH. He stated that about one or two weeks after NAH's death, he attended a meeting at Mdm Teng's house. During this meeting, the defendant requested the family to support the proposed transfer of shares in the Company to him. The eldest sister, Ms Ng, also encouraged those present to support the transfer.

32 Subsequently, the 25 June meeting was held. This meeting was meant for all the beneficiaries of NAH's estate. During the meeting, Mr Philip Liew, the Company's auditor, explained that the shares had to be transferred to the defendant in order for him to manage the Company. Ms Ng had said the same thing to Gary Ng and their mother, Mdm Teng, before the meeting. Gary Ng did not fully understand what Mr Liew was saying, but he endorsed the deed which was produced for him to sign as everybody else was doing so.

33 Gary Ng asserted that he was under the impression that the deed was a mere formality and that his entitlement to his father's shares in the Company was still intact. He could not really understand the terms of the deed. If he had known he was signing his shares over to the defendant, he would not have done it, or at least he would have asked the defendant to pay him some compensation. It did not occur to him the shares were no longer his until some years later when he

received a letter from Larry Ng in his capacity as one of the administrators of NAH's estate.

34 In March 2006, Gary Ng took the position that the documents signed by him including the deed were procured by misrepresentation of fraud and by his mistaken belief that the documents only authorised the defendant to act as his proxy to manage the family business.

35 Gary Ng also testified that he found it hard to believe that the trust shares were held on trust for the defendant. He did not think that NAH was the kind of person who would resort to using a trust. He was a straightforward man and if he wanted to confer a benefit on somebody would do so outright. Gary Ng said that he had attended Mdm Yap's funeral in June 2004. Even though he did not talk to the defendant about Mdm Yap's death, he was surprised by the defendant's allegation that he did not know of this event until February 2006.

The defendant's story

The defendant

36 The defendant said that he used to address Mdm Yap as "Ah Yi", a name which he translated as meaning "mother". He said that occasionally he had dinner at her home and went for outings with her and her children. During the school holidays, he helped Mdm Yap sell jade (she had a small business retailing jade jewellery). He also occasionally gave tuition to Mdm Yap's children.

37 The defendant explained that after his parents' divorce, he lived with Mdm Teng and her children and occasionally with Mdm Yap and her children. He addressed Mdm Teng as "mah mah". Larry Ng was NAH's eldest child while the defendant was the second eldest. According to the defendant, he and NAH had a close relationship from the time of the defendant's youth. They spent a lot of time together. After the defendant's marriage, NAH spent most of his weekends with the defendant's family. When NAH died on 8 June 1993, he held 4,688 shares in the Company of which the trust shares were held by him for the defendant's benefit.

38 On 20 April 1993, NAH and the defendant signed a director's resolution approving the transfer of the 3,845 shares to NAH. After that, NAH told the defendant that he was now holding those 3,845 shares and another 68 shares that he already held in the Company for the defendant's benefit. He told the defendant to work hard and take care of the family. The defendant assured his father that he would do so and also asked him to inform his two eldest daughters *ie* Ms Ng and the plaintiff, of his intention. NAH said that he had already informed them of this.

39 The 25 June meeting was attended by all the members of the family except Ng Chee Ming who was in Hong Kong. Also present were Philip Liew, the auditor of the Company and Victor Tan, the lawyer representing Ng Geok Eng and Larry Ng who had been chosen at an earlier meeting to be the administrators of NAH's estate in Singapore. At the 25 June meeting, Ng Geok Eng and Philip Liew told the attendees that before his death, NAH had told them that it was his intention that the defendant should benefit from the 3,845 shares in the Company that he was purchasing.

40 The defendant recalled that he heard Victor Tan explain the contents of the deed to the members of the family during the 25 June meeting. After this and after hearing what Ms Ng and Philip Liew had to say about the intentions of NAH, all the family members signed the deeds that had been prepared for them by Victor Tan. In the case of Mdm Yap, her execution of the deed was witnessed by Lie Kee Pong, an advocate and solicitor. That deed contained a translation clause by which Lie Kee Pong confirmed that he had explained the deed to Mdm Yap in the Mandarin language and that she understood the contents of the deed.

41 In reference to the plaintiff's allegation that some days before the 25 June meeting he had persuaded Mdm Yap to relinquish her entitlement to the shares in exchange for the sum of \$2,500 per month until the entire value of the shares had been paid off, the defendant said that he had never done this at any time on or before the 25 June meeting and whether in the plaintiff's presence or not. He noted that the plaintiff had failed to produce any written document to prove her allegation. Mdm Yap had signed the deed without modifications to incorporate her oral agreement that the trust shares were held by NAH on trust for the defendant. There was no reason either for him to have entered such an oral agreement with Mdm Yap since both Ms Ng and Philip Liew had confirmed that Ng shares held the trust shares for his benefit. If indeed any family member was not prepared to accept that NAH held the trust shares on trust for him, the defendant would have applied to court for a decision on the trust shares. The defendant also said that if there had been an oral agreement with Mdm Yap as alleged he would have certainly reduced its terms to writing.

42 The plaintiff's letter of 30 July 2002 was the first time that the plaintiff had made the allegation that he had an oral agreement with Mdm Yap to pay her \$2,500 "as long as she lives". The defendant had denied those allegations by his letter of 7 January 2003. He asserted that the plaintiff was uncertain of the terms of the alleged oral agreement as what she said in her law suit was different from what was said in the letter of July 2002. The defendant also noted that there was no value ascribed to the shares under the alleged oral agreement and it was only by that letter that the plaintiff alleged that the value of Mdm Yap's share was 25% of \$3,812,279.38 (as assessed by the Estate Duty Department).

43 The defendant's version was that at the 25 June meeting, the plaintiff asked him about the monthly allowance to be paid to Mdm Yap now that NAH had passed away. Accordingly, he asked Mdm Yap how much allowance she had received from NAH every month. He made similar enquiries of Mdm Teng and Ng Geok Eng as to the amount of Mdm Teng's allowance. He was told that both Mdm Yap and Mdm Teng received a monthly allowance of \$2,500. He then informed them that out of respect for his father he would arrange for the companies (*ie* companies associated with or subsidiary to the Company) to pay them this allowance. After the meeting therefore, the defendant instructed Ms Heng, the Company's accounts manager, to pay both widows the monthly allowance.

44 From July 1993 until she died in November 1997, Mdm Teng received her monthly allowance from Marina Fiesta. As for Mdm Yap, she received payments from the same company from July 1993 until December 2004. Between January 2005 and June 2005, her allowance was paid by STH Development Pte Ltd and from July 2005 up to February 2006, the payer was STH Holdings Pte Ltd. At times, the companies also paid the widows an *ang pow* at the end of the year.

45 The defendant noted that the plaintiff was relying on the fact that the monthly payments continued after Mdm Yap's death to support her allegation that he had agreed to pay Mdm Yap a monthly consideration until the entire value of the shares had been paid off. He stated that he learnt of Mdm Yap's death from Irene Lee Sai Huay, the company secretary of the Company who had attempted to contact Mdm Yap in February 2006. Ms Lee was informed at that time that Mdm Yap had died two years previously and she then passed this information on to the defendant. Upon the defendant becoming aware of Mdm Yap's death, the monthly allowance payment stopped.

46 According to the defendant, there were two reasons why the plaintiff and Mdm Yap had alleged that he had agreed to buy her interest in the trust shares from Mdm Yap. The first was that in July 2002, they were unhappy with the Company's decision to reduce the monthly allowance to \$1,000. The defendant said that he had explained to Mdm Yap that the reduction was due to the then adverse economic conditions and that the Company was carrying high interest costs due to the group's borrowings and the shortfall in its cash flow of \$500,000 a year caused by the failure of Alex

Ng to pay certain vessel charter fees. The second reason was that STH Marine Sea Services Pte Ltd ("STH Marine") had instituted legal proceedings against Alex Ng in May 2002 over an alleged failure by the latter to return certain vessels belonging to that company.

47 In his affidavit of evidence-in-chief, the defendant also gave a history of NAH's career and business and of his own involvement in the same and how he had further developed the business after his father's death. He stated that after 30 November 1988, he and NAH were the sole directors of the Company and the personal guarantors of all banking facilities extended to the Company. As regards the shareholders in the Company, before 1987, NAH held 843 shares whilst the defendant owned 1,259 shares. When he died, out of the 10,140 issued shares in the Company, NAH was holding 4,688 shares whilst the defendant's shareholding remained at 1,259 shares. The other Ng children each had a small shareholding. Mdm Yap owned 629 shares in her own name but Mdm Teng was not a shareholder.

The other witnesses

48 Ms Lee Sai Huay ("Irene Lee") supported the defendant's evidence that he had not found out about Mdm Yap's death until February 2006. She explained that she had been trying to contact Alex Ng to retrieve some documents. In the course of these efforts, she called Mdm Yap's residence and was told by the person who answered the phone of Mdm Yap's death. She conveyed this news to the Defendant who immediately, and in her presence, called the residence again to obtain confirmation of the information.

49 Ms Ng Geok Eng was the eldest surviving child of Mdm Teng. After completing her O-levels in 1971, she studied business and accounts. She then joined the Company where she did accounting and general administrative work until 1988. She remained close to her parents after her marriage in 1975 and frequently visited them.

50 Ms Ng testified that in January 1993, her father summoned her to his office. There he spoke to her generally about the Company's business and told her that it needed someone to manage it. NAH said that the ideal person to run the Company was the defendant but in order to do so the defendant would need to have a 51% shareholding. NAH mentioned that he was purchasing 3,845 shares in the Company and intended the defendant to benefit from those shares and a further gift of 68 shares from him. He said too that he wanted the plaintiff and Philip Liew, the auditor of the Company, to know about his intentions as well. Subsequently, shortly before his death, NAH informed Ms Ng that he was holding the trust shares for the defendant.

51 After NAH's funeral, family meetings were held to discuss his affairs. At those meetings, Ms Ng informed the family of her father's intention in relation to the trust shares. She also had meetings with Victor Tan who had been engaged to apply for the grant of letters of administration to NAH's Singapore estate. Mr Tan prepared a statement headed "Affidavit" for her to sign setting out NAH's wishes regarding the trust shares. This was signed before a commissioner for oaths on 25 June 1993. At the family meeting held on that same day, she and Philip Liew repeated what NAH's intentions were. She herself signed the deed recognising the defendant's claim to the trust shares. She also explained the contents of the deed to her mother, Mdm Teng. A further explanation of the deed was given to Mdm Teng by Lie Kee Pong who then attested to Mdm Teng's execution of the deed. At the meeting, the defendant informed both Mdm Teng and Mdm Yap that he would arrange for the Company to continue to pay them their monthly allowances.

52 Miss Ng stated that she was not aware of Mdm Yap's death in 2004 as she was not informed of the same by the latter's children.

53 Ng Chee Ming was the only member of the family who was not present at the 25 June meeting. After the meeting, Ng Chee Ming received a copy of the deed and signed the same. He was aware from his mother that she received a monthly allowance of \$2500 from his father's companies after NAH's death. He too was unaware of Mdm Yap's death at the time it occurred as he was not informed of it. He only learned of her death in 2006 from Irene Lee.

54 Larry Ng's evidence was generally similar to that of the defendant and Ms Ng. He first learnt of NAH's intentions with regard to the trust shares at one of the meetings held subsequent to his father's death. Ms Ng had told the meeting that their father intended to give the trust shares to the defendant so that the defendant would own 51% of the Company and be able to carry on the Company's business. His testimony on what happened at the 25 June meeting was also similar to Ms Ng's. He added that none of the persons present raised any queries in relation to the trust shares and his father's intentions. Larry Ng confirmed that he too had signed the deed on that day and stated that Victor Tan had explained the contents of the deed to the meeting. The monthly allowance to be paid to both mothers was also discussed at the meeting and the defendant had confirmed that he would arrange for the companies to pay this.

55 Mr Ng Chee Kiong, another sibling who testified for the defendant, had little to add that was different. His account followed the lines of those of Ms Ng and Larry Ng. He learnt of Mdm Yap's death in early 2006 when he had met Alex Ng.

56 Liew Kim Swee ("Philip Liew") testified that he was the Company's auditor for many years, having known NAH since 1971. As he was a close and old friend, NAH would often confide in Philip Liew regarding his personal and business affairs. Some time in 1991, NAH informed Philip Liew that he was purchasing 3,845 shares in the Company. These shares were paid for in instalments and Philip Liew's firm agreed to hold the post-dated cheques and release the same to the sellers as and when payments fell due. The firm also held the shares and the signed transfer forms.

57 Philip Liew referred to his affidavit signed on 25 June 1993 which had been prepared by the lawyer, Victor Tan. Using the affidavit to refresh his memory, Philip Liew stated that in or around January 1993, NAH had come to his office one day and informed Philip Liew that he intended the defendant to benefit from the 3,845 shares that he was purchasing. He stated that his reason for this was that it was the defendant who had for many years assisted him in the running of the Company and was the person who was responsible for bringing the Company to its position at that time. NAH intended the defendant to own 51% of the Company so that the Company would be able to continue to conduct business under the defendant's control. The 3,845 shares were eventually transferred to NAH on 20 April 1993. Shortly thereafter, NAH informed Philip Liew that he was holding the trust shares for the defendant's benefit.

58 At the 25 June meeting Larry Ng introduced Philip Liew to the relatives as NAH's close friend. Philip Liew addressed the meeting and repeated his knowledge of NAH's intentions. He recalled that Mdm Yap had requested that the monthly allowance for household expenses be continued. The other widow, Mdm Teng, nodded in agreement with Mdm Yap's request. The defendant assured them that the monthly allowance would continue to be paid to both of them.

59 Tan Chong Phang Victor ("Victor Tan") filed an affidavit of evidence in chief but could not be called to testify as he disappeared shortly before the trial commenced. His affidavit therefore had to be disregarded.

The issues

60 The main issue is whether there was an oral agreement between Mdm Yap and the defendant whereby the defendant agreed to purchase Mdm Yap's entitlement to the trust shares. According to the statement of claim, the basic term of the oral agreement were that Mdm Yap would not claim the trust shares or contest the defendant's claim to them on condition that he paid her the sum of \$2,500 per month until the entire value of the shares had been paid for.

61 This issue is mainly a factual issue. The defendant however in his closing submissions, raised one legal issue. This was whether, in the light of Mdm Yap's signature of the deed, a written agreement, the plaintiff was entitled to adduce evidence of an oral agreement which contradicted the terms of the deed. The defendant argued the admission of such evidence would offend s94 of the Evidence Act (Revised Edition 1997) ("the Act").

62 As is well known, s94 of the Act is the statutory embodiment of the parol evidence rule. It provides that when the terms of a contract reduced to the form of a document have been proved by the production of that document, no evidence of any oral agreement shall be admitted for the purpose of contradicting, varying, adding to or subtracting from its terms subject to certain exceptions are set out in the section. The defendant's position was that the deed that Mdm Yap signed represented the agreement between him and her and therefore it was not permissible for the plaintiff to adduce evidence that contradicted that agreement.

63 I do not accept that submission. As the plaintiff pointed out, the oral agreement did not contradict the terms of the deed. The plaintiff's evidence was that her mother had signed the deed pursuant to the oral agreement *ie*, Mdm Yap was performing her side of the bargain in the oral agreement by disclaiming her claim to or interest in the trust shares. In any case, there is no inherent conflict between the terms of the deed and those of the oral agreement. The oral agreement did not alter the terms of the deed in any way. In fact, it could be said that the deed was complementary to the oral agreement as Mdm Yap had to disclaim her interest in the trust shares in order to establish her entitlement to payment of the agreed amount from the defendant. Further, as the plaintiff also pointed out, under proviso (b) of s94 the existence of any separate oral agreement, as to any matter on which a document is silent and which is not inconsistent with its terms, may be proved. In this case the deed did not contain any reference to any obligation on the part of the defendant. It was silent on the defendant's obligation and did not contain any provision that was inconsistent with the oral agreement. The plaintiff therefore argued, and I agree, that she was entitled to adduce evidence relating to the oral agreement as a separate collateral agreement.

64 Coming now to the factual issues, the plaintiff considered that three broad issues arose which she expressed as follows:

- (a) whether NAH held the trust shares for the benefit of the defendant;
- (b) even if he did do so, whether there was a valid and binding compromise between Mdm Yap and the defendant in the form of the oral agreement; and
- (c) whether the plaintiff's evidence on the oral agreement and other matters should be accepted in preference to that proffered by the defendant and his witnesses.

65 I do not think it is necessary to decide whether or not NAH did hold the trust shares for the benefit of the defendant. This is because, even if he did, there could still be a valid agreement between the defendant and Mdm Yap that she would not challenge his claim to the trust shares in exchange for an agreed payment. At the time of the discussions, the defendant's claim to the trust shares was not a settled entitlement *vis-à-vis* the other members of the family. Whilst Miss Ng had

informed her siblings and her mother about her father's intention, it was not clear that she had also conveyed this information to Mdm Yap and the latter's children. Secondly, even if they were aware of Miss Ng's stand on the matter, they were not obliged to accept her averments especially since there was no document emanating from NAH that could be produced to substantiate her stand. It should be noted that, according to the plaintiff, it was Larry Ng who first informed her of the proposed transfer of the trust shares to the defendant and he did not tell her that the trust shares had been held for the defendant's benefit. Larry Ng denied having a meeting with the plaintiff. He did not assert he told her about the status of the trust shares. The defendant himself did not tell the plaintiff and Mdm Yap this fact before the 25 June meeting. There is no evidence that before that meeting Mdm Yap knew of the assertion that these assets were subject to a trust, although she knew that the defendant wanted them. It is probable therefore that Mdm Yap genuinely believed that she had a valid claim to part of the trust shares. For his part, the defendant would have been aware that if Mdm Yap disputed his claim he would probably have to go to court to resolve it and, in the meantime, the status of the trust shares would have been in doubt and he would not have had the necessary majority shareholding that he said he required to run the Company. In those circumstances, Mdm Yap's agreement to give up her possible claim to the shares would have provided good consideration for the oral agreement.

66 As I stated in *Abdul Jalil bin Ahmad bin Talib & Ors v. A Formation Construction Pte Ltd* [2006] 4 SLR 778 at 798, citing *Chitty on Contracts*, the compromise of a claim which is doubtful in law is binding as a contract as long as it was a reasonable claim which was in good faith believed by the party forbearing to have a fair chance of success. The situation here is somewhat different from that that existed in the cited case but as long as Mdm Yap believed in good faith that she had the claim to part of the trust shares and there was nothing to make such a belief unreasonable, her decision not to pursue such a claim in return for payment would constitute good consideration for such payment. As one of the widows of a man who had died intestate, she had a *prima facie* entitlement to 25% of his assets and, apart from what was stated by Miss Ng, the defendant himself and Philip Liew (statements that she might have considered biased and self serving) at the 25 June meeting, there was no evidence that NAH had dealt with the trust shares in any way that would have removed them from his estate. In any event, her case is that the oral agreement was made before the 25 June meeting and it is indisputable that before that date neither Ms Ng nor Philip Liew had told her anything about the trust shares or NAH's intentions.

67 So the main issue remains whether there was an oral agreement and to decide this issue, I have to consider the credibility of the witnesses.

The defendant's submissions

68 The defendant pointed out that it was the plaintiff who had the burden of proving on the balance of probability that the oral agreement existed. As Mdm Yap had died, the only witness to adduce evidence to support the oral agreement was the plaintiff herself since she asserted that she was present when the oral agreement was concluded. The defendant considered that the plaintiff's evidence should be approached with caution because she stood to benefit if the claim was successful as she was one of the two beneficiaries of Mdm Yap's estate.

69 The defendant considered that there were a number of areas in which the evidence of the plaintiff was contrived. First, there was the explanation of how she had arrived at the estimated value of Mdm Yap's shares and the \$2,500 monthly payment. Her problem was that she had to work out the figure that would enable her to explain how Mdm Yap had agreed to accept that monthly sum for her share. Thus, it was submitted, she chose a method of valuation that did not reflect the true value of the trust shares because she did not take into account all the assets of the Company reflected in its

audited accounts. She had based her valuation only on the Company's land and building. It was pointed out to the plaintiff in cross examination that the Company had other valuable assets like development property, investment property and its interests in subsidiary and associated companies. The plaintiff's explanation for not taking these assets into account was that she did not have their details and she was not given much time to consider them as the defendant had called for an urgent meeting. The defendant argued that the plaintiff could have computed the value of these other assets in the same way as she had calculated the value of the land and building since she only wanted a rough estimate of value to use when she talked to the defendant about paying for her mother's interest in the trust shares.

70 The defendant argued that since the plaintiff's main concern had been to provide for her mother's old age, it was not credible that she would have been satisfied with confining her computation to simply the land and the building and taking her own value of the land and building, especially since the Company's accounts only reflected the historical costs. In order to ensure that Mdm Yap was comfortable in her old age, had the plaintiff actually done the calculation, she would have taken all the Company's assets into account so as to obtain the highest value of the trust shares.

71 The defendant also criticised the fact that the plaintiff who was an accountant at the time had failed to use any recognised method to compute the value of the trust shares. He considered her explanation that she had used the historical value of the land and building in the late 1980s and multiplied that by 2.5 times in order to arrive at the market value of the same in 1993, to be unbelievable. The plaintiff had explained that she had derived the multiplier of 2.5 from her experience with the appreciation in value of her own flat in Pandan Valley during the same period.

72 Another criticism of the plaintiff was that she had rounded down the estimated value of the trust shares based on the value of the land and building from \$1m to \$900,000 to factor in a possible 10% margin of error as she was dealing with estimated numbers. The plaintiff, however, had not stated anywhere that she had over-valued the land and building and therefore the explanation that she needed to factor in a margin of error was not plausible. The plaintiff's evidence was that the prices of commercial buildings especially those located in central Singapore were much higher than those of residential properties and therefore she had been very conservative when she had used her own property as the basis of the multiplier. The defendant submitted that the only reason why the plaintiff had reduced the value by 10% was so that she could more easily derive a figure that was close to \$2,500 in order to support the oral agreement.

73 The defendant also considered the plaintiff's explanation on how she arrived at a monthly payment of \$2,500 a month to be unbelievable. Whilst the plaintiff had claimed that her basis was that women had a life expectancy of 80 years, she did not produce any statistics or publication to support the statement. She then claimed that it was her "own understanding of the expected life of a female". When queried further, she said she used her grandmother as a basis. The defendant argued that this was not true as the plaintiff's grandmother was only in her 70s in 1993 and therefore did not support a life expectancy of 80 years for Mdm Yap. The defendant also argued that Mdm Yap's life expectancy could not be equated to that of the grandmother as Mdm Yap probably had heart disease and hyper-tension in 1993 whilst the grandmother did not suffer from those conditions. If the plaintiff had compared her mother's health with that of her grandmother, the plaintiff would have arrived at a lower life expectancy for Mdm Yap and that would have meant that the monthly payment would be higher than \$2,500.

74 Further based on the computation of \$900,000 over 28 years, the plaintiff arrived at \$2,678.57 per month. The plaintiff claimed that she rounded this figure down to \$2,500 for

convenience. The defendant submitted that this was not credible as, given Mdm Yap's financial position after her husband's death one would have expected the plaintiff would try to get the maximum amount for her. Even if the plaintiff thought it was right to round the figure down, one would have expected her to round it to \$2,600 rather than to \$2,500. The plaintiff had said that \$2,500 was easier to calculate on a monthly basis over one year and that she did not use \$2,600 because this figure would require her to use a calculator for her computations. That was not a convincing reason since the plaintiff admitted that she had access to calculators in the office and at home.

75 The defendant did not believe the plaintiff's reasons for suggesting that the amount be paid to Mdm Yap in instalments instead of in a lump sum. She had said that she considered \$900,000 was a very large sum of money to ask for and that she should not make things difficult for the defendant. The defendant argued that she must have known that the defendant was a director of the Company and that her husband would have told her of the defendant's shareholdings in the subsidiary Company. The plaintiff had no basis to compare the defendant's financial position with her own and conclude that the defendant would not be able to make a lump sum payment. As for not making things difficult for him, the defendant said that as the plaintiff had admitted that Mdm Yap and the defendant had never been close, there was no reason for the plaintiff to want to avoid making the situation difficult for the defendant when this would be done at her mother's expense.

76 The defendant also pointed out what he considered to be contradictions in the plaintiff's evidence. First, she had said in one paragraph of her affidavit that Mdm Yap was understandably reluctant to part with her entitlement to the trust shares, but, in an earlier paragraph she had stated that Mdm Yap was reluctant to transfer the shares to the defendant, as she was intending to sell them to the Company's existing shareholders to provide for her old age. The defendant said that since it was Mdm Yap's intention to sell the shares in any case, there would have been no reason for her to be reluctant to transfer her shares to the defendant since the transfer would be done for money.

77 Second, the plaintiff was not able, the defendant thought, to explain her statement that Mdm Yap had reached a "compromise" with the defendant. She explained the compromise by saying that it related to Mdm Yap's reluctance to transfer or give up her rights in the trust shares to the defendant and therefore it was a compromise that Mdm Yap agreed to give up those rights in return for payment. The plaintiff admitted that when Mdm Yap received payment for the shares, she was no longer reluctant to give them up. The defendant submitted that these circumstances showed that no compromise had been made by Mdm Yap.

78 Another alleged contradiction related to the plaintiff's evidence in cross-examination when she stated that the defendant had not informed her mother and herself at the private meeting of his claim that the 3,913 shares were held by NAH on trust for him. The defendant submitted that this contradicted para 26 of her evidence in chief where she said that Mdm Yap and the defendant had agreed that Mdm Yap would not "contest the defendant's claim [to the trust shares]". The plaintiff had further stated in cross-examination that the words "defendant's claim" referred to his claim to the shares after they were transferred to him under the terms of the oral agreement. She said that the defendant might have been afraid that, even after accepting payment, Mdm Yap's family might still contest and ask for ownership of the trust shares and that is why the defendant had told them that once he had agreed to the oral agreement, they would have no more right to contest.

79 The defendant also pointed out that the first time the plaintiff had raised the oral agreement was in her letter of 30 July 2002, written nine years after the oral agreement was made. In that letter, the plaintiff had stated that the payment of \$2,500 was supposed to be made for "as long as [Mdm Yap] lives". This assertion contradicted the plaintiff's claim in the proceedings that Mdm Yap and the defendant had agreed that the defendant was to pay her \$2,500 per month until the full

value of the shares have been paid for. In fact, the payment of the sum of \$2,500 "as long as she lives" was consistent with the defendant's position that it was agreed at the meeting that the companies would continue to pay Mdm Yap a monthly allowance. The plaintiff's explanation that when she said \$2,500 per month she had meant it to last over the natural life expectancy of a female which she estimated at 80 was, the defendant said, an afterthought as in the letter itself the plaintiff did not refer to such life expectancy to explain the phrase "as long as she lives".

80 Apart from relying on the perceived weaknesses in the plaintiff's evidence, the defendant also submitted that the conduct of the plaintiff and Mdm Yap after the conclusion of the alleged oral agreement was consistent with his position as to the status of the trust shares. The defendant noted that the plaintiff's story was that at the private meeting, he had agreed to document the oral agreement. If that had been the case, he argued, Mdm Yap would have made a fuss when at the 25 June meeting he produced the deed, a document that the plaintiff herself described as "one-sided". Instead of raising the issue with the defendant at the meeting, the plaintiff and Mdm Yap had signed the deed. He noted the plaintiff's explanation that she had not wanted to raise the oral agreement as it was a private arrangement and she did not want the other family members to know about it because she did not want them to ask for similar arrangements or make things difficult for the defendant. The defendant contended that as the relationship between Mdm Yap and the defendant was not close, the plaintiff could not have worried about making things difficult for him. As for keeping the matter private, the plaintiff could have asked for more time to review the terms of the deed.

81 The defendant did not accept the plaintiff's reason for not confirming the terms of the oral agreement in writing by way of a simple letter. He said that her reason for not doing so *ie*, that she and Mdm Yap trusted the defendant would live up to the terms of the agreement should not be believed since the plaintiff had admitted that he and Mdm Yap had never been close. The plaintiff's statement that she considered the defendant the boss and also family should be rejected he argued, because if they truly felt that way about him, Mdm Yap and the plaintiff would not have asked him to document the oral agreement in the first place.

82 The defendant also considered that certain inferences had to be drawn from the fact that the plaintiff herself had signed the deed. It was her evidence that she did not accept that the trust shares were held for the benefit of the defendant and therefore she should not have signed the deed. Her explanation that she signed the deed because she wanted to support her mother's oral agreement with the defendant was unbelievable. At that time, the plaintiff was earning about \$2,000 a month and it was not credible that she would have relinquished her own interest in the trust shares for nothing since on her own calculation her interest was valued at about \$200,000. One would have expected the plaintiff to have asked the defendant to pay her for her interest so that she could either use the money herself or (if her evidence that she was not looking to inherit from her father's estate was accepted), give it to her mother for the latter's maintenance.

83 The defendant also argued that his story was consistent with the situation of the two widows as it existed at that time. The plaintiff had admitted that Mdm Yap depended on NAH for her monthly allowance. She had also admitted that at the 25 June meeting, the defendant had brought up the issue of paying both widows \$2,500 a month. Since he was willing to pay Mdm Teng that allowance, there was no reason why Mdm Yap should not have asked for a similar allowance at that meeting. This was also consistent with the plaintiff's admission that at that meeting, the defendant had asked both the widows whether they agreed to \$2,500 a month and Mdm Yap had not objected. The defendant said that if he had already agreed to pay Mdm Yap pursuant to the oral agreement, there was no reason why he should have asked Mdm Yap again whether she agreed to the payment unless he was asking her in relation to payment of a monthly allowance.

84 The defendant also dealt with the plaintiff's argument that the continued monthly payments to Mdm Yap after her death in June 2004 supported her claim that the payments were made pursuant to the oral agreement since a monthly allowance would have stopped on her death. He noted that the plaintiff had confirmed that she had not informed the defendant and other members of Mdm Teng's family of Mdm Yap's death. Gary Ng had told the court that although he attended Mdm Yap's funeral, he did not inform the defendant and the other family members of her death. The fact that various directors of companies in the group and some old friends had also attended the funeral was irrelevant as the plaintiff had not proved that their attendance meant that the defendant himself was aware of Mdm Yap's death. Further, all the witnesses for the defendant had confirmed in their affidavits that Gary Ng had told them that the plaintiff had instructed him not to tell the other family members about Mdm Yap's death. It should be noted that Gary Ng himself denied having said this. The defendant submitted that all in all, the continuance of the monthly payment after Mdm Yap's death could not be held against him as he was ignorant of her death and therefore did not stop the payments until he found out about the situation in February 2006 and had verified the information he was given.

The plaintiff's submissions

85 The plaintiff submitted that the following evidence was consistent with the existence of the oral agreement:

- (a) that the defendant needed the consent of all the beneficiaries to the transfer of the trust shares to him;
- (b) that the person most likely to oppose the transfer would be Mdm Yap;
- (c) that the defendant admitted to the possibility of a private meeting with Mdm Yap to discuss the issue of the transfer of the trust shares;
- (d) that the defendant procured the consent of all the beneficiaries (including Mdm Yap) to the transfer before the 25 June meeting;
- (e) that the payment of \$2,500 per month each to Mdm Yap and Mdm Teng was suggested by the defendant at that meeting;
- (f) that the defendant did not deny the contents of the plaintiff's letter of 30 July 2002 until 7 January 2003; and
- (g) that the defendant continued to effect monthly payments to Mdm Yap even after her death.

The plaintiff developed these points further in her submissions.

86 Dealing with the first point, she said it was undisputed that Ms Ng and the defendant believed that in order for him to run the Company, he would need to hold 51% of its shareholding. Ms Ng informed the 25 June meeting that it was NAH's intention that the defendant should have that shareholding for that purpose. The number of shares *ie*, 3,913 was not selected randomly: it was the number of shares that would give the defendant the stake in the Company that he required. The plaintiff argued that this meant that the defendant had to procure the consent of all the beneficiaries to the transfer of the trust shares to him. The objection of even a single beneficiary would prevent him from getting the desired majority stake. During cross-examination, the defendant admitted that the transfer of the trust shares to him was both urgent and important and he confirmed also that he

was aware at the time that if any of the beneficiaries refused to sign the deed, he would have to take the matter to court in order to resolve the issue. He denied, however, that it had crossed his mind at that time that it was preferable to get the consent of the beneficiaries rather than to litigate the issue in court.

87 In relation to the second point, the plaintiff argued that the person who was most likely to oppose the transfer was Mdm Yap. This was because the defendant had been raised as Mdm Teng's own child and hence she and her natural children were more likely to believe him and Ms Ng on his father's intentions than Mdm Yap and her family would. Whilst the defendant had alleged in his affidavit that his relation with Mdm Yap had always been good, a different picture emerged during cross-examination. The plaintiff said that the defendant had admitted that his visits to Mdm Yap petered out after the death of NAH and from 2004 onwards, he had made no attempt to visit or call Mdm Yap. Further, the defendant's attempts to paint a picture of a close and warm relationship with Mdm Yap had been discredited during cross-examination. The plaintiff's evidence was that there was little interaction between the two families and since Mdm Yap was not close to the defendant, it was not surprising that she was unhappy and reluctant to effect the transfer of her interest in the trust shares to the defendant. The plaintiff submitted that Mdm Yap was only prepared to relinquish her entitlement to the trust shares in exchange for a promise of compensation and that the defendant's proposition that she agreed to give up her claims to him for nothing was ludicrous. The amount involved was \$1m and there was no special bond between Mdm Yap and the defendant that would influence her to do this.

88 The third point related to the private meeting between the defendant, the plaintiff and Mdm Yap. In his affidavit of evidence in chief, the defendant denied that such a meeting had taken place. The plaintiff submitted that since the defendant had to procure Mdm Yap's consent to the proposed transfer of the trust shares to him, he must have met her some time after NAH's funeral and before the 25 June meeting to ascertain her position. During cross-examination, the defendant was asked whether he had met or spoken with the plaintiff and Mdm Yap between the time of the funeral and the 25 June meeting. He responded that he did and then stated that he could not recall where he met them but he believed it was either at the office of the Company or at Mdm Yap's home. Subsequently, he said that there were one or two meetings before the 25 June meeting where he had spoken to Mdm Yap's family or to Mdm Teng's family and he could have had these conversations either in the presence of the whole family or separately with Mdm Yap's family. When he was asked whether he was saying that he could have had a separate meeting with Mdm Yap's family, his response was:

I think it should ... I think there ... there must be, yah. I cannot recall but I think there is, whether over (*sic*) together or separate I cannot recall.

He was then asked whether he admitted that there was a possibility that he may have met the plaintiff and Mdm Yap alone with no one else present and to that question he gave a very definite response:

No. That ... that will never happen.

When he was asked again whether his answer meant that Mdm Yap's family would have been present at the meeting which members of Mdm Teng's family were also present, his first response was "it is possible" and when he was pressed on this he replied:

Your Honour, I ... I really ... to be honest, there was a few meetings after my father passed away. But specifically whether Mdm Yap joined into Mdm Teng's family or there were separately, I cannot recall really.

89 The fourth point was the plaintiff's submission that the defendant had taken care to procure the consent of all the beneficiaries to the vesting of the trust shares in him before the 25 June meeting. That he had obtained such consent was, it was submitted, indicated by the evidence that the 25 June meeting was of a different nature from the earlier family meeting. The differences were that:

- (a) the 25 June meeting was attended by all the beneficiaries from both families (except for Mr Ng Chee Ming);
- (b) the lawyer, Victor Tan, had prepared deeds for each of the beneficiaries to sign at that meeting;
- (c) Victor Tan had also drafted affidavits for signature by Ms Ng and Philip Liew;
- (d) Philip Liew was asked to attend the meeting; and
- (e) arrangements were made for Victor Tan and Lie Kee Pong to be present to witness the signing of the deeds and Lie Kee Pong was asked to be there in order to translate the deeds to Mdm Yap and Mdm Teng.

In particular, the plaintiff argued, that the presence of so many "outsiders" at the 25 June meeting indicated that its purpose was different from the purpose of previous family meetings. In the plaintiff's submission, the 25 June meeting was not a meeting at which the parties were going to discuss what was to be done but rather it was a meeting to officially endorse the transfer of the trust shares to the defendant. She pointed out that Larry Ng and Ng Chee Kiong had testified that the beneficiaries had agreed to the transfer of the shares before the meeting and the defendant himself had said that it was called to carry out what had been agreed to at the earlier meetings.

90 The next point related to the monthly payment of \$2,500. The defendant's case was that this sum was only a monthly allowance for maintenance and in support of this contention, he claimed that this matter had been raised only at the 25 June meeting and not prior thereto. The plaintiff submitted that this position was not sustainable. First, there were differences between the defendant's pleaded case and his evidence. In para 7 of the defence, it was pleaded that after the 25 June meeting, Mdm Yap informed the defendant that NAH had given her a monthly allowance of \$2,500 and had then enquired whether this allowance would still be paid to her. The defendant said that he then informed Mdm Yap that out of goodwill and respect for his father, he would arrange for NAH's companies to pay her this allowance. He also pleaded that Mdm Teng made a similar request after the meeting.

91 On the other hand, in his affidavit of evidence-in-chief, the defendant said that at the 25 June meeting, it was the plaintiff who asked him about the monthly allowance to be paid to Mdm Yap now that NAH had died. He then asked Mdm Yap and the plaintiff about the amount that Mdm Yap had received every month. Similarly, he enquired from Ms Ng and Mdm Teng the amount of Mdm Teng's monthly allowance. According to the widows, each of them received \$2,500 a month and the defendant then said he would arrange for the companies to continue paying these amounts.

92 The plaintiff pointed out four discrepancies between the defendant's evidence and his pleadings. She also submitted that, contrary to what he had said, there was no independent evidence that the sum of \$2,500 per month was proposed by the plaintiff and Ms Ng. In fact, during cross-examination, both witnesses had testified that they did not know the amount of the monthly allowance that their respective mothers received from NAH before he died. Mdm Teng's other sons

also did not know what her allowance was during NAH's lifetime.

93 The plaintiff submitted that since there was so much uncertainty and ignorance over how much each wife was drawing as a monthly allowance from NAH, the only reasonable conclusion was that the proposal of \$2,500 a month made at the meeting was that of the defendant. This assertion, she averred, was consistent with the evidence of Larry Ng, Ng Chee Kiong, Ms Ng and the plaintiff herself that it was the defendant himself who had brought up the matter of the \$2,500 monthly payment at the meeting.

94 The plaintiff's position was that the sum of \$2,500 per month was mentioned at the meeting because it was the amount the defendant had already agreed to pay Mdm Yap pursuant to the terms of the oral agreement. She postulated that he was fearful that if some of the beneficiaries discovered that Mdm Yap was being paid for her interest, they would demand compensation from him as well. Instead of hiding the payments to Mdm Yap, the defendant boldly proclaimed them to the beneficiaries and cleverly disguised them as her monthly allowance. This enabled the defendant to extend the same benefit to Mdm Teng. The further advantage that the defendant gained by classifying the monthly payments as a living allowance was that he could use the Company and its associates to make the payments and would not have to pay anything himself.

95 One point that the plaintiff considered to be a telling point against the defendant's case was his failure to deny the contents of her letter of 30 July 2002 for some six months. The letter was a protest written on behalf of Mdm Yap and it stated specifically that under the oral agreement between Mdm Yap and the defendant she agreed to transfer her 25% share in the trust shares on the basis that he would pay her a sum of \$2,500 monthly. The letter also stated that the value of Mdm Yap's interest in the trust shares was \$953,069.85. Despite such serious allegations being made, the defendant did not respond to the letter until 7 January 2003.

96 The plaintiff pointed out that the defendant had portrayed himself as a prudent businessman who liked to put things in writing in order to prevent disputes. The defendant had also agreed under cross-examination (after some prevarication) that he should have written immediately to deny the allegations in the plaintiff's letter. He did not do so, however. It was only after Mdm Yap issued a second letter on 12 December 2002 threatening legal proceedings that he responded. Even then, his response took about a month. He said in cross-examination that when he received the 30 July 2002 letter, he did not think it was serious enough to warrant a written response from him. It was only after he received the second letter threatening legal action that he acted. The plaintiff's submission was that the defendant did not deny the contents of the 30 July 2002 letter because he knew that the oral agreement truly existed. He was counting, however, on the fact that Mdm Yap would not actually sue him. It was only on receipt of the second letter that he began to worry that Mdm Yap would take him to court and it was then that he decided to deny the oral agreement. At the same time he arranged for Marina Fiesta to make payment to Mdm Yap for the previous six months (at \$1,000 per month) so as to placate her and dissuade her from suing.

97 The next point that the plaintiff relied on was the fact that the defendant continued to make payment to Mdm Yap even after she had passed away. This is a contentious issue because the defendant's position is that he did not find out about Mdm Yap's death until February 2006 whilst the plaintiff thought that he must have been aware of it even though he did not attend the funeral. The plaintiff submitted that the defendant's evidence on this point was suspect. When cross-examined, he claimed that he could not remember when in February 2006 he found out about Mdm Yap's death. However, when he was "directed" to a specific paragraph of his affidavit of evidence-in-chief by his counsel, he had "suddenly" remembered that he had discovered the death in late February 2006. Further, if the information was discovered in late February, it was surprising that his condolence note

to the plaintiff was sent only on 7 April 2006. This was despite the defendant's assertion that Mdm Yap's death was a big matter to him. The plaintiff submitted that the condolence note was contrived in that the normal behaviour of someone who finds out about the death of a relative's mother is to telephone or visit. It is not normal to wait a month and then write a letter of sympathy.

98 The plaintiff pointed out that Ms Irene Lee's evidence was that she had found out about Mdm Yap's death before 27 February 2006. Yet, the February 2006 payment was processed by the Company only on 27 February 2006 and it was collected by the plaintiff's courier on 28 February 2006. She submitted that if both Ms Lee and the defendant had found out about Mdm Yap's death before 27 February 2006, then the February 2006 payment would not have been processed. Ms Lee was the person who was actually writing out the cheque payments to Mdm Yap and it was peculiar that she did so even after finding out about the death. Further, even if there had been an oversight in sending out the cheque on 27 February, the defendant could have stopped payment on the cheque. But he had done nothing. The fact that the February 2006 payment was issued to Mdm Yap and cleared contradicted the defendant's assertion in his affidavit of evidence-in-chief that upon knowledge of Mdm Yap's death, the monthly allowance payments stopped. The plaintiff submitted that in court, the defendant realised the weakness of his story and therefore invented a new story by claiming that he had instructed his solicitors to verify Mdm Yap's death with the Registry of Births and Deaths. Pending such verification, he allowed the payments to be made to Mdm Yap. According to the plaintiff, this evidence was unbelievable. Firstly, it was contrived as the defendant could have called his siblings, especially the plaintiff, to ascertain the accuracy of the information rather than seeking his lawyers' help. Secondly, the defendant could have gone down to Mdm Yap's residence to find out for himself if she was still alive. Thirdly, this evidence did not appear in the affidavit of evidence-in-chief when it was clearly in the defendant's interest to claim as late a date as possible for his discovery of Mdm Yap's death. Fourthly, in his affidavit of evidence-in-chief, the defendant had said that Mdm Yap's mother had confirmed to Irene Lee that Mdm Yap had died and that he himself had contacted Mdm Yap's residence and "verified" the information with Mdm Yap's mother. The defendant did not say in his affidavit of evidence-in-chief that he had required further verification from the Registry of Births and Deaths.

99 The plaintiff also submitted that it was difficult to believe the defendant's account of the events that led up to his discovery of Mdm Yap's death. Irene Lee had first alleged in her affidavit that she had been looking for the plaintiff in order to check with her whether Alex Ng had signed some documents and if he had, to arrange for the retrieval of the documents. Ms Lee was aware, however, that Alex Ng did not reside with the plaintiff. When asked what would be the point of calling the plaintiff to check whether Alex Ng had signed the documents, she made a rather weak reply stating that that was one way since after all the plaintiff was his sister. When she had no success with that route, she tried to contact Mdm Yap for the same purpose. The plaintiff did not accept Ms Lee's evidence that she had had difficulty contacting Mdm Yap because the residential number that appeared in the Company's records was not in use and she had had to consult the telephone directory to obtain the correct number. The plaintiff's stand was that the number had remained unchanged since before NAH's death and therefore Ms Lee's evidence was suspect.

100 A further point that the plaintiff made in respect to the defendant's alleged ignorance of Mdm Yap's death related to the defendant's assertion that all his witnesses had confirmed in their affidavits that Ng Chee Yuen had informed them at a family meeting that the plaintiff had told him not to tell the other family members of Mdm Yap's death. The plaintiff noted that this evidence had only been given by the defendant himself, Ms Ng, Ng Chee Ming, Larry Ng and Ng Chee Kiong. Further, each of these persons had given different dates as the date of this family meeting. The defendant said that it occurred in December 2006. Larry Ng said it happened in early 2006. Ng Chee Kiong said it happened in 2007 while Ng Chee Ming chose mid 2007 and Ms Ng pinpointed the second half of 2006 as the time

it occurred. Further, none of them could remember what specifically had been discussed at this meeting. The plaintiff argued that this suggested that the witnesses had conspired to lie but had neglected to work out the details. She emphasised that both she and Gary Ng had denied that she had asked him not to disclose the fact of Mdm Yap's death to the other siblings.

101 The plaintiff also submitted that it was not true that Ms Ng did not know about Mdm Yap's death until late 2006 as she had asserted. She pointed out that Ms Ng had admitted receiving two letters from Rajah & Tann dated 14 March 2006 and 24 March 2006. These letters which were sent to her as administrator of the estate of NAH were clearly copied to the "Estate of Mdm Yap Yoon Moi". Ms Ng had also admitted reading those letters but she denied having noticed who the other addressees of the letters were.

102 On the balance of probabilities, the plaintiff submitted that there was sufficient evidence to indicate that the defendant must have known of Mdm Yap's death well before February 2006. The inconsistencies in the evidence given by the defendant and his witnesses and the circumstantial evidence indicated that his account was not true and, the only reason to put forward an untrue account would have been to conceal the correct state of his knowledge. It was also significant, the plaintiff suggested, that none of the companies that had made the \$1,000 a month payments to Mdm Yap after 24 June 2004 had made any claim to recover the amounts paid. If such payments had been made on the mistaken assumption that Mdm Yap was still alive, then it would follow that those companies would be able to claim refund of the moneys from the estate. Yet, as the defendant confirmed in court, none of the companies had so far even issued a demand letter asking for the refund of these payments. That, the plaintiff considered, was some indication that the companies did not believe that the payments made to Mdm Yap after her death were improper.

Credibility

103 The plaintiff asserted that on the whole, she was a more credible witness than the defendant. She considered that the defendant was an unreliable witness whose evidence should be disregarded. She submitted that he had not only given misleading evidence but had also lied outright.

104 The plaintiff contended that the defendant had tried to show that he had a close relationship with Mdm Yap because if the court accepted that as a fact, it would pave the way for the defendant to argue that it was quite natural for Mdm Yap to have surrendered her interest in the trust shares to him for nothing. Thus, in his affidavit, he had said the following:

- (a) that occasionally he had dinner at Mdm Yap's home and went for outings with her and his children;
- (b) he occasionally gave tuition to Mdm Yap's children;
- (c) after his parents' divorce, he had lived with Mdm Teng and occasionally with Mdm Yap;
- (d) he attended to minor repairs in his father's house when required;
- (e) he "addressed Mdm Yap as Ah Yi (mother)".

The plaintiff alleged that all these matters were put forward in the defendant's affidavit in order to create the impression of closeness between Mdm Yap and the defendant. The defendant's admissions in cross-examination, however, showed that he had been painting a misleading picture.

105 First, in relation to the dinners at Mdm Yap's home, it turned out that the defendant had visited Mdm Yap weekly only while his father was alive. Once NAH died, he visited only three to four times a year and from 2004 onwards, he made no social calls on Mdm Yap at all. The very fact that the defendant did not know of Mdm Yap's death at or close to the time it occurred showed that he had not kept in close contact with her. Secondly, the occasional tuition given by the defendant to Mdm Yap's children turned out to be some lessons given during a period of one month during one of the children's school holidays. Thirdly, in cross-examination, the defendant admitted that he had only stayed with Mdm Yap for a very short period when he was about 25 or 26 years old and at that time, he had stayed in Mdm Yap's house for less than a month. He even rather confusingly at one point replied that he had stayed there sometimes for "one night or, you know, very short". He agreed, however, that he had stayed with Mdm Yap rather than lived with her. This was quite different from the impression given by his assertion in his affidavit that he had lived mainly with Mdm Teng and occasionally with Mdm Yap. Fourthly, as to the minor repairs that he carried out, the defendant confirmed that these were repairs of Mdm Teng's house rather than of Mdm Yap's.

106 Some time was spent questioning the defendant on his fifth assertion that he had addressed Mdm Yap as "Ah Yi", a term which he asserted meant "mother". The plaintiff submitted that this evidence was false because "Ah Yi" means "aunt" rather than "mother". The defendant admitted that he had addressed Mdm Teng as "mah mah" a term which indisputably means "mother" but continued to maintain that "Ah Yi" meant "mother". His evidence was not, however, supported by that of his siblings. Larry Ng, Ng Chee Kiong and Ms Ng all testified that they had called Mdm Yap "Ah Yi" at the request of their father and that that term meant "aunt". The plaintiff submitted that their evidence on the meaning of the words should be accepted rather than that of the defendant as the other witnesses had less reason to lie about this point.

107 The plaintiff also pointed out various areas where she considered that the defendant had not told the truth. First, there was his claim that he did not instruct Victor Tan to draft the affidavits signed by Ms Ng and Philip Liew and that he was not even aware that these affidavits were being prepared. He said he thought that the instructions to draw up the affidavits were given by Philip Liew or Ms Ng herself. The plaintiff considered this evidence was unbelievable since the affidavits were made for the defendant's own benefit. It was therefore astounding for the defendant to claim that nobody told him about them. In any case, Larry Ng had testified that he did inform the defendant that the deeds and the affidavits were being prepared by Victor Tan to support the defendant's claim of the existence of a trust. Further, the defendant himself subsequently contradicted his earlier assertion when he testified that he had prepared the document entitled "notes of meeting" a few days before the 25 June meeting. These notes expressly referred to the "Affidavits by Ng Geok Eng and Philip K S Liew" and "Deeds of Acknowledgement" as being among the items on the agenda for the meeting. When questioned about these notes, the defendant admitted that he knew about the preparation of affidavits at the time he prepared the notes. When pressed to admit that he also knew about the deeds at that time, he said that the agenda had been given to him by Victor Tan and he had just put in the matters to be discussed as disclosed by Victor Tan.

108 The plaintiff also submitted that the defendant's evidence that he did not instruct Victor Tan to draft the affidavits was contradicted by two letters subsequently written by him. In the first, dated 1 September 1993, the defendant requested Victor Tan to hold the affidavits and deeds for safekeeping. The second document, dated 29 June 2007, was a letter to Shook Lin & Bok where Victor Tan was then employed asking for the return of these documents. The plaintiff submitted that the fact that it was the defendant and not Larry Ng or Ms Ng (the administrators of NAH's Singapore estate) who dealt with the lawyers on the safekeeping of the documents, showed that he was considered to be the client. If so, it was argued, it followed that the affidavits and deeds were drafted on the defendant's instructions.

109 The plaintiff also criticised the veracity of the defendant's reason for reducing the monthly payment from \$2,000 to \$1,000 from July 2002. In the defendant's letter of 7 January 2003, the defendant stated that "Under the adverse economic conditions, the company believes that the monthly sum of \$1,000 is reasonable". In his affidavit, the defendant gave three reasons for the reduction. These were (a) SARS; (b) a legal dispute between STH Marine and Alex Ng; and (c) "the 911 bombings in America". None of those reasons was given in the 7 January 2003 letter. SARS was referred to in the pleadings where the defendant had averred that in July 2002, he spoke with Mdm Yap and informed her that the companies could only pay her \$1,000 a month "as business was affected because of SARS (bird flu)".

110 The plaintiff contended that the references to SARS in the pleadings and in the affidavit were clearly untrue as the SARS epidemic had not occurred either in July 2002 when the defendant allegedly spoke to Mdm Yap or when the letter of 7 January 2003 was sent out. According to evidence adduced by the plaintiff which the defendant accepted, the epidemic occurred in Singapore in March 2003. When it was put to him that therefore SARS was not a valid reason for a reduction made in mid 2002, the defendant said that in 1997 and 1998, there was a financial crisis and this carried on all the way down to the 9/11 issues followed by SARS. The defendant also confirmed that bird flu (a separate disease) had not occurred in July 2002 and therefore was not a reason for the decrease.

111 It was also asserted that the second reason given by the defendant to justify his reduction of the payment, the legal dispute between STH Marine and Alex Ng, could not be a valid reason because, at that time Mdm Yap's payments were made by Marina Fiesta and not STH Marine. The two companies were involved in different businesses and the defendant had agreed during one bulk of questioning that the finances of one company would not affect the finances of the other. The defendant changed his position, however, when the question of the effect one company's finances would have on the other was put to him in the context of the reduction of the payment. He then said that at the material time, the income of Marina Fiesta was very low and subsequently the loss of the charter income meant that STH Marine's income was practically zero. He asserted that most of the companies were supported by others in the group and this meant that if one company could not make it, the other companies in the group would be affected although they appeared to be separate entities. He agreed, however, that in his defence, he had not stated that the legal tussle between STH Marine and Alex Ng had affected the financial situation of Marina Fiesta.

112 The plaintiff noted that a further reason for the reduction was given by the defendant in para 26 of his affidavit when he stated that he had explained to Mdm Yap that Marina Fiesta was carrying high interest costs due to the group's borrowings. This point, she said, had not been pleaded or even mentioned in the letter of 7 January 2003.

113 The plaintiff submitted that the defendant's shift in his position on this issue showed that he did not have a real and justifiable reason for the reduction. The fact that the defendant could refer to the SARS epidemic allegedly affecting the business climate in July 2002 showed his complete disregard for the truth.

114 On the other hand, the plaintiff had testified that Mdm Yap agreed to accept the first reduction to \$2,000 per month provided that the original sum of \$2,500 would be reinstated when the defendant's financial position improved. She submitted that this evidence was corroborated by the reference to the reinstatement made in her letter of 30 July 2002. It was also admitted by the defendant during cross-examination that his intention had been that if the Company's financial position improved, he would try to raise Mdm Yap's monthly allowance because \$1,000 was not

enough for her. The defendant, however, did not put the allowance back to \$2,000 let alone to \$2,500. This was despite the fact that the Company had done well enough so that in 2003, the directors' fees were increased by 100% from \$100,000 to \$200,000. The defendant admitted having received most of the increase. The defendant also admitted that the Company and its subsidiaries had done better after 2002.

Analysis and decision

115 Whilst the defendant called many persons to testify on his behalf, most of the evidence of the other witnesses related to the status of the trust shares. These witnesses were not involved in any discussion that the defendant may have had with the plaintiff and her mother. Nor were these persons close to Mdm Yap or her daughter. They were therefore not able to shed any light on the main issue to be decided *ie*, the existence of the oral agreement. Their evidence could not assist the plaintiff on this matter. In some cases, their evidence was inconsistent with other testimony given by the defendant himself and showed him in an unfavourable light.

116 After analysing the relevant evidence, I have come to the conclusion that there was an oral agreement between Mdm Yap and the defendant whereby she would transfer her interest in the trust shares to him in exchange for payment. The existence of such an agreement was consistent with the circumstances as they existed at that time. I accept the argument that in June 1993, the defendant wanted a quick resolution to the issue of the ownership of the trust shares so that he could take over the helm of the Company. He saw himself as NAH's natural heir having worked in the business with him for so many years. He was also regarded by his siblings as the person who should take over from NAH. This is not surprising since it was NAH's own view as the plaintiff's husband testified. At the same time, the defendant was the registered owner of only a portion of the shares in the Company. Whilst NAH might have told Ms Ng and Philip Liew that the trust shares were intended for the defendant eventually, he had done nothing to put the shares in the defendant's name or even to document his intentions. I accept the plaintiff's submission that when NAH died, the defendant was not close to Mdm Yap and her family. This was shown also from his own affidavit and subsequent conduct. Thus the defendant would have been aware that the person whom he needed most persuade to surrender the interest in the shares was Mdm Yap. To do this he, or his emissary, would have had to speak with Mdm Yap and find out what her views were. On the evidence that the defendant would have me believe however, no one spoke to Mdm Yap or the plaintiff about the matter before 25 June.

117 The defendant originally denied that there had ever been any private meeting between himself, Mdm Yap and the plaintiff. As pointed out above however, under repeated questioning he agreed at one point that there could have been such a meeting. That admission must have been the truth. It was supported by his confirmation that the 25 June meeting had been called to carry out what had been agreed to by the members of the family at earlier meetings. Whilst it was clear that Mdm Teng and her children had been told by Ms Ng about the trust shares and NAH's intention regarding those shares at an earlier family meeting, there was no evidence that Mdm Yap and her children were present at that meeting. I think it was significant that Ms Ng did not assert that either Mdm Yap or the plaintiff had been present at the meeting or that she had given the same information to them at any other time prior to the 25 June meeting. Larry Ng denied having told the plaintiff about the need to transfer the trust shares to the defendant and the defendant himself wanted me to accept that he had not spoken to Mdm Yap about it separately. Yet the defendant had called the 25 June meeting for the purpose of confirming his title to the trust shares and (in my judgment) in order that each of the family members could sign the deed. He also expected the deed to be signed. He would not have had such an expectation had he not already known that Mdm Yap was willing to disclaim her interest in the trust shares. How would he have known that Mdm Yap was willing to do that if he had not already had a meeting with her and learnt her views? Since at the beginning the

defendant was at pains to deny having had such a meeting (when he could have asserted that at the meeting he had explained the situation to Mdm Yap and she had agreed to give up her shares for nothing), it follows that probably what did happen at the meeting was that the oral agreement was concluded.

118 I accept the evidence of the plaintiff that Mdm Yap was concerned about her maintenance after her husband's death and therefore was reluctant to forego any interest in the trust shares without receiving something in return. The plaintiff's own willingness to give up her claim to those shares was, on examination, not suspect. By the time of her father's death, the plaintiff was married and not only living in a separate household but also earning her own living and able to rely on her husband who was also gainfully occupied. Her position was very different from that of Mdm Yap who had been dependent on NAH. I also agree that, on balance, the evidence establishes that there was no close relationship between the defendant and Mdm Yap in June 1993 and that therefore there was no reason for her to relinquish her interest without asking for something in return. The defendant's various attempts to paint a different picture were not successful and only cast doubt on his credibility.

119 The evidence showed that the 25 June 2005 meeting was a carefully planned meeting. The defendant must have been a party to the organisation of the meeting and he must also have been aware of the preparation of the deed and the affidavit to be signed by Ms Ng and Philip Liew. Not only did Larry Ng confirm that he informed the defendant about the documents but also the defendant was the one who drew up the notes of the meeting and put in the items on the agenda. He said that he only put down the items that were told to him by Victor Tan without understanding their significance but that evidence showed that he was in contact with Victor Tan. His relationship with Victor Tan was further underscored by his subsequent contact with the lawyer in relation to the safe keeping of the documents. Someone had to have been orchestrating the whole procedure and that person could only have been the defendant. He was the only one who would benefit directly from the outcome of the 25 June meeting. It was intended to establish his title to the trust shares without the necessity of an expensive and protracted court proceeding. The careful planning involved the preparation of statements for Ms Ng and Philip Liew to sign and the attendance of Victor Tan and Lie Kee Pong to witness the execution of the various deeds and to translate the documents to Mdm Teng and Mdm Yap in their respective dialects. I agree with the plaintiff's submission that it was the defendant who brought up the \$2500 allowance to the two widows and that he did so because he wanted to disguise the fact that he was paying Mdm Yap for her shares so as to avoid similar demands being made by the other members of the family.

120 As regards the failure to document the oral agreement in writing, I accept the plaintiff's position that she and her mother did not press the point because the defendant was part of the family and shortly after the June meeting he fulfilled his promise regarding payment and kept on fulfilling it for a substantial period of time thereafter. Whilst Mdm Yap and the plaintiff were not particularly close to the defendant, there were family ties between them and it was quite reasonable for them to accept his word. In any case, shortly after NAH's death, no one would have been in a confrontational frame of mind and since the defendant very quickly thereafter showed he was a man of his word, it would have seemed unnecessary to take an offensive stance. It was only when the defendant decided to cut the payment for the second time that the plaintiff and her mother felt the need to put something in writing thus resulting in the July 2002 letter. I think that letter was significant as a statement of the belief of Mdm Yap and the plaintiff as to the legal position. It was also significant that the defendant did not reply to it until he received the second letter threatening him with legal action. It was only then, belatedly, that he denied the existence of the oral agreement. He could at that stage have refused to pay Mdm Yap any more money since if the payment was only a monthly allowance it was a gratuitous payment which could have been stopped at any time. He did

not do so however. Instead he ensured that at the same time as his reply went, Mdm Yap was sent the cheque covering the payments due over the previous six months. That action indicates to me that he was not willing to risk court action by Mdm Yap at that time.

121 Overall I found the plaintiff to be a more credible witness than the defendant. There were some difficulties with the plaintiff's evidence but some of these could be explained and in any case these difficulties did not, in my judgment, undermine the truth of her testimony on the essential points. For example the defendant had argued that the plaintiff had put forward a value of the trust shares which failed to reflect their true value in the light of the fact that the Company had other assets. The plaintiff's position was not, however, that she had derived the true value of the shares. She had simply decided to use the Company most valuable assets in order to calculate the estimated value of the shares. She explained that she did not include the other assets in her computation because she did not know the breakdown of some amounts and also some of the other assets were stocks held for sale and since stocks fluctuated it was difficult to use them for valuation. She also explained that as she was not involved in the Company's operations, she did not know whether the Company's other assets had changed from what was shown in the old audited reports in her possession that she had used when making her calculation. The plaintiff as a shareholder in the Company in her own right had her own copies of the audited accounts and as far as she could remember, when making the calculation, had used either the 1991 or 1992 accounts.

122 The defendant also argued that the plaintiff's reason from making a rough calculation *ie*, that she did not have details of the assets and was not given much time to consider these items, should be rejected as she could have obtained the information from the Company or changed the date of the meeting with the defendant. As the plaintiff contended, that submission ignored the then existing circumstances. The plaintiff's computation was done shortly after NAH's death and funeral. The plaintiff was grieving and did not have much time to obtain an accurate valuation of the shares especially since the defendant was the one who called for an urgent meeting and wanted the issue to be resolved quickly. In any case an accurate valuation of the trust shares was not necessary since the plaintiff's calculation was made only to give her mother an idea of what to ask for and the final amount payable would be based on the market value of the trust shares as calculated by the estate duty office. The plaintiff maintained that she had told the defendant that the amount she gave him of \$900,000 to \$1m was just a rough estimate. In any case he did not ask her how she arrived at that sum.

123 As for the suggestion that the plaintiff should not be believed because she should have tried to obtain the highest value for the trust shares in order to ensure Mdm Yap was comfortable in her old age, the plaintiff's evidence was that she was not trying to extract the maximum sum from the defendant but a reasonable amount. The plaintiff said that Mdm Yap had instructed her to ask for a reasonable sum as compensation and had indicated that \$2,500 would be acceptable to her. There was no need for the plaintiff to do a calculation of all the assets in order to come up with a higher value since her mother was willing to accept \$2,500 per month.

124 It would be recalled that the defendant submitted that the plaintiff's statement that she had rounded down the value of the trust shares in order to factor in a 10% margin of error had no basis because the plaintiff had not admitted over valuing the land and building such that she needed to factor in a margin of error. The plaintiff responded that the rounding down was not attributable to the value of the land and building. She had testified that she needed to put in a margin of error as she was dealing with estimated numbers. The estimation was based on her assumption that NAH was holding roughly 50% of the shares in the Company (the plaintiff did not know his exact shareholding since the old audited accounts did not reflect the shares that he had recently acquired). It turned out that NAH held only 46% of the shares in the Company so the rounding down was not too far off

the mark. Also, although the plaintiff did not admit it in court, she must have been aware that her assessment of the property value was rough and ready and required some adjustment.

125 As for the plaintiff's claim that she used the natural life expectancy of a female and that was 80 years, the defendant's criticism was that she had no evidence to support it. I think that this was the weakest part of the plaintiff's case. Her explanation that she used her grandmother's life expectancy as a basis for her mother's life expectancy was a bit far fetched since the two of them did not have the same health situation. I think that there may have been some *ex post facto* rationalisation of the figures on the plaintiff's part and also some over optimistic expectations of how long Mdm Yap would live. The plaintiff could not really justify on the basis of her calculations why Mdm Yap had agreed to \$2,500 per month but I accept that this figure was used because it was convenient and because Mdm Yap thought that sum would be enough to support her comfortably.

126 The defendant had argued that there was an alleged contradiction in the plaintiff's evidence relating to what she had told the defendant about the value of the trust shares. In fact there was no contradiction. The plaintiff's evidence actually was that she did not reveal her computations on value to the defendant but she did tell him what she considered the ball park figure to be. At the time she did not have the estate duty valuation and therefore she told the defendant she would use the market value of the shares and mentioned that she thought the value would be in the region of \$900,000 to \$1m. She did not give him an exact amount because she did not have one and the formula she used was based on estimates.

127 The defendant had made a point about the letter of July 2002 not being consistent with the terms of the oral agreement as pleaded in the plaintiff's statement of claim. He noted that the letter said that he had agreed to pay \$2,500 to Mdm Yap "as long as she lives". This phrase contradicted the claim that the oral agreement was that the defendant pay Mdm Yap the sum of \$2,500 per month "until the full value of the shares is (*sic*) paid". The plaintiff explained in her evidence that the phrase "as long as she lives" was not intended to mean that the defendant was only obliged to pay \$2,500 a month until Mdm Yap died. What she meant was that that instalment was calculated to, and intended to, stretch over the period of Mdm Yap's life expectancy. Further, she had mentioned the total value of the trust shares (\$953,069.85) in the last paragraph of her letter which was an indication that she was expecting the defendant to pay the full amount to Mdm Yap in due course.

128 The plaintiff also submitted that the defendant was not entitled to take the position that the payment obligations under the oral agreement were actually couched in different terms from what was pleaded in the statement of claim. This was because the defendant had denied the existence of the oral agreement completely and had not taken the alternative position that there was such an agreement but that the payment provision agreed upon was that Mdm Yap would be paid a sum of \$2,500 per month. Accordingly, if the court found that there was a private meeting and an oral agreement between the defendant and Mdm Yap, the only version of the contract which could be upheld was that pleaded by the plaintiff. In this respect, the case of *Yew Wan Leong v Lai Kok Chye* [1990] 2 MLJ 152 is instructive. There, the trial judge made a finding that a new contract had been agreed to between the parties and this contract had replaced the original contract. Since the plaintiff's cause of action was based on the original contract (and not on the subsequent agreement), the trial judge had dismissed the plaintiff's claim. This decision was reversed on appeal, the Court of Appeal holding that a court is not entitled to decide a suit on a matter on which no issue has been raised by the parties. In disposing of a suit involving a disputed question of fact, it is not proper for the court to displace the case made by a part in its pleadings and give effect to a new case which has not been pleaded. The trial of the suit should be confined to the pleas on which the parties are at variance.

129 Applying that authority in this case, since the defendant did not plead that the terms of the oral agreement were that payment was to be made to Mdm Yap until her death only, I am not able to find that that was a term of the oral agreement. Having found, on the balance of the evidence, that an oral agreement was concluded, it follows that I must conclude that its terms were as pleaded by the plaintiff since the defendant did not put up any alternative pleading. Thus, the reference in the plaintiff's letter to "as long as she lives" cannot be used by me as a basis to find that the terms of the oral agreement were different from what was pleaded. The plaintiff is an accountant not a lawyer. She wrote the letter as her mother's daughter to make a protest on her mother's behalf. The wording of the letter cannot be given the same close construction that a document or contract drafted by a lawyer would be subject to. I accept the plaintiff's explanation for the use of the language "as long as she lives". It should also be noted that in April 2006 after the defendant had ceased all payments to Mdm Yap or her estate, the plaintiff wrote a further letter to the defendant in which she specifically asserted that the agreement was that the sum of \$2,500 per month would be paid until the entire value of Mdm Yap's 25% share was paid off. The defendant would have known from then what stand the plaintiff was taking and could very well, if that was the case, have asserted in his defence that the agreement was only to make payment to Mdm Yap as long as she lived. He did not take that position and having denied the existence of the oral agreement *ab initio* must accept the consequences of that stand.

130 The plaintiff submitted that when on 15 May 2006 the defendant denied the oral agreement in writing and claimed that the payments made by the companies were merely *ex gratia* payments, he repudiated the oral agreement. It was clear from this letter that he did not intend to honour his obligations under the oral agreement any further. The plaintiff accepted the defendant's repudiation on behalf of the estate by way of a letter dated 16 August 2006 and thereby terminated the oral agreement. Following from the termination of the oral agreement, the instalment plan came to an end and the estate's cause of action became a claim for damages against the defendant. See *Moschi v Lep Air Services Ltd* [1972] 2 All ER 393. I accept this submission and agree that as in the cited case, on the rescission of the oral agreement, the defendant's obligation to make the monthly instalments was converted by operation of law into a secondary obligation either to pay damages for failure to perform it or, perhaps, a revived obligation to pay the balance of the whole debt immediately (per Lord Diplock, at 403).

Conclusion

131 For the reasons given above, there will be judgment for the plaintiff in the sum of \$656,569.85 and interest thereon at 5.33% per annum from the date of the writ until the date of judgment. The plaintiff shall have her costs of the action as taxed or agreed.

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