

Chong Chwee Hin v Ng Sew Hoi
[2000] SGHC 226

Case Number : Suit 15/2000/G
Decision Date : 07 November 2000
Tribunal/Court : High Court
Coram : Woo Bih Li JC
Counsel Name(s) : Plaintiff in person; Wong Kin Meng (Wong Kin Meng & Co) for the defendant
Parties : Chong Chwee Hin — Ng Sew Hoi

JUDGMENT:

Cur Adv Vult

1. The Plaintiff and the Defendant were husband and wife respectively.
2. In this action, the Plaintiff's claims can be classified under four headings:
 - (a) claim for a half share in Kuang Shun Gold Smith;
 - (b) claim for S\$42,167.11 being insurance monies from AXA Life Insurance Co;
 - (c) claim for a half share in 144 Bukit Timah Road #01-06 Beauty World Centre or alternatively repayment of S\$60,000.00;
 - (d) claim for rent allegedly received by Mdm in respect of three properties ie.
 - (i) 10 Jalan Besar Road #03-24 Sim Lim Tower;
 - (ii) 120 Jalan Jurong Kechil; and
 - (iii) 50 East Coast Road #01-30 Roxy Square Shopping Centre.
3. There is another action i.e. Suit No. 108 of 2000/W in which the former wife is the plaintiff and the former husband is the defendant but he has counterclaims therein.
4. To avoid confusion, I will refer to the former husband as 'Chong' and the former wife as 'MdmNg' and the present action as 'Suit 15' and the other action as 'Suit 108'. Also, 'AEC' means affidavit of evidence-in-chief, and 'NE' means Notes of Evidence.
5. As various allegations were made by one against the other, I will set out the background to the various claims in this action which background would also be relevant to the claims and counterclaims in Suit 108.

BACKGROUND

6. Chong is illiterate and attended school for one or two years after which he helped his father in a coffee shop.
7. Chong and MdmNg were married on 22 January 1973 and have three children.

8. Chong and his family had a shop in Bukit Timah selling zippers, buttons and sewing materials before the marriage. After the marriage, MdmNg helped out in this shop.
9. In the late 1970s or 1981/1982, a fire gutted many shops in that area and the shop selling zippers etc was not spared either.
10. In the early 1980s, a shop #03-13 in Beauty World Centre was leased to Chong and/or MdmNg. The shop sold female clothing. Chong said he assisted in the shop but MdmNg denied this. MdmNg said this shop made good profits but Chong disagreed. These disputes are not material.
11. In 1980/81, after #03-13 was allocated to Chong and/or MdmNg, both of them obtained a lease of another shop #01-06 also in Beauty World Centre which had been allotted to one Tan Kwong Niang ('Tan'). The circumstances as to how the lease was acquired are disputed but they are not material.
12. In September 1983, a business by the name of Kuang Shun Gold Smith was registered. I will refer to it as 'KSGS'. Chong, MdmNg and Tan were the partners but Tan withdrew as a partner on 17 November 1983.
13. The business of KSGS commenced in early 1984.
14. Chong claimed to have provided the capital for KSGS from the profits from the shop selling sewing accessories, the insurance monies from the fire, an overdraft facility from Maybank and from selling his shares. He denied MdmNg had made any contribution towards the capital. MdmNg did not deny that Chong had contributed to the capital of KSGS but she claimed that she also contributed to its capital from the profits from the shop selling female clothing and from her dealings in securities. It is not material to me who provided the capital as it was not disputed that, at least up to June 1992, they considered each other as equal partners of KSGS.
15. Some time later the shop selling female clothing was given up. The reasons for doing so are in dispute but again are not material.
16. MdmNg said that in 1985/1986, she discovered that Chong was keeping a mistress but he denied having a mistress.
17. In 1987/1988, Chong and MdmNg bought a bungalow at 107 Bukit Teresa Road in their joint names using, inter alia, proceeds from the sale of another residential property which they both owned. For a while after the purchase, 107 Bukit Teresa Road was not occupied but eventually Chong agreed that MdmNg and the children and her mother could reside there.
18. MdmNg also alleged that in 1988 she discovered that Chong had fathered a child through his mistress but Chong also denied there was such a child.
19. MdmNg said Chong did not help out at KSGS (except for a period between 1988 and 1990) and was often drunk and was violent towards her.
20. Chong said he did help out at KSGS. He denied that he was drunk or was violent towards MdmNg but eventually admitted he had assaulted MdmNg on several occasions in 1987 and 1988. He said this was because she had been keeping late nights and had male friends.
21. MdmNg claimed that on 27 February 1988, Chong assaulted her and she ran away. Chong initially denied this but later admitted it. Apparently MdmNg did not return to KSGS until about two years later.
22. Immediately after the assault on 27 February 1988, MdmNg withdrew \$200,000 from the goldsmith business. She said she was afraid that Chong would spend it away.
23. It is not disputed that Chong caused KSGS to sue MdmNg for the \$200,000 which she eventually returned.

24. On 15 April 1988, MdmNg made a police report about Chong's violence and in particular about the incident on 27 February 1988.

25. On 4 August 1988, MdmNg obtained a Personal Protection Order ('PPO') against Chong. Chong said he did not know that she had applied for the PPO until the trial of Suit 15 but the PPO itself mentions that he had appeared before the 25th Court (of the Subordinate Courts) on the application of MdmNg for such an order. When he was faced with a copy of the PPO, he admitted that he was present in court but said he could not remember what the court attendance was about and still sought to deny that he was aware of the PPO. He said it was addressed to him at 107 Bukit Teresa Road (which they both owned but she and the children were residing there then). He claimed that he did not receive the PPO as he was not allowed to go to 107 Bukit Teresa Road. MdmNg had a big dog there which she would have let loose against him had he gone there.

Chong's liability to pay maintenance

26. On 26 February 1990, MdmNg obtained a court order (AB 38) for Chong to pay maintenance for her and the children of \$3,000 per month from 1 March 1990 and by consent it was also ordered that he was to pay arrears of maintenance amounting to \$31,460.90 at \$4,000 per month, also starting from 1 March 1990 ('the Maintenance Order').

27. The arrears of maintenance apparently arose from Chong's agreement in or about 1988 to pay \$3,000 a month maintenance for MdmNg and the children.

28. Notwithstanding what was stated in the Maintenance Order, Chong denied that he was in arrears of maintenance as at the date of the Maintenance Order. He said he had been giving money to his mother-in-law regularly between 1988 and 1990 for maintenance for the children.

29. Chong also said that in February 1990 he was not represented by solicitors on the issue of maintenance. However, this was not true. There was correspondence between his solicitors and MdmNg's solicitors on the issue of maintenance since October 1988 up to July 1991.

30. At this stage, I would deal with the outstanding maintenance as at various dates.

31. Although Chong alleged that he had been paying maintenance all along, the fact is that on 26 February 1990, the Maintenance Order was made and, by consent, Chong was ordered to pay the initial arrears of maintenance amounting to \$31,460.90 and further maintenance of \$3,000 a month for MdmNg and the children.

32. MdmNg's AEIC at paragraphs 28 and 30 alleged that she had received Chong's half share of rent from #03-24 Sim Lim Tower and after taking this into account, Chong was indebted to her for \$154,540.90 being outstanding maintenance as at August 1995:

'28. As a result of his inability to effect payment of maintenance, the Plaintiff offered in July 1992 that I may collect the rental proceeds of the property known as 10 Jalan Besar #03-24 Sim Lim Tower Singapore from July 1992 onwards and half of the rental proceeds (being the Plaintiff's share) may be appropriated by me towards reduction of the arrears of maintenance. To the best of my recollection, the amount received are as follows:-

(a) share of rental of #04-24 Sim Lim Tower from August 1992 for 12 months @ \$900.00 per month = \$10,800.00

(b) share of rental of #03-24 Sim Lim Tower from August

1995 for 13 months @ \$2,240.00 per month = \$29,120.00

29.

30. As at August 1995, the Plaintiff was indebted to me for a substantial sum of money in the form of arrears of maintenance. The details are as follows:-

Maintenance from <u>August 1990</u> to August 1995	
61 months X \$3,000 p.m.	- \$183,000.00
<u>Arrears of Maintenance</u> (\$31,460.90 - \$20,00)	- \$ 11,460.90
	\$194,460.90
SubTotal:	
Less half share of rental received (#03-24 Sim Lim Tower)	\$ 39,920.00
	\$154,540.90 '
Amount outstanding	

[Emphasis added.]

33. However, the correspondence shows that the monthly maintenance was paid up to February 1991 and the initial arrears of \$31,460.90 was also paid up by February 1991. Mdm Ng's Counsel appears to have accepted this and thus his cross-examination and submission were on the basis that Chong had failed to pay maintenance from March 1991 to August 1995 (see NE 19A and paragraph 6 of Mdm Ng's Closing Statement).

34. Furthermore, since Mdm Ng had used August 1995 as the cut-off month for her calculation, then rent received by her subsequently whether from #03-24 Sim Lim Tower or from other properties, should not be taken into account yet.

35. Therefore, unless Chong can establish that, after February 1991, he had made further payments towards maintenance, then, as at August 1995, there was outstanding maintenance amounting to \$148,960 constituted as follows:

(a) From March 1991 to August 1995	= \$162,000
i.e. 54 months x \$3,000 p.m.	
(b) Less half share of rent from #03-24 Sim Lim Tower (up to August 1995)	= \$ 13,040 -
i.e. \$10,800 + \$2,240 for August 1995	
(see paragraph 32 above)	
	\$148,960

36. I have used the expression 'outstanding maintenance' to distinguish it from the initial arrears of maintenance.

37. Chong's evidence about his payment of maintenance was unclear. He made general statements about how he used to give some money to Mdm Ng's mother who was staying with Mdm Ng (which would have stopped by 1990 in any event, because he had said that then he was not allowed to enter Mdm Ng's residence without her permission).

38. He also made general statements about how he used to give her cheques of \$3,000 or more.

39. I find that during the period March 1991 to August 1995, Chong did not make any further payment towards maintenance.

40. Chong also relied on a subsequent Order of Court dated 27 August 1996 in Divorce Petition No 174 of 1996 which states that by consent the Maintenance Order (dated 26 February 1990) be rescinded ('the Rescission Order').

41. MdmNg's position was that the Rescission Order did not have retrospective effect. As Chong had agreed to pay all the outstanding maintenance, she would not insist on any more maintenance. Hence she agreed to have the Maintenance Order rescinded. Chong did not give any reason as to why the Maintenance Order was rescinded.

42. I also refer to Chong's evidence during cross-examination at NE 52C to E:

'I would like to refer to AB 63, the Consent Order on Ancillaries. Yesterday, I said that the court order said that I need not pay the maintenance for a period. I cannot remember the period. I do not understand the order at AB 63. When my lawyer explained it to me, one moment she told me that I need not pay any more maintenance. The next moment she told me I would require to pay the maintenance. So I did not understand her. I did call my former lawyer yesterday. She explained it to me over the phone but I still could not understand.

I wish to clarify that I had paid up maintenance from 1988 to 1996. So I need not pay her any more maintenance.'

43. If the Rescission Order was intended to and did have retrospective effect, Chong's solicitors would not have told him that he had to pay maintenance. Also, Chong would not have said that he had paid maintenance up till 1996. In addition, there was no reason for MdmNg to agree to the Rescission Order having retrospective effect.

44. Furthermore, MdmNg produced five cash cheques handed by Chong to her after the Rescission Order was made:

- | | |
|--|----------|
| (a) Maybank cheque No 925259 (undated but supposedly handed to her in December 1996) for | \$30,000 |
| (b) Maybank cheque No 317797 dated 1 July 1997 for | \$5,000 |
| (c) Maybank cheque No 371798 dated 1 August 1998 for | \$5,000 |
| (d) Maybank cheque No 371799 dated 1 September 1997 for | \$5,000 |
| (e) Maybank cheque No 371800 dated 1 October 1999 for | \$5,000 |

45. It was not clear from her evidence whether all five cheques were handed to her on the same day or not.

46. She said that the five cheques were handed to her after repeated reminders from her to him to pay outstanding maintenance. She did not present them for payment because Chong kept telling her to defer doing so until he had sufficient funds in his bank account to meet payment, however, these five cheques were evidence that Chong was liable to pay outstanding maintenance.

47. Chong at first said he did not sign these five cheques but then agreed that he did (NE 20D). He disagreed with MdmNg's evidence on the reason why these cheques were handed to her. However, he did not elaborate as to why they were handed to her except to suggest the possibility that for the \$30,000 cheque, it might have been handed to MdmNg to help buy a car for their son (AEC paragraph 51). However this would not explain why she omitted to present that cheque for payment when she received it unless it was because he had told her that he did not have sufficient funds in his bank account then.

48. I find that the Rescission Order did not have retrospective effect. It terminated Chong's obligation to pay maintenance only from August 1996.

49. I also find that between August 1995 to July 1996, Chong did not make any further payments towards maintenance although credit must be given for his half share of rent received by MdmNg. I have used end July 1996 as the cut-off month for calculation purposes as the Rescission Order was dated 27 August 1996 and he would not be liable for further maintenance from

August 1996.

50. As at end July 1996, the outstanding maintenance was as follows:

(a) As at August 1995 (see paragraph 35 above)	\$148,960
(b) From September 1995 to July 1996 ie. 11 months x \$3,000 per month	\$36,000 +
(c)	\$20,160 -
	\$164,800

51. I should mention that although Mdm Ng was prepared to account for half the rent she received for #03-24 Sim Lim Tower up to August 1996, I am of the view that she only had to account for half the rent up to May 1996 because in June 1996 a consent order was made in which Chong was to transfer his interest in, inter alia, this property to Mdm Ng. I will elaborate on this order below.

52. Mdm Ng said that thereafter she received further sums from various sources towards payment of maintenance. Based on her allegations, the outstanding maintenance would have been reduced by June 2000 as follows:

(a) Outstanding maintenance as at July 1996 (see paragraph 50)	\$164,800.00
(b) In September 1997, Mdm Ng received some insurance monies which were payable to Chong. Less:	\$42,167.11 -
(c) Between 1997 and 1998, she received 1 year's rent from 120 Jalan Jurong Kechil (which was owned by Chong). Less:	\$36,000.00 -
(d) In about October 1998 she received money from Chong. Less:	\$60,000.00 -
Outstanding maintenance as at June 2000	\$26,632.89

53. I have used June 2000 as the cut-off date for this calculation because it is relevant to Chong's claim for a half share in KSGS.

CHONG'S CLAIM FOR A HALF SHARE IN KSGS

54. Mdm Ng said that from late 1991 to mid 1992, Chong had borrowed \$300,000 from her for his business in Malaysia. As security and evidence of the loans made by her, Chong had issued three undated cheques for \$100,000 each to her from his account with Malayan Banking Berhad. The three cheques are Exhibits D4A, 5A and 6A.

55. Mdm Ng also alleged that, in addition, Chong took various sums of money from KSGS and eventually she decided to put a stop to this.

56. She alleged that Chong and her then negotiated between themselves and it was agreed that he would sell his interest in the goldsmith business to her for \$500,000 and the \$500,000 was to be paid by way of set-off from her loans totalling \$300,000 and various sums taken by Chong from the goldsmith business which was agreed at \$200,000.

57. To that end, Chong and her signed an agreement dated 23 July 1992 ('the Agreement') in which Chong agreed to retire from KSGS and Mdm Ng agreed to pay \$500,000 to Chong for his share and interest in the business. In the Agreement, Chong acknowledged receipt of the \$500,000.

58. Clauses 1 and 2 of the Agreement state:

'1 (1) The outgoing partner shall withdraw retire and is released from the Business as from the date hereof.

(2) The withdrawal retirement and release of the outgoing partner shall not dissolve the Business which shall be carried on by the continuing partner.

2. The continuing partner shall pay the outgoing partner the agreed sum of Dollars Five Hundred Thousand Only (\$500,000.00) as the price of all his shares and interest in the capital and assets including goodwill of the Business and receipt of payment is hereby acknowledged by the outgoing partner.'

59. At this stage, I should mention one point submitted for Mdm Ng. In Mdm Ng's Closing Statement, the point was taken for the first time that sections 93 and 94 of the Evidence Act (Ch 97) would exclude Chong's oral evidence to contradict the Agreement. Section 94 is the relevant section and is subject to various provisos.

60. The relevant provision is s 94(a) of the Evidence Act. It states:

'94. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to section 93, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives in interest for the purpose of contradicting, varying, adding to, or subtracting from its terms subject to the following provisions:

(a) any fact may be proved which would invalidate any document or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, the fact that it is wrongly dated, want or failure of consideration, or mistake in fact or law;'

61. The point taken in Mdm Ng's Closing Statement was not taken during the trial when Chong was giving his evidence. The evidence had therefore already been admitted.

62. Besides, Chong was saying that he had entered into the Agreement based on Mdm Ng's representation to him that it was only to put his assets out of reach of his creditors and he would retain his interest in KSGS. This comes under proviso (a) of s 94. See also Illustration (d) for this section which states:

'(d) A enters into a written consent with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B as to their value. This fact may be proved.'

63. Also, as Chong was denying that he had received \$500,000 in payment of the alleged sale of his interest to Mdm Ng, the acknowledgment of receipt of \$500,000 in the Agreement does not prevent him from giving evidence on his denial, see *Fook Gee Finance Co Ltd v Liu Cho Chit & another action* [1998] 2 SLR 121.

64. I also note that Mdm Ng's version was not that she actually paid Chong \$500,000 but that he received it by way of set-off.

65. The Agreement was prepared by a solicitor Timothy Ong Kian Wei on the instructions of Mdm Ng.

66. Timothy Ong gave evidence as DW2. He confirmed that he had prepared the Agreement on Mdm Ng's instructions.

67. The parties had appeared before him together to sign the Agreement.
68. Although there was no interpretation clause, he said that it was not his practice to insert an interpretation clause in agreements. He would do so only in affidavits or in accordance with Rules of Court (NE 100B to C).
69. However he also said it was his practice to explain documents to parties particularly when, as in the present case, the parties do not understand English.
70. He said he had explained the Agreement to both MdmNg and Chong in Mandarin and perhaps in Hokkien too.
71. He said that he did ask about the \$500,000 payment and he was informed that this had been paid directly.
72. In his AEIC at paragraph 5, he said both Chong and MdmNg had confirmed that the \$500,000 had been paid directly to the Plaintiff. In cross-examination, he said he was informed by either one that payment had been made directly to Chong (see NE 98E) and later, that 'parties confirmed receipt' (at NE 99A). He reiterated this (at NE 99D/E).
73. In answer to my questions, he referred to Clause 2 of the Agreement on the acknowledgment of payment by Chong and said that this 'would have been explained and confirmed by parties otherwise agreement ought not to have been signed with this term' (NE 101A/B).
74. The Agreement was signed more than eight years ago. Mr Ong did not refer to any note of his made contemporaneously at the time of the Agreement to refresh his memory. It seemed to me that his evidence was really based on inferences drawn by him and not from his recollection of events. He also did not say how long he had taken to interpret the Agreement to the parties.
75. It is not disputed that Chong's name was removed from the records of the Registry of Businesses as a partner of KSGS pursuant to the Agreement.
76. MdmNg also relied on an order made in Divorce Petition No 174 of 1996 on 12 June 1996 ie. some four years after the date of the Agreement ('the Division Order').
77. This was an order made by consent, the draft of which was signed by Chong. He also wrote three words in Chinese below his signature on the draft to signify that the draft had been read to him. Although Chong had, through his solicitors' letter dated 25 May 2000 (at AB 169) denied that he had written the three words in Chinese below his signature, he admitted in cross-examination that those words were written by him (NE 36B).
78. The Division Order provided for, inter alia, the division of assets by each party transferring his/her interests in certain properties to the other.
79. Also, paragraph 4 thereof stipulates:
- 'Neither party shall have any claim against the other for any interest in any other property for the other.'
80. It was submitted for MdmNg that the goldsmith business was part of matrimonial property. As Chong had not asked for it to be dealt with in the Division Order and in view of paragraph 4 thereof, these points reinforced her position that Chong had agreed and knew all along that he had no more interest in KSGS.
81. On the other hand, Chong argued that he did not consider the goldsmith business as matrimonial property to be dealt with under the Division Order and it did not occur to him that the business was to be dealt with under the Division Order.
82. The Division Order (at AB 54 to 56) shows that Chong did not appear at the hearing of the divorce petition on 12 June 1996

although he consented to the Division Order. It appears that at that time, he might not have been represented by solicitors.

83. Chong did not dispute signing the three cheques which were for \$100,000 each.

84. He could not really explain what the three cheques were issued for. He said that he would give Mdm Ng cheques or cash from time to time between mid 1991 to 1997 (even after the divorce in 1996) for \$3,000 and for such sums as Mdm Ng might ask. He said that the cheques would usually be signed in blank. On the other hand, he also said he would often write 'cash' cheques (see his AEIC paragraphs 19 and 20).

85. Chong also said he would sometimes leave the quantum unstated and leave it to Mdm Ng to insert the amount (see his AEIC paragraph 19).

86. However Chong's evidence was general and not specific to the three cheques.

87. Mdm Ng said she inserted her name on the three cheques and the amount on these three cheques before Chong signed them (NE 93B). Chong did not challenge this.

88. Although Chong suggested (at NE 92F) that the three cheques were given to Mdm Ng just in case she required money for the family, he was not really certain that this was the case.

89. As for the Agreement, Chong admitted that he signed it and that it was interpreted to him. However he claimed that there were parts which he did not understand although he did not seek clarification from Timothy Ong. He said he did not do so as he trusted Ong.

90. In addition, Chong insisted that Timothy Ong did not confirm with him that he had received the \$500,000.

91. Chong claimed that the purpose of the Agreement was to put his assets out of reach of his creditors as he was going to do business in Malaysia. According to him, it was Mdm Ng who suggested that he withdrew from the business of KSGS. He agreed provided he would retain a beneficial interest in it. He admitted that subsequent to the Agreement he did not declare income from KSGS for income tax purposes.

92. Chong pointed out that after the date of the Agreement, he still went to the goldsmith shop. He had the keys and he did go to open and close the shop from time to time. Not only did he have the keys to the shop but to a safe deposit box in the shop as well.

93. Chong also called two witnesses who he indicated were the longest serving employees of KSGS.

94. PW2 was Toh Bok Seng. He was and apparently still is the manager of the goldsmith shop. He agreed that from 1992 until recently Chong still went to the shop to open and/or lock it up from time to time.

95. He considered Chong to be the boss of the business until one or two years ago when he learned from Mdm Ng that Chong was no longer the boss.

96. He said that after July 1992 he received his salary in cash from Mdm Ng. However he also said this was the position even before July 1992 except for a period when Mdm Ng did not come to the shop.

97. The next witness PW3 was Lim Sock Choy who was unemployed at the time he was giving evidence. He had worked in the goldsmith shop from 1986 to 1989/1990 and from 1991 to January 1999 when he retired to look after his grandchildren. He also said that from 1992 Chong went to the shop from time to time although less than he had done in the past. He attributed this to Chong's business in Malaysia.

98. PW3 did various things at the shop eg. sweeping the floor, arranging the gold, weighing the gold and getting the shop

ready for business, writing various sale and purchase transactions in the books and generally helping out (see his AEIC paragraph 4 and NE 60E/F).

99. He had always treated Chong as the boss and he claimed that PW2 also did likewise.

100. PW3 said that at the end of each day he would hand cash received to Chong when Chong was around. When Chong was not around, he would pass the money to either MdmNg or PW2. He also said that MdmNg hardly spoke to him (ie. PW3) at all.

101. PW3 also said that he received his salary in cash from Chong and not MdmNg and his salary was \$1,500 per month.

102. He agreed that after the shop was closed in the evenings, he went drinking with Chong.

103. MdmNg's Counsel took the position in cross-examination that PW3 was really employed or engaged by Chong personally and not by KSGS.

104. The point was also made that Lim did not disclose his income to the tax authority or pay CPF on his income.

105. MdmNg also said that she had allowed Chong to go to the shop after the Agreement because he had requested this to give him face as his friends would look him up there to settle accounts. She also said that she had given him a duplicate set of keys to the shop.

My conclusion about KSGS

106. On the one hand, Chong had signed the Agreement which recorded his withdrawal from the partnership and his acknowledgment of receiving \$500,000 for his interest in it. Also, his name was withdrawn from the records with the relevant registry as a partner of KSGS. He did not declare income from KSGS thereafter. However these points are not entirely inconsistent with Chong's version that this was a scheme to put his assets out of reach of his creditors.

107. I also considered that Timothy Ong had also given evidence against Chong.

108. Thirdly, the evidence of Chong was often unreliable on other points.

109. Fourthly, there was the Division Order which did not deal with the business of KSGS. However it was not necessarily inconsistent with Chong's claim.

110. MdmNg's Counsel also raised the argument that if the Agreement was simply to put Chong's assets out of reach of his creditors then (a) he could have used the medium of a private limited company to carry on the business, and, (b) furthermore, Chong should have got MdmNg to sign a document that she was holding his share in trust for him.

111. I do not think either of these arguments carry much weight.

112. If Chong were to use a private limited company to carry on the business, he would be holding shares in the company to reflect his share of the business and such shares would also be liable to be seized by his creditors.

113. As for getting MdmNg to sign a trust document in his favour, Chong was not a sophisticated person who would have thought about this. Besides, it was not his case that he had spent a long time to consider the matter. His case was that he did as MdmNg had suggested and he had trusted her.

114. The points in favour of Chong were, firstly, it was not denied that Chong still came to the shop after July 1992 from time to time to open and/or to close the shop and that he had the keys to the shop.

115. Although Mdm Ng said she gave him a duplicate set of keys, I do not accept this. He already had the keys before the Agreement and probably hung on to them as there is no evidence that the locks were changed.

116. Secondly, Chong said he still had the keys to a safe deposit box in the shop and he was not challenged on this. If he was not to have an interest in the business anymore, Mdm Ng would have or should have asked him to return these keys. She did not say that she forgot to do so.

117. Thirdly, both PW2 and PW3 continued to treat him as the boss of the shop for some time after July 1992. For PW3 it was until he resigned and for PW2 it was until he learned otherwise one or two years ago.

118. As regards the argument that PW3 did not disclose his income to the tax authority or pay CPF on his income, this is neither here nor there in the dispute before me.

119. Also, although it was argued for Mdm Ng that it was unlikely that KSGS would have employed PW3 as he had admittedly served a prison term for accepting illegal 4D bets, I am of the view that such a submission is untenable. It is open to anyone to employ an ex-convict.

120. Furthermore, it was not disputed that PW3 had done the work he had claimed to have done in his AEIC for the business. It was, in my view, unlikely that PW3 was just the personal helper of Chong and the fact that he was receiving his salary from Chong indicated that Chong still had a share in the business.

121. Fourthly, it was not disputed that PW3 would hand cash received for the business to Chong when Chong was around.

122. There is one other factor which is quite telling.

123. Mdm Ng claimed that the three cheques for \$100,000 each issued by Chong to her were to repay loans made by her to Chong. However the \$300,000 plus another \$200,000 supposedly withdrawn by Chong from the business was set-off against the purported purchase consideration of \$500,000.

124. Yet in June 2000, she inserted the date of 13 June 2000 on the three cheques and presented them for payment at which time they were not honoured.

125. If she was telling the truth about the purchase of Chong's interest by way of set-off, then she should not have presented the cheques for payment in June 2000. It contradicted her version. Her reason for presenting the cheques in June 2000 was:

'Q Why did you bank in the cheques all of a sudden in June 2000?

A Since he cannot pay me the monies he owes me, I will just bank in the cheques. He told me not to bank in the cheques. When he sells the properties, he will get the money. I refer to 120 Jalan Jurong Kechil and a condominium at Bukit Batok and a property in Hong Kong. He kept telling me this. Up till this day, he has not paid me the money even after selling off the properties. I am referring to the maintenance.' (NE 94B)

126. I do not accept this explanation for two reasons.

127. First, if the alleged debt of \$300,000 was paid by way of the sale of Chong's interest in KSGS to her, she had no business in trying to present them in June 2000 to pay for outstanding maintenance.

128. Secondly, the outstanding maintenance as at June 2000 did not come close to \$300,000 in any event (see paragraph 52 above).

129. I considered whether Mdm Ng might have made a genuine mistake in presenting the three cheques for payment in June 2000. They were not the only cheques she had dated and presented for payment then (the date she had inserted on the various cheques was 13 June 2000) and it could be that she had dated and presented the three cheques together with other cheques in her anxiety to get payment from Chong on her loans to him which are the subject of Suit 108 and/or in her anxiety to prove that he had no money to pay her what he was owing to her.

130. However, it was not her evidence that she had made a mistake in presenting the three cheques for payment.

131. Accordingly, I find that Chong did not sell his interest in KSGS to Mdm Ng for \$500,000 or at all.

132. It is not necessary for me to make a finding whether Mdm Ng had lent \$300,000 to Chong for which the three cheques of \$100,000 were handed to her or whether Chong did take \$200,000 or more from the business because there is no claim, on an alternative basis, by Mdm Ng for payment of the \$300,000 or the \$200,000 or for these two sums to be set-off against whatever she has to account to Chong for.

CHONG'S CLAIM FOR \$42,167.11 BEING MONIES FROM AXA LIFE INSURANCE CO LTD ('AXA')

133. It is not in dispute that Chong was the beneficiary of a 20-year endowment policy issued by an insurer. The commencement date was 15 July 1977 and it matured on 15 July 1997. There was some confusion as to whether the insurer was originally some other company or not but that is not material because it is also not in dispute that in or about September 1997, Chong became entitled to receive \$42,167.11 from AXA.

134. Mdm Ng admitted that she inserted Chong's signature on the discharge voucher and received the cheque from AXA issued in Chong's favour for the sum. It was then paid into an OCBC joint account and she used it to pay outstanding maintenance, as allegedly agreed to by Chong.

135. Chong denied that he had agreed to this. He said that the first time he came to know about this was after he had been chased out of the goldsmith shop by Mdm Ng in or about January 2000 and thereafter he went through documents and learned about the discharge voucher. This was also how he came to learn about the purported sale of his interest in KSGS for \$500,000.

136. I refer to Mdm Ng's evidence. In her AEIC at paragraphs 35 to 37, she said,

'Insurance Monies

35. Sometime in September 1997, the Plaintiff orally informed me that he was expecting a sum of money from AXA Life Insurance Company as his endowment policy was reaching maturity. The Plaintiff told me to accept the cheque from AXA Life Insurance Company and deal with the documentation in his absence.

36. Shortly thereafter, I received a cheque for \$42,167.11 from AXA Life Insurance Company together with a Discharge Voucher. As the Plaintiff has asked me to deal with the documentation, I signed the Discharge Voucher on behalf of the Plaintiff and returned the same to AXA Life Insurance Company. The cheque for \$42,167.11 was left in the goldsmith shop for about 2 weeks. I showed the said cheque to the Plaintiff on one occasion when he turned up at the goldsmith shop and he instructed me to utilise the same towards reduction of the arrears of maintenance. I deposited the said cheque into a joint account (maintained at Oversea-Chinese Banking Corporation Limited) in the names of the

Plaintiff and myself. A copy of the Discharge Voucher and deposit slip is exhibited hereto and marked "NSH-10".

37. As agreed between the Plaintiff and myself, the sum of \$42,167.11 has been appropriated towards reduction of the arrears of maintenance.'

137. However, in cross-examination, she said (at NE 89F to 90C):

'Q How did you get the money?

A I received a letter from AXA Life Insurance one day. Since I did not understand English, I asked my friend about the contents. My friend told me that the monies concerned some insurance policy. I called Plaintiff and told him about the letter from AXA. My friend told me that Plaintiff had to affix his signature before money can be drawn out. I called Plaintiff and told him about it. I called his Malaysian office number. An accounts clerk told me that he was not in. Later Plaintiff called me. I told him about the letter from AXA. He told me to sign on it and post it back. The letter I am referring to is the one at DB 31.'

138. I find her evidence during cross-examination to be different from that in her AEIC. In her AEIC, she gave the impression that the question of her receiving the insurance monies had been pre-arranged between Chong and her whereas in cross-examination, she said it came about only after she received a letter from AXA.

139. Furthermore, contrary to her AEIC, she did not receive the cheque from AXA 'together with' the discharge voucher. The correspondence from AXA showed that it was only after AXA had received the discharge voucher that it then forwarded the cheque to Chong at the address of KSGS.

140. Thirdly, after having seen and heard Chong, I am of the view that he is not the sort of person who would have remembered in advance about the maturity date of the policy.

141. Although it was argued for Mdm Ng that Chong must have been aware before 2000 that the insurance monies had been paid out because Chong had not been paying insurance premiums for 1998 and 1999, I do not think this argument should be given much weight.

142. Many people pay their insurance premiums only because they receive a payment notice from the insurers. Without the payment notice, they may well forget to pay such premiums and even forget that they have an insurance policy.

143. In so far as Chong's sister PW4 Chong Bee Hwa had given some evidence about the insurance monies, I find her evidence to be immaterial even though she had lied.

144. The burden is on Mdm Ng to establish that she received the insurance monies with Chong's consent.

145. I find that Mdm Ng had appropriated the insurance monies because Chong had not paid her the outstanding maintenance. The fact that it was paid into the joint account with OCBC is neither here nor there because she controls that account. More on that account will be said in my judgment for Suit 108.

***CHONG'S CLAIM FOR A HALF SHARE IN 144 BUKIT TIMAH ROAD #01-06 BEAUTY WORLD CENTRE OR
ALTERNATIVELY REPAYMENT OF \$60,000***

146. Chong claimed that he paid \$60,000 to Mdm Ng in 1998 and that this was a loan by him to Mdm Ng to enable her to buy #01-06 Beauty World Centre, which is the shop at which the goldsmith business is carried out and for which rent was presumably paid until such time as Mdm Ng bought it. However Chong also claimed that he is entitled to a half share of the shop which was bought in the name of Mdm Ng alone as she had told him that the unit would be purchased jointly and he would be a co-owner. He also claimed that despite his requests, Mdm Ng never up-dated him about the purchase.

147. Chong said that the purchase price was more than \$400,000 but he did not know the exact price. He also said that Mdm Ng had told him that she had to take a loan (from a financial institution) of about \$300,000 to buy the shop.

148. Chong accepted that he was not a co-borrower of the loan to purchase the shop. Neither did he assert that he helped to pay that loan.

149. Mdm Ng admitted that she received \$60,000 from Chong.

150. However she denied that she had agreed that Chong was to have a half share in the shop or that the \$60,000 was a loan to her.

151. She said that she received the \$60,000 around October 1998 and that she had insisted that he pay this sum then because there was still outstanding maintenance and she wanted the money to buy the shop.

152. There was however no evidence to substantiate her allegation that she received the \$60,000 around October 1998. This may have been a month she conveniently chose because it would allow her to argue that Chong was in no position to lend her \$60,000 as he was then having problems paying off a loan from Malayan Bank Berhad ('MBB').

153. In August 1998 (or thereabouts), MBB had commenced action against Chong for his failure to repay monies he had borrowed from MBB and on 9 September 1998 they had obtained an order against him for whatever he owed and for possession and sale of 120 Jalan Jurong Kechil which was mortgaged to them.

154. At about the same time, Chong signed a power of attorney dated 19 August 1998 to authorise Mdm Ng to sell 120 Jalan Jurong Kechil for him. Mdm Ng said he did so because she was chasing him to repay her loans (AEIC paragraph 25).

155. Chong said that MBB had asked him to pay interest but denied they had sued him in August or September 1998. His evidence on this point was clearly untrue in view of letters from MBB's solicitors to him regarding MBB's action and an order obtained by MBB against him at that time.

156. Chong also denied that he had executed a power of attorney to enable Mdm Ng to sell 120 Jalan Jurong Kechil (NE 48F to 49E) but the power of attorney which he had signed contradicted him.

157. At this stage, I would mention that there is a dispute in Suit 108 as regards another property ie. 202A Lornie Road. Chong had alleged that he had provided some money to buy that property because Mdm Ng had agreed that that property would be bought in their joint names. However, Mdm Ng had allegedly breached their agreement and his trust because, as it turned out, that property was registered in her sole name sometime in 1993. He said he discovered this breach in 1995 or 1996 but decided not to take action on it.

158. Counsel for Mdm Ng took the point that if Chong is to be believed, it would mean that he knew by 1995 or 1996 that Mdm Ng had played him out vis--vis 202A Lornie Road. Accordingly, Chong would not have repeated the same 'mistake' again by providing Mdm Ng \$60,000 in 1998 allegedly to buy the shop in joint names without ensuring that this time the property was registered in both their names.

159. I am of the view that this is a valid point only if Chong's allegation about 202A Lornie Road is upheld. If it is not upheld, then it would mean that Mdm Ng had not played him out in respect of 202A Lornie Road and this point cannot be used against

him in respect of the shop.

160. In any event, the \$60,000 is not even half of the purchase price for the shop. I find that MdmNg would not have agreed and did not agree to let Chong have a half share of the shop for the \$60,000.

161. As for Chong's alternative claim for \$60,000 as a loan made by him to MdmNg, I find that Chong was an unreliable witness and he has failed to establish that the \$60,000 was a loan to MdmNg. Consequently I find that it was to pay some of the outstanding maintenance.

CLAIM FOR RENT ALLEGEDLY RECEIVED BY MDM NG IN RESPECT OF THREE PROPERTIES

#03-24 Sim Lim Tower

162. Chong is claiming half of the rent from this unit from 1992 to 1996 (NE 50A). Presumably he knows that under the Division Order (made on 12 June 1996), he is to transfer his interest in this unit, as well as in #01-30 in Roxy Square Shopping Centre, to MdmNg and hence should not be claiming rent from 1997. In my view, he cannot be claiming rent from June 1996.

163. MdmNg does not deny receiving some rent for this unit. She said this was with Chong's consent to pay outstanding maintenance. It will be re-called that in any event MdmNg had accounted for half the rent for this unit (a) from August 1992 for twelve months and (b) from August 1995 for thirteen months up to August 1996. However, I have taken into account half the rent received by her up to May 1996 for the reason I have mentioned in paragraph 51 above.

164. As for a period between 1994 and 1995, MdmNg said no rent was collected for this unit for this period.

165. Chong was unable to produce any evidence to contradict this assertion. In his Closing Submission, he referred to a certified copy of notices of assessment which he had prepared ie. A5 and A6. However, as these were not introduced in evidence earlier, they were not admissible.

166. In any event, they had no probative value. Despite Chong's use of the phrases 'certified copy' and 'notice of assessment' they were nothing of the sort. As he had mentioned, they were prepared by him and he had no evidence to substantiate his claim for rent for this unit for 1994 and 1995.

167. I would also mention that any claim for accounting by MdmNg for rent received prior to 3 March 1994 is time-barred because of s 6 of the Limitation Act (Ch 163).

120 Jalan Jurong Kechil

168. Chong is claiming rent for this period for one year (NE 51E).

169. In his AEIC at paragraph 58, he stated that it was rented out since 1997.

170. In cross-examination, he said he was claiming for the period 1987 to 1988 (NE 51B/C). I find that this was a genuine mistake on his part and he was intending to refer to 1997 to 1998 (see his AEIC at paragraph 58). He said that he had no evidence of the rent claimed to have been received by MdmNg.

171. MdmNg's Counsel argued that any claim for rent between 1987 to 1988 is time-barred. This is irrelevant as the correct period of the claim is 1997 to 1998.

172. He also stressed that Chong had no evidence of rent being received by Mdm Ng for this property.

173. Mdm Ng's Counsel appears to have overlooked Mdm Ng's own evidence in her AEIC at paragraph 41 and at NE 92E in which she admitted receiving rent of \$3,000 a month for this property for one year from 1997 to 1998 amounting to \$36,000.

174. Mdm Ng said that Chong was collecting the rent for this property previously and then in 1997 allowed her to collect the rent to reduce the outstanding maintenance owing by him.

175. It appears that she had nothing to hide on this point which is consistent with Chong's evidence that she had told him orally about the rent which she had received for this property (NE 51F).

176. I find that Chong did agree to let her collect the rent for 1997/1998 to reduce the outstanding maintenance owing by him. This rent has been taken into account in the calculation in paragraph 52 above.

#01-30 Roxy Square Shopping Centre

177. Chong is claiming half the rent for this unit from 1992 to 1996 (NE 50E to 51B). It will be re-called that under the Division Order, this was one of the two units he was to transfer to Mdm Ng and so he cannot claim for rent for this unit from June 1996.

178. However Chong had no evidence of any tenancy for this unit from 1992 to 1996.

179. Mdm Ng's Counsel said that any claim for rent prior to 7 March 1994 is time-barred. Presumably he meant 3 March 1994 as the Writ, according to my copy, was filed on 3 March 2000.

180. As for rent from 3 March 1994 to June 1996, Mdm Ng said she believed no rent was received from this property.

181. In the circumstances, I find that Chong has not made out his claim for half the rent for this unit from 1992 to 1996.

SUMMARY

182. I declare that Mdm Ng holds half of the assets and profits of KSGS in trust for Chong. For the avoidance of doubt, the shop at 144 Bukit Timah Road #01-06 Beauty World Centre is not part of the assets of KSGS. It belongs to Mdm Ng.

183. Mdm Ng is to account for half the profits of KSGS from 3 March 1994 until the date of accounting and to pay the same to Chong. In so doing, Mdm Ng may deduct a reasonable sum for the rent for the shop from the date her purchase of the shop was completed.

184. The business of KSGS is to be sold as soon as possible and the net proceeds of sale are to be divided equally between Mdm Ng and Chong or, at Mdm Ng's option, she may buy Chong's half share in the business based on a valuation of a valuer to be agreed by the parties or to be appointed by the Registrar. Mdm Ng is to exercise this option, if at all, by notice in writing to Chong within thirty days of this judgment. If so, the purchase is to be completed within sixty days of the valuation.

185. Any monies payable by Mdm Ng to Chong for his half share of the profits and/or the purchase of his share in KSGS may be set-off against the outstanding maintenance as stated in paragraph 52 above and against any monies that I may find to be due to her in Suit 108 if the same has still not been paid to her by the time the accounting has been completed and/or the valuation is completed.

186. Parties are granted liberty to apply in respect of the orders I have made for the accounting of half the profits and for the

sale of KSGS or Chong's half share in it. Each party may agree to grant in writing any extension of time to the other to carry out any act mentioned in this part of the judgment.

187. I also award judgment in favour of Chong for \$42,167.11 as the AXA monies were appropriated by MdmNg without his consent. However as this sum has been taken into account in the determination of the outstanding maintenance in paragraph 52 above, MdmNg need not pay this sum to him.

188. Chong's claim in relation to a half share in 144 Bukit Timah Road #01-06 Beauty World Centre or alternatively \$60,000 is dismissed.

189. Chong's claims for rent allegedly received by MdmNg in respect of the three properties mentioned above are dismissed.

190. As Chong has not been entirely successful, I order that 75% of the costs of this action is to be paid by MdmNg to Chong.

Woo Bih Li

Judicial Commissioner

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