

**IN THE HIGH COURT OF MALAYA AT SEREMBAN  
IN NEGERI SEMBILAN  
[CIVIL SUIT NO: NA22NCVC-91-11/2019]**

**BETWEEN**

**TANG CHON KOK**

**... PLAINTIFF**

**AND**

**1. TANG NGE AI @ TANG NG KING**

**2. TEONG SIEW WOON**

**3. TAN POO YOK**

**... DEFENDANTS**

[as the sole administrator of the estate of TENG EU TONG,  
deceased]

**4. TEONG SIEW SIN**

**(In the original action)**

**BETWEEN**

**TEONG SIEW SIN**

**... PLAINTIFF**

**AND**

**1. TANG CHON KOK**

**2. ONG KIAN FAR**

**3. TAN POO YOK**

[as the sole administrator of the estate of TENG EU TONG,  
deceased]

**... DEFENDANTS**

**4. TENG CHEONG FOOK**

**5. TANG HE SING**

**6. TANG NGE AI @ TANG NG KING**

**7. TANG SHUEN CHEN**

**(In the counterclaim)**

**GROUND OF JUDGMENT**

## INTRODUCTION

[1] This case involved a family dispute over properties accumulated by the late Teong E Sing, who had acquired vast wealth in his lifetime and was a renowned member of the Fuzhow community in area of Sepang. The parties in this dispute are all related to the Teong E Sing and his four brothers.

### *The dispute in the main action*

[2] On 28 August 2001, a declaration of trust (the “*Declaration of Trust*”) was entered into by ten members of the family, who were the trustees of the trust thereby constituted. The subject matter of the trust were 12 pieces of landed properties. Under the terms of the trust, the ten trustees were to hold the trust properties for the benefit of five beneficiaries in the following proportion:

- (a) Tang He Sing: 15/100
- (b) Teng Eu Tong: 20/100
- (c) Tang Nge Ai: 20/100
- (d) Tang Chon Kok: 20/100; and
- (e) Teong Siew Kwang 25/100.

[3] Each of the beneficiaries represented the family of one of the five brothers: Tang He Sing, Teng Eu Tong and Tang Nge Ai were all the brothers of Teong E Sing, while Tang Chon Kok was the son of Tang Yew Koh, who was Teong E Sing’s brother, and Teong Siew Kwang was the son of Teong E Sing himself.

[4] The plaintiff, Tang Chon Kok, was also a trustee under the Declaration of Trust, as were the first to fourth defendants in the main action.

[5] Tang Chon Kok alleged that the first to fourth defendants in the main action had breached the terms of the trust that was constituted by the Declaration of Trust. Specifically:

- (a) it was alleged that the first defendant in the main action, Tang Nge Ai (who was Tang Chon Kok's uncle and one of Teong E Sing's brothers), had breached the terms of the trust by creating a charge over a piece of land held under the title PM1271 Lot 1532 (referred to as the "*Lot 1532 land*") in favour of public Bank Berhad on 17 May 2013;
- (b) it was alleged that the second defendant in the main action, Teong Siew Woon (who was one of Teong E Sing's sons), had breached the terms of the trust by selling the land held under the title PM1250 Lot 1430 (the "*Lot 1430 land*") to one Chua Lee Ping on 31 March 2015; and
- (c) it was alleged that the third and/or fourth defendants in the main action had breached the terms of the trust by selling the land held under GRN 144814 Lot 6920 (the "*Lot 6920 land*") to one See Siow Ling @ See Ah Moi and See Yun Zhao on 15 October 2015. The third defendant, Tan Poo Yok, was the administrator of the estate of her late husband, Teng Eu Tong, another of Teong E Sing's brothers). The fourth defendant, Teong Siew Sin, was her son.

[6] As against Tang Nge Ai, Tang Chon Kok sought an order directing him to discharge the Public Bank charge and to restore the Lot 1532 land to the trust. This relief claimed against Tan Nge Ai was however subsequently abandoned. As against the second to fourth defendants, Tang Chon Kok sought for the Lot 1430 land and the Lot

6920 land to be restored to the trust, failing which they were to pay 20/100 of the proceeds of the sales of the lands to the plaintiff.

*The counterclaim*

[7] In the counterclaim, Teong Siew Sin sued all the other trustees under the Declaration of Trust apart from his two brothers. The action against the estate of Teng Eu Tong was maintained against its administrator, Tan Poo Yook.

[8] Teong Siew Sin contended that the Declaration of Trust had been revoked by an oral agreement between all the beneficiaries sometime between 2002 and 2004. According to Teong Siew Sin, by the terms of this oral agreement, the registered proprietors of the lands in question would own the lands absolutely and would be free to dispose of their interest in the lands in any way that they considered fit.

[9] Teong Siew Sin also pointed out that recital 1 of the Declaration of Trust required that each of the 12 trust properties be registered in specific proportions in the names of the various trustees. These transfers were not carried out because—according to Teong Siew Sin—the beneficiaries had agreed to revoke the trust. Teong Siew Sin's further pointed out that a series of transactions on three trust properties had been effected between 2011 and 2013 involving Tang Chon Kok. This, according to Teong Siew Sin, showed that the beneficiaries had agreed to revoke the Declaration of Trust.

[10] In the counterclaim, Teong Siew Sin sought for a declaration that the Declaration of Trust had been revoked and also sought damages against Tang Chon Kok.

[11] The observation may be made that the matters raised in the counterclaim also constituted the defence to the main action. A counterclaim was raised because Teong Siew Sin had prayed for the court to declare the Declaration of Trust as having been terminated by agreement.

## **WHETHER THE TRUST WAS PROPERLY CONSTITUTED**

### *The pleaded defences*

[12] As explained above, the position taken by Teong Siew Sin in his defence and counterclaim was that the Declaration of Trust was terminated by an oral agreement between all the beneficiaries and/or trustees. It was not Teong Siew Sin's pleaded position that the trust was improperly constituted. I have carefully examined his defence and counterclaim, and could not discern anywhere in which he denies the validity of the trust constituted by the Declaration of Trust at the time it was executed. Furthermore, if it was his position that the trust had been terminated by agreement, it would follow that a valid trust had existed prior to this purported termination. This being the case, I was of the view that it was not open to Teong Siew Sin, being the fourth defendant in the main action and the plaintiff in the counterclaim, to challenge the validity of the trust at its inception.

[13] The third defendant, Madam Tan Poo Yok, is the widow of Teng Eu Tong. She is also the administrator of his estate. In her pleaded defence, while she acknowledged that the Declaration of Trust was signed by her late husband, she stated that the contents of the Declaration of Trust was outside her knowledge. Her defence did, however, deny the entire statement of claim.

[14] The second defendant is Teong Siew Woon. He had signed the Declaration of Trust as a trustee. At that time, he was only 19 years old. The position taken by the second defendant in his defence was that:

- (a) his father, Teong E Sing, had died in 1997, before the Declaration of Trust had been executed. Five of the properties that were said to be subject of the trust had been distributed in accordance to the will of the Teong E Sing. As such, because of the distribution, the properties could no longer be registered in the manner stated in the Declaration of Trust, which meant that it was void and invalid;
- (b) in addition, because five of the properties had been distributed in accordance with the will of Teong E Sing, Teong Siew Woon did not have the legal capacity to execute the Declaration of Trust in connection with those properties; and
- (c) he had never agreed to execute the Declaration of Trust and did not understand its effects at the time he signed it.

[15] In my judgment, the issue of whether the trust under the Declaration of Trust was properly constituted at its inception could only be raised by Madam Tan Poo Yok and Teong Siew Woon, due to the position that they had taken in their respective statements of defence. Teong Siew Sin, based on his pleaded case in his defence and counterclaim, did not challenge the validity of the trust at its inception.

[16] I should add that none of the parties in this case disputed the authenticity of the Declaration of Trust.

*The applicable principles*

[17] The standard of proof to be applied in determining whether or not a trust subsisted is *beyond reasonable doubt*. In *Low Tin Yong @ Low Yong Lian v. Low Yong Thuan* [2016] 3 MLJ 332, the Court of Appeal held:

[I]n relation to the law, the learned judge misdirected herself on the standard of proof to be applied when determining whether or not a trust subsisted on the given factual matrix. The learned judge applied the standard of a ‘balance of probabilities’ rather than ‘beyond reasonable doubt’. It would appear that in so doing, the learned judge, with respect, erred in law. In so concluding, we are supported by the decision of this court in *Choong Kwee Sang v. Choong Kwee Keong (as the executor of the estate of Chan Fook Lin, deceased)* [2009] 1 MLJ 186 at p 201:

... In the instant case the appellant had not only failed to dislodge the burden of having to prove he paid for the subject properties, he had also failed the additional burden of proving the deceased held them in trust for him.

The burden is a heavy one as *Lord Chancellor in Po Kin & Anor v. Po Shein* AIR 1926 PC 77 said:

... the person who alleges that property conveyed to another belongs to him must prove his allegation and prove it beyond reasonable doubt

...

The onus being such, I am unable to see how the appellants case, based on the evidence adduced by him as it were, can hold up to scrutiny.

... The standard required to prove a trust property is beyond reasonable doubt. There is no document suggesting the slightest probability of the existence of a trust. There was also no independent witness called to give evidence in support of such alleged trust.

The cases of *Low Yong Thuan v. Low Mey Yoon & Ors* [2015] 1 LNS 271 and *Hameeda Bee v. Mrs P Seenivasagam* [1950] 16 MLJ 267 similarly make reference to *Po Kin & Anor v. Po Shein* and applied the standard of proof of ‘beyond reasonable doubt’.

[18] In order to constitute a trust, three requirements must be met:

- (a) there must be certainty of words, in that there must be evinced a clear intention to create a trust;
- (b) there must be certainty as to the property that is to be the subject matter of the trust; and
- (c) there must be certainty of object, meaning that the purpose or beneficiaries of the trust (as the case may be) must have been clearly expressed.

[19] The authority of the principles in the preceding paragraph is the Supreme Court case of *Yeong Ah Chee v. Lee Chong Hai* [1994] 2 MLJ 614. There was no material dispute between the parties regarding these principles.

*Certainty of words*



[20] The Declaration of Trust is, on its face, unambiguous, and clearly evinces an intention to create a trust. The issue is whether the contention by Teong Siew Woon was made out: that because he did not understand its contents at the time he executed it, the Declaration of Trust was rendered null and void.

[21] Under cross examination, Teong Siew Woon stated that he was only 19 at the time he signed the Declaration of Trust. As the youngest in the family, he felt that he had no choice but to follow his elder brother's instruction (Teong Siew Sin) to sign the document. His position was that he had duly signed the document despite not understanding what it was that he was signing.

[22] In the case of *Lim Bua v. Ng Kian Heng* [1993] 2 CLJ 461, the plaintiff sought for an order declaring that lands that had been conveyed to her by her late husband was held by her absolutely and for her own benefit. The plaintiff, who was the second wife of her late husband, had executed a declaration of trust by the terms of which she held the property as trustee for the benefit of the defendant. The defendant was her late husband's grandson by his first marriage. The plaintiff claimed that she executed the declaration without proper legal advice and that it was not read or explained to her.

[23] Richard Talalla J nonetheless held that the declaration of trust bound the plaintiff, stating:

Counsel for the plaintiff in his written submission said that it was understandable and natural for the plaintiff to have depended completely and trustingly on her husband and to carry out implicitly his instructions regarding the purchase of the property and that this Court ought to take judicial notice of the fact that during the era of the plaintiff's younger days it was the custom amongst Chinese women for such a woman to depend

completely on and obey without question the commands of her husband. I do accept that that was the situation, the background situation, in this case just as much as in the case of *Kang Moi Lan @ Kang Hoi Lan v. Kang Ah Lang @ Kong Ah Moy* [1993] 2 CLJ 455, which I decided yesterday, it was regarding filial respect and obedience in an old conservative Chinese family. In this light there is also the case of *Yew Phaik Hoon v. Quah Ooi Keat & Anor* [1968] 1 LNS 178 to be considered. Such being the admitted situation of the plaintiff in relation to her late husband, I find that the Land was the husband's to do with as he liked. Even if it was purchased with money being wholly or in part the plaintiff's earnings, I find that the money constituted pooled family funds which were controlled by and to be spent as the husband thought fit. I find that the plaintiff without question obeyed the direction of her husband to execute the two documents in the way they were executed and that she knew at the time that she was to hold the Land in trust for the defendant, or she chose not to know, leaving it completely to her husband to do as he pleased with the Land, that being his prerogative as patriarch of this admittedly old Chinese family, and therefore she must be taken to have agreed with him that the Land was to be transferred to her as trustee to hold for the defendant.

[24] This case is instructive because the declaration was held to be binding on the plaintiff even though she professed little or no understanding of its contents. She had placed trust on her husband, and considered it her filial duty to sign the declaration of trust based on his instructions.

[25] This was also precisely Teong Siew Woon's position. He signed the document, despite not understanding its contents, because he considered that, as the youngest in his family, he was to simply follow Teong Siew Sin's instructions.

[26] For this reason and on the authority of *Lim Bua v. Ng Kian Heng*, I was of the view that the circumstances under which Teong Siew Woon signed the Declaration of Trust did not absolve him from his obligations as trustee thereunder.

*Certainty of subject*

[27] Teong Siew Woon's arguments regarding the subject matter of the trust were two-fold:

- (a) first, it was contended that five of the properties under the trust had been distributed according to the testament of his late father, Teong E Sing and therefore could not be registered in the names of the trustees named in the Declaration of Trust; and
- (b) secondly, it was contended that because five of the properties had been distributed in accordance with the will of Teong E Sing, Teong Siew Woon did not have the legal capacity to execute the Declaration of Trust in connection with those properties.

[28] I was unable to agree with either of these submissions. By his last will and testament, the late Teong E Sing had bequeathed his share of the subject lands absolutely to one of Teong Siew Kwang, Teong Siew Sin and Teong Siew Woon (in the case of two of the lands, Teong E Sing's share was bequeathed to two brothers in equal shares). This meant that the brothers held their respective shares in the subject lands absolutely prior to the execution of the Declaration of Trust.

[29] Once the Declaration of Trust was executed, their share of the properties, which they held as legal co-proprietors, were then held on trust for the beneficiaries under the trust.

[30] The prior bequest of the property did not adversely affect the validity of the trust. Indeed, it was because of their father's will that they became registered legal proprietors, which had made it possible for them to settle the trust for the benefit of the beneficiaries. The contentions by Teong Siew Woon were thus without merit.

[31] I am of the view that, with the subject properties having been specifically and clearly identified in the Declaration of Trust, that there has been certainty of subject.

*Certainty of object*

[32] There is no reasonable doubt, in my mind, that the objects of the trust have been clearly set out in the Declaration of Trust, which is that the trust properties are to be held for the benefit of the heads of the five families: Teong Siew Kwang, as the eldest son of the late patriarch Teong E Sing; Tang Chon Kok, as the eldest son of the late Tang Yew Koh; Tong Eu Tong (who at that time was still alive); Tang Nge Ai; and Tang He Sing.

[33] Tang He Sing, as the youngest brother, was given a 15/100 share, while the family of the late patriarch was given a 25/100 share. The rest were given 20/100 each.

[34] Based on the foregoing, I was satisfied that the plaintiff had proven beyond reasonable doubt that a valid trust had come into existence and had subsisted at the time of the execution of the Declaration of Trust.

**WHETHER THE TRUST HAS BEEN TERMINATED**

[35] The defendants' common position was that the trust constituted by the Declaration of Trust had been terminated. The evidential burden to prove that the trust had been termination, in my view, lay with the defendants. The evidential burden of a fact in issue lies with the party alleging that fact to be true, in accordance with section 103 of the Evidence Act 1950. Proof was of course on a balance of probabilities.

[36] A number of arguments were raised by the defendants in the counterclaim as to why the trust under the Declaration of Trust has been terminated:

- (a) first, that it had been terminated by oral agreement of all the beneficiaries and/or trustees;
- (b) second, it was contended that the terms of the Declaration of Trust required that each of the 12 trust properties be transferred to all the 10 trustees. This had not been done, and so it was argued that this failure meant that the trust was of no further effect;
- (c) third, that there had been a series of transactions on three trust properties—to which Tang Chon Kok was a party—which established that the Declaration of Trust had been terminated. Because Tang Chon Kok was a party to these transactions, it was also argued that he was estopped from denying that the trust had been terminated; and
- (d) finally, there were other transactions on the trust property—this time not involving Tang Chon Kok—

which again established that the parties had regarded the Declaration of Trust as having been terminated.

[37] Each of these arguments are addressed in turn below.

*Termination by mutual agreement*

[38] The pleaded case for the defendants in the main action was that the trust constituted by the Declaration of Trust had been terminated by way of an oral agreement. For the trust to be terminated by mutual agreement, there must have been—at the very least—consensus among all the beneficiaries under the trust. It will be recalled that there were five beneficiaries, one of whom had passed on by the time of trial.

[39] Three of the beneficiaries testified on behalf of the plaintiff: Tang He Sing, Tang Chon Kok and Tang Nge Ai, all of whom stated that they had never agreed, whether orally or in writing, for the Declaration of Trust to be terminated.

[40] Teong Siew Kwang (DW4), the eldest son of the patriarch Teong E Sing, testified for the defence. He had testified in his witness statement as follows:

Pada sekitar tahun 2002 sehingga 2004, kesemua 10 pemegang amanah (yang mana 5 dari mereka adalah benefisiari) telah bersetuju membatalkan Deklarasi Amanah tersebut secara lisan.

[41] Under cross-examination, however, he conceded that only five persons had attended this alleged meeting, purportedly representing the five families. When questioned further, he admitted that he himself had not attended. The persons present at the meeting were the four other beneficiaries and his brother Teong Siew Sin. He agreed

with the suggestion of counsel that he had been told by Teong Siew Sin that the Declaration of Trust had been terminated at the meeting.

**[42]** Two observations may be made regarding the testimony of Teong Siew Kwang:

- (a) first, it is he who is (or was, if he is to be believed) the beneficiary under the trust, and as such, the trust can only be terminated if he, together with the rest of the beneficiaries, agree. By his own testimony, Teong Siew Kwang wasn't even at the alleged meeting, and so how could he have indicated his agreement?; and
- (b) second, even assuming that the substance of the trust was to distribute the trust properties to the five families, and it sufficed if one member from each of the five families attended this meeting to indicate their assent, the fact remained that Teong Siew Kwang's testimony regarding the events of the meeting was inadmissible as hearsay, as he had not himself been present.

**[43]** Subsequently, Teong Siew Sin took the stand, where he testified that it was he who had attended the meeting on behalf of his family, and that it was he who agreed for the Declaration of Trust to be terminated. The problem was, Teong Siew Sin was not a named beneficiary under the trust. Even if the assent of a non-beneficiary was sufficient to terminate the trust, all the court had to go on was his uncorroborated oral testimony, which directly contradicted with the testimonies of the three other beneficiaries.

**[44]** A further perplexing point was that the family members did not think it fit to document the termination in writing, when they had

gone to great lengths to draw up a mechanism for distribution of the trust properties and to take legal advice on the arrangement. The court was asked to accept that, having gone to all this trouble and having documented their agreed arrangement with care and attention to detail, they would suddenly abandon the carefully laid plans through a mere oral agreement, which would be inconsistent with the way in which financial dealings of the family had been dealt with in the past.

[45] Having carefully considered the evidence in this case, I was of the view that the contention that there had been an oral agreement between the beneficiaries for the termination of the Declaration of Trust had not been made out.

*The contended failure to transfer the legal title in accordance to the terms of the trust*

[46] It was advanced for the defendants that recital 1 to the Declaration of Trust required each of the 12 trust properties to be vested in the names of the 10 trustees. Since this was not done, it was argued that the trust constituted by the Declaration of Trust was no longer enforceable.

[47] I am of the view that this submission was misplaced. The reasons are as follows:

- (a) first, the provisions are contained in the recital to the Declaration of Trust, and thus should not be construed as creating rights or obligations. The recitals exist to provide context for the operative provisions of the Declaration of Trust, as it would for contractual documents;



- (b) second, based on a proper construction of the Declaration of Trust, it does not require all the trustees to be joint proprietors of all 12 trust properties. Recital 1 is merely descriptive, and referred to specific properties that, at the time, were already registered in the names of particular trustees (such as, for example, recital 1(f), which is held only by Teng Eu Tong), or to other properties that, at the time, had not yet been registered in the name of the named trustee but would be so registered after execution of the Declaration of Trust (such as, for example, recital 1(c)). The use of the phrase “shall be registered”, in my judgment, means that it *will be registered*, and was not intended to create an obligation or condition precedent to the validity of the Declaration of Trust;
- (c) third, even if the defendants are correct that each of the properties must be registered in the names of all 10 trustees, then the following equitable rule should apply: equity sees to it that what ought to have been done, shall be taken as done. The failure of the settlors to the trust to carry out their obligations (assuming that such obligations existed in the first place) does not warrant the striking down of the trust.

In *Lechmere v. Lady Lechmere* [1735] Gas. t Talb 26, Lord Lechmere covenanted with the father of his bride to be, Lord Carlisle, to acquire lands with the consent of trustees and to settle those lands after marriage for the benefit of his wife. He acquired certain lands without first obtaining the consent of

the trustees, but died without settling those lands for Lady Lechmere. The court allowed those lands to be transferred to his widow rather than to pass upon his intestacy, holding:

Wherefore the rule in all such cases is, that what ought to have been done, shall be taken as done; and a rule so powerful it is, as to alter the very nature of things; to make money land, and to the contrary, to tell land into money; thus money articulated to be laid out in land, shall be taken as land, and descend to the heir; and on the other hand, land agreed to be sold, shall be considered as personal estate.

[48] For these reasons, I was of the view that there was no basis for the court to find that there existed an obligation under the trust to transfer each of the trust properties into the names of all the trustees, and even if such an obligation did exist, the trust would not be terminated by reason of a failure to fulfil that obligation. The equitable maxim *that what ought to have been done, shall be taken as done* would apply, and the objects and purpose of the trust ought to be upheld.

*Estoppel and the transactions involving Tang Chon Kok*

[49] In 2011 and 2013 certain transactions had been undertaken in respect of three trust properties:

- (a) The land held under Geran No. 17603, Lot No. 670 was sold on 1 November 2011 by Tang He Sing, Teng Eu Tong, Tang Nge Ai, Tang Chon Kok and

Teong Siew Kwang to a company known as E Sing Plantation Sdn Bhd;

- (b) The sale of the land held under Geran No. 17604, Lot No. 527 was recorded in two sale and purchase agreements dated 1 November 2011:
  - (i) the first between Teong Siew Kwang as seller and three companies: He Sing Plantation Sdn Bhd and E Sing Plantation Sdn Bhd; and
  - (ii) the second between Teng Eu Tong, Tang Nge Ai and Tang Chon Kok as sellers and Tachiwa Plantation Sdn Bhd; and
- (c) The land held under Grant No. 3406, Lot No. 421 was transferred by Tang Chon Kok, Tang He Sing and Teong Siew Kwang to Tang Nge Ai, Tang Shuen Chen, Tang Shuen Land, Tang Shen Siong, Tan Poo Yok and Teng Cheong Fook. The transferees were the members of Tan Nge Ai's family, and the widow and son of the late Teng Eu Tong.

[50] The defendants argued that these transfers were contrary to the terms of the trust, and constituted evidence that the beneficiaries had agreed for the Declaration of Trust to be terminated. Because Tang Chon Kok was a party to these transactions, it was argued that he could not now deny that the trust had been terminated. In his submissions Mr Daniel Siew acting for Teong Siew Sin raised a further argument that did not appear to be a pleaded point: that the transfer of these properties to persons who were not beneficiaries caused the trust to longer subsist.

[51] Tang Chon Kok's position was that these transactions were in fact distributions of the properties in question for the benefit of the family members, which were made in a manner to adhere as closely as practically possible to the sharing proportions stipulated in the Declaration of Trust. Evidence was received at trial that the companies that were the transferees of the undivided portions in the land were in fact companies owned by some of the families. E Sing Plantation Sdn Bhd was a company owned by Teong Siew Kwang's family, Tachiwa Sdn Bhd by Tang Chon Kok's family and He Sing Plantation Sdn Bhd by the family of Tang He Sing.

[52] It was further pointed out that consent letters had been executed by all five beneficiaries in respect of the transfers involving the lands held under Geran No. 7604 and Grant No 3406. These were exhibited at trial. In respect of the transfers involving the land held under Geran No. 17603, the solicitor attending to the transfer of the land, Mr. Soo Chong Yuen (PW2) from the firm of Stanley Ponniah Soo & Ng, testified that he did not prepare a separate consent letter because all five beneficiaries under the trust were the transferors for this piece of land, and their assent to the transfer would have been adequately recorded by their signing the sale and purchase agreements.

[53] The total land area for the three properties was 261.219 acres. Following the transactions referred to in paragraph 49, if the total share owned by each family were expressed as a percentage of this total land area for the three properties, the result would be as follows:

<i>Family of:</i>	Teong Siew Kwang	Tang Chon Kok	Teng Eu Tong	Tang Nge Ai	Tang He Sing
<i>Percentage of</i>	25.72%	20.38%	18.20%	20.40%	15.41%

<i>total land area</i>					
<i>Percentage stipulated in the Declaration of Trust</i>	25%	20%	20%	20%	15%

[54] Having considered the evidence before me, I was satisfied that the transfers that were made involving these three pieces of land did not contravene the terms of the Declaration of Trust, because the consent of the beneficiaries had been obtained in all cases. I also found that the distribution of the properties attempted to adhere as closely as possible to the sharing proportions that had been stipulated under the Declaration of Trust, and that this was therefore a genuine attempt to adhere to the spirit of the trust.

[55] As a consequence of this finding, I was of the view that there was no basis for the operation of any estoppel against Tang Chon Kok.

#### *The transactions not involving Tang Chon Kok*

[56] The defendants referred to certain other transactions that had been undertaken on the trust properties (which transactions did not involve Tang Chon Kok) as proof that the Declaration of Trust had been terminated.

[57] The fatal flaw in this argument was that these were the very transactions that was the subject of Tang Chon Kok's complaint in his claim. The defendants would not be permitted point to their own breach of trust as evidence that the trust has been terminated.

[58] Having carefully considered the evidence in this case, I was not satisfied that the Declaration of Trust had been terminated as contended by the defendants.

### **WHETHER THERE HAS BEEN ANY BREACH OF TRUST**

[59] The parties do not dispute that:

- (a) Teong Siew Woon had sold the Lot 1430 land to one Chua Lee Ping on 31 March 2015; and
- (b) the Lot 6920 land had been sold by Teng Eu Tong, Tan Poo Yok and/or Teong Siew Sin to one See Siow Ling @ See Ah Moi and See Yun Zhao on 15 October 2015.

[60] The defendants' position was that they were entitled to do because the Declaration of Trust had been terminated. It has now been established that the Declaration of Trust has not been terminated, for the reasons explained *passim*. It follows therefore that the two transactions above were in contravention of the terms of the Declaration of Trust. The plaintiff's claims were accordingly allowed with costs.

[61] As a consequence of my having allowed the plaintiff's claim, the counterclaim was dismissed.

**Dated : 30 DECEMBER 2021**

**(AZIZUL AZMI ADNAN)**

Judge  
High Court  
Seremban

**COUNSEL:**

*For the plaintiff in the main action and the second, fifth, sixth and seventh defendant in the counterclaim - Alex Gan; M/s Lee Gan Teo & Wong*

*For the second defendant in the main action - Chin Yin Choi; The Law Office of Wong & Ang*

*For the third defendant in the main action - Lim Wei Lun; M/s WL Lim*

*For the fourth defendant in the main action and the plaintiff in the counterclaim - Daniel Siew; Lee Kuan Mang & Co*

**Case(s) referred to:**

*Lim Bua v. Ng Kian Heng [1993] 2 CLJ 461*

*Low Tin Yong @ Low Yong Lian v. Low Yong Thuan [2016] 3 MLJ 332*

*Hameeda Bee v. Mrs P Seenivasagam [1950] 16 MLJ 267*

*Yeong Ah Chee v. Lee Chong Hai [1994] 2 MLJ 614*

**Legislation referred to:**

Evidence Act 1950, s. 103