

Lim Giok Boon and another v Lim Geok Cheng
[2015] SGHC 208

Case Number : Suit No 369 of 2012

Decision Date : 06 August 2015

Tribunal/Court : High Court

Coram : Vinodh Coomaraswamy J

Counsel Name(s) : Derek Kang Yu Hsien, Charmaine Kong and Francis Wu (Rodyk & Davidson LLP) for the plaintiffs; Lim Ker Sheon and Cai Enhuai Amos (Characterist LLC) for the defendant.

Parties : Lim Giok Boon and another — Lim Geok Cheng

Trusts – Constructive trusts

Trusts – Resulting trusts

6 August 2015

Vinodh Coomaraswamy J:

Introduction

1 This is a dispute between sisters. The first plaintiff, Lim Giok Boon (“Una”), is the older sister of the defendant, Lim Geok Cheng (“Lena”). Una’s husband, Hiew Yee Choong (“Ah Choong”), is the second plaintiff. The facts relevant to the dispute between the sisters go back almost 15 years and cut across various aspects of the parties’ lives.

2 The plaintiffs’ claim rests on certain factual premises that were directly undermined by Lena’s defence and by her counterclaim. In the end, while I have accepted Lena’s version of events over that of the plaintiffs, I have nevertheless allowed part of the plaintiffs’ claim and have dismissed Lena’s counterclaim.

3 Lena has appealed against my decision. I now set out my grounds.

Overview of the case

The parties

4 I begin by setting out the brief background of the parties to the suit. Una, Lena and Ah Choong are all now Singapore citizens who came here from Malaysia to find work. Una and Lena come from a large family which still has its roots in Muar in Malaysia.^[note: 1]

5 Ah Choong first came to Singapore in or around 1975. He found work as a tailor.^[note: 2] Una came to Singapore in 1986. She found work in a factory. Ah Choong and Una met that same year. By that time, Ah Choong was working as a renovation contractor. Una and Ah Choong registered their marriage in 1989. They also successfully applied for a HDB flat in the same

6 Lena's work history was a matter of some contention. Specifically, there was a dispute, which I analyse and resolve below, about where she lived and worked from 1991 to 1994. It was undisputed, however, that from the end of 1994 onwards, Lena lived and worked in Singapore.^[note: 4] In fact, she lived with the plaintiffs, even as they moved homes, and continued to do so up to about 2006.^[note: 5] In 2007, she moved into a flat in a development known as Edelweiss Park ("the Edelweiss Property").^[note: 6]

7 Another prominent figure that features in many of the issues before the court is Lena's boyfriend, Chew Chong Khay ("Frank"). Frank and Lena's relationship began some time in 2005.^[note: 7] It is noteworthy that Lena did not call Frank as a witness.

Candace, Canary and C&C

8 A threshold issue which cuts across all the plaintiffs' claims and the Lena's counterclaim relates to the beneficial ownership of certain businesses in which both Lena and Una were involved. The plaintiffs' position is that they are the sole owners of these businesses. Lena's case is that she and her step-sister, Ng Siew Lian ("NSL"), are part-owners of these businesses.

9 The first of these businesses is Candace Unisex Beauty & Hair Salon ("Candace"). Candace was set up in September 1994^[note: 8] at Bedok North.^[note: 9] As its name suggest, it is a hair salon. In December 1995, Candace opened a second salon at Loyang Point.^[note: 10] In June 1997, Candace's salon at Bedok North closed, leaving only the salon at Loyang Point in operation.^[note: 11]

10 Although the ownership of Candace is a matter of contention, it is a matter of record that Candace was initially registered on 27 September 1994 in Una's name. On 5 September 1995, Ah Choong became the second registered owner of Candace. Two weeks later, Una withdrew, leaving Ah Choong as the sole registered owner.^[note: 12]

11 The second of these businesses is Canary Beauty Centre ("Canary"). Canary was set up in 12 September 1998. As its name suggests, Canary was a beauty salon. Its place of business is at Loyang Point, on the same floor as Candace.^[note: 13] It was registered in Una's name.^[note: 14]

12 In 2007, a company, Candace and Canary Beauty Pte Ltd ("C&C"), was incorporated to take over the businesses of Candace and of Canary. Una, Ah Choong and Lena were the directors of C&C. Una held 50% of C&C while Lena held 47.5% and Ah Choong held 2.5%.^[note: 15]

13 Towards the end of 2007, the parties' shareholding in C&C changed. Sometime between late November 2007 and early December 2007, Lena agreed to sell her shareholding in C&C to the plaintiffs and to step down as a director of C&C.^[note: 16] It is also undisputed that the plaintiffs paid Lena four different sums around that time. These four sums were:^[note: 17]

- (a) \$133,000 for the transfer of Lena's 47.5% shareholding in C&C to the plaintiffs;
- (b) \$32,084.32 for Lena's share of C&C's profits for the period of time that she was a director and shareholder;
- (c) \$1,990.70 for share investments that Lena had made with the plaintiffs; and
- (d) \$8,420.90 for share investments that Lena had made in Ah Choong's account.

14 In 2008, Lena opened her own hair salon, called Lena L Aoyama Tokyo, at Loyang Point. Her salon operated from premises next to Candace's premises.^[note: 18]

The plaintiffs' claims

15 The plaintiffs commenced this action against Lena on 7 May 2012. In it, they allege that they advanced money over the years to Lena which she is obliged to repay them or to account to them for in some other way. Lena's defence, broadly speaking, is that most of the sums which she received from the plaintiffs were either salary due to her as an employee of the businesses or a share of the profits due to her as a part-owner of the businesses. The plaintiffs' position is that they own the entirety of the businesses, to the exclusion of any claim by Lena to be part-owner. I now summarise the respective heads of the plaintiffs' claim.

16 The first head of the plaintiffs' claim relates to a joint account ("the Joint Account") held by Una and Lena with United Overseas Bank ("UOB").^[note: 19] In March 2006, Lena withdrew \$203,040.46 ("the UOB Money") from the Joint Account. Una claims that the money in the Joint Account came entirely from her and did not belong to Lena. She seeks a declaration that Lena held the UOB Money, upon withdrawing it, on trust for her. Lena's defence to this head of the plaintiffs' claim is simply that the UOB Money was hers.

17 The second head of the plaintiffs' claim is that they have a beneficial interest in the Edelweiss Property, even though it is registered in Lena's sole name. It is the plaintiffs' case that between 2003 and 2007, they contributed at least \$502,172.42 ("the Edelweiss Money") to help Lena pay for the Edelweiss Property. In response, Lena contends that the money given to her by the plaintiffs and applied towards the Edelweiss Property was her salary and share of profits from the businesses.

18 The third head of the plaintiffs' claim is for repayment of certain loans extended to Lena for her to invest in shares ("Share Acquisition Loans"). They claim to have lent Lena various sums of money from 1998 to 2007. Their case is that \$258,000 of that money now remains outstanding. Again, Lena denies that she has any obligation to repay this money because these advances were not in fact loans but were instead her salary and share of the profits from the businesses.

19 Finally, Ah Choong seeks to recover \$150,000 from Lena. His case is that he lent her the sum over time for her to gamble with on board cruise ships ("the Gambling Loans") and she has yet to repay it. He advanced these sums to her either by cheque or in cash. Lena's defence to this claim is that the cheques she received from Ah Choong were Ah Choong's repayments either to Frank or to her for credit which they had extended to the plaintiffs on those same gambling cruises. As for the loans which the plaintiffs allege to have advanced to her in cash, Lena points out that the plaintiffs have no documentary evidence to prove that any such loans were ever made.

20 Lena's counterclaim against Una is founded on breach of fiduciary duty. Her case is that Una held 85% of all the profits received from the businesses on trust for her. She therefore seeks an account of profits from Una, and from Una alone.^[note: 20]

21 From the summary of the claims and counterclaims provided above, the broad issues which fall for determination are:

- (a) Whether Lena was a part-owner of the businesses.
- (b) Whether Lena held any part of the UOB Money on constructive trust for Una and, if so, whether they have to be repaid.
- (c) Whether Lena is liable to repay the Share Acquisition Loans.
- (d) Whether the plaintiffs have a beneficial interest in the Edelweiss Property.
- (e) Whether Lena is liable to repay the Gambling Loans.

22 Lena's assertion that she was a part-owner of the businesses is critical to her defence on each of these claims. A finding that Lena was indeed a part-owner of the businesses will bolster her defence because it explains how Lena had access to the substantial sums necessary for her defence to be accepted. If, on the other hand, Lena was not a part-owner of the businesses,

she would have earned a salary as an employee but would have had no right to a share of the businesses' profits. This would reduce substantially the amount of money she would have been entitled to receive from the businesses and to claim as her own. This, in turn, would undermine significantly the credibility of her defence.

23 Before analysing each of the plaintiff's five heads of claim, therefore, I begin by considering Lena's claim to be a part-owner of the businesses. That considers assessing, first, Lena's explanation of how she earned the capital which she invested in the business to be a part-owner of it.

Lena's claim to be a part-owner of the businesses

Lena's case

24 Lena's case is that she earned the capital by working in Japan from 1991 to 1994, together with a few members of her extended family. During that time, she worked three jobs, one of which led her to work under certain famed Japanese hairdressers.^[note: 21]

25 Over this period, Lena remitted most of the money she earned in Japan to Una and Ah Choong. When NSL joined Lena in Japan, they pooled their money from time to time and remitted it as a single amount to Una. They would tell Una over the telephone their respective shares so that she could divide the money accordingly and deposit it on their behalf.^[note: 22] There was never any doubt that this money did not belong to Una.

26 In 1994, Una proposed over the telephone to Lena and NSL that the three of them open a hair salon in Singapore. Una told Lena that while the business of the hair salon would be jointly carried out by all three of them, it would be set up in Una's name as only Singaporean citizens or permanent residents could carry on a business in Singapore.^[note: 23] Lena and NSL agreed and came to Singapore.

27 When Candace opened for business, Una worked as a cashier and Lena worked as a hairstylist. At some point, Una told NSL and Lena that \$118,000 was spent setting up Candace.^[note: 24] Although that money had come from either Una's or Ah Choong's account, it was actually money which they held on trust for Lena and NSL.^[note: 25] Of that capital sum, Lena put up 85% and NSL put up 15%. Una and Ah Choong did not have substantial savings and put up nothing.^[note: 26]

28 Despite Una not providing any money to start the business, the three sisters agreed that Una would own 45% of it, Lena would own 40% and NSL would own 15%. They agreed to this because Una promised to sell her flat in Bedok and inject \$53,100 into the business as her contribution to the initial start-up cost of Candace.^[note: 27] Una, however, never invested this sum of money in the business.^[note: 28]

29 At the time the Loyang Point branch of Candace opened in 1995, Una told NSL and Lena that they would each have to bear the start-up costs of opening the new salon in proportion to their respective shareholdings in Candace. NSL could not, however, put up her share. It was at this point that Una declared that NSL's share in the businesses would, from that point forward, be reduced from 15% to 5% with Una's share increasing to 50% and Lena's increasing to 45%.^[note: 29]

30 Lena's case in relation to Canary is that it was set up in 1998 using retained profits from Candace. This means that the parties' ownership of Canary mirrored their ownership of Candace.

31 Lena further avers that she, Una, Ah Choong and NSL drew a salary from the businesses. In addition, Una distributed various amounts to Lena and NSL as their respective share of the profits from the businesses. Una determined how much of the profits to distribute and paid it out to the three of them in proportion to their respective stakes in the businesses.^[note: 30]

32 In 2006 or 2007, the sisters' ownership of the businesses changed again. Una asked NSL to top up her investment in the businesses. NSL, however, agreed to give up her 5% share to Una and Lena to cover the sums she was said to owe the businesses.^[note: 31] Una's share thus became 52.5% and Lena's share became 47.5%.^[note: 32]

33 Lena also highlighted an incident which occurred between her and Una sometime in 2006. Una called Lena to tell her that the businesses were losing money. Lena then suggested that they look at the accounts of the businesses together in order to find out the source of the problem. According to Lena, this was the first time she had asked to see the accounts. Nevertheless, it made Una very angry because she felt that Lena was accusing her of falsifying the accounts. Una nevertheless agreed to let Lena see the accounts. When Lena reached the salon a few minutes after the call, however, Una said the accounts had been burned.^[note: 33]

34 When Lena's relationship with Una deteriorated further, Una unilaterally informed her that she was incorporating C&C to take over the businesses.^[note: 34] Lena was allotted 47.5% of the shares in C&C to reflect her stake in the underlying businesses.^[note: 35]

35 In November 2007, Una agreed to buy out Lena's shares in C&C. This took place through a bidding exercise that occurred during a family gathering in Muar at the home of their third brother, Lim Kok Lian ("LKL").^[note: 36] LKL conducted the bidding exercise.^[note: 37] Una and Lena each bid what they thought C&C was worth. The bidding exercise started with Lena bidding \$150,000. Una offered \$200,000. Lena counter-offered \$250,000. Una then proposed \$280,000. The bidding stopped there because Lena could not bid higher.^[note: 38]

36 Subsequently in December 2007, the plaintiffs issued four cheques to Lena (see [13] above). When she received the cheques, she assumed that the cheque for \$133,000 was for her 47.5% shareholding in C&C calculated according to Una's bid price of \$280,000.^[note: 39]

Plaintiffs' case

37 The plaintiffs' case is that they alone set up Candace and Canary and they alone provided the necessary funds. This included the renovation costs, deposits and the purchase of equipment and furniture.^[note: 40] As a result, Una and Ah Choong owned the businesses equally.^[note: 41]

38 Lena came to Singapore only at the end of 1994 or the beginning of 1995 in search of work. The plaintiffs offered her a job in Candace as an assistant hairstylist. Her salary varied over the years. Her initial salary was \$1,000 per month. Sometime in 1997, Lena was promoted to the position of stylist and drew an increased salary of \$1,200 per month until September 1998. From September 1998, Lena's salary was increased to \$2,000 per month. In April 2001, Lena's salary was revised downwards to \$1,500. It was further reduced to \$1,000 a month from September 2001 to June 2002. Finally, in July 2002, her salary was then again increased, but this time to \$3,000.^[note: 42]

39 The plaintiffs also provided the funds to set up Candace's Loyang Point branch. They spent around \$160,000 to \$180,000 on the renovation, deposits and purchase of equipment and furniture.^[note: 43]

40 The plaintiffs' funds came from their personal savings^[note: 44] and their lottery winnings. Before 1993, the plaintiffs won a total of \$32,000 in the lottery.^[note: 45] In 2005, the plaintiffs won the lottery on four other occasions, winning \$13,000, \$90,000, \$100,000 and \$105,000.^[note: 46] Whether the plaintiffs are entitled to the \$100,000 won on the third occasion is disputed. Lena claims that she purchased the winning lottery ticket but allowed Una to collect the winnings on her behalf. This money was then deposited into the Joint Account.

41 On the plaintiffs' version of events, Una and Ah Choong admitted Lena as a part-owner of the businesses only because she insisted and that she did not want to be an employee any more. She suggested that she be made the majority owner of the businesses.^[note: 47]

42 The plaintiffs decided to accede to Lena's request, partly out of fear of Frank.^[note: 48] In December 2006, the plaintiffs informed Frank and Lena that they had decided to convert the businesses into a company and make Lena a shareholder. Ah Choong told Lena that there would be 10,000 shares and each share would be worth more than \$20. The plaintiffs arrived at this price because they believed that the businesses were worth around \$200,000.^[note: 49]

43 Lena refused this offer, claiming that the share price was too high. Frank, however, told the plaintiffs that their method of calculation was wrong. He suggested that they use the previous year's accounts and recorded profits as a measure of the total value of the 10,000 shares.^[note: 50]

44 About three months later, in about March 2007, the plaintiffs proposed a share price based on the net profits of the businesses. The net profits amounted to \$96,821.10. That meant that each share was worth \$9.68.^[note: 51] After consulting Frank, Lena accepted this price. She agreed to buy 47.5% of C&C out of Ah Choong's shareholding of 50% at a price of \$45,999.^[note: 52] That would leave Ah Choong with only a 2.5% shareholding in C&C. After further discussions, Lena agreed to pay the purchase price for Ah Choong's shares within a week of seeing her name listed as a registered shareholder and a director of the company.^[note: 53] But after C&C was incorporated, Lena did not pay for the shares. When she was asked for payment, she became angry. The plaintiffs decided not to press her for payment after that and Lena never offered to pay.^[note: 54]

45 In July 2007, when the relationship between Lena and Una deteriorated, Frank suggested that the plaintiffs sell the remainder of their shareholding in C&C to Lena. The plaintiffs refused.^[note: 55] Frank then suggested that the plaintiffs buy Lena's shares in C&C at the price of \$7 per share.^[note: 56] Frank issued threats against Una and Ah Choong claiming he would "do [them] in".^[note: 57]

46 In October 2007, Una informed Lena that the plaintiffs had decided to buy her out of C&C. Lena appeared to agree, but demanded a share of the profits as well.^[note: 58]

47 Una's account of the family gathering in Muar differs from Lena's. For one, her evidence is that there was no bidding exercise. Indeed, there was no mention of the businesses or C&C at this gathering.^[note: 59] The only topic of discussion was her mother's funeral affairs. Una's mother wanted to inform the entire family that she was putting Una in charge of handling her funeral.

48 After the gathering, Una informed Lena that the plaintiffs agreed to give her a portion of C&C's profits earned over the last six months. It was then that Lena informed Una of her intention to open her own salon at Loyang Point.^[note: 60]

49 A few days later, LKL called Una and suggested she pay Lena \$150,000 out of 'goodwill':^[note: 61]

... [LKL] said that he was confident that since I earned so much money, I could simply give Lena a 'goodwill red packet' of \$150,000 and get her to reconsider setting up shop next to Candace.

50 After further discussions, LKL proposed instead that Una give Lena the sum of \$100,000 as a "goodwill red packet". LKL also said that in order to "save face", the plaintiffs could tell the employees that they had bid for the shares.^[note: 62] The plaintiffs agreed.

51 The plaintiffs thus transferred the various sums set out at [13] above to Lena. Of the \$133,000 which they paid, \$100,000 was the "goodwill red packet" and \$33,000 was for Lena's 47.5% shareholding in C&C (at the agreed purchase price of \$7 for each of Lena's 4,750 shares, less \$250 for the accountant's service fee).

52 Despite these payments, Lena still set up her salon at Loyang Point. Not unexpectedly, the relationship between the sisters soured further.

My decision

53 The parties' various positions give rise to three sub-issues. These are:

- (a) Whether Lena worked in Japan from 1991 to 1994.
- (b) Whether Lena remitted various sums of money to the plaintiffs while working in Japan.

(c) Whether the sums which Lena remitted from Japan to the plaintiffs' accounts in Singapore were used to set up Candace.

Whether Lena worked in Japan from 1991 to 1994

54 To prove that she was in Japan continuously from 1991 to 1994, Lena produced dated photographs showing that she was in Japan at various times between 1991 and 1994, pay slips from her employers in Japan and remittance memoranda which Lena used to remit funds to Singapore.

55 The plaintiffs reject Lena's evidence that she was continuously in Japan. They say that her evidence on the circumstances of her stay is inconsistent and that her pay slips are incomplete and internally inconsistent because of the number of "labour days" recorded. The plaintiffs also point to various inconsistencies in the testimony of Lena, NSL and LKL to argue that Lena's evidence is unreliable.

56 I do not consider these inconsistencies to be surprising given the lapse of time following the events in question. Therefore, I am prepared to accept Lena's evidence that she did work in Japan continuously from 1991 to 1994. The photographic evidence shows clearly that Lena was in Japan at various times from 1991 to 1994. In particular, there are dated photographs which show that Lena was in Japan on 6 October 1991, 27 October 1991, 3 March 1992, 9 June 1992, 10 August 1993, 5 April 1994 and 12 April 1994.^[note: 63]

57 There are thus two alternatives: either Lena was in Japan continuously during this period or she travelled to Japan repeatedly, on each occasion when the photographs were taken. Una accepted in cross-examination that the finances of her family at that time would not have permitted members of their family to fly to Japan regularly for leisure.^[note: 64] It is more likely that Lena was in Japan continuously during this period. The extended length of this period also means that she must have worked and earned money while she was there. Therefore, I find on the balance of probabilities that Lena was in Japan continuously from 1991 to 1994 for work. But for reasons that will soon be apparent, I do not need to make a finding on precisely how much money Lena earned while she worked in Japan.

Whether Lena remitted money to the plaintiffs while working in Japan

58 I also find that Lena remitted money to the plaintiffs while working in Japan. There is documentary evidence of three remittances by Lena to Una. This evidence is in the form of remittance memoranda coupled with receipts from The Fuji Bank Limited.^[note: 65]

59 The plaintiffs argue that there is no seal affixed to the remittance memoranda as proof of receipt by the bank. On this basis, they argue that the remittance forms were never submitted to the bank. They also point out that Lena's signature on one of the remittance memoranda differs significantly from her signature on the other two. However, I do not find the difference in the signatures to be material. Furthermore, I accept Lena's oral testimony that: (i) the remittances were indeed processed by the bank; (ii) that the bank's seal was not necessary for cash remittances; and (iii) that evidence of identity was not required for cash remittances.^[note: 66]

60 The plaintiffs also submit that, even if the remittances took place, the funds never reached Una because the transferee bank named in the memoranda was not Una's bank. But on the face of all three of the memoranda, Una is named as the beneficiary. Una's address is also accurately reflected. I find it unlikely that Lena falsely represented the identity of the beneficiary to the bank. I also find it highly unlikely that the bank would have processed the remittances if there was a mismatch between the account number and the name of the account owner.

61 The plaintiffs also argue that Lena's description of how the remittances would take place was unbelievable and point to various inconsistencies in the evidence of the defendant's witnesses. I find that none of these inconsistencies undermine the overall tenor of Lena's evidence or my findings based on the documentary evidence.

Whether the plaintiffs used Lena's money to set up Candace

62 Lena's evidence is that she remitted more money to Una than that which is captured in the three remittance memoranda produced in evidence. Any finding on the precise amount which Lena earned or remitted to Una while working in Japan from 1991 to 1994 would have been largely based on speculation. Fortunately, it is not necessary for me to speculate. The only relevance of a finding as to that amount is to establish the extent of Lena's ownership interest in the businesses. I am able, however, to deduce that fact from circumstantial evidence.

63 I rely first on the parties' evidence as to the family gathering in Muar. The parties had differing accounts as to what happened at this gathering. Una's position was that no matters relating to the businesses or C&C was discussed (see [47] above). Lena's position, on the other hand, was that LKL conducted a bidding exercise which Una won (see [35] above). If the bidding exercise did take place, it is strong circumstantial evidence that Lena owned the 47.5% of shares in C&C registered in her name. Otherwise, there would be no reason for Una to pay Lena for the transfer of those shares. It makes no sense for Una to pay Lena for shares that Lena did not own. It also makes no sense for Una to have allotted Lena 47.5% shareholding in C&C if she did not own 47.5% of the underlying businesses at the time C&C was incorporated to take them over.

64 I also rely on the fact that Una paid Lena \$133,000 in late 2007. Lena's position is simply that \$133,000 is 47.5% of \$280,000. That is correct as a matter of arithmetic. That, says Lena, was the price at which Una had won the bidding exercise (see [36] above). Una's position, it will be recalled (see [49] above), was that the \$133,000 comprised a \$100,000 "goodwill red packet" and \$33,250 for Lena's 47.5% stake in C&C at a price of \$7 per share, minus \$250 payable in accountant's fees.

65 I find Lena's explanation more credible than Una's. If Una did give a "goodwill red packet" of \$100,000 to Lena for her not to set up a salon next to Candace at Loyang Point, it is surprising that Una does not seek to recover this \$100,000 in these proceedings. Lena clearly breached the agreement. Una has gone to great lengths in this action to particularise all the amounts which Lena is said to still owe her after all these years, including amounts which are by now time-barred. I find it strange that she would choose not to claim recovery of this \$100,000 "goodwill red packet" if she had an arguable basis for doing so. If her version were true, she would have that arguable basis.

66 It is also the case that Una gave inconsistent evidence on how she calculated \$32,084, which she said was Lena's share of the profits of C&C. She first stated that it was for the period "from April 2007 to November 2007".^[note: 67] In Exhibit P1, however, Una used the period from May 2007 to October 2007 to calculate the profits. When cross-examined on this, she stated that Exhibit P1 showed the correct period.^[note: 68] In the light of these inconsistencies, I prefer Lena's evidence because it is not beset with the same inconsistencies.

67 Because of these difficulties with Una's evidence, I therefore accept Lena's evidence that the bidding exercise did in fact happen. This to my mind is strong circumstantial evidence that Lena was allocated a 47.5% of the shares in C&C to reflect that she owned 47.5% of the underlying businesses.

68 The plaintiffs argue that Lena gave inconsistent evidence as to the set up costs of Candace. She stated that \$118,000 was used to start up Candace (see [27] above). Lena then claimed that this sum was provided to her by Una. The plaintiffs rely on a document titled "*Renovation, Electronics and Furniture*" to show that the set up cost of Candace was \$67,773.02.^[note: 69] The plaintiffs also went to great lengths to show that they had sufficient funds to set up Candace on their own. I do not think these facts were material. The fact that Lena got the set up costs wrong is neither here nor there. The fact that the plaintiffs had sufficient money on their own does not detract from the fact that they treated Lena as a part-owner of the businesses.

69 In a similar vein, the plaintiffs point to inconsistencies in the defendant's witnesses' version of the Muar trip, the timing of the requests Lena made to see the accounts of the business and when she came to know that the accounts were burnt. The inconsistencies in respect of the bidding exercise pertain to the identities of the parties present, the venue and the manner in which the cheques were issued pursuant to the settlement. None of these are sufficiently material to satisfy me that Lena and her witnesses entirely fabricated the account of the bidding exercise. As for Lena's narrative of her requests to see the accounts and the burning of the accounts, these matters have little relevance to the question of whether Lena was a part-owner of the businesses.

70 There is one final point of significance raised by the plaintiffs. They submit that the outcome of the bidding exercise was illogical because the final valuation of C&C was only \$280,000. That figure is only slightly more than the profits that Lena claimed she received in 2005 (\$240,000) and in 2007 (\$246,000).^[note: 70] Although there is force in this argument, I find that

it was more likely that Lena had overstated the profits she received from the businesses instead of grossly under bidding for C&C.

71 This point — that Lena overstated the profits she received from the businesses — is not a trivial point. It requires further attention because it sets the appropriate context for the plaintiffs' claims and, more pertinently, for Lena's defence that payments were either her salary or share of the profits.

72 The quantum of profits that Lena claims to have received is extremely high. If Lena's position reflects the truth, it would mean that the profits of the business as a whole from 2005 onwards would have exceeded the \$250,000 at which Lena stopped bidding for the businesses.

73 From Exhibit P3, which was derived from further and better particulars provided by Lena, her 45% share of the profits in 2004, 2005, 2006 and 2007 were \$2,754, \$239,631.23, \$127,928.22 and \$246,253.52 respectively. If those sums are 45% of C&C's profits in those years, 100% of those profits in those years would have been in the region of \$6,120, \$532,000, and \$284,000 respectively. In 2007, when Lena's stake was increased from 45% to 47.5%, Lena's share would imply total profits above \$500,000. There was also no indication that Lena expected the business of C&C to plummet. These supposed yearly profits do not sit well with Lena's evidence that she stopped bidding at \$250,000. There are only two explanations for this, either Lena overstated the profits she received from the business or she underestimated the value of the business during the bidding exercise.

74 Given that both parties agree that Una paid Lena \$133,000 in exchange for the transfer of Lena's 47.5% shareholding in C&C (however they may say that figure was arrived at), I find that it is more likely that Lena overstated the profits she received.

75 To me, an appropriate yardstick to estimate the quantum of profits received by Lena would be her final profit distribution. Her final profit distribution was \$32,084.32 (see [13(b)] above). Exhibit P1 showed how this final figure was derived. Lena did not object to the formula used which was $[(\text{total income} - \text{total expenses}) \times 47.5\%]$. If this formula was similarly used for other profit distributions, which is a reasonable conclusion given that Lena did not object to the formula, the specific quantum of profits distributed would be unlikely to result in round figures. This means that certain payments, like the \$30,000 cheques given as Gambling Loans, were unlikely to have been profit distributions. If this figure of \$32,084.32 accurately reflects Lena's share of the profits for the period from May 2007 to October 2007, and assuming that the profits made by C&C in 2007 are representative of the profits that it would have made in other years (both of which I find to be true), the most that Lena could expect to receive each year was approximately \$64,000. Therefore, any claims for a share of profits exceeding \$64,000 must be treated with caution.

76 With this in mind, I now turn to the plaintiffs' five heads of claim.

The Joint Account

Una's case

77 On 8 July 2003, Una opened the Joint Account with an initial deposit of \$202,000.^[note: 71] The money in the Joint Account could be withdrawn by either Una or Lena alone.

78 Una's position was that the money in the account came entirely from her. There was an understanding between Lena and Una that Lena could not use the money in the account as she wished.^[note: 72] Una always intended that the money in the Joint Account would remain her own.^[note: 73]

79 Una withdrew \$101,738 from the Joint Account on 10 November 2004.^[note: 74] About half a year later, on 6 July 2005, Una deposited a sum of \$100,000 into the Joint Account.^[note: 75]

80 Lena withdrew the UOB Money from the Joint Account in March 2006. After the withdrawal, she closed the Joint Account. Una came to know all of this only much later, when Lena told Una in 2007, after the Chinese New Year holidays. Lena also said that she needed the money but would return it.^[note: 76] Una was surprised and angry because she never intended for Lena to withdraw money from the Joint Account.

81 Lena has never repaid this money. Una thus claims that Lena holds the UOB Money on trust for her and is liable to account for it.

Lena's case

82 Lena's case is that when the Joint Account was opened, she deposited a sum of \$100,971.41 from her own savings account. Una deposited a sum of around \$100,000 at the same time. At a later time, Una withdrew \$101,738 as her share from the Joint Account.^[note: 77]

83 One Saturday in 2005, Lena won \$100,000 in the lottery. The next day Lena informed both staff and customers that she had won the top prize in the lottery. The winnings could be collected only on Monday. Because Lena had to work on Monday, she handed the winning lottery ticket to Una to collect the winnings. Una did so and deposited the winnings into the Joint Account.^[note: 78]

84 It was Lena's position therefore, that the UOB Money was hers.

My decision

85 The issue here is whether Lena held any part of the UOB Money on constructive trust for Una. This requires identifying the source of the UOB Money.

86 The weight of the evidence shows that the amount of \$100,971.42 came from Lena's account. A letter from the UOB branch manager states that the sum was transferred from a particular Passbook Savings Account ("the 368 account"). Jessica Foo, an officer from UOB, testified for the defence that the 368 account was held by an individual called Lim Geok Cheng. That, of course, is Lena's legal name. The bank officer noted that the names matched. She could not, however, categorically state that this account belonged to Lena. Because of the lapse of time, UOB no longer maintains the documents necessary to establish identity conclusively. This includes the NRIC number of the account-holder. Nevertheless, I find it more likely than not that the Lim Geok Cheng referred to in UOB's records is in fact Lena.

87 Moreover, Una accepted at one point in cross-examination that the 368 account belonged to Lena although she changed her position and said she was not sure.^[note: 79] Given the evidence, I find that the amount \$100,971.42 was transferred by Lena and belonged to her.

88 Turning to the \$100,000 lottery winnings, I do not believe Lena's assertion that she bought the winning lottery ticket and then allowed Una to collect the money on her behalf. I find that the \$100,000 lottery winnings belonged to Una. I say this for a number of reasons. First, it is undisputed that the cheque for \$100,000 from Singapore Pools was drawn in Una's name.^[note: 80] Further, Lena did not assert in her pleadings that the \$100,000 was hers. She mentions it for the first time only in her affidavit of evidence in chief. Furthermore, Lena claims to have told both staff and customers about winning the lottery on the very next day. Yet she did not call any one of them as witnesses. More detrimental to her case is the fact that she failed to call NSL's daughter, whom she claimed had bought the winning ticket on her behalf.

89 Lena argues that Una's behaviour after Lena withdrew the UOB Money suggests that Una did not own any of the UOB Money, including the \$100,000 lottery winnings. Una claims that she was surprised and angry when she learned that Lena had withdrawn the UOB Money. Nevertheless, Una continued to lend Lena money. Una's evidence is that she advanced four loans to Lena even after she discovered the withdrawal from the Joint Account. These include three sums of \$6,000 as part of the Share Acquisition Loans and one sum of \$30,000 as part of the Gambling Loans.

90 I will find later that the sum of \$6,000 was not a loan to Lena. I accept that the fact that Una advanced \$30,000 to Lena even after Una discovered that Lena had withdrawn the UOB Money supports Lena's case. I do not think, however, that this is sufficient to dispel the finding I have reached from all the other evidence that Lena owned the \$100,000 lottery winnings.

91 I therefore find that Lena was a constructive trustee of part of the UOB Money. The \$100,000 lottery winnings belonged to Una prior to that sum being deposited in the Joint Account. It is also clear to me that the parties did not intend to transfer the beneficial interest in the money they deposited into the Joint Account to the other account holder. Each of them deposited roughly equal sums of about \$100,000 in order to open the account. It appears to me that they made an effort to contribute equally to the Joint Account. This strongly suggests to me that there was no intention on either's sister's part to transfer any part of the beneficial interest in the money they put into the account to the other sister.

92 Given that Una did not make a gift of any part of her lottery winnings to Lena, Lena held that part of the UOB Money on constructive trust for Una the moment she withdrew the UOB Money from the Joint Account. Her conscience was bound from that moment. I therefore find that Lena continues to hold the sum of \$100,000 on constructive trust for Una. Lena is thus liable to account to Una for the \$100,000 plus interest earned from the date of deposit (6 July 2005) to the date of withdrawal (23 March 2006).

93 Given that Una's claim against Lena was an action by a beneficiary against a trustee for the recovery of trust property, s 22(1)(b) of the Limitation Act (Cap 163, 1996 Rev Ed) applies. This means that there is no time bar to Una's claim. It is thus irrelevant that the Una's cause of action accrued more than six years before the action was commenced.

The Edelweiss Property

Plaintiffs' case

94 In late 2002, the plaintiffs began looking for a flat that Lena could invest in. They selected the Edelweiss Property. Its purchase price was \$553,500.^[note: 81]

95 Lena's salary had earlier been increased, in July 2002, to \$3,000 a month. According to the plaintiffs, part of the reason this was done, apart from the fact that the businesses were growing, was that they wanted to help Lena obtain a housing loan to acquire her own property.^[note: 82]

96 The most attractive housing loan came from Standard Chartered Bank ("SCB"). SCB was prepared to lend up to 60% of the Edelweiss property's purchase price. This left slightly more than \$220,000 to be funded. The SCB housing loan — called Mortgageone — is what is commonly called an "offset mortgage". The mortgage operated with a loan account in parallel with a current account. Lena would only have to pay interest on the difference between the outstanding sum due on the loan account and the credit balance in the current account.^[note: 83] That meant that if the credit balance in the current account equalled the sum due on the loan account, Lena's loan was effectively interest-free.

97 According to the plaintiffs, Lena was initially unwilling to acquire the Edelweiss Property. The plaintiffs reassured her that they would help fund the purchase. The plaintiffs also told her that they would do their best to maintain the credit balance in the Mortgageone current account so that Lena's interest burden would be minimised.

98 Between 2003 and 2007, the plaintiffs contributed the Edelweiss Money (which was at least \$502,172.42) towards the purchase of the Edelweiss Property (see above at [17]). This was about two-thirds of their cash savings during this period.^[note: 84] The plaintiffs paid Lena the Edelweiss Money over the years as follows. In 2003, the plaintiffs issued four cheques to Lena totalling \$238,255. The four cheques were in the amounts of \$40,805, \$100,000, \$13,450 and \$84,000. The total sum of \$238,255 was slightly more than 40% of the Edelweiss Property's purchase price.^[note: 85] In 2005, the plaintiffs issued another two cheques to Lena totalling \$96,552.47. These two cheques comprised a cheque for \$48,552.47 and another for \$48,000.^[note: 86] In 2006, the plaintiffs issued a further three cheques to Lena totalling \$107,440.50.^[note: 87] These three cheques were in the amounts of \$30,000, \$48,000 and \$29,440.50. In 2007, the plaintiffs issued another cheque to Lena for \$59,924.45.^[note: 88] All of these sums add up to \$502,172.42. It is this sum which the plaintiffs now claim.

99 The plaintiffs' case is that they "had at all times a beneficial interest in the [Edelweiss Property] as they funded a substantial portion of the purchase price(s) for the [Edelweiss Property]".^[note: 89] The plaintiffs have clarified, however, that they do not claim a share of the value of the Edelweiss Property but merely expect repayment of the sum which they contributed from the sale proceeds. They say that they are "happy for [Lena] to retain any capital gains earned from any such real estate investment".^[note: 90] Accordingly, the relief which the plaintiffs seek is for the Edelweiss Property to be sold and for Lena to account to them for their beneficial interest in it by paying the Edelweiss Money to them out of the sale proceeds.^[note: 91]

Lena's case

100 Lena's case, not surprisingly, is quite different. She says that when she went to view the showflat for the Edelweiss Property, Una and Ah Choong accompanied her. Lena placed a deposit of more than \$27,000 (which was 5% of the purchase price of the unit) on that day itself. She did her calculations before that and knew she had enough money in her own bank account to pay 40% of the purchase price up front.^[note: 92]

101 Immediately after placing the deposit, Una, Lena and Ah Choong went to SCB where Lena obtained the Mortgageone loan facility.^[note: 93] When they got home, Lena asked Una if her unpaid dividends would be enough to pay the entire purchase price. Una told her that the dividends which were going to be paid out were of a huge amount and that Lena should not worry.^[note: 94]

102 Lena's position was that all progress payments were paid by her from her Mortgageone account. The money she deposited into her SCB account was her salary and her share of the profits from the businesses.^[note: 95]

My decision

103 This head of the plaintiffs' claim raises two sub-issues to be decided. First, whether the Edelweiss Money was actually Lena's salary or share of profits from the businesses. Second, if the Edelweiss Money was not her salary or share of profits, what is the nature of the plaintiffs' interest in the Edelweiss Property.

104 There are a few preliminary points to be made in relation to the first sub-issue. I have already observed that it would be unlikely for Lena's share of profits to be in round figures (see [75] above). This makes it unlikely that the sums of money which the plaintiffs gave Lena in round figures (such as the cheques for \$100,000, \$48,000 and \$30,000) were in fact profit distributions. As for the payments which were not in round numbers, I accept Una's explanation that these sums were paid after making small deductions for payments which the plaintiffs had made on Lena's behalf.

105 Furthermore, I have also observed that it is unlikely that Lena's profit distribution could have been significantly more than \$64,000 in any given year (see [75] above). The plaintiffs' claim in respect of the Edelweiss Property was a total of \$502,172.42 paid from 2003 to 2007. It is likely that these were not profit distributions.

106 Lena submits that she had no need to secure advances of \$502,172.42 from the plaintiffs when SCB already gave her a loan of 60% of the purchase price. Lena was required to fund only 40% of the purchase price, which was about \$220,000. Furthermore, Lena was required to make only monthly payments to SCB.^[note: 96] According to Lena, the monthly payment for the year 2005 was \$258.38. It therefore did not make sense for Una to give her lump sum payments occasionally if they were referable to the Edelweiss Property. On Una's evidence, she provided \$96,552.47 to help Lena with the purchase of the Edelweiss Property in 2005.

107 The plaintiffs provide a satisfactory explanation as to why large upfront payments were given to Lena. It is undisputed that the Mortgageone loan facility charged interest on the difference between the amount disbursed from the loan account and the credit balance in the current account. Thus, any sums deposited in the current account reduced Lena's interest burden. That explains why the plaintiffs made lump sum payments: in order to reduce the interest payable by Lena.

108 Given the above, I find the plaintiffs' evidence to be more plausible. I accept that they advanced \$502,172.42 to Lena in order to help her buy the Edelweiss Property. These sums were not due to Lena as her share of the profits from the businesses.

109 Turning to the nature of the plaintiffs' interest in the Edelweiss Property, the plaintiffs claim a beneficial interest framed as arising from a resulting trust. The plaintiffs rely on *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 (at [116]–[117]) ("*Lau Siew Kim*") for the proposition that the payment of mortgage instalments or other financial contributions subsequent to the initial acquisition of the property can give rise to a resulting trust if there is an agreement between the parties at the time of acquiring the property that one party would make those contributions with a view towards retaining a beneficial interest in the property. The plaintiffs assert that, in this case, there was an understanding between the parties that the plaintiffs would help Lena with the purchase of the Edelweiss Property before the Mortgageone loan facility was obtained. They thus had a beneficial interest in the property given that they had extended \$502,172.42 to Lena.

110 It is necessary to appreciate the context in which the Court of Appeal made the statement relied on by the plaintiffs. In *Lau Siew Kim*, the precise words of the Court of Appeal were:

114 Pearce & Stevens ([31] *supra*) state unequivocally at p 243 that:

Whilst "indirect" contributions may constitute sufficient detriment to call for the imposition of a constructive trust if there was an express common intention to share the ownership of the land, only "direct" contributions to the purchase price will give rise to a presumption of resulting trust in favour of the contributor.

The question then is: What amounts to a "direct" contribution to the purchase price?

115 It has been held that the payment of mortgage instalments should not be regarded as a direct contribution to the purchase price of a property: see *Calverley v Green* ([37] *supra*). Mason and Brennan JJ explained at 257–258:

The payment of instalments under the mortgage was not a payment of the purchase price but a payment towards securing the release of the charge which the parties created over the property purchased.

...

116 A distinction may, however, be drawn between contributions made to the repayment of a mortgage on the basis of an agreement made when the mortgage is taken out, and subsequent payments of mortgage instalments. In the former case, the payment of mortgage instalments pursuant to the agreement between the parties will be "*direct contributions to the purchase price*" and will give rise to a resulting trust. This was the case in *Cowcher v Cowcher* ([27] *supra*) where Bagnall J held that a resulting trust was presumed in favour of the wife who had made some of the repayments on a mortgage taken out by her husband, pursuant to a prior agreement between them. The concept of a prior agreement prevailing over any prima facie "direct" contribution as a relevant consideration for the presumption of resulting trust also manifests itself in "bridging finance" cases. Wheeler J discussed these cases in *Bertei v Feher* [2000] WASCA 165 at [44]:

For example, where finance is raised, which is plainly intended to be "bridging finance" it seems to me that it may be undesirably artificial to say that it is the money raised under the mortgage for which, temporarily, both parties may be liable, rather than what is intended to be the ultimate source of funding, (for example, money from the sale of one party's home) which constitutes the payment of the purchase price. Similarly, for example, if a relative of one of the parties provides the whole or some of the purchase price as a short term measure until that party is able to obtain funds from, for example, access to a fixed term investment, it would not, I think, be correct to regard that relative as the person making the contribution to the purchase price.

117 It is difficult to fault the logic of this. Therefore, the court will, and should, give effect to any agreement between the parties at the time of acquiring the property in question as to the ultimate source of funds for the *purchase of that property*. However, in the absence of any such agreement, the payment of mortgage instalments or other financial contributions subsequent to the initial acquisition of the property will not give rise to any beneficial interest by way of a resulting trust.

[emphasis in original removed; emphasis added in italics]

111 It is clear from the Court of Appeal's discussion on direct contributions which give rise to a resulting trust that the general rule remains that contributions have to be applied *towards the purchase price*. A prior agreement between the parties does not change the general rule. This distinguishes the effect of a loan or other advance from a contribution to the purchase price. It is only in the latter situation that a resulting trust arises, giving the plaintiffs a beneficial interest in the Edelweiss Property. Otherwise, the relationship between the parties would be that of a debtor and creditor or one that would give rise to a claim in restitution. Neither of these is sufficient to give the plaintiffs a beneficial interest in the Edelweiss Property, which they claim. Therefore, a preliminary factual question has to be answered – whether the plaintiffs intended Lena to have the beneficial interest in the Edelweiss Property.

112 I find that the general intent of the plaintiffs was to *help* Lena with the purchase and to do their best to ensure Lena did not have to worry about interest under the Mortgageone loan facility.^[note: 97] In this respect, they were assisting Lena financially in *her* purchase of the Edelweiss Property and fully intended her to own it at law and in equity.

113 It is significant that Una's evidence in cross-examination was that she considered these advances to be a loan to Lena. Thus, although she initially denied lending Lena the Edelweiss Money, she acknowledged soon after that *she did lend* Lena the money.^[note: 98] I accept, however, that too much weight should not be placed on this aspect of Una's evidence as she is not legally trained and therefore is unlikely to appreciate the deeper legal significance of the words she uses.

114 It is, however, important that the plaintiffs characterised their advance of money to Lena as "assisting" Lena in her acquisition. This confirms my view that these advances were more in the form of financial assistance than as contributions attracting proprietary consequences. In her evidence-in-chief, Una stated:

114 Because she is my sister, I wanted to help her as much as I could. ... Both Ah Choong and I wanted to help her find a way to make money, and to have tangible property under her name. *I felt that real estate was the steadiest form of investment for her. I discussed this with Ah Choong, and we agreed that Lena should invest in property, as property prices were low at that time.*

...

116 Sometime in late 2002, Ah Choong and I started looking around for *condominium developments that Lena could invest in*. We found '*The Edelweiss*', which was, at that time, a condominium being launched in the Pasir Ris area. ...

[emphasis added]

115 From this, it is apparent that the plaintiffs were interested in assisting Lena in making an investment in real property to be owned by her. This is also consistent with the plaintiffs' pleaded case where they state:

14 ... The Plaintiffs always expected that they would get the monies they had contributed from the sales proceeds of any liquidation of such investment property acquired in the Defendant's name and that they were entitled to the same. However, the Plaintiffs were *happy for the Defendant to retain any capital gains earned from any such real estate investment*.

[emphasis added]

At the hearing before me, Mr Kang informed me that regardless of how the claimed was framed, the plaintiffs were only interested in getting their money back instead of participating in any capital appreciation of the property.^[note: 99]

116 This leads me to the conclusion that the plaintiffs intended from the outset that Lena should own the Edelweiss Property at law and in equity. They intended to assist Lena financially with *her purchase* of the Edelweiss Property. I make this finding despite the fact that Lena's will names Una as Lena's executrix and sole beneficiary. Being named in Lena's will shows only that Lena intended Una to acquire ownership of the Edelweiss Property in the event of Lena's death. It does not detract from my finding that the plaintiffs intended Lena to own the Edelweiss Property at law and in equity.

117 The result of my finding that the plaintiffs were financing Lena's acquisition of the Edelweiss Property is that Lena owns the property outright. She does not hold any part of the Edelweiss Property on trust for the plaintiffs.

118 Nonetheless, the plaintiffs did advance money to Lena to assist her to purchase the Edelweiss Property. If they had an agreement that Lena would repay the money, there would have been a debtor and creditor relationship which would *prima facie* oblige Lena to repay the Edelweiss Money. Even if there was no agreement, the plaintiffs might well have had a claim in restitution to recover back the money. The plaintiffs, however, pleaded only that they had a proprietary interest in the property and, on that basis, sought as their only relief an order that Lena account for that interest. They did not seek to recover the Edelweiss Money either as a loan or pursuant to a claim in restitution.

119 In *Sheagar s/o T M Veloo v Belfield International (Hong Kong) Ltd* [2014] 3 SLR 524, the Court of Appeal explained that the general rule in an adversarial system is that the parties and the court are bound by the pleadings (at [94]). The Court of Appeal further explained that pleadings serve the important function of upholding the rules of natural justice by requiring a party to give his opponent notice of the case he has to meet to avoid his opponent being taken by surprise at trial and by defining the matters to be decided by the court.

120 After the close of trial and the delivery of my judgment (though before the final disposal of the matter), Mr Kang took out a summons (Summons No 5960 of 2014) to amend the plaintiffs' pleadings to include a claim to recover the Edelweiss Money as a loan or pursuant to a claim in restitution. I dismissed his application. I considered that such a fundamental amendment at such a late stage would radically change the plaintiffs' claim from the one actually advanced at trial and would have caused prejudice to the defendant for which she could not be compensated by costs.

121 Given my finding that Lena owns the Edelweiss Property outright, I dismiss this head of the plaintiffs' claim.

The Share Acquisition Loans

Plaintiffs' case

122 The plaintiffs' case is that they began investing in shares in 1998. Lena noticed the plaintiffs making profits and expressed a desire to invest in shares as well. Lena started borrowing money from the plaintiffs in order to invest in shares. These were interest-free loans with no fixed repayment date.^[note: 100]

123 From 1998 to 2007, the plaintiffs lent Lena various sums of money in order for her to invest in shares. Between 1998 and 2000, Lena repaid all the sums which she borrowed from the plaintiffs in these years.^[note: 101] In 2002, Lena wanted to borrow \$10,000 a month from the plaintiffs to invest in shares. The plaintiffs agreed to lend her only \$6,000 a month. In 2002, the plaintiffs lent Lena \$66,000 through 11 payments of \$6,000 each. Lena returned a sum of \$60,000 in cash that same year.^[note: 102] Again over the course of 2003, the plaintiffs lent a total of \$80,000 to Lena, mostly through monthly payments of \$6,000 each. In that same year, Lena returned \$18,000 in cash.^[note: 103]

124 From 2004 to May 2007, the plaintiffs lent a substantial sum of money to Lena, again mostly in payments of \$6,000 each time.^[note: 104] Lena did repay a certain amount of the money. However, the plaintiffs claim that a sum of \$258,000 remains outstanding even after taking into account the sums that Lena has repaid over the years.^[note: 105] The plaintiffs therefore seek to recover this sum of \$258,000 from Lena.

125 At trial, the plaintiffs did, however, recognise that a substantial portion of the sum claimed is time-barred.^[note: 106] The writ of summons was issued in May 2012. The plaintiffs have therefore abandoned their claim for repayment of money lent to Lena before May 2006. They seek repayment only of \$78,000, which is the amount said to have been advanced after May 2006.^[note: 107]

126 I set out the breakdown of these amounts and the relevant details pertaining to each sum lent to Lena^[note: 108]:

Amount	Date	Source
\$6,000	8 May 2006	Candace
\$6,000	8 May 2006	Candace
\$6,000	8 May 2006	Candace
\$6,000	8 June 2006	Candace
\$6,000	24 July 2006	Canary
\$6,000	13 September 2006	Canary
\$6,000	13 September 2006	Plaintiffs' Joint Account
\$6,000	20 November 2006	Plaintiffs' Joint Account
\$6,000	4 January 2007	Candace
\$6,000	15 February 2007	Candace
\$6,000	15 March 2007	Canary
\$6,000	10 April 2007	Canary
\$6,000	8 May 2007	Canary

Lena's case

127 Lena's position is that she did not borrow any money from Una or Ah Choong to buy shares. She accepts that she discussed investments in shares with the plaintiffs, but she ultimately made her own purchases with her own money.^[note: 109] The amounts claimed by the plaintiffs were either Lena's salary or her share of the profits of the businesses.^[note: 110] To bolster her case that these sums were actually her salary, Lena points to the fact that 11 out of the 13 payments came from either Candace or Canary.

128 The plaintiffs reject Lena's position. They point out that Lena has failed to plead that these sums were her salary. They also point out that Lena has nowhere in her evidence in chief stated that her salary was ever \$6,000 a month. In addition, Lena's pleaded annual income was never \$72,000 except in 2005.^[note: 111] The plaintiffs also point to the fact that the cheques were not cashed regularly.

129 Lena's income tax notices of assessment show that Lena's income was around \$36,000 from 2002 to 2006.^[note: 112] Before 2002, her income was significantly less. The plaintiffs also argue that this supports their assertion that Lena's salary was only \$3,000.

My decision

130 While I accept that the cheques were not cashed regularly, it appears that there is some regularity as to when the cheques were dated. Generally, one cheque was given each month. This strongly suggests that these were some sort of recurring payment, possibly for salary or for some other entitlement arising from Lena's ownership interest in the businesses. It is also entirely possible that Lena was receiving \$72,000 per annum as her salary but that she or Una consistently under-declared it for tax purposes. It is not necessary for me to find that this was what had indeed happened. The plaintiffs have failed to satisfy me that these payments were advances to Lena to enable her to purchase shares. I find that these payments were referable to Lena's salary, to her part-ownership of the businesses or to both.

131 The plaintiffs also submit that Lena repaid some of the Share Acquisition Loans over the years. This, according to the plaintiffs, was strong evidence that the rest of these advances were indeed loans. There is, however, no independent evidence to support this assertion. There is therefore insufficient evidence for me to conclude that what Lena paid to the plaintiffs was in fact repayment of what the plaintiffs have characterised as Share Acquisition Loans.

132 In light of my findings, I dismiss this head of the plaintiffs' claim.

The Gambling Loans

Ah Choong's case

133 The plaintiffs seek to recover a total of \$150,000 which they lent over a period of time to Lena for gambling on board cruise ships ("the Gambling Loans"). These Gambling Loans were interest-free loans with no specific repayment date.

134 In June 2006, when the plaintiffs, Lena and Frank were on a gambling cruise, Lena asked the plaintiffs if she could borrow money. Lena knew that the plaintiffs kept cash at home. Lena made a phone call to Jenny Loo ("Jenny") who was at home. Jenny is Una's and Lena's niece. Una told Jenny to open the safe in the plaintiffs' room and take out 30 \$1,000 notes from an envelope inside. Lena arranged for a taxi to pick Jenny up and to take her to Changi Ferry Terminal where Lena collected the \$30,000.^[note: 113]

135 In October 2006, Lena called Ah Choong to ask if he had \$30,000 to lend her. Lena told Ah Choong that Frank wanted to borrow the money from her and that he would pay off all the loans. Ah Choong agreed. Lena told Ah Choong to take the money to a unit in the IMM Building and to give it to a casino junket operator. Ah Choong gave \$30,000 in cash to the casino junket operator.^[note: 114]

136 In November 2006, Ah Choong again gave \$30,000 to a casino junket operator at the IMM Building at Lena's request.^[note: 115]

137 In February 2007, Lena persuaded Ah Choong to lend her another \$30,000. Ah Choong informed her that he only had \$3,000 cash on hand and would write a cheque for \$27,000. On Lena's instructions, Ah Choong went to the Mobil petrol station near the plaintiffs' home and handed the cheque and \$3,000 cash to unknown men in a car. Lena had given him the license plate number of the car he should look out for.^[note: 116]

138 On 27 June 2007, Lena called Ah Choong again asking if she could borrow \$30,000. Ah Choong reluctantly agreed and issued a cheque for \$30,000. Lena told him that someone would come in a taxi to pick up the cheque. She gave Ah Choong the taxi's license plate number and told him to pass the cheque to the passenger of the taxi. He did so.^[note: 117]

139 All in all, Ah Choong claimed \$150,000 from Lena.

Lena's case

140 Lena's case is that Una and Ah Choong forced her to accompany them on the gambling cruises. It was on one of these cruises that Lena met Frank in 2005. Between 2006 and 2007, Una, Ah Choong, Lena and Frank regularly patronised overnight gambling cruises.^[note: 118]

141 The plaintiffs and Frank had a practice whereby Frank would extend credit to the plaintiffs for gambling on board these cruises. Pursuant to this practice, Frank lent Una money on a few occasions, when Una ran out of money to gamble with while at sea. Frank had credit on these cruises and would simply extend this credit to Una.^[note: 119] The cheques which the plaintiffs claim are Gambling Loans and which were cashed by a Junket Operator (Heng Heng Pte Ltd) and by one Lim Hock Hoe, were actually the plaintiffs' repayment of loans extended to them by Frank.^[note: 120]

142 In respect of the cash amounts advanced, Lena argues the plaintiffs have failed to discharge their burden of proof because there is no documentary evidence to show that these sums were ever advanced. In particular, the defendant singled out for attention the two alleged loans of \$30,000 in cash: (i) the payment to the casino junket operator at the IMM Building; and (ii) the payment in February 2007 given partly in cash (\$3,000) and partly by way of cheque (\$27,000) to strangers in a car at the Mobil petrol station.

143 Further, the \$30,000 in cash which Jenny gave Lena at the Changi Ferry terminal was taken from Lena's own safe and not from that of the plaintiffs.^[note: 121] That occurred on an occasion where she and Frank decided to stay an additional night on the cruise. Lena, however, did not have any more money on her. While the ship was on its way to the jetty, Lena called Jenny to give her the password to Lena's safe at home so that Jenny could retrieve \$30,000 and bring it to the ferry terminal for Lena.

144 Finally, Lena also claims that the money she received from the plaintiffs may have been due to her, either because they represented her salary, her share of profits from the businesses or both.

My decision

145 I do not accept that the advances which the plaintiffs characterise as Gambling Loans could have been part of Lena's salary or her share of profits from the businesses. As I have noted, it is not likely that any distributions of her share of profits would be in round numbers. Furthermore, I doubt that Lena's salary from the businesses would be paid in lump sums in the manner the Gambling Loans were advanced.

146 All in all, I prefer the plaintiffs' account of the events surrounding the Gambling Loans. First, the plaintiffs' statement of claim particularises each Gambling Loan. In response, Lena's defence merely asserts baldly that these sums were her share of profits and her salary from the businesses. It is only in Lena's affidavit of evidence-in-chief that she alleges for the first time that: (i) the money which Jenny brought to the Changi Ferry terminal was from Lena's own safe; and (ii) that Frank extended credit to the plaintiffs on the gambling cruises. She does not make either assertion in her pleadings. This, when juxtaposed against the fact that the plaintiffs' statement of claim is particularised, leads to me infer that Lena's account of events is an afterthought and to prefer the plaintiffs' account over Lena's.

147 Second, I draw an adverse inference against Lena for failing to call Frank as a witness at trial. Illustration (g) to s 116 of the Evidence Act (Cap 97, 1997 Rev Ed) gives the court the discretion to presume "that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it". In *Cheong Ghim Fah and another v Murugian s/o Rangasamy* [2004] 1 SLR(R) 628 ("*Cheong Ghim Fah*"), V K Rajah JC (as he then was) agreed with the principles distilled in *Wisniewski v Central Manchester Health Authority* [1998] 5 PIQR P324 ("*Winiewski*"). The relevant principles as set out in *Cheong Ghim Fah* are (at [42], citing *Winiewski* at P340):

- (1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.
- (2) If a court is willing to draw such inferences, they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.
- (3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.
- (4) If the reason for the witness's absence or silence satisfies the court, then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified.

148 Lena could have called Frank to give evidence of his practice of extending credit to the plaintiffs and to deny that the cash amounts given on two occasions at the IMM Building were for him. His evidence would have been directly relevant to Lena's defence for at least four of the five sums claimed as Gambling Loans. Yet, Lena chose not to call Frank. Her sole reason for not doing so was that it would be unfair to him and she wanted to protect his feelings. I do not think this is a good reason in the circumstances of the case. I thus draw an adverse inference against Lena. I infer that she did not call Frank because his evidence would be unfavourable to her and show that the amounts given by the plaintiffs' were in fact loans to Lena.

149 Having accepted the plaintiffs' version of events I find that Lena has to repay \$150,000 to the plaintiffs since they were indeed loans extended to her.

Lena's counterclaim for breach of fiduciary duty

150 Lena's counterclaim is simply that Una has repudiated the settlement agreement reached in Muar during the bidding exercise. That entitles Lena to claim all of the money which Una owes her.^[note: 122] In addition, because Una failed to put in the capital of \$53,100, as promised when Candace was first set up (see [28] above), Lena's claims that the plaintiffs hold 85% of all profits received from the businesses and from C&C on constructive trust for her and are liable to account to her for those profits.^[note: 123]

151 I reject Lena's counterclaim. There is absolutely no evidence to support the claim that Una repudiated the agreement reached in Muar. It seems patent to me that the parties intended the settlement agreement in Muar and the four cheques transferred pursuant to that agreement to be full settlement of all possible claims relating to their ownership and share of profits in businesses of Candace and Canary and of C&C. Una is therefore bound by this settlement.

152 I therefore dismiss the counterclaim.

Conclusion

153 Given all my findings, I have entered judgment on the claim and counterclaim as follows:

- (a) I have declared that Lena is a constructive trustee for Una in respect of \$100,000 out of the UOB Money. She is liable to account to Una for that sum by paying it to her together with interest for the period from 6 July 2005 to 23 March 2006.
- (b) I have dismissed the plaintiffs' claim that they have a beneficial interest in the Edelweiss Property.
- (c) I have dismissed the plaintiffs' claim to recover the Share Acquisition Loans.
- (d) I have allowed the plaintiffs' claim to recover \$150,000 in respect of the Gambling Loans extended.
- (e) I have dismissed Lena's counterclaim.

154 I have also ordered that Lena pay to the plaintiffs 50% of the combined costs of and incidental to both the claim and the counterclaim in these proceedings. Those costs shall be taxed if not agreed.

[note: 1]Una's AEIC 23/12/2013 at paras 4-7 and Lena's AEIC 23/12/2013 at para 5.

[note: 2]Ah Choong's AEIC 23/12/2013 at paras 3-4

[note: 3]Ah Choong's AEIC 23/12/2013 at paras 3-4, Una's AEIC 23/12/2013 at paras 24-25.

[note: 4]Una's AEIC 23/12/2013 paras 40-41 and Lena's AEIC para 21.

[note: 5]Lena's AEIC at para 105.

[note: 6]Statement of claim (Amendment No 2) at para 7.

[note: 7]Una's AEIC 23/12/2013 at para 67 and Lena's AEIC 23/12/2013 at para 54.

[note: 8]Statement of claim at para 3 (admitted by the defendant).

[note: 9]Una's AEIC 23/12/2013 at para 39 and Lena's AEIC 23/12/2013 at para 21.

[note: 10]Una's AEIC 23/12/2013 at para 47 and Lena's AEIC 23/12/2013 at para 27.

[note: 11]Una's AEIC 23/12/2013 at para 48 and Lena's AEIC 23/12/2013 at para 42 (where it is said "By 1998, the Candace salon in Bedok had closed...").

[note: 12]Agreed Bundle volume 1 at page 73.

[note: 13]Una's AEIC 23/12/2013 para 51 and Lena's AEIC 23/12/2013 at paras 43-45.

[note: 14]Statement of claim (Amendment No 2) at para 3 (admitted by the defendant) and Una's AEIC at para 51.

[note: 15]Agreed Bundle volume 1 pages 579-587.

[note: 16]Statement of claim (Amendment No 2) at para 6 and Defence and Counterclaim at para 19.

[note: 17]Una's AEIC 23/12/2013 at para 256 (see also LGB-33 for Ah Choong's Phillip Securities Pte Ltd Monthly Statement) and Defence and Counterclaim at para 20.

[note: 18]Lena's AEIC 23/12/2013 at para 109 and Una's AEIC 23/12/2013 at para 261.

[note: 19]Una's AEIC 23/12/2013 at para 148.

[note: 20]Lena's closing submissions, para 208(l).

[note: 21]Lena's AEIC 23/12/2013 at paras 6-7.

[note: 22]Lena's AEIC 23/12/2013 at paras 8-11.

[note: 23]Lena's AEIC 23/12/2013 at paras 17-20.

[note: 24]Lena's AEIC 23/12/2013 at para 23.

[note: 25]Defence and Counterclaim at para 8.

[note: 26]Defence and Counterclaim at para 8 and Lena's AEIC 23/12/2013 at para 23.

[note: 27]Defence and Counterclaim at para 9.

[note: 28]Defence and Counterclaim at para 9.

[note: 29]Defence and Counterclaim at para 11 and Lena's AEIC 23/12/2013 at paras 30-37.

[note: 30]Defence and Counterclaim at para 13.

[note: 31]Lena's AEIC 23/12/2013 at para 53.

[note: 32]Defence and Counterclaim at para 17.

[note: 33]Lena's AEIC 23/12/2013 at paras 60-61.

[note: 34]Defence and Counterclaim at para 19.

[note: 35]Lena's AEIC 23/12/2013 at paras 46-47.

[note: 36]Una's AEIC 23/12/2013 at para 237 and Defence and Counterclaim at para 19.

[note: 37]Defence and Counterclaim at para 19.

[note: 38]Lena's AEIC 23/12/2013 at paras 73-75.

[note: 39]Lena's AEIC 23/12/2013 at para 80.

[note: 40]Una's AEIC 23/12/2013 at para 32.

[note: 41]Una's AEIC 23/12/2013 at para 180.

[note: 42]Una's AEIC 23/12/2013 from paras 104–110.

[note: 43]Una's AEIC 23/12/2013 at para 46.

[note: 44]Plaintiffs' closing submissions at paras 14 and 16.

[note: 45]Agreed Bundle volume 1 pages 2–5.

[note: 46]Una's AEIC 23/12/2013 LGB-7.

[note: 47]Una's AEIC 23/12/2013 at paras 162–167.

[note: 48]Una's AEIC 23/12/2013 at paras 169 and 175.

[note: 49]Una's AEIC 23/12/2013 at para 172.

[note: 50]Una's AEIC 23/12/2013 at para 174.

[note: 51]Una's AEIC 23/12/2013 at para 176.

[note: 52]Una's AEIC 23/12/2013 at para 180.

[note: 53]Una's AEIC 23/12/2013 at para 186.

[note: 54]Una's AEIC 23/12/2013 at para 191.

[note: 55]Una's AEIC 23/12/2013 at paras 207–208.

[note: 56]Una's AEIC 23/12/2013 at para 213.

[note: 57]Una's AEIC 23/12/2013 at para 211.

[note: 58]Una's AEIC 23/12/2013 at paras 223–224.

[note: 59]Una's AEIC 23/12/2013 at paras 227–240.

[note: 60]Una's AEIC 23/12/2013 at para 242.

[note: 61]Una's AEIC 23/12/2013 at para 245.

[note: 62]Una's AEIC 23/12/2013 at paras 245–250.

[note: 63]DB pages 51–85.

[note: 64]NE Day 1 page 39, lines 26–31.

[note: 65]DB pages 19–42 (originals and translated copies).

[note: 66]NE Day 9 page 41, lines 11–15.

[note: 67]Una's AEIC 23/12/2013 at para 254.

[note: 68]NE Day 4 page 23, lines 20–30.

[note: 69]PB page 1.

[note: 70]Lena's claimed profits were set out in Exhibit P3.

[note: 71]Una's AEIC 23/12/2013 at para 148.

[note: 72]Una's AEIC 23/12/2013 at para 150.

[note: 73]Statement of claim (Amendment No 2) at para 9.

[note: 74]Una's AEIC 23/12/2013 at para 151.

[note: 75]Una's AEIC 23/12/2013 at para 151, LGB-27.

[note: 76]Una's AEIC 23/12/2013 at paras 154–156.

[note: 77]Lena's AEIC 23/12/2013 at paras 86–87.

[note: 78]Lena's AEIC 23/12/2013 at para 93.

[note: 79]NE Day 2 page 52, lines 14–16 and page 53 lines 25–28.

[note: 80]AB pages 301–302.

[note: 81]Una's AEIC 23/12/2013 at paras 116–117.

[note: 82]Una's AEIC 23/12/2013 at paras 110 and 115.

[note: 83]Una's AEIC 23/12/2013 at paras 118–120.

[note: 84]Statement of claim (Amendment No 2) at para 18 and Una's AEIC 23/12/2013 at para 122.

[note: 85]Una's AEIC 23/12/2013 at para 125.

[note: 86]Una's AEIC 23/12/2013 at paras 130–132.

[note: 87]Una's AEIC 23/12/2013 at paras 136–144.

[note: 88]Una's AEIC 23/12/2013 at para 146.

[note: 89]Statement of claim (Amendment No 2) at para 19.

[note: 90]Statement of claim (Amendment No 2) at para 14.

[note: 91]Statement of claim (Amendment No 2) at prayer 7.

[note: 92]Lena's AEIC 23/12/2013 at para 98.

[note: 93]Lena's AEIC 23/12/2013 at para 99.

[note: 94]Lena's AEIC 23/12/2013 at para 100.

[note: 95]Lena's AEIC 23/12/2013 at para 101 and Defence and Counterclaim at para 27.

[note: 96]AB pages 343–346, 352 and 359.

[note: 97]Una's AEIC 23/12/2013 at para 120.

[note: 98]NE Day 2, page 66 lines 21–24, page 67 lines 18–21, page 73 lines 17–20.

[note: 99]Notes of Argument, 31 October 2014 lines 12–14.

[note: 100]Una's AEIC 23/12/2013 at para 72 and Statement of claim (Amendment No 2) at para 20.

[note: 101]Una's AEIC 23/12/2013 at paras 73–75.

[note: 102]Una's AEIC 23/12/2013 at paras 79–80.

[note: 103]Una's AEIC 23/12/2013 at paras 81–82.

[note: 104]Una's AEIC 23/12/2013 at paras 83–90.

[note: 105]Una's AEIC 23/12/2013 at para 90 and Statement of claim (Amendment No 2) at para 22.

[note: 106]Plaintiffs' opening statement 04/02/2014 at para 41.

[note: 107]Plaintiffs' closing submissions 18/09/2014 at para 182.

[note: 108]Una's AEIC 23/12/2013 at paras 87–88.

[note: 109]Lena's AEIC 23/12/2013 at paras 106–107.

[note: 110]Defence and Counterclaim at para 29.

[note: 111]See Exhibit P3.

[note: 112]Plaintiffs' Bundle of Documents, volume 2.

[note: 113]Una's AEIC 23/12/2013 at paras 96–97 and Ah Choong's AEIC 23/12/2013 at para 69.

[note: 114]Una's AEIC 23/12/2013 at para 98, Ah Choong's AEIC 23/12/2013 at para 70 and Statement of claim (Amendment No 2) at para 21(i).

[note: 115]Una's AEIC 23/12/2013 at para 99 and Ah Choong's AEIC 23/12/2013 at para 71.

[note: 116]Una's AEIC 23/12/2013 at para 100 and Ah Choong's AEIC 23/12/2013 at para 73.

[note: 117]Una's AEIC 23/12/2013 at para 102 and Ah Choong's AEIC 23/12/2013 at para 75.

[note: 118]Lena's AEIC 23/12/2013 at para 82.

[note: 119]Lena's AEIC 23/12/2013 at para 83.

[note: 120]See AB pages 529 and 616.

[note: 121]Lena's AEIC 23/12/2013 at para 84.

[note: 122]Lena's AEIC 23/12/2013 at para 117.

[note: 123]Defence and Counterclaim at para 37.

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