

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
VIRGIN ISLANDS
COMMERCIAL DIVISION
CLAIM NO. BVIHC (COM) 88 OF 2012
IN THE MATTER OF THE PECKSON LIMITED
BETWEEN:-**

NG, MAN SUN (also known as Ng Wei)

Claimant/Defendant to counterclaim

-v-

(1) PECKSON LIMITED (a BVI company)

First Defendant

(2) CHEN, MEI HUAN

Second Defendant/Counterclaimant

Appearances: Mr Andrew Hochhauser QC and Mr Ian Mann for the Claimant
Mr John McDonnell QC and Mr Raymond Davern for the Second Defendant

JUDGMENT

[2013: 22-25, 28, 29 October; 14 November]

(Shares – beneficial ownership – whether transfer gratuitous – whether resulting trust in favour of transferor – burden of proof considered)

- [1] **Bannister J [Ag]:** In November 1996 Ng Man Sun, the Claimant in these proceedings ('Mr Ng'), acquired the entire issued share capital of the first Defendant company, Peckson Limited ('Peckson'), comprising 50,000 shares. Mr Ng acquired these shares as beneficial owner. Shortly thereafter, he sold 10,000 of the Peckson shares to Dr Stanley Ho, who at that time was *de facto* regulator of all casino business carried on in Macau, for HKD100 million. The purpose of the sale to Dr Ho was two-fold: (1) to produce capital for Peckson's anticipated acquisition of a Macau registered company called Empresa Hoteleira de Macau Limitada ('Empresa') and (2) to have Dr Ho on side, as it were, for the proposed opening of a casino at the New Century Hotel, which was Empresa's sole asset ('the Hotel').

- [2] The purchase price for Empresa was some HKD900 million. Of that, an initial deposit of HKD100 million was borrowed by Peckson from Liu Chong Hing Bank. Unusually, that loan was guaranteed by Mr Ng's solicitors, Lu Lai & Li. The loan was further guaranteed by Mr Ng and an associate of his and was secured by a mortgage of the Peckson shares which described Mr Ng as their beneficial owner. For reasons which are not directly relevant, repayment of that loan was ultimately extended to June 2002. The funds to pay a further deposit of HKD100 million, on 27 November 1996, were raised from the sale of shares to Dr Ho. The balance of the purchase price was raised by way of a syndicated loan of some HKD800 million from a number of banks, guaranteed by Mr Ng and secured against his earnings from STDM,¹ Dr Ho's casino management company.
- [3] On 4 October 2011 Mr Ng transferred his 40,000 Peckson shares to the second Defendant, Chen Mei Huan ('Madame Chen'). Mr Ng and Madame Chen had formed a relationship some time around the beginning of 1996 and moved into the Hotel together on its purchase. On 22 November 2011 a notary purports to have witnessed Mr Ng's signature² to a declaration in which he stated that the transferred shares were his and that as a result of the transfer to Madame Chen he retained no rights in them. On the face of it, therefore, he had divested himself of legal and beneficial ownership in the shares. Indeed, Mr Ng does not deny in his amended statement of claim that that was so. What he pleads³ is that Madame Chen paid no consideration for the transfer as it was not intended that she should keep the shares permanently. In his witness statement⁴ the matter is put differently: Mr Ng says that Madame Chen did not pay any consideration because it was not intended that she should keep the shares beneficially, it being understood between them that it was a temporary transfer of the bare legal title, not the beneficial interest.
- [4] Mr Ng pleads and explains in his witness statement that the reason for the transfer to Madame Chen was that he was planning to bid for government approval to build a new hotel and casino in an area of Macau called the Cotai Strip. Madame Chen had suggested that she apply for the relevant approvals personally, on the grounds that she had good contacts in Macau and (which there was credible evidence to support) Beijing. She had told him that in order to make a convincing application, she would have to demonstrate that she had significant assets in her own name. It was therefore agreed, so Mr Ng says, that the Peckson shares would be transferred to her, but that after six months she would retransfer them to Mr Ng, whatever the outcome of the proposed application.

¹ Sociedade de Turismo e Diversões de Macau SARL

² Mr Ng's unchallenged evidence was that he is sure that no notary was present when he signed the declaration

³ ASoC para 16

⁴ paragraph 161, on which Mr Ng was not cross examined

- [5] On 18 January 2012 Madame Chen made a will in favour of Mr Ng whose sole subject matter was the Peckson shares. Shortly thereafter, Mr Ng and Madame Chen split up for good. She retains the shares and is registered in Peckson's register of members as their holder.
- [6] The issue for decision, therefore, is whether Madame Chen must return the shares to Mr Ng, either because, as the amended statement of claim suggests, she is under some sort of enforceable obligation to retransfer them⁵ or, as Mr Ng's witness statement puts it, because she holds the legal title only.
- [7] Before I resolve that issue, however, I must deal with the background to these events.

Madame Chen the beneficial owner of the shares from the outset?

- [8] Madame Chen insisted that by the time she met Mr Ng she was a lady of immense wealth in her own right. She attributed these riches to her alleged ownership of five hotels in mainland China. Apart from her own assertion, which was not made until she made her responses to a request for information in July of this year, there is no evidence that she owned any hotels in mainland China. There was evidence that she held managerial positions in such establishments, and no doubt drew an appropriate managerial salary, but no evidence at all of ownership. Madame Chen went so far as to assert that one of these hotels incorporated a casino, operating at a time when gaming was illegal in the People's Republic. She said that it was a Chinese Government experiment, restricted in the first instance to foreigners, which had to be shut down when local people abused it. Madame Chen even persuaded a young lady acquaintance to go into the witness box and say that at the age of somewhere between eight and ten years she and a party of school friends had been taken by Madame Chen to the hotel and had sneaked in to the casino, where they had been permitted to roam and observe gambling being carried on. The evidence was risible. I cannot accept that an owner of valuable hotel properties in mainland China could not, even after a considerable lapse of time, provide solid corroborative evidence of proprietorship (whether by way of documents of title, financial statements, or otherwise) and, being legally represented, would not have been advised of the need to do so. Apart from that, I have to say that I found Madame Chen an unreliable witness. Argumentative and evasive, she failed to inspire any confidence that it would be wise to rely upon anything that she said unless it was against her interests or corroborated. I find that she owned no hotels in mainland China and never derived any income (as she claimed to have done) by way of the profits of any casino there.
- [9] Madame Chen insisted that she had advanced HKD100 million to Mr Ng in early November 1996 to fund the initial deposit for the hotel. I find, for the reasons given in the

⁵ a number of other contentions raised in the ASoC why the transfer was ineffective were not pursued at trial

preceding paragraph, that Madame Chen did not have HKD100 million to advance for this purpose in 1996. Her evidence about this imaginary advance was hopelessly confused. It was originally put forward as the source of the funds from which the initial deposit had been paid. When it became obvious that that money had in fact been borrowed from a bank, Madame Chen's case was adjusted to fit by alleging that she had indeed advanced the money for the purpose of funding the initial deposit but had later found that Mr Ng had spent the money on some other unspecified purpose.

- [10] Madame Chen even produced a receipt signed by Mr Ng to support the supposed advance. The receipt is dated 7 November 1996 and was presented as having been signed on that date in Madame Chen's second witness statement sworn in these proceedings and in her original list of documents. Somehow or other, it must have been drawn to Madame Chen's notice subsequently that the supposed signature was in a style not adopted by Mr Ng until around 2001 or 2002. The story was then further tailored to suggest that Madame Chen had become so alarmed by borrowings by Peckson in early 2001 (only part of which, she said, had been disclosed to her) that she wanted a receipt for the alleged advance of UKD100 million so that she could salvage something if Mr Ng were to become bankrupt in consequence. So she went into a tea room in the Hotel's casino where Mr Ng was having lunch, took a sheet of paper from her handbag, used a pen which Mr Ng picked up from a baccarat table to write the text of the receipt and handed it to Mr Ng, which he signed.
- [11] The provenance of the receipt was more fanciful even than this story. It is said by Madame Chen and repeated in the witness statement of a witness⁶ who in the event was not called, that when Mr Ng commenced these proceedings she had set her staff on a hunt to find the document, but notwithstanding three separate searches, they had failed to do so, causing Madame Chen to yell at them. She then had all the documents in the Hotel's offices brought to a separate room where she searched them for days. Finally, she found what she was looking for in a red Lai See⁷ envelope. On hearing the good news, the staff heaved a collective sigh of relief.
- [12] For some unexplained reason, it was thought worth subjecting this document to forensic examination and the Court had the pleasure (although not the need) of hearing the views of two internationally renowned handwriting experts on its genuineness⁸ – Mr Robert Radley for Mr Ng and Mr SC Leung for Madame Chen. It was Mr Radley's considered opinion that the signature on the receipt was a forgery, while Mr Leung considered it genuine. Given the fact that I consider that the question whether the signature on the receipt was forged to be of peripheral importance in the light of the other evidence to

⁶ Lu Mei Fang

⁷ lucky money

⁸ more accurately, on the genuineness of Mr Ng's supposed signature to it

which I have already referred, I can perhaps be forgiven for taking this aspect of the matter shortly. In doing so, I mean no discourtesy to the two distinguished expert witnesses, who took so much trouble to educate and enlighten the Court.

- [13] The experts agreed on one point, that while both the text of the receipt and the signature are in blue, the ink in which they are written came from different pens. That alone means that, like so much else which Madame Chen has said about the document, the circumstances of its execution which she describes must be a fabrication.
- [14] Although there had been some initial dispute whether an expert who cannot read and write Chinese is in as good a position as a Chinese speaker/writer to assess the genuineness of a signature written in Chinese characters, in the end it was common ground that with respect to a signature (as opposed to a script) Mr Radley was in as good a position as Mr Leung to offer an opinion.
- [15] Mr Radley examined the signature against a group of (eventually) some one hundred comparators. He regarded the size of such a sample as generous by ordinary standards and Mr Leung agreed with that. Mr Radley's view was that the signature on the receipt contained over a dozen differences as compared with the set of sample signatures. As I understood it, by 'difference' Mr Radley was referring to features of the questioned signature which the person who had written the signatures comprising the sample was unlikely to have produced, because they were fundamentally inconsistent with his writing style and method as established from the samples - as opposed to being examples of shapes that could be found only rarely in the samples or anomalous shapes produced under the influence of extraneous events or temporary physical indisposition. Four of these differences⁹ were relied upon in particular by Mr Radley in giving his opinion.
- [16] In addition to these differences, Mr Radley considered that certain lines in the questioned signature were of poor quality – evidencing hesitation and an inability to reproduce the *élan*¹⁰ with which the maker ordinarily generated his signature. Mr Radley's opinion was that the combination of the differences which I have mentioned above together with the poor line quality and overall 'look'¹¹ of the thing led him to the conclusion that the signature on the receipt had not been made by Mr Ng.
- [17] Mr Leung's report and oral evidence were more contemplative than that of Mr Radley. Although he did not accept that his approach had been to concentrate on similarities rather than to identify and consider differences, I think that the criticism was fair. His attempts to identify Mr Radley's four principal differences with features in the samples

⁹ referred to in Mr Radley's explanatory diagram as points 14, 15, 17 and 21

¹⁰ not a word used by Mr Radley but which I believe summarises his point

¹¹ again, this was not Mr Radley's word, but I think it summarises what Mr Radley was driving at when he spoke of the relationship to one another of the characters in the questioned signature as being inconsistent with the relationship found in the sample signatures

were unconvincing and he failed to persuade me that Mr Radley's criticism of the line quality in the questioned signature was otherwise than fully justified. In re-examination, he referred to the fact that the ball point pen used to make the questioned signature was defective, in that it produced irregular ink flow. Mr Leung said that no forger would use a defective pen to forge a signature. He did not attempt to justify this observation by reference to experimental fact. In essence, his evidence amounted to an opinion that the questioned signature bore sufficient similarity to the samples to enable him to reach the conclusion that it was genuine, without really grappling with the differences and absence of strong line quality highlighted by Mr Radley so as to defeat these objections to the genuineness of the signature.

[18] For these reasons, I prefer the opinion of Mr Radley and find that the signature on the supposed receipt was not made by Mr Ng. Not, in my judgment, that it matters very much. I would not have accepted that Madame Chen had put up HKD100 million in November 1996 as part of the funding for the acquisition of Empresa in any event, forgery or no forgery. She clearly had not the means to do so.¹² Further, there is no suggestion that, after she had allegedly discovered that this supposed fund had not been used for the purpose for which it is said to have been intended, she ever pressed Mr Ng for the return of the money which, on her account, he had misappropriated. Even after she obtained the supposed receipt, she did nothing with it, beyond inserting it into a Lai See envelope which (according to her account) she then proceeded to mislay.

[19] Even if Madame Chen's account (as refined) had been correct in every detail, it would not have assisted her claim to beneficial ownership of the Peckson shares on issue. The HKD100 million alleged to have been transferred to Mr Ng in November 1996 was not applied (even on Madame Chen's account) in the acquisition of Peckson shares or of Empresa, so as to give rise to some equitable proprietary interest in either of those assets. It was (according to Madame Cheng) spent by Mr Ng elsewhere. Even if it had been so applied, no reason is advanced why it should have given Madame Chen one hundred per cent beneficial ownership of an enterprise which had been purchased for not much short of HKD1 billion, or that would fit in with Dr Ho's purchase of twenty per cent of Peckson. The money to purchase the Hotel (with the exception of the HKD 100 million put up by Dr Ho) was entirely borrowed from banks. There was never any contemporaneous suggestion that anyone other than Mr Ng and Dr Ho held Peckson shares as beneficial owner, or that Peckson was not the sole beneficial owner of the Empresa shares. Indeed, the documentation prepared for the purposes of the 4 October 2011 transfer and upon which Madame Chen relies asserted the very opposite. It was Mr Ng who guaranteed the borrowings with which the acquisitions of the shares and the

¹² earlier ventures, engaged in while Madame Chen had been resident in the United States, were a jewellery shop and a daily goods store. There was no evidence that either enterprise had generated anything that could correctly be described as wealth

Hotel were funded. Madame Chen contributed nothing and made herself liable for nothing. The notion that she had some original beneficial interest in the shares of Peckson is entirely fanciful and, I find, false.

- [20] I think that with that I can now turn to what is the real issue in the case, whether Madame Chen is entitled to retain the shares that were transferred to her on 4 October 2011.

The October 2011 transfer

- [21] Bought and sold notes dated 4 October 2011 evidence a sale by Mr Ng of his 40,000 Peckson shares to Madame Chen at a price of US\$40,000. A copy resolution of the directors of Peckson dated 4 October 2011, signed by each of Mr Ng and Madame Chen, approved the transfer of 40,000 Peckson shares of USD1.00 each from Mr Ng to Madame Chen.
- [22] By an instrument of transfer dated 4 October 2011 Mr Ng transferred to Madame Chen 40,000 shares in Peckson in consideration of the sum of US\$40,000 paid to him by Madame Chen. There is in evidence a certificate, signed by Mr Ng, evidencing Madame Chen's title to the 40,000 shares.
- [23] The minutes of a meeting of the Directors of Peckson, held on 21 November 2011 and signed by Mr Ng, record (among other matters) that Mr Ng transferred the 40,000 shares then held by him to Madame Chen; that Mr Ng had never issued or signed any trust documents in respect of the shares or managed any of them on behalf of any other person; that the shares which Mr Ng had transferred to Madame Chen on 4 October 2011 belonged to him personally; that after the transfer, all the 40,000 transferred shares were vested under Madame Chen's name and Mr Ng retained no right or interest. The board then resolved and reconfirmed that Madame Chen had become the holder of the 40,000 shares and that Mr Ng had been authorized to represent Peckson in signing share certificate No 6 in favour of Madame Chen.
- [24] On 22 November 2011 and as I have mentioned earlier, Mr Ng signed a notarized¹³ declaration to the same effect. It appears that these minutes and Mr Ng's declaration may have been made in connection with the reconstitution of the books of Peckson, although Mr Ng's evidence was that he signed the declaration of 22 November 2011 because Madame Chen told him that the transfer process could not be completed unless he did so. Those may be two different ways of describing the same thing, since Madame Chen could not become the legal owner of the 40,000 shares until she was entered as such in Peckson's register of members.
- [25] Mr Ng was not cross examined upon any of the documents to which I have referred in the preceding paragraphs. Although in his reply Mr Ng 'denies' these documents and

¹³ Mr Ng's evidence that his signature was not notarized was not challenged

says that he does not recall signing them, he also admits that he executed certain documents at around the relevant time, although without having taken legal advice and in reliance upon Madame Chen's alleged advice that he needed to do so for the purpose of obtaining approvals for the proposed Cotai Strip Development.¹⁴ The existence and validity of the documents or the fact that they bear Mr Ng's signature was never challenged, however. If it had been desired to do so, the evidential burden would have been on Mr Ng. So that in my judgment the Court is entitled (and bound) to take them at face value. The fact that Mr Ng was not cross examined upon them is immaterial.

- [26] On 18 January 2012 Madame Chen, as I have already mentioned, executed a will bequeathing the Peckson shares to Mr Ng. The will contained no other material provision.
- [27] Mr Ng's evidence is that he transferred the shares to Madame Chen because at the time he was interested in developing land on the Cotai Strip in Macau by constructing a hotel and casino on it. In order to do that, he needed the permission of the Macau government. By March 2011 planning was well under way and a feasibility report, business plan and catalogue had been produced. Madame Chen persuaded Mr Ng, he says, that she, together with the Vice President of a well known Macau casino (also, but coincidentally, called Chen), with whom she was acquainted and who she told Mr Ng had good contacts in Beijing, would be well placed to handle the application. Mr Ng says that he agreed to that proposal. Madame Chen told him that she travelled to Beijing, together with Mr Chen in mid 2011, for the purpose, although he now believes that no such visit was ever made.
- [28] In July of 2011 an article appeared in a Macau newspaper alleging (which Mr Ng denies) that he had been involved in a fraud upon the PRC Social Security Fund, the truth of which is denied by Mr Ng. He says that Madame Chen told him that this negative publicity would make his application for planning permission futile. She suggested, Mr Ng says, that she should make it in her name in place of his. Before she could do that, however, so Mr Ng says that she told him, she would need to be able to evidence that she was someone with considerable assets to her name – specifically, a majority interest in a large hotel. If Madame Chen ever said anything of the sort – which she denies – it would be inconsistent with her claim to ownership of the five hotels on the Chinese mainland which she told me that she owned. Mr Ng says that she suggested to him that he transfer the Peckson shares to her to evidence her suitability as an applicant for permission to carry out a hotel and casino development in Macau.
- [29] Mr Ng says that he eventually agreed to a 'temporary' transfer of his Peckson shares to Madame Chen as nominee for him for the sole purpose of obtaining the necessary

¹⁴rReply, paragraph 9

approvals for the Cotai Strip project. He says that it was also orally agreed between them that after six months Madame Chen would retransfer the shares, whether or not the applications had by then been successful.

[30] Madame Chen said, in short, that she had never discussed the Cotai Strip project with Mr Ng. She says that the Peckson shares were transferred to her because they had been hers beneficially from the outset. She denies ever having discussed retransferring them to Mr Ng.

[31] I cannot accept Mr Ng's explanation for the transfer of 4 October 2011. The reason stems from the fact that the new hotel and casino project was a proposed development on the Cotai Strip by a company called Chong Gold International Limited ('Chong Gold'), of which Mr Ng was CEO and President and in which he was the majority shareholder. A feasibility study had been produced and was in evidence before the Court. Its Executive Summary includes, on its first page, the statement that:

'The success of the Company is highly dependent upon Mr Ng, the Chief Executive Officer and President of the Company.'

Later, when discussing the risks associated with the project, the feasibility study has this to say:

'Loss of Mr Ng's service caused by any reason could have a material adverse effect on the business, reputation, and prospects of the New Casino project because it is difficult for the Company to seek an alternative person to adequately replace Mr Ng's position.'

[32] These passages were not put to Mr Ng in cross examination¹⁵ or relied upon specifically at trial by Mr John McDonnell QC, who appeared, together with Mr Raymond Davern, for Madame Chen, but they illustrate the submission which Mr McDonnell made on this topic. He said that it was irrational to suppose that a transfer of shares in Peckson to Madame Chen could assist her to promote, in Beijing, a project that was on its face a project of Mr Ng's, or could conceivably result in a commercial advantage to Mr Ng or Chong Gold in advancing the Cotai Strip development.

[33] I accept that submission. I do not believe that Mr Ng would have executed the documents referred to in paragraphs [21] to [24] above transferring the whole of his Peckson shareholding to Madame Chen outright on the basis of a proposal which he, as a highly experienced businessman, must have known could bring him no advantage, because it was self-evidently futile. Even if one could get over that evidential improbability, I cannot

¹⁵ the feasibility study was put to Madame Chen by Mr Andrew Hochhauser QC who appeared, together with Mr Ian Mann, for Mr Ng

believe that he would have done so without ensuring that Madame Chen gave him a blank transfer which he could use to retransfer the shares at the end of the six month period. For these short reasons I find that there was no agreement of the nature alleged by Mr Ng pursuant to which the shares were transferred to Madame Chen. It follows that I find that there was no agreement between Mr Ng and Madame Chen that Madame Chen should retransfer the shares, whether after an interval of six months or at all. It is therefore not necessary for me to consider whether any such agreement for retransfer would have been enforceable in the apparent absence of any consideration supporting it.

- [34] Mr Andrew Hochhauser QC, who appeared, together with Mr Ian Mann, for Mr Ng, argued that a similar arrangement had been reached previously between Mr Ng and Madame Chen in relation to a company called Eastern Technology Group Company Limited ('Eastern Technology'). That company had been intended to produce educational software and Mr Ng had issued 50% of its shares to himself, 24% to Madame Chen and the balance to employees. The software project failed but Eastern Technology had a lease on which Mr Ng was liable. He therefore asked the Madame Chen and the others to transfer their shares to him. After prompting, Madame Chen eventually did so.
- [35] Even if I had not decided that the agreement put forward by Mr Ng was inherently incredible, I would have derived no assistance from the Eastern Technology transaction. Contrary to the position here, the shares in Eastern Technology were issued to Madame Chen as beneficial owner. She appears to have transferred them to Mr Ng because he had asked her to and, if she is to be believed, because she had been advised to do so to keep them out of the hands of a creditor. There is no parallel with the October 2011 transfer, where shares in which Madame Chen was not previously beneficially interested were transferred to her pursuant to a transaction evidenced by sold notes and for which there is no acceptable available explanation other than a wish to confer beneficial ownership of the shares on Madame Chen.
- [36] Mr Hochhauser made two points which are independent of the truth or otherwise of Mr Ng's explanation for transferring the shares to Madame Chen and of the alleged oral agreement for retransfer.
- [37] Mr Hochhauser's first point is that the transfer of 4 October 2011 was gratuitous; that there arises from that fact a presumption of resulting trust; and that the burden is on Madame Chen to rebut that presumption – a burden which she has failed to discharge.
- [38] This submission, while forcefully put, seems to me to proceed upon a false premise. The transfer was not gratuitous. It was for a consideration, evidenced by the bought and sold notes, of USD40,000. The fact that the consideration has not been demanded or paid does not mean that the transfer was gratuitous – unless, which has been neither pleaded nor argued, the documents are shams. All that is pleaded is that Madame Chen did not

pay any consideration because it was not intended that she should keep the shares. That is not sufficient to negative the contractual effect of the documents which the parties signed.

- [39] In my judgment the legal and evidential burden is upon Mr Ng to show reason why the documents which he executed should not have carried into effect the agreement which they evidence on their face – a sale and purchase by Mr Ng to Madame Chen for US\$40,000, completed by Madame Chen's entry in Peckson's register of members. Mr Ng fails to discharge that burden. His stated reason (to clothe Madame Chen with an aura of spurious wealth for the purpose of obtaining benefits from the Chinese authorities in favour of a company with which neither she nor the transferred shares had any connection) will not stand scrutiny. Mr Ng cannot show that the transfer was gratuitous, because his own documents contradict him. And even if he could, his own declarations against interest, despite the fact that he says he made them without the benefit of legal advice, bind him nevertheless and rebut any presumption of resulting trust. One might add that Madame Chen's execution of her will of January 2012 would have been pointless if she had held the shares on resulting trust for Mr Ng. The only point of making the will would be to ensure that property held beneficially by Madame Chen should pass to Mr Ng on her earlier death.
- [40] Mr Hochhauser further submits that Madame Chen's defence is based upon the contention that the Peckson shares were hers from the moment they were issued and were transferred to her in October 2011 pursuant to an oral agreement made between Madame Chen and Mr Ng in 1996 that the shares would be transferred to Madame Chen upon request made by her at any time. Mr Hochhauser says, correctly, that Madame Chen has failed to establish any of that. So, he submits, Mr Ng should succeed.
- [41] That seems to me to be a *non sequitur*. In order to succeed in these proceedings Mr Ng needed to prove that he is entitled to call for a retransfer of the shares. Madame Chen needed to prove nothing. Mr Ng's case is that Madame Chen promised, in October 2011, to retransfer the shares to him after 4 April 2012. I have found that no such promise was ever made, because I have rejected the evidence of Mr Ng as to the agreement of which he says that it formed a part. The suggestion that Madame Chen holds the shares on resulting trust for him also fails on the facts. Mr Ng therefore fails to establish a cause of action entitling him to succeed on his claim. The fact that Madame Chen's defence and counterclaim are predicated upon a false claim does not provide Mr Ng with a cause of action. So the shares stay where Mr Ng put them – with Madame Chen.
- [42] I have asked myself whether the fact that the foundation of Madame Chen's defence is false means that her counterclaim should be dismissed, but I have come to the conclusion that that would not be right. Madame Chen pleads and relies upon the transfer and surrounding documents. I have no idea why Mr Ng sold the shares to Madame Chen, but he has failed to establish a case why she should be ordered to retransfer them. In my

judgment, that means that Madame Chen's counterclaim must succeed – despite the fact that she chose to found it on a false factual premise to which she had no need to resort. That, of course, is quite independent of the question where the case that she was unwise enough to ask the Court to accept leaves her on the question of costs.

Conclusion

- [43] This claim accordingly fails. The counterclaim succeeds. I will deal with costs and any other consequential matters at a hearing to be conducted in Chambers on a date to be fixed.

A handwritten signature in black ink, appearing to read 'L. H. S. J.', is written over the printed name.

Commercial Court Judge

14 November 2013