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HCA 3282/2002

**IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
ACTION NO. 3282 OF 2002**

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BETWEEN

TANG CHUI YUK ANGELA and TANG SIU WING, Plaintiff  
the executrix and executor of the estate of  
TANG WING CHEUNG, deceased

and

HUNG JIN MUI Defendant

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Before: Deputy High Court Judge Muttrie in Court

Dates of Trial: 13-16 March and 5-7 June 2006

Date of Judgment: 7 July 2006

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**J U D G M E N T**

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*The Action*

1. Tang Wing Cheung was a famous Cantonese opera singer and film star. He died, aged 80, in 1997. This case concerns an unedifying dispute, itself with almost operatic overtones, between Mr Tang's children and his widow over shares in a company he once controlled. The children

seek the return of the shares, which they say were held on trust for Mr Tang during his life, and now belong to his estate; the widow says the shares are hers absolutely.

2. The plaintiffs in this case, Tang Chui Yuk, Angela (“Ms Tang”), and Tang Siu Wing are two of the four children of Mr Tang and Madam Hung Jin Mui, the defendant. They are the executors of Mr Tang’s last will, dated 26 September 1996. The other two children, Tang Siu Chuen Johnny and Tang Bic Yuk Sannie do not figure in these proceedings, and indeed Tang Siu Wing has not given evidence.

#### *The Shares*

3. In 1987, Mr Tang had an interest in the Kam Lai Kung restaurant in Shaukiwan. The restaurant’s landlord distrained for rent, and Mr Tang decided to buy the premises. This led to the incorporation on 15 May 1987 of a company called Acegrowth Limited (“Acegrowth”) to buy and hold the restaurant premises (“the Property”) and lease them to the restaurant. Acegrowth was acquired by Mr Tang and a Mr Lee Yu Man, who each held one share and were the company’s directors. On 24 August 1987 the Property was assigned to Acegrowth at a price of \$20 million. \$10 million was put up by Mr Tang, and the balance was on mortgage, which was discharged on 31 January 1991, with funds obtained from the sale of a business in Macau which belonged to Mr Tang.

4. The Kam Lai Kung restaurant was originally operated by one Rapid Reach Ltd in which Mr Tang held shares along with others, but their partnership broke down. Mr Tang decided to operate the restaurant

himself under the name of Chor Lau Heung. In 1989 the Chor Lau Heung Restaurant Co. Ltd (“Chor Lau Heung”) was incorporated to take over the restaurant business, and it is convenient to deal with that company’s history here also.

5. In 1989, the shareholdings in Acegrowth changed. Acegrowth issued another 5,999,998 \$1 shares, pursuant to a resolution made in 1987 but not yet put into effect. On 10 July 1989, 225,000 shares were allotted to Madam Hung and 124,999 to Lee Yu Man, with Mr Tang holding the remaining 5,649,999. Then on 21 July 1989, the 125,000 shares then held by Mr Lee were allotted to Madam Hung who became the holder of 350,000 shares in total. On 7 August 1988, Lee Yu Man resigned as director and Madam Hung was appointed. The shareholdings remained the same until 21 June 1995, when a further 3,150,000 shares were transferred to Madam Hung, who then became the majority shareholder.

6. It is convenient also, at this point, to trace the history of Chor Lau Heung. Originally it issued two \$1 shares held by Mr Tang and one Tsang Kwok Wah. On 21 August 1989, the shares were increased to 500, of which Tsang Kwok Wah held 50 and Mr Tang 450. On 31 December 1993, the 50 shares were transferred to Ms Tang, and later, on 19 December 1994, they were transferred to Madam Hung.

7. As appears from the evidence of Ms Tang, the financial relationship of the two companies was as follows. Mr Tang had put up the money to buy the Property in the name of Acegrowth. Acegrowth leased the Property to the original company and later to Chor Lau Heung. A tax-

saving scheme was formed in 1994 by the companies' accountant, whereby Mr Tang assigned a loan of \$10 million due to him from Acegrowth to Chor Lau Heung. Interest of 12% per annum, i.e. \$1.2 million, was then payable by Acegrowth to Chor Lau Heung. The rent payable by Chor Lau Heung to Acegrowth, formerly \$200,000 per month was reduced to \$150,000, but this was set off against the interest.

### *The Issues*

8. The following is a list of issues agreed by Counsel :

A. Regarding 225,000 ordinary shares of Acegrowth Development Limited ("the Company") allotted to the Defendant on 10th July 1989 :

1. Whether the allotment was an *inter-vivos* gift by Mr Tang Wing Cheung or the Defendant has been and is still holding the said 225,000 shares on trust for the Deceased and his estate.

B. Regarding 125,000 ordinary shares of the Company transferred to the Defendant by Mr Lee Yu Man ("Mr Lee") on 21st July 1989 :

2. Whether Mr Lee held the said 125,000 shares on trust for the Deceased.

3. Whether the Defendant paid the sum of about HK\$125,000 to purchase the said 125,000 shares from Mr Lee.

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4. Whether the Defendant is the beneficial owner of the said 125,000 shares or that she has been and is still holding the same on trust for the Deceased and his estate.

C. Regarding the transfer of 3,150,000 ordinary shares of the Company to the Defendant by the Deceased on 21st June 1995 under the transfer documents :

5. Whether the said transfer documents were executed by the Deceased under mistake or as a result of the misrepresentation or (actual or presumed) undue influence of the Defendant. Whether the Deceased understood the effect of the said transfer documents.

6. Whether the said 3,150,000 shares was an *inter-vivos* gift by the Deceased to the Defendant or the Defendant has been and is still holding the said 3,150,000 shares on trust for the Deceased and his estate.

9. In addition the defendant pleaded defences of laches and limitation, but these were not pursued at trial, so they need be mentioned no further.

10. In brief, the plaintiffs' case on the first two assignments is that the shares were assigned to Madam Hung as nominee, in trust for her husband. The plaintiffs have no direct evidence on this but Ms Tang says that this was how her father arranged the shareholdings in the companies he owned. Madam Hung says that the first assignment was a gift and that she bought the second lot of shares from Lee Yu Man for \$125,000.

11. As to the third and major assignment, this is supported by an instrument of transfer and bought and sold notes signed by Mr Tang. The plaintiffs' case is that Madam Hung fraudulently misrepresented to her husband that the documents were the annual returns of Acegrowth. There are alternative pleadings of undue influence. Madam Hung's case is that the transfer was by way of absolute *inter vivos* gift to her, and the purported consideration of \$3,150,000 was for stamp duty purposes.

### *Background*

12. Before approaching the evidence on the specific issues, it is necessary to deal with the background. Some facts are not disputed or indisputable; others are not. Where there are disputes, I do not propose to make specific findings of fact because those disputes are not included in the agreed issues. Obviously, however, the agreed issues have to be looked at against the background of the disputed, as well as the undisputed facts, in particular since this case depends very largely on the credibility of the witnesses, in relation to the background disputes as well as the specific issues.

13. Mr Tang and Madam Hung met in the 1960s and began living together. They later married, but not until 1992. They had the four children mentioned above; Ms Tang herself was born in 1969.

14. Ms Tang presents herself, at any rate up to the time of her marriage in 1995, as having been a major assistant to Mr Tang in his business dealings, as well as taking part in running the Chor Lau Heung restaurant, of which she was a director. She even had a joint bank account

with her father, though according to her Madam Hung later insisted, after Ms Tang's marriage to a Mr Lee Yu Ming in 1995, that she be a joint signatory instead. (Lee Yu Ming has no relation to the Lee Yu Man mentioned above)

15. There appears to have been some change in the father/daughter relationship about the time of the marriage, of which Madam Hung says that Mr Tang did not approve, because Ms Tang ceased to be a director of Chor Lau Heung and various other companies at that time, but there seems to be no dispute that thereafter Ms Tang and the other children rallied round their father.

16. At some stage in the 1970s, Mr Tang acquired the Wing Cheung Mansion on Morrison Hill Road. He, or he and Madam Hung, owned various other properties through various companies, but by 1995, the Wing Cheung Mansion was the major asset. It is said to have been worth about \$300 million, though there is no supporting evidence on this point. Originally Mr Tang held a 90% interest and Madam Hung a 10% interest in this building, presumably by way of shares in a company; I have not seen the relevant documents, but the proportions are not in dispute. On about 25 September 1996, the date of the last will, Mr Tang's interest was transferred to one Citiwin International Ltd. A return of allotments dated 21 August 1996 (Exhibit P17) shows that the shares in this company were held by the four children in equal shares.

17. Originally the family all lived in a duplex apartment in the Wing Cheung Mansion. Ms Tang married and moved out in about 1994,

after which the parents remained in the duplex and the siblings occupied a different part or parts of the building, though it appears that Ms Tang later moved back in (she divorced) and the youngest sibling was living elsewhere by the end of 1996.

18. There were also offices in the building, for looking after the various business interests of the family including a Wing Cheung Records Company, controlled by Madam Hung. Her younger brother, Mr Hung Chuen Peter, worked in those offices, supervising the record company, the collection of rents from tenants of the Wing Cheung Mansion and other properties, and acting as a general factotum for Mr Tang and Madam Hung.

19. In 1994, Mr Tang made a will in which appointed Madam Hung as sole executrix and divided his estate into 10 equal shares, of which six were bequeathed to Madam Hung, two to Ms Tang, one to Tang Siu Wing and one to Tang Shui Chuen Johnny. On 26 September 1996, Mr Tang made his last will, in which he left his estate to the four children in equal shares, and cut out Madam Hung entirely. Clause 4 of the will reads :

“I HEREBY DECLARE that I am not making any provisions for my wife Hung Jin Mui ... as she is financially independent and has been amply provided for during my lift time. I FURTHER DECLARE that if she should contest the contents of this my Will, I hereby direct my Executors to pay her HK\$1.00 in full and final satisfaction of any claim that she may have against my estate.”

20. Ms Tang says that that she and Mr Tang discovered that Madam Hung had for some time been diverting money and property held in joint accounts or names between her husband and herself, into her own



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B name. According to Ms Tang, she and her father discovered that a bank  
C safe deposit box in the joint names of the couple, containing jewellery and  
D other valuables, had been emptied; and this discovery prompted inquiries  
E which led to the discovery of further diversions. Madam Hung denies  
emptying the safe deposit box.

F 21. The further diversions include the transfer of shares on  
G 21 June 1995, withdrawals from Chor Lau Heung, diversion of the  
H proceeds of sales of property, and overseas payments in Canadian and US  
I dollars from the couple's joint account to Madam Hung's individual  
account.

J 22. That some of these diversions, apart from the share transfer,  
K were made is disputed, but other diversions are not. Where they are not  
L disputed, Madam Hung says that they were done with Mr Tang's  
M knowledge and approval. I refer in particular to withdrawals totalling  
N about \$2.2 million from Chor Lau Heung's account between November  
O 1995 and October 1996, despite the fact that the company consistently  
made a loss (which Madam Hung tried to deny). She insisted that Mr  
Tang wanted her to have these sums as a share of the business.

P 23. There was also the sale of a property in Nicholson Tower,  
Q originally bought in the name of Citywide International Ltd, for Ms Tang,  
R with money mainly supplied by Mr Tang. The proceeds of the sale were  
S paid to Madam Hung's account. Again, she says that the property was  
T sold with Mr Tang's consent, and that he had told her to take the money by  
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way of reimbursement for properties she had earlier bought for the three children other than Ms Tang.

24. There were also two transfers overseas, of over \$1.2 million Canadian, and of over \$1.9 million U.S. dollars, in February and July 1996, from the couple's joint account to individual accounts in Madam Hung's name. Again, her evidence is that these transactions were done with Mr Tang's knowledge and consent.

25. Ms Tang has spoken to other diversions of funds or property, and I do not need to detail them, because where Madam Hung has to admit the fact that a diversion happened her evidence is that it was done with Mr Tang's knowledge and consent.

26. Madam Hung in evidence sought to present herself as a loving wife, right up to her husband's death, in contrast to the evidence of Ms Tang who says, in effect, that her parents' relationship went to pieces after they formally married in 1992. However, it is not in dispute that Madam Hung left the matrimonial home in October 1996, following a family meeting on about 16 October, and did not return to it. What happened at this meeting is in dispute and the subject of evidence, to which I will return later. Mr Tang was admitted to hospital in early January 1997, and remained there until he died. During that time, Madam Hung visited him once.

27. No sooner was the ink dry on Mr Tang's death certificate than the writs started to fly. Madam Hung on 28 April 1997 took out a probate

action (HCAP 4 of 1997) in which she sought to propound the 1994 will and have the later will declared null and void and of no testamentary effect.

28. Madam Hung on 2 December 1997 issued a winding up petition, HCCW 474 of 1997, to wind up Marvel Ace Co. Ltd, a property holding company of which Mr Tang had been, and she was still a director.

29. On 17 November 1997, the present plaintiffs applied by originating summons for an order that an EGM of Chor Lau Heung be convened for the appointment of the children as directors of that company, additional to Madam Hung. On 2 December 1997, however, Madam Hung thereafter issued an originating summons (HCMP 4158 of 1997) for passing a resolution to appoint herself and a proposed administrator *pendente lite* of the estate, as directors, and that they together should appoint a third director. On 15 December 1997 the court appointed receivers and managers of Chor Lau Heung with a view to preserving the status quo pending the resolution of the proceedings or until further order.

30. Madam Hung's probate action, in which she pleaded lack of testamentary capacity and in the alternative undue influence on the part of the children was set down for trial on 20 October 1998. However, it was dismissed by consent on 8 October 1998 on Madam Hung's undertaking not to contest the proving of the 1994 will. The petition relating to Marvel Ace was also withdrawn. The stay of the plaintiffs' application for appointment of directors of Chor Lau Heung was lifted and that matter was to proceed, but then on 19 January 1999 Madam Hung applied for the winding up of that company (HCCW 63 of 1999).

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31. This last matter was heard by Le Pichon J, as she then was, on 31 March 2000. After a 7-day trial, she dismissed the petition. She found, *inter alia*, that Madam Hung held her shares in Chor Lau Heung on trust for Mr Tang. Her judgment makes interesting reading in the context of this action and was re-visited in cross-examination of Madam Hung.

32. An action was also raised in 2002, whereby Acegrowth sued Chor Lau Heung for vacant possession of the Property and arrears of 23 months' rent between 1996 and 1998.

*Events in September and October 1996*

33. As indicated, Ms Tang discovered in about September, if not before, that Madam Hung had been making transfers or diversions of one sort or another, and she then made inquiries. In particular, she says that she was told by her uncle, Mr Hung, who had been present when the Acegrowth share transfer documents were signed, of what had happened.

34. Ms Tang says that on about 14 October 1996 she got a call to go to the office of Ho and Wong, solicitors, with her brother. When they arrived, Mr Tang told them that Madam Hung wanted to transfer the 90% interest in the Wing Cheung Mansion into her own name. He then asked Madam Hung whether, if he had made a decision, she would accept it, and she said that she would. He then told her that he would not make any change to the ownership of the shares in the Wing Cheung Mansion, which he had already put into the children's names. At this point, Madam Hung became very angry, threatened to divorce him, and left the office.

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35. Ms Tang also says that there had been an earlier occasion when Madam Hung had taken Mr Tang to the solicitors' office with a view to making this same transfer, but he had not signed the documents.

36. In evidence in chief, Madam Hung denied that she had been to the solicitor in September 1996 to get the 90% shareholding transferred to herself. In cross-examination, however, she appeared to admit that there had been an occasion when they had gone to the solicitors' office, concerning the transfer of the 90% shareholding to the children. She says he had then been angry because there had also been a mortgage to an Australian bank. Mr Tang had called the children to the office in order to scold them. She did not attempt to get the shareholding transferred to herself, but she did agree that she had been asked if she would abide by her husband's decision to transfer it to the children, and had said that she would. She denied threatening divorce, but she agreed that at about this time the press had got wind of a rumour of impending divorce.

37. Under cross-examination, Madam Hung was shown Exhibit P16, a letter from Ho and Wong to Mr Tang and herself, dealing with tenancy matters relating to the Wing Cheung Mansion. In the first paragraph the solicitors confirmed that they had on 24 September 1996 received instructions from Madam Hung herself that a plan to rebuild the Mansion had been abandoned but that :

“Instead, the title of the whole Wing Cheung Mansion will be transferred to Hung Jin Mui under her sole name and thereafter plan to renovate and decorate Wing Cheung Mansion.”

38. Under cross-examination, Madam Hung said that she had never given such instructions, and if she received the letter, she had never noticed this part of it. In effect she could produce no sensible explanation why the solicitors should have written in those terms.

*The Family Meeting*

39. It is not in dispute that there was family meeting on about 16 October 1996 at the Wing Cheung Mansion, at which some other friends were present, including a reporter, Mr Cheng Bing Wah. There is a dispute as to how Mr Cheng came to be there; he says that he was an old friend of Mr Tang's and often visited, and that Madam Hung had invited him to the apartment. Madam Hung says that she found him sitting outside the door, because the family dog barked at the door, and invited him in. In any event, Mr Cheng was present at the meeting.

40. Mr Cheng's evidence, and that of Ms Tang, is that the meeting was called to ask Madam Hung about the various diversions of money and property that she had made to herself. Madam Hung admitted that she had made them, and promised to return what she had taken. Ms Tang says that the transfer of 3,150,000 shares came into the discussion, and Madam Hung promised to return them also, but Mr Cheng does not specifically remember that. In any event, Mr Cheng managed to take a photograph of some of the family members, surreptitiously, as they sat around the coffee table in the apartment, and after the meeting, the whole family went downstairs to meet the press, and a photograph was taken of them all together, smiling and presenting themselves as a happy and united family. Mr Cheng next day published a report of the meeting, as well as the

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photographs, in the Apple Daily, for which he was working at the time. It appears from this report that Madam Hung had agreed to return assets which she had put into her own name, and that they would be put into a family company owned by all the family members; and that, although Madam Hung admitted that she had threatened divorce in a moment of impulse, she would absolutely not divorce Mr Tang.

41. Madam Hung's evidence is that on this occasion, Mr Tang called the children together, and scolded Ms Tang for having failed to follow his instructions, in that she had been asked to set up a company in the joint names of the parents and the four children, but had not done so. She herself was never asked to return any assets or to put them in the name of such a company. Mr Cheng's evidence and his newspaper article were all made up. From cross-examination it appears that Madam Hung was saying that Ms Tang was being scolded for having put the company (Citiwin) in the name of only herself and Tang Siu Wing; but Exhibit P17 shows that the shareholding in that company was in the names of the four children, and not two of them as at 21 August 1996. Madam Hung cannot and does not deny that she appeared in the "happy family" photograph after the meeting.

*The Share Transfer in June 1995*

42. I will deal with the issues relating to this transfer first, because it is the largest and most important part of the plaintiffs' claim, and that on which most evidence has been adduced.

43. It is not in dispute that the instrument of transfer and bought and sold notes dated 21 June 1995 were signed by Mr Tang and Madam Hung and that the instrument of transfer was signed by Mr Hung Chuen Peter, as witness. The documents were prepared by Messrs Edmund Cheung & Co., solicitors. Mr Hung went to the firm's offices, on Madam Hung's instructions, collected the papers, and took them to the couple's apartment at the Wing Cheung Mansion. After they were signed, he returned them to the solicitors' office.

44. Mr Hung's evidence is that he checked the documents when he collected them, and found that they were an instrument of transfer and bought and sold notes. At the apartment, in his presence, Madam Hung told Mr Tang that the documents were the annual reports of the company, and invited him to sign them, which he did. Mr Hung was then asked to sign as witness, and did so. He felt very surprised because what Madam Hung said about the documents was totally different from what their actual contents were. But Mr Tang did not do or say anything to indicate that he did not accept what he was told. Mr Hung told no one of this incident, until about September 1996, when his nephews complained that their mother had taken away their father's assets; and then he told the children.

45. Madam Hung's evidence is that in April or May 1996, Mr Tang took her to Edmund Cheung & Co.'s offices, to see Mr Yip Kin Man. He is a partner in that firm. Mr Tang instructed Mr Yip to prepare the transfer documents, saying that the transfer would be gift to his wife. Later, when the papers were ready, and Mr Hung brought them up, Mr Tang said, in Mr Hung's presence, "Mother, here are 3.15 million



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shares of Acegrowth which are a gift from me to you”; and then, having read through the papers, he signed them.

46. There is some suggestion in the pleadings that this gift was by way of a reward for Madam Hung’s having looked after Mr Tang in hospital during his many admissions, but there seems to be nothing specific in the evidence to support this.

47. At the trial, evidence-in-chief was taken orally. Madam Hung’s evidence relating to the visit to the solicitors’ office did not appear in her witness statement. Mr Yu indicated that he might need to apply to call evidence in rebuttal of this new evidence, and at the end of the trial he did so. Having heard counsel, including Mr Grossman SC who was brought in specifically to oppose the plaintiffs’ application, I allowed it, and heard the evidence of the solicitor, Mr Raymond Yip Kin Man, in rebuttal.

48. Mr Yip had acted for many years for Mr Tang and Madam Hung, in connection mainly with tenancy matters in the Wing Cheung Mansion. His evidence was that he had indeed drafted the documents and had them engrossed, and had given instructions for them to be handed over to whoever came to collect them. Later, the documents had come back and he had dealt with stamp duty. But his instructions to prepare the documents did not come from Mr Tang, and there was never any meeting between himself, Mr Tang and Madam Hung at his office. He had received the instructions directly from Madam Hung over the telephone.

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V*Evaluation*

49. Mr Hung's evidence was attacked, mainly on the basis that he had been dismissed from the family's service on 31 July 1996, and must therefore have borne a grudge against Madam Hung, who had dismissed him; and also that he failed to tell anyone about this matter, in particular Mr Hung, after his dismissal and until September 1996.

50. The dismissal came about because on 31 July 1996, Mr Hung was not paid his monthly salary of \$10,000. He went up to the apartment in the evening and asked Madam Hung to pay it, but she refused on the basis that the accounting staff had gone home. One word followed another, and Mr Hung stamped out without his money, though it is not clear, as it often is not in this sort of situation, whether he was being sacked or quitting. I asked him directly if he had been told "You're fired" or if he had said "I quit" but he said that neither had been said. In any event, he was subsequently paid off, with salary in lieu of notice, and a notice was put in the newspapers that he no longer worked for the family. As to why he had said nothing about the incident for so long, Mr Hung said that in the beginning, he was still employed by Madam Hung, and was afraid he might have to shoulder some legal liability; and later, he did not have the chance to go back, or to telephone Mr Tang, who would not take telephone calls.

51. Mr Hung appeared to me to be an honest and straightforward witness, and he stood up to cross-examination well enough. It appears that he was not reduced to penury by being paid off; although he became a taxi driver thereafter, he says that he had for a long time been in the business of

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buying and selling taxis, as well as working for the family. There was no very good reason for him to bear a grudge. I can well see that divided loyalties and the employment situation, and indeed the fear that he might have been involved in some legal liability, might have led him to keep silent until someone else brought the matter up.

52. Madam Hung was, by contrast, a very bad witness indeed. She was repeatedly and obviously evasive, and she was inconsistent. She did not stand up to cross-examination at all well, on this issue, or on all the other background matters which I have mentioned.

53. If Madam Hung's credibility was on the ropes by the close of her evidence, Mr Yip's evidence provided the knockout blow. He was entirely credible. He was the family solicitor, and was used to taking instructions directly from Madam Hung, or through Mr Hung or Miss Au who was also employed by the family. He had known Madam Hung, who was a friend of his in-laws, for a long time, and he knew Mr Tang, whom he used to meet socially, though rarely. But, he said, Mr Tang had never, in all the years of their acquaintance, visited his office. This is obviously something Mr Yip would well know and remember, even after many years.

54. I am led to the conclusion that Madam Hung is not a witness of truth, and actually made up the story of the instructions having been given by her husband, in order to support her case.

55. The plaintiffs' evidence is attacked on the basis of improbability. Ms Tang says that her father did not speak, read or write

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B English, and always relied on herself, or Madam Hung, or Mr Hung, or  
C whomever he instructed, to prepare documents and produce them for  
D signature. Madam Hung says that Mr Tang did speak some English,  
E “better than I do”, and used to have an English teacher, years ago, but how  
F much English he could speak and read by 1995, on her evidence, is not  
G clear. Everyone says that they spoke Cantonese with Mr Tang, and if he  
H did learn English in the past, if one does not use a language, one loses it.  
I In any event, as I have indicated, she is not a witness of truth. Where there  
J is a conflict I prefer the evidence of Ms Tang. So it is probable that Mr  
K Tang could not read English.

L  
M 56. Even so, the figures are writ large on the documents, and  
N nowadays in Hong Kong Arabic numerals are in constant use everywhere,  
O in Chinese advertisements, newspapers and so on. Everyone, or almost  
P everyone, knows how to read and understand the numbers. This is  
Q particularly so when the numbers relate to money. Also, there is no  
R dispute that Mr Tang had various companies and would have had to sign  
S company documents from time to time. It is not unreasonable to assume  
T that he might, if he was paying attention, have known the difference  
U between a set of transfer documents and a set of annual reports.

V  
57. There is also the point raised by the defence counsel Mr  
Chung, that an annual return dated 15 May 1996 shows the change in the  
shareholdings, and this document was also signed by Mr Tang. There  
appeared to be an attempt to rely on this as an absolute proof that Mr Tang  
had in some way ratified the transfer, which of course it is not; but it is a  
document which he signed, and which could be taken, if he paid attention

to what he was signing, as indicating that he accepted the transfer. But again, I refer to Ms Tang's evidence as to the common practice which was followed, when Mr Tang had to sign English documents; he relied on others. So I do not see this document as significant.

58. What we have here is evidence for the plaintiff which comes from apparently credible witnesses, but to which some objection can be taken on the ground of probability. This is an allegation of fraud, and therefore serious; and the more serious the allegation, the more cogent must be the evidence to prove it. But the standard of proof is the balance of probabilities. There is a logical difficulty of requiring more cogent evidence on fraud than otherwise, while still holding that the allegation is to be proved on the balance of probabilities. Its resolution was explained in *Re H (minors)* [1996] AC 563. In that case the House of Lords held that even where a serious allegation is in issue, the standard of proof remains the same. Per Lord Nicholls :

“... this does not mean that that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established.”

59. In this connection Mr Chung relies also on passages of the judgment of the Court of Final Appeal in *Ming v Ming*, FACV 25 of 2005, and *Nina Kung v Wang Din Shin*, FACV 12 of 2004. Mr Yu says that it is not in dispute that the “*Re H*” standard of proof applies here but points to

the fact that unlike the situation where the court may be required to draw inferences in order to find fraud, the court here has direct evidence of it.

60. In considering the balance of probabilities, I must also take into account the evidence of Madam Hung herself, which is worthless. Also, I do not believe her evidence that the various transfers she made earlier were made with the consent of Mr Tang. It is clear that she had embarked on a course of getting as much as she could out of joint names and into her own, and a share transfer of this nature would be part of that course.

61. In fact, Madam Hung's evidence is worse than worthless to her own case, because of the obviously deliberate lie she told about instructions having been given by Mr Tang to the solicitor, face to face. In a criminal case, it may be argued that even where the defendant is incredible, the court must be satisfied of guilt, on the prosecution case, to the required standard. But a defendant's lie may amount to corroboration of the case against him, so long as it is deliberate, relates to a material issue, is motivated by realisation of guilt and fear of the truth, and is clearly shown to be a lie by extrinsic evidence. See *R v Lucas*, (1981) 73 Cr. App. R. 159. It seems to me that the lie here meets those criteria and therefore that it goes to support the probability of the plaintiffs' case.

### *Finding*

62. I am therefore satisfied on the balance of probabilities that the transfer documents were executed by Mr Tang as a result of the misrepresentation of Madam Hung, and that he did not understand the

effect of the transfer documents. I am also satisfied that the shares were not an *inter vivos* gift by Mr Tang to Madam Hung. It follows that she has been and is still holding the shares on trust for Mr Tang and his estate.

63. There is no need to consider the issues as to undue influence and unconscionability. They would only come in if I did not accept that there was an actual fraudulent misrepresentation.

#### *The Allotment of 225,000 Shares*

64. There is no dispute that the property held by Acegrowth was bought with Mr Tang's own money, and that Madam Hung did not pay anything for the shares. The couple were not married, and there is no presumption of advancement.

65. The evidence of Ms Tang is that Mr Hung's practice was to allot shares to some other person to hold on trust for him, because of the legal requirements of having two shareholders and directors. He allowed her to hold shares on trust for him, and the same applied to Lee Yu Man. Where there is a conflict I prefer Ms Tang's evidence.

66. Madam Hung said that when the shares were allotted to her, Mr Tang :

“took me and Lee Yu Man to Chau Wai Hung's solicitor's firm, and the shares were allotted to me; and he gave those shares to me and Lee as gifts.”

If the allotments were made through a solicitor, it is difficult to see why there is no documentation as to the nature of the transaction. If there were

gifts it would have been in the interest of Madam Hung and perhaps more particularly in the interests of Mr Lee, who was a business partner, but not a family member, to have that made clear.

67. In fact it was found, in HCCW 63 of 1999 that the shares in Chor Lau Heung were beneficially owned by Mr Tang, and it is difficult to see why this same practice as to beneficial ownership of part of the shares would not apply in the case of Acegrowth also. I have set out above the relationship between Acegrowth, and in particular the tax scheme which came into being involving them. The picture is the common one, of a man exercising ownership of his assets through companies, so that he can enjoy the advantages, be it tax advantages or the advantage of escaping liability by what I call the “dance of the corporate veils”, which the use of companies allows. But that picture itself requires effective control of the companies, and more often than not beneficial ownership of the entire shareholding, by the man behind them.

#### *Finding*

68. I have already indicated my view of Madam Hung’s credibility. I do not believe that these shares were a gift, and it follows that she holds them on trust for the estate.

#### *The Allotment of 125,000 shares*

69. Here, the evidence of Madam Hung is that she paid Mr Lee Yu Man \$125,000 for the shares. Of course there is no receipt for the money. That does not of itself make the evidence improbable. Many



people toss around large sums like confetti, without any kind of documentation. But about this transfer Madam Hung again said :

“Later on 125,000 shares were allotted to me. Because at that time, Lee wanted to come out of Acegrowth. He wanted to leave the restaurant. And then I talked to my husband about it. He asked me to buy Lee’s shares. At the value of \$125K. He brought me to Chau Wai Hung’s firm to get the shares transferred to me. I paid the price of the shares. I gave the money to Lee after he had signed the documents. All those things took place at Chau’s firm.” (My note)

70. It is difficult to see that if the transaction took place at a solicitor’s office, with money changing hands, there would not have been a receipt. Madam Hung avers the sale and she must prove it. I have already expressed my views on her credibility. I do not believe her evidence on this issue.

### *Finding*

71. I am satisfied on the balance of probabilities that Mr Lee held the 125,000 shares on trust for Mr Tang, and that Madam Hung did not buy them from Mr Lee for \$125,000.

### *Result*

72. In the result the plaintiffs are entitled to judgment and judgment is ordered in terms of paragraphs 1-7, 9 and 10 of the prayer of the Statement of Claim, with costs (*nisi*) to be taxed if not agreed.

(G.P. Muttrie)  
Deputy High Court Judge

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Mr Benjamin Yu SC and Mr Anson Wong, instructed by Messrs K C Ho  
and Fong, for the Plaintiff

Mr Hylas Chung, instructed by Messrs Gary Lau & Partners,  
for the Defendant

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