Yong Ching See v Lee Kah Choo Karen
[2008] SGHC 68

Case Number : Suit 76/2007

Decision Date : 08 May 2008

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Philip Jeyaretnam SC and Jeanette Lim (Rodyk & Davidson LLP) for the plaintiff; Daniel Koh and Wendy Lin (Rajah & Tann LLP) for the defendant

Parties : Yong Ching See — Lee Kah Choo Karen

Trusts – Resulting trusts – Presumed resulting trusts – Whether transferor or contributor having no intention to retain any beneficial interest in property – Whether money advanced by way of loan

8 May 2008 Judgment reserved.

Lai Siu Chiu J:

1 This action is a claim by Yong Ching See ("the plaintiff") against Lee Kah Choo Karen ("the defendant") for the transfer to the plaintiff of 175,000 shares in a company Alsecure International Pte Ltd ("Alsecure") registered in the defendant's name, on the basis that the defendant held those shares on trust for the plaintiff.

2 By way of preliminary observation, two highly inconsistent versions of the same facts emerged as both parties crossed swords during the trial. Given that the events that transpired leading up to the dispute were relatively protracted in nature, it would be apposite to first set out the undisputed facts before delving into the plaintiff's and defendant's versions.

The facts

3 From the mid-1980s, the defendant had been working in the ironmongery industry and was the Vice-President of Sales and Marketing at Assa Abloy Pte Ltd ("Assa Abloy"). Under a restructuring exercise in 2004, the defendant was retrenched and despite attempts at negotiations with the management, she left the employment of Assa Abloy sometime at the end of March 2004.

4 Since 1958, the plaintiff had been a director of Yong Tai Loong Pte Ltd ("Yong Tai Loong") from which position he retired in 2001. Yong Tai Loong developed a close business relationship with another company, Tai Tong Industrial Suppliers Pte Ltd, run by Lily Ling Ker Ing ("Lily") and her brother. In the course of business, the plaintiff developed a closeness to Lily and subsequent to his retirement at Yong Tai Loong, the plaintiff continued to maintain a close relationship with Lily who lived a few lanes from his home and who accompanied him on visits to the doctor; she became by all accounts, the plaintiff’s surrogate daughter.

5 Sometime in 2004, the plaintiff first entertained the possibility of assisting his son Yong Boon Wei ("Boon Wei") to set up the latter’s own company in Singapore, to be called Sinca. At Lily's suggestion, the plaintiff provided financial support for this business venture despite his scepticism of his son's ability to run his own business and their strained relations over the years. However, Boon Wei was unhappy that the Chairman of Sinca would be the plaintiff and accordingly, the idea for the business venture of Sinca fell through. Nonetheless, this was not the end of Boon Wei's efforts to set

up his own company. On behalf of Boon Wei, Lily approached the plaintiff to provide financial support again. Given his age (69 then), the plaintiff was not keen on taking an interventionist role in the management of a new company and steering the direction of the company. In his affidavit evidence, the plaintiff revealed that at this point, he "did not want to be named as a shareholder or a director of the new company that was to be set up as [he] did not want to be asked to attend to matters relating to the company". The administrative matters of this new company to be named Alsecure were therefore, managed by Boon Wei and Lily with the latter providing regular updates to the plaintiff.

6 Around August 2004, the defendant was invited to lunch by Lily who was keen on engaging the defendant's help in the running of Alsecure, capitalising on her expertise in the private sector. Both had known each other in their prior employment. The lunch resulted in a second meeting on 11 September 2004 at the Legends Country Club, Fort Canning, where Lily and Boon Wei continued to persuade the defendant to join them in setting up Alsecure. The defendant expressed scepticism over the setting up of Alsecure as it would require a large sum of capital. Lily assured the defendant that the plaintiff would lend her money to finance the operations of Alsecure. Due to the difference in pay between her previous position at Assa Abloy, the defendant alleged that Lily and Boon Wei enticed her to join Alsecure by dangling the carrot that in lieu of drawing a better salary, she would be given one-third share of the business. Lily on the other hand claimed that on the issue of salary, it was in fact the defendant who suggested that she should draw a salary of $8,000 and after further negotiations, it was agreed that the defendant would be paid $7,000 a month. Lily further claimed that the defendant did not mention the salary she had drawn at Assa Abloy. Second, Lily claimed that the defendant also offered to raise $20,000 at this meeting to invest in Alsecure if she could be made a shareholder. However, the defendant was unable to raise the money subsequently as her husband needed the funds for a new business he had started. This was to be the first of many differing versions of events between the parties. What is clear is that on 23 September 2004, Alsecure was eventually incorporated, with the defendant and Boon Wei holding one share each.

7 In October 2004, differences between Boon Wei and Lily erupted. Boon Wei wanted to deny Lily's one-third entitlement to the shares in Alsecure so Lily sought the help of the defendant and the defendant's husband's in verifying that she owned one-third of the company. The plaintiff agreed to help Lily in the dispute with Boon Wei, to the extent of forcing Boon Wei out of Alsecure. Accordingly, on 2 November 2004, the plaintiff attended at the office of ACIES Law Corporation (the defendant's lawyers) to sign a statement ("the plaintiff's statement") so that Lily could use it against Boon Wei. As is often the case, the events that transpired at this meeting were also of some dispute in these proceedings - while the defendant alleged that the plaintiff did not claim he was the true owner of the company and in fact emphasised that he had lent money to Lily so that the company was owned equally by three parties *viz* Boon Wei, Lily and the defendant, the plaintiff contended that he did not make any representation, promise or assurance that he would pay for the defendant to have shares in Alsecure in her own right or for her own benefit. On an express reading of the plaintiff's statement, I noted that the plaintiff indicated he knew of the agreement between the Boon Wei and Lily and had "no expectations that any of these monies would be returned to [him] as [he] had helped Lily purely out of goodwill and friendship". On 3 November 2004, Boon Wei resigned as Chairman and Director of Alsecure and transferred his shares to Lily who stepped in to become the Chairwoman of Alsecure.

8 In the ensuing period, the plaintiff continued to transfer money to Lily and Alsecure. This included an initial sum of $200,000 to Lily to increase the paid-up capital of Alsecure. On 16 November 2004, with the sum of $200,000, 199,998 shares were issued to Lily who assured the defendant that the plaintiff would continue to lend her sums of money which she would then use to increase the paid-up capital of Alsecure, based on the understanding that the defendant was entitled to one-third share of Alsecure. The plaintiff therefore lent Lily a second sum of $300,000 to increase the paid-up capital of Alsecure. All in all, in the period 12 November 2004 to 16 December 2005, the plaintiff

transferred about $1m to Alsecure.

9 The sequence of events that took place subsequent to the aforementioned events were also of considerable dispute between the opposing camps. So as to place the dispute in its proper context, I propose to set out each party's version of what happened next *seriatim*, beginning first with the plaintiff's version of events.

The plaintiff's version

10 Around February 2005, the plaintiff alleged that Lily confided in him that the defendant had expressed unhappiness at holding only a $1 share in Alsecure. The defendant was presumably embarrassed by the fact that she had only a single share even though she was a director of the company and had made continuous attempts to lobby for her shareholding in Alsecure to be increased. In the plaintiff's statement of claim, the plaintiff further elaborated that the defendant requested Lily to seek his permission to increase her shareholding, on the strict understanding that the defendant would be holding the said shares on trust for the plaintiff. As such, his response to Lily was he needed time to consider if he would increase the amount of shares the defendant would have, having invested about $500,000 into Alsecure in total as paid-up capital at this point. In late February 2005, the plaintiff finally agreed to allow some of the shares to be allotted to Karen, but on the condition that Lily, the defendant and himself would sign a document reflecting that he remained the true owner of the shares and that the defendant was a mere nominee holding such shares on trust for the plaintiff. Lily corroborated the plaintiff's testimony and stated that he had allowed her to allot 300,000 shares to be issued in her name and the defendant's name but held on his behalf. Lily further alleged that the defendant was cognisant of this arrangement. Pursuant to this arrangement, Lily prepared three copies of a Memorandum of Understanding, with two copies being on Alsecure's letterhead while the third copy was on plain paper.

11 According to Lily, on 2 March 2005, 174,999 shares were allotted to the defendant while 125,001 shares were allotted to herself on the understanding that the shares were "put in [the defendant's] name for appearances, and that they really belonged" to the plaintiff as the investor. On the following day, both the plaintiff and Lily recalled that the defendant signed all three copies of the Memorandum of Understanding dated 1 March 2005 ("the MOU") and Lily then handed one copy of the MOU which was on Alsecure's letterhead, to the defendant.

12 As a follow-up, on or about 8 March 2005, Lily claimed that the defendant passed her a draft MOU prepared by the defendant’s lawyers. This proposed draft MOU showed that the plaintiff's contribution was a loan to Lily and the defendant, instead of an investment. Lily asserted that she did not agree to this draft MOU.

13 In the ensuing period from March 2005 to December 2005, the plaintiff lent cumulatively an approximate amount of $500,000 to Alsecure. On 5 October 2005, the plaintiff requested to meet with the defendant and Lily as he claimed that at that juncture, he was worried about his investment.

14 In his affidavit, the plaintiff stated that he "was worried about [his] investment and [his] loans… [he told the defendant and Lily] that [he] wished to recover the money [he] had invested and lent Alsecure because it was [his] pension money". The plaintiff further implored both of them to curb Alsecure’s losses and reduce its expenses, such as overheads, reimbursements and salaries. According to the plaintiff, both the defendant and Lily assured him they would do their very best to protect his interest in the company. On 16 December 2005, the plaintiff lent a further sum of $70,000 to Alsecure and indicated this would be his last contribution to the company.

15 The situation, however changed in or about June 2006. Lily claimed that as her mother was ill, she wanted to stop working. The plaintiff then suggested to her that the defendant buy over Alsecure. This was confirmed by the plaintiff. Lily spoke to the defendant who sought a valuation of the assets of Alsecure, concluding them to be worth approximately $720,000. The plaintiff indicated that he would only accept a minimum of $600,000. After a series of negotiations, the plaintiff eventually told Lily to inform the defendant that he would accept her counter-offer of $520,000 ("the agreed sum").

16 In late September 2006, Lily told the plaintiff that the defendant's lawyers were in the process of drawing up a contract for the sale of Alsecure. A copy of this Sale and Purchase Agreement ("S&PA") with an accompanying declaration was given to the plaintiff who was surprised to find that the defendant wanted to make payment of the agreed sum in two parts. The first payment of $300,000 would be made within 28 days from completion while the second payment of the balance of $220,000 would only take place one year from the date of the first payment. Unhappy that he was not privy to this arrangement, the plaintiff instructed Lily not to sign the S&PA. The proposed sale of Alsecure to the plaintiff thus fell through.

The defendant's version

17 It would be appropriate at this juncture to turn to the defendant's version of the events that took place from February 2005 to June 2006.

18 The defendant claimed that in late February 2005, about 15 days before Lily's friend Anthony Quek was asked to prepare the draft MOU in [12], both the defendant and Lily had instructed the company secretary to proceed to issue 174,999 shares to the defendant. The defendant argued that as of 15 February 2005 (before the date of the alleged signing of the MOU), the shares had already been allocated to her.

19 Notwithstanding the plaintiff's and Lily's recollection of the events, the defendant recalled that Lily had asked her to sign a copy of the MOU confirming that she had been issued 175,000 shares in Alsecure but at the time of signing, there was no signature of the plaintiff but only Lily's on the MOU.

20 According to the defendant, she brought her copy of the MOU home and her husband, Chong Choong Fee, recommended that she had her lawyer S Pillai ("Pillai") review the MOU before finalising the same. Pillai reverted with a revised version of the MOU ("the revised MOU") sometime on or around 8 March 2005. The defendant stated that she in turn handed this revised MOU to Lily who proceeded to tear up the MOU containing only Lily's and the defendant's signatures, claiming it was not necessary for good friends to go through so much trouble to prepare legal documents. Accordingly, the defendant's version was that the two copies of the MOU produced in court contained her forged signature.

21 In relation to the 5 October 2005 meeting where the plaintiff expressed his worries about his investment in Alsecure, it was curious that the defendant did not mention the meeting at all in any of her affidavits. It was only on cross-examination that the defendant confirmed that there had been such a meeting.

22 As for the proposed sale of Alsecure to the defendant, her recollection of events also similarly differed from the plaintiff's and Lily's. The defendant alleged that in June 2006, Lily had expressed a desire to wind up Alsecure as her mother had taken ill. The defendant claimed that Lily then explained that she wanted to "repay her loan" to the plaintiff with her share of the proceeds from the sale of the assets of Alsecure. What was significant however, was that the defendant insisted that Lily never

mentioned that the defendant's share of proceeds had to be paid to the plaintiff. Thereafter, as the defendant disagreed with Lily's proposal to close down Alsecure, it was Lily who suggested to the defendant to purchase Lily's shares in Alsecure for approximately $700,000.

23 Accordingly, the defendant sought the help of her brother-in-law Michael Ho Kah Peng of KP Ho and Associates to conduct a valuation of the shares in Alsecure. In August 2006, a meeting took place where Lily confirmed she wanted to sell her shares in Alsecure to the defendant and stated that a fair value would be somewhere in the region of $600,000. Following further discussions, the agreed sum was reached and Lily instructed Pillai to draft the S&PA for the shares.

24 In a subsequent meeting held sometime in late September 2006, during heated negotiations between Lily's lawyer ("Neoh") and Pillai on the proposed sale, Neoh had indicated that the defendant should *sell* her shares to Lily instead and Pillai had replied that the defendant would consider doing so but only at market price. According to the defendant, Lily had never indicated to her that the defendant's shares belonged to the plaintiff.

25 With these two differing versions out of the way, it would be apposite to touch briefly on the events that took place after the proposed sale of Alsecure was aborted.

26 Following the unsuccessful negotiations for the proposed sale of Lily's shares to the defendant, the plaintiff commenced the present proceedings in November 2006 for the return to him of the 175,000 shares registered in the defendant's name.

The findings

27 Given the differing versions of events proffered by the parties, it would be apposite to make a few preliminary observations on the credibility of the accounts rendered by the parties before proceeding to determine the merits of the plaintiff's claim. In deciding which version to accept, I was mindful of looking at the evidence in its entirety and *inter alia*, took into account any inconsistencies in their evidence *vis-à-vis* the independent evidence adduced. As a result, I was more inclined to believe and accept the plaintiff's version of the chronology of events.

28 First, with regard to the issue of 174,999 shares to the defendant, I was of the view that the shares were allocated on the date of issue and not on the date of application, as the defendant had vehemently contended. The Board resolution for allotment of the shares was dated 2 March 2005. The defendant admitted in her defence that the issue date was 2 March 2005. Further, the defendant's numerous allegations that her signatures had been forged on the MOUs made her version even more unbelievable. On first receiving a copy of the MOU sent by Neoh to Pillai on 6 October 2006, she responded to the substance of the MOU on 11 October 2006 through her solicitors without bringing up the issue of forgery on the MOU. It would not, in my view, be logical that she would not have raised this point at the first opportunity she had, given that the substance of her letter on 11 October 2006 dealt with the specific terms of the MOU. Under cross-examination, the defendant admitted that she did not dispute the authenticity of the documents initially. It was only in her defence filed on 5 March 2007 (nearly half a year later) that she changed tack and denied signing the MOU. The defendant's testimony was rendered even more incredible when subsequently, in her affidavit of 27 September 2007, she contended that she *did* sign the MOU but only one original, which original she claimed for the first time, was torn up by Lily in her presence. Given that her signature on the MOU represented her consent to the terms of the said MOU and was such a fundamental element, it was curious that the defendant did not dispute the authenticity of the documents earlier. I should add that the evidence of the handwriting expert from the Health Sciences Authority, Miss Lee Gek Kwee was that the signatures on both copies of MOU produced in court were authentic. To that end,

I am persuaded that the defendant's signatures were indeed appended to the MOUs.

29 In that regard, I noted that on the defendant's instructions, Pillai had prepared the revised MOU which the defendant intended to substitute for the original MOU of Lily's. The terms of the revised MOU provided that the plaintiff would contribute a sum of $500,000 towards the total paid-up capital of Alsecure and that it would be apportioned as to 65% in favour of Lily while the defendant would have the remaining 35%. I paid particular attention to the terms of the revised MOU which stated that the said sum would be "repayable by [Lily and the defendant] at their absolute discretion provided that net profits always exceed $500,000 per year for a continuous period of three years from the first year of operation". Should the profits earned be less than $500,000, the plaintiff would be paid nothing by Lily and the defendant. Under cross-examination however, the defendant admitted that the terms of the revised MOU were less favourable than if she were given full ownership of the shares without any obligation to repay the plaintiff. I am of the view that this document clearly acknowledged that the money came from the plaintiff by way of investment in the company but the defendant later attempted to change her version of events and stated that the "gentleman's agreement" was that she would assist Lily to repay the $500,000 owed to the plaintiff. On this note, I found her shifting stance on whether the money was an investment or a loan and her changing recollections to be detrimental to her credibility.

30 Second, with respect to the 5 October 2005 meeting, the defendant admitted under cross-examination, that she had met the plaintiff on that occasion and that he had expressed worries about recovering his investments; she confirmed that he had used the expression "pension money". In response, she had apparently reiterated that she would curb expenses and reduce losses for Alsecure. Yet, the defendant stopped short of admitting that the plaintiff's expressions of concern suggested that he believed he was entitled to recover his investment and loans to Alsecure. I believe that the absence of mention in the defendant's affidavit of what would seem to be a crucial meeting between the parties, suggested that the defendant was willing to conceal facts where it suited her purpose.

31 Third, the terms of the draft S&PA of the proposed sale of Alsecure to Lily (albeit it did not materialise) were instructive insofar as they were indicative of what each party's position was in relation to the shares. I found that the accompanying declaration to the draft S&PA recognised the plaintiff's role as an investor by asking him to sign a disclaimer of his interest, against both the defendant and Lily. More importantly, the draft S&PA was not prepared by Lily's lawyers but by Pillai, on the defendant's express instructions as contained in an email of 11 September 2006, wherein she told him to incorporate *inter alia,* a term to "fully discharge [herself], Mdm Ling from all claims, liabilities from [the plaintiff]" (see 1AB346).

32 Accordingly, taking an objective view of the differing versions canvassed by the opposing parties, the weight of the evidence (and *a fortiori*, the inferences to be drawn therefrom) seemed to suggest that the plaintiff's version of the events was the more plausible.

33 At this juncture, it would be appropriate to turn to the law relevant to the plaintiff's claim and then consider whether on the factual matrix of this case, the key elements of his claim had been made out.

The law

34 The plaintiff's claim essentially sought to establish that despite the defendant having legal ownership of the 175,000 shares, the beneficial interest in them remained with the plaintiff. The defendant consequently must transfer the same to the plaintiff, as she had been holding those shares

on trust for him. As there was no evidence of a trust relationship having been established by the deliberate intent and act of the plaintiff leading to the creation of an express trust, the plaintiff sought to raise the argument that the shares were held by the defendant by way of a resulting trust.

Doctrinal basis of a resulting trust

35 Under English law, two types of trusts are carved out where property will be regarded as subject to a trust in spite of the absence of any express intention on the part of the settlor. The first is that of constructive trusts and the second is that of resulting trusts. On this note, I would pause to mention that the distinction between express, constructive and resulting trusts really lies *inter alia*, in the intention of a settlor and whether the transfer is the product of an implied intention. Accordingly, it is not surprising that while express trusts are founded on the *express or inferred* intention of the settler, constructive trusts are imposed on a person who holds the title to property *against* his intention but resulting trusts are founded on the *presumed* intention of the transferor of property. It is the last of this that we are concerned with in this case. Where a transfer of property has occurred with a consequent transfer of legal title, but the transferor has failed to show an intention to divest himself fully of all his interest in that property, the transferee will not be permitted to receive the property absolutely for his own benefit. Instead, he will hold it on trust for the transferor. The equitable interest is thereafter, said to 'result back' to the transferor, thus ensuring that he retains his interest in the property.

36 As the authors of *Lewin on Trusts* (Sweet and Maxwell, 18th ed, 2008) observe at para 7-02, the resulting trust" is created, not because it was intended by the settler, but by operation of law because the settler is presumed to have intended not to make a gift, this actual intention being consistent with that presumption." In *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 *("Westdeutsche")*, Lord Browne-Wilkinson reiterated this position, that resulting trusts arise to fulfil the implied intentions of the parties. As he opined, a "resulting trust is not imposed by law against the intentions of the trustee (as is a constructive trust) but gives effect to his presumed intention." Accordingly, he identified two primary circumstances in which a resulting trust may arise:

> Under existing law a resulting trust arises in two sets of circumstances: (A) Where A makes a voluntary payment to B or pays (wholly or in part) for the purchase of property which is vested either in B alone or in the joint names of A and B, there is a presumption that A did not intend to make a gift to B; the money or property is held on trust for A (if he is the sole provider of the money) or in the case of a joint purchase by A and B in shares proportionate to their contributions. It is important to stress that this is only a presumption, which presumption is easily rebutted either by the counter-presumption of advancement or by direct evidence of A's intention to make an outright transfer… (B) Where A transfers property to B on express trusts, but the trusts declared do not exhaust the whole beneficial interest.

37 For instance, in *Westdeutsche* itself, the transferor intended that the money it had paid over was to become the absolute property of the transferee. The court found that simply because the parties had transacted under a mistake as to the validity of their transaction did not alter their actual intentions. Peter Birks and Francis Rose in *Resulting Trusts and Equitable Compensation* (LLP, 2000) have contended that there are in reality three categories of resulting trusts, the first being voluntary conveyance, the second being purchase in the name of another, and third, being incomplete disposal of the beneficial interest. The fundamental inquiry in all three categories is whether the transfer of property to B is intended by A to be beneficial to B. In all three categories, it is presumed that A did not intend B to acquire a beneficial interest in the property. As alluded to above, this presumption as to A's intention operates unless the evidence establishes that A intended to make an outright gift to

B, or the alternative presumption of advancement is invoked to trump A's intention. Problems and differences therefore arise when a transferee cannot be shown to have possessed the intention to make a gift. As encapsulated by Lord Goff in *Westdeutsche* at 689, a presumed resulting trust arises where there are:

> … voluntary payments by A to B, or for the purchase of property in the name of B or in his and A's joint names, where there is no presumption of advancement or evidence of intention to make an out-and-out gift.

38 This principle was more succinctly expressed by Meggary V-C in *Re Sick and Funeral Society of St John's Sunday School Golcar* [1973] Ch 51 where he stated that a resulting trust "is essentially a property concept: any property that a man does not effectually dispose of remains his own." Put another way, Lord Reid remarked in *Vandervell v IRC* [1967] 2 AC 291 that a resulting trust arises:

> …where it appears to have been the intention of the donor that the donee should not take beneficially, there will be a resulting trust in favour of the donor.

39 Lord Millet went on to echo this nearly thirty years later in *Air Jamaica Ltd v Charlton* [1999] 1 WLR 1399 at 1412:

> Like a constructive trust, a resulting trust arises by operation of law, although unlike a constructive trust, it gives effect to intention. But it arises whether or not the transferor intended to retain a beneficial interest -- he almost always does not-- since *it responds to the absence of any intention on his part to pass a beneficial interest to the recipient.*
>
> [emphasis added]

40 Closer to home, in the most recent pronouncement on resulting trusts, the Court of Appeal in *Lau Siew Kim v Yeo Guan Chye Terence and Another* [2007] SGCA 54 ("*Lau Siew Kim*"), stated that there is a distinction to be drawn between the presumption of resulting trust and the resulting trust itself, at [35]:

> The presumption is an inference of a fact drawn from the existence of other facts, whereas the resulting trust is the equitable response to those facts, proved or presumed… the difference between them is explained in Resulting Trusts [Robert Chambers, Clarendon Press, Oxford 1997]:
>
> > The facts which give rise to the presumption of resulting trust are (i) a transfer of property to another, (ii) for which the recipient does not provide the whole of the consideration. The facts which give rise to the resulting trust itself are (i) a transfer of property to another, (ii) in circumstances in which the provider does not intend to benefit the recipient.

41 *Lau Siew Kim* is significant as it clarifies that first, a lack of consideration required for the presumption is not a requirement for the resulting trust and secondly, that the lack of intention to benefit the recipient required for the resulting trust is precisely the fact being inferred when the presumption is applied. The arms of equity step in to intervene to prevent unconscionable conduct on the part of the legal owner or as the court in *Lau Siew Kim* recognised, equity "assumes bargains, and not gifts" (per Spence J (Supreme Court of Canada) in *Goodfriend v Goodfriend* (1972) 22 DLR (3d) 699 at 703). With an absence of intent to transfer beneficial ownership, this operates to establish defective consent by the transferor. First, as the authors of *Lewin on Trusts* note at para 7-07, this wide theory of "resulting trusts" operates within the sphere of autonomous unjust enrichment, and so responds to the injustice of the receipt carrying beneficial ownership. Peter Birks and Francis Rose in

"Restitution and Resulting Trusts" in S Goldstein (ed), *Equity and Contemporary Legal Developments* (Hebrew University, Jerusalem, 1992) at 40 propound that the resulting trust is:

> [the] proprietary form of response to an unjust enrichment. The consequence is that the resulting trust is not intent-based. The presumption operates to establish defective consent in the transferor, who must then ground his claim in the event of unjust enrichment.

42 In a paper by Mr William Swadling "*A New Role for Resulting Trusts?*" (1996) 16 LS 110, Swadling argued that the "presumption of resulting trust is rebutted by evidence of any intention inconsistent with such a trust, not only by evidence of an intention to make a gift."

43 As can be seen from the aforementioned extracts, the key principle is whether there was an intention manifested by the transferor to part with the beneficial interest in the property.

Circumstances rebutting the presumption of resulting trust

44 In *Lau Siew Kim*, the Court of Appeal reiterated at [46] that the presumption of resulting trust is a rebuttable presumption of law. Should a resulting trust be found in the aforementioned circumstances and though "the presumption of resulting trust must be applied in those circumstances, the *strength* of the presumption must vary according to the facts of the case and the contemporary community attitudes and norms" (*per* V K Rajah JA at [37]).

45 First, equity tried to prevent a dishonest misappropriation of property as a result of improvident transactions by presuming that outside of certain relationships such as husband-wife, mother-child and cohabiting partners, an owner of property never intends to make a gift. If an owner voluntarily transfers the legal title of his property to a third party without receiving consideration, he is presumed to have intended to retain the equitable interest for himself. The transferee will then be regarded as holding the property on resulting trust for him.

46 Second, a person who provides money required to purchase money intends to obtain the equitable interest in the property acquired. It follows that where the property is purchased in the name of someone who did not provide the purchase money, he will be presumed to hold the legal title on trust for the provider thereof. This presumption has long been recognised in *Dyer v Dyer* (1788) 2 Cox Eq Cas 92 where Eyre CB observed at [93]:

> …the trust of a legal estate…whether taken in the names of the purchasers and others jointly, or in the names of others without that of the purchaser; whether in one name or several; whether jointly or successive, results to the man who advances the purchase-money.

47 The position at law is that the presumption of resulting trust can be rebutted by evidence that the transferor or contributor had no intention to retain any beneficial interest in the property. Consequently, the strength of the evidence required to rebut the presumption of a resulting trust will depend upon the strength of the presumption, which in turn depends on the facts and circumstances that gave rise to it. As Lindley LJ in *Standing v Bowring* (1885) 31 Ch D 282 at 289 opined, trusts "are neither created or implied or are held to result in favour of donors or settlors in order to carry out and give effect to their true intentions, expressed or implied…"

48 It is clear that to succeed in rebutting the presumption of resulting trust, the evidence required differs on the factual matrix in question, as the presumption will be given varying weight by the courts depending upon the context. In *Fowkes v Pascoe* (1875) 10 Ch App. 343, Mellish LJ observed at 352 that:

> …the presumption must…be of very different weight in different cases. In some cases it would be very strong indeed. If, for instance, a man invested a sum of stock in the name of himself and his solicitor, the inference would be very strong indeed that it was intended solely for the purpose of a trust, and the court would require very strong evidence on the part of the solicitor to prove that it was intended as a gift; and certainly his own evidence would not be sufficient. On the other hand, a man may make an investment of stock in the name of himself and some person, although not a child or wife, yet in such a position to him as to make it extremely probable that the investment was intended as a gift. In such a case, although the rule of law, if there was no evidence at all, would compel the court to stay that the presumption of trust must prevail, even if the court might not believe that the fact was in accordance with the presumption, yet, if there is evidence to rebut the presumption, then, in my opinion, the court must go into the actual facts.

49 Further, the presumption of a resulting trust will also be rebutted where evidence shows that money was advanced by way of a loan. For instance, in *Re Sharpe (a bankrupt)* [1980] 1 WLR 219, a couple lived in a maisonette with their aunt. The property had been purchased in the name of the husband but the aunt contributed a partial sum towards the purchase price, while the rest of the amount was raised by way of a mortgage. The couple subsequently went bankrupt and the aunt claimed to be entitled to a proprietary interest in the maisonette by means of a resulting trust presumed from her contribution to the purchase price. Browne-Wilkinson J held that the money had in fact been advanced by way of a loan with the intention that it be repaid. She was hence, not entitled to any share of the equitable interest of the property.

The issue

50 Accordingly, the dispute between the plaintiff and defendant in this case rests on who has the beneficial ownership of the 175,000 shares and whether on the evidence, a resulting trust had arisen. If it did, whether the presumption had been rebutted. Unless the defendant was able to rebut the presumption by evidence that the plaintiff intended to benefit her, the defendant did not stand in one of the relationships that gave rise to a presumption of advancement such as a familial relationship. In fact, it was common ground that they had met one another only once or twice. The presumption of advancement only arises as a consequence of a pre-existing relationship between the parties to the transfer, such as where the transferor is regarded as morally obliged to provide for the person benefiting: see Pearce and Stevens, *The Law of Trusts and Equitable Obligations* (Oxford University Press, 4th ed, 2006).

51 Having dealt with the law, I turn next to consider whether the plaintiff has made out his case based on a resulting trust.

Whether the presumption of resulting trust arises on the facts

The role of intention: was the plaintiff's payment for the shares a loan or an investment?

52 The plaintiff's case was essentially that he had paid for the shares and therefore, the defendant held them on trust for him. Unsurprisingly, the defendant's case hinged on denying the existence of such a resulting trust. She then relied on the defences of estoppel by convention and estoppel by representation. As stated in *Snell's Equity,* parol evidence is admissible to prove by whom payment had been made, for such evidence in effect shows that the nominal purchaser was really the agent of the true purchaser. If the evidence merely established a loan of some or all of the money used for the purchase, there would be no resulting trust and the person lending the money would be a mere creditor.

53 In *Cheong Yoke Kuen & Ors v Cheong Kwok Kiong* [1999] 2 SLR 476, the Court of Appeal held that where a person has paid the purchase price of the property and the property is conveyed or transferred to him jointly with others, or to one or more persons other than the purchaser, a resulting trust arises in favour of the purchaser and he is the beneficial owner of the property.

54 To my mind, the numerous receipts issued by Alsecure acknowledging the amounts received as well as the DBS bank statements with corresponding dates provided by the plaintiff, addressed the issue of fact as to who provided the funds for the purchase of the shares. Without a doubt, there was evidence of numerous sums in varying amounts ranging from $15,000 to $200,000 being transferred for the period between November 2004 and 16 December 2005. All in, the plaintiff had transferred $1m to Alsecure.

55 The defendant tried to mount the argument that she believed that the plaintiff was making a *gift* to her. However, in the course of cross-examination, the defendant changed her case substantively by stating that she believed the money used to pay for the shares was a *loan*. On the first point, in my view, the circumstances would suggest that there was no reason why the plaintiff would give her such a large sum without any expectations at all, given that she was neither a blood relative nor well acquainted with the plaintiff. The defendant tried to argue that as her salary at Assa Abloy was higher, Lily and Boon Wei told her that they would give her one-third share in Alsecure to compensate for her lower salary. However, this was easily disproved by looking at her last drawn salary at Assa Abloy -- due to the retrenchment exercise, the defendant would have stood to earn only 40% of her previously drawn salary, amounting to about $3,000-$4000 a month whereas at Alsecure, she negotiated for her pay to be $7,000 a month.

56 On the second point, the defendant argued that the plaintiff merely lent monies to Lily and Alsecure. Where there is evidence of existence of a loan, no resulting trust can arise in favour of the person who provided the purchase monies. Hence, if the plaintiff was in reality extending a loan, a resulting trust may not arise. In support, the defendant pointed to the plaintiff's statement signed at Pillai's office. She averred that at no point in the course of making that statement, did the plaintiff allude to the fact that he was to have any interest or shareholding in Alsecure, or that any of those shares were to be held on trust for him.

57 In the plaintiff's statement, he said:

> Although I helped Lily financially to set up Alsecure and to start operations, I have done this *as a friendly loan to Lily without any expectations as to when these monies will be returned to me.* I have provided help purely out of goodwill and friendship and if one day some of the monies that I have *loaned* to Lily can be repaid to me, I would be more than happy.
>
> [emphasis added]

58 During his cross-examination, it was confirmed that the plaintiff's statement was a document meant to support Lily in her dispute with Boon Wei. However, the plaintiff alleged that the signing of the document was under dubious circumstances. While the plaintiff recalled that he spoke to Pillai in the little Malay he could converse in, Pillai testified that he was not conversational in Malay and instead, it was Lily who acted as the interpreter and once transcribed, Pillai's secretary, Nicole Yeo (who testified), interpreted it in turn for the plaintiff. The defendant on the other hand, argued that on the basis of this document, the plaintiff intended only to make a friendly loan to Lily and herself.

59 At first blush, while I agreed that on a literal reading of the plaintiff's statement, it appeared to

say that the plaintiff was making a loan, I extended my analysis further to consider the context in which it was made. First, the plaintiff's primary purpose in attending this meeting was to assist the defendant and Lily in her dispute with his son. Further, in his affidavit, the plaintiff expressly stated that the plaintiff's statement was inaccurate in reflecting his true position with regards to the money transferred to Alsecure. He emphasised that:

> No one is so foolish as to give money away. Further, I had already retired for some years and was not drawing a salary. Money was precious to me. Any money I have is my 'pension money' *ie.* money that I need for my old age. *If I make a loan, I expect it to be repaid. If I invest in something, I expect to make a return on my investment.* Further, I could not possibly have helped Lily by giving her a "friendly loan". I had not even begun investing in the company nor had I lent any money to the company yet.
>
> [emphasis added]

60 This evidence was confirmed by the receipt of the first amount of money by Alsecure from the plaintiff on 12 November 2004. It was also consistent with the plaintiff's representations to the defendant and Lily at the 5 October 2005 meeting. Accordingly, it is my view that the circumstances are insufficient to found the existence of a loan between the parties. I would add that the defendant found it necessary to change her stand from contending that she owned the 175,000 shares absolutely, to saying that it was a loan, a position admittedly less attractive since she would have to assume liability to repay the monies owed to the plaintiff.

Estoppel by convention

61 The first defence the defendant tried to run was that the plaintiff was estopped by his conduct in contending that the shares rightfully belonged to him and were merely held on trust by the defendant. As noted in *The Law Relating to Estoppel by Representation* (Lexis Nexis 4th ed, 2004), the doctrine of estoppel by convention finds its roots not in any representation on the part of the parties, unlike estoppel by representation; rather, it relies on an agreed statement of facts the truth of which had been assumed by the parties to be the basis of the transaction.

62 The locus classicus on the doctrine of estoppel by convention is found in *Amalgamated Investment & Property Co Ltd v Texas Commerce International Bank Ltd* [1982] QB 84 ("*Amalgamated Investment*"). The conduct of the parties in that case was held to have given rise to an estoppel by convention and this prevented them from relying on the express construction of the written document, as opposed to what they had erroneously supposed it to mean. It is instructive to refer to Lord Denning MR's comments at 122:

> When the parties to a transaction proceed on the basis of an underlying assumption -- either of fact or of law -- whether due to misrepresentation or mistake makes no difference -- on which they have conducted the dealings between them -- *neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so.*
>
> [emphasis added]

63 In *Singapore Island Country Club v Hilborne* [1997] 1 SLR 248, the test for successfully relying on estoppel by convention was set out. First, there must be a course of dealings between the two parties in a contractual relationship; second, the course of dealings must be such that both parties must have proceeded on the basis of an agreed interpretation of the contract and third, it must be unjust to allow one party to go back on the agreed interpretation. This formulation of the test was

most recently approved of by the Court of Appeal in *MAE Engineering Ltd v Fire-Stop Marketing Services Pte Ltd* [2005] 1 SLR 379.

64 Turning to this case, the defendant chose to run her case based on the sole ground that she and the plaintiff had accepted a particular state of things as the foundation of the course of dealings between them. As such, she contended that the positive representations and/or silence of the plaintiff meant that this contributed to an agreed assumption on which they dealt with one another.

Whether there was a course of dealings and an agreed assumption between the plaintiff and the defendant

65 Was there a course of dealings between the plaintiff and the defendant in a contractual relationship? If this first limb should fail, it would be unnecessary to look at the second and third limbs. It would appear that far from a contractual relationship, the plaintiff and the defendant did not formalise their arrangement in any contract nor was there a course of dealings. In some respect, this resulted in the lack of clarity over the arrangement and caused the present dispute to escalate. As the plaintiff indicated, he had only met the defendant once or twice and it was often Lily who acted as their conduit.

66 Second, the defendant tried to argue that the course of dealings arose by looking at the evidence in its totality, citing instances such as the plaintiff's statement and the issue of 174,999 shares to the defendant before the MOU was signed. As mentioned in [28], the issue of shares to the defendant was not done on 15 February 2005 but on 2 March 2005.

67 Further, with regards to the plaintiff's statement, irrespective of how the plaintiff interpreted the same, it was not addressed to the defendant but intended to assist Lily in her dispute with Boon Wei. Under cross-examination, the defendant accepted that this was the case and confessed to not reading the document carefully. The plaintiff's statement also contained factual inaccuracies. As of 2 November 2004, the plaintiff had not yet invested or extended any loan to Alsecure, it was only on 12 November 2004 that he invested his money. The plaintiff's statement did not carry any representation, promise or assurance that the plaintiff would pay for the defendant to have shares in Alsecure in her own right or for her own benefit.

68 Third, under cross-examination, the defendant admitted that even though Boon Wei and Lily might have represented to her that she was to own one-third share in Alsecure, it did not mean that someone else was going to pay for the one-third share, it would still have to be paid by her. Further, her testimony was riddled with inconsistencies when she revealed for the first time on the stand, that when Lily told her the plaintiff had advanced $200,000 to increase the paid-up share capital of Alsecure, she had told Lily to issue two-thirds of the new shares to Lily and one-third of the new shares to herself. This alleged representation was however, never mentioned in any of her affidavits or pleadings.

69 Fourth, I noted that at the 5 October 2005 meeting, the plaintiff (admitted by the defendant under cross-examination) indicated that he had voiced his concerns over his investment and in response, Lily and the defendant both promised him they would reduce expenses and try to curb losses so that the plaintiff could recoup his investment. Given these incidents, there was no course of dealings between the parties to speak of nor was there a shared assumption between them that the defendant would have both legal and beneficial ownership of the shares. Further, it was interesting to note that subsequent to this meeting, the plaintiff continued to transfer money to Alsecure (*ie* $70,000 on 16 December 2005). It follows that whatever transpired at the meeting must have gone some way towards assuring the plaintiff that his investment would be protected; hence, he was

willing to part with more money subsequent to the meeting.

70 Consistent with this conclusion, should the agreed assumption between the parties be that she had the beneficial ownership of the shares, it would not have been necessary for the defendant to instruct Pillai to prepare the accompanying declaration to the draft S&PA on the proposed sale of Alsecure to explicitly incorporate a term discharging both herself and Lily from all claims and liabilities owed to the plaintiff.

71 In my view, the above incidents would *ipso facto,* suggest that the defendant cannot argue that the plaintiff is estopped by convention from demanding the return of the shares.

Estoppel by representation

72 In a related vein, a similar proposition was raised by the defendant in pleading a defence of estoppel by representation. It is trite law that for a party to successfully raise a defence of estoppel by representation, three elements must be satisfied, namely, representation, reliance and detriment: *United Overseas Bank Ltd v Bank of China* [2006] 1 SLR 57 ("the *UOB* decision").

73 With regard to the first element of representation, it has been noted in *Halsbury's Laws of England Volume* 16(2) (4th edn, 2003) ("Halsbury's Laws of England") that the representation must be both material and unambiguous. A representation is material if it is of such a nature that it would induce a person to enter into a contract, or tend to induce him to do so (as in *Smith v Chadwick* (1882) 20 Ch D 27); or it is such that a person would be naturally inclined to believe it (as in *Pickard v Sears* (1836) 6 Ad & El 469; *Freeman v Cooke*(1848) 2 Exch 654; *HDS Viscaya AS v Bryggen Shipping and Trading AS* [2002] EWHC 1678). The test is an objective one and a representation can be regarded as material if the representee did in fact act upon it. Next, to found an estoppel, a representation must be clear and unambiguous.

74 Not surprisingly, the defendant mounted the argument that the statement given by Boon Wei and Lily and the subsequent conduct of the parties that she was to own one-third share in Alsecure was a clear and unequivocal representation that she was entitled to 175,000 shares so as to compensate her for accepting a lower salary. She therefore relied on these representations to her detriment. In effect she argued, citing the *UOB* decision for support that "it did not mean that for a person to be able to rely upon a representation, the representation must be made directly by the representor to the representee"(at [19] of the judgment).

75 As analysed earlier, the defendant's argument that she was willing to accept a lower salary under the promise of being given one-third share in Alsecure was untrue because, looking at her affidavit, she admitted that after the restructuring exercise in Assa Abloy, she was offered a lower salary by her company than what was negotiated for her employment with Alsecure. Further, it seemed to me that it would not be correct to argue that any representation was made by Lily who only acted as a mere conduit for the defendant. As Spencer Bower on *The Law Relating to Estoppel by Representation* states at pp 135-136, para VI.2.1:

> The onus is on the estoppel raiser to show that the representation was made to him, or else that he is entitled to raise the estoppel as representative of the representee, where, at the date when the estoppel is raised, the representee has died, or has come under any disability. *A representee may, of course, receive a representation by an agent, or a partner, but the principal must still (if he is to arise an estoppel) show that he was, by himself or his agent, actually or presumptively intended to act on it.* Furthermore, a representee includes not only any person to whom, or to whose agent, the representation was directly and immediately made, but

also any person to whose notice the representation was intended to, and did in fact, come. *Such intention may be shown to have been expressed by the representor, when making the representation, in the form of a request or authority to pass it on; or such intention may be inferred from the representor's proved or presumed knowledge that the representation was of such character that in the ordinary course of business, it would naturally and properly be transmitted to the representee.*

[emphasis added]

76 Consequently, the argument of the defendant that the plaintiff *via* his agent Lily represented to the defendant repeatedly, that she was intended to have the beneficiary interest in the shares seems to be ill-founded. Surely, if the plaintiff wanted to, he could have told her expressly in person or over the telephone that he wanted her to have the shares.

77 Extending this analysis further, under cross-examination, both the defendant and the defendant's husband admitted that at no point did the plaintiff allude to the fact that the shares were to be owned beneficially by the defendant. I noted too that the defendant cannot plead that she relied on any representation because she demonstrated that she was not clear about the specifics of the arrangement, for instance, she claimed that she was promised the specific number of 175,000 shares. This was not logical given that at the point of negotiations during the inception of Alsecure, the total amount of shares to be issued would not yet have been known.

78 Moreover, the ambiguity of the arrangement would have been clarified from the date of the 5 October 2005 meeting called by the plaintiff (proving that he in fact, recognised that Lily was not his agent). He had in fact told the defendant explicitly that he was worried about *his* investment and *his* pension money. At that juncture, what should have been clear to the defendant was that she did not own the shares at all and that the plaintiff was the rightful owner. Accordingly, given that there was no representation at all, I find that the defence of estoppel by representation fails.

Observations

79 In sieving through the evidence, one matter which served to complement the differing accounts by both parties warrants mention. The plaintiff's written submissions made reference to the alleged efforts of the defendant to divert business away from Alsecure. The background to this was as follows: There had been an exclusive agency agreement dated 31 August 2005 between Alsecure and Firstech I & C Co Ltd ("Firstech"), a Korean company, in which Firstech appointed Alsecure to be the exclusive agent to sell digital locks known as MYKEY in Singapore and Malaysia("MYKEY digital locks") for a term of five years.

80 It was alleged by the plaintiff that without the knowledge and/or consent of Alsecure, the defendant had covertly attempted (during the period February to May 2006), to procure another exclusive agency agreement for MYKEY digital locks in favour of a Singapore-based competitor known as Allsolution Secureware Asia Pte Ltd ("Allsolution"). In October 2006, Lily learnt of the existence of Allsolution's website and visited it; she found that it stated that Allsolution was the exclusive distributor of MYKEY digital locks in Singapore. Alarmed, Lily wrote to Mr Jang of Firstech to apprise them of the website and sought clarification as to whether there was a breach of the exclusive agency agreement. He responded by stating that he was introduced by the defendant to a director of Allsolution and that both the defendant and a representative from Allsolution had visited him in Korea in May 2006 to attempt to obtain the exclusive right for MYKEY digital locks. However, he clarified that Firstech ultimately did not conclude any agency agreement with them.

81 Even so, on 6 November 2006, Firstech terminated the distributorship with Alsecure while the defendant was still a director and employee of Alsecure. Three days later, she resigned from Alsecure. It was discovered subsequently that officers of Allsolution included relatives of the defendant. The defendant apparently became CEO of a company called Alliancz International Pte Ltd ("Alliancz") which was incorporated in October 2006. Firstech granted Alliancz an exclusive agency agreement for MYKEY digital locks sometime in December 2006.

82 The defendant on the other hand argued that Lily was aware of such activities. In her testimony, the defendant was unable to state when she visited Korea exactly. It transpired that although she had gone to Korea in 2006, it was for a family holiday from 31st October 2006 to 3 November 2006 and she did not meet with any representatives of Firstech except the President, in a social context, on 31 October 2006. Taking these factors into account, the plaintiff contended that based on the alleged diversion of business, if the defendant believed she truly owned the shares in Alsecure, she would have done her utmost to ensure the success of Alsecure rather than try to divert its business elsewhere.

83 Whether the defendant was actively engaged in diverting business away from Alsecure is not the subject of and not relevant to these proceedings. I would hesitate to make any finding on the issue since it appeared that the defendant had allegedly commenced a libel action against Lily.

84 On the evidence, I find that the defendant has failed to displace the presumption of a resulting trust in the plaintiff's favour. She could not prove that: (a) she was entitled to the beneficial ownership of the 175,000 shares in Alsecure as a gift or (b) that the sums put into the company by the plaintiff were loans. Her defences of estoppel by representation and estoppel by convention accordingly fails.

Conclusion

85 In the result, I award the plaintiff final judgment on his claim with costs together with the costs in Originating Summons No 2134 of 2006. As there was no evidence of the loss if any, suffered by the plaintiff arising from the defendant's refusal to acknowledge his ownership of the shares, nor was it pleaded by the plaintiff or particularised in his affidavit of evidence-in-chief, an award of damages (to be assessed by the Registrar) would not be appropriate.

86 I declare that the defendant holds the 175,000 shares in Alsecure on trust for the plaintiff and that the plaintiff is the beneficial owner thereof. The defendant is directed to transfer the shares to the plaintiff within ten days of the judgment date without consideration. In the event the defendant fails to comply with this direction as ordered, the Registrar of the Supreme Court is empowered to execute the share transfer and any incidental documents on her behalf.