IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 127

Originating Summons No 833 of 2020

Between

Somwonkwan Sharinrat

… *plaintiff*

And

1 Wong Hong Sang Maurice
2 Wong Seng Khiew

… *defendants*

GROUNDS OF DECISION

[Trusts] — [Constructive trusts]
[Trusts] — [Resulting trusts]
[Land] — [Interest in land] — [Joint tenancy]

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v
Wong Hong Sang Maurice and another

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19 January 2021

24 May 2021

Lai Siu Chiu SJ:

Introduction

1 Somwonkwan Sharinrat ("the plaintiff") filed Originating Summons No. 833 of 2020 ("the Application") in which she prayed for, *inter alia*, the following relief against Wong Hong Sang Maurice ("the first defendant") and Wong Seng Khiew ("the second defendant") (collectively "the defendants") who are her former husband and former father-in-law respectively :-

> A declaration that the first defendant is the legal owner of 50% of the Housing and Development Board ("HDB") flat at Block 234, Jurong East Street 21 #05-304, Singapore 600234 ("the Flat"), in the alternative, that the second defendant holds 50% of the beneficial interest in the Flat for the first defendant.

2 This court heard and dismissed the Application. As the plaintiff has appealed against the dismissal of the Application (in Civil Appeal No 9 of 2021), I now set out the reasons therefor.

The facts

3 According to the plaintiff's first affidavit ("the plaintiff's first affidavit") filed in support of the Application[1], she had obtained a decree *nisi* against the first defendant in divorce proceedings she instituted against the first defendant in the Family Justice Courts ("FJC"). At the time of the hearing of the Application, the ancillary proceedings between the parties were still pending in the FJC.

4 The plaintiff and the first defendant were married in February 2013 and they have two children. Since their marriage, the couple have lived at the Flat with the first defendant's parents and now with the second defendant after the first defendant's mother passed away.

5 The plaintiff deposed that the defendants co-owned the Flat and she was applying for a division of the first defendant's 50% share in the Flat. The Flat is worth $540,000 (according to the plaintiff's searches on HDB's record of transacted prices as of 9 August 2020).

6 The plaintiff pointed out that the second defendant claimed he had used his Central Provident Fund ("CPF") contributions to pay for the outstanding mortgage loan. Consequently. The first defendant's share of the Flat is based on

[1] On 25 Aug 2020

the use of his CPF contributions in paying the mortgage instalments which amounted to $22,674.28 as of 3 June 2020.

7 The plaintiff added that the Flat was purchased in 1998 by the second defendant and his wife. On 17 April 2010, the first defendant's name was included as a joint tenant of the Flat by way of a gift from his parents. Following the demise of the first defendant's mother in 2016, her interest in the Flat devolved to the defendants under the right of survivorship.

8 The plaintiff deposed that apart from the use of the first defendant's CPF savings to meet the initial down-payment of the Flat, the first defendant made no other payments for the Flat as the monthly mortgage instalments thereafter were serviced by the second defendant using his CPF contributions.

9 The plaintiff disclosed that the second defendant is employed by the first defendant as a driver at the latter's company after the second defendant was retrenched from his last job. She had reason to believe that the CPF contributions utilised in servicing the monthly mortgage instalments were paid by the first defendant.

10 Consequently, the plaintiff was of the view that the first defendant has an equal share in the Flat as the second defendant and she wanted the court to grant the declaratory relief she claimed in the Application.

11 The defendants not unexpectedly objected to the Application. In their joint affidavit filed[2] to oppose the Application as well as to support their

[2] On 22 Sep 2020

application (in Summons No 4070 of 2020) to strike out the Application under O 18 r 19 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the striking out application"), the defendants deposed that the Application is inappropriate in being commenced by way of an Originating Summons ("OS") which is meant for matters where the sole or principal question for determination is one involving construction of any written law or of a deed, will or any other document.

12 The defendants deposed that an OS procedure is not apposite where (as in this case) there is undoubtedly a dispute of fact. Here, the court has to undertake a fact-finding process whereby evidence from both sides must be tendered to determine the ownership of the Flat.

13 The defendants submitted that the Application is a frivolous and vexatious exercise. The plaintiff's argument was that because the first defendant employs the second defendant and pays him a salary, the former is indirectly contributing towards the monthly mortgage instalments of the Flat made by the latter. Therefore, the first defendant owns a 50% share in the Flat.

14 They pointed out that if the plaintiff's argument is taken to its logical conclusion, it would mean that all employers who make CPF contributions for their employees would own a share in their employees' house or other properties. Moreover, the concept of family-run businesses is not novel or unique.

15 The plaintiff had exhibited[3] the contribution history of the first defendant to the second defendant's CPF account. The contribution history showed the first defendant made an aggregate monthly contribution of $359 towards the second defendant's CPF account from May 2017 to December 2018 of which $75.73 went into his ordinary account, $228.56 into his medisave account and $54.61 into his special account. From January 2019 onwards, a lower sum averaging $299 per month was contributed by the first defendant of which only $23.76 went into the second defendant's ordinary account, $24 went into his special account and $251.24 went into his medisave account. The contributions made by the first defendant to the second defendant's CPF ordinary account for the period May 2017 to December 2018 totalled $1,514.60 and from January 2019 to June 2020 totalled $427.68. The two sums added up to $1,942.28. Accounting for slight variations from month-to-month, the court's calculations show that the contributions made by the first defendant to the second defendant's CPF ordinary account for the period May 2017 to December 2018 only totalled $1,266.86 and from January 2019 to June 2020, the total was $422.76. The two sums added up to $1,689.62 and not $1,942.28. The court however adopted the defendants' figures as they were more favourable to the plaintiff.

16 The defendants therefore found the plaintiff's contention that the first defendant is the one paying for the Flat puzzling.

17 Even if the court accepts the plaintiff's argument that the first defendant indeed paid/pays for the Flat via the second defendant's CPF contributions, the

[3] As exhibit SK-1 pgs 9-21

defendants contended that there is no justification or basis for the declaration of 50% ownership sought by the plaintiff.

18 The defendants pointed out that the plaintiff is not seeking a determination by the court as to the percentage share owned by the first defendant in the Flat. Instead, she is asking the court to impute an equal share or 50% to the first defendant, of which she wants a share in the division of the couple's matrimonial assets. The defendants pointed out that apart from her bare assertion, the plaintiff had provided no evidence or justification in support of her claim.

19 Assuming *arguendo* the plaintiff's argument is correct, the defendants totalled up the first defendant's down-payment of $22,674.28 towards the Flat and his contributions of $1,942.28 to the second defendant's CPF ordinary account. The sums added up to $24,616.56. However, the second defendant pays $549 every month for the Flat through his ordinary account. He had contributed $514,713.39 (inclusive of interest) towards the purchase of the Flat as seen in his CPF statement[4] that the defendants produced. The defendants therefore argued that the plaintiff's contention that the first defendant has 50% interest in the Flat unsustainable. They asserted that his share, based on his contributions, equates to only 4.26% of the Flat.

20 As for the plaintiff's alternative claim in the Application, namely, that that the second defendant holds 50% of the beneficial interest in the Flat for the first defendant, she had provided no evidence as to how the trust came into existence, apart from her bare assertion. In any case, under s 51(8) of the

[4] At exhibit MWSK-1 pg 1

Housing and Development Act (Cap 129, 2004 Rev Ed) ("HDA"), any trust to be created over HDB property requires the consent of the HDB.

21 Consequently, the defendants urged the court to dismiss the Application.

22 The plaintiff filed two further affidavits before the hearing of the Application.

23 In her affidavit filed on 20 October 2020 ("the plaintiff's second affidavit"), the plaintiff deposed to her marital woes which with respect, are irrelevant to this matter. She asserted[5] that the first defendant had "deliberately coined a situation" of getting the second defendant to work for him, draw a salary and pay for the mortgage through the second defendant's CPF contributions but chose not to pay himself a regular salary with CPF contributions.

24 She claimed that the whole intention to include the first defendant as an owner of the Flat was because the second defendant and his wife could not afford to pay for the mortgage and had fallen into arrears. Yet, after he became a co-owner, the first defendant made no contribution towards the Flat except for the lump sum payment set out in [6] and [19] above. She alleged that after the first defendant became a co-owner, his and the second defendant's situations changed. The second defendant could afford to pay the monthly mortgage instalment from the salary he received from the first defendant whereas the first defendant was unable to service the housing loan anymore. She alleged there

[5] In para 7

was thus a family conspiracy to deprive her of her rightful share and interest in the Flat.

25 The plaintiff asserted that the burden of proof was on the defendants not her, to show that they are holding the Flat in unequal shares. She requested that the striking out application be dismissed.

26 In her third affidavit filed on 15 December 2020 ("the plaintiff's third affidavit"), the plaintiff repeated her assertions in her first affidavit as set out at [7] above on the first defendant's parents giving him a share in the Flat out of natural love and affection.

27 She disagreed with the defendants' computation of the first defendant's interest in the Flat being only 4.26%. She was not privy to the defendants' family arrangement but was certain that the loan repayment arrangement was to deprive her of her rightful share in the Flat in the event the first defendant divorced her. She alleged that he had told her repeatedly during their marriage that he would make sure she would not get a share of the Flat if ever they divorced.

28 The plaintiff asserted that in the absence of evidence to the contrary, the defendants were named in the title deed of the Flat as joint tenants – that meant that they hold the Flat in equal shares, unlike a tenancy-in-common where shareholdings can be unequal.

The submissions

(i)The plaintiff's arguments

29 In support of the Application, the plaintiff's counsel cited ss 53(5) and 53(6) of the Land Titles Act (Cap 157, 2004 Rev Ed) ("LTA") which state:

> (5) Without prejudice to any rule or principle of law relating to severance of a joint tenancy, any joint tenant may sever a joint tenancy of an estate or interest in registered land by an instrument of declaration in the approved form and by serving a copy of the instrument of declaration personally or by registered post on the other joint tenants.
>
> (6) Upon the registration of the instrument of declaration which has been duly served as required by subsection (5), the respective registered estates and interests in the registered land shall be held by the declarant as tenant-in-common with the remaining joint tenants, and the declarant shall be deemed to hold a share that is equal in proportion to each of the remaining joint tenants as if each and every one of them had held the registered land as tenants-in-common in equal shares prior to the severance.

She pointed out that the defendants could have but did not sever their joint tenancy of the Flat. Therefore, they held the Flat in equal shares.

30 Even if the defendants had severed their joint tenancy in the Flat, it would still have resulted in the first defendant holding 50% in the Flat due to the operation of s 53(6) of the LTA set out above. There could not have been a trust created with the first defendant holding his interest in the Flat on trust for the second defendant, due to s 51(8) of the HDA which states:

> No trust in respect of any protected property shall be created by the owner thereof without the prior written approval of the Board.

Consequently, the plaintiff submitted that the first defendant held a 50% share in the Flat.

31 The plaintiff's counsel cited certain cases in support of her client's arguments. The cases included *Calverley v Green* (1984) 155 CLR 242 ("*Calverley v Green*") and *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*") as well as the defendants' authority *Damodaran s/o Subbarayan v Rogini w/o Subbarayan* [2020] 5 SLR 1409 ("*Damodaran*"). The court will return to these authorities later.

(ii) The defendants' arguments

32 The defendants submitted that the Flat is valued at $430,000 as at 30 June 2020 and it has an outstanding mortgage of $46,476.83.

33 The defendants criticised the plaintiff's claim as being fanciful and entirely without substance. They contended that there is no evidence of an express or an inferred common intention that the parties should hold the beneficial interest in the Flat in a proportion different from their contributions. As such, the court may not impute a common intention where one did not in fact exist. They cited the Court of Appeal decision in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*") as well as *UJT v UJR and another Matter* [2018] 4 SLR 931 ("*UJT v UJR*") in support of their arguments.

34 *Low Yin Ni and another v Tay Yuan Wei Jaycie (formerly known as Tay Yeng Choo Jessy) and another* [2020] SGCA 58 was also cited by the defendants as the facts in the case were similar to the facts here. There, the appellate court found that the appellants (who were the second respondent's

parents and the first respondent's in-laws) faced persistent difficulties in making payments on the mortgage of their HDB flat. Their mortgage payments were irregular, were often missed or insufficient to even cover the interest component. Consequently, the Court of Appeal found that the appellants added the respondents as co-owners to the flat to enable the respondents to use their CPF monies to help the appellants pay down the mortgage due to the appellant's dire financial situation. They never intended to make a gift of ⅓ of the flat to the second respondent.

35 The defendants also referred to *Lau Siew Kim* for the guidelines on the principle of advancement. In that case, the Court of Appeal held at [78]:

> The overall aim of the presumption of advancement is to discern the intention of the transferor. As Gibbs CJ remarked in *Calverley v Green* ([37] supra) at 250:
>
> > The presumption should be held to be raised *when the relationship between the parties is such that it is more probable than not that a beneficial interest was intended to be conferred,* whether or not the purchaser owed the other a legal or moral duty of support [emphasis added].

36 The defendants submitted that the principle of advancement that applied in *Lau Siew Kim* is no more than a rough and ready guide and is not meant to be applied rigidly.

The decision

37 This court dismissed the Application as, on the facts disclosed in the affidavits filed by the plaintiff and the defendants, it was very clear that the plaintiff's assertion that the first defendant held a 50% share in the Flat was not borne out.

38 In *Chan Yuen Lan*, the Court of Appeal (at [111]) pointed out that in *Stack v Dowden* [2007] 2 AC 432, Lord Neuberger had drawn a sharp distinction between an inferred and an implied common intention, holding that the court could infer a common intention on the part of the parties, but could not impute to them a common intention. This same point was adopted in *Chan Yuen Lan* (at [160(b)]), where the Court of Appeal stated that "a court may not impute a common intention to the parties where one did not in fact exist." However, that was exactly what the plaintiff attempted to do in this case – she wanted the court to impute a common intention to the defendants that they intended to own the Flat in equal half shares notwithstanding their unequal contributions towards its purchase price. That is something the court cannot and will not do.

39 In addition, the defendants were right in their contention that an OS procedure is not appropriate for this case. As the defendants pointed out in [11] and [12] above, an OS procedure is wholly inappropriate in a case as here, where it was not a question of construction of a document but involved a determination on a dispute on facts.

40 By taking out the OS, the plaintiff was in effect attempting to circumvent and cut short, the ancillary proceedings pending in the FJC. That is unacceptable.

41 The court will now deal with the cases that the plaintiff cited (at [31] above) and explain why they do not help to advance her case. first, there is *Calverley v Green*, a case concerning resulting trusts. In that case, the plaintiff Mr Calverley lived with the defendant Ms Green for about 10 years as husband and wife although the parties were not married. They first started living together

at property A which was owned by Mr Calverley, and Mr Calverley would give Ms Green a certain sum every week as contribution towards the household expenses. Ms Green would pay the balance of the household expenses. At first, Mr Calverley's contributions were about half of the household expenses. Over time, his contributions were proportionately reduced while Ms Green's contributions increased, all funded from the earnings from her employment.

42 At some point in their relationship, Mr Calverley and Ms Green decided to purchase a property B, for which Mr Calverley initially experienced difficulty in obtaining financing. Subsequently, he told Ms Green that the loan had been approved but the finance company required the purchase to be in the joint names of the parties. At Mr Calverley's suggestion, Mr Green signed the application form of the finance company, in which she was represented as his wife. The couple were jointly and severally liable to repay the sum borrowed from the finance company with interest. Property B was transferred to the couple as joint tenants. Mr Calverley paid the deposit for property B from part of the sale proceeds of property A, and made repayments under the mortgage for property B from his own funds.

43 After living at property B for some five years, Ms Green left. She then brought an action seeking an order for sale of property B and an equal distribution of the sale proceeds. Mr Calverley counterclaimed for a declaration that Ms Green held her interest in property B in trust for him and for an order that she transfers her interest to him.

44 The first instance court held that property B was put into the joint names of the parties for the purpose of enabling finance to be raised and not to confer any beneficial interest on Ms Green and she had no beneficial interest therein.

On Ms Green's appeal, the decision was reversed by the Court of Appeal, which held that, subject to the mortgage, the parties were joint owners in equity as well as in law, of property B. On Mr Calverley's appeal, the High Court of Australia held that the presumption that the parties held the legal estate in trust for themselves in shares proportionate to their contributions to the purchase price was not rebutted by the circumstances of the case.

45 *Calverley v Green* supports the defendants' position that their share in the Flat equated to their contributions towards the purchase price. Our Court of Appeal in *Lau Siew Kim* at [112], followed *Calverley v Green* in respect of this proposition.

46 In *Lau Siew Kim*, the appellate court dealt with the principles of presumption of advancement and resulting trust. The respondents there were the only sons of the late Yeo Hock Seng ("Yeo"). They sought a declaration that two properties namely the Minton Rise Road and the Jalan Tari Payong property (collectively "the Properties") were held by their step-mother, the appellant, on trust for the estate of Yeo. At first instance, this court found that there was a presumption of resulting trust in respect of the properties and declared that the appellant held the properties on trust for herself and the estate in proportion to their respective financial contributions to the purchase of the properties. The step-mother appealed against the decision.

47 The Court of Appeal allowed the appellant's appeal and held *inter alia* that in applying the presumptions of resulting trust and advancement, a two-stage test should be adopted: (i) the court had to first determine if the presumption of resulting trust arose on the facts and (ii) it was only if a resulting trust was presumed that the presumption of advancement would apply to

displace the initial presumption. On the facts of the case, the Court of Appeal held that since the relationship between the parties was a spousal one, the presumption of advancement operated in relation to the properties. The parties had a close and caring relationship and Yeo's intention for the appellant to benefit absolutely from all his assets after his demise was reflected by his execution of a will that named the appellant the sole beneficiary of all his properties upon his death.

48 The defendants had also cited the case of *UJT v UJR*, which is instructive. There, the sole executor of a will executed by his late grandfather applied to court to sell a property that was bought in the grandfather's sole name some 50 years ago as his and his wife's matrimonial home. The property was the principle asset under the will which had made it subject of a trust for sale, whose beneficiaries comprised only the executor and one of the grandfather's sons. The executor sought a declaration that he was entitled to sell the property. The executor's grandmother who still occupied the property with two of her sons responded with an action against her grandson claiming a beneficial interest in the property under a purchase price resulting trust and a common intention constructive trust. She also asserted a right to occupy the property based on a deserted wife's equity and a licence coupled with an equity.

49 The grandmother's action was dismissed while the executor was granted the declaration he sought. The High Court held that the grandmother failed to show on a balance of probabilities that she had contributed to the purchase price of the property in the proportion that she claimed to have done.

50 Then, there is the case of *Chan Yuen Lan*[6]. There, the parties were married in 1957 and the wife quit her job soon thereafter. Although the husband subsequently had an affair and then lived with his mistress, the parties did not divorce. In 2012, the husband sought a declaration that the wife held the entire beneficial interest in a property on a resulting trust for him. The wife counterclaimed for a declaration that she was the true owner of the property, which was purchased in 1983 in her sole name.

51 The purchase price of $1.83m was funded from six sources namely (i) the wife's life savings of $290,000; (ii) an overdraft of $400,000 in the name of the husband's company; (iii) $400,000 from a bank loan in the wife's name; (iv) $8,000 from a joint account in the name of the husband and the couple's eldest son; (v) $10,000 from the eldest son; and, (vi) $720,000 from the husband's savings and his Central Provident Fund savings.

52 The husband maintained that he had agreed to put the property in the wife's name so that she could brag to her friends but only on condition that she acknowledged him as the true owner. He said she acknowledged him as the true owner by executing a power of attorney shortly before the completion of the purchase appointing him and their eldest son to take charge of the property. The husband further asserted he had fully repaid her the loan of $290,000 she extended to him to fund part of the purchase price, which the wife denied.

53 The wife conceded that she did not provide the entire purchase price of the property but asserted that the parties agreed that that she would own the property absolutely and this was evidenced by her willingness to (a) apply her

[6] See [33] *supra*.

life savings towards the purchase price and (b) allow future income which she would derive from the husband's companies to be applied towards the repayment of the bank loan. In the alternative, she resisted the husband's claim on the basis that the presumption of advancement applied in her favour.

54 The trial judge held that the property was held on a resulting trust by the wife for the husband. On appeal by the wife, the Court of Appeal held that the wife held 84.1% of the property on a resulting trust for the husband as she had failed to rebut this presumption.

55 It is noteworthy that despite the spousal relationship between the parties, the appellate court did not apply the presumption of advancement as on the facts (the husband having left the wife to live with the mistress) that presumption did not apply.

56 Finally, there is the case of *Damodaran*. There, the son took out proceedings against his mother. The plaintiff's late father and his mother ("the couple") owned a HDB flat at Lower Delta Road ("the Lower Delta flat") as joint tenants. When the Lower Delta flat was compulsorily acquired, the couple obtained a replacement flat as joint tenants in September 2001. The plaintiff and his family stayed with the couple at the Lower Delta flat as well as at the replacement flat. The plaintiff was added as the third joint tenant of the replacement flat in September 2004 and took over the balance of the housing loan. The father died intestate in October 2004

57 In 2019, the mother severed the joint tenancy of the replacement flat into a tenancy in common in equal shares. The son commenced proceedings seeking a determination of his and his mother's respective shares in the replacement flat.

58 The court was of the view that the couple held the Lower Delta flat as joint tenants in both law and equity. Applying *Chan Yuen Lan*, the court found there was insufficient evidence of the late father's and mother's respective financial contributions to the purchase price of the Lower Delta flat. It was thus presumed that they held both the legal and beneficial interests as joint tenants. The couple likewise held the replacement flat as legal and beneficial joint tenants at the time of the acquisition.

59 When the plaintiff was added as a third legal joint tenant, he held his beneficial interest as a tenant in common in proportion to his contribution to the flat while the couple continued to hold their beneficial interest in the flat jointly. Upon the father's demise, the mother by the right of survivorship became the sole beneficial owner of his interest. The mother and the plaintiff remained legal joint tenants until the mother severed the joint tenancy after which they became tenants in common with the plaintiff's share being proportionate to his contribution. Based on the monetary contributions of the plaintiff, the court held that the plaintiff and the mother owned the replacement flat in the proportion of 45.35% and 54.65% respectively.

60 This court's review of the cases in [38] to [59] cited by one or other of the parties show that none would assist the plaintiff and support her contention that the first defendant held more than 4.26% in the Flat, based either on the principle of advancement or resulting trust. There could not be a resulting trust held by the second defendant of the first defendant's alleged 50% interest in any case without HDB's approval because of s 51(8) of the HDA set out earlier at [30].

61 It bears recapitulating that the plaintiff herself admitted that the first defendant only contributed $22,674.28 towards the purchase price of the Flat and he became a joint owner because the second defendant and the first defendant's mother had difficulties in servicing the HDB mortgage loan. All the authorities reviewed earlier pointed to the first defendant's share in the Flat being based on his actual contribution towards the purchase price. The plaintiff did not produce one iota of evidence to refute that principle. Consequently, the court dismissed the Application.

Lai Siu Chiu
Senior Judge

Jenny Lai Ying Ling (Jenny Lai & Co) for the plaintiff;
Jerome Ashley Tan Wey Chiang (H C Law Practice) for the defendants.