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

[2021] SGHC 268

Suit No 625 of 2019

Between

Lyu Jun

… *Plaintiff*

And

Wei Ho-Hung

… *Defendant*

JUDGMENT

[Contract] — [Intention to create legal relations]
[Gifts] — [Inter vivos]
[Gifts] — [Presumptions against] — [Resulting trusts]
[Restitution] — [Unjust enrichment]
[Trusts] — [Quistclose trusts]
[Trusts] — [Resulting trusts] — [Presumed resulting trusts]

TABLE OF CONTENTS

Lyu Jun
v
Wei Ho-Hung

[2021] SGHC 268

General Division of the High Court — Suit No 625 of 2019
Philip Jeyaretnam J
22–26, 29–31 March, 1 April, 18 June, 28 September 2021

26 November 2021 Judgment reserved.

Philip Jeyaretnam J:

Introduction

1 Some solace for the parties embroiled in this action is that they loved each other fiercely. Their love burned hot and fast, dying out before they could marry as they had vowed to do. This court is left to rake through the ashes to decide what belongs to each of them as they part ways. Without the benefit of matrimonial law to guide this exercise, it is property law to which we turn.

2 It helps in answering the question of ownership that they exchanged reams of messages. At times, interpreting those messages presents something of a challenge, not so much because they were written in Chinese, and had to be translated for the court, but because they were written in the language of love: larded with vows, suffused with sacrifice and stirred from time to time by anger

or resentment. Such language is not always easy to render into the dry language of property law.

3 The story of their love is what has to be deciphered. Is it, as the defendant says, a classic tale of a lover who, having made lavish gifts as an expression of his love, is now seeking to claw them back?[1] Or did the plaintiff transfer moneys to the defendant for the purpose of their intended new life together – to buy a home, a car and various incidentals or investments – without any intention of making a gift of the moneys or the assets purchased with those moneys?

Facts

The parties

4 The plaintiff, Lyu Jun, is a national of the People's Republic of China ("PRC").[2] I shall refer to him as Mr Lyu. Mr Lyu is a dentist by profession.[3] He retired after selling his shares in a dental hospital in the PRC for RMB80,000,000.[4] During the events in question, Mr Lyu was based in Beijing.

5 The defendant, Wei Ho-Hung, was originally a PRC national, but is now a citizen of both the Republic of China and Grenada.[5] I shall refer to her as Ms Wei. In 2014, she incorporated a medical technology company in Singapore, Hong-Shuo Medical Technologic (SG) Pte Ltd ("Hong-Shuo Medical

---

1 Defendant's closing submissions dated 31 May 2021 ("DCS") at para 2.

2 Lyu Jun's affidavit of evidence-in-chief dated 3 March 2021 ("Lyu's AEIC") at para 5.

3 Statement of Claim (Amendment No 4) dated 29 September 2021 at para 1.

4 Lyu's AEIC at para 6; Wei Ho-Hung's affidavit of evidence-in-chief dated 2 March 2021 ("Wei's AEIC") at para 47; Transcript, 23 March 2021, p 42 lines 10–13.

5 Wei's AEIC at para 8.

Singapore"), and relocated to Singapore holding an employment pass as its chief executive officer.[6]

Background to the dispute

6 Mr Lyu and Ms Wei first met at a medical conference in March 2016, and thereafter became romantically involved.[7] They soon formed an intention for Mr Lyu to relocate to Singapore, where they were to marry and build a life together.[8]

7 During the course of their relationship, Mr Lyu transferred large sums of money to Ms Wei: according to him, about S$8,000,000,[9] but Ms Wei only admits to receiving almost S$7,000,000.[10]

8 The moneys were used to purchase a number of assets in Singapore in Ms Wei's name, as well as for certain other purposes. Some purposes do not appear to have been carried out. The assets and purposes with which these proceedings are concerned are:[11]

(a) an apartment located at Leedon Heights (the "D'Leedon apartment");

(b) a Mercedes-Benz GLC250 (the "Car");

---

6 Wei's AEIC at para 14.

7 Lyu's AEIC at para 7; Wei's AEIC at para 21.

8 Lyu's AEIC at para 33; Wei's AEIC at paras 34 and 53.

9 Statement of Claim (Amendment No 4) dated 29 September 2021 at para 7; Lyu's AEIC at paras 20 and 21.

10 Defence (Amendment No 1) dated 26 February 2021 at paras 10(c) and (h).

11 Statement of Claim (Amendment No 4) dated 29 September 2021 at para 10.

(c) the discharge of a mortgage taken out by Ms Wei over a property at Bartley Ridge (the "Bartley mortgage"), which may not have happened;

(d) a surrogacy procedure in the US, which did not happen (the "US surrogacy");

(e) an option to purchase an apartment in Cairnhill, which was granted but not exercised (the "Cairnhill option");

(f) an investment into a dental clinic, which did not happen (the "first clinic investment");

(g) applications for Grenadian citizenship for Ms Wei and her four children from previous relationships ("Grenadian citizenship");

(h) a shop at Marne Road (the "Marne Road shop");

(i) an investment into a second dental clinic, which did not happen (the "second clinic investment").

9 Their relationship seems to have severely deteriorated from about September 2018,[12] and certainly came to an end by 17 May 2019 when Mr Lyu was arrested as the result of a complaint made by Ms Wei to the police.[13] That complaint and others made by her against Mr Lyu never resulted in any prosecution.[14]

---

12 Lyu's AEIC at para 85; Wei's AEIC at para 96.

13 Lyu's AEIC at para 104.

14 Lyu's AEIC at para 115.

Procedural history

10 On 24 May 2019, a few days after Mr Lyu's arrest, Ms Wei commenced suit against him by HC/S 515/2019.[15] She sought the return of S$300,000, which she alleged she had transferred to him to facilitate his opening of a bank account in Singapore.[16] She pleaded it was not a gift; rather, it was held on constructive or resulting trust for her by Mr Lyu.[17] She applied for and was granted a freezing order *ex parte*,[18] which was discharged on 7 August 2020.[19] Ms Wei discontinued this earlier suit on 23 November 2020.[20]

11 Mr Lyu commenced these proceedings on 26 June 2019. His case in its essentials has not changed, namely that he transferred large sums of money to Ms Wei that were not intended as gifts, and so they, and the assets purchased with those moneys, were held on resulting or constructive trust for him. He pleaded specific transfers totalling about RMB40,000,000[21] and the specific purposes for which the moneys were used.[22]

12 Strikingly, in her original defence, Ms Wei denied both the transfers and the purposes, admitting only that she had received some monetary gifts whose amount she did not specify.[23] She confirmed and elaborated on her denials in

---

15 Bundle of Affidavits Volume 3 ("3 BA") at p 1037.

16 3 BA at pp 1040–1041.

17 3 BA at p 1043.

18 3 BA at pp 1629–1631.

19 Plaintiff's closing submissions dated 31 May 2021 ("PCS") at para 41.

20 3 BA at p 1632.

21 Statement of Claim dated 26 June 2019 at para 7.

22 Statement of Claim dated 26 June 2019 at para 10.

23 Defence dated 6 March 2020 at paras 10 and 14.

two interlocutory affidavits.[24] For example, she said on oath that no payment was made using moneys belonging to Mr Lyu towards the purchase price of the D'Leedon apartment, the Car or the Cairnhill option.[25]

13 It was only in February 2021, about a year and eight months after the proceedings commenced, that Ms Wei amended her defence to admit receiving almost S$7,000,000 and to plead that this money, as well as any assets purchased with it, were meant as gifts to her.[26] This was only about a month before the trial, which took place in March and April 2021.

14 While Mr Lyu's case remained substantially the same throughout, the relief that he sought was overly broad and did not fully match the case as it had narrowed following discovery and evidence at trial. I raised with his counsel at the original oral closing submissions on 18 June 2021 that the relief claimed lacked precision.[27] This led to Mr Lyu's filing an application on 23 July 2021 to amend the relief sought by his statement of claim, with no change to the body of the pleading. After hearing parties on 30 August 2021, I allowed the bulk of these amendments and permitted Ms Wei's counsel's request to file a further round of submissions, limited to the changes made to the relief sought, with a final reply given to Mr Lyu's counsel.

---

24 Wei Ho-Hung's affidavit dated 8 July 2019 at paras 20, 28, 32, 46, 47 and 57; Wei Ho-Hung's affidavit dated 27 April 2020 at paras 29 and 32.

25 Wei Ho-Hung's affidavit dated 9 July 2019 at paras 28, 32 and 47.

26 Defence (Amendment No 1) dated 26 February 2021 at para 10.

27 Transcript, 18 June 2021, p 105 lines 3–29.

The parties' cases

15 Mr Lyu's case is that he had transferred moneys to Ms Wei so that they could build a life together in Singapore, with the D'Leedon apartment and the Car. These were not gifts and belonged to him, though Ms Wei had the benefit of being able to use them. He also contended that he later transferred additional moneys to her for the purpose of discharging the Bartley mortgage on the shared basis that they would marry. As they did not marry and she did not in fact discharge the Bartley mortgage, she had to return those moneys to him. Subsequently, at her request he transferred moneys for three projects, namely the Cairnhill option, the US surrogacy and the first clinic investment, all of which were not ultimately executed; therefore, Ms Wei had to return those moneys, or in the case of the Cairnhill option, account for the rental she received in subletting the property. Later, she asked him for financial help in connection with her application for Grenadian citizenship for herself and her children, and he contended that the money he transferred to her for this purpose was a loan that she had to repay. Then there was the Marne Road shop, in relation to which he claims a resulting trust in proportion to his contribution to its purchase. Finally, there was a second clinic investment that was mooted but did not materialise, and he seeks a refund of the moneys he transferred to her for that purpose. Mr Lyu also claims that Ms Wei unlawfully removed and retained a Rolex watch belonging to him, and seeks either the delivery up of the watch or a payment equal to its purchase price.

16 Mr Lyu's case in essence is that these transfers were not made as gifts.[28] He accepts that he had made certain other gifts to her, such as watches and

[28] Statement of Claim (Amendment No 4) dated 29 September 2021 at para 8.

luxury bags.[29] At times, his case veered into the suggestion that Ms Wei had seduced him for his money. He even called her former husband, Mr Lu Chia-Ying ("Mr Lu"), as a witness to attest to how he too believed he had been cheated by her. Ultimately this line of argument was not pursued, beyond the submission that Ms Wei is no stranger to court proceedings.[30]

17 Ms Wei's case is simple: everything was meant as a gift of love to her.[31] While she messaged a sort of IOU for the moneys needed for the applications for Grenadian citizenship,[32] she argued that there was no intention to create legal relations, as would have been necessary for a contract of loan.[33]

Issues to be determined

18 I will start with a brief overview of the relevant legal principles, before determining the issues in this case by reference to the assets or purposes of expenditure in the following (broadly chronological) order:

(a) the D'Leedon apartment;

(b) the Car;

(c) the discharge of the Bartley mortgage;

(d) the three projects: the Cairnhill option, the first clinic investment and the US surrogacy;

(e) the application for Grenadian citizenship;

---

29 Statement of Claim (Amendment No 4) dated 29 September 2021 at para 8.

30 PCS at para 84.

31 Defence (Amendment No 1) dated 26 February 2021 at paras 10 and 12.

32 Agreed Bundle of Documents Volume 2 ("2 AB") 669–670.

33 DCS at paras 211 and 215.

(f) the Marne Road shop;

(g) the second clinic investment; and

(h) the Rolex watch.

Brief overview of legal principles

19 I will consider the legal principles under the following heads:

(a) gifts;

(b) presumed resulting trusts and common intention constructive trusts;

(c) failed purpose trusts;

(d) unjust enrichment; and

(e) intention to create legal relations.

Gifts

20 The law relating to gifts has been recently recapitulated by the Court of Appeal in *Toh Eng Tiah v Jiang Angelina and another appeal* [2021] SGCA 17, at [52]–[53]. Briefly, a valid gift between living people is made where there is both the intention to gift, and delivery of the precise subject matter of the gift. Intention refers to the donor's subjective intention, which must be assessed as of the time of the transfer. Once a gift has been made (*ie*, delivery has been completed with the requisite intention), the donor cannot revoke the gift. There are however recognised grounds, such as undue influence, fraud or mistake, on the basis of which a gift may be set aside.

Presumed resulting trusts and common intention constructive trusts

21 A presumed resulting trust comes into existence where a person transfers property or purchases it in the name of another who pays nothing for it, and without the intention to make a gift of it. The registered legal owner holds the property on trust for the benefit of the first person. The word "resulting" bears its older meaning of "springing back" – thus, although the legal title carries across, the beneficial interest springs back. It is the funder's lack of intention to benefit the recipient that gives rise to the resulting trust.

22 It follows that the court's task, just as it is with gifts, is to discern the intention of the transferor from any direct evidence, *per* the Court of Appeal in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*") at [52].

23 Where there is no direct evidence of the transferor's intention, resort may be had to the rebuttable presumption of advancement, which traditionally has been relied on in the context of established patriarchal categories of protection, namely that of a husband for his wife and a father for his child, but in more modern times has been the subject of discussion for possible extension in favour of anyone for whom the person providing the funds is under a legal, equitable or possibly even moral obligation to care. While Ms Wei's primary contention is that the evidence shows that Mr Lyu intended to make a gift of the moneys and properties to her, she also relies on the presumption of advancement. Her counsel argued that the question left open in the Court of Appeal decision in *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 at [74] of whether advancement should extend in favour

of the woman in a *de facto* relationship, living as husband and wife, should now be answered in the affirmative.[34]

24 In the context of familial and other close relationships, the law has developed a more flexible approach under the rubric of a common intention constructive trust for the apportioning of beneficial ownership in domestic property, and a broad framework for the analysis of property disputes has been established by the Court of Appeal in *Chan Yuen Lan* at [160]:

> 160 In view of our discussion above, a property dispute involving parties who have contributed unequal amounts towards the purchase price of a property and who have not executed a declaration of trust as to how the beneficial interest in the property is to be apportioned can be *broadly* analysed using the following steps in relation to the available evidence:
>
> (a) Is there sufficient evidence of the parties' respective financial contributions to the purchase price of the property? If the answer is "yes", it will be presumed that the parties hold the beneficial interest in the property in proportion to their respective contributions to the purchase price (*ie*, the presumption of resulting trust arises). If the answer is "no", it will be presumed that the parties hold the beneficial interest in the same manner as that in which the legal interest is held.
>
> (b) Regardless of whether the answer to (a) is "yes" or "no", is there sufficient evidence of an express or an inferred common intention that the parties should hold the beneficial interest in the property in a proportion which is different from that set out in (a)? If the answer is "yes", the parties will hold the beneficial interest in accordance with that common intention instead, and not in the manner set out in (a). In this regard, the court may not impute a common intention to the parties where one did not in fact exist.
>
> (c) If the answer to both (a) and (b) is "no", the parties will hold the beneficial interest in the property in the same manner as the manner in which they hold the legal interest.

---

[34] DCS at paras 113 to 114.

> (d) If the answer to (a) is "yes" but the answer to (b) is "no", is there nevertheless sufficient evidence that the party who paid a larger part of the purchase price of the property ("X") intended to benefit the other party ("Y") with the entire amount which he or she paid? If the answer is "yes", then X would be considered to have made a gift to Y of that larger sum and Y will be entitled to the entire beneficial interest in the property.
>
> (e) If the answer to (d) is "no", does the presumption of advancement nevertheless operate to rebut the presumption of resulting trust in (a)? If the answer is "yes", then: (i) there will be no resulting trust on the facts where the property is registered in Y's sole name (*ie*, Y will be entitled to the property absolutely); and (ii) the parties will hold the beneficial interest in the property jointly where the property is registered in their joint names. If the answer is "no", the parties will hold the beneficial interest in the property in proportion to their respective contributions to the purchase price.
>
> (f) Notwithstanding the situation at the time the property was acquired, is there sufficient and compelling evidence of a subsequent express or inferred common intention that the parties should hold the beneficial interest in a proportion which is different from that in which the beneficial interest was held at the time of acquisition of the property? If the answer is "yes", the parties will hold the beneficial interest in accordance with the subsequent altered proportion. If the answer is "no", the parties will hold the beneficial interest in one of the modes set out at (b)–(e) above, depending on which is applicable.
>
> [emphasis in original]

25 Both counsel have referred to and relied on this framework. In this particular case, the court may perhaps take quick steps for some part of the analysis, as it is now accepted that the funds came from Mr Lyu, while the assets were or are all in Ms Wei's sole name as legal owner. Neither party has contended that there is any question of shared ownership of the beneficial interest of any particular asset. Either Mr Lyu gave the moneys or assets to Ms Wei or he did not. This question will have to be asked in relation to each asset,

because it is possible that Mr Lyu may have intended one asset to be a gift to Ms Wei but not another.

26 I would also add that in this case, notwithstanding challenges of interpretation, there is ample evidence, both documentary and oral, from which to make a finding concerning what was intended at the time the moneys were transferred.

Failed purpose trusts

27 Where money is advanced by someone to another with the mutual intention that it be applied exclusively for a specific purpose, then if that purpose fails, the law implies an obligation to repay the money with a secondary trust, known as a *Quistclose* trust, arising in favour of the first person: see, *eg*, *Pacific Rim Palm Oil Ltd v PT Asiatic Persada and others* [2003] 4 SLR(R) 731 at [16], referring to the House of Lords decision in *Barclays Bank Ltd v Quistclose Investments Ltd* [1970] AC 567, for which this doctrine is named.

28 This doctrine is relied on by Mr Lyu in relation to the first clinic investment and the US surrogacy.

Unjust enrichment

29 Mr Lyu has relied on the doctrine of unjust enrichment in relation to the discharge of the Bartley mortgage, the US surrogacy and the first and second clinic investments.

30 The legal requirements for a claim in unjust enrichment were set out by the Court of Appeal in *Benzline Auto Pte Ltd v Supercars Lorinser Pte Ltd and another* [2018] 1 SLR 239 ("*Benzline*") at [45]:

(a) Enrichment of the defendant;

(b) At the expense of the plaintiff;

(c) In the presence of an unjust factor;

(d) No defences.

31 Mr Lyu relies on total failure of consideration, which was the "unjust factor" considered in *Benzline* at [46]:

> 46 The specific unjust factor relied upon in this case was pleaded as a failure of consideration, which the Judge referred to instead as a "failure of basis"; the two terms are synonymous (and should not be confused with the more controversial thesis, which is not before us, that the law of unjust enrichment should be centred around the concept of "absence of basis": see Andrew Burrows, *The Law of Restitution* (Oxford University Press, 3rd Ed, 2011) ("*The Law of Restitution*") at pp 95–116). The concept of failure of basis is succinctly summarised in Charles Mitchell, Paul Mitchell & Stephen Watterson, *Goff & Jones: The Law of Unjust Enrichment* (Sweet & Maxwell, 9th Ed, 2016) ("*Goff & Jones*") at para 12–01, as follows:
>
> > … The core underlying idea of failure of basis is simple: a benefit has been conferred on the joint understanding that the recipient's right to retain it is conditional. If the condition is not fulfilled, the recipient must return the benefit. …
>
> The inquiry has two parts: first, what was the basis for the transfer in respect of which restitution is sought; and second, did that basis fail?

32 Ms Wei raises the defence of change of position. Briefly, she would have to have changed her position in good faith, such that it would now be inequitable to require her to make restitution: see the decision of the Court of Appeal in *Management Corporation Strata Title Plan No 473 v De Beers Jewellery Pte Ltd* [2002] 1 SLR(R) 418, at [35].

Intention to create legal relations

33 In relation to the Grenadian citizenship applications, where Mr Lyu's claim is that he lent money to Ms Wei, her counsel raises the question of whether there was an intention to create legal relations necessary for a contract of loan, and relies on the presumption that parties do not intend to create legal relations in the context of social and domestic arrangements: *Gay Choon Ing v Loh Sze Ti Terence Peter and another appeal* [2009] 2 SLR(R) 332, at [72].

Issue 1: The D'Leedon apartment

34 The D'Leedon apartment is by far the largest in value of the assets purchased. Ms Wei was issued the option to purchase on 20 December 2016. She paid the initial option moneys of S$43,490 from Hong-Shuo Medical Singapore's bank account. She exercised the option on 23 December 2016, drawing a cheque on Hong-Shuo Medical Singapore's bank account for S$391,410, and on the same day drew cheques on the same account for stamp duty (S$777,420) and for conveyancing fees (S$3,000). On 1 February 2017, she used funds from her personal account to complete the purchase, with payment of S$3,921,026. The total of those payments is S$5,136,346.[35]

35 All of this money originated from Mr Lyu. On 17 December 2016, he transferred RMB25,000,000 in multiple tranches to certain intermediaries whose particulars he was given by Ms Wei. On 19 December 2016, he transferred a further RMB500,000 to an intermediary. On 25 December 2016, he transferred a further RMB5,000,000 in ten equal tranches to intermediaries. The total transferred by him at this time was thus RMB30,500,000.[36]

---

[35] Lyu's AEIC at para 38.

[36] Lyu's AEIC at para 35.

36 In December 2016, Ms Wei received corresponding deposits in her personal account, totalling S$6,002,017.90, of which she transferred S$1,200,000 to Hong-Shuo Medical Singapore on 23 December 2016.[37]

37 Mr Lyu's evidence-in-chief of the circumstances of this purchase was brief. He said Ms Wei proposed the purchase of the D'Leedon apartment to him as their intended matrimonial home in Singapore and as an assurance of their relationship, threatening to end their relationship if he did not do so.[38]

38 Ms Wei gave a much longer account.[39] She made a number of points by way of context. The first is that in September 2016 at a dental conference in Shanghai he promised to divorce his wife and marry her, and it was only upon hearing that promise that she "allowed him to have sexual relations with [her]".[40]

39 She then describes a hiatus in their communications from about October to November 2016. She says this was both because she was busy and because Mr Lyu did not respond to her messages. She later learned that his silence was because his wife had confiscated, among other things, his phone and computer.[41] When she learned that he was only in the process of starting on his divorce, she became upset, and told him that once he was free to pursue her she would tell him her conditions, explaining that "[i]t is impossible for a woman to ask for nothing".[42] When he assured her of his commitment, she told him to back up his

---

37 Lyu's AEIC at paras 36 and 37.

38 Lyu's AEIC at para 33.

39 Wei's AEIC at paras 32–55.

40 Wei's AEIC at para 35.

41 Wei's AEIC at para 37.

42 Wei's AEIC at paras 39–40.

words with concrete action.[43] He then offered to buy her dream car for her, a Mercedes Benz GLC250. This was a pledge of his love. He also offered to pay off the Bartley mortgage.[44] While she was touched, she was also uncomfortable, feeling that these gestures were more consistent with gifts to a mistress than a commitment to marriage.[45] She considered him a wealthy person, as he had told her of the sale of his shares in a dental hospital for about RMB80,000,000.[46] She told him he had to demonstrate in practical terms his long-term commitment and that she had always dreamed of a big house. According to her, Mr Lyu hesitated, and so she did not respond to his messages for a time, ignoring him until he agreed.[47]

40 This much of her account is broadly consistent with Mr Lyu's terser account. Where they differ is that her testimony is that he then said he would make a gift to her of the money needed to buy the big house she desired, and that he made her promise not to leave him for another man.[48] Mr Lyu's testimony by contrast focused on the purchase of the D'Leedon apartment rather than on the transfer of money, and did not waver from its being an expression of commitment to their intended marriage as their intended matrimonial home, but not a gift to her.[49]

---

43 Wei's AEIC at paras 42–43.

44 Wei's AEIC at para 44.

45 Wei's AEIC at paras 45–46.

46 Wei's AEIC at para 47.

47 Wei's AEIC at paras 48–51.

48 Wei's AEIC at para 51.

49 Transcript, 23 March 2021, p 49 line 4 to p 50 line 27.

41 There is a gap in the WeChat messages during December 2016 around the time of the grant and exercise of the option to purchase the D'Leedon apartment. I am not able to draw any inferences against either party from their absence, other than to proceed on the basis that there probably were no messages clearly favouring either party's version. If there had been messages of significance clearly favouring either party's version of events during that time, it is reasonably likely that that party would have saved those messages. Indeed, Ms Wei's own evidence was that she saved screenshots of WeChat messages that were meaningful.[50]

42 However, there are a lot of WeChat messages in the early months of 2017. They reveal a tempestuous and passionate relationship. Both counsel have scoured them for fragments with which to confront the other party and on which to found submissions. I will survey some of them.

43 In February 2017, they quarrelled, leading to Ms Wei ignoring Mr Lyu. Ms Wei's counsel relies on how Mr Lyu complained that she could "do this to a lover who gives everything".[51] This is said to show that the D'Leedon apartment was an outright gift.[52] Mr Lyu's counsel in turn relies on a message from him a few days later in which, the quarrel having subsided, he commended her with these words: "You plan for my future very seriously, and you hope that I can live in a big house in Singapore, have good quality of life, and can have a social status immediately."[53] Here, Ms Wei's hope that *Mr Lyu* would live in a

---

50 Transcript, 30 March 2021, p 55 lines 1–20.

51 2 AB 406.

52 DCS at para 135(a).

53 2 AB 429.

big house is said to show that the D'Leedon apartment was his provision of an intended matrimonial home.[54]

44 In March 2017, Mr Lyu complained several times about how much money he had spent.[55] On 10 March 2017, he wrote to Ms Wei by WeChat:[56]

> I don't have much money now, and I still have to divide my property. Is there still anyone in this world who is as silly as me and willing to use almost all my assets to treat you and my best effort to build our future home? Shouldn't I feel stressed out?

The reference to having to divide his property was a reference to his divorce proceedings and what he would have to transfer to his wife as part of his divorce.

45 The next day, addressing Ms Wei as his wife, he wrote:[57]

> Dear wife, no matter what your response to my decision yesterday is, I must tell you truthfully about my thoughts: (1) I have already contributed 34 million as the basic building block of our home. I bought a house and a car, and you used the balance of a few millions to pay the house loan for your property in Singapore … (4) You know that I can no longer think rationally after I have invested a huge amount of money. If you break up with me, I will lose miserably. This is not a good feeling. It is not a question of trust or distrust. I must tell you frankly now…

Mr Lyu's counsel contended that such messages showed how Mr Lyu saw his purchases of the D'Leedon apartment as a building block for their future life together and not as a gift.[58] Ms Wei's counsel contended that these messages contrasted the little he had left with his generosity to her, and that his description

---

54 PCS at para 134.

55 2 AB 567–574.

56 2 AB 575.

57 2 AB 594.

58 PCS at para 136.

of himself as "silly" and at risk of "losing miserably" showed his regret at having made outright gifts to her.[59]

46 Before I make a finding on Mr Lyu's intention when he made these transfers around December 2016, I should deal with Ms Wei's failure to plead from the beginning of the proceedings that the moneys were meant as gifts, and her evidence in her initial interlocutory affidavits, referred to at [12] above. She did not admit to receiving moneys from Mr Lyu and claimed to have purchased the D'Leedon apartment with her own money. Mr Lyu's counsel contends that Ms Wei always knew the assets were paid for by Mr Lyu, and consequently her allegations of gift are an afterthought, *ie*, she never genuinely believed that they were gifts.[60] Ms Wei's counsel, meanwhile, argued that when she said she had not used Mr Lyu's moneys to purchase these assets, she meant that this was because upon receipt the moneys became hers. Thus, it was not fair to describe her initial evidence as false or misleading.[61] I reject this last submission. A communication depends on what is said, and the context in which it is said. Its meaning is unaffected by some hidden and unarticulated thought. The argument struck me as rather like a child crossing his fingers behind his back to invalidate his spoken promise. I have no doubt that Ms Wei understood that she was not putting forward a defence of gift but rather falsely denying that she had received moneys from Mr Lyu for the purchase of the D'Leedon apartment.

47 I accept that Ms Wei always knew that the money for the purchases came from Mr Lyu and hence her original position in these proceedings was, to her knowledge, false and misleading. However, this does not of itself lead

---

59 DCS at paras 135(b)–(d).

60 PCS at paras 66–67.

61 Defendant's reply submissions dated 13 June 2021 at para 3(g).

ineluctably to the conclusion that her defence of gift is a mere afterthought and necessarily false. It is possible that she took a false position in the early stages of this litigation because of a concern that any defence of gift was just her word against his, and that it would be harder for Mr Lyu to prove that the money came from him. This shows a certain cynicism about telling the truth, which I must take into account in considering her testimony, but it does not of itself mean that the moneys were not in fact gifts.

48 Ultimately, the question of who is telling the truth can be tested against the contemporaneous messages. I consider the WeChat messages in February and March 2017, when read as a whole, a generally illuminating window into Mr Lyu's mindset. I find that Mr Lyu did not intend either the D'Leedon apartment or the Car to be outright gifts to Ms Wei. Rather, they were, to use his words, building blocks of their future life together. Having a big home that Ms Wei could live in and a fancy car that she could use would underpin their new life together. Their common future lay in Singapore and buying a home and car here expressed Mr Lyu's commitment to that future. It did not mean that Ms Wei was intended to be the beneficial owner of them. That is why he said he "bought a house and car", without adding the words "for you".

49 It is true that he repeatedly expressed concerns about the amount of his available funds, especially at times when Ms Wei suggested new items of expenditure. However, this is perfectly consistent with his being concerned that his money was tied up in, among other things, the D'Leedon apartment. Of his assets, he had still to give about half to his wife as they divorced, while the vast bulk of the balance was sunk into the building blocks for his new life together with Ms Wei. It does not mean that he had given the D'Leedon apartment to Ms Wei.

50 I also find that at that relatively early stage of their relationship, Ms Wei too did not in fact believe that the D'Leedon apartment was a gift to her. On 11 March 2017, she wrote:[62]

> Financially, I am not as capable as you, and I cannot live in a *big house* without you in five years, but I also have my own house, my own judgment and my own dignity …
>
> [emphasis added]

I find that the reference to a big house was to the D'Leedon apartment, while her own house meant her apartment at Bartley Ridge.

51 A month later, Ms Wei made much the same point, distinguishing the D'Leedon apartment from her Bartley Ridge apartment:[63]

> I am just managing [the D'Leedon apartment] on behalf of you … If you dump me, I will return to the small apartment in [Bartley]

52 When cross-examined on the last message, Ms Wei broke down in tears. She said that she wrote her messages in "the language of love"[64] and this was "sweet talk between lovers"[65]. There is certainly some truth to her description of the tone and register of her messages. There were times when her messages dramatically called out for chivalric demonstrations of love and affection, including by evoking pity for her and her situation. Nonetheless, reading her messages in totality, I find that she recognised that the D'Leedon apartment was not hers.

---

62 2 AB 600.

63 2 AB 545.

64 Transcript, 31 March 2021, p 12 lines 1–8.

65 Transcript, 31 March 2021, p 9 lines 21–22.

53 That Ms Wei always understood that the D'Leedon apartment belonged beneficially to Mr Lyu is further supported by how she sent him photos and videos of it on 30 December 2016,[66] and subsequently sent him a screenshot of the certificate of stamp duty, telling him: "The expenses for the taxes! For your information".[67]

54 For completeness, I add that I have specifically disregarded in my evaluation of Ms Wei any suggestion that she deliberately set out to deprive Mr Lyu of his money, as was at one point pursued by Mr Lyu, including by calling as a witness Mr Lu.[68] In finding that she understood, for example, that the D'Leedon apartment was not a gift to her, I do not find that she had suggested he transfer moneys for its purchase with any intention to cheat him, or that she entered the relationship with any designs on his money. She was in love with him as much as he was in love with her.

55 I should also deal with Ms Wei's counsel's concern that Mr Lyu testified by video link while she testified in person. He asked that I "bear in mind the fact of the asymmetry".[69] I have certainly done so. I also did so at the time that they gave evidence. I had a clear view of Mr Lyu, with two cameras being used. Sometimes, in order to read a document, he had to stand up and approach the screen on which the document was shown. For those moments, I was not able to observe his face. However, I was satisfied that these interruptions were momentary and that I had sufficient opportunity to observe him. He gave his evidence in a clear and logical way. He occasionally showed impatience or

---

66 2 AB 353–366.

67 2 AB 383–385.

68 See Lyu's AEIC at para 13.

69 Transcript, 18 June 2021, p 7 lines 22– 23.

temper but I consider that this was generally natural and not feigned. I accept him as generally a witness of truth.

56 In relation to Ms Wei's evidence, there was some suggestion that she may have suffered from being cross examined "up close and personally by a formidable cross-examiner".[70] I am satisfied that there was nothing overbearing in the cross-examination and that Ms Wei was given full opportunity to answer his questions. Unfortunately, she was not always logical or clear, and at times was evasive, including on matters that she could easily have checked or verified, such as receipts of money.

57 There was also much debate[71] over the significance of Mr Lyu's use of the phrase "交给你" in his WeChat messages. Mr Lyu says that that phrase means "to entrust to you"; had he meant "to give to you", he would have used "送给你".[72] I have not found it necessary to resolve this debate. It is true that in the context of the D'Leedon apartment Mr Lyu used the former phrase, but I do not find that that sheds any particular light, even if Mr Lyu were correct about what it meant. Much more important were the communications and actions of both parties at the material time, especially in the early months of 2017, taken as a whole.

58 Communications that happened much later, and especially from September 2018 onwards, when the relationship sharply deteriorated, are of much less probative value, both because the relationship was in flux and because of the parties' often distraught emotional state. This includes Mr Lyu's

---

70 Transcript, 18 June 2021, p 7 lines 19–20.

71 PCS at paras 120–123; DCS at para 132.

72 Transcript, 24 March 2021, p 46 lines 5–19.

suggestion, made by a WeChat message sent in September 2018, that they enter a prenuptial agreement confirming joint and equal ownership of the moneys transferred and properties purchased.[73] While if the original transfers were indeed gifts, this could be read as an attempt by Mr Lyu to improve his position, I am inclined to view this suggestion as Mr Lyu being prepared to compromise with Ms Wei and put their still hoped for marriage on a clearer and sounder footing. I consider it is readily reconcilable with Mr Lyu's position that the transfers were not gifts to Ms Wei.

59 Thus, having observed Mr Lyu during his testimony, tested against the contemporaneous WeChat messages and his actions generally, I accept his evidence that he did not intend to make a gift of the D'Leedon apartment to Ms Wei.

60 In the absence of a donative intention on Mr Lyu's part, I hold that the D'Leedon apartment is held by Ms Wei on resulting trust for Mr Lyu.

Issue 2: The Car

61 Turning to the Car, Ms Wei's evidence was that Mr Lyu raised with her his buying what he described as her dream car.[74] Mr Lyu said he did not remember saying this, and instead testified that she suggested that he buy a Mercedes Benz because he "should not drive a poor car", especially given that he drove BMWs in Beijing.[75] The contemporaneous WeChat messages support Mr Lyu's account. For example, she sent him photos of the Car upon her taking delivery of it, in a way that implied the Car was for him. He in turn exclaimed

---

73 3 AB 1126.

74 Wei's AEIC at para 44.

75 Transcript, 23 March 2021, p 43 lines 2–10.

"Wow. Goodbye to BMW."[76] This off-the-cuff comment again suggests it was really for him, as the reference to BMW was to his car in Beijing. Moreover, Ms Wei took pains to make sure the Car was customised so that it was "convenient for [him] to drive it.[77] I accept that the Car was not meant as a gift, and instead is held on resulting trust for Mr Lyu.

Issue 3: The discharge of the Bartley mortgage

62 On 13 February 2017, Ms Wei received S$202,220.38 from Mr Lyu.[78] According to Mr Lyu, he transferred this to her to help her settle the outstanding mortgage for her own apartment at Bartley Ridge and on the shared basis that they would marry.[79] He did this because she complained that stress was hindering her chances of conception and asked him to "solve the problem of [her] house loan".[80] He says that she never used the money for its intended purpose, and instead apparently refinanced the loan, as shown by a mortgagee's caveat created on 30 November 2017.[81] They also never married. He contends that the basis of his transfer therefore failed, and that he is entitled to restitution.[82]

63 Ms Wei's defence is that she received these moneys as a gift that she could use for any purpose that she saw fit.[83] She also contends that if there was

---

76 2 AB 601.

77 2 AB 605.

78 Lyu's AEIC at p 487.

79 Lyu's AEIC at paras 40–41.

80 2 AB 398.

81 Agreed Bundle of Documents Volume 4 ("4 AB") 1345.

82 PCS at para 164.

83 Defence (Amendment No 1) dated 26 February 2021 at para 10(h).

any purpose linked to the transfer it was that they have a child together, which was fulfilled when they had a child by surrogacy.[84]

64 First of all, I accept that if the money had been used in discharge of the Bartley mortgage it could not be recovered. That appears to be Mr Lyu's own position. The implication is that he was giving her the money. I accept that the motive was at least in part to reduce her levels of stress and thus foster their relationship, including with a view to conceiving a child together.

65 Secondly, I am unable to find that the transfer of the moneys was made explicitly conditional on its being used specifically to discharge the Bartley mortgage, failing which it had to be returned. Money is generally fungible. If she refinanced the loan, and then used the moneys transferred to her by Mr Lyu to help pay outstanding mortgage instalments as they fell due, this may well have achieved what she wanted, in terms of reducing any worries she had concerning this mortgage.

66 Thirdly, the pleaded claim is that it was paid on the shared basis that the parties would marry and that as that basis failed, she should return the moneys.[85] I do not accept that that was the basis on which this transfer was made. It was made by Mr Lyu because he wanted to reduce her worries at that time. It was not linked to their marrying.

67 I therefore dismiss Mr Lyu's claim for return of the sum of S$202,220.38.

---

84 DRS at para 29.

85 Statement of Claim (Amendment No 4) dated 29 September 2021 at para 29(d).

Issue 4: Three projects – the Cairnhill option, the first clinic investment and the US surrogacy

68 I turn to the next transfer of funds. Mr Lyu remitted RMB4,000,000 to Ms Wei through intermediaries,[86] and she received the corresponding deposit of S$792,864.22 on 30 March 2017.[87] This transfer followed a significant WeChat message from Ms Wei to Mr Lyu on 10 March 2017 at 1.51pm,[88] saying:

> The costs for the clinic, the down payment for the house and the cost for doing surrogacy in the United States are about <<SGD350k plus renovation, SGD480k for down payment and SGD200K for the surrogacy (excluding agent fee)! So it is about SGD1 million in total! Originally, the clinic alone would need about SGD1.4 million, but I have managed to use that money for 3 important things!

69 Ms Wei testified that this was a gift from Mr Lyu but formed part of "what [she] had planned for [their] family" and that it was "actually to his benefit and also to [her] benefit".[89]

70 The contemporaneous WeChat messages show that other than the US surrogacy, these were investments that Mr Lyu was funding for their shared future, without any intention of making a gift of the money to her. For example, on 10 March 2017 at 7.19pm he wrote: "The amount of money for the investment is too large. The risk is beyond what I can accept."[90] If this was meant as a gift to her, he would not have spoken of investment or of risks.

---

86 Lyu's AEIC at pp 506–525.

87 Lyu's AEIC at p 526.

88 2 AB 552.

89 Transcript, 31 March 2020, p 52 lines 4–18.

90 2 AB 568.

71 I therefore hold that this transfer was not a gift from Mr Lyu to Ms Wei. It was an investment made by him for the future of their intended family.

The Cairnhill option

72 The option to purchase was for S$476,800.[91] As part of the option, Ms Wei was granted a tenancy during the option period[92] and in turn sublet it for a rent of S$4,200 per month.[93] She collected this rental for a period of two years, totalling S$100,800.[94] The option was never exercised.[95] Mr Lyu does not seek the return of the moneys expended on the option but claims that Ms Wei holds the benefit of that option, namely the rental collected, on resulting trust for him.[96]

73 I accept that the benefit of the Cairnhill option belonged to Mr Lyu in equity, and therefore order, as prayed for,[97] that Ms Wei account to Mr Lyu for the rental proceeds received by her in respect of the Cairnhill property.

The first clinic investment

74 It is common ground that the first clinic investment was not proceeded with.[98] There is no evidence that Mr Lyu asked for the money to be paid back at that time. Ms Wei relies on this subsequent conduct (in the form of inaction on

---

91 4 AB 1535.

92 4 AB 1541–1548.

93 Lyu's AEIC at para 52(b)(vi) and pp 554–555; 4 AB 1555–1565.

94 Lyu's AEIC at para 52(b)(vi).

95 Lyu's AEIC at para 52(b)(viii).

96 Statement of Claim (Amendment No 4) dated 29 September 2021 at para 18.

97 Statement of Claim (Amendment No 4) dated 29 September 2021 at para 29(g).

98 Lyu's AEIC at para 52(c)(i); Wei's AEIC at para 89.

his part) to support her contention that he intended it as an outright gift.[99] I do not accept that this is the proper inference to draw. As I have outlined at [70], the contemporaneous WeChat messages at the time the transfer was made show that it was not intended as a gift.

75 The legal requirements for recovery, whether formulated in terms of a *Quistclose* trust or a restitutionary claim, are satisfied. It would not be inequitable for Ms Wei to repay this money to Mr Lyu, and I hold that she must do so.

The US surrogacy

76 It is common ground that this never took place,[100] and that instead arrangements were made for surrogacy in Cambodia, for which Mr Lyu made separate payments.[101] Surrogacy is clearly a shared project on the part of both intended biological parents. Mr Lyu was ready to fund it, and had it taken place then in the absence of clear words that she was ultimately to bear part of the expense he would not have been able to recover any of the money spent from her. Indeed, Mr Lyu does not claim anything in relation to the Cambodian surrogacy which he funded and which took place. However, where the surrogacy never took place at all and the money transferred by Mr Lyu to Ms Wei was not spent for this purpose, it must be returned to him. The legal requirements for recovery, whether formulated in terms of a *Quistclose* trust or a restitutionary claim, are satisfied. It would not be inequitable for Mr Lyu to obtain such recovery.

---

99 DCS at para 191.

100 Lyu's AEIC at para 52(a)(iv); Transcript, 31 March 2021, p 56 lines 5–17.

101 Transcript, 1 April 2021, p 2 line 24 to p 4 line 1.

77 I hold that Ms Wei must repay this money to Mr Lyu.

78 Taking the first clinic investment and the US surrogacy together, the sum to be repaid is S$314,684.22.

Issue 5: Grenadian citizenship

79 After considerable prevarication and equivocation, Ms Wei admitted that Mr Lyu paid approximately US$400,000 in renminbi in connection with her applying for Grenadian citizenship for herself and her four children from previous marriages.[102] This was borne out by a series of receipts and messages showing that Mr Lyu had transferred a total of RMB2,901,661.[103]

80 Ms Wei claimed this was a gift. However, on 16 April 2017, she messaged Mr Lyu in terms that clearly show she understood that the issue of the Grenadian passports was one that was personal to her (and so by implication not part of building a future life together) and promising to repay the loan upon sale of a property owned by her.[104] Three days later, she referred to this message as an IOU,[105] as confirmed by her during cross-examination.[106]

81 There is no evidence that Mr Lyu intended to give these moneys to Ms Wei rather than lend them to her, and I accept his evidence that in any case a gift was out of the question because he was upset with her at the time, having

---

102 Transcript, 1 April 2021, p 19 lines 16–27 and p 20 lines 21–31.

103 2 AB at pp 689–690 and 749–751.

104 2 AB 670.

105 2 AB 756.

106 Transcript, 1 April 2021, p 28 lines 8–31.

just found out about her having children from previous relationships, as corroborated by his WeChat message on 21 April 2017.[107]

82 Ms Wei's counsel has also argued that, even if Mr Lyu did not intend these moneys as a gift, he is not able to recover the moneys as a loan because there was no intention to create legal relations. This argument is misconceived. If one family member lends money to another, one cannot turn that into a gift (which is the effect of disallowing recovery of the loan) by relying on the family context. Further, the context of this expenditure is not truly familial, in the sense of any shared family with Mr Lyu. Ms Wei was not asking Mr Lyu for money for an expenditure in their shared home, but for a purpose that was not connected to their relationship, namely her desire for Grenadian citizenship for herself and her own children.

83 I allow Mr Lyu's claim for return of his RMB2,901,661.

Issue 6: The Marne Road shop

84 Ms Wei admitted that she used moneys transferred by Mr Lyu to pay some part of the purchase price for the Marne Road shop.[108] Mr Lyu contends that 80% of its purchase price came from moneys he transferred, while Ms Wei contends that at best it was 28%.[109] Its purchase price was S$1,020,000.[110] I accept that Ms Wei paid the option fee of 5% and a further 15% of the price before December 2016.[111]

---

107 2 AB 783.

108 Transcript, 1 April 2021, p 41 lines 12–27.

109 Defendant's reply submissions at paras 63 to 64.

110 4 AB 1477.

111 DCS at para 178.

85 I accept Mr Lyu's evidence[112] that Ms Wei did not give him specific or reliable details of how she was using the moneys left over after the purchase of the D'Leedon apartment and the Car, but did tell him there was a shop unit on sale for S$300,000, which corresponds to the Marne Road shop.

86 Ms Wei has also not given clear evidence of how she used the leftover moneys. These moneys were not a gift to her and accordingly she is accountable to Mr Lyu for her use of them. Plainly, she is the one who would be in the best position to show how she paid for the Marne Road shop. She has not provided evidence of how she funded the difference between her contention of 28% and his of 80%.

87 I find on a balance of probabilities that 80% of the purchase price of the Marne Road shop was paid for with moneys Mr Lyu transferred to Ms Wei. That use stands on the same footing as her use of his moneys to purchase the D'Leedon apartment.

88 Thus, I hold that Ms Wei holds 80% of the beneficial interest in the Marne Road shop on resulting trust for Mr Lyu.

Issue 7: The second clinic investment

89 I accept Mr Lyu's evidence that he transferred S$100,000 to Ms Wei for the purpose of the second clinic investment, and that she returned S$60,000 of it to him.[113] This investment was never made. It was not a gift. Accordingly, when the purpose of the transfer failed, Ms Wei had to return it to him.

---

112 Lyu's AEIC at paras 65–69.

113 Lyu's AEIC at para 81.

90 I allow Mr Lyu's claim for the return of S$40,000.

Issue 8: The Rolex watch

91 Mr Lyu claims that when the relationship soured, Ms Wei took a Rolex watch belonging to him from a bedside table in the D'Leedon apartment, and has kept it.[114]

92 However, Mr Lyu produced no evidence for this claim. Upon cross-examination, he acknowledged that he had no witnesses to support it, apart from Ms Wei herself.[115] Yet when Ms Wei took the stand, she was not questioned on this Rolex watch. Neither did Mr Lyu's written submissions deal with it, apart from an unelaborated assertion in his reply submissions that he would rely on the evidence before the court for this claim,[116] when there was no such evidence.

93 In the circumstances, I find that Mr Lyu has not proven on a balance of probabilities his claim for the Rolex watch, and I therefore dismiss it.

Conclusion

94 I grant declarations that Mr Lyu beneficially owns 100% of the D'Leedon apartment and the Car, and 80% of the Marne Road shop. I also order that Ms Wei pay him the sums of S$354,684.22 and RMB2,901,661, and account to him for the rental received on the Cairnhill property. All other claims are dismissed.

---

114 Statement of Claim (Amendment No 4) dated 29 September 2021 at para 25; Lyu's AEIC at para 97(d).

115 Transcript, 26 March 2021, p 39 lines 23–27.

116 Plaintiff's reply submissions dated 14 June 2021 at para 74.

95 I will hear parties on any consequential orders, interest and costs.

Philip Jeyaretnam
Judge of the High Court

Lok Vi Ming SC and Qabir Sandhu (LVM Chambers LLC) (instructed), Chong Xin Yi and Tan Lena (Chen Lina) (Gloria James-Civetta & Co) for the plaintiff;
Gregory Vjayendran SC (Rajah & Tann Singapore LLP) (instructed), Lee Ee Yang and Lua Wei Liang Wilbur (Covenant Chambers LLC) for the defendant.