

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

**[2023] SGHC 108**

Originating Application No 18 of 2023

Between

Kua Swee Lin

*... Applicant*

And

- (1) Ho Kim Yan
- (2) Kua Swee Hor

*... Respondents*

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**JUDGMENT**

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[Trusts — Constructive trusts]

[Trusts — Resulting trusts]

[Gifts — Presumptions against — Resulting trusts]

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This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

**Kua Swee Lin**  
**v**  
**Ho Kim Yan and another**

**[2023] SGHC 108**

General Division of the High Court — Originating Application 18 of 2023  
Hri Kumar Nair J  
2, 13 March 2023

25 April 2023

Judgment reserved.

**Hri Kumar Nair J:**

**Introduction**

1 Mr Kua Oh Kim (“**Mr Kua**”) and his wife, Mdm Ng Bee Ngoah (“**Mdm Ng**”) migrated to Singapore from China many years ago.<sup>1</sup> Their lives embodied the traditions, values and success of our pioneer generation. They became Singapore citizens, started a small business, bought a Housing Development Board (“**HDB**”) flat and raised five children. Mr Kua passed away in 2012 and Mdm Ng sadly now suffers from dementia. Unfortunately, their children are embroiled in a dispute with their daughter-in-law over the ownership of assets which the children say rightly belong to Mdm Ng.

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<sup>1</sup> Hor’s First Affidavit dated 1 February 2023 at para 10; Hoon’s First Affidavit dated 31 January 2023 at para 9.

2 Mr Kua Swee Lin (“**Lin**”), acting as deputy for his mother, Mdm Ng, seeks, *inter alia*, declarations that the respondents, his brother Mr Kua Swee Hor (“**Hor**”) and Hor’s ex-wife, Ms Ho Kim Yan (“**Ho**”), hold on trust for Mdm Ng (a) Blk 99 Bedok North Avenue 4 #21-1906, Singapore 460099 (the “**Flat**”); and (b) 50% of the net proceeds, amounting to a sum of \$237,822.74 (the “**GMP Proceeds**”), from the sale of 6001 Beach Road #02-54 Golden Mile Tower, Singapore 199589 (the “**GMP**”).

3 The Flat is currently in the names of Hor and Ho as joint tenants. In 1978, the Flat was acquired in Mr Kua’s sole name. In 2004, he included Hor’s name as a joint tenant. A year after Mr Kua passed away in 2012, Hor included Ho as a joint tenant.

4 Hor acquired the GMP together with his friend, Mr Gu Pei Hua (“**Gu**”), on 5 November 2013. In August 2022, Hor sold his half share in the GMP to Gu and the GMP Proceeds are currently held by Hor’s solicitors in the conveyance.

5 Lin and Hor maintain that the Flat is held by Hor and Ho on a resulting or constructive trust for Mdm Ng. Ho denies the said trust. It is her case that Mr Kua had gifted the Flat to Hor, and Hor had thereafter gifted it to her. She has filed a counterclaim for an order that Hor buys her share in the Flat. Lin and Hor also claim that Mdm Ng had largely funded the purchase of Hor’s share in the GMP on the understanding that Hor would hold that share, and the proceeds of its sale, on trust for Mdm Ng. Ho similarly denies that trust – she claims that the GMP Proceeds belong to Hor absolutely and are matrimonial property that should be dealt with in their ongoing matrimonial proceedings. Ho claims that Lin, Hor and their siblings have contrived both trusts to deprive her of her rightful share in these assets now that her marriage with Hor has broken down.

6 I dismiss all the parties’ claims with respect to the Flat, and Lin and Hor’s claims of a trust over the GMP Proceeds.

### **The parties**

7 Mdm Ng and Mr Kua had five children, who are, from the eldest to the youngest: Ms Kua Swee Hoon (“**Hoon**”), Lin, Mr Kua Swee Leong (“**Leong**”), Ms Kua Swee Hong (“**Hong**”) and Hor (collectively but excluding Leong, the “**Children**”).<sup>2</sup>

8 Ho and Hor married in 1996. They have three children. Ho initiated divorce proceedings in May 2021 and interim judgment was granted on 9 November 2021.

### **Background to the dispute**

9 As part of the divorce proceedings, Ho filed a Proposed Matrimonial Property Plan, in which she claimed a half share of the Flat and proposed that Hor purchase her share of the Flat.

10 In relation to the GMP, Hor provided information on it in his first Affidavit of Assets and Means (“**AOM**”). It appears that Ho was unaware of Hor’s (half) ownership of the GMP prior to this filing.

11 The other Children only discovered that Hor had included Ho’s name in the Flat after she made a claim over it in the matrimonial proceedings. They took (and still take) the position that Mdm Ng is the true owner of the Flat and a half share of the GMP. Since Mdm Ng has dementia, Lin applied under the Mental Capacity Act 2008 (2020 Rev Ed) to be appointed to make decisions on

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<sup>2</sup> Leong is estranged from the family and does not feature in this dispute.

behalf of Mdm Ng (the “**Mental Capacity Act Application**”). On 20 October 2022, Lin obtained an order of court (FC/ORC 5050/2022) appointing him as Mdm Ng’s deputy.

12 Lin thereafter commenced this action.

### **Issues to be determined**

13 The core issues in relation to the Flat are whether Hor intended to gift a share of the Flat to Ho in 2013, and relatedly, whether Mr Kua had intended to gift a share of the Flat to Hor in 2004.

14 The key factual issue in relation to the GMP is whether Mdm Ng contributed \$100,000 to the purchase price of the GMP. If she did not, no trust arises in her favour over the GMP.

15 I first deal with two preliminary issues raised by Ho.

### **Preliminary issue: Whether the application constitutes an abuse of process**

16 Ho invites me to strike out this application on the basis that it is an abuse of process.<sup>3</sup> It is Ho’s case is that Hor and Lin deliberately delayed filing this application to drag out the matrimonial proceedings, deny her relief and exhaust her financially. Ho points out that Hor had known, at the very latest, by January 2022 that his assertion of Mdm Ng’s interest in the Flat would be disputed, but delayed taking legal action,<sup>4</sup> shirked a deadline imposed by the Family Justice

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<sup>3</sup> Ho’s Written Submissions at para 25.

<sup>4</sup> Ho’s Written Submissions at para 20.

Courts (“FJC”) in the divorce proceedings,<sup>5</sup> and, working together with Lin, filed the Mental Capacity Act Application and thereafter this application only at the eleventh hour.<sup>6</sup>

17 The court in *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 explained the term “abuse of process” at [22]:

The term, “abuse of the process of the Court”, ... includes considerations of public policy and the interests of justice. This term signifies that the process of the court *must be used bona fide and properly and must not be abused*. The court will *prevent the improper use of its machinery*. It will *prevent the judicial process from being used as a means of vexation and oppression in the process of litigation*. The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed and will depend on all the relevant circumstances of the case...

[emphasis added]

18 The threshold for the court to find that there has been an abuse of process is high; the facts must disclose a plain and obvious case of abuse of process – see *TMT Asia Ltd v BHP Billiton Marketing AG (Singapore Branch) and another* [2019] 2 SLR 710 at [25] and *Pathfinder Strategic Credit LP and another v Empire Capital Resources Pte Ltd and another appeal* [2019] 2 SLR 77 at [94].

19 I decline to strike out the application. While it could arguably have been brought sooner, the evidence does not come close to meeting the threshold for establishing abuse.

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<sup>5</sup> Ho’s Written Submissions at para 21.

<sup>6</sup> Ho’s Written Submissions at para 22.



20 First, the chronology of events does not show any egregious delay. After Hor had in the matrimonial proceedings raised the possibility of commencing a separate action concerning the Flat, the FJC directed that the matrimonial proceedings should proceed, except on ancillary matters, which should not proceed until after the action concerning the Flat was dealt with. The FJC later directed that Hor inform Ho of the status of the separate action by 7 July 2022.<sup>7</sup> Arrangements had earlier been made for Mdm Ng to be assessed by a doctor, and a medical report (the “**Medical Report**”) was issued in June 2022. At a case conference in the matrimonial proceedings on 28 July 2022, the FJC gave directions for discovery and interrogatories. In September 2022, after receiving the Medical Report, Lin filed the Mental Capacity Act Application in anticipation of this application. The Mental Capacity Act Application was allowed on 20 October 2022. This application was then filed on 10 January 2023.

21 It does not appear that there was significant delay in the commencement of either the Mental Capacity Act Application or this application.<sup>8</sup> I accept Lin and Hor’s explanation, through their respective counsel, that they needed time to get the necessary evidence and resolve certain issues between the Children. The first AOM was filed on 17 January 2022 and thereafter, there were several case conferences. Hor’s counsel informed the other Children that he could not act for them. Lin’s counsel disclosed at the hearing that there had been some uncertainty amongst the Children (other than Hor) as to who should be appointed as Mdm Ng’s deputy and concerns about costs. These caused some delay. Hoon, Hong and Lin had also filed statutory declarations, hoping that

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<sup>7</sup> Ho’s First Affidavit dated 2 February 2023 at para 18 and p 141 (notes of evidence of a case conference in FC/D 2371/2021 on 23 June 2022 at p 3).

<sup>8</sup> Ho’s Written Submissions at paras 20–23.

these would be sufficient to persuade Ho to drop her claims on the Flat and the GMP.<sup>9</sup> When that failed, Lin's solicitors were instructed in June 2022 to file the Mental Capacity Act Application. The Medical Report was also only issued in June 2022 (according to Lin's counsel at the hearing). Lin's solicitors then worked with the doctor on his affidavit and filed the Mental Capacity Act Application in September 2022 (FC/OSM 321/2022). Significantly, Lin asked for an urgent hearing date for the application and obtained the necessary order at the first hearing on 20 October 2022.<sup>10</sup>

22 Furthermore, this application did not appear to have caused serious delay to the matrimonial proceedings:<sup>11</sup> Ho's counsel accepted that the FJC had proceeded with discovery and interrogatories in the matrimonial proceedings while the Mental Capacity Act Application and this application were being prepared and dealt with. I also accept that Lin's counsel had not been aware of the timelines in the matrimonial proceedings, including the deadline for Ho and Hor to file their second AOMs; it follows that the fact that this application was filed just before the parties were due to file and exchange their second AOMs<sup>12</sup> in the matrimonial proceedings was not likely a calculated decision to delay matters.

23 Second, Ho does not explain why it would be in Hor's interests to drag out the matrimonial proceedings. It would be in both Ho and Hor's interests for the matrimonial dispute to be resolved as soon as possible. Further, as far as Hor

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<sup>9</sup> Hor's Written Submissions at para 26.

<sup>10</sup> Lin's First Affidavit dated 6 January 2023 at p 9 (order of court in respect of the Mental Capacity Act Application).

<sup>11</sup> Ho's Written Submissions at para 24.

<sup>12</sup> Ho's First Affidavit dated 2 February 2023 at para 34; Ho's Written Submissions at para 24.

was concerned, he was prepared for the dispute over the Flat to be dealt with under the matrimonial proceedings.<sup>13</sup> However, the dispute involved third parties who were not under the jurisdiction of the FJC or his control.

24 Third, if Ho was anxious to resolve the dispute over the Flat and the GMP as soon as possible, it was open to her to have commenced proceedings to obtain the necessary declarations. Ho’s counsel argued that it did not make sense for Ho to initiate proceedings as she had the “default legal position” and sought merely to maintain the status quo. But Ho is not merely seeking to preserve the default position: she wants an order for the Flat to be sold, which she is seeking in this application via her counterclaim.<sup>14</sup>

25 Ho’s counsel argued at the hearing that if this application had not been taken out, Ho would not have filed her counterclaim and would have instead argued that the Flat constitutes matrimonial property which could be dealt with in the matrimonial proceedings. Indeed, Ho initially took contradictory positions: she argued in this application that the Flat is not matrimonial property,<sup>15</sup> while also reserving her right to argue the contrary in the matrimonial proceedings.<sup>16</sup> Ho’s counsel explained at the hearing that Ho sought to rely on “alternative cases on the same facts”. But that was also not the case, as Ho’s Counsel also reserved the right to rely on additional facts in the matrimonial proceedings to argue that the Flat is matrimonial property. This is not permissible. Whether the Flat is matrimonial property is a mixed question of fact and law on which Ho cannot take inconsistent or different factual

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<sup>13</sup> Hor’s Written Submissions at para 20.

<sup>14</sup> Ho’s First Affidavit dated 2 February 2023 at para 54.

<sup>15</sup> Ho’s Written Submissions at paras 55 and 56.

<sup>16</sup> Ho’s First Affidavit dated 2 February 2023 at para 55.

positions. Ho effectively conceded this at the hearing by withdrawing her claim that the Flat is matrimonial property. In the circumstances, she could have initiated these proceedings herself.

26 Fourth, if Ho believed that Hor was deliberately delaying matters, she could have sought the necessary orders against him in the matrimonial proceedings. There is no evidence that Ho had done so.

27 In the circumstances, the facts do not support a finding of an abuse of process, and certainly do not warrant dismissing this application summarily. I disagree with Ho's submission that this action was commenced for the collateral purpose of oppressing her and subjecting her to a battle of attrition.<sup>17</sup>

**Preliminary issue: whether only undisputed facts should be considered**

28 The application was filed via an originating application and none of the parties applied for cross-examination. Ho submits that, in the circumstances, I must decide the issues on only the undisputed facts, and should disregard any evidence which another party disputes or does not accept.<sup>18</sup> In particular, Ho urges me to disregard evidence of discussions between the Kua family members in relation to the Flat and the GMP which she does not accept took place or the terms of any agreement or understanding reached as a result of those discussions.

29 I do not accept that submission. In my view, the critical issue is whether the party bearing the burden of proof on an issue has discharged that burden. Generally speaking, where parties have narrated different accounts and there is

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<sup>17</sup> Ho's Written Submissions at paras 23 and 25.

<sup>18</sup> Ho's Written Submissions at para 26.

limited or no documentary or corroborative evidence, the dispute(s) can usually only be resolved with cross-examination. However, where the party with the legal burden has adduced sufficient evidence such that the evidential burden has shifted to the other party, the failure of the latter to adduce contrary evidence or to undermine the former's evidence via cross-examination may result in the former successfully discharging its legal burden of proof.

30 In *Britestone Pte Ltd v Smith & Associates Far East Ltd* [2007] 4 SLR(R) 855, the Court of Appeal held at [60] that:

... at the start of the plaintiff's case, the legal burden of proving the existence of any relevant fact that the plaintiff must prove and the evidential burden of adducing some (not inherently incredible) evidence of the existence of such fact coincide. Upon adduction of that evidence, the evidential burden shifts to the defendant, as the case may be, to adduce some evidence in rebuttal. If no evidence in rebuttal is adduced, the court may conclude from the evidence of the plaintiff that the legal burden is also discharged and making a finding on the fact against the defendant. If, on the other hand, evidence in rebuttal is adduced, the evidential burden shifts back to the plaintiff. If, ultimately, the evidential burden comes to rest on the defendant, the legal burden of proof of that relevant fact would have been discharged by the plaintiff.

31 The Court of Appeal in *Cooperatieve Centrale Raiffeisen-Boerenleenbank BA (trading as Rabobank International), Singapore Branch v Motorola Electronics Pte Ltd* [2011] 2 SLR 63 similarly recognised at [30] that ss 103 and 105 of the Evidence Act (Cap 97, 1997 Rev Ed) place the burden of proving a fact on the party who asserts the existence of any fact in issue or relevant fact; the burden may then shift to the other party to contradict, weaken or explain away the evidence led.

32 *Registrar of Vehicles v Komoco Motors Pte Ltd* [2008] 3 SLR(R) 340 at [38] (“**Registrar of Vehicles**”) provides an illustration of this principle, and the relevant part is reproduced below:

Having considered the Registrar’s Affidavit, we were of the view that the Judge was wrong not to believe that the Registrar had genuinely considered Komoco’s representations for two reasons. First, the Registrar had given sworn evidence as to the matters which she had considered in deciding to reject Komoco’s representations; *if Komoco did not accept her sworn evidence, it should have applied to cross-examine her*. In the *absence of cross-examination*, the only justification for not believing a sworn statement, especially one from a state official performing an administrative function, *is if documentary or other oral evidence is adduced to disprove it*. As there was no such proof to the contrary in the present case, there was *no basis in law to reject the Registrar’s evidence on oath* as to the actions which she took after the March 2006 Meeting and the factors which she considered in arriving at her decision of 18 May 2006...

[emphasis added]

33 In the circumstances, if Lin and Hor adduce sufficient evidence of discussions between the Kua family members where certain understandings and/or arrangements were reached, and Ho is unable to offer contrary evidence and does not apply to cross-examine them, then Lin and Hor would have discharged their burden of proving those understandings and/or arrangements. It is insufficient for Ho to simply assert that she does not accept or believe their evidence.

34 Having said that, I accept that the interests of Lin, Hor and the other Children are aligned and they may have an incentive to tailor their evidence. But that goes to my assessment of whether they have discharged their evidential burden in the first place; it does not follow that I should dismiss their evidence entirely and accept only the undisputed facts.

35 I now turn to the main issues in the application.

### **The Flat**

36 In 1968,<sup>19</sup> Mdm Ng and Mr Kua ran a provision shop in Killiney (the “**Business**”).<sup>20</sup> They raised the Children in the unit above the provision shop (the “**Killiney Property**”)<sup>21</sup> and later, a shophouse in Bedok.<sup>22</sup> In 1978, Mr Kua purchased the Flat<sup>23</sup> for \$30,000 in his sole name.<sup>24</sup> However, the family continued to live in the shophouse in Bedok<sup>25</sup> out of convenience as the provision shop was on the lower floor of the unit they lived in. In 1989, Mr Kua retired and sold the Business to Lin,<sup>26</sup> who was then about 31 years old.<sup>27</sup> Mr Kua, Mdm Ng and Hor then moved into the Flat.<sup>28</sup> Prior to this, between 1978 and 1989, Lin and Leong occupied the Flat for some time.<sup>29</sup> Neither Hoon

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<sup>19</sup> Hor’s First Affidavit dated 1 February 2023 at para 14 and p 33 at para 2 (Hoon’s statutory declaration dated 17 January 2021).

<sup>20</sup> Hoon’s First Affidavit dated 31 January 2023 at para 12; Hor’s First Affidavit dated 1 February 2023 at para 14.

<sup>21</sup> Hoon’s First Affidavit dated 31 January 2023 at para 12; Hor’s First Affidavit dated 1 February 2023 at para 14.

<sup>22</sup> Hoon’s First Affidavit dated 31 January 2023 at para 13; Hor’s First Affidavit dated 1 February 2023 at para 14.

<sup>23</sup> Lin’s First Affidavit dated 6 January 2023 at p 15 (lease document in respect of the Flat).

<sup>24</sup> Lin’s First Affidavit dated 6 January 2023 at para 11; Hoon’s First Affidavit dated 31 January 2023 at para 14; Lin’s First Affidavit dated 6 January 2023 at p 14 (lease document in respect of the Flat).

<sup>25</sup> Hor’s First Affidavit dated 1 February 2023 at para 15; Hoon’s First Affidavit dated 31 January 2023 at para 16.

<sup>26</sup> Hor’s First Affidavit dated 1 February 2023 at paras 15 and 17.

<sup>27</sup> Hor’s First Affidavit dated 1 February 2023 at p 33 at para 2 (Hoon’s statutory declaration dated 17 January 2021).

<sup>28</sup> Hor’s First Affidavit dated 1 February 2023 at para 17.

<sup>29</sup> Hoon’s First Affidavit dated 31 January 2023 at paras 18–22; Hor’s First Affidavit dated 1 February 2023 at para 16.

nor Hong lived in the Flat – Hoon and Hong moved out of the shophouse in Bedok in 1978 and 1984 respectively, after they got married.<sup>30</sup>

37 Hor married Ho in 1996, and the couple lived in the Flat for about three years. They purchased a condominium unit and moved there in 1999.<sup>31</sup> They did not thereafter reside in the Flat again. After Ho and Hor moved out, only Mdm Ng and Mr Kua lived in the Flat.

38 In 2003, Mr Kua became unwell and told Hor that he wanted to include his name in the Flat.<sup>32</sup> On 30 March 2004, Mr Kua added Hor as a joint tenant of the Flat.<sup>33</sup>

39 On 4 October 2012, Mr Kua passed away. Mdm Ng continued to live in the Flat together with a domestic helper.<sup>34</sup>

40 On 10 December 2013, Hor lodged a Notice of Death in respect of Mr Kua<sup>35</sup> and added Ho as a joint tenant of the Flat.<sup>36</sup> Hor did not inform the

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<sup>30</sup> Hoon's First Affidavit dated 31 January 2023 at paras 16, 17 and 19. Hoon moved back into the shophouse in Bedok with her husband and daughter for some time between 1984 and 1985.

<sup>31</sup> Hor's First Affidavit dated 1 February 2023 at para 18.

<sup>32</sup> Hor's First Affidavit dated 1 February 2023 at para 19.

<sup>33</sup> Lin's First Affidavit dated 6 January 2023 at para 11; Lin's First Affidavit dated 6 January 2023 at p 18 (lease document in respect of the Flat); Hor's First Affidavit dated 1 February 2023 at para 20.

<sup>34</sup> Lin's First Affidavit dated 6 January 2023 at para 23; Hor's First Affidavit dated 1 February 2023 at paras 5 and 10.

<sup>35</sup> Lin's First Affidavit dated 6 January 2023 at p 18 (lease document in respect of the Flat).

<sup>36</sup> Hor's First Affidavit dated 1 February 2023 at para 27; Lin's First Affidavit dated 6 January 2023 at p 18 (lease document in respect of the Flat).



other Children he had done so;<sup>37</sup> nor did Ho ever mention her ownership of the Flat to the others.

### ***The parties' cases***

#### *Lin's case*

41 Lin claims that the Flat is held by Hor and Ho on trust for “[Mdm Ng] and/or [the Children]”.<sup>38</sup>

42 Lin argues that there was a common intention that the Children would acquire a beneficial interest in the Flat after Mdm Ng passed.<sup>39</sup> Lin contends that Mr Kua did not intend to solely benefit Hor<sup>40</sup> and Mr Kua's conduct reflected that someone else held the beneficial interest in the Flat.<sup>41</sup> At the hearing, Lin's counsel took a different position and argued that after Mr Kua added Hor as a co-owner of the Flat, Hor held the Flat on trust for Mdm Ng, and not the Children.

43 Lin argues that, in any case, Ho does not have a beneficial interest in the Flat since Hor did not intend to gift the Flat to Ho; this can be seen from the facts that (a) Hor and Ho were always aware that Mr Kua and Mdm Ng had occupied the Flat for the most part of their lives; (b) Mdm Ng's dementia meant that she needs familiarity; and (c) since the Flat was Mr Kua's main asset, it is not for Ho to deny the Children's rightful claim to the Flat on account of Hor

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<sup>37</sup> Lin's First Affidavit dated 6 January 2023 at para 13; Hoon's First Affidavit dated 31 January 2023 at para 29.

<sup>38</sup> Lin's Written Submissions at para 2.

<sup>39</sup> Lin's Written Submissions at para 25.

<sup>40</sup> Lin's Written Submissions at paras 28–31 and 40.

<sup>41</sup> Lin's Written Submissions at paras 32 and 33.

having failed to inform her, expressly or impliedly, that the property is beneficially owned by Mdm Ng.<sup>42</sup>

### *Hor's case*

44 Hor's position is largely aligned with Lin's, with some differences. He maintains that he holds the Flat for the benefit of only Mdm Ng.<sup>43</sup> He relies on the lack of donative intent on Mr Kua's part as evidenced from the facts that: (a) Mr Kua and Mdm Ng stayed in the Flat as if it were their own;<sup>44</sup> (b) Mr Kua was the patriarch and provided reasons for including Hor's name as a joint tenant instead of Mdm Ng, which included (i) his traditional belief that women had no right to hold property;<sup>45</sup> and (ii) that Mdm Ng was illiterate and would not be able to deal with the tax and legal issues concerning the Flat after Mr Kua's passing;<sup>46</sup> (c) the Flat was Mr Kua's greatest asset and it was unlikely he intended to benefit Hor solely;<sup>47</sup> and (d) the Children, including Hor, did not consider that the Flat belonged to Hor.<sup>48</sup> Hor further argues that there is a presumption, arising from Mr Kua's gratuitous transfer of the half share of the flat to Hor, that Hor holds the Flat on a resulting trust for the benefit of Mr Kua.<sup>49</sup> Hor then argues that Mr Kua's intention was always to benefit Mdm Ng, and, after her passing, the Children.<sup>50</sup> Hor also highlights that, had Mdm Ng and

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<sup>42</sup> Lin's Written Submissions at paras 43 and 44.

<sup>43</sup> Hor's Further Written Submissions at para 21.

<sup>44</sup> Hor's Written Submissions at para 66.

<sup>45</sup> Hor's Written Submissions at para 67.

<sup>46</sup> Hor's Written Submissions at para 68; Hor's First Affidavit dated 1 February 2023 at para 19.

<sup>47</sup> Hor's Written Submissions at para 70.

<sup>48</sup> Hor's Written Submissions at para 39.

<sup>49</sup> Hor's Written Submissions at para 81.

<sup>50</sup> Hor's Written Submissions at para 89.

Mr Kua undergone a divorce, Mdm Ng would almost certainly have been found to have a beneficial interest in the Flat.<sup>51</sup> Hor later revised his position to state that, immediately after Hor was added as a co-owner of the Flat, the Flat was held by Hor on trust for *both* Mr Kua and Ng, since the funds used to purchase the Flat must have come from Mr Kua and Mdm Ng's combined funds; thus, after Mr Kua's passing, Hor holds the Flat on trust for Mdm Ng.<sup>52</sup>

45 Finally, Hor argues that he included Ho's name after a discussion between him and Mdm Ng – Hor thought it prudent to include Ho's name so that, should anything befall him, Ho could handle the legal matters pertaining to the Flat.<sup>53</sup> The fact that Ho does not have a beneficial interest in the Flat is evident from the following facts: (a) Hor and Ho did not stay in the Flat even after Ho had been added as a co-owner;<sup>54</sup> (b) the Children rented out a room in the Flat without consulting Ho;<sup>55</sup> (c) Hor had no beneficial interest in the Flat to be given to Ho;<sup>56</sup> and (d) in circumstances where there is no evidence of Hor's intention behind adding Ho's name to the Flat, the court usually attempts to divine the transferor's intention and, as such, Ho cannot argue that a mere gratuitous transfer is necessarily a gift.<sup>57</sup>

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<sup>51</sup> Hor's Written Submissions at para 96.

<sup>52</sup> Hor's Further Written Submissions at para 21.

<sup>53</sup> Hor's Written Submissions at para 41.

<sup>54</sup> Hor's Written Submissions at para 42.

<sup>55</sup> Hor's Written Submissions at para 42.

<sup>56</sup> Hor's Written Submissions at para 52.

<sup>57</sup> Hor's Written Submissions at para 62.

*Ho's case*

46 Ho argues that she owns 50% of the Flat. She avers that there is neither a resulting<sup>58</sup> nor constructive trust over the Flat; specifically, there is no constructive trust over the Flat since there was no express common intention at the time of the transfer, given that (a) Mdm Ng was excluded from all discussions regarding the Flat,<sup>59</sup> and (b) at the time Ho was made a joint tenant of the Flat, there was no discussion with Mdm Ng, so there could not have been a common intention shared between Mdm Ng and the legal owners of the Flat.<sup>60</sup> There was also no inferred common intention since Mdm Ng did not pay for the Flat.<sup>61</sup>

47 Ho argues that Hor gifted the Flat to her (a) as is evidenced from the fact that the HDB lease document in respect of the Flat (the “**Lease Document**”) states that she had been added as a joint tenant “BY GIFT”;<sup>62</sup> (b) by operation of the presumption of advancement;<sup>63</sup> and (c) because Hor’s act of adding Ho as a joint tenant of the Flat could not have been for the purposes of protecting Mdm Ng’s interest in the Flat.<sup>64</sup> Ho also asserts that Hor never informed her, whether expressly or impliedly, that the Flat belonged to Mdm Ng.<sup>65</sup>

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<sup>58</sup> Ho’s Written Submissions at para 33; Ho’s Further Written Submissions at para 5(a).

<sup>59</sup> Ho’s Written Submissions at para 46.

<sup>60</sup> Ho’s Written Submissions at para 48; Ho’s Further Written Submissions at para 5(b).

<sup>61</sup> Ho’s Written Submissions at paras 49–51.

<sup>62</sup> Ho’s Written Submissions at para 52.

<sup>63</sup> Ho’s Written Submissions at para 52.

<sup>64</sup> Ho’s Written Submissions at para 54.

<sup>65</sup> Ho’s First Affidavit dated 2 February 2023 at para 48.

48 Ho also argues that Mr Kua had gifted the Flat to Hor,<sup>66</sup> albeit with a condition that Mdm Ng has a bare licence to stay in the Flat for as long as she wishes,<sup>67</sup> and Hor had thereafter gifted the Flat to her as an inter-spousal re-gift. She claims that the fact that Mdm Ng possessed a bare licence to stay in the flat is clear from the following: (a) Mr Kua's wish for Hor to take care of Mdm Ng and for Mdm Ng to continue residing in the Flat for as long as she desired was not expressed to Mdm Ng directly;<sup>68</sup> and (b) such permission was not supported by any consideration or deed so Mdm Ng did not possess a contractual licence.<sup>69</sup> Ho argues that Mdm Ng does not have an equitable licence to reside in the Flat because neither the transfer of the Flat from Mr Kua to Hor, nor Hor's addition of Ho as a joint tenant, affected Hor's conscience.<sup>70</sup>

### *The law on resulting trusts*

49 As stated above, Ho relies largely on the terms of the Lease Document, which expressly states that the addition of Ho as a joint tenant was done via a gift from Hor to Ho. Ho also relies on the presumption of advancement to rebut any resulting trust that may arise in Hor's favour. This question forms the crux of the dispute, and I deal with it first. But there is more: a finding that Hor had gifted a share of the Flat to Ho is predicated on Hor being the absolute owner of the Flat on 10 December 2013. I deal with this issue second.

50 The parties cited several authorities – I found two of particular relevance: *Lim Choo Hin v Lim Sai Ing Peggy* [2022] 1 SLR 873 (“*Lim Choo*

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<sup>66</sup> Ho's Written Submissions at para 52; Ho's Further Written Submissions at para 6.

<sup>67</sup> Ho's Further Written Submissions at para 6.

<sup>68</sup> Ho's Further Written Submissions at para 12.

<sup>69</sup> Ho's Further Written Submissions at para 12.

<sup>70</sup> Ho's Further Written Submissions at para 21.

*Hin*”) and *Low Yin Ni and another v Tay Yuan Wei Jaycie (formerly known as Tay Yeng Choo Jessy) and another* [2020] SGCA 58 (“*Low Yin Ni*”). I summarise them below.

51 In *Lim Choo Hin*, a father had added his daughter (the “**Respondent Daughter**”) as a joint tenant to a flat of which he was previously the sole owner. After the father died, by operation of the right of survivorship, the Respondent Daughter became the sole owner of the flat. The father’s executrix, one of his other daughters, brought an application for a declaration that the Respondent Daughter held the flat on trust for the father. The Appellate Division laid out the following approach:

However, while a gratuitous transfer of property normally gives rise to a presumption of resulting trust in the transferor’s favour (see *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 (“*Lau Siew Kim*”) at [34] and [46]), the Court of Appeal in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 (“*Chan Yuen Lan*”) made clear (at [52]) that the court is not obliged to rely on such a presumption if there is ‘direct evidence that may adequately reveal the intention of the transferor’ [emphasis in original]. As such, a resulting trust may arise independently of the presumption of resulting trust as long as it can be shown that the transfer was not intended to benefit the transferee; and, in a similar vein, a resulting trust may not necessarily arise even if there was no consideration for the transfer, if it can be shown that the transfer was indeed intended to benefit the transferee: *Lau Siew Kim* at [35]. It is only in the “rather limited and exceptional situation” when the court is “not able to find any clear intention” or if the evidence is “inconclusive either way as to what the [transferor’s] real intention might be” that the court should apply the presumption: see *Lim Chen Yeow Kelvin v Goh Chin Peng* [2008] 4 SLR(R) 783 at [116], endorsed in *Chan Yuen Lan* at [52].

52 The Appellate Division found the High Court judge’s approach of relying on the title deed of the flat and the transfer document incorrect (*Lim Choo Hin* at [11]), and that they are not “conclusive of [the father’s] actual intent or state of mind as at the time”. Instead, the Appellate Division looked at the

evidence as a whole and concluded that “there were several reasonably cogent indicia that there was no such positive donative intent on [the father’s] part”, which included (a) the father’s illiteracy and limited education; (b) that the father had continued to exercise control over the flat as if he was its sole owner; and (c) the lack of evidence that the father shared a particularly close relationship with the Respondent Daughter. The Appellate Division concluded that the Respondent Daughter held the flat on a resulting trust for the father’s estate.

53 In *Low Yin Ni*, a couple purchased a flat as joint tenants in 1999. Their son married, notwithstanding the couple’s objections to the marriage. Later, the son and daughter-in-law moved into the flat, were added as joint tenants in 2011 and contributed to the mortgage. The son and daughter-in-law underwent a divorce and the daughter-in-law commenced proceedings to determine their respective beneficial interests in the flat. The High Court judge decided that the daughter-in-law was entitled to an 8.11% beneficial interest in the flat by application of a resulting trust, which arose due to her contributions to its purchase price (*Low Yin Ni* at [2]). The presumption of advancement operated in favour of the son, who was thus constituted as a co-owner of the beneficial interest in the flat in equal shares with the couple; accordingly, the couple and the son each had a 30.63% beneficial interest (*Low Yin Ni* at [2]). The Court of Appeal found that the High Court judge had correctly rejected the couple’s contention that they did not know about or remember signing transfer forms (*Low Yin Ni* at [6]) but had reached an “implausible ruling” in response to the couple’s argument that they never intended in effect to gift a half share in the flat to either the son or the daughter-in-law (*Low Yin Ni* at [6]). The Court of Appeal pointed out that the High Court judge ought to have considered the following: (a) the presumption of advancement in favour of the son at the time

he was added as a co-owner, if any, would have been extremely weak, given that the couple disapproved of the son's choice of spouse (*Low Yin Ni* at [8]); and (b) the couple had faced persistent difficulties in making payment on the mortgage and it was unlikely that the couple had realistically contemplated making a gift of a quarter or a third of their beneficial interest in the flat to the son. Instead, the primary concern was for the son and daughter-in-law to be added as co-owners so that they could use moneys in their Central Provident Fund to help pay part of the mortgage (*Low Yin Ni* at [9]). The Court of Appeal therefore found that, absent any evidence that the parties were to hold the beneficial interest in a proportion different from their respective contributions to the purchase price, the presumption of resulting trust applied, and each person held a share of the beneficial interest reflecting their respective financial contributions to the purchase price of the flat. Thus, the couple jointly held an 89.45% share of the flat, the son held a 2.44% share and the daughter-in-law held an 8.11% share (*Low Yin Ni* at [9]).

***Whether Hor intended to give Ho a share of the Flat***

54 As held in *Lim Choo Hin*, it is insufficient to simply look at the transfer document to ascertain the intention of the transferor. Instead, the totality of the evidence must be considered (*Lim Choo Hin* at [8] and [11]). Crucially, the court there pointed out that the first step is to analyse *the evidence of the intention of the transferor*, and it is only if the said evidence is *inconclusive* that the presumption of a resulting trust or advancement operates (as the case may be). I add one more point on the presumption of advancement specifically: the court in *Lee Kuan Yew v Tang Liang Hong and another* [1999] 1 SLR(R) 533 found at [19] that the presumption of advancement is “not a rule of substantive law but an evidentiary tool of adjectival law”. Accordingly, the presumption of advancement, as an evidential tool, should not be used or allowed to supplant



actual evidence as to the intention of the transferor (*ie*, Hor), where such evidence is available.

55 I find, based on all the evidence, that Hor had no intention of giving Ho a half share of the Flat when he included her name in the HDB Lease Document.

56 First, it is Hor's evidence that after Mr Kua's death on 4 October 2012, he was required, under the HDB regulations, to include a family member as a joint owner of the Flat to form a family nucleus.<sup>71</sup> Ho does not challenge this. Hor claims that he had a discussion with Mdm Ng after Mr Kua's funeral, and they both agreed that Ho's name should be added to the Flat "in the event anything untoward happened to [Hor]". Ho claims that this explanation does not make any sense but does not explain that argument; instead, she merely points to Lin's statement that he did not understand how the addition of Ho's name as a joint tenant of the Flat would protect Mdm Ng.<sup>72</sup>

57 Given that Hor's interests are currently aligned with the Children and against Ho's, I should be cautious in accepting unverifiable assertions of discussions between Ho and Mdm Ng. However, there is nothing unreasonable about Hor's decision to add Ho's name to the Flat to protect Mdm Ng:

(a) First, according to Hor, he needed to include a second name to the Flat. Ho's counsel argued that Hor should have included Mdm Ng as a co-owner if he believed he was holding the Flat on trust for her. That does not make sense. That would defeat Mr Kua's intention of not saddling Mdm Ng with legal responsibilities.<sup>73</sup> Further, by that time,

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<sup>71</sup> Hor's First Affidavit dated 1 February 2023 at para 26.

<sup>72</sup> Ho's Written Submissions at para 54.

<sup>73</sup> Hor's First Affidavit dated 1 February 2023 at para 26.

Mdm Ng was already unwell and it would have been more difficult for her to deal with such issues.<sup>74</sup> Ho's counsel responded to this by suggesting that a deputy should have been appointed for Mdm Ng and the name of the deputy added to the Flat. But there was no reason for Hor to spend time and money to do this. He had no dispute with Ho at that time and it was not unreasonable for him to believe that Ho would help take care of matters relating to the Flat. Hor states, reasonably, that he did not contemplate his marriage would break down eight years later.<sup>75</sup>

(b) Furthermore, Hor could not include Lin's name (he being the only other son) as Lin already owned a HDB flat at the time.<sup>76</sup> Indeed, of all the Children, only Hoon did not own a HDB flat in 2012<sup>77</sup> – although the evidence is unclear whether Hor was aware of this. In the circumstances, Hor could only have included Hoon's or Ho's name. It is not unreasonable for Hor to trust his own wife. There is no evidence that Ho and the other Children did not get along.

(c) Ho's counsel argued that the Children did not regard Ho as a family member and did not trust her and, therefore, Hor's intention in adding Ho's name would not have been to protect Mdm Ng's interest.

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<sup>74</sup> Lin's evidence was that Mdm Ng had started showing signs of dementia in 2012 and had been diagnosed with dementia in 2015. Ho accepts (at Ho's First Affidavit dated 2 February 2023 at para 20(a)) that Mdm Ng had been diagnosed with dementia as early as 2012.

<sup>75</sup> Hor's First Affidavit dated 1 February 2023 at para 26.

<sup>76</sup> Lin's Second Affidavit dated 9 March 2023 at para 4(a).

<sup>77</sup> Lin's Second Affidavit dated 9 March 2023 at para 4(b) and pp 27 and 28; Lin's Further Written Submissions at p 4.

But this was not stated in any affidavit and was certainly not Hor's position.

58 Second, the Lease Document cannot and does not conclusively reflect, without more, the intention of the parties. Ho's argument is that, because the Lease Document states that the Flat was transferred "TO KUA SWEE HOR AND HO KIM YAN AS JOINT TENANTS (*BY GIFT*)" [emphasis added],<sup>78</sup> therefore Hor intended to gift the Flat to Ho.<sup>79</sup> Ho's submission is precisely what the court in *Lim Choo Hin* at [11] cautioned against.

59 Ho's reliance on the Lease Document is problematic for a second reason. In the "Flat Information" provided by the HDB concerning the Flat, Ho, Hor and their children are reflected as the occupiers of the Flat.<sup>80</sup> It appears that this is what Ho and Hor declared to the HDB at the time of the inclusion of Ho's name. This declaration was plainly untrue. As stated above, Ho and Hor only lived in the Flat together with Mr Kua and Mdm Ng for about two years and three months, from the time they got married in September 1996 to January 1999.<sup>81</sup> They have not lived in the Flat since.<sup>82</sup> It does not lie in Ho's mouth to claim that the Lease Document is strictly true on the issue of ownership, but not in respect of other information declared to the HDB. Hor and Ho's form-filling approach to the documentation of the Flat suggests that they were concerned only with administrative convenience. Indeed, this is what Hor himself deposed

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<sup>78</sup> Lin's First Affidavit dated 6 January 2023 at p 18 (lease document in respect of the Flat).

<sup>79</sup> Ho's Written Submissions at para 54.

<sup>80</sup> Hor's First Affidavit dated 1 February 2023 at p 22 (information on the HDB website concerning the Flat under the heading "Flat Owner(s)/ Occupier(s)").

<sup>81</sup> Hor's First Affidavit dated 1 February 2023 at para 18.

<sup>82</sup> Hor's First Affidavit dated 1 February 2023 at para 18.

to.<sup>83</sup> In contrast, Ho offers no explanation at all for the false declaration. Her silence is significant.

60 Third, there is no evidence that Hor and Ho discussed the inclusion of Ho's name in the Lease Document at all. As stated above, Ho is simply relying on the terms of the Lease Document (at [47] above). It is not her evidence that Hor informed her of, or discussed with her, the inclusion of her name in the Lease Document. Her evidence is limited to the fact that Hor never informed her, whether expressly or impliedly, that the Flat belonged to Mdm Ng.<sup>84</sup> Ho's counsel stated at the hearing that, given that there is no other evidence as to a discussion between Hor and Ho, then it must be that Ho had understood that Hor had gifted a share of the Flat to her solely by looking at the Lease Document. It is also not Hor's evidence that he had discussed the Flat with Ho and he merely asserts that Ho had always known that the Flat "in reality belonged to [Mdm Ng]".<sup>85</sup> The evidence therefore suggests that Hor and Ho did not discuss the inclusion of Ho's name in the Lease Document. If Hor was giving Ho a half share in not just a valuable asset, but indeed the Kua family home (which Mdm Ng was still living in), to the exclusion of the other Children, one would expect them to have discussed the matter. But nothing was apparently said. Evidently, Ho and Hor did not consider the inclusion of Ho's name a significant matter. This lends further weight to the inference that this was not a true gift but rather an act done out of administrative convenience.

61 I note that Ho asserts in her affidavit that (a) Mr Kua adding Hor's name to the Flat on 30 March 2004; and (b) Hor adding her name to the Flat on

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<sup>83</sup> Hor's First Affidavit dated 1 February 2023 at paras 30 and 80(a).

<sup>84</sup> Ho's First Affidavit dated 2 February 2023 at para 48.

<sup>85</sup> Hor's First Affidavit dated 1 February 2023 at para 26.

10 December 2013 were instances of the Flat being given as gifts<sup>86</sup> and that the “(a)foresaid gifts coincided with [her] understanding for the reason behind the addition of Hor as joint tenant, and [her] addition as joint tenant”.<sup>87</sup> However, nothing is said in Ho’s affidavit as to what those reasons were, how she came to know them and how she arrived at her understanding. As it turned out, the only evidence her counsel relied on at the hearing was the terms of the Lease Document.

62 Fourth, Hor and Ho have their own matrimonial home and do not live in, or need, the Flat. Ho (now) agrees that the Flat is not a matrimonial asset (at [25] above). In contrast, the Flat has been the Kua family home for the past 34 years, since 1989. Ho did not offer any reason why Hor would give the family home to her to the exclusion of the other Children. There is no evidence that Hor and the others were on bad terms; instead, the evidence suggests that the Children got along prior to Hor’s inclusion of Ho’s name: (a) they were all contributing to looking after Mdm Ng;<sup>88</sup> (b) Hor met up with the other Children to discuss and collaborate to plan Mdm Ng’s living situation;<sup>89</sup> and (c) the Children would meet for family dinners.<sup>90</sup>

63 Fifth, Ho did not contribute to the acquisition or upkeep of the Flat in any way. At the hearing, Ho’s counsel was only able to point to one act done by Ho which might be regarded as an assertion of ownership, namely, that she had

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<sup>86</sup> Ho’s First Affidavit dated 2 February 2023 at para 50.

<sup>87</sup> Ho’s First Affidavit dated 2 February 2023 at para 50.

<sup>88</sup> Hoon’s First Affidavit dated 31 January 2023 at para 29; Hor’s First Affidavit dated 1 February 2023 at para 22.

<sup>89</sup> Hor’s First Affidavit dated 1 February 2023 at para 25.

<sup>90</sup> Lin’s First Affidavit dated 6 January 2023 at para 16; Hoon’s First Affidavit dated 31 January 2023 at para 35; Hor’s First Affidavit dated 1 February 2023 at para 36.

purchased furniture for the Flat and relied on Ho's AOM filed on 12 January 2023 in the matrimonial proceedings. However, it is not clear from the AOM that the furniture purchased by Ho was for the Flat; the reference to furniture falls within a section titled "Contributions to the matrimonial assets", which includes other such items as the family car and the laptops used by Hor and Ho's children, and which likely relate to Ho's own household and not the Flat.

64 Sixth, Ho and Hor never asserted, whether by words or conduct, prior to the divorce, that the Flat was theirs. Indeed, Ho does not appear to have taken any interest in the Flat at all. Instead, it was the Kua family members who continued to take care of it and make all arrangements: Mr Kua and Mdm Ng continued to live there and pay for their expenses while Mr Kua was still alive, Lin and Hor shared in the expenses of the Flat and care for their parents, and the sisters contributed moneys sporadically.<sup>91</sup> This is also evident from the involvement of the various parties when a room in the Flat was rented out in 2015. The suggestion to rent out a room was made by Hoon,<sup>92</sup> and the rental moneys were deposited into the joint account of Hoon and Hong, and used to meet Mdm Ng's expenses.<sup>93</sup> Ho was not involved in the discussion on this issue,<sup>94</sup> or consulted. Ho does not address this at all in her submissions.

65 Ho's counsel pointed out at the hearing that Hor had paid the property tax on the Flat and the levy for the domestic helper residing there<sup>95</sup> and had

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<sup>91</sup> Hor's First Affidavit dated 1 February 2023 at para 22.

<sup>92</sup> Hor's First Affidavit dated 1 February 2023 at para 29; Hoon's First Affidavit dated 31 January 2023 at para 37.

<sup>93</sup> Lin's First Affidavit dated 6 January 2023 at para 10; Hor's First Affidavit dated 1 February 2023 at para 29; Hoon's First Affidavit dated 31 January 2023 at para 37.

<sup>94</sup> Hor's First Affidavit dated 1 February 2023 at para 29.

<sup>95</sup> Hor's First Affidavit dated 1 February 2023 at para 22.

thereby asserted his ownership over the Flat. This does not advance Ho's case. Hor would be expected to make these payments as he was the legal owner of the Flat. Significantly, the other Children were paying other expenses, such as the expenses of the Flat and the upkeep of Mr Kua and Mdm Ng and the salary of Mdm Ng's domestic helper living in the Flat, which Lin paid.<sup>96</sup> No evidence is adduced, nor is it asserted, that Hor bore a disproportionate amount. Hor's payment of the property tax and levy therefore reflects the Children's arrangement for sharing Mdm Ng's expenses and is not evidence of Hor's ownership of the Flat. Significantly, it is also not Ho's case that she bore any part of the property tax or other expenses of the Flat after her name was included.

66 The evidence therefore leads to the conclusion that Hor did not intend to give Ho a share in the Flat. I therefore find that Ho does not have a beneficial interest in the Flat.

67 There is a further argument: if Hor did not regard the Flat as his, then he could not have intended to give Ho a share when he included her name in the Lease Document. Hor states in his affidavit that he does not consider the Flat to be his<sup>97</sup> and that he is holding it on trust for Mdm Ng.<sup>98</sup> This is probably a rare instance of a legal owner admitting the existence of a trust against his interests. Be that as it may, Hor could not have intended to give Ho a half-share if he did not believe the Flat was his to give. As stated above, I cannot accept this assertion of Hor's belief at face value given his current dispute with Ho. I

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<sup>96</sup> Hor's First Affidavit dated 1 February 2023 at para 22.

<sup>97</sup> Hor's First Affidavit dated 1 February 2023 at para 21.

<sup>98</sup> Hor's First Affidavit dated 1 February 2023 at paras 24 and 28; Hor's Further Written Submissions at para 21.

therefore examine the circumstances under which Hor's name came to be included in the Flat to determine, on a balance of probabilities, whether Hor's position is supported by the evidence.

***Whether Mr Kua intended to give Hor a share of the Flat***

*Who owned the Flat when it was first purchased?*

68 Lin (via his counsel at the hearing) and Hor (at [44] above) argue that Mr Kua held Mdm Ng's interest in the Flat on a resulting trust for her as it had been purchased from funds belonging to both of them. Lin's counsel clarified that the purchase of the Flat had been funded from the compensation funds received from the compulsory acquisition of the Killiney Property and from the Business which both Mr Kua and Mdm Ng operated. Lin and Hor state that the Flat was only registered in Mr Kua's name because he was "a traditional patriarch" who bought into the "traditional notion that women had no right to hold property or did not have to hold property in any event because they would be provided for by their husbands".<sup>99</sup>

69 I do not find a resulting trust in favour of Mdm Ng. There is no evidence as to whose name the Killiney Property was held in or who owned the Business. On Lin and Hor's own evidence as to Mr Kua's beliefs and values, Mr Kua would likely have been the sole owner of the Killiney Property as well as the Business. While Mdm Ng had assisted him in the Business, it does not mean she held a share in it. This was the family's only source of income and it is not unreasonable that Mdm Ng would assist without any expectation or belief of a proprietary interest. This is unlike the case of *Ong Chai Soon v Ong Chai Koon and others* [2022] SGCA 36 ("***Ong Chai Soon***"): in *Ong Chai Soon*, while there

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<sup>99</sup> Hor's Written Submissions at para 67.



was no evidence of direct contribution by the respondents to the purchase price of the disputed property, there had been indirect financial contributions by the family company, of which the respondents were shareholders; accordingly, the property had been purchased through a mixed fund comprising moneys which belonged to all the parties.<sup>100</sup> There is no evidence here that Mdm Ng had directly or indirectly contributed to the acquisition of the Flat. On the contrary, there is evidence that the Flat was purchased by Mr Kua.<sup>101</sup> There is therefore no evidentiary basis to assert a resulting trust in Mdm Ng's favour and nothing to dispel Mr Kua's sole ownership of the Flat. It is true that Mdm Ng would likely be given an interest in the Flat in matrimonial proceedings between Mr Kua and Mdm Ng, but the ownership of the Flat in these proceedings must be determined by property, and not matrimonial, rules.

70 In the circumstances, Mr Kua owned the Flat entirely and it was for him to decide what to do with it.

*Why was Hor added as a joint tenant in 2004?*

71 In the event, Mr Kua included Hor's name as a joint tenant on 30 March 2004. Ho relies on the transfer form signed in 2004, which states that Mr Kua transferred to Hor his share "BY GIFT".<sup>102</sup> But, for the same reasons above (at [58]), this is not determinative. The circumstances surrounding the inclusion of Hor's name are critical.

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<sup>100</sup> See also Ho's Written Submissions at para 50.

<sup>101</sup> Lin's First Affidavit dated 6 January 2023 at para 10; Hoon's First Affidavit dated 31 January 2023 at para 15.

<sup>102</sup> Ho's Written Submissions at para 52.

72 The evidence is that around 2003, Mr Kua experienced health issues.<sup>103</sup> He was subsequently diagnosed with cancer.<sup>104</sup> According to Hor, Mr Kua spoke with him in 2003 and told Hor that he wanted to include Hor's name in the Flat as he was concerned that Mdm Ng was uneducated and would not know how to deal with the Flat, including the tax implications upon his death.<sup>105</sup> Hor then went with Mr Kua to the HDB office and helped him with the paperwork. Hor's name was included on 30 March 2004.<sup>106</sup>

73 Nothing is said in Hor's affidavit as to *why* Mr Kua chose him instead of the other Children. Neither did Mr Kua (apparently) say anything about whether he was giving the Flat outright to Hor to the exclusion of his siblings, that Hor was to hold it for the benefit of Mdm Ng or the Children, or that Mr Kua expected Hor to share the Flat (or its proceeds) with the other Children after Mdm Ng passed away. All Hor states is that Mr Kua did not consider Hor to be the real owner of the Flat,<sup>107</sup> albeit without basis or explanation. Lin similarly says nothing of any intention *expressed by Mr Kua* concerning who should own the Flat after Mr Kua's passing and his affidavit includes mere assertions as to what Mr Kua would or would not have intended.<sup>108</sup> All Lin states in his affidavit about what Mr Kua said is:

During his lifetime my father always reminded us and made it clear that my mother is to be taken cared [*sic*] of during her

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<sup>103</sup> Hor's First Affidavit dated 1 February 2023 at para 19.

<sup>104</sup> Lin's First Affidavit dated 6 January 2023 at para 11.

<sup>105</sup> Hor's First Affidavit dated 1 February 2023 at para 19.

<sup>106</sup> Hor's First Affidavit dated 1 February 2023 at para 19; Lin's First Affidavit dated 6 January 2023 at p 18 (lease document in respect of the Flat).

<sup>107</sup> Hor's First Affidavit dated 1 February 2023 at para 21.

<sup>108</sup> Lin's First Affidavit dated 6 January 2023 at para 11.

lifetime and she must reside in the Flat [for] as long as she was alive and wanted to...<sup>109</sup>

74 Hoon’s affidavit gives more details. She says that Mr Kua told her that he wanted to put Hor’s name in the Flat as:

[I]t was to protect [Mdm Ng] as she was uneducated and would not know what to do with the [Flat] if she outlived [Mr Kua]. Lin already owned his own HDB flat and his name could not be included. I knew that [Mr Kua] would not consider putting [Mdm Ng’s], Hong’s or my name as he would never think of putting a woman’s name as owner of the [Flat]. I agreed that it was a good idea. He also informed me that he would be leaving some money with Lin to be used for the expenses of the [Flat] and for [Mdm Ng].<sup>110</sup>

75 It does not appear that Mr Kua spoke directly to any of the other Children about the inclusion of Hor’s name in the Flat. Lin’s counsel submitted to the contrary at the hearing, that Mdm Ng and the other Children “were also there” at the time Mr Kua added Hor as a co-owner of the Flat; further, since the entire family was involved in the decision, the Children could therefore give evidence on Mr Kua’s intention. But this submission is not supported by the evidence before me.

76 The evidence concerning Mr Kua’s expressed intention is, on its face, that Mr Kua intended for Mdm Ng to continue living in the Flat after his demise and expected the Children to take care of her: he had expressly stated this to Hoon. But this, on its own, is equivocal as to whether he intended *to give the Flat to Hor*. I therefore consider other evidence that might shed light on Mr Kua’s intention.

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<sup>109</sup> Lin’s First Affidavit dated 6 January 2023 at para 12. See also Lin’s First Affidavit dated 6 January 2023 at p 28 (Lin’s statutory declaration dated 17 January 2022).

<sup>110</sup> Hoon’s First Affidavit dated 31 January 2023 at para 26. See also Hor’s First Affidavit dated 1 February 2023 at p 36 (Hoon’s statutory declaration dated 17 January 2021 [*sic*]).

77 First, the Flat has been the family home since 1989 and appears to have been Mr Kua’s biggest asset, as he had by then retired from and sold off the Business.

78 Second, there was no reason for Mr Kua to prefer Hor over the other Children. There is no evidence that he was Mr Kua or Mdm Ng’s favourite child. Neither was he closer to them or more involved than the other Children in looking after them. There is also no evidence that Hor needed financial assistance or needed it more than his siblings.

79 Third, at the time Hor’s name was included, *all the other Children*, including Lin, owned HDB flats,<sup>111</sup> which meant Mr Kua did not have the option of including any of their names to the Flat.

80 Ho’s counsel argued at the hearing that there was reason for Mr Kua to prefer Hor. He argued that (a) consistent with Mr Kua’s views and values, Mr Kua would give the Flat to his son(s) and not his daughter(s); and (b) of the three sons, Leong was estranged from the family, Lin had taken over the Business from Mr Kua, and it was therefore not surprising that Mr Kua would give the Flat to Hor. The evidence does not support that conclusion:

(a) First, while Mr Kua may not have included Mdm Ng’s name in the Flat for “traditional” reasons (*ie*, that the husband would own the property and provide for his wife), it does not follow that he would only give his assets to his sons to the exclusion of his daughters. Further, that same traditional outlook may also mean that he would *put the Flat in the*

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<sup>111</sup> Hor’s First Affidavit dated 1 February 2023 at para 71; Lin’s First Affidavit dated 6 January 2023 at para 11; Lin’s Second Affidavit dated 9 March 2023 at paras 4(a) and 4(b).

*name of a son* because he expected the son to be in charge after his passing – but this does not mean that he intended to *give* the Flat only to that son.

(b) Second, the evidence suggests that Lin, the older brother, was at least equally involved in the family's affairs. But the Flat could not be put in his name as he already owned a HDB flat. This suggests that Hor's name was included because he was the only option, and not because Mr Kua intended to give the Flat to him. Ho's argument that Lin had already benefitted from acquiring the Business is speculative – there is no evidence that Mr Kua based his decision on that fact; further Lin states that he purchased the Business from Mr Kua,<sup>112</sup> it was not given to him. Ho points out that no details are given of the consideration, but this point was only made in Ho's oral submissions.

81 The evidence therefore suggests that it was not Mr Kua's intention to gift the Flat to Hor. Rather, it appears that Mr Kua's main concern was to include a joint tenant to the Flat to ensure that the said joint tenant could handle administrative matters concerning the Flat upon Mr Kua's passing, thereby sparing Mdm Ng the trouble. In the circumstances, Hor was the only one among the Children who was eligible to be added as a joint tenant.

82 Fourth, there is no evidence that Mr Kua had, by words or conduct, asserted that he was making an outright gift of the Flat to Hor. Nothing changed after Hor's name was included. Mr Kua and Mdm Ng continued to live in the Flat and pay the expenses (at [64] and [65] above). At the hearing, Ho's counsel accepted that in the eight or so years between Mr Kua's addition of Hor as co-

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<sup>112</sup> Lin's First Affidavit dated 6 January 2023 at para 8.

owner of the Flat and Mr Kua's passing, Mr Kua was regarded as the owner of the Flat and Hor did not exercise any right of ownership. This constituted objective evidence of Mr Kua's exercise of control over the Flat as if he were the sole owner.

83 Fifth, Hor does not appear to have believed that he had gained ownership of the Flat:

(a) Like what happened later in 2013 (see above at [60]), there is no evidence that Hor even discussed the inclusion of his name with Ho in 2004. Ho and Hor were on good terms then. If it was a gift, it would have been significant. The lack of discussion suggests that Hor did not consider the inclusion of his name a significant matter, but rather a matter of convenience.

(b) Hor did not exercise ownership rights over the Flat. Mr Kua continued to do so (at [82] above).

(c) There is no evidence that Hor bore any greater expense than Mdm Ng or the other Children as the Flat's joint owner, took a greater interest in the Flat or bore a greater share of responsibility to look after Mr Kua or Mdm Ng.

84 I note that Lin and Hor take varying positions as to who Hor is holding the Flat on trust for, both before and after Mr Kua's passing:

(a) Lin's position: It is not clear whose benefit Lin claims Hor held the Flat for before Mr Kua's passing since Lin suggests that it was held

for the benefit of Mr Kua and the Children,<sup>113</sup> or Mr Kua,<sup>114</sup> or Mdm Ng and/or the Children.<sup>115</sup> Lin is somewhat more definitive on who he posits Hor holds the Flat for after Mr Kua's passing – he claims that the Flat is now held by Hor and Ho on trust for Mdm Ng and/or the Children.<sup>116</sup>

(b) Hor's position: Before Mr Kua's passing, he held the Flat for Mr Kua and Mdm Ng.<sup>117</sup> Now, after Mr Kua's passing, Hor holds the Flat for the benefit of Mdm Ng.<sup>118</sup>

85 I reject these arguments. There is no evidence at all that Mr Kua intended Hor to hold the Flat on behalf of the Children. The evidence is also not clear that he intended for Hor to hold it on trust for Mdm Ng before or after his passing. The foregoing analysis shows that Mr Kua likely did not intend to, and indeed did not, gift a share of the Flat to Hor. In the circumstances, given that Mr Kua's instructions were limited to Mdm Ng being taken care of and that Hor did not give any consideration for the inclusion of his name in the Flat, I find that Hor held the Flat on a resulting trust for Mr Kua, and after Mr Kua's passing, for Mr Kua's estate.

86 In any event, and relevant to the first issue discussed above, I accept that Hor did not believe that he owned the Flat (at [67] above). In the circumstances, Hor *could not have intended* to have made a gift to Ho when he included her name in the Flat.

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<sup>113</sup> Lin's Written Submissions at para 33.

<sup>114</sup> Lin's Written Submissions at para 23.

<sup>115</sup> Lin's Written Submissions at paras 24 and 25.

<sup>116</sup> Lin's Written Submissions at para 2.

<sup>117</sup> Hor's Written Submissions at para 50; Hor's Further Written Submissions at para 50.

<sup>118</sup> Hor's Further Written Submissions at para 21.

87 For the above reasons, I dismiss:

(a) Lin’s application for a declaration that Ho and Hor hold the Flat on trust for Mdm Ng or, in the alternative, an order that the rights, title and interest in the Flat shall be transferred to Mdm Ng with no cash consideration to Ho and Hor; and

(b) Ho’s counterclaim for an order that Hor purchase a 50% share of the Flat from Ho at the prevailing market value.

### **The GMP**

88 Sometime in 2013, Mdm Ng suffered a fall and began having difficulties walking.<sup>119</sup> The Children claim that she then asked Hor to help her manage her money.<sup>120</sup> Mdm Ng informed Hoon, Hong and Hor that she had \$100,000 and wanted Hor to invest this sum for her. Hor suggested that the sum be used to purchase a unit with Gu in “Golden Mile Centre” as it was rumoured that it was about to be sold en bloc.<sup>121</sup> Hor would be the legal owner of the half share of the GMP on the understanding that, when it was sold, the GMP Proceeds would belong to Mdm Ng and be used for her expenses<sup>122</sup> while she was alive and, thereafter, for her funeral expenses, with the remainder being distributed among the Children. According to Hor, matters pertaining to the GMP, which include

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<sup>119</sup> Lin’s First Affidavit dated 6 January 2023 at para 15; Hor’s First Affidavit dated 1 February 2023 at para 29.

<sup>120</sup> Hor’s First Affidavit dated 1 February 2023 at para 33.

<sup>121</sup> Lin’s First Affidavit dated 6 January 2023 at paras 16 and 17; Hor’s First Affidavit dated 1 February 2023 at paras 34–36.

<sup>122</sup> Hor’s First Affidavit dated 1 February 2023 at para 37; Lin’s First Affidavit dated 6 January 2023 at para 18.



the understanding between Mdm Ng and the Children, were not made known to Ho.<sup>123</sup>

89 Hor and Gu agreed that they would each finance their respective half shares of the GMP and share the profit or loss in the investment equally. They held the GMP as tenants-in-common in equal shares. They purchased the GMP for \$685,500 and took a loan of \$479,500 from OCBC Bank. Accordingly, Hor had to pay cash of \$102,750 for the purchase – he claims he used Mdm Ng’s \$100,000 to pay most of this and he paid the balance.<sup>124</sup> The purchase of the GMP was completed on 5 November 2013.<sup>125</sup>

90 However, the en bloc sale did not materialise. The GMP was rented out, and Hor used his share of the rental proceeds to partially service his loan, and he personally made up the shortfall. In 2022, Hor started facing pressure from the Children to sell off his share of the GMP and use the proceeds towards Mdm Ng’s expenses. Gu agreed to purchase Hor’s half share of the GMP based on a valuation of the GMP of \$700,000.<sup>126</sup> They signed a sale and purchase agreement on 1 June 2022.<sup>127</sup> Ho had no knowledge of the GMP until Hor disclosed it in his first AOM in the divorce proceedings.<sup>128</sup> She objected to the sale of Hor’s share of the GMP and her solicitors demanded that he stop the

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<sup>123</sup> Hor’s First Affidavit dated 1 February 2023 at para 45.

<sup>124</sup> Hor’s First Affidavit dated 1 February 2023 at para 38.

<sup>125</sup> Hor’s First Affidavit dated 1 February 2023 at para 38.

<sup>126</sup> Hor’s First Affidavit dated 1 February 2023 at paras 65 and 74.

<sup>127</sup> Hor’s First Affidavit dated 1 February 2023 at paras 66 and 78.

<sup>128</sup> Hor’s First Affidavit dated 1 February 2023 at para 80(b).

sale.<sup>129</sup> But the sale was completed on 31 August 2022.<sup>130</sup> The GMP Proceeds, amounting to \$237,822.74, are currently held by Hor's solicitors in the conveyance pending the outcome of this dispute.<sup>131</sup>

### ***The parties' cases***

#### *Lin's case*

91 Lin submits that either the whole or a part of the GMP Proceeds is held by Hor for the benefit of Mdm Ng.<sup>132</sup> Lin claims there is an express trust,<sup>133</sup> but recognises that the requirement for such a declaration of trust to be manifested and proved by some writing, under s 7(1) of the Civil Law Act ("CLA"), is not met.<sup>134</sup> Lin nonetheless argues that since the purpose of s 7(1) CLA is to allow a beneficiary to enforce their rights, and the dispute here is not between a beneficiary and a trustee, but rather involves a third party, *ie*, Ho, it cannot be for Ho to determine the enforceability of the express trust.<sup>135</sup> Lin further argues that a failure to comply with s 7(1) CLA merely renders a trust unenforceable, not void. Lin highlights that (a) Hor intends to fulfil his obligation to Mdm Ng and Mdm Ng accepts such obligation; and (b) equity must intervene and prevent s 7(1) CLA from being used to deny Mdm Ng what justly belongs to her.<sup>136</sup>

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<sup>129</sup> Hor's First Affidavit dated 1 February 2023 at para 69; Ho's First Affidavit dated 2 February 2023 at para 12.

<sup>130</sup> Hor's First Affidavit dated 1 February 2023 at para 78.

<sup>131</sup> Hor's First Affidavit dated 1 February 2023 at para 76 and p 69 (letter from T U Naidu dated 2 December 2022).

<sup>132</sup> Lin's Further Written Submissions at para 8.

<sup>133</sup> Lin's Further Written Submissions at para 3.

<sup>134</sup> Lin's Further Written Submissions at para 4(a).

<sup>135</sup> Lin's Further Written Submissions at paras 4(b) and 5.

<sup>136</sup> Lin's Further Written Submissions at para 7.

*Hor's case*

92 Hor states that he received \$100,000 from Mdm Ng and holds that sum and any profit made thereon on trust for Mdm Ng.<sup>137</sup> He also contributed his own moneys toward the acquisition of the GMP, and the GMP Proceeds should therefore be divided between Mdm Ng and him in proportion to their respective contributions. Hor argues that the trust is “express, or alternatively implied, or alternatively resulting”,<sup>138</sup> based on the following:

(a) Hor argues that it is an express trust, and that the operation of s 7(1) CLA means that the trust is unenforceable, but not void;<sup>139</sup> he argues that the trust is not unenforceable since (i) he is fully aware of the trust and does not consider it a gift to him;<sup>140</sup> (ii) if he avoided the trust, it would affect his conscience;<sup>141</sup> (iii) in any event, it is not for Ho, a third party, to claim that the trust is unenforceable;<sup>142</sup> and (iv) if Hor claims that the \$100,000 was a gift, “the instrument of fraud principle would still enforce the trust”.<sup>143</sup>

(b) Hor argues that a resulting trust arises in favour of Mdm Ng because Hor did not pay the full price for a half share of the GMP,<sup>144</sup> and, in so far as Hor had paid his own moneys towards the GMP, he was

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<sup>137</sup> Hor's Written Submissions at para 116; Hor's Further Written Submissions at para 20.

<sup>138</sup> Hor's Further Written Submissions at para 4.

<sup>139</sup> Hor's Further Written Submissions at para 8.

<sup>140</sup> Hor's Further Written Submissions at para 9.

<sup>141</sup> Hor's Further Written Submissions at para 9.

<sup>142</sup> Hor's Further Written Submissions at para 15.

<sup>143</sup> Hor's Further Written Submissions at para 15.

<sup>144</sup> Hor's Further Written Submissions at para 15.

doing no more than responsibly holding up his end of the agreement with his family.<sup>145</sup>

*Ho's case*

93 Ho claims that Hor is the sole beneficial owner of Hor's half share in the GMP and the GMP is matrimonial property. This is because the half share of the GMP was solely acquired by Hor, given that (a) there is no evidence that Mdm Ng's moneys were used for the purchase of a half share of the GMP;<sup>146</sup> (b) Hor was gainfully employed and had the means to acquire a share of the GMP;<sup>147</sup> and (c) Hor always acted as though the GMP was his own investment as he declared and paid tax on the rent received from the GMP and made the decision to sell his share of the GMP without consulting Mdm Ng.<sup>148</sup>

94 Further, Ho argues that even if Mdm Ng did contribute \$100,000 to the purchase of the GMP, by the presumption of advancement, Mdm Ng intended it as a gift to Hor.<sup>149</sup> Ho further argues that (a) there is no express trust because there is no evidence of Mdm Ng's intention to create an express trust,<sup>150</sup> the subject matter of the alleged trust is not certain,<sup>151</sup> and s 7(1) CLA was not complied with;<sup>152</sup> and (b) there was no common intention between Hor and

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<sup>145</sup> Hor's Further Written Submissions at para 18.

<sup>146</sup> Ho's Written Submissions at para 65.

<sup>147</sup> Ho's Written Submissions at para 66.

<sup>148</sup> Ho's Written Submissions at para 66.

<sup>149</sup> Ho's Written Submissions at para 68.

<sup>150</sup> Ho's Further Written Submissions at para 34.

<sup>151</sup> Ho's Further Written Submissions at para 35.

<sup>152</sup> Ho's Further Written Submissions at para 36.

Mdm Ng that Mdm Ng holds a proprietary interest in the GMP,<sup>153</sup> especially as (i) Mdm Ng was diagnosed with dementia as early as 2012 and probably did not have the capacity to share such common intention;<sup>154</sup> and (ii) there appears to be a difference in the purported intentions of Mdm Ng and Hor.<sup>155</sup>

***Whether Hor holds the GMP Proceeds on trust for Mdm Ng***

95 I find that Lin has failed to prove on a balance of probabilities that Mdm Ng's moneys were used to fund the purchase of the GMP. Therefore, no trust over the half share of the GMP, or the GMP Proceeds, arises.

96 First, I do not accept that Mdm Ng kept large amounts of cash (at least \$50,000),<sup>156</sup> in the Flat in 2013 (specifically, between the time she suffered the fall sometime in 2013 and the date of completion of the purchase of the GMP on 5 November 2013).<sup>157</sup> This means that she did not contribute towards the purchase price of the GMP.<sup>158</sup>

97 The main basis given by Lin and Hor for Mr Kua and Mdm Ng's practice of keeping cash in the Flat is that they often had to pay suppliers of the Business.<sup>159</sup> But they had retired from the Business almost 25 years ago, in 1989.<sup>160</sup> Further, Mr Kua, who managed the finances, had passed away in 2012.

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<sup>153</sup> Ho's Written Submissions at para 73.

<sup>154</sup> Ho's Further Written Submissions at para 42.

<sup>155</sup> Ho's Written Submissions at para 74.

<sup>156</sup> Hor's First Affidavit dated 1 February 2023 at para 34.

<sup>157</sup> Hor's First Affidavit dated 1 February 2023 at paras 32 and 38.

<sup>158</sup> Lin's Written Submissions at para 51; Lin's Further Written Submissions at para 3(a).

<sup>159</sup> See also Hoon's First Affidavit dated 31 January 2023 at para 33.

<sup>160</sup> Hor's First Affidavit dated 1 February 2023 at paras 15 and 17.

There was therefore no longer any reason to keep large amounts of cash at the Flat.

98 Lin and Hor also explain that Mdm Ng kept large amounts of cash because of a “traditional mentality that ‘cash is king’”.<sup>161</sup> The evidence however suggests that Mdm Ng was unlikely to have kept large amounts of cash at the Flat:

(a) It is Lin’s and Hor’s evidence that Mr Kua did not believe Mdm Ng was capable of handling legal matters (see above at [44(b)(ii)]). It would therefore be highly unlikely that Mr Kua would have allowed large amounts of cash to be kept at home when he was close to passing, knowing that Mdm Ng would have to manage it. Indeed, this is consistent with the evidence that Mr Kua gave Lin cash to look after Mdm Ng after he passed on.<sup>162</sup> This suggests that he did not keep large amounts of cash at the Flat or stopped doing so.

(b) I also find it improbable that the Children would have allowed Mdm Ng to keep large amounts of cash in the Flat in 2013. Mdm Ng lived alone in the Flat with her domestic helper, her health was poor and she was diagnosed with, or exhibited symptoms of, dementia as early as 2012 (at [57(a)] above). Hoon’s affidavit details an instance where Mdm Ng was forgetful and left \$5,000 at a vegetable stall in a market<sup>163</sup> – while Hoon does not state when the incident occurred, it nonetheless shows that the Children did not trust Mdm Ng with cash. The Children would therefore likely have wanted to take steps to safeguard Mdm Ng’s

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<sup>161</sup> Hor’s First Affidavit dated 1 February 2023 at para 31.

<sup>162</sup> Hoon’s First Affidavit dated 31 January 2023 at para 26.

<sup>163</sup> Hoon’s First Affidavit dated 31 January 2023 at para 32.

moneys. Indeed, Hoon states that she assisted Mdm Ng to open fixed deposit accounts.<sup>164</sup> If that was the case, it is curious why the Children would allow Mdm Ng to continue keeping large sums of cash in the Flat.

99 Second, Lin relies on the passbook of Mdm Ng and Hor's joint account, which shows a withdrawal of \$58,457.<sup>165</sup> He and Hor maintain that this sum was withdrawn and handed to Hor as part of the \$100,000 given to Hor to purchase the GMP.<sup>166</sup> The remainder was handed in cash from Mdm Ng to Hor. But that cannot be the case as the withdrawal took place on 21 December 2013, *after* the completion of the purchase of the GMP on 5 November 2013.<sup>167</sup> At the hearing, Hor belatedly applied for leave to file an affidavit from Gu to explain this discrepancy, arguing that they had no notice of this argument as it was only raised in Ho's written submissions. I denied the application. It is for Lin and Hor to put all the relevant evidence before the court before they proceed with the hearing. The bank book is the only document purportedly evidencing the source of the \$100,000, and Lin and Hor must have realized the significance of the dates. Indeed, Hor only made the application to file an affidavit from Gu mid-way through the hearing after I questioned why there was no affidavit explaining the discrepancy in the dates.

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<sup>164</sup> Hoon's First Affidavit dated 31 January 2023 at para 34.

<sup>165</sup> Lin's Written Submissions at para 50; Hor's First Affidavit dated 1 February 2023 at pp 24 and 25 (bank passbook of Hor and Mdm Ng's bank account).

<sup>166</sup> Lin's Written Submissions at para 50; Hor's Written Submissions at para 38; Ho's Written Submissions at para 65.

<sup>167</sup> Hor's First Affidavit dated 1 February 2023 at para 38.

100 Third, Hor's conduct is not consistent with him holding the GMP Proceeds on trust for Mdm Ng. Ho points out that Hor acted as though the GMP was his own investment by declaring it as his property and paying tax on the rental proceeds he received.<sup>168</sup> Ho also submits that Hor had made the decision to sell his share of the GMP without consulting Mdm Ng.<sup>169</sup> I do not think these points are determinative. It is Hor's case that Mdm Ng left the matters relating to the investment in GMP entirely to him.<sup>170</sup> It is plausible that Hor would therefore do these acts without consulting with Mdm Ng, particularly given her deteriorating health. He certainly could not consult her on the sale given her dementia.

101 However, Hor's proposed treatment of the GMP Proceeds, which Lin agrees with, is inconsistent with their case. Hor's proposed apportionment of the GMP Proceeds to Mdm Ng is not consistent with his case that \$100,000 of the purchase price of the GMP was Mdm Ng's moneys. I reproduce the calculations made by Hor below:<sup>171</sup>

I did a basic calculation of the payments made by me and [Mdm Ng] towards the [GMP]:

Purchase price	685,000.00
Less: Loan – OCBC	<u>(479,500.00)</u>
Balance	205,500.00
My share of the payment	102,750.00

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<sup>168</sup> Ho's Written Submissions at para 66; Ho's First Affidavit dated 2 February 2023 at para 67 and Tab 19 (Hor's Notice of Assessment for 2018).

<sup>169</sup> Ho's Written Submissions at para 66.

<sup>170</sup> Hor's First Affidavit dated 1 February 2023 at paras 34 and 36.

<sup>171</sup> Hor's First Affidavit dated 1 February 2023 at para 72.



My mother's investment	100,000.00
Actual amount paid by me	2,750.00
<i>Further payment that I made from time of purchase to sale*</i>	<i>42,000.00</i>
Total payment	144,750.00

*\*Calculation of the payment that [Hor] made from time of purchase to sale:*

	[Gu and Hor]	[Hor]
<i>Monthly Rental</i>	2,300.00	<i>1,150.00</i>
Monthly loan repayment	(3,100.00)	(1,550.00)
Monthly cash payment	(800.00)	(400.00)
From 12/2013 to 6/2022 (261 months) <sup>172</sup>		<i>(42,000.00)</i>

[emphasis added]

102 Hor therefore states that contributions to the purchase price of the half share of the GMP were made in the following shares: Mdm Ng contributed 69.08% and Hor contributed 30.92%.<sup>173</sup> He thereby asserts that the GMP Proceeds should be split between Mdm Ng and him in this ratio.

<sup>172</sup> (Hor's counsel confirmed at the hearing that "261 months" was an error and it should be "105 months" instead.)

<sup>173</sup> Hor's First Affidavit dated 1 February 2023 at para 73.

103 The main difficulty with this computation is that Hor allocates the rent collected entirely to himself. But if he is holding a (substantial) part of the GMP on trust for Mdm Ng, the rental income received should be allocated in the same proportion between them, thus adding to her contribution. On Ho's calculation, if the rent had been properly allocated to Mdm Ng, her share of the GMP Proceeds would be about 97%.

104 Hor's calculation of Mdm Ng's share of the GMP Proceeds reflects that he regarded the entirety of the rental as belonging to him, which in turn suggests that Hor considered the half share of the GMP was owned by him absolutely. If there was a trust in favour of Mdm Ng, Hor appears to be seeking a larger proportion of the GMP Proceeds for himself to the detriment of Mdm Ng.

105 Surprisingly, Lin chose not to address this issue and continued, without explanation, to align his position with Hor's although it was to the detriment of Mdm Ng. This suggests that the trust claim is not *bona fide*.

106 In the circumstances, I find that Hor does not hold the GMP Proceeds, or any part therefore, on trust for Mdm Ng. I therefore dismiss Lin's application for a declaration that Hor and/or Ho hold(s) the whole or part of the GMP Proceeds on trust for Mdm Ng as well as the consequential orders he seeks.

### **Conclusion**

107 I therefore find that Hor and Ho hold the Flat on trust for Mr Kua's estate. It is for Mr Kua's estate to take steps to enforce the trust. I also find that the GMP Proceeds belong to Hor, to be dealt with in the matrimonial proceedings.

108 I will hear the parties on costs. The parties are to file their submissions, limited to ten pages, within seven days.

Hri Kumar Nair  
Judge of the High Court

Kasturibai Manickam and Samuel Chong (East Asia Law  
Corporation) for the applicant;  
Goh Hui Hua and Ezra Wong De Wei (Covenant Chambers LLC) for  
the first respondent;  
Mathew Moncy (Mathew Chew & Chelliah) for the second  
respondent.