

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

[2024] SGHC 115

Originating Claim No 454 of 2022

Between

Lim Kim Toon

... Claimant

And

Lim Hwee Hoon

... Defendant

JUDGMENT

[Trusts — Resulting trusts]

[Trusts — Constructive trust]

[Gifts — Presumptions against — Resulting trusts]

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Lim Kim Toon
v
Lim Hwee Hoon

[2024] SGHC 115

General Division of the High Court — Originating Claim No 454 of 2022
Choo Han Teck J
1–4 April, 25 April 2024

6 May 2024

Judgment reserved.

Choo Han Teck J:

1 The claimant, Lim Kim Toon and his wife Madam Wong have six children —

- (a) the eldest is a daughter, Lim Kwee Hoey,
- (b) the second is a son, Lim Boon Yew,
- (c) the third is a daughter, Lim Kwee Giok,
- (d) the fourth is a daughter, Lim Quee Hong,
- (e) the fifth is a son, Lim Boon Lye, and
- (f) the youngest, a daughter Lim Hwee Hoon, the defendant in this action.

The claimant is 90 years old. His wife, Madam Wong died on 13 March 2021. This action has split the family, with the claimant, his second son Lim Boon Lye, and Jimmy Lea, the son-in-law of his elder son, testifying as witnesses for the claimant, and the defendant and her other siblings, including Jimmy Lea's father-in-law Lim Boon Yew, testifying for the defendant. Lim Boon Yew, Lim Kwee Hoey, and Jimmy Lea live in Australia.

2 The claimant worked as a labourer and a cook when he was 16 years old. When he was 18, he went into business with his older brother. Then in 1964 (when he was 30 years old) he left his older brother's business and started Evan Lim Construction Ltd with one of his younger brothers. In 1982, they started a warehousing company called Evan Lim Industrial/Warehousing Development Pte Ltd ("the Company") to buy and lease out warehouses. In 1993, the claimant's brother took over Evan Lim Construction Ltd and he took over the Company. He appointed the defendant, then aged 23 as a director of the Company. The defendant is presently 54 years old. The claimant had made all his children directors of this company, and he appointed Lim Boon Lye as the Managing Director, but the Company was essentially his in form and substance, that is to say, the voice above the board and the managing director.

3 Over the years, the Company bought warehouses and other properties. One of the major assets, a warehouse, brought the Company more than a million dollars in income a year. It appears that the claimant treated the company as his own even though he owns approximately 28.5% shareholding. The defendant holds 11.5%, the five other siblings have 10% each and the claimant's two daughters-in-law have 5% each. The above shareholding is the current status. Before Madam Wong died, she had a 30% shareholding in the Company. This was distributed to the defendant and her siblings after Madam Wong died, a matter that I will refer to shortly.

4 The claimant is illiterate and is conversant only in the Hokkien dialect in which he testified. The defendant has a university degree and is fluent in English. Over the years, the claimant bought, or assisted his children to buy properties in their names. The defendant was no exception. I will enlarge on this point shortly. She was the only child who had worked with him in the Company, serving mainly as his personal assistant as he is illiterate. And over the past 22 years, the claimant and the defendant bought properties in their joint names, four of which are now the subject of this action. The properties are known at trial as Boon Lay 222, Jurong West 164, 2 Dalhousie, and Jurong West 225 (“the Four Properties”).

5 The claimant is suing the defendant for the Four Properties on the ground that they belong to him solely and that the defendant inserted her name in the purchase without his knowledge or consent, and thus, so far as her share in the properties are concerned, she is holding them in trust for him. The defendant denies this claim and asserts that, on the contrary, her father, the claimant, had intended to give the Four Properties to her as joint tenant and that he had done so. Her counsel, Mr Low Chai Chong submits that the presumption of advancement applies, and that the claimant has not rebutted that presumption. This then is the issue — whose claim is the more probable.

6 It is not disputed that apart from the Four Properties, there were two others, referred to as the Jurong West 235 Property and the Yishun Property (bought on 8 August 2002 and 27 September 2002 respectively), that had been purchased also in the joint names of the claimant and the defendant. These two properties had been sold with a tidy profit (\$4.275m and \$2.015m respectively) and the proceeds deposited into a joint account with the United Overseas Bank in the names of the claimant and defendant (the “UOB Joint Account”). This account was opened in 2002 just after Jurong West 235 was purchased. There

is one other joint account which I shall refer to shortly. The Four Properties were also rented out, and the rental proceeds were deposited by the defendant into the joint accounts until they were closed in 2020.

7 The transaction details of the Four Properties are as follows:

(a) Boon Lay 222 was bought 20 years ago on 7 May 2004 for \$1,050,000. 9% of the purchase money came from the UOB Joint Account. The claimant paid 31%, and the remaining 60% was by way of a mortgage executed in the joint names of the claimant and the defendant.

(b) Jurong West 164 was bought a week later on 14 May 2004 for \$1,250,000. The claimant paid 25% of the purchase price and the remaining 75% was paid by way of a mortgage executed in the joint names of the claimant and the defendant.

(c) 2 Dalhousie was bought on 24 August 2017 for \$4,000,000. The claimant paid 5% of the purchase price and the remaining 95% came from the UOB Joint Account, paid in cash. The source of the 95% cash payment is disputed. The claimant says that the entire cash payment came from the sale proceeds of Jurong West 235. The defendant disagrees with the claimant in so far as she asserts that the 95% consisted of sale proceeds of Jurong West 235 as well as sale proceeds of the Yishun property. I am inclined to believe the claimant. As far as the claimant is concerned, even the Yishun property was purchased as his investment.

(d) Jurong West 225 was bought on 22 March 2018 for \$5,300,000. The claimant says he paid 1% and 4% came from the UOB Joint

Account. As for the remaining 95%, he claims to have personally deposited funds into the UOB Joint Account to complete the purchase. The defendant asserts that the money for this property came from the sale proceeds of Jurong West 235 and the Yishun property. The bank records show that it was the claimant who personally deposited funds amounting to \$3,041,348.58 using moneys from his personal fixed deposit accounts with UOB. I am therefore inclined to believe the claimant.

8 Normally, when a person signs documents relating to a purchase of real property, including the mortgage documents, the natural assumption is that he knows what he signed. Here we are not concerned with just the one property but four properties. If the documents show that the property (or properties) was purchased in the joint names with another person, he must be taken to know that he purchased it (them) as a joint tenant with the other. In cases where such a person disputes the document, it is usually a denial based on either the doctrine of mistake (*non est factum* — that is not my signature), or on the basis of undue influence brought to bear on him by the other joint tenant or some other third party.

9 But the claimant is not saying either of these things. He says specifically that he saw the Four Properties (in sequence) and wanted to invest in them. He told the defendant to make the arrangements and take care of the details including the legal documentation. He does not dispute the defendant's claim that she suggested and arranged the mortgage because he was, even in 2002, too old to procure a mortgage. But he says that having agreed to raise mortgages to help pay for the properties, he left it to the defendant to get the necessary documentation done. That included the legal documentation as well as the banking documentation — such as opening the joint account. He testified in

court that it was the defendant who inserted her own name in the documents. The claimant says that he did not know what the defendant had done until he told her that he wanted to sell the properties and use the proceeds to buy a property for his grandson, the son of Lim Boon Lye. Not only did the defendant refuse, but she also told him that the properties belong to her. The claimant commenced this action to recover the Four Properties.

10 In a case such as this where one party says he bought the properties for himself and only left the joint tenant to finalise the documentation, and the opposing narrative (from the defendant) is that the properties were given to her, the determinative issue would be the intention of the parties at the time when the properties were purchased. That intention may be proved by the contemporaneous evidence at the time of purchase, as well as evidence of the conduct of the parties thereafter, and any relevant evidence lending support to either story.

11 The first two properties — Jurong West 235 and the Yishun property — were purchased in 2002. The claimant was 68 years old at the time, and probably would not have been able to get bank loans under his sole name. The defendant testified that it was advisable that she be named as a joint tenant and mortgagee as she was much younger. I have little difficulty accepting this.

12 The next most obvious fact that I have little difficulty finding is that the claimant is illiterate, and can only sign his name in Chinese. He testified in Hokkien, and, under cross-examination, appeared forthright although a little forgetful at times. His evidence was clear and he testified without embellishment and without guile. I would have accepted his evidence that when he bought the Four Properties, he bought them as investments for himself. I believe him when he said that it was the defendant who “put her name on the

documents herself”. But I need not rely just on my acceptance of the claimant’s testimony alone. The evidence on the whole incline towards the claimant’s version. It is to these evidence, including the testimony of the defendant, that I now turn.

13 The two earliest of the Four Properties were purchased 20 years ago in 2004. One might reasonably ask, how was it that for 20 years the claimant did not know that the ownership of the properties were in joint names? It is clear to me that the claimant selected the properties and once the terms were acceptable to him, he bought them. The documentation for each property were done only once, and thereafter, were kept away. The claimant had no interest in checking documents he could not read, and it was the defendant who kept both the office and personal records for the claimant.

14 In all the properties, whenever cash had to be used, whether as a deposit or for payment of stamp duties, they were paid by the claimant personally. There were occasions when money was disbursed from the UOB Joint Account, as well as another joint account with the DBS Bank (“the DBS Joint Account”). The defendant claims that she must be credited for money paid from the joint accounts since she was a joint holder of those accounts. But there is no evidence that she had deposited any money independently into those accounts. On the contrary, the claimant was the one who controlled how the money in those accounts were to be used. The evidence shows that the claimant used the joint accounts as though they belonged to him solely. The defendant did not use the joint account for herself.

15 The defendant was brought into the company shortly after her graduation, and though she was made a director, she seemed more her father’s personal and administrative assistant. No other sibling worked in the company.

The defendant portrayed that her brother, the claimant's second son, as a wastrel who lost money for the company and for the claimant, which resulted in his eventual dismissal. There is not enough evidence to support her claim, and in any event, even if true, that evidence has no bearing on the issues in this trial.

16 Over the course of decades, the claimant had purchased or helped his children — including the defendant — purchase properties in their sole names. The fact that the defendant was also such a beneficiary was only divulged late in her evidence in court. On the stand, the defendant conceded under cross-examination that the claimant had assisted her financially for the properties purchased in her sole name. There were in total five properties purchased in her sole name, of which three have been sold. For instance, in 2005, the claimant had helped her with the downpayment for a property located at Mount Faber, purchased in her sole name. The rest of the details are not known since the defendant has not disclosed them. That exposes the flaw in the defendant's contention that the claimant gave the Four Properties to her as joint tenant. Were that his intention, he would have given them to her in her sole name, just as he did with those five properties and all the ones he gave to his other children. Furthermore, when Lim Kwee Giok testified on behalf of the defendant, she revealed that she too held a property with her father in their joint names. No claim was made by her, presumably because, she, like the defendant, expected herself to outlive their 90-year-old father. Unlike in the defendant's case, the claimant was not, at least not yet, looking to sell that property.

17 It is more likely, as the defendant herself said, that the claimant was getting too old (even in 2002) to obtain bank loans in his sole name. That was why the purchases had to be in joint names, and consequently, joint accounts were needed to facilitate the management of the investments. We now come to a crucial point. The purchase of a property and the mortgage loans were all

documented in English. The claimant had no clue what was written, not because he was dense, but because he was illiterate. The discussions and instructions were given to the defendant through the conveyancing lawyer. That brings up the obvious solution, especially when the defendant claims that the concept of joint tenancy was explained to the claimant by the conveyancing lawyer. The conveyancing lawyers that handled the purchase and mortgages of the Four Properties were Mr Lie Kee Pong and Ms Lie Chin Chin, from Lie Kee Pong Partnership. They were not called to testify and be cross-examined. Lim Quee Hong testified that she told the defendant that she (the defendant) must make sure their illiterate father understood the concept of joint tenancy. When asked if that was true, the defendant said that her sister was just being careful.

18 Similarly, the defendant arranged for the opening of the joint account, but what did she tell the banker? The defendant insists that the claimant knew what a joint account meant, but since the claimant is clearly incapable of reading English, it is unclear what he and the banker had said to each other, and in what language if they did in fact speak to each other. The defendant did not call the banker to testify. On the stand, the claimant showed that he was aware of the existence of the joint accounts and the fact that rental proceeds received from the Four Properties were deposited into the accounts. I find that that is because when he discovered the rental proceeds were being paid into the joint accounts in 2020, he decided to close the joint accounts. He closed the UOB Joint Account, transferred the balance to his personal bank account, and directed the defendant to close the DBS Joint Account, which she did.

19 I am of the view that based on his deposits and withdrawals of funds, as well as the control he had exerted over the closing of the accounts, the claimant had, at all material times, treated and operated the joint accounts as if they were under his sole name. In contrast, the defendant's use of the joint accounts was

limited to reimbursements of expenses relating to the management of the properties, and she did not use the funds for her personal use. Even when the DBS Joint Account was closed at the claimant's request, she sought reimbursement for the income tax that she paid on the rental income earned. There is evidence that she informed an employee of the Company that "[the claimant] collects all rental and [she] pay[s] income tax to [the Inland Revenue Authority of Singapore] on half the rental he collected". That conduct is more consistent with the claimant's case that the defendant was not a beneficial owner of the properties and joint accounts.

20 There is another event that is relevant, and that concerns the defendant's mother's will. Madam Wong, the claimant's wife and the defendant's mother was, according to the claimant, unwell in June 2020. Unknown to him at the time, the defendant brought her mother to a lawyer to draft her (Madam Wong's) will. The lawyer was none other than Ms Lie Chin Chin. The defendant did not call Ms Lie to testify. Ms Lie, together with Mr Lie Kie Pong, were involved in yet another incident relating to the Jurong West 235 property bought in May 2002. It is clear from the evidence that Lie Kie Pong acted in the conveyance of that property and that it appears that he originally informed the Housing and Development Board ("the HDB") that it was a property purchased as tenants-in-common, and it was only after he wrote to the defendant (the claimant could not read) to confirm instructions that the property would be held as a joint tenancy that he wrote to the HDB to make the correction.

21 Madam Wong died less than a year after she made her will, but the claimant was unaware of that will. What he remembered was that he made a will together with her but could not find her will after she died. He therefore asked his lawyer at Tan Lee & Partners in August 2021 to prepare a deed of family arrangement with the view that he will have the authority to distribute

the assets of his wife's estate. When he informed his children, the defendant wrote to Tan Lee & Partners in September 2021 asking if that was true. The deed was not executed as it was left unsigned. But about two months later, on 3 November, the claimant and Lim Boon Lye were taken by surprise to find that the other directors (the claimant's other five children) had removed both him and Lim Boon Lye as signatories to the company's bank account. They also discovered that Madam Wong had made a will and probate had been granted in which the defendant and Lim Quee Hong were the executors. Her estate included her 30% share in the Company to be distributed equally among the six children. This gave the five children (excluding Lim Boon Lye) majority control, and it was with that control that they ousted the claimant and Lim Boon Lye.

22 The claimant testified that he made a will with his wife sometime around 2015. Although his wife's will could not be found, he produced his will. Its relevance lies in the fact that even in 2015, the claimant had regarded the Jurong West 235 property as his personal property, as he did Jurong West 164 and Boon Lay Place. He included all these in his assets for distribution. The claimant's will was made in 2015 and Jurong West 235 was sold in 2017 without fuss. The 2 Dalhousie and Jurong West 225 properties were purchased after 2015.

23 As Mr Low pointed out, the claimant and the defendant continue to manage the company to this date, that "despite the ongoing proceedings against the defendant as well as the other Lim siblings, [the claimant] maintained a close and cordial relationship [with them]". That accords with my assessment of the claimant's nature as I observed his testimony in court. He gave his evidence forthrightly and without any recriminations against the defendant or any of the other children who testified on her behalf.

24 In contrast to the claimant, the defendant appeared guarded and evaded answering questions directly many a time. She gathered four of her siblings to support her defence but their evidence is largely not helpful in determining the main issue in this suit. The inferences from their evidence inclines me to find the defendant's case contrived. They repeat each other's words verbatim in a concerted effort to press home a point in which they had no personal knowledge — that the claimant intended to give the Four Properties to the defendant as joint tenant. Mr Low submitted that the defendant was able to give clear and consistent testimony on the events over the past 22 years, but I find her evidence contrived.

25 The defendant's case is that the claimant bought the Four Properties as gifts to her, yet under cross-examination when asked why in 2019 when the claimant wanted to sell the Four properties, she did not tell him that the properties were hers, she replied, "I did not need to say that at the time. This was the case over 20 years ago". In my view, caught unprepared, she had no time then to fabricate her present claim that the claimant bought the properties for her.

26 The conduct of the defendant and her testimony in court left me with the clear impression that having persuaded the claimant to secure the mortgage in their joint names, the natural consequence of registering the property similarly in their joint names became naturally advantageous to the defendant because of the claimant's age. I am of the view that she was prepared to inherit the entire property through the right of survivorship. The claimant's decision to sell the properties spoilt the defendant's plans.

27 The defendant describes herself as a filial daughter. It is a description open to debate, depending on whether one thinks that a filial child would

surrender to the parents what her parents want, regardless of whether the child thinks it fair or deserving. But that is a philosophical issue, and the claimant does not require extra-judicial considerations to prove his case. The evidence in this case justifies it. There is, however, one other claim by the defendant that has a ring of truth. And that is her description that they were a “close-knit family”. The evidence suggests that this was so — until the claimant wanted to sell the Four Properties. Even the tapestry of close-knit families can be unravelled by greed.

28 For the reasons above, I find that the claimant intended to purchase the Four Properties for himself. It follows that the defendant holds her share in trust for the claimant and the properties are to be sold or disposed of in the manner the claimant deems fit. I will hear the question of costs at a later date.

- Sgd -
Choo Han Teck
Judge of the High Court

Kenneth Jerald Pereira, Keerthana Narayanan and David Ooi Tsu
Chong (Aldgate Chambers LLC) for the claimant;
Low Chai Chong, Manfred Lum Rui Loong and Shermaine Lim Jia
Qi (Dentons Rodyk & Davidson LLP) for the defendant.
