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

**[2018] SGHC 162**

Suit No 105 of 2016

Between

Ng So Hang

*… Plaintiff*

And

Wong Sang Woo

*… Defendant*

And

Wong Sang Woo

*… Plaintiff in Counterclaim*

And

Ng So Hang

*… Defendant in Counterclaim*

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# GROUNDS OF DECISION

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[Trusts] — [Constructive trusts]
[Trusts] — [Resulting trusts]
[Equity] — [Estoppel] — [Proprietary estoppel]
[Equity] — [Defences] — [Limitation]
[Equity] — [Defences] — [Laches]

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# Ng So Hang
# v
# Wong Sang Woo

**[2018] SGHC 162**

High Court — Suit No 105 of 2016
Aedit Abdullah J
18–21, 25–28 July, 2 August 2017, 23 January 2018

16 July 2018

**Aedit Abdullah J:**

## Introduction

1 The Plaintiff claimed that a property held in the joint names of the Plaintiff and Defendant at St Martin's Drive ("the Property") was held beneficially by her solely. The Defendant denied this claim, arguing that there was a common intention constructive trust, or alternatively proprietary estoppel, entitling him to a beneficial half share. The circumstances of the purchase, the contributions made by each side, as well as the background relationship between the two parties were put in issue. I found that the Plaintiff made out her case, while the Defendant failed to do so. I thus granted the Plaintiff the declaration sought. The Defendant has now appealed.

## Background

2 The Plaintiff, a Hong Kong resident, met the Defendant, a Singapore citizen, in or around 1989.[1] The nature and extent of the relationship between the two thereafter was disputed. The Plaintiff claimed that they were only business associates, companions and flat mates; they had separate households under the same roof.[2] The Defendant claimed that they were *de facto* husband and wife.[3]

3 The business dealings between the two involved a Hong Kong company, Zanawa Limited, and a Shenzhen company, Zawana Fashion (Shenzhen) Co Ltd ("Zawana Fashion") (collectively "the companies"). The Defendant was the Chairman, and the Plaintiff the General Manager of Zanawa Limited.[4] In respect of Zawana Fashion, the Defendant was the legal representative while the Plaintiff was the General Manager of the same.[5] The Plaintiff and the Defendant were shareholders of Zanawa Limited.[6] Zawana Fashion was wholly-owned by another company known as Parka Lam Fashion (Hong Kong) Company Limited which the Plaintiff had an interest in.[7] The Plaintiff's second eldest sister was also involved in the work of these companies.[8]

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1 Statement of Claim (Amendment No. 2) dated 16 May 2017 ("SOC") at paras 1–2; Affidavit of evidence-in-chief of Ng So Hang dated 2 June 2017 ("AEIC of Ng So Hang") at para 13; Affidavit of evidence-in-chief of Wong Sang Woo dated 1 June 2017 ("AEIC of Wong Sang Woo") at para 10.

2 AEIC of Ng So Hang at paras 15–17.

3 AEIC of Wong Sang Woo at para 14.

4 AEIC of Ng So Hang at paras 36, 58; AEIC of Wong Sang Woo at para 23.

5 AEIC of Ng So Hang at para 42; AEIC of Wong Sang Woo at 26.

6 AEIC of Ng So Hang at para 39; AEIC of Wong Sang Woo at para 20.

7 AEIC of Ng So Hang at para 26, 35.



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4 In 2005, the Property was purchased in the joint names of the Plaintiff and Defendant.[9] The purchase price was S$3,102,300.[10] The purpose of the purchase was disputed as was the state of their relationship.

5 The mortgage was fully redeemed in 2010.[11]

6 In 2016, the Plaintiff commenced the current suit, seeking a declaration that the Property belonged beneficially to her alone, as well as an order for transfer of rights, title and interests in the Property to the Plaintiff by the Defendant.[12] The Defendant counterclaimed for an order that the Property be sold in the open market and the net proceeds be divided between the Plaintiff and Defendant in equal shares. In the alternative, the Defendant counterclaimed for the sum of S$1,541,748.50 being money received by the Plaintiff from the Defendant. The Defendant also counterclaimed for his share of rental proceeds.[13]

**Plaintiff's case**

7 The Plaintiff argued that no common intention constructive trust or proprietary estoppel arose. Instead, a resulting trust arose in her favour, based on her contributions towards the purchase price of the Property.

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8 AEIC of Ng So Hang at para 37; Affidavit of evidence-in-chief of Ng So Yuet dated 2 June 2017 at paras 9–11

9 SOC at para 4–5; Affidavit of evidence-in-chief of Lucy Khoo Bee Lay dated 1 June 2017 ("AEIC of Lucy Khoo") at p 35–66.

10 AEIC of Ng So Hang at p 299 (NSH-46).

11 SOC at paras 7, 9; AEIC of Ng So Hang at NSH-55; AEIC of Lucy Khoo at paras 32–33.

12 SOC at p 7;

13 Defence and Counterclaim (Amendment No. 3) dated 22 May 2017 ("Defence and Counterclaim") at paras 30–32.



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8 The Plaintiff claimed that she had made all of the contributions to the purchase of the Property, including the down-payment, the balance of the deposit, the mortgage repayments and redemption payment. While the Defendant alleged that there were sums unaccounted for, these sums were minimal (approximately 10%) and were in any event validly explained by the Plaintiff.[14] In contrast, the Defendant was not able to show that he made any contributions.[15] There was no evidence of the Defendant's contributions through investments or profits or otherwise, or that any of the moneys towards the acquisition of the Property came from the companies.[16] There were serious doubts as to the veracity and authenticity of the cheque contributions that the Defendant claimed he had made.[17] In any event, the supposed contributions by the Defendant were not contributions to the Property and were instead either contributions towards the household expenses,[18] gifts to the Plaintiff,[19] or payment towards the renovation and repair of a Hong Kong property at which the Plaintiff and Defendant resided for a period of time ("Casa Marina").[20]

9 In respect of the Defendant's assertion that there was a common intention constructive trust, the Plaintiff denied that there was any common intention formed.[21] No representation, assurance or promise were made.[22] The Property was not intended for their joint retirement.[23] The fact that the Property

14 Plaintiff's closing submissions dated 22 September 2017 ("PCS") at paras 59–96.

15 PCS at paras 97–189.

16 PCS at paras 104–108.

17 PCS at paras 118–144.

18 PCS at paras 100–103.

19 PCS at paras 151–169.

20 PCS at paras 174–181.

21 PCS at paras 199–327.

22 PCS at paras 278–295.



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was registered in their joint names did not indicate an intention to share the Property.[24] The Plaintiff had only agreed to include the Defendant's name on the basis that he would have to make half of the payment.[25] There was in fact conduct inconsistent with any representation, assurance or promise having been made: the Defendant had sent a newspaper clipping with remarks to the Plaintiff that showed he treated the Property as hers;[26] messages sent by the Plaintiff to the Defendant and an email sent by the Plaintiff to their conveyancing lawyer showed that the Plaintiff had made a decision to sell the Property on her own and the Defendant had not asserted his half share until months later.[27] The Property was in fact registered in joint names only for convenience.[28] In any event, there was no detrimental reliance by the Defendant.[29]

10 The parties did not have a long and loving relationship. The Plaintiff was not registered as the Defendant's wife, and was not a member of the Defendant's household under the Hainan Household Registration System unlike as claimed by the Defendant. There was nothing to show that the parties were a couple.[30] The facts also did not support the Defendant's assertions that he had provided opportunities to the Plaintiff.[31]

11 No presumption of advancement should apply.[32]

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23 PCS at paras 258–260.

24 PCS at paras 262–275.

25 AEIC of Ng So Hang at para 133; NE dated 26 July 2017 at p 4.

26 PCS at paras 298–303.

27 PCS at paras 305–317.

28 PCS at para 318.

29 PCS at paras 326–327.

30 PCS at paras 229–257.

31 PCS at paras 202–228.



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12 In the event that a common intention for the Property to be shared equally at the time of the purchase of the Property was found, the subsequent common intention in or around end-2009 was for the Plaintiff to be the sole beneficial owner.[33]

**Defendant's case**

13 The Defendant argued that there was a common intention constructive trust, proprietary estoppel, and presumption of advancement which operated in his favour.[34]

14 The Defendant submitted that there was an intimate relationship between the Plaintiff and the Defendant.[35] The documentary evidence including various photographs and messages indicated that a romantic relationship existed between the Plaintiff and Defendant. They had gone on cruises and holidays to various destinations. They treated each other as husband and wife in front of others.[36] The two of them built up the companies together.[37] They had also shared apartments and living arrangements for many years.[38]

15 A common intention existed at the time of the purchase of the Property[39] that the Plaintiff and the Defendant would be joint owners of the Property and hold the shares in the Property legally and beneficially as joint tenants. The

32 PCS at paras 41, 331.

33 SOC at para 11; PCS at paras 332–338.

34 Defendant's closing submissions dated 22 September 2017 ("DCS") at para 48.

35 DCS at paras 49–56.

36 DCS at paras 57–76.

37 DCS at paras 77–80.

38 DCS at paras 81–88.

39 DCS at paras 92–145; Defence and Counterclaim at para 10.



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Plaintiff and the Defendant would both contribute towards the payment of the Property. However, regardless of the amount of contribution each of them made towards the purchase price, the common intention was that both the Plaintiff and the Defendant were to be legally and beneficially entitled to half of the Property and that any difference in contribution between the parties would constitute a gift to the other in view of their loving relationship. The survivor would have the right of survivorship and inherit the property. The parties would obtain a bank loan to help pay for the Property which was to be taken in their joint names and for which each of them would be jointly and severally liable. There was no subsequent change in this common intention.[40]

16 Aligned with the common intention, the Plaintiff and the Defendant both contributed towards the purchase of the Property.[41] The Plaintiff and Defendant obtained a housing loan to finance the purchase of the Property, under which they were both jointly and severally liable. The Defendant did share the responsibility of bearing the mortgage payments with the Plaintiff and had made several payments by way of cash and cheques issued to the Plaintiff.[42] According to the Defendant, the Plaintiff had failed to prove that she had made 100% of the payments towards the purchase of the Property.

17 Even if no common intention existed, the presumption of advancement rebutted the presumption of a resulting trust, in the light of the nature of the relationship between the parties.[43]

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40 DCS at paras 217–234.

41 DCS at paras 146–205.

42 DCS at paras 206–216.

43 DCS at paras 235–251.



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18 Alternatively, a proprietary estoppel arose in the Defendant's favour. The Plaintiff represented to the Defendant that he would be entitled to a half share even if he did not pay the equivalent towards the purchase price, and that any difference in the contribution towards the purchase price would be treated as a gift from the Plaintiff.[44] In reliance on the Plaintiff's representation that the Defendant would be entitled to a half share of the Property, the Defendant agreed to execute the option to purchase and sale and purchase agreement, and be a joint borrower and mortgagor of property. The Defendant was jointly and severally liable with the Plaintiff for the S$2 million housing loan taken in July 2005. He had also issued cheques in favour of the Plaintiff in reliance of the Plaintiff's representations. It would thus be unconscionable to allow the Plaintiff to resile from her representation.[45]

19 The Defendant also argued that the Plaintiff's claim which was brought in February 2016 was time barred, or subject to laches.[46]

**The decision**

20 I was satisfied that the Plaintiff made out her case that she was entitled to the whole of the beneficial interest in the Property, having made all the financial contributions towards the purchase of the Property, and that the Defendant failed in his counterclaim. Any money received by the Plaintiff from the Defendant was for other purposes, and did not constitute the Defendant's contributions towards the Property. There was also no common intention to share the Property.

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44 DCS at para 277.

45 DCS at paras 279–281.

46 DCS at paras 290–328.



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21 I preface my analysis of the issues by observing that while there were issues about the respective parties' evidence, I did not in the end find that either was bereft of credibility such that I should reject the whole of their evidence. I was satisfied that in various areas, their evidence could be relied upon.

## Analysis

22 The issues that arose for determination were:

(a) whether any common intention constructive trust arose;

(b) the proportion of the beneficial interest the Plaintiff had in the Property by way of resulting trust;

(c) whether any proprietary estoppel arose; and

(d) whether any procedural bars operated in relation to the Plaintiff's claim.

## Law

### *The approach in Chan Yuen Lan*

23 The general approach to be taken in considering claims for the recognition of a beneficial interest in a property was laid down in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*") at [160]:

> In view of our discussion above, a property dispute involving parties who have contributed unequal amounts towards the purchase price of a property and who have not executed a declaration of trust as to how the beneficial interest in the property is to be apportioned can be *broadly* analysed using the following steps in relation to the available evidence:
>
> (a) Is there sufficient evidence of the parties' respective financial contributions to the purchase price of the property? If the answer is "yes", it will be presumed that



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the parties hold the beneficial interest in the property in proportion to their respective contributions to the purchase price (*ie*, the presumption of resulting trust arises). If the answer is "no", it will be presumed that the parties hold the beneficial interest in the same manner as that in which the legal interest is held.

(b) Regardless of whether the answer to (a) is "yes" or "no", is there sufficient evidence of an express or an inferred common intention that the parties should hold the beneficial interest in the property in a proportion which is different from that set out in (a)? If the answer is "yes", the parties will hold the beneficial interest in accordance with that common intention instead, and not in the manner set out in (a). In this regard, the court may not impute a common intention to the parties where one did not in fact exist.

(c) If the answer to both (a) and (b) is "no", the parties will hold the beneficial interest in the property in the same manner as the manner in which they hold the legal interest.

(d) If the answer to (a) is "yes" but the answer to (b) is "no", is there nevertheless sufficient evidence that the party who paid a larger part of the purchase price of the property ("X") intended to benefit the other party ("Y") with the entire amount which he or she paid? If the answer is "yes", then X would be considered to have made a gift to Y of that larger sum and Y will be entitled to the entire beneficial interest in the property.

(e) If the answer to (d) is "no", does the presumption of advancement nevertheless operate to rebut the presumption of resulting trust in (a)? If the answer is "yes", then: (i) there will be no resulting trust on the facts where the property is registered in Y's sole name (*ie*, Y will be entitled to the property absolutely); and (ii) the parties will hold the beneficial interest in the property jointly where the property is registered in their joint names. If the answer is "no", the parties will hold the beneficial interest in the property in proportion to their respective contributions to the purchase price.

(f) Notwithstanding the situation at the time the property was acquired, is there sufficient and compelling evidence of a subsequent express or inferred common intention that the parties should hold the beneficial interest in a proportion which is different from that in which the beneficial interest was held at the time of acquisition of the property? If the answer is "yes", the



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> parties will hold the beneficial interest in accordance with the subsequent altered proportion. If the answer is "no", the parties will hold the beneficial interest in one of the modes set out at (b)–(e) above, depending on which is applicable.

24 While the approach in *Chan Yuen Lan* starts its analysis with the purchase price resulting trust, in practice the foremost claim that is put forward is usually the common intention constructive trust, with an alternative basis relied upon of a proprietary estoppel; the resulting trust is usually the backstop claim.

***The burden of proof***

25 The legal burden lay on the Plaintiff to make out her claim; thus she had to show on the balance of probabilities that she was entitled to the whole of the beneficial interest. That meant negating the existence of a constructive trust or proprietary estoppel. Thus, while the Defendant asserted a constructive trust and proprietary estoppel, in assessing the Plaintiff's claim, I had to consider whether she made out her contentions on the balance of probabilities. The legal burden insofar as her claim was concerned did not shift to the Defendant.

26 The Defendant's positive assertion of a right to the Property would have had to be proven on the balance of probabilities too, but in the present case, it would have followed from the rejection of the Plaintiff's claim that he would be entitled to an interest. Thus, he did not bear the legal burden of proving that the Plaintiff was not entitled to the whole of the beneficial interest in the Property.

**The nature of the relationship**

27 The Plaintiff and Defendant were never legally married. The Plaintiff's position was that while they had lived together, they were only flat mates and business partners. The Defendant argued that they were in an intimate, loving



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relationship, and that the Property was purchased against that background, with the objective of it being used as their retirement home as a couple.

28 The Defendant put great score on the relationship between the parties. I understood that what the Defendant was primarily trying to show was that it was likely that a common intention constructive trust was formed because of the state of the relationship between the parties. The existence of a relationship was also invoked as a basis for the presumption of advancement to apply.

29 The nature of the relationship may have coloured the arrangements between the parties, but I did not find in the end that the relationship was particularly integral to the outcome. Some time was also spent at trial on the history of their working life, including the involvement of the Defendant in the running of the companies. As I will elaborate further in a later section (see [53] to [58]), I did not think this really assisted the Defendant's case as the extent of the Defendant's involvement could not lead to any conclusion on the existence or otherwise of a common intention constructive trust.

30 That said, I accepted that the relationship between the parties was at least initially more than one of business. There was probably a relationship of some intimacy at the start which persisted for a considerable period of time, though it may have eventually come to an end. On the whole, I was satisfied that there was a relationship of some closeness if not intimacy.

31 This was, as argued by the Defendant, borne out by the exhibited photographs[47] and messages exchanged.[48] The photographs showed the Plaintiff

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47 AEIC of Wong Sang Woo at WSW-10 and WSW-11.

48 AEIC of Wong Sang Woo at WSW-10 and WSW-12.



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and the Defendant spending time together on trips and holidays, posing intimately in some. The messages also showed a level of familiarity and intimacy that went beyond a purely business relationship. The Defendant also brought in a witness to support the fact that the Plaintiff attended a wedding in Sarawak, where she was treated as the wife of the Defendant.[49]

32 There were other aspects that were perhaps less strong in pointing to the existence of a relationship, such as her being mentioned in the memoirs of a third party as the wife of the Defendant.[50] Such mention in the memoirs could not assist that much, as there was no indication that the Plaintiff consented to it. The writer of the memoir was also not a witness testifying in court. Similarly, reference in a police memo of the Defendant as the boyfriend of the Plaintiff,[51] mention of the Plaintiff as the wife of the Defendant in the obituary of the Defendant's mother, and Chinese newspaper clippings referring to the Plaintiff as the Defendant's wife,[52] could not add much in the circumstances; these were not shown to have come from or been acquiesced to by the Plaintiff.

33 The Defendant also invoked what was said to be a *Hukou*, *ie*, Chinese household registration document, recording the Plaintiff and Defendant as husband and wife.[53] That would have been quite strong evidence of a relationship existing, as it would be an official document of the People's Republic of China, and surprising as well given what this Court was told regarding the place of residence of the parties. As it turned out, what was being

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49 NE dated 26 July 2017 at pp 22–23, 25.

50 Supplemental AEIC of Wong Sang Woo dated 15 June 2017 ("Supplemental AEIC of Wong Sang Woo") at p 22; NE dated 21 July 2017 at pp 41–44.

51 AEIC of Ng So Hang at pp 155–155A.

52 Supplemental AEIC of Wong Sang Woo pp 13–14, 16–17.

53 DCS at para 60; AEIC of Wong Sang Woo at para 39, pp 95–103.



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relied upon was not an official registration but apparently an ancestral village memorial of family members or a clan association book.[54] These documents were thus inconclusive.

34 On the other side of the coin, I discounted the evidence of the Plaintiff and her sisters that there was either no such relationship, or that any such relationship was of a very short duration.[55] Firstly, this went against the objective evidence in the form of the photographs, as well as the messages exchanged. In addition, the lack of closeness alleged by the Plaintiff and her siblings was very much against the probabilities of the situation, given the fact that the Plaintiff and the Defendant shared apartments and how the Plaintiff and Defendant portrayed themselves to others.

35 But while I did not accept the evidence of the Plaintiff and her sisters on the nature of the relationship between the Plaintiff and the Defendant, I did not find that this put into doubt all the other evidence that the Plaintiff and her sisters had given. Their lack of candour was limited to this specific issue. I saw nothing to show a general lack of honesty on the other points, which were in several instances, backed up by objective evidence in the form of documentary evidence.

**Whether a common intention constructive trust arose**

36 I found that there was no common intention between the parties to dispose of the beneficial interest in any particular way. There was sufficient evidence shown by the Plaintiff that there was no such common intention on the

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54 NE dated 26 July 2017 at p 60.

55 NE dated 18 July 2017 at p 17; NE dated 19 July 2017 at p 24; NE dated 20 July 2017 at p 64; AEIC of Ng So Hang at para 15; NE dated 26 July 2017 at pp 19–26.



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balance of probabilities; the Defendant failed to adduce evidence to refute this conclusion.

***The law on common intention***

37 The court cannot find a constructive trust by imputing a common intention when no common intention was present: *Chan Yuen Lan* at [160(b)]. But common intention can be inferred by conduct, even if there was no express common intention: *Chan Yuen Lan* at [97]. Whether the Defendant was relying on an express or inferred common intention was not made clear in the pleadings of the Defendant. In any event, the evidence did not point to there being an express agreement between the parties or common intention inferred by conduct.

38 A subsequent change in the common intention is possible: *Chan Yuen Lan* at [160(f)]. The Plaintiff put this forward as an alternative pleading, that is, that even if there was an initial common intention as alleged by the Defendant to be joint owners in equity, the subsequent common intention was that the Plaintiff was to be the sole beneficial owner.[56] As I found that there was no common intention in the first place, this alternative argument was not triggered on the facts, but I will for completeness evaluate it along with the rest of the analysis.

***The Plaintiff's arguments on common intention***

39 The Plaintiff denied that there was any common intention on the parties' beneficial interest in the Property. It was argued that no representation, assurance or promise was given by the Plaintiff that the Defendant would be

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[56] SOC at para 11.



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entitled to a half share of the Property in equity, no matter the parties' respective financial contributions.[57] The Plaintiff refuted the Defendant's suggestion that such representation could be inferred from the Plaintiff having been loving and caring to the Defendant for the opportunities he had provided to her, and from the Property being intended as a retirement home for the Plaintiff and Defendant.[58] No opportunities were given by the Defendant to the Plaintiff.[59] There was no loving relationship between the parties.[60] The purchase of the Property was for investment, not for use as a retirement home as the Plaintiff had no intention of retiring in Singapore.[61]

***The Defendant's arguments on common intention***

40 The Defendant alleged that there was a common intention that:[62]

(a) The Plaintiff and the Defendant would be joint owners of the Property, holding it in equal shares legally and beneficially as joint tenants, with the right of survivorship operating if one of them should pass away before the other.

(b) Each would contribute towards the payment of the Property, but regardless of the contribution of either, each of them would be entitled legally and beneficially to half of the Property, with any difference in

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57 PCS at paras 278–295; Plaintiff's reply submissions dated 13 October 2017 ("PRS") at paras 72–80.

58 PCS at para 199–260.

59 PCS at paras 202–228.

60 PCS at paras 229–257.

61 PCS at paras 258–260.

62 Defence and Counterclaim at para 10.



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contribution to the purchase price intended to benefit the other in view of their long loving relationship.

(c) A bank loan would be taken in their joint names to finance the purchase of the Property, for which each of them would be jointly and severally liable.

41 The Defendant pointed to a number of factors as supporting his case that there was a common intention for him to have a half interest in the Property beneficially as well as legally:

(a) The Plaintiff had included the Defendant's name in the legal title without insisting that the Defendant pay his share first or verifying the Defendant's ability to do so, and also had not removed his name subsequently despite her claim that he had not contributed at all.[63] The Plaintiff had also received advice on the different ways of holding the Property; [64] she was in any event aware of the legal effect of a joint tenancy.[65]

(b) It was actually more inconvenient to include the Defendant in the legal title of the Property rather than convenient as argued by the Plaintiff. The inclusion of the Defendant could not be explained by the latter's proficiency in English, as alleged by the Plaintiff, as the Defendant was not involved in the dealings of the Property. Nor was the Defendant more familiar with Singapore's financial institutions and conveyancing regime.[66]

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63 DCS at para 99–103, 134–135; Defendant's Reply Submissions dated 13 October 2017 ("DRS") at paras 153–154.

64 DCS at paras 104–107.

65 DCS at paras 108–117.



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(c) The nature of the relationship between the Plaintiff and the Defendant and the provision of opportunities by the Defendant to the Plaintiff supported his case that there was a common intention to share the beneficial interest equally regardless of the respective financial contributions.[67]

***Assessment of the existence of a common intention***

42 The legal burden lay on the Plaintiff to establish that there was no common intention to share the Property beneficially because the Plaintiff sought a declaration that she alone was entitled to the beneficial interest in the Property. In the face of the Plaintiff's denial that there was any common intention, the Defendant had the evidential burden of adducing some evidence of an express or inferred common intention.

43 I was satisfied that there was no common intention formed on the balance of probabilities. There was, in particular, no specificity to the Defendant's allegation that a common intention was formed. The Defendant could not give details of when any intention was discussed and formed. While it is expected that couples or friends purchasing a property jointly may not record their discussions, and that there may be some vagueness in recollection years after the event, the sheer lack of details here significantly weakened the Defendant's case and strengthened that of the Plaintiff. One would have expected there to either be some specific details about the reaching of a common intention, or failing that some indication of why despite the absence of a specific discussion, a common intention was formed nonetheless. In the absence of such

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66 DCS at paras 116, 118–133.

67 DCS at paras 49–88.



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detail, I found the Defendant's evidence unconvincing. I found that the Plaintiff established that there was in fact no such common intention.

*The right of survivorship*

44 The Defendant suggested that the parties had chosen to hold the Property as joint tenants, having been advised on the legal effect of a joint tenancy and in particular on the right of survivorship, in order for the right of survivorship to operate upon the demise of one party. According to the Defendant, this showed that there was a common intention to share the Property.[68]

45 I could not accept that just because the right of survivorship accrued from the Property being legally held in joint tenancy, it therefore followed that the Plaintiff evinced an intention to give a half share in equity as well or that there was a common intention to share the Property beneficially in a proportion different from the parties' respective contributions.

46 Even if the Plaintiff and Defendant intended for the right of survivorship to operate upon the demise of one party in deciding to hold the Property as joint tenants, this did not mean that the parties also intended for the beneficial interest to be held in equal shares, or in any particular proportion while both parties were alive. The former discloses an intention that on the death of one party, the other would be entitled automatically to the property, rather than an intention to share the beneficial interest in the property equally while both parties are alive. The following passage from *Neo Hui Ling v Ang Ah Sew* [2012] 2 SLR 831, at [39], is instructive:

> The intended consequences of the rule of survivorship operate after the death of one tenant, and say nothing whatsoever about

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[68] DCS at paras 111, 115.



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> what should happen while both tenants are alive. This is not to say that the rule of survivorship is incompatible with an intention that the joint tenants should also hold the property beneficially during their lifetimes. What this means is that the rule of survivorship sheds no light on the tenants' intentions as to their beneficial interests in the property while both are alive.

47 In addition, the right of survivorship may entitle the surviving owner to a share of the property, but what is gained is only at law; it may be that even where the right of survivorship operates to make the sole surviving owner the sole registered proprietor of the property, the survivor may not be entitled to the whole of the beneficial interest. Such would be the case for instance where a resulting trust operates in favour of the deceased's estate, which is not displaced by a common intention constructive trust, intention to gift or presumption of advancement (see *Lim Chen Yeow Kelvin v Goh Chin Peng* [2008] 4 SLR(R) 783 at [116]). Where co-owners have contributed unequal amounts towards the purchase price of a property, how the beneficial interest in the property is to be apportioned upon the death of one party is still to be determined by undertaking the steps set out in *Chan Yuen Lan* (see above at [23]).

48 The upshot is that adding a person as a joint owner does not by itself support a common intention to share the beneficial interest equally; something more has to be shown to indicate a common intention than the mere fact that both parties are registered as joint owners at law. A joint tenancy may be used for many reasons: the fact that property is held jointly at law could not control the disposition in equity. What matters in equity is whether some basis is given for the beneficial interest to be held in any way other than in proportion to the contributions; a common intention constructive trust supplies one such reason. It is entirely conceivable for property to be held jointly at law, but with different interests in equity: that is the whole consequence of different interests being held in law and in equity.



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49 Therefore, the Defendant's attempts to rely on a decision made by the parties to be legal joint tenants[69] did not assist his case. Any failure or omission to remove the Defendant as a joint owner thus did not support the existence of any common intention to share the beneficial interest in the Property equally either. It is equivocal at the very most. The fact that the mortgage was taken in both names, and that both were jointly liable, also could not have indicated a common intention to hold the beneficial interest jointly.

*Inconvenience in adding the Defendant*

50 The Plaintiff tried to explain that the Property was registered in the Defendant's name, in addition to the Plaintiff's, for reasons of convenience. These included the Defendant's supposed greater familiarity with Singapore including its property conveyancing process, greater proficiency in English, and greater range of contacts in Singapore.[70] This led the Defendant to argue that if anything there were pointers which showed the contrary, *ie*, that it was not more convenient and in fact more inconvenient to include the Defendant in the legal title. The Defendant pointed to the presence of possible contacts for the Plaintiff in Singapore, that the Plaintiff's lack of proficiency in English was not material, and that the Plaintiff was more familiar with property purchasing and there was no advantage arising out any supposed familiarity by the Defendant with Singapore's financial institutions and conveyancing processes.[71] The Defendant argued that in fact it was more inconvenient to include his name because his signature would generally be needed for the purchase, and that a younger

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69 DCS at paras 97–103.

70 SOC at para 8; PCS at paras 318–319; PRS at paras 114–141.

71 DCS at paras 118–130.



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borrower than the Defendant would have been more acceptable to the mortgagee bank.[72]

51 None of these points, to my mind, assisted either party's case; they were all neutral points. Whether or not any convenience was indeed gained from the inclusion of the Defendant as a joint owner did not settle the issue whether there was a common intention to deal with the beneficial interest in the Property.

52 The circumstances of the conveyance raised by the Defendant were equivocal at best. The addition of the Defendant's name, whether or not this was convenient, did not automatically give him a beneficial interest.

*Nature of relationship*

53 The Defendant raised the loving relationship between the parties and his involvement in the companies as the background or foundation of the common intention being formed at the time of the purchase of the Property. In essence, the Defendant argued that the common intention was reached at least partly because of the assistance and support rendered by the Defendant prior to the purchase of the Property in relation to the companies.[73] The Plaintiff took issue with the extent and nature of assistance and support that the Defendant claimed he had rendered.[74]

54 I found that the contributions to the companies were not as great as the Defendant alleged. Even if such contributions were made, that would not support the conclusion that there was a common intention constructive trust. I

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72 DCS at paras 131–133.

73 DCS at paras 10–11, 77–80; DRS at 111–118.

74 PCS at paras 202–228; PRS at paras 15–18.



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did not find that the events relied upon by the Defendant, even if true, rendered it more likely than not that the alleged common intention was formed. Though much time was spent on these events, any linkage was, to my mind, tenuous. Such assistance and support, even if rendered, need not lead to a common intention being formed; conversely, a common intention may be formed without there having been such assistance and support. The nature of the relationship and business involvement of the Defendant could not assist ultimately in the determination of whether there was a common intention constructive trust. Even taken together they did not displace the Plaintiff's contention that there was no common intention.

55 So also the evidence given about the Defendant giving the Plaintiff a supplementary credit card or a car was immaterial.[75] Either gift did not make the existence or otherwise of a common intention any more likely. Neither would have any intention to retire in Singapore supported a conclusion that there was an intention to share the beneficial interest equally.

56 As explained by Lord Neuberger in *Stack v Dowden* [2007] 2 AC 432 ("*Stack v Dowden*") at [145], whose opinion in *Stack v Dowden* has been treated favourably by our courts (see *Chan Yuen Lan* at [153]), the focus of the court's inquiry should be on the conduct of the parties insofar as it sheds light on what the parties intended their respective shares of the beneficial interest in the property to be:

> … Undertaking a survey of the whole course of dealings between the parties' should not, I think, at least normally, require much detailed or controversial evidence. That is not merely for reasons of practicality and certainty. As already indicated, I would expect almost all of 'the whole course of dealing' to be relevant only as background: it is with actions, discussions and

[75] Defence and Counterclaim at pp 6, 17; NE dated 26 July 2017 at pp 65–69.



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> statements which relate to the parties' agreement and understanding as to the ownership of the beneficial interest in the home with which the court should, at least normally, primarily be concerned. Otherwise, the inquiry is likely to be trespassing into what I regard as the forbidden territories of imputed intention and fairness.

57 Therefore, what would have been more relevant is evidence bearing on the common intention of the parties, such as the conduct, discussions and understandings relating to the parties' common intention. Evidence of the surrounding circumstances and background may then have further bolstered the evidence of that common intention. But there was no such evidence bearing directly on the parties' common intention to begin with adduced by the Defendant in the present case.

58 The Defendant did give testimony that the Plaintiff had specifically told him that when she sold the properties in Hong Kong, she would put money into the Property and that this would represent their joint contributions. However, the Defendant was unable to furnish any further details concerning the representation beyond his bare assertion of it and I therefore found that this assertion was not supported by evidence.[76]

*Subsequent conduct in the form of direct financial contributions*

59 In *United Overseas Bank Ltd v Giok Bie Jao and others* [2012] SGHC 56 at [16], Belinda Ang J, in explaining the types of evidence that may rebut the presumption of resulting trust, favoured an approach which allows evidence of subsequent conduct to be admitted, leaving the weight to be placed on such evidence in the court's discretion:

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[76] NE dated 28 July 2017 at pp 49–50.



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> For a guide to the type of evidence admissible to rebut a presumption of resulting trust, I refer to the case of *Shephard v Cartwright* [1955] 1 AC 431. In that case, the House of Lords approved of a passage from the 24th Edition of *Snell's Equity* which stated that the acts and declarations of the parties before or at the time of the purchase, or so immediately after it as to constitute a part of the transaction, are admissible in evidence either for or against the party who did the act or made the declaration. As for subsequent declarations, they are admissible as evidence only against the party who made them, and not in his favour. However, in the latest edition the authors of *Snell's Equity* (32nd Ed, 2010) suggested that such evidence should not be excluded but left to the court to decide on the weight to be given to it (see emphasis in bold below). Para 25-013 states:
>
> > *Contemporaneous and subsequent conduct.* The acts and declarations of the parties before or at the time of the purchase, or so immediately after it as to constitute a part of the transaction, are admissible in evidence either for or against the party who did the act or made the declaration. It has been held that subsequent acts and declarations may only be admissible as evidence against the party who made them, and not in his favour. ***The preferable approach nowadays may be to treat the parties' subsequent conduct as admissible even in their own favour, and to leave the court free to assess its probative weight. This approach would be consistent with the looser significance attached to the presumptions of resulting trust and of advancement in the modern authorities***.
>
> While local courts have previously expressed approval of the rule originally cited in *Shephard v Cartwright*, the new approach seems eminently sensible. However, it is unnecessary for me to express a formal view on the matter to dispose of this case and I leave it to another forum to ponder on the new approach.
>
> [emphasis in the original]

60 Ang J's *obiter dictum* on the preferable approach in relation to subsequent conduct has since been approved by the Court of Appeal in *Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 at [110].



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61 Therefore, common intention can be established by subsequent conduct, including the making of direct financial contributions. However, as I consider in later sections (see [82]–[106] below), the payments invoked by the Defendant were not shown to be linked to the repayments going to the purchase of the Property. Therefore, the payments made by the Defendant did not support a conclusion that there was a common intention between the parties to share the Property beneficially.

***Change in common intention***

62 The Plaintiff put forward an alternative argument that even if there was an initial common intention as alleged by the Defendant to be joint owners in equity, the subsequent common intention was that the Plaintiff was to be the sole beneficial owner.[77] In the light of my finding that there was no common intention to begin with, I will only deal with this alternative plea briefly.

63 Firstly, to be clear, there was insufficient evidence to establish on the balance of probabilities that a common intention was reached at the point of purchase of the Property. If I was wrong on this, I did find that there was sufficient evidence of a change in common intention as argued for by the Plaintiff. I note that such a subsequent common intention would need to be common to all parties, and a unilateral understanding is not sufficient. In *Su Emmanuel v Emmanuel Priya Ethel Anne and another* [2016] 3 SLR 1222 ("*Su Emmanuel*"), the Court of Appeal stated at [84]:

> The evidence in this case unequivocally militates against the finding of any common intention between the parties that Priya was to have more than a 49% interest in the Property for the reasons we have set out at [80]–[82] above. Nor is there any basis to find a *subsequent* common intention to *vary* the

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[77] SOC at para 11; PCS at paras 320–325; PRS at 81–86, 225.



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> beneficial interests in the Property from the proportions held by the parties when Priya entered the picture in 2004. Priya argues that there was a common intention to vary the beneficial interest when it became evident that she alone was making the mortgage repayments under the second mortgage. Even if we assume that Priya believed all along that *her* beneficial interest in the Property would be increased by virtue of her repayment of the second mortgage, for a common intention constructive trust to be found, the intention to vary the beneficial interest must in fact be *common* to all the parties involved. Yet it is clear in this case that Su *never* intended to reduce her interest in the Property from that which vested in her in 2004. In fact, as we have noted, Su had wished to retain her 50% interest in the Property in the belief that she would, as a result of this, be in a position to block any intended sale. In the light of this, we are satisfied that no common intention constructive trust can arise. It may also be noted that when the parties contemplated selling the Property for $1.6m, Priya's position, … was that the net proceeds would be shared in the proportions in which they held the Property.
>
> [emphasis in the original]

64 The Plaintiff gave evidence that in or about February 2009, she had informed the Defendant that she intended to retire and to wind up Zawana Fashion due to the poor performance of the business arising from the economic downturn. As she would not have a steady income, she had made a final request to the Defendant to contribute towards the financing of the Property, to which the Defendant responded that he had no money and that the Property was hers and she had to deal with it. The Plaintiff shortly thereafter took steps to redeem the Property in order to prevent the accruing of interest.[78]

65 I accepted the Plaintiff's testimony in this respect as being consonant with the probabilities of the situation. That the economic downturn affected the performance of the companies was supported by the parties' respective income comparison tables which showed a drop in the income of both the Plaintiff and the Defendant from 2008 to 2011.[79] The Defendant also testified that he was not

[78] AEIC of Ng So Hang at para 158; NE dated 25 July 2017 at pp 14-16.



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involved in the redemption of the Property and had no knowledge of the redemption.[80] The fact that the Defendant's response was not shared with the conveyancing lawyer when the Plaintiff was making arrangements for the redemption of the Property, as pointed out by the Defendant,[81] was immaterial.

**Contributions**

66 The making of contributions towards the purchase price is generally necessary for a constructive trust to arise. Without such contribution, there is little basis for a constructive trust to be imposed, unless the party asserting the constructive trust is able to show some other form of detrimental reliance, since it would otherwise be in response to a bare promise. As noted in John McGhee, *Snell's Equity* (Sweet & Maxwell, 33rd ed, 2015) ("*Snell's Equity*") at para 24-057:

> Simple proof of the oral or inferred agreement between the parties or an unwritten declaration of trust would not be enough to entitle the claimant to an enforceable interest in the property under a trust. Such an arrangement could only take effect as an express trust. It would be unenforceable since it would not be evidenced by writing signed by the party declaring the trust. Accordingly, proof that the claimant has acted to his detriment in reliance upon the agreement that he would take an interest in the property is essential to explaining the constructive trust. In these circumstances it would be fraudulent for the proprietor of the legal estate to rely on the formality requirements to deny the enforceability of the beneficial interest and claim the entire beneficial rights to the property for himself. The constructive trust arises to prevent this result. …

67 I was satisfied that it was more probable than not that no contributions or very negligible contributions were in fact made by the Defendant towards the

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79 Exhibit P 3 and Exhibit D 2.

80 NE dated 28 July 2017 at pp 53–5.

81 DCS at para 224.



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Property. The evidence on his side was wanting, while that of the Plaintiff largely supported her position that the payments for the Property were made by her alone.

***The Plaintiff's arguments***

68 The Plaintiff submitted that she had paid for the whole of the Property, relying on remittance records dating from 2005 to 2010.[82] The total amount paid according to the Plaintiff was some S$3,353,209.79.[83] The 5% down payment of S$155,115 was financed from the booking fee that the Plaintiff was paid for the sale of one of her Hong Kong properties, which I shall refer to as the "Luso Apartment".[84] The sale price for the Luso Apartment was approximately S$4,200,000 which was some S$1,000,000 more than the purchase price of the Property.[85] The 15% balance deposit of S$1,040,244.79 was paid by the Plaintiff, with the support of her eldest sister, who had written a cheque of HK$4,500,000 in her favour.[86] The mortgage repayments were solely handled by and effected by the Plaintiff.[87] The last payment was made by the Plaintiff on 19 January 2010, for a sum of S$1,210,000 as full redemption of the mortgage, which was financed from the moneys she received from liquidating another Hong Kong property at Victorious Factory Building ("the Victorious Factory Property").[88]

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82 SOC para 7; AEIC of Ng So Hang at paras 138–150, 159.

83 SOC para 7; AEIC of Ng So Hang at para 150.

84 PCS at paras 63–66.

85 PCS at para 69.

86 PCS at paras 67–68.

87 PCS at paras 70–72.

88 PCS at paras 73–74; AEIC of Ng So Hang at para 159.



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69 Further, the sums of S$1,000,000 and S$180,000 relied upon by the Defendant did not constitute his contributions towards the purchase price of the Property. The sum of S$1,000,000 was a gift from the Defendant to the Plaintiff, while the sum of S$180,000 was the cost of restoration works to Casa Marina arising from the Defendant's damage to Casa Marina.[89]

***The Defendant's arguments***

70 The Defendant argued that at all material times, the Plaintiff and the Defendant would both contribute towards the purchase of the Property. The Defendant would contribute by giving the Plaintiff money when she asked him for it.[90] The Property was also purchased using moneys that came from the buying and selling of other properties.[91]

71 According to the Defendant, while the Plaintiff claimed that she financed the purchase of the Property from the sale of the Luso Apartment, the sale proceeds for the Luso Apartment were only received by the Plaintiff on 6 July 2006, after the 15% balance deposit of S$1,040,244.79 had been paid on or around 21 July 2005.[92] There was a total sum of S$369,349.47 credited into the mortgage account, which was not taken into account in the table of payments submitted by the Plaintiff.[93] The moneys credited into the mortgage account were pooled by the Defendant, the Plaintiff, and Zanawa Limited.[94] The Plaintiff

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89 PRS at 166–200.

90 DCS at para 149.

91 DCS at paras 150–151.

92 DCS at para 158.

93 DCS at paras 159–160; DRS at paras 68–73.

94 DCS at paras 159–160.



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only produced the remittance advices for various payments and did not produce bank statements of account.[95]

72 The Defendant relied on cheques drawn from his Hang Seng Bank Limited and United Overseas Bank (HK) Limited ("UOB (HK)") bank accounts totaling about S$361,748.50, as well as cheques of S$1,000,000 and S$180,000 drawn from his HSBC accounts, as his contributions towards the purchase of the Property.[96]

***Determination of contributions***

73 I was satisfied that the payments relied upon by the Defendant were in fact for other purposes and did not constitute payments for the Property. Conversely, I was satisfied on the balance of probabilities that the Plaintiff made the payments without any contribution from the Defendant. The Defendant's position was not served by his lack of knowledge about the mortgage repayments and redemption. There were also significant issues concerning the cheques relied upon by the Defendant.

74 In addition, there was no evidential support for the Defendant's assertion that the money used to finance the Property must have come from the pooling of money from the companies, the Plaintiff and the Defendant. The Defendant's assertions in this respect therefore could not displace or counter the Plaintiff's evidence of her payments, as they lacked cogency and strength.

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95 DCS at paras 165–166.

96 DCS at paras 168–205; DRS at paras 74–78, 91–106.



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*Assessment of evidence concerning the Plaintiff's contributions*

75 The Plaintiff gave evidence of various property purchases and sales she had made, both solely and with others, to show that she had funds. Various documents supporting this were also adduced. The Defendant tried to show that these funds were not sufficient. However, I was satisfied that there were sufficient funds from the various sources, including the property transactions, that enabled the Plaintiff to make the purchase of the Property on her own.

76 The Plaintiff had given sufficient evidence of her payments and I was satisfied that the Plaintiff had the funds to pay:

(a) The sale of the Luso Apartment provided funds for the purchase of the Property. The booking fee from the sale was received in April 2005[97] which coincided more or less with the timing of payment of the initial deposits for the Property.[98] The rest of the sale proceeds from the Luso Apartment were paid to the Plaintiff in July 2006,[99] which was before the Property was fully redeemed in 2010.[100]

(b) The Plaintiff had received about HK$4,500,000 from her eldest sister which provided another source of funds.[101]

(c) The final redemption payment was also paid by the Plaintiff in January 2010, which corresponded with the sale of the Victorious

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97 AEIC of Ng So Hang at p 282 (NSH-42); NE dated 21 July 2017 at p 31.

98 SOC at para 7.

99 AEIC of Ng So Hang at p 286 (NSH-43).

100 SOC at paras 7, 9; AEIC of Ng So Hang at pp 396–410 (NSH-55); AEIC of Lucy Khoo at paras 32–33.

101 Plaintiff's Bundle of Documents dated 17 July 2017 at S/N 6 and 7; NE dated 21 July 2017 at p 31.



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> Factory Property by the Plaintiff.[102] The Defendant also testified that he had not been involved in the sale of the Victorious Factory Property,[103] or in the redemption process and that he could not recall how much he had contributed towards the redemption amount of S$1,210,000.[104]

The Defendant argued that there was late disclosure of the Plaintiff's means to pay.[105] Even if late, nothing relating to the circumstances of the Plaintiff's disclosure cast doubt as to her ability to pay the purchase price.

77 Further, the mortgage repayments were handled by the Plaintiff, as admitted by the Defendant.[106] While this was not determinative of the Defendant's contributions, it showed a lack of engagement with the process of repayment, that, in the absence of some evidence of actual payments by the Defendant, pointed to the conclusion that the Defendant did not actually make any contribution.

78 Other conduct supported the conclusion that the Plaintiff was the one who contributed the funds. Sometime in 2006, the Defendant had sent the Plaintiff a newspaper clipping concerning the increase in private property prices in Singapore.[107] On the newspaper clipping, the Defendant had written along the margins:

> Dear, you must read, you made a fortune, money came in like water enters a pig basket, incredible!

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102 AEIC of Ng So Hang at para 159, pp 402–404 (NSH-55).

103 NE dated 28 July 2017 at p 13.

104 NE dated 28 July 2017 at pp 3–5.

105 NE dated 21 July 2017 at p 34; DCS at para 166.

106 NE dated 27 July 2017 at pp 16–18.

107 AEIC of Ng So Hang at para 198; pp 456–457 (NSH-64).



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The message from the Defendant to the Plaintiff, while not determinative on its own, suggested that the Defendant himself understood the Property as being financed by the Plaintiff and belonging solely to her. Taken with the other evidence of the Plaintiff's payment, such evidence supported the Plaintiff's case that she alone paid for the Property.

79 The Plaintiff listed her contributions in a table and adduced remittance advices for each entry in the table.[108] Allegations were made that the Plaintiff had provided insufficient disclosure, with only remittance advices being adduced as evidence of payments, as opposed to bank statements for the relevant periods.[109] However, the Defendant's challenge did not land home, since the remittance advices were clear evidence that the Plaintiff did indeed make the payments that she alleged she had made. If there was something in the remittance advices that was wanting, the Defendant should have brought in evidence to show that. This he did not do.

80 The Defendant also tried to show that the Plaintiff's table showing her contributions did not completely tally with all of the deposits into the mortgage account, based on the statement of accounts furnished for the mortgage account;[110] there were some deposits into the mortgage account that were unaccounted for, amounting to a total of S$369,349.47. The Defendant submitted that these moneys must have been derived from the Defendant or Zanawa Limited.[111]

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108 AEIC of Ng So Hang at para 150, NSH-45, NSH-49, NSH-50, NSH-53.

109 DCS at para 165; NE dated 21 July 2017 at p 35.

110 3.AB at pp 735–841.

111 DCS at paras 159–160; NE dated 25 July 2017 at p 13.



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81 At best, this shortfall constituted a relatively minor differential of about 11% of the total purchase price of the Property. Further, it did not follow that the unaccounted figure of S$369,349.47 was derived from the Defendant. The Defendant testified that he was unaware of the payments relating to this amount, and that he had no documentary evidence to show that this amount was paid by him or derived from Zanawa Limited.[112] He also did not adduce any evidence that showed that he had made any contributions; his was only a negative assertion that whatever could not be shown to have been paid by the Plaintiff alone must therefore have come from him. The Plaintiff, on the other hand, testified that she had deposited these moneys into the mortgage account though she was not able to recover the remittance advices in respect of these payments.[113] On the balance of probabilities, I found that this amount was also paid by the Plaintiff.

*Assessment of evidence concerning the Defendant's contributions*

82 Conversely, there was no evidence that the Defendant contributed to the financing of the Property, including the mortgage payments. The evidence suggested that the Plaintiff was the one who solely contributed to the mortgage payments:

(a) The Defendant did not know of the details of the mortgage payments.[114]

(b) The Plaintiff made payments to the mortgage account through her personal bank accounts.[115]

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112 NE dated 27 July 2018 at pp 16–19.

113 NE dated 25 July 2017 at pp 12–13.

114 NE dated 27 July 2017 at p 18.



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(c) There was insufficient evidence to show that the Defendant made contributions through the Plaintiff's account or made contributions directly to the mortgage account.

(d) The Defendant admitted that he had no documentary evidence showing that the moneys credited into the mortgage account came from him or Zanawa Limited aside from his purported cheque payments to the Plaintiff.[116]

83 The Defendant relied on three primary modes of contribution, which I will examine in turn:

(a) cheques drawn from his Hang Seng Bank Limited and UOB (HK) accounts made out to the Plaintiff totaling about S$361,748.50;

(b) funds from the companies; and

(c) payments of S$1,000,000 and S$180,000 to the Plaintiff after the mortgage was redeemed.

Cheques from Hang Seng Bank Limited and UOB (HK) accounts

84 While the Defendant claimed to have made payments through cheques paid out to the Plaintiff from his Hang Seng Bank Limited and UOB (HK) accounts,[117] there were issues with these cheques:

(a) At least two of the cheques could not have been contributions towards the Property as they were issued before 2005.[118]

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115 AEIC of Ng So Hang at pp 373–387 (NSH-53).

116 NE dated 27 July 2018 at pp 18–19, 32–33.

117 Defence and Counterclaim at para 25D.



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(b) The Defendant did not have documentary evidence of all of the cheque payments to the Plaintiff.[119] He was only able to adduce two cheque images showing payments of HK$5,000 and HK$1,000 respectively to the Plaintiff.[120] In respect of the rest of the cheques allegedly made out to the Plaintiff:

(i) The Defendant adduced his request letter to UOB (HK) for records of the relevant cheques. The response from UOB (HK) did not correspond with the request letter adduced but referred to the Defendant's letter of a different date.[121]

(ii) The Defendant also adduced his request to Hang Seng Bank Limited for records of the cheque payments. However, the response from Hang Seng Bank Limited was ambiguous and did not squarely answer the question in the letter of request.[122]

(iii) In any event, Hang Seng Bank Limited and UOB (HK) did not provide records of the cheque payments.[123]

85 Additionally, the amounts covered by most of the cheques allegedly drawn from the Defendant's Hang Seng Bank Limited and UOB (HK) accounts were relatively low, *ie*, in the range of a few hundred to a few thousand dollars each. This did not by itself mean that he did not make contributions, but the low value of the payments suggested that they were payments for other purposes, in

118 NE dated 27 July 2017 at pp 21–22.

119 AEIC of Wong Sang Woo at para 74.

120 AEIC of Wong Sang Woo at para 77, pp 252–253 (WSW-21).

121 AEIC of Wong Sang Woo at pp 255–256 (WSW-22); NE dated 27 July 2017 at p 45–46.

122 AEIC of Wong Sang Woo at pp 249–250 (WSW-20); NE dated 27 July 2017 at p 53.

123 AEIC of Wong Sang Woo at pp 249–250 (WSW-20), pp 255–256 (WSW-22).



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the absence of other factors supporting the conclusion that they were meant to be contributions towards the purchase of the Property.

86 Against this, the claim by the Defendant that he was a person of means could not take him very far.[124] Even if true, it did not follow that he had actually made any contribution.

Funds from the companies

87 The Defendant claimed that the business of the two companies were built up by the Plaintiff and the Defendant together. He asserted that he had been responsible for marketing, procuring overseas orders and liaising with trade partners and banks.[125] The Defendant further argued that the Plaintiff could not have made the payments towards the Property herself, and must have used the funds from the companies.[126]

88 I was satisfied that the Defendant probably played some role in the companies. However, I did not find that this was as extensive or deep as the Defendant alleged. In addition, I was satisfied that it was more probable than not that the Plaintiff's contributions towards the Property were not derived from company funds. I do note that not all loose ends were tied up, but this did not render the Plaintiff's payments unproven. Some discrepancies did exist but that is to be expected in transactions going back many years.

89 The Defendant failed to bring in any evidence to show that the funds were derived from the companies. While the legal burden fell on the Plaintiff to

124 DCS at paras 79, 149; DRS at para 35; NE dated 28 July 2017 at p 47; AEIC of Wong Sang Woo at para 59.

125 DCS at para 79.

126 Defence and Counterclaim at paras 8, 9, 15 and 24.



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make out that she alone financed the Property, it was incumbent on the Defendant, in the face of the Plaintiff's affidavit, her testimony at trial, and the documents adduced showing payments from her personal bank account, to bring in evidence that would point to the companies being a source of the funds. The Defendant failed to adduce any such evidence. He gave evidence of his involvement in the companies, but did not introduce into evidence any detail in relation to the flow of funds from the companies. It was not enough for the Defendant to merely raise the possibility that the funds could have come from the companies. The Defendant testified after all that he could not remember any transfer of money or income derived from the companies.[127]

90 Even if there were evidence that company funds were used to pay for the Property, I doubted that this could then be attributed as the Defendant's contributions towards the Property:

(a) His position as the legal representative of Zawana Fashion did not necessarily translate into any substantial rights or interest in the company.

(b) I was doubtful that the Defendant did much in terms of the marketing activities, procuring of orders and liaison with partners and banks in respect of the companies. The evidence on this was not substantial enough. It was denied by the Plaintiff and her witnesses. The Defendant did not have any other evidence brought into play.

91 Specifically, the ownership or entitlement of the Defendant to such funds was not proved. Even if I accept that some funds from the companies had been used in the purchase of the Property, there was no evidence that the

[127] NE dated 27 July 2017 at pp 33–34.



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Defendant had any interest in the profits or funds of these companies, such that he could assert an interest based on the use of company funds towards the purchase of the Property.

92 For that to be made out, he would need to clearly plead such an interest and assert it by way of a proper claim in the proper forum. As it was, the extent of his shareholding in Zanawa Limited was the subject of an ongoing suit in Hong Kong,[128] but even if he was the sole shareholder, this would in any event only confer certain rights against the company on him *qua* shareholder, and not a direct interest in the assets or profits of the company directly. He did not make out any such interest before me, for example by adducing evidence to show that the corporate veil ought to be pierced. The evidence relied upon by the Defendant was not at all sufficient to support an assertion that the contributions to the Property were in fact made by the companies or even so that those contributions could be directly attributed to him.

The payment of S$1,000,000

93 The Defendant relied on his payment of S$1,000,000 by way of a cheque made out to the Plaintiff on 13 June 2011. According to the Defendant, the Plaintiff had informed him in 2011 that he still owed her a sum of S$1,000,000, after taking into account the repayments for the housing loan, the rentals received and other moneys contributed by the Defendant, being the shortfall in his contribution to the purchase price. The Defendant did not question the amount and proceeded to pay the sum to the Plaintiff.[129]

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128 AEIC of Ng So Hang at para 49; NE dated 20 July 2017 at p 23; NE dated 28 July 2017 at p 14;

129 Defence and Counterclaim at para 19.



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94 The Plaintiff argued that this was a gift from the Defendant, not tied to the purchase of the Property; at the time this payment was made, the mortgage had already been redeemed.[130]

95 In response, the Defendant contended that the Plaintiff's position in her pleading and at trial were contradictory. The Plaintiff had testified at trial that the S$1,000,000 was a gift from the Defendant to her.[131] Yet, in her Reply and Defence to Counterclaim, she pleaded that she had not received any "lavish gifts" from the Defendant. However, it must be borne in mind that her averment in the Reply that she had not received any "lavish gifts" was made in direct response to the Defendant's allegation in his Defence and Counterclaim that he had furnished her with lavish gifts including a Mercedes Benz car. To my mind, her denial was in relation to those gifts, and not to the S$1,000,000.[132]

96 I accepted that the Plaintiff had not requested that the Defendant pay her S$1,000,000 to make up for his shortfall in contributions towards the Property. There were inconsistencies in the Defendant's account. As the Plaintiff highlighted, the Property was not rented out until 2012 and hence she could not have taken into account rentals received for the Property in tabulating the Defendant's shortfall, as was alleged by the Defendant.[133] Furthermore, the claim that this S$1,000,000 payment was made towards the purchase of the Property was inconsistent with the Defendant' claim that there was a common intention between the parties that any shortfall was to be treated as a gift.[134]

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130 PCS at para 151.

131 DCS at paras 178–179.

132 Reply to Defence and Counterclaim (Amendment No. 3) dated 29 May 2017 at para 8(6).

133 NE dated 27 July 2017 at pp 54–55, 62.

134 Defendant's further submissions dated 6 December 2017 at paras 78, 103.



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97 I found that the S$1,000,000 was indeed not given as a contribution to the purchase of the Property. The redemption had occurred more than one year earlier. Further, there was nothing adduced to show that there was any agreement that the redemption was made on the basis that there would be subsequent contributions made by the Defendant to make up for his shortfall in contributions towards the purchase price. Furthermore, I accepted that more likely than not, as asserted by the Plaintiff,[135] this S$1,000,000 payment, which coincided with the Defendant's striking of a lottery,[136] was made to encourage her to continue with the business, which was at the time being wound down. The Defendant had testified that he had wanted the business of Zanawa Limited to continue:[137]

> Q And, Mr Wong, we all know that the last shipment left the Zawana factory in 10 January 2011. Agree?
>
> …
>
> A Yes.
>
> Q And Zawana, as we know, is the manufacturing arm for Zanawa.
>
> A Yes.
>
> Q So, Mr Wong, why would there be a need to obtain a loan when the factory is already closed?
>
> A For the fu---the intention was to take a loan for the future developments of Zanawa in Hong Kong.
>
> Q Yes. So, you would agree that you wanted to continue the Zanawa business?
>
> A Yes.
>
> Q And that is also one of the reasons why Peonie said you gave her S$1 million?

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135 AEIC of Ng So Hang at para 186.

136 NE dated 27 July 2017 at pp 63–64.

137 NE dated 27 July 2017 at p 61.



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The payment of S$180,000

98 The Defendant claimed that S$180,000 had been paid to the Plaintiff on 16 July 2012, again by cheque, which constituted his contribution to the purchase of the Property, or at least to the renovations required in respect of the Property. According to the Defendant, the Plaintiff had requested for the Defendant to reimburse her the sum of S$180,000 for renovation and other expenses in relation to the Property.[138]

99 The Plaintiff claimed that this payment was for repairs to Casa Marina, *ie*, the Hong Kong property, which were needed because of damage caused to the property by the Defendant during a dispute that arose between them in June 2012.[139] The Defendant responded by denying that the damage to Casa Marina was so extensive that S$180,000 had to be spent on the repairs.[140]

100 Some time was spent on the circumstances of the dispute that arose between the parties at Casa Marina. A letter from the Hong Kong police was tendered as evidence.[141] There was also disagreement about the extent of repairs, and the sufficiency of invoices that were relied upon by the Plaintiff.[142]

101 While there may have been some issue with the sufficiency of the invoices adduced by the Plaintiff, in the end I was persuaded that it was more

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138 DCS at paras 186–205.

139 PCS at paras 174–181.

140 DCS at para 200.

141 AEIC of Ng So Hang at pp 155–155A (NSH-25).

142 DCS at paras 191–199.



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likely than not that the S$180,000 was used for the repairs to Casa Marina, and not towards the renovation of the Property.

102 The Defendant argued that Zanawa Limited would have made payments for the repairs at Casa Marina as it was owned by that company.[143] I did not find that this ousted the Plaintiff's version – the fact that the property was owned by the company did not exclude the possibility that payment for repairs were made by the Defendant.

103 The Plaintiff was largely able to point to specific invoices though these may not have been entirely comprehensive.[144] In the end I was persuaded that it was indeed more likely than not that the invoices were real, and that the money went to these invoices. Furthermore, I also accepted the Plaintiff's assertion that the payment requested for the repairs to Casa Marina was made on an approximate basis. She had testified:[145]

> … Can I---can I go on to explain why the sum of [S]$180,000 was given to me? … After Paul had smashed the things in the house, he urged me to move back and he said that he would leave Hong Kong. After I had returned to that house, I---it was either 1 or 2 days before he gave me the cheque. He came back. I remembered that when I was in the office, he came to look for me and then he asked me how much the renovation works [to Casa Marina] cost. I answered him that I---that I didn't know as yet because there was a lot of work to be done. Paul asked me whether [HK]$1 million was sufficient. I told him that thereabouts. So Paul gave me this cheque of [S]$180,000. At that time the company has already ceased operations and didn't have much money. Paul then said that he would come out with the money for the renovation himself, that's all.

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143 DCS at para 204.

144 AEIC of Ng So Hang at pp 156–176 (NSH-26).

145 NE dated 25 July 2017 at p 56.



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104 The timing and other circumstances also pointed to this sum being for the purpose of repairs to Casa Marina. The renovation to the Property had been carried out seven years prior to the payment of this amount by the Defendant to the Plaintiff.[146] On the other hand, the payment largely coincided with the timing of the repairs to Casa Marina.[147] The sum of S$180,000 was also larger than the amount spent on the renovations to the Property.[148]

105 I therefore rejected the Defendant's account that the money was for the renovation of the Property. In any event, moneys spent on renovations to the Property do not constitute direct contributions giving rise to a presumption of resulting trust under all circumstances. In *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*"), the Court of Appeal recognised, at [126], that payments made towards the renovation of the property could be considered as contributions towards the purchase price *if such renovations were carried out closely after the purchase of the property and increased the value of the property*. Evidence would need to be brought in to show that the renovation work did indeed lead to an increase in the value of the property. In this case, even if I accepted that the money was used for the renovation of the Property, there was no evidence adduced to show that the renovation increased the value of the Property.

106 Further, there was nothing to show that such payment, though not directly related to the purchase price, was meant to substitute for or allow for the release of other funds to pay for the purchase price of the Property. It is also doubtful that such payment would constitute direct contributions giving rise to

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146 1.AB at p 209; NE dated 28 July 2017 at p 8.

147 AEIC of Ng So Hang at pp 157–176 (NSH-26).

148 1.AB at p 209; NE dated 28 July 2017 at pp 7–8.



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a presumption of resulting trust. Direct payments that count are payments that go directly to the purchase price, the mortgage, or renovations carried out closely after the purchase of the property which increase the value of the property (see *Lau Siew Kim* at [112]–[117], [126]; *Chan Yuen Lan* at [53]–[57]).

**Resulting trust and the presumption of advancement**

107 Where there is sufficient evidence of the parties' respective financial contributions to the purchase price of the property, it will be presumed that the parties hold the beneficial interest in the property in proportion to their respective contributions to the purchase price (*ie*, the presumption of resulting trust arises). The basis for the presumption of resulting trust in such circumstances has been expressed by the Court of Appeal in *Su Emmanuel* at [78]–[79] as follows:

> … [T]he doctrinal basis for the presumption of resulting trust is that an intention on the part of the payor of the purchase price to benefit the recipient (who receives property in his legal name but who has not paid for the property) will not be readily inferred … Put simply, a resulting trust arises by operation of law unless the court is satisfied that there was indeed an intention on the part of the person paying the purchase price for the property to benefit the recipient of the legal title … Where the presumption of resulting trust is invoked, it is the lack of intention to benefit the recipient of the property that is being *inferred.* It follows that the presumption of resulting trust … will not be called in aid when the evidence that is before the court adequately reveals the true intention of the transferor.
>
> [emphasis in the original]

108 In this case, I found that the contributions by the Plaintiff created a presumption of resulting trust in the Plaintiff's favour, entitling her to the whole of the beneficial interest in the Property, as all of the payments towards the Property came from her.



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109 The presumption of resulting trust would not arise or would in any event be rebutted if there is evidence that the Plaintiff had intended 50% of the direct payments to be a gift to the Defendant. There was insufficient evidence to establish this. In the premises, I found that the Plaintiff did not intend for 50% of the contributions to be a gift to the Defendant.

110 The presumption of resulting trust may also be rebutted by the operation of the presumption of advancement which presumes an intention to gift in the light of the nature of the relationship between the parties. Here, while I found that there was a relationship that went beyond merely business between the parties, that did not confer upon the relationship between them a status that would call for the operation of the presumption of advancement.

111 The presumption of advancement operates as a rule of evidence in specific situations where the probability of a gift being intended is significant by virtue of the type of relationship. It should be treated as "an evidential instrument of last resort where there is no direct evidence as to the intention of the parties rather than as an oft-applied rule of thumb" (see *Teo Siew Har v Lee Kuan Yew* [1999] 3 SLR(R) 410 at [29] and *Lau Siew Kim* at [59]). The overall aim of the presumption of advancement is to discern the intention of the transferor; the presumption should apply when the relationship between the parties is such that it is more probable than not that a beneficial interest was intended to be conferred, whether or not the purchaser owed the other a legal or moral duty of support (*Lau Siew Kim* at [78] citing *Calverley v Green* (1984) 155 CLR 242 at 250).

112 In *Lau Siew Kim*, the Court of Appeal held that the presumption of advancement was still relevant in the established (both traditional and extended) categories of relationships and that it is the strength of the presumption that



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should vary with the circumstances in accordance with the modern social conditions (at [77]). All the circumstances of the case should be taken into account by the court in assessing how strongly the presumption of advancement should be applied, with two aspects being particularly crucial, *viz*, the nature of the relationship between the parties and the state of the relationship (at [78]).

113 In relation to the categories of relationships which attract the presumption of advancement, the Court of Appeal opined (at [60]):

> Relationships which attract the presumption of advancement have traditionally included transfers from husband to wife, and from father to child. These categories of relationships have, however, been established in a markedly different social context from the present. It goes without saying that the application of the presumption of advancement, just like the presumption of resulting trust, should be assessed in accordance with contemporary norms. Indeed, the two traditional categories of relationships have each already been remoulded and refined in different jurisdictions as social realities and practices have changed over time. Nevertheless, further extension and extrapolation may be appropriate, and indeed required, to cater to the myriad matrices that prevail in today's society. As Deane J sagely noted in *Calverley v Green* ([37] *supra*) at 268, the categories of relationships to which the presumption of advancement applies are not "finally settled or closed". …

114 While I accept that the categories of relationships to which the presumption of advancement applies are not finally settled or closed, in my judgement, the categories under which a presumption of advancement would apply should not be unduly expanded. An approach based on the actual intentions of the parties should be preferred; where there is no evidence of actual intentions, it should not be easily presumed that the intention was to gift the property. There are limited categories of relationships in which it is more probable than not that a gift was intended simply by virtue of the nature of the relationship between the parties. I was therefore doubtful that the categories attracting the presumption should be extended to include cohabiting couples



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who are not legally married. I noted in this regard that the Court of Appeal had stated in *Lau Siew Kim* that such an extension to cohabiting couples may not be warranted (at [74]):

> It is obvious that Gibbs CJ's remarks were driven, at least in part, by his pragmatism in acknowledging the changing conditions of society and a desire to desist from the historical reasons for confining the presumption of advancement to cases of *legal* spouses. Though his remains the lone voice advocating for such a change, academics have acknowledged that it is *arguable* that changing social attitudes to *de facto* relationships, especially where they are recognised legislatively, should be reflected by the courts in the application of the presumption of advancement: see G E Dal Pont & D R C Chalmers, *Equity and Trusts in Australia and New Zealand* (LBC Information Services, 2nd Ed, 2000) at p 591. However, given that legislative recognition and public consensus about the status of *de facto* relationships have yet to emerge locally, any development along the lines envisaged by Gibbs CJ may be, in our view, presently unwarranted. …
>
> [emphasis in the original]

115 The Defendant relied on the case of *BMM v BMN and another matter* [2017] 4 SLR 1315 ("*BMM v BMN*") to argue that the presumption of advancement should be applicable in the present case.[149] In *BMM v BMN*, the plaintiff and defendant registered their marriage and the plaintiff then transferred the property in question (originally purchased in his sole name) to be held in their joint names, with the understanding that the marriage was valid. The marriage was discovered to be void and declared void only subsequently when the parties carried out the process of obtaining a divorce. Foo Tuat Yien JC found that given that the parties were in what they thought was a marriage, the financial dependency of the defendant on the plaintiff, and the close and loving relationship between the parties, that there was a strong presumption of advancement in favour of the defendant (at [32]). Nevertheless, Foo JC found

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149 DCS at paras 240–241.



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that the presumption of advancement in that case was rebutted by the common intention that the property would be solely owned by the plaintiff. The circumstances in *BMM v BMN* were unique given that the parties had registered their marriage and were under the impression that they were legally married at the time of the property transfer. To the extent that *BMM v BMN* stands for the proposition that the presumption of advancement could be extended in principle to the benefit of a female partner in cohabitation receiving a gift from the male partner, I respectfully decline to follow it.

116 In this case, the nature of the relationship between the parties was not such as to bring into operation the presumption of advancement. Even if a presumption of advancement operated, the presumption was weak and in any event rebutted.

**Proprietary estoppel**

117 For the reasons outlined in previous sections, I was also satisfied that there was no proprietary estoppel arising in the Defendant's favour.

118 In contrast to the Defendant's contentions,[150] there was nothing to establish any representation by the Plaintiff that:

(a) the Defendant was entitled to a half share of the Property;

(b) there was a shortfall in the Defendant's contributions of the sum of S$1,000,000 for which he was to reimburse the Plaintiff; or

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150 DCS at paras 273–289.



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(c) that the Defendant was to reimburse the Plaintiff of a sum of S$180,000 for renovation and other expenses incurred in relation to the Property.

119 There was correspondingly no detrimental reliance either. As I found above, the preponderance of evidence was that the Property was paid for by the Plaintiff.

**Procedural bars**

120 The Defendant argued that the Plaintiff was barred from her claim either because of the operation of the statutory limitation period, or because laches applied.

***Limitation***

121 The Plaintiff argued that the claim fell under s 22(1)(*b*) of the Limitation Act (Cap 163, 1996 Rev Ed) ("Limitation Act") under which no limitation period applied.[151] The Defendant submitted that s 6(7) of the Limitation Act, as opposed to s 22, applied, which imposes a time bar of six years from the date on which the cause of action accrued.

122 Section 6 of the Limitation Act reads:

> **Limitation of actions of contract and tort and certain other actions**
>
> **6.**—(1) Subject to this Act, the following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued:
>
> (*a*) actions founded on a contract or on tort;
>
> (*b*) actions to enforce a recognizance;

[151] Plaintiff's opening statement dated 11 July 2017 at paras 14–21.



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> (*c*) actions to enforce an award;
>
> (*d*) actions to recover any sum recoverable by virtue of any written law other than a penalty or forfeiture or sum by way of penalty or forfeiture.
>
> …
>
> (7) Subject to sections 22 and 32, this section shall apply to all claims for specific performance of a contract or for an injunction or for other equitable relief whether the same be founded upon any contract or tort or upon any trust or other ground in equity.

123 Section 6(7) is subject to s 22, which reads:

> **Limitation of actions in respect of trust property**
>
> **22.**—(1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action —
>
> (*a*) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or
>
> (*b*) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.
>
> (2) Subject to subsection (1), an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of 6 years from the date on which the right of action accrued.
>
> …

Section 22(2) therefore applies a 6-year limitation period to actions by a beneficiary to recover trust property or in respect of any breach of trust. Section 22(1) provides an exception and exempts actions by a beneficiary of a trust in respect of fraud or fraudulent breach of trust which the trustee was privy, and actions for recovery from the trustee of trust property, from a limitation period.



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124 The relevant issue here is whether the exception under s 22(1)(*b*) applies to a claim for the beneficial interest in a property based on a resulting trust, such that the Plaintiff's claim is not subject to a limitation period. In *Tan Chin Hoon and others v Tan Choo Suan (in her personal capacity and as executrix of the estate of Tan Kiam Toen, deceased) and others and other matters* [2016] 1 SLR 1150 ("*Tan Chin Hoon*"), the plaintiffs claimed that they owned in equity assets which were owned at law by the defendants based on resulting trust. Vinodh Coomaraswamy J held that s 22(1)(*b*) applied to a claim based on resulting trust such that the plaintiff's claim was not time barred:

> 248 Section 22(1)(*b*) provides that the six-year limitation period does not apply to an action by a beneficiary "to recover from the trustee trust property or the proceeds of trust property in the possession of the trustee, or previously received by the trustee and converted to his use". The exception applies whenever a trustee retains trust property, or its proceeds, in her hands: see Robert Pearce, John Stevens and Warren Barr, *The Law of Trusts and Equitable Obligations* (Oxford University Press, 5th Ed, 2010) at p 900.
>
> 249 Section 2 of the Limitation Act defines the terms "trust" and "trustee" as "[having] the same meanings as in the Trustees Act [Cap. 337]". This is a reference to s 3 of the Trustees Act (Cap 337, 2005 Rev Ed), which defines the terms "trust" and "trustees" as including "implied and constructive trusts, and … cases where the trustee has a beneficial interest in the trust property, and to the duties incident to the office of a personal representative".
>
> 250 Although the definition does not include resulting trusts, the weight of authority suggests that resulting trusts are dealt with on the same footing as express and constructive trusts for the purposes of the section: see David Hayton, Paul Matthews and Charles Mitchell, *Underhill and Hayton Law of Trusts and Trustees* (LexisNexis, 18th Ed, 2010) at para 94.2; John Mowbray *et al, Lewin on Trusts* (Sweet & Maxwell, 19th Ed, 2015) ("Lewin on Trusts") at para 7-004.
>
> 251 I therefore find that the plaintiffs' claims against TCS in respect of the resulting trusts that arose over their AAS shares which they transferred to TCS are not subject to the six-year limitation period in s 22(2) of the Limitation Act as they fall within the scope of s 22(1)(*b*).



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125 I saw no reason to depart from the approach in *Tan Chin Hoon*. Section 22(1)(*b*) was applicable to the Plaintiff's claim. Therefore, no limitation period applied to bar her claim.

126 In addition, even if one were to take the position that s 22 and, in particular, s 22(1)(*b*), does not apply to claims based on resulting trusts given that the definition of "trust" does not expressly include resulting trusts, it did not follow that s 6(7) of the Limitation Act applied, as submitted by the Defendant.

127 In *Yong Kheng Leong and another v Panweld Trading Pte Ltd and another* [2013] 1 SLR 173 ("*Yong Kheng Leong*"), the Court of Appeal considered the history and background of s 6(7), and the interaction between s 6(7) and s 22:

> 73 Though the streams of equity and the law sprang out of different sources, it became increasingly untenable to keep them flowing entirely separately as litigants often looked to equity to overcome the harsh rigidity and formalism of the law. It was out of this that the doctrine of limitation by analogy developed so that limitation periods applicable to claims in law could not be side-stepped by the simple device of seeking equitable relief. The point is succinctly and clearly explained by Jules Sher QC sitting as a deputy High Court judge in *Coulthard* … (*Coulthard* at 730):
>
> > Two things emerge … First, where the court of equity was simply exercising a concurrent jurisdiction giving the same relief as was available in a court of law the statute of limitation would be applied. Secondly, even if the relief afforded by the court of equity was wider than that available at law the court of equity would apply the statute by analogy where there was 'correspondence' between the remedies available at law or in equity.
> >
> > …
>
> 74 … In our judgment, essentially the same result was achieved by s 6(7) of the 1959 Limitation Ordinance and its successor provisions and this is unaffected by the omission of the words "(if necessary by analogy)".



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75 It will be recalled that s 6(7) of the 1959 Limitation Ordinance and its successor provisions make this regime subject to ss 22 and 32 of the same Ordinance and its successor legislation. This is the consequence of two things. First, not every claim to equitable relief will have a corresponding claim in the law such that the relevant limitation period specified for the latter can be readily applied by analogy. There is a historical rationale for this. The confluence of the streams of law and equity was such that there nonetheless remained areas in which only equity could intervene. This was referred to as the exclusive jurisdiction of equity as opposed to its concurrent or auxiliary jurisdictions.

76 The concurrent, auxiliary and exclusive jurisdictions of equity are explained as follows by William Swadling in his chapter on "Limitation" in *Breach of Trust* (Peter Birks and Adrianna Pretto eds) (Hart Publishing, 2002) at p 323:

> The 'concurrent' jurisdiction comprises equity's responses to common law claims. An example would be a claim for specific performance of a contract. Another would be an action for an account following a tort, while yet another would be an injunction to restrain a threatened breach of contract or tort. The common feature of these claims is that while the common law recognises the underlying cause of action, it does not give the particular relief sought. While the 'concurrent' jurisdiction might be said to be concerned with matters of substantive *relief*, the 'auxiliary' jurisdiction, by contrast, deals with matters of *procedure*. It might, for example, be that in a common law action the plaintiff wants discovery of certain documents. The common law has no power to order discovery, though equity does. If discovery is ordered by a court of equity, it does so within its 'auxiliary' jurisdiction. Within the 'exclusive' jurisdiction fall claims which the common law does not recognise at all. The most obvious is the claim of a beneficiary to enforce a trust. Trusts have never been recognised by the common law, so a beneficiary suing to enforce a trust can only obtain relief from a court of equity. Such claims are therefore said to be within the 'exclusive' jurisdiction of the court.

77 For claims that fell within the exclusive jurisdiction of equity, since the plaintiff had no legal claim at all, there was no basis for invoking a statutory limitation. Instead, the equitable doctrine of laches applied, although the courts, in determining the time limit for laches, would usually follow the lead given by the Legislature and adopt the statutory period of limitation (see *Smith v Clay* (1767) 3 Bro CC 639).



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> 78 Under our framework, s 22 statutorily deals with the limitation period that is specifically applicable (or not, as the case may be) to claims for breach of trust or for the recovery of trust property, which claims would ordinarily have fallen within the exclusive jurisdiction of equity. … Second, equity developed its own rules that allowed for equitable defences to be raised against equitable claims. Section 32 preserves the applicability of those equitable defences (including laches and acquiescence) which may arise according to the facts of the case in any setting where equitable remedies are sought. …
>
> [emphasis in the original]

128 The relevant passages from *Yong Kheng Leong* cited above suggest that limitation by analogy under s 6(7) applies to concurrent jurisdiction equitable claims, with claims for breach of trust or for the recovery of trust property being dealt with under s 22. Therefore, should s 22 not cover a claim based on a resulting trust arising from direct contributions to the property, it did not follow that s 6(7) would be applicable. This is so since a claim based on resulting trust falls within the exclusive jurisdiction of equity. As the Court of Appeal stated (at [69]–[71]):

> 69 The effect of s 6(7) is that "this section", *ie*, the entire s 6, applies to all claims for equitable relief, whether these be founded upon contract, tort, a trust or other ground in equity. This, however, is expressly subject to s 22 (limitation of actions in respect of trust property) and s 32 (the equitable jurisdiction to refuse relief on the ground of acquiescence, laches or otherwise). In other words, outside the operation of the two exceptions in ss 22 and 32, s 6(7) contemplates that the relevant limitation period for a particular cause of action in law (*eg*, six years for claims for damages for breach of contract under s 6(1)(*a*)) will also apply when the claim is for equitable relief instead (*eg*, specific performance of that contract).
>
> …
>
> 71 The language of the English provision indicates that the statutory limitation periods would *not* apply to equitable reliefs, save to the extent that the doctrine of limitation by analogy made them applicable. In contrast, the language of the Singapore provision indicates that the statutory limitation periods would apply in effect to all claims for equitable relief. *This can only be given effect to by finding the particular provision elsewhere in s 6 by which an express limitation period has been*



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> *prescribed for an action at law, which bears the closest correspondence to the relevant claim for equitable relief. …*
>
> [emphasis added]

129 Thus, even if it is accepted that s 22(1)(*b*) does not apply to a claim based on resulting trust (which I did not accept), it was doubtful that the Plaintiff's claim was caught by the statutory limitation under s 6(7) by analogy given that the claim did not bear a close correspondence with any of the actions at law for which an express limitation period is prescribed under s 6. I rejected the Defendant's assertion that the Plaintiff's claim bore an analogy with a claim based on contract and therefore that s 6(7) would apply read with s 6(1)(*a*).[152] A resulting trust arises automatically upon the non-exhaustion or non-disposal of the beneficial interest. Therefore, assuming that s 22(1)(*b*) did not apply, it is likely that the equitable doctrine of laches would apply exclusively.

***Laches***

130 The doctrine of laches is a discretionary remedy. Laches operate to bar a claim where there has been delay in bringing the claim coupled with circumstances rendering it unjust for a remedy to be awarded such as conduct which may be regarded as equivalent to a waiver. Three factors in particular are to be considered: (a) the length of delay before the claim was brought; (b) the nature of the prejudice said to be suffered by the defendant; and (c) any element of unconscionability in allowing the claim to be enforced (*Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 at [44], citing with approval *Cytec Industries Pte Ltd v APP Chemicals International (Mau) Ltd* [2009] 4 SLR(R) 769 at [46]).

131 I did not find that the Plaintiff was so tardy or deleterious in pursuing her claim as to justify invocation of the doctrine of laches. The civil suit was

[152] DCS at para 316.



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commenced by the Plaintiff in February 2016. On the Defendant's account, the parties' relationship lasted until 2015.[153] Sometime in 2015, the parties exchanged text messages concerning the entitlement to the Property.[154] The Defendant was therefore aware that the dispute over the ownership of the Property was live. The Defendant did not establish that he was misled or had otherwise suffered prejudice from the delay because of a belief that he was entitled to the beneficial interest in the Property. While he sought to rely on his payments of S$1,000,000 and S$180,000 to the Plaintiff,[155] as I had found earlier, these payments were for other purposes and not linked to the Property. No other unconscionability was invoked by him either.

132 There was thus nothing in the Plaintiff's behaviour that would call for her to be disentitled to assert her claim in equity. The Plaintiff was thus not barred by laches.

**The Defendant's counterclaim**

133 The Defendant's counterclaim for a share of the rentals as well as a refund of money paid to the Plaintiff failed.

134 There was no share due to the Defendant out of the rentals. As for his claim for the sum of S$1,541,748.50 (S$361,748.50 + S$1,000,000 + S$180,000), I accepted the Plaintiff's evidence in respect of these sums (see above at [84]–[106]), and thus the basis for his claim for these sums fell away. Any money paid to the Plaintiff out of the S$1,541,748.50 claimed was for purposes other than contributions to the Property; the Defendant was not entitled

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153 AEIC of Wong Sang Woo at para 38, 95.

154 AEIC of Wong Sang Woo at paras 95–98 and at pp 295–310 (WSW-28).

155 DCS at para 325.



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to claim the sum based on unjust enrichment, estoppel or a trust, unlike as alleged by the Defendant.[156]

**Orders**

135 Specific orders made:

(a) Prayers (1), (2) and (3) of the Statement of Claim were granted.

(b) As for the Defendant's counterclaim, prayers (a), (b), (c) were dismissed.

136 Costs were awarded to the Plaintiff.

Aedit Abdullah
Judge

Chan Yew Loong, Justin & Neo Wei Chian Valerie (Tito Isaac & Co LLP) for the Plaintiff in main action and Defendant in counterclaim; Keh Kee Guan (Pacific Law Corporation), Nicholas Jeyaraj s/o Narayanan & Cheryl Chan (Nicholas & Tan Partnership LLP) for the Defendant in main action and Plaintiff in counterclaim.

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[156] DCS at paras 339–344.



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