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

[2021] SGHC(A) 22

Civil Appeal No 37 of 2021

Between

Lim Choo Hin (as the sole executrix of the estate of Lim Guan Heong, deceased)

… *Appellant*

And

Lim Sai Ing Peggy

… *Respondent*

In the matter of Originating Summons No 168 of 2020

Between

Lim Choo Hin (as the sole executrix of the estate of Lim Guan Heong, deceased)

… *Applicant*

And

Lim Sai Ing Peggy

… *Respondent*

GROUNDS OF DECISION

[Trusts] — [Resulting trusts] — [Presumed resulting trusts]
[Gifts] — [*Inter vivos*]

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Lim Choo Hin (as the sole executrix of the estate of Lim Guan Heong, deceased)
v
Lim Sai Ing Peggy

[2021] SGHC(A) 22

Appellate Division of the High Court — Civil Appeal No 37 of 2021
Woo Bih Li JAD, See Kee Oon J, Chua Lee Ming J
29 November 2021

15 December 2021

See Kee Oon J (delivering the grounds of decision of the court):

Introduction

1 The appellant ("LCH") brought this appeal against the High Court Judge's decision in HC/OS 168/2020 ("OS 168"). In OS 168, LCH sought a declaration that the respondent ("LSI") holds a Housing and Development Board ("HDB") flat located at 2 Jalan Batu #08-69, Singapore 430002 ("the Flat") on trust for the Estate of their late father, Mr Lim Guan Heong ("Mr Lim"), as well as other consequential relief. The parties are two of Mr Lim's eight children (comprising seven daughters and a son). LCH has brought the action in OS 168 solely in her capacity as the sole executrix of Mr Lim's estate ("the Estate").

2 In 1975, Mr Lim entered into a sale and purchase agreement to purchase the Flat and became its sole registered proprietor in 1976. However, in 1981,

LSI became registered as a joint tenant of the Flat ("the 1981 Transfer"). In 2001, LCH also became registered as a joint tenant of the Flat, but subsequently removed her name from the Flat of her own accord in 2013 because she wanted to become eligible to acquire a HDB flat of her own. Accordingly, upon Mr Lim's death on 4 September 2015, legal title to the Flat devolved to LSI under the right of survivorship and also notwithstanding a Will which Mr Lim had executed on 27 April 2015.

3 The Judge dismissed OS 168 and issued his grounds of decision in *Lim Choo Hin (as the sole executrix of the estate of Lim Guan Heong, deceased) v Lim Sai Ing Peggy* [2021] SGHC 52 ("Judgment"). The Judge's sole reason for dismissing OS 168 was that the documentary evidence – in particular, a stamp on the title deed to the Flat ("Title Deed") – unequivocally showed that Mr Lim had intended to confer his beneficial interest in the Flat to himself and LSI as joint tenants by way of *inter vivos* gift (Judgment at [38] and [40]). As a result of this finding, the Judge saw no need to engage in any analysis relating to the presumption of resulting trust or the presumption of advancement (Judgment at [42] and [44]).

The parties' arguments

4 On appeal, LCH argued that the Judge erred in finding that the right of survivorship under a joint tenancy is capable of "overriding" a resulting trust or a presumption of resulting trust. LCH submitted that, contrary to the Judge's holding, a presumption of resulting trust had arisen in the present case as LSI did not furnish any consideration for the 1981 Transfer. This presumption was neither displaced by the presumption of advancement, nor by any evidence of donative intent on Mr Lim's part. Consequently, LSI holds the beneficial interest in the Flat on behalf of the Estate.

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5 LSI contended that there was no basis for the presumption of resulting trust to operate as the Title Deed and the transfer instrument for the 1981 Transfer ("1981 Transfer Instrument") were conclusive of Mr Lim's intention to gift the beneficial interest in the Flat to her as a joint tenant alongside himself. In the alternative, even if a presumption of resulting trust had arisen, it would have been displaced by the counter-presumption of advancement. In the further alternative, any trust in respect of the Flat would be prohibited under ss 51(8) or 51(9) of the Housing and Development Act (Cap 129, 2004 Rev Ed) ("HDA"). Finally, LSI submitted that if this Court was not with her on the facts, OS 168 should be converted into a writ action so that LCH's "many unsupported allegations" could be tested at trial.

Our decision

6 We begin with the preliminary observation that the parties' characterisation of the issues in their written and oral submissions on appeal appeared to be somewhat confused. The first issue identified by LCH – namely, whether the right of survivorship under a joint tenancy is capable of overriding the presumption of resulting trust – did not even arise from the Judge's decision. It was evident that the Judge had found it unnecessary to resort to the presumption of resulting trust, not because of the operation of the right of survivorship, but because of his view that the documentary evidence, on its face, clearly and sufficiently evinced Mr Lim's intention to gift both the legal and the beneficial interest in the Flat to LSI as a joint tenant alongside himself.

7 In our view, the evidence in its totality supported LCH's position that LSI provided no prior or contemporaneous consideration for the 1981 Transfer. In this connection, we also agreed with the Judge's related finding that LSI did not contribute to the purchase price of the Flat to begin with: see Judgment at

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[34]–[35]. Moreover, even if LSI had made such a contribution, there was no indication that the 1981 Transfer was made in consideration for such a contribution.

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

9 The central issue in the present appeal, therefore, was whether the Judge erred in finding that the documentary evidence was, on its face, *conclusive* of Mr Lim's intention to gift a beneficial interest in the Flat to LSI. It is this issue to which we first turn.

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Whether Mr Lim intended to gift a beneficial interest in the Flat to LSI

10 In the Judgment, the Judge acknowledged (at [40]) that there was "some uncertainty as to Mr Lim's subjective state of mind when the relevant transfers were effected" but held that this was irrelevant since the documentary evidence, which "[could] tell no lies", unequivocally showed that Mr Lim had intended to gift his beneficial interest in the Flat to LSI as a joint tenant alongside himself. The Judge relied in particular on a stamp on the Title Deed which reflected that the 1981 Transfer had taken place ("Title Deed Stamp"). This stamp, the authenticity of which was unchallenged, stated that the Flat had been "TRANSFER[RED] TO LIM SAI ING (BY GIFT) AND LIM GUAN HEONG AS JOINT TENANTS OF THE WITHIN LEASEHOLD ESTATE" [emphasis in original] (at [37]–[38]). On appeal, LSI rehashed the Judge's analysis in relation to the Title Deed Stamp, and further relied on the 1981 Transfer Instrument which stated that the 1981 Transfer had taken place in consideration of "natural love and affection".

11 With respect, the Judge's approach was not correct in law. Though the Title Deed and the 1981 Transfer Instrument were contemporaneous records, they could hardly be said to be *conclusive* of Mr Lim's actual intent or state of mind as at the time when the 1981 Transfer was effected. In this connection, our courts have previously found that properties were held on trust for the transferor in the face of transfer documents suggesting that the transfer had been intended as a gift. For instance, in *Lee Nellie v Wong Lai Kay* [1990] 1 SLR(R) 215, the plaintiff alleged that she had transferred a property to the defendant on trust. Notwithstanding that the terms of the transfer instrument expressly provided that the transfer had been made "in consideration of natural love and affection", Yong Pung How J (as he then was) considered the evidence of the plaintiff's intention in its totality and concluded that such evidence did not support the

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defendant's allegation that the transfer of the property had been intended as a gift.

12 In the present case, the importance of considering the circumstantial evidence on hand was further reinforced by the fact that Mr Lim, being deceased, was no longer able to provide direct evidence of his own intentions. In this regard, we highlight the Court of Appeal's observation in *Chan Yuen Lan* (at [51]) that:

> … In *Lau Siew Kim*, ***the father was no longer alive***; thus, it was necessary to ***rely on the presumptions and the circumstantial evidence in order to divine his intentions*** with respect to his contributions towards the purchase price of the properties in question. [emphasis in original in italics; emphasis added in bold italics]

13 In our view, the weight of the evidence as a whole did not support LSI's position that the 1981 Transfer had been intended as a gift. On the contrary, there were several reasonably cogent indicia that there was no such positive donative intent on Mr Lim's part. These indicia were based primarily on objective facts or facts which had not been disputed by either party.

14 First, Mr Lim had only received primary school education in China and was illiterate in the English language. His signatures on the transfer documents were also in Chinese characters. There was no evidence that he had been advised on the legal implications of the 1981 Transfer or that he had even read or understood the words "BY GIFT" on the Title Deed Stamp. The 1981 Transfer Instrument did not speak to these concerns.

15 In this connection, the facts of the present case may be distinguished from that of *Mak Saw Ching v Yam Hui Min, Barbara Rebecca* [2014] SGHC 212 ("*Mak Saw Ching*"). In *Mak Saw Ching*, the applicant executed a transfer

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of a HDB flat to the respondent as a joint tenant with herself. The consideration for the transfer was stated in the transfer document as "Natural Love and Affection", and the transfer was notified as a "Gift" on the HDB lease. The applicant alleged that she had in fact intended to create an express trust over the flat with the respondent as trustee when she made the transfer to the respondent. In reaching the conclusion that the transfer had been intended as a gift and not as a trust, the Judge emphasised the fact that:

> 37 … the Applicant did not challenge the Respondent's evidence that both the procedure for and the effect of the transfer had been *clearly explained to her by a HDB officer* before she executed to the transfer. Nor did the Applicant challenge the Respondent's evidence that the words "Natural Love and Affection" had been stated as the consideration for the transfer *at her direction*. … [emphasis added]

16 Secondly, Mr Lim's conduct showed that he continued to exercise control over the Flat as if he was its sole owner. For instance, it was not disputed that in 2001, Mr Lim had arranged for LCH to be made a joint tenant of the Flat without first obtaining LSI's consent to do so. In any event, LSI did not protest. Moreover, Mr Lim had demanded that his children, including both LSI and LCH, pay him rent whenever they were residing in the Flat. This was evidenced by a series of e-mails between the parties in September 2014. In her e-mail to LSI dated 25 September 2014, LCH had informed LSI that "Dad is requesting rental from me for the use of your room in block 2." On 28 September 2014, LSI replied that "Dad also did asked me to pay [rental]" and explained that she had declined to pay, not because she was a co-owner of the Flat, but because she had already been paying for the Flat's renovations and expenses.

17 In her submissions on appeal, LSI asserted that Mr Lim's demands for rent had nothing to do with their shares in the Flat and were merely a way of "nudging" his family members to make financial contributions for the Lim

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family's collective benefit. We were unpersuaded by this submission as there was no evidence to show that Mr Lim had requested rental payments from those of his children who were not residing in the Flat. The terminology of "rental" was also, in our view, telling. LSI did not offer any reason as to why Mr Lim would have felt a need to couch a request for financial contributions from his family in such terms if he did not think that he was still the sole owner of the Flat.

18 Thirdly, there was no evidence that Mr Lim shared a particularly close relationship with LSI. Rather, the evidence suggested that he was a traditional patriarch who favoured his only son, Lim Kwong Yin ("LKY"). In particular, Mr Lim had executed a will on 27 April 2015 ("the Will") which provided that Mr Lim's "share" in the Flat, the money in his bank accounts, and his residual estate would *all* be given to LKY and LKY alone. Mr Lim did not bequeath any of his assets to his daughters, including LSI. Moreover, it was undisputed that LKY was the only one of Mr Lim's children who had been made a partner of Mr Lim's hair salon business. This was despite the fact that some of Mr Lim's elder daughters had also worked in the salon for a considerable period of time.

19 As for the fact that Mr Lim had added only LSI's name to the register in 1981, LCH's uncontroverted evidence was that LSI was the only one of Mr Lim's eight children who was suitable to become an owner of the Flat at the material time. The other children were either (a) estranged from Mr Lim or (b) unable to satisfy the HDB's eligibility criteria for ownership of the Flat. This provided support for LCH's position that Mr Lim had only transferred the Flat to LSI as a matter of administrative convenience, and/or because he was concerned that since he did not actually stay at the Flat after 1981 when his wife passed away, the Flat might be repossessed by the HDB if it were not occupied by its owner.

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20 We noted further that after LSI relocated from Singapore to live with her husband in the United Kingdom, she did not give any instructions about the maintenance or upkeep of the Flat. Nor did she continue paying for any related expenses. This suggested that she did not believe that she owned an interest in the Flat. From her conduct, it would appear that she was behaving more like a lodger, *ie*, paying for expenses only when she was staying at the Flat.

21 In addition, we noted that the e-mail exchanges between LCH and LSI in September 2014 made no mention of any legal or beneficial interest LSI had in the Flat. More pertinently, after Mr Lim's death on 4 September 2015, LSI apparently did not claim any interest in the Flat until after she was told about his Will two years later on 23 September 2017. It was only thereafter that LSI proceeded to file the Notice of Death of Mr Lim on 3 October 2017. Even if LSI did not initially appreciate the legal significance of being a joint tenant, she would have understood that she was at least a co-owner (if her account was to be believed) and would have wanted to enquire as to what would happen to the Flat upon Mr Lim's demise. The fact that she did not do so again suggests that she did not think that she owned any interest in the Flat.

22 Aside from the abovementioned points, there were certain aspects raised by LCH which were, in our view, neither here nor there. For instance, LCH relied on a provision in the Will which stated that Mr Lim intended to bequeath his "share" in the Flat to LKY. According to LCH, the word "share" ought to be interpreted to mean "100% share". With respect, we found insufficient basis for such an interpretation. LCH also alleged that Mr Lim had repeatedly requested LSI to renounce her ownership of the Flat, but as LSI pointed out, this allegation was unsupported by any documentary evidence whatsoever.

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23 Nevertheless, these aspects did not in our view detract from the overall cogency of the other indicia enumerated above. In our view, the evidence in its totality was sufficiently strong to establish, *on a balance of probabilities*, that Mr Lim did *not* intend to gift a beneficial interest in the Flat to LSI. Thus, in line with the Court of Appeal's observations in *Lau Siew Kim* at [35] (see [8] above), it was unnecessary for us to apply the presumption of resulting trust in the present case. Nor was it necessary to invoke the presumption of advancement, as that presumption similarly operates only when there is no evidence from which to prove or infer the intention of the transferor: see *Chan Yuen Lan* at [50]–[51]. In any event, given that there was no evidence that (a) LSI was financially dependent on Mr Lim, or that (b) Mr Lim shared a particularly close relationship with LSI, any presumption of advancement which might have arisen would not have been sufficiently strong to rebut a presumption of resulting trust in Mr Lim's favour.

24 For the reasons above, we were of the view that LSI, being the sole legal owner of the Flat, holds the Flat on resulting trust for the Estate.

Whether the trust in Mr Lim's favour contravenes the HDA

25 We next turn to LSI's argument that, even if she holds the Flat on trust for the Estate, such a trust would be void under ss 51(8) and/or 51(9) of the HDA. These provisions state:

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> (8) No trust in respect of any protected property shall be created by the owner thereof without the prior written approval of the Board.
>
> (9) Every trust which purports to be created in respect of any protected property without the prior written approval of the Board shall be null and void.

26 In making this argument, LSI relied primarily on the Court of Appeal's decision in *Lim Kieuh Huat v Lim Teck Leng and another and another appeal* [2021] 1 SLR 1328 ("*Lim Kieuh Huat (CA)*"). In that case, the appellants had financed the purchase of a HDB flat, but had intentionally registered the flat in their son's sole name so as to avoid paying a resale levy and enable their son to obtain a housing loan. The parties did not obtain the HDB's prior written approval for this arrangement. The Court of Appeal held (at [11]) that, although the parties had eschewed the language of an express trust, their arrangement in effect entailed the "creat[ion]" of an express trust and thereby contravened ss 51(8)–(9) of the HDA.

27 LSI suggested that the trust in the present case was likewise an express trust that had been "created" in Mr Lim's favour. However, it is trite that an express trust will only be found to exist if there is sufficient evidence of the settlor's intention to create a trust. In the present case, there was no evidence of any intention on Mr Lim's part to bifurcate the legal and beneficial interest in the Flat, and retain the beneficial interest whilst conferring only the legal interest on LSI. This may be contrasted with *Lim Kieuh Huat (CA)*, where the appellants admitted that they had deliberately structured the arrangement in order to circumvent the HDB resale levy requirements whilst retaining beneficial ownership of the flat: see *Lim Kieuh Huat (CA)* at [10]–[11]. In our judgment, the trust in Mr Lim's favour was in the nature of a resulting trust, not an express trust. Subsections 51(8) and (9) of the HDA were therefore inapplicable here.

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28 Section 51(10) of the HDA provides that "[n]o person shall *become entitled* to any protected property (or any interest in such property) under any resulting trust or constructive trust whensoever created or arising" [emphasis added]. In our view, the resulting trust in Mr Lim's favour similarly did not contravene s 51(10) of the HDA. We noted that there are two High Court decisions that have interpreted s 51(10) differently. In *Tan Chui Lian v Neo Liew Eng* [2007] 1 SLR(R) 265 at [10], the High Court held that s 51(10) was intended only to prevent a person from acquiring an interest in an HDB flat by virtue of a resulting or constructive trust if that person would otherwise have been ineligible to acquire such an interest. In contrast, in *Lim Kieuh Huat and another v Lim Teck Leng and another* [2020] SGHC 181 at [80]–[86], the High Court held that s 51(10) would prevent even an otherwise eligible owner from obtaining an interest under the trust if that person did not already have an interest in the flat in question. On appeal, the Court of Appeal held that it was not necessary to determine the issue relating to s 51(10) for purposes of its decision in that case: *Lim Kieuh Huat (CA)* at [13]. It is clear that, on either interpretation, s 51(10) does not extend to situations where the person in whose favour the trust arises *already* has an interest in the flat in question. In the present case, Mr Lim had already possessed an interest in the Flat *before* the 1981 Transfer, and therefore cannot be said to have "become entitled" to an interest in the Flat by virtue of the resulting trust in his favour.

Whether the present action could and ought to be converted into a writ action

29 Finally, we address LSI's contention that OS 168 should be converted into a writ action in the event that this Court was not with her on the facts.

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30 The applicable statutory provision in this regard is O 28 r 8(1) of the Rules of Court (2014 Rev Ed), which enables the court to convert an OS action into a writ action on its own motion if it is satisfied that "the proceedings should for any reason be continued as if the cause or matter had been begun by writ". However, even if the nature of the dispute indicates that a matter should be converted into a writ action, a party can lose the ability to ask the court to order such a conversion if it has elected to forgo the opportunity to do so: see *TDA v TCZ and others* [2016] 3 SLR 329 at [34]–[36] and *LS Investment Pte Ltd v Majlis Ugama Islam Singapura* [1998] 3 SLR(R) 369 at [55].

31 While there were apparent disputes of fact in the present case, LSI had not seen fit to apply for the present matter to be heard by way of writ action in the hearing below or to seek an order to cross-examine certain deponents on their affidavits. Having elected to forgo the opportunity to do so, LSI should not be permitted to change her stance on appeal.

32 In any event, the points which LSI intended to pursue in cross-examination were allegedly related to the unreliability of the affidavits filed by her siblings in support of LCH's position given that the material events surrounding the 1981 Transfer took place some 40 years ago. We did not think that these were material to the outcome of the present appeal. As mentioned at [13] above, the indicia which we relied upon to determine Mr Lim's intention were based primarily on facts which were undisputed by either party. The outcome of LSI's intended cross-examination would not affect our analysis of these indicia or the conclusions which we drew therefrom.

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Conclusion

33 For the reasons set out above, we allowed the appeal and granted LCH the declaration of trust sought in OS 168. LCH was also granted an order in terms of the other prayers sought in OS 168. These included orders requiring LSI to (a) deliver up possession of the Flat to the Estate in order that the Flat may be sold in the open market within six months from the date of this judgment or such extended period as may be agreed between the parties or allowed by the court; (b) sign and execute all documents, instruments and/or applications as may be necessary to effect a sale and/or transfer of the Flat as may be directed by the Estate; and (c) be accountable to the Estate as trustee from the date of Mr Lim's demise for all benefits and income arising from the Flat as well as for all loss or damages to the Estate occasioned by her breach of duty as trustee. The parties were granted liberty to apply.

34 We also reversed the costs order below and awarded LCH costs fixed at $40,000 (all in) for the appeal and below. The usual consequential orders would apply.

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Woo Bih Li
Judge of the Appellate Division

See Kee Oon
Judge of the High Court

Chua Lee Ming
Judge of the High Court

Ivan Lee Tze Chuen and Letchamanan Devadason (LegalStandard LLP) for the appellant;
Lim Cheng Hock Lawrence (Matthew Chiong Partnership) for the respondent.

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