

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

[2024] SGHC(A) 14

Appellate Division / Civil Appeals Nos 115 of 2023 and 116 of 2023

Between

Djony Gunawan

... Appellant

And

Christina Lesmana

... Respondent

In the matter of Originating Application No 713 of 2022

Between

Djony Gunawan

... Claimant

And

Christina Lesmana

... Defendant

In the matter of Originating Summons No 1095 of 2021

Between

Christina Lesmana

... Plaintiff

And

Djony Gunawan

... Defendant

GROUNDS OF DECISION

[Evidence — Proof of evidence — Presumptions]

[Family Law — Advancement — Presumption]

[Land — Interest in land — Joint tenancy]

[Trusts — Resulting trusts]

TABLE OF CONTENTS

INTRODUCTION.....	1
HISTORY OF VARIOUS RELATED PROCEEDINGS AND THE EVENTS LEADING TO OS 1095 AND OA 713	2
DECISION OF THE GENERAL DIVISION OF THE HIGH COURT IN OS 1095 AND OA 713	3
PARTIES' CASES IN THE APPEALS	5
<i>Mr Gunawan's case</i>	5
<i>Ms Lesmana's case</i>	6
PRELIMINARY POINTS.....	7
BURDEN OF PROOF	7
JUDGE'S RELIANCE ON THE DATE 23 AUGUST 2007	12
ISSUE BEFORE THIS COURT.....	14
DISCUSSION AND DECISION	15
INHERENT INCONSISTENCIES IN MR GUNAWAN'S EVIDENCE.....	18
MR GUNAWAN'S 2018 WILL	19
MR GUNAWAN'S AFFIDAVIT IN CA/OS 17/2018.....	19
MR GUNAWAN'S WRITTEN STATEMENT IN RAS 10.....	20
<i>RES JUDICATA</i>	21
CONCLUSION.....	21

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

Djony Gunawan
v
Christina Lesmana and another appeal

[2024] SGHC(A) 14

Appellate Division of the High Court — Civil Appeals Nos 115 of 2023 and 116 of 2023

Belinda Ang Saw Ean JCA, Kannan Ramesh JAD and Philip Jeyaretnam J
4 April 2024

10 May 2024

Belinda Ang Saw Ean JCA (delivering the grounds of decision of the court):

Introduction

1 Both AD/CA 115/2023 (“AD 115”) and AD/CA 116/2023 (“AD 116”) were filed by the appellant, Mr Djony Gunawan (“Mr Gunawan”). AD 116 was Mr Gunawan’s appeal against the decision of a Judge of the General Division of the High Court (the “Judge”) to grant the respondent’s application in HC/OS 1095/2021 (“OS 1095”) for sale in lieu of partition of a property known as the “Seaview Property”, with the sale proceeds to be distributed equally between the respondent, Ms Christina Lesmana (“Ms Lesmana”), and Mr Gunawan. AD 115 was Mr Gunawan’s appeal against the Judge’s dismissal of his application in HC/OA 713/2022 (“OA 713”). Mr Gunawan filed OA 713 for, *inter alia*, a declaration that he was the sole beneficial owner of the Seaview Property and

for Ms Lesmana’s name as joint owner to be removed from the certificate of title.

History of various related proceedings and the events leading to OS 1095 and OA 713

2 Mr Gunawan and Ms Lesmana were married in Indonesia in 1995. The marriage of 18 years ended in divorce in June 2013. There were three children from the marriage.

3 The Seaview Property was purchased in 2007 with Mr Gunawan exercising the option to purchase in his sole name. However, it transpired that sometime thereafter and before legal completion of the sale to Mr Gunawan as a subsidiary proprietor, Mr Gunawan consented to adding Ms Lesmana’s name to the certificate of title of the property. The certificate of title in evidence showed her to be a joint tenant as early as 24 June 2009.

4 More than three years after the parties’ divorce in Indonesia, on 21 October 2016, Ms Lesmana filed FC/OSF 101/2016 (“OSF 101”) in the Family Justice Courts of Singapore where she sought leave, pursuant to s 121D of the Women’s Charter (Cap 353, 2009 Rev Ed) (the “Women’s Charter”), to apply for financial relief consequent on a foreign divorce. In particular, she sought leave to apply for a division of the Seaview Property as a matrimonial asset. OSF 101 was dismissed by a district judge. Ms Lesmana succeeded in her appeal filed in HCF/RAS 10/2017 (“RAS 10”). Ms Lesmana then commenced FC/OSF 124/2017 (“OSF 124”) on 26 December 2017 for sale of the Seaview Property with a just and equitable distribution of the sale proceeds under s 121B of the Women’s Charter. Ms Lesmana withdrew OSF 124 on 6 April 2022.

5 Mr Gunawan successfully obtained permission to appeal against the decision in RAS 10, albeit out of time and, on 19 September 2018, Mr Gunawan filed CA/CA 169/2018 (“CA 169”) to appeal against the decision in RAS 10. The Court of Appeal dismissed the appeal on 9 July 2019 and upheld the decision of the court below in RAS 10 to grant leave to Ms Lesmana to commence proceedings for financial relief under Ch 4A of Pt X of the Women’s Charter. Relevantly for present purposes, the Court of Appeal in its grounds of decision published as *UFN v UFM and another matter* [2019] 2 SLR 650 (“*UFN*”) on 9 October 2019 observed at [63] that Ms Lesmana “as joint tenant of the Seaview Property, may be entitled to apply for a sale and partition of the property and seek half of the sale proceeds” and that the court would “leave it to her to decide whether this would be a less costly way for her to obtain a share of the Seaview Property”.

6 On 30 September 2019, Mr Gunawan’s mother commenced HC/OS 1207/2019 (“OS 1207”) to stake her claim on the Seaview Property. She sought a declaration that she was the rightful legal and beneficial owner of the Seaview Property. She claimed that both her son and Ms Lesmana held the property on trust for her. OS 1207 was dismissed on 24 March 2021. There was no appeal against the dismissal.

7 On 28 October 2021, Ms Lesmana filed OS 1095 and Mr Gunawan filed OA 713 on 26 October 2022.

Decision of the General Division of the High Court in OS 1095 and OA 713

8 OS 1095 and OA 713 were consolidated. The Judge in his oral grounds ruled in favour of Ms Lesmana on 9 October 2023 and ordered the Seaview

Property to be sold in the open market in lieu of partition. He further ordered that Ms Lesmana was to receive as her entitlement 50% of the sale proceeds.

9 There were various contentious facts in evidence that could not be resolved. In his oral grounds, the Judge noted that notwithstanding the parties' serious dispute over the material facts, the earlier order for the parties' witnesses to be cross-examined on the disputed facts was revoked following Mr Gunawan's decision to proceed on a documents-only hearing. According to the Judge, the change meant that he was left to determine the consolidated applications on the available evidence gathered from the undisputed facts.

10 The Judge also separately looked at the disputed documentary evidence relied upon by Mr Gunawan and went on to observe that even if he had to adjudicate on the facts based on the documents disputed by the parties, he would have likely ruled in favour of Ms Lesmana. All said, the Judge concluded that he was obliged to treat Mr Gunawan's allegations against Ms Lesmana as not having been proved.

11 On the available evidence, the Judge accepted that it was Mr Gunawan who paid the entire purchase price for the Seaview Property. The Judge relied on the holding in OS 1207 that Mr Gunawan's mother had gifted to her son the funds that were used to purchase the Seaview Property. In addition, all the mortgage payments were made by Mr Gunawan. On the part of Ms Lesmana, she accepted that Mr Gunawan paid for the Seaview Property and that she had not paid anything for her interest as joint tenant of the property. The Judge accepted that the presumption of advancement raised by Ms Lesmana operated and that it had not been rebutted by Mr Gunawan. In the result, the legal title reflected the beneficial interest of the parties involved. In other words, Mr

Gunawan was presumed to have intended to gift a legal and beneficial half share of the Seaview Property to Ms Lesmana.

Parties' cases in the appeals

Mr Gunawan's case

12 Counsel for Mr Gunawan, Mr Abdul Wahab bin Saul Hamid (“Mr Wahab”), argued that Mr Gunawan remained the sole beneficial owner of the Seaview Property as there was no intention to benefit Ms Lesmana at the time Ms Lesmana’s name was added as a joint tenant of the Seaview Property. The Judge had wrongly discounted Mr Gunawan’s evidence of actual intention not to benefit Ms Lesmana. In addition, contrary to the Judge’s finding, Mr Gunawan had rebutted the presumption of advancement raised by Ms Lesmana. In the circumstances, Ms Lesmana as joint tenant held her half share of the beneficial interest on a resulting trust.

13 Mr Gunawan in his Appellant’s Case had taken the position that the presumption of advancement was inapplicable to the present case. However, at the oral hearing, Mr Wahab conceded that the presumption of advancement was triggered on the facts, but it was rebutted by circumstances, contrary to the Judge’s finding. Mr Wahab submitted that at the time Ms Lesmana’s name was added as a joint tenant of the Seaview Property in 2009, the parties’ relationship had broken down to such an extent that Mr Gunawan could not have intended to benefit Ms Lesmana. For that reason, the presumption of advancement was not only weak but was properly rebutted. Mr Wahab also highlighted that it was Ms Lesmana’s case that she obtained a divorce in June 2013 after enduring years of abuse, which supported Mr Gunawan’s position that the parties’ poor relationship would contradict an intention on his part to benefit Ms Lesmana.

14 Ultimately, Mr Gunawan asserted that he had proven that the Seaview Property was meant to be in his family to be inherited by the male bloodline; that he was placed under duress to add Ms Lesmana as a joint owner of the property; that he had not made any declarations contrary to his intent to retain sole beneficial ownership of the property; and that there was no evidence that he intended for Ms Lesmana to benefit from his funding of the property.

Ms Lesmana's case

15 Ms Lesmana based her claim for a half-share of the beneficial interest in the Seaview Property on the presumption of advancement. The Seaview Property was paid entirely by Mr Gunawan. She accepted that she did not contribute anything to have her name added as a joint tenant. Counsel for Ms Lesmana, Mr Suang Wijaya (“Mr Wijaya”), submitted that the Judge was correct in concluding that the presumption of advancement was not rebutted. Mr Wijaya submitted that the Seaview Property was acquired between 2007 and 2009, at least two or three years before the start of any acrimony between the parties that eventually ended in a divorce in 2013. Mr Wijaya submitted that a strong presumption of advancement thus applied based on the parties’ spousal relationship.

16 Mr Wijaya further submitted that the Judge’s decision should be upheld on the alternative basis that Ms Lesmana had proven a common intention on the part of the parties to benefit her in the parties’ acquisition of the Seaview Property. In this regard, Ms Lesmana relied on Mr Gunawan’s own statements in an affidavit filed for RAS 10 (see [4] above). Ms Lesmana also relied on other documents to support her claim that there was a common intention to benefit her and it remained unchanged.

Preliminary points

Burden of proof

17 The burden of proof in question here turns on the proper legal framework for analysing the parties’ beneficial interest (if any) in the Seaview Property. In this regard and at the outset, we highlight the difficulties in the appeals as well as the cumulative effect of these difficulties.

18 Mr Gunawan first claimed in his affidavit in support of OA 713 that a resulting trust over the Seaview Property arose in his favour as he never intended for Ms Lesmana to hold any beneficial ownership in the property. He also claimed that as there was no dispute that he paid for the property entirely, a resulting trust operated as a presumed intention in the absence of actual intention.

19 We digress to make the following remarks. We agreed that after *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 (“*Chan Yuen Lan*”), the resulting trust is the default analytical tool to be used in Singapore for resolving property disputes in the absence of any evidence of a common intention between the parties as to how the beneficial interest in the property concerned would be held (see Christopher Hare and Vincent Ooi, *Singapore Trusts Law* (LexisNexis, 2021) at para 9-15, which commented on *Chan Yuen Lan* at [153] and *Stack v Dowden* [2007] 2 AC 432 at [103]–[145]). In their respective written submissions, the parties proceeded on the basis that the *Chan Yuen Lan* framework as set out at [160] of that decision applied. In our view, the *Chan Yuen Lan* framework was not particularly relevant to this case. The framework must be understood in the context of the facts of that case; there, the property in question had been registered in the wife's sole name at the point of acquisition, even though parties had both contributed (albeit in unequal amounts) to its

purchase price. On the other hand, in the present case, the transfer of the property (or strictly speaking the inclusion of Ms Lesmana as a joint tenant) occurred well after the property was first acquired by Mr Gunawan. In principle, the resulting trust analysis can still apply without adopting the *Chan Yuen Lan* framework to ascertain the beneficial interests in the property.

20 We make a further observation. The General Division of the High Court (the “General Division”) in *Ng Lai Kuen Priscilla Elizabeth and others v Ng Choong Keong Steven* [2023] SGHC 343 (“*Ng Lai Kuen Priscilla Elizabeth*”) applied the *Chan Yuen Lan* framework in determining the joint owners’ proprietary rights in the property in dispute in that action. Limb (a) of the *Chan Yuen Lan* framework (set out at [160] of *Chan Yuen Lan*), was applied at [44] of *Ng Lai Kuen Priscilla Elizabeth* even though one of the joint owners, the defendant, had contributed nothing whatsoever to the purchase of the property. We doubted the correctness of the General Division’s application of the *Chan Yuen Lan* framework to the facts of that case in circumstances where the defendant contributed nothing whatsoever to the purchase of the property and the property had, at the outset, been registered in the names of the defendant and his father as joint tenants. As mentioned, the *Chan Yuen Lan* framework was set against the context where the parties had made unequal contributions towards the purchase of a property. We further observed from the oral grounds recorded in the Minute Sheet of the Appellate Division of the High Court which dismissed the appeal against the decision in *Ng Lai Kuen Priscilla Elizabeth* that *Chan Yuen Lan* was not referred to. Instead, only *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 (“*Lau Siew Kim*”) was referred to and applied. There is no doubt that *Chan Yuen Lan* and *Lau Siew Kim*, both decisions of the Court of Appeal, are consistent with each other to the extent that they both consider and apply well-established principles relating to the law

on resulting trusts. However, the precise framework set down in *Chan Yuen Lan* need not be resorted to where the court is not required to determine the proportion of the contributors' interests that is to be derived from the types of contributions and the amounts paid at the time of acquisition of the property.

21 Returning to Mr Gunawan's claim that a resulting trust arose in his favour, Mr Gunawan based his claim on his direct evidence that purportedly proved his actual intention not to benefit Ms Lesmana at the time Ms Lesmana's name was added as a joint tenant of the Seaview Property in June 2009, based on the certificate of title. This issue of Mr Gunawan's actual intention at the time of the transfer in June 2009 was legally relevant in that a resulting trust might arise if there was evidence that the transfer was not intended to benefit the recipient (see *Lau Siew Kim* at [35] citing Robert Chambers, *Resulting Trusts* (Clarendon Press, Oxford, 1997) at p 32). The "lack-of-intention" or absence of intention analysis for resulting trusts was endorsed in *Chan Yuen Lan* at [43]–[44]. Notably, in principle, it is the absence of intent on the part of the transferor to benefit the recipient that is relevant. The intention of the recipient is irrelevant to the analysis of whether a resulting trust has arisen (see *Chan Yuen Lan* at [43]).

22 Ms Lesmana disputed the material facts Mr Gunawan relied on to prove his actual intention. His main difficulty was a result of his strategic mistake in resiling from his original position that there would be cross-examination. We noted that the Judge spent some time with counsel on 7 February 2023 explaining what it meant for them not to cross-examine the other side's witnesses or to allow their own witnesses to be cross-examined. We noted that while Mr Gunawan's then-counsel initially applied for the proceedings to continue with cross-examination, on 8 February 2023, Mr Gunawan's then counsel wrote to court to indicate that Mr Gunawan no longer wished for the

proceedings to proceed by way of cross-examination, with detailed reasons explaining the choice. The reasons included financial considerations and a desire for a speedy conclusion. About three months later, Mr Gunawan chose to act in person but maintained his decision to continue without cross-examination. It was not possible for Mr Gunawan to improve his position pertaining to evidence of his intention in the appeals.

23 Mr Gunawan proceeded on the presumed intention of the contributing party in the absence of evidence of actual intention. A resulting trust gives effect to the presumed intention of the transferor, in the absence of evidence of actual intention. The transferor's presumed intention is inferred from proof of two critical precedent facts: a transfer of property to another and the recipient having provided less than the whole of the consideration for the transfer (see *Lau Siew Kim* at [35]). In this case, the recipient, Ms Lesmana, did not provide any consideration for the transfer of the property to her name as joint tenant in June 2009. Ms Lesmana, in response to the operation of the presumption of resulting trust, raised the presumption of advancement. When the presumption of advancement operates, the transferor is presumed to intend to benefit the transferee unless there is *evidence* to the contrary: *Lau Siew Kim* at [57].

24 The Court of Appeal in *Lau Siew Kim* at [57] set down a two-stage test when the application of the presumption of resulting trust and the presumption of advancement are raised by the parties:

... We are of the view that a two-stage test remains helpful and, indeed, necessary. The court must first determine if the presumption of resulting trust arises on the facts; and it is *only* if a resulting trust is presumed that the presumption of advancement would apply to displace that initial presumption. In addition, it should also be noted that the actual *effect* of the presumptions of resulting trust and advancement relates to the

burden of proof in the particular case. As Abella J in *Pecore* astutely noted at [81]:

If the presumption of advancement applies, an individual who transfers property into another person's name is presumed to have intended to make a gift to that person. The burden of proving that the transfer was not intended to be a gift, is on the challenger to the transfer. If the presumption of resulting trust applies, the transferor is presumed to have intended to retain the beneficial ownership. The burden of proving that a gift *was* intended, is on the recipient of the transfer. [emphasis in original]

...

25 We agreed with Mr Gunawan that the presumption of resulting trust operated because of the following undisputed facts, namely there was a transfer of property to another and for which the recipient did not provide the whole (or, indeed, any part) of the consideration (see [23] above). For the purpose of these appeals, the legally relevant time was 2009 when Mr Gunawan appeared to have made a gift of a legal and half share of the beneficial interest in the Seaview Property to Ms Lesmana by adding her as a joint tenant. This was the time when the presumption of resulting trust operated to presume that Mr Gunawan lacked an intention to benefit Ms Lesmana through his apparent gift.

26 The burden was on Ms Lesmana to satisfy the second stage of the two-stage test. It was for Ms Lesmana to establish that a gift was intended by the transfer or to invoke the presumption of advancement to assist her. We will elaborate on the presumption of advancement below when we consider various elements to determine the strength of the presumption such as the nature of the relationship between the parties and the state of the relationship. In examining the nature of the relationship, the court would inquire into the obligation (whether of a legal or moral nature) that one party has towards another or the dependency between the parties. As regards the state of the relationship, the

court would consider whether the relationship was a close and caring one or one of formal convenience (see *Lau Siew Kim* at [78]).

Judge’s reliance on the date 23 August 2007

27 The Judge took the position that Mr Gunawan gave instructions to his lawyer to add Ms Lesmana’s name to the Seaview Property as a joint tenant on 23 August 2007 and that this information came from Mr Gunawan who, at the hearing, said that “I added her name on August 23rd 2007 ... right after she cut her wrist and threatened to jump down from the 10th floor of the Seaview if I did not add her name”. That timepoint, August 2007, became a source of Mr Gunawan’s discontentment with the Judge and it was that particular alleged factual error that Mr Gunawan took up with the Judge at the hearing below. The Judge’s alleged factual error was a point that was raised in the appeals.

28 We reviewed the record of appeal and concluded that Mr Gunawan did not unequivocally state that he had agreed to add Ms Lesmana’s name as a joint tenant on 23 August 2007. We referred to the court’s transcripts on 22 May 2023 where Mr Gunawan said:

[Mr Gunawan]:	I may ask---I may---if I have a permission to show the chronology of events that were compiled by Mr Lim Joo Toon?
Court:	No, I don’t want to see any of that. I just want you to answer my questions.
[Mr Gunawan]:	Okay.
Court:	I’m not asking you about dates. So don’t look at the chronology. I’m asking about one very simple thing.
[Mr Gunawan]:	Yes, I added her name in August 23rd 2007. Right after she had cut her wrist and threatened to jump down from the 10th floor of the Seaview if I did not add her name.

Court: Okay, so August 23rd 2007, you added her name by telling your lawyers to add the name.

[Mr Gunawan]: I agreed to --- I don't remember whether I talked to Francis Ow or not. But I agreed to Christina at that time, "Okay, okay, just leave me alone."

29 Mr Francis Ow was the solicitor handling the purchase of the Seaview Property in 2007. Mr Lim Joo Toon was counsel acting for Mr Gunawan in OSF 124.

30 In our view, little weight should have been given to Mr Gunawan's alleged admission. It appeared from the exchange that Mr Gunawan, who had been acting in person then, was confused about the chronology and had wanted to refer to a written chronology of events that had been prepared by his former counsel for OSF 124. However, the Judge stopped Mr Gunawan from doing so. Turning to the evidence provided by Mr Gunawan in OSF 124 when he was being represented by Mr Lim Joo Toon, we noted that Mr Lim Joo Toon was appointed to act in OSF 124 on 19 October 2021, and in an affidavit dated that very day, Mr Gunawan deposed that "sometime in 2009", Ms Lesmana threatened to commit suicide and Mr Gunawan acceded to her request to be added as a joint legal owner of the Seaview Property. We were persuaded that there was some merit in Mr Gunawan's complaint about the Judge's mistake.

31 The entire exchange captured in the court's transcripts for 22 May 2023 suggested that whilst Mr Gunawan initially offered 23 August 2007 as the date on which he added Ms Lesmana's name to the certificate of title, he later sought to clarify that around 23 August 2007, he orally promised Ms Lesmana that he would add her name so as to placate her after an alleged suicide threat, but he

could not remember whether he spoke to his solicitor to instruct the solicitor to carry out the promise.

32 Evidently, the Judge misunderstood Mr Gunawan's answer and wrongly used 23 August 2007 as the date on which Mr Gunawan actually added Ms Lesmana's name to the certificate of title of the Seaview Property. In 2007, the development was still under construction, and Mr Gunawan's point of contention was on the absence of documentary evidence that Ms Lesmana's name was "added" back in 2007, as compared to the certificate of title of the Seaview Property where the parties were registered as joint tenants on 24 June 2009.

33 Ms Lesmana relied on the certificate of title to prove her proprietary right as a joint tenant under property law. In the challenge that ensued, two presumptions were relied on to ascertain the disputing parties' proprietary rights. Both presumptions raised the question of whether the relevant operative date should be in 2009 and not earlier than 2009.

Issue before this court

34 At the oral hearing, Mr Wahab confirmed that the presumption of advancement was triggered on the facts, and he conceded that his arguments were simply directed towards rebutting it. With this as well as our remarks on the available evidence (see [17]–[26] above) in mind, the sole issue before this court pertained to the threshold for appellate intervention, that is to say whether the Judge had erred in concluding that Mr Gunawan had not rebutted the presumption of advancement because the Judge's assessment of the evidence was plainly wrong or manifestly against the weight of the evidence.

Discussion and decision

35 Although the Judge made no specific finding on the existence of a presumption of resulting trust, it could be inferred that he thought the presumption applied in 2007 (given the date of inclusion of Ms Lesmana's name as joint tenant as adopted by the Judge – see [27] above) because he decided in favour of Ms Lesmana based on the presumption of advancement, which is necessarily parasitic on the presumption of resulting trust: *Lau Siew Kim* at [57]. In our view, it would be incorrect to look at 2007; the legally relevant time for analysing the existence of a presumption of resulting trust must be 2009 when Ms Lesmana was added as a joint tenant (see [21] and [25] above). Separately, we agreed with the Judge's overall finding that the presumption of advancement was not rebutted.

36 The first question in the appeals was whether, on the facts, the presumption of resulting trust applied to the transaction where Ms Lesmana was added as a joint tenant in 2009. We agreed with Mr Gunawan that the presumption of resulting trust applied for the reasons explained above. To repeat, Mr Gunawan was entitled to invoke the presumption of resulting trust on these facts. In 2009, Mr Gunawan had added Ms Lesmana as a joint tenant of the Seaview Property and Ms Lesmana did not provide any consideration for the transfer. The legally relevant time was 2009 when Mr Gunawan added Ms Lesmana as a joint tenant. That was the time when the presumption of resulting trust operated to presume, as an inference arising from the set of undisputed facts, that Mr Gunawan lacked an intention to benefit Ms Lesmana.

37 The next question that arose in the appeals was whether the presumption of resulting trust was displaced or rebutted by the presumption of advancement. As mentioned earlier, Mr Wahab had conceded that the presumption of

advancement was triggered and the issue before us was whether Mr Gunawan had on the evidence rebutted the presumption.

38 A presumption of an advancement arises when a gratuitous transfer of property takes place between persons in certain recognised relationships. A spousal relationship is a recognised category. When the presumption arises, the law presumes an intention on the part of the transferor to benefit the spouse. All that Ms Lesmana needed to do to invoke the presumption of advancement was to prove two critical precedent facts: (a) that she belonged in one of the various recognised categories of relationships in which the presumption of advancement operated (*eg*, spousal relationships), and (b) that she had received what appeared to be a gift from the counterparty in that relationship. There was no dispute that Ms Lesmana had proven these two critical facts. The parties were still married in 2009. Their divorce was several years later in 2013. As the transfer was gratuitous, and unless there was any evidence to the contrary, the court would regard any such transfer as a gift.

39 In relation to Mr Wahab's concession that the presumption of advancement applied, we were prepared to treat him as taking the stance that given the state of the relationship between the parties, the presumption was weak and hence less weighty evidence was required to rebut it. In this regard, Mr Wahab had relied on the alleged breakdown of the marriage between 2007 and 2009 (see [40] below). Significantly, when Ms Lesmana's name was added to the Seaview Property in 2009, the parties were still married. They remained married until their divorce in 2013. Ms Lesmana was a housewife throughout the marriage. In fact, Mr Gunawan's behaviour even after the divorce did not suggest that the marriage had broken down in 2009. His letter to the Family Justice Courts in 2017 indicated his affection, care, and concern for the welfare of Ms Lesmana and his children:

4. I inherited the Alam Sutra apartment, the Kedoya apartment in Indonesia and the Seaview apartment in Singapore from my parents. *The Alam Sutra and the Seaview apartment are under mine and my wife names. (I love her a lot and as such I put her names in my properties to make sure she is financially safe when I am gone)*

[emphasis added]

40 In our view, having regard to the objective evidence favouring Ms Lesmana on key elements such as (a) the nature of the relationship between the parties and (b) the state of the relationship (see *Lau Siew Kim* at [78] and see [26] above), the presumption of advancement operated strongly in this case. On the nature of the relationship, Ms Lesmana was a homemaker throughout the marriage, and was financially dependent on her husband. Mr Gunawan did not dispute those facts. He accepted his obligation to financially support his wife and family. Turning to the state of the relationship between the parties, Mr Wahab referred us to Ms Lesmana’s affidavits filed in various proceedings where she had alleged that she (and the couple’s children) had been subjected to physical violence at various points during the marriage. This point was relied upon to demonstrate that the marriage had broken down by 2009 and that Mr Gunawan would in no way have intended to make a gift of a beneficial interest to Ms Lesmana. We disagreed that this piece of evidence served to unequivocally rebut the presumption. To put the point shortly, a violent, mercurial spouse who was prone to fits of anger might still love his family and could still have intended to make gifts to them. As mentioned, Mr Gunawan’s 2017 statement, made *after* the divorce, spoke of his love for Ms Lesmana and that the transfer of the property was to ensure her financial “security” or well-being. Moreover, at the hearing, this court pointed out to Mr Wahab that the Indonesian court documents dating back to 2013 relating to the parties’ divorce in Indonesia indicated that the parties’ relationship had broken down only in

2012 (*ie*, three years after Ms Lesmana was made a joint tenant of the Seaview Property). Counsel was unable to provide any countervailing evidence.

41 We agreed with the Judge that on the evidence, Mr Gunawan had not rebutted the presumption of advancement. As the presumption of advancement operated and was not rebutted, the gratuitous transfer of a share in the Seaview Property to Ms Lesmana was rightly held to be a gift to her.

42 For completeness, our remarks above on the heavily disputed evidence also left no room for the operation of a common intention constructive trust, which requires “*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” [emphasis added] from that in which the beneficial interest was initially held (*Chan Yuen Lan* at [160(f)]). Ms Lesmana’s alternative submission (see [16] above), which appeared to be based on the common intention constructive trust, thus suffered from the same evidential difficulties as Mr Gunawan’s case.

Inherent inconsistencies in Mr Gunawan’s evidence

43 Our conclusion that Mr Gunawan had not successfully rebutted the presumption of advancement was sufficient to dismiss the appeals. We, however, close with some observations on Mr Gunawan’s documentary evidence examined at face value. Looking at his documentary evidence at face value, there existed inherent inconsistencies that undermined his case on intention or lack of intention to benefit Ms Lesmana. We need only refer to a few examples as illustration.

Mr Gunawan’s 2018 will

44 Mr Gunawan made a will on 3 March 2018 (the “2018 will”). The 2018 will stated:

...

If **Christina Lesmana** predeceases me and I am the sole owner of the [Seaview Property], then upon my demise, the said property shall be bequeathed to my son ...

[emphasis in original]

45 In our view, while the 2018 will showed that Mr Gunawan had bequeathed the Seaview Property to his son, it recognised that this would only take place if Ms Lesmana had predeceased Mr Gunawan. In other words, it implicitly accepted that the principle of survivorship applied as between Mr Gunawan and Ms Lesmana, an essential feature of the joint tenancy. There was thus nothing in the 2018 will which sought to dispose of Mr Gunawan's beneficial interest ignoring Ms Lesmana’s interest as a joint tenant.

46 Furthermore, we noted that when the 2018 will was executed in March 2018, when legal proceedings over the Seaview Property had already been going on for some time in the Family Justice Courts since 2016, Mr Gunawan said nothing in the 2018 will about Ms Lesmana holding the Seaview Property on trust for their son should Mr Gunawan predecease her. Inferentially, there was recognition that Ms Lesmana held both a legal and beneficial interest in the Seaview Property. The 2018 will largely supported Ms Lesmana’s case.

Mr Gunawan’s affidavit in CA/OS 17/2018

47 Mr Gunawan, at paragraph 21 of his CA/OS 17/2018 (“OS 17”) supporting affidavit, made several statements. He stated that he left the Seaview Property in both parties’ names as he wished to “provide the children with a

home and my wife a security”. Mr Gunawan also stated that he wanted to pass his inheritance from his parents to his wife and children. Pausing here, OS 17 was Mr Gunawan’s application for extension of time to seek permission to appeal against the Judge’s decision in RAS 10. The point here is that his assertions in his earlier affidavit were inconsistent with the position he took in these appeals *ie*, there was no intention to benefit Ms Lesmana when he added her name to the property.

Mr Gunawan’s written statement in RAS 10

48 On 22 September 2017, the High Court (Family Division) hearing RAS 10 released its judgment. As noted earlier, the court allowed Ms Lesmana’s appeal against the decision of a district judge and granted Ms Lesmana leave to proceed with her application under Ch 4A of Pt X of the Women’s Charter. On 4 October 2017, Mr Gunawan sought leave to make further arguments. His attachment to his request to make further arguments stated the following:

I respected wholeheartedly the judgement made by the honourable Judicial commissioner [sic], Miss Valerie Thean. However I feel that there are some points that have been overlooked. All these while I had been representing myself., my lawyer Mimi Oh from Ethos Law was only appointed at the last stage of the lower court case, upon urging by the registrar to appoint a lawyer and therefore she might have overlooked important points that the I now wish to clarify to the court.

...

4. I inherited the Alam Sutra apartment, the Kedoya apartment in Indonesia and the Seaview apartment in Singapore from my parents. *The Alam Sutra and the Seaview apartment are under mine and my wife names. (I love her a lot and as such I put her names in my properties to make sure she is financially safe when I am gone)*

...

8. I want to keep my wife’s name for the Seaview apartment as this will serve as a safe house for the family should another anti Chinese riots break out in Indonesia.

[emphasis added]

49 These statements were made by Mr Gunawan in 2017 many years after the Seaview Property was acquired and the reasons stated for adding Ms Lesmana as a joint tenant were tellingly inconsistent with his claim to sole beneficial ownership of the Seaview Property. Mr Gunawan sought to explain these statements but for present purposes his explanation formed part of the disputed body of facts. We are merely pointing to documentary evidence that on face value were ostensibly inconsistent with his case.

Res judicata

50 For completeness, we now come to the *res judicata* argument raised by counsel for Ms Lesmana, Mr Wijaya. We found Ms Lesmana's contentions on the *res judicata* issue irrelevant to the merits of the appeals. It suffices to say that it was not an abuse of process for Mr Gunawan to argue before us that he was entitled to 100% of the beneficial interest in the Seaview Property because there was no conflict between this argument and the decision in OS 1207, which was that Mr Gunawan's mother did not have any ownership interest in the Seaview Property. We observed that Mr Wijaya subsequently tried to advance the *res judicata* argument as giving rise to protracted litigation and wasted time and costs.

Conclusion

51 For the reasons stated, we dismissed the appeals.

52 We ordered costs in favour of Ms Lesmana as the successful respondent in the sum of \$70,000, all-in. This sum was a global figure for the two appeals, and for the following matters for which costs had been reserved to this court: (a) HC/SUM 3470/2023 filed in OS 1095; (b) Mr Gunawan's filing of his

supplemental record of appeal; and (c) the extension of time application to file the appellant's case and the record of appeal. The usual consequential orders applied.

Belinda Ang Saw Ean
Justice of the Court of Appeal

Kannan Ramesh
Judge of the Appellate Division

Philip Jeyaretnam
Judge of the High Court

Abdul Wahab bin Saul Hamid and Muhammad Hasif bin Abdul Aziz
(A.W. LAW LLC) for the appellant;
Suang Wijaya and Johannes Hadi (Eugene Thuraisingam LLP) for
the respondent.
