

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 257

Originating Summons No 218 of 2019

Between

Tan Chor Hong

... Plaintiff

And

Ng Cheng Hock

... Defendant

GROUND OF DECISION

[Land] — [Interest in land] — [Tenancy in common]

[Land] — [Sale of land] — [Sale under court order]

TABLE OF CONTENTS

INTRODUCTION.....	1
ISSUES	3
THE PARTIES' RELATIVE SHARES IN THE FLAT	3
RELEVANT FACTS	3
<i>How parties came to purchase the Flat together</i>	<i>3</i>
<i>Parties' intention on their respective shareholding.....</i>	<i>5</i>
<i>Parties' financial contribution towards the Flat</i>	<i>7</i>
<i>Events after completion of sale</i>	<i>8</i>
OVERVIEW OF MR NG'S CASE FOR CLAIMING MORE THAN 5% OF THE FLAT	10
ANALYSIS.....	12
WHETHER THE COURT SHOULD ORDER THE SALE OF THE FLAT	19
WHETHER MDM TAN SHOULD BE GIVEN SOLE CONDUCT OF THE SALE	21
WHETHER MDM TAN SHOULD BE GIVEN THE RIGHT TO BUY OVER MR NG'S SHARE.....	22
CONCLUSION.....	23

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.

Tan Chor Hong
v
Ng Cheng Hock

[2019] SGHC 257

High Court — Originating Summons No 218 of 2019
Pang Khang Chau J
9 and 29 July 2019

31 October 2019

Pang Khang Chau J:

Introduction

1 In 1997, the plaintiff Mdm Tan Chor Hong (“Mdm Tan”) and the defendant Mr Ng Cheng Hock (“Mr Ng”) bought a 5-room flat in Woodlands (“the Flat”) from the Housing and Development Board (“HDB”) under the Joint Singles Scheme as tenants-in-common, with Mdm Tan holding a 95% share and Mr Ng holding a 5% share.

2 Mdm Tan and Mr Ng were not related in any way. They only got to know each other shortly before the purchase of the Flat through their mutual friend, Mr Ang. Mdm Tan and Mr Ng lost contact with each other soon after the purchase of the Flat. Mr Ng moved to Japan in 2000 where he spent 18 years in prison after being convicted of a drug-related offence. Mr Ng never stayed a single day in the Flat until after his return from Japan in December 2018.

3 Mdm Tan was 41 years old back in 1997 and is now aged 63. Mr Ng was 37 years old back in 1997 and is now aged 59. Over the past twenty-odd years, the monthly repayments for the HDB mortgage loan came entirely from Mdm Tan. Mr Ng's *only* monetary contribution towards the Flat was a payment of \$7,922.44 from *his CPF account* in October 1998 as part of the initial capital payment for the Flat, for which he received a partial repayment of \$5,000 *in cash* from Mdm Tan a few days later.

4 After Mr Ng's return to Singapore, disputes arose between Mdm Tan and Mr Ng over the Flat. This prompted Mdm Tan to apply to court for the Flat to be sold in the open market and for the sale proceeds to be divided between her and Mr Ng in the ratio of 95:5. Mdm Tan also sought to be given sole conduct of the sale. In addition, Mdm Tan sought an order that she be allowed to buy over Mr Ng's share directly at valuation price in lieu of putting the Flat up for sale.

5 Mr Ng did not object to the court ordering a sale of the Flat. Instead, Mr Ng objected to Mdm Tan having sole conduct of the sale and to Mdm Tan being given the right to buy over his share at valuation price. Mr Ng also claimed to be entitled to 43.4% of the sale proceeds on the basis that Mdm Tan held 38.4% of the Flat on resulting trust for Mr Ng.

6 The Flat was purchased for \$237,282.44 and is now worth about \$450,000 (based on recent HDB transacted prices for similar flats). Deducting the outstanding mortgage loan of about \$50,000, the equity in the Flat should be around \$400,000. Thus a 5% share in the Flat should be worth around \$20,000 while a 43.4% share should be worth around \$170,000.

7 After hearing the parties, I ordered the sale of the Flat with Mdm Tan having sole conduct of the sale. I also ordered that the sale proceeds should be divided in the ratio of 95:5 between Mdm Tan and Mr Ng. I did *not* grant Mdm Tan's request for an order giving her the right to buy over Mr Ng's share. Both Mr Ng and Mdm Tan have appealed against my decision. I now provide my grounds of decision.

Issues

8 In these grounds, I will address the following key issues:

- (a) the parties' relative shares in the Flat;
- (b) whether the court should order the sale of the Flat;
- (c) whether Mdm Tan should be given sole conduct of the sale; and
- (d) whether Mdm Tan should be given the right to buy over Mr Ng's share.

The parties' relative shares in the Flat

Relevant facts

How parties came to purchase the Flat together

9 It is common ground that Mdm Tan and Mr Ng became acquainted sometime in 1997 through their mutual friend Mr Ang.¹

¹ Mr Ng's 2nd affidavit, filed on 30 April 2019, at para 14; Mdm Tan's 3rd affidavit, filed on 28 May 2019, at para 7.

10 According to Mr Ng:²

- (a) Mdm Tan was Mr Ang's mistress, whom Mr Ang wished to provide for as she was then pregnant;
- (b) as Mr Ang was not in a position to purchase a flat with Mdm Tan, Mr Ang sought Mr Ng's help to purchase the Flat with her;
- (c) in consideration, Mr Ang agreed to pay Mr Ng \$5,000; and
- (d) Mr Ang also persuaded Mr Ng that Mr Ng would stand to gain if the Flat was sold.

11 According to Mdm Tan:³

- (a) in 1996, she was making arrangements to purchase a flat with her mother when the latter suddenly passed away;
- (b) concerned that she could not proceed with the purchase and that she and her two daughters would be left without a roof over their heads, Mdm Tan shared her predicament with Mr Ng who offered to assist;
- (c) Mr Ng agreed to be a co-owner of the Flat, and parties agreed verbally that Mr Ng would not reside in the Flat and would leave the Flat to be solely managed by Mdm Tan;

² Mr Ng's 2nd Affidavit, at paras 14–15.

³ Mdm Tan's 1st Affidavit, filed on 20 February 2019, at paras 15–18.

(d) in consideration of the said verbal agreement, Mr Ng requested that a sum of \$5,000 be paid to him as he had contributed \$7,922.44 from his CPF account towards the purchase of the Flat.

12 Although there were several discrepancies between Mr Ng's and Mdm Tan's version of events, they appear to be *ad idem* on the following essential features:

(a) Mr Ng and Mdm Tan were not in the kind of relationship which would naturally lead them to wish to purchase a flat together (*ie*, they were not family, relatives, lovers, or even close friends);

(b) Mr Ng and Mdm Tan did not initially intend to purchase a flat together;

(c) Mr Ng only agreed to be a co-owner of the Flat in order to help a friend (*ie*, Mr Ang) or acquaintance (*ie*, Mdm Tan) out of a predicament;

(d) in return for Mr Ng helping out in this way, he was paid a compensation of \$5,000.

Parties' intention on their respective shareholding

13 The option to purchase issued by the HDB to the parties on 24 February 1997 ("Option to Purchase") did not indicate the parties' respective shares.⁴ When parties attended at the HDB on 14 July 1997 to execute the HDB Agreement Order cum Tax Invoice ("Agreement Order"), it was indicated in

⁴ Mdm Tan's 1st Affidavit, at p 1 of Exhibit TCH-1.

the Agreement Order that Mdm Tan and Mr Ng would hold the Flat as tenants-in-common with Mdm Tan holding a 95% share and Mr Ng holding a 5% share. Mr Ng executed the Agreement Order by affixing his signature while Mdm Tan executed it by affixing her thumb print.⁵

14 Parties also executed a HDB Agreement for Lease dated 1 August 1997 (“Agreement for Lease”) which provided that Mdm Tan and Mr Ng would hold the Flat as tenants-in-common, with Mdm Tan holding a 95% share and Mr Ng holding a 5% share.⁶ Mr Ng executed the Agreement for Lease by affixing his signature while Mdm Tan executed it by affixing her right thumb print.⁷

15 Although the Agreement Order provided that the estimated completion date of the Flat was 31 May 1999, the Flat was completed early with the HDB issuing a HDB Sales Order on 6 October 1998 (“Sales Order”), specifying the effective date of sale as 1 October 1998.⁸ It was also on 6 October 1998 that Mdm Tan applied in her sole name to Power Supply Ltd for connection of utilities.⁹

16 The Sales Order also recorded that parties held the Flat as tenants-in-common with Mdm Tan holding a 95% share and Mr Ng holding a 5% share.¹⁰ Similarly, the land titles register show the Flat as being held by Mdm Tan and

⁵ Mdm Tan’s 2nd Affidavit, filed on 27 March 2019, at p 46.

⁶ Mdm Tan’s 1st Affidavit, at p 5 of Exhibit TCH-1.

⁷ Mdm Tan’s 1st Affidavit, at pp 4–7 of Exhibit TCH-1.

⁸ Mdm Tan’s 2nd Affidavit, at p 30.

⁹ Mdm Tan’s 1st Affidavit, at p 13 of Exhibit TCH-1.

¹⁰ Mdm Tan’s 2nd Affidavit, at p 30.

Mr Ng as tenants-in-common with Mdm Tan holding a 95% share and Mr Ng holding a 5% share.¹¹

17 Mdm Tan’s evidence is that she had agreed with Mr Ng to purchase the Flat as tenants-in-common with 5% to Mr Ng and 95% to herself.¹² Mr Ng’s evidence is that, at the time of the purchase, there was never any discussion or agreement that his share of the Flat would only be 5%, and that it was his understanding that parties would own the Flat equally. He added that, as he only had primary school education and a very limited command of English, he was not aware that the completion documents stated that he owned only 5% of the Flat.¹³

Parties’ financial contribution towards the Flat

18 The Option to Purchase provided that the option was to be exercised by payment of \$39,260. The Agreement Order recorded that this \$39,260 payment was made by way of \$2,418 in cash and \$36,842 from Mdm Tan’s CPF account. Mr Ng acknowledged and accepted that this \$2,418 cash payment came entirely from Mdm Tan.¹⁴ Thus it is undisputed that the initial payment of \$39,260 made on 14 July 1997 to exercise the Option to Purchase (which sum was described as “Commitment Deposit” in the Agreement Order) came entirely from Mdm Tan.

¹¹ Mdm Tan’s 2nd Affidavit, at p 22.

¹² Mdm Tan’s 1st Affidavit, at para 16.

¹³ Mr Ng’s 2nd Affidavit, at paras 16–17.

¹⁴ Mr Ng’s 2nd Affidavit, at para 20.

19 The Agreement Order also recorded that, over and above the \$36,842 deducted from Mdm Tan's CPF account towards the Commitment Deposit, a further sum of \$2,140 was deducted from Mdm Tan's CPF account for the stamp fee on the HDB lease and another sum of \$134.93 was deducted from Mdm Tan's CPF account for conveyancing fees.

20 About one and a half years later, at the completion of the sale on 6 October 1998, the Sales Order recorded that an additional payment \$7,922.44 was made towards the initial capital payment of the Flat. This \$7,922.44 came from Mr Ng's CPF account. That left a balance purchase price of \$190,100 which was met by a loan from the HDB. The Sales Order recorded that the monthly loan repayment of \$1,045 was to be made by cash. No copy of the loan agreement with the HDB was tendered in evidence.

21 Thus, at the point of completion in October 1998, Mdm Tan had contributed \$41,534.93 (comprising \$39,260 towards the initial capital payment for the Flat and \$2,274.93 towards the stamp fee and conveyancing fee) and Mr Ng had contributed \$7,922.44.

Events after completion of sale

22 About a week after completion, Mdm Tan and Mr Ng signed an agreement which read as follows:¹⁵

13th October 1998
To : Mr Ng Cheng Hock
Re : [address of the Flat]

¹⁵ Mdm Tan's 1st Affidavit, at p 11 of Exhibit TCH-1

This is proof that a payment of S\$5,000-00 has been made to you by cheque no. 484456 as interest for CPF deposit (S\$9,0000-00) deducted from your account for the above mentioned.

Now it is agreed that both parties will not withdraw or sell the above mentioned flat within five years.

[signed]

Tan Chor Hong

Nric No. XXXXXXXXX

I, Ng Cheng Hock, Nric No. XXXXXXXXX hereby acknowledge receipt of cheque no. 484456, amounting to S\$5,000-00 on 13th October 1998 for the above interest payment and has agreed to the above terms and conditions.

[signed]

Ng Cheng Hock

Nric No. XXXXXXXXX

23 Mr Ng did not stay in the Flat after completion of the sale. In 2000, Mr Ng relocated to Japan and was not heard from until after he returned to Singapore in December 2018. In 2004, Mdm Tan wanted to buy over Mr Ng's share in the Flat but was not able to contact Mr Ng.¹⁶ She therefore lodged a police report on 2 February 2004 in the following terms:¹⁷

On 06/10/98 at about 1.30pm I took possession of the above stated flat from HDB Centre. The flat was bought under the tenancy in common scheme together with my friend one Ng Cheng Hock, male/43 years old, I/C SXXXXXXX, contact number unknown. I wish to state that my friend did not stay

¹⁶ Mdm Tan's 1st Affidavit, at para 22.

¹⁷ Mdm Tan's 1st Affidavit, at p 12 of Exhibit TCH-1.

together with me since then. Now I want to sell my flat. But my friend is uncontactable and I do not know his whereabouts. I am lodging this report to refer to HDB and for record purpose. That's all.

24 It is undisputed that Mr Ng did not pay any monetary sums towards the HDB loan repayments.¹⁸ The monthly repayments, which were made solely by Mdm Tan over the years, appeared to have fluctuated in quantum. For example, the 2019 housing loan statement of account provided by HDB showed the monthly instalment as \$1,071¹⁹ while the 2018 statement showed that monthly repayments of \$1,371 were made for eight months out of 12.²⁰ The outstanding loan amount as at end May 2019 was \$54,457.82.²¹

Overview of Mr Ng's case for claiming more than 5% of the Flat

25 Mr Ng accepted that the monetary contribution he made towards the Flat was limited to the \$7,922.44 from his CPF account.²² Mr Ng also acknowledged receipt of \$5,000 as consideration for him agreeing to purchase the Flat together with Mdm Tan. However, he claimed that this \$5,000 was paid by Mr Ang and not Mdm Tan. Mr Ng therefore submitted that this \$5,000 should not be regarded as Mdm Tan's contribution towards the purchase of the Flat.²³ Finally, Mr Ng submitted that, as the \$190,100 HDB loan was taken out in their joint names, he should be regarded as having contributed a further \$95,050 (*ie*, half

¹⁸ Mr Ng's 2nd Affidavit, at para 22.

¹⁹ Mdm Tan's 3rd Affidavit, at p 28.

²⁰ Mdm Tan's 1st Affidavit, at p 10 of Exhibit TCH-1.

²¹ Mdm Tan's 3rd Affidavit, at p 29.

²² Defendant's Written Submission, at para 16.

²³ Mr Ng's 2nd Affidavit, at para 14.

of the HDB loan) towards the purchase of the Flat. Mr Ng therefore calculated that his contribution towards the purchase price was 43.4%.²⁴

26 Mr Ng next submitted that, since his contribution was substantially larger than the 5% share registered in his name, parties should be presumed to hold their shares in equity in proportion to their respective contributions.²⁵ In this regard, Mr Ng submitted that the principle laid down in *Lau Siew Kim v Yeo Chye Terence and another* [2008] 2 SLR(R) 108 (“*Lau Siew Kim*”) at [83], that “legal joint tenants of a property will be presumed to hold that property as beneficial tenants in common of shares proportionate to their contribution to the acquisition of that property” should also apply to legal tenancies in common. In other words, Mr Ng submitted that, where parties acquire a property as legal tenants in common with expressly specified relative shares, equity should still intervene to presume that parties hold as beneficial tenants in common of shares proportionate to their contribution.

27 Mr Ng further submitted that, applying *Su Emmanuel v Emmanuel Priya Etehl Anne and another* [2016] 3 SLR 1223 (“*Su Emmanuel*”) at [89], the court ought to disregard the fact that the loan repayments were all made by Mdm Tan, as those payments were not referable to any agreement made at the time of acquisition of the Flat concerning how the loan was to be serviced.²⁶

²⁴ Defendant’s Written Submission, at para 16.

²⁵ Defendant’s Written Submission, at para 22.

²⁶ Defendant’s Written Submission, at paras 24–28.

Analysis

28 Since the starting point of Mr Ng’s submission was the case of *Lau Siew Kim*, and since Mr Ng did not cite any authority where equity intervened in legal tenancies in common in the same way that it did in legal joint tenancies, it would be useful to begin by examining the rationale given in *Lau Siew Kim* for the intervention of equity in legal joint tenancies. This rationale was explained in a detailed and comprehensive discussion found at [83]–[95] of *Lau Siew Kim*. The key points of this discussion are:

- (a) Traditionally, equity’s intervention in legal joint tenancies has been a reaction to the common law presumption of joint tenancy (at [83] and [84]).
- (b) Much like the presumption of joint tenancy at common law, there exists in Singapore a statutory presumption of joint tenancy in the form of s 53(1) of the Land Titles Act (Cap 157, 2004 Rev Ed) (“LTA”). Therefore, “just as equity inclines towards a tenancy in common when faced with the common law presumption of joint tenancy, equity may similarly intervene in the statutory presumption of joint tenancy in Singapore to deem, as beneficial tenants in common, co-owners holding local registered land as joint tenants at law” (at [87]).
- (c) The existence of s 53(1) gives rise to “a default position where equitable presumptions may still be required to effect justice between the parties given that they may have been presumed to be joint tenants at law without any informed or voluntary intention on their part to hold the land they co-own in such a manner” (at [90]).

(d) “Under s 53(1) of the LTA, there may exist situations where co-owners hold land as legal joint tenants without fully appreciating or voluntarily intending the consequences of such manner of holding; there is, therefore, room for the intervention of equity to ensure fairness between the parties” (at [92]).

(e) “[I]t is *only* where the registered co-owners of land had *not* made a conscious and informed choice to hold as joint tenants at law that equity kicks in to presume a tenancy in common. In contrast, where co-owners had expressly specified their intention to hold land in a legal joint tenancy, there would be no cause for equity not to follow the law; thus, in such instances, legal joint tenants should also be beneficial joint tenants unless it may be shown that the expressly-stated choice should be vitiated for some reason” [emphasis in original] (at [93]).

(f) If there had been no statutory presumption of joint tenancy in the form of s 53(1) of the LTA, and if parties were required to state their manner of holding (failing which the land registrar would refuse to register transfers), “the equitable presumption of a tenancy in common might have been displaced and rendered unnecessary” (at [88]–[89]).

(g) Where parties can make an informed choice as to whichever type of co-ownership they desire, “there would be no need, generally, for any intervention on the part of the courts or equity to presume a completely different beneficial manner of holding” (at [94]).

29 From the foregoing summary, it can be seen that:

(a) The equitable presumption that parties hold as beneficial tenants in common in proportion to their contributions to the acquisition of the property is a reaction to the legal presumption of joint tenancy.

(b) Equity intervenes in a legal joint tenancy in order to “effect justice between the parties” or “ensure fairness between the parties” because of the legal presumption of joint tenancy gives rise to the risk that the parties may “hold land as legal joint tenants without fully appreciating or voluntarily intending the consequences of such manner of holder” or “may have been presumed to be joint tenants at law without any informed or voluntary intention on their part to hold the land they co-own in such a manner” (*Lau Siew Kim* at [90] and [92]).

(c) Where co-owners have expressly specified their intention on their manner of holding, “there would be no cause for equity not to follow the law” (at [93]).

30 Since there is no legal presumption concerning tenancies in common, the consideration at [29(a)] above would not apply to a legal tenancy in common. Since, in a purchase of property as legal tenants in common, parties would necessarily have to state expressly their relative share, the consideration at [29(b)] above would also not apply to a legal tenancy in common. Lastly, since legal tenants in common would have expressly specified their intention to hold as tenants in common and expressly specified their relative shares in the property, legal tenancies in common fall within the situation described at [29(c)] above, with the result that equity should follow the law.

31 I therefore held that, where parties had expressly agreed to hold as tenants in common and expressly agreed on their relative shares, there was no

room for equity to intervene with an equitable presumption that parties held as beneficial tenants in common in proportion to their contributions to the acquisition of the property.

32 Mr Ng submitted that he only had primary school education and had a very limited command of English, that he was not made aware that the completion documents stated that he had only a 5% share of the Flat, and that he did not agree to the 5%.²⁷ I did not give much weight to this submission. First, Mr Ng had not relied on the doctrine of *non est factum*. In my view, he was right not to claim *non est factum* as such a claim would clearly have been unsustainable on the facts. Secondly, the effects of the HDB documents he signed would in all likelihood have been explained to him when he attended at the HDB office to sign the documents. Thirdly, even if I were to accept that Mr Ng had a poor command of English, he would at the minimum have been able to recognise his own name and been able to read the number “5/100” against his name on both the Sale Order and the Agreement Order, as well as on the Agreement for Lease. Fourthly, counsel for Mr Ng accepted that both Mr Ng and Mdm Tan were equally handicapped when it came to reading English.²⁸

33 Lastly, given the factual background (especially having regard to the nature of the relationship between the parties as well as the purpose for purchasing the Flat and the reason Mr Ng’s assistance was sought), I found it extremely unlikely that either Mr Ang or Mdm Tan would have promised Mr Ng a half-share in the Flat simply for helping out in the manner he did. I found that, in all probability, an offer of \$5,000 cash upfront plus a 5% share when the

²⁷ Defendant’s Written Submission, at para 12.

²⁸ Notes of Argument, 9 July 2019 at p 8, lines 15–18.

Flat was eventually sold would have been sufficiently attractive to persuade Mr Ng to assist Mr Ang or Mdm Tan in the manner he did.

34 I therefore found that Mr Ng is bound by the contractual documents he signed and therefore acquired only a 5% share in the Flat.

35 Given my finding at [34] above, there was no need for me to consider Mr Ng's further submission at [27] above, since that submission would become relevant only if I were to accept Mr Ng's submission at [26] above that equity would intervene in a legal tenancy in common to disregard parties' express agreement on their relative shares. This was because the principle set out in *Su Emmanuel* at [89] is in essence a method for ascertaining the parties' respective contributions *in the event that* the court has decided that parties in a legal joint tenancy are presumed to hold as beneficial tenants in common. There was no scope for applying the said principle in the present case given my finding, on the facts, that parties hold as tenants in common in the shares specified in the contractual documents, as opposed to in shares in proportion to their respective contributions. Nevertheless, for completeness, I shall explain why, even if I were wrong in my finding at [34] above, the proper application of the principle in *Su Emmanuel* at [89] would have led me to attribute all the loan repayments to Mdm Tan instead of apportioning the loan repayments equally between Mr Ng and Mdm Tan.

36 *Su Emmanuel* states at [89] that:

... When a mortgage is taken out, the crucial consideration is the parties' intentions, at the time the property is acquired, as to the ultimate source of the funds for purchase of that property (see *Lau Siew Kim* at [116] and *Bertei v Feher* [2000] WASCA 165 at [44]). Actual mortgage payments made at a later time would therefore only count as direct contributions to the purchase price where these are referable to, and in keeping

with, a prior agreement between the parties as to who would be liable to repay the loan. ...

37 Mr Ng's submission was that, because the HDB loan was taken out in Mdm Tan's and Mr Ng's joint names, half of the loan amount should be attributed to Mr Ng as his contribution. Although Mr Ng did not tender the loan documentation in evidence, I would have been prepared to accept that the HDB loan was, in all likelihood, taken out in both their names. However, the fact that the loan was taken out in both their names did not necessarily mean that each party must be taken as having contributed the equivalent of half the loan. As explained in *Su Emmanuel* at [90]:

Many factors are engaged in the determination of the precise agreement or understanding between the parties as to who would repay the mortgage. The focus should not lie exclusively on who took on *liability* for the mortgage as against the bank. Often such liability will be joint because the bank would like to have the widest choice of the parties against whom it can enforce the liability under the mortgage. Rather, the question will turn on what the operating agreement was between the co-owning parties at the time the loan was taken out. In this regard, subsequent conduct may be relevant to the extent that it sheds light on such an agreement (if any) between the co-owners. Thus, in *Chan Yuen Lan [v See Fong Mun]* [2014] 3 SLR 1048], despite the fact that liability for the loan fell on the wife, the court found that the agreement between the parties was for the husband to repay the loan and therefore the loan amount of \$400,000 was attributed to the husband as his direct contribution to the acquisition of the property (at [81]–[87]). [emphasis in original]

38 Mdm Tan's evidence was that she had verbally agreed with Mr Ng that he would leave the Flat to be solely managed by her.²⁹ She submitted that it was pursuant to this verbal agreement that she made all the mortgage loan

²⁹ Mdm Tan's 1st Affidavit, at para 17.

repayments.³⁰ Mr Ng denied that there was such a verbal agreement. He referred to the written agreement of 13 October 1998 (see [22] above) and submitted that since this written agreement was silent on the question of liability for repayment of the loan, that amounted to evidence that there was no verbal agreement between parties on the liability for repayment of the loan.³¹

39 I did not agree with Mr Ng that I should read so much into the absence of provisions concerning loan repayment in the 13 October 1998 written agreement. That written agreement recorded the payment of \$5,000 by Mdm Tan in consideration of Mr Ng contributing \$9,000 [*sic*] from his CPF account towards the acquisition of the Flat and contained a further stipulation that parties agreed not to sell the Flat within the HDB-mandated minimum occupation period of five years. On its face, the 13 October 1998 agreement was not drafted in a manner which signified that it was intended to comprehensively and exhaustively encompass all of the parties' understanding concerning the Flat.

40 In contrast, I found that Mdm Tan's submission was more consistent with the factual background and with the parties' subsequent conduct. Dealing first with the latter point, I noted that this was not a case where Mr Ng had initially made some contributions towards the loan repayment only for those contributions to cease after he moved to Japan. What in fact occurred was that, for the two years between the completion of the purchase of the Flat and Mr Ng's move to Japan, he made no contribution at all towards the loan repayment. This conduct was strong evidence that the parties' understanding was that Mdm Tan would be solely responsible for the loan repayment.

³⁰ Notes of Argument, 9 July 2019, at p 3, lines 11–12 and p 8, lines 26–30.

³¹ Notes of Argument, 9 July 2019, at p 7, line 31 to p 8, line 10.

41 As for the factual background, I noted that whether on Mr Ng's version (*ie*, Mr Ang wishing to provide a roof over Mdm Tan's head) or Mdm Tan's version (*ie*, Mdm Tan was planning to buy a flat with her mother but her mother had passed away), the key feature of the factual background was that of Mdm Tan seeking to obtain a flat *for her own occupation* but being unable to do so in her sole name due to the relevant HDB requirements, thus necessitating Mr Ng's assistance to consent to his name to be included as a co-owner of the Flat. Given this factual background, it was extremely unlikely that either Mr Ang or Mdm Tan would have expected Mr Ng to bear responsibility for half of the mortgage loan and equally unlikely that Mr Ng would have agreed to do so.

42 I would therefore have found that it was the parties' understanding, at the time the Flat was purchased, that Mdm Tan would be solely responsible for repayment of the HDB mortgage loan. What this would mean in terms of parties' relative contribution was that Mr Ng's contribution was limited to the \$7,922.44 from his CPF account, which amounted to only 3.3% of the purchase price of the Flat. If the \$5,000 paid to Mr Ng on 13 October 1998 were taken into account, Mr Ng's contribution would be only \$2,922.44, which amounted to 1.2% of the purchase price.

43 For the reasons given above, I held that Mdm Tan is the owner of 95% of the Flat while Mr N'g is the owner of 5% of the Flat.

Whether the court should order the sale of the Flat

44 As noted in *Su Emmanuel* at [57(a)]:

In deciding whether it is necessary or expedient for a sale to be ordered in lieu of partition, the court conducts a balancing exercise of various factors, including (i) the state of the relationship between the parties (which would be indicative of whether they are likely to be able to co-operate in the future);

(ii) the state of the property; and (iii) the prospect of the relationship between the parties deteriorating if a sale was not granted such that a “clean break” would be preferable.

45 It was clear that the relationship between parties had deteriorated to such an extent that it would be necessary and expedient for a sale to be ordered in lieu of partition.

46 Mdm Tan’s affidavits recounted how Mr Ng broke into the Flat³² and locked Mdm Tan and her tenants out of the property.³³ Although Mdm Tan called the police on Mr Ng a few times, the police left Mr Ng alone after they found out upon arrival that Mr Ng was a co-owner of the Flat.³⁴ Mr Ng also created loud disturbances in the Flat, threw food on the floor, and shouted at and threatened Mdm Tan and the tenants of the Flat.³⁵ The tenants found the situation unbearable and moved out.³⁶ Mdm Tan herself became so fearful that she moved out of the Flat on 16 March 2019.³⁷ Mdm Tan also received various text messages from Mr Ng which she perceived as taunts and harassment.³⁸ On 22 March 2019, Mr Ng even sent Mdm Tan a photograph of a kitchen chopper lying on the coffee table in the living room, with a caption (in Chinese) that translated as “There is a chopper at the main door. If you try to enter, it is either your death or mine”.³⁹ Mdm Tan perceived this as a death threat. Mdm Tan also

³² Mdm Tan’s 2nd Affidavit, at para 56.

³³ Mdm Tan’s 2nd Affidavit, at paras 35, 43, 45, 56–60 and 66.

³⁴ Mdm Tan’s 2nd Affidavit at para 57.

³⁵ Mdm Tan’s 2nd Affidavit at para 67.

³⁶ Mdm Tan’s 2nd Affidavit at paras 67 and 72.

³⁷ Mdm Tan’s 2nd Affidavit at para 69.

³⁸ Mdm Tan’s 2nd Affidavit at paras 73–75.

³⁹ Mdm Tan’s 2nd Affidavit at para 76 and p 83.

tendered an affidavit from one of her tenants to corroborate her allegations against Mr Ng.⁴⁰

47 Mr Ng denied some of these allegations and tried to explain some of the others away. Even though he gave evidence that his only wish was to stay at the Flat,⁴¹ he did not make any submission against the court making an order of sale.

48 Having regard to the foregoing, I concluded that this was a suitable case for making an order of sale. I therefore made an order for sale of the Flat in lieu of partition pursuant to para 2 of the First Schedule to the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) (“SCJA”).

Whether Mdm Tan should be given sole conduct of the sale

49 Mdm Tan prayed to be given the sole conduct of the sale of the Flat. Mr Ng objected to this. He submitted that, if Mdm Tan were to be given sole conduct, she could “easily play out” Mr Ng.⁴² Mr Ng further submitted that he should not be deprived of the right to participate in the sale.⁴³ Mdm Tan submitted that, given the acrimonious nature of parties’ relationship, there was concern that Mr Ng would not cooperate in the sale.⁴⁴

50 Where one of two co-owners applies to court for a sale in lieu of partition, it could be because one owner wishes to sell while the other owner does not wish to sell. In such a situation, it may be unrealistic to expect the other

⁴⁰ Affidavit of Sarline, filed on 30 May 2019.

⁴¹ Mr Ng’s 2nd Affidavit at para 6.

⁴² Notes of Arguments, 9 July 2019, p 11 at lines 11–12.

⁴³ Notes of Arguments, 29 July 2019, p 3 at line 6.

⁴⁴ Notes of Arguments, 29 July 2019, p 2 at lines 7–8.

owner to cooperate in the sale if the court were to order a sale with parties having joint conduct of the sale. In such a situation, an order for joint conduct of the sale would simply afford the owner not wishing to sell an opportunity to hold up the sale.

51 In my view, the foregoing considerations apply squarely to the present case. Although Mr Ng did not formally object to the court granting an order of sale, his past behaviour demonstrated that he may have an incentive to not cooperate in the sale, especially since the Flat is now solely occupied by him, with Mdm Tan fearful of returning to the Flat. The state of the parties' relationship (as recounted above) also meant that it is unrealistic to expect parties to cooperate in the sale. Finally, having regard to the fact that Mdm Tan will be entitled to 95% of the sale proceeds while Mr Ng will only be entitled to 5%, I considered it fair and equitable for Mdm Tan to have sole conduct of the sale, subject to the following safeguards:

- (a) Mdm Tan shall keep Mr Ng updated on all issues of importance concerning the sale process, including the appointment of property agents for the conduct of the sale, the appointment of conveyancing lawyers for the conduct of the sale and all offers received for the purchase of the Flat.
- (b) Mr Ng shall be at liberty to apply.

Whether Mdm Tan should be given the right to buy over Mr Ng's share

52 Mdm Tan prayed, as an alternative to selling the entire Flat to a third party, for an order that she be given the right to buy over Mr Ng's share in the Flat. Mr Ng submitted that there was no basis in law for the court to make such an order.

53 I agreed with Mr Ng's submission. It was noteworthy that even though I had granted an adjournment for Mdm Tan's counsel to do further research, she was not able to furnish any authorities in support of such an order.⁴⁵ The wording of para 2 of the First Schedule of the SCJA is clear. It empowers the court to "order the land or any part of it to be sold". It does not empower the court to allow one co-owner to compulsorily purchase the other co-owner's share.

54 I therefore declined to make an order giving Mdm Tan the right to purchase Mr Ng's share. Notwithstanding this ruling, parties are not precluded from negotiating with each other for one side to buy over the other's share at a mutually agreed price.

Conclusion

55 In the light of the foregoing, I ordered the sale of the Flat in the open market, with the sale proceeds to be divided in the proportion of 95% to Mdm Tan and 5% to Mr Ng. Mdm Tan is to have sole conduct of the sale, subject to the safeguards outlined at [51] above. I also ordered each party to make the necessary refund (if any) to their CPF accounts from their respective shares of the sale proceeds. In keeping with my finding that it was the parties' understanding that Mdm Tan was to be solely responsible for repaying the housing loan, the repayment of the outstanding loan shall be made fully from Mdm Tan's share of the sale proceeds. Finally, I ordered Mdm Tan to account to Mr Ng for 5% of all rental proceeds she had received from the Flat. There shall be liberty for parties to apply.

56 I made no order as to costs as Mr Ng was legally aided.

⁴⁵ Notes of Arguments, 29 July 2019, at p 2 lines 21–27.

Pang Khang Chau
Judge

Sujatha Selvakumar (I.R.B. Law LLP) for the plaintiff;
Yong Boon On (Eldan Law LLP) for the defendant.
