IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2017] SGCA 54

Civil Appeal No 141 of 2016

Between

Chia Kok Weng

… *Appellant*

And

(1) Chia Kwok Yeo
(2) Ng Chui Guat

… *Respondents*

In the matter of Suit No 89 of 2016

Between

Chia Kok Weng

… *Plaintiff*

And

(1) Chia Kwok Yeo
(2) Ng Chui Guat

… *Defendants*

JUDGMENT

[Trusts] — [Resulting trusts] — [Presumed resulting trusts]

Chia Kok Weng
v
Chia Kwok Yeo and another

[2017] SGCA 54

Court of Appeal — Civil Appeal No 141 of 2016
Chao Hick Tin JA, Judith Prakash JA and Steven Chong JA
5 July 2017

20 September 2017 Judgment reserved.

Judith Prakash JA (delivering the judgment of the court):

Introduction

1 In 1978, one Mr Chia Chee Wah ("the Father"), and his wife ("the Mother"), purchased the land and house known as 37 Jalan Kechubong ("the Property"). Things were good then; the Father's business was prosperous, and the couple lived in the Property with eight of their nine children. But the family's good fortune did not last. The Father found himself in debt a few years later, with the prospect of the Property being sold for the benefit of his bankers and his family left without a home. Fortunately, the children chipped in to help and, working together, they managed to keep the Property within the family. Decades later, however, two of the children turned against each other, with one

brother suing another for a one-third share in the Property. This claim failed at first instance in the High Court and the claimant then lodged the present appeal.

Background

2 Since the main protagonists of this story are siblings, to distinguish them from each other, we will refer to them by their given names. The appellant, Chia Kok Weng ("Weng"), is the younger brother of the first respondent, Chia Kwok Yeo ("Yeo"). They were two of the nine children of the Father and the Mother (together, "the Parents"). The second respondent, Ng Chui Guat ("Mdm Ng"), is Yeo's wife. Yeo and Mdm Ng are, presently, the legal owners of the Property, holding it as tenants-in-common in equal shares. In the present appeal (as he did in the court below), Weng contends that Yeo holds a one-third share in the Property on trust for him, and has done so since 1987.

3 The Property was acquired on 16 September 1978 and was registered in the names of the Father, the Mother and Weng, as tenants-in-common in equal shares. The purchase price was $68,000, out of which the Father contributed $40,000 and the Mother contributed the remaining $28,000. Weng, who had just turned 21, did not contribute to the purchase price. To finance the purchase, the Father obtained a $40,000 overdraft facility from the Overseas-Chinese Banking Corporation Limited ("OCBC"), which was secured against the Property.

4 The Property was the family home. The Parents lived there with all of their nine children save for the eldest, who was married by that time.

5 The Father owned a plumbing business, M/s Chia Chee Wah Plumbing. Weng assisted him in the running of the business, although a few of the other

children helped out as well at various points. The business initially did very well and in March 1983, a new company, KW Chia Engineering Pte Ltd ("KWCEL"), was incorporated. The shareholders of KWCEL were the Father (60%), Weng (20%) and another of the siblings (20%). In June 1984, KWCEL purchased a property at Lichfield Road ("the Lichfield Property").

6 Sometime in 1984, the Father's business started to face difficulties. The limit of the OCBC overdraft facility taken out by the Father in 1978 had increased to $440,000 by November 1983, with the funds being used for the Father's business and also for the family's needs. As of 4 October 1984, the Father's overdraft debt amounted to about $250,000. As the Father could not pay off the debt, the Property was in danger of being foreclosed by OCBC. To avert this danger, a series of transfers of ownership interests in the Property took place thereafter.

The 1984 transfer of the Father's one-third share in the Property to Yeo

7 On 4 October 1984, the Father transferred his one-third share in the Property to Yeo ("the 1984 Transfer"). Yeo had just returned to Singapore after obtaining his civil engineering degree overseas, and had not yet commenced employment. The stated purchase price for the transaction was $150,000, but Yeo did not pay this amount to the Father. Instead, he redeemed the Father's existing OCBC overdraft debt of about $250,000 by borrowing money from OCBC by way of a new secured overdraft line with a limit of $440,000. This new loan facility was granted to Yeo as sole borrower, but it was secured against the Property with Yeo, Weng and the Mother as co-mortgagors.

8 The circumstances under which the 1984 Transfer took place were disputed at the trial. According to Yeo, Weng and another brother, Chia Kok

Chiong ("Chiong"), who were helping the Father with his business, had approached him. They told him that the Father's business was in serious financial difficulty and that the OCBC overdraft facility that the Father had taken in 1978 was liable to be recalled with the Property then being auctioned off by the bank. The family would then be left with no home. They suggested that Yeo help by "buying" over the Father's one-third share in the Property, because he, as a freshly minted engineer with good career prospects, would be able to obtain a fresh overdraft facility from OCBC which could be drawn-down to repay the Father's overdraft debt. Weng denied that he and Chiong had made such a suggestion to Yeo, although he agreed in his Statement of Claim that the transfer of the Father's one-third share in the Property to Yeo in 1984 was made because of concerns that the Property could be seized by the Father's creditors. On the stand, Weng testified that the Father had transferred his one-third share in the Property to Yeo because a significant portion of the overdraft debt was incurred for Yeo's overseas education and so the Father wanted Yeo to apply his CPF savings towards repayment of the debt.

The 1987 transfers of the Mother's one-third share in the Property to Chris and Weng's one-third share to Yeo

9 Yeo did not service the loan he took from OCBC at all. By 1987, the overdraft debt had increased to $306,000 and the Property was, once again, in danger of being foreclosed by OCBC.

10 On 25 January 1987, the Mother transferred her one-third share in the Property to her daughter, Chia Hang Kiu ("Ms Chia"). As part of the same transaction, Weng also transferred his one-third share in the Property to Yeo. The instrument effecting both transfers recorded a total consideration of $252,000, and was preceded by two sale and purchase agreements:

(a) A sale and purchase agreement was executed on 15 July 1986 under which the Mother agreed to transfer her one-third share in the Property to Ms Chia at a stated purchase price of $126,000.

(b) A second sale and purchase agreement was executed on 25 August 1986 under which Weng agreed to transfer his one-third share in the Property to Yeo at a stated purchase price of $126,000.

The transfer from Weng to Yeo ("the 1987 Transfer"), as a result of which Yeo became the registered owner of a two-thirds share in the Property, lies at the heart of the present appeal.

11 Neither Ms Chia nor Yeo paid the stated purchase price. Instead, they both helped to discharge the outstanding debt owed to OCBC that was secured on the Property. As stated, the OCBC overdraft debt, which was taken out by Yeo in 1984, had increased to $306,000 by 1987. According to Yeo, sometime before the 1987 Transfer, Weng gave him a sum of $100,000 to bring the overdraft debt down from $306,000 to $206,000. Weng remembered giving Yeo a large sum of money to reduce the overdraft debt, but could not remember the exact amount. He said that it was "at least $70,000". Whether it was $100,000 or $70,000, it is not disputed that the money came from the proceeds of sale of the Lichfield Property by KWCEL. Thereafter, Ms Chia and Yeo jointly helped to discharge the balance of $206,000 owed to OCBC. The breakdown of their contributions is as follows:

(a) $65,000 from Ms Chia's Central Provident Fund ("CPF") account;

(b) $10,000 from Yeo's CPF account;

(c) $1,000 from Yeo in cash; and

(d) $130,000 from a fresh housing loan from OCBC taken up in the names of Ms Chia and Yeo on 22 October 1986 for the stated purpose of buying the one-third shares in the Property belonging to the Mother and Weng, respectively.

12 At around the same time in early 1987, Yeo and Mdm Ng held their customary wedding and Mdm Ng moved into the Property to live with Yeo and the rest of the family.

The 1991 transfer of a one-third share in the Property from Yeo to Mdm Ng

13 In 1991, the housing loan from OCBC taken by Ms Chia and Yeo in 1986 (see [11(d)] above) remained outstanding.

14 On 23 April 1991, Yeo, who was then the legal owner of a two-thirds share in the Property (pursuant to the 1984 Transfer and the 1987 Transfer), transferred a one-third share in the Property to his wife, Mdm Ng, at a stated price of $160,000 ("the 1991 Transfer"). Mdm Ng did not pay the stated purchase price to Yeo. Instead, she paid about $61,266 to OCBC towards reduction of the outstanding housing loan. Of this amount, $50,000 came from her CPF account and the balance came from a fresh housing loan of $11,266 from OCBC with Yeo and Ms Chia joining in as co-borrowers and co-mortgagors.

The rebuilding of the Property from 1999 to 2000

15 In 1999, Ms Chia, Yeo and Mdm Ng, the registered co-owners of the Property, agreed to, and cooperated in, the rebuilding of the premises on the

Property from a one-storey bungalow into a three-storey bungalow. The rebuilding took place from November 1999 to late 2000. More than $1m was allegedly spent. A construction loan of $700,000 was jointly taken by Ms Chia, Yeo and Mdm Ng, but it was not disputed that Mdm Ng in fact supplied most of the funds for the rebuilding project. Weng did not make any contribution.

The dispute between Ms Chia, Yeo and Mdm Ng on the rebuilding costs

16 In December 2013, Yeo and Mdm Ng started to press Ms Chia for payment of her share of the rebuilding cost. Having not received any payment, on 8 May 2014, they filed Originating Summons No 422 of 2014 ("OS 422") naming Ms Chia as defendant and seeking a court order for the Property to be sold on the open market. They claimed that Ms Chia had breached an agreement allegedly reached with them for the Property to be sold and for her to pay, out of her one-third share of the sales proceeds, the rebuilding costs owed by her to Mdm Ng.

17 Ms Chia applied for a stay of OS 422, claiming that the Property was held on trust for the estate of the Father, who had died in August 2001, and also for some of her siblings. She argued that OS 422 should be stayed to allow the interested parties to come forward. In July 2014, Woo Bih Li J rejected the stay application, noting, among other things, that none of the siblings had filed an action to assert their interest in the Property, and that Ms Chia had also been vague about the alleged family trust. On the same day, Woo J granted an order in terms of OS 422, thereby ordering that the Property be sold on the open market and the proceeds divided equally amongst Yeo, Mdm Ng, and Ms Chia, and that Ms Chia pay, from her share of the proceeds of the sale, a sum of $285,764.57 together with interest in settlement of her share of the cost of rebuilding the Property: see *Chia Kwok Yeo and another v Chia Hang Kiu*

[2014] SGHC 197. Ms Chia's appeal against Woo J's decision was dismissed in March 2015, with the Court of Appeal expressly stating that, in upholding Woo J's decision in OS 422, it did not have to make any determination with respect to the "family trust" that Ms Chia had alleged existed.

18 The parties could not, however, find a buyer for the Property. At their request, on 20 April 2015, Woo J varied his order in OS 422 to provide that Ms Chia should sell her one-third share in the Property to Yeo and Mdm Ng for $1.7m instead, with the rebuilding costs due from Ms Chia to Mdm Ng to be set off from this amount. Yeo and Mdm Ng completed their purchase of Ms Chia's one-third share in the Property on 22 June 2015. They therefore now hold the Property as tenants-in-common in equal shares.

Subsequent disputes

19 On 28 July 2015, *ie*, just a month after completion of the sale of her one-third share in the Property to Yeo and Mdm Ng, Ms Chia commenced Suit No 767 of 2015 ("S 767"), in her capacity as the administratrix of the Father's estate ("the Estate"), against Yeo, Mdm Ng and Weng. The Estate claimed that Mdm Ng and Yeo held two-thirds of the Property on trust for the Estate, arising from the 1984 Transfer, 1987 Transfer, and 1991 Transfer, for the following reasons:

(a) Yeo did not provide valuable consideration for the one-share in the Property that he received from the Father in 1984, and so he held that one-third share on trust for the Father;

(b) Weng held the initial one-third share registered in his name at the time of the purchase of the Property in 1978 on trust for the Father.

There was a breach of trust by Weng when he transferred that one-third share to Yeo in 1987, and Yeo took that one-third share as a constructive trustee; and

(c) Yeo's transfer of a one-third share in the Property to Mdm Ng in 1991 was similarly in breach of trust, and so his wife received her one-third share as a constructive trustee.

20 Weng disagreed with the Estate that he held the one-third share registered in his name in 1978 on trust for the Father. In January 2016, he filed Suit 89 of 2016 ("S 89"), contending that he had transferred his one-third share to Yeo in 1987 on trust, and that Yeo had breached the trust when he transferred a one-third share in the Property to Mdm Ng in 1991. Weng therefore sought a declaration that a one-third share of the Property was held by Yeo and/or Mdm Ng on trust for him.

The decision below

21 The two actions, S 767 and S 89, were heard together. The Judge dismissed both the Estate's and Weng's claims: see *Chia Hang Kiu (administratrix of the estate of Chia Chee Wah (alias Chay Ah Soo) deceased) v Chia Kwok Yeo and others and another suit* [2016] SGHC 198 ("the Judgment").

22 In relation to S 767, the Judge found that Yeo did provide consideration for the 1984 Transfer. He provided consideration for the Father's one-third share in the Property when he took up a fresh mortgage loan with OCBC and used the money to redeem the Father's existing OCBC overdraft debt, which then stood at about $250,000 (see [7] above). It did not matter that he did not

actually service the new loan that he took up; it was sufficient consideration for him to have undertaken personal liability to OCBC to repay the loan: see [41]–[43] of the Judgment. Accordingly, pursuant to the 1984 Transfer, Yeo held what used to be the Father's one-third share in the Property absolutely.

23 As for the Estate's other claim in S 767, that Weng held the initial one-third share registered in his name at the time of the purchase of the Property in 1978 on trust for the Father, this too was dismissed. The Judge found that although Weng did not contribute to the purchase price of the Property, the Father had given the one-third share to him as a gift, since Weng was the only son who agreed to run his plumbing business: see [62] of the Judgment. Accordingly, there was no breach of trust by Weng when he transferred his one-third share in the Property to Yeo in 1987.

24 As for S 89, the Judge found that Yeo did not provide any consideration when Weng transferred his one-third share in the Property to Yeo in 1987. This was because although Yeo made contributions that went towards discharging the outstanding loan from OCBC that amounted to $206,000 at that time (see [11] above), that loan was the same overdraft loan that he took up when he purchased the Father's one-third share in 1984. In other words, Yeo's contributions in 1987 went towards discharging his own debt: see [77] of the Judgment.

25 Since Yeo did not provide any consideration for the 1987 Transfer, the Judge held that the presumption of resulting trust arose in Weng's favour, and that the burden was on Yeo to rebut the presumption by proving that Weng had intended an outright transfer of his one-third share to Yeo: see [87] of the Judgment. The Judge found (at [96] of the Judgment) that "the evidence

irresistibly point[ed] to the conclusion that Weng intended to transfer his share in the Property *absolutely* to Yeo" [emphasis in original]. In coming to this conclusion, she relied on the following matters:

(a) That Weng, having applied for a Housing and Development Board ("HDB") flat in April 1992, had subsequently declared to the HDB on 6 August 1994 that he did not "own or have any interest or have any interest through a nominee in a private property/HUDC Phase I & II flat/Prewar SIT flat". The Judge noted that when Weng was questioned about this during cross-examination, his answer was essentially that he was not telling the truth in his HDB application. She was, nonetheless, of the view that Weng's own declaration to HDB was evidence which "undermined his present claim that he had retained an interest in the Property": see [91] of the Judgment.

(b) That Yeo's conduct subsequent to the 1987 Transfer was more consistent with him acting as absolute proprietor of the Property rather than as a trustee. First, between 1999 and 2000, Yeo invested a substantial amount of money in rebuilding the Property, and it was unlikely that he would have invested so heavily in improving the Property if he did not view it as belonging to him. Second, Yeo and Mdm Ng did not seek to claim any part of the cost of rebuilding from Weng, but instead only sought to claim a third of the costs from Ms Chia whom they viewed as a one-third owner of the Property: at [92] of the Judgment.

(c) That Weng was, in the Judge's view, unable to provide a good explanation as to why he would transfer his one-third share in the Property on trust to Yeo in 1987. Weng claimed that he decided to

transfer his one-third share to Yeo on trust because, having helped the Father with matters pertaining to the Father's bankruptcy, he became fearful that the same fate would befall him, and therefore wanted to safeguard his interest in the Property by putting it on trust. The Judge did not accept this explanation. She was of the view that security of the family home could just as easily have been secured by an absolute transfer of Weng's interest to Yeo: see [93] of the Judgment.

(d) That there were several instances where Weng's own conduct subsequent to the 1987 Transfer and prior to the present litigation was consistent with Yeo being the absolute proprietor of the one-third share transferred to him by Weng. For instance, Weng was aware of, but uninterested in, the rebuilding of the Property between 1999 and 2000. Further, throughout the litigation process for OS 422 which was Yeo's and Mdm Ng's dispute with Ms Chia over the rebuilding costs, Weng failed to claim that he owned a one-third share in the Property. In fact, Weng did not seek to stake a claim in the Property even after the death of the Mother in October 2014, and he first raised the matter with Mdm Ng and Yeo only in July 2015: see [94] of the Judgment.

26 In addition, the Judge was of the view that while Weng's surrender of his beneficial interest in the Property to Yeo in 1987 was a "gift" in strict legal terms, it was a logical decision for him to have made in the light of his financial situation at the time. Weng was mostly unemployed after the Father's business failed, and the transfer of his one-third share in the Property to Yeo benefitted him because it freed him of worry that his business debts could deprive his parents, himself and other members of their family of their home, released him from any moral obligation he might have felt as a co-owner living in the

Property to help to pay the mortgage outstanding, and subsequently, it allowed him to pursue other options for housing with the HDB: see [96] of the Judgment.

27 Given her conclusion that Yeo had acquired two one-third shares in the Property absolutely arising from the 1984 Transfer and the 1987 Transfer, the Judge was of the view that there was no need for her to decide on the claims against Mdm Ng, which were premised on a trust being established over either of Yeo's two one-third shares of the Property. In any case, the Judge accepted Mdm Ng's evidence that she believed Yeo held his shares in the Property absolutely, so that even if Yeo held the shares on trust she would not have known that his 1991 transfer to her of a one-third share in the Property was in breach of trust: see [99] of the Judgment.

28 Finally, the Judge made a finding on what she termed as "the family compact". At [97]–[98] of the Judgment, she held:

> 97 … It appears to me that the intention of the family, from 1984, was to secure the home for the parents and the members of the family who lived there. This was the family compact. It actuated the father's first transfer in 1984, and forms the foundation as to why Yeo is the sole borrower on the loan secured in 1984. Prior to the second series of transfers to Yeo and [Ms Chia] in 1987, Weng had sought to use his CPF but was not allowed to do so. Thus, he would not be able to help with the repayments that, in the longer run, could secure the home for the family. He therefore looked to Yeo to do so. Yeo and [Ms Chia] then followed up to maintain the payments, later with the aid of [Mdm Ng's] CPF contribution as well. The family compact also explains why the Lichfield Property proceeds were used to pay down the debt outstanding on the overdraft even though, as a legal matter, Yeo was the sole borrower on the bank loan. In the face of his father's and brothers' business debt, Yeo took on the liability in 1984 in order to protect the family home. As a fresh graduate, it was clear that he did not quite have the means to do so. [Ms Chia], Weng and Chiong, being aware of the risk of foreclosure, subsequently came in to help, with [Ms Chia] also taking on part of the mortgage. Indeed,

> these are siblings who have borne much adversity together for the greater good of the family.
>
> 98 While all had a part to play, the facts surrounding the rebuilding of the Property show that throughout, [Ms Chia], Yeo and [Mdm Ng] were looked upon by the rest as owners of their shares, both legally and beneficially. [Ms Chia], Yeo and [Mdm Ng] also behaved as such …

The issues in the present appeal

29 The Estate has not appealed against the Judge's dismissal of the claims in S 767, and the parties in the present appeal have also accepted the Judge's findings with respect to S 767. The present appeal must therefore proceed on the basis that (a) Weng owned, absolutely, the one-third share that was registered in his name when the Property was purchased in 1978; and (b) Yeo provided consideration for the 1984 Transfer and holds that one-third share transferred from the Father absolutely.

30 The present appeal was filed by Weng against the Judge's dismissal of his claim in S 89. It turns on the 1987 Transfer, by which Weng transferred his one-third share in the Property to Yeo. Weng's main contention is that the Judge had erred in holding that Yeo had successfully rebutted the presumption of resulting trust by proving that, by the 1987 Transfer, Weng had intended to make a gift of his one-third share in the Property to Yeo.

31 Before us, Yeo concedes through his counsel, Mr Daniel John ("Mr John"), that, as the Judge had found, he had provided no consideration for the 1987 Transfer. He also concedes that the presumption of resulting trust therefore applies in Weng's favour, but contends there is no need for the court to resort to the presumption as there is sufficient evidence that Weng had effected the 1987 Transfer as a gift to Yeo. The issues that we have to resolve in the present appeal are therefore:

(a) Whether there is, as Mr John contends, sufficient "direct evidence" that Weng had an "actual intention" to make a gift of his one-third share in the Property to Yeo by the 1987 Transfer; and

(b) Whether the Judge had, as counsel for Weng, Mr Kelvin Lee Ming Hui ("Mr Lee"), contends, erred in holding that Yeo had successfully rebutted the presumption of resulting trust by adducing sufficient evidence to prove that, in 1987, Weng had intended to make a gift of his one-third share in the Property to Yeo.

In presenting their respective cases in the appeal, both parties accept the Judge's finding with respect to the "family compact" and seek to rely on it for different propositions.

Our decision

32 Since both parties emphasise the Judge's finding of the "family compact", it is pertinent for us to set out a number of observations on the "family compact".

Our observations on the "family compact"

33 By the "family compact", what the Judge found was that when the Father's business started to fail and the family was facing financial difficulties, the family members' prime concern was to preserve their family home and therefore they looked for ways by which they could each chip in to prevent the Property from being foreclosed by OCBC. The 1984 Transfer and the two transfers in 1987 were designed and carried out to, respectively, enable Yeo and then both Yeo and Ms Chia to use new borrowings and CPF funds in repayment of the existing mortgage loan. The 1991 Transfer was effected with the similar

objective of enabling Mdm Ng to obtain a new loan and to use her CPF savings to repay the outstanding debt that was secured on the Property.

34 We agree with the Judge's finding on the "family compact". It is apparent to us that the transactions in 1984, 1987 and 1991 were not true sale and purchase transactions between buyers who wanted to buy and sellers who wanted to sell. Rather, it seems that the parties were merely cooperating with each other so that funds could be raised for the Property to be kept within the family, without having any regard to who were the actual owners of the Property. This can be gleaned from the evidence adduced. We elaborate below.

35 First, with respect to the 1984 Transfer, by which the Father transferred his one-third share in the Property to Yeo, Yeo did not pay the documented purchase price of $150,000 to the Father (see [7] above). It is clear to us that it was never intended for him to have paid that amount, since at the time Yeo had just graduated from university and would not have had the means to pay. Rather, Yeo's "purchase" of the Father's share was arranged so that Yeo could secure a fresh loan facility from OCBC, apply funds from that new loan facility in redemption of the Father's original overdraft debt, and so help stave off foreclosure of the Property by OCBC. Yeo did obtain a new loan facility from OCBC as planned, and the Judge held that since he assumed personal liability to OCBC to repay that facility, that was the consideration he provided for the 1984 Transfer (see [22] above). There is no appeal against that part of the Judge's decision. Even though Yeo assumed personal liability to repay the new facility, the fact is that he never serviced it, and that others including Ms Chia then chipped in to reduce the outstanding indebtedness in 1986/1987. The most substantial contribution in this regard was the sum of $100,000 derived from the sale of the Lichfield Property which Weng gave Yeo. Since the Lichfield

Property belonged to KWCEL whose shareholders were the Father, Weng and another sibling, it seems clear that the members of the family regarded the liability on the overdraft facility as a joint responsibility and not Yeo's alone notwithstanding that he was the sole borrower according to the loan documents.

36 As for the 1987 Transfer, that transfer of Weng's one-third share to Yeo was carried out concurrently with the transfer of the Mother's one-third share to Ms Chia. Both Yeo and Weng gave evidence that the transfers took place because, at that time, the overdraft facility taken by Yeo in 1984 had not been serviced and the Property was once again in danger of being foreclosed by OCBC. The family therefore decided that the best way was for Yeo and Ms Chia to take over the shares in the Property from Weng and the Mother so that they could then use their CPF savings and also get a new housing loan to redeem the outstanding overdraft debt. An extract of Yeo's evidence at trial is set out below:

> Counsel: Would you agree with me that this whole transaction came about in respect of the second transfer to you and the transfer of your mother's to [Ms Chia], because your father, Weng and all had discussed and they decided that this is the best way forward to reduce the liability to the bank?
>
> Yeo: Yes.

Consistently with Yeo's evidence, Weng stated at trial that that the transfers took place in 1987:

> Because Kwok Yeo need to use his CPF to top up the overdraft, that's what my father is concerned, because he want to reduce the interest. That is his main concern. That is why [Ms Chia] also have to -- using her CPF to reduce the help reduce the overdraft.

37 Originally, no transfer of Weng's one-third share in the Property to Yeo was contemplated. On 17 April 1986, Ms Chia, Yeo and Weng had made a joint

application to the CPF Board to use their CPF savings in respect of a purported purchase of the Property. On 25 July 1986, the CPF Board replied in a letter addressed to all three individuals that only Ms Chia was allowed to use her CPF savings to purchase the Mother's one-third share in the Property. The letter expressly stated Weng was not allowed to use his CPF savings towards redeeming the existing loan secured on the Property, but was silent on whether Yeo could use his CPF savings for the same. Presumably, Ms Chia was allowed to use her CPF savings because, by the time of CPF Board's reply, a sale and purchase agreement had already been executed under which the Mother would transfer her one-third share to Ms Chia at a stated purchase price of $126,000, and so there was proof of the purchase. Weng was in a different position as he had owned his share since 1978 and there was no purchase contract to which his CPF savings could be applied. Since Weng could not use his CPF savings, and Ms Chia had insufficient CPF savings to satisfy the indebtedness completely, the family then decided that Weng should transfer his one-third share to Yeo, so that Yeo could apply to use his CPF savings for that purpose instead. On the stand, Yeo admitted that the 1987 Transfer came about to enable him to apply to use his CPF savings to reduce the outstanding debt to OCBC, and that it was not intended for Weng's one-third share to be sold to him in a normal outright transaction:

> Counsel: So then the proposition came, as Weng had failed to raise his finance on the CPF, you were to take over his shares and [Ms Chia] was to take over the mother's share, so that together you both can apply for the CPF to reduce the liability to the bank; you agree?
>
> Yeo: Yes.
>
> Counsel: It was not in any way intended for it to be sold to you in a normal outright transaction; do you agree?
>
> Yeo: Yes.

The plan worked. As stated at [11] above, Ms Chia and Yeo successfully obtained the CPF Board's approval for them to use their respective savings in their "purchase" of the shares in the Property. They were then also able to get a new loan facility from OCBC for the "purchase" as well. The funds thus secured for the purchase were sufficient to pay off the 1984 loan facility that Yeo had taken.

38 The 1991 Transfer was effected for a similar purpose. Yeo admitted during cross-examination that although the stated purchase price at which Mdm Ng was buying a one-third share in the Property from him in 1991 was $160,000, he never actually intended to collect that sum from her. Instead, his intention was for his wife to use her CPF savings, and to obtain a new loan together with him and Ms Chia, for the purpose of running down the debts that were outstanding to OCBC then.

39 In short, the 1984 Transfer, 1987 Transfer and 1991 Transfer did not reflect genuine sales. Instead they were effected to enable various members of the family to use their CPF savings or to obtain new loans to discharge outstanding debts due to OCBC. They were all steps taken in pursuance of the prime aim of saving the family home from foreclosure by OCBC.

40 In the present appeal, Mr Lee submits that when Weng transferred his one-third share in the Property to Yeo in 1987, he was so engrossed in carrying out the "family compact" that it would be artificial and contrived to say that he had even paused to think about whether he was making a gift to Yeo. This could be the case, but it is also possible that although Weng's key motivation in effecting the 1987 Transfer was to carry out the "family compact", he also intended to make a gift of his one-third share in the Property to Yeo at the same

time. In order to rebut the presumption of resulting trust arising from the fact that no consideration was given for the transfer, it needs to be shown that there was an intention to make a gift to Yeo, albeit that that intention need not be the only, or even the predominant intention. The finding of the "family compact" is nonetheless significant in that it forms part of the factual background against which Yeo must rebut the presumption of resulting trust by proving that Weng, quite apart from trying to carry out the "family compact", also had an intention to make a gift to Yeo when he effected the 1987 Transfer.

41 Before turning to consider whether Yeo had successfully rebutted the presumption of resulting trust, we address Mr John's contention that there was in fact no need to resort to the presumption because there was direct evidence that Weng intended to make a gift to Yeo.

Whether there was direct evidence that Weng intended to make a gift to Yeo via the 1987 Transfer

42 In contending that there was direct evidence of such an intention on Weng's part, Mr John also relies on the Judge's finding of the "family compact". He says that the "family compact … explains why Weng had never intended from the outset that Yeo was to hold the one-third share [on] trust for him", and that it is "direct evidence" that Weng had an "actual intention" to benefit Yeo in effecting the 1987 Transfer. With respect, we are unable to see how this is so. The significance of the Judge's finding of the "family compact" is that the 1987 Transfer must be viewed from the perspective that all actions taken by family members in relation to the Property were taken to preserve it as the family home. The 1987 Transfer enabled Yeo to draw $10,000 from his CPF account and to get a new loan facility, all monies being taken with the objective of settling the outstanding indebtedness secured by the Property. We agree with Mr Lee that

since this objective of saving the Property from foreclosure through contributions from Yeo could be equally achieved by transferring the one-third share to Yeo on trust or as a gift to him, the existence of the "family compact" is equivocal in relation to whether Weng intended to make a gift to Yeo at the time of the 1987 Transfer.

43 In our judgment, therefore, there was no direct evidence that Weng intended to make a gift to Yeo when he effected the 1987 Transfer. Mr John has not been able to point the court to such evidence.

Whether the presumption of resulting trust had been rebutted

44 As mentioned, it is not disputed in the present appeal that Yeo did not give any consideration for the 1987 Transfer, and that the presumption of resulting trust therefore applies in favour of Weng being the beneficial owner of the one-third share in the Property that he had transferred to Yeo. The thrust of Weng's appeal is that the Judge had erred in holding that Yeo had successfully rebutted the presumption by proving that Weng had intended to make a gift to Yeo when he effected the 1987 Transfer. Since, as discussed, there is no direct evidence that Weng had intended a gift, we must now consider whether there is indirect evidence which demonstrates such intention.

The law pertaining to the presumption of resulting trust

45 We begin our analysis with a recapitulation of the relevant legal principles.

46 In *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*"), this Court explained (at [36]) the basis of the presumption in the following terms:

> The presumption of resulting trust is based on a traditional commonsense presumption that, outside of certain relationships, an owner of property never intends to make a gift, and, by extension, that a person who provides the money required to purchase a property intends to obtain an equivalent equitable interest in the property acquired. Equity, with its superbly realistic grasp of human motivations, "assumes bargains, and not gifts" (per Spence J (Supreme Court of Canada) in *Goodfriend v Goodfriend* (1972) 22 DLR (3d) 699 at 703 quoting in turn from an article by Prof Donovan Waters entitled "The Doctrine of Resulting Trusts in Common Law Canada" (1970) 16 McGill LJ 187 at 199) … The presumption of resulting trust is about the intentions of property owners and, … it is rebuttable by evidence of a contrary intention. Lord Upjohn commented in *Vandervell v Inland Revenue Commissioners* [1967] 2 AC 291 at 313:
>
> > In reality the so-called presumption of a resulting trust is no more than a long stop to provide the answer when the relevant facts and circumstances fail to yield a solution.

47 When the presumption of resulting trust applies, the fact that is being inferred is the lack of intention of the transferor to benefit the transferee, and *not* the presence of an intention of the transferor to retain a beneficial interest: see *Lau Siew Kim* at [35] and the recent Court of Appeal decision in *Su Emmanuel v Emmanuel Priya Ethel Anne and another* [2016] 3 SLR 1222 ("*Su Emmanuel*") at [79]. In *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*"), this Court approved (at [38]) the following passage of the Privy Council case of *Air Jamaica Ltd and others v Joy Charlton and others* [1999] 1 WLR 1399 (at 1412):

> Like a constructive trust, a resulting trust arises by operation of law, though unlike a constructive trust, it gives effect to intention. But *it arises whether or not the transferor intended to retain a beneficial interest – he almost always does not – since it responds to the absence of any intention on his part to pass a beneficial interest to the recipient.* [emphasis added].

48 It follows from the above that in rebutting the presumption of resulting trust, what needs to be proved is not that the transferor did not have an intention

to retain a beneficial interest, but that the transferor intended to benefit or to make a gift to the transferee. In most cases, there may be no practical difference between the two, as they are usually concurrent and when one is proved the other would follow; a transferor found to have transferred his property without intending to retain a beneficial interest in the property would usually have intended to make a gift to the transferee, and the converse is also usually true for a transferor found to have intended to make a gift to the transferee most likely also did not intend to retain a beneficial interest in the property. In this case, however, the distinction is material. Both parties in the present appeal have accepted the Judge's finding of a "family compact", and Mr Lee submits that Weng was so singularly pre-occupied with carrying out the "family compact" to preserve the family home that the issue of making a gift to Yeo simply never crossed his mind when he effected the 1987 transfer. Assuming this was so, and if to rebut the presumption of resulting trust Yeo must prove that Weng did not intend to retain a beneficial interest in his one-third share in the Property when he effected the 1984 Transfer, then that burden may have been discharged because Weng did not specifically direct his mind to whether he intended to retain a beneficial interest when he made the transfer. Conversely, if to rebut the presumption Yeo must prove that Weng intended to make a gift to Yeo when he effected the 1984 Transfer, then that burden would not be discharged if the court is persuaded that, at the time of the transfer, Weng was *singularly* occupied with the "family compact" and so he did not address his mind at all to whether he was making a gift to Yeo.

49 As stated, the correct position in law is that in rebutting the presumption of resulting trust, what the transferee needs to prove is not that the transferor did not have an intention to retain a beneficial interest, but that the transferor had the donative intent to benefit him or to make a gift to him. Thus, in this case,

what Yeo needs to prove is that Weng positively intended to make a gift of his one-third share in the Property to Yeo. The burden is on Yeo to prove this on a balance of probabilities. The Judge appreciated this when she stated at [87] of the Judgment that "[t]he absence of consideration shifts the burden of proof to Yeo, who now has to rely on other evidence to prove that Weng intended an outright transfer to Yeo". With respect, however, it seems to us that she might not have applied this principle with full rigour in her subsequent analysis.

50 The Judge relied on several factors in reaching her conclusion that there was sufficient evidence that Weng intended to gift his one-third share to Yeo when he effected the 1987 Transfer, and that rebutted the presumption of resulting trust (see [25] and [26] above). We examine each of these factors below.

Weng's failure to indicate in his declaration to the HDB in 1994 that he had an interest in the Property

51 The Judge was of the view that the fact that Weng did not disclose any interest in the Property in his declaration to the HDB in 1994 was evidence which "undermined his present claim that he had retained an interest in the Property" (see [25(a)] above).

52 As we have stated, in rebutting the presumption of resulting trust, what needs to be proved is that the transferor intended to make a gift to the transferee. The focus is on this and not on whether the transferor intended to retain a beneficial interest in the property transferred. Hence, in this case, whether or not Weng thought he retained a beneficial interest in the Property is actually not the relevant inquiry; its relevance to the analysis is limited to only in so far as it

may shed light on whether Weng had, by the 1987 Transfer, intended to make a gift of his one-third share in the Property to Yeo.

53 In any event, we are of the view that the fact that Weng did not disclose any interest in the Property in his declaration to the HDB in 1994 is, at best, equivocal as to whether Weng had regarded himself as having a beneficial interest in the Property. During cross-examination at the trial, Weng provided what we think is a plausible explanation of why he did not declare his interest in the Property. He said that he did not tell HDB the truth because he knew that if he had disclosed his interest in the Property, then HDB may not approve his application for a flat; it was important for him to secure an HDB flat then because he was getting married and there was no room in the Property for him and his bride. The Property was then occupied by many people including Yeo and his family, Weng, and the Parents. Rather than ask Yeo to move out with his family, Weng felt that it would be better for him to move into an HDB flat upon his marriage. An extract of Weng's evidence in court is provided below:

> When Kwok Yeo came back from UK he share a room with me, okay? Now, when Kwok Yeo get married in 1987, okay, and [Mdm Ng] move into the flat, I allowed Kwok Yeo to use my room and I moved to the storeroom, okay? …
>
> After several years Kwok Yeo got two children …
>
> Kwok Yeo is my brother, it's okay that he use my room because I'm only one person. But then the time come when I get married, right, so I need a house to stay. I cannot ask Kwok Yeo to get out, because he is my brother and moreover the children need my mother to overlook the children …
>
> And the transportation from 37 Jalan Kechubong to the kindergarten is not very far, you know, because I ferry them to and fro. So it's a very convenient place for us -- for him to stay there. That's my consideration.
>
> Now when the day come, I and my wife apply for HDB flat, I fill all the application form except this question, okay? I got stuck for almost 10 minutes. Because I was thinking if I were not to

> tick [the box declaring that he had no interest in another property] then I have to go back to Kwok Yeo, Yeo, will know. If I get married I need your flat, okay, you know, then Kwok Yeo have to move out.
>
> I think to me Kwok Yeo need the house at that point of time more than me la, because of the children … So I give way to my brother …

54 We accept his explanation. Weng only claims to be a beneficial co-owner owning one-third of the Property. It is not his case that he is the sole beneficial owner of the Property. He would not have been able, as a mere co-owner, to have insisted that Yeo, who was also a co-owner, move out of the Property. The more practical course for Weng, therefore, was to apply for an HDB flat so that he and his wife could move out of the Property and have their own home. Yeo could not have done the same as he, as a registered co-owner of the Property, could not have acquired an HDB flat.

55 Correctly, in the present appeal, Mr John has not made any submission on the doctrine of illegality with respect to Weng's false declaration to the HDB. In our view, Weng's claim is not tainted by illegality, as the claim arises from a resulting trust that came into existence much earlier than the false declaration and is not dependent on the latter at all. Weng's admission that he had made a false declaration to HDB is only relevant in explaining his state of mind when he decided not to declare his interest in the Property.

Yeo's conduct subsequent to the 1987 Transfer which indicated that he regarded himself as an absolute proprietor of the Property

56 The Judge found it significant that, subsequent to the 1987 Transfer, Yeo acted like an absolute proprietor of the Property rather than as a trustee (see [25(b)] above). She considered it unlikely that Yeo would have invested a substantial amount of money in rebuilding the Property, without seeking to

claim any of the rebuilding cost from Weng, if Yeo had regarded Weng as a co-owner of the Property.

57 It is settled law that when deciding whether there is a resulting trust, the relevant intention is that of the transferor and not that of the transferee: *Chan Yuen Lan* at [43]. Hence, Yeo's conduct, and the inferences that may be drawn from that conduct as to what his intention at the time of the 1987 Transfer might have been, are irrelevant to the current inquiry. It appears that the Judge discussed Yeo's conduct in the course of her judgment because Weng's case before her was premised on Yeo knowing and agreeing to hold the one-third share of the Property on trust for Weng. Be that as it may, we do not think that much weight can be given to the fact that Yeo had invested substantially in the rebuilding of the Property but did not try to claim any share of the cost from Weng. After all, Yeo was living there with his wife and children and Mdm Ng's two nephews together with the Parents, Ms Chia and Chia Hung Lin (another sister). Since the Property, which was then a single-storey bungalow, provided cramped accommodation for its 10 inhabitants, rebuilding and expanding it was a practical course. Weng, on the other hand, had not lived in Property since the early 1990s. It may not have occurred to Mdm Ng and Yeo to claim a portion of the rebuilding costs from Weng even if they had regarded Weng as the owner of a one-third share, since Weng had no need for the Property to be rebuilt and had not been consulted on the desirability of doing so. In any event, their failure to make a claim against Weng reflects, at the most, their state of mind at the time of rebuilding; it does not reflect Weng's intention at the time of the 1987 Transfer.

Weng's failure to provide a good explanation as to why he would transfer his one-third share in the Property to Yeo on trust

58 One of the other factors that the Judge took into account in reaching her conclusion that Weng had intended to make a gift of his one-third share in the Property to Yeo was that, in her view, Weng failed to provide a good explanation as to why he would transfer his share to Yeo on trust (see [25(c)] above). With respect, we do not think that this can be held against Weng in the current inquiry on whether the presumption of resulting trust has been rebutted, since as we stated at [49] above, there is no onus on Weng to prove that he had not intended to make a gift to Yeo.

Weng's lack of interest in the rebuilding of the Property

59 The Judge also considered that Weng's conduct subsequent to the 1987 Transfer was inconsistent with his being an owner of the Property (see [25(d)] above). In 1999 to 2000, Weng was aware of the rebuilding project and even helped Yeo and the other occupants of the Property move to temporary accommodation, but appeared to be completely disinterested in the project itself. During cross-examination, he said that when the Property was demolished, he had no idea what the size of the new house that was to be constructed was, and also did not see the need to assert his one-third interest in the Property then. Further, he did not offer to pay any part of the cost of rebuilding the Property.

60 There appears to us no reason why Weng should have spoken out against the rebuilding of the Property, and so his failure to do that is not inconsistent with him being an owner of one-third of it. As stated, it is not disputed that the Property was then too small for its ten inhabitants. The Parents were both still occupying it and Weng would have wanted them to live comfortably and not in

an overcrowded house. He was not asked to contribute towards the cost of the rebuilding, and he did not see a need to offer to pay because he was not living in the Property and, as he said in his evidence, he considered it Yeo's and Mdm Ng's "responsibility to pay for the house if they need the house to be so big".

61 In our judgment, Weng's inaction and detached attitude in relation to the rebuilding of the Property do not undermine his claim because reasonable explanations exist for them. He was not living in the Property, and he had not been asked to pay for the rebuilding and so did not need to know the scale of the project or how much it would cost. From his perspective, Yeo, Mdm Ng and Ms Chia were occupying the Property. Indeed, they wanted to continue to live there in more comfortable accommodation, and were using their own money to pay for it to be rebuilt so as to achieve that aim. This was not a case where the rebuilding project would be contrary to his interest as an owner of the Property so that failing to speak out against it implied the lack of such an interest. Weng would have known that the reconstructed house would be bigger than the original house as he was aware of the reason for the rebuilding project. Thus, even though there were no plans to sell the Property then, Weng would have known that he would stand to gain from the rebuilding project which would likely enhance the value of the Property. Weng's evidence explaining why he was unconcerned about the rebuilding of the Property was:

Counsel:	Thank you. Do you agree that in the course of the work being done you would have realised that a much bigger building was being built on the property?
Weng:	As the construction is going on, okay, yes, I did observe, you know, it's more than a storey building la, it's more than a single storey la.

> Counsel: In fact it is a three storey bungalow, much bigger than the original single storey bungalow; right?
>
> Weng: Agree.
>
> Counsel: Did you at any time get concerned as to how you are going to recover your one-third share in the property?
>
> Weng: Sorry, Mr Daniel, *whatever money they put inside, three of them, it's no concern of me because it's their responsibility to pay for the house if they need the house to be so big. Because I don't stay there, okay, it's up to them to take the risk. They themselves know behind their mind that the whole house is on trust, it will increase; okay?* So whatever they put in, it's up to them because I trusted my brother, Yeo. That's my answer.
>
> [emphasis added]

62 There was also no reason why Weng would have seen a need to assert his claim in the Property then, as the Property was being rebuilt for its original occupants, and not to be sold. When asked in cross-examination why he had not warned Yeo and Mdm Ng against investing in the rebuilding of the Property because he (Weng) had a one-third share in it, Weng's reply was that Yeo and Mdm Ng were experienced enough to be aware of the potential risks:

> Counsel: -- did you ever raise to Yeo or [Mdm Ng], "look, you are rebuilding the property, I have a one-third share, I want to warn you that one day I'm going to take it back, then what is going to happen with the money that you have sunk into it"?
>
> Weng: Mr Daniel, I've already told you the answer. Whatever they want to invest in that property is up to them, okay? It's got nothing concerned about me, because I don't want -- I trusted my brother. He is a civil engineer in the construction industry, you know, the wife is accountant, he's a financial controller in various companies as far as I know. She should know the risk, right?

> Counsel: So in other words, you were happy to allow them to continue with the construction and not tell them anything?
>
> Weng: Like I say, I trusted my brother, Yeo. Whatever he do, he got his own mind, you see? I don't tell him what to do, what not to do. I'm staying outside there, I shift out in 1993 or 1994. This house was constructed in the year 99 to 2000. So what do you expect me to do …

We do not think that the fact that Weng did not warn Yeo and Mdm Ng against investing in the rebuilding project can be taken against Weng in his current claim. From his perspective, Yeo and Mdm Ng were occupying the Property and they could, if they wished, expend their own money to rebuild the house if they found that necessary to serve their needs.

Weng's failure to stake a claim to the Property during the litigation process for OS 422 and thereafter

63 The Judge considered that Weng's failure to claim that he owned a one-third share in the Property during the litigation of OS 422 was another instance where he had acted in a manner that was inconsistent with his claim to own a one-third share in the Property. On 22 July 2014, the High Court allowed Yeo's and Mdm Ng's application in OS 422, and granted an order for the Property to be sold on the open market and the proceeds divided equally amongst Yeo, Mdm Ng and Ms Chia, but even then, Weng did not assert that he had a one-third share in the Property.

64 In the course of the arguments, we were informed that Ms Chia had, in her affidavit filed in support of her application to stay OS 422, stated that she had informed the rest of her siblings that Yeo and Mdm Ng had commenced proceedings against her for the sale of the Property, and that some of them had stepped forward to assert their interest in the Property. Weng was not among

those siblings. In the present suit, Yeo claimed that he had informed Weng and Chiong of developments in OS 422 at intervals, and that when he told them that Ms Chia's defence in OS 422 was that Yeo and Mdm Ng were holding a two-third share in the Property on trust for the Father and the rest of the family, both Weng and Chiong responded that no such trust existed. At no time did Weng tell Yeo that he (Weng) was the beneficial owner of a one-third share in the Property. Furthermore, according to Yeo, after he obtained the court order in OS 422 for the Property to be sold on the open market, he informed Weng and Chiong that he could not find a buyer. Weng then allegedly encouraged Yeo to persuade Mdm Ng that they both buy over Ms Chia's one-third share rather than sell the Property.

65 The burden of rebutting the presumption of resulting trust is on Yeo, but in the suit below no evidence from Ms Chia on whether she had informed Weng about OS 422 was adduced, nor was Chiong called as a witness. In a lengthy cross-examination, Mr John repeatedly put to Weng that he was aware of the court order in OS 422 for sale of the Property and of Ms Chia's allegation of a family trust then. It was also put to Weng that he had suggested to Yeo that the latter and his wife buy over Ms Chia's share in the Property. In response, Weng claimed that he did not know about the dispute in OS 422 till much later, said he was against the sale of the Property when he found out about it. Weng also repeatedly said that he did not remember whether Yeo told him about Ms Chia's allegation of a family trust nor recalled suggesting that Yeo and Mdm Ng should buy over Ms Chia's share. An extract of Weng's evidence on this point is provided below:

> Counsel: Do you remember that there was a lawsuit initiated by Yeo and [Mdm Ng] against [Ms Chia] for the sale of the property?

Weng: At the beginning I doesn't know.

Counsel: Do you agree that it was Yeo that came and told you and Chiong about it?

Weng: I don't remember.

Counsel: I am instructed that on 25 June 2014 your sister … [Ms Chia] filed an affidavit in which she suggested that the property was a family asset and does not belong to Yeo and [Mdm Ng]. Are you aware of that?

Weng: No.

Counsel: I am further instructed that when this was explained to you and Chiong by Yeo in a meeting, both of you said to him there is no such trust?

Weng: There is no such meeting, I don't remember such meeting in the first place.

…

Counsel: Thank you. My instructions are that my clients saw the affidavit of your sister, [Ms Chia], that was filed on 25 June 2014 very soon after that, and inside there they notice [*sic*] that [Ms Chia] had said that the property is a family asset, all right? And because of this, my client, Yeo, called you to say that he wanted to talk to you and Chiong about this. You recall this?

Weng: I don't remember.

Counsel: I am further instructed that you are the one who then contacted Chiong and they met, the three of you met at the canteen in the mezzanine floor of Changi Airport terminal 2 to discuss this matter. You recall?

Weng: Yes, that I recall in the Changi Airport.

Counsel: You recall that during that conversation Yeo raised to you that he was surprised that [Ms Chia] is saying that he and his wife are not entitled to sell their two-thirds share because it's a family asset?

Weng: I can't remember … I just cannot remember. How can I remember so detail?

Counsel: All right, I have to put my case to you … then following on that, both you and Chiong immediately responded to Yeo to say there is no such family trust. You remember?

Weng: I really don't know -- I cannot remember …

…

Counsel: But you remember the meeting?

Weng: Yes, I remember the meeting but the conversation I doesn't remember.

Counsel: Thank you. I'm instructed that my clients succeeded in the lawsuit against [Ms Chia] and they obtained a court order for the property to be sold. You are aware of that?

Weng: I only aware of that in the later stage when this -- when they, you know, they argue like, you know?

Counsel: I am instructed that after trying for some time they were not able to get a buyer because the market was dropping. Are you aware of that?

Weng: No, no, no.

Counsel: I am instructed that Yeo called you again and the three of you, Yeo, you and Chiong, had a second meeting again at the same canteen in Changi Airport terminal 2 again on a weekend?

Weng: Yes.

Counsel: To discuss this matter, true?

Weng: We only discuss sensible matter, not about what sale here, sale there. We don't even agree the sale.

…

Counsel: Yeo then asked you that he and his wife are not able to get a decent price because the market is falling and there is an option that they should consider going back to the judge to get permission to buy [Ms Chia's] one-third share. You remember?

Weng: I don't remember.

> Counsel: I put to you there was such a conversation and you then suggested to Yeo "why don't you buy [Ms Chia's] share instead of looking for a buyer to sell it on the open market". True or not true?
>
> Weng: I just cannot remember, because in the first place I and Chiong don't agree to the sale of the property.
>
> …
>
> Counsel: I put it to you further that in the conversation Yeo had told you that they cannot afford to buy over the one-third share, and your response to them was "why don't you sell your Sommerville flat and buy over the one-third share". Did you not say that?
>
> Weng: I didn't say that. I cannot remember, I don't think I say that, because I really don't agree to the property; okay?

66 It was a lengthy exchange but the truth is that nothing much came out of it that could assist Yeo's case. Weng claimed that he did not know about OS 422 till later, and that he did not know that [Ms Chia] had filed an affidavit in relation to OS 422 alleging the existence of a family trust over the Property. He said he could not remember Yeo mentioning to him [Ms Chia's] allegation of a family trust, or that he had suggested to Yeo that Yeo and Mdm Ng buy over her share. We are thus left with Yeo's word against Weng's since Yeo did not adduce evidence from Ms Chia or Chiong to support his case. In our judgment, it cannot be established, on a balance of probabilities, that Weng knew about the court order granted in relation to OS 422 for the Property to be sold on the open market and for the proceeds to be split three ways between Yeo, Mdm Ng and Ms Chia, or of the allegation of a family trust. So, his failure to stake a claim in the Property cannot give rise to an inference that he did not regard himself as the owner of a one-third share in the Property.

67 The Judge also considered it significant that, although Weng said that he had not staked a claim in the Property all these years because the Mother was still living in the Property, Weng did not make his claim soon after the death of the Mother in October 2014. Instead, he first raised the matter with Yeo and Mdm Ng only in July 2015. With respect, we do not think that a time lapse of nine months is such a significant or lengthy delay as to warrant drawing an inference against Weng to the effect that he did not consider himself to have a one-third share in the Property especially in light of the fact that Weng's transfer of his one-third share to Yeo had taken place some 28 years previously, in 1987.

68 In the overall analysis, we are unable to agree with the Judge that Yeo had successfully rebutted the presumption of resulting trust. First, the factors relied upon by the Judge in coming to this conclusion are, in our view, at best equivocal as to whether Weng did not regard himself as a beneficial owner of one-third of the Property. Second, the presumption of resulting trust arises by operation of law, and it is possible that Weng, while not intending to make a gift to Yeo, did not appreciate that he still retained a beneficial interest in the Property despite the 1987 Transfer. It is possible that, whatever the position in law, the exact nature of his interest never registered in Weng's mind since the purchase price of the Property was paid by the Father and the Mother, and the Property was acquired as a home for the family and was treated as such by all family members who took whatever steps they could to preserve it. It is likely that Weng transferred his one-third share to Yeo in 1987 because that move was necessary to carry out the "family compact" and he gave little thought to the impact, if any, that the transfer had on his beneficial ownership. Indeed, so long as the Parents were alive and occupying the Property, any claim to a share in it would not have featured in Weng's mind at that material time. It seems to us that the question of Weng's share in the Property only came into focus after he

was sued by Ms Chia in S 767 and obtained legal advice; he first mentioned to Yeo and Mdm Ng that he had a one-third share in the Property in July 2015, and that coincided with the institution of S 767. Third, in rebutting the presumption, the focus of the inquiry is, in any event, not whether Weng intended to retain a beneficial interest in the Property when he effected the transfer, but whether he positively intended to make a gift to Yeo. Yeo has adduced no satisfactory evidence indicating that Weng did have such a donative intent.

69 We therefore hold that Yeo has not rebutted the presumption of resulting trust. Indeed, we consider it unlikely that Weng would have positively intended to make a gift of his one-third share in the Property to Yeo because, at the time of the 1987 Transfer, Weng was not earning much and was just starting his own plumbing business following the failure of the Father's firm. Since the one-third share in the Property was his most valuable asset, it seems to us quite inconceivable that he would have decided to give it away at a time when he was in a financially difficult situation, especially if the recipient was to be Yeo who, as a freshly minted engineer, had much better career and financial prospects. We note that the Judge was of the view that it was logical for Weng to have decided to gift his one-third share in the Property to Yeo because that "freed him of worry that his business debts could deprive his parents, himself and other members of their family of their home, released him from any moral obligation he might have felt as a co-owner living in the Property to help to pay the mortgage outstanding, and subsequently, it allowed him to pursue other options for housing with the HDB" (see [26] above). With respect, we are unable to agree with her. Any concern that Weng might have harboured then that his business debts could deprive his family of the family home would be equally addressed whether Weng transferred his one-third share in the Property to Yeo absolutely or on trust. In any event, at that time, Weng's debts were not secured

by the Property such that there was a real risk that his failure to repay those debts would lead to the Property being foreclosed. In fact, the only loan that was secured by the Property had been made to Yeo as sole borrower when he took over the Father's share and it was Yeo's failure or inability to service the loan that created the need to raise further funds to safeguard the Property.

70 The Judge's consideration that Weng might have decided to give his one-third share to Yeo because he wanted to be relieved of any moral obligation to help to pay the mortgage loan facility also loses its force when one considers that, under the "family compact", various members of the family assumed some form of obligation to do their part to help secure the family home anyway, regardless of who was or was not the legal owner of the Property. In this regard we repeat our observations at [35] in regard to contributions made to reduce the overdraft debt in Yeo's name. Finally, it is, in our view, speculative to reason that the prospect of being able to pursue housing options with the HDB would have operated on Weng's mind at the time of the 1987 Transfer; it was not till years later that he actually married and applied for an HDB flat.

71 In the circumstances, we are of the view that the appeal should be allowed.

Equitable account of the costs of rebuilding of the Property

72 At the hearing of the appeal, Mr Lee informed the court that Weng was prepared to reimburse Yeo and Mdm Ng one-third of the costs of the rebuilding of the Property if his appeal were allowed and he were declared to be the owner of one-third of the Property. According to his counsel, Weng would sell his one-third share in the Property to Yeo and Mdm Ng if they were willing to purchase it, and the couple could then set off one-third of the rebuilding cost from the

purchase price. Alternatively, the Property could be sold on the open market, and one-third of the building costs could be set off from Weng's one-third share of the sale proceeds.

73 We would have ordered Weng to reimburse one-third of the rebuilding costs to Yeo and Mdm Ng even if he had not offered to do so. As this Court noted in *Su Emmanuel* (at [96]), equitable accounting between co-owners of land is a "process by which the financial burdens and benefits of land shared by co-owners are adjusted between them". This remedy should, in our view, be available to Yeo and Mdm Ng.

74 The classic authority on equitable accounting of expenses incurred by co-owners for improvements and repairs to property is the English Court of Appeal case of *Leigh v Dickeson* (1884) 15 QBD 60 ("*Leigh v Dickeson*"). In that case, the plaintiff and the defendant were tenants-in-common of a property. The defendant claimed that he had expended money on the repairs of the property and sought a contribution from the plaintiff in respect of the money so expended in proportion to the respective shares in which the property was owned between them. The court disallowed the claim on the basis that when a tenant-in-common makes a voluntary payment to effect repairs or to improve the property, and the other tenant-in-common is in no position to reject the benefits of such repairs or improvements, then this second tenant-in-common should not be made to contribute towards the costs of the repairs or improvements, so long as they continue to hold the property as tenants-in-common. The court added, however, in *obiter dicta*, that where a sale is being ordered, such that the tenancy is to come to an end, the remedy of equitable accounting can then be obtained. Under that remedy, the second tenant-in-common would be required to contribute to costs incurred for past repairs or

improvements to the property which have enhanced its value. This is because, at that point, the second tenant-in-common accepts the increase in value of the property, and so he can be treated as having also adopted and sanctioned the execution of the repairs and improvements that led to the increase in value of the property. Cotton LJ stated as follows (at p 67):

> [B]ut in a suit for a partition it is usual to have an inquiry as to those expenses of which nothing could be recovered so long as the parties enjoyed their property in common; *when it is desired to put an end to that state of things, it is then necessary to consider what has been expended in improvements or repairs: the property held in common has been increased in value by the improvements and repairs; and whether the property is divided or sold by the decree of the Court, one party cannot take the increase in value, without making an allowance for what has been expended in order to obtain that increased value; in fact, the execution of the repairs and improvements is adopted and sanctioned by accepting the increased value …* [emphasis added]

75 The *dicta in Leigh v Dickeson* was followed in *In Re Pavlou* [1993] 1 WLR 1046. In that case, a wife paid for repairs and improvements to the matrimonial home after she and her husband separated and the husband left her in sole occupation of the property. She and the husband originally held the property on a joint tenancy, but when the husband became a bankrupt, the joint tenancy was severed and thereafter they owned the property as tenants-in-common in equal shares. In holding that, on the sale of the property, the remedy of equitable accounting was available to the wife with respect to the costs that she incurred in repairing and improving the property, Millet J stated (at 1048) that the guiding principle behind the remedy was that no party should be allowed to take the benefit of an increase in the value of the property without making an allowance for what had been expended by the other in order to obtain it. He then held (at 1049) that the wife was entitled to credit for one-half of either the costs she incurred in repairing or improving the property, or any increase in the value

of the property resulting from those repairs or improvements, whichever was less:

> I must make it clear of course that, in deciding as I do that the wife is entitled … to credit for one half of any repairs or improvements, there has to be an inquiry as to the amount expended and the increase, if any, in the value of the property thereby realised. Much expenditure on property is not reflected in any increase in value, and most expenditure on property results in a much smaller increase in value than the amount expended. The wife will be entitled … to credit only for one half of the lesser of the actual expenditure and any increase in the value realised thereby.

76 *Leigh v Dickeson* and *Re Pavlou* were applied locally in *Tan Chui Lian v Neo Liew Eng* [2007] 1 SLR(R) 265 ("*Tan Chui Lian*"), where Menon JC (as he then was) held that renovation costs paid by a co-owner of a property which went towards enhancing the value of the property should be compensated when the co-ownership of the property comes to an end. In the course of his judgment, Menon JC noted that the remedy of equitable accounting rests on equity and the court has a discretion as to how it may be given effect to. The extent to which the remedy of equitable accounting would be applied would depend on all the facts and circumstances of each case, including (a) when the renovation works were done; (b) whether these were in the nature of works done to enhance the capital value or merely to attend to necessary repairs; (c) whether in fact there has been an enhancement in the resale value of the property as a result of the expenditure; and (d) whether these have already been enjoyed by a party in occupation so as to warrant no further remedy or to limit it: see *Tan Chui Lian* at [32]–[33].

77 In the present case, we are of the view that Yeo and Mdm Ng should be entitled to recover from Weng one-third of the costs they incurred between

1999 and 2000 for the rebuilding of the Property, as the same went towards the enhancement of the value of the Property.

Conclusion

78 For the reasons given above, we allow the appeal and grant the declaration sought by Weng that Yeo holds a one-third share in the Property on trust for him.

79 Mdm Ng has been named as a respondent in this appeal but no order was sought against her. The Judge found that Mdm Ng did not know that Yeo was holding a one-third share in the Property for Weng at the time of the 1991 Transfer, and there is no appeal against that finding. In any case, as Mr Lee concedes, the one-third share that Yeo held absolutely pursuant to the 1984 Transfer was indistinguishable from the one-third share that he held on trust for Weng pursuant to the 1987 Transfer, and it cannot be said that the one-third share that Yeo transferred to Mdm Ng in the 1991 Transfer was the one-third share that he held on trust for Weng. Weng's claim for a one-third share in the Property should and is to be realised from Yeo's current 50% share in the Property.

80 As a result of [78] and [79] above, the beneficial interests in the Property are held as follows: 33.3% by Weng, 16.7% by Yeo and 50% by Mdm Ng.

81 We make the following orders:

(a) That, unless the parties are able to come to an agreement on the costs of the rebuilding of the Property which went towards the enhancement of the value of the Property, they shall, within three months from the date of this judgment, make an application for

an Assistant Registrar ("AR") to determine the same. For the avoidance of doubt, in determining the costs of the rebuilding of the Property which went towards the enhancement of the value of the Property, expenses incurred in the procurement of chattels for the Property (including equipment like air conditioners which may be affixed to the Property but are easily detachable) would be excluded.

(b) That Yeo and Mdm Ng shall, within six months from the date of this judgment, inform Weng in writing whether (i) either or both of them elect to buy over Weng's one-third share in the Property; or (ii) they elect to sell the Property on the open market and for the proceeds of sale to be divided between Yeo, Mdm Ng and Weng based on their respective shares in the Property (*ie*, 33.3% to Weng, 16.7% to Yeo and 50% to Mdm Ng).

(c) That, in the event that Yeo and/or Mdm Ng elect to buy over Weng's one-third share in the Property:

(i) The purchase price shall be one-third of the fair market value of the Property, based on valuation determined by a qualified valuer to be jointly appointed by Weng, Yeo and Mdm Ng, less one-third of the costs of rebuilding of the Property which went towards enhancement of the value of the Property as may be agreed between Weng, Yeo and Mdm Ng or as may be determined by the AR.

(ii) The costs of valuation shall be borne jointly by Weng, Yeo and Mdm Ng in proportion to their respective shares in the Property as aforesaid.

(iii) The parties shall be at liberty to apply for the court to appoint a valuer should they fail to agree on one.

(iv) The sale of Weng's one-third share in the Property to Yeo and/or Mdm Ng shall be completed within three months from the date of their written notification to Weng that either or both of them elect to buy over Weng's one-third share in the Property.

(d) That, in the event that Yeo and Mdm Ng elect to sell the Property:

(i) The Property shall be sold with vacant possession on the open market within six months from the date of Yeo's and Mdm Ng's written notification to Weng of their election for the Property to be sold on the open market.

(ii) Weng, Yeo and Mdm Ng shall have joint conduct of the sale including appointment of estate agents and solicitors.

(iii) All costs incurred in the sale of the Property, including the costs of estate agents and solicitors, shall be borne jointly by Weng, Yeo and Mdm Ng in proportion to their respective shares in the Property as aforesaid.

(e) That the parties be at liberty to apply.

Costs

82 The costs order made by the Judge is set aside. Yeo shall pay Weng's costs of the trial and of the appeal as taxed, if not agreed. No order for costs is

made against Mdm Ng as she, basically, is a nominal defendant who was joined in case it was found that Yeo had transferred the share he held on trust for Weng to her.

Chao Hick Tin	Judith Prakash	Steven Chong
Judge of Appeal	Judge of Appeal	Judge of Appeal

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