IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 131

Suit No 173 of 2017

Between

(1) Koh Lian Chye
(2) Koh Lian Chye (Administrator of the Estate of Koh Cheng Kang, Deceased)

… Plaintiffs

And

(1) Koh Ah Leng
(2) Koh Seng Hin

… Defendants

And

(1) Koh Ah Leng
(2) Koh Seng Hin

… Plaintiffs in Counterclaim

And

(1) Koh Lian Chye
(2) Koh Lian Chye (Administrator of the Estate of Koh Cheng Kang, Deceased)

… Defendants in Counterclaim

JUDGMENT

[Trusts] — [Resulting trusts] — [Presumed resulting trusts]
[Trusts] — [Constructive trusts]
[Partnerships] — [Partners *inter se*] — [Partnership property and property of separate partners]

TABLE OF CONTENTS

Koh Lian Chye and another
v
Koh Ah Leng and another

[2020] SGHC 131

High Court — Suit No 173 of 2017
Mavis Chionh Sze Chyi JC
1–4, 8, 11 ,15–17, 29–31 October 2019; 30 January, 5 March, 16 April 2020

26 June 2020 Judgment reserved.

Mavis Chionh Sze Chyi JC

Introduction

1 This is a dispute between two brothers concerning the beneficial ownership of a two-storey Housing and Development Board ("HDB") shophouse unit at Block 323 Bukit Batok Street 33 #01-112, Singapore 650323[1] ("the Property").

2 The younger brother, Koh Lian Chye, appears as the first plaintiff ("P1") in his personal capacity, and as the second plaintiff ("P2") in his capacity as the administrator of the estate of his late father, Koh Cheng Kang ("Father"). P1 is also the defendant-in-counterclaim. The older brother, Koh Ah Leng, appears as the first defendant ("D1") and first plaintiff-in-counterclaim. Koh Seng Hin,

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[1] Statement of Claim (Amendment No 4) ("SOC") at para 18(b).

a partnership where D1 and Father were partners, appears as the second defendant ("D2") and the second plaintiff-in-counterclaim.

Background facts

3 The undisputed background facts are as follows.

4 P1 is the natural son of Father and his wife, Tan Poh Geok ("1st Mother"). Father, 1st Mother and the children to their marriage shall be referred to collectively as the "1st Family". D1 is adopted, and he is also the eldest son in the 1st Family. P1 is the second youngest son in the 1st Family.

5 Father also had a relationship and started a family with another woman, Ong Ah Kim ("2nd Mother"). Father, 2nd Mother and the children to their marriage shall be referred to collectively as the "2nd Family".

6 In 1968, Father started Koh Seng Hin as a sole proprietorship. In 1975, Koh Seng Hin was converted to D2, a partnership. D1 was also made a partner of D2 in the same year.[2]

7 Originally, D2 conducted its business in an HDB shophouse at Choa Chu Kang. In or around 1986, D2 relocated its premises to the Property, which was rented from HDB to Father and D1 in their capacity as partners of D2.[3]

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2 Agreed Bundle of Documents ("ABD") at pp 527–528.

3 ABD at p 565.

8 In 1996, HDB offered the Property for sale.[4] The offer was taken up, and the sale of the Property was effected in the following manner: P1 was added as a joint lessee of the Property,[5] before the Property was purchased in the names of P1, D1 and Father as legal joint tenants.[6] The purchase price of the Property was $537,800,[7] excluding interest and/or fees.

9 The purchase was financed by a loan of $570,800 ("Mortgage Loan") taken out with United Overseas Financed Limited ("UOFL"), which was secured by a mortgage over the Property.[8] Father, P1 and D1 signed the loan agreement with UOFL as joint borrowers for the Mortgage Loan.[9]

10 In 1998, Father prepared his last will and testament ("the 1998 Will"). However, the 1998 Will did not provide for how the Property was to be disposed of after Father's passing.[10]

11 Between 1997 and 2001, P1 applied $76,800 of his own CPF money towards discharging the Mortgage Loan.[11] The remainder of the Mortgage Loan was paid for by Father.[12] The Mortgage Loan was discharged in 2005 after Father paid off the outstanding balance.[13]

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4 ABD at p 599.

5 ABD at pp 601–602.

6 ABD at p 603.

7 ABD at p 603.

8 ABD at p 197.

9 ABD at p 197.

10 ABD at pp 641–643.

11 ABD at pp 1186–1887.

12 Defendants' Closing Submissions (16.12.2019) ("DCS") at para 145.

12 In 2005, after the Mortgage Loan was discharged, Father went to the office of the law firm Irene Lim & Associates ("ILA") with P1 and D1, to discuss the ownership of the Property. Father apparently contemplated removing both P1 and D1 as legal joint tenants of the Property, but did not eventually follow through.[14]

13 Father passed away on 1 June 2014.[15] By virtue of the operation of the rule of survivorship, the Property is currently held by P1 and D1 as legal joint tenants. D1's youngest son, Koh Chee Keong ("Chee Keong"), was added as a partner of D2 on 21 June 2014.[16]

The parties' cases

The plaintiffs' case

14 The plaintiffs' primary case is that P1 is the sole beneficial owner of the Property.[17] They have two key arguments in support of their primary case:

(a) first, that there exists a common intention constructive trust pursuant to which P1 was to be the sole beneficial owner of the Property upon Father's passing.[18]

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13 SOC at para 31.

14 ABD at pp 385–386.

15 ABD at p 9.

16 ABD at p 26.

17 SOC at para 81(a).

18 SOC at paras 47, 50.

(b) second, that there exists a claim in proprietary estoppel on the basis that Father represented to P1 that the latter was to be the sole beneficial owner of the Property upon the former's passing.[19]

15 The plaintiffs' alternative case is that the Property is held on a purchase price resulting trust[20] in the proportion of 98.01:1.99[21] or 59.1:40.9[22] between P1 and Father. Finally, the plaintiffs have prayed in the alternative for a declaration "that [P1] (or… [P1] and the Father's estate) and [D1] have beneficial interests in [the Property] in such proportion to be determined by [the Court]"[23]. As to other reliefs, the plaintiffs have prayed for an account of the rental income collected by D1 (less the amounts paid by D1 to Father)[24].

The defendants' case

16 The defendants' primary case is that D2 is the sole beneficial owner of the Property.[25] Their alternative case is that the Property is held on a purchase price resulting trust in the proportion of 85.7:14.3 in favour of "the Defendants".[26] As another alternative, they claim that D1 is "the sole beneficial

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19 SOC at para 54.

20 SOC at para 63(a).

21 Plaintiffs' 2nd Supplementary Submissions (6.4.2020) ("P2SS") at para 25.

22 P2SS at para 57.

23 SOC at para 63 (c).

24 SOC at para 63(g).

25 Defence and Counterclaim (Amendment No 5) ("DC") at para 81(2).

26 DC at para 81(1).

owner" of the Property by virtue of "the operation of the presumption of advancement"[27].

On whether there was a dissolution of D2 upon Father's death

17 Before addressing the defendants' case, I will deal with a preliminary issue raised by the plaintiffs. The plaintiffs have argued that D2 no longer exists after Father – one of D2's partners – passed away on 1 June 2014.[28]

18 Section 33(1) of the Partnership Act (Cap 391, 1994 Rev Ed) states that a partnership is dissolved upon the death of any partner unless otherwise agreed between the partners. Therefore, D2 would have dissolved upon Father's death unless otherwise agreed between the partners of D2 (Father and D1) prior to Father's death.

19 The defendants claim that there was such an agreement as Father and D1 had agreed for Chee Keong to take over Father as a partner of D2.[29] I do not accept the defendants' claim. My reasons are as follows.

20 The evidence given by D1 was internally inconsistent. In cross-examination, D1 initially claimed that Father's intention for Chee Keong to be made a partner of D2 was only communicated to the second oldest son of the 1st Family, Koh Lian Thye ("Lian Thye"), and that Lian Thye only told D1 of Father's intention *after* Chee Keong was added as a partner of D2.[30] However,

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27 DC at para 81(3).

28 Plaintiffs' Closing Submissions (16.12.2019) ("PCS") at paras 136–137.

29 DC at para 47.

30 Transcript (29.10.2019) at p 32, lines 11 to 17.

D1 subsequently changed his position and asserted, without any corroborating evidence, that Father had told *him* of the intention to make Chee Keong a partner on two occasions in 1999 and 2013.[31]

21 The evidence from Lian Thye contradicted both versions of events put forward by D1. In cross-examination, Lian Thye claimed that he had told D1 about Father's intention *before* Chee Keong was added as a partner of D2.[32]

22 Beyond these inconsistencies, if Father had in fact intended to make Chee Keong a partner of D2 as early as 1999 (*per* D1's second version of events), he could easily have done so when he was alive. However, this was not done.

23 I find therefore that the defendants have not discharged their burden of showing that Father and D1 had agreed for Chee Keong to become a partner of D2. It follows that D2 was dissolved in 2014 when Father passed away.

24 In the interests of completeness, I should make it clear that this dissolution of D2 was not a "technical dissolution" in which (*per Chiam Heng Hsien v Chiam Heng Chow* [2015] 4 SLR 180 ("*Chiam Heng Hsien*") at [57]:

> [A] change in the composition of a partnership results in a dissolution of the existing firm and the creation of a new firm … [and] the new firm will usually take on the assets and liabilities of the old, without any break in the continuity of the business.

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31 Transcript (29.10.2019) at p 34, lines 17 to 20.

32 Transcript (31.10.2019) at p 82, lines 20 to 23.

In the present case, as I have found that there was no agreement for Chee Keong to become a partner of D2 prior to Father's death, D1 was the sole remaining partner of D2 following Father's death. There can be no partnership of one. In the circumstances, the dissolution of D2 upon Father's death was a general (as opposed to technical) dissolution. It should be added that the dissolution of D2 upon Father's death carries certain implications for the defendants' claims about D2's interest in the Property, which I will come to.

Observations on the defendant's presentation of their primary case

25 Turning back to the defendants' primary case, this is described in their pleadings and submissions as follows:

(a) In their Defence and Counterclaim (Amendment No 5) ("DC"), the defendants pleaded that "[D2] is the sole beneficial owner of the [Property] and [P1] holds his share in the [Property] on constructive trust for [D2]."[33] In the Defendants' Closing Submissions ("DCS"), it was submitted that the constructive trust in question was a "common intention constructive trust".[34] This common intention constructive trust was said to be premised on a common intention between Father and P1 for D2 to have sole beneficial ownership of the Property.[35]

(b) In their DC, the defendants also pleaded that the Property was purchased as D2's partnership asset, with D2 as the sole beneficial

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33 DC at para 81(2).

34 DCS at para 1(d).

35 DCS at para 197.

owner.[36] Father was said to have used D2's money to pay for the acquisition of the Property.[37] It was alleged that there was a "common intention between the parties that the [Property] was acquired as [D2]'s partnership asset".[38]

(c) The defendants have prayed for an order that the Property be sold in the open market, with the net sale proceeds to be divided in the ratio of the parties' beneficial interests in the Property[39].

(d) The defendants have also prayed for an account to be taken of the rental income collected by P1[40].

26 I make the following observations:

(a) With respect, there appeared first of all to be a considerable amount of confusion in the defendants' pleadings. The best understanding I could glean from these pleadings was that insofar as it was asserted that D2 had sole beneficial ownership of the Property on a "common intention constructive trust", this was also a proposition that the Property was a partnership asset. In other words, insofar as D2 was concerned, the claim advanced on its behalf was that the Property was a partnership asset, either because it was held on a common intention constructive trust in D2's favour, or because it was purchased with

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36 DC at para 26.

37 DCS at paras 89–92.

38 DC at para 26(l).

39 DC at para 81(4).

40 DC at para 81(5).

partnership funds. In either instance, it would be the beneficial interest in the Property which D2 claimed – because a partnership, not being a separate legal entity, cannot hold in its name the legal title to partnership land, and such legal title would have to vest in the names of one or more of the partners and/or any other persons (in this case, in the names of the then partners Father and D1, as well as P1): *Chiam Heng Hsien* at [121].

(b) Second, insofar as D2 claimed that the Property was a partnership asset, strictly speaking it would be the partners of D2 who were (on the defendants' case) collectively entitled to such partnership asset (*Chiam Heng Hsien* at [116] and [123]). In other words, if the Property was indeed a partnership asset, the beneficial interest in the Property would vest in the partners of D2 (Father and D1).

(c) Third, if the Property was indeed a partnership asset, the nature of the partners' beneficial interest would be as follows. During the continuation of the partnership, Father and D1 would collectively have an undivided share in the Property, but once D2 was dissolved, Father and D1 would each be entitled to a proportionate share in the net proceeds of sale of the Property after D2's liabilities were paid for (see *Cham Heng Hsien* at [116]–[117]). It follows that Father and D1 had no divided shares in the Property *in specie*.

(d) Following from the above, if upon D2's dissolution each partner would be entitled to a proportionate share in the net proceeds of the Property, Father's share in these net proceeds – being personalty – would go to his estate (see *Chiam Heng Hsien* at [125]). It should be noted that the doctrine of non-survivorship between partners applies in respect of their beneficial interests in the partnership assets, and that in

the absence of an agreement to the contrary, there is a strong presumption against partnership assets accruing to the surviving partner(s) beneficially upon the death of one partner (see *Chiam Heng Hsien* at [119]). In other words, if the Property was indeed a partnership asset, then upon Father's death and D2's dissolution, there would be a strong presumption against Father's share in the net proceeds of the Property accruing to D1; and this presumption would only be rebutted if there was an agreement to the contrary. Such an agreement was never pleaded, nor did the defendants adduce any evidence to this effect. In the circumstances, if the Property was indeed a partnership asset, Father's share in the net proceeds of the Property would go to his estate.

The legal framework

The general approach

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

> In view of our discussion above, a property dispute involving parties who have contributed unequal amounts towards the purchase price of a property and who have not executed a declaration of trust as to how the beneficial interest in the property is to be apportioned can be *broadly* analysed using the following steps in relation to the available evidence:
>
> > (a) Is there sufficient evidence of the parties' respective financial contributions to the purchase price of the property? If the answer is "yes", it will be presumed that the parties hold the beneficial interest in the property in proportion to their respective contributions to the purchase price (*ie*, the presumption of resulting trust arises). If the answer is "no", it will be presumed that the parties hold the beneficial interest in the same manner as that in which the legal interest is held.

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

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

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

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

(f) Notwithstanding the situation at the time the property was acquired, is there sufficient and compelling evidence of a subsequent express or inferred common intention that the parties should hold the beneficial interest in a proportion which is different from that in which the beneficial interest was held at the time of acquisition of the property? If the answer is "yes", the parties will hold the beneficial interest in accordance with the subsequent altered proportion. If the answer is "no", the parties will hold the beneficial interest in one of the modes set out at (b)–(e) above, depending on which is applicable.

28 As noted by the High Court in *Ng So Hang v Wong Sang Woo* [2018] SGHC 162 ("*Ng So Hang*") at [24],

> … in practice the foremost claim that is put forward is usually the common intention constructive trust, with an alternative basis relied upon of a proprietary estoppel; the resulting trust is usually the backstop claim.

Burden of proof

29 As the High Court in *Ng So Hang* noted at [25], the party making a claim of sole beneficial interest under a common intention constructive trust bears the burden of proving such claim. In respect of the plaintiffs' case, therefore, the burden lies on the plaintiffs to show that P1 is entitled to the whole of the beneficial interest in the Property.

30 Likewise, in relation to the defendants' claim that the Property is D2's partnership asset, the burden of establishing this lies on the defendants (see *Bant v Bant* [2003] WASC 137 at [9]).

Issues to be determined

31 The issues that arise for determination are as follows:

(a) whether the Property is held on a common intention constructive trust in favour of P1;

(b) whether P1 has a claim in proprietary estoppel;

(c) whether the Property is D2's partnership asset (either on the basis of the defendants' claim of a common intention constructive trust in D2's favour or on the basis that the Property was bought with partnership funds);

(d) whether D1 is the sole beneficial owner of the Property based on the operation of the presumption of advancement;

(e) whether any resulting trust arose, and if so, the proportions of the beneficial interest that the parties have in the Property thereof.

Whether the Property is held on a common intention constructive trust in favour of P1

32 The plaintiffs' pleaded case of common intention constructive trust is premised on an oral agreement allegedly entered into between P1 and Father sometime in 1996 ("the Plaintiffs' Agreement").[41] Pursuant to this Plaintiffs' Agreement, Father is said to have agreed that P1 would have sole beneficial ownership of the Property upon Father's passing, and in return P1 would assist Father in purchasing the same.[42]

33 The plaintiffs have the burden of furnishing "*sufficient and compelling* evidence" [emphasis in original] of the Plaintiffs' Agreement (see *Su Emmanuel v Emmanuel Priya Ethel Anne and another* [2016] 3 SLR 1222 ("*Su Emmanuel*") at [83]). For the reasons explained below, I find that the plaintiffs have not proved the existence of such an agreement.

Father's conduct

34 First, the evidence available of Father's conduct post 1996 did not support the plaintiffs' contention that he had agreed for P1 to have sole beneficial ownership of the Property upon his death.

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41 PCS at para 5.

42 PCS at para 5.1.

35 At no point after 1996 did Father indicate his intention for P1 to have sole beneficial ownership of the Property, either in the 1998 Will or in his discussions with the 1st and 2nd Families. While Father appears to have contemplated removing P1's and D1's names as legal joint tenants after discharging the Mortgage Loan in 2005, this was never carried out; and up until Father's death, the Property was always held in the joint names of P1, D1 and Father. While Father agreed for P1 to be included as a joint lessee of the Property, and also for P1 to make some contributions to the purchase of the Property,[43] these actions suggested at best that Father agreed for P1 to have *some* interest, and not *all* the interest in the Property.

36 I also note that the plaintiffs, in their closing submissions and their 2nd supplementary submissions, have failed to identify a single instance where Father's conduct was probative of the existence of the Plaintiffs' Agreement. The plaintiffs' arguments were merely limited to showing how Father's conduct *was not inconsistent* with the Plaintiffs' Agreement.[44]

37 Second, P1 claimed that under the Plaintiffs' Agreement, Father wanted D1 to be added as a joint borrower to the Mortgage Loan purely in order to "convey the impression that the [Mortgage Loan] was being taken out for [D2]".[45] However, the letter of offer for the Mortgage Loan made no reference to D2, and was instead addressed to Father, P1 and D1 individually.[46] In the circumstances, I do not believe that UOFL was labouring under the impression

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43 Plaintiffs' Reply Submissions (7.1.2020) ("PRS") at para 13.

44 PCS at paras 46–51.

45 P1's AEIC at para 65.7.

46 ABD at pp 197–201.

that the Mortgage Loan was taken out for D2. Nor do I believe that Father's decision to include D1 as a joint tenant had anything do to with UOFL's perception of whom the Mortgage Loan was taken out for. In my view, the most logical inference to be drawn from Father's decision to add D1 as a joint tenant of the Property is that he intended *for D1 to have some interest i*n the same.

38 In sum, there is no evidence to show that Father agreed for P1 to have sole beneficial ownership of the Property upon Father's passing.

P1's conduct

39 Indeed, even P1's own conduct was not entirely consistent with his case as to what was agreed under the Plaintiffs' Agreement. For example, P1 claimed that under the Plaintiffs' Agreement, it was agreed that he would pay for all the Property's "outgoings" after Father's passing.[47] In cross-examination, P1 explained that "outgoings" includes "utilities bills … property tax … town council charges … renovation cost, maintenance … [and] upgrade [of the Property]".[48] Yet, despite the alleged agreement, P1 admitted that after Father's death, he had requested for D1 to share the cost of installing a sunshade on the Property and renovation of the same,[49] as well as property tax payments.[50]

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47 P1's AEIC at para 65.10.

48 Transcript (1.10.2019) at p 111, lines 2 to 13.

49 Transcript (1.10.2019) at p 112, lines 4 to 12 and 17 to 24.

50 Transcript (2.10.2019) at p 78, lines 13 to 27.

Summary

40 For the reasons explained in [34]–[39], I find that there was no Plaintiffs' Agreement as alleged. The plaintiffs have failed to make out their claim of a common intention constructive trust.

Whether the plaintiffs have a claim in proprietary estoppel

41 The plaintiffs have also put forward an alternative claim in proprietary estoppel. This is premised on a representation allegedly made by Father to P1, sometime in 1996, that P1 was to have sole beneficial ownership of the Property after Father's passing.[51]

42 For the reasons elaborated in [34]–[39] above, I am of the view that Father made no such representation to P1. The claim in proprietary estoppel therefore also fails.

Whether the Property is D2's partnership asset

43 Turning to the defendants' claims to the Property: as mentioned in [26(a)] above, the defendants put forward two alternative arguments in support of their primary claim that the Property is D2's partnership asset: first, that the Property is held on a common intention constructive trust, and second, that Father has applied D2's money towards the acquisition of the Property. I find that neither argument can be sustained. My reasons are as follows.

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[51] SOC at para 54.

Whether the Property is held on a common intention constructive trust

44 The defendant's pleaded common intention constructive trust is premised on an agreement entered into between Father and P1 ("Defendants' Agreement").[52] Pursuant to the Defendants' Agreement, P1 was added as a co-lessee of the Property "solely in the interests of convenience",[53] and it was agreed that D2 would be in charge of all mortgage repayments.[54] D2 was to have sole beneficial ownership of the Property at all material times,[55] whereas P1 was not to have any beneficial ownership in the Property.[56]

45 I have earlier noted (at [26(b)]–[26(c)] above) that legally speaking, it is inaccurate to say that "*D2* is the beneficial owner of the Property". A partnership has no separate legal personality – so when one speaks of D2 being beneficially interested in a property, one really means that the partners of D2 are beneficially interested in the property. More accurately, one really means that the partners of D2 have a beneficial interest in the net proceeds of sale of the property upon dissolution. Nevertheless, I accept that it was factually possible for Father and P1 to have intended for *D2* to be the beneficial owner of the Property, without being cognisant of the legal nuances. The point is that even if the defendants could prove the existence of the Defendants' Agreement, any beneficial interest arising from the ensuing common intention constructive trust would not actually be in the form of beneficial ownership by D2 of the Property *in specie*.

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52 DC at para 26.

53 DC at para 26(e).

54 DC at para 26(f).

55 DC at para 26(t).

56 DC at para 26(g).

46 To prove the existence of the Defendants' Agreement, the defendants had to adduce sufficient and compelling evidence to that effect (see [33] above). I find that the defendants have not discharged this burden. My reasons are as follows.

Father's communications and conduct

47 From the outset, P1 has denied the existence of the Defendants' Agreement; and the defendants have not been able to point to any evidence that P1 had intended for D2 to have sole beneficial ownership of the Property. Quite apart from P1's denial that he had entered into the Defendants' Agreement with Father, the greatest difficulty with the defendants' case is that insofar as Father is concerned, they have also been unable to point to any objective evidence which shows Father's alleged intention for D2 to have sole beneficial ownership of Property.

48 As stated in [35] above, the Property was always held in joint names up until Father's death. Apart from having apparently contemplated at one point removing P1's and D1's names from the Property in 2005, Father took no step to effect any change in the ownership of the Property. Without more, no intention on Father's part for D2 to have the Property can be divined.

Father's communications to the defendants' witnesses

49 The defendants' witnesses asserted that Father's conduct and communications to them showed such an intention. These were bare assertions made without any corroborating evidence. Tellingly, moreover, their evidence about the alleged communications by Father actually contradicted the

defendants' case that Father had intended for *D2* to have sole beneficial ownership of the Property.

50 Koh Chye Hin ("Chye Hin"), the eldest son of the 2nd Family and one of the defendants' witnesses, initially claimed that Father had told him the Property would belong to D2.[57] However, he subsequently changed his position and asserted instead that Father had told him on other occasions that the Property would belong *to D1*,[58] *or to D1 and his wife*.[59]

51 Lian Thye claimed that in 2009, Father had told him that should D1 decide to cease D2's business, the Property would be sold and its proceeds distributed "according to the law" – which would have entailed the proceeds going to *P1 and D1* in equal shares.[60] This would be contrary to the defendants' case about the alleged Defendants' Agreement, since it is not disputed that P1 was never a partner of D2, and the Defendants' Agreement was supposedly to give D2 sole beneficial ownership of the Property at all times, with P1 having no beneficial interest at all.

Father's attempt to remove D1 as legal joint tenant of the Property

52 The defendant's case is also contradicted by the evidence of Father's attempt (though aborted) to remove P1 and D1 as legal joint tenants of the Property in 2005. If D2 was supposed to enjoy the sole beneficial ownership of

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57 Transcript (15.10.2019) at p 23, lines 23 to 30.

58 Transcript (15.10.2019) at p 38, lines 4 to 8 and p 40, line 30 to p 41, line 11.

59 Transcript (15.10.2019) at p 60, lines 27 to 30.

60 Transcript (31.10.2019) at p 62, lines 20 to 32 and p 64, lines 5 to 13.

the Property, there was no reason for Father to contemplate removing D1 (a partner of D2) as legal joint tenant.

53 Lian Thye claimed that Father actually only wanted to remove P1's name, and that P1 must have miscommunicated Father's intention to ILA. This, according to Lian Thye, led him to send an email to P1 on 25 February 2005 to set the record straight.[61] However, Lian Thye's evidence on this issue cannot be believed because the very email he relied on actually made no mention of Father's purported intention to remove only P1's name.[62] There was also no evidence that anyone had sought to inform ILA of the purported miscommunication.

Father's alleged conflation of D2 and the Property

54 In seeking to show that Father had intended for D2 to be the sole beneficial owner of the Property, the defendants also claimed that Father always saw the Property and D2 as one and the same.[63]

55 Again, I find this claim to be unsustainable. There is no objective evidence that Father somehow treated D2 and the Property as one and the same, other than bare assertions from the defendants' witnesses. If anything, on the objective evidence before me, it is difficult if not impossible to believe that Father was unaware of the distinction between D2 and the Property. For example, while the lease agreement for the Property in 1986 was addressed to

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61 Transcript (31.10.2019) at p 47, lines 17 to 28.

62 Transcript (31.10.2019) at p 51, lines 21 to 25; see also ABD at p 705.

63 DCS at para 13.

Father and D1 in their capacities as partners of D2,[64] the sale agreement for the Property in 1996 was addressed to Father, P1 and D1 individually, with no mention of D2.[65] Having read and signed both the 1986 lease agreement and the 1996 sale agreement, Father must have been aware of the distinction between D2 and the Property.

The video captured by Koh Bee Hoon

56 The defendants also tendered, in support of their case, two videos recorded on 31 May 2011 (collectively, "the Videos") by Koh Bee Hoon ("Bee Hoon"), a witness for the defendants and the eldest daughter of the 2nd Family.

57 According to the transcript of the Videos, Father could be heard saying "His share [referring to P1's interest in the Property] cannot eat our shares [referring to D1 and Father's interest in the Property"[66] and that "My son [P1] only borrowed monies from the Bank [UOFL]"[67] The defendants relied on these statements to argue that Father did not intend for P1 to have any beneficial interest in the Property.[68]

58 I am of the view that no weight ought to be accorded to the Videos. First, one of the plaintiffs' witnesses, Dr Nagaendran Kandiah ("Dr Nagaendran"), gave evidence that Father had possibly developed Alzheimer's (a type of senile

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64 ABD at pp 197–201.

65 ABD at pp 603–608.

66 ABD at p 1404.

67 ABD at p 1405.

68 DCS at para 27.

dementia) starting one to two years before March 2012.[69] Given that the Videos were recorded on 31 May 2011, and having viewed the video recordings for myself, there appeared to me to be a real possibility that Father was already suffering from Alzheimer's when the Videos were recorded.

59 The defendants argued that the evidence from Dr Nagaendran amounted to no more than "suppositions",[70] because Dr Nagaendran was not asked to comment on Father's state of mind *specifically* on 31 May 2011, when the Videos were taken.[71] I do not accept their argument. Dr Nagaendran stated that Father's dementia could have developed one or two years before March 2012. This would clearly include 31 May 2011, when the Videos were taken.

60 Second, I would add that it was apparent from the Videos in any event that Father was already extremely frail – both physically and mentally – by this stage. He had great difficulty articulating himself: in fact, I could barely hear the statements which the transcript purported to record as having been made by him.

61 Third, having viewed the Videos, it was clear to me that Bee Hoon was prompting Father to make certain statements which the defendants later relied on. In particular, Bee Hoon gave the following prompts:[72]

> What do you intend to do with the [Property], after you ask [P1] to withdraw [his name]? …
>
> …

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69 Transcript (4.10.2019) at p 18, lines 16 to 27.

70 DCS at para 40.

71 DCS at para 31.

72 ABD at pp 1404–1405.

> Just like before, in the past, right? [D1]'s name still inside the title? [D1]'s name still inside the title, right? [D1]'s name still inside. Okay, lah.
>
> …
>
> You [Father] and [D1]? Okay, lah.
>
> …
>
> … he [Father] wants to ask [P1] to withdraw his share and put the shares in his [Father's] name and [D1]'s name only. Other people, don't put. Like that, he [Father] doesn't have to worry about [P1] eating up [D1]'s share subsequently. That's what he meant.

For the above reasons, I do not think it safe to place any reliance on the Videos.

Other inconsistencies in the defendants' evidence

62 For completeness, I should also point out the following other inconsistencies in the defendants' evidence.

(1) P1's role under the Defendants' Agreement

63 The defendants claim that under the Defendants' Agreement, P1 was added as a joint tenant purely for "convenience", and that D2 was responsible for all the mortgage payments.[73] This claim is directly contradicted by the fact that P1 used $76,800 of his CPF money to repay the Mortgage Loan from 1997 to 2001.[74] I do not find it believable that P1 would have put in $76,800 of his money for nothing in return, especially given his knowledge that D1 was one of the legal joint tenants.

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73 DCS at para 14.

74 ABD at p 1187.

64 I also do not accept that the $76,800 was in the nature of a loan.[75] Strangely, P1 was not cross-examined on whether his CPF contributions were intended to be a loan. In any case, the allegation of a loan was not supported by the evidence. According to D1, Bee Hoon told him that in 2004, Father had mentioned wanting to repay the money to P1.[76] Similarly (according to the defendants), in 2005 Father broached with Lian Thye the issue of returning P1 his CPF money[77]. Again, these were bare assertions made without any supporting evidence. In fact, on Lian Thye's evidence, Father's alleged statement that he wanted to "pay up that particular loan"[78] could well have been a reference to the Mortgage Loan rather than to P1's CPF contributions. If the $76,800 from the P1 was indeed a loan and Father treated it as such, Father could always have repaid P1 when he (Father) was alive. This was never done. I would add that even assuming Father did say in the Videos in 2011 that he wanted to return P1 his CPF money,[79] for the reasons set out above in [58] to [61], I do not find it safe to place any reliance on the Videos.

(2) The parties to the Defendants' Agreement

65 Another inconsistency in the defendants' evidence concerned the issue of the parties to the Defendants' Agreement. The defendants claim that the Defendants' Agreement was entered into between *Father and P1*.[80] However,

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75 DC at para 26(h).

76 Transcript (30.10.2019) at p 6, lines 15 to 20.

77 DCS at para 26; Transcript (31.10.2019) at p 44, lines 10 to 15 and p 44 line 30 to p 45 line 18.

78 Transcript (31.10.2019) at p 44, lines 10 to 15.

79 ABD at pp 1399–1400.

80 DC at para 26(f).

this claim was controverted by the evidence from the defendants' own witnesses.

66 In cross-examination, Chye Hin departed from his AEIC[81] in alleging that the Defendants' Agreement was entered into between Father, P1 *and D1*.[82] Likewise, Lian Thye alleged on the stand that *D1* was a party to the Defendants' Agreement.[83] Their testimony is materially inconsistent with D1's own testimony that the Defendants' Agreement was entered into between *Father and P1 only*.[84] Given that the existence of the Defendants' Agreement is a fundamental element of their case on common intention constructive trust, these evidential anomalies only serve to underline how lacking in credibility their case is.

Summary

67 For the reasons set out above in [47] to [66], I find that there was no Defendants' Agreement as alleged; and the defendants' case that D2 had sole beneficial ownership of the Property by virtue of a common intention constructive trust cannot be made out.

Whether D2's money was used to acquire the Property

68 I address next the defendants' alternative claim – namely, that the Property was acquired using partnership funds and that it is thus a partnership

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81 Chye Hin's AEIC at para 24.

82 Transcript (15.10.2019) at p 21, lines 12 to 17.

83 Transcript (31.10.2019) at p 70, lines 6 to 13.

84 Transcript (17.10.2019) at p 35, lines 1 to 4.

asset. Here too, I find that the defendants have not discharged the burden of proving that D2's money was used to acquire the Property.

Applicable law

69 Section 20(1) of the Partnership Act provides that

> All property and rights and interests originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm or for the purposes and in the course of the partnership business, are called in this Act partnership property…

70 Section 21 of the Partnership Act provides that

> Unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm.

71 Read together, s 21 read with s 20(1) Partnership Act provide that property bought with *"money belonging to" a partnership* is presumed to be partnership asset (unless a contrary intention is shown). The central inquiry remains whether there exists an agreement, or an intention to treat the property in question as partnership asset (see *Ponnukon v Jebaratnam* [1980] 1 MLJ 282 at 283).

Application to the facts

72 The plaintiffs [85] and the defendants[86] both say that *some* of the money used by Father to discharge the Mortgage Loan came from *D2's "trading profits"*. However, this by itself does not trigger the presumption under s 21

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85 Transcript (1.10.2019) at p 64, lines 15 to 19.

86 DCS at para 89.

Partnership Act. This is because D2's profits, once distributed to Father, would be Father's money and not "money belonging to" D2. There was no evidence adduced as to how much of D2's profits was distributed to Father: the portions in the IRAS statements dealing with profits allocated to Father appear to have been expunged.[87] Nor was there any evidence as to how much of D2's profits was applied towards the Mortgage Loan. In the circumstances, I do not accept the defendants' bare assertion that Father paid off the Mortgage Loan using "money belonging to" D2 (see *Chua Kwee Chen, Lim Kah Nee and Lim Chah In (as Westlake Eating House) and another v Koh Choon Chin* [2006] 3 SLR(R) 469 ("*Chua Kwee Chen*") at [73]).

73 Given the state of the evidence, I find that the presumption under s 21 Partnership Act was not triggered. In any event, even if D2's trading profits remained "money belonging to" D2 after distribution to Father and even if the presumption under s 21 Partnership Act was triggered, I find that this presumption was nevertheless rebutted (see [74]–[79] below). My reasons are as follows.

74 First, it cannot be disputed that Father used a substantial amount of his personal funds to pay for the Mortgage Loan. D2's profit and loss statements from IRAS[88] show that D2's profits for the entire period from 1996 to 2005 aggregated at $326,865.[89] Taking the defendants' case at the highest and assuming that *all* of D2's profits remained "money belonging to" D2 and were applied by Father towards discharging the Mortgage Loan, Father would still

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87 See, for instance, ABD at pp 452, 454, 456, 458, 460, 462, 464.

88 ABD at pp 451–470.

89 PCS at para 109.

have paid at least $167,135 of his own money (being $570,800 - $326,865 - $76,800) towards discharging the loan. Indeed, I find it more probable that Father would have used considerably less than all $326,865 of D2's profits – and considerably more than $167,135 of his own money. This is because based on D1's own evidence, part of the money D2 made would have gone towards paying D1 and his Wife their regular allowances.

75 Given that a substantial amount of Father's personal funds was applied towards the discharge of the Mortgage Loan, it seems to me most doubtful whether the presumption under s 21 Partnership Act is still applicable. When property is financed by a partner's personal funds, the inference is that the purchasing partner intended for the property to be his alone (see *Chua Kwee Chen* at [72]).

76 Second, P1's involvement in the acquisition of the Property also militates against the finding that the Property is D2's partnership asset. If Father had intended for the Property to be a partnership asset, it was highly unlikely that he would have asked P1 – who was not a partner of D2 – to become a legal joint tenant of the Property. Likewise, it was highly unlikely – and in fact downright peculiar – that P1 would have forked out $76,800 of his own money to pay for a property that would belong solely to D2. I have already found that there was no objective evidence to show that the $76,800 was in the nature of a loan (see [64] above).

77 Third, if the Property was intended to be a partnership asset, it was anomalous that Father should have contemplated removing D1's name, since D1 was a partner of D2. Logically, if Father had intended for the Property to be

D2's partnership asset, he would only ever have contemplated removing P1's name.

78 Fourth, the Property was not listed as a partnership asset in D2's balance sheets in 2012 and 2013.[90] This would surely indicate that the Property was never intended to be a partnership asset. The defendants have argued that the exclusion of the Property from D2's balance sheet was a neutral factor, claiming that the person who prepared these balance sheets had merely "mechanically carried forward information" from balance sheets from previous years, which did not list the Property as D2's asset.[91] I do not see how this argument helps the defendants. Even if D2's balance sheets in 2012 and 2013 were merely "mechanically" prepared by "carrying forward information", it remained the case that the Property was not listed as D2's asset in the years preceding 2012. This again points to the conclusion that the Property was never intended to be a partnership asset (see *Kelly v Kelly* (1990) 92 ALR 74 at 80).

79 Lastly, the defendants say that D2 appears to have been paying for the Property's outgoings up until 2014. However, I do not think this leads necessarily to the inference that such payments were made because "D2 is sole beneficial owner" of the Property. It is equally possible that payments of these outgoings were made from D2's coffers because it was enjoying the (otherwise gratuitous) use of the Property (see *N B Menon v Abdullah Kutty* [1974] 2 MLJ 159 at 161).

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90 DCS at para 82.

91 DCS at para 83.

80 In sum, for the reasons set out in [72] to [79], I do not accept that the Property was acquired with partnership funds, and I find that the Property is not a partnership asset.

D1's claim to sole beneficial ownership

81 As an alternative to the claim that D2 has sole beneficial interest in the Property, the defendants also pleaded that D1 is the sole beneficial owner by virtue of the "presumption of advancement". It was alleged that Father must have intended D1 to "retain the ownership" of the Property as "the surviving member of [D2]" because of the bonds of love and affection between Father and D1[92].

82 I find this claim clearly baseless. In the first place, the reference to D1's capacity as "the surviving partner of [D2]" in this context is puzzling. The presumption of advancement, if it applies in this context, would operate between Father and D1 in their respective capacities as father and son. D1's position as a partner of D2 has nothing to do with the operation of the presumption of advancement. In this connection, it should be remembered that P1 too was Father's son; and no reason has been shown by the defendants why the presumption of advancement should operate only as between Father and D1 but not as between Father and P1. Moreover, the defendants have not in any event managed to explain how Father would have been in a position to make a gift to D1 of the *entire* beneficial ownership in the Property. The defendants appear to ignore completely the fact that P1 contributed $76,800 towards the purchase of the Property – and P1 certainly never had any intention to make D1 a gift of

92 DC at para 80.

his contribution. I have already found that the $76,800 was not a loan from P1 (see [64] above).

The parties' entitlement under a resulting trust

83 To recap: I have found that the Property is not D2's partnership asset. I have also found that it is not held on a common intention constructive trust, whether in D2's favour or P1's. Nor are P1's alternative claim in proprietary estoppel and D1's alternative claim to sole beneficial ownership made out. It follows that the backstop claim in resulting trust is applicable.

Applicable law

84 If there is "cogent evidence" showing that the registered co-owners of a property had in fact exercised their informed and voluntary intention to hold a property as legal joint tenants, the legal joint tenants will hold the property as beneficial joint tenants (*Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*") at [95]). Otherwise, the legal joint tenants of a property will be presumed to hold that property as beneficial tenants in common of shares proportionate to their contributions towards the acquisition of the said property (*Lau Siew Kim* at [83]).

85 In determining the extent of the parties' contributions towards the acquisition of a property, the payment of the mortgage loan should not be regarded *unless made on the basis of an agreement entered into when the mortgage is taken out* (*Lau Siew Kim* at [117]). In ascertaining this agreement, the focus should not solely be on who took on *liability* for the loan (*Su*

Emmanuel at [90] and [91]). Further, while this agreement must have been made when the loan is taken out, the evidence which can be relied upon to shed light on this agreement can come in the form of *subsequent conduct* (that is, conduct occurring after the loan is taken out) (*Su Emmanuel* at [90]).

86 If the objective evidence does not show that parties reached an overt agreement on the repayment of the loan at the point it was taken out, a court would not be precluded from determining the parties' rights based on some common intention or understanding (*Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 ("*Tan Yok Koon*") at [153]). The actual loan repayments can be relied on as the manifestation of the parties' intention on how the loan was to be paid (*Tan Yok Koon* at [160]). This process of inference is legitimate because subsequent conduct can be relied upon to shed light on the parties' intention when a loan was taken out (see above at [85]).

Application to the facts

87 There is no evidence to show that Father, P1 and D1 had exercised their informed and voluntary intention to hold the Property as legal joint tenants. It follows that the presumption of resulting trust will apply.

88 The key controversy concerns the determination of the parties' contributions towards the acquisition of the Property. While the plaintiffs[93] and the defendants[94] agreed that P1 and Father made contributions of 14.3% and

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93 PCS at para 143.

94 DCS at para 133.

85.7% respectively, they did not agree that this accurately represented parties' agreement on their respective contributions.

89 The plaintiffs argued that there was an implied prior agreement for P1 to contribute 98.01% towards the acquisition of the Property,[95] since he had successfully applied for $527,100 of his CPF money to be applied towards the Mortgage Loan.[96] I do not accept this argument. It was consistently stated in the Statement of Claim[97] and the Plaintiffs' Closing Submissions[98] that the precise extent of contributions was never agreed between Father and P1 at the outset. It was thus inconsistent for the plaintiffs subsequently to change their position and to contend instead that there was an implied agreement for P1 to contribute 98.01% towards the acquisition of the Property. In any event, P1's act of applying to use $527,100 of his CPF money did not necessarily suggest that there was an agreement beforehand for him to use all of this money: it could just as well suggest that he had acted out of an abundance of caution to ensure he would have the ability to contribute more at a later stage if he needed or wanted to. Indeed, I should add that if there was a prior agreement for P1 to contribute 98.01%, then it was most strange for P1 to cease his CPF contributions in 2001 and to leave Father to foot the (hefty) remainder of the bill.

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95 P2SS at para 25.

96 ABD at pp 630–631.

97 SOC at para 24(f).

98 PCS at para 43.

90 The plaintiffs also argued, in the alternative, that there was an implied agreement for P1 to contribute 59.1% towards the acquisition of the Property.[99] This is because P1 paid for $1,600 out of the $2,706 monthly instalments under the Mortgage Loan.[100] I do not accept this alternative argument. P1 has only paid for the monthly mortgage instalments from 1997 to 2001. Moreover, if it was agreed for P1 to contribute 59.1%, there would have been no need for P1 to apply for $527,100 to be set aside.

91 Turning to the defendants, they argued that there was an implied prior agreement that D2 was to be solely responsible for the mortgage payments.[101] This is a meritless argument. There was no evidence of such an agreement other than bare assertions from the defendants' witnesses. Further, if there was indeed such an agreement, there would have been no need for P1 to use $76,800 of his money to pay for the mortgage instalments. I reiterate that there was no evidence to show that the $76,800 withdrawn by P1 was in the nature of a loan (see [64] above), and thus P1's contributions cannot be seen as "bridging finance".[102]

92 The defendants also pleaded in the DC that the Property was held on a resulting trust in the ratio of 14.3:85.7 between P1 and the *defendants*.[103] In the DCS, it was argued that Father's 85.7% contributions were "funded by profits from [D2]'s provision shop business and/or Father's monies in his capacity as

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99 P2SS at para 57.

100 P2SS at para 58.

101 Defendants' 2nd Supplementary Submissions (16.4.2020) ("D2SS") at para 72.

102 D2SS at para 73.

103 DC at para 81(1).

a partner of [D2]".[104] Therefore, the defendants' position seemed to be that Father's contributions must be treated as D2's, and accordingly only D2 was entitled to the 85.7% (as opposed to both D1 and D2). With respect, this again ignored basic principles of partnership law; in particular, that beneficial interest in the Property cannot vest in D2.

93 However, this potential legal conundrum did not even need to be confronted, because there was simply no evidence anyway to support the contention that Father's contributions must be treated as D2's. First, there has been no evidence adduced before me to justify treating Father's personal money as money spent in his capacity as partner of D2. As such, Father's personal money should be assumed to have been spent for his personal benefits (see [75] above). Second, as noted earlier, there has been no evidence adduced anyway as to how much of D2's profits were distributed to Father, and/or how much of D2's profits were used to discharge the Mortgage Loan (see [72] above).

94 Accordingly, neither the plaintiffs' case nor the defendants' case in relation to the resulting trust analysis is sustainable. Based on the material presented, there was no evidence of an *overt agreement* between the parties as to how the Mortgage Loan was to be paid.

95 Clearly, the matter does not simply end there. In one of their final prayers for relief, the plaintiffs have prayed in the alternative for a declaration "that [P1] (or… [P1] and the Father's estate) and [D1] have beneficial interests in [the Property] in such proportion to be determined by [the Court]"[105]. At the

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104 DCS at para 149.

105 SOC at prayer (c) at p 42.

end of the day, the court has, necessarily, to draw an inference as to the parties' agreement, or failing that, intention as to how the Mortgage Loan was to be repaid (*Tan Yok Koon* at [153]). In my view, the actual repayments made in this case can be said to be the manifestation of the parties' intention as to the sources from which the Mortgage Loan was to be repaid and the extent to which each source would make payment (*Tan Yok Koon* at [160]). As I noted earlier, case law has established that this process of inference is legitimate because subsequent conduct can be used to shed light on the parties' intention at the time the Mortgage Loan was taken out (*Su Emmanuel* at [90]). Based on the actual repayments made, the parties would have intended for Father to bear 85.7% of the mortgage liability, and P1 14.3%. Accordingly, on a purchase-price resulting trust analysis, it would seem that the Property should be held for Father, P1 and D1 as beneficial tenants-in-common in the ratio of 85.7:14.3:0.

96 Again, however, this is not where the matter ends. In my view, since Father was the parent of P1 and D1, the presumption of advancement should apply so as to displace the presumption of resulting trust. The presumption of advancement means that Father is presumed to have intended his contributions to the acquisition of the Property to be a gift to his children – P1 and D1 – and that he did not intend to retain any interest in the Property (*Lau Siew Kim* at [56] and [62]). The presumption of advancement applies even in a relationship between a parent and an adult child (*Neo Hui Ling v Ang Ah Sew* [2012] 2 SLR 831 at [44]). There is nothing on the evidence to rebut this presumption.

97 I note that the presumption of advancement in this case applies two ways: as between Father and P1, and as between Father and D1. Applying the maxim "equality is equity", it would be presumed that Father intended to benefit P1 and D1 equally. I note that although D1 was an adoptive son, the evidence

shows that Father treated him as though he were a natural son and did not discriminate as between him and his natural sons. Accordingly, Father's contributions towards the acquisition of the Property will be apportioned to P1 and D1 in equal measures.

98 As between P1 and D1, no presumption of advancement exists (see *Chan Gek Yong v Chan Gek Lan* [2008] SGHC 167 at [17]). In fact, insofar as his contributions to the acquisition of the Property are concerned, P1 is clear that he never intended to make a gift of his contributions to D1. Accordingly, taking into account the equal apportionment between them of Father's contributions to the Property, P1's and D1's contributions towards the acquisition of the Property would be in the ratio of (14.3 + 85.7/2):(85.7/2), or 57.15:42.85. The Property is thus held on a purchase price resulting trust with P1 and D1 as the beneficial tenants-in-common in the ratio of 57.15:42.85 between P1 and D1, respectively.

99 For completeness, I note that D1 attempted to effect severance of the legal joint tenancy in the Property.[106] However, in closing submissions the plaintiffs[107] and the defendants[108] agreed that there was no effective severance because the instruments of severance were not registered with the Singapore Land Authority Titles Registry. Therefore, P1 and D1 remain the joint legal tenants of the Property. I also add that given my findings herein, the parties' legal ownership of the Property does not reflect their beneficial interests in the same.

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106 DC at paras 63(d)–(f).

107 P2SS at paras 139–146.

108 D2SS at paras 94–95.

Apportionment of the rental income

100 The purchase price resulting trust in [98] above crystallises at the point when the Property is acquired in 1996 (see *Lau Siew Kim* at [112]). Accordingly, the rental income on the Property, which is generated after 1996, is likewise held on trust for P1 and D1 in the ratio of 57.15:42.85.

101 The Property was rented to one Yap Lian Moi ("Yap") from October 2009 to September 2015 for $2,200 per month under various tenancy agreements. While the latest tenancy agreement with Yap expired on 30 September 2015, it appears that Yap continued to rent the Property's premises and paid rent at the same amount from October 2015 to at least November 2016. The Property was also rented to Dragon World Investment Pte Ltd ("Dragon World") from February 2015 to November 2016 for $2,500 per month.

102 As Father was collecting the rent from Yap from October 2009 to about 2012,[109] I order an account to be taken in respect of the rental income collected by Father for this period. The rental income generated in this period between October 2009 and 2012 should be paid out from Father's estate to P1 and D1 in the ratio of 57.15:42.85.

103 As D1 was collecting the rent from Yap from about 2012 to October 2014,[110] I order an account to be taken in respect the rental income collected by D1 for this period. D1 is to pay 57.15% of the rental income collected to P1.

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109 SOC at para 35; DC at para 46.

110 SOC at paras 35 and 37A.

104 As P1 was collecting the rent from Yap and Dragon World from November 2014 onwards,[111] I order an account to be taken in respect the rental income collected by P1 for this period. P1 is to pay 42.85% of the rental income collected to D1, less the amounts he has already given D1.

Conclusion

105 In summary, I find that the Property is held on a purchase price resulting trust for P1 and D1 in the ratio of 57.15:42.85.

106 The defendants have prayed for an order that the Property be sold in the open market and its net sale proceeds be divided between the parties in the ratio of their beneficial interests. Taking into account the circumstances of this case and having regard in particular to the clearly acrimonious relationship between P1 and D1 as well as the cessation of the provision shop business, I think on balance this would be the most appropriate course of action. Accordingly, I order that the Property is to be sold in the open market within 6 months from today, and the net sale proceeds (after paying off the costs and expenses of the sale) are to be divided between P1 and D1 in the ratio of their beneficial interests. Any refund which may need to be made to CPF by P1 is to come out of P1's own share of the sale proceeds. To obviate any unnecessary squabbles, the appointment of property agents for the sale will be agreed on between P1 and D1 in this manner: P1 to write to D1 within 2 weeks from today with a list of 6 suggested property agents; D1 is to revert within 2 weeks with his choice from P1's list.

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111 SOC at paras 38, 41.

107 The rental income generated by the Property is to be apportioned in the manner provided for in [102]–[104] above.

108 P1 and D1 shall have liberty to apply.

109 I will hear parties on the issues of costs. I am inclined to say that given the findings I have made on each side's case, neither side can really claim to have "won"; and the fairest thing to do here may be to order each party to bear his own costs – but I will hear counsel out before I make any costs order.

Mavis Chionh Sze Chyi
Judicial Commissioner

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