

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

[2021] SGHC 119

Originating Summons No 100 of 2021 and Summons No 2123 of 2021

Between

(1) Ong Swee Geok
(2) Ong Swee Hwa

... Applicants

And

Gee Ah Eng

... Respondent

JUDGMENT

[Trusts] — [Resulting trusts]
[Trusts] — [Unlawful trusts]

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Ong Swee Geok and another

v

Gee Ah Eng

[2021] SGHC 119

General Division of the High Court — Originating Summons No 100 of 2021
and Summons No 2123 of 2021

Andre Maniam JC
20 April, 10 May 2021

31 May 2021

Judgment reserved.

Andre Maniam JC:

Introduction

1 Can a person who is ineligible to acquire a particular Housing and Development Board (“HDB”) flat claim an interest in it, or in the proceeds of its sale, by way of a purchase money resulting trust?

2 Two sisters, Swee Geok and Swee Hwa (the applicants), brought this action to claim for themselves the whole of the beneficial interest in an HDB flat (“the Flat”), or its sale proceeds. The Flat is in the sole name of their mother (the respondent, Mdm Gee).

3 Swee Geok and Swee Hwa say that because they had paid for the Flat, the beneficial interest in the Flat (or its sale proceeds) is theirs. If they are right,

Mdm Gee has no beneficial interest in the Flat (or its sale proceeds) although she is its registered owner – she would merely be staying in it with their permission.

4 At earlier points in time, first Swee Geok and then Swee Hwa were registered co-owners of the Flat with Mdm Gee, but they ceased to be registered co-owners when they each acquired another HDB flat, and Mdm Gee is now the sole registered owner of the Flat.

5 Swee Geok and Swee Hwa could not continue to be registered owners of the Flat when they each acquired another HDB flat: one cannot own two or more HDB flats at the same time (see [26] below). But they contend that they can still claim the whole of the beneficial interest in the Flat (or its sale proceeds). They say the law allows this, notwithstanding that they still own their respective HDB flats.

Background

The Flat

6 In or around 1980, Mdm Gee and Swee Geok jointly applied to purchase the Flat. Mdm Gee and Swee Geok became the first registered co-owners of the Flat, and Swee Geok made payments towards it from her Central Provident Fund (“CPF”) account.¹

7 In or around 1987, Swee Geok got married, moved out of the Flat, and became the owner of another HDB flat. What Swee Geok had paid towards the

¹ First Affidavit of Ong Swee Geok and Ong Swee Hwa dated 1 February 2021 (“Applicants’ First Affidavit”) at paras 7(d)–(e).

Flat was refunded to her CPF account. Swee Hwa replaced Swee Geok as a registered co-owner of the Flat, together with Mdm Gee.²

8 From 1987, Swee Hwa made payments towards the Flat from her CPF account. In or around 1993, Swee Hwa got married, moved out of the Flat, and became the owner of another HDB flat. What Swee Hwa had paid towards the Flat was refunded to her CPF account. Mdm Gee’s husband, Mr Ong, replaced Swee Hwa as a registered co-owner of the Flat, together with Mdm Gee.³

9 Swee Geok then resumed paying towards the Flat – this time, in cash – from 1993 until the Flat was fully paid up in early 2016.⁴

10 During the period in which Swee Geok was making cash payments towards the Flat, Mr Ong passed away in 2009, leaving Mdm Gee as the sole registered owner of the Flat.⁵

Mdm Gee’s will

11 Mdm Gee has five children: Swee Geok and Swee Hwa, two other daughters, and a son – Joo Hak.

12 The Flat was initially occupied by Mr Ong, Mdm Gee, Swee Geok, Swee Hwa, and Joo Hak. With Swee Geok and Swee Hwa moving out, and Mr Ong’s passing, Mdm Gee and Joo Hak (and Joo Hak’s family) were the remaining occupants of the Flat.

² Applicants’ First Affidavit at paras 7(h)–(i).

³ Applicants’ First Affidavit at paras 7(j)–(k).

⁴ Supplementary Affidavit of Ong Swee Geok and Ong Swee Hwa dated 3 May 2021 (“Applicants’ Supplementary Affidavit”) at p 4.

⁵ Applicants’ First Affidavit at para 7(l).

13 This litigation was prompted by a will Mdm Gee made in 2013, purporting to bequeath the Flat to Joo Hak.⁶ As Swee Geok and Swee Hwa put it, this was done “notwithstanding” that they were the ones who had made the payments towards the Flat.⁷

14 In Mdm Gee’s will, she explained that she was bequeathing the Flat to Joo Hak because he and his children needed a home. She said she was grateful to her wonderful daughters who had given her monies and been understanding. She expressed her wish that her children would be generous and kind to each other, and that they would not quarrel over her will or her property.⁸

15 Mdm Gee evidently regarded the Flat as hers. Swee Geok and Swee Hwa, however, did not agree with that.

The Originating Summons

16 In September 2020, Swee Geok and Swee Hwa lodged a caveat over the Flat.⁹ The caveat stated that they were claiming “an ESTATE OR INTEREST in the land as Beneficiaries” based on the following grounds of claim:¹⁰

The caveators Ong Swee Geok and Ong Swee Hwa claim a beneficial interest in the proceeds of the sale of the property (registered in the name of the caveatee, Gee Ah Eng) arising from a resulting trust, by virtue of the fact that the caveators have made all payments to fully redeem the mortgage taken out to purchase the property, and had the property registered in the caveatee’s name.

⁶ Applicants’ First Affidavit at para 8.

⁷ Applicants’ First Affidavit at para 9.

⁸ Applicants’ First Affidavit at p 16.

⁹ Applicants’ First Affidavit at para 11.

¹⁰ Applicants’ First Affidavit at p 105.

Payment towards the redemption of the mortgage taken out to purchase the property were made by Ong Swee Geok between 1982 and 1987, Ong Swee Hwa between 1987 and 1992, and Ong Swee Geok from 1993 up and until the mortgage was fully redeemed in December 2015.

17 In February 2021, Swee Geok and Swee Hwa filed this originating summons (“OS”) against Mdm Gee. By this time, Mdm Gee had been admitted to a community hospital, and substituted service of the court papers was effected on her care coordinator at the hospital.

18 In the OS, Swee Geok and Swee Hwa claimed a declaratory judgment that they “have a 58% and 42% beneficial interest respectively in [the Flat]”. When I first heard the matter, I queried the proportions claimed by them: had the refunds to their CPF accounts been accounted for? The hearing was adjourned for counsel to take instructions on this.

The application to amend the OS

19 Swee Geok and Swee Hwa then filed a supplementary affidavit, acknowledging that they had been refunded all the payments they had made from their CPF accounts.¹¹ That left the payments made in cash by Swee Geok from 1993 to 2016: when the Flat was in the names of her parents (from 1993 to 2009), and then in Mdm Gee’s sole name (from 2009 to 2016) (see [9] above).

20 Swee Geok and Swee Hwa also filed an application to amend the OS, to change the claim for relief to: “a declaratory judgment ... that [*Swee Geok*] has a beneficial interest in the whole of the *proceeds from the sale* of [the Flat].” [emphasis added]

¹¹ Applicants’ Supplementary Affidavit at p 3.

21 Recognising that she had been refunded all that she had paid towards the Flat, Swee Hwa abandoned any claim to the Flat, or its sale proceeds. That left Swee Geok as the sole claimant. Under the proposed amended OS, Swee Geok would only be claiming the beneficial interest in the *sale proceeds* of the Flat, rather than in the *Flat* itself. That claim was based on the cash payments which she made from 1993 to 2016.

22 Swee Geok added that she would not seek to realise her beneficial interest in the sale proceeds of the Flat until after Mdm Gee’s lifetime or until the time the Flat is sold (whichever came first).¹² In other words, Mdm Gee could continue staying in the Flat, but if the Flat were sold in Mdm Gee’s lifetime then Swee Geok should get all the sale proceeds.

The claim to the beneficial interest in the Flat

23 The provisions of the Housing and Development Act (Cap 129, 2004 Rev Ed) (“the HDA”) stand in the way of the applicants’ claims, in particular, ss 51(8), (9) and (10):

(8) No trust in respect of any protected property shall be created by the owner thereof without the prior written approval of the [HDB].

(9) Every trust which purports to be created in respect of any protected property without the prior written approval of the [HDB] shall be null and void.

(10) No person shall become entitled to any protected property (or any interest in such property) under any resulting trust or constructive trust whensoever created or arising.

¹² Applicants’ Supplementary Affidavit at para 8.

24 The Flat is “protected property” as defined in s 51(11) of the HDA: “any flat, house or other building that has been sold by the [HDB] under the provisions of this Part.”

25 In *Lim Kieuh Huat v Lim Teck Leng and another and another appeal* [2021] SGCA 28 (“*Lim Kieuh Huat*”), the Court of Appeal, citing *Tan Chui Lian v Neo Liew Eng* [2007] 1 SLR(R) 265 (“*Tan Chui Lian*”) and *Koh Cheong Heng v Ho Yee Fong* [2011] 3 SLR 125, stated (at [14]): “[t]he authorities are clear that s 51(10) of the HDA prevents a person who is ineligible to acquire an HDB flat from obtaining or becoming entitled to an interest in such a flat by way of a resulting or constructive trust.” The court went on to say that the question of “eligibility” must be “whether the particular person could purchase the particular flat, and what conditions must be met before that purchase would be approved” (at [14]).

26 Here, Swee Geok and Swee Hwa ceased being registered owners of the Flat, so that they could acquire other flats. That was required of them by s 47(1)(a) of the HDA:

47.—(1) No person shall be entitled to purchase any flat, house or other living accommodation sold subject to the provisions of this Part if such person, his spouse or any authorised occupier

—
(a) is the owner of any other flat, house, building or land or has an estate or interest therein ...

27 As Swee Geok and Swee Hwa own other HDB flats, they are ineligible to acquire the Flat, and under s 51(10) of the HDA they cannot obtain or become entitled to any interest in it by way of a resulting or constructive trust. Indeed, in their written submissions, they expressly accept that they “are not eligible within the meaning of section 47 [and s 51(10)] of the HDA as they are the

owners of [other] HDB flats”.¹³ The payments relied upon to assert a resulting trust were those made by Swee Geok when she and Swee Hwa were ineligible persons.

28 By virtue of 51(10) of the HDA, Swee Geok and Swee Hwa are not entitled to the Flat or any interest in it. Sections 51(8) and (9) of the HDA would also defeat such a claim (see [35]–[52] below).

29 It follows that the applicants’ claim in the OS to the beneficial interest in the *Flat* must fail. Perhaps that is why they decided to abandon that claim, and to amend the OS such that Swee Geok would claim an interest in the *sale proceeds* instead.

The claim to the beneficial interest in the proceeds of sale

30 The applicants (and finally Swee Geok) rely on a presumed resulting trust arising from the payments made by them. In their affidavits, they did not expressly say what their intention was when they made those payments, but it was submitted that their payments were not meant as a gift of the Flat to Mdm Gee, but rather to ensure that she had a property where she could reside at.¹⁴

31 The applicants further contended that “even if an ineligible person is not entitled to own a HDB flat by way of resulting trust, she is still entitled to the sale proceeds therefrom”.¹⁵

¹³ Applicants’ Written Submissions dated 16 April 2021 (“AWS”) at paras 32–33.

¹⁴ AWS at para 29.

¹⁵ AWS at para 35.

32 They rely on the High Court decision in *Low Heng Leon Andy v Low Kian Beng Lawrence (administrator of the estate of Tan Ah Kng, deceased)* [2013] 3 SLR 710 (“*Andy Low*”) for the proposition that under s 51(10) of the HDA “the effect of conferring an entitlement or interest in protected property by way of resulting or constructive trust is disallowed, although any resulting or constructive trust that confers such an interest is not rendered void” (*Andy Low* at [21]).

33 *Andy Low* did not, however, concern a resulting trust claim (which is the claim in the present case): the claim in *Andy Low* was one in proprietary estoppel. Moreover, the court was dealing with an application to strike out that claim on the basis that it was precluded by s 51(10) of the HDA as the plaintiff was an ineligible person. The court concluded that s 51(10) of the HDA did not extinguish the proprietary estoppel claim from the outset; and that as long as a proprietary estoppel claim does not give rise to an interest in the land (specifically, an interest in an HDB flat in favour of an ineligible person), it should not be affected by s 51(10) (*Andy Low* at [30(e)] and [30(f)]).

34 It was not necessary for the court in *Andy Low* to consider ss 51(8)–(9) of the HDA, and the court did not do so.

35 In *Cheong Yoke Kuen and others v Cheong Kwok Kiong* [1999] 1 SLR(R) 1126 (“*Cheong Yoke Kuen*”), the Court of Appeal considered the predecessors to ss 51(8)–(9) of the HDA, namely, ss 51(4)–(5) of the Housing and Development Act (Cap 129, 1997 Rev Ed) (“1997 HDA”):

(4) No trust in respect of any such flat, house or other building shall be created by the owner thereof without the prior written approval of the [HDB].

(5) Every trust which purports to be created in respect of any such flat, house or other building without the prior written approval of the [HDB] shall be void.

36 The respondent in *Cheong Yoke Kuen* claimed on the basis of a resulting trust. The HDB flat in question was registered in the joint names of the respondent and his mother. The respondent was subsequently allocated a new HDB flat. As he could not own more than one flat at any one time (by virtue of s 47(1)(a) of the 1997 HDA), he ostensibly transferred his interest in the first flat to his mother, who became its sole owner. After his mother's death, however, the respondent asserted that he still had a beneficial interest in the first flat by way of a resulting trust as he had paid for the flat.

37 The Court of Appeal held that the alleged trust was prohibited by s 51(4) and was void under s 51(5) of the 1997 HDA. In arriving at its conclusion, the Court of Appeal noted that there was earlier a blanket prohibition against the creation of any trust over HDB flats, but this was relaxed to allow such trusts to be created with the prior written approval of HDB (at [18]). The court went on to examine the underlying purpose of the prohibition and the policy of the 1997 HDA (*Cheong Yoke Kuen* at [19]):

Despite the relaxation of the prohibition to permit creation of trusts with the prior written approval of HDB, the underlying purpose of the prohibition remains unchanged. In our view, the respondent's contention that resulting trusts over HDB properties are not prohibited by s 51(4) of the [1997 HDA] would give rise to a highly unsatisfactory result and *would open the way to abuse by persons who would and could easily purchase HDB properties through nominees*. For instance, if a purchaser pays the purchase money for the property and the property is registered in the name of a nominee but he takes a declaration of trust executed by the nominee in his favour without HDB's prior written approval, such a trust will be prohibited by s 51(4) and becomes void under s 51(5) of the [1997 HDA]. *On the other hand, if no such declaration is executed, the trust which arises by operation of law is not caught by s 51(4). Such a construction is untenable and would frustrate the policy of the [1997 HDA] and could not have been intended by Parliament.*

[emphasis added]

38 In *Cheong Yoke Kuen*, the respondent’s claim was on the basis of a resulting trust, but the Court of Appeal reasoned that the respondent had “created” the alleged trust in his favour as he had intended to remain the beneficial owner of the first flat when transferring his interest in that flat to his mother (at [20]). The alleged trust was thus subject to ss 51(4)–(5) of the 1997 HDA.

39 The respondent in *Cheong Yoke Kuen* ([35] above) purportedly created the alleged trust when he transferred his interest in a flat that he had paid for to his mother, such that it appeared that his mother was the sole owner and he no longer had an interest in it, while he intended to be the beneficial owner of the flat. Here, the payments Swee Geok relies upon were made when the Flat was in her parents’ names, and then in the sole name of Mdm Gee – again, making it appear that the registered owner(s) owned the Flat and that Swee Geok had no interest in it (indeed, she had ceased to be a registered owner of the Flat some years earlier, and owned another flat), while Swee Geok intended to be the beneficial owner of the Flat. Swee Geok had purported to create a trust just as the respondent in *Cheong Yoke Kuen* had.

40 In *Lim Kieuh Huat* ([25] above), the parents claimed to have funded the purchase of an HDB flat that was registered in their son’s sole name (“the Kim Tian Flat”). They asserted a purchase money resulting trust in respect of the Kim Tian Flat. Their claim failed. The Court of Appeal held that this would be a nominee arrangement – in substance, for the son to hold the Kim Tian Flat as a bare trustee on behalf of his parents. The Court of Appeal stated (at [11]):

However one describes it, it is clear to us that this would be a trust which was ‘created’ or ‘purports to be created’ in respect of the Kim Tian Flat, in the language of ss 51(8) and (9) of the

HDA. That being the case, even apart from any question of the Parents' ineligibility, the HDB's prior written approval would have been needed. There was no such approval. Hence, s 51(9) of the HDA applies to render the purported trust null and void. The Parents' claim fails at this stage.

41 Likewise, by making payments towards the Flat while she was no longer the registered owner (but intending to be its beneficial owner), Swee Geok regarded her parents, and then Mdm Gee, as mere nominees holding the Flat as a bare trustee for her, in the same way that the parents in *Lim Kieuh Huat* regarded their son.

42 The fact that the alleged trust was purportedly created some time after the initial purchase of the Flat does not avoid the operation of ss 51(8)–(9) of the HDA – in *Cheong Yoke Kuen* ([35] above) the alleged trust was created some time after the initial purchase: when the respondent transferred his interest to his mother.

43 Both the respondent in *Cheong Yoke Kuen*, and Swee Geok, were the owners of other HDB flats. If the respondent in *Cheong Yoke Kuen* could not retain a beneficial interest in the first flat while owning another, neither could Swee Geok acquire a beneficial interest in the Flat while owning another. This is consonant with the policy of avoiding “abuse by persons who would and could easily purchase HDB properties through nominees” (*Cheong Yoke Kuen* at [19]), and the restrictions on dual ownership of HDB flats pursuant to s 47(1)(a) of the HDA (*Cheong Yoke Kuen* at [22]–[23]).

44 In *Cheong Yoke Kuen*, the Court of Appeal concluded (at [27]):

In our judgment, the resulting trust of the flat in favour of the respondent is prohibited by s 51(4) and is void under s 51(5) of the [1997 HDA]. It follows that the property remained vested in the mother and upon her death forms part of her estate. We make a declaration that the flat forms part of the estate of the

mother, and the proceeds of sale, subject to payment of debts and liabilities of the estate, is available for distribution under the Intestate Succession Act.

45 The respondent in *Cheong Yoke Kuen* thus failed to get an interest in the flat, or an interest in its *proceeds of sale*, although he had paid for the flat.

46 Applying *Cheong Yoke Kuen*, the High Court in *Chong Sze Pak v Chong Ser Yoong* [2011] 3 SLR 80 (“*Chong Sze Pak*”) likewise rejected a resulting trust claim to sale proceeds of an HDB flat (“the McNair Road property”). There, the trust purportedly created by a trust deed was held to be null and void under ss 51(4)–(5) of the 1997 HDA (see [42] and [58]). The court went on to say at [59]: “The Plaintiff’s attempt to claim the sale proceeds (of the McNair Road property) under a resulting trust, must also fail, see [*Cheong Yoke Kuen* ([35] above)] at [13]–[19].”

47 I would also mention *Ong Chai Koon and others v Ong Chai Soon* [2021] SGHC 76 (“*Ong Chai Koon*”), where the High Court found that a constructive trust justified an order for the sale of an HDB shophouse, with the sale proceeds being distributed to the beneficiaries of that trust (one of whom was the registered owner, the others his siblings). The court found that the parties always shared a common intention that they would treat the shophouse as their collective “retirement fund”, and that the shophouse would be sold at some point in time, so that its sale proceeds can be shared by them equally (at [189]). Thus, the court found a common intention constructive trust over the shophouse and its sale proceeds.

48 The court in *Ong Chai Koon* distinguished *Cheong Yoke Kuen* ([35] above) and *Chong Sze Pak* ([46] above) on the basis that those cases did not concern s 51(10) of the HDA but instead the predecessors of the current ss

51(8)–(9) (see [160]–[162]). The defendant had relied on ss 51(8)–(9) to argue that “an express trust” created over the HDB shophouse would fail (at [140]), but what the court found was a constructive trust rather than an express trust.

49 The defendant relied on s 51(10) of the HDA to defeat a constructive trust; but following *Andy Low* ([32] above) the court held that s 51(10) of the HDA did not render the constructive trust void – it would only prevent a person from becoming entitled to HDB property (or any interest in it) by virtue of that trust (see *Ong Chai Koon* at [160]). Thus, the court held that s 51(10) of the HDA did not preclude the court from ordering the sale of the shophouse and the distribution of its proceeds (see *Ong Chai Koon* at [108], [189] and [192]–[193]).

50 Unlike *Ong Chai Koon*, there is no constructive trust in the present case. Swee Geok and Swee Hwa did not assert a constructive trust, and there is clearly no common intention between them (on the one hand) and Mdm Gee (on the other hand) that the Flat belongs to the applicants, or to Swee Geok alone.

51 I find that ss 51(8)–(9) of the HDA defeat the applicants’ claim to the beneficial interest in the *Flat*, as well as Swee Geok’s claim to the beneficial interest in its *sale proceeds*. The decisions in *Cheong Yoke Kuen* ([35] above), *Chong Sze Pak* ([46] above), and *Lim Kieuh Huat* ([25] above) support the application of ss 51(8)–(9) of the HDA to the present case.

52 I thus do not need to decide whether, by itself, s 51(10) of the HDA might also have stood in the way of Swee Geok’s claim to sale proceeds. I would simply observe that when s 51(10) of the HDA was introduced (as 51(6) of the HDA in force in 2005), it was described by the Minister for National Development as an additional prohibition on top of the prohibition already

contained in the predecessors to the current ss 51(8)–(9) (see *Tan Chui Lian* ([25] above) at [9]). Section 51(10) of the HDA is a *prohibition*: it does not save any purported trust that is null and void on an application of ss 51(8)–(9).

Conclusion

53 For the above reasons, Swee Geok and Swee Hwa have no beneficial interest in the Flat or its sale proceeds. I thus dismiss both the application to amend the OS, and the OS itself. Swee Geok and Swee Hwa shall withdraw the caveat that they lodged in respect of the Flat. They shall also provide copies of this judgment to Mdm Gee (through her care coordinator), and to their siblings.

Postscript

54 Mdm Gee did not participate in these proceedings. I am informed that she is in a community hospital, but I do not have any objective evidence of her condition.

55 Although Mdm Gee was absent, what Swee Geok and Swee Hwa put before me was sufficient for me to dismiss their claims. If I had found their claims to have some merit, I would have directed that the court papers be served on their siblings so that they could consider if someone should be appointed to represent Mdm Gee’s interests.

56 Given the circumstances, I was disappointed that Swee Geok and Swee Hwa had sought an order for costs against their mother. All Mdm Gee did was to regard the Flat that was in her name, as hers – such that she could bequeath it to her son. Even if Swee Geok and Swee Hwa had succeeded in claiming the whole beneficial interest in the Flat (or its sale proceeds), I would not have ordered costs against Mdm Gee.

57 On a more positive note, Mdm Gee had in her will expressed her gratitude to Swee Geok and Swee Hwa,¹⁶ and indeed they should be commended for the payments which they had made towards the Flat, providing their parents and their brother with a home. But they have their own HDB flats now, and they cannot also claim the Flat – Mdm Gee’s flat – or its sale proceeds, for themselves.

Andre Maniam
Judicial Commissioner

Sureshan s/o T Kulasingam and Samuel Ang Rong En
(Sureshan LLC) for the applicants;
The respondent absent.

¹⁶ Applicants’ First Affidavit at p 16.