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

[2022] SGHC 130

Originating Summons No 764 of 2021

Between

Lau Yaw Ben

… *Plaintiff*

And

(1) Lau Wee Hion
(2) Ng Lisa

… *Defendants*

JUDGMENT

[Trusts] — [Express trusts]
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Lau Yaw Ben
v
Lau Wee Hion and another

[2022] SGHC 130

General Division of the High Court — Originating Summons No 764 of 2021
Audrey Lim J
9 May 2022

27 May 2022 Judgment reserved.

Audrey Lim J:

1 Mr Lau Yaw Ben ("P") is the father of Lau Wee Hion ("D1"). D1 and Lisa Ng ("D2") are currently undergoing divorce proceedings ("Divorce Proceedings"). D1 and D2 were married on 2 February 2012. On 14 September 2020, D2 filed for divorce against D1, with interim judgment granted on 18 March 2021. On 8 June 2021, D1 and D2 filed their respective affidavits of assets and means ("AOM").[1] The present application ("OS 764") was commenced by P on 27 July 2021, in which P seeks a declaration that D1 holds the following moneys on trust for P:

(a) the balance sale proceeds of 473 Changi Road ("Unit 473") amounting to $130,000 ("473 Moneys");

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1 Ng Lisa's 1st Affidavit dated 4 October 2021 at [5], [7], [8], [13] and [16].

(b) the balance sale proceeds of 473A Changi Road ("Unit 473A") amounting to $530,217.78 ("473A Moneys"); and

(c) moneys P inherited from his late mother and entrusted to D1 in cash amounting to $82,000 ("Inheritance Sum").[2]

P's case

2 P's case is as follows.

3 Around 1991, P jointly developed land along Changi Road with one Wong Keng Hua. To finance the development of the land, P invested at least $500,000 of his personal moneys and additionally mortgaged the land to RHB Bank ("RHB") ("the Loan"). P received legal ownership of 473, 473A and 473B Changi Road in 1994.[3]

4 Between 1994 and 2004, P faced financial difficulties for various reasons, including the high interest rates under the terms of the Loan.[4]

5 In 2004, under the pressure of RHB to reduce the Loan, P transferred Unit 473 to D1 for D1 to refinance and make part payment to RHB, but he had no intention of gifting Unit 473 to D1. To effect the transfer of Unit 473 to D1, P paid an option fee of $54,000 (representing 10% of the purchase price of Unit 473) to RHB. P borrowed $20,000 from his sister, Lau Yaw Ngoh ("LYN") and took a loan of $30,000 from NTUC Insurance to pay the option fee. D1 did not pay any moneys as transferee of Unit 473.[5]

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2 Law Yaw Ben's 3rd Affidavit dated 12 April 2022 ("LYB3A") at [23].

3 Lau Yaw Ben's 1st Affidavit dated 27 July 2021 ("LYB1A") at [24]–[30].

4 LYB1A at [31]–[38].

5 LYB1A at [45]–[48]; P's Written Submissions dated 2 May 2022 ("PWS") at [45].

6 In 2005, P needed to pay off a significant portion of his debts urgently and thus decided to sell Unit 473 to make a substantial repayment to RHB. He found a buyer for Unit 473, one Wong Keng Seng ("WKS") who was Wong Keng Hua's brother and to whom Unit 473 was sold (through D1) for $670,000 on 31 October 2005. Before me, Mr Yeo (P's counsel) pointed to a Land Titles Registry transfer document ("Transfer Document") to show that whilst the contract to sell Unit 473 was made between P and D1 in October 2004, the property was only transferred to D1 in October 2005 and it was then transferred to WKS immediately on the same day.[6]

7 Of the $670,000 sale proceeds from Unit 473, $540,000 was paid to RHB to reduce the sum outstanding under the Loan and the remaining $130,000 (*ie*, the 473 Moneys) was credited into D1's bank account. P entrusted the 473 Moneys to D1 because he was not in a proper emotional state to handle large sums of moneys and he could potentially face bankruptcy proceedings at the material time.[7]

8 P explained that when he had to sell Unit 473 (because RHB pressured him to repay the Loan), he transferred it to D1 for D1 to sell the property as a "workaround"[8] for two reasons ("the Workaround"). First, Unit 473 had no separate strata title but only a lot number, which would have made it extremely difficult to find a willing buyer. If D1 was the owner/seller of Unit 473 and there was any problem with the title to Unit 473, a purchaser could at least have potential recourse against D1 as the immediate seller. Second, as P was in a precarious financial situation and facing the prospect of bankruptcy, a potential

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6 Notes of Evidence dated 9/5/22 ("9/5/22 NE") 3; LYB1A at pp 40–42.

7 LYB1A at [52]–[54].

8 LYB3A at [17].

buyer of Unit 473 might be concerned with the risk of clawbacks if he bought the property directly from P.[9]

9 P's financial difficulties persisted in spite of the sale of Unit 473. He owed UOB Bank ("UOB") more than $1.1m under a mortgage of his family home and was unable to make timely repayments of this mortgage. In November 2006, UOB thus sold the family home, following which P's outstanding debt to UOB fell to $42,826.73 (as at 10 May 2007) ("the Debt"). In June 2007, UOB agreed to accept $18,000 (in $300 monthly instalments over five years commencing 30 June 2007) as full and final settlement of the Debt. Under P's instructions, D1 then used $18,000 of the 473 Moneys in discharge of the Debt.[10]

10 Separately, in around 2007, P fell into arrears in respect of the Loan again. RHB sold 473B Changi Road and applied the sale proceeds to reduce the sum outstanding under the Loan. As for Unit 473A, RHB permitted P to transfer it to D1 for $395,000 – the documents showed this transaction to have taken place around 31 August 2007.[11] D1 paid for Unit 473A using $59,000 of the 473 Moneys and by taking a mortgage (for the remainder) on Unit 473A. As Unit 473A was rented out, P told D1 to use the rental proceeds (which P claimed also belonged to him) to pay the monthly mortgage instalments. P also told D1 that if there was any shortfall, D1 could use the balance 473 Moneys to pay for this.[12]

11 In December 2011, D1 sold Unit 473A to Lee Thiam Hock and Fun Peng Kiong for $850,000, which sale was negotiated by P. Completion took place on

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9 LYB3A at [16]–[17]; PWS at [43]–[44].

10 LYB1A at [56]–[67], pp 49–50.

11 D1's Affidavit of Asset and Means filed in the Divorce Proceedings dated 8 June 2021 ("D1's AOM") at pp 126, 128 (Tab L).

12 LYB1A at [68]–[72].

8 March 2012. After paying off the outstanding mortgage on Unit 473A (of some $289,000), the balance of $530,217.78 (*ie*, the 473A Moneys) was deposited into D1's bank account. P informed D1 to hold the 473A Moneys on P's behalf as P still owed RHB more than $600,000 at that time.[13]

12 Additionally, in 2008, P accepted RHB's offer to make payment of $400 a month, beginning 30 June 2008, in consideration of RHB withholding legal proceedings against him. P instructed D1 to pay RHB $400 a month using the 473 Moneys and, following the sale of Unit 473A, the 473A Moneys. In this regard, D1 paid a total of $48,000 on P's behalf over ten years.[14]

13 Finally, on or about 19 February 2017, P received a cheque of $82,068.20, constituting his inheritance from his late mother's estate. P encashed this cheque out of fear that if he deposited the moneys into his bank account, RHB would become cognisant that P was in possession of a significant sum of money and revoke the payment plan it extended to him (see [12] above). From this amount, P handed $82,000 (the Inheritance Sum) to D1 for his safekeeping and kept the loose sum of $68.20.[15]

14 P submits that D1 held the 473 Moneys, the 473A Moneys and the Inheritance Sum (collectively, "the Sums") on trust for P. In particular, pertaining to the 473 and 473A Moneys:

(a) P was in a poor financial state at the time he entrusted the 473 and 473A Moneys to D1. P owed $1,631,738.18 to RHB as of 30 April 2006 (which was after the sale of Unit 473 to WKS) and approximately

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13 LYB1A at [73]–[75], pp 52–58.

14 LYB1A at [79]–[85], [95] (item (d) of the Table), p 69.

15 LYB1A at [88]–[93]; PWS at [76(g)].

$600,000 in 2007 (which was after RHB's mortgagee sale of 473B Changi Road). P also owed UOB $42,826.73 as at 10 May 2007. Given his heavy debts, P could not have intended to absolutely benefit D1 by gifting D1 the 473 and 473A Moneys.[16]

(b) Mr Yeo submits that the 473 and 473A Moneys were the only "return[s]" P received from his investment in Units 473 and 473A.[17]

(c) P negotiated the sale of Unit 473 to WKS and the sale of Unit 473A to Lee Thiam Hock and Fun Peng Kiong.[18]

(d) To transfer Unit 473 to D1, P had to borrow $50,000 to pay RHB the option fee of $54,000. It did not make sense for P to borrow moneys to facilitate a gift to D1 given P's financial difficulties.[19]

(e) D1 utilised $59,000 of the 473 Moneys to purchase Unit 473A from P and used the rental income from Unit 473A to service the monthly mortgage payment on that property.[20]

(f) P instructed D1 to use the 473 Moneys to pay the monthly instalments of $300 to UOB Bank and the 473 and 473A Moneys to pay the monthly instalment of $400 to RHB.[21]

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16 LYB1A at [48], p 49; LBY3A at [20], p 19; PWS at [76]–[77], [78(d)].

17 PWS at [78].

18 LYB1A at [53], [73]; PWS at [80(a)], [80(c)].

19 PWS at [79(a)], [80(a)].

20 LYB1A at [71(b)]; PWS at [80(b)].

21 PWS at [80(d)].

D1's case

15 D1 did not file any affidavit in OS 764. Before me, he confirmed that he did not intend to do so and maintained what he had stated in his AOM filed on 8 June 2021 ("D1's AOM") in the Divorce Proceedings.[22]

D2's case

16 D2 disputes that Units 473 and 473A, as well as any proceeds from the sales thereof, and the Inheritance Sum are held on trust by D1 for P. Her case is as follows.

17 During the marriage, D1 never mentioned to D2 that he held the above assets on trust for P. D1 first raised the trust when he filed D1's AOM in the course of the Divorce Proceedings. Moreover, throughout the course of D1 and D2's marriage, D1 had dealt with the assets and moneys in his possession as if they were his own.[23]

18 D2 submits that P failed to establish that D1 held Units 473 and 473A on trust for P for the following reasons:

(a) Under s 7(1) of the Civil Law Act (Cap 43, 1999 Rev Ed) ("CLA"), a declaration of trust respecting any immovable property must be manifested and proved by some writing signed by some person who is able to declare such trust. As there was no such written evidence, D1 could not have held Units 473 and 473A on trust for P.[24]

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22 9/5/22 NE 2.

23 Ng Lisa's 3rd Affidavit dated 28 March 2022 ("NL3A") at [31]–[34].

24 D2's Written Submissions dated 4 May 2022 ("2DWS") at [57], [77].

(b) In relation to Unit 473, P did not adduce any evidence – apart from LYN's affidavit – to support his claim that he had paid for the option moneys and that D1 did not pay anything as transferee of the property. Moreover, P's claim that D1 did not provide any moneys to fund the transfer of Unit 473 to D1 was contradicted by P's own assertion that he transferred Unit 473 to D1 for D1 to refinance the property and make part payment to RHB.[25]

(c) In relation to Unit 473A, P has not furnished any documents to show that the property was priced at $395,000, that D1 paid $59,000 as down payment, that the property was tenanted and that the rental proceeds were used to service the monthly mortgage on the property. Further, the evidence showed that D1 paid the purchase price for Unit 473A and took out a mortgage to fund its purchase.[26]

(d) The presumption of advancement negated the presumption that D1 held Units 473 and 473A on a resulting trust for P.[27]

19 As for the 473 and 473A Moneys, D1's failure to segregate them in his bank account militated against a finding that he held them on trust for P. Moreover, it was improbable that P did not apply the 473 Moneys (if indeed the moneys belonged to P) in discharge of the Loan or to repay his debts given his dire financial straits at the time Unit 473 was sold.[28]

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25 NL3A at [38]; 2DWS at [51]–[53].

26 2DWS at [70], [73].

27 2DWS at [58]–[60], [78].

28 2DWS at [55]–[56], [63], [85]–[86].

20 Finally, P has not adduced evidence to show that he handed the Inheritance Sum to D1 to hold on P's behalf. Moreover, in D1's AOM, D1 stated that he had deposited cash of only $50,000 from the Inheritance Sum, with no explanation for the shortfall of $32,000.[29]

Units 473 and 473A and the 473 and 473A Moneys

Whether there was a trust of Unit 473 or the 473 Moneys

21 Before me, Mr Yeo clarified that P's claim is based on an express trust and a resulting trust.[30]

22 Three certainties must be present for the creation of an express trust: certainty of intention, certainty of subject matter and certainty of the objects of the trust. Certainty of intention requires proof that a trust was intended by the settlor (*Guy Neale and others v Nine Squares Pty Ltd* [2015] 1 SLR 1097 at [51]–[52]). Additionally, under s 7(1) of the CLA, a declaration of trust respecting any immovable property or any interest in such property must be manifested and proved by some writing signed by some person who is able to declare such trust. However, s 7(1) does not affect the creation of a resulting, implied or constructive trust (see s 7(3) of the CLA).

23 Turning to the law on resulting trusts, where a transferor appears to have paid for the acquisition of an interest in property in the name of a different party or to have transferred some interest in property to a transferee, the presumptions of resulting trust and advancement are relevant. If there is no relationship between the transferor and transferee, the court presumes that the transferor

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29 NL3A at [45]; 2DWS at [93].

30 9/5/22 NE 1–2.

intended to retain the beneficial interest in the property in proportion to his financial contribution towards the acquisition of the property. This is the presumption of resulting trust. Where, however, the transfer occurs in the context of certain recognised categories of relationships (*eg*, between parents and children), the presumption of advancement ("POA") operates to rebut the presumption of resulting trust on the basis that the transferor intended to benefit the transferee. The burden then lies on the party challenging the claim of the transferee to rebut the POA by proving that the transfer was not intended to be a gift (*Koh Lian Chye and another v Koh Ah Leng and another and another appeal* [2021] SGCA 69 at [23]–[26]).

24 Importantly, however, the court will not rely on the presumption of resulting trust and POA when the evidence adequately reveals the true intentions of the transferor (*Su Emmanuel v Emmanuel Priya Ethel Anne and another* [2016] 3 SLR 1222 at [79]).

25 I find that there was no express trust created over Unit 473 in P's favour. P did not adduce any evidence in writing to support a declaration of such a trust. Before me, Mr Yeo could merely say that he was relying on the averments in P's affidavits to support P's claim in express trust, without providing any documentary evidence from P (or D1) manifesting such a trust at the material time.[31] Having found that Unit 473 was not held on an express trust for P, it follows that the 473 Moneys was also not held on an express trust for him unless D1 decided to hold it on such a trust for P after Unit 473 was sold to WKS. But as the evidence below would show, D1's actions demonstrated otherwise.

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[31] 9/5/22 NE 7.

26 I find that P has failed to show, on balance, that Unit 473 was held on a resulting trust for him when it was transferred to D1, or correspondingly that D1 held the 473 Moneys on trust for P when Unit 473 was sold onwards to WKS. Contrary to P's claim that a trust of Unit 473 was created in his favour because he had no intention of gifting it to D1, I find that P had intended to divest the beneficial interest in the property to D1.

27 First, if P claimed that he had transferred Unit 473 to D1 for D1 to refinance it and make part payment to RHB, D1 would have given consideration for the property when it was transferred to him. In this regard, what P essentially sought to do was to obtain funds from D1 through *D1* refinancing Unit 473, to assist P to reduce the Loan to RHB. By refinancing Unit 473, D1 would become the owner and mortgagor of Unit 473 and bear the responsibility and burden of repaying the mortgage to the mortgagee. As D1 stated, Unit 473 was transferred to him so that he could assist P to discharge the Loan and *D1* paid the $540,000 to RHB to do so.[32]

28 In fact, P's claim that D1 "did not pay anything" for Unit 473 when it was transferred to him and it was P who first paid the 10% option fee of $54,000 to RHB which was required by RHB to start the transaction to effect the transfer to D1 (to support that the property was held on trust for P) was not borne out by the evidence.[33] I reject P's claim that he paid the 10% option fee. On the contrary, the evidence showed that all $540,000 which P used to reduce the Loan came from the sale proceeds of Unit 473 when Unit 473 was sold to WKS:

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32 D1's AOM at [26(d)] and [26(e)].

33 PWS at [45].

(a) First, P's claim that he paid RHB the option fee of $54,000 with $30,000 borrowed from NTUC Insurance and $20,000 borrowed from LYN is not supported by the evidence. There is no evidence of P having paid the option fee at all, or of the alleged loan of $30,000 from NTUC Insurance. On the contrary, the evidence shows that his assertion could not be believed. LYN (who filed an affidavit to support P's claim that he had borrowed $20,000 from her) attested that P approached her only in *2005* for the loan of $20,000.[34] P, however, stated on affidavit that he paid $54,000 to RHB "to start the transaction", which Mr Yeo confirmed before me referred to 2004.[35]

(b) Second, the Transfer Document (see [6] above) which was signed by P and D1 at the time of the sale of Unit 473 to WKS *in 2005*, stated that P "ACKNOWLEDGE[D] receipt of the consideration of … (*$540,000*) paid to [P] by [D1]" [emphasis added].[36] For completeness, the Transfer Document stated that Unit 473 was sold to WKS for $630,000, and the "transfer" was "through immediate purchaser" (D1). The Transfer Document thus contradicts P's claim that *he* had first paid $54,000 to RHB to effect the transfer of Unit 473 to D1. If P's claim is to be believed, there is no reason why all $540,000 from the sale of Unit 473 was paid over to P for P to pay RHB given that he claimed to have already paid 10% of this amount to RHB. P's evidence that $540,000 *from the sale proceeds* of Unit 473 was paid to RHB thus contradicts his

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34 Lau Yaw Ngoh's Affidavit dated 14 April 2022 at [3]–[4].

35 LYB1A at [47]; D1's AOM at Tab I; 9/5/22 NE 4.

36 LYB1A at p 40.

earlier evidence that he had already personally paid $54,000 to RHB "to start the transaction".[37]

(c) Hence, what was reflected in the Transfer Document was consistent with P's and D1's testimony that the property would be transferred to D1 so that he could assist P to discharge the Loan. By D1's evidence in D1's AOM, he paid the $540,000 to RHB to reduce the Loan in return for P transferring Unit 473 to him.[38]

29 At this juncture, I deal with D1's assertion before me that he only paid 1% (or $5,400) to RHB when P transferred Unit 473 to him in October 2004 and his parents paid the remaining option moneys (9% of $540,000) to RHB a few months before the property was sold to WKS in October 2005.[39] I disbelieve D1's assertion which was not on oath (as he chose not to file any affidavit for OS 764), and contradicted by the Transfer Document and D1's AOM, and which I find was made in an attempt to support P's claim of a resulting trust.

30 Second, it was clear that P transferred Unit 473 to D1 to put it out of the reach of his creditors. As P stated, he implemented the Workaround to *prevent any clawback of Unit 473 if he became a bankrupt* and for the buyer to have recourse *against D1* if there was any problem with Unit 473's title. P's desire to place Unit 473 out of the reach of his creditors and for D1 to bear the risk of warranty to title supports a finding that P intended to divest the beneficial interest in the property to D1, as otherwise P's creditors would still be able to reach into P's beneficial interest in the property and any corresponding sale proceeds. That the transfer of Unit 473 to D1 immediately preceded its sale to

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37 LYB1A at [47(a)]; 9/5/22 NE 3.

38 D1's AOM at [26(e)].

39 9/5/22 NE 9.

WKS did not change P's motive or intent to divest the beneficial interest in Unit 473 to D1. This further demonstrates there to be no resulting trust of Unit 473 in P's favour.

31 In the above regard, I find P's explanation for the Workaround, *ie*, that it would be extremely difficult to find a buyer who would agree to buy a property (Unit 473) which did not have a title but merely a lot number, to show that he did not intend to gift Unit 473 to D1, to be unconvincing. It is unclear how transferring the property to D1 would make it more attractive to buyers if it continued to have no separate title, as the property would remain "extremely difficult" to be sold, based on P's case.

32 Finally, that the 473 Moneys was commingled with D1's money in his bank account, which D1 admits is the same account he used for his family and personal expenses,[40] further supports that P did not intend to retain a beneficial interest in Unit 473 or the sale proceeds thereof. In fact, both P's and D1's claims that all the Sums were kept in D1's bank accounts and only for P's benefit, were contradicted by D1's actions in treating the Sums as his own.[41] The total of P's claims is over $620,000 (after deducting some $125,000 which P claimed had been spent), but D1's bank accounts as at 8 June 2021 showed only some $340,000 (including more than $20,000 held in trust accounts for D1's children).[42] Whilst D1 agreed that he would hold the Sums in his bank accounts for P's benefit and that he would provide for his family with his own income and savings,[43] the moneys in D1's bank accounts (which is significantly

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40 LYB1A at [54]; 9/5/22 NE 4–5.

41 LYB1A at [54], [75]; D1's AOM at [26(e)], [32(j)].

42 LYB1A at [95] (items (b), (c) and (d) of the Table); D1's AOM at p 3 (Table of List of Assets).

43 D1's AOM at [26(e)].

less than what P claims as owing to him beneficially) showed that D1 had used a substantial portion of the Sums for his own purposes (even if I accept the total net amount of the Sums in D1's bank accounts is some $620,000). Indeed, D1 admitted to having spent some of the Sums over the years.[44]

33 D1's conduct is inconsistent with a person who claims to be a trustee of the moneys, and further contradicted P's claims that the 473 Moneys (and the 473A Moneys and Inheritance Sum) were held on trust for him. Given P's claim that he trusted D1 who was a filial son, and D1's claim that he shared a very close bond with P,[45] it was improbable that D1 would have used moneys purportedly belonging to P and kept in D1's bank account without P's knowledge or permission. At this juncture, my analysis includes the assumption that the Inheritance Sum was also deposited into D1's bank account(s) – whether this was indeed the case is a point I will return to later.

34 In this regard, both P and D1 relied on *Hinckley Singapore Trading Pte Ltd v Sogo Department Stores (S) Pte Ltd (under judicial management)* [2001] 3 SLR(R) 119 at [28]–[29] to support their respective positions. In particular, the Court of Appeal stated (citing *R v Clowes (No 2)* [1994] 2 All ER 316 at 325) that a requirement to keep moneys separate is normally an indicator that they are impressed with a trust, and that the absence of such a requirement, *if there are no other indicators of a trust*, normally negatives it. The fact that a transaction contemplates the mingling of funds is, therefore, not necessarily fatal to a trust. However, in the present case, not only are there no other indicators of a trust of Unit 473 or of the 473 Moneys, but D1 had also utilised a substantial part of the Sums for his personal and family benefit. There is no

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44 D1's AOM at [32(m)].

45 D1's AOM at [32(j)].

evidence that D1 needed or sought P's consent to use the moneys held in D1's name for such purpose, whose consent D1 would have sought if the moneys were indeed P's. It must be remembered that the issue of whether D1 held on trust certain moneys for P was not raised until the Divorce Proceedings.

35 To conclude, I find that there was no express or resulting trust of Unit 473 in favour of P, and hence there was likewise no trust of the 473 Moneys. P's intent to transfer Unit 473 to D1 for D1 to refinance it and his motive for the Workaround with the sale of Unit 473 to WKS with D1 as the seller showed P's consistent intent to divest his beneficial interest in Unit 473.

36 At this juncture, I deal with P's claim that the $18,000 paid to UOB over five years was paid using his moneys, namely the 473 Moneys (see [9] above). Quite apart from the fact that I have found there to be no trust of the 473 Moneys, there is also no evidence that D1 had utilised the 473 Moneys to help P discharge the sum owing to UOB. Whilst D1's AOM stated that D1 had helped his father to repay this sum, he did not mention that he had used the 473 Moneys for this purpose.[46] Even if D1 did assist P in this regard, this could equally well be the case of a son helping his father precisely because he had benefitted from the transfer of Unit 473 to him and its subsequent disposition.

Whether there was a trust of Unit 473A or the 473A Moneys

37 I likewise find there to be no express or resulting trust of Unit 473A or the 473A Moneys and find that P had intended to divest the beneficial interest in Unit 473A to D1.

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[46] D1's AOM at [26(g)].

38 To support the existence of a trust, P claims that RHB had allowed Unit 473A to be transferred to D1 at a valuation of $395,000; that D1 used $59,000 of the 473 Moneys as down payment for this transaction; that D1 took out a mortgage for the remainder (which Mr Yeo confirmed before me was for a sum of $336,000); and that P told D1 to use the rental proceeds from Unit 473A (which was then rented out) to service the monthly mortgage repayments and to use the balance of the 473 Moneys to pay for any shortfall.[47]

39 Whilst the transfer document registered with the Land Titles Registry showed that Unit 473A was transferred to D1 for $395,000,[48] there are no documents to evince that P retained the beneficial interest in the property to support a claim in express trust. I also find that P has failed to show on balance that there was a resulting trust of Unit 473A, or an express or resulting trust of the 473A Moneys.

40 Unit 473A was transferred to D1 for *D1* to refinance the property, so that the proceeds from the refinancing could be used to assist P to reduce the Loan. If so, consideration was provided by D1 for Unit 473A. There is no dispute between P and D1 that D1 took out a mortgage on Unit 473A and was discharging the mortgage until the property was sold by D1 to third parties. It was highly improbable that D1 would have taken a mortgage on Unit 473A and the responsibility of repaying the mortgage (even if there was rental income generated from the property) unless P had divested the beneficial interest in the property to D1.

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47 LYB1A at [71]; PWS at [57]; 9/5/22 NE 5.

48 D1's AOM at pp 125–127 (Tab L).

41 In this regard, D1 claimed that he financed the transfer of Unit 473A to him by taking out a $316,000 bank loan (and not $336,000 as P asserted) and the remainder (which would have been $79,000 and not $59,000) was paid from the 473 Moneys.[49] P and D1 could not even maintain a consistent story. Further, there is no objective or documentary evidence that the down payment for Unit 473A (let alone its precise amount) was paid using the 473 Moneys. In any event, I had found there to be no trust of the 473 Moneys in P's favour. Thus, even if D1 had utilised some of the 473 Moneys to pay for Unit 473A, this did not in itself impress a trust on Unit 473A in P's favour.

42 There is also no evidence to show that Unit 473A was then (in 2007) tenanted, much less the amount of rental proceeds D1 received and then used to service the monthly mortgage repayments – in fact, this is not even mentioned in D1's AOM. Even if Unit 473A was subsequently sold by D1 in 2012 "subject to tenancy", as reflected in an Inland Revenue Authority of Singapore document,[50] that document did not reflect when the tenancy came into being or the monthly rent.

43 Finally, whilst D1 also claimed that the 473A Moneys were held for P's benefit, his conduct of depleting the moneys in his bank accounts showed otherwise, and I repeat my findings at [32]–[34] above.

Presumption of advancement

44 Finally, D2 seeks to rely on the POA if the court finds that there is a resulting trust in relation to Units 473 and 473A.[51]

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49 D1's AOM at [26(h)].

50 LYB1A at pp 63–64.

51 2DWS at [58], [80].

45 The key inquiry when considering the POA is in substance directed at discerning the *presumed* intention of the transferor; where a transferor's intention is explicitly articulated there will generally be no room for invoking any presumption in this regard (*Low Yin Ni and another v Tay Yuan Wei Jaycie (formerly known as Tay Yeng Choo Jessy) and another* [2020] SGCA 58 at [5]). Even if there was a resulting trust in relation to Units 473 and 473A (which I had found there was not), I find that the POA rebutted this.

46 Aside from the fact that P and D1 shared a close relationship, P's own account for transferring Units 473 and 473A to D1 is telling. At that time, he was worried about losing all his assets and the outstanding sum owed to RHB was more than the value of the properties.[52] Pertinently, *P intended to dispose of his assets* to prevent creditors from reaching into them in the event he became bankrupt. As P attested, he was fearful of having substantial sums of moneys in his name or owning assets in case he was made a bankrupt and would then have to declare all his assets.[53] Hence, the transfer of his properties to protect them from his creditors did nothing by itself to rebut the POA but merely reinforced it (*Tribe v Tribe* [1995] WLR 913 at 938).

47 Additionally, D1's conduct in treating the 473 and 473A Moneys as his own to use as he thought fit (see [32]–[34] above) supported the POA. Even if D1 had allowed any of the 473 or 473A Moneys to be used according to P's wishes, this did not necessarily rebut the POA, especially if the source of the 473 and 473A Moneys came from Units 473 and 473A, the beneficial interests in which had been transferred to D1 (*Lilyana Alwi v John Arifin* [2020] 5 SLR 1219 at [51]–[52]). I find that when P transferred Units 473 and 473A to D1, he

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52 LYB1A at [43]–[44].

53 LYB1A at [84], [87].

intended to benefit D1 because he trusted that D1 would in return provide for his needs.

Conclusion

48 In the result, I find there to be no trust of Units 473 and 473A or of the 473 and 473A Moneys in P's favour.

49 At this juncture, I deal with P's assertion that there is no reason for D1 to make the $400 monthly repayments to RHB (see [12] above) using D1's own money, unless D1 was actually using the 473 and 473A Moneys which belonged to P.[54] This contention is neutral at best. There is no documentary evidence to show that it was D1 who paid RHB the $400 each month, which P claimed occurred for ten years from 30 June 2008.[55] D1 has failed to show any recent bank statements or documents (*eg*, from 2017 or 2018) to support this. Even assuming D1 had made the monthly repayments to RHB, it is equally probable that he had done so for P precisely because D1 had benefited from the transfer of the ownership of Units 473 and 473A (and the subsequent disposition of the properties) and was helping P in return.

50 Likewise, even if P negotiated the sale of Unit 473 and Unit 473A with their respective purchasers,[56] this does not show that P retained the beneficial interest in the properties after conveying them to D1. P could have simply done so to assist D1 with the sale of the properties.

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54 LYB1A at [85].

55 LYB1A at [80]–[81]; PWS at [60]–[62], [76(f)], [78(d)], [80(d)].

56 LYB1A at [53], [73].

51 In so far as D1 sought to align his account of events with P's case in D1's AOM, his evidence must be treated with caution. There is no evidence of D1 having informed D2 that he held moneys on trust for P during their eight-year marriage, and it was only after their divorce that D1 first raised this allegation in D1's AOM. Fundamentally, it is in D1's interest to align his testimony with P's case since any sums he purportedly holds on trust for P would be removed from the matrimonial pool of assets to be divided between D1 and D2 and become impervious to D2's reach. This is especially given P and D1's "very close bond".[57]

Inheritance Sum

52 I turn to deal with the Inheritance Sum. P claims that in February 2017, he received a cash cheque of $82,068.20 from his late mother's estate ("P's Inheritance"), encashed it and then handed $82,000 to D1 for his safekeeping. I find that P has not shown, on balance, that D1 kept the Inheritance Sum on behalf of and let alone on trust for P.

53 There is no evidence to support that P handed any portion of the Inheritance Sum to D1 or that D1 deposited it into his bank account. In fact, P's and D1's evidence on this matter differed. P stated that shortly after he received P's Inheritance (which was around 19 February 2017), he had encashed the cheque and passed an entire sum of $82,000 (minus the loose change of $68.20 which he kept) to D1 for safekeeping. This was because he did not feel safe keeping substantial amounts in his bank account and he had been living in fear of bankruptcy for a long time.[58] P claimed that he entrusted this $82,000 to D1

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57 LYB1A at [50]; D1's AOM at [32(j)].

58 LYB1A at [88]–[92]; LYB3A at [23].

in February 2017, which Mr Yeo also confirmed before me.[59] However, D1 attested that the sum of *$82,068.20* was *gradually* deposited into D1's UOB account *over time* and *whenever P asked D1 if P could deposit P's cash into D1's account*. D1 further stated that on 7 and 8 July and 8 November 2017, a total of $50,000 from P's Inheritance was credited into D1's UOB account.[60]

54 D1's assertion contradicts P's position on how much of P's Inheritance was passed to D1, and when and how much of it was placed in D1's bank account. P was very clear that it was a round sum of $82,000, even taking pains to mention that he kept the "loose sum" of $62.80; whereas D1 claimed that the entire sum of $82,068.20 was deposited into D1's bank account.[61] P also stated that he handed the Inheritance Sum to D1 in February 2017, whereas D1 seemed to suggest that he obtained P's Inheritance in instalments.[62] Additionally, whilst D1 claimed that he deposited all of P's inheritance into his bank account, he has only shown bank statements evidencing a total of $50,000 deposited into his account.[63] Before me, D1 attempted to explain away the missing $32,000 by claiming that he had only deposited $50,000 into his bank account as he was hiding the rest of the moneys from P's creditors.[64] But this contradicted D1's own claim that all of P's Inheritance was gradually deposited into his bank account. In any event, there is no evidence that the $50,000 deposited into D1's bank account came from P. P and D1's inability to maintain a consistent story

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59 LYB1A at [92], [95] (item (f) of the Table); 9/5/22 NE 6–8.

60 D1's AOM at [26(r)].

61 LYB1A at [93].

62 PWS at [74], [76(g)], [79(e)]; D1's AOM at [26(r)]; 9/5/22 NE 6–8.

63 D1's AOM at pp 143–157 (Tab M).

64 9/5/22 NE 8.

casts doubts on their assertions that P had entrusted the Inheritance Sum to D1, much less that there was a trust of this sum for P.

Conclusion

55 In conclusion, I find that D1 did not hold the Sums on either an express or resulting trust for the benefit of P.

56 It is telling that D1 never informed D2 that he held the Sums on trust for P at any time during their marriage.[65] This was only raised in D1's AOM after the dissolution of their marriage. D1 remained silent through his years of marriage even though he received significant sums of moneys purportedly held beneficially for P. He received the 473A Moneys shortly after he married P in February 2012 (*ie*, on 8 March 2012 following the completion of the sale of Unit 473A) and purportedly received the Inheritance Sum relatively recently in 2017. I could not but infer that the reason for D1's silence was because he knew that he did not hold the Sums (if any) on trust for P.

57 For the above reasons, I dismiss P's application.

58 My findings above render the precise quantum of moneys D1 allegedly held on trust for P an academic issue. I nevertheless mention for completeness that the total sum of moneys P averred that D1 held on trust for his benefit was, on his own case, overstated. P accepted that D1 had expended at least $125,000 of the 473 Moneys and 473A Moneys for P's benefit.[66]

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65 NL3A at [32].

66 LYB1A at [95] (items (b), (c) and (d) of the Table).

59 I will hear parties on costs.

Audrey Lim
Judge of the High Court

Yeo Lai Hock Nichol and Zhang Jun (Solitaire LLP) for the plaintiff;
The first defendant unrepresented;
Surenthiraraj s/o Sauntharajah, Poon Pui Yee, Leong Shan Wei
Jaclyn and Cherrilynn Chia
(Harry Elias Partnership LLC) for the second defendant.