

See Fong Mun v Chan Yuen Lan
[2013] SGHC 99

Case Number : Suit No 298 of 2012
Decision Date : 06 May 2013
Tribunal/Court : High Court
Coram : Choo Han Teck
Counsel Name(s) : Lim Seng Siew (instructed), Lai Swee Fung and Susan Tay (UniLegal LLC) for plaintiff; Jones Simon Dominic and Jayagobi s/o Jayaram (Grays LLC) for defendant.
Parties : See Fong Mun — Chan Yuen Lan

Trusts

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 64 of 2013 was allowed in part by the Court of Appeal on 24 June 2014. See [\[2014\] SGCA 36.](#)]

6 May 2013

Judgment reserved.

Choo Han Teck J:

1 This is a case about an old folks' home – a very large and expensive house located at 24 Chancery Lane ("24 Chancery Lane") purchased for \$1,831,758.90 in August 1983 by the 86-year-old plaintiff, then 55 years old, in the sole name of his wife, the 88-year-old defendant, then 57 years old. The plaintiff claimed that 24 Chancery Lane is presently worth about \$20 million, although no formal valuation was conducted before trial. The parties married more than 50 years ago and have three children. The eldest, a son named See Hang Chong (also known as Cliff) ("Hang Chong"), is 55 years old. Their daughter See Seow Meng ("Seow Meng") is 53 years old, and their youngest son, See Hung Yee ("Hung Yee"), is 51 years old. The plaintiff retired many years ago. He rose from being a machinist to an owner of a machine repair shop, and eventually developed that into a successful engineering business. He was a thrifty man, and by 1955 he had bought his first property, a house at 11 Borthwick Drive ("the Borthwick property"). The defendant was a hairdresser before she married the plaintiff.

2 The plaintiff married the defendant in 1957. After they got married, they lived in a rented unit at 15A, Lorong 40 Geylang ("the Geylang property") and sometime in 1967 the plaintiff bought the Geylang property from their landlord. The plaintiff paid \$20,000 for it. In 1969 the plaintiff bought two properties in his sole name: a house at 100 Joo Chiat Walk ("the Joo Chiat property") and a house at 41 Goldhill Avenue ("the Goldhill property"). The plaintiff is still the owner of the Goldhill property. It is on a 4,500 square feet piece of land and cost \$65,500 in 1969. The plaintiff sold the Geylang property in 1972 for \$60,000 and gave \$20,000 to the defendant.

3 The plaintiff incorporated two companies: See's Engineering Company Pte Ltd ("SEPL") for his engineering business and Tat Mun Pte Ltd ("TMPL") for managing his property investments. The Borthwick property and Joo Chiat property were transferred to TMPL. The Goldhill property was not transferred to TMPL and was used as what the plaintiff called the "family home". TMPL subsequently bought more properties, including two units in People's Park Centre held in TMPL's name.

4 When the plaintiff purchased 24 Chancery Lane, he claimed that he had to scrape together the money which included a \$290,000 loan from the defendant and \$800,000 in bank loans. The property was purchased in the defendant's sole name but she signed a Power of Attorney on 15 October 1983 (the "POA"), three days before the completion of the purchase of the property. She granted full powers in the POA to the plaintiff and Hang Chong to:

... take charge of, manage and improve my property known as 24 Chancery Lane Singapore (Lot 590112 Town Subdivision-XXVIII) ...

The family then moved from the Goldhill property to 24 Chancery Lane after the completion of renovation works.

5 The parties' respective claims were for the full beneficial interest of 24 Chancery Lane and nothing in between. The plaintiff claimed to be the sole beneficial owner on the ground of a resulting trust on account of having paid the entire purchase price of the property. The plaintiff testified that he brought this action only because the defendant revoked the POA on 5 April 2011. He thus sought a declaration that the defendant was holding 24 Chancery Lane by way of a resulting trust for him. The defendant counterclaimed that she was the full beneficial owner of the property and denied any trust in favour of the plaintiff. The defendant disputed that the property was purchased solely with the plaintiff's money and claimed that she had paid a substantial sum for the property. In the alternative, the defendant relied on the doctrine of presumption of advancement "to remedy what would be a highly unjust operation of the presumption of resulting trust". The defendant pleaded in her Defence and Counterclaim and deposed in her affidavit of evidence-in-chief ("AEIC") that the plaintiff had started an affair with his secretary, one Chew Teck Ching ("Chew"), in about 1979 or 1980, and that he stopped having dinner with his family and came home very late at night. The defendant then suggested that "for his own safety, the [p]laintiff should stay overnight with his mistress, rather than travel late at night". Thus, from 1981 or 1982 the plaintiff "ceased to stay at the family home, and began to live openly with [Chew]". In 1983, when the plaintiff had been living with Chew for more than two years, the defendant began to feel "very vulnerable". She deposed that because the Goldhill property was registered in the plaintiff's sole name, she needed financial security for herself and her children after the plaintiff started his affair with Chew. When the plaintiff asked her for money to buy 24 Chancery Lane, she replied with words to the effect of "my money, my name". While she claimed to have contributed a "substantial sum" towards the purchase of the property, she was not able to state how much she gave him, whether in her pleadings or in her evidence-in-chief.

6 It was not disputed that Hang Chong had been responsible for arranging the finances for the purchase of 24 Chancery Lane, and Hang Chong's AEIC contained an account of the purchase money for 24 Chancery Lane, which was adopted in full by the plaintiff. The accounts credited the defendant as having loaned the plaintiff \$290,000 and recorded that the plaintiff contributed \$741,758.90 in cash from his CPF and bank accounts (this included a small sum of \$10,000 from Hang Chong, who, in any event did not make a claim to the property and appeared happy to attribute this to his father). The purchase was also funded by a \$400,000 overdraft that was taken out in the name of TMPL and a \$400,000 seven year term loan in the defendant's name from HSBC Bank ("HSBC"). The plaintiff claimed that the loan from the defendant had been repaid, and Hang Chong gave evidence that he had issued a cheque to the plaintiff for the repayment of the defendant's loan from the proceeds of sale of the Joo Chiat property in 1986. The plaintiff also adduced in evidence a memorandum which was signed by all three children and dated 21 August 1988 (the "Chancery Lane Memo"). The Chancery Lane Memo reads as follows:

TO MY BELOVED CHILDREN HANG CHONG, SEOW MENG, HUNG YEE

I, SEE FONG MUN, NOW INFORM ALL OF YOU THAT I HAVE PURCHASE WITH MY MONEY A BUNGALOW AT 24 CHANCERY LANE. ("THE PROPERTY") AT THE TIME OF PURCHASE YOUR MUM CHAN YUEN LAN REQUESTED IF I CAN PUT THE PROPERTY IN HER NAME SO SHE CAN BRAG TO HER FRIENDS SINCE SHE SAY ALL HER FRIENDS ALL HOLD PROPERTY IN THEIR NAMES. I AGREED TO HER REQUEST ON CONDITION SHE SIGNS A SEPARATE LEGAL DOCUMENT CONFIRMING I'M THE SOLE AND ULTIMATE OWNER OF THE PROPERTY AND SHE'S MERELY HOLDING THE PROPERTY ON MY BEHALF. YOUR MUM HAS AGREED TO THIS ARRANGEMENT AND HAVE SIGNED THIS LEGAL DOCUMENT WHICH I HAD A LAWYER PREPARED.

THIS MEMO IS FOR ALL OF YOU TO ACKNOWLEDGE AND CONFIRM MY OUTRIGHT OWNERSHIP OF THE PROPERTY AND TO GUARANTEE ME NONE OF YOU WILL GO TO YOUR MOTHER TO LAY CLAIM OF ANY KIND WHATSOEVER, DIRECTLY OR INDIRECT TO THE PROPERTY AT ANYTIME. EVEN IF YOUR MOTHER WERE TO OPENLY OR SECRETLY GIVE, BY WHICHEVER MEANS, THE PROPERTY TO ANY OR ALL OF YOU, ALL OF YOU WILL AND IS OBLIGED TO REFUSE YOUR MUM. SHOULD ANY OR ALL OF YOU ACCEPT THE PROPERTY FROM YOUR MUM THEN YOU WILL BE IN BREACH OF THIS AGREEMENT MEMO IN WHICH CASE EVERY ONE OF YOU WILL UNCONDITIONALLY AND IRREVOCABLY RETURN YOUR ILL GOTTEN SHARE OF THE PROPERTY IN ITS ENTIRETY BACK TO ME WITHOUT MY DEMAND. YOU ALL MUST UNDERSTAND THAT THIS PROPERTY IS A GUARANTEE FOR MY RETIREMENT NEST EGG. PLEASE SIGN BELOW CONFIRM YOUR FULL UNDERSTANDING AND ACCEPTANCE OF ABOVE.

YOUR FATHER

[signed]

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The defendant was unable to give any evidence relating to the Chancery Lane Memo as she could not recall anything about this document. Hung Yee asserted that the memo was forged and that the text was written over company paper which the three See siblings had previously signed in blank as directors for the purpose of recording directors' resolutions for the family companies. He pointed to a similar signed memo, also dated 21 August 1988, that declared the plaintiff's intention to distribute his shares in TMPL and SEPL to the three children ("the Share Memo"). Hung Yee claimed that Hung Chong's signature overlapped with the last line of the text in the Share Memo, which gave rise to the inference that the text was inserted only after a blank sheet of paper had been signed by the children. Hang Chong testified that the Chancery Lane Memo was in his handwriting and that he had written it as his father dictated the contents to him in Cantonese. He further testified that they had all signed the two documents on the same day. The plaintiff had purportedly requested them to sign the Chancery Lane Memo and Share Memo in 1988 as Hung Chong had told the plaintiff that he (Hung Chong) wanted to move to the United States. The plaintiff was upset by the decision and wanted the children to make certain acknowledgements about the shareholdings in the family companies and the family home as they did not wish to continue staying with him.

7 The only evidence before me regarding whether the Chancery Lane Memo was forged was thus the conflicting assertions of Hang Chong and Hang Yee. The original documents of the Chancery Lane Memo and the Share Memo were not produced before me and I was unable to draw any conclusions from the face of the Chancery Lane Memo. While Seow Meng, another signatory to the document, could have given evidence, she was not called as a witness by either party. In the light of the limited

evidence before me on this issue, I generally preferred the evidence of Hang Chong over that of Hang Yee. If Hang Yee claimed that the document was forged, the burden was on him to prove this on a balance of probabilities. As neither account was inherently unbelievable, my finding could only be based largely on credibility. The overall tenor of Hang Chong's evidence appeared to me to be forthright and sincere, whereas Hung Yee seemed overly anxious to claim that 24 Chancery Lane belongs to the defendant solely and gave carefully qualified answers. He was openly hostile to his father whereas Hang Chong was not at all hostile to his mother. While critical of his brother, he also did not show the same degree of hostility that his brother showed in his attitude towards him in court. I find Hang Chong a more measured and candid witness, and see no positive reason to believe the bare allegations made by Hang Yee.

8 I accept the plaintiff's and Hang Chong's evidence that the purchase price of 24 Chancery Lane was scraped together by the plaintiff from various sources as exhibited by the notes in Hang Chong's AEIC indicating the specific amounts of money from the diverse sources. I find that it was the plaintiff who made payment in full for all the loans, including the loan given by the defendant and the loans from HSBC. I do not consider that the sum of \$290,000, which the plaintiff acknowledged was from the defendant, should constitute a direct contribution to the purchase price as it was advanced to the plaintiff as a loan and repaid. Although the defendant disputed that the plaintiff repaid the \$290,000 loan and the plaintiff was, unsurprisingly, unable to produce receipts of an event that occurred over 20 years ago, I incline towards the plaintiff's account against the defendant's vague assertions. The defendant did not provide any evidence to the contrary or allude to any requests for repayment over the years that were ignored by the plaintiff.

9 The \$400,000 term loan was in the defendant's name and the \$400,000 overdraft was in TMPL's name; as the plaintiff was not legally liable for the loans, the subsequent repayments of the loans cannot *prima facie* be attributed to the plaintiff as direct contributions to the purchase price of 24 Chancery Lane. However, I am satisfied that at the time of the purchase of the property, the parties had agreed that the plaintiff would repay the \$400,000 term loan. I am not convinced by the defendant's contrary contention that it was agreed that the defendant would pay off the loan instalments using her dividends or salaries from the family companies. The \$290,000 represented the defendant's entire savings then, and she was not able to adduce any evidence to show her actual financial status at that point of time or give a cogent reason why the parties would have reasonably accepted that she had the means to repay the loan. It was not disputed that the defendant stopped working as a hairdresser shortly after she married the plaintiff. She claimed that she stopped work in April 1958 soon after the birth of Hung Chong, while the plaintiff claimed that the defendant stopped work when they got married in 1957. The defendant stated in her AEIC that she entered the marriage with substantial savings from her earnings as a hairdresser, but she did not provide any details on this. In view of the 25 years of marriage that had elapsed when 24 Chancery Lane was purchased, it would be fair to infer that the plaintiff was the sole income earner in the marriage save for a brief period (accepting the defendant's account) of about a year and that he took on the primary duty of contributing to the family finances. During cross-examination, the defendant also claimed that it was the plaintiff who arranged the term loan and handled all matters. I was generally reluctant to give more than limited weight to the defendant's vague and confused answers in respect of the matters that occurred in 1983 but I accepted that this was an instinctive response that reflected the way the parties had structured their relationship over the years, with the plaintiff acting as a patriarch who controlled all the family's finances. I therefore think it implausible that the parties would have agreed that the defendant, who was dependant on the household income that the plaintiff gave her, would be responsible for discharging the term loan, and I find that the plaintiff's direct contribution to the purchase price includes the amounts that he paid towards discharging the term loan pursuant to the parties' agreement that he would be responsible for servicing the loan. With respect to the \$400,000 overdraft that was extended to TMPL, I accept Hung Chong's evidence that the overdraft was only

intended to be used as bridging finance and that it was discharged within two and half months in December 1983 using the sale proceeds from the Borthwick property. Although TMPL was legally liable to pay the loan and had legal ownership of the Borthwick property, the plaintiff was at the material time the owner of all but one of TMPL's 50,002 issued shares, and it was not disputed that the plaintiff controlled the company. For all intents and purposes, TMPL could be equated to the plaintiff, and it would be entirely artificial to consider that the liability undertaken for the \$400,000 overdraft was not a direct contribution of the plaintiff.

10 There was also no credible evidence to indicate that the defendant had in fact contributed to the payment of the HSBC loans. The defendant, though able to understand the Cantonese interpreter and answer questions, appeared weak in body and mind. She was alert but her memory was faulty and unreliable, and she was able to provide very little evidence on the accounts leading up to and after the purchase of 24 Chancery Lane. Although she claimed at trial that she had sold her house to pay for 24 Chancery Lane, the only available evidence indicated that the property she was referring to was the Geylang property sold in 1972. Save for Hung Yee's assertions that it was "well known within the family that [his] mother contributed a substantial sum towards her purchase of the property, and then reached an arrangement with [his father] regarding the subsequent mortgage repayments", the defendant had very little to rely on to show that she had made direct contributions to the purchase of 24 Chancery Lane either through immediate financial contributions at the time of acquisition or subsequent repayment of the loans. Hung Yee only returned to Singapore after the purchase of the property and did not have any personal knowledge. So far as the facts are concerned, I am thus of the view that the plaintiff paid for the entire purchase price of 24 Chancery Lane.

11 The defendant further claimed that the entire beneficial interest of the property should be deemed to have been intended as a gift to her under the presumption of advancement. Presumably, from the evidence that the defendant led, her case was that the plaintiff gave her 24 Chancery Lane because he felt guilt-ridden by his affair with Chew. It is a possible reason but one that I think is inherently improbable given the surrounding circumstances. Accepting the defendant's case at its highest, even if the plaintiff had started his affair with Chew in 1979 and moved out of the house in 1982, there was no convincing reason why the plaintiff would spend so much money and incur substantial financial risks so that he could give a large house to a woman with whom his marriage existed in name only. A man nearing retirement age who had just fallen in love with another woman was unlikely in the circumstances to scrape together a \$1,800,000 fund from multiple sources to buy a house, which would undoubtedly have been his most expensive acquisition, as a gift to the wife. It might be more plausible if he had a lot more money to spare, but while I accept that he was a wealthy man, he was not of such means that he could readily purchase a bungalow for his wife out of sheer conscience or moral responsibility. The evidence in support of the defendant's position is thus, in my view, very weak on the defendant's own account of the relationship of the parties at the time and in the circumstances. The facts surrounding the acquisition – the plaintiff used up his entire CPF savings to finance the purchase, sold the Borthwick property, discharged the loans of \$800,000, and spent \$300,000 on renovations for the property – inclines me to the view that the presumption of advancement has been rebutted by evidence pointing towards the implausibility of the defendant's case that the plaintiff should be taken to have purchased the property for her sake only.

12 I also find that there is sufficient evidence to support the plaintiff's case that the parties' agreement at the time of purchase was that the plaintiff would be the owner of the property, even though the legal title would be in the defendant's sole name. The plaintiff adduced evidence relating to the discussions that the parties had before purchasing 24 Chancery Lane and the contemporaneous creation of the POA. According to the plaintiff, the defendant had requested him to put the property in her name as the husbands of all her friends had done so and she wished to flaunt

it to her friends. The plaintiff explained that the POA was signed following a family meeting where he had agreed to put the property in her name on condition that she executed a document acknowledging that the property belonged to him. Hang Chong also testified that he was present at the meeting and corroborated the plaintiff's account of the agreement. The defendant's case, as set out earlier, was that when the plaintiff approached her for money, she said "my money, my name" and the plaintiff agreed. The defendant did not deny that she had signed the POA but claimed that she did not know it was a POA as it was in English and was never explained to her; in her AEIC, she averred that she had thought that it was merely a document relating to the purchase of the property. Under cross-examination, she said she could not remember about any POA being given. Her memory, both long term and short, failed her at trial, but it could also be that there was no substantial evidence for her to recall. Hung Chong, who was present at the time the POA was signed, claimed in his AEIC that the POA was explained to the defendant in Cantonese. Given the defendant's position, the burden fell on her to call the lawyer who completed the conveyance to testify but she did not do so. Unless the contrary is proved, the court must assume that the lawyer in those circumstances would have explained the nature of the document before obtaining the defendant's signature, and that the legal document that ostensibly bears the defendant's signature is *prima facie* evidence that the defendant acceded to the contents. I am of the opinion that the POA, when viewed in the light of the circumstances at the time of purchase, supports the plaintiff's account that he did not intend to make an outright gift to the defendant and that the defendant had accepted that arrangement. I am of the opinion that the defendant's account that the plaintiff took \$290,000 from her, which was less than 20% of the purchase price of the property, in exchange for placing the property in her sole name was neither realistic nor credible. Likewise, the Chancery Lane Memo, while admittedly not directly acknowledged by the defendant and signed only five years after the purchase of the property, undermined Hung Yee's contention that it was always understood by the family that 24 Chancery Lane was owned fully by the defendant. I would add that, nevertheless, I find little probative value to this document as the Chancery Lane Memo was of limited relevance in discerning the plaintiff's or defendant's intentions at the time of purchase and had only been adduced primarily to support the plaintiff's original pleading that Hung Yee was exercising undue influence on the defendant. The plaintiff subsequently did not pursue this line of argument.

13 Considering the totality of the evidence before me, I think that the evidence leans in favour of the plaintiff's case. I am also of the view overall that the plaintiff and Hang Chong were more forthright and reliable witnesses than Hung Yee, who could only provide hearsay evidence. The defendant was an unreliable witness because under cross-examination she appeared to have such poor memory that her evidence was unhelpful and unreliable. In my judgment, there is sufficient evidence to infer that the plaintiff purchased 24 Chancery Lane with the intention that he would be the full beneficial owner and that the plaintiff and defendant had reached an agreement prior to the acquisition of the property. I find that when 24 Chancery Lane was purchased, it was intended to be used jointly as the matrimonial home – the entire family moved to 24 Chancery Lane from the Goldhill property, and all three children lived there when they returned to Singapore after completing their studies overseas. Although the plaintiff had an affair, he did not divorce the defendant and as far as the family was concerned, 24 Chancery Lane remained the matrimonial home. The plaintiff might not presently live there but he retains his room and study there. The plaintiff maintained at trial – and I believe him – that 24 Chancery Lane is the family home and he has no intention of selling the property as long as the defendant is alive. Neither would the defendant be evicted or compelled to leave the house. That intention withstood the passage of time from 1983 to this day. For her part, the defendant lived in that house from the day she moved in and remained until these legal proceedings were commenced. The situation would have continued without disturbance had the defendant not abruptly revoked the POA. She claimed that she feared that the plaintiff was going to sell the property. The plaintiff denied this was so. The defendant's only basis for her claim was that she had received enquiries from estate agents for the sale of the property. No specific evidence was led on

this point except for Hung Yee's vague comments at trial that property agents had made some enquiries over the sale of 24 Chancery Lane.

14 Having made these findings of fact on the intentions of the plaintiff and defendant in relation to the ownership of 24 Chancery Lane at the time of the acquisition of the property, it leaves me now to consider the small matter of the law. The parties fought this case as a battle of presumptions; the plaintiff relied on the presumption of resulting trust from his contribution to the purchase price and the defendant relied on the presumption of advancement arising out of the matrimonial relationship. The trust pleaded here was thus a presumed resulting trust, which was discussed in considerable detail by the Court of Appeal in *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*"). However, this was not a case where the parties were not present to give evidence of their intentions. Although the defendant no longer had the mental faculties or clarity of mind to provide the court with any useful evidence of her personal knowledge, she had sought to defend the action before me on the basis that she was still competent to do so.

15 The defendant relied on the presumption of advancement in support of her claim that the plaintiff bought 24 Chancery Lane as a gift to her. It is true that the presumption of advancement is a presumption of law that operates in this case to give the defendant an evidential advantage, and, to borrow an analogy from Lord Mance – albeit made in a very different context – in *Dallah Real Estate and Tourism Holding Company v The Ministry of Religious Affairs, Government of Pakistan* [2011] 1 AC 763 at [30], this sort of advantage means that the party in whose favour it falls "starts with advantage of service, it does not also start fifteen or thirty love up." The presumption of advancement only means that in the absence of evidence to the contrary, the defendant would succeed in her counterclaim for a declaration that she is the full beneficial owner of the property. It gives the recipient of property an advantage which, if not neutralised, operates to form the basis of proof. Presumptions of this sort are intended to assist parties who might otherwise be disadvantaged at trial. The classic example is where a widow, whose husband had purchased property in her name when he was alive, has to fend off third party claimants to the property. She may have no evidence to support her in defence. The presumption of advancement thus compels the third party claimant to prove that there was no intention on the part of the husband to make a gift of the property to her. Presumptions should not be raised as a matter of course, especially when both parties are present and competent to testify as to their respective knowledge and intentions relating to the purchase. In such cases, the court will evaluate their evidence and take into account the fact the property was purchased by one spouse in the name of the other and the credibility of the opposing testimonies to decide whether the property was intended as a gift by one to the other. If it had been claimed on behalf of the defendant that she was no longer of sound mind to defend the claim, the presumption of advancement might be called in her aid. However, it was her case that she was not of unsound mind and great efforts were made before and at trial to show that she was capable of defending this action. The fact that in the event her memory failed her cannot subsequently be an excuse to give the presumption greater weight than the objective evidence can support.

16 My findings on the parties' intentions were made on the basis of direct evidence adduced before me, and not inferred through recourse to the two presumptions. The question then arises – with the legal title in the defendant's name while the plaintiff maintained control over the property through the POA, what is the appropriate property law concept that could respond to a situation where the parties have evinced certain common intentions as to the ownership of the property, and where should the beneficial interest lie?

17 The facts in this case indicated a classic situation of a common intention constructive trust – the defendant holding the legal title in trust for the plaintiff pursuant to an express agreement as to beneficial ownership prior to the acquisition of the matrimonial home. The problem here was that the

plaintiff pleaded his claim under a resulting trust rather than a constructive trust. He might have done so because the Court of Appeal in *Lau Siew Kim* had endorsed the resulting trust approach in the matrimonial context although the majority of the House of Lords in *Stack v Dowden* [2007] 2 AC 432 ("*Stack*") and the United Kingdom Supreme Court in *Jones v Kernott* [2012] 1 AC 776 ("*Jones*") pointed out that where legal title and beneficial ownership of the family home are claimed to reside separately, the claim should be made under a constructive trust and the presumption of resulting trust is not consistent with this approach. *Stack* and *Jones* dealt with a situation where the parties, who were not married, bought properties in joint names. It was held in those two cases that, to establish a claim in those situations, the court would have to find a constructive trust based on the intentions of the parties, and consider relevant factors – such as the contributions made by the parties to the purchase and the course of dealings between them in relation to the property – in order to determine how the property was to be divided. *Lau Siew Kim* was concerned with a situation where properties were held by husband and wife as legal joint tenants, and where there were no direct evidence as to whether the properties formed part of the deceased husband's estate. It did not expressly address a situation where the legal title to the family home was held by one party in his or her sole name and both parties subsequently adduced direct evidence of their intentions at the time of acquisition. Neither did it allude to the nature of the trust that would apply where the two presumptions are displaced or where it is not necessary to apply the presumptions at all because direct evidence is available.

18 On the authority of *Lau Siew Kim*, it seems that the presumption of resulting trust and presumption of advancement respond solely to the intentions of the party who provides the consideration for the property. The fact that gives rise to the resulting trust is the lack of an intention on the part of the *transferor* to benefit the recipient (at [35] of *Lau Siew Kim*); in a case where the party who provided the consideration asserts a resulting trust, the single narrow intention that the court is concerned with is therefore his or her lack of intention, and the presumptions are evidential aids in inferring this intention. This may be contrasted with Lord Browne-Wilkinson's conceptualisation of the resulting trust in *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 at 708 (that the Court of Appeal also cited with approval in *Lau Siew Kim* (at [34])). Lord Browne-Wilkinson suggested that the resulting trust arises due to the presumed *common intentions* of the parties and expressly rejected the unjust enrichment analysis of the resulting trust based on the transferor's lack of intention to benefit the recipient. With respect, I think that *Lau Siew Kim* was equivocal on whether the court was concerned with the transferor's intentions or both parties' presumed intentions under a resulting trust analysis. If it were the former, it would appear to expand the boundaries of the resulting trust beyond the scope of its traditional application and a resulting trust could thus arise when there is evidence of actual lack of intention of the transferor to benefit the recipient. If it were the latter, the Court of Appeal left open the question of how this form of the resulting trust is consistent with the common intention constructive trust since they are doctrinally distinct property concepts, and further, whether intention can be distinguished on the basis that one is presumed and the other is proved despite the similarities in the conceptual justification for both types of trusts (*ie*, the common intentions of both parties). Indeed, Lord Neuberger in *Stack*, who dissented and expressed his preference for the presumption of resulting trust as a starting point when there were unequal contributions to the purchase price, considered (at [124] of *Stack*) that the resulting trust could be rebutted and replaced by a constructive trust where there was relevant evidence that would enable the court to deduce an agreement or understanding amounting to an intention as to the basis on which the beneficial interests would be held. The resulting trust was therefore regarded under English Law as a default property device in the absence of evidence before the court, whereas, the constructive trust provides the legal means for a claimant seeking to adduce direct evidence of agreement or common understandings.

19 Hence, while I am certain in the conclusion I reach in this case, I am hesitant to hold that the

plaintiff is entitled to 24 Chancery Lane by reason of a resulting trust in his favour. However, I am able to say that even if the plaintiff's case could only have succeeded on the basis of the pleaded resulting trust, I can find support in the authority of *Lau Siew Kim*; the plaintiff contributed the entirety of the purchase price and did not intend to give full beneficial ownership to the defendant, and the beneficial interest thus 'resulted' back to the plaintiff. However, if it were a constructive trust situation (which I think is a sounder solution where proven express common intentions of the parties are concerned) the final result would have been the same as all the facts relating to the transaction and intentions of both parties had been adduced before me. I find that there was a common intention in the plaintiff's and defendant's agreement, supported by the defendant's execution of the POA, that 24 Chancery Lane would belong to the plaintiff. That common intention has not changed from 1983 and represented the *status quo* until 5 April 2011, when the defendant revoked the POA. I add that the extent of the plaintiff's beneficial interest in this case is the same whether on a resulting trust or on a constructive trust analysis because the share that the plaintiff was claiming pursuant to the parties' common intentions was equivalent to his share of direct contributions to the purchase price. The extent of a beneficial interest is dependent on the particular trust analysis and may be materially different on the facts in other cases.

20 I therefore hold that the defendant was not entitled to revoke the POA, and accordingly, the revocation of 5 April 2011 is declared null and void. I further hold that the plaintiff is entitled to 24 Chancery Lane by way of a resulting trust. I will hear the question of costs at a later date if parties are unable to agree costs.

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