

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

[2021] SGHC 94

Originating Summons No 1116 of 2019

In the matter of section 18(2) of the Supreme Court
of Judicature Act (Cap 322, 2007 Rev Ed)

And

In the matter of the property known as 32 Jalan
Rengkam Singapore 537585

Between

Yeow Jen Ai Susan

... Applicant

And

Ravindaranath Kalyana
Ramasamy

... Respondent

And

Vishnumangalam
Chandrasekharan Renuka

... Intervener

JUDGMENT

[Land] — [Interest in land]

[Trusts] — [Constructive trusts]

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Yeow Jen Ai Susan
v
Ravindaranath Kalyana Ramasamy
(Vishnumangalam Chandrasekharan Renuka, intervener)

[2021] SGHC 94

General Division of the High Court — Originating Summons No 1116 of 2019
Lee Siu Kin J
30 March, 6 October, 1 December 2020, 2 February 2021

19 April 2021

Judgment reserved.

Lee Siu Kin J:

Introduction

1 The respondent, Ravindaranath Kalyana Ramasamy, purchased the property at 32 Jalan Rengkam Singapore 537585 (the “Property”) in March 2008. The Property is held in his sole name and is the subject of contention in this originating summons (“OS”).

2 The applicant, Yeow Jen Ai Susan, seeks an order for the determination of her legal interest in the Property. She claims that the Property is an investment venture that was purchased under an oral agreement between her and the respondent. Pursuant to this agreement, the respondent is to sell the Property once its price rises to S\$3,500,000, and the sale proceeds are to be divided according to the financial contributions that each has made towards the Property’s purchase and related expenses. The applicant claims that she made

financial contributions to the Property's purchase and related expenses and thus claims that she has a concomitant beneficial interest in the Property to the extent of her contributions. The respondent agrees with the applicant's claims.

3 The intervener, Vishnumangalam Chandrasekharan Renuka, is the respondent's wife. The intervener and the respondent are currently undergoing divorce proceedings. The intervener claims that the property at Blk 857 Tampines Street 83 #02-388 Singapore 520857 (the "Tampines Flat") was their matrimonial home. She argues that because the respondent used the sale proceeds of the Tampines Flat to buy the Property, she has a beneficial interest in the Property. She also claims that the applicant does not have a beneficial interest in the Property.

Facts

4 The respondent and the intervener were married in India on 29 January 1992 and their marriage was registered in Singapore on 14 May 1992.¹ They subsequently purchased the Tampines Flat in 1993 and held it jointly.² The intervener claims that the Tampines Flat was their matrimonial home. After the intervener concluded a Power of Attorney for the respondent to act on her behalf in respect of the sale, subletting, and general management of the Tampines Flat, the respondent sold the Tampines Flat in March 2008.³ Since 12 December 2018, the respondent and the intervener have been undergoing divorce proceedings in FC/D 5697/2018.

¹ Intervener's Affidavit dated 1 November 2019 at para 5.

² Respondent's Closing Submissions dated 2 Feb 2021 ("RCS") at para 5; Intervener's Affidavit dated 1 November 2019 at paras 8 and 17.

³ Intervener's Affidavit dated 1 November 2019 at para 17 and p 17.

5 The applicant and the respondent have known each other since February 2003.⁴ They met as course mates in their Master of Business Administration programme. Sometime at the end of 2007, they decided to purchase a private property as an investment.⁵ To that end, the Property was purchased in March 2008 and was held in the respondent's sole name.⁶

6 The respondent was previously employed from 1983 to 2006 as a broker in financial institutions, a role in which he traded financial instruments on behalf of customers.⁷ He claims that from 2007 to 2009, he was self-employed and traded with his own savings using his personal proprietary trading account with Philips Futures Pte Ltd.⁸ He also claims that he was not allowed to trade on behalf of anyone since 2007 and did not do so.⁹

The Tampines Flat

7 The intervener contends that since the respondent used the sale proceeds of the Tampines Flat to purchase the Property, matrimonial assets had been used for its purchase. As a result, the intervener claims to have a beneficial interest in the Property. She also claims that the applicant has no beneficial interest in the Property. Taking these claims together, an affirmative determination of the applicant's interest in the Property may result in the dilution of the intervener's

⁴ Respondent's Affidavit dated 18 September 2019 at para 7; Applicant's Affidavit dated 3 September 2019 at para 6.

⁵ Applicant's Closing Submissions dated 2 Feb 2021 ("ACS") at para 6.

⁶ RCS at para 19.

⁷ Respondent's Affidavit dated 6 April 2020 at paras 3 and 4.

⁸ Respondent's Affidavit dated 6 April 2020 at paras 3, 4 and 6.

⁹ Respondent's Affidavit dated 6 April 2020 at para 4; Transcript dated 1 December 2020 at p 65, ln 5-7.

interest. Hence, the learned Assistant Registrar granted her leave to intervene in this matter in HC/SUM 5511/2019.¹⁰

8 Parties seek to introduce facts pertaining to a few irrelevant issues, including: (a) whether the intervener is entitled to the sale proceeds of the Tampines Flat, (b) whether there was an agreement between the respondent and the intervener that the respondent will purchase another property for their family using the sale proceeds of the Tampines Flat, and (c) whether the respondent used the sale proceeds of the Tampines Flat to purchase the Property. I pause to state that these issues are irrelevant to the present proceedings. While they may be relevant to the division of matrimonial assets in the divorce proceedings between the respondent and the intervener (see above at [4]), they are clearly irrelevant to the determination of *the applicant's* share in the Property. I therefore find it unnecessary to set out these facts in my reasoning here.

The applicant's beneficial interest in the Property

9 The crux of the matter is whether the applicant has a beneficial interest in the Property, and if so, what the extent of that interest is. Both the applicant and the respondent agree that the applicant does have a beneficial interest in the Property in accordance with her financial contributions to the Property's purchase and related expenses. The intervener disputes this claim.

10 The Property was purchased in March 2008 for S\$1,700,000 and is held in the respondent's sole name.¹¹ To fund the purchase, the applicant and respondent jointly took up a loan from OCBC Bank of S\$1,360,000 (*ie* 80% of

¹⁰ HC/ORC 8329/2019.

¹¹ ACS at paras 7 and 10; RCS at para 19; Intervener's Affidavit dated 1 November 2019 at para 12.

the Property's purchase price) (the "Housing Loan"), with the applicant undertaking to be a guarantor.¹² These facts are fully supported by the documents.

11 The applicant and respondent contend that at the time of the Property's purchase, there was an oral agreement between them (the "Alleged Oral Agreement"). This purported agreement contained the following terms.

12 Firstly, the Property was to be held in the respondent's name to "save costs on stamp duties and higher yearly property tax".¹³ At the time of purchase of the Property, the applicant already owned a property. Conversely, the respondent will not own any property after selling the Tampines Flat. The applicant claims that, at that time, she was worried about "speculation that the government may impose second property stamp duties".¹⁴ She also claims that if she were to hold the Property jointly with the respondent, an additional property tax of 3% would be levied on the Property as it would be her second property.¹⁵ Since the Property was purchased as an investment, they decided that it was more commercially sound for the respondent to hold the Property in his sole name.¹⁶

13 Secondly, when the selling price of the Property rises to S\$3,500,000, the Property is to be sold and the sale proceeds are to be shared between them

¹² ACS at para 7; RCS at para 19; Intervener's Submissions dated 2 February 2021 at para 12.

¹³ ACS at para 10.

¹⁴ Transcript dated 1 December 2020 at p 26, ln 14-24.

¹⁵ Transcript dated 1 December 2020 at p 28, ln 13-14.

¹⁶ Transcript dated 1 December 2020 at p 28, ln 21-22.

according to the contributions made by each party towards the Property's purchase and related expenses.¹⁷

14 Thirdly, the applicant and respondent were to contribute to the initial payments for the Property's purchase, and the applicant was to pay for the Property's mortgage loan repayments and related expenses.¹⁸ Such related expenses include insurance premiums, property tax, and general upkeep (eg pest control, grass cutting, pond maintenance, and gutter cleaning).¹⁹ To this end, the applicant claims that she has been transferring approximately S\$7,000 to S\$10,000 every month to the respondent and she is currently still doing so.²⁰ The respondent does not dispute this claim.²¹

15 The alleged contributions by the applicant and the respondent are summarised in the table below:²²

¹⁷ ACS at para 11.

¹⁸ ACS at para 12.

¹⁹ ACS at para 33.

²⁰ ACS at paras 23 and 32.

²¹ RCS at paras 19, 21 and 28.

²² ACS at para 35; Respondent's Affidavit dated 18 September 2019 at para 20.

S/N	Particulars		Contributions	
			Applicant	Respondent
1	Option fee and deposit (5%)		Nil	S\$85,000
2	Balance down payment (15%)	CPF	Nil	S\$167,000
		Cash	S\$30,000	S\$58,000
3	Stamp duty		S\$45,600	Nil
4	Renovation on purchase		S\$22,000	Nil
5	Yearly insurance from April 2008 to April 2019: S\$900 per year		S\$9,900	Nil
6	General maintenance from 2008 to 2018: S\$3,800 per year		<u>S\$38,000</u>	Nil
7	Mortgage loan repayments from April 2008 to August 2019 (ongoing): S\$5,200 per month (average)		S\$717,600	Nil
8	Total contribution		<u>S\$833,600</u>	S\$310,000
9	Share in Property		73%	27%

Pursuant to the Alleged Oral Agreement (see [13] above), the applicant's and the respondent's beneficial interest in the property are calculated according to their total contributions to the Property's purchase and related expenses, and this yields the ratio of 73:27. The applicant and respondent agree on this manner of apportionment.²³

²³ ACS at para 35; Respondent's Affidavit dated 18 September 2019 at para 20.

16 In respect of the two items in the table that are underlined, my own computation from the documents before me indicate that those items have been understated by the applicant. However, as the difference is not a significant amount, and the effect is to reduce the applicant's share rather than to increase it, in the circumstances of the case where the intervener may be entitled to part of the respondent's share, it would be appropriate to accept the applicant's stated amounts.

17 The intervener disputes the existence of the Alleged Oral Agreement.

18 In respect of the initial payments towards the Property's purchase, the intervener claims that the applicant did not contribute (a) the sum of S\$30,000²⁴ and (b) the sum of S\$45,600 for the payment of stamp duty (see the table at [15]).²⁵

19 In respect of the monthly transfers of moneys from the applicant to the respondent, the intervener rejects the applicant's and the respondent's claim that they were used for the Housing Loan repayments. Instead, the intervener alleges that these transfers were done because the respondent had traded on behalf of the applicant and subsequently incurred losses.²⁶ Hence, the applicant had to bear these losses. Alternatively, these moneys were loans or gifts by the applicant to the respondent.²⁷

20 With respect to the mortgage, the intervener claims that the applicant was merely a guarantor for the Housing Loan and the loan instalments were to

²⁴ Intervener's submissions dated 2 February 2021 at para 9.

²⁵ Intervener's submissions dated 2 February 2021 at para 19.

²⁶ Intervener's submissions dated 2 February 2021 at para 17.

²⁷ Intervener's submissions dated 2 February 2021 at para 37.

be solely paid by the respondent.²⁸ The applicant thus has no beneficial interest in the Property.

The applicable law

21 From the parties’ submissions, it is *ex facie* unclear as to what point of law they seek to rely on. On closer examination, the central legal contention concerns whether a common intention constructive trust arose in favour of the applicant, such that the respondent holds her beneficial interest in the Property on trust for her.

22 In her submissions, the applicant canvasses the law regarding resulting trusts and common intention constructive trusts.²⁹ In her affidavit supporting her OS, she merely prays for a declaration that the respondent “holds the property on trust for [her]”.³⁰

23 Nevertheless, it is clear to me that the applicant is arguing that there is a common intention constructive trust in favour of her, arising at the time of the Property’s purchase.

24 The applicant first submits that the framework set out in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 (“*Chan Yuen Lan*”) at [160] is applicable:

160 In view of our discussion above, a property dispute involving parties who have contributed unequal amounts towards the purchase price of a property and who have not executed a declaration of trust as to how the beneficial interest in the property is to be apportioned can be *broadly* analysed using the following steps in relation to the available evidence:

²⁸ Intervener’s submissions dated 2 February 2021 at para 12.

²⁹ ACS at paras 54 to 76.

³⁰ Applicant’s Affidavit dated 3 September 2019 at p 9.

(a) Is there sufficient evidence of the parties' respective financial contributions to the purchase price of the property? If the answer is "yes", it will be presumed that the parties hold the beneficial interest in the property in proportion to their respective contributions to the purchase price (*ie*, the presumption of resulting trust arises). If the answer is "no", it will be presumed that the parties hold the beneficial interest in the same manner as that in which the legal interest is held.

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

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

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

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

(f) Notwithstanding the situation at the time the property was acquired, is there sufficient and compelling evidence of a subsequent express or inferred

common intention that the parties should hold the beneficial interest in a proportion which is different from that in which the beneficial interest was held at the time of acquisition of the property? If the answer is “yes”, the parties will hold the beneficial interest in accordance with the subsequent altered proportion. If the answer is “no”, the parties will hold the beneficial interest in one of the modes set out at (b)–(e) above, depending on which is applicable.

[emphasis in original]

25 Importantly, the applicant then contends that the present facts are unlike those of *Chan Yuen Lan*.³¹ In *Chan Yuen Lan*, the court found at [161] that the evidence as to the parties’ common intention was unsatisfactory, so the application of step (b) of the above framework did not result in any change to the court’s preliminary determination of the parties’ respective shares in step (a). In contrast, the applicant argues here that the Alleged Oral Agreement is evidence of the applicant’s and the respondent’s common intention to hold their beneficial interest in the Property in a manner that is different from how its legal interest is held.

26 Accordingly, it is apparent that the applicant is seeking to directly rely on step (b) of the above *Chan Yuen Lan* framework. Step (b) concerns whether a common intention constructive trust arose at the time of purchasing the property in question: *Ng So Hang v Wong Sang Woo* [2018] SGHC 162 (“*Ng So Hang*”) at [36]. Indeed, the applicant’s direct reliance on step (b) is consistent with the court’s remarks in *Ng So Hang* at [24] (cited with approval in *Koh Lian Chye and another v Koh Ah Leng and another* [2020] SGHC 131 at [28]):

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

³¹ ACS at para 74.

27 Hence, the applicant is arguing here that a common intention constructive trust arose in her favour, such that the respondent holds her share in the Property on such a trust for her.

28 The applicant's position is consistent with the respondent's position. The respondent explicitly argues that there is a common intention constructive trust in favour of the applicant, arising at the time of the Property's purchase.³² The respondent submits that he therefore holds the applicant's beneficial interest in the Property on such a trust for her.

29 Like the applicant, the intervener also cavasses the law regarding resulting trusts and constructive trusts.³³ While it is not immediately clear as to what point of law she relies on, it is obvious that she disputes the existence of a common intention between the applicant and the respondent.³⁴ She specifically disputes the existence of the Alleged Oral Agreement.³⁵ She also agrees that *Chan Yuen Lan* is applicable.³⁶ The intervener thus contests the existence of a common intention constructive trust in the applicant's favour.

30 The present dispute therefore concerns step (b) of the above *Chan Yuen Lan* framework. The applicant bears the legal burden of proving, on a balance of probabilities, that she is entitled to the beneficial interest in the Property to the extent of her financial contributions to its purchase and related expenses. To this end, she must adduce sufficient evidence of an express or an inferred

³² RCS at para 28.

³³ Intervener's submissions dated 2 February 2021 at paras 21 to 62.

³⁴ Intervener's submissions dated 2 February 2021 at para 24.

³⁵ Intervener's submissions dated 2 February 2021 at paras 24 and 51.

³⁶ Intervener's submissions dated 2 February 2021 at para 43.

common intention that the parties should hold the Property beneficial interest in that manner.

My decision

31 I note at the outset that if the applicant can prove that the Alleged Oral Agreement exists, that would clearly be sufficient evidence of an express common intention that the applicant's and the respondent's beneficial interest in the Property is to be apportioned in accordance with their financial contributions towards the Property's purchase and related expenses.

32 Accordingly, there is only one issue in the present case: does the Alleged Oral Agreement exist? I am persuaded that it does, and I set out my analysis below.

33 To support her case that the Alleged Oral Agreement exists, the applicant adduces extensive documentary evidence showing (a) the transfer of S\$30,000 to the respondent for the payment of the balance down payment, (b) the monthly transfers of sums (approximately S\$7,000 to S\$10,000) from her bank account to the respondent's bank account and (c) the transfer of sums by the respondent to OCBC Bank for mortgage loan repayments.³⁷ These documents are mainly bank records. Having examined the evidence, I am satisfied that the moneys transferred by the applicant to the respondent are ultimately then transferred to OCBC Bank in service of the Housing Loan. I also find that the amounts transferred are also consistent with the amounts generally needed for property related expenses such as insurance premiums, property tax, and general upkeep.

³⁷ ACS at para 32; Applicant's Affidavit dated 3 September 2019 at p 42 to 726; Applicant's Affidavit dated 2 October 2019 at p 5 to 66; Applicant's Affidavit dated 14 Feb 2020 at Tab A and Tab B.

34 I am also not convinced by the intervener's submissions to dispute the existence of the Alleged Oral Agreement.

35 With regard to the initial payments, the intervener submits that there are no documentary evidence to support the payments of S\$30,000 and S\$45,600 by the applicant (see table above at [15]).³⁸ This submission is simply untrue for the S\$30,000 sum as there are bank records showing this transfer (stated above at [33]). As for the S\$45,600 paid towards the stamp duty, the respondent has confirmed that the applicant made this payment and I do not see any reason to doubt this.³⁹

36 With regard to the monthly transfers, the intervener submits that the sums transferred by the applicant to the respondent were for the respondent's trading losses. For the reasons below, I find that this submission is weakly supported, if at all.

37 Firstly, the intervener claims that the respondent admits that he had suffered major losses from trading in 2008, including losses incurred from trading on behalf of the applicant.⁴⁰ Hence, the applicant has been making monthly repayments to the respondent for these losses. I find that there is insufficient evidence to support her claim. To begin with, the respondent did not make such an admission: he states that he had only incurred personal losses from his trading activities.⁴¹ Moreover, even if he did incur losses on the

³⁸ Intervener's submissions dated 2 February 2021 at paras 9 and 19.

³⁹ RCS at para 19.

⁴⁰ Intervener's submissions dated 2 February 2021 at para 17; Transcript dated 1 December 2020 at p 64, ln 29.

⁴¹ RCS at para 21; Transcript dated 1 December 2020 at p 65, ln 5-13.

applicant's behalf, it does not immediately follow that the applicant's monthly transfers of sums were for the payment of these losses.

38 Secondly, apart from merely speculating, the intervener did not adduce any direct evidence to show that the respondent had any prior history of trading on behalf of the applicant.⁴²

39 Thirdly, the intervener argues that if the monthly transfers by the applicant were indeed for the Housing Loan and the Property's expenses, she would have procured the transfers by GIRO.⁴³ In my view, it is rather far-fetched to make this inference merely on how the applicant chose to transfer the monthly sums. Furthermore, even if I were inclined to infer some significance in her choice, it would not aid the intervener's case. The applicant has explained that the Housing Loan is subject to a variable interest rate⁴⁴ and she prefers not to use GIRO as it is "a source of error".⁴⁵ I find this explanation plausible. Indeed, if the respondent had incurred losses on behalf of the applicant, these losses would likely be a fixed amount that is *not* subject to a variable interest rate. Repayment by GIRO in this context would then be *less* error prone. It follows that the applicant's choice of *not using GIRO* can indicate that it is *more likely* that the monthly transfers were in service of the Housing Loan, contrary to the intervener's argument.

40 Overall, I am not persuaded by the intervener's arguments that the applicant's monthly transfers of moneys to the respondent were for trading

⁴² Intervener's submissions dated 2 February 2021 at paras 27 to 35.

⁴³ Intervener's submissions dated 2 February 2021 at paras 39 and 50.

⁴⁴ Applicant's Affidavit dated 6 April 2020 at para 6.

⁴⁵ Transcript dated 1 December 2020 at p 32, ln 21-24.

losses incurred on her behalf by the respondent. I therefore dismiss her submission on this point.

41 I am also not persuaded by the intervener's submission that these monthly transfers were a gift or a loan by the applicant to the respondent.⁴⁶ The intervener did not adduce any credible evidence to support this submission, so this is merely speculation on her part.

42 From the above analysis, I find that, on balance, the Alleged Oral Agreement exists. To begin with, the weight of documentary evidence is in the applicant's favour. On top of that, it must be borne in mind that the applicant chose to undertake personal liability for the Housing Loan as a guarantor. Generally, one does not do so without the expectation of some concomitant benefit. Hence, while it may be commercially unwise that the Alleged Oral Agreement was not reduced to writing, I find that it is rather implausible that the applicant's monthly payments to the respondent is anything but in service of the Housing Loan and the Property's related expenses.

43 In my evaluation of the evidence, I have been conscious that there is a possibility that the applicant and respondent could have been involved in a conspiracy to dilute the respondent's assets so as to reduce the value of the matrimonial assets of the respondent and intervener. Having carefully analysed the evidence, which includes documentary evidence accumulated over many years, I do not see any indication that this is the case. I am therefore satisfied that the applicant has proven that, at the time of the Property's purchase, there was a common intention between the applicant and the respondent that their beneficial interest in the Property is to be apportioned according to their

⁴⁶ Intervener's submissions dated 2 February 2021 at para 37.

financial contributions to the Property's purchase and related expenses. Hence, the respondent holds the applicant's share in the Property on a common intention constructive trust for her.

Conclusion

44 For the reasons set out above, I allow the applicant's claim. Following the table above at [15], I declare that the applicant's and the respondent's beneficial interest in the Property is 73% and 27% respectively. The respondent holds the applicant's share in the Property on a common intention constructive trust for her.

45 Unless the parties have come to an agreement on costs, I will hear counsel on this issue.

Lee Seiu Kin
Judge of the High Court

Jayagobi s/o Jayaram and Gurcharanjit Singh Hundal (Grays LLC)
for the applicant;
The respondent in person;
Seenivasan Lalita (Virginia Quek Lalita & Partners) for the
intervener.
