

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

[2021] SGHC 25

Suit No 602 of 2019

Between

Amy Tay

... Plaintiff

And

Ho Toh Ying

... Defendant

EX TEMPORE JUDGMENT

[Gifts] — [Inter vivos]
[Restitution] — [Unjust enrichment]

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Tay Amy
v
Ho Toh Ying

[2021] SGHC 25

General Division of the High Court — Suit No 602 of 2019
Tan Siong Thye J
29 January 2021

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Tan Siong Thye J:

Introduction

1 The plaintiff is Mdm Amy Tay (“Mdm Tay”) and the defendant is Mdm Ho Toh Ying (“Mdm Ho”). Mdm Tay and the defendant’s youngest son, Mr Chung Tze Hoong (“CTH”), are undergoing divorce proceedings in the Family Justice Courts (“FJC”). Interim judgment was issued on 21 November 2017.¹ The FJC are presently considering the division of the matrimonial assets of Mdm Tay and CTH.

2 One of the matrimonial assets is a property located at 16 Doherty Place, Wakerley, QLD 4154 (the “Australian Property”), which was in CTH’s sole

¹ Statement of Claim (“SOC”), at para 2.

name.² It is not disputed that Mdm Ho provided the money for the purchase of the land and subsequently also provided further sums of money for the construction of the house. These moneys from Mdm Ho amounted to a total of S\$1,015,089.59 (the “Purchase Moneys”).³ The Australian Property was sold by CTH in 2016 for A\$881,000.⁴

3 On 19 April 2016, a sum of A\$849,990.33 (the “Sum”) was credited into the UOB Global Premium Account jointly held by Mdm Ho and CTH.⁵ Mdm Tay instituted this Suit as she claims that Mdm Ho should make restitution of the Sum to the pool of matrimonial assets of Mdm Tay and CTH in the divorce proceedings because the Purchase Moneys were gifts from Mdm Ho to CTH. Mdm Ho, on the other hand, asserts that the Purchase Moneys were her loans to CTH, and that she is entitled to the Sum as partial repayment of those loans.⁶

The parties’ cases

Mdm Tay’s case

4 Mdm Tay contends that the Purchase Moneys for the Australian Property were gifts from Mdm Ho. Her primary argument to support this contention is that neither CTH nor Mdm Ho had ever indicated or suggested to her that the Purchase Moneys were loans from Mdm Ho and there was no reason

² SOC, at paras 10–11; Agreed Statement of Facts (“ASOF”), at para 6.

³ Defence, at para 4.

⁴ SOC, at para 15; Plaintiff’s Affidavit of Evidence-in-Chief (“P-AEIC”), at para 3; Defendant’s Affidavit of Evidence-in-Chief (“D-AEIC”), at para 14; ASOF, at para 9.

⁵ SOC, at para 8; Defence, at para 6.

⁶ Defence, at para 9.

for them to hide this information from her since a very large sum of money was involved and this would adversely affect her and the child of the marriage financially.⁷

5 In her Opening Statement, Mdm Tay also referred briefly to the presumption of advancement to support her argument that the Purchase Moneys were gifts rather than loans.⁸ Mdm Tay also makes her claim on unjust enrichment.

Mdm Ho's case

6 Mdm Ho avers that the Purchase Moneys for the Australian Property were her personal loans granted to CTH.⁹ She and CTH had orally agreed that in the event that the Australian Property was sold, the balance of the outstanding loans would be repaid to Mdm Ho from the sale proceeds of the Australian Property.¹⁰ In support of this argument, Mdm Ho emphasised that she has two other sons, and it would not make sense for her to gift such a significant amount (of over S\$1m) to her youngest son, CTH, to the exclusion of the others.¹¹

My decision

7 The central issue in this case is whether the Purchase Moneys were loans or outright gifts from Mdm Ho to CTH for the purchase of the Australian Property. If the Purchase Moneys were *loans* (as Mdm Ho argues), Mdm Ho

⁷ P-AEIC, at paras 22–24, 36 and 63.

⁸ Plaintiff's Opening Statement, at para 2B.

⁹ Defence, at para 3.

¹⁰ Defence, at para 4.

¹¹ Defence, at para 8; D-AEIC, at para 18.

would be entitled to keep the Sum as partial repayment of the loans, notwithstanding that the Sum was transferred to Mdm Ho without Mdm Tay's consent. On the other hand, if the Purchase Moneys were *gifts* (as Mdm Tay contends), Mdm Ho would not be entitled to keep the Sum and she would have to return the Sum and the interest accrued to the pool of matrimonial assets of Mdm Tay and CTH in the divorce proceedings. The burden lies on Mdm Tay, the plaintiff in this Suit, to prove on a balance of probabilities that the Purchase Moneys were indeed gifts from Mdm Ho.

8 After hearing both parties' evidence and submissions at the trial, I am of the view that Mdm Tay's claim against Mdm Ho has not been made out on a balance of probabilities. Hence, Mdm Ho is not required to return the Sum amounting to A\$849,990.33 to the pool of matrimonial assets of Mdm Tay and CTH. I shall now briefly furnish the reasons for my decision.

Whether the Purchase Moneys were loans or gifts

9 It is important to note that the Australian Property was in the sole name of CTH and that the Purchase Moneys were provided by Mdm Ho to CTH, *ie*, from a mother to her son. Hence, one would expect a high degree of informality between Mdm Ho and CTH.

10 In my view, Mdm Tay's argument that the Purchase Moneys were gifts because she was not told that they were loans from Mdm Ho is not persuasive. Mdm Ho testified that, during a family dinner in early 2010 before the purchase of the Australian Property, she had told CTH and Mdm Tay that she would be lending CTH a large sum of money to purchase the Australian Property. Mdm Tay has stated that she does not recall this conversation taking place. Neither party has called CTH himself, or any other persons present at this family

dinner, to corroborate their respective accounts. However, even assuming that this conversation did not take place (as Mdm Tay claims), the mere fact that CTH and Mdm Ho did not indicate or suggest to Mdm Tay that the Purchase Moneys were loans does not show that the Purchase Moneys were *gifts*. The agreement or arrangement relating to the transfer of the Purchase Moneys would have been made between Mdm Ho and CTH. Whether or not they communicated this agreement to Mdm Tay would be, at best, inconclusive of their actual intentions. Mdm Tay's argument that CTH would have informed her if they had taken loans amounting to such a large sum of money, as these loans would impose a significant financial burden on their family, also loses much of its force in the context of friendly loans from mother to son. Unlike, for example, a bank or commercial loan, Mdm Ho would not have charged interest on the principal sum or demanded adherence to a fixed repayment schedule.

11 Mdm Tay further argues that the presumption of advancement enables her to establish that the Purchase Moneys were gifts instead of loans from Mdm Ho to CTH. A mother-child relationship may give rise to the presumption of advancement in certain circumstances. However, as the Court of Appeal observed in *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 (at [59]), the presumption "will operate only where there is no direct evidence that may reveal the intention of the parties; only then will there be any necessity to *infer* or *presume* intention" [emphasis in original]. In other words, the presumption of advancement may operate if there is no evidence, written or oral, to indicate the purpose of the moneys that were provided to CTH by Mdm Ho. It does not operate in the present case as Mdm Ho has given direct evidence that the Purchase Moneys to CTH were loans.

12 Mdm Tay’s argument that Mdm Ho was unjustly enriched by earning interest on the Sum at her expense, and by “not letting [Mdm Tay] to have access to it”,¹² cannot succeed in this case as I find that she has not proven on a balance of probabilities that the Purchase Moneys from Mdm Ho were gifts. Mdm Tay has also failed to establish the claim on the ground of unjust enrichment with regard to the Sum.

13 On the other hand, Mdm Ho’s arguments are convincing. Mdm Ho stated that she would not have given such a large sum of money to CTH as gifts as she has two other children. At trial, both parties agreed that the Purchase Moneys for the Australian Property came from the sale proceeds of the property left to Mdm Ho in her late husband’s will. I understand this to be the property at 15 Harvey Avenue, which Mdm Ho sold in November 2009 for S\$3m.¹³ The Purchase Moneys would have been one-third of the S\$3m. This is a significant amount of money and it is not plausible that Mdm Ho would have intended to make an outright gift of the Purchase Moneys to CTH. I accept Mdm Ho’s explanation that the Purchase Moneys were, instead, loans to CTH. This is further supported by Mdm Ho’s evidence that, around 2009 or 2010, she also made a loan of S\$700,000 to her eldest son, Mr Chung Tze Kon (“CTK”), to enable him to purchase a flat at Bain Street. Mdm Ho has testified that CTK has been repaying this loan in monthly instalments of around S\$500 to S\$1,000. Mdm Tay did not adduce any evidence to the contrary. It would, therefore, have been surprising for Mdm Ho to have made outright gifts of the Purchase Moneys to CTH, when she had advanced the smaller sum of S\$700,000 to CTK as a

¹² SOC, at para 9(c).

¹³ P-AEIC, at para 20.

loan. Mdm Tay has not offered any explanation for why Mdm Ho might have treated her sons differently in this regard.

14 Although Mdm Ho did not produce any written documents of her loan agreement with CTH, I accept Mdm Ho's explanation that it was because CTH is her youngest son and she trusted him.¹⁴ In the context of a mother-son relationship, it is understandable that parties may not fastidiously keep written records of their loan arrangements or be legalistic in their dealings with one another.

15 Further, although Mdm Ho did not receive any repayments prior to the transfer of the Sum into her bank account on 19 April 2016, she explained that there was some agreement with CTH regarding the repayment of the loans. According to Mdm Ho, she had orally agreed with CTH that the loan repayments would commence when CTH emigrated to Australia and started work there.¹⁵ There is no evidence to the contrary. Since these events did not occur before the Australian Property was sold (in 2016¹⁶), the loan repayments were not due to commence prior to the sale. In these circumstances, the fact that no other repayments were made therefore does not, in and of itself, suggest that the Purchase Moneys were not loans from Mdm Ho. Furthermore, the period between the final transfer of the Purchase Moneys to CTH on 9 January 2014¹⁷ and the sale of the Australian Property in 2016 was quite short. This weakens any argument that the absence of evidence of repayment suggests that the

¹⁴ D-AEIC, at para 19.

¹⁵ Defence, at para 4.

¹⁶ SOC, at para 15.

¹⁷ Defence, at para 3.

Purchase Moneys were gifts rather than loans. I wish to reiterate that, in a loan arrangement made between a mother and her son, the parties may not strictly adhere to a loan repayment schedule. It may not be fair for Mdm Tay to compare the informal loan arrangement between Mdm Ho and CTH to a commercial loan made at arm's length, in which one would expect the parties to have agreed on a fixed loan repayment schedule, the applicable interest rate, and other terms of repayment as well as collateral for the loan. In my view, even though Mdm Ho did not demand any repayments from CTH or Mdm Tay prior to the sale of the Australian Property, Mdm Ho nevertheless expected to be repaid eventually, either when CTH started work in Australia or when the Australian Property was sold.

Conclusion

16 In these circumstances, I find that Mdm Tay has not succeeded in proving on a balance of probabilities that the Purchase Moneys were gifts, and I accept Mdm Ho's case that the Purchase Moneys were loans. Therefore, I dismiss Mdm Tay's claim. I shall supplement this judgment later if there is a need to do so.

17 The parties have earlier agreed on fixed costs of S\$12,000 to be awarded to whoever wins the Suit. Accordingly, I award costs agreed at S\$12,000 in favour of Mdm Ho.

18 Finally, I would like to comment on the FJC's direction that Mdm Tay should file the present civil Suit in the High Court to claim restitution of the Sum from Mdm Ho. I note that the Court of Appeal in *UDA v UDB and another* [2018] 1 SLR 1015 explained that the court's power of division under s 112 of the Women's Charter applies only between the parties to a marriage and their

assets, and does not extend to adjudicating on third parties’ claims to alleged matrimonial assets (see, in particular, [32] and [50]). However, in the present case, Mdm Ho is not asserting any interest in the Australian Property or its sale proceeds *per se*. This is because Mdm Ho already had the Sum. Mdm Ho’s position is that whether the Australian Property is a matrimonial asset or not is “strictly a matter between [Mdm Tay] and [CTH] and is irrelevant to [Mdm Ho]”; instead, her claim to the Sum is based on her “entitle[ment] to be repaid the loan[s] from the sale of the [Australian Property] as agreed between [CTH] and her”.¹⁸ In these circumstances, the FJC were empowered to decide whether the Sum was paid to Mdm Ho in partial repayment of the loans at the ancillary matters stage of the matrimonial proceedings, without having to direct Mdm Tay to commence a separate civil suit against Mdm Ho.

Tan Siong Thye
Judge of the High Court

The plaintiff in person;
The defendant in person.

¹⁸ Defence, at para 7.