

Mak Saw Ching v Yam Hui Min, Barbara Rebecca
[2014] SGHC 212

Case Number : Originating Summons No 1216 of 2013
Decision Date : 24 October 2014
Tribunal/Court : High Court
Coram : Lee Kim Shin JC
Counsel Name(s) : Low Wan Kwong Michael (Crossbows LLP) for the applicant; K Mathialahan (Guna & Associates) for the respondent.
Parties : Mak Saw Ching — Yam Hui Min, Barbara Rebecca

Trusts – resulting trusts – automatic resulting trusts

Trusts – resulting trusts – presumed resulting trusts

Equity – mistake

24 October 2014

Lee Kim Shin JC:

Introduction

1 Originating Summons No 1216 of 2013 (“OS 1216”) concerned a rather unfortunate dispute between a grandmother (“the Applicant”) and her granddaughter (“the Respondent”) over the beneficial ownership of a Housing and Development Board flat at Block 81 Commonwealth Close #10-103 Singapore 140081 (“the Flat”). The dispute manifested itself in the wider context of an acrimonious divorce between the Respondent’s parents.

2 The primary relief sought by the Applicant in OS 1216 was a declaration that the Respondent held her legal half-share in the Flat on trust for the Applicant. In the course of the proceedings, this trust was particularised as a resulting trust arising in the Applicant’s favour.

3 I dismissed OS 1216 on 14 July 2014 because the Applicant had not proven the resulting trust she asserted. As the Applicant was legally aided, I made no order as to costs. The Applicant has since appealed against my decision. I therefore set out the grounds for my decision.

The Background

The parties

4 The Applicant is currently 83 years old. She is the paternal grandmother of the Respondent. The Applicant and her husband, Yam Pak Kee (“Pak Kee”), had two children. Their son, Yam Wing Kong (“Wing Kong”), is the Respondent’s father.

5 Wing Kong was previously married to the Respondent’s mother, Maria Cristina S Yam (“Maria”). Apart from the Respondent, they have another daughter, Isabel Yam Min Yi (“Isabel”). Maria filed for divorce against Wing Kong on 9 April 2013. Interim judgment of divorce was granted on 24 September

2013.

The undisputed facts

6 The Applicant and Pak Kee acquired the Flat as joint tenants in 2001. They paid the purchase price of the Flat in full using the sale proceeds of their previous flat. Pak Kee passed away on 14 September 2009.

7 On 22 October 2009, the Applicant made an application with the Housing and Development Board ("the HDB") for Pak Kee's death to be notified and to include the Respondent's name as a joint tenant of the Flat.

8 On 2 December 2009, the Applicant executed a transfer of the Flat to the Respondent as a joint tenant with herself. The consideration for the transfer was stated in the transfer document as "Natural Love and Affection" and the transfer was notified as a "Gift" on the HDB lease. Upon registration of the transfer on 3 February 2010, the Respondent became a legal joint tenant of the Flat together with the Applicant.

9 Sometime in early January 2013, the marriage between Wing Kong and Maria broke down acrimoniously. The Respondent sided with her mother. On 21 January 2013, Maria and the Respondent left the matrimonial flat to live elsewhere at another HDB flat. I pause here to note that the breakdown in the marriage occurred more than three years after the addition of the Respondent as a joint tenant of the Flat.

10 On 25 March 2013, the Applicant severed the joint tenancy with the Respondent, making them tenants in common in equal shares.

11 On 16 August 2013, the Applicant's solicitors sent a letter to the Respondent to demand that the Respondent transfer her rights and interests in the Flat to the Applicant. The Respondent's solicitors replied on 5 September 2013 to refuse the Applicant's demand.

12 On 18 December 2013, the Applicant filed OS 1216 against the Respondent.

The disputed facts

13 The main dispute of fact in OS 1216 concerned whether the Applicant had intended the transfer of the Flat to the Respondent as a gift. The Applicant's case was that the transfer was not intended as an absolute gift. Instead, she had intended the transfer to benefit her son, Wing Kong. The Respondent denied this and claimed that the transfer was intended as an absolute gift.

14 In support of their respective positions, the parties filed two affidavits each. In the Applicant's first affidavit dated 8 November 2013, she stated that:

(a) Although the transfer to the Respondent was worded as a gift, the Applicant had no intention of making a gift. Rather, the Applicant had wished to "plan her succession" for Wing Kong but he could not be made a joint tenant of the Flat because he held another HDB flat in his name.

(b) The Respondent was made a joint tenant of the Flat instead. This was on the condition that the Respondent was to give the sale proceeds of the Flat to Wing Kong upon the Applicant's demise. This was done on the advice of an HDB officer. The Applicant was not advised on the

making of a will. She also did not obtain legal advice.

(c) The Respondent had not behaved like an owner of the Flat. She did not pay the purchase price, conservancy fees or utilities bills in respect of the Flat. The Respondent also did not stay at the Flat.

(d) The Respondent was siding with Maria in the divorce proceedings. Therefore, the Applicant had lost trust in the Respondent and wanted the Respondent's name removed from the title to the Flat.

15 The Respondent filed a reply affidavit on 3 February 2014. She deposed that:

(a) The transfer was intended as a gift.

(b) The Applicant and the Respondent shared a close relationship. When the Respondent was a child, the Applicant had looked after her and bought her gifts. Conversely, when the Applicant underwent surgery for breast cancer in 2009 and when Pak Kee passed away, the Respondent took care of the Applicant.

(c) After Pak Kee's death, the Applicant approached the Respondent and Maria at the Flat to discuss adding the Respondent's name as an owner. The Respondent was reluctant at first but she eventually agreed when the Applicant insisted that she deserved to be a joint tenant.

(d) The Applicant knew that she could make a will to devise the Flat. Wing Kong had in fact suggested that she do so. However, the Applicant said that she had already decided to make the Respondent a joint tenant. Wing Kong did not object.

(e) On 22 October 2009, the Applicant, Wing Kong, Maria, Isabel and the Respondent went to the HDB office to file the notice of Pak Kee's death and to add the Respondent as a joint tenant of the Flat. They were attended to by an HDB officer who explained the procedures for and the implications of the transfer to them in full. The Applicant and the Respondent then signed the relevant forms.

(f) On 2 December 2009, the Applicant, Wing Kong, Maria and the Respondent again went to the HDB office. On this day, the Applicant signed the transfer and other relevant documents. This was done after an HDB officer had clearly explained the nature of the documents to the Applicant. The consideration in the transfer form was stated as "Natural Love and Affection" on the Applicant's instructions.

(g) The HDB officer who attended to them on 2 December 2009 did not advise the Applicant on succession planning. Moreover, he would not have given the advice alleged by the Applicant because such advice would have contravened the Housing and Development Act (Cap 129, 2004 Rev Ed) ("the HDB Act").

(h) The Respondent did not contribute towards the purchase price of the Flat because it was already paid in full when she was made a joint tenant. The Respondent had also stayed with the Applicant in the Flat on a number of occasions after the transfer.

(i) Thereafter, the relationship between the Applicant and the Respondent remained close. It was only after the breakdown of Wing Kong's and Maria's marriage, and after the Respondent sided with Maria, that the Applicant had claimed that the transfer was not intended to be a gift.

(j) Wing Kong had instigated and influenced the Applicant to file OS 1216 because he was unhappy with the Respondent for siding with Maria in the divorce proceedings. Wing Kong had previously harassed the Respondent and Maria to demand that the Respondent transfer her share of the Flat to the Applicant. Wing Kong was driving OS 1216 because he wanted the benefit of the Flat for himself upon the Applicant's death.

16 On 19 February 2014, the Applicant filed a further affidavit to respond to the Respondent's first affidavit. She stated that:

(a) Admittedly, the relationship between the Applicant and the Respondent was previously close. However, the Applicant did not love the Respondent to the exclusion of her other family members.

(b) In making the transfer, the Applicant had intended to provide for Wing Kong and (indirectly) his family. There was no reason for the Applicant to provide for the Respondent only. The Applicant did not consider making her other granddaughter, Isabel, a joint tenant because she was not an adult yet.

(c) Before deciding to make the Respondent a joint tenant of the Flat, the Applicant had gone to the HDB office on her own to enquire. She was told that she could not add Wing Kong's name as a joint tenant because he was a current owner of a HDB flat.

(d) At the material time, both the Applicant and Wing Kong were ignorant of the option of making a will.

(e) When the parties were at the HDB office on 22 October 2009 and 2 December 2009, the Applicant had reminded the Respondent of her obligation to give the sale proceeds of the Flat to Wing Kong upon the Applicant's demise.

(f) The Respondent did not stay at the Flat on a number of occasions as she had alleged. Instead, she only stayed for one or two nights before moving back to stay with her parents. The Respondent complained about the Applicant's nagging. The Respondent also complained that there were ghosts in the Flat.

(g) Wing Kong had not instigated the Applicant to commence OS 1216. The Applicant was interviewed by the Legal Aid Bureau and her assigned lawyers. They would have ascertained whether she was under Wing Kong's influence. When Wing Kong had asked the Respondent to return her share in the Flat to the Applicant, he had done so on the Applicant's instructions.

(h) Maria had brainwashed the Respondent to be hostile towards the Applicant. Sometime in March 2013, the Respondent called the Applicant to say that the Applicant would die without a coffin because Wing Kong had squandered her savings. The Respondent also said that she would donate a few bins for the Applicant's bones.

17 On 31 March 2014, the Respondent filed a second affidavit in reply to the Applicant's affidavit of 19 February 2014. The Respondent denied calling the Applicant in March 2013 (see [16(h)] above) and making the alleged cruel comments. She said that she had ceased communicating with the Applicant in January 2013. This was because Wing Kong had instructed the Applicant not to communicate with the Respondent any further. The Respondent reiterated her belief that Wing Kong was the driving force behind OS 1216.

18 Maria also filed an affidavit on 14 March 2014 in support of the Respondent's case. In effect, her affidavit repeated and confirmed what was stated in the Respondent's first affidavit.

19 Based on the affidavit evidence, it seemed to me that there were substantial disputes of fact in these proceedings. At the first hearing on 6 May 2014, I had indicated to counsel that it would be difficult to decide this case on the basis of the affidavit evidence alone, without the benefit of cross-examination. I repeated this concern at the hearing on 10 June 2014.

20 However, both counsel insisted that there was no need for cross-examination. This was in part because neither party could afford the costs and expenses of a protracted process. As will become evident in the course of these grounds, this was also in part due to the Applicant's belief that she was entitled to frame her case as what was primarily a question of law.

The Arguments before this Court

21 When parties first appeared before me, counsel for the Applicant, Mr Michael Low ("Mr Low"), submitted that the Respondent held her half-share in the Flat on resulting trust for the Applicant. This resulting trust was said to arise from the fact that the Respondent did not contribute towards the purchase price of the Flat. Moreover, Mr Low submitted that there was no presumption of advancement between a grandmother and granddaughter. Therefore, the Respondent had to strictly prove her allegation that the transfer was a gift. Mr Low said that this was improbable on the evidence.

22 Finally, Mr Low submitted that such a resulting trust would not be void by reason of s 51 of the HDB Act. The material portions of s 51 read:

...

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

...

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

...

In this regard, Mr Low first submitted that the resulting trust claimed by the Applicant was a trust arising by operation of law and therefore, not "created" by the owner of a flat for the purposes of s 51(8) of the HDB Act. Second, Mr Low submitted that the resulting trust claimed would not have allowed an ineligible person to acquire an interest in a HDB flat and therefore did not infringe the prohibition under s 51(10) of the HDB Act.

23 On the other hand, counsel for the Respondent, Mr K Mathialahan ("Mr Mathialahan"), premised his submissions purely on the factual issue of whether the transfer was intended to be a gift. He made no submissions as to the legality of the resulting trust claimed by the Applicant. At the first hearing, I observed that even taking the Applicant's case at its highest, there seemed to be a threshold issue regarding the legality of the resulting trust. I therefore directed that parties file further submissions on the issue of illegality.

24 In further submissions, the Applicant shifted the goal-posts somewhat. Mr Low now submitted that in executing the transfer, the Applicant had intended to create an express trust where the Respondent was the trustee and Wing Kong the beneficiary. Mr Low said that this express trust was void by reason of s 51(8) of the HDB Act, and as such, a resulting trust arose by operation of law in favour of the Applicant because she had failed to dispose of the beneficial interest in the Flat.

25 In the alternative, Mr Low maintained his original submission that there was an unrebutted presumption of resulting trust because the Respondent did not contribute to the purchase price of the Flat.

26 As a further alternative, Mr Low submitted that the transfer should be set aside on the ground of mistake. Mr Low said that the Applicant had executed the transfer hoping to benefit Wing Kong. She had therefore made a mistake of law as she was unaware that the transaction itself was illegal.

27 Without prejudice to the Respondent's position that the transfer was in fact a gift, Mr Mathialahan submitted that if the Appellant had intended to create an express trust in Wing Kong's favour, then both that express trust and any resulting trust arising as a result would be void under s 51 of the HDB Act. Mr Mathialahan also submitted that the presumption of resulting trust could be displaced by the presumption of advancement in this case.

Issues before this Court

28 Based on the parties' arguments, the issues in the present case were as follows:

- (a) Did the Respondent hold her half-share in the Flat on resulting trust for the Applicant?
- (b) If a resulting trust did arise, was the trust void by reason of s 51 of the HDB Act?
- (c) Should the transfer be set aside on the ground of mistake?

Did the Respondent Hold her Half-Share in the Flat on Resulting Trust for the Applicant?

29 The law on resulting trusts is settled in Singapore. In *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*"), the Court of Appeal endorsed Lord Browne Wilkinson's formulation in *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 ("*Westdeutsche*") as to the circumstances in which a resulting trust will arise. The Court of Appeal said (at [34]):

Resulting trusts are presumed to arise in two sets of circumstances. These circumstances were appositely summarised by Lord Browne-Wilkinson in *Westdeutsche* at 708 as follows:

Under existing law a resulting trust arises in two sets of circumstances: (A) where A makes a voluntary payment to B or pays (wholly or in part) for the purchase of property which is vested in B alone or in the joint names of A and B, there is a presumption that A did not intend to make a gift to B: the money or property is held on trust for A (if he is the sole provider of the money) or in the case of a joint purchase by A and B in shares proportionate to their contributions. It is important to stress that this is only a *presumption*, which is easily rebutted either by the counter-presumption of advancement or by direct evidence of A's intention to make an outright transfer...(B) Where A transfers property to B *on express trusts*, but the trusts declared do not exhaust the whole beneficial interest...Both types of resulting trust are traditionally regarded as examples of trusts giving effect to the common

intention of the parties. A resulting trust is not imposed by law against the intentions of the trustee (as is a constructive trust) but gives effect to his presumed intentions. [emphasis in original]

Resulting trusts of the second type operate to “fill the gap” in the beneficial ownership of property where an express trust fails. Resulting trusts of the first type, on the other hand, are commonly termed “presumed resulting trusts”, and, as is apparent from the passage above, the *presumption* of resulting trust only applies to the first set of circumstances discussed by Lord Browne-Wilkinson...

[emphasis in original]

30 Resulting trusts of the first type are commonly described as “presumed resulting trusts” while those of the second type are described “automatic resulting trusts”: see Tan Sook Yee, Tang Hang Wu and Kelvin F K Low, Tan Sook Yee’s *Principles of Singapore Land Law* (LexisNexis, 3rd Ed, 2009) (“*Principles of Singapore Land Law*”) at p 129. The common thread between presumed and automatic resulting trusts is that they are implied by *operation of law* in response to what equity infers the intention of the transferor to be. The corollary to this is that a resulting trust will not be implied against the actual intentions of the transferor. This point was made in *Standing v Bowring* (1885) 31 Ch D 282 where Lindley LJ observed (at 289):

Trusts are neither created nor implied by law to defeat the intentions of donors or settlors; they are created or implied or are held to result in favour of donors or settlors in order to carry out and give effect to their true intentions, expressed or implied.

Lindley LJ’s observations were endorsed by the Court of Appeal in *Lau Siew Kim* at [36].

31 Insofar as the law on resulting trusts is concerned with presumed or inferred intentions, the Court of Appeal has recently held in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 (“*See Fong Mun*”) that the fact being inferred is a lack of intention on the part of the transferor to benefit the recipient (“lack of intention analysis”). This can be contrasted with Lord Browne-Wilkinson’s view in *Westdeutsche* that the fact being inferred is the positive common intention of the parties to create a trust (“the positive intention analysis”). In this regard, *See Fong Mun* explained that *Lau Siew Kim* had unequivocally endorsed the lack of intention analysis. Insofar as *Lau Siew Kim* had quoted Lord Browne-Wilkinson’s observations in *Westdeutsche* (see [29] above), the Court of Appeal in *See Fong Mong* clarified that it had done so for the limited purpose of identifying the situations in which a resulting trust would arise.

32 Turning to the present case, the Applicant first relied on the existence of an automatic resulting trust. Mr Low submitted that the Applicant had in fact intended to create an express trust with the Respondent as trustee and Wing Kong as beneficiary when making the transfer to the Respondent. Mr Low conceded that this express trust was void by reason of s 51(8) of the HDB Act. In that event, Mr Low submitted, an automatic resulting trust arose in the Applicant’s favour because she had failed to dispose of the beneficial interest in the Flat.

33 I did not agree with Mr Low’s submission. It was not for him to concede that the express trust alleged was void for illegality without first proving the existence of that express trust. This follows from the normal and commonsensical rule that a party alleging a fact bears the burden of proving it. The burden of proof in such cases must also be viewed in the light of the Torrens System of Title which is encapsulated in the Land Titles Act (Cap 157, 2004 Rev Ed).

34 When the Respondent became a joint registered proprietor of the Flat, she acquired indefeasible title, subject *only* to the limits and exceptions to indefeasibility which are set out in ss 46(1) and (2) of the Land Titles Act respectively. Insofar as the existence of a trust is an exception to indefeasibility pursuant to s 46(2)(c) of the Land Titles Act, the Applicant squarely bore the burden of proving the express trust that she alleged.

35 On the evidence, I found that the Applicant had not discharged her burden of proof. In this regard, four aspects of the evidence were key to my decision.

36 First, the consideration for the transfer was stated in the transfer document to be "Natural Love and Affection". On the HDB lease, the transfer was also indicated as a "gift". As the face of the documentary evidence suggested that the transfer was intended as a gift, I was of view that the Applicant's evidential burden in proving the alleged express trust was a heavy one.

37 Second, the Applicant did not challenge the Respondent's evidence that both the procedure for and the effect of the transfer had been clearly explained to her by an HDB officer before she executed the transfer. Nor did the Applicant challenge the Respondent's evidence that the words "Natural Love and Affection" had been stated as the consideration for the transfer at her direction. Viewed objectively, this belied the Applicant's allegation that she had intended to create a trust in making the transfer.

38 Third, the Applicant's evidence that the addition of the Respondent's name (to hold the Flat on trust for Wing Kong) was done at the suggestion of an HDB officer was incredible. By the Applicant's own admission in these proceedings, such an arrangement would have been plainly illegal by reason of the HDB Act. It was therefore improbable that an HDB officer would have suggested it.

39 Fourth, the Respondent's affidavit evidence was not tested by cross-examination. I was therefore left to determine whether the Respondent's evidence was inherently incredible on its face. In light of the objective evidence in this case, I was unable to conclude that this was so.

40 In these circumstances, I was not satisfied that the Applicant had discharged her burden of proving the express trust which she had alleged. In effect, the Applicant's case was premised on the claims made in her affidavit and not supported by the objective and uncontroverted evidence in this case. In this regard, cross-examination may have been of some assistance, both in establishing the credibility of the Applicant's explanations as to why the transfer document did not reflect her true intentions, as well as in discrediting the Respondent's evidence. However, the Applicant elected not to take that course and failed to prove her case on a balance of probabilities.

41 I come to consider Mr Low's alternative argument which was that a presumption of resulting trust arose in the Applicant's favour because the Respondent did not contribute to the purchase price of the Flat.

42 In *Lau Siew Kim*, the Court of Appeal explained (at [35]) that the presumption of resulting trust is conceptually distinct from the resulting trust itself; the presumption of resulting trust is an inference of fact drawn from the existence of other facts; the resulting trust, on the other hand, is equity's response to those facts, whether *proven or presumed*. In this regard, the Court of Appeal endorsed the following passage of Robert Chambers' seminal work titled *Resulting Trusts* (Clarendon Press, Oxford, 1997) where it is stated (at p 32) that:

The facts which give rise to the presumption of resulting trust are (i) a transfer of property to another, (ii) for which the recipient does not provide the whole of the consideration. The facts

which give rise to the resulting trust itself are (i) a transfer of property to another, (ii) in circumstances in which the provider does not intend to benefit the recipient.

43 In the present case, I was of the view that Mr Low's arguments regarding a presumption of resulting trust were misconceived. First, Mr Low had wrongly advanced his case on the basis of a "purchase price resulting trust". Such a resulting trust is based on unequal contributions to the purchase price of property *at the time of its purchase*; the presumption of resulting trust crystallises at that time: see *Lau Siew Kim* (at [112]) and *See Mun Fong* (at [53]). It was obvious to me that such a presumption of resulting trust could not be sensibly applied in the present case as the parties were never co-purchasers of the Flat in the first place.

44 The proper basis for asserting a presumption of resulting trust in this case would have been the fact that the Applicant had voluntarily transferred a share in the Flat to the Respondent for no consideration: see *Westdeutsche* (at [29] above); see also *Principles of Singapore Land Law* at p 129. Even then, I was of the view that such a presumption of resulting trust should not be applied in the present case.

45 Recourse to the presumption of resulting trust was, in my view, inappropriate because both parties had ample opportunity to, and did in fact, adduce evidence of the Applicant's actual intentions when making the transfer. In this respect, I was mindful of the principles enunciated by the Court of Appeal in *See Fong Mun* (at [50]–[51]). These principles can be summarised as follows:

(a) The presumption of resulting trust is no more than a long stop to provide an answer when the relevant facts and circumstances fail to yield a solution. It is not an often to be applied rule of thumb.

(b) There is no justification for resorting to presumptions when the court is faced with the actual intentions and desires of the transferor.

(c) The position is different if the transferor is unavailable to give evidence as to his actual intentions. In that case, it may be necessary to rely on presumptions and circumstantial evidence to divine his intentions.

46 Keeping the above principles in mind, I noted that the substance of the Applicant's case in these proceedings was that she had actually intended to benefit Wing Kong when making the transfer. In my view, the Applicant ought to have made good her assertions by adducing direct evidence and through cross-examination. Instead she elected, all too conveniently, to fall back on the presumption of resulting trust.

47 Moreover, because the Applicant's own case was based on her intention to create an express trust for Wing Kong's benefit, it would be anomalous that a presumption of resulting trust should arise in her favour because this would be inconsistent with her intentions as proffered in her affidavit evidence.

48 Assuming I was wrong in my analysis at [44]–[47] above, and the presumption of resulting trust should be applied, I would have found that the presumption had been rebutted. In *Lau Siew Kim*, the Court of Appeal held (at [52]) that the strength of the presumption of resulting trust would depend on the factual matrix in which it is invoked. In this vein, the Court of Appeal emphasised the importance of aligning the presumption of resulting trust with modern social values and expectations.

49 Interestingly, there is no longer a presumption of resulting trust under English law in cases of

gratuitous transfers of real property. This change was effected by s 60(3) of the UK Law of Property Act 1925 (c 20). No similar legislative change has been forthcoming in Singapore. In my view, however, this does not preclude a Singapore court from applying the presumption of resulting trust with circumspect in cases of gratuitous transfers.

50 Where property is transferred gratuitously, it is perhaps difficult to imagine that ordinary members of society today would expect the transfer to be anything but a gift. This is all the more so where the face of the documentary evidence indicates that the transfer is a gift. Therefore, even if the presumption of resulting trust may be invoked in such factual situations, I am of the view that it will not carry great weight.

51 In the present case, the weight to be accorded to the presumption of resulting trust was further diminished by the relationship between the parties. Here, the transfer was between a grandmother and her granddaughter and not between distant relatives or commercial parties. It was not disputed that the parties shared a close relationship at the time of the transfer. As I have mentioned earlier, the relationship only worsened following the acrimonious divorce of the Respondent's parents.

52 Therefore, even if the presumption of resulting trust applied in this case, the presumption was a weak one. For the reasons stated at [35] to [40] above, I was satisfied that the presumption of resulting trust had been rebutted.

53 Given my conclusion that no resulting trust arose in the present case, it was not necessary to consider the issue of illegality.

Should the Transfer be Set Aside on the Ground of Mistake?

54 This leaves me to deal with the Applicant's contention that the transfer should be set aside on the ground of mistake. Mr Low submitted that the Applicant had executed the transfer hoping to benefit Wing Kong. Mr Low said that the Applicant had thus made a mistake of law as she was unaware that this transaction was illegal.

55 In my view, Mr Low's submissions were wholly untenable. First, they were inextricably linked with Mr Low's other submission that the Applicant had intended to benefit Wing Kong in making the transfer. As noted above, the Applicant had not discharged her burden of proving her intentions in this regard.

56 Second, the relief claimed in OS 1216 was a declaration that the Respondent held her half-share in the Flat on trust for the Applicant. There was no prayer for the transfer to be set aside. Instead, the issue of mistake was raised belatedly, and only when I had directed further submissions on the discrete issue of illegality.

57 Third, assuming the Applicant was entitled to set aside the transfer on the ground of mistake, Mr Low did not identify how this would defeat the Respondent's title as registered proprietor of the Flat. In the circumstances, the Applicant's contentions on the issue of mistake had to fail.

Conclusion

58 For these reasons, I dismissed OS 1216 in the terms set out at [3] above.

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