

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 198

Suit No 767 of 2015

Between

Chia Hang Kiu (administratrix of the estate of Chia Chee Wah (alias Chay Ah Soo) deceased)

... Plaintiff

And

- (1) Chia Kwok Yeo
- (2) Ng Chui Guat
- (3) Chia Kok Weng

... Defendants

Suit No 89 of 2016

Between

Chia Kok Weng

... Plaintiff

And

- (1) Chia Kwok Yeo
- (2) Ng Chui Guat

... Defendants

JUDGMENT

[Probate and administration] — [Administration of assets]
[Trusts] — [Constructive trusts]
[Trusts] — [Resulting trusts] — [Presumed resulting trusts]
[Land] — [Registration of title] — [Indefeasibility]

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This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

**Chia Hang Kiu (administratrix of the estate of Chia Chee Wah
(alias Chay Ah Soo) deceased)**

v

Chia Kwok Yeo and others and another suit

[2016] SGHC 198

High Court — Suit No 767 of 2015 and Suit No 89 of 2016
Valerie Thean JC
5, 7–8, 12–15 July; 8 August 2016; 18 August 2016

21 September 2016

Judgment reserved.

Valerie Thean JC:

Introduction

1 These two suits arise out of a dispute between siblings over a three-storey bungalow, 37 Jalan Kechubong, Singapore 799401 (“the Property”).

2 The Property was first acquired by their parents (“the Late Father” and “the Late Mother”) in 1978. At that time, it was initially held in the names of the Late Father, the Late Mother and their fourth son, Chia Kok Weng (“Weng”) as tenants-in-common in equal shares, each having a one-third share.

3 A series of transfers thereafter took place between 1978 and 2015, regarding these three one-third shares, as follows:

- (a) In 1984, the Late Father transferred his one-third share to his third son, Chia Kwok Yeo (“Yeo”);
- (b) In 1987, the Late Mother transferred her one-third share to her second daughter, Chia Hang Kiu (“Chris”). As part of the same transaction, Weng transferred his one-third share to Yeo;
- (c) In 1991, Yeo, who now held two-thirds of the Property, transferred a one-third share to his wife, Ng Chui Guat (“Angie”); and
- (d) In 2015, pursuant to a court order, Chris transferred her one-third share to Yeo and Angie.

As a result of these various transfers, Yeo and Angie now hold the property as tenants-in-common in equal shares.

4 In Suit No 767 of 2015 (“S 767/2015”), Chris, as the administratrix for the Late Father Chia Chee Wah @ Chay Ah Soo’s estate (“the Estate”), sues Yeo, Angie and Weng, claiming that Angie and Yeo hold two-thirds of the Property on trust for the Estate. Disagreeing in part with the Estate’s contentions, by Suit No 89 of 2016 (“S 89/2016”), Weng sues Angie and Yeo, laying claim to the beneficial interest of a third of the Property.

5 I dismiss both plaintiffs’ claims, for the reasons given below.

Facts

6 On 16 September 1978, the Property was acquired by the siblings’ late parents at a purchase price of \$68,000.¹ The Late Father contributed \$40,000

¹ Chia Hung Lin’s AEIC at para 9

to the purchase price and the Late Mother contributed the remaining \$28,000.² The Property was registered in the names of the Late Father, the Late Mother and Weng as tenants-in-common in equal shares (*ie*, each held a one-third share).³

7 The couple had nine children who are, in the order of their birth, as follows:

- (a) Chia Kwok Kee;
- (b) Chia Hung Lin;
- (c) Chris;
- (d) Chia Kok Chiong;
- (e) Yeo;
- (f) Weng;
- (g) Chia Kwok Hong;
- (h) Chia Kok Soon; and
- (i) Chia Hung Mei (now deceased).

8 The Property was purchased as a family home. When the Late Mother and Late Father moved into the property, all the children stayed with them save for the eldest, Chia Kwok Kee, who was married by that time.

² Statement of Claim (Amendment No 2) in S 767/2015 (“S 767 SOC”) at para 6

³ Chia Hung Lin’s AEIC at para 9

9 At the time of the purchase of the property, the Late Father was 55 years old and running a successful plumbing business. While at least five sons helped the Late Father in his business over the course of time, none committed to taking over his plumbing business, save for Weng. Weng started working with the Late Father full-time from December 1978⁴ and received his plumber’s licence in 1982.⁵

10 Initially, a \$40,000 overdraft facility, which was used by the Late Father for his business, was secured against the Property. This was increased more than three times and by 7 November 1983, the overdraft facility secured by the Property had been increased to \$440,000.⁶

The 1984 transfer

11 On or about 4 October 1984, the Late Father transferred his one-third share of the Property to Yeo.⁷

12 There is dispute as to the circumstances under which this transfer took place. According to Yeo, Weng and his second brother Chia Kok Chiong (“Chiong”), who were helping their Late Father with his business, suggested that he purchase the Late Father’s one-third share of the Property to help alleviate his father’s financial burden. At this point, their Late Father was in semi-retirement. Two more sons had moved out of the property, but his parents, his mother’s sister Mdm Chong Yee Yong, and other siblings, including Weng, Chris, Hung Lin, Hung Mei still lived there, aside from

⁴ Weng’s AEIC at para 19

⁵ NE 8 July 2016 at pp 10–11.

⁶ 1st Defendant’s Submissions para 29 and 30.

⁷ S 767 SOC at para 12, Yeo’s AEIC at p220

himself. The agreed purchase price was stated as \$150,000.⁸ While it is not disputed that Yeo did not pay this \$150,000, Yeo's contention is that he provided consideration for the Late Father's one-third share by redeeming his Late Father's existing Overseas-Chinese Banking Corporation ("OCBC") overdraft debt, which stood at about \$250,000 at the time. He raised the money by taking up a new mortgage loan in his own name with OCBC.⁹ While Yeo was the sole borrower under the new loan, Weng and the Late Mother also co-signed the mortgage instrument as co-mortgagors.¹⁰

13 The Estate asserts in its statement of claim in S 767/2015 that the Late Father's sole intention in effecting the transfer to Yeo was to avoid having the family home seized by creditors because his business, M/s Chia Chee Wah Plumbing, was in financial difficulty.¹¹ In the light of their assertion that Yeo did not provide consideration, the Estate contends that Yeo held the one-third share transferred from the Late Father to him on trust for the Late Father.

14 In 1985, the Late Father was made a bankrupt.¹²

The 1987 transfers

15 There were further ownership changes to the Property in January 1987. The relevant sale and purchase agreements reflected that the Late Mother transferred her one-third share of the Property to Chris at a price of

⁸ Yeo's AEIC at para 69

⁹ Yeo's AEIC at para 71

¹⁰ Yeo's AEIC at pp 216–219

¹¹ S 767 SOC at para 12

¹² Yeo's AEIC at para 75, Weng's AEIC at para 24

\$126,000, and Weng transferred his one-third share of the Property to Yeo at a price of \$126,000.¹³ It is not disputed that neither sum was paid. The transfer to Chris is not a subject of dispute. The dispute centres upon whether Yeo held Weng's one-third share absolutely, or on trust either for the Late Father or for Weng.

16 According to Yeo, Weng wanted to sell his share of the Property because he faced problems with creditors and wanted to be freed of the overdraft debt completely.¹⁴ While Yeo did not pay the purchase price of \$126,000 to Weng, he contends that he provided consideration by helping to discharge the outstanding loan of \$206,000 on the Property (of which Weng was one of the mortgagors). According to Yeo, the outstanding loan was discharged in the following way¹⁵:

- (a) \$65,000 from Chris' Central Provident Fund ("CPF") account
- (b) \$10,000 from Yeo's CPF account
- (c) \$1,000 from Yeo in cash
- (d) \$130,000 from a new OCBC housing loan taken up in the names of Chris and Yeo on 22 October 1986

17 According to Weng, he transferred his one-third share of the Property to Yeo because he wanted to safeguard his share of the Property from creditors.¹⁶ Weng contends that he and Yeo agreed that Yeo would not have to

¹³ Yeo's AEIC at pp 250–255

¹⁴ Yeo's AEIC at para 79

¹⁵ Yeo's AEIC at para 82

¹⁶ Weng's AEIC at paras 24, 25 and 27

pay any consideration for Weng’s one-third share of the Property, and that Yeo would be holding the said share on trust for him.¹⁷ Weng also contends that Yeo provided no consideration for his one-third share of the Property.¹⁸

18 The Estate’s case, on the other hand, is that Yeo knew that Weng held his one-third share of the Property on trust for the Late Father, and that after the transfer, Yeo held the same one-third share on trust for the Late Father.¹⁹ In the alternative, the Estate pleads that Yeo held the one-third share on resulting or constructive trust for Weng, who in turn held it on trust for the Late Father.²⁰

19 Prior to Weng’s transfer of his one-third share of the Property to Yeo, Weng contributed a significant sum of money towards discharging the mortgage on the Property. According to Yeo, prior to the completion of his purchase of Weng’s one-third share of the Property, Weng gave him a cash cheque of \$100,000 to run down the existing overdraft loan on the Property. Yeo’s case is that he used the money to reduce the outstanding overdraft debt from \$306,000 to \$206,000.²¹ Weng does not mention this \$100,000 in his evidence; instead, he contends that he contributed a cash payment of *at least* \$70,000 to the discharge of the mortgage.²²

¹⁷ Weng’s AEIC at paras 37, 38, 44

¹⁸ Weng’s AEIC at para 41

¹⁹ S 767 SOC at para 18

²⁰ S 767 SOC at para 19

²¹ Yeo’s AEIC at para 81, Defence of the 1st Defendant (Amendment No 1) in S 767/2015 (“Yeo’s Defence in S 767”) at paras 27 – 28

²² Statement of Claim (Amendment No 1) in S 89/2016 (“S 89 SOC”) at para 14, Weng’s AEIC at para 34

The 1991 transfer to Angie

20 On 23 April 1991, Yeo, who then held a two-third share of the Property, transferred a one-third share to Angie at a stated price of \$160,000. Chris signed the land transfer instrument dated 23 April 1991 as the legal owner of the remaining one-third share of the Property.²³ It is not disputed that Angie did not pay the stated purchase price to Yeo.²⁴ Instead, she contributed about \$50,000 of her CPF monies to offset the outstanding mortgage on the Property, and undertook a fresh mortgage liability of \$11,266 with Chris and Yeo as co-borrowers *and* co-mortgagors to pay off the outstanding debt on the Property.²⁵

21 The Estate's case in S 767/2015 is that Yeo transferred the one-third share of the Property to Angie in breach of trust, and that Angie knew or must have known that the said one-third share was held on trust by Yeo for the Late Father. The Estate asserts that Angie did not purchase the Property for full consideration or without notice of the trust in favour of the Late Father, and therefore now holds her one-third share of the Property on trust for the latter.²⁶ Weng, on his part, contends that he did not know about the transfer to Angie and that Yeo acted in breach of trust if Yeo had transferred the one-third share he held on trust for Weng.²⁷

22 Yeo and Angie however claim that the one-third share was transferred to Angie absolutely for good consideration and without notice of any trust.

²³ Yeo's AEIC, CKY-21, pp264–278 (see pp 273-274 in particular)

²⁴ Yeo's AEIC at para 92

²⁵ Angie's AEIC at para 14, Yeo's AEIC at para 90, Chia Hung Lin's AEIC at para 24

²⁶ S 767 SOC at paras 20–21

²⁷ Weng's AEIC at pp 8–9

Rebuilding of the Property in 1999

23 In 1999, Chris, Yeo and Angie agreed and cooperated in the demolition and construction of the Property from a one-storey bungalow into a three storey bungalow. Construction took place from November 1999 to late 2000.²⁸ A construction loan of \$700,000 was jointly taken and more than a million was spent. It is not disputed that Angie supplied most of the funds for the rebuilding.²⁹

The previous suit brought by Yeo and Angie against Chris

24 In December 2013³⁰, Yeo and Angie pressed Chris to pay her share of the rebuilding costs. Chris was unwilling to do so and despite rounds of discussion and the assistance of the fifth son, Chia Kwok Hong (“Hong”), the parties could not reach an agreement.

25 Given the disagreement over whether Chris should bear a portion of the rebuilding costs, Yeo and Angie filed Originating Summons No 422 of 2014 (“OS 422/2014”) to determine the matter. On 22 July 2014, the High Court ordered that the Property be sold on the open market, with the proceeds to be divided equally among Chris, Yeo and Angie. Chris was also ordered to pay Angie her share of the rebuilding costs out of her share of the sales proceeds.³¹ Subsequently, because the parties could not find a buyer, Yeo and Angie applied to court for, and obtained on 20 April 2015, a further order that Chris sell her one-third share of the Property to Yeo and Angie at a price of

²⁸ Angie’s AEIC at para 20, Chia Hung Lin’s AEIC at para 27

²⁹ Angie’s AEIC at para 21, Yeo’s Defence in S 767 at para 9

³⁰ Yeo’s AEIC at para 21

³¹ Yeo’s AEIC at pp 41–42

\$1.7m. Yeo and Angie were allowed to set off the debt due to them for the rebuilding of the Property against the \$1.7m due to Chris.³² Chris' appeal to the Court of Appeal was dismissed. As a result, Chris' one-third share in the Property was conveyed to Yeo and Angie, resulting in the present ownership structure in which Yeo and Angie hold the Property in law as tenants-in-common in equal shares.

26 This last one-third share of the Property, transferred by Chris to Yeo and Angie in 2015 as the result of OS 422 of 2014 is not the subject-matter of either suit.

The present suits

27 In OS 422/2014, Chris contended that the Property was subject to a "family trust". When dismissing the appeal, the Court of Appeal stated that it made no decision on the issue of a family trust.

28 In S 767/2015, filed on 28 July 2015, Chris, in her capacity as administratrix of the Estate, sues Yeo and Angie (who are named as the first and second defendants respectively in S 767/2015), claiming that they hold two-thirds of the Property on trust for the Late Father, arising from the transfers that took place in 1984, 1987 and 1991. Weng is joined as a third defendant in S 767/2015 because the Estate similarly contends that his initial one-third share was held on trust for the Late Father. Therefore, his transfer of his one-third share to Yeo in 1987 was in breach of trust *vis-à-vis* the Late Father, and Yeo took this second one-third share as constructive trustee. It follows from this that the Estate argues that Angie's one-third share, received from Yeo, is held as a constructive trustee.

³² Yeo's AEIC at pp 43–44

29 Disagreeing with the Estate that his one-third share acquired in 1978 was held on trust for the Late Father, Weng followed on to file S 89/2016 on 16 January 2016. By this suit, Weng sues Yeo and Angie seeking a declaration that a one-third share of the Property is held on trust by Yeo and/or Angie for him. As the plaintiff in Suit 89 of 2016, he contends that he transferred his one-third share to Yeo in 1987 to be held on trust and now seeks the return of his share, whether from Yeo or from Angie (arising from Yeo’s transfer of a one-third share to Angie in 1991).

30 Yeo and Angie contend that all the transfers of title were made for good consideration, without any intention or agreement to create a trust, and without any notice of a trust. They also plead that:

- (a) the plaintiffs are precluded from asserting an illegal agreement to create a trust for the purposes of defrauding creditors³³;
- (b) the plaintiffs are estopped from asserting a trust given that it would be unconscionable and inequitable to do so after Yeo and Angie had spent considerable sums of money renovating the Property without objection from any of the siblings³⁴; and
- (c) Yeo and Angie’s titles to the Property are indefeasible and cannot be defeated by the alleged unregistered beneficial interests.

Legal context of registered title

31 Yeo and Angie are the registered proprietors of the Property. Section 46(1) of the Land Titles Act (Cap 157, 2004 Rev Ed) (“LTA”) confers

³³ Yeo’s Defence in S 767 at paras 37A and 37B

³⁴ Yeo’s Defence [9]-[11] in S 767/2015.

indefeasibility of title to registered proprietors. In the present case, Yeo and Angie rely on indefeasibility as a *legal defence* against the possibility of the plaintiffs asserting *any unregistered interest* against their registered title. Leaving aside, for the moment, the extent to which indefeasibility of title completely precludes, as a matter of law, the assertion of unregistered interests against a registered proprietor's title, indefeasibility is also of *evidential significance*.

32 In *Loo Chay Sit v Estate of Loo Chay Loo, deceased* [2010] 1 SLR 286 ("*Loo Chay Sit*"), the Court of Appeal established that the indefeasibility of a registered proprietor's title has, at the very least, an effect on *who bears the burden of proof* in legal proceedings. In *Loo Chay Sit* at [14], the Court of Appeal held:

While the respondent, as the party bringing the counterclaim, bears the legal burden of establishing Loo Chay Loo's title to the Property, *it is entitled to rely on the presumption of indefeasibility of title to the Property accorded to Loo Chay Loo as registered owner of the Property to discharge this burden* (see s 46 of the Land Titles Act (Cap 157, 2004 Rev Ed) ("LTA")). Therefore, to establish Loo Chay Loo's title to the Property, the respondent need not prove that Loo Chay Loo had paid for it; all it needs to show is that Loo Chay Loo was the registered owner of the Property. [emphasis added]

33 Thus, a registered proprietor enjoys a "presumption of indefeasibility of title" and can rely on such to establish, *prima facie*, that it holds absolute title to the property in question. The "legal burden" is on the parties asserting an unregistered interest against the registered proprietor's title to "prove the exceptional circumstances in the LTA, as a result of which the presumption of indefeasibility of title is displaced" (*Loo Chay Sit* at [14]).

34 Applying the above to the present case, the presumption is that Yeo and Angie own the Property absolutely in equal shares. The legal burden is on

the Late Father's estate and on Weng to demonstrate that they have a beneficial interest in the Property under constructive and/or resulting trust. It should be noted that even if they can prove that a trust arises in their favour, there remains the question whether the trust proven falls within the "exceptional circumstances in the LTA" (per *Loo Chay Sit* at [14]) such as to be *legally capable* of defeating Yeo and Angie's registered title.

Issues

35 The two suits before me essentially turn on a determination of who holds beneficial interests in the disputed two-thirds share of the Property. It is not in dispute that the one-third share purchased by Yeo and Angie from Chris at the price of \$1.7m pursuant to the High Court's order is held by Yeo and Angie absolutely. The question is whether Yeo and Angie hold the *remaining two-thirds* of the Property absolutely, or on trust for the Late Father and/or Weng.

36 In this regard, the following issues must first be determined:

- (a) In relation to the first one-third share:
 - (i) Following the 1984 transfer from the Late Father to Yeo, did Yeo hold the Late Father's one-third share on trust for him?
 - (ii) If so, is the Estate prevented by reasons of illegality from so claiming?
- (b) In relation to the second one-third share:
 - (i) Did Weng hold the one-third share of the Property that was in his name on trust for the Late Father?

(ii) Following the 1987 transfer from Weng to Yeo, did Yeo hold the one-third share on trust, either for Weng or the Late Father?

(c) Following the 1991 transfer from Yeo to Angie, did Angie hold the one-third share on trust for Weng or the Late Father?

37 If a trust is found over either Yeo's or Angie's one-third share of the Property, the court must then determine whether either or both of them may rely on the indefeasibility of their registered title, and/or any estoppel arising as a result of the family's acceptance of Yeo and Angie's contribution to the rebuilding of the Property in 1999/2000.

38 I now consider each of the one-third shares in turn.

The first one-third share

39 While an express trust was pleaded by the Estate, during the trial, counsel for the Estate informed the court that the Estate was no longer pursuing the claim that there was an express trust created in favour of the Late Father. The plaintiff's case in S 767/2015, and as seen in counsel's closing submissions, is therefore premised on the existence of either a resulting trust or a common intention constructive trust in favour of the Late Father.³⁵

Resulting trust

40 The transfer was made at a purported price of \$150,000. The Estate claims that a resulting trust arises because Yeo did not furnish consideration for the Late Father's one-third share of the Property.³⁶ The estate submits that

³⁵ Estate's closing submissions at paras 28-29

Yeo did not conduct himself as a genuine buyer³⁷, nor did he give the Late Father any money in exchange for the Property³⁸. And even though Yeo did extinguish the Late Father's debt of \$250,000 to OCBC by taking up a new mortgage loan (see [12] above), Yeo did not single-handedly do so because Weng and the Late Mother co-signed the mortgage, and Yeo was not *in fact* financially responsible for repaying the loan³⁹. According to the Estate, the loan remained the Late Father's responsibility.

41 Having considered the evidence, I find that Yeo did give good consideration for the Late Father's one-third share of the Property in 1984. While Yeo did not pay the Late Father, this does not mean that no consideration was given. It is not disputed that Yeo extinguished an existing \$250,000 overdraft debt owed by his Late Father by taking up a fresh loan *in his own name*. This was done in exchange for the Late Father's transfer of his one-third share of the Property to Yeo.

42 The mortgage documents show that Yeo was the *sole borrower* under the fresh mortgage loan.⁴⁰ The Late Mother and Weng only signed the mortgage documents as co-mortgagors; they were *not* co-borrowers. This means that Yeo *alone* undertook *in personam* liability to the bank to repay the debt. By signing the mortgage, the Late Mother and Weng merely consented to the bank registering a charge over their *interests in the Property*; they did not undertake any personal liability to repay the loan.

³⁶ S 767 SOC at para 13

³⁷ Estate's closing submissions at paras 20 and 21

³⁸ Estate's closing submissions at para 22

³⁹ Estate's closing submissions at paras 24-25

⁴⁰ Yeo's AEIC at p218

43 In my judgment, the above facts show that Yeo provided full consideration for the Late Father's one-third share of the Property. In *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*") at [112], the Court of Appeal held that parties' contributions to the purchase of the property must be determined *at the time of acquisition*. Where liability is assumed by a mortgagor at the time of the purchase of the property and the monies borrowed are used on the purchase, "the mortgagor is treated as having provided the proportion of the purchase price attributable to the monies so borrowed" (*Curley v Parkes* [2004] EWCA Civ 1515 at [14], cited in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*") at [53]).

44 As for the Estate's claim that Yeo was not *in fact* financially responsible for the loan, no evidence was adduced to support this assertion. While it is not disputed that Yeo did not thereafter make payment on the outstanding loan, his proprietary interest would have crystallised at the point the property was transferred. In its submissions, the Estate relies on Yeo's equivocal assent under cross-examination to the Estate's counsel, Mr Peter Gabriel's ("Mr Gabriel") suggestion that the bank only gave Yeo the loan because "the bank still trusted [the Late Father]". In my view, the bank could have given Yeo the loan for a variety of reasons: for example, it was secured by a mortgage over the Property, Yeo was an engineering graduate who would likely have secure income in the future; certainly, the Late Father's credit history and long-standing relationship with the bank would also have mattered. Nevertheless, Yeo's assent to Mr Gabriel's questioning, *at its highest*, only demonstrates that Yeo did not obtain the loan on his own credit worthiness. It does not establish that the Late Father was in any way *still legally responsible* to the bank for the loan. The documents unequivocally suggest that Yeo *alone* was personally liable to repay the loan. The evidence was clear that by the 1980s, the Late Father was in semi-retirement, much of

the business was left to Weng and Chiong⁴¹. With the plumbing business failing, the mantle and responsibility of the loan was put on Yeo's shoulders: as a graduate, it was expected that he would soon have steady employment and with that promise of future capacity to pay, the ability to stave off foreclosure from the bank. This security from the threat of foreclosure was important because his parents, his aunt and some of his siblings still lived at the Property. The new loan arrangement allowed the family to remain in their home and, in Weng's words, to be "spared from any hardship"⁴² that could result from the mounting debts arising from the plumbing business.

45 In the circumstances, I find that Yeo did give consideration for his Late Father's one-third share of the Property in 1984 and therefore, any claim based on a resulting trust must fail. It is not necessary to consider the presumption of advancement in respect of this transaction.

Common intention constructive trust

46 The Estate contends, on the other hand, that there exists a common intention constructive trust, where Yeo and the Late Father *shared a common intention* for the beneficial interest in the one-third share transferred to Yeo to remain entirely with the Late Father.

47 The operation of the common intention constructive trust was considered by the Court of Appeal in *Chan Yuen Lan* and at [160(b)], the court clearly established that there must be "sufficient evidence of an express or an inferred common intention" regarding the parties' respective beneficial

⁴¹ NE 8 July 2016 at pp 19–20.

⁴² Weng's AEIC, at [22].

interests; it is *not* open to the court to “impute a common intention to the parties where one did not in fact exist”.

48 The Estate has not adduced much by way of evidence to prove that Yeo and the Late Father *shared a common intention* for the beneficial interest in the one-third share transferred to Yeo to remain entirely with the Late Father. Only Chia Hung Lin, the eldest daughter who lived at the Property while the parents were alive, gave evidence on behalf of the Estate. Unfortunately, she had very little personal knowledge of the factual matrix of the transactions. She provided little factual basis for the Estate’s claim, and her responses to many of the questions in cross-examination was that she did not know or was not aware. In addition, she contended during her cross-examination that Yeo and Angie had rebuilt the Property because of their “use of the Property”. This contention was not coherently explained, in the light of the fact that no other member of the family appeared to pay for their “use” of the property; conversely, it was largely undisputed that Yeo paid the household expenses at the Property.

49 The Estate sought mainly to establish its case through cross-examination. Mr Gabriel submits that Yeo admitted that the transfer of the Late Father’s one-third share to him was not a sale, but part of an arrangement among the family members.⁴³ This is a submission without any basis. No such admission was made. In his submissions, Mr Gabriel also relies on facts to do with the transfer between *Weng and Yeo* to prove that a common intention constructive trust arose in favour of the Late Father following the transfer in 1984.⁴⁴ In my view, this submission is also a non-starter. I fail to see how the

⁴³ Estate’s closing submissions at para 33

⁴⁴ Estate’s closing submissions at paras 33-34

subsequent transfer from Weng to Yeo is at all relevant to whether the Late Father and Yeo shared a *common intention* that the beneficial interests in the Property should remain with the Late Father.

50 Consistent with his case, Yeo denies any such common intention. Subsequent events and the parties' course of conduct are consistent with Yeo having acquired the Late Father's one-third share of the Property *absolutely*. First, Yeo went on to discharge his share of the mortgage through his and Angie's CPF contributions, over the years. Secondly, after the Late Father's discharge from bankruptcy in August 2000, the trust was not raised by the Late Father; no one saw fit to transfer the one-third share back to him on the ground that it was held on trust. Third, it was clear that the family accepted that Yeo owned his share, just as they accepted that Chris owned hers. The Property was rebuilt on the basis of that family acceptance. When the Late Father passed away on 4 August 2001, still no assertion was made about his ownership of two-thirds of the Property. Application for Letters of Administration was filed for his Estate in September 2014, some 13 years after his death, and four months after Yeo and Angie filed OS 422/2014 in May 2014.

51 A trust of any kind was only raised for the first time by Chris in 2014 in response to OS 442/2014. In the context of Yeo, Angie and Chris' dispute in 2013 over the payment of her share of the cost of re-construction of the Property, parties came to a tentative agreement at the end of a long series of emails where no trust was discussed. This then broke down because Chris wanted assurance of Yeo's responsibility to pay for his Late Mother's medical care. It was at this juncture that she raised the issue that she had discovered that Yeo had received assistance on paying down the loan, which she mentioned she learnt for the first time on 19 February 2013. When sued in OS

422/2014, she was only able to make vague assertions of a “family trust”. These were dismissed by the High Court. In this context, it is somewhat disingenuous of Chris to have commenced S 767/2015 as administratrix of the Late Father’s estate given that she clearly took the position in her previous correspondence with Yeo and Angie (about the sale of the Property) that the three of them were the absolute owners of the Property. I entirely agree with the High Court’s observation in the judgment for OS 422/2014 that “if there was really a family trust of some sort, why did Chris not mention the trust at all when she was negotiating, through Hong, with Angie about the sale of the Property and the use of the net sale proceeds?” (*Chia Kwok Yeo and another v Chia Hang Kiu* [2014] SGHC 197 at [43]) The fact that Chris chose not to testify on behalf of the Estate in the present proceedings to explain herself is also telling.

Illegality

52 The issue of illegality only arises if the Estate is able to rely on evidence that a common intention trust was created as part of a plan by the parties to avoid having the Property seized by the Late Father’s creditors. In the light of my finding that there was no such trust, this argument does not arise.

Conclusion on the first one-third share

53 To conclude, I find that there is no trust over the one-third share of the Property which was transferred from the Late Father to Yeo in 1984.

The second one-third share

54 This second one-third share was registered in Weng’s name when the Property was acquired in 1978. It is first relevant to determine whether Weng held his original one-third share of the Property on trust for the Late Father as alleged by the Estate.

Did Weng hold his one-third share on trust for the Late Father?

55 It is not disputed that Weng did not pay for the one-third share held in his name. In September 1978 when the Property was first acquired, the Late Father and Late Mother paid the entire purchase price (see [6] above). Weng started employment with the Late Father in his business in December 1978.

56 In *Lau Siew Kim* at [34], the Court of Appeal affirmed the holding in *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 that “where A makes a voluntary payment to B or pays (wholly or in part) for the purchase of property which is vested either 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”.

57 In this case, a presumption of resulting trust arises in favour of the Late Father from the fact that Weng gave no consideration for his one-third share of the Property.

58 In response, Yeo’s counsel, Mr Daniel John (“Mr John”), and Weng’s counsel, Mr Kelvin Lee (“Mr Lee”), submit that the presumption of resulting trust is rebutted by the presumption of advancement in favour of Weng. In *Lau Siew Kim* at [56] and [57], the Court of Appeal held:

56 The presumption of advancement is an antidote to the rigid injustice periodically occasioned by the mechanical application of the presumption of resulting trust: In limited circumstances where a person voluntarily transfers property into the name of another, or contributes to its purchase, the law presumes that a gift was intended and that the transferor or contributor did not intend to retain any interest in the property concerned...

57 ... The unrebutted presumption of advancement mandates that the legal title of property reflects the beneficial interests of the parties involved...

The Court of Appeal affirmed that the presumption of advancement arises between a father and son, and stated that it was “more inclined” to the view that it could also extend to independent adult children (*Lau Siew Kim* at [67]–[68]). In this case, in any event, and for reasons that I elaborate upon below, I hold that the Late Father intended to gift this one-third share to Weng.

59 For the avoidance of doubt, I note that no argument was made that this one-third share of the Property was held on trust for the *Late Mother* despite her contribution of more than one-third of the purchase price. For completeness, I note that even if there was a possibility that part of Weng’s share is attributable to the Late Mother, the Court of Appeal in *Lau Siew Kim* showed a clear willingness to extend the presumption of advancement to include mother-child relationships given the “the obvious logical flaws in the rejection of the presumption of advancement in the case of a mother and her child” (*Lau Siew Kim* at [64]).

60 Weng’s explanation of the factual context for the share was that by 1978, the Late Father had looked for a successor amongst his six sons, but none stepped up, save for Weng. This is not disputed by any of the witnesses. Weng’s position was that the beneficial interest in the one-third share was his because of his commitment to his father’s business. He only joined his Late

Father's business, however, in December 1978. The house was purchased in September 1978. His contribution could not form consideration for the transaction.

61 Mr Gabriel relies on Weng's evidence under cross-examination that his one-third share of the Property was not a gift from the Late Father. In considering this suggestion, it is critical to appreciate the context in which this was said⁴⁵:

Q: I put it to you that the property was never a gift to you.

A: It's not a gift, okay, it's my contribution that my parents put my name in, because of my full commitment of my whole career as a plumber and all my brothers doesn't want because it's low class, plumber is low class, no one want to do; okay?

62 From the above, it is clear that Weng denied that the one-third share of the Property was a gift because he felt that it was not a *gratuitous* transfer from the Late Father. While in strict legal terms it could be categorised as a "gift" because the Late Father had no intention to retain a beneficial interest, *from Weng's perspective*, however, the share was not free: it arose from his sense of duty to his Late Father and carried familial expectations. Weng therefore felt that he had earned it because of his undertaking to carry on his father's business. Chris' affidavit, dated 25 June 2014 and filed in support of OS 422/2014, reflects the same understanding at [9]: "Weng's name was included on the title of the Property as he had contributed to [the Late Father's] business". I hold that the Late Father gave Weng the one-third interest as Weng was heavily involved in the Late Father's business and had agreed to take over the business.⁴⁶

⁴⁵ NE 12 July 2016, p66 lines 10-16

⁴⁶ Weng's closing submissions at paras 13, 15 and 16

63 I should mention, at this juncture, a letter from CPF dated 25 July 1986 which Mr Gabriel contended evinces Weng’s acknowledgment that his one-third share was held on trust for the Late Father. Prior to the 1987 transfers, Weng had applied to the CPF in April 1986 to use his CPF money for payment towards the mortgage. CPF’s reply was dated 25 July 1986. It is addressed to Chris, Yeo and Weng, and states as follows⁴⁷:

Dear Sirs/Mdm

37 JALAN KECHUBONG SINGAPORE 2879

We refer to your application dated 17th April 1986.

We are pleased to inform you that Miss Chia Hang Kiu will be allowed to use her CPF savings together with a loan to purchase one-third share in the subject property from your mother. However, in view that you were not able to provide us with evidence that the overdraft of \$150,000/- was taken by [Weng] to purchase one-third share of the property from your father, he will not be allowed to use his CPF savings to redeem the existing loan.

The letter does suggest that Weng did apply to use his CPF savings on the basis that he had taken up an overdraft of \$150,000 to purchase a one-third share of the Property from the Late Father. Mr Gabriel invites the court to infer from this that Weng must have acknowledged that he was holding his one-third share of the Property on trust for the Late Father.⁴⁸

64 When asked about this letter under cross-examination, Weng claimed that he could not remember the basis upon which the CPF application was made⁴⁹. Subsequently, when asked whether he was “actually a purchaser of [the Late Father’s] share for \$150,000”, Weng said “I’m not sure whether it’s

⁴⁷ Yeo’s AEIC at p 235

⁴⁸ Estate’s closing submissions at para 53

⁴⁹ NE 12 July 2016, p47 lines 14-19

real or not real”.⁵⁰ When Mr Gabriel put to Weng that “you were seeking to state that you were the purchaser of the \$150,000 because prior to this you were holding it in trust for your father”, Weng responded “[t]hat is not true at all”.⁵¹

65 It is clear that *none of the parties* are asserting that Weng sought to purchase a one-third share of the Property from the Late Father at \$150,000. The CPF application dated 17 April 1986⁵², which the CPF letter ostensibly refers to, does *not* state that Weng purchased the Late Father’s one-third share for \$150,000. The CPF application dated 17 April 1986 was a joint application by Chris, Yeo and Weng to use their CPF savings for the purchase of the Property. In the said form, it states that the vendor is the Late Father, the purchase price is \$150,000 and the “Date or Expected Date of Completion of Purchase Transaction” is 28 September 1984. The application form does not specify *Weng* as the purchaser. In fact, given that the transfer from the Late Father to *Yeo* was effected on 4 October 1984 and was at a purchase price of \$150,000, it may very well be the case that the parties were in fact referring to *Yeo*’s purchase of the Property from the Late Father. This was Yeo’s reading of the documents when he was on the stand. This issue of the CPF letter is a red herring, not relevant to the issue at hand.

66 To conclude, I find that Weng held his one-third share of the Property absolutely and not on trust for the Late Father.

⁵⁰ NE 12 July 2016, p48 lines 4-9

⁵¹ NE 12 July 2016, p49 lines 9-13

⁵² 3AB p141-145

67 I note at this juncture that *my findings thus far are sufficient to dispose of S 767/2015*. The one-third shares originally held by the Late Father and Weng are *not* held on trust for the Late Father. I find that the Late Father had transferred his interest in the Property to Yeo and Weng *absolutely*. As such, ***the Estate's claim in S 767/2015 fails entirely***. The only question that remains is whether the one-third share originally held by Weng is presently held by Yeo and/or Angie on trust *for Weng*.

Did Weng transfer his share of the Property to Yeo on trust?

68 Weng entered into a sale and purchase agreement with Yeo on 25 August 1986, under which Weng agreed to sell his one-third share of the Property to Yeo for \$126,000.⁵³ Similarly, the purchase price in the sale and purchase agreement between Chris and the Late Mother is \$126,000. The instrument of transfer effecting the transfer of Weng's and the Late Mother's one-third shares to Yeo and Chris respectively thus record that a total consideration of \$252,000 was received by Weng and the Late Mother.⁵⁴

69 Against this backdrop, Weng's case is that the sale and purchase agreement between himself and Yeo was a sham.⁵⁵ Yeo did not in fact provide any consideration for the transfer of Weng's one-third share of the Property.⁵⁶ Weng claims that he did not intend to benefit Yeo with the transfer and that they had agreed that Yeo would hold Weng's share on trust for Weng.⁵⁷ Weng asserts a resulting trust or a trust based on the parties' agreement that Yeo

⁵³ Yeo's AEIC at pp 252-255

⁵⁴ Yeo's AEIC at p 256

⁵⁵ Weng's closing submissions at para 95

⁵⁶ Weng's closing submissions at para 39

⁵⁷ S 89 SOC at para 17; Weng's closing submissions at para 39

would hold the Property on trust for Weng (it is not clear whether Weng is asserting an express trust, constructive trust, or both).

70 Resolution as to ownership of this one-third share thus depends on the following:

- (a) Did Weng and Yeo have an express common intention that Yeo would hold the share on trust for Weng?
- (b) If not, did Yeo furnish adequate consideration or does a presumption of resulting trust arise?
- (c) If the presumption of resulting trust arises, does the evidence show that Weng did intend to transfer his share absolutely to Yeo?

Did Weng and Yeo expressly agree on a trust at transfer?

71 Weng's initial premise was an express trust or a common intention constructive trust. In his statement of claim for S 89/2016, Weng pleaded:

It was *expressly agreed* between the Plaintiff and the 1st Defendant in various conversations between them that the Plaintiff's one-third share was to be held on trust and/or resulting trust and/or constructive trust for himself. Further or in the alternative, there was never any intention by the Plaintiff to benefit the 1st Defendant. [emphasis added]

72 His oral evidence under cross-examination, however, contradicted this. I cite a passage from the notes of evidence on 8 July 2016⁵⁸:

Q. -- it is my client's position that you have never, ever told him that he is holding a one-third share in trust for you. You are aware of that?

A. Yes, I never told him that.

⁵⁸ NE 8 July 2016, pp137-138

Q. You never told him?

A. I never told him –

73 Clearly, if there was an *express agreement* or any kind of common intention between Yeo and Weng that Yeo was to hold Weng’s one-third share on trust for him, this must have been mentioned by Weng to Yeo. Any conversation of this nature was denied by Yeo, and laid to rest by Weng’s evidence on the stand. I therefore find that there was no agreement that Yeo was to hold Weng’s one-third share of the Property on trust for Weng.

Does a presumed resulting trust arise?

74 The main focus of Weng’s case is that a presumed resulting trust arose upon his transfer of the one-third share to Yeo. Weng submits that Yeo paid no consideration, and further that he had contributed \$70,000 towards the discharge of the mortgage on the Property prior to the transfer.

75 The presumed resulting trust is an equitable response to situations where property is transferred to another in circumstances in which the provider did not intend to benefit the recipient (*Lau Siew Kim* at [35]). The *presumption* of resulting trust, however, arises when there is a transfer of property to another for which the recipient *does not provide the whole of the consideration* (*Lau Siew Kim* at [35]). The Court of Appeal in *Lau Siew Kim* clarified at [35] that “the lack of intention to benefit the recipient required for the resulting trust is precisely the fact being inferred when the presumption is applied”. Therefore, in determining whether the presumed resulting trust arises on a particular set of facts, the *key inquiry* is whether the transferor had an *intention to benefit the transferee*. However, proving that the transferee did not provide consideration (or the whole of the consideration) gives rise to a *rebuttable presumption* that there was *no intention to benefit the transferee*.

Did Yeo provide consideration for Weng's one-third share?

76 Yeo's case is that he provided consideration for Weng's share by contributing financially to the full redemption of the existing \$206,000 overdraft loan on the Property on 21 January 1987.⁵⁹ As mentioned at [16] above, Yeo contributed a total of \$11,000 in cash and CPF, as well as jointly undertook a fresh loan of \$130,000 with Chris. Therefore, if half of the fresh loan is attributed to Yeo, he would have made a contribution of \$76,000 to the discharge of the existing \$206,000 overdraft loan. Yeo's case is therefore that he did give valuable consideration to Weng for the one-third share of the Property.

77 At this juncture, it is essential to pay close attention to the \$206,000 loan which Yeo and Chris discharged on 21 January 1987. This appears to have been the *same* overdraft debt Yeo undertook when purchasing the Late Father's one-third share in 1984 (see [12] and [41] above). The undisputed evidence is that this debt was not serviced by Yeo before 1986.⁶⁰ In addition, the OCBC credit note dated 27 January 1987⁶¹ evidencing the redemption of the existing \$206,000 overdraft loan on the Property was addressed *solely to Yeo*, which is further evidence that Yeo is likely to have been the *sole borrower* under the existing overdraft loan. All this points to one significant fact: the alleged \$76,000 consideration Yeo provided to Weng for the latter's one-third share of the Property went in fact to the redemption of Yeo's own debt. Neither Weng nor any other third party benefited from Yeo's contribution of \$76,000.

⁵⁹ Defence of the 1st Defendant (Amendment No 1) in S 89/2016 ("Yeo's Defence in S 89") at para 16

⁶⁰ Yeo's AEIC at para 76, Plaintiff's closing submissions at para 26

⁶¹ Yeo's AEIC at p262

78 On behalf of Yeo, Mr John submits that Weng did benefit because following the redemption of the \$206,000 overdraft loan, Weng was no longer a mortgagor to OCBC and had no more legal liability to them.⁶² However, as I found at [42] above, Yeo *alone* undertook personal liability for repaying the loan. This is corroborated by the OCBC credit note dated 27 January 1987 (see [77] above). Weng’s only “liability” (loosely speaking) is that his interest in the house was subject to OCBC’s charge which may be enforced against *his share of the Property* if Yeo defaults on the loan. Weng was under no legal obligation as a principal to repay the \$206,000 overdraft loan. Therefore, I reject Mr John’s submission that Weng benefited from Yeo’s contribution to redeeming the \$206,000 overdraft loan.

79 A point to note is that by signing the sale and purchase agreement, Yeo had given Weng a *legally binding contractual promise* that he would pay Weng \$126,000. It is not disputed that this sum was not paid (similarly Chris did not pay her Late Mother the stipulated \$126,000 mentioned in their sale and purchase agreement). Mr Lee submits that the sale and purchase agreement executed was a sham agreement.⁶³

80 In *Chng Bee Kheng and another (executrixes and trustees of the estate of Fock Poh Kum, deceased) v Chng Eng Chye* [2013] 2 SLR 715 (“*Chng Bee Kheng*”) at [50], the High Court, citing *Snook v London and West Riding Investments Ltd* [1967] 2 QB 786 at 802, held that the “basic idea of a sham” in law refers to:

acts done or documents executed by the parties to the ‘sham’ which are intended by them to give to third parties or to the court the appearance of creating between the parties

⁶² Yeo’s closing submissions at paras 67 and 180

⁶³ Weng’s closing submissions at para 95

legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create... for acts or documents to be a ‘sham,’ with whatever legal consequences follow from this, *all the parties thereto must have a common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating.* [emphasis in original]

The crux of the sham concept is a common intention to mislead (*Chng Bee Kheng* at [52]), and the inquiry is into the “subjective intention of the parties”, which means that “the court is not restricted to the usual rules governing the interpretation of documents... [but] may have regard to a wider category of evidence, such as the parties’ subsequent conduct” (*Chng Bee Kheng* at [55]).

81 The High Court in *Chng Bee Kheng* also held at [51] that:

- (a) the person alleging that a document is a sham has the burden of proving that the parties intended the document to be a pretence; and
- (b) there is a very strong presumption that parties intend to be bound by the provisions of agreements which they enter into.

These propositions of law were affirmed in *iTronic Holdings Pte Ltd v Tan Swee Leon and another suit* [2016] 3 SLR 663 (“*iTronic Holdings*”) at [63].

82 The courts in both *Chng Bee Kheng* at [51] and *iTronic Holdings* at [63] and [64] emphasised that the finding of a sham carries with it a finding of *dishonesty*, and hence the burden of proof, though still a question of balance of probabilities, is made harder to discharge by the strong presumption that parties intend to be bound by the agreement entered into. In my view, while the finding of a sham *often* carries with it a finding of dishonesty, there can be *exceptional* cases in which the court finds a common intention to create a

sham without necessarily finding enough evidence to establish dishonesty. I find the present case to be one such example.

83 I am satisfied that Yeo's and Weng's subsequent conduct amply demonstrate that they *did not intend* for Yeo to actually pay the \$126,000 purchase price. Weng did not ask for the purchase price, and Yeo did not attempt to pay Weng the same. Yeo's evidence on the stand was that he thought the \$126,000 had been stipulated as the purchase price as it reflected the value of the one-third share of the Property. It is not clear, however, *why* Yeo and Weng decided to enter into a sale and purchase agreement rather than to effect an outright transfer. While a variety of possible reasons exist, I do not find it necessary to make a finding on this. In my judgment, there is not enough evidence to establish dishonesty on the part of Yeo or Weng (given their motive for creating the appearance of a sale and purchase agreement is unclear). I find, however, that the common understanding between them at that time was that the purchase price of \$126,000 did not actually have to be paid by Yeo. Similarly, there is no evidence that Chris paid the \$126,000 she promised in her sale and purchase agreement to her Late Mother. To this extent, I accept Weng's position that Yeo's contractual promise to pay him \$126,000 was a sham in that both parties never intended it to be enforced.

84 My finding is reinforced by Yeo's conduct in the present proceedings. In his defence in S 89/2016,⁶⁴ and similarly in Mr John's closing submissions,⁶⁵ the \$76,000 contribution Yeo made to the running down of the \$206,000 overdraft loan was referred to as the "valuable consideration" he gave in exchange for Weng's one-third share in the Property. The contractual promise

⁶⁴ Yeo's Defence in S 89 at para 17

⁶⁵ Yeo's closing submissions at para 180

was not seriously intended by either party, and as such, it cannot be the basis upon which the court finds that consideration was given by Yeo for the purposes of the presumed resulting trust.

85 To conclude, neither (a) Yeo's contribution of \$76,000 to extinguishing the \$206,000 overdraft loan in January 1987, nor did (b) Yeo's contractual promise to pay Weng \$126,000 constitute valuable consideration given by him to Weng for his one-third share of the Property. As such, equity intervenes and I find that the presumption of resulting trust arises in Weng's favour.

Was there direct evidence of Weng's intention to make an outright transfer to Yeo?

86 In *Lau Siew Kim* at [36] and [37], the Court of Appeal explained:

The presumption of resulting trust is based on a traditional common-sense presumption that, outside of certain relationships, an owner of property *never intends to make a gift*, and, by extension, that a person who provides the money required to purchase a property intends to obtain an equivalent equitable interest in the property acquired. *Equity, with its superbly realistic grasp of human motivations, "assumes bargains, and not gifts"...* the presumption of resulting trust is *an inference or even an estimate as to what a party's intention is likely to be*, based on certain assumptions arising from a set of given facts. [emphasis added]

The key premise underpinning the presumption of resulting trust is that outside certain relationships, people are assumed not to have intended gifts. Instead, parties are assumed to have struck a fair bargain.

87 As pointed out by the Court of Appeal in *Lau Siew Kim* at [35], however, there is an important distinction between the presumption of resulting trust and the resulting trust itself. The absence of consideration shifts

the burden of proof to Yeo, who now has to rely on other evidence to prove that Weng intended an outright transfer to Yeo.

88 Mr Lee (following upon Mr Gabriel’s response to closing submissions) raised an objection to this line of inquiry. He submits that Yeo did not plead in his defence any material facts in support of the proposition that Weng had intended to transfer his beneficial interest to Yeo.⁶⁶

89 O 18 r 7(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) states that “every pleading must contain, and contain only, a statement in a summary form of the *material facts* on which the party pleading relies for his claim or defence” [emphasis added]. As the Court of Appeal held in *V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 (“*V Nithia*”) at [36]:

pleadings delineate the parameters of the case and shape the course of the trial. They define the issues before the court and inform the parties of the case that they have to meet. They set out the allegations of fact which the party asserting has to prove to the satisfaction of the court and on which they are entitled to relief under the law. Adherence to the rules of pleadings promotes good case management and results in cost and time saving efficiencies.

While parties are generally bound by their pleadings, “the law permits the departure from the general rule in limited circumstances, where no prejudice is caused to the other party in the trial or where it would be clearly unjust for the court not to do so” (*V Nithia* at [40]).

⁶⁶ Weng’s supplemental closing submissions dated 18 August 2016 at para 29

90 In the present case, insofar as Mr Lee’s submission is that Yeo did not sufficiently plead his alternative case that the presumption of resulting trust is rebutted, I disagree. First, I observe that the legal conclusions to be drawn from material facts need not be pleaded (*MK (Project Management) Ltd v Baker Marine Energy Pte Ltd* [1994] 3 SLR(R) 823 at [26]). There is therefore no need for Yeo to specifically plead that the presumption of resulting trust, if it arises, is rebutted. While Yeo did not specifically deny the assertion that Weng lacked an intention to benefit Yeo with the transfer in his defence, it is sufficient in my view that Yeo denied all the allegations in the statement of claim that were not expressly admitted. From the statement of claim, it is clear that Yeo was disputing the assertion that Weng lacked an intention to benefit Yeo in the transfer, or that the transfer from Weng to him was anything but an outright transfer of both legal and beneficial interests. More importantly, both plaintiffs fully understood Yeo’s case and were not prejudiced in any way. Thus, it is open to the court to determine whether the presumption of resulting trust is rebutted. In my judgment, *Weng did intend an outright transfer* to Yeo, for the reasons that follow.

91 First, Weng applied for a Housing Development Board (“HDB”) flat in April 1992.⁶⁷ He declared to HDB on 6 August 1994 that he did not “own or have any interest or have any interest through a nominee in a private property/HUDC Phase I & II flat/Prewar SIT flat”.⁶⁸ This is consistent with the conclusion that he had made an outright transfer of his interest in the Property to Yeo. Under cross-examination, Weng essentially said that he was not telling the truth in his HDB application.⁶⁹ Mr Lee submits that whether Weng was

⁶⁷ 6 AB pp 6-7

⁶⁸ 6 AB p 8

⁶⁹ Weng’s closing submissions at para 62

telling the truth in his HDB application is a matter between Weng and HDB, and has no bearing on the resulting trust.⁷⁰ Nevertheless, while Weng now retrospectively claims that he was not telling the truth in his HDB application, his *own* declaration to HDB is still, in my view, evidence which undermines his present claim that he had retained an interest in the Property.

92 Secondly, Weng's factual case is premised on Yeo knowing and agreeing to hold the one-third share of the Property on trust for Weng. Yeo's subsequent conduct, however, is more consistent with him acting as absolute proprietor of the Property rather than as a trustee. First, Yeo invested a substantial amount of money into rebuilding the Property. It is unlikely that Yeo would have been willing to invest so heavily in improving the Property if he did not view it as belonging to him. Second, Yeo or Angie did not seek to reclaim any rebuilding costs from Weng, but instead only sought to claim a third of the costs from Chris whom they viewed to be a one-third owner of the Property. All this shows, *at the very least*, that Yeo must have viewed himself as an absolute owner of the Property even prior to this litigation. This is inconsistent with the alleged common understanding and agreement between Weng and Yeo that Yeo would hold Weng's share on trust for him.

93 Weng was unable to give a good explanation as to why he would transfer his share on trust to Yeo. He suggested that, having helped his father with his bankruptcy, he became afraid that the same fate would befall him. Security for the family home, however, could just as easily have been protected by a transfer of his interest (in like manner to what the Late Father did when the Late Father sought to protect the family home).

⁷⁰ Weng's closing submissions at para 57

94 Weng's own conduct prior to this litigation has been consistent with Yeo being the absolute proprietor of the second one-third share. Contrary to Mr Lee's submissions, I do not find Weng's silence equivocal in the circumstances. He contended he had no knowledge that Yeo transferred a one-third share to Angie in 1991. He was still living at the Property at this point (his application to the HDB was made in 1992). Yet, his explanation, "after 1987, after I transferred to Yeo, I got nothing to do with it", belies his claim to ownership. When the family moved out of the Property for the renovation in 1999, Weng assisted. His contention on cross-examination that he had no idea about the redevelopment but assisted at his Late Mother's request smacks of the incredible. Throughout Yeo's renovation costs dispute with Chris, and during the OS 442/2014 litigation, Weng failed to make his claim. On the stand, he said "I don't remember" about the previous lawsuit and claimed he was not aware that Chris had filed an affidavit suggesting the Property was a family asset. These contentions were not persuasive. Even after the demise of the Late Mother in October 2014, Weng did not seek to stake a claim to the one-third share he transferred to Yeo in 1987. His contention was first raised with Angie and Yeo in July 2015, in separate telephone calls.

95 Finally, Weng relies heavily on a contribution of \$70,000 or \$100,000 to the discharge of the overdraft loan sometime in 1986. I note as an aside that a voluntary injection of funds to help mortgage repayments does not, on its own, establish Weng's proprietary interest in the Property: the capital injection is, at best, only relevant as evidence that Weng may have still treated the Property as his. Weng, however, admitted that the money originated from his Late Father's business, although he contended on the stand that the Late Father had given the sum to him. Weng was only receiving a minimal allowance when he worked for the Late Father. After his Late Father's bankruptcy, he worked alone as a plumber without a registered business and

was not in a stable financial condition. The evidence was clear that the \$100,000 came from the sale of a property (“the Lichfield property”) that was owned by a company in which the Late Father had a 60% share, and Weng and Chia Kwok Kee had a 40% share.⁷¹ It appears more likely that at that point, Weng simply viewed the overdraft debt as part of the debts chalked up by his and the Late Father’s business, and tried to do what he could to repay the loan owed to the bank. The payment of the \$100,000 is also consonant with Yeo’s evidence that when Chiong and Weng had initially asked him to take over the overdraft as borrower with the bank in 1984 (when the market value of the property was estimated at about \$150,000), Chiong had promised that they would try to help repay the amount owing on the overdraft, which at the time of their conversation stood at \$250,000. The Estate chose not to rebut this contention by calling Chiong, although Yeo raised the point even in his Defence⁷².

96 To conclude, I find that the evidence irresistibly points to the conclusion that Weng intended to transfer his share in the Property *absolutely* to Yeo. Both the documentary evidence and the parties’ conduct through the years are consistent with that conclusion. Weng’s surrender of his beneficial interest, while a “gift” in strict legal nomenclature, was a logical decision to make in the light of his financial situation at the time, and was not without wider benefit to him. It freed him of worry that his business debts could deprive his parents, himself and other members of their family of their home, it released him from any moral obligation he may have felt as a co-owner living in the Property to help to pay the mortgage outstanding, and

⁷¹ Weng’s AEIC at para 31 and p 62.

⁷² Yeo’s Defence in S 89, at [23(f)].

subsequently, it allowed him to pursue other options for housing with the HDB.

97 Chris' conduct is also relevant in considering the intentions of the various actors. Although Yeo was the sole borrower under the fresh loan he took up in 1984, Chris used her CPF money to run down Yeo's debt on the transfer of the Late Mother's share to her in 1987. Over the years, she also used her CPF to contribute to running down the overdraft debt. It appears to me that the intention of the family, from 1984, was to secure the home for the parents and the members of the family who lived there. *This was the family compact*. It actuated the father's first transfer in 1984, and forms the foundation as to why Yeo is the sole borrower on the loan secured in 1984. Prior to the second series of transfers to Yeo and Chris in 1987, Weng had sought to use his CPF but was not allowed to do so. Thus, he would not be able to help with the repayments that, in the longer run, could secure the home for the family. He therefore looked to Yeo to do so. Yeo and Chris then followed up to maintain the payments, later with the aid of Angie's CPF contribution as well. The family compact also explains why the Lichfield Property proceeds were used to pay down the debt outstanding on the overdraft even though, as a legal matter, Yeo was the sole borrower on the bank loan. In the face of his father's and brothers' business debt, Yeo took on the liability in 1984 in order to protect the family home. As a fresh graduate, it was clear that he did not quite have the means to do so. Chris, Weng and Chiong, being aware of the risk of foreclosure, subsequently came in to help, with Chris also taking on part of the mortgage. Indeed, these are siblings who have borne much adversity together for the greater good of the family.

98 While all had a part to play, the facts surrounding the rebuilding of the Property show that throughout, Chris, Yeo and Angie were looked upon by the

rest as owners of their shares, both legally and beneficially. Chris, Yeo and Angie also behaved as such. While the rebuilding was in progress, the Late Father was discharged from bankruptcy; yet, no mention was made of any return of a share to him. While there was an expectation that their parents would live in the home, *this was on the premise that Chris, Yeo and Angie were both the legal and beneficial owners* of their shares of the Property. On the part of Chris, Yeo and Angie, *their conduct was founded upon filial expectations, not legal obligations*. Hence Angie's evidence - which was not contradicted - was that there was, prior to the rebuilding, a discussion about whether a pair of semi-detached homes should be built instead of a single bungalow. This was a logical query because the owners were Chris, on the one hand, and Yeo and Angie, on the other. Respecting the wishes of their Late Mother, a single bungalow was built.

The claims against Angie; indefeasibility of Yeo and Angie's title; estoppel

99 The claims against Angie were premised on a trust being established over either of Yeo's two one-third shares of the Property. With my conclusion that there is no trust in relation to either one-third share, there is no need to consider if Angie holds her one-third share on trust for the Late Father or Weng. Yeo, as legal and beneficial owner of his then two-thirds share of the Property, had the right to dispose of the Property to whomever he wished and Angie received good title following that transfer. In any event, I accept Angie's evidence that she believed Yeo held his two-thirds absolutely, and she sought to purchase a one-third share so that she could help shoulder the mortgage with her CPF money. In that regard, she would have no notice of any trust arrangement (which I have held does not exist). Given the absence of any evidence as to expressions of a trust made by the various parties (and the lack of any direct assertion based on personal knowledge from the Estate's

sole witness), any contention that she ought to have known would also be without any basis.

100 In addition, with my finding that the plaintiffs are unable to establish that a trust arises in their favour *on the evidence*, there is no necessity for me to consider whether they can assert their alleged unregistered beneficial interests against Yeo's and Angie's registered titles. The discussion, which on the facts before me I find unnecessary to deal with, would have involved three Court of Appeal authorities that do not sit easily with each other: *United Overseas Bank Ltd v Bebe bte Mohammad* [2006] 4 SLR(R) 884; *Ho Kon Kim v Lim Gek Kim Betsy and others and another appeal* [2001] 3 SLR(R) 220; and *Loo Chay Sit*.

101 Finally, Yeo and Angie rely upon estoppel as a last-stop defence in the event that they are held to be trustees. The estoppel defence is premised upon the circumstances surrounding the rebuilding of the Property. It is not clear which kind of estoppel Yeo and Angie intend, and the plaintiffs submit that no estoppel can be made out. Given the nature of the evidence adduced, it is not surprising that Yeo and Angie had difficulty articulating the category and factual premise of any estoppel. In any event, on the facts as I have found, there is no need for this issue to be dealt with.

Conclusion

102 In conclusion, I dismiss Suits 767/2015 and 89/2016.

103 As requested, I will hear parties on costs.

Valerie Thean
Judicial Commissioner

Gabriel Peter and Pravin Thevar (Gabriel Law Corporation) for the
plaintiff in S 767/2015;
Daniel John and Kevin Cheng (Goodwins Law Corporation)
for the first defendant in S 767/2015 and S 89/2016;
Eddie Koh (S H Koh & Co) for the second defendant in
S 767/2015 and S 89/2016;
Kelvin Lee (WNLEX LLC) for the third defendant in
S 767/2015 and the plaintiff in S 89/2016.
