

Koh Joo Ann (alias Koh Choon Teck) v First Grade Agency Pte Ltd  
[2009] SGHC 87

**Case Number** : Suit 163/2008, SUM 5194/2008  
**Decision Date** : 09 April 2009  
**Tribunal/Court** : High Court  
**Coram** : Woo Bih Li J  
**Counsel Name(s)** : Tan Yew Cheng (Leong Partnership) for the plaintiff; Adrian Wong and Ho Hua Chyi (Rajah & Tann LLP) for the defendant  
**Parties** : Koh Joo Ann (alias Koh Choon Teck) — First Grade Agency Pte Ltd

*Land*

*Equity*

*Trusts*

9 April 2009

**Woo Bih Li J:**

## **Introduction**

1 At the heart of this action is the property known as 88 Stevens Road, Stevens Court, #02-02, Singapore 257865 ("the Property"). The plaintiff, Koh Joo Ann @ Koh Choon Teck ("Koh"), is the registered proprietor of the Property. On 22 August 2007, the defendant, First Grade Agency Pte Ltd ("First Grade"), lodged a caveat against the Property ("the Caveat") on the basis that Koh is not the beneficial owner of the Property and holds the Property on trust and that the legal title to the Property was to be transferred by Koh upon demand. In this action, Koh sought the removal of the Caveat and a declaration that Koh is the beneficial owner of the Property ("the Declaration"). First Grade and another company, Inhil Investment Pte Ltd ("Inhil"), counterclaimed for an order for Koh to transfer the Property to yet another company, Yeo Siak Hor Pte Ltd ("YSHPL") or such other nominee as may be nominated.

## **Facts of the case**

### ***Background***

2 First Grade is a company incorporated in Singapore, and is the marketing arm for the Sambu group of companies ("the Sambu Group"), which are family companies in the business of the production of coconut-based products in Indonesia. The President of the Sambu Group is Tay Juhana. Tay Juhana is the second maternal uncle of Koh. Inhil and YSHPL are companies in the Sambu Group. In fact, YSHPL is named after the mother of Tay Juhana.

3 In 1967, Tay Juhana started a coconut oil processing plant under PT Pulau Sambu ("PSK") on Kuala Enok, an island in the Riau province of Sumatra, Indonesia. The business grew over the years and expanded into the Sambu Group which has more than a dozen companies.

4 Koh's mother died when he was seven years of age. He then went to stay with his grandmother Yeo Siak Hor (Tay Juhana's mother) at 36 Jalan Arnap, Singapore. Koh was financially supported by

Tay Juhana. In 1976, six months after he completed national service, Koh commenced work as a supervisor at PSK. Over the years, Koh worked his way up through the ranks and eventually was appointed managing director of PSK in 1994.

### ***The Property***

5 In the early 1980s, Inhil, a company run by Tay Juhana's sister, Tay Ban Geok @ Tay Teng Hoei ("Mdm Tay"), developed units in an apartment project known as Stevens Court ("the Project") for commercial sale. In total, there were six units, from levels two to four, developed within the Project. The units were eventually not sold, however, and ownership was placed in the names of various members of the Tay family. In this regard, the legal title for three of the units was transferred in 1994 and the legal title for the remaining three units, which included the Property, was transferred in 1996. The registered proprietors of the units by end-1996 were:

Unit number	Name of registered proprietor
#02-01	Mdm Tay
#02-02 (the Property)	Koh
#03-01	Tay Chuan Yao (son of Tay Juhana)
#03-02	Tay Tuan Lee Melvin Tay Kia Hui Joanna (children of Tay Jui Cheow, brother of Tay Juhana)
#04-01	Wong Choon Lan (wife of Tay Juhana)
#04-02	Teh Jui Kern (brother of Tay Juhana)

6 There was documentary evidence that showed that the transfer of each unit in Stevens Court, including the Property, was structured as a sale of the property to the transferee. This included the director's resolution of Inhil dated 22 February 1996 entitled "Sale of Properties at No. 88 Stevens Road". It was not in dispute that none of the registered proprietors paid any money for his or her respective unit. For the units transferred in 1994, the stated consideration in the transfer documents was S\$550,000. For the units transferred in 1996, the stated consideration in the transfer documents was S\$700,000. With regards to the S\$700,000 being the purported consideration for the Property, First Grade alleged that it had paid S\$550,000 for each of the units and Inhil paid the balance of S\$150,000. At trial, Mdm Tay admitted that the \$150,000 had been borrowed from Tay Juhana [\[note: 1\]](#).

7 The Property was not used by Koh for residence, but was used as an informal office and a meeting place for meetings called by Tay Juhana. Koh was not given the title deeds for the Property. He did not pay for the property tax, management fees and utilities. He did not hold the keys to the Property. In 2002 and 2003, the Property was used to secure loans made to First Grade and/or a

subsidiary company, Fairteck Holdings Pte Ltd ("Fairteck").

### **Events leading to this action**

8 In 2004, Koh and Tay Juhana had a falling out in their relationship. It is First Grade's case that Koh had managed the Sambu group poorly or improperly in the absence of Tay Juhana. The truth of this, however, is disputed by Koh. In any event, in a series of actions, Tay Juhana stripped Koh of most of the authority he had. This led to the resignation of Koh on 16 August 2004 from his various positions in the Sambu Group.

9 On 25 August 2004, Koh had a meeting with Tay Juhana at his home. According to First Grade, at this meeting, Koh indicated that he was resigning from his positions in the Sambu Group and would return everything to the family, ie, Koh would resign and return shares in the Sambu Group which he held on trust for the Sambu Group and that the legal title of the Property would be transferred to First Grade or its nominees. Koh's version is that he had no choice but to agree to return the shares in the Sambu Group held by him as Tay Juhana had demanded it in return for Koh's release as guarantor for certain bank loans granted by Bank Negara Indonesia to the Sambu Group. Koh had signed the said guarantee sometime in 1997. Following this, Tay Juhana demanded that Koh agree to sign a transfer of the Property. Koh said he agreed as he feared Tay Juhana's power and ability to make life difficult for him and his family. He alleged that on hearing that Koh would consent, Tay Juhana immediately said that he would give Koh a written undertaking to support him for the rest of his life if the transfer was signed.

10 On 13 September 2004, Koh signed the transfer forms for all his shareholdings in the Sambu Group. Koh also signed a letter of release of all claims against First Grade and a letter appointing Mdm Tay, *inter alia*, to sell or dispose of the Property. Meanwhile, Koh continued to receive his last-drawn salary (*viz*, S\$40,000 per month) and bonuses up to December 2004. From January 2005 to July 2007, Koh received S\$25,000 per month. According to First Grade, Tay Juhana allowed such payments for the sake of Koh's mother and knowing that Koh had a family to feed. Koh's version was that Tay Juhana was simply following up on his undertaking given at the meeting of 25 August 2004 to provide financial support in exchange for the transfer of the Property.

11 In May 2007, Mdm Tay made arrangements for Koh to sign the transfer instrument to transfer the Property by way of a gift to YSHPL. On 28 May 2007, Koh received a copy of the transfer instrument through email from Tay Juhana's secretary. On 13 June 2007, Koh's solicitor received a copy of the same document. Koh insisted on meeting Tay Juhana to obtain a written undertaking to support him financially in exchange for signing the transfer instrument. Tay Juhana refused to meet him until the transfer instrument was signed. Following this turn of events, the monthly remittance of \$25,000 ceased altogether in July 2007, and on 22 August 2007, First Grade lodged the Caveat. The grounds for the Caveat appeared as follows:

By virtue of an agreement between the Registered Proprietor and the Caveator that the Registered Proprietor would hold (the Property) on trust for the Caveator and that the legal title to the Property would be transferred to the Caveator upon demand made by the Caveator on the Registered Proprietor.

12 On 7 September 2007, Koh through his solicitors demanded that First Grade remove the Caveat. An exchange of correspondence between the parties yielded no results, with First Grade threatening legal proceedings to claim the Property. However, no legal action was commenced then. On 11 January 2008, Koh lodged a Statutory Declaration with the Singapore Land Authority pursuant to s 127(2) of the Land Titles Act, claiming that the lodging of the Caveat had been vexatious, frivolous,

or not in good faith. On 18 January 2008, the Registrar of Titles issued a notice to First Grade, notifying it that the caveat would be cancelled upon expiry of 30 days unless an order of court to the contrary was served or unless satisfactory evidence was furnished to show that the cancellation should be withheld or deferred. First Grade through its solicitors Rajah & Tann submitted written representations dated 13 February 2008 alleging, *inter alia*, that First Grade had paid part of the purchase price for the Property and that the balance of the purchase price had been paid by Inhil. The Registrar of Titles' reply on 14 February 2008 was that the withdrawal of the Caveat would be withheld pending any orders made by the court.

13 Subsequently, Koh commenced this action for various orders including an order for the removal of the Caveat. I ordered the removal of the Caveat. There is an appeal against this decision.

14 I should also mention that in the course of the trial, there was an application to add Inhil and Tay Juhana as plaintiffs to the counterclaim. I allowed only Inhil to be added because Tay Juhana was undisputedly a "foreign person" within the meaning of the Residential Property Act (Cap 274, 1985 Rev Ed) ("RPA") and, in my view, could not be entitled beneficially to the Property, in any event. There is also an appeal against my decision not to allow him to be added.

### **Koh's case**

15 Koh's case in his pleadings was that the transfer of the Property to his name on 11 April 1996 was a gift and not on trust for anyone else. According to Koh, sometime in 1993 or 1994, Tay Juhana had told him that he (*ie*, Tay Juhana) was giving him (*ie*, Koh) a property at Stevens Court. According to Koh, it was unsurprising that he would receive such a gift, as it was a reward for his commitment, loyalty, sacrifice and/or contribution to the Sambu Group. In addition, there was no agreement made at the meeting of 25 August 2004 between Koh and Tay Juhana for Koh to transfer the Property unconditionally to First Grade and/or Inhil upon demand.

### **The case for First Grade and Inhil**

16 The case for First Grade and Inhil from the pleadings was that the Property was not intended to be a gift, but was transferred on condition that Koh was to faithfully work for the Sambu Group until retirement, *ie*, until he was 60 years of age. Therefore, Koh was to hold the Property on trust for First Grade until he fulfilled the condition. However, he did not fulfil the condition, having resigned before he reached the age of 60.

### **The proceedings**

17 Koh called four witnesses to give evidence, including Koh himself and Mdm Tay who was cross-examined as a hostile witness. At the end of Koh's case, First Grade elected to call no evidence and submitted that it had no case to answer.

### **The burden of proof**

18 Drawing from the Court of Appeal's decision in *Bansal Hermant Govindprasad v Central Bank of India* [2003] 2 SLR 33 ("*Bansal*"), it can be said that a no case submission would succeed if accepting Koh's evidence at its face value, *ie*, on a *prima facie* basis, no case has been established in law, or in the alternative, the evidence led for Koh was so unsatisfactory, or unreliable, that the court should find that the burden of proof had not been discharged (see *Bansal* [14]–[16]). Making reference to *Bansal*, in *Soh Lup Chee v Seow Boon Cheng* [2004] SGHC 8, Choo Han Teck J further elaborated (at [20]):

The basic rule is that the plaintiff must first prove its case to the court. The task of the Defence is to expose the weaknesses and flaws in that case so that the court may, on a balance of probabilities, find that the plaintiff's case cannot be sustained. Thus, all the tussles and the cut and thrust at trial are manoeuvres towards that objective. Where a defendant offers no evidence, it has to persuade the court that either the plaintiff's case cannot stand on its own, even without any rebuttal evidence from the Defence, or that the evidence does not disclose any cause of action in law.

19 The principles enunciated in *Bansal* would be the established law and have been applied subsequently in, *inter alia*, *Sukhpreet Kaur Bajaj d/o Manjit Singh v Paramjit Singh Bajaj* [2008] SGHC 207 ("*Sukhpreet*"), *Relfo Ltd (in liquidation) v Bhimji Velji Jadva Varsani* [2008] 4 SLR 657, *Creanovate Pte Ltd and Another v Firstlink Energy Pte Ltd* [2007] 4 SLR 780, *GYC Financial Planning Pte Ltd v Prudential Assurance Company Singapore (Pte) Ltd* [2006] 2 SLR 865 and *Lim Swee Kiang v Borden Co (Pte) Ltd* [2005] 4 SLR 141 ("*Lim Swee Kiang*"). More recently, in *Lim Eng Hock Peter v Lin Jian Wei* [2009] SGHC 31, Chan Seng Onn J applied *Bansal*, *Lim Swee Kiang* and *Sukhpreet* and held (at [209]):

I agree with the defendants that the test of whether there is no case to answer is whether the plaintiff's evidence at face value establishes no case in law or whether the evidence led by the plaintiff is so unsatisfactory or unreliable that its burden of proof has not been discharged ....

### **The existence of a trust**

20 Koh's assertion that there was no trust *vis-à-vis* the Property rested mainly on his evidence by way of his Affidavit-of-Evidence-in-Chief and his testimony in court that Tay Juhana had meant the Property to be a gift to him. According to Koh, sometime in 1993 or 1994, Tay Juhana had told him that he (*ie*, Tay Juhana) was giving him (*ie*, Koh) a property at Stevens Court. The Property had been given to Koh to reward Koh for his considerable contribution to the Sambu Group. Koh came to know that the Property was transferred to him when he received a property tax bill sent to his home at 32 Tung Po Avenue in December 1996.

21 Mdm Tay also confirmed, when cross-examined, that she did not mention anything about a trust to the lawyer who acted in the transaction in respect of the transfer to Koh [\[note: 21\]](#). This was not surprising in view of the RPA.

22 On the other hand, First Grade relied on various undisputed facts to support its contention that there had been no gift of the Property to Koh. One of such facts was that First Grade paid for the property tax and maintenance charges of the Property. In contrast, the property tax for the other units at Stevens Court was paid by the respective proprietors. Presumably they paid for their maintenance charges too.

23 At this point, I should refer again to the assertion by First Grade and Inhil that Koh was holding the Property in trust until he faithfully served the Sambu group up to 60 years of age. They asserted that this condition applied to all the subsidiary proprietors (or their parents) of the other units in the Project too. If this allegation was true, then the payment by these others of property tax or maintenance charges was neither here nor there since their units would in any event also not belong to them. In any event, I did not accept the allegation about the condition. This was a late allegation made by way of an amendment to their pleadings. Secondly, if the Property was meant to be an incentive to Koh to serve faithfully until he reached 60, there was no valid reason why it should be transferred to him before he had met the condition especially with all the attendant expenses, like stamp duty. I rejected the allegation about the condition but, for the avoidance of doubt, I would

mention that I did not reject the allegation of a trust *per se* as I shall elaborate.

24 In the circumstances, the fact that Koh did not pay for the property tax and maintenance charges was an indicator that he was not the beneficial owner. Although he said that the Property was being used by Tay Juhana as an office (at one time) and also as a meeting place, it seemed to me that this begged the question - why was Koh not using the Property even to earn some rent? It seemed to me that that was because he was not the beneficial owner.

25 Secondly, Koh did not keep the title deeds to the Property. Koh's explanation was that he was working and living in a remote area, *viz*, Kuala Enok, and he had had marital problems with his first wife and trusted Tay Juhana more than her. This assertion, in my opinion, was dubious, as there was no reason why Koh could not have kept the title deeds to the Property outside the matrimonial home, if he was truly the beneficial owner. There was also no suggestion that the title deeds of other properties acquired by Koh after his marital woes started, were also not kept by Koh.

26 Thirdly, the fact that Koh did not have a set of the keys to the Property suggested that he was not the beneficial owner. He explained that he was not staying there but I would have thought that if he was the beneficial owner, he would want to keep a set of the keys so as to check on the condition of the Property from time to time.

27 Fourthly, there was the failure to move Maigawaty, Koh's girlfriend (who became his second wife) into the Property. Under cross-examination, Koh testified that in 1998, there was racial violence in Jakarta. So, he thought of moving Maigawaty to Singapore for security. However, he did not move her into the Property. His explanation was that he had promised his daughter from his first wife, who was in secondary one at that time, that she would be given the Property when she reached 21. By moving the second wife into the Property, he would be breaking his promise to this daughter and his promise was of importance to him<sup>[note: 3]</sup>. He claimed that he had mentioned this intention to Tay Juhana in 1993 or 1994 when the transfer to Koh was discussed. This daughter was then 11 years of age.

28 I doubted the veracity of his gift explanation. Firstly, moving Maigawaty into the Property, pending the acquisition of another property in Singapore would not in itself compromise the intended gift to this daughter. Secondly, as Koh admitted, he did not take any step to transfer the Property to the daughter when she turned 21 in about 2004<sup>[note: 4]</sup>. His explanation was that he was preoccupied with his divorce at that time, but he could not explain why he did not even bring up the fact that he had promised the Property to this daughter when Tay Juhana demanded the Property at the meeting on 25 August 2004<sup>[note: 5]</sup>.

29 After the meeting of 25 August 2004, Koh had signed a letter of appointment authorising Mdm Tay to, *inter alia*, "sell and dispose of [the Property] either by private auction for such price as to her shall deem reasonable, and to subject to terms and conditions, if any, as she shall think fit". At one point, he suggested that he did so because the letter was to allow Mdm Tay to deal with the mortgage on the Property. The second paragraph of the letter had included the following, "(including giving notice to discharge the Mortgage)" but it was clear from the letter that it was not confined to dealing with a mortgage alone. In any event, Koh's execution of that letter could be said to be pursuant to his agreement to transfer the Property and so, it did not add anything more to the factors in support of the existence of a trust.

30 As regards the evidence of the Property being mortgaged as security for loans in favour of First Grade or Fairteck, I was of the view that this did not place much weight against Koh. He had

elaborated that #03-02 in the Project was mortgaged for a similar purpose and he had also mortgaged a property in Indonesia (which was given to him) to help the Sambu Group at the appropriate time.

31 First Grade and Inhil also sought to rely on additional evidence from the contents of an internet chat conversation between Melvin Tay and Koh which Koh sought to counter. In view of the evidence which I have already mentioned above, it is unnecessary for me to elaborate on such additional evidence.

32 Koh's evidence that the Property was given to him was not satisfactory in the circumstances and I concluded that he held the Property on trust.

### **Beneficiary of the trust**

33 Since there was a trust over the Property, the next question was the identity of the beneficiary. The evidence suggested that it was Tay Juhana who had provided the money for the purchase of the Property. For instance, as mentioned above, Mdm Tay, when cross-examined, said that the \$150,000 that Inhil paid for the Property had come from Tay Juhana, although she attempted to construe the money received by Inhil as being a loan from Tay Juhana<sup>[note: 6]</sup>. She was later cross-examined as to the source of the money for First Grade's payment of \$550,000 for the Property. Her denials to a suggestion that it was Tay Juhana who had provided the money were unconvincing<sup>[note: 7]</sup>. I would add that Mdm Tay admitted that Tay Juhana had provided about 50 per cent of the money needed to buy the Stevens Court land<sup>[note: 8]</sup>.

34 In any event, it was not material whether it was Tay Juhana who had personally provided the money for the purchase of the Property. In the first place, I found that the purchase was a sham. Inhil had to dispose of the Property along with the other units of the Project. The market was poor as First Grade and Inhil had alleged. So each of the units was transferred to family members instead of being sold to third parties. However, the transferees could not be "foreign persons" in view of the requirements of the RPA and the transfers were made to look as if they were done pursuant to genuine sales. How could Inhil be *bona fide* selling the Property to Koh for \$700,000 and yet purportedly pay for \$150,000 of the purchase price? The other \$550,000 purportedly came from First Grade which is a company in the Sambu Group. I add that even if some of the units were meant to be beneficially owned by the transferees, it was clear to me that this did not apply to the Property for the reasons I have stated.

35 The truth of the matter was that Tay Juhana was in control of the Sambu Group. All the transfers were done on his bidding. That is why when he spoke to Koh in 1993 or 1994 about the transfer of the Property to Koh, Tay Juhana did not mention which company he was representing. It was unnecessary to do so. Likewise, when Tay Juhana spoke to Koh on 19 August 2004 to claim the Property back, he again did not say which company he was representing. That is why First Grade and Inhil had some difficulty in saying who the true owner was and why there was an attempt to bring in Tay Juhana as a plaintiff in the counterclaim as well.

36 Accordingly, I was of the view that the true beneficiary of the trust over the Property was Tay Juhana.

### **The alternative counterclaim**

37 The primary contention of First Grade and Inhil was that the Property was held in trust for either of them. Alternatively, they asserted that Koh had agreed (in the 25 August 2004 meeting) to

relinquish his shares in companies in the Sambu Group and to relinquish the Property in exchange for his discharge as a guarantor for the liabilities of the Sambu Group.

38 Koh's evidence was that the shares and his guarantee were separate from the Property and treated separately in the discussion of 25 August 2004. It was after the shares and the discharge of his guarantee were agreed to that Tay Juhana asked for the Property and Koh had agreed. It was then, only after Koh had agreed to transfer the Property, that Tay Juhana said that he would pay for the living expenses of Koh and that he would put this promise down in writing. Tay Juhana did not give evidence.

39 I accepted the submission for First Grade and Inhil that based on Koh's evidence, the alleged promise by Tay Juhana to pay for the living expenses and to put this down in writing was not given in exchange for Koh's agreement to transfer the Property. It also seemed to me that a promise to pay for the living expenses was too vague to be enforceable. In any event, Koh was not seeking to enforce such a promise.

40 However, based on Koh's evidence again, his agreement to transfer the Property was not in exchange for the release of his guarantee. In addition, it is significant that the letter of representation by Rajah & Tann dated 13 February 2008 to the Registrar of Titles (see [\[12\]](#)) did not rely on any independent enforceable agreement in 2004 but on the trust arrangement said to be in or around 1996. In the circumstances, the alternative counterclaim failed because there was no consideration to enforce Koh's agreement in 2004 to transfer the Property. First Grade and Inhil had to succeed on the trust argument or not at all.

**Did Tay Juhana agree to give a written undertaking to pay for the living expenses of Koh for the rest of his life?**

41 Did Tay Juhana say that he would pay for Koh's living expenses and also to put this down in writing? True, Koh had received \$40,000 per month and then \$25,000 per month thereafter until the latter was stopped, as I mentioned above. However, this could have been done without any express promise from Tay Juhana to do so, let alone a promise to also put this down in writing. As regards the latter, it seemed to me unlikely that Tay Juhana would tie himself down to such a responsibility in writing. That was not the way he operated. The fact that Koh had not asked for the written promise while he was being asked to sign first the letter of appointment for Mdm Tay and then the instrument of transfer, also militated against such an allegation.

42 In any event, it was unnecessary in the circumstances for me to make a finding as to whether Tay Juhana made either promise.

**RPA**

43 It was undisputed that at all material times, Tay Juhana was an Indonesian citizen.

44 The relevant provisions of the RPA that were in force at the time of the transfer of the Property to Koh would be ss 3 and 23. The provisions would have restricted Tay Juhana's right, as a foreign citizen, to own residential properties such as the Property, whether in his own name or as a beneficiary to a trust or through nominees. In this regard, the pertinent provisions state:

**Prohibition on transfer to, or purchase or acquisition by, foreign persons of residential property.**



3. —(1) Except as provided in this Act —

- (a) no person shall, whether for consideration or by way of gift inter vivos or otherwise, transfer any residential property or any estate or interest therein to any foreign person;
- (b) no person shall create any trust for sale in respect of any residential property or any estate or interest therein in favour of any foreign person; and
- (c) no foreign person shall purchase or acquire any residential property or any estate or interest therein except by way of a mortgage, charge or reconveyance.

(2) Any —

- (a) transfer of any residential property or of any estate or interest therein by any person to a foreign person made in contravention of subsection (1) (a);
- (b) trust for sale in respect of any residential property or any estate or interest therein created by any person in favour of any foreign person in contravention of subsection (1) (b); and
- (c) purchase or acquisition of any residential property or of any estate or interest therein by any foreign person, except by way of a mortgage, charge or reconveyance, made in contravention of subsection (1) (c),

shall be null and void.

...

**Residential property not to be purchased or acquired by a citizen or an approved purchaser as a nominee of a foreign person.**

23. —(1) No —

- (a) citizen or approved purchaser shall purchase or acquire any estate or interest in any residential property as a nominee of any foreign person with the intention that the citizen or approved purchaser shall hold it in trust for that foreign person; and
- (b) foreign person shall authorise or appoint as his nominee any citizen or approved purchaser to purchase or acquire any estate or interest in any residential property with the intention that that citizen or approved purchaser shall hold it in trust for that foreign person.

(2) Any trust created in whatever manner or form pursuant to subsection (1) shall be null and void and there shall be no resulting trust in favour of the foreign person; and any contract or covenant between such citizen or approved purchaser and the foreign person in respect of such residential property or any estate or interest therein shall be null and void.

(3) The Registrar, upon discovering that any instrument of transfer contains any such void trust and the instrument is pending final registration or has been finally registered by the Registrar, shall enter a note in that instrument or the registration copy thereof, as the case may be, stating that such trust is null and void by virtue of subsection (2).

45 The RPA at the time of the transfer of the Property to Koh allowed foreign persons to acquire an interest in apartment units in buildings if they consisted of six levels or more including the ground level or the unit was part of an approved condominium plan. The Project had only four levels and was not an approved condominium.

46 The restrictions on foreign persons acquiring an interest in apartment units under the RPA, *viz*, the requirement that the apartment unit had to be in a building that was six storeys or higher, was later relaxed by Parliament. As stated in the Singapore Land Authority's Practice Circular 6:

As announced in Parliament, the Government has decided that effective 19 July 2005, a foreign person (as defined in the RPA) will no longer need to seek prior approval under the RPA to buy an apartment unit in a building of less than 6 levels in a non-condominium development. In addition, he can continue (as before) to buy any dwelling unit in a condominium development as classified by URA.

47 However, the fact remained that the law at the time of the transfer of the Property to Koh prohibited a foreign person from acquiring any interest in apartment units in buildings of less than six levels, such as Stevens Court. It was not disputed that Tay Juhana is a foreign person within the meaning of the RPA and was not allowed to hold any interest in the Property at the material time.

48 I would add that apparently First Grade would also come within the definition of a foreign person at the material time because not all its shareholders and directors were Singapore citizens then.

49 As for Inhil, it appeared to satisfy the requirements of the RPA at the material time. However, I was of the view that in substance, it did not. In truth, it was controlled by Tay Juhana, a foreign person, but this was probably not disclosed to the relevant authorities at the material time.

50 In any event, I concluded that Koh held the Property on trust for Tay Juhana. Pursuant to s 3(1) of the RPA, the trust over the Property was null and void.

51 Counsel for First Grade and Inhil submitted that even if, as I found, Koh was holding the Property on trust for Tay Juhana, this did not mean that Tay Juhana could not direct Koh to transfer the Property to a non-foreign person like YSHPL and there was no evidence that YSHPL would hold the Property in trust for Tay Juhana.

52 Counsel also submitted that Koh did not have the beneficial interest in the Property even if he could not be compelled to transfer the Property. For this proposition, counsel relied on a passage in *William Hurndell v Barrie Hozier* [2008] EWHC 538 in which the court said at [161]:

Mr Melville QC for Mr Hurndell submitted that the illegality associated with the arrangement that Mr Hurndell should hold the shares as a nominee without disclosure of the true owner meant that, in accordance with the analysis in *Tinsley v Milligan* [1994] 1 AC 340, Mr White is not permitted to assert his own title to the shares. This would be arguable if Mr White were suing to recover the shares from Mr Hurndell. But the claim in this case is by Mr Hurndell to recover the value of shares of which he is not now the legal owner and of which he was never a beneficial owner. Principles of illegality may defeat a claim but they do not enable Mr Hurndell to obtain shares, or their value, which never beneficially belonged to him.

53 The facts in that case were quite different. The plaintiff there was holding shares in trust for someone else to get round certain requirements of the Stock Exchange. However, the plaintiff then

transferred the shares out. Subsequently, he claimed the value of the shares. The court said he was not entitled to do so since he was never the beneficial owner of the shares. In the case before me, Koh was not claiming to recover the value of the Property which still remained in his name. He was only seeking to remove a caveat which First Grade was not entitled to lodge. Furthermore, it was clear to me that Tay Juhana was controlling YSHPL. In any event, the simple point was that Tay Juhana was not entitled to direct Koh to transfer the Property to anyone. He could only do so if he had acquired the beneficial interest but that was prohibited, as a matter of law, by the RPA. Therefore, although Koh would not have had beneficial ownership of the Property, but for the RPA, the result is that he has ended up with the beneficial ownership. If he does not have beneficial ownership and Tay Juhana cannot enforce the trust, it will mean that no one is entitled to deal with the Property which cannot be right. The consequence of a breach of the RPA is that the loss lies where it falls and since Koh is the registered owner, he is entitled to the beneficial ownership as well.

54 While my decision may appear unjust to Tay Juhana, those who flout the law cannot complain if their illegal action results in a loss. Indeed, that is the specified consequence of breaching the prohibition under the RPA.

55 I would like to add an observation. As mentioned above, Mdm Tay was the only representative of the Sambu Group who gave evidence. This was because Koh had subpoenaed her to do so. As she gave oral evidence, she did not seem at all concerned about the possibility, and indeed the fact as I found to be the case, that she and Tay Juhana had deliberately violated the RPA.

## **Conclusion**

56 For the foregoing reasons, I ordered First Grade to remove the Caveat by a certain deadline failing which the Registrar of Titles was to cancel the notification of the Caveat. I did not declare that Koh is the beneficial owner of the Property, which was one of the reliefs sought, because, at that time, I thought that if I were to make the declaration, I might give the impression that Koh had been given the Property and it was not necessary to make the declaration since I was ordering the removal of the Caveat. I also dismissed the counterclaim of First Grade and Inhil. As for costs, each party was ordered to bear his/its own costs of the action and, as regards the hearing fees, Koh would bear half of the fees and First Grade and Inhil would bear the other half.

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[\[note: 1\]](#) Notes of Evidence ("NE") 4/11/08 pp 70–74

[\[note: 2\]](#) NE 5/11/08 pp 54–55

[\[note: 3\]](#) NE 3/11/08 pp 41–44

[\[note: 4\]](#) NE 28/10/08 p 48

[\[note: 5\]](#) NE 28/10/08 pp 49–52

[\[note: 6\]](#) NE 4/11/08 pp 71–74

[\[note: 7\]](#) NE 6/11/08 pp 25–29

[\[note: 8\]](#) NE 4/11/08 p 37

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