Low Gim Siah and Others v Low Geok Khim and Another
[2006] SGCA 45

Case Number : CA 40/2006

Decision Date : 22 December 2006

Tribunal/Court : Court of Appeal

Coram : Chan Sek Keong CJ; Lai Siu Chiu J; Andrew Phang Boon Leong JA

Counsel Name(s) : Michael Khoo SC and Ong Lee Woei (Michael Khoo & Partners) and Jimmy Yap (Jimmy Yap & Co) for the appellants; Tan Kay Kheng, Sim Bock Eng and Joyce Lim (Wong Partnership) for the first respondent; Manoj Sandrasegara, Tan Mei Yen, Benjamin Gaw, Tan Mingfen and Jeremy Leong (Drew & Napier LLC) for the second respondent

Parties : Low Gim Siah; Low Chay Lin; Low Gim Har; Low Gim Tin @ Low Gim Tin Renna; Low Gim Lay; Low Gim Hong Richard; Low Gim Tee; Low Gim Chiong; Low Gim Pheng; Frey-Low Daisy; Low Chay Ghee; Low Nancy; Low Lina; Low Chye Chim — Low Geok Khim; Low Geok Bian

Family Law – Advancement – Presumption – Father and adult son holding bank accounts jointly – Whether presumption of advancement applying such that money in joint bank accounts amounting to gift from father to son upon father dying intestate – Whether presumption of advancement rebutted

Trusts – Resulting trusts – Father and adult son holding bank accounts jointly – Money in joint bank accounts provided entirely by father – Whether money vesting in son or in father's estate upon father's death – Whether son holding joint bank accounts on resulting trust for father's estate

22 December 2006 *Judgment reserved.*

Chan Sek Keong CJ (delivering the judgment of the court):

1 This is an appeal by the grandchildren of one Low Kim Tah ("LKT"), who died intestate, against the decision of the trial judge in Originating Summons No 826 of 2003 (*Low Geok Khim v Low Geok Bian* [2006] 2 SLR 444 ("*Low Geok Khim*")) that the money in six joint accounts held in the names of LKT and his youngest son, one Low Geok Bian ("LGB"), vested beneficially in LGB as the surviving joint account holder upon LKT's death on 6 December 1997.

2 This appeal raises an important issue as to the current state of the law in Singapore regarding the application of the presumption of advancement in a father-and-child relationship. The joint administrators of the estate of LKT ("the Estate"), *viz*, one Low Geok Khim ("LGK") and one Low Geok Beng ("Geok Beng"), brought this action to determine the respective rights of the Estate and LGB to the money in the six joint accounts totalling $4,471,144.28. Subsequently, Geok Beng was discharged as joint administrator, leaving LGK, who is the first respondent in this appeal, as the sole administratrix of the Estate. LGK and LGB and Geok Beng are three of the ten children of LKT. The particulars of the six joint accounts as at the date of the death of LKT are as follows:

(a) POSB Account No 042-07218-5 opened on 4 March 1983 – $221,207.11 ("Account 1");

(b) OCBC Easisave Account No 516-054889-001 opened on 25 February 1995 – $2,004,604.97 ("Account 2");

(c) OCBC Easisave Account No 516-054889-002 opened on 25 February 1995 –

$2,004,604.97 ("Account 3");

(d) OCBC Easisave Account No 516-054889-003 opened on 11 March 1995 – $114,441.89 ("Account 4");

(e) OCBC Easisave Account No 516-054889-004 opened on 19 April 1995 – $114,072.52 ("Account 5"); and

(f) OCBC Fixed Deposit Account No 516-549706-501 opened (with an initial sum of $3,000,000) on 23 March 1990 – $12,212.82 ("Account 6").

3 The original application required the court to determine whether the sum of $90,028.84 in a seventh joint account, *viz*, POSB Account No 045-07219-3 opened on 4 March 1983 and held in the joint names of LKT and LGK, belonged beneficially to LGK or to the Estate on a resulting trust. Subsequently, LGK agreed to relinquish any claim to the money in the said joint account and, accordingly, there is no dispute between the beneficiaries of the Estate over this sum of money.

4 The appellants are the children of one Low Yok Kay ("Yok Kay") and one Low Geok Khoon ("Geok Khoon"), the two elder sons of LKT who had predeceased him. They were joined as co-defendants to the action on 6 August 2003 in order to contest the claim of LGB that, as the surviving holder of the six joint accounts, he was entitled to the beneficial ownership of the money in the said accounts. The appellants took the position that LGB held the money in Accounts 1 to 6 on a resulting trust for the Estate.

Background

5 LKT was, as described by the trial judge, a typical Chinese patriarch and a self-made businessman. Starting from a humble family business dealing mainly in livestock trading in the early 1940s, he expanded his business to include real estate development. To this end, he incorporated a family company known as Hup Choon Kim Kee Pte Ltd ("HCKK") on 1 February 1963 to take over the bulk of his assets. LKT was then 57 years old while LGB was 20 years old. Most of his sons helped out in the family business at some time or other, with Yok Kay, Geok Khoon and LGB being the ones who were actively involved in the running of the business.

6 Upon the incorporation of HCKK in 1963, LKT allotted the share capital to himself and his children as follows:

Name	Number of shares
LKT	1,060
Yok Kay	1,005
LGB	905
Geok Khoon	730
Geok Hwee	730
Geok Choo	730
Geok Beng	730
LGK	160
Geok Yin	150

Geok Kiow	150
Geok Up	150

7 On 15 October 1983, the shareholders of HCKK passed a special resolution to wind up the company voluntarily. The distribution of the assets to the shareholders was effected as set out in a Distribution Agreement Deed dated 15 May 1985 signed by LKT and all his children.

8 However, some of the properties held by HCKK, specifically the land at Ava Road and the properties known as 263 and 263A Balestier Road ("the Ava/Balestier properties"), could not be conveniently distributed at that time as they were under development. Accordingly, a new company, Hup Choon Kim Kee Realty Pte Ltd ("HCKK Realty"), was incorporated to hold the Ava/Balestier properties on trust for LKT and all his sons except Geok Choo. Sometime in 1989, HCKK Realty sold the Ava/Balestier properties and, on completion on 12 March 1990, realised the net sum of $14,329,643.75. The proceeds were then distributed on 23 March 1990 as follows:

Name	Share of the Ava/Balestier properties	Amount received
LKT	21/100	$3,009,225.19
Estate of Yok Kay	21/100	$3,009,225.19
LGB	18/100	$2,579,335.87
Estate of Geok Khoon	14/100	$2,006,150.12
Geok Hwee	13/100	$1,862,853.69
Geok Choo	0/100	$0
Geok Beng	13/100	$1,862,853.69

9 On the very same day that LKT received his cheque for $3,009,225.19, being his share of the proceeds of sale, he had it deposited, through LGB, into his personal current account, OCBC Account No 516-033719-001. LKT then immediately transferred out of that account a sum of $3m to open a fixed deposit account, *viz*, Account 6 (with a provision for the right of survivorship, but which was operative on one signature only), to be placed under two separate deposits of $1,500,000 each. Further deposits of $86,710.62 and $87,292.98, which came from LKT's other fixed deposit account at OCBC's head office at Chulia Street, and a separate sum of $10,000 were subsequently deposited in Account 6 in May 1990, June 1990 and January 1991 respectively. Thereafter, no other money was deposited in Account 6. No withdrawal was made from Account 6 in the next five years, during which the capital sum and accrued interest accumulated to just short of $4m.

10 However, during the period from February to April 1995, the bulk of the money in Account 6 was withdrawn and used to open Accounts 2 to 5. These accounts were also opened jointly in the names of LKT and LGB, also with rights of survivorship and also operative on one signature only. It would appear that LGB was aware that these accounts were being opened as the related signature cards had his signatures on them. These accounts were called Easisave accounts as they combined features of a savings account and a current account, and, for this reason, funds held in such accounts are given a lower rate of interest than ordinary fixed deposit accounts. It is common ground that LGB did not put any money into Accounts 1 to 6 and that he also did not draw out any money

from these accounts.

11 LKT died intestate on 6 December 1997 at the age of 91. Apart from the money in Accounts 1 to 6, LKT left other assets totalling about $6.9m, the distribution of which is not in dispute among the beneficiaries. Up to the date of LKT's death, only LGB was aware of the existence of Accounts 1 to 6 since he was present when all the accounts were opened and the signature cards were signed by him. None of the other family members was aware of the existence of these accounts as LKT had never mentioned or spoken to them about the accounts.

Issues before the trial judge

1 2 The only issue before the trial judge with respect to Account 1 was whether LGB held the money in the joint account beneficially or on a resulting trust. However, with respect to Accounts 2 to 6, the trial judge was asked to determine the beneficial ownership of the money in the said accounts on the basis of the following questions:

(a) Whether LKT had the mental capacity to open Account 6 in 1990 and Accounts 2 to 5 in 1995.

(b) If so, whether he had intended to open the five accounts as joint accounts with LGB.

(c) If so, whether the presumption of advancement should be applied in favour of LGB.

(d) If so, whether the presumption was rebutted on the facts.

Issues (a) and (b) are questions of fact, whilst issues (c) and (d) are issues of fact and law in relation to the presumption of advancement as an evidentiary guide or principle.

Issues (a) & (b) – Mental capacity and intention of LKT

13 In respect of issues (a) and (b), the appellants had called two doctors to testify on the mental state of LKT. The first, Dr Tang Kok Foo ("Dr Tang"), a neurologist, had examined LKT in February 1995, May 1995, November 1996 and April 1997. He testified that LKT was already suffering from advanced dementia in 1995, due likely to Alzheimer's disease, and that it became very advanced in 1996. However, he was also of the view that LKT's dementia would have been mild in 1990. The second doctor, Dr Tan Chue Tin, a psychiatrist, did not personally examine LKT but based his opinion on the findings of Dr Tang and on LKT's court testimony in Suit No 854 of 1991 ("Suit 854/1991") in April 1994. His opinion was that LKT would have had very limited or little awareness of his situation when he opened Accounts 2 to 5 in 1995, and that in 1990, it was more likely than not that LKT was similarly limited in his awareness when he opened Account 6.

14 By way of response, LGB relied on the opinions of two other doctors. However, one of them, Dr Lee Suan Yew, who had treated LKT from 1987 to 1992, submitted a report but did not testify, whilst the one who did testify, Dr Yeo Kah Loke Brian ("Dr Yeo"), had not personally examined LKT but gave his opinion on the basis of the findings of Dr Tang. Dr Yeo opined that if LKT was suffering from any form of dementia in 1995, it was more likely to be vascular dementia and not Alzheimer's dementia, and that "it would not be possible to conclude from an examination of the deceased in 1995, that he was not in a coherent mental state a few years prior to 1995, much less in 1990". Dr Yeo also opined that in view of the gradual progression of Alzheimer's disease, it would not necessarily mean that LKT was not able to reason immediately prior to 1990 or in 1994. He was of the view that LKT was in a more coherent mental state in April 1994 when he gave evidence in court in

Suit 854/1991.

15 The trial judge, after considering the expert evidence and also evidence from two other sources relating to LKT's medical condition, *viz*, (a) the testimonies of LGK, the sole administratrix, and LGB to the effect that LKT was in good health until his death, and (b) Lai Kew Chai J's acceptance of LKT's testimony in 1994 in Suit 854/1991 in preference to that of an opposing witness, found that LKT had the mental capacity to open Account 6 in 1990.

16 At the trial, the appellants had also alleged that LKT had intended Account 6 to be in his sole name, but because of his medical condition, might not have been aware that he had opened a joint account with LGB. Counsel for the appellants had contended that because of the suspicious state of the documentation relating to the opening of the account, LGB had opened the joint account for LKT without the latter's awareness. The trial judge, after a careful and detailed examination of the related banking forms, signature cards and other documents, concluded that they were insufficient to prove that LKT did not intend to open or was not aware of the opening of Account 6 as a joint account in 1990 (see *Low Geok Khim* ([1] *supra*) at [36]).

17 In respect of the opening of Accounts 2 to 5 in 1995, the trial judge found (at [37]–[38]) that LKT was suffering from mild dementia which did not deprive him of his mental capacity to open those accounts. The trial judge further held that even if he was wrong in his finding with regard to LKT's mental capacity to open Accounts 2 to 5, the money in those accounts would automatically revert back to Account 6 for the purpose of determining its ownership.

Issues (c) & (d) – Application of the presumption of advancement

18 In respect of issue (c), the trial judge was of the view that the presumption of advancement applied to the money held in Accounts 1 to 6 in view of the father-and-son relationship between LKT and LGB. In respect of issue (d), he found that, on the evidence before him, the presumption had not been rebutted.

The appeal

19 The appellants' arguments, as set out in their case, skeletal arguments and counsel's oral pleadings, all of which the respondents have opposed, are as follows:

(a) The trial judge was wrong in fact to find that LKT had the requisite mental capacity to open Account 6 in 1990 and Accounts 2 to 5 in 1995 respectively.

(b) If LKT did have the requisite mental capacity to open Account 6, he did not intend to open it as a joint account, and hence, LKT did not intend LGB to have the money in the account upon his death.

(c) Given the mental state of LKT, the presumption of advancement was not a sensible guide to determine LKT's intention in opening Accounts 2 to 6.

(d) The trial judge was wrong to apply the presumption of advancement to Accounts 1 to 6 as LGB was self-supporting and not financially dependent on LKT when the joint accounts were opened.

(e) The presumption of advancement was rebutted on the facts.

Mental capacity of LKT

20 Counsel for the appellants submitted that the trial judge's finding that LKT had the mental capacity to open Accounts 2 to 5 in 1995 was based on the erroneous finding that "if the deceased had dementia, it was mild dementia, and not severe dementia" (see *Low Geok Khim* at [37]). It was submitted that this finding disregarded the evidence of three of the doctors who had testified that LKT was suffering from advanced dementia in February 1995. We do not find it necessary to examine the medical evidence in detail on this point. However, it is pertinent to observe that the opening of Accounts 2 to 5 in 1995, when compared to the circumstances in which Account 6 was opened in 1990, made no commercial sense. The reason is that the opening of Accounts 2 to 5 resulted in LKT getting a lower rate of interest than if he had allowed the money to remain on fixed deposit in Account 6. He was not in need of liquid funds at the time Accounts 2 to 5 were opened since he still had his current account. Furthermore, he had not drawn out a single cent from Account 6 since it was opened. Given that LKT had been an astute and successful businessman, his actions in 1995 were inexplicable except on the basis that his mental state had deteriorated to the extent that he was not fully aware of the commercial consequences of his own actions, even though he might have had the mental capacity to open banking accounts. He was then aged 89 and suffering from either advanced vascular dementia or Alzheimer's disease.

21 Notwithstanding our observations on LKT's mental state in 1995, we agree with the trial judge that this fact is not critical to the primary issue in this case, which is LKT's mental condition in 1990. What happened in 1990 was of greater significance than what happened later in 1995 since the money in Accounts 2 to 5 came from Account 6. This is reflected in the trial judge's findings on the law and the facts, as well as in the arguments of counsel for the parties before us.

22 However, counsel for the appellants was unable to say anything useful to challenge the correctness of the trial judge's finding on LKT's mental state in 1990, having regard to (a) Dr Tang's evidence that LKT had mild dementia in 1990 and that a person with such a medical condition would usually be able to make reasonably good decisions, and (b) the fact that Lai Kew Chai J had found that even in 1994, LKT was reasonably competent when he testified in court in Suit 854/1991. Counsel's attempt to refute the trial judge's finding on this issue was futile. For these reasons, we have no basis to disagree with the trial judge's finding that there was insufficient evidence to show that LKT did not know that he was opening a joint account with LGB in 1990.

23 However, before we consider the trial judge's findings on the law and the facts on the issue of the application of the presumption of advancement, it is pertinent to note that when LKT opened Account 6 in 1990 and then Accounts 2 to 5 in 1995, using money from Account 6, he stipulated in the bank's account opening documents that one signature alone would be sufficient to operate the accounts. The significance of this, which we will consider in greater detail later, is that in 1995, it would appear that LKT, notwithstanding his mental state, did not wish to relinquish control of the operation of Accounts 2 to 5.

Presumption of advancement

24 In the court below, it was the appellants' case that as LGB was self-supporting and not financially dependent on LKT in 1990 and 1995 (and the same argument would apply in the case of Account 1 which was opened in 1983, when LGB was already 40 years old), the presumption of advancement was not applicable as the presumption was premised on a father's moral or equitable obligation to provide for his children. Counsel cited the following passage from *Snell's Equity* (John McGhee gen ed) (Sweet & Maxwell, 31st Ed, 2005) at para 23-02:

> The presumption of advancement applies to certain transfers between parties where it may be readily inferred that A would have intended to make a gift to B. It is found therefore where A is under an equitable obligation to support or make provision for B. Examples are where A is the husband or father of B. It is, in effect, a counter-presumption which provides *prima facie* evidence about A's intentions as to where the beneficial interest in the property should lie. Its effect is to negative any initial presumption that the transfer creates a resulting trust.

Counsel also cited in support of his argument the case of *Ang Toon Teck v Ang Poon Sin* [1998] SGHC 67 where Judith Prakash J had suggested that the presumption of advancement should not be applied between a father and a 50-year-old financially self-supporting son as the latter's need for support in those circumstances was absent.

25 The trial judge rejected this argument on the ground that the presumption of advancement had been explained by Lord Eldon in *Murless v Franklin* (1818) 1 Swans 13 at 18; 36 ER 278 at 280 without reference to the need for financial support, implying that the basis of the presumption was not the moral or equitable obligation on the part of one party to provide for another, such as between a father and his child or between a husband and his wife. The trial judge quoted the following passage from *Murless v Franklin* (see *Low Geok Khim* at [44]):

> It is settled that though, in general cases, if *A*. purchases with his own money, and the conveyance is taken in the name of *B*., an implied trust in favour of *A.* arises from the payment of the purchase money; yet that doctrine has exceptions. One exception is, that if a man purchases in the name of his son, and no act is done to manifest an intention that the son shall take as trustee, that intention will not be implied from the payment of the purchase money by the father, but the purchase is *prima facie* an advancement.

The trial judge also observed that neither Prakash J nor counsel had referred to any cases stating that the presumption of advancement could only arise in a transaction of property from a parent to a child when it could be inferred that the parent was making a financial provision for the child.

26 The trial judge also quoted a passage from the judgment of Willmer LJ in *In re Pauling's Settlement Trusts* [1964] Ch 303 at 336 on the relationship between the presumption of advancement (equity approves of gifts by a father to a child) and the presumption of undue influence (equity dislikes and distrusts gifts by a child to a parent). On the basis of these two passages, the trial judge proceeded to state (at [47]) the law as follows:

> When one considers the presumption of advancement as expounded in *Murless v Franklin* and *In re Pauling's Settlement Trusts*, one must be cautious about adopting the narrower approach. As the presumption operates as an exception to the rule on resulting trusts, the rationale for the presumption should be considered. The underlying reason for having an exception is that the parent would have intended the child to have the benefit of the property because of the parent-child relationship between them. There is no necessity to restrict the operation of the presumption of advancement to a child in need of financial support. There is no reason to suppose that a parent could have intended the child to have the benefit if the latter was financially dependent, but not if he was financially sound.

The trial judge accordingly held that the presumption of advancement was applicable to the six joint accounts.

27 Before us, counsel for the appellants contended that the trial judge was wrong, as a matter of law, in holding that the presumption of advancement was not based on a dependency relationship

giving rise to a moral or equitable obligation on the part of the provider. He referred us to another passage from the judgment of Lord Eldon in *Murless v Franklin* ([25] *supra*) which preceded the passage quoted by the trial judge (see [25] above). It reads:

> The general rule that on a purchase by one man in the name of another, the nominee is a trustee for the purchaser, *is subject to exception where the purchaser is under a species of natural obligation to provide for the nominee*. The purchase in this case being *prima facie* a provision for the sons, it is necessary to repel that presumption by evidence which shows that, at the time, the father intended the purchase for his own benefit. *Possession taken by the father at the time would amount to such evidence*. [emphasis added]

This passage supports counsel's submission that the origin of the presumption was that of the dependency of the child for support from his father and the natural feeling of paternal love and affection of the one for the other. Counsel in his written submissions also referred to *Bennet v Bennet*(1879) 10 Ch D 474 where the underlying basis for the presumption was also explained in the context of an *in loco parentis* relationship.

28 In *Bennet v Bennet,* a mother had purchased an investment in the name of her son and the question was whether the presumption of advancement applied. Jessel MR held that as a mother had, in the eyes of equity, no equitable obligation to advance or make provision for her child, unlike in the case of a father, the presumption did not apply where a mother purchased property or made an investment in the name of her child, or in the joint names of herself and her child. In such a case, whether there was any intention on the part of the mother to make an advance to the son was a question of evidence. If there was no evidence to show an advance, the property would be held on a resulting trust. Jessel MR explained the interaction between these two presumptions in equity (at 476) as follows:

> The doctrine of equity as regards presumption of gifts is this, that where one person stands in such a relation to another that there is an obligation on that person to make a provision for the other, and we find either a purchase or investment in the name of the other, or in the joint names of the person and the other, of an amount which would constitute a provision for the other, the presumption arises of an intention on the part of the person to discharge the obligation to the other; and therefore, in the absence of evidence to the contrary, that purchase or investment is held to be in itself evidence of a gift.
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> *In other words, the presumption of gift arises from the moral obligation to give.*
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> That reconciles all the cases upon the subject but one, because nothing is better established than this, that as regards a child, a person not the father of the child may put himself in the position of one *in loco parentis* to the child, and so incur the obligation to make provision for the child.
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> …
>
> [A] person *in loco parentis* means a person taking upon himself the duty of a father of a child to make provision for that child. It is clear that in that case the presumption can only arise from the obligation, and therefore in that case the doctrine can only have reference to the obligation of a father to provide for his child, and nothing else.
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> *But the father is under that obligation from the mere fact of his being the father, and therefore no evidence is necessary to shew the obligation to provide for his child, because that is part of*

his duty. In the case of a father, you have only to prove the fact that he is the father, and when you have done that the obligation at once arises; but in the case of a person in loco parentis you must prove that he took upon himself the obligation.

[emphasis added]

29 In our view, these statements in *Murless v Franklin* and *Bennet v Bennet* make it clear that a dependency relationship was the original basis of the presumption of advancement. However, in the same period that these cases were decided, some English equity judges were also prepared to apply the presumption in cases where the element of dependency was absent, so long as there was a parental relationship between the donor and the donee. For example, in *Hepworth v Hepworth* (1870-71) LR 11 Eq 10, the testator, by his will, settled £1000 reduced annuities on each of his three granddaughters, the children of his only son, and two years later, transferred a sum of £3200 reduced annuities, which was all the property he had, to his son. He died at the age of 92, having resided for the last ten years of his life with his son, who was a man of considerable property. Malins VC, in holding that there was an absolute gift of the annuities to the son, said (at 12–13):

The law is not doubtful that if this had been a transfer to a stranger it would have operated as a trust, but if a gift is made in favour of a child the presumption of law is, that it is intended as an advancement or provision for the child. The old cases turned upon the question, whether the child was provided for or not, but recent authorities have gone upon whether the gift was intended as an advancement or not.

Thus, in the present case, the transfer having been made to the son, it is thrown upon those who deny that it was an absolute gift to prove that there was no intention on the part of the father to make an advancement or provision for his son. Here the son was evidently capable of maintaining himself, for it is in evidence that he was possessed of considerable property, and, in fact, it was the son who maintained his father. That he well performed the duty of taking care of him is evident from the fact that the father lived with the son for ten years, till his death at the age of ninety-four. The father, on the other hand, had no object in the world upon whom to bestow his property but his son and his son's children, and it was the most natural thing that the father should have come to the determination to make over to his son during his lifetime this property, being well satisfied that what he gave to his son would be disposed of in the way he considered best for the benefit of his own children. The son seems to have been perfectly ready to fulfil this duty since by his will he left all his property for the benefit of his wife and children.

…

In *Sidmouth v Sidmouth* an observation made by Lord Langdale is very appropriate, where he says: "The parent may judge for himself, when it suits his own convenience, or when it will be best for his son, to secure him any benefit which he voluntarily thinks fit to bestow upon him; and it does not follow that, because the reason for doing it is not known, there was no intention to advance at all." *Here the father was at liberty to say he would give this sum to his son, and there is no presumption to rebut the* prima facie *rule of law, that a father who gives property to his son does so by way of advancement or provision for him.*

[emphasis added]

30 In *Sidmouth v Sidmouth* (1840) 2 Beav 447; 48 ER 1254, the father had bought certain stock in the name of the son, who was an adult living with the father and dependent on him for support. The court held that the presumption of advancement applied. Lord Langdale MR reasoned (at

457;1258) as follows:

> Consider the situation in which they stood – the son unmarried, living in the house of his father, and wholly maintained by him, having future expectations from another source, but no present maintenance except from his father, and having very great future expectations from his father's large property; and then consider what the father could mean by transferring sums of stock into the name of his son, with an intention to receive the dividends himself. It is clear that he meant to continue to maintain his son; it is probable that if he had meant only a contingent provision in the event of the son surviving him, he would have made a transfer into the joint names of himself and his son, for this would have given the absolute power over the stock to the survivor; *if he had intended, notwithstanding the transfer to the son, to retain the absolute dominion in himself, it is probable he would have taken care to extend the power so as to enable himself to sell and transfer*; but it is scarcely to be conceived why he should make any transfer at all if he intended the son to have neither any present interest in the stock, nor any power over it, nor any future benefit of any kind from it. [emphasis added]

31 *Hepworth v Hepworth* ([29] *supra*) appears to be an extreme case where the presumption of advancement was held to apply. However, to our knowledge it has never been disapproved. *Hepworth v Hepworth* could well be regarded as a case where the presumption was applied by reason of parental affection or regard of the father for his only surviving son, although this basis does not seem, to our knowledge, to have been followed in subsequent cases. However, some Canadian courts have accepted parental love and affection as a basis for the application of the presumption: see the discussion at [18]–[21] of the judgment of the Court of Appeal of Ontario in *Saylor v Madsen Estate* (2006) 261 DLR (4th) 597.

32 We should also mention that in the case of *Phng Siew Hoon v Phng Siew Lan* [1991] SGHC 129, the judge did not apply the presumption on the basis of love and affection, but instead held that love and affection were part of the evidence of the father's intention to make a gift to the daughter. In that case, the father was terminally ill and warded in hospital. His other children did not visit him, at least not as often as the defendant, a married daughter who had visited him regularly to comfort him. On one of these visits at night, the father gave a cheque of $500,000 to her. After his death, the estate claimed the money on a resulting trust on the ground that the father did not intend the defendant to have the money as he had amply provided for her and that her husband was already supporting her. The defendant, on the other hand, testified that the deceased had told her that the cheque was meant for her. The judge held that there was ample evidence in that case that the father had intended to give the proceeds of the cheque to her.

33 In our view, the passage we have earlier quoted from para 23-02 of *Snell's Equity* ([24] *supra*) has summed up the legal position correctly. Some transfers of property from father to son or from husband to wife are more readily inferable as gifts from one party to the other, thereby raising the presumption of advancement. For example, if a father were to purchase a property or open a fixed deposit account in the name of an infant son who is dependent on him for support, the presumption would apply without more. If, in the case of any such relationship, the court does not apply the presumption, it would be because there is some contemporary evidence, either in the form of declarations made by the father or in the way he deals with the property or the deposit, that shows he intends to retain ownership of the property or the money. This is also established law. The presumption is not absolute and may be rebutted by evidence. In our view, the amount of evidence required to rebut the presumption would depend on the strength of the presumption, *ie,* how readily the court would be prepared to make the presumption. It would be a rare case for the presumption to be rebutted where there is no other evidence to show what the intention of the father is when he purchases property in the name of his son or daughter. However, in a number of recent English and

Singapore decisions, the courts have held that because of changed social conditions, the presumption of advancement may be rebutted by very little evidence. We will now examine these decisions in the context of whether the presumption of advancement has been rebutted in this case.

Current judicial treatment of presumption

34 In the course of considering whether the presumption of advancement had been rebutted, the trial judge referred to the current judicial trend in England and Singapore in treating the presumption of advancement with less robustness than in the past, the process having started with *Pettitt v Pettitt* [1970] AC 777, where the House of Lords showed their disdain for the presumption as an evidentiary technique to resolve disputes relating to title to property between husband and wife. In that case, the husband had done work and expended money in improving the matrimonial home which was beneficially owned by the wife. The husband claimed a share of the property on the ground that there was a common intention that he should have a share in the matrimonial home. The wife argued that the court should apply the presumption of advancement to presume that the husband had intended to make her a gift of the value of the work and the money expended on the house. It was in this particular context that the House of Lords rejected the argument and held that the presumption was not applicable. Lord Reid said (at 793) that:

> It was argued that the present case could be decided by applying the presumption regarding advancement. It was said that if a husband spends money on improving his wife's property, then, in the absence of evidence to the contrary, this must be regarded as a gift to the wife. I do not know how this presumption first arose, but it would seem that the judges who first gave effect to it must have thought either that husbands so commonly intended to make gifts in the circumstances in which the presumption arises that it was proper to assume this where there was no evidence, or that wives' economic dependence on their husbands made it necessary as a matter of public policy to give them this advantage. I can see no other reasonable basis for the presumption. These considerations have largely lost their force under present conditions, and, unless the law has lost all flexibility so that the courts can no longer adapt it to changing conditions, the strength of the presumption must have been much diminished. I do not think that it would be proper to apply it to the circumstances of the present case.

Three of the other law lords agreed with Lord Reid. It was expressly remarked by Lord Diplock (at 824) that "[t]he old presumptions of advancement and resulting trust are inappropriate to these kinds of transactions". In contrast, Lord Upjohn was of the opinion (at 813) that the presumptions, "when properly understood and properly applied to the circumstances of today … remain[ed] as useful as ever in solving questions of title".

35 In *Pettitt v Pettitt*, the House of Lords were concerned with a matrimonial home owned solely by the wife to which the husband had made contributions in improving it. In such a situation, their Lordships felt that it was inappropriate to apply the presumption in modern social conditions in England where it was normal for a couple to work and contribute jointly to the purchase and upkeep of the matrimonial home. Hence, instead of applying the presumption and then considering the evidence to see whether it was rebutted, the courts should consider whether the common intention of the parties was to give each other a share in the property and if so, what they intended the quantum of their respective shares in the matrimonial home to be. *Pettitt v Pettitt* did not involve a case of a traditional social setting where the wife was a full-time housekeeper who did not work but instead looked after the husband, children and the home whilst the husband worked and was the sole provider of all the living and financial needs of the family. In other words, *Pettitt v Pettitt* was not concerned with a situation where it could be said that the husband was in a relationship with the wife (or even a woman) where he was or could be considered to be under a moral or equitable obligation

to support and provide for her. In our view, the observations of the House of Lords in *Pettitt v Pettitt* should be understood against the factual matrix of that case and the economic and social conditions which their Lordships considered relevant to the case.

36 The trial judge also referred to a number of decisions which have reiterated the observations of the law lords in *Pettitt v Pettitt*, such as *McGrath v Wallis* [1995] 2 FLR 114, where the English Court of Appeal said that those observations applied to the situation in that case concerning a father and son. He also referred to: (a) a Privy Council decision on appeal from Singapore, *viz*, *Neo Tai Kim v Foo Stie Wah* [1985] 1 MLJ 397 ("*Neo Tai Kim*"); and (b) this court's decision in *Teo Siew Har v Lee Kuan Yew* [1999] 4 SLR 560 ("*Teo Siew Har*") as having followed the judicial trend in England. These cases require a closer examination for a better understanding of what they actually decided in relation to the presumption of advancement, which we will now proceed to do.

Neo Tai Kim v Foo Stie Wah

37 In this case, the Privy Council had to decide the beneficial ownership of six properties and a business which were placed in the name of the wife at the instance of or with the concurrence of the husband. The trial judge held that one of the properties purchased as the matrimonial home and also the business belonged beneficially to the wife, while the remaining five properties were owned beneficially by the spouses equally as the purchase money came from a business in which they were equally interested. The Court of Appeal reached the same conclusion. The husband appealed in relation to the matrimonial home and the business contending that he was entitled to half of the assets, while the wife cross-appealed in relation to the five properties arguing that she was entitled to full ownership thereof. An important issue that arose was the status of the presumption of advancement under Singapore law. The Privy Council held that the presumption of advancement was not applicable in determining the ownership of the matrimonial home as there was a common intention, as found by the trial judge, that it was to belong to the wife beneficially. With regard to the five properties, the Privy Council held that in a case where both spouses were the providers of the purchase money, the presumption was no more than a circumstance of evidence to rebut the inference of joint ownership. Lord Brightman, who delivered the judgment of the Privy Council, said at 399 of the judgment ([36] *supra*):

> Counsel for the wife placed before their Lordships a powerful argument that as the presumption of advancement would have applied if the husband had been the sole provider of the purchase money, there was no logical reason for reaching a different conclusion because the purchase money was provided by both spouses.
>
> The nature of the presumption of advancement is accurately stated in *Snell's* Principles of Equity, 27th Edition, pages 176 *et seq*, under the distinguished editorship of Sir Robert Megarry V-C. "This presumption of advancement, as it is called, applies to all cases in which the person providing the purchase-money is under an equitable obligation to support, or make provision for, the person to whom the property is conveyed. [*e.g.*] where the former is the husband or father of, or stands in *loco parentis* to, the latter… Accordingly, if a man buys property and has it conveyed to his wife… *prima facie* this is a gift to her… However, under modern conditions, with the reduction in the wife's economic dependence on her husband, the force of the presumption is much weakened…" The qualification expressed in the final sentence of this quotation reflects views which had been expressed four years earlier by Lord Diplock in *Pettitt v Pettitt*, at page 824. Sir Robert Megarry rightly referred to "this presumption of advancement, as it is called" because, as Lord Upjohn pointed out in *Pettitt v Pettitt* at page 814, "it is no more than a circumstance of evidence which may rebut the presumption of resulting trust", *i.e.* a trust resulting to the husband if he is the provider of the money. In a case such as the present, where

both spouses are the providers of the money, it is no more than a circumstance of evidence which may rebut the inference that they are equally interested.

38 Having referred to the presumption of advancement within its historical context and under modern conditions, Lord Brightman continued with his opinion on the operation of the presumption in a case where the spouses have both contributed to the purchase of the properties (at 400) as follows:

> In the opinion of their Lordships the presumption of advancement is not an immutable rule to be applied blindly where there is no direct evidence as to the common intention of the spouses. It is rather a guideline to be followed by the court in an appropriate case when it searches for the intention which ought, in the absence of evidence, to be imputed to the parties. It is proper for the trial judge to review the background of the case and to decide in appropriate circumstances that the guideline is not one which can sensibly be followed in the case before him. In the instant case the trial judge had to consider the affairs of a Chinese family and the legal effect of the purchase of a number of houses out of the funds of businesses in which they [the husband and the wife] were equal partners. The trial judge, with his knowledge of local conditions, considered it inappropriate to apply the presumption of advancement to such a case, and so did the Court of Appeal. The view taken by the trial judge and the Court of Appeal in Singapore as to what is appropriate to a case concerning the local Chinese community ought not to be disturbed by their Lordships. Their Lordships therefore accept, as correct, the opinion of the trial judge and of the Court of Appeal that the circumstances of the present case were not appropriate for the application of the presumption of advancement so as to vest the entire beneficial interest in the five properties in the wife.

39 It is clear from this passage that Lord Brightman did not purport to give any views on the prevailing social norms and conditions that might affect the operation of the presumption of advancement to the facts of the case. Instead, his Lordship relied entirely on the findings of the Court of Appeal on this point. In this respect, we should also point out that the Court of Appeal, apart from stating that it had considered *Pettitt v Pettit,* had also said nothing about this subject: see *Neo Tai Kim v Foo Stie Wah* [1980-1981] SLR 215. The Court of Appeal simply held that the presumption was rebutted because the purchase of the five properties came from joint assets. The Privy Council agreed with the Court of Appeal. In our view, the Privy Council's observations on the presumption of advancement in *Neo Tai Kim* are relevant to cases of joint contributions by spouses to the purchase of properties in the name of the wife, whether as the matrimonial home or as investments.

McGrath v Wallis

40 In *McGrath v Wallis* ([36] *supra*)*,* the father and his adult son were living together in a house which the father sold because it was too big for their needs. To move elsewhere, he needed financing to buy another property. Because he was unemployed, the building society would not accept him as a sole mortgagor. The property was accordingly purchased in the names of both the father and the son. The father then arranged with his solicitors to draw up a deed of trust to declare that he and his son would hold 80% and 20% of the property respectively. Although the trust deed was never signed, the father did not tell the solicitors not to proceed with the declaration of trust. It was in this context that Nourse LJ held, after referring to *Pettitt v Pettitt* ([34] *supra*)*,* that the presumption of advancement was applicable but that it was also readily rebutted by comparatively slight evidence in the case of a father-and-son relationship. In that case, the English Court of Appeal held that the presumption of advancement was rebutted by three considerations: (a) the father originally wanted to put the house in his own name, but he could not get a mortgage from the building society because he was unemployed and hence, he had to put the name of his son, who qualified for a loan, as the

mortgagor; (b) the father had wanted the trust deed to be signed, and had not instructed the solicitors that it would not be signed; and (c) there was no other evidence that the father had decided to divest his interest in the house.

Teo Siew Har v Lee Kuan Yew

41 In this case, the appellant was a full-time housewife. Her husband had purchased the property in her name and had arranged for it to be financed on different occasions. She made no monetary contributions to the property. Chao Hick Tin JA, who delivered the judgment of this court, accepted the concession by counsel for the appellant that the application of the presumption of advancement had diminished in recent years in line with changing social norms. Chao JA referred to the statement of Lord Diplock in *Pettitt v Pettitt* ([34] *supra*) that it would be an abuse of legal technique to apply to transactions between the post-war generation of married couples presumptions which were based upon inferences of fact which an earlier generation of judges had drawn as to the most likely intentions of spouses belonging to the propertied classes of a different social era. He then referred to *Neo Tai Kim* and quoted (at [26]) the following passage from the judgment of Lord Brightman:

> In the opinion of their Lordships the presumption of advancement is not an immutable rule to be applied blindly where there is no direct evidence as to the common intention of the spouses. It is rather a guideline to be followed by the court in an appropriate case when it searches for the intention which ought, in the absence of evidence, to be imputed to the parties. It is proper for the trial judge to review the background of the case and to decide in appropriate circumstances that the guideline is not one which can sensibly be followed in the case before him.

After referring also to *McGrath v Wallis* ([36] *supra*) and the decision of the British Columbia Supreme Court in *Russell v Russell* [1975] 4 WWR 517, Chao JA concluded thus (at [29]):

> Thus the current judicial approach towards the presumption of advancement is to treat it as an evidential instrument of last resort where there is no direct evidence as to *the intention of the parties* rather than as an oft-applied rule of thumb. [emphasis added]

42 We should point out that counsel for the appellant in *Teo Siew Har* ([36] *supra*) had conceded the judicial trend as expressed in the decisions referred to. However, he also contended that most of the cases which had accorded lesser importance or usefulness to the presumption of advancement were those involving matrimonial proceedings, and that these judicial statements had no application to a claim by a creditor against the husband and the wife, as was the issue in that case. In that case, the dispute regarding ownership was not between husband and wife. Counsel for the appellant thus contended that where the case concerned a creditor of the husband who was seeking to enforce a judgment against property held in the wife's name, the presumption would be more easily applied, all the more so in a case where the wife was a full-time home maker who had no financial means of her own and depended entirely upon her husband, like the appellant. The court rejected this submission and held that how the presumption was to be applied did not depend on the nature of the proceedings, matrimonial or otherwise, and that whether or not the presumption would apply in a particular case would have to depend instead on the facts and circumstances of the case. The court, citing *Harrods Ltd v Tester* [1937] 2 All ER 236, did not think that such a rule as contended for by the appellant could be distilled from the cases.

43 Given the conclusions we have reached in this appeal, based on an examination of the relevant recent judgments in situations involving properties purchased by fathers in the names of their children or by husbands in the names of their wives, we are of the view that counsel's argument in

Teo Siew Har was not without merit. Although the scenario in *Harrods Ltd v Tester* was similar to that in *Teo Siew Har* in that both involved claims by creditors, it is apparent from the facts of the former case that the husband did not intend to make a gift of the money in the bank account to the wife. There, the husband had opened a bank account in the name of the wife, who gave a mandate authorising the husband to draw on the account. All payments into the account were made by the husband, and the wife would ask for the husband's consent before she drew on the account. The creditors of the wife sought to garnish the money in the account. It was held by the English Court of Appeal in that case that the money belonged to the husband and there was a resulting trust in favour of the husband. Consequently, it is difficult to see why the decision in *Harrods Ltd v Tester* was considered as a refutation of the argument raised by the appellant's counsel in *Teo Siew Har*. In our view, it is correct to say that the cases where the presumption of advancement was held to have lost its robustness or diminished in importance were cases concerning joint contributions by married couples in acquiring the matrimonial home or properties acquired using joint savings. They were not concerned with the traditional and well-established categories of father–and-child and husband-and-wife relationships where one party is under a moral or equitable obligation to support the other party. *Teo Siew Har* was concerned with the traditional husband-and-wife relationship where the wife was economically dependent on the husband. In fact, in *Teo Siew Har,* this court applied the presumption without expressly saying so, but it was also able to conclude that the husband had some interest in the property because he had publicly declared that the property belonged to him and his wife jointly as he had purchased it as their matrimonial home. The wife's appeal was dismissed on the ground that this was sufficient evidence to ground a Mareva injunction to prevent her from selling the property and keeping the entire proceeds of sale.

44 It is relevant to note that in *Teo Siew Har,* Chao JA's statement (at [29]) that the use of the presumption should be a last resort is relevant only in a situation where the court needs to determine the *intention of both parties.* Cases involving the intention of both parties would normally be those concerned with property, such as the matrimonial home, where both parties have contributed or agreed to contribute to the acquisition and subsequent upkeep of the property. It is obvious that the intention of both parties would not be relevant in the traditional type of relationship where the provision or advancement is made unilaterally by the provider. In the traditional relationship of father-and-child or husband-and-wife, where one provides for the other, it is always the intention of the provider alone that is relevant. The presumption of advancement has been applied in England in such relationships for over two centuries and justified on the basis of a *moral or equitable obligation* on the part of one to care for the other. Such moral obligations do not change even if social conditions change. Hence, we find it difficult to accept an argument that in modern Singapore, fathers and husbands have somehow changed their paternal or marital obligations so radically that the presumption is no longer applicable or should not be applied. There is no doubt that many married women in Singapore are financially independent of their husbands. But there are also many of them who are not or who choose to be housewives in order to look after their husbands, their children and their homes. Infant children will always be financially dependent on their fathers and mothers. In our view, in the case of such relationships, there is no reason to treat the presumption of advancement as having lost its robustness or diminished in its vigour, and there is no reason why it should not be applied to resolve questions of title in the absence of any evidence indicating otherwise.

45 It is also clear from *Neo Tai Kim* itself that the Privy Council did not think so in the traditional type of husband and wife relationship, and father and child relationship. We have earlier referred to a passage in the judgment of Lord Brightman where he acknowledged that counsel for the wife had placed before their Lordships a "powerful argument" that the presumption of advancement would have applied if the husband had been the sole provider of the purchase money (see [37] above). In this respect, we agree with the observation of Lord Upjohn in *Pettitt v Pettitt* ([34] *supra* at 813) that the presumption remains as useful as ever in solving questions of title.

Was the presumption of advancement in favour of LGB rebutted?

46 For the reasons given in the previous paragraphs, we agree with the trial judge that the presumption of advancement was *prima facie* applicable to Accounts 1 to 6 by virtue of the relationship between LKT and LGB. The issue that remains to be decided is whether the trial judge was correct in holding that the presumption was not rebutted by the evidence. The trial judge found that the only relevant rebuttal evidence was the appellants' suggestion that LKT, being 84 years old in 1990, needed the assistance of LGB to operate his accounts for him, but rejected it as insufficient. Instead, he found that the $3m that was deposited in Account 6 was more than sufficient for LKT's personal needs, and that "[i]f he had not intended for [LGB] to have the moneys after he died, he would have left instructions for their distribution" (see *Low Geok Khim* ([1] *supra*) at [59]). Further, he considered that it was not likely that a Chinese patriarch like LKT would have intended his sons and daughters to have equal shares and that his distribution of the shares in the family company (see [6] above) reflected a more traditional and conservative outlook. The trial judge accordingly found it more probable than not that when LKT opened Accounts 1 to 6, he intended LGB to have the money upon his death.

47 In our view, the proper principle to apply in relation to rebutting the presumption of advancement is that the more readily the presumption may be inferred from the relationship, the greater is the evidence needed to rebut it, and conversely, the less readily the presumption is inferable, the lesser is the evidence needed to rebut it. Applying this principle, we respectfully disagree with the trial judge on the conclusion to be drawn from the evidence.

48 The trial judge found that the presumption was not rebutted for the following reasons: (a) that if LKT had not intended LGB to have the money in the six joint accounts, he would have left instructions for its distribution; and (b) as LKT was a typical Chinese patriarch, he was not likely to have intended to give equal shares to his sons and daughters. In our view, both these considerations are inconsistent with LKT's conduct in dying intestate and leaving another sum of about $7m in his estate to be distributed according to the law of intestacy. The other fact which was not drawn to the trial judge's attention was that at the same time that LKT opened Account 6 in 1990 with the $3m distributed to him from the dissolution of HCKK Realty, LGB had also received his own distribution of about $2.5m. We should ask whether, in these circumstances, LKT would have intended to give another $3m to LGB. If he had such an intention, it would have been easier for him to direct the liquidators to remit the $3m to LGB directly. The fact that he opened a joint account with LGB, but made it operative with only one signature, was clearly, in our view, indicative of an intention to retain full control of the money in the account rather than to give it away. It might be argued that the intention was to give it away only upon his death. But, in our view, that is an argument that has no factual basis on the evidence before us.

49 It may be recalled that although LKT brought LGB along with him to open Account 6 jointly, it was only for that purpose and none other. LGB candidly admitted under cross-examination that LKT did not tell him why he was opening a joint account with him. He also admitted that LKT did not tell him that his intention in opening the joint accounts in 1983 and 1990 was to give the money in the accounts to him upon the death of LKT. LGB said he wished LKT had told him as such. LGB's attitude when cross-examined seemed to be that he was brought along for no reason other than to open the joint account. But the evidence shows that LKT made sure that only he could draw on the joint account, although he had stipulated that either signature was sufficient to operate the account. After Account 6 was opened, LGB had nothing more to do with it. LKT kept the interest accruing on the deposit and also declared it as his own for income tax purposes. The circumstances relating to the opening of Account 1 and Accounts 2 to 5 were the same as those for Account 6. In short, LGB was treated more like a nominee than as a potential beneficiary under the survivorship clause.

50 Counsel for LGB contended before us that LKT was aware that in opening a joint account, he was giving away money to the joint signatory. He pointed out that according to the "Administrator's Summary" which was circulated to the beneficiaries of the Estate on or about 5 July 2002 as a summary of all the information and documents pertaining to the joint accounts, LKT had on one occasion, in the presence of LGB and Geok Beng, asked Geok Beng to sign some bank documents to open an account with him. Geok Beng had then said to LKT: "You sign with Bian", to which LKT then replied in Hokkien, "Ah Beng doesn't want money". It was argued that this showed that LKT understood that opening a joint account with Geok Beng was a way of giving money to him. Hence, by parity of reasoning, when LKT opened Account 6, he intended LGB to have the money in it. When cross-examined on this point, Geok Beng admitted that he did not remember when the conversation took place and what LKT had meant by those words. We note that the trial judge gave no consideration to this conversation. Neither should we, given the absence of the context in which the conversation took place and when it took place.

51 The principles that have been applied to determine whether the presumption of advancement has been rebutted have been settled for a long time. We have earlier cited the statement of Lord Eldon in *Murless v Franklin* (see [27] above) that "[p]ossession taken by the father at the time would amount to such evidence" sufficient to rebut the presumption of advancement even in cases where the father has purchased property in the name of the child, but has retained control over it. We have also referred to the statement of Lord Langdale MR in *Sidmouth v Sidmouth* (see [30] above) that "if [the father] had intended, notwithstanding the transfer to the son, to retain the absolute dominion in himself, it is probable he would have taken care to extend the power so as to enable himself to sell and transfer". This was precisely what LKT did in the case of Account 6, and later Accounts 2 to 5. He retained absolute dominion, as a fact, of Account 6 in himself. LGB was not given the opportunity to operate the account. LKT kept all the accrued interest and retained the power to close and/or deal with Account 6 as he wished, and this was demonstrated by his opening another four joint accounts with money from Account 6. Even then, he could have closed all the accounts and retaken possession of the money in these accounts without the knowledge and consent of LGB. The same conditions were applicable to Account 1. The present case stands in stark contrast to cases where property, such as stocks or shares or real estate, are purchased in the name of the son or jointly with the son, thereby vesting the title in the son immediately and requiring the consent of the son if the father wishes to regain title over the property. Here, LKT had full and complete dominion over the money in the six joint accounts throughout his life. In our view, this fact is sufficient to rebut the presumption that LKT intended for LGB to have the money in the joint accounts upon his death.

Position of joint bank accounts

52 An instructive illustration of the application of the presumption of advancement to joint bank accounts may be seen in the decision of the Ontario Court of Appeal in *Saylor v Madsen Estate* ([31] *supra*). The facts in that case are similar to the facts in the present case. The father, who died in 1998, had made one of his daughters ("Ms Brooks") a joint signatory to his bank accounts which provided for a right of survivorship. In September 1997, the joint accounts were closed and the funds deposited into an investment account, which again was a joint account with Ms Brooks and had a right of survivorship. The issue was whether the father had intended to make a gift of that money to Ms Brooks or whether he intended to remain the beneficial owner of it. The trial judge was of the view that the joint account agreement was not determinative of the relationship between the father and Ms Brooks. The evidence showed that from 1991, the father was in control of his finances and that he claimed all the interest from the joint accounts for tax purposes. During the father's lifetime, Ms Brooks did not deposit any of her own money into the accounts and only drew out cheques on her father's directions. As a result, the trial judge found that there was "no evidence to support

[Ms Brook's] position that [the deceased] intended to gift the contents of his joint accounts to her".

53 The Ontario Court of Appeal, in upholding the decision, said (at [27]) that bank documents could be strong evidence of a party's intention at the time the parties signed them, but that they should not be assigned presumptive value when trying to determine a party's intention. The probative value of such documents, like any other relevant evidence, could only be ascertained after an assessment of the totality of the relevant evidence and, as the case demonstrated, these documents did not always provide accurate evidence of the parties' intent. The court then went on to hold (at [40]) that regardless of whether the trial judge had applied the presumption of advancement or a resulting trust, the trial judge's finding that no gift to Ms Brooks was intended was correct.

Conclusion

54 For the above reasons, we hold that the money in the six joint accounts is held by LGB on a resulting trust for the Estate. The appeal is therefore allowed. As regards the costs of the appeal and of the trial in the court below, we make the following orders:

(a) LGK, the sole administratrix, will be entitled to costs on an indemnity basis out of the Estate in due course of administration.

(b) The appellants will be paid their costs out of the Estate on a standard basis.

(c) LGB will bear his own costs.