

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 276

Originating Summons No 146 of 2018

In the matter of the property known as [address
redacted]

And

In the matter of Section 18 of the
Supreme Court of Judicature Act (Chapter 322)

And

In the matter of Section 5 of the Conveyancing
and Law of Property Act (Chapter 61)

Between

(1) BUE

(2) BUF

... Plaintiffs

And

(1) TZQ

(2) TZR

... Defendants

JUDGMENT

[Family Law] — [Advancement]

[Trusts] — [Constructive Trusts]

[Trusts] — [Resulting Trusts]

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**BUE and another
v
TZQ and another**

[2018] SGHC 276

High Court — Originating Summons No 146 of 2018
Tan Puay Boon JC
4 April, 11 May 2018

28 December 2018

Judgment reserved.

Tan Puay Boon JC:

Introduction

1 The plaintiffs are brothers (“the brothers”). The first defendant is their biological father (“the father”), and the second defendant is their (former) step-mother (“the step-mother”). The brothers and the father are the registered proprietors of a Housing and Development Board (“HDB”) flat at Choa Chu Kang Avenue 2 (“the Property”), which the step-mother is seeking a share of in the divorce proceedings between her and the father.

2 The brothers’ application herein (“the Application”) is for a declaration that they are each entitled to a beneficial share of 33.3% of the value of the Property. In the alternative, they seek an equitable determination of the parties’ shares in the Property. The brothers also pray that in the event of a sale of the Property, the proceeds should be distributed to the parties in proportion to their

respective shares in it, after deducting the outstanding HDB loan, the costs and expenses of the sale, and the legal and stamp fees.

Background

3 The father filed the writ for divorce against the step-mother on 10 November 2014. The interim judgment for the divorce was granted on the step-mother's counterclaim on 31 March 2016. After the hearing before the Family Court on 24 November 2016, the order on the ancillary matters was made on 29 November 2016. The father was dissatisfied with the decision of the Family Court, and filed an appeal (HCF/DCA 164/2016) ("the Appeal") on 9 December 2016. Subsequently, before the hearing of the Appeal, the interim judgment was made final on 15 December 2016.

4 The brothers filed the Application on 30 January 2018. They had previously applied unsuccessfully to intervene in the divorce proceedings in the Family Court (FC/SUM 3263/2017), and to set aside the decision of the Family Court on the ancillary matters (FC/SUM 3152/2017). The Family Court had ruled that the brothers had no beneficial interest in the Property, and that their names were added to the title to the Property to dilute the step-mother's interest in the same. That decision was made in the absence of any documentary evidence of their financial contributions to the Property: see *TZQ v TZR* [2017] SGFC 40 ("the GD") at [6]. These documents have since been admitted with the leave of the High Court on the application of the father (HCF/SUM 144/2017) for the purposes of the Appeal. Also, on 6 March 2018, with the consent of the father and step-mother, an assistant registrar of the Family Justice Courts allowed an application by the brothers to intervene in the Appeal.

The preliminary issue

5 Both the Application and the Appeal were fixed together for hearing before me. The brothers were represented by the same counsel in both proceedings.

6 At the hearing on 4 April 2018, a preliminary issue arose as to whether the court should hear the Application at all. The step-mother submitted that the brothers, having been allowed to intervene in the Appeal, would no longer need to pursue the Application. This was because they would be bound by the decision in the Appeal, in which the court could deal with the brothers' alleged interest in the Property for the purpose of the divorce proceedings. The brothers could not have two cases running at the same time. The brothers' response was that they would take the same position in the Application and the Appeal. They added that the decision in the Application would delineate and preserve their alleged interest in the Property before the Appeal was decided. The father's submission was that the brothers' rights would be determined in the Application, but they would nevertheless be bound by the decision in the Appeal because of their intervention. He also submitted that in my appellate capacity, I could not exercise powers which the Family Court did not have.

7 I decided that the Application should be allowed to proceed:

(a) At the time of the hearing, the High Court had decided *UDA v UDB and another* [2018] 3 SLR 1433 ("*UDA (HC)*"), holding that in proceedings under s 112 of the Women's Charter (Cap 353, 2009 Rev Ed) ("s 112 proceedings"), the court has no power to make direct orders against a third party claiming an interest in an alleged matrimonial asset: see *UDA (HC)* at [31]. I respectfully agreed with that ruling.

(b) The High Court further held that the court has two options where a third party claims an interest in an alleged matrimonial asset. The first is to determine the interests in the asset but to make no order against the third party, either because (i) the court finds that neither party to the marriage has a beneficial interest in the asset, and therefore excludes it from the pool of matrimonial assets or (ii) there are “substantial matrimonial assets to be divided apart from the disputed asset”: see *UDA (HC)* at [14]–[15]. Option (i) was not available here because it seemed clear from the evidence that the father, at least, had a beneficial interest in the Property, and thus the Property could not be excluded from the pool of matrimonial assets. Option (ii) was also not available. The Family Court had ordered that the division of the matrimonial assets was to be achieved, either in whole or in part, through a distribution of monies in the father’s Central Provident Fund (“CPF”) accounts. However, this was no longer possible as the father had withdrawn most of the monies that were to be distributed and expended them (see [19] below). The only significant asset left for distribution was the Property.

(c) The second option noted by the High Court was to stay the s 112 proceedings to allow the property dispute to be determined in a separate civil action. Here, the separate civil action had indeed been commenced by the brothers and, in the circumstances, I came to the view that I should hear it. I therefore proceeded to hear the Application.

(d) After the hearing on 4 April 2018, the Court of Appeal delivered its decision in *UDA v UDB and another* [2018] 1 SLR 1015 (“*UDA (CA)*”) which broadly affirmed the rulings in *UDA (HC)*. This fortified my view that it was appropriate to hear the Application.

8 As the step-mother's share of the Property would depend on what the father's share of the Property was, I heard the Application before the Appeal, during which I also heard the brothers in their capacity as interveners. As noted above, this was before the decision in *UDA (CA)* was handed down. In *UDA (CA)*, the Court of Appeal stated the following at [54]:

Given that the third party cannot participate in those [s 112] proceedings, whilst he may ask for leave to intervene in the proceedings, *the only purpose of such intervention would be to notify the court of his interest and apply for a stay of the s 112 proceedings pending determination of his separate civil suit.* [emphasis added]

9 The brothers should therefore not have been heard in the Appeal after their application to intervene was granted, notwithstanding that they took the same position in the Appeal as they did in the Application.

The material facts

10 Although the Application was brought to determine the parties' respective interests in the Property, that matter was closely related to what had taken place in the marriage between the father and step-mother. Therefore, besides the history of the ownership of the Property, it was necessary to examine some details of that marriage, as well as events that took place before it. Indeed, a number of affidavits of the father and step-mother filed in the divorce proceedings were also referred to in the Application.

11 The brothers were the only children from an earlier marriage entered into by the father. According to the step-mother, the father was married twice before their marriage but nothing turns on this.¹ The Property was originally purchased by the father and the brothers' biological mother ("the parents") on 1

¹ Step-mother's affidavit of 31 July 2017, at para 11.

October 1992,² with the 99-year lease starting on 1 July 1993. The Property was transferred by gift to the father on 25 September 1996 in his sole name.³ The parents' marriage ended in 2003.⁴ The father and the brothers have been living in the Property since its purchase.

12 The father, who was born in March 1955,⁵ turned 55 in 2010. He is 63 years old this year. The step-mother is 59 years old this year. They knew each other since 1993, when they were still married to their previous spouses. Around that time, in 1993 or 1994, the step-mother, who has three daughters from her first marriage which ended in 1995, moved into the Property with her youngest daughter.⁶ The brothers were then eight and six years old respectively.

13 The father married the step-mother on 10 July 2003. They have no children from this marriage.

14 About a year after she married the father, the step-mother sold a property that she had purchased using her share of the sale proceeds of the matrimonial flat from her previous marriage, and received \$83,795.13.⁷ Although she lived in the Property until she left in 2012, the step-mother never obtained any legal interest in the Property, and was only an occupier there.

15 In May 2012, the step-mother left the Property for a trip to India with her daughters. When they came back to Singapore in August that year, they did

² Father's affidavit of 1 June 2017 at para 17.

³ Brothers' affidavit of 30 January 2018, at pp 13–16.

⁴ Father's affidavit of 18 July 2017 at para 20.

⁵ Father's affidavit of 1 June 2017, at Tab K.

⁶ Step-mother's affidavit of 27 January 2016 at para 8.

⁷ Step-mother's first affidavit of assets and means ("AOM") of 6 June 2016, at p 60.

not return to the Property. Instead, they went to live with the eldest daughter of the step-mother, and have not gone back to live in the Property ever since. The step-mother alleges that the locks to the Property were changed and she was not allowed to return to the Property when she came back from India.⁸ The father and the brothers deny this.⁹ They claim that she did not make any attempt to return; they gave her a set of the keys to the Property, but she refused to return to it. For the purpose of the Application, it is not necessary for me to decide whose version is correct. It is undisputed that the step-mother ceased to live in the Property since August 2012 at the latest.

16 In September 2012, the step-mother applied for maintenance from the father. A consent maintenance order was made on 18 October 2012 for the father to pay her \$850 per month from 1 November 2012 towards her maintenance.¹⁰

17 Before the consent maintenance order was made, on 2 October 2012, the father executed a transfer of the Property into the joint names of the brothers and the father (“the Transfer”).¹¹ According to the transfer documents, the Transfer was registered to be “By Gift”,¹² and the consideration was stated as “natural love and affection”.¹³ On 10 October 2012, the elder brother (the first plaintiff) had \$11,000 deducted from his CPF account to discharge the outstanding mortgage on the Property (“the Mortgage”), while the younger brother (the second plaintiff) had \$15,073.85 deducted from his CPF account,

⁸ Step-mother’s affidavit of 13 March 2018, at para 10 and p 57.

⁹ Brothers’ affidavit of 27 March 2018 at para 8; Father’s affidavit of 1 June 2017 at para 20.

¹⁰ Step-mother’s affidavit of 13 March 2018, at para 10 and p 58.

¹¹ Brothers’ affidavit of 30 January 2018, at para 4 and p 9.

¹² Brothers’ affidavit of 30 January 2018, at p 16.

¹³ Brothers’ affidavit of 30 January 2018, at p 10.

comprising \$14,905.05 for the discharge of the Mortgage, \$130.50 for a conveyancing fee, and \$38.30 for a registration fee.¹⁴ In total, excluding payments of fees, \$25,905.05 was deducted from the brothers' CPF accounts to discharge the Mortgage.

18 The father had paid a total of \$186,271.24 for the acquisition of the Property.¹⁵ The respective financial contributions of the father and the brothers to the purchase price of the Property are set out in the table below:

	Father	First Plaintiff	Second Plaintiff	Total
CPF funds (\$) (Principal sum only)	186,271.24	11,000	14,905.05	212,176.29
Percentage (%)	87.80	5.18	7.02	100.00

19 According to the father's CPF statement for 2014, he had \$221,725.66 in his Ordinary Account on 1 January 2014.¹⁶ Since the father became eligible to withdraw his CPF savings in 2010 when he turned 55, it appears that he would have been able to draw on his CPF savings to pay off the Mortgage in October 2012 had he chosen to do so. However, the father did not do so. Instead, he withdrew \$226,645.66 from his Ordinary Account only on 1 August 2016.¹⁷ According to him, he spent most of the money on discretionary expenses including gifts of \$20,000 each to the brothers.¹⁸

¹⁴ Brothers' affidavit of 30 January 2018, at para 11 and pp 45–48.

¹⁵ Brothers' affidavit of 30 January 2018, at p 49.

¹⁶ Step-mother's affidavit of 13 March 2018, at p 61.

¹⁷ Father's affidavit of 1 June 2017, at Tab A (CPF Statement – Transaction History).

20 As noted above, on 10 November 2014, the father commenced divorce proceedings against the step-mother. This was on the ground that parties had lived apart for a continuous period of at least four years immediately preceding the filing of the writ. This premise was contested by the step-mother, who filed a counterclaim for divorce on the ground that the father had behaved in such a way that she could not reasonably be expected to live with him. Interim judgment was eventually granted on the step-mother's counterclaim, which was uncontested. The matter then proceeded in the manner set out in [3] above.

The parties' cases

21 The parties' respective cases are summarised below.

The brothers' case

22 The brothers claim that their names were added to the title to the Property because they had lived in the Property since it was purchased in 1992, and had contributed both financially and otherwise towards its upkeep. They deny that their names were added to the title to dilute the step-mother's alleged interest in the Property. They contend that the father was diagnosed with cancer in 2012, and decided to add their names to the title to the Property in view of his ailing health. At that time, the step-mother had already moved out of the Property, and her interest in it was minimal.¹⁹

23 As noted above, the brothers also claim that the step-mother was not denied access to the Property when she returned from India, and was given a new set of keys when she asked for it. However, she decided not to return to the

¹⁸ Father's affidavit of 18 July 2017 at para 26.

¹⁹ Brothers' affidavit of 27 March 2018 at para 6.

Property. The father was also involved in a traffic accident in 2011 and suffered grave injuries, but the step-mother did not visit him. The brothers further deny that they ever told the step-mother that they were perplexed as to why the father wanted to add their names to the title to the Property (see [30] below).²⁰

24 The brothers submit that their names were added to the title to the Property because the father wanted to leave his only asset to them.²¹ They claim that since they were joint tenants (at law) of the Property with the father, they are each beneficially entitled to one-third of the Property.²² They also submit that there was a common intention between them and the father that their beneficial interests in the Property were to be joint and equal.²³ In this regard, they emphasise that if the father had wanted to give them shares in the Property in proportion to their contributions to its purchase price, he could have made them tenants-in-common. Further, they had provided sufficient consideration for their names to be added to the title to the Property through their redemption of the Mortgage.²⁴ The brothers also aver that the step-mother's allegation that \$20,000 of her money was spent on renovations of the Property should be disregarded, because there is no documentary evidence of this.

The father's case

25 The father claims that he decided to leave the Property to the brothers because he discovered that he was suffering from stage 4 cancer, and the step-mother had already left the Property at the time of the Transfer. He contends

²⁰ Brothers' affidavit of 27 March 2018 at paras 8–9 and 13.

²¹ Brothers' written submissions at para 17.

²² Brothers' written submissions at paras 26–27.

²³ Brothers' written submissions at paras 42–45.

²⁴ Brothers' written submissions at paras 47–55.

that he had only the brothers on his mind when he made the Transfer.²⁵ He was afraid that the step-mother would “kick [them] out of the [Property] when [he] was no longer around”.²⁶ He had not intended to dilute the pool of matrimonial assets. If that had been his intention, he could have transferred the Property to the brothers in their sole names. Rather, it had only been his intention to leave the Property to the brothers “upon his passing and instil a sense of responsibility in them by giving them the opportunity to own a share in their home”.²⁷ The brothers had made the financial contributions so that they could feel a sense of ownership, and in order “to protect their interest in [the Property]”.²⁸ The father also claimed that since learning of his illness, he has been living each day as if it was his last.²⁹ He added that the step-mother did not look after him after he was diagnosed with cancer in 2012.³⁰

26 The father acknowledges that the concept of the resulting trust has been applied to family disputes over property between parents and their children, where financial contributions were taken into consideration in the determination of a party’s share of the disputed property. For example, the resulting trust analysis was applied in *Neo Boh Tan v Ng Kim Whatt* [2000] SGHC 31.³¹ In the present case, the Family Court had disregarded the financial contributions of the brothers, which were not in evidence before it. However, now that the evidence has been placed before the court, after leave was obtained from the High Court,

²⁵ Father’s written submissions at para 25.

²⁶ Father’s affidavit of 1 June 2017 at para 16.

²⁷ Father’s written submissions at para 26.

²⁸ Father’s affidavit of 1 June 2017 at para 16.

²⁹ Father’s affidavit of 18 July 2017 at para 30.

³⁰ Father’s affidavit of 18 July 2017 at para 9.

³¹ Father’s written submissions at para 13.

it should be considered in the determination of the brothers' shares of the Property, which should be in proportion to their financial contributions to the Property.³² Additionally, where it could be demonstrated that the father had intended to benefit each brother with a one-third share of the Property, the father and the brothers should then each hold a one-third share of the Property.³³

27 The father also submits that if the court does not find that there was a common intention for him and the brothers to each hold a one-third share in the Property, the gift to the brothers was the entire beneficial interest in the Property.³⁴ He further submits that the presumption of advancement arose to give each brother a one-third share given their close-knit relationship with him, and in the light of the fact that the Property was their familial home since soon after the brothers were born.³⁵

28 In addition, the father submits that the court should disregard the step-mother's contention that she contributed \$20,000 towards the Property for two reasons.³⁶ First, there is a lack of evidence supporting this contention. Second, the payment of renovation costs made years after the purchase of the Property cannot be considered as contributions towards its acquisition (*Tan Chui Lian v Neo Liew Eng* [2007] 1 SLR(R) 265 ("*Tan Chui Lian*") at [24]). By contrast, the CPF monies applied by the brothers towards the redemption of the Mortgage can be considered direct financial contributions.

³² Father's written submissions at para 16.

³³ Father's written submissions at paras 23–28.

³⁴ Father's written submissions at para 29.

³⁵ Father's written submissions at para 31.

³⁶ Father's written submissions at paras 34–41.

The step-mother's case

29 According to the step-mother, the proceeds of sale of her property of \$83,795.13 were paid into a bank account which the father became a joint account holder of. The father withdrew money from the account, including an estimated \$20,000 for renovations of the Property.³⁷ This claim was accepted by the District Judge who heard the divorce proceedings (“the DJ”): see the GD at [6]. The step-mother also claims that the father had earlier taken \$18,000 from her when he needed money after he suffered a traffic accident.³⁸

30 In addition, she avers that because she was locked out of the Property since 2012, she did not know of the father’s cancer which, in any event, the documents show was only diagnosed in 2014.³⁹ She further claims that the second plaintiff, the younger brother, told her that he was perplexed by the father’s action to make the brothers joint tenants of the Property with him.⁴⁰

31 The step-mother submits that the brothers have no *locus standi* to bring the Application because they do not have any interest in the Property. This was because their redemption of the Mortgage did not confer on them a beneficial interest, as the CPF monies utilised for the redemption should be treated only as loans (presumably to the father).⁴¹ She points out that the brothers did not pay market price for their shares, and the consideration for the transfer of the Property to them was stated as “natural love and affection”. Further, the father could have paid off the Mortgage himself without the money from the brothers,

³⁷ Step-mother’s first AOM of 6 June 2016, at p 7.

³⁸ Step-mother’s first AOM of 6 June 2016, at p 6.

³⁹ Step-mother’s affidavit of 31 July 2017, at para 18.

⁴⁰ Step-mother’s affidavit of 13 March 2018, at para 12.

⁴¹ Step-mother’s affidavit of 13 March 2018, at para 12.

who only used their CPF monies when they were eligible to do so after the Transfer. The step-mother claims that this was done to deprive her of her rightful share of the matrimonial assets. The father had also given away his other assets, such as CPF savings, for this same purpose.

32 The step-mother relied on *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 (“*Lau Siew Kim*”), where the Court of Appeal held that for the purpose of presuming a resulting trust, only the parties’ contributions at the time of the acquisition of the property were to be considered. For the repayment of a mortgage, a distinction was drawn between repayments pursuant to an agreement made at the time the mortgage was taken out, and other repayments of a mortgage (*Lau Siew Kim* at [113] and [116]). Where there was no agreement, the mortgage payments made subsequently would not give rise to any beneficial interest by way of a resulting trust (*Lau Siew Kim* at [117]).

33 The step-mother submits that since the brothers do not have an interest in the Property, they may only obtain a refund of the CPF monies they had used to discharge the Mortgage upon the sale of the Property.

My decision

34 As stated in [11] above, the father was the sole registered proprietor of the Property until the brothers’ names were added to the title to the Property pursuant to the Transfer. The Transfer was apparently by way of a gift in consideration for “natural love and affection”. The brothers then used savings in their CPF accounts to discharge the outstanding mortgage sum of \$25,905.05 on 10 October 2012. The step-mother, whose name was never added to the title to the Property, estimated that \$20,000 of her money had been applied towards renovations of the Property (see [29] above).

35 To determine the parties' respective shares of the beneficial interest in the Property, it is necessary to consider how the concepts of the resulting trust, the common intention constructive trust and the presumption of advancement, which the parties relied on to support their claims, apply to the available evidence. The approach, set out in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*"), a case relied on by the father and the brothers, at [160] is as follows:

In view of our discussion above, a property dispute involving parties who have contributed unequal amounts towards the purchase price of a property and who have not executed a declaration of trust as to how the beneficial interest in the property is to be apportioned can be *broadly* analysed using the following steps in relation to the available evidence:

- (a) Is there sufficient evidence of the parties' respective financial contributions to the purchase price of the property? If the answer is "yes", it will be presumed that the parties hold the beneficial interest in the property in proportion to their respective contributions to the purchase price (*ie*, the presumption of resulting trust arises). If the answer is "no", it will be presumed that the parties hold the beneficial interest in the same manner as that in which the legal interest is held.
- (b) Regardless of whether the answer to (a) is "yes" or "no", is there sufficient evidence of an express or an inferred common intention that the parties should hold the beneficial interest in the property in a proportion which is different from that set out in (a)? If the answer is "yes", the parties will hold the beneficial interest in accordance with that common intention instead, and not in the manner set out in (a). In this regard, the court may not impute a common intention to the parties where one did not in fact exist.
- (c) If the answer to both (a) and (b) is "no", the parties will hold the beneficial interest in the property in the same manner as the manner in which they hold the legal interest.
- (d) If the answer to (a) is "yes" but the answer to (b) is "no", is there nevertheless sufficient evidence that the party who paid a larger part of the purchase price of the property ("X") intended to benefit the other party ("Y")

with the entire amount which he or she paid? If the answer is “yes”, then X would be considered to have made a gift to Y of that larger sum and Y will be entitled to the entire beneficial interest in the property.

(e) If the answer to (d) is “no”, does the presumption of advancement nevertheless operate to rebut the presumption of resulting trust in (a)? If the answer is “yes”, then: (i) there will be no resulting trust on the facts where the property is registered in Y’s sole name (ie, Y will be entitled to the property absolutely); and (ii) the parties will hold the beneficial interest in the property jointly where the property is registered in their joint names. If the answer is “no”, the parties will hold the beneficial interest in the property in proportion to their respective contributions to the purchase price.

(f) Notwithstanding the situation at the time the property was acquired, is there sufficient and compelling evidence of a subsequent express or inferred common intention that the parties should hold the beneficial interest in a proportion which is different from that in which the beneficial interest was held at the time of acquisition of the property? If the answer is “yes”, the parties will hold the beneficial interest in accordance with the subsequent altered proportion. If the answer is “no”, the parties will hold the beneficial interest in one of the modes set out at (b)–(e) above, depending on which is applicable.

36 I now apply this analytical framework to the facts of this case.

The first step: Whether the presumption of resulting trust arose

The law

37 In *Lau Siew Kim*, the Court of Appeal held at [112] that a resulting trust crystallises at the time the property is acquired and the extent of the beneficial interests of the parties where a resulting trust arises must be determined at the time of the purchase of the property, because that is when the resulting trust arises. The court further held at [116] that payment of mortgage instalments pursuant to an agreement made when the mortgage is taken out “will be ‘direct’ contributions to the purchase price and will give rise to a resulting trust”. For

subsequent mortgage payments to amount to a direct contribution to the purchase price for the purpose of establishing a resulting trust, there has to be a prior agreement between the parties at the time of the acquisition as to who would pay for the mortgage. The court made clear at [117] that “in the absence of any such agreement, the payment of mortgage instalments or other financial contributions *subsequent* to the initial acquisition of the property will *not* give rise to any beneficial interest by way of a resulting trust”.

38 With regard to renovation costs, while those incurred at the time of the acquisition of the property are regarded as contributions towards the acquisition of the property, those incurred years after the acquisition could not be so regarded: see *Tan Chui Lian* at [26] and [27].

The brothers’ interests

39 The brothers rely on *Lee Hwee Khim Rosalind v Lee Sai Khim and others* [2011] SGHC 64 (“*Lee Hwee Khim Rosalind*”) in support of their submission that they had acquired a beneficial interest in the Property as joint tenants through their payments which discharged the Mortgage. They submit that they are therefore each entitled to a one-third share in the beneficial interest in the Property, with the father holding the other one-third share.

40 In *Lee Hwee Khim Rosalind*, the plaintiff and one Lee Sai Kim (“LSK”) were the registered joint proprietors of a HDB flat. When LSK wanted to sell the flat, and the plaintiff refused, LSK served a Declaration to Sever A Joint Tenancy in respect of the flat on the plaintiff. The plaintiff then applied to the court for a declaration that she was the sole beneficial owner of the flat. In the course of the proceedings, LSK passed away and the action continued against the administrators of LSK’s estate. The High Court dismissed the plaintiff’s claim, holding at [23] that LSK held “a beneficial interest in the [flat] as a joint

tenant which she acquired through [several payments]”. The court further noted the general rule that upon severance of a joint tenancy, the parties take equal shares of the property, but considered that it was not necessary to determine the beneficial ownership of the flat.

41 The flat was originally purchased in or around 1985 in the names of the plaintiff and her foster mother, Mdm Cheng, for \$46,400. LSK, another foster daughter of Mdm Cheng, and LSK’s husband moved into the flat then. When Mdm Cheng passed away in 1991, the plaintiff became the sole registered proprietor of the flat. Towards the end of 1993, the plaintiff arranged for LSK’s name to be added to the title to the flat and in 1995, LSK was registered as a joint proprietor of the flat with the plaintiff.

42 While the plaintiff initially denied that LSK had made any financial contributions towards the acquisition of the flat, she eventually conceded that LSK had made such contributions. The High Court accepted that LSK had contributed towards the property, by paying \$20,000 for renovations when the flat was first purchased in or around 1985 and \$100 per month towards the monthly payments and utility bills, and buying most of the furniture and fixtures. This arrangement had arisen because although LSK had wanted to purchase a property, her husband had not wanted to commit to a purchase. She then decided to make the purchase without her husband’s knowledge, and obtained the assistance of the plaintiff and Mdm Cheng to purchase the flat. LSK and her husband moved into the master bedroom when the flat was ready. After her husband died in 1989 and Mdm Cheng died in 1991, LSK requested the plaintiff to transfer Mdm Cheng’s share of the property to her, and she thus became a joint tenant. LSK also paid \$13,288.61 from her CPF savings for the flat, as she and the plaintiff were required to redeem the existing mortgage on

the flat before she could become a joint tenant. The plaintiff, on the other hand, had withdrawn \$47,258.46 from her CPF account to pay for the flat.

43 Although this decision appears to support the brothers' submission that a beneficial interest in a property may be acquired through the discharge of a mortgage and other payments, the decision has to be understood in context. The plaintiff had added LSK as a joint tenant but claimed that the parties had agreed that LSK would only take the property after the plaintiff passed on. However, the court found it telling that the alleged agreement was not alluded to in a letter which the plaintiff had instructed her lawyers to send to LSK after LSK took steps to sever the joint tenancy. The court found that there was no such agreement, accepted that LSK had made contributions to the house, noted the addition of LSK as joint tenant, and on that basis, found that there had been an intention for LSK to acquire a beneficial interest in the flat, albeit the intention had been reflected as a gift in the transfer documents (at [23]).

44 The facts here are materially different. As will be explained below, unlike the facts in *Lee Hwee Khim Rosalind*, I find that while the precise legal effect of the addition of the brothers' names as joint tenants had not been thought out between the father and brothers, the father's intention was for the sons to take the Property only after he passed on. He had no intention that the brothers could acquire two-thirds of the Property in the event that it was sold prior to his death.

45 There were two relevant junctures at which the Property was acquired in the present case. It was first acquired by the father in 1993, when the brothers were only aged eight and six respectively. Naturally, there could not have been any agreement between the father and them that they should be involved in

making any mortgage payment, or otherwise financing the acquisition of the Property, that would only be performed in 2012, some 19 years later.

46 However, the brothers had acquired their legal interests pursuant to the Transfer on 2 October 2012, and the payments from their CPF accounts to discharge the Mortgage were made soon after on 10 October 2012.

47 The brothers had received property in their legal names. They now claim they are joint tenants which would entitle them to 66.7% (rounded up) of the proceeds of the Property if sold, but through the discharge of the Mortgage using their CPF monies, they had only collectively paid out what amounted to 12.2% of the purchase price of the Property. I accept that the CPF monies were not intended to be loans to the father, as he had more than enough savings in his CPF account to discharge the Mortgage if he had wanted to, but were understood by all to be contributions towards the purchase of the Property. Otherwise, the brothers' names would not have been added as legal owners. This distinguishes the current case from other cases where subsequent repayments of mortgage monies failed to count towards the payment of the purchase price of a property so as to establish a resulting trust.

48 However, the brothers are not just claiming 12.2% of the Property. They are effectively claiming an additional 54.5%. Since I am not satisfied that there was an intention on the part of the person paying the purchase price for that portion of the property (the father) to benefit the recipients of the legal title (the brothers), the reasons for which are set out below at [56]–[62], a resulting trust arises. On the evidence, the father had wanted to give the brothers a share in the Property, and the brothers had made the financial contributions through the discharge of the Mortgage using their CPF savings, so that they could feel a sense of ownership (see [25] above). However, there was never any intention

that the brothers could claim more than they had contributed, at least while the father still lived. This was understood by them all. Therefore, having ruled out the possibilities that the brothers' CPF contributions were intended to be loans to the father, or that the father's intention was for the brothers to have 66.7% of the Property either by way of gift (as stated in the transfer document) or sale (at an undervalue giving the brothers 66.7% of the Property for 12.2% of the original purchase price), and having found that the father and brothers did not have any specific intention regarding exactly whom the 54.5% would vest in, I come to the conclusion that a resulting trust arises. Accordingly, applying the first step of the approach in *Chan Yuen Lan*, there is a resulting trust over the Property in the proportions of the respective financial contributions towards the purchase price of the Property as set out above (at [18]).

The step-mother's alleged interest

49 Although the step-mother does not have any legal interest in the Property, she claims that she has a beneficial interest.

50 The step-mother claims that the proceeds of sale of the flat that she bought using her share of the sale proceeds of the matrimonial flat from her previous marriage were paid into a bank account which the father became a joint account holder of, and he had availed himself of the money. She further claims that \$20,000 of that money was spent on renovations of the Property. The first claim was not supported by any documentary or other objective evidence. For the second claim, she relies on an invoice or receipt which actually shows that \$200 was spent on servicing an air conditioning unit.⁴²

⁴² Step-mother's third AOM of 7 November 2016, at p 6.

51 The DJ found that the step-mother contributed \$20,000 to the renovations of the Property (see [29] above). This finding is in issue in the Appeal, and will be dealt with there. For present purposes, even if I accept that \$20,000 of the step-mother's monies were applied towards renovations of the Property, that expenditure would not have given rise to any beneficial interest in the Property in her favour under a resulting trust. First, there was a long time lag between the acquisition of the Property and the alleged expenditure and consequently, the alleged expenditure could not be regarded as a contribution towards the acquisition of the Property: see *Tan Chui Lian* at [24]. Further, the expenditure was not made pursuant to any agreement between the father and her when the father acquired the Property, whether in 1992 when it was purchased by the father and his then wife, or in 1996, when it was transferred to his sole name. Indeed, there was no allegation of such an agreement despite the step-mother's explanation that the father did not arrange for her name to be added to the title to the Property because it was necessary to pay a resale levy of \$20,000 to the HDB if she was so added.⁴³ The step-mother therefore could not have acquired any beneficial interest in the Property under a resulting trust.

The second step: Whether a common intention constructive trust arose

52 A presumption of resulting trust may be displaced by a common intention constructive trust: see *Chan Yuen Lan* at [160(b)].

53 In order to establish whether a common intention constructive trust exists, the common intention of parties (on how their beneficial interests in the property are to be held) may subsist between them either at, or subsequent to, the time the property was acquired, and it may either be express or inferred.

⁴³ Step-mother's third AOM of 7 November 2016, at para 11.

However, there must be sufficient and compelling evidence of the express or inferred common intention: see *Chan Yuen Lan* at [160(b)] and [160(f)].

54 In *Chan Yuen Lan*, the Court of Appeal made the following observations at [97] in relation to a common intention with regard to property:

Such a common intention may: (a) arise from an express discussion; or (b) take the form of an inferred common intention, as evidenced by direct financial contributions by [a party] to the purchase price of the property; or (c) in exceptional situations, arise from the conduct by [a party] which gives rise to an implied common intention.

The brothers' interest

55 The step-mother claims that the second plaintiff told her that he was surprised by the father's conduct in making him a joint tenant. However, as noted above, this was denied by the second plaintiff. Since no corroborative evidence was adduced on behalf of the step-mother, I find that her claim is not proved, and do not take it into consideration in deciding whether there was any common intention between the father and brothers to give the latter a one-third share each of the beneficial interest in the Property.

56 To determine whether there was any such common intention, it is useful to recall what the situation was in 2012, and the events that took place in that year and after:

(a) The step-mother left the Property, by August 2012 at the latest, and ceased to be part of the life of the father and the brothers.

(b) She filed a claim for maintenance in September 2012, and obtained a consent order on 18 October 2012 for maintenance of \$850 per month from 1 November 2012.

- (c) The father claims that around this time, he was suffering the ill effects of a traffic accident in 2011.
- (d) The father also claims that he was diagnosed with cancer in 2012.
- (e) The father executed the Transfer which transferred title to the Property into the names of himself and the brothers on 2 October 2012, with the Transfer being registered as a gift and the consideration stated as “natural love and affection”.
- (f) The brothers used monies in their CPF accounts to discharge the Mortgage on 10 October 2012.
- (g) The father, who became eligible to withdraw money from his CPF accounts upon turning 55 in March 2010, had more than enough money in his CPF accounts which he could have used to discharge the Mortgage. He withdrew almost all of the monies from his CPF accounts only on 1 August 2016, with most of the money withdrawn used for discretionary expenses, including gifts of \$20,000 each to the brothers.⁴⁴

57 On the evidence of the father that is summarised at [25] above, while the father claims that he had wanted the brothers to have a share of the Property, it is not clear that he wanted to give them a one-third share each in the Property during his lifetime, even though he arranged for them to become registered proprietors of the Property with him. There was no express evidence from him that this was indeed his intention. Ordinarily, the indication of joint tenancy on the transfer document might have been taken as evidence of such an intention.

⁴⁴ Father’s affidavit of 18 July 2017, at para 26.

However, I am unable to accept on the present facts that the information in the transfer document was reflective of the true transaction intended between the father and brothers. The transfer documents had indicated that the Transfer had been executed in consideration of natural love and affection. But as the evidence adduced in the Application showed, the father had intended that the brothers make at least some financial contributions. Given that the information on the transfer documents had already been shown not to be a true reflection of what the father and brothers intended in at least one aspect, the other aspects of the transfer document that the father and brothers relied on to show their intentions at the time of transfer could not be taken as conclusive proof of their intentions at the relevant time in the absence of corroborative evidence.

58 One of the reasons which the father gives for the Transfer was his health condition in 2012. However, I find it doubtful that the Transfer was made for the health reasons that he claimed. While the father initially submitted that he made the Transfer because he was diagnosed with cancer in 2012, the documents tendered in support of this claim showed that the earliest record of his cancer was in 2014. When this was pointed out, the father then submitted that he was unwell because of a traffic accident in 2011. Yet, as the step-mother highlighted, his injuries comprised non-displaced rib fractures, and he continued with the same job he had until he stopped work some years later.

59 In *Ng So Hang v Wong Sang Woo* [2018] SGHC 162 (“*Ng So Hang*”), the High Court made the following observations at [46] and [47]:

46 Even if [parties] intended for the right of survivorship to operate upon the demise of one party in deciding to hold the property as joint tenants, *this did not mean that the parties also intended for the beneficial interest to held in equal shares, or in any particular proportion while both parties were alive.* The former discloses an intention that on the death of one party, the other would be entitled automatically to the property, rather

than an intention to share in the property equally while parties are alive. ...

47 In addition, the right of survivorship may entitle the surviving owner to a share of the property, but what is gained is only at law; it may be that even where the right of survivorship operates to make the sole surviving owner the sole registered proprietor of the property, *the survivor may not be entitled to the whole of the beneficial interest*. Such would be the case for instance where a resulting trust operates in favour of the deceased's estate, which is not displaced by a common intention constructive trust, intention to gift or presumption of advancement (see *Lim Chen Yeow Kelvin v Goh Chin Peng* [2008] 4 SLR(R) 783 at [116]). Where co-owners have contributed unequal amounts towards the purchase price of a property, how the beneficial interest in the property is to be apportioned upon the death of one party is still to be determined by undertaking the steps set out in *Chan Yuen Lan* (see above at [23]).

[emphasis added]

60 I respectfully agree with these observations.

61 The same distinction between the intention for the right of survivorship to operate upon the demise of one party, namely the father, and the intention for the beneficial interest to be held in equal shares needs to be drawn in the present case. If the respective beneficial interests of the father and the brothers were indeed intended to be one-third each after the transfer, it would have meant that if either or both of the brothers wanted to sever the joint tenancy immediately and have the Property sold, the father would only receive one-third of any proceeds of sale, despite him having contributed some 87.80% of the purchase price of the Property (see [18] above). There is nothing in the evidence which indicates that the father would have countenanced this, even if the Transfer was executed because of the father's health concerns. On the contrary, the cost of treating the cancer which he said he was diagnosed with would have militated against a finding that he intended to give away a major financial asset.

62 It is clear that the father was more concerned with the disposition of the Property after he passed on than with giving the brothers a beneficial interest in it immediately upon the Transfer. As I have noted, the father's evidence was that he was afraid that the step-mother would evict the brothers from the Property after his passing, and that the brothers made the financial contributions to protect their interest in the Property (see [25] above). On the father's own evidence, it was more likely that he intended that they would acquire a right of survivorship in relation to his beneficial interest in the Property, and not a one-third share of the beneficial interest immediately upon the Transfer.

63 In my judgment, the above considerations alone would suffice to dispose of the submission that the father and brothers had a common intention that they each have an immediate beneficial interest in one-third of the Property upon the Transfer. However, looking at the timing of the Transfer against the backdrop of the events that took place in 2012 (see [56] above), it could also be inferred that the father was taking steps to reduce the step-mother's potential share in the matrimonial assets in the event that divorce proceedings were commenced. The marriage was failing rapidly. The step-mother had left the Property, and she had gone to court to seek maintenance from the father in September 2012. As this was not the father's first divorce, he would certainly have been aware of how matrimonial assets are dealt with in a divorce. The Transfer was made on 2 October 2012. This view of the father's intentions resonates with his stated intention of having the brothers make financial contributions to protect their interest in the Property.

64 Taking into account the above, I do not accept the step-mother's submission that the brothers' CPF contributions should be treated as loans (to the father). But I am also of the view that there was no common intention for

the father and the brothers to each hold a one-third share of the beneficial interest in the Property in the lifetime of the father.

The step-mother's interest

65 As pointed out in [51] above, there was no evidence that there was any agreement for the step-mother to have a beneficial interest in the Property at any time after her marriage to the father. Therefore, taking the step-mother's case at its highest, that the father had made use of the proceeds of sale of the matrimonial property from her previous marriage and \$20,000 of those proceeds had been spent on the renovations, it is not possible to find that there was any common intention that she was to acquire a share of the beneficial interest of the Property.

The third step: Whether a gift was intended

66 In the third step of the approach set out in *Chan Yuen Lan*, the inquiry is whether there is "sufficient evidence that the party who paid a larger part of the purchase price of the property ("X") intended to benefit the other party ("Y") with the entire amount which he or she paid": see *Chan Yuen Lan* at [160(d)]. In the light of my analysis of the facts above, in my discussion of whether a common intention constructive trust arose, even if the father had intended to make a gift to the brothers, he did not intend to gift the brothers with a one-third beneficial interest each in the Property immediately upon the Transfer. It is far more likely that if the father had been asked at the time of the Transfer whether the brothers could sever the joint tenancy during his lifetime, and take one-third of the proceeds of the Property, he would have answered in the negative. If there was an intention to gift at all, on the evidence, it would have been an intention to gift them with a right of survivorship in the Property only.

The fourth step: Whether the presumption of advancement applies

67 A presumption of resulting trust may also be displaced by the presumption of advancement, which presumes an intention to gift having regard to the nature of the relationship between the parties involved: see *Ng So Hang* at [110].

68 In *Lau Siew Kim*, the Court of Appeal explained the interaction between the presumption of advancement and the presumption of resulting trust at [107]:

... both the presumption of resulting trust and the presumption of advancement may feature whenever there is a legal joint tenancy in place and there are unequal contributions to the purchase price of the jointly-owned property. The presumption of resulting trust will operate in such a situation since equity abhors joint tenancy as a form of common ownership. The presumption of advancement, on the other hand, comes into play to displace the presumption of resulting trust where there is a pre-existing relationship between the parties which falls into one of the established categories of relationships.

69 The Court of Appeal elaborated on the presumption of advancement at [59] as follows:

Just like the presumption of resulting trust, the presumption of advancement is “no more than a long stop to provide the answer when the relevant facts and circumstances fail to yield a solution” (see [36] above). It should be treated 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”: see *Teo Siew Har v Lee Kuan Yew* [1999] 3 SLR(R) 410 (“*Teo Siew Har*”) at [29]. Indeed, in *Neo Tai Kim v Foe Stie Wah* [1985–1986] SLR(R) 48 (“*Neo Tai Kim*”), the Privy Council accepted that where the trial judge had found as a fact that there was a common intention that the property in question should be bought for the wife as the matrimonial home, the common intention *by itself* established the beneficial ownership and *precluded the operation of any presumption*. It is therefore apparent that the presumption of advancement will operate only where there is no direct evidence that may reveal the intention of the parties; only then will there be any necessity to *infer* or *presume* intention.

70 The Court of Appeal added the following at [78]:

The overall aim of the presumption of advancement is to discern the intention of the transferor In our judgment, two key elements are crucial in determining the strength of the presumption of advancement in any given case: *first*, the *nature* of the relationship between the parties (for example, the obligation (legal, moral or otherwise) that one party has towards another or the dependency between the parties); and *second*, the *state* of the relationship (for example, whether the relationship is a close and caring one or one of formal convenience). The court should consider whether, in the entirety of the circumstances, it is readily presumed that the transferor or contributor intended to make a gift to the recipient and, if so, whether the evidence is sufficient to rebut the presumption, given the appropriate strength of the presumption in that case.

71 The parent-child relationship between the father and the brothers in this case falls within the well-established categories of relationships where the presumption of advancement may apply. I therefore need to consider whether the presumption of advancement has displaced my earlier finding that the brothers' beneficial interests in the Property are, pursuant to a resulting trust, limited to the proportions of their financial contributions against the total amounts used towards the acquisition of the Property. Having reviewed the evidence earlier in the analysis of whether there was a common intention constructive trust, I am of the view that the presumption of advancement that the father had intended to gift an immediate one-third share of the Property each to the brothers is also rebutted.

72 The father had originally claimed that he made the Transfer because he was diagnosed with cancer in 2012. As pointed out earlier (see [58] above), this was not borne out by the evidence which showed that the diagnosis was only made in 2014. Nor was the transfer likely due to the alleged effect that the 2011 traffic accident had on his well-being. Even if the father was concerned about his health, he was not likely to have given away two-thirds of his beneficial

interest in the Property immediately, entitling the brothers to sever the joint tenancy and claim that larger interest if they decide to sell the Property. Instead, considering the evidence that he was afraid that the step-mother would evict the brothers from the Property when he had passed away, and that the brothers had made the financial contributions to protect their interest in the Property, the father had intended to confer on the brothers a right of survivorship so that the brothers would not be excluded from the Property when he passed on. The possibility that the father had attempted to reduce the step-mother's share of the Property in the divorce also cannot be ruled out.

73 Accordingly, I find that when the father made the brothers joint tenants of the Property with him, there was no presumption that he had intended to advance to each of them an immediate gift of a one-third share of the beneficial interest in the Property.

The fifth step: Whether there was a subsequent change in common intention

74 The submissions in the Application centred on the intentions of the relevant parties up to and until the Transfer. There was no suggestion that there had been any subsequent change in the intentions of the father and the brothers, or the step-mother, after the brothers had been added as joint tenants. I therefore find that there was no subsequent common intention that the beneficial interest in the Property should be held in a proportion which differed from the position when the brothers' names were added to the title to the Property in 2012.

Conclusion

75 In the result, I find that the Property is held on a resulting trust in the following proportions: 87.80% (father), 5.18% (first plaintiff) and 7.02% (second plaintiff). There was no common intention, whether immediate or

subsequent to the transfer, that the brothers would be entitled to an immediate beneficial interest of one-third each of the Property subsequent to them being added as joint tenants. The father's intention was, instead, for them to inherit his beneficial interest in the Property upon his passing. Given this intention, the presumption of advancement in the brothers' favour would also be rebutted.

76 In the event the Property is sold in the father's lifetime, the net proceeds of sale, after deducting the costs of the sale, would have to be distributed to the father and the brothers according to the percentages set out above. All three would have to refund to their respective CPF accounts the amounts which were withdrawn for the acquisition of the Property in accordance with the rules governing such transactions.

77 I also find that the step-mother does not have any beneficial interest in the Property under property law. Any share which she may have will be determined under matrimonial law, and will be dealt with in the Appeal. The proceeds of sale in the event of the sale of the Property will also be dealt with in the Appeal.

78 I will hear parties on costs.

Tan Puay Boon
Judicial Commissioner

Abdul Wahab bin Saul Hamid and Jovita Ann Dhanaraj (IRB Law
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Yeow Tin Tin Margaret and Jeanna Loe Yuqing (Hoh Law

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