

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 188

Originating Summons No 195 of 2020

Between

Damodaran s/o Subbarayan

... Plaintiff

And

Rogini w/o Subbarayan

... Defendant

JUDGMENT

[Equity] — [Remedies] — [Equitable accounting]
[Land] — [Interest in land]
[Trusts] — [Resulting trusts] — [Presumed resulting trusts]

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Damodaran s/o Subbarayan

v

Rogini w/o Subbarayan

[2020] SGHC 188

High Court — Originating Summons No 195 of 2020

Andre Maniam JC

18 June 2020

7 September 2020

Judgment reserved.

Andre Maniam JC:

Introduction

1 When one of three joint tenants dies, what happens to his beneficial interest in the property? Does it go to his estate? Or does it go to the two surviving joint tenants (or either of them)?

2 In the present case, a married couple had acquired a Housing and Development Board (“HDB”) flat as joint tenants. I find that they were joint tenants in equity as well as in law. Their son was added as a third joint tenant three years later, and he took over the outstanding balance of the mortgage loan. The father died a month later.

3 The son contended that his share of the flat, relative to his mother’s, would only depend on the respective contributions each of them had made, *ie*, it was immaterial what his father’s contributions had been, and what beneficial

interest his father previously had in the flat. I find instead that upon death, his father's beneficial interest passed to his mother.

4 The son was entitled to a share in the flat proportionate to the financial contribution he had made. But his share in the flat did not increase on account of his father's death.

5 In the event, I found that the son had a beneficial interest of 45.35% in the property, and his mother the remaining 54.65%.

Background

The Lower Delta Flat

6 Prior to owning the HDB flat in dispute ("the Jln Membina Flat"), Mr Subbarayan s/o Mayavan Pillai ("Mr Subbarayan") and his wife, Rogini w/o Subbarayan ("Mrs Subbarayan", the defendant) owned a previous HDB flat at Lower Delta Road ("the Lower Delta Flat") as joint tenants.¹ Their son, Damodaran s/o Subbarayan ("Mr Damodaran", the plaintiff), stayed in the Lower Delta Flat with his parents. When Mr Damodaran got married in 1998, his wife moved in too; they had a child in 1999 (and a second child in 2006).²

7 Sometime in 2001, the Lower Delta Flat was compulsorily acquired pursuant to the Selective En bloc Redevelopment Scheme ("SERS").³

The Jln Membina Flat

¹ Mrs Subbarayan's affidavit dated 19 February 2020, para 6; Mr Damodaran's affidavit dated 3 February 2020, para 4.

² Mr Damodaran's affidavit dated 3 February 2020, para 13.

³ Mr Damodaran's affidavit dated 3 February 2020, para 4.

8 Mr and Mrs Subbarayan obtained the Jln Membina Flat as a replacement for the Lower Delta Flat. The effective date of purchase of the Jln Membina Flat was 1 September 2001.⁴ As with the Lower Delta Flat, Mr and Mrs Subbarayan owned the Jln Membina Flat as joint tenants.⁵

9 All those who stayed in the Lower Delta Flat moved into the Jln Membina Flat in early November 2001. Certain renovations to the Jln Membina Flat were done in or around August to September 2001.⁶

10 Mr and Mrs Subbarayan received from the HDB compensation in the sum of \$164,000 for the acquisition of the Lower Delta Flat: that sum included, *inter alia*, monies refunded to their Central Provident Fund (“CPF”) accounts (in respect of what they had withdrawn and used towards the Lower Delta Flat, and accrued interest) and a SERS contra of \$108,603.16, which was set off against what was payable for the purchase of the Jln Membina Flat.⁷

11 Mr Damodaran was joined as a third joint tenant of the Jln Membina Flat some three years later, on 1 September 2004.⁸

Mr Subbarayan’s death and subsequent developments

⁴ Mr Damodaran’s affidavit dated 3 February 2020, p 14.

⁵ Mr Damodaran’s affidavit dated 3 February 2020, p 14.

⁶ Mr Damodaran’s affidavit dated 3 February 2020, pp 20–26.

⁷ Mr Damodaran’s affidavit dated 3 February 2020, pp 15–16.

⁸ Mrs Subbarayan’s affidavit dated 19 February 2020, p 32 and para 21.

12 Unfortunately, Mr Subbarayan passed away from a cardiac arrest just a month later, on 1 October 2004, leaving Mrs Subbarayan and Mr Damodaran as the surviving joint tenants. Mr Subbarayan died intestate.⁹

13 In 2019, Mrs Subbarayan initiated a severance of the joint tenancy over the Jln Membina Flat into a tenancy in common in equal shares; she was then over 70 years of age and wished to realise her interest in the flat so that she could get alternative accommodation.¹⁰ Things had not been going well between her and Mr Damodaran and his wife. Mr Damodaran objected to severance, but Mrs Subbarayan proceeded to sever the joint tenancy into a tenancy in common in equal shares on 13 June 2019, pursuant to the Land Titles Act (Cap 157, 2004 Rev Ed).¹¹ She told Mr Damodaran that she intended to sell her half share, and gave him the first option to purchase it at the best market price, failing which she intended to seek an order that the flat be sold.¹²

14 Mr Damodaran did not take up Mrs Subbarayan's offer to purchase her interest in the Jln Membina Flat on a 50:50 basis. Nor did he wish for the flat to be sold at that point in time.¹³

The present proceedings

15 Mr Damodaran filed this Originating Summons on 12 February 2020 seeking a severance of the leasehold interest in the Jln Membina Flat, in the

⁹ Mrs Subbarayan's affidavit dated 19 February 2020, paras 5 and 25.

¹⁰ Mr Damodaran's affidavit dated 3 February 2020, pp 32–36; Mrs Subbarayan's affidavit dated 19 February 2020, paras 16–17.

¹¹ Mrs Subbarayan's affidavit dated 19 February 2020, pp 23–30.

¹² Mr Damodaran's affidavit dated 3 February 2020, p 43.

¹³ Mr Damodaran's affidavit dated 3 February 2020, p 44.

proportion of 83% to himself and the remaining 17% to his mother, Mrs Subbarayan. In submissions, it was recognised that Mrs Subbarayan had already effected a severance of the joint tenancy, and so what Mr Damodaran really sought was a determination of his and Mrs Subbarayan's respective shares in the Jln Membina Flat.

16 As an alternative to his primary case of an 83:17 division in his favour, Mr Damodaran submitted that there should at the very least be a 78.3:21.7 division in his favour (in the event that his payments of service and conservancy charges, property tax, and utilities were not regarded as contributions to the *acquisition* of the Jln Membina Flat).¹⁴

17 On her part, Mrs Subbarayan initially contended that the division should be 65:35 in her favour.¹⁵ This ratio was later adjusted in submissions to 66.88:33.12 in her favour,¹⁶ alternatively 54.9:45.1 in her favour,¹⁷ alternatively 50:50.¹⁸

My findings

What could have happened to Mr Subbarayan's beneficial interest in the Jln Membina Flat?

18 Mr Damodaran's approach in this case was to ignore the contributions made by Mr Subbarayan to the acquisition of the Jln Membina Flat as well as

¹⁴ Plaintiff's written submissions dated 10 June 2020, paras 74–75.

¹⁵ Mrs Subbarayan's affidavit dated 19 February 2020, para 27.

¹⁶ Defendant's written submissions dated 10 June 2020, paras 28 and 78–79.

¹⁷ Defendant's written submissions dated 10 June 2020, para 80.

¹⁸ Defendant's written submissions dated 10 June 2020, paras 29 and 81.

Mr Subbarayan’s beneficial interest in that flat, and to focus only on the relative contributions made by himself and Mrs Subbarayan. This was wrong in principle. Mr Subbarayan’s interest in the Jln Membina Flat did not vanish upon his death – the question is whether his interest:

- (a) became part of his estate; or
- (b) passed to Mrs Subbarayan and/or Mr Damodaran who were the surviving co-owners of the Jln Membina Flat.

19 This would in turn have an impact on Mrs Subbarayan’s and Mr Damodaran’s shares in the Jln Membina Flat presently.

20 Neither Mr Damodaran nor Mrs Subbarayan contended that Mr Subbarayan’s interest became part of his estate. However, Mr and Mrs Subbarayan had a daughter, Ms Tharumambal d/o Subbarayan (“Ms Tharumambal”), who was entitled to 25% of Mr Subbarayan’s estate in intestacy. As such, I asked that Mrs Subbarayan or her solicitors inform Ms Tharumambal of these proceedings, and check if she wished to be heard by the court (and in particular whether she might contend that Mr Subbarayan’s beneficial interest in the Jln Membina Flat had formed part of his estate).

21 In response, I was informed that Ms Tharumambal had, in applying for letters of administration, declared Mr Subbarayan to have a one-third share in the Jln Membina Flat (presumably because he was registered as one of three joint tenants); she regarded his interest as *not* forming part of his estate, but instead as having devolved by survivorship.¹⁹ However, Ms Tharumambal

¹⁹ Letter from Island Law LLC to the Supreme Court Registry dated 30 July 2020, para 2.

indicated that if I should find that Mr Subbarayan's beneficial interest did form part of his estate, then she wished for her 25% share to go to her mother, Mrs Subbarayan (since the division in intestacy would be 50% to Mrs Subbarayan, 25% to Mr Damodaran, and 25% to Ms Tharumambal).²⁰

22 To resolve the question of what happened to Mr Subbarayan's interest in the Jln Membina Flat, it is necessary to go back in time to when Mr and Mrs Subbarayan owned the Lower Delta Flat.

How did Mr and Mrs Subbarayan hold their interests in the Lower Delta Flat?

23 Mr and Mrs Subbarayan were married in 1963.²¹ At the time of Mr Subbarayan's death, they had been married for some 41 years.

24 The Lower Delta Flat was Mr and Mrs Subbarayan's matrimonial home.²² I did not have sufficient evidence of the financial contributions that Mr and Mrs Subbarayan had individually made to acquire the Lower Delta Flat. However, more money was refunded to Mr Subbarayan's CPF account than Mrs Subbarayan's when the Lower Delta Flat was acquired,²³ which would tend to indicate that Mr Subbarayan had contributed more; this was unsurprising as Mr Subbarayan was the main breadwinner.²⁴ I did not however know what the purchase price of the Lower Delta Flat was, or whether any payments in cash might have been made by Mr Subbarayan or Mrs Subbarayan.

²⁰ Letter from Island Law LLC to the Supreme Court Registry dated 30 July 2020, para 3.

²¹ Defendant's written submissions dated 10 June 2020, para 13.

²² Mrs Subbarayan's affidavit dated 19 February 2020, para 6.

²³ Mr Damodaran's affidavit dated 3 February 2020, pp 15–16.

²⁴ Mrs Subbarayan's affidavit dated 19 February 2020, para 6.

25 Mrs Subbarayan contended that absent any evidence of an express intention to the contrary, the Lower Delta Flat was simply jointly owned by them as a couple. She said that continued to be the case for the Jln Membina Flat, and if Mr Subbarayan had passed away prior to Mr Damodaran’s being added as a joint tenant and contributing financially towards the Jln Membina Flat (by taking over the balance of the housing loan), she would have become the sole legal and beneficial owner of the Jln Membina Flat by survivorship.²⁵

26 As such, for the purposes of determining what shares she and Mr Damodaran now had in the Jln Membina Flat, Mrs Subbarayan contended that Mr Subbarayan’s beneficial interest in the flat had passed to her, and not at all to Mr Damodaran. Put another way, if Mr and Mrs Subbarayan’s contributions towards the Jln Membina Flat were put in a pool with Mr Damodaran’s contributions, Mrs Subbarayan argued that Mr Subbarayan’s contributions should (upon his death) be attributed to her for the purposes of determining what interests she and Mr Damodaran had.²⁶

27 It was also submitted on Mrs Subbarayan’s behalf that the couple had enjoyed a long and happy marriage, and that this engaged the presumption of advancement from Mr Subbarayan to Mrs Subbarayan.²⁷ Counsel for Mr Damodaran however submitted that it was opportunistic for Mrs Subbarayan to claim in submissions that her marriage had been a “happy” one – she had not said so in her affidavit, and her claim was only an afterthought to fit in with the case law. Mr Damodaran’s counsel was *instructed* that the marriage was *not* a happy one, but this was a point that Mr Damodaran had not raised in his

²⁵ Defendant’s written submissions dated 10 June 2020, para 19.

²⁶ Defendant’s written submissions dated 10 June 2020, para 20.

²⁷ Defendant’s written submissions dated 10 June 2020, para 20.

affidavits either. All that Mr Damodaran could point to in his own affidavits was a passage where he stated that he had become aware that Mr Subbarayan was not feeling well in the morning of 1 October 2004, and that he had brought Mr Subbarayan to the hospital where the latter died. Mr Damodaran then added: “If only [Mrs Subbarayan] had acted earlier when [Mr Subbarayan] told her that he was unwell throughout the night before, he could have been saved.”²⁸

28 I did not consider that one sentence, or one event, to be sufficient to support a finding that Mr and Mrs Subbarayan’s marriage was not a happy one. Mrs Subbarayan might simply not have considered Mr Subbarayan’s condition to be serious enough for him to be brought to the hospital right away, whereas by the morning he would have had been unwell for some time when Mr Damodaran decided to do so.

29 This incident was no basis for me to find that there was no intention for Mr and Mrs Subbarayan to beneficially own the Lower Delta Flat jointly, or to negate any presumption of advancement by Mr Subbarayan to Mrs Subbarayan.

30 Indeed, Mr Damodaran himself did not go so far as to contend that because of the nature or state of his parents’ marriage, there should be no presumption of advancement by Mr Subbarayan to Mrs Subbarayan.

31 Mr Damodaran’s position was that the sum of \$108,603.16, which was the SERS contra from the Lower Delta Flat that went towards the deposit for the Jln Membina Flat, should be attributed *equally* to Mr and Mrs Subbarayan since they were joint tenants of the Lower Delta Flat.²⁹ This was despite his

²⁸ Mr Damodaran’s affidavit dated 3 February 2020, para 14.

²⁹ Plaintiff’s written submissions dated 10 June 2020, paras 50–51.

contention that the unequal CPF refunds to them suggested that Mr Subbarayan had contributed relatively more than Mrs Subbarayan had to the acquisition of the Lower Delta Flat. If Mr and Mrs Subbarayan's contributions could be ascertained, and Mr Subbarayan had indeed contributed more, the proceeds of the Lower Delta Flat would only be owned on a 50:50 basis between Mr and Mrs Subbarayan if this had been their common intention, or if there had been some advancement by Mr Subbarayan to Mrs Subbarayan.

32 Having regard to the principles stated in *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*") at [101], [102], [105] and [107], and *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*") at [160], I find that Mr and Mrs Subbarayan were joint tenants of the Lower Delta Flat not only in law, but in equity as well.

33 Applying step (a) of the six-step analytical framework in *Chan Yuen Lan* ("the *Chan Yuen Lan* framework") at [160], I first asked: was there sufficient evidence of the respective financial contributions of Mr and Mrs Subbarayan to the purchase price of the Lower Delta Flat? The answer was no. It was thus presumed that they held the beneficial interest in the same manner as that in which the legal interest was held, *ie*, that they were joint tenants both in law and in equity. There was no contrary common intention to displace this under step (b) of the *Chan Yuen Lan* framework, and as such, "the parties will hold the beneficial interest in the property in the same manner as the manner in which they hold the legal interest" (*Chan Yuen Lan* at [160(c)]). There was no subsequent and contrary common intention under step (f) of the *Chan Yuen Lan* framework to change the foregoing conclusion either.

34 My understanding of the phrase "the parties will hold the beneficial interest in the property in the same manner as the manner in which they hold the

legal interest” at step (c) of the *Chan Yuen Lan* framework is this: in such a case, if the legal interest is held as a joint tenancy, the beneficial interest too would be held as a joint tenancy. Likewise, the equivalent phrase in step (a) (see *Chan Yuen Lan* at [160(a)]) means that where there is insufficient evidence of the purchasers’ respective contributions, a legal joint tenancy will be presumed to also be an equitable joint tenancy.

35 In its earlier decision in *Lau Siew Kim*, the Court of Appeal observed (at [101]) that my conclusion at [34] above will generally be right in the context of a typical marital relationship.

36 The presumptive inference is that Mr and Mrs Subbarayan held their interests in the Lower Delta Flat as legal and beneficial joint tenants. That is consistent with Mr Subbarayan’s conduct, which showed that he had wanted to provide for Mrs Subbarayan, even if he might have contributed more than she had to the purchase price of the Lower Delta Flat:

(a) Money withdrawn from Mr Subbarayan’s CPF account upon his turning 55 was deposited in a joint bank account with Mrs Subbarayan,³⁰ even though Mr Subbarayan also had a bank account in his sole name.

(b) The balance compensation of \$10,056.19 from the compulsory acquisition of the Lower Delta Flat was also deposited into that joint bank account on 20 December 2001.³¹

(c) On Mr Subbarayan’s death, Mrs Subbarayan became the absolute owner of the balance in that joint bank account by survivorship.

³⁰ Mrs Subbarayan’s affidavit dated 19 February 2020, para 7.

³¹ Mrs Subbarayan’s affidavit dated 19 February 2020, p 16.

(d) Mr Subbarayan nominated Mrs Subbarayan as the sole beneficiary of the balance in his CPF account, and she received that money upon his death.³²

(e) The bulk of the compensation received when the Lower Delta Flat was compulsorily acquired went towards acquiring the Jln Membina Flat, which was Mr and Mrs Subbarayan’s next matrimonial home and which was again held by them as legal joint tenants.

(f) As between Mr and Mrs Subbarayan, Mr Subbarayan was the main breadwinner. After 2000, Mr Subbarayan was the sole breadwinner; Mrs Subbarayan ceased to have any employment income, but Mr Subbarayan continued to work (earning \$1,200 a month according to Mrs Subbarayan, but only \$700 according to Mr Damodaran).³³

37 Given these circumstances, I find that Mr and Mrs Subbarayan intended to own the Lower Delta Flat jointly; if either of them should die, it was intended that the survivor would become the absolute beneficial owner. Even if there were no such intention, the presumption of advancement would operate to bring about the same result. In this regard, having regard to the matters stated in [36] above, I find that the nature and state of the marriage was an “ordinary, caring matrimonial relationship”/“typical caring and amiable matrimonial relationship” (see *Lau Siew Kim* ([32] *supra*) at [101]–[102]). It would thus be appropriate to apply the presumption of advancement, if that were required.

³² Mrs Subbarayan’s affidavit dated 19 February 2020, para 3, s/n 5.

³³ Mrs Subbarayan’s affidavit dated 19 February 2020, para 3, s/n 2 and para 6; Mr Damodaran’s affidavit dated 3 February 2020, para 6.

38 In this case, there is no need to rely on a presumption of advancement under step (e) of the *Chan Yuen Lan* ([32] *supra*) framework to rebut a presumption of resulting trust under step (a), because no presumption of resulting trust arises here due to the insufficient evidence of Mr and Mrs Subbarayan’s individual contributions to the purchase price of the Lower Delta Flat. Moreover, Mr Damodaran did not contend that there was a resulting trust as between Mr and Mrs Subbarayan in relation to the Lower Delta Flat.

39 My conclusion that Mr and Mrs Subbarayan were both legal and beneficial joint tenants of the Lower Delta Flat is also consonant with the observation in *Lau Siew Kim* ([32] *supra*) regarding property ownership in a typical marital relationship. As stated at [101] of *Lau Siew Kim*, “... in cases where married spouses who contribute jointly (whether in equal proportions or otherwise) to the purchase of a property (in particular, their matrimonial homes) hold that property as legal joint tenants ... there is a presumptive inference that the parties intended to hold the property as joint tenants in *equity* as well”.

40 That observation applies fully here: Mr and Mrs Subbarayan contributed jointly to their acquisition of the Lower Delta Flat (as can be seen from the refunds to both their CPF accounts when the flat was compulsorily acquired by the HDB); the flat was their matrimonial home (see *Lau Siew Kim* ([32] *supra*) at [101]–[102]); and the flat was held by them as legal joint tenants.

How did Mr and Mrs Subbarayan hold their interests in the Jln Membina Flat?

41 For the foregoing reasons at [32]–[40] above, I concluded that when the Jln Membina Flat was acquired, it was likewise held by Mr and Mrs Subbarayan as legal and beneficial joint tenants.

42 Mr Damodaran argued that because Mr Subbarayan had agreed for Mr Damodaran to become a joint tenant merely three years after the purchase of the Jln Membina Flat, Mr Subbarayan could not have intended for him (*ie*, Mr Subbarayan) and Mrs Subbarayan to hold the property as beneficial joint tenants.³⁴ This argument is unsound. On Mr Damodaran's own case, it was only in November 2003 that there were discussions about his taking over the balance of the loan and becoming a joint tenant; that was after the HDB had sent a final notice on 19 November 2003 about the housing loan being three months in arrears (for September to November 2003).³⁵ This says nothing about Mr Subbarayan's intentions *at the time that he and Mrs Subbarayan acquired the Jln Membina Flat* in September 2001. Mr Damodaran did not point to anything at the time the Jln Membina Flat was acquired to support a finding that Mr and Mrs Subbarayan held their interest in it in a manner different to how they had held their interest in the Lower Delta Flat.

43 Moreover, if Mr Damodaran were really arguing that Mr Subbarayan held his beneficial interest in the Jln Membina Flat as an individual tenant in common, the logical corollary is that Mr Subbarayan's beneficial interest would have formed part of his estate upon his death. But Mr Damodaran did not contend that Mr Subbarayan's beneficial interest had become part of his estate and ought to be divided 50% to Mrs Subbarayan, 25% to Mr Damodaran and 25% to Ms Tharumambal (who moreover was willing to have her share go to Mrs Subbarayan). If Mr Damodaran only received 25% of Mr Subbarayan's share, that would result in Mr Damodaran getting *less*, and Mrs Subbarayan getting more, than the distribution Mr Damodaran sought.

³⁴ Plaintiff's written submissions dated 10 June 2020, para 31.

³⁵ Mr Damodaran's affidavit dated 3 February 2020, paras 8–9 and p 17.

44 The question remains whether the circumstances in which Mr Damodaran was added as a third joint tenant changed the manner in which Mr and Mrs Subbarayan held their interest in the Jln Membina Flat. I now turn to this issue.

What (if anything) was agreed between the parties when Mr Damodaran was added as a third joint tenant?

45 According to Mr Damodaran, prior to his being added as a third joint tenant of the Jln Membina Flat, Mr and Mrs Subbarayan had assured him “that [his] interest in the Property [*ie*, the Jln Membina Flat] would be in the proportion of [his] contribution and that the home would be for [himself] and [his] immediate family to live in”.³⁶ He elaborated that this assurance was made in the context of his wanting to purchase an HDB flat of his own for himself, his wife, and his child, and that Mr and Mrs Subbarayan had begged for his help in paying the mortgage instalments for the Jln Membina Flat.³⁷

46 Mrs Subbarayan denied that there was such an agreement. She however admitted that “[Mr Subbarayan] told [her] that [Mr Damodaran] had offered to pay the mortgage instalments for the [Jln Membina Flat] since he and his family had been staying together. [Mr Subbarayan] allowed [Mr Damodaran] to be included as a third joint tenant and utilise his CPF to settle the outstanding HDB loan”.³⁸

47 Although Mrs Subbarayan denied the existence of any agreement as regards Mr Damodaran’s interest in the Jln Membina Flat in proportion to his

³⁶ Mr Damodaran’s affidavit dated 3 February 2020, para 9.

³⁷ Mr Damodaran’s affidavit dated 3 February 2020, para 9.

³⁸ Mrs Subbarayan’s affidavit dated 19 February 2020, para 3, s/n 3.

contribution, she was “prepared to accept whatever apportionment this Honourable Court deems just and fair based on our respective contributions”, *ie*, her and Mr Damodaran’s contributions. The rider to this was that Mrs Subbarayan contended that upon his death, Mr Subbarayan’s contributions ought to be attributed to her solely.³⁹

48 Mrs Subbarayan thus did not deny that Mr Damodaran was entitled to an interest in the Jln Membina Flat in proportion to his contribution, but her position was that this would be because of a resulting trust, rather than because of any agreement between the parties.⁴⁰

49 Did Mr and Mrs Subbarayan continue to hold their interest in the Jln Membina Flat jointly when Mr Damodaran was added as a joint tenant? Or had Mr Subbarayan, Mrs Subbarayan and Mr Damodaran become tenants in common in respect of their beneficial interests in the Jln Membina Flat whilst being legal joint tenants?

50 The agreement described by Mr Damodaran says nothing about how Mr and Mrs Subbarayan would hold their interest(s) in the Jln Membina Flat: it only addresses the interest which *Mr Damodaran* would acquire by contributing towards Jln Membina Flat. As such, I find that Mr and Mrs Subbarayan continued to hold their interest in the Jln Membina Flat jointly; Mr Damodaran then became a third legal joint tenant (with a beneficial interest as a tenant in common, in proportion to his contribution). Mr Damodaran rightly did not contend that there had been any advancement from his parents to him merely

³⁹ Defendant’s written submissions dated 10 June 2020, paras 25, 45 and 65.

⁴⁰ Defendant’s written submissions dated 10 June 2020, para 70.

because they had added him as a third joint tenant; his case was that he would only get a share proportionate to his contribution to the Jln Membina Flat.

51 The Court of Appeal in *Low Yin Ni and another v Tay Yuan Wei Jaycie (formerly known as Tay Yeng Choo Jessy) and another* [2020] SGCA 58 (“*Low Yin Ni*”) recognised (at [10]) that in equity, some co-owners may hold their interests jointly as between each other (like the parents in that case), while other co-owners hold individual shares (like the son and daughter-in-law in that case). My conclusion here is in a similar vein: Mr and Mrs Subbarayan held a beneficial interest in the Jln Membina Flat jointly, with Mr Damodaran individually holding the remainder of the beneficial interest as a tenant in common.

What happened to Mr Subbarayan’s beneficial interest in the Jln Membina Flat upon his death?

52 From my finding that Mr and Mrs Subbarayan held their beneficial interest in the Jln Membina Flat jointly, it follows that upon Mr Subbarayan’s death, Mrs Subbarayan became the sole beneficial owner of that interest by survivorship. Mrs Subbarayan and Mr Damodaran remained legal joint tenants (until Mrs Subbarayan severed that joint tenancy in June 2019), and were beneficial tenants in common with Mr Damodaran’s share being proportionate to his contribution.

53 As such, I find that no part of Mr Subbarayan’s beneficial interest passed to Mr Damodaran upon his death. Ironically, this is also supported by what Mr Damodaran said about the circumstances in which he was added as a joint tenant: “The process of including me as joint tenant instead of as a tenant-in-common based on my individual contribution was out of convenience. As my father did not buy the [Jln Membina Flat] as an investment but rather as a home

for his family (which included [Mrs Subbarayan], my wife, my children and I) we never made plans to convert the joint tenancy into a tenancy-in-common based on our respective contributions (even though that was the nature of our agreement).’’⁴¹

54 Given Mr Damodaran’s claim that the parties had intended to hold their beneficial interests as a tenancy in common, it is unsurprising that he did not assert that any part of Mr Subbarayan’s beneficial interest in the Jln Membina Flat passed to him upon Mr Subbarayan’s death.

55 Mr Damodaran chose instead to ignore Mr Subbarayan’s beneficial interest (and contribution) altogether, and to invite the court to apportion the Jln Membina Flat solely with regard to what he (*ie*, Mr Damodaran) and Mrs Subbarayan had individually contributed. As I said at [18] above, this was wrong.

56 I now analyse the acquisition of the Jln Membina Flat, and what contributions were made towards that by Mr and Mrs Subbarayan (on the one hand) and Mr Damodaran (on the other hand). Given my finding that Mr and Mrs Subbarayan continued to hold their interest in the Jln Membina Flat jointly, Mr and Mrs Subbarayan’s contributions can be aggregated for this purpose.

What were the costs of acquiring the Jln Membina Flat, and what were the parties’ contributions?

57 I found that there were three components of acquisition costs:

- (a) costs of the original purchase in September 2001;

⁴¹ Mr Damodaran’s affidavit dated 3 February 2020, para 10.

- (b) additional costs in September 2004 of adding Mr Damodaran as a joint tenant and of his taking over the balance of the housing loan; and
- (c) renovation costs in August to September 2001.

Costs of the original purchase

58 The HDB sales order shows that the Jln Membina Flat was purchased for the sum of \$336,200, plus stamp fees and other expenses of \$910.75, thus amounting to total fees and selling price of \$337,110.75.⁴²

59 That sum of \$337,110.75 was met as follows:

- (a) \$108,603.16 by the SERS contra from the compensation for the compulsory acquisition of the Lower Delta Flat;
- (b) \$39,980.31 from Mr Subbarayan's CPF account (after he had been refunded \$39,014.46 following the compulsory acquisition of the Lower Delta Flat);
- (c) \$13,027.28 from Mrs Subbarayan's CPF account (after she had been refunded \$8,042.38 following the compulsory acquisition of the Lower Delta Flat); and
- (d) the balance of \$175,500 (after deducting the above payments totaling \$161,610.75) by Mr and Mrs Subbarayan's taking up a mortgage loan, repayable in monthly instalments of \$703.

⁴² Mr Damodaran's affidavit dated 3 February 2020, p 14.

60 Mr Subbarayan's CPF withdrawal application form dated 22 August 2001 also reflects a stamp fee of \$5,600 and a conveyancing fee of \$221.45, totaling \$5,821.45, which would have been paid from Mr Subbarayan's CPF account.⁴³

61 Adding the \$337,110.75 payable to the HDB, to the additional fees of \$5,821.45 per Mr Subbarayan's CPF withdrawal application form, the costs of the original purchase total \$342,932.20.

Additional costs when Mr Damodaran was added as a joint tenant

62 In connection with his being added as a joint tenant and taking over the balance of the housing loan, Mr Damodaran's CPF statement shows that he withdrew \$574.55 to pay for valuation/stamp/legal fees;⁴⁴ Mrs Subbarayan's CPF statement shows that she withdrew \$206.85 to pay for valuation/stamp/legal fees.⁴⁵ The additional costs were thus \$574.55 + \$206.85 = \$781.40.

63 The HDB Transfer System – Financial Plan document dated 21 June 2004, for completion on 1 September 2004, reflects an intended lump sum payment of \$161,049.21 and a new loan of \$10,800 to be paid in monthly instalments of \$193.⁴⁶ Mr Damodaran's CPF withdrawal application form dated 12 July 2004 indicates that he would withdraw \$160,600 towards partial loan repayment (exclusive of fees), and that he would meet the monthly loan

⁴³ Mr Damodaran's affidavit dated 13 April 2020, p 153.

⁴⁴ Mr Damodaran's affidavit dated 13 April 2020, p 156.

⁴⁵ Mr Damodaran's affidavit dated 3 February 2020, p 47.

⁴⁶ Mrs Subbarayan's affidavit dated 19 February 2020, p 32.

instalments of \$193.⁴⁷ Mrs Subbarayan's CPF withdrawal application form dated 12 July 2004 indicates that she would withdraw \$449.21 towards partial loan repayment (exclusive of fees).⁴⁸

64 The partial loan repayment amounts of \$160,600 plus \$449.21 totaling \$161,049.21 match the same figure reflected in the HDB documentation as the intended lump sum payment upon completion on 1 September 2004.

65 By the time Mr Damodaran was added as a third joint tenant, taking into account the partial loan repayment of \$449.21 from Mrs Subbarayan's CPF account, the mortgage loan would have been reduced from the original loan amount of \$175,500 to \$171,400 (which would be met by the intended lump sum payment of \$160,600 from Mr Damodaran's CPF account, and the new loan of \$10,800). Mr and Mrs Subbarayan had thus contributed \$4,100 in terms of reducing the original mortgage loan from \$175,500 to \$171,400.

66 It was intended that Mr Damodaran would pay for the new loan of \$10,800 from his CPF account, and the loan was paid off accordingly.

67 From the above, I consider Mr Damodaran's contribution to be \$171,974.55, comprising:

- (a) \$160,600 towards the lump sum payment for the discharge of the original mortgage loan;
- (b) \$10,800 in relation to the new mortgage loan which he paid for;
- and

⁴⁷ Mrs Subbarayan's affidavit dated 19 February 2020, p 33.

⁴⁸ Mrs Subbarayan's affidavit dated 19 February 2020, p 34.

- (c) \$574.55 in valuation/stamp/legal fees which were paid from Mr Damodaran's CPF account.

68 There is a difference between the balance of the original housing loan that Mr Damodaran was to take over (\$171,400) and the figure of \$171,783.66 reflected in his CPF statement as having been withdrawn for "payment for lumpsum and housing loan".⁴⁹ That difference of \$383.66 would be due to the interest he paid on the new housing loan of \$10,800 as he paid it off in monthly instalments of \$193.

69 It is more accurate to use the principal sum of \$171,400 rather than the sum of \$171,783.66 inclusive of interest in reckoning Mr Damodaran's contribution. I have likewise not included any interest paid by Mr and Mrs Subbarayan on the original housing loan, in the course of their reducing the principal amount due by \$4,100 from \$175,500 to \$171,400, *ie*, their contribution in this regard would be \$4,100 and not \$4,100 plus interest. Moreover, the other payments totaling \$161,610.75 made by them at the time of purchase, and the additional \$206.85 in fees paid from Mrs Subbarayan's CPF account in 2004, were lump sum payments with no element of interest.

70 If interest were included, that would mean that Mr Damodaran could get a greater share in the Jln Membina Flat by paying off the balance of \$171,400 by way of a long-term loan, rather than by making a lump sum payment for all or much of the balance. It cannot be right that the more interest he paid, the greater his share would be. This would also not be consistent with the discussions in 2003–2004 on Mr Damodaran paying off the balance of the

⁴⁹ Mr Damodaran's affidavit dated 13 April 2020, p 156.

housing loan – that balance was around half of the cost of acquiring the Jln Membina Flat (leaving aside the issue of renovation costs), and the parties could not have intended that Mr Damodaran would get a share exceeding that proportion, just because of interest that he might pay in the years to come.

71 Excluding interest in ascertaining contributions is also consistent with “... the orthodox conception of the resulting trust as a trust which crystallises at the time the property is acquired” (*Su Emmanuel v Emmanuel Priya Ethel Anne and another* [2016] 3 SLR 1222 (“*Su Emmanuel*”) at [87] on *Lau Siew Kim* ([32] *supra*) at [112]–[113] and [117]), as well as the proposition in *Su Emmanuel* at [89] that “... it is correct to analyse the position by reference to the responsibility that is undertaken by each party for loan repayments at the time the property is acquired”.

72 Excluding interest is correct on a resulting trust analysis, and it would also be consonant with the parties’ intentions here. It is likely that there was some agreement or understanding to the effect that Mr Damodaran would get a share in the Jln Membina Flat proportionate to his financial contribution towards it, in particular, his taking over the balance of the housing loan. The original mortgage was accordingly discharged. But he could not “grow” that share by paying interest on whatever new loan amount he chose to take up.

73 Mr Damodaran also claimed that he had been the one paying for the monthly loan instalments for the whole period from September 2001 until August 2003 (*ie*, for 24 months, totaling \$16,872). His first affidavit was however inconsistent on this; at paragraph 7, he claimed to have paid the monthly loan instalments until August 2003, but at paragraph 8 he said that he

had stopped paying in July 2003.⁵⁰ His claim is also contracted by Mr Subbarayan's CPF withdrawal application form dated 22 August 2001, which includes the loan instalment for the first month (for September 2001) in the amount to be withdrawn.⁵¹

74 Mr and Mrs Subbarayan's bank books also show that they had enough savings to meet the monthly loan repayments from September 2001 until August 2003 (totaling \$16,872), from September to November 2003 (totaling \$2,109), and beyond. As regards their joint account, from September 2001 to the end of 2004, the balance never fell below \$13,692.25 (which it was on 10 November 2001, shortly thereafter rising above \$20,000 with the deposit of the cheque for \$10,056.19 from the HDB on 20 December 2001).⁵² For Mr Subbarayan's sole account, the balance remained above \$24,000 at all times from 18 June 2003 to 20 March 2004.⁵³ Besides their bank balances, Mr Subbarayan also continued to work, earning some \$1,200 (according to Mrs Subbarayan) or \$700 (according to Mr Damodaran) in monthly income.⁵⁴

75 Mr and Mrs Subbarayan were able to pay the monthly loan instalments for the whole period from September 2001 until the time that the HDB issued a final notice dated 19 November 2003 about the housing loan being three months in arrears (for September to November 2003).⁵⁵ Mrs Subbarayan suggested that

⁵⁰ Mr Damodaran's affidavit dated 3 February 2020, paras 7–8.

⁵¹ Mr Damodaran's affidavit dated 13 April 2020, p 153.

⁵² Mrs Subbarayan's affidavit dated 19 February 2020, p 16.

⁵³ Mrs Subbarayan's affidavit dated 19 February 2020, p 37.

⁵⁴ Mrs Subbarayan's affidavit dated 19 February 2020, para 3, s/n 2 and para 6; Mr Damodaran's affidavit dated 3 February 2020, para 6.

⁵⁵ Mr Damodaran's affidavit dated 3 February 2020, p 17.

the default on the loan repayments for that period might simply have been an oversight.⁵⁶ Whatever the reason for the loan falling into arrears, it was not that Mr and Mrs Subbarayan were unable to pay.

76 On the back of his assertion that Mr and Mrs Subbarayan were unable to pay the mortgage instalments, Mr Damodaran claimed that they had begged for his help to pay the mortgage instalments.⁵⁷ But his assertion that Mr and Mrs Subbarayan were cash-strapped is unfounded, and I reject Mr Damodaran's claim that Mr and Mrs Subbarayan had begged him to help pay the mortgage instalments.

77 I do not accept his assertion that he had paid the instalments from September 2001 to July/August 2003 either. This assertion is likewise based on the premise that Mr and Mrs Subbarayan could not afford the monthly loan instalments of \$703. At least the instalment for the first month (for September 2001) would have been paid by Mr Subbarayan (from his CPF account), and Mr and Mrs Subbarayan had enough funds to meet the subsequent monthly loan repayments. But if Mr Damodaran had paid the monthly loan instalments, he would not thereby acquire any share in the Jln Membina Flat – a flat of which he was not one of the registered owners at that time. Mr Damodaran did not argue that any such payments had been made pursuant to an agreement, understanding or expectation that he would thereby get a share in the Jln Membina Flat. The only such agreement that he asserted was arrived at in November 2003 (pursuant to which he became a joint tenant and assumed responsibility for the balance of the mortgage loan).⁵⁸ On the principles in *Lau*

⁵⁶ Mrs Subbarayan's affidavit dated 19 February 2020, para 3, s/n 2.

⁵⁷ Mr Damodaran's affidavit dated 3 February 2020, para 9.

⁵⁸ Mr Damodaran's affidavit dated 3 February 2020, para 9.

Siew Kim ([32] *supra*) and *Su Emmanuel* ([71] *supra*) discussed at [71] above, the mere fact that mortgage loan instalments are paid by a party does not mean a resulting trust arises in that party's favour. Analysing the position by reference to the responsibility that was undertaken by each party for loan repayments at the time the Jln Membina Flat was acquired, that responsibility rested on Mr and Mrs Subbarayan's shoulders (see *Su Emmanuel* at [89] and *Lau Siew Kim* at [112]–[113] and [115]–[117]).

78 For completeness, there was some controversy over the completion date, *ie*, when exactly Mr Damodaran became a third joint tenant. This ultimately did not matter to my decision, but I will briefly state my conclusion on it. Mr Damodaran first claimed to have become a joint tenant on 12 December 2003, and to have paid \$147,737.22 towards discharging the original mortgage loan then.⁵⁹ He relied on the HDB Transfer System – Financial Plan document dated 12 December 2003, but that document reflects the intended completion date as 1 February 2004. The figure of \$147,737.22 also includes the loan instalment of \$95 for the first month, for a loan of \$22,600 to commence on 1 February 2004.⁶⁰

79 The HDB however confirmed in an email of 30 March 2020 that although an application to add Mr Damodaran as a joint tenant was first made on 29 November 2003 and completion had been set for 1 February 2004, due to certain issues completion did not take place as scheduled, and the application was cancelled on 15 April 2004. The HDB stated that another application was then made on 10 June 2004 and that “[t]ransfer of ownership was finalised on

⁵⁹ Mr Damodaran's affidavit dated 3 February 2020, para 11.

⁶⁰ Mr Damodaran's affidavit dated 3 February 2020, p 18.

9 July 2004.”⁶¹ Latching on to that, Mr Damodaran then claimed that in July 2004 he had become a joint tenant and fully paid the outstanding mortgage loan, and maintained that the bulk of the loan had been paid by him on 12 December 2003.⁶² This was however contradicted by the CPF application for withdrawal forms dated 12 July 2004 (which are subsequent to the date of 9 July 2004 mentioned by the HDB),⁶³ which show that completion was scheduled for 1 September 2004 – which is also the date stated by the HDB in the Flat Information particulars provided on 1 June 2020.⁶⁴ Moreover, the CPF application for withdrawal forms show that Mr Damodaran did not pay “the bulk of the [original mortgage] loan”, or indeed anything on 12 December 2003.⁶⁵ 12 December 2003 was merely the date of the earlier (and superseded) HDB Transfer System – Financial Plan document, with a stated completion date of 1 February 2004 (when, in the event, completion did not happen).

Renovation costs

80 The Court of Appeal accepted in *Lau Siew Kim* ([32] *supra*) at [126] that “... contributions to the cost of repairs or renovation of a property *may* be relevant when computing a party’s contribution to the purchase price of property” [emphasis in original] and that “... where a property is redeveloped *closely after purchase* and where its value is increased by the redevelopment, contributions to the costs of redevelopment can be relevant in determining the

⁶¹ Mr Damodaran’s affidavit dated 13 April 2020, p 157.

⁶² Mr Damodaran’s affidavit dated 13 April 2020, para 10.

⁶³ Mrs Subbarayan’s affidavit dated 19 February 2020, pp 33–34.

⁶⁴ Defendant’s Bundle of Additional Documents, p 1.

⁶⁵ Mrs Subbarayan’s affidavit dated 19 February 2020, pp 33–34.

respective proportion of contributions to the purchase price of the property for the purposes of a presumption of resulting trust” [emphasis in original].

81 Mr Damodaran asserted that he had spent more than \$100,000 on renovations and the purchase of furniture and furnishings. He claimed that a sum of \$30,000 was made available from the HDB for renovations as part of the SERS package, and that Mr Subbarayan had contributed \$10,000 towards renovation. Curiously, he also said that the sum of \$30,000 from the HDB “became part of the mortgage loan thereafter”.⁶⁶

82 Mrs Subbarayan agreed that a sum of \$30,000 was made available by the HDB for renovations. She stated that this sum was received by cheque, and that Mr Subbarayan had made withdrawals totaling \$40,000 from their joint bank account, which sum was then handed to Mr Damodaran.⁶⁷

83 There was no documentation showing that the HDB had made available the sum of \$30,000 for renovations. The HDB’s letter of 30 August 2001 in relation to the compulsory acquisition of the Lower Delta Flat states the total compensation as \$164,000 with the following breakdown, which does not reflect any sum of \$30,000 for renovations:⁶⁸

Description	Amount
CPF Refund (to Mr Subbarayan’s account)	\$39,297.40

⁶⁶ Mr Damodaran’s affidavit dated 3 February 2020, para 13.

⁶⁷ Mrs Subbarayan’s affidavit dated 19 February 2020, para 3, s/n 4; para 11; and p 16.

⁶⁸ Mr Damodaran’s affidavit dated 3 February 2020, pp 15–16.

CPF Refund (to Mrs Subbarayan's account)	\$6,043.25
Contra of Commitment Deposit (for the Jln Membina Flat)	\$108,603.16
Balance Compensation	\$10,056.19

84 The joint account bank book also has no entry showing the deposit of a \$30,000 cheque (whereas it does show the deposit of the cheque for the balance compensation of \$10,056.19 on 20 December 2001).⁶⁹ There is also nothing to show that the \$30,000 supposedly made available by the HDB for renovations then formed part of the mortgage loan amount. The HDB documentation simply shows that the mortgage loan amount of \$175,500 was the \$337,110.75 in total fees and selling price, less the \$161,610.75 in payments made at the time of completion.⁷⁰ There is no additional sum of \$30,000 that somehow found its way into the mortgage loan.

85 It was however common ground that Mr Damodaran had access to funds of \$40,000 (other than his own money) for renovations. He acknowledged that \$10,000 of that came from Mr Subbarayan, but asserted that the remaining \$30,000 came from the HDB. Mrs Subbarayan's position was that all of the \$40,000 had come from her and Mr Subbarayan's joint bank account, and she pointed to withdrawals of \$20,000 on 25 August 2001, \$10,000 on 29 September 2001, and \$10,000 on 10 November 2001.⁷¹ This was in the same period that renovations were undertaken and paid for.⁷²

⁶⁹ Mrs Subbarayan's affidavit dated 19 February 2020, pp 15–16.

⁷⁰ Mr Damodaran's affidavit dated 3 February 2020, p 14.

⁷¹ Mrs Subbarayan's affidavit dated 19 February 2020, p 16.

86 On this point, I accept Mrs Subbarayan's evidence that the \$40,000 which Mr Damodaran had access to for renovations came from her and Mr Subbarayan. It does not appear that \$30,000 of the \$40,000 came from the HDB in relation to the compulsory acquisition of the Lower Delta Flat, but even if that were the case, it would properly be attributed to Mr and Mrs Subbarayan. Furthermore, the \$30,000 did not find its way into the mortgage loan, so Mr Damodaran could not claim that contribution as his despite his taking over the balance of the housing loan.

87 From the documents, it appears that \$35,520 was incurred in renovation expenses: under a contract with Hong Seng Air-Con & Electrical Pte Ltd for \$2,650⁷³ and three with Heico Enterprises for \$28,230, \$1,990, and \$2,650 (the Heico Enterprises amounts match the figures in Mr Damodaran's handwritten calculations).⁷⁴ Mr Damodaran's handwritten calculations also listed other costs and payments, for which he did not have supporting documents.⁷⁵ Those alleged payments may have been for electrical appliances, furniture and the like, rather than renovations that increased the value of the Jln Membina Flat (see *Lau Siew Kim* ([32] *supra*) at [126]). I regarded the items purchased under the invoice from Gokulam Jewels & Crafts for \$2,500 as belonging to the former;⁷⁶ moreover, the invoice appeared to be addressed to Mr and Mrs Subbarayan, and Mrs Subbarayan said that Ms Tharumambal had signed and paid for that

⁷² Mr Damodaran's affidavit dated 3 February 2020, pp 20–26.

⁷³ Mr Damodaran's affidavit dated 3 February 2020, p 21.

⁷⁴ Mr Damodaran's affidavit dated 3 February 2020, pp 19 and 23–26.

⁷⁵ Mr Damodaran's affidavit dated 3 February 2020, p 19.

⁷⁶ Mr Damodaran's affidavit dated 3 February 2020, p 20.

purchase (Ms Tharumambal’s signature appeared to be on the invoice under “customer signature”).⁷⁷

88 In his second affidavit, Mr Damodaran put forward various other receipts and invoices in the period from 2007 to 2018 amounting to \$2,682.66.⁷⁸ I found those to come too late in the day to count as contributions to the *acquisition* of the Jln Membina Flat. Moreover, they appeared to be for items such as a fan, a microwave oven, a shoe rack, and a cabinet; there was thus an issue as to whether they should be regarded as having increased the value of the Jln Membina Flat in any event (see *Lau Siew Kim* ([32] *supra*) at [126]).

89 According to Mr Damodaran, his handwritten calculations showed that \$56,394 had been incurred by him in the August to October 2001 period.⁷⁹ He submitted that that should be the figure for renovation expenses if the court were minded to only accept those expenses made closely after the purchase of the Jln Membina Flat, although he estimated that he had in fact spent in the region of \$60,000.⁸⁰ That \$60,000 figure stood in some contrast to his original claim to have spent over \$100,000 on renovations, furniture and furnishings, of which he said \$10,000 was contributed by Mr Subbarayan, \$30,000 came from the HDB, and the balance of over \$60,000 would have come from Mr Damodaran himself.⁸¹

⁷⁷ Mrs Subbarayan’s affidavit dated 19 February 2020, para 3, s/n 4; Mr Damodaran’s affidavit dated 3 February 2020, p 20.

⁷⁸ Mr Damodaran’s affidavit dated 13 April 2020, pp 27–32.

⁷⁹ Mr Damodaran’s affidavit dated 3 February 2020, p 19.

⁸⁰ Plaintiff’s written submissions dated 10 June 2020, para 47.

⁸¹ Mr Damodaran’s affidavit dated 3 February 2020, para 13.

90 On the evidence, the figure I accept as renovation expenses counting as a contribution to the acquisition of the Jln Membina Flat, is \$35,520.

91 As I find that Mr and Mrs Subbarayan had given Mr Damodaran \$40,000 from their joint account for such expenses, it follows that the renovation expenses of \$35,520 were entirely paid for by Mr and Mrs Subbarayan.

92 In arguing that his contribution towards renovation costs should count towards his share in the Jln Membina Flat, Mr Damodaran relied on *Lee Hwee Khim Rosalind v Lee Sai Khim and others* [2011] SGHC 64 (“*Rosalind Lee*”) for the proposition that contributions made *prior* to a party being registered as a co-owner, can count towards that party’s share in the property.⁸² In view of my finding in the preceding paragraph that the renovation expenses had been paid for entirely by Mr and Mrs Subbarayan, *Rosalind Lee* does not help Mr Damodaran.

93 In any event, I do not regard *Rosalind Lee* to stand for the proposition advanced by Mr Damodaran. There, one Lee Siew Kim (“LSK”) was registered as a joint tenant of a flat some ten years after it had been purchased, but she had moved in from the start, contributed about \$100 a month towards the monthly payments and utility bills of the flat, and bought most of the furniture and fixtures. To enable her registration as a joint tenant, LSK paid \$13,288.61 out of her CPF account towards the discharge of the existing mortgage. Thereafter, LSK severed the tenancy, and that severance was disputed.

94 The court found that LSK had a beneficial interest in the flat and applied the rule that severance of a beneficial joint tenancy results in a beneficial

⁸² Plaintiff’s written submissions dated 10 June 2020, paras 48–49.

tenancy in common in equal shares. The court stated at [23] that LSK had a beneficial interest in the flat as a joint tenant "... which she acquired through the payment of \$13,288.61, and the other payments she alluded to". However, it would have sufficed to refer to the payment of \$13,288.61, since the court did not have to determine the parties' exact contributions in order to work out their proportionate shares in the flat. The case is also distinguishable in that the purchase of the flat was LSK's idea in the first place (see *Rosalind Lee* at [10]), and there was some agreement to the effect that she would become an owner of the flat one day (see *Rosalind Lee* at [5]–[6], [15] and [19]).

Other contributions

95 Mr Damodaran also claimed to have paid towards utilities, service and conservancy charges and property tax from 2001 to date. He asked that these be taken into account in calculating his share of the Jln Membina Flat. In submissions, however, his counsel acknowledged that given the decision in *Lau Siew Kim* ([32] *supra*) at [114] that only "direct contributions" to the purchase price would be taken into account, he would accept it if the court were not inclined to accept those payments as part of the contributions for the purpose of a resulting trust.⁸³

96 Indeed, on the principles in *Lau Siew Kim* ([32] *supra*), I did not regard those payments as contributions to the acquisition of the Jln Membina Flat such that Mr Damodaran's share in it might thereby increase.

From the costs incurred and contributions made, what are the parties' shares in the Jln Membina Flat?

⁸³ Plaintiff's written submissions dated 10 June 2020, para 56.

97 In sum, the costs of the acquisition of the Jln Membina Flat were as follows:

Costs incurred	Amount
Original purchase costs in 2001	\$342,932.20
Additional costs in 2004	\$781.40
Renovations between August and September 2001	\$35,520
Total	\$379,233.60

98 As I stated at [67] above, I regarded Mr Damodaran's contributions to amount to \$171,974.55.

99 The rest of the costs of acquisition were met by Mr and Mrs Subbarayan (or either of them); given my finding that Mr Subbarayan held his beneficial interest in the Jln Membina Flat jointly with Mrs Subbarayan and that she became solely entitled to that interest upon Mr Subbarayan's death, it follows that any contributions by Mr Subbarayan, as well as any joint contributions by Mr and Mr Subbarayan, can now be attributed to Mrs Subbarayan.

100 On the basis of the above, Mr Damodaran's share would be $\$171,974.55 / \$379,233.60 = 45.35\%$, and Mrs Subbarayan's share would be the remaining 54.65%.

101 Mrs Subbarayan contended that in reckoning the parties' shares in the Jln Membina Flat, instead of using the *cost* of acquisition, I should instead consider the *market value* of the Jln Membina Flat on 1 September 2004 (*ie*, at

the time that Mr Damodaran was added as a joint tenant).⁸⁴ That would increase her share in the Jln Membina Flat and correspondingly decrease Mr Damodaran's share, for she would then be regarded as having contributed to the market value of the Jln Membina Flat (which was said to be higher in 2004 than its original sale price in 2001), whereas Mr Damodaran would be regarded as having merely contributed the dollar value of the payments that he made (or took responsibility for) in 2004.⁸⁵

102 I did not think this approach was correct. First, it was unsupported by authority. In cases where some of the parties became co-owners later, and they did not all make contributions at the same time, our courts have not reckoned the earlier parties' contributions in terms of market value when the later parties came into the picture – see, *eg*, *Low Yin Ni* ([51] *supra*) at [10] and *BUE and another v TZQ and another* [2019] 3 SLR 1022 at [18]. In principle, though, it is possible that considerations of market value might feature in determining the intention of the parties. So, *eg*, if a property were purchased by X for \$1m, and 20 years later it was worth \$10m with X still owing \$500,000 on a mortgage loan, if X joined Y as a co-owner on the basis that Y would take responsibility for paying off the balance \$500,000 of the mortgage loan, X might well contend that the parties only intended for Y to get a 5% share in the property, and not a 50% share in it.

103 In the present case, however, Mrs Subbarayan did not argue for any such common intention; instead, she denied that there was any agreement about Mr Damodaran getting a share in the Jln Membina Flat in connection with his taking

⁸⁴ Defendant's written submissions dated 10 June 2020, paras 27(b), 28, 43, 44 and 69.

⁸⁵ Defendant's written submissions dated 10 June 2020, para 79.

over the balance of the mortgage loan.⁸⁶ Mrs Subbarayan's argument was, rather, that a resulting trust analysis should be based on market value, and not cost. I did not agree with this, having regard to the authorities' focus on contributions to the *acquisition* of the property, *ie*, to its *cost*.

104 Using the market value would also be at odds with the discussions and agreement amongst the parties that led to Mr Damodaran being added as a joint tenant. It did not seem that the market value of the Jln Membina Flat had featured in those discussions; indeed, there was no evidence that the parties had the market value of the Jln Membina Flat in mind at the time that Mr Damodaran was added as a joint tenant and took over the balance of the housing loan.

105 I also noted that in the schedule of assets filed by Ms Tharumambal in court on 6 July 2005 in DCP 700/2005K in applying for letters of administration for Mr Subbarayan's estate, she had declared his one-third share in the Jln Membina Flat at a market value of \$129,666.66, *ie*, the Jln Membina Flat was said to have a market value of roughly \$389,000. That is not far from the figure of \$379,233.60 which I have arrived at as the total cost of acquisition.

106 In Mrs Subbarayan's affidavit, she put forward an estimated market value of the Jln Membina Flat of \$450,000 at the time of transfer; in her submissions, the figure put forward was \$505,000.⁸⁷ The higher figure was based on a sale of another HDB flat in the Bukit Merah area that was launched in 2001; that sale was approved in September 2004.⁸⁸ But that flat appeared to

⁸⁶ Mrs Subbarayan's affidavit dated 19 February 2020, para 3, s/n 3.

⁸⁷ Defendant's written submissions dated 10 June 2020, para 44.

⁸⁸ Defendant's written submissions dated 10 June 2020, para 43; Defendant's Bundle of Authorities, p 6.

be a larger one at 121m², as compared to the Jln Membina Flat at 110m²;⁸⁹ another transaction of a 115m² flat (also launched in 2001) that was approved in July 2004, was at the resale price of \$430,000.⁹⁰ I did not think I had sufficient information to determine the market value of the Jln Membina Flat as of 1 September 2004, if I were inclined to go down that road (and I was not).

Equitable accounting

107 In her written submissions, Mrs Subbarayan contended that Mr Damodaran's contribution should be reduced by \$4,480 (*ie*, the \$40,000 which had gone to him from Mr and Mrs Subbarayan's joint account, less the \$35,520 which had been spent on renovations).⁹¹

108 I did not agree with this. It would mean that the parties' contributions then would not add up to the cost of acquiring the Jln Membina Flat. Even if Mr Damodaran had received \$40,000 from Mr and Mrs Subbarayan but only spent \$35,520 on renovations, that should not reduce his contributions to the acquisition of the Jln Membina Flat (which he had made from his CPF account, and by taking on responsibility for a \$10,800 mortgage loan).

109 In oral submissions, counsel for Mrs Subbarayan clarified that Mrs Subbarayan was not asking that equitable accounting be used to adjust the parties' entitlements to the Jln Membina Flat; she was merely asking that Mr Damodaran pay her what would be appropriate on such accounting.

⁸⁹ Defendant's Bundle of Additional Documents, p 1.

⁹⁰ Defendant's Bundle of Authorities, p 5.

⁹¹ Defendant's written submissions dated 10 June 2020, para 76.

110 The Court of Appeal discussed the principles of equitable accounting in *Su Emmanuel* ([71] *supra*) at [95]–[105]. At [95] of *Su Emmanuel*, the court explained that equitable accounting should not be understood as a rigid process; it is instead a process where the court endeavours to do “broad justice or equity as between co-owners”. Two possible justifications for equitable accounting are: (a) a right of contribution which is an incident of one discharging another’s obligation, or (b) that payment by one co-owner has increased the value of the property and the other co-owner should make an allowance for that in taking the benefit of the property’s increased value (see *Su Emmanuel* at [97]–[101]).

111 The excess payment of \$4,480 does not seem to fall within the principles of equitable accounting – Mr and Mrs Subbarayan did not thereby discharge any obligation which Damodaran ought to have contributed towards, nor did the payment increase the value of the property.

112 In any event, on the facts I did not consider that Mr Damodaran should be required to account for the sum of \$4,480. Although I found that that sum did not go towards renovations, Mr Damodaran appeared to have spent at least \$2,682.66 on furniture, furnishings, electrical appliances and the like.⁹² Moreover, Mrs Subbarayan accepted that Mr Damodaran had paid for property tax, service and conservancy charges, and utilities from October 2004 onwards, save that she had paid for property tax for 2020.⁹³ In all, Mr Damodaran would have spent more than the sum of \$4,480 for the benefit of those living in the Jln Membina Flat. Looking at the matter in the round, I did not think that any accounting as between Mr Damodaran and Mrs Subbarayan was necessary.

⁹² Mr Damodaran’s affidavit dated 13 April 2020, pp 27–32.

⁹³ Mrs Subbarayan’s affidavit dated 19 February 2020, para 12; Defendant’s Bundle of Documents, pp 1–7; Defendant’s written submissions dated 10 June 2020, para 23.

113 I say this also to Mrs Subbarayan's suggestion that Mr Damodaran should be charged an occupation rent on account of his supposedly unequal enjoyment of the Jln Membina Flat.⁹⁴ This was premised on Mr Damodaran's family unit (comprising Mr Damodaran, his wife, and their two children) occupying more of the Jln Membina Flat than Mrs Subbarayan. But Mr Damodaran's wife was also Mrs Subbarayan's daughter-in-law, Mr Damodaran's children were also Mrs Subbarayan's grandchildren, and Mr Damodaran was Mrs Subbarayan's son. Mr Damodaran had stayed with his parents all along, his wife did too when they got married, and his children had followed suit since their birth. No issue was ever raised about charging Mr Damodaran rent, until that was raised for the first time in these proceedings. As things transpired, Mr Damodaran became a co-owner of the Jln Membina Flat and contributed substantially to its acquisition. It would be wrong to charge Mr Damodaran rent on account of him, his wife, and his children staying in the Jln Membina Flat together with Mrs Subbarayan. This was not an extreme case like *In re Pavlou* [1993] 1 WLR 1046 where one co-owner was in sole occupation of the property, and equitable accounting was thus held (at 1048 and 1050) to be justified.

114 In Mrs Subbarayan's affidavit, she had referred to such rent, and the \$200/month she claimed to have contributed towards the household's marketing expenses every month, in response to Mr Damodaran referring to his payments towards property tax, service and conservancy charges, and utilities. But I have not regarded those payments by Mr Damodaran as contributions that affect his share of the Jln Membina Flat.

⁹⁴ Mrs Subbarayan's affidavit dated 19 February 2020, para 22.

115 In any event, whether in relation to the excess payment of \$4,480 that Mr Damodaran had received from Mr and Mrs Subbarayan, the occupation rent which Mrs Subbarayan contended Mr Damodaran was now liable for, or the marketing expenses that Mrs Subbarayan claimed to have paid for, the facts show that these payments had been made with the intention of benefitting everyone who stayed in the Jln Membina Flat. In *Su Emmanuel* ([71] *supra*) at [105], the Court of Appeal made the following observations as to when equitable accounting may *not* be called in aid in the context of mortgage repayments:

In our judgment, the extent to which each party is expected to contribute to mortgage repayments will largely depend on the common understanding or agreement between the parties at the time the mortgage is taken out. ... If there is a *material* departure from that common understanding, and one party repays more of the mortgage than was initially envisaged, then equitable accounting may be brought into play, unless it is shown that at the time the mortgage repayments were made, *the payor had the intention to benefit the other co-owners*. This follows from the fact that the basis underlying the remedy of equitable accounting is a notional request to contribute so as to restore the parties to what had been their common understanding at the time the mortgage was taken out; but if the evidence is that the payor intended to benefit the other co-owners, there would be no room for any such notional request for contribution to be inferred. In these circumstances, equity will not require a co-owner to contribute.

[emphasis in original]

116 Although the Court of Appeal's observations were made in the context of mortgage repayments, I see no reason why they should not apply with equal force to the various payments that Mrs Subbarayan sought equitable accounting for. There was no common understanding as to who should bear those expenses, and equitable accounting would thus be inappropriate.

117 It is understandable that Mrs Subbarayan would be upset about these proceedings having been brought by Mr Damodaran, the claims he made, and

the positions he took. But I did not consider an accounting as between the parties to be warranted. It was submitted on Mrs Subbarayan's behalf that anything Mr Damodaran had done for her on account of his filial duty should not be the subject matter of computation of contribution or equitable accounting.⁹⁵ I agree; but the same would apply to what Mrs Subbarayan had done for her son, her daughter-in-law and her grandchildren, on account of their being her family members and living under one roof with her.

118 In a family, there must be room for give and take, and it would be a sad day if every cent had to be accounted for.

Conclusion

119 For the reasons above, I hold that Mr Damodaran has a 45.35% share in the Jln Membina Flat and that Mrs Subbarayan has a 54.65% share. I will hear the parties on costs.

Andre Maniam
Judicial Commissioner

Nadia Ui Mhuimhneachain (August Law Corporation) for the
plaintiff;
N K Anitha (Island Law LLC) for the defendant.

⁹⁵ Defendant's written submissions dated 10 June 2020, para 25.

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