IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 131

Originating Summons No 240 of 2015

Between

BMM

… *Plaintiff*

And

BMN

… *Defendant*

Originating Summons No 574 of 2015

Between

BMN

… *Plaintiff*

And

BMM

… *Defendant*

JUDGMENT

[Gifts] — [Presumptions against] — [Resulting trusts]

[Gifts] — [Avoidance]

[Equity] — [Estoppel] — [Proprietary estoppel]

[Trusts] — [Resulting Trusts]

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BMM
v
BMN and another matter

[2017] SGHC 131

High Court — Originating Summonses Nos 240 and 574 of 2015
Foo Tuat Yien JC
4 March, 29 April, 27 June, 15 September 2016

29 May 2017 Judgment reserved.

Foo Tuat Yien JC:

1 These twin originating summonses before me concern essentially the same issue, namely, the beneficial ownership of real property located at [address redacted] ("the Property"). The Property was bought by Mr BMM ("[Y]") before marriage (*ie*, in 1997), transferred to Ms BMN ("[X]") in 2001 to be held as joint tenants (after the parties married in 1999 and after twins were born to them in March 2000). The twist in this case is that the marriage was later discovered and declared to be void on the ground that, at the time of marriage, the court had not granted a *decree absolute* in respect of [X]'s divorce from her previous marriage, and the twins were later discovered through DNA tests and declared to be the biological issue of another man and not [Y].

2 In Originating Summons No 240 of 2015 ("OS240"), [Y] seeks a declaration, *inter alia*, that [X] holds her share as joint tenant in a property at the Property on resulting trust for him. Originating Summons No 574 of 2015 ("OS574") prays for relief that largely mirror those sought in OS240. There, [X] seeks a declaration that she and [Y] each hold an equal beneficial interest in the Property, or alternatively a declaration that she holds a beneficial interest in the Property in a proportion calculated based on her various financial contributions.

3 After an examination of the relevant law and evidence, I find that [Y] has sole beneficial ownership of the Property pursuant to parties' common intention. Accordingly, I allow OS240 and dismiss OS574. I elaborate on my reasons below. The facts are stated at some length to provide necessary context.

The facts

The parties

4 [Y] was born in Hong Kong and raised in the United States since he was 11 years old. He graduated with Bachelor's and Master's degrees in Engineering and worked as an engineer for about 13 years before obtaining his Masters of Business Administration, after which he worked in the banking and finance industry as a corporate and commercial banker.

5 [X] was born and raised in Singapore, and read fashion merchandising at college in Canada before returning to Singapore to start her own company designing and manufacturing clothing. Thus, in 1994, she became the co-

owner of a Shanghai-based fashion business which she managed with her business partner, one [M].

The parties' supposed marriage

6 [Y] bought the Property in August 1997. The parties met in early 1998 in Singapore.[1] [X] was then married with a son ("[S]") who was born in 1993. Nonetheless, [X] and [Y] dated, and [X] filed for divorce in 1999. On 8 July that year, [X] was granted the decree *nisi* in respect of her divorce.[2] In that same month, she realised that she was pregnant with twins whom she thought [Y] had fathered.[3] [Y], with the knowledge that [X] was pregnant, proposed to [X] in September 1999.[4] The parties married in the USA on 23 November 1999,[5] about four and a half months after date of the *decree nisi*. As it turned out, the *decree absolute* for [X]'s divorce was granted only on 6 December 1999,[6] and *not* in October 1999 (which would have been three months after the *decree nisi* had been granted). The parties' versions on how and why the marriage took place before the grant of the *decree absolute* and whether [Y] knew then that the *decree absolute* had been granted differ — more on this later at [33]-[34].

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1 [X]'s 1st Affidavit, para 7 and p 25; [Y]'s 2nd Affidavit, p 305.

2 [X]'s 1st Affidavit, para 8.

3 [X]'s 1st Affidavit, para 9.

4 [X]'s 1st Affidavit, para 9.

5 [Y]'s 1st Affidavit, para 5; [X]'s 1st Affidavit, para 10.

6 [X]'s 1st Affidavit, para 8.

Birth of the twins and move to Shanghai

7 After the marriage in the USA, [Y] returned to Shanghai, where he has been working since May 1999, on a two-year posting by his then-employer, [E] Bank.[7] [X] returned to Singapore, where she gave birth to the twins in March 2000. In May 2000, the family, together with [X]'s son [S] from her first marriage, moved to Shanghai to live with [Y].[8] However, [Y] was dismissed by [E] Bank in January 2001 for inappropriate behaviour.[9] In that same month, the parties moved back to Singapore and [Y] commenced employment with a different Bank in March 2001.[10] He sued [E] Bank in Singapore for wrongful termination, but the suit was dismissed in 2005.

Return to Singapore in January 2001

8 After the parties came back to Singapore in January 2001, they stayed in various locations. They stayed briefly at a Housing Development Board flat of which [X] and her ex-husband were owners ("the HDB Flat").[11] The HDB Flat had been sold in early September 2000 but completion was effected only in early May 2001.[12] The parties stayed there until March 2001 before moving back to [X]'s family home at [address redacted] ("her Family Home");[13] they later moved to a rented house along [address redacted] in mid-2001 and then

7 [X]'s 1st Affidavit, para 7.

8 [X]'s 1st Affidavit, para 11.

9 [X]'s 1st Affidavit, para 16.

10 [X]'s 1st Affidavit, paras 17 and 19.

11 [X]'s 1st Affidavit, para 13.

12 [X]'s 1st Affidavit, para 15.

13 [X]'s 1st Affidavit, para 18.

in July 2003 to other rental premises, until they left for the USA in July 2004. [Y] had expressed his unhappiness about staying in Singapore and had received an offer to be re-posted to Los Angeles.[14]

9 Notably, at no time did the parties stay in the Property while they were in Singapore.[15] The Property was bought by [Y] in his sole name in August 1997[16] and was, from time to time during [X]'s and [Y]'s supposed marriage, rented to various tenants. In June 2001, he transferred it to be held by [X] and himself as joint tenants. The circumstances surrounding the transfer and the reasons for the transfer are disputed.

10 [X] alleges that it was around April to May 2001 that the parties orally agreed that [X] was to use the net sale proceeds of about $100,000 from the sale of the HDB Flat to pay for household expenses, while [Y] was to use his salary to pay for, amongst other things, the mortgage loan for the Property. [X] also alleges that [Y] wanted to make her a joint tenant of the Property so that she and her children would have a place to stay should anything happen to [Y], whose new job required frequent overseas travel.[17] [Y], on the other hand, says that none of this was true; instead, [X]'s name was added only because [Y] could enjoy discounted interest rates with DBS Bank in respect of his mortgage loan by naming [X] (a Singapore citizen) as a registered co-owner of the Property.[18] He, however, remained solely responsible for the mortgage

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14 [Y]'s 2nd Affidavit, p 256.

15 [Y]'s 2nd Affidavit, para 29.

16 [Y]'s 1st Affidavit, para 4.

17 [X]'s 1st Affidavit, para 20.

payments at all times[19] and claims to have clarified with [X] that he would remain the Property's sole beneficial owner.[20] [X] said that she closed her fashion business in August 2001, allegedly to spend more time with her children especially in view of the fact that [Y] had to travel frequently.[21] It appears that she continued to help out at [F] Pte Ltd ("the Factory") (a business also run by [M], her business partner in her erstwhile fashion business) until April 2003, although her involvement was infrequent at best.[22] [X] often argued with [Y] about how [S] should be brought up and, in early 2002, she sent [S] to live with his father in Australia.[23]

11 Subsequent arguments about finance led [Y] to reduce the monthly allowance he gave to [X] — [X] says this was sometime around July 2003. It was also around this time that [X] started a new business ("the Business"), allegedly to generate income to top up the difference between the household expenditure and the monthly allowance from [Y] (in any event, the business was never profitable).[24]

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18 [Y]'s 1st Affidavit, paras 6–7; [Y]'s 2nd Affidavit, paras 4 and 26.

19 [Y]'s 1st Affidavit, paras 4 and 8; [Y]'s 2nd Affidavit, paras 29 and 34–35.

20 [X]'s 2nd Affidavit, para 4.

21 [X]'s 1st Affidavit, para 28.

22 [X]'s 3rd Affidavit, para 18, pp 16–18.

23 [Y]'s 2nd Affidavit, pp 305–306.

24 [X]'s 3rd Affidavit, paras 19–20; pp 20–21.

Family move to the USA

12 In July 2004, [Y] was posted to the USA for work; [X] and the twins moved with him. [Y] bought a property in Pasadena, California ("the Pasadena property"), in respect of which [X] signed an inter-spousal transfer deed (which would establish that the property was owned solely by [Y]). That deed was signed in late August 2004 and was recorded and came into effect in mid-September 2004. Parties agree that after they moved to the USA, their relationship rapidly deteriorated.[25] [X] filed divorce proceedings in the USA in January 2005 after subsequent reconciliation efforts failed,[26] and [X] and the twins moved out of the family home in August 2006.[27]

The matrimonial proceedings

13 The divorce proceedings went on in the USA for about four years. In the early stages of the proceedings, the papers filed by the parties suggested that both parties treated the Property as community property.[28] Loosely speaking, that is the American analogue for what is known as matrimonial property in Singapore.

Annulment of the marriage upon [Y]'s application

14 However, things took a turn in 2008. [Y] claims that, in early 2008, whilst going through some papers at home, he found the grant of the divorce

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25 [Y]'s 1st Affidavit, para 9; [X]'s 1st Affidavit, para 29.

26 Bundle of documents, Tab 2, p 18.

27 [X]'s 1st Affidavit, para 29.

28 See also Bundle of documents, Tab 7, p 124; Tab 9, p 151.

decree absolute made on 6 December 1999.[29] After receiving advice from his Singapore solicitor on 11 February 2008,[30] he realised that the marriage was void because they had registered their marriage on 23 November 1999 *before* [X] received the *decree absolute* in respect of her divorce from her ex-husband. In March/May 2008, he applied and was granted approval to amend the divorce proceedings to proceedings for annulment.[31] On 1 May 2009, the USA courts made an order annulling [X]'s and [Y]'s marriage on 23 November 1999.[32]

15 Throughout this time and thereafter, there were ongoing proceedings for custody of the twins and for [Y] to pay spousal and child support. During these proceedings up to August 2009 in the USA, [X] raised the possibility to the Child Custody Evaluator in the USA that the twins had not been fathered by [Y], but did not provide definitive evidence.[33] [X] later revealed that she had surreptitiously ordered a DNA test in late 2008 using [Y]'s shaver as a specimen to establish that [Y] had not fathered the twins.[34] The twins had also not been fathered by [X]'s ex-husband. This naturally came as a shock to [Y], who was for all practical intents and purposes the father of the twins — they

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29 [Y]'s 2nd Affidavit, p 134 ([Y]'s court papers for his claim to recover spousal support that was paid to [X]).

30 [Y]'s 2nd Affidavit, para 52.

31 [Y]'s 2nd Affidavit, para 47 (states May 2008); pp 134 (states mid-march 2008).

32 [Y]'s 1st Affidavit, para 9; pp 59–62.

33 [Y]'s 2nd Affidavit pg 310 referring to Child Custody Evaluation Report of 21 August 2009.

34 OSF 186 of 2009, [X]'s 1st Affidavit, para 7.

adopted his surname, he treated them as his own, he nurtured them from young and he had developed a close bond with them.[35]

[X] took the twins to Singapore in August 2009 without [Y]'s permission and without a USA court order

16 However, as paternity had not been determined as at July 2009, the USA courts regarded [Y] as the twins' "presumed father" and, accordingly, awarded joint custody to him and [X].[36] On 31 August 2009, in the midst of the USA proceedings, [X] breached that joint custody order by removing the twins from California to Singapore without [Y]'s permission or a court order. As child abduction is a criminal offence in the USA, an arrest warrant and an INTERPOL alert was issued against [X].[37] More importantly, the USA courts made an order giving [Y] sole custody of the twins.[38] This entire affair was highly publicised.[39]

Consent order between [X] and the biological father of the twins on paternity

17 On 1 December 2009, the Singapore courts, based on a DNA test conducted by the Health Sciences Authority, recorded a consent order between [X] and her ex-colleague, declaring that the latter was the natural father of the twins and that he disclaimed any interest and responsibility as a parent.[40]

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35 See, *eg*, OSF 186 of 2009, [Y]'s 2nd Affidavit, paras 8–15.

36 OSF 186 of 2009, [X]'s 1st Affidavit, para 9.

37 [Y]'s 2nd Affidavit, para 6(a).

38 OSF 186 of 2009, [X]'s 1st Affidavit, para 10.

39 See, *eg*, [Y]'s 2nd Affidavit, pp 495 *et seq*.

40 See OSF 186/2009.

Order by the Singapore Family Court for the twins to be returned to the USA and the aftermath

18 [X] opposed [Y]'s application in Singapore for the twins to be returned to the USA. After contentious proceedings, the then Family Court ordered in March 2011 that the twins be returned to [Y], in the USA. Until recently, [Y] lived in the USA with the twins. [X] had weekly visitation rights to the twins. [X] said that when she first returned to the USA in May 2011, she was sentenced to jail for 52 days on a charge of deprivation of child custody and put on probation for five years. After her release, she travelled to and from Singapore to see the twins and then decided to move back permanently to the USA in November 2011 to obtain an order enabling her to see the twins every week for four hours in a monitored centre for which she had to pay 50% of the costs. She said that she was arrested in July 2012 by the USA immigration authorities because [Y] reported that her green card was no longer valid as the marriage had been annulled. As her passport was confiscated by the USA immigration authorities in August 2012, she was not able to leave the USA.[41]

19 It would seem from information given by [X]'s counsel that on 3 March 2017, the USA Juvenile Court ordered that the twins be placed in the home of [X] under the supervision of the relevant child authority with a report to be furnished to the court before the next hearing fixed for 31 August 2017. [Y] was not granted visitation rights.

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41 Letter dated 23 May 2015 enclose with the Official Assignee's submission of 26 May 2016

[X] adjudged a bankrupt on 20 December 2012

20 After the USA courts made the order in May 2009 annulling [X]'s and [Y]'s marriage to each other,[42] [Y] brought an action in Magistrate's Court Suit No 10720 of 2011/V and was awarded US$40,000 to be paid by [X]. As [X] was unable to pay this, she was, upon [Y]'s application, adjudged a bankrupt in Singapore on 20 December 2012.[43] On 25 March 2013, [Y], pursuant to an action commenced by him on 19 April 2012, was awarded US$86,882 by the Californian courts as damages for a suit commenced in April 2012 for deceit and unjust enrichment. This sum comprised US$50,503.01 in spousal support paid to [X], US$5,125 in fees paid to her attorney, and pre-judgment interest in the sum of US$27,644. [Y] proved these debts in relation to [X]'s bankruptcy. As at 27 June 2016, there were only two other minor proofs of debt filed by other persons totalling not more than $500.

Position of the Official Assignee

21 The Official Assignee ("OA") has said that she is not in a position to address the court on the issue of an implied trust relating to the Property. The OA has confirmed that if the court were to rule that the Property is beneficially owned by [Y], she will accept that [X]'s estate title and interest as joint tenant is not vested in the OA. Should the court rule that [X] does have a beneficial interest for a half-share or less in the Property, then the monies due to [X] arising from the sale of the Property, may, depending on the decision, be

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42 [Y]'s 1st Affidavit, para 9; pp 59–62.

43 [Y]'s 1st Affidavit, para 12; pp 77–78.

sufficient to satisfy the three proofs of debt due to [Y]. The other two proofs of debt only added up to $460.40.[44]

Present applications in OS240 and OS574

22 As the USA courts had declared the marriage void in May 2009, the USA courts did not need to rule on division of matrimonial assets and maintenance. Parties agree that [X] cannot avail herself of ancillary relief pursuant to a nullity of marriage under Chapter 4A of the Women's Charter (Cap 353, 2009 Rev Ed) ("WC"), which applies only to marriages dissolved or annulled with effect from 2011. Accordingly, the only basis on which [X] can lay claim to a beneficial interest in the Property is under the law of property and trusts.

23 It is in this context that the parties dispute the beneficial ownership of the Property in these twin originating summonses before me. In OS240, [Y] seeks a declaration, *inter alia*, that [X] holds her share in the Property on resulting trust for him. For completeness, I will also consider whether the transfer can be avoided on the basis of mistake. In OS574, [X] seeks a declaration that she and [Y] each hold an equal beneficial interest in the Property, or alternatively a declaration that she holds a beneficial interest in the Property in a proportion calculated based on her various financial contributions. She cites various legal bases for her claim: a gift (or a presumption of advancement), a common intention constructive trust, and proprietary estoppel.

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[44] OA's submissions at para 2. SingTel debt was for $110.73; IRAS debt was for $349.67.

The submissions of the parties

24 [X] argues that she became the beneficial owner of a half-share in the Property when [Y] made her a joint tenant of the Property in July 2001. She argues that the direct evidence shows that [Y] intended to make a gift of that half-share to her, or that the Court can infer a common intention on the parties' part for the Property to be beneficially owned in equal shares under a common intention constructive trust, or that the presumption of advancement applies. [X] further argues that [Y] cannot set aside the transfer in July 2001 based on a mistake.

25 [Y] disputes that [X] is a beneficial owner of a half-share in the Property. He argues that the presumption of advancement does not apply, that there is no common intention on the beneficial ownership of the Property, and that the direct evidence does not show any intention on [Y]'s part to make a gift of a half-share in the Property to [X]. He also adds that [X] cannot raise proprietary estoppel for a lack of representation and detrimental reliance.

Whether [X] has a beneficial interest by virtue of a gift, common intention constructive trust or presumption of advancement

26 The main issue in these originating summonses is whether [X] has a beneficial interest by virtue of a gift, common intention constructive trust or presumption of advancement. The relevant approach and principles were set out by V K Rajah JA (delivering the judgment of the Court of Appeal) in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*"), as follows:

160 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.

27 I will apply these principles in the following sequence. First, I will assess parties' direct financial contributions to determine if a resulting trust arises, and if so, in what proportions. Next, I will consider whether the presumption of advancement applies. Finally, I will consider whether there is sufficient evidence to rebut the presumption of advancement and establish parties' common intentions.

Whether there is sufficient evidence of [X]'s direct financial contributions

28 As mentioned above (at [10]), *all* payments for the Property were made by [Y]. This suggests that the presumption of a resulting trust should arise in favour of [Y], such that [Y] is presumed to be the sole beneficial owner of the Property on the basis of his direct financial contributions. However, there is the issue of whether [X] made any direct financial contributions by virtue of the fact that the inclusion of her name as a joint tenant allowed [Y] to enjoy a

reduced interest rate on his mortgage loan with DBS Bank, which I will examine in detail. I take the view that there is sufficient evidence of [X]'s direct financial contribution.

29 In *Springette v Defoe* [1992] FLR 388, the parties purchased a council house as joint tenants. The purchase price had been discounted by £10,045 from its estimated market value because the plaintiff wife had been a tenant of the council for over 11 years. In attributing the beneficial interest in the property, the UK Court of Appeal considered that sum to be the plaintiff's *direct financial contribution* to the *gross* (rather than *actual or discounted*) purchase price of the property (at 391 *per* Dillon LJ, at 395 *per* Steyn LJ and at 396 *per* Sir Christopher Slade (agreeing with Dillon and Steyn LJJ)).

30 It is undisputed that the saving of bank interest was at least one purpose of adding [X]'s name as a joint tenant of the Property, and it is undisputed that [Y] enjoyed a lower bank interest for this purpose. This suffices to prove [X]'s direct financial contribution in the proportion of the interest saved to the purchase price of the Property had there been no savings on interest. Accordingly, under the resulting analysis in *Chan Yuen Lan* (at [160(*a*)]) and subject to the later steps of analysis as set out in *Chan Yuen Lan*, [X] would have a beneficial interest in the Property in the proportion of the interest saved by [Y] to the purchase price of the Property had there been no savings on interest. The precise figures can be worked out at the valuation stage, which parties have agreed will be done at a later stage if and after the issue of parties' rights therein have been determined in [X]'s favour. However, this will not be necessary, as I later find on the basis of direct evidence that

parties had a common intention for [Y] to be the sole beneficial owner of the Property (see [47]–[85] below).

Whether the presumption of advancement applies

31 In *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108, V K Rajah JA (delivering the judgment of the Court of Appeal) made some seminal observations regarding the presumption of advancement in the spousal context:

> **Spousal relationships**
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> …
>
> 70 … The husband-wife relationship which attracts the presumption of advancement has been subsequently extended to **include a situation where the transferor or contributor husband is *engaged* to be married to the beneficiary wife and they do not subsequently break their engagement** to marry each other.
>
> 71 In *Moate v Moate* [1948] 2 All ER 486 ("*Moate*"), Jenkins J explained the compelling logic of this extension at 487 as follows:
>
> > I can see no practical distinction … between a transfer by an intending husband to an intending wife and a transfer as between a husband and a wife. The reason for presuming advancement is stronger where the gift is made in contemplation of the marriage before it is actually solemnised than it is where the transaction is post-nuptial. It seems to me the presumption would be, in the former case, that the intending husband is making a gift to the lady in consideration of the marriage, a gift by way of wedding present which he intends to take effect in her favour beneficially provided the marriage is duly solemnised. I, therefore, hold that the presumption in this case is that the husband intended this to be a provision by way of gift to his wife provided the marriage was duly solemnised.
>
> The High Court of Australia has similarly held in *Wirth v Wirth* (1956) 98 CLR 228 ("*Wirth*") that a transfer of property by a

prospective husband to his intended wife made in contemplation of the marriage for which they had contracted raises a presumption of advancement just as a similar transfer made after the celebration of the marriage raises the same presumption. In coming to this conclusion, Dixon CJ remarked at 238:

> **To say that a transfer of property to an intended wife made in contemplation of the marriage raised a presumption of a resulting trust but a similar transfer made immediately after the celebration of the marriage raised a presumption of advancement involves almost a paradoxical distinction that does not accord with reason and can find a justification only on the ground that the doctrine depends in categories closed for historical reasons. That is not characteristic of doctrines of equity.**

72 **It appears, therefore, that the courts are willing to modify and extend the established categories of relationships to which the presumption of advancement applies, to accommodate the contemporary social climate and the particular circumstances in the cases which come before the court**; a steadfast and rigid adherence to the historical application of the presumption has been rightly rejected. In fact, the Australian courts have also expressed at least *some* inclination to extend the application of the presumption of advancement even to "de facto relationships" in the light of the progressive prevalence and openness of such relationships in recent times.

73 The conventional position is that there is no presumption of advancement between cohabiting couples (whether sexual or homosexual), nor between a man and his mistress: see, for example, *Rider v Kidder* (1805) 10 Ves 360; 32 ER 884, *Soar v Foster* (1858) 4 K & J 152; 70 ER 64, *Allen v Snyder* ([29] *supra*) and *Diwell v Farnes* [1959] 1 WLR 624. In *Calverley v Green* ([37] *supra*), however, although the majority rejected the application of the presumption of advancement to a relationship "devoid of the legal characteristic which warrants a special rule affecting the beneficial ownership of property by the parties to a marriage" (*per* Mason and Brennan JJ at 260), Gibbs CJ adopted quite a different line of argument. He observed at 250–251:

> The question is whether the relationship which exists between two persons living in a de facto relationship makes it more probable than not that a gift was

> intended when property was purchased by one in the name of the other. The answer that will be given to that question will not necessarily be the same as that which would be given if the question were asked concerning a man and his mistress who were not living in such a relationship. The relationship in question is one which has proved itself to have an apparent permanence, and in which the parties live together, and represent themselves to others, as man and wife. … *Once one rejects the test applied in* Soar v. Foster *as too narrow, and rejects any notion of moral disapproval, such as is suggested in* Rider v. Kidder, *as inappropriate to the resolution of disputes as to property in the twentieth century,* ***it seems natural to conclude that a man who puts property in the name of a woman with whom he is living in a de facto relationship does so because he intends her to have a beneficial interest, and that a presumption of advancement is raised***. [emphasis added [in italics]]

74 It is obvious that Gibbs CJ's remarks were driven, at least in part, by his pragmatism in acknowledging the changing conditions of society and a desire to desist from the historical reasons for confining the presumption of advancement to cases of *legal* spouses. Though **his remains the lone voice advocating for such a change**, **academics have acknowledged that it is *arguable* that changing social attitudes to *de facto* relationships, especially where they are recognised legislatively, should be reflected by the courts in the application of the presumption of advancement**: see G E Dal Pont & D R C Chalmers, *Equity and Trusts in Australia and New Zealand* (LBC Information Services, 2nd Ed, 2000) at p 591. **However, given that legislative recognition and public consensus about the status of *de facto* relationships have yet to emerge locally, any development along the lines envisaged by Gibbs CJ may be, in our view, presently unwarranted. The point to be highlighted here is simply that equitable principles such as the presumption of advancement should constantly be re-examined and adjusted in the light of contemporary reality and this approach has quite correctly and undoubtedly been adopted by foreign courts, albeit in varying degrees.**

75 In order **to ensure that the presumption of advancement dovetails with modern norms and expectations, courts have also increasingly regarded the**

presumption to be of varying strength in spousal relationships characterised by different dynamics. In *Pettitt v Pettitt* [1970] AC 777 ("*Pettitt*"), Lord Reid, with his customary acuity, observed that **the strength of the presumption of advancement, when applied to spousal relationships, should *generally* be considered as having diminished significance**. He stated at 793:

> I do not know how this presumption first arose, but it would seem that the judges who first gave effect to it must have thought either that husbands so commonly intended to make gifts in the circumstances in which the presumption arises that it was proper to assume this where there was no evidence, or that wives' economic dependence on their husbands made it necessary as a matter of public policy to give them this advantage. I can see no other reasonable basis for the presumption. These considerations have largely lost their force under present conditions, and, unless the law has lost all flexibility so that the courts can no longer adapt it to changing conditions, the strength of the presumption must have been much diminished.

In the same case, Lord Upjohn acknowledged at 813 that the presumptions of resulting trust and advancement "have been criticised as being out of touch with the realities of today", but he nevertheless remained optimistic that "when properly understood and properly applied to the circumstances of today", the presumptions "remain as useful as ever in solving questions of title". Nevertheless, he appeared to have regarded the ready rebuttal of the presumptions by "comparatively slight evidence" as the proper application of these presumptions then (at 814).

76 Locally, the Court of Appeal recently considered the presumption of advancement in some detail in *Low Gim Siah v Low Geok Khim* [2007] 1 SLR(R) 795 ("*Low Gim Siah*"). Chan Sek Keong CJ, in delivering the judgment of the court, accepted that **the presumption of advancement was generally of varying strength in different circumstances**; he opined at [33] that:

> [T]he amount of evidence required to rebut the presumption would depend on the strength of the presumption, *ie*, how readily the court would be prepared to make the presumption. ...

Chan CJ further pronounced on the application of the presumption in certain spousal relationships at [43]–[44] as follows:

> … In our view, it is correct to say that the cases where the presumption of advancement was held to have lost its robustness or diminished in importance were cases concerning joint contributions by married couples in acquiring the matrimonial home or properties acquired using joint savings. They were not concerned with the traditional and well-established categories of father-and-child and husband-and-wife relationships where one party is under a moral or equitable obligation to support the other party. …
>
> … The presumption of advancement has been applied in England in such relationships for over two centuries and justified on the basis of a *moral or equitable obligation* on the part of one to care for the other. Such moral obligations do not change even if social conditions change. Hence, we find it difficult to accept an argument that in modern Singapore, fathers and husbands have somehow changed their paternal or marital obligations so radically that the presumption is no longer applicable or should not be applied. There is no doubt that many married women in Singapore are financially independent of their husbands. But there are also many of them who are not or who choose to be housewives in order to look after their husbands, their children and their homes. … **In our view, in the case of such relationships, there is no reason to treat the presumption of advancement as having lost its robustness or diminished in its vigour, and there is no reason why it should not be applied to resolve questions of title in the absence of any evidence indicating otherwise.**
>
> [emphasis [in italics] in original]

77 We maintain the view expressed in *Low Gim Siah*. **The presumption of advancement is still very relevant today in the established (both traditional and extended) categories of relationships; it is the strength of the presumption that should vary with the circumstances in accordance with modern social conditions.** Thus, on this point, we must respectfully depart from the learned trial judge's bare assertion that the Singapore courts had moved away from the presumption of advancement and that the presumption was

no longer applicable in modern times unless there was evidence to support it (see [16] above). In fact, we find that **the strength of the presumption of advancement, whether in cases concerning spouses or otherwise, should not even be *generally* diminished** as appeared to be suggested in *Pettitt*. **Instead, it should only be where the present realities are such that the putative intention inherent in the presumption of advancement is not readily inferable from the circumstances of the case, that the presumption would be a weak one easily rebuttable by any slight contrary evidence.**

78 The **overall aim of the presumption of advancement is to discern the intention of the transferor**. As Gibbs CJ remarked in *Calverley v Green* ([37] *supra*) at 250:

> The presumption should be held to be raised *when the relationship between the parties is such that it is more probable than not that a beneficial interest was intended to be conferred*, whether or not the purchaser owed the other a legal or moral duty of support. [emphasis added]

The nuanced, fact-sensitive approach advocated in *Low Gim Siah* is therefore preferred; ***all* the circumstances of the case should be taken into account by the court when assessing how strongly the presumption of advancement should be applied in the particular case.** The **financial dependence of the recipient on the transferor or contributor, mentioned in *Low Gim Siah*, is but one factor** which may affect the strength of the presumption of advancement. 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.

[emphasis added in bold]

32 In my view, the nature of the relationship is sufficient in this case to trigger the operation of a considerably strong presumption of advancement. First, the parties were in what they *thought* was a marriage. Second, [X] was financially dependent on [Y] to an appreciable extent. The state of the relationship (*ie*, that [X] and [Y] were in a close and loving relationship at the material time) also supports this conclusion.

(1) The nature of the relationship

(I) [X] AND [Y] EFFECTIVELY HAD A SPOUSAL RELATIONSHIP

33 I find that [X] and [Y] had, in effect, a spousal relationship, having registered their marriage on 23 November 1999 in the USA. The difficulty is the fact that the parties were never legally married. The fact that [Y] thought that the marriage was valid and that the twins were his biological issue could clearly have been part of his calculus regarding whether to give a half-share in the Property to [X]. There could accordingly have been two *potential* operative mistakes. However, neither changes my analysis because [Y], for all intents and purposes, considered himself to be married to [X] at the relevant time. I will address whether [Y] may avoid his disposition on the basis of these mistakes below at [89]; for now, I will only consider their (more tangential) relevance to the issue of the presumptions of advancement.

34 I find that, on balance, [Y] did not know that his marriage was in fact void when it was registered in the USA on 23 November 1999 and when he transferred the Property to be held jointly by [X] and himself. Admittedly, [Y]'s suspicions could have been raised because [X] did not indicate on the marriage certificate that she had a prior marriage that ended in death,

dissolution or annulment.[45] However, [Y]'s position, that he did not know until February 2008 that the marriage was void, is plausible because the *decree nisi* for [X]'s divorce from her previous marriage was granted on 8 July 1999. Had the *decree absolute* been granted at the earliest opportunity (*ie*, 8 October 1999),[46] no issue would have arisen as to the validity of [X]'s and [Y]'s marriage to each other as it was registered on 23 November 1999. As stated in [14], it was only in February 2008 that [Y] found the *decree absolute* papers and was advised on 11 February 2008 by his Singapore counsel that the marriage was void. Shortly thereafter, in mid-March/May 2008, [Y] amended the divorce proceedings commenced by [X] to proceedings for annulment.[47] I note that in the span of three years, [Y] had paid [X] some US$50,503.01 in spousal support. While these payments were eventually recovered (see [20] above), those payments showed that [Y] did not know of the nullity earlier: if he did, it is likely that he would have raised it when [X] filed for divorce to avoid paying spousal support at all, thereby saving the subsequent costs of recovering such payments.

35 There is some affidavit evidence by [X] to suggest that [Y] might have been aware from an early stage that [X] had not received her *decree absolute*. [X] claims that, *at the time when [Y] was applying for a USA visa* (*ie*, September 1999), she told [Y] that she had not received her "final divorce document" and that [Y] replied that they should get married in the USA as it would otherwise be difficult for him to apply for citizenship for the twins.[48]

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45 [Y]'s 2nd Affidavit, pp 45 and 57.

46 [X]'s 1st Affidavit, para 8.

47 [Y]'s 2nd Affidavit, para 47 (states May 2008); pp 134 (states mid-March 2008).

[X] also said that [Y] claimed to have concealed from the USA Embassy officer the fact that [X] did not have her *decree absolute*:

> 12. When I was around 4 months' pregnant, [Y] asked me to marry him [this was in September 1999]. I told [Y] that I have yet to receive my final divorce document but he told me it would be difficult for him to apply for Citizenship for the boys and so he suggested that we should get married in the States. …
>
> …
>
> 40. … Effectively, [Y] is a very smart, organized and detailed man who is always careful about everything. He had asked me all the questions and had planned for the registration of our marriage. He also went to apply for a green card for me in the US Embassy in Singapore and had to produce my Decree Absolute. He even told me after the interview that he managed to hide it from the Officer. He was using this to annul our marriage as he did not want to pay me anything.

Although [Y] did not reply to these claims in his reply affidavit, I do not infer that [Y] was aware, at the time he married [X], that his marriage would be invalid. While the arrangements for marriage were made before or around the time when the *decree absolute* could be made final after 8 October 1999, the marriage on 23 November 1999 took place well after one and a half months from 8 October 1999. This affidavit was filed in Originating Summons Family No 148 of 2009, which was [Y]'s application for access to the children; the issue of [Y]'s knowledge that [X] had not received her *decree absolute* was one that was incidental and I am accordingly prepared to discount the fact that [Y] did not reply to [X]'s claims. As stated, [Y]'s knowledge could have related only to the time that [X]'s USA visa application was made (*ie*,

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[48] [Y]'s 2nd Affidavit, p 360 (OSF 148/2009 — [X]'s affidavit dated 13 August 2010, para 12).

September 1999), and not to the time of their marriage as [Y] could have assumed that the *decree absolute* would have been granted by the date of marriage. If [Y] had been aware then that the *decree absolute* had been granted on 6 December 1999, the marriage could have taken place after that date, leaving a good three months margin before the birth of the twins in early March 2000.

36 It is noted that in [Y]'s affidavit filed for this civil action, [Y] claimed that [X] admitted in a USA court in his USA action for deceit and unjust enrichment filed on 19 April 2012,[49] that [Y] did not know that she was still married and that she was the one, who insisted on getting married in the USA "to get around the Registry of Marriage[s] in Singapore." [Y] had been granted a judgment for damages in his favour as outlined in [20]. [X], in her reply affidavit, did not respond on or contradict this point. It bears noting that as [X] would have received the *decree absolute* only after 6 December 1999, that it is probable that she may have known, if not at the time of the marriage then at some time after 6 December 1999, that the marriage of 23 November 1999 was not valid. Accordingly, I find that [Y], if not [X], conducted himself on the basis that they were each other's legal spouses.

37 I do not think the analysis is changed by the fact that [Y] wrongly thought that the twins were his biological children. As I discussed above at [15], [Y] was for all practical intents and purposes their father. As seen from the proceedings that have taken place, [Y]'s care of the twins does not seem to have been swayed by the fact that they were not his biological children; he

[49] [Y]'s 2nd affidavit pg 4 para 8.

fought for custody of them in the USA, and when they were taken to Singapore by [X]. After obtaining a USA court order for sole custody of the twins, [Y] applied in Singapore for the twins to be returned to him in the USA. It is noted that in the Child Evaluation Report of 21 August 2009 made in the USA, it was stated that [Y] believed that he was the biological father of the twins, and that regardless of the results of any test, "his commitment to raising the boys as his own would not be altered." [50] This fact is also one step removed from the inquiry at hand, which is the nature of the relationship between [Y] and [X] for the purposes of determining if the presumption of advancement applies.

38 It should be noted that this is not a case where [Y] was dealing with fraudsters or rogues, whom he thought were his wife and children. The mistake he made concerned the precise legal relationship he enjoyed with them. That, in my judgment, is not sufficient in this case to prevent the presumption of advancement from operating.

(II) [X] WAS FINANCIALLY DEPENDENT ON [Y]

39 The other aspect of the nature of the relationship between [X] and [Y] is [X]'s financial dependency on [Y]. I find that, at the material time, [X] was financially dependent on [Y] to an appreciable extent such that the strength of the presumption is considerably strong.

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[50] [Y]'s 2nd affidavit page 335

40 Throughout the marriage, [Y] worked as a banker. As of 2005, he was earning a gross annual salary of US$192,860.[51] His salary information as at 2001 was not disclosed but I infer that it was also a substantial amount.

41 In contrast, [X] was not financially stable at the material time. Although [X] received about $100,000 in cash from the sale of the HDB Flat in 2001, this was a capital sum rather than a revenue sum. More importantly, [X] was essentially earning no income. She was then the co-owner of a Shanghai-based fashion business which was opened together with [M]. That business was unprofitable at the material time — in contrast to the trade income of $63,155 she earned in 1999, she reported a trade income of $4,378 and a trade *loss* of S$1,285 in 2000 and 2001 respectively.[52] She received no employment income as, according to her, she could not work full-time as she was busy taking care of her children and had thus agreed with [M] that she would not draw a salary.[53] [X] closed the business in August 2001 to be a full-time housewife, allegedly to spend more time with her children.[54] Although [Y] claims that [X] never cited this reason to him,[55] I am inclined to believe [X]. During [Y]'s courtship, [X] would travel to Shanghai on a monthly basis until she moved there in May 2000 to live with [Y]. However, this would have been made considerably more difficult by the fact that [Y] was dismissed from

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51 Bundle of Documents, Tab 4, p 37, para 11.

52 [X]'s 3rd Affidavit, pp 16–18.

53 [X]'s 3rd Affidavit, para 16.

54 [X]'s 1st Affidavit, para 28.

55 [Y]'s 2nd Affidavit, para 46.

his employment in Shanghai, that the family moved back to Singapore in January 2001 and, more importantly, that [X] now had infant twins to care for.

42 [X] also appears to have been working for the Factory from September 2000 to April 2003, based on her *curriculum vitae* ("CV").[56] However, she says that this was a company owned by her partner [M] at which she helped out only occasionally; she mentioned her involvement to boost her CV. I need not make a finding on the extent of [X]'s involvement in the Factory; the point was that she was still not earning any real income. Apart from employment income of $3,200 in 2002, she continued to report trade losses of $20,988 and $13,661 in 2002 and 2004 respectively.[57]

43 Also, in 2001, [X] was receiving a household allowance of about $2,500 per month from [Y],[58] and [Y] was paying for the rental of the family's residence in Singapore between mid-2001 and July 2004. These facts are not inconsistent with the proposition that [X] was somewhat financially dependent on [Y] at the time of the transfer and that, accordingly, the presumption of advancement can and should operate.

(2) The state of the relationship

44 In my view, the state of the relationship between [X] and [Y] fortifies my view that a considerably strong presumption of advancement operates in

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56 [Y]'s 2nd Affidavit, p 525.

57 [X]'s 3rd Affidavit, Tab 1, Notices of Assessment for YA2003 and YA2005.

58 [X]'s 3rd Affidavit, para 25.

this case. The parties were, generally speaking, in a close and caring relationship (as opposed to one of formal convenience).

45 [X] claims that the parties were in a close, loving marriage at the material time. First, both parties also agree that their relationship deteriorated rapidly only after their move to the USA in July 2004 (after which [X] commenced divorce proceedings in January 2005 and moved out of the parties' USA residence in August 2006).[59] Second, between March 1999 and July 2006, [Y] sent [X] cards on special occasions such as Valentine's Day, [X]'s birthday and Mother's Day expressing his affection for her.[60] The cards that were sent most proximate to the transfer in July 2001 were dated December 2000, February 2001, October 2001, November 2001 and February 2002. For completeness, the value of card-sending in proving a close and loving relationship is not diluted by the fact that [Y] continued to send cards in 2005 to 2006 (*ie*, after [X] filed for divorce) because the cards had decreased in frequency and I accept that [Y] was simply trying to maintain the peace then.

46 This is not to say that the relationship was smooth-sailing. As in any relationship, [X] and [Y] had their fair share of friction. [Y] alleged that his arguments with [X] often concerned finances and [X]'s son from her previous marriage. [X] also says that there was a lot of conflict in the marriage caused by disagreements over the parenting of [X]'s son among others. This resulted in instances of physical hurt to both [X] and her son.[61] However, in my view,

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59 [Y]'s 2nd Affidavit, p 307.

60 [X]'s 1st Affidavit, para 10 and pp 20–96.

such friction did not rise to a level which made it improbable that a gift could have been intended.

47 In the circumstances, I hold that the presumption of advancement applies. To displace it, [Y] needs to adduce sufficient evidence that he did not intend to benefit [X], or that he and [X] shared a common intention to hold the property in a certain manner in equity.

Whether [Y] intended to benefit [X] or they had a common intention as to the beneficial ownership of the Property

(1) The context

(I) PARTIES' HISTORY

48 [Y] was born in Hong Kong and grew up in the USA. He obtained his Bachelor's and Master's degrees in Engineering from University of California, Los Angeles ("UCLA"). He worked as an engineer for 13 years before returning to UCLA to obtain his Masters of Business Administration with a specialisation in Finance. He joined [E] Bank in April 1997 and was seconded to Shanghai on a two-year assignment beginning June 1999 as the Head of Service Delivery, Corporate and Institutional Banking of [E] Bank in China. [Y] also had two prior childless marriages. His first marriage ended when his wife returned to her former boyfriend, while he cited "cultural differences" as the reason for his second divorce.

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[61] [Y]'s 2nd Affidavit, para 12(b); OSF 186/2009, [X]'s 2nd Affidavit, para 20.

49 All these facts, while neutral by themselves, suggest that that [Y] would have been well aware of the potential proprietary consequences of transferring the Property to be jointly held by [Y] and [X], at least under USA law. [Y] claims that he did not know the difference between joint tenancies and tenancies-in-common because he was a commercial & corporate banker doing back-office operations and not a mortgage banker.[62] This claim is somewhat difficult to believe. Even if he did not deal with *mortgages*, he would have been advised of it by his solicitor when the transfer of the Property was made.

(II) PARTIES HAD SEPARATE FINANCES

50 One notable feature of the parties' relationship is that the parties kept their finances markedly separate (in particular, to the extent of never having had any joint financial transactions or joint bank accounts). This goes towards rebutting the presumption of advancement.

51 [Y] described that he liked the fact that [X] was independent, ran her own business, and seemed very capable.[63] [Y] deposed that the parties kept their accounts and assets separate, that they made decisions regarding their respective properties and assets alone.[64] [X], on the other hand, claimed that she and [Y] had planned their family's finances together.[65]

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62 [Y]'s 2nd Affidavit, para 45; [Y]'s 3rd Affidavit, para 8.

63 [Y]'s 2nd Affidavit, p 305.

64 [Y]'s 1st Affidavit, para 17; [Y]'s 2nd Affidavit, para 17. [Y]'s Reply Submissions, paras 22–23.

65 [X]'s 1st Affidavit, para 30; [X]'s 3rd Affidavit, para 5.

52 It does appear that both parties planned to invest in properties. In these proceedings, [X] claims that the parties decided that "[they] would invest in properties to build up [their] assets for [their] family".[66] [Y] also claimed, in his Supplemental Responsive Declaration for the USA proceedings dated 3 January 2007, that "it was agreed between [the parties] that [they] would invest in real estate so that [they] could build up our assets" and that he "always tried to buy properties in places that [they] lived, so that [they] could build up [their estate] for [themselves] and the boys".[67]

53 However, as [Y] points out, it does not appear that they planned to invest *together* — and, if they did, such plans seemed to bear no fruit. It is clear fact that the parties never had a joint bank account;[68] by [X]'s own admission, [Y] "never wanted to share an account" with her.[69] Apart from the Property, [Y] and [X] also did not jointly own any properties despite whatever they may have discussed about their finances. At the outset, it seems more likely than not that the parties planned their family finances together but conducted their financial transactions separately. [X] suggests that the Property was one of the fruits of their financial planning (specifically their plans to make joint investments), but I am not convinced. [Y] entered the agreement to purchase the Property in August 1997, many months before he met [X] for the first time. It may be that [Y] decided to let [X] have a share of the beneficial interest of the Property at a later date, either pursuant to an

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66 [X]'s 1st Affidavit, para 11.

67 [X]'s 1st Affidavit, Tab 3, paras 9 and 17.

68 [Y]'s 2nd Affidavit, paras 17 and 48.

69 [Y]'s 1st Affidavit, p 73 ([X]'s reply declaration dated 25 September 2006, para 27).

agreement or a gift. However, I will explain below why I do not think that this was the case.

(2) The direct evidence

54 Besides the fact that a joint tenancy is more consistent with a trust arrangement than a tenancy-in-common, a few other lines of evidence also suggest that [Y] did not intend [X] to have any real interest in the Property.

(I) [Y]'S DEALINGS WITH THE PROPERTY AND THE PASADENA PROPERTY

55 [X] argues that [Y] acknowledged her beneficial interest in the Property in the way he conferred upon her an ownership interest, and by the way he dealt with the Pasadena property.

56 First, she says that the fact that she was made a joint tenant (and not a tenant-in-common) of the Property is consistent with her account of her discussion with [Y] in 2001 and, coupled with the fact that [Y] was legally represented at the time, this was evidence that [Y] intended [X] to beneficially own the Property. This is fortified by the instrument of transfer, which [X] argues is a clear statement that the Property would be jointly owned by [Y] and her.[70]

57 Second, she also says that [Y] had impliedly accepted her beneficial interest in the Property by making her sign an Inter-spousal Transfer Deed in respect of the Pasadena property. [Y] bought the Pasadena property in July 2004 after the parties moved to the USA. On 26 August 2004, [X] signed an

[70] [X]'s Submissions, para 13.

Interspousal Transfer Deed to establish that the Pasadena property belonged solely to [Y].[71] [X]'s argument is that [Y] failed to effect similar steps in respect of the Property even though it was open for him to have done so and, as a result, [Y] had impliedly acknowledged her beneficial interest in the Property.[72]

58 In my view, these arguments have little force.

59 The mere fact of joint tenancy (and the attendant fact of the right of survivorship) does little to prove the parties' intention as to the beneficial ownership of the property. At best, it does not overtly contradict [X]'s claim that [Y] intended for her and her children to be able to live in the Property should anything happen to him. Where joint tenants have made unequal contributions to the purchase price of the property, they are presumed to beneficially own a share of the property proportionate to their respective contributions to its purchase price (*Lau Siew Kim* at [83]; *Neo Hui Ling v Ang Ah Sew* [2012] 2 SLR 831 at [14]–[15]). The strongest argument that [X] can make here is probably that no consideration actually passed from [X] to [Y], although the consideration stated in the instrument of transfer was $400,000. However, this fact does not strongly suggest that [Y] intended to gift to [X] a share in the Property at least in the proportion of $400,000 to its then market value.

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71 [X]'s 3rd Affidavit, para 8.

72 [X]'s 3rd Affidavit, para 9; [X]'s Submissions, paras 13–17.

60 [X]'s comparison of the Property to Pasadena property also suffers from a crucial flaw — it is distinguishable on the basis of the times when the properties were acquired. The Pasadena property was acquired in 2004, *ie*, after the parties registered their marriage in 1999. According to both expert affidavits before me, under California law, community property is all property acquired by a married person *during marriage while domiciled in California*. This means that the Pasadena property would have been community property on the assumption that [X] and [Y] were validly married. On the other hand, the Property was acquired in 1997, *ie*, before [X] and [Y] even started dating. The parties never lived in it and never improved it. It would not have been community property under Californian law (or, for that matter, matrimonial property under Singaporean law).

61 In these circumstances, I take the view that the way that the parties dealt with the Property (or the Pasadena Property) does *not* show that [Y] intended to give [X] a half-share of the Property, or that they shared a common intention that the parties would each have a half-share in the Property.

(II) THE PARTIES' STATEMENTS

62 Another aspect of the evidence which is quite telling is the parties' various statements around the time that matrimonial proceedings in the USA were ongoing. At the outset, it appears that both parties proceeded on the (erroneous) basis that the Property was community property on the basis that their marriage was valid.

63 Thus, on [X]'s part, this was made clear in her response to [Y]'s Form Interrogatories dated 21 April 2005.[73] The Form Interrogatories is a standard form questionnaire that provides for the exchange of relevant information between parties. The relevant questions and responses are below:[74]

> 2. **Agreements.** Are there any agreements between you and your spouse or domestic partner, made before or during your marriage or domestic partnership or after your separation, that affect the disposition of **assets, debts or support** in this proceeding? If your answer is yes, for each agreement state the date made and whether it was written or oral, and attach a copy of the agreement or describe its contents.
>
> …
>
> 13. **Property held by others.** Is there any **property** held by any third party in which you have any interest or over which you have any control? If your answer is yes, indicate whether the property is shown on the *Schedule of Assets and Debts* completed by you. If it is not, describe and identify each such asset, state its present value and the basis for your valuation, and **identify the person** holding the asset.
>
> …
>
> **Form Interrogatory NO. 2:** None
>
> …
>
> **Form Interrogatory NO. 13:** No.
>
> [emphasis in original]

More importantly, in the Schedule of Assets and Debts appended to the response to the Form Interrogatories, [X] listed her Family Home and a shophouse owned by her family at 24 Sin Ming Road ("the Sin Ming

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73 [Y]'s 2nd Affidavit, pp 594–616.

74 [Y]'s 2nd Affidavit, pp 595, 597 and 600.

Shophouse") as separate property belonging to her, and she listed the Property as community property.[75]

64 [Y]'s declarations are more problematic. He filed a supplemental declaration in matrimonial proceedings in the USA dated 3 January 2007, in response to [X]'s claims for spousal and child maintenance. I do not make very much of the fact that he says he and [X] "own" the property, because this could very well refer to legal ownership when read in context. It is more telling that he asked the Court to consider his debts in respect of the Property when ordering spousal support, or to order [X] to pay half of all the outstanding liability on the Singapore apartment. Relevant parts of this supplemental declaration is reproduced below:[76]

> **SINGAPORE APARTMENT:**
>
> …
>
> 10. Before I met [X], I had purchased the apartment in Singapore. In 2001, [X] was added on title to the property…
>
> 11. When [X] and I lived in Singapore, we lived in that property. In 2001, I had to refinance, so the property was put in both my and [X]'s names. …
>
> …
>
> 15. [X] and I jointly own the property. Attached … is a … copy of a surety signed by [X] … *Since separation, I have paid all of the expenses regarding the Singapore property. [X] has made no contribution to the negative amounts that I must pay in order to maintain the property.*
>
> …

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75 [Y]'s 2nd Affidavit, p 609 (Item 1, read with Instructions).

76 [X]'s 1st affidavit at pp 100–103.

> 17. [X] and I were always very careful with our money. I always tried to buy properties in places that we lived, so that we could build up our estate for ourselves and the boys. There has never been a history of extravagant spending by me or [X]. Everything I did was with a thought for the future.
>
> 18. I respectfully request the Court to consider the payment by me of the shortfalls on the rental properties as ongoing obligations and take them into consideration when doing the calculation for child support. *Since [X] and I own the Singapore properties, the obligation should belong to both of us. I should get credit for making the payments after the date of separation.* Based upon the temporary order that was made by the Court, I cannot afford to pay the monthly obligations on all of the properties and at the same time pay the amount of child support and spousal support that was ordered by the Court.
>
> 19. *I respectfully request the Court to* consider the debts that I am paying on behalf of the properties or, *in the alternative*, *order [X] to pay one-half of all the outstanding liability on the Singapore apartment, commencing subsequent to the date of separation as it is our joint responsibility.*
>
> [emphasis added]

65 In August 2007, [Y]'s American attorney wrote to [X] a letter in which the Property was described as community property and, more importantly, in which it was alleged that [X]'s share of the "community real property loss" for 2005 to July 2007 was $9,248 and that [X]'s share of "Singapore income tax liabilities for 2003 & 2004" was $11,215.66. Further, [X] was asked to lodge a power of attorney with the Singapore court to relieve her from further financial and legal obligations for the Singapore community property.

66 Even after the annulment order was made in May 2009, [Y] sent [X] an e-mail on 2 June 2009. This e-mail was brief. In it, [Y] claimed that he and [X] had to pay the shortage on the mortgage loan after the bank sold the Property:[77]

> Just to let you know that the mortgage on the Property will be in default status in June. I do not know what the bank will do yet but was told they will sell and then *you and I have to pay the shortage*.
>
> [emphasis added]

67 These declarations — especially the e-mail dated 2 June 2009 — are the weakest part of [Y]'s case because they suggest that [Y] regarded [X] as being jointly liable for the outgoings of the Property (and, therefore, as being a joint owner of the Property). If [Y] had regarded himself as the joint owner, he would have considered himself to have been solely liable for the outgoings. However, on balance, I am not inclined to hold [Y]'s declarations against him.

68 ***First***, the declaration in 2007 was made on the twin assumptions that the Property was community property and that spousal support would be one consequence of divorce — these rested on a more fundamental assumption that [X] and [Y] were validly married.[78] It would have been natural (and self-serving) for [Y] to state as his primary position that the Court should consider his obligations on the Property when ordering spousal support. This is in fact [Y]'s own characterisation of the declaration, that he was "merely seeking to convince the Court to reduce the amount of child and spousal support that I was ordered to pay considering all the obligations I have" [emphasis omitted].[79] His prayer that the Court order [X] to bear half of the liability commencing on the date of separation was an alternative position. The attorney's letter in 2007 was made on the same assumption. Further, [Y]'s attorney was conveying a

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77 [X]'s 1st affidavit at para 32.

78 [Y]'s 2nd Affidavit, para 53.

79 See [Y]'s 2nd Affidavit, paras 51–52.

settlement proposal. As for [Y]'s e-mail of 2 June 2009, the very brief phrase that "you and I have to pay the shortage" is not very probative of the fact that [Y] regarded [X] to have a beneficial interest in the Property. I am prepared to accept [Y]'s explanation to the effect that he was simply passing on the message from the bank.[80] The most likely inference in my view is that [Y] was inflicting stress on [X] in as acute a form as possible (*ie*, on her finances). I say this because the parties were in the midst of a bitter custody struggle at this point in time ([X] had raised the fact of the twins' paternity in the USA proceedings, but the USA courts had not reached a determination yet), and I find it hard to see another plausible reason for [Y] to have sent this e-mail to [X]. Specifically, I do *not* find it convincing to say that [Y] intended to acknowledge [X]'s half-share in the Property because he sent this e-mail *despite* the ongoing matrimonial proceedings. Shortly after this letter in June 2009, [X] took the twins with her to Singapore on 31 August 2009.

69 ***Second***, the fact that [Y] considered the Property to be community property does not say very much. This, as it turns out, seems to have been an erroneous assumption because there was no "transmutation" under Californian law that would have changed its nature from being the separate property of [Y] to the community property of the parties as parties were not legally married. Further, the mere fact that the Property is community property is not dispositive (or even suggestive) of the respective shares that [X] and [Y] have in it; that would still depend on Californian law.

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[80] [Y]'s 2nd Affidavit, para 55.

70 ***Third***, and very tellingly, [X], despite also stating the Property to be community property (see above at [62]), admitted rather early on (and quite categorically) that she was named as a joint tenant of the Property for the sake of interest savings only. This is found in her reply declaration dated 25 September 2006:[81]

> **CHILD SUPPORT, SPOUSAL SUPPORT, AND ATTORNEY FEES**
>
> …
>
> 24. As for the apartment in Singapore that [Y] stated we owned together, the apartment was bought by [Y] before our marriage. During our marriage, we never lived in it. When we returned to Singapore, after he was fired by his previous company, he had rented out the apartment for 2 years. As he is not a citizen of Singapore, he would have to pay very high interest rate for his mortgage if he is staying in Singapore and not living in the apartment. Therefore, *[Y] told me the only way for him to continue paying the same interest rate is for him to put my name on the apartment as I am a citizen of Singapore.* Therefore, he will not be penalized for the high interest rate. *That is why I agreed to put my name on the title. [Y] has paid for the entire mortgage all these years, because he had told me many times that this is his property not mine.*
>
> [emphasis added in italics]

This was essentially an admission that [X] and [Y] had agreed for [Y] to be the sole beneficial owner of the Property. This was filed in response to [Y]'s Responsive Declaration to Order to Show Cause dated 12 September 2006, wherein he stated:[82]

> **CHILD SUPPORT AND SPOUSAL SUPPORT**
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> …

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81 [Y]'s 1st affidavit, pp 71–72.

82 Bundle of documents, Tab 4, p 38.

> 16. The Court should also take into account that since 2001, [X] and I have owned an apartment in Singapore. From August 2001 to August 2004, the monthly maintenance and negative rental income totaled … ($1,000) per month. From August 2004 to 2006, the maintenance and negative rental income totaled … ($1,350) per month, *I am the only one who is maintaining this property. [X] has not contributed to the maintenance of this property since August 2001.*
>
> 17. I respectfully request the Court to take into consideration the fact that *I alone am paying this monthly short fall without any contribution by [X].*
>
> [emphasis added in italics]

71 [X] claims that she was never advised by her USA lawyer that she should tell the full story in her USA declaration, that she did not have solicitors in Singapore, and that she did not contemplate that there would be Singapore proceedings regarding the Property.[83] I reject this because this fails to explain why she volunteered the fact that [Y] had paid for the entire mortgage and the fact that [Y] repeatedly said that the Property belonged to him and not to her when this was her very opportunity to stake a claim to the Property. I am also mindful that [X]'s declaration was made in the context of a USA court proceeding for spousal and child support. However, I note that she has not *denied* the truth of the facts in her USA declaration; her only contention was that it was not the full story. These are facts which [Y] too asserted.[84] These facts are also consistent with (and perhaps complement) [Y]'s account in his supplemental declaration that [X]'s name was added to the property because [Y] "had to refinance". Additionally, in some ways, [X]'s USA declaration was even more accurate than [Y]'s supplemental declaration.

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83 [X]'s 1st Affidavit, para 5.

84 [Y]'s 1st Affidavit, paras 6–7.

In particular, I note that it is accepted in this proceedings that parties never lived in the Property (see above at [9]). Yet, [Y]'s declaration wrongly claimed that the couple "had lived in that property", while [X]'s USA declaration states correctly that the couple "never lived in it". Accordingly, I take the view that [X]'s statement strongly corroborates [Y]'s claims that he had named her as an owner only to enjoy interest savings, and that [X] was never meant to have any beneficial interest in the Property. It also bears noting that [X], like [Y], was a divorcee, who had gone through divorce proceedings, albeit in Singapore.

72 For this reason, and also for the reason that the parties never lived in the Property, I also take the view that her claim in these proceedings (*ie*, that [Y] wanted to make her a joint tenant of the Property so that she and her children would have a place to stay should anything happen to him) is an afterthought.

73 In these circumstances, I take the view that the parties' statements and declarations do *not* show that [Y] intended to give [X] a half-share of the Property, instead, these documents show that parties shared a common intention that [Y] would be the sole beneficial owner of the Property.

(III) [X]'S SALE OF THE HDB FLAT AND CONTRIBUTION TO THE HOUSEHOLD EXPENSES

74 Next, [X] claims that she sold the HDB Flat so that she could co-own the Property with [Y].[85] She also claims that she agreed with [Y] that she

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[85] [X]'s Submissions, para 55.

would use the cash proceeds of about $100,000 from the sale of the HDB Flat to pay for the household expenses while [Y] would use his salary to service the mortgage loans for the Property and his other property in Seattle. Thus, pursuant to such an agreement, she paid for various household expenses between January 2001 and July 2004 (such as the maids' salaries, groceries, marketing, petrol and other miscellany).[86] Besides being potentially relevant in showing some sort of financial arrangement for [X] to contribute to the purchase price of (and accordingly enjoy a beneficial interest in) the Property or common intention as to the beneficial ownership in the Property, this could also be evidence of detrimental reliance for the purpose of raising a proprietary estoppel against [Y] — I will return to that later.

75 As I mentioned, the HDB Flat was a matrimonial property from [X]'s previous marriage. The contract for the sale of the HDB Flat was entered into on 6 September 2000; at the time, the family was still living in Shanghai. It does not appear that the parties ever contemplated at that point in time that they would move back to Singapore. [Y]'s posting was due to end only in May 2001 and, in any event, it was only in January 2001 that [Y] was dismissed from [E] Bank.

76 As to the reason for selling the HDB Flat, the parties had differing views. [Y] deposed that the decision was solely [X]'s.[87] [X] gave various reasons. The first reason was that the parties were unlikely to stay in the HDB Flat. She says that although the prevailing HDB regulations then allowed

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86 [X]'s 1st Affidavit, paras 22–24.

87 [Y]'s 2nd Affidavit, para 23.

concurrent ownership in the HDB Flat and the Property, she would be required to live in the HDB Flat. However, [Y] preferred not to live in the HDB Flat because it was too small for seven persons (*ie*, [X], [Y], the three children and two domestic helpers) to reside.[88] The second reason was that she did not have enough money to keep the HDB Flat. Although the *decree nisi* in her earlier divorce proceedings required her ex-husband to transfer his share in the HDB Flat to her in repayment of the funds used from his Central Provident Fund account, this was not done as [X] did not have enough funds to pay her ex-husband.[89]

77 I am not entirely convinced with [X]'s first reason. This reason, at best, would have arisen in early 2001 when [Y] was dismissed and had to make other plans for his family. This would be *after* [X] had sold the HDB Flat in September 2000. Moreover, even when the parties moved back to Singapore, they first stayed in the HDB Flat until they moved to her Family Home in March 2001. This reason seems to have been a convenient justification rather than a genuine reason. I am therefore inclined to think that it was far more by coincidence than by design that the date of the supposed contract for [X] to become a joint tenant of the Property (4 April 2001) and the completion accounts for the HDB Flat (5 April 2001) were proximate.

78 There remains the possibility that, at around April 2001, [X] decided to make the best of the forthcoming sale proceeds of the HDB Flat and, to that

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88 [X]'s 1st Affidavit, paras 14–15.

89 [X]'s 1st Affidavit, para 13.

end, agreed with [Y] that she would pay for the household expenses while [Y] paid for the mortgage.

79 I have some doubts about the extent of her claim, besides the fact that [Y] denied having discussed with [X] about whether she was to contribute towards the purchase price of the Property.[90] ***First***, she claims that she reached an agreement with [Y] in April 2001 on the use of the HDB Flat sales proceeds but, at the same time, she claimed that she began paying for household expenses since January 2001, which cannot be the case. This was not only a time when she was not yet financially stable, but also a time which predated the agreement. ***Second***, she affirmed in her response to the Form Interrogatories dated 21 April 2005 in connection with the then USA divorce proceedings, that there were no agreements made between parties before or during the marriage or after separation, that affected the disposition of her assets or debts.[91] She did not mention the alleged agreement between she and [Y] and that she would use her cash proceeds from the sale of the HDB Flat for household expenses, whilst [Y] would use his salary to service the mortgage loans for the Property and his property in Seattle. ***Third***, if she had contributed anything, it would not have been a very large amount. On one hand, [Y] shows that he gave [X] an allowance of about $2,500 per month (until July 2003) towards the household expenses. This was not only admitted by [X] but also evidenced by [Y]'s bank statements. On the other hand, while I do not draw any adverse inference from the lack of receipts, the expenses that have been listed seem inflated. ***Fourth***, the sale proceeds of the HDB Flat

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90 [Y]'s 2nd Affidavit, paras 30–33.

91 [Y]'s 2nd affidavit para 37 and pages 595 and 597

seems to have gone towards the setting up of the Business in 2003. In her response to the Form Interrogatories, she stated that the Business was acquired in May 2003 using money she had acquired from her previous marriage. [X] explained that she would drain her savings if she continued to pay for household expenses and hence she invested what appears to be $30,000 in the Business to generate some income to top up the difference between the sum that [Y] was giving her (this had fallen from $2,500 to $1,000 per month) and the household expenses. In the event, [X] suffered trade *losses* of $13,661 and $12,739.44 in calendar years 2004 and 2005 — she denies that the sale proceeds of the HDB Flat went towards supporting the losses suffered by her business, but fails to explain how these losses were settled. I therefore take the view that a large part of the cash proceeds from the sale of the HDB Flat went towards setting up the Business and settling its losses, despite [X]'s claims to the contrary.[92]

80 The more important point, however, is that payments towards household expenses are indirect contributions. On this issue, the Court of Appeal in *Lau Siew Kim* at [114], citing Robert Pearce & John Stevens, *The Law of Trusts and Equitable Obligations* (Oxford University Press, 4th Ed, 2006) at p 243, observed that "indirect" contributions may constitute sufficient detriment such that the court will impose a constructive trust if there was an express common intention to share the ownership of the land. However, I find little evidence of a common intention in [X]'s favour; in fact, as I had indicated above, the evidence supports a finding of an opposite common intention by parties: a common intention for [Y] to be the sole beneficial

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92 [X]'s 3rd Affidavit, paras 35–38.

owner of the Property (at [69]–[72]). To find a common intention in favour of [X] would also be in strong contrast to the fact that the parties had quite clearly delineated their finances, and would also be odd considering that the parties never spent a day living in the Property. Moreover, [X]'s contributions (if any) are not even indirect contributions in relation to the property (*eg*, in the form of repairs, insurance or taxes). Ultimately, I consider that [X]'s contributions should have been vindicated in matrimonial proceedings. She has, however, chosen to commence matrimonial proceedings at a particular time in a particular jurisdiction. The governing matrimonial regime unfortunately does not permit financial relief consequent to the *annulment* of a marriage and [X] must be taken to accept it. A court is ill-suited to take cognisance of these contributions in the context of a trust analysis, and it would be very slow indeed to mimic the putative outcome of a division of matrimonial assets had [Y] and [X] been validly married (and, later, divorced).

81 In these circumstances, I am not persuaded that the sale of [X]'s HDB Flat or her alleged contributions to household expenses would entitle her to a beneficial interest in the Property whether or not by way of a constructive trust.

(IV) [X]'S NOTICE OF ASSESSMENT FOR YEAR OF ASSESSMENT 2015

82 Finally, [X] argues that she should enjoy beneficial ownership of the Property because she was made to share in its income tax liabilities.[93]

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93 [X]'s 3rd Affidavit, para 24.

83 [X] was, for some reason, attributed with income of $14,816.50 for the Year of Assessment 2015 (*ie*, for the calendar year 2014). The annex to the notice of assessment showed that this was (her share of) rental income in respect of the Property for the period 1 January 2014 to 14 September 2014.[94] This is consistent with the rental income for the Property, which was expressed to be $3,500 per month for two years beginning 15 September 2012 (and therefore ending 14 September 2014). [X]'s share of the rental income for 2014 would therefore be half of the rental income for eight full months and an extra 14 days in a 30-day month — that would be ½ × ($3,500 × (8 + 14/30)), which works out to be $14,816.67. [X] insinuates that [Y] filed these returns on her behalf because she says that she did not know the rental amount and could not have inserted the amount when filing her tax returns.[95] She also says that this income could not have been from her other properties because in 2010, her share in her Family Home had been transferred to her sister (and in any event it was the family house) and the Sin Ming Shophouse, in which she had a share, had also been sold.

84 I do not accept [Y]'s suggestion that [X] was collecting rental income on an unspecified piece of property,[96] given that $14,816.50 is a round figure that is very close to $14,816.67.

85 More importantly, however, I also do not believe [X]'s claim. ***First***, as [Y] points out, the notice of assessment appears to have been based on

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94 Bundle of Documents, p 148.

95 [X]'s 3rd Affidavit, para 23.

96 [Y]'s 3rd Affidavit, paras 27–30.

information submitted by [X] through the internet on 28 April 2015.[97] From the various tax assessments tendered in evidence, this does not appear to be a token statement. [X]'s claim that [Y] had filed [X]'s tax returns on her behalf therefore seems very unlikely to me; that is tantamount to an accusation that [Y] had accessed [X]'s online account without authorisation. It is plausible that one is privy to the passwords used by his or her spouse, but it is surprising if this remains the case for parties in the midst of an acrimonious divorce. ***Next***, the tax returns were filed shortly after [Y] filed OS240 on 17 March 2015. This lends credence to the hypothesis that [X]'s tax filing was a manoeuvre to resist [Y]'s claim. ***Third***, the picture becomes even clearer when these facts are juxtaposed against the fact that [Y] had not filed any tax returns in Singapore since Year of Assessment 2011, after being informed by the Inland Revenue Authority of Singapore ("IRAS") by a letter dated 31 January 2011 that he need not do so if his total annual income did not exceed $22,000.[98] If [Y] did not file tax returns for his own share of rental income from the Property, it would have been strange for [Y] to file a return for [X] in respect of her share for the first time ([X] voluntarily reported that she did not have any income in 2012 and 2013 respectively, and that her only income in 2011 was from employment).[99] This is especially the case when the income fell below the threshold which triggers the obligation to file a return (of which [Y] was aware) and when [Y] had been diligently filing tax returns in the USA for what appears to be the whole of the rental income derived from the Property since at least 2009, perhaps earlier.[100] [Y] claimed that the tenants had paid

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97 [Y]'s 3rd Affidavit, para 27; [X]'s 3rd Affidavit, p 23.

98 Letter by [Y]'s Counsel dated 14 October 2016, pp 3–4.

99 Bundle of Documents, pp 144–146.

rentals into a bank account in his sole name[101] and I find it significant that [X] did not directly dispute this. When considered from the obverse perspective, it is clear that it would cost [X] nothing to create this piece of evidence to bolster her claim for beneficial ownership in the Property. It would be strange for [Y] to file a return on [X]'s share of rental income for the Property, since it would have been adverse to his case. ***Finally***, it is very strange that only rental *revenue* was reported. No deductions for expenses were claimed.[102] Any rational taxpayer would have reported rental *income*, *net of expenses*. [Y] has set out numerous expenses incurred in respect of the Property in his USA tax returns, and it is undisputed that he has been responsible for its outgoings. The inference I draw from this is that whoever filed the returns with IRAS was most probably not privy to the expenses that were incurred. In my judgment, [X] is attempting to manufacture evidence in a bid to show her ownership claim in the Property.

(3) Conclusion

86 In the above circumstances, I take the view that [Y] did not intend to benefit [X] with a half-share in the Property. Instead, I find that [X] and [Y] shared a common intention that [Y] would be the sole beneficial owner of the Property. Under the analysis in *Chan Yuen Lan* (at [160(*b*)]), this finding would displace the earlier result from the resulting trust analysis, where [X] had a share in the proportion of the interest that [Y] has saved to the purchase price of the Property (at [29] above). While the issue of parties' direct

100 Letter by [Y]'s Counsel dated 7 October 2016, p 14.

101 [Y]'s 2nd Affidavit, para 29.

102 Bundle of Documents, p 148.

intentions was only argued by [Y] in the context of the presumption of advancement, which falls under a later stage of the analysis in *Chan Yuen Lan* (at [160(*e*)]),[103] to my mind this difference in analytical sequence does not affect the outcome. On the evidence, I am satisfied that parties shared a common intention that the Property will be solely-owned by [Y].

Whether [X] may raise a proprietary estoppel against [Y]

87 Although [Y] argues that proprietary estoppel does not operate to confer a beneficial interest in the Property on [X], [X] has not made any arguments to the contrary. In these circumstances, there is no need for me to decide if a proprietary estoppel has been raised.

88 However, I observe that there does not seem to have been any clear representation that [X] would be given a beneficial interest in the Property if she sold the HDB Flat and/or paid for the household expenses.

89 In any event, as I discussed above, even if there was such a representation, [X] did not detrimentally rely on it by selling the HDB Flat because she would have had to sell it in any event; in fact, she entered the contract for the sale of the HDB Flat in September 2000 *before* the parties moved to Singapore in January 2001 (and, therefore, before any representation that [Y] might have made). [X] would have suffered hardly any detriment by paying for household expenses because most of them were paid for from the allowance that [Y] had given her.

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103 [Y]'s Submissions, paras 32–33; *Cf* para 25.

Whether the transfer can be vitiated by mistake

90 There remains the issue of whether [Y]'s transfer of the Property to be jointly held by him and [X] can be set aside on the ground of mistake. Strictly speaking, in light of my finding above that [X] holds her share of the Property on trust for [Y] pursuant to parties' common intention, I do not need to decide the issue of mistake. However, for completeness, I shall address this issue.

91 As noted above at [32], there are two potential operative mistakes in this case: that [Y] wrongly thought at the time of the transfer that he was validly married to [X], and that the twins were fathered by him.

92 I will only address the mistake on the validity of the marriage, as it appeared that [Y] was not relying on the mistake regarding the twins to vitiate the transfer. To begin with, the ground of mistake was not specifically canvassed in [Y]'s three affidavits and written submissions. Nothing in [Y]'s affidavits stated, for example, how these mistakes were causative of the transfer. After all, [Y]'s primary case was that he never intended to transfer the beneficial interest in the Property to [X] in the first place.

93 Nevertheless, as the *fact* of these mistakes was raised, in the interest of justice, I invited parties to make further submissions addressing the issue of mistake.[104] In response, [X] filed further written submissions,[105] while [Y]'s counsel (who declined to file further written submissions)[106] addressed the

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104 Minute sheet dated 27 June 2016 at p 8;

105 [X]'s further submissions, para 1.

106 Minute sheet dated 15 September 2016 at p 1.

issue of mistake in oral submissions. Both parties' submissions only addressed the mistake on the validity of the marriage.[107] [Y]'s counsel also emphasised that the equitable doctrine of mistake was *not* the main plank of his case.[108] In the circumstances, with regards to the equitable doctrine of mistake, I do not need to address the mistake on the twins' paternity.

94 I turn now to examine the relevant case law. In *Pitt v Holt* [2013] 2 AC 108, the first claimant (Mrs Pitt) received damages as a result of a settlement in an action for damages fallowing an accident involving her husband. As receiver and with the authority of the Court of Protection, she settled the monies received on a discretionary trust, the trustees of which were the first defendant and both Mr and Mrs Pitt. As the trust did not comply with the requirements of the Inheritance Tax Act 1984 and Mrs Pitt and her advisors never considered the same, large inheritance tax liabilities ensued after Mr Pitt's death. The Pitts sought to set aside the settlement on the basis that Mrs Pitt had failed to consider the material consideration of the inheritance tax consequences and would not have entered into the settlement if she had appreciated these consequences or, in the alternative, equitable relief on the ground of mistake.

95 The UK Supreme Court distinguished a mistake from forgetfulness, inadvertence, misprediction or ignorance. These, although not as such mistakes, could lead to a false belief or assumption which the law would recognise as a mistake (at [104]-[105] and [108]-[109]). It then held that

107 Minute sheet dated 15 September 2016 at pp 3–4; [X]'s further submissions, para 11–18.

108 Minute sheet dated 15 September 2016 at p 1.

the equitable jurisdiction to set aside a voluntary disposition on the ground of mistake was exercisable when there was a causative mistake, as to either the legal character of the transaction or a matter of fact or law that was basic to the transaction, and that was of such gravity that it would be unconscionable to refuse relief (at [122]-[123] and [126]). The gravity of the mistake would be assessed objectively but by an intense focus on the facts including the circumstances of the mistake, its centrality to the transaction in question and the seriousness of its consequences (including tax consequences) for the disponor (at [126] and [128]). Thus, the Court set aside the settlement on the ground that the Mrs Pitt had made a grave mistake through her conscious belief or tacit assumption that the trust would have no adverse tax consequences since, as it turned out, the trust could have complied with the Inheritance Tax Act 1984 without artificiality or abuse of the relief which Parliament had intended to grant (at [142]).

96 As discussed above, I have found that [Y] was unaware of the invalidity of his marriage until about 2008. However, I do not think that this mistake is material. The way the parties dealt with each other was premised less on the assumption that their marriage had been validly registered and more on the fact that, at the time, they were in a considerably close and loving relationship, which was borne out by the fact that [Y] had fought for the custody of the twins despite the fact that they were not his biological children. Had [Y] been made aware of the invalidity of his marriage at that point in time, I think that it is improbable that he would have suddenly sought to annul his marriage; on the contrary, I think it probable that he would have re-registered his marriage to establish its validity. The position *may* be different if [Y] had been made aware of *both* the invalidity of his marriage *and* the fact

that the twins were not his biological children. However, as [Y] did not pursue the issue of the twins' paternity (as noted above at [91]–[92]), I do not make any finding on this point.

Conclusion

97 For the above reasons, I allow the claims in OS240 and dismiss the claim in OS574. To recapitulate, [Y] beneficially owns the Property. It is unfortunate that the marriage between [X] and [Y] was invalid and, as such, annulled. Flowing from this are certain consequences, many of which could or did cause hardship to the parties. [X] may have made sacrifices in her relationship with [Y]. However, these are not matters of which property law is well-suited to take cognisance.

98 I will hear parties on costs.

Foo Tuat Yien
Judicial Commissioner

Alagappan s/o Arunasalam (A Alagappan Law Corporation) for the plaintiff in HC/OS 240/2015 and the defendant in HC/OS 574/2015; Lim Pei Ling June and Low Seow Ling (Eden Law Corporation) for the defendant in HC/OS 240/2015 and the plaintiff in HC/OS 574/2015.