

Yeo Guan Chye Terence and Another v Lau Siew Kim
[2007] SGHC 7

Case Number : Suit 855/2005
Decision Date : 12 January 2007
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Lim Chor Pee (Chor Pee & Partners) for the plaintiffs; Chew Swee Leng (as counsel) and Sng Kheng Huat (Sng & Company) for the defendant
Parties : Yeo Guan Chye Terence; Theodore Yeo Guan Huat @ Yeo Guan Huat — Lau Siew Kim

Land – Interest in land – Property held by parties as joint tenants – Whether parties joint tenants at law or tenants in common in equity – Whether existence of resulting trust overriding right of survivorship in joint tenancy

Trusts – Resulting trusts – Presumed resulting trusts – Whether presumed resulting trust displaced by presumption of advancement – Application of presumption of advancement in Singapore

12 January 2007

Judgment reserved.

Lai Siu Chiu J

Introduction

1 This case involved a bitter family dispute. The two plaintiffs, Terence Yeo Guan Chye (“the first plaintiff”)[[note: 1](#)] and Theodore Yeo Guan Huat @ Yeo Guan Huat (“the second plaintiff”)[[note: 2](#)] (collectively referred to as “the plaintiffs”), sued Lau Siew Kim (“the defendant”)[[note: 3](#)] who was their stepmother and the third wife/widow of their late father, Tommy Yeo Hock Seng (“the deceased”), claiming that certain properties she held jointly with the deceased, were held on trust for the deceased’s estate on the basis that the deceased provided the purchase monies.

2 The plaintiffs were the sons of the deceased from his first marriage to one Iris Chong Yen Ying (“Iris Chong”), whom the deceased divorced in 1987. The first plaintiff is the younger of the two siblings. The divorce was acrimonious and Iris Chong obtained custody of the plaintiffs who were then aged 13 and 17 years respectively. It was the defendant’s case that the deceased was estranged from the plaintiffs after the first marriage ended in divorce and therefore, he could not have intended to have his properties held on trust for them. In the alternative, even if there was a resulting trust, the defendant contended that the presumption of advancement in her favour displaced any presumption of a resulting trust.

Facts

3 The deceased died on 23 November 2004. He had made a will dated 28 January 1992 (“the first will”) in which he named the first plaintiff as his sole beneficiary. Subsequently, the deceased made another will dated 20 May 1996 (“the second will”) to replace the first will. In the second will, he appointed the defendant as the sole executor and named her the sole beneficiary. On 5 July 2005, pursuant to an application by the plaintiffs in Suit No 32 of 2005, the second will was invalidated by the High Court, by reason of the subsequent marriage between the deceased and the defendant on 18 December 2000. Accordingly, the deceased died intestate. The defendant has not to-date applied

for Letters of Administration to the estate of the deceased.

4 At the time of his demise, the deceased held the following four properties:

- (a) 35 Fowlie Road, Singapore ("the Fowlie Road property"), which was registered solely in the deceased's name;
- (b) 149 Hougang Street 11 #10-136, Minton Rise, Singapore ("Minton Rise"), which was registered in the joint names of the deceased and the defendant on 11 October 2000;
- (c) 18 Jalan Tari Payong, Singapore ("18 Jalan Tari Payong"), which was registered in the joint names of the deceased and the defendant; and
- (d) 18A Jalan Tari Payong, Singapore ("18A Jalan Tari Payong"), which was registered in the joint names of the deceased and the defendant.

5 As the Fowlie Road property was solely in the deceased's name and 18A Jalan Tari Payong has been sold and its sale proceeds used to discharge bank loans, the two properties are a non-issue. Hence the properties in contention are Minton Rise and 18 Jalan Tari Payong (collectively referred to hereinafter as "the properties").

6 Before I deal with the issues proper, it would be helpful to set out the financial sources used to acquire the properties. Minton Rise was bought for \$495,000, using a loan of \$396,000 from Standard Chartered Bank ("Standard Chartered") [see 2AB-69] and withdrawals from the defendant's Central Provident Fund ("CPF") savings. The Minton Rise property was the couple's matrimonial home until the demise of the deceased. The defendant still resides there. According to the defendant, she is servicing the monthly mortgage instalments of \$2,100 on the Standard Chartered loan, partly through her CPF contributions and partly by cash; she also pays the monthly conservancy charges.

7 As regards 18 Jalan Tari Payong, the deceased purchased it in March 2004 as joint tenants with the defendant for \$1.1m. The deceased and the defendant took a loan of \$770,000 from United Overseas Bank ("UOB") repayable over 17 years, to part-finance the purchase.

The Issues

8 The question I had to determine was whether the defendant or the deceased's estate was entitled to Minton Rise and 18 Jalan Tari Payong. Before delving into the issues in substance, it would be apposite at this juncture to refer to two interlocutory appeals that arose in the main action.

9 On the first day of trial (20 September 2006), in Summons No 4284 of 2006 ("SUM 4284/2006"), the plaintiffs applied to amend the Statement of Claim ("SOC") to identify the correct locations of the properties in dispute. The defendant did not have any objections and I granted leave to the plaintiffs to so amend the SOC.

10 On the last day of trial (25 September 2006), in Summons No 4407 of 2006 ("SUM 4407/2006"), after all the evidence had been adduced and the defendant was about to close her case (save that I ordered her to produce bank documents to support her claim on 22 September 2006 that she had her own lines of credit from banks), the plaintiffs applied to further amend the SOC, essentially to make a concession on one property, *viz.* that half of Minton Rise belonged to the defendant. I allowed the plaintiffs' second application in part against which decision the defendant appealed in Civil Appeal No. 113 of 2006 and for which I have delivered my grounds of decision (see *Terence Yeo Guan Chye*

& anor v Lau Siew Kim [2006] SGHC 227).

11 As a result of my decision in SUM 4407/2006, the plaintiffs re-filed an Amended (No 2) Statement of Claim on 27 September 2006 ("Amended (No 2) SOC"). Consequently, para 28 of the SOC dated 25 September 2006 filed with SUM 4407/2006 was deleted and paragraphs 30(1) and (2) were added and re-numbered para 29(1) and (2); the paragraphs state:

29.

...

And the plaintiffs claim:-

(1) A declaration that the property (now registered in the sole name of the defendant) and known as 149 Hougang Street 11, #10-136, Minton Rise, Singapore ("Minton Rise property") is held by the defendant in trust for the estate of Yeo Hock Seng, deceased;

(2) In the alternative, a declaration that the property (now registered in the sole name of the defendant) and known as No 18 Jalan Tari Payong, Singapore ("the Tari Payong property") is held in trust by the defendant as to half share thereof for the estate of Yeo Hock Seng, deceased.

12 With regard to the additional prayers prayed for in the Amended (No 2) SOC (relating to the application for Letters of Administration as well as the appointment of administrators for the deceased's estate), I was of the view that they were premature as they were dependent on the outcome of this suit. Those prayers should be dealt with after judgment by way of a fresh application, if necessary. Hence, they were not granted.

13 I shall now refer to the submissions presented by the parties before I make my findings.

The Plaintiffs' Submissions

Minton Rise

14 The plaintiffs proceeded by way of a resulting trust on the basis that it was the deceased who had provided the purchase monies for the properties – hence, the properties should result back to the deceased's estate. The 10% down payment of Minton Rise (which was equivalent to about \$90,000) was paid by the deceased. The remaining \$390,000 came from the housing loan of Standard Chartered.[\[note: 4\]](#)

15 The plaintiffs argued that the presumed intention of the parties to set up a resulting trust over the properties was substantiated by the fact that the properties were owned in joint names. When cross-examined on why the deceased did not buy Minton Rise in her name only, the defendant replied that "[h]usband and wife always share everything together. Why buy in my name?"[\[note: 5\]](#) Further, the defendant accepted that the deceased put Minton Rise "in joint names because both of you are co-owners" and "if there is a divorce, he could claim half of it".[\[note: 6\]](#)

16 Next, the plaintiffs argued that there was no presumption of advancement in the defendant's favour such that the properties were intended as gifts by the deceased to the defendant. The plaintiffs claimed that the deceased was not generous to the defendant and therefore, he could not have given Minton Rise to her. In the course of cross-examination, however, the defendant disagreed that the fact the deceased "never paid out any of his own money to give [her] whilst [she was] in

England" was "a sign of a very mean person, not generous at all" because the deceased was "living on OD [overdraft]" and the defendant believed that she was "the only person in this world [the deceased] should have been generous to".[\[note: 7\]](#)

17 To further rebut any presumption of advancement, the plaintiffs argued that the properties and bank loans were registered in joint names because the deceased used the defendant's name for the purpose of extending the length of the loan and not because he wanted to transfer the entire interest of the properties to her eventually.

18 In cross-examination, the second plaintiff asserted that the deceased made use of the defendant so that he could borrow money for a longer period of time because the defendant was younger than him (by 14 years) and had a regular job. However, the second plaintiff conceded he did not "speak to the bank officer of Standard Chartered".[\[note: 8\]](#) The assertion was therefore pure conjecture on the part of the second plaintiff.

19 The second plaintiff agreed that "[the deceased] and the defendant have committed themselves to service the UOB housing loan" and "upon the death of [his] father, the defendant would have been responsible for the repayment of all these loans taken out in their joint names". He maintained that "the defendant was merely a nominee borrower of [his] father" and "used by [his] father".[\[note: 9\]](#) In re-examination, the second plaintiff was of the view that if the defendant was unable to pay as a co-borrower, the banks would sell the property. The sale proceeds would be enough to cover all the loans and there would still be a balance left after paying all the loans.[\[note: 10\]](#)

20 The defendant agreed that it was normal bank practice that "[i]f a man has a regular job, he applies for a bank loan at the age of 55, the bank would give him only 10 years' loan". Although the defendant could not comment on whether the deceased would not be able to obtain a housing loan "[i]f he bought Minton Rise by himself without any income tax return", she accepted that "with [her] joining the deceased, both of [them] got a housing loan for 25 years".[\[note: 11\]](#)

21 In addition, if the deceased "did not die and he decided to divorce his third wife for whatever reason", Donald Yeo Hock Chwee ("Donald"),[\[note: 12\]](#) the deceased's older brother (who is a retired lawyer), said that the deceased would "have claimed back his share of Minton Rise and Tari Payong" and not have given them away. Donald stated that the deceased "confided in [him] that he intended to leave his sons some of his properties even as late as 1999."[\[note: 13\]](#) In this regard, Donald agreed that the deceased "loved Guan Chye (the first plaintiff) and he made a will in his favour in 1992."[\[note: 14\]](#)

22 Further, Donald's affidavit dated 7 August 2006 at [25] reads:

Tommy was very shrewd always only thinking of himself at the expense of others. If he were a generous person, he would have simply bought Minton Rise property in the defendant's name as he was so many years older than her. Tommy had always the intention of retaining Fowlie Road as he had said Fowlie Road was derived from Thrift Drive, which he claimed was a gift of love to him by our late mother.

23 In his affidavit at [23], Donald averred that "Tommy was using the defendant to obtain financial assistance from her and to obtain a higher mortgage for his property at Fowlie Road to further his avaricious intention to gain profit for himself". Donald added at [26] that "Tommy was using the defendant to obtain a higher mortgage for his ventures as he was unemployed and of middle age". In the course of cross-examination, Donald denied that he was making "false allegations to help [his]

nephews to grab a share of the properties which they are not entitled to".[\[note: 15\]](#)

18 Jalan Tari Payong

24 For this property, the plaintiffs argued that similarly, the deceased paid for the purchase monies. The defendant stated that the property at Jalan Tari Payong "was purchased for \$1.1 million and the housing loan was \$770,000. The down payment would have been about \$330,000". This down payment came from "the Fowlie Road mortgage" which "belongs to Tommy Yeo solely at that time". It was significant that the defendant conceded that "[i]f Fowlie Road never existed, [she] would not have got an OD" because Fowlie Road acted "as security" for the credit facility.[\[note: 16\]](#)

25 It was the plaintiffs' case that the presumption of advancement had been rebutted. In cross-examination, the defendant stated that in her opinion, if the deceased was still alive and divorced her, he would have given her 18 Jalan Tari Payong. However, she subsequently conceded that the deceased was "the sort of person who would claim back his properties of an ex-wife".[\[note: 17\]](#) Moreover, the evidence showed that the deceased "has had two divorces in the past" and "he was not generous to his ex-wives in the divorce".[\[note: 18\]](#) Indeed, there was correspondence presented in court written by the deceased that evidenced his bitterness in having to transfer his Housing and Development Board flat at Block 202, Marsiling Drive #06-134 to his second wife Ng Ah Mui, as part of the ancillary proceedings when he divorced her in or about 1996.

The Defendant's Submissions

26 First, the defendant submitted that the deceased was estranged from the plaintiffs after the first marriage ended in divorce and therefore, could not have intended to hold properties on trust for them.

27 In her closing submissions dated 10 November 2006 at [15], the defendant contended that "there is clear evidence [referring to the second will] that the deceased intended the defendant to have everything should he die before her. The defendant asserted that the deceased cared for no one else except her. He was totally estranged from the plaintiffs for more than 12 years before his death in November 2004. He made a [second] will on 20 May 1996 to give everything to the defendant upon his death".

28 During his cross-examination, the second plaintiff admitted that he did not have any contact with the deceased at all from 1994 until 2004, when the deceased passed away.[\[note: 19\]](#) The second plaintiff saw the deceased "for [his] last time since when [he] was 17."[\[note: 20\]](#) In fact, the second plaintiff's relationship with the deceased was strained. He stated that his "attitude towards [his] father was one of hate" and he admitted "saying to the defendant sometime in November 2004 that [he] will kill [his] father if [he] saw him in the streets".[\[note: 21\]](#)

29 However, the second plaintiff disagreed that he did not put up any obituary "because [he] still hated [his] father" and that "[he] attended [his] father's wake and ma[d]e a nuisance of [himself] to embarrass [his] father and the defendant."[\[note: 22\]](#) When put to him in cross-examination if "[he] and [his] brother had filed this unmeritorious claim as a shameful attempt to grab a share of the estate of a man whom [he] hated",[\[note: 23\]](#) the second plaintiff disagreed.

30 In a similar fashion, it was submitted that the first plaintiff was not close to the deceased, albeit closer than the second plaintiff was to the deceased. The first plaintiff "last saw [the deceased] when he was 15 years old".[\[note: 24\]](#) The first plaintiff's "last conversation with [the deceased] was in 1992" and "[he] lost contact with [his] father for 12 years after that".[\[note: 25\]](#)

However, the first plaintiff disagreed that he “harboured a lot of hatred towards [his] father” and that “[he] and [his] brother fought this unmeritorious claim as a shameless attempt to grab a share of the estate of a man whom [he] hated.”[\[note: 26\]](#)

31 Second, the defendant’s position was that the presumption of advancement displaced any presumption of a resulting trust. The defendant claimed that the only property disputed in this case was Minton Rise and “in Tari Payong registered in [her] name now belong to [her] absolutely.” It was the defendant’s contention that as the deceased bought [Minton Rise and Fowlie Road] in joint tenancies, there and then, on the date of the purchase, he intended to give it to [her] as a gift already when he was still alive” and “it’s also due to [her] husband’s love for [her]”.[\[note: 27\]](#)

32 Third, the defendant argued that the right of survivorship in a joint tenancy entitled her to claim the entire legal interest of the properties.

Minton Rise

33 The defendant claimed that she was currently paying Minton Rise’s monthly mortgage instalments of \$2,100 to Standard Chartered, partly through her CPF contributions and partly by cash. In addition, she paid the monthly conservancy charges of Minton Rise. However, the defendant produced no evidence in court to support her claim that she contributed towards the purchase price of Minton Rise; I will revert to this issue later.

34 It was not disputed that Minton Rise was the matrimonial home. The deceased and the defendant were its joint tenants. Upon the death of the deceased, the right of survivorship operated to make the defendant the sole legal and beneficial owner of Minton Rise. “When [the defendant] and the deceased bought the property, they were advised by their solicitors of the legal consequence of holding the property as joint tenants”: see defendant’s closing submissions dated 10 November 2006 at [16].

35 With regard to Minton Rise, the defendant stated that the lawyers explained to her and Tommy about holding the property in joint names. The lawyer said that “[j]oint tenancy in this property, if one of you were to go earlier, the survivorship will take over” and “if something happened to you first, the property will go to Tommy”. “Tommy agreed to this”.[\[note: 28\]](#)

36 The defendant argued that as the Standard Chartered facility letter was issued before December 2000 (when the defendant found a job as an accountant after her marriage to the deceased), it could not be the case that the deceased “had to use the defendant as a co-borrower to obtain loans of 20 years or more because she was considerably younger and had a regular job”.[\[note: 29\]](#)

37 The defendant’s counsel referred the court to a facility letter from UOB to the deceased and the defendant dated 12 June 2002, where a line of credit was given to the deceased and the defendant for \$2.218 million, comprising \$798,000.00 for the housing loan to redevelop Fowlie Road: see 2AB-346. The UOB term loan dated 12 June 2002 had a 21 year repayment period, which term was shorter than the Standard Chartered loan dated 6 June 2000 for 25 years. The second plaintiff disagreed that UOB’s “letter of offer also goes against [his] evidence that the defendant was used by [his] father as a co-borrower because of her age and because she was 40.”[\[note: 30\]](#)

18 Jalan Tari Payong

38 The defendant submitted that she put in her own money into the construction of 18 Jalan Tari

Payong and was therefore entitled to an interest in it. The plaintiffs' solicitor countered that nowhere in her affidavit did the defendant state that she "contribute[d her] own money to the development of Fowlie Road and Jalan Tari Payong". The defendant responded that she had "a lot of thing to put, so it might slip out of my mind."[\[note: 31\]](#) However, the defendant did not "have supporting documents to support [her] claim [she] spent \$250,000 of [her] own money" because "she had "so much to do."[\[note: 32\]](#)

39 It was noted earlier in [24] that the down-payment for 18 Jalan Tari Payong originated from the Fowlie Road mortgage. In this regard, the defendant submitted that she contributed some money in the construction of the Fowlie Road property. However, the defendant's testimony in cross-examination and in re-examination was contradictory. During cross-examination the defendant confirmed that she used "about less than a few thousand" of her "personal money to pay the contractors".[\[note: 33\]](#) However, in re-examination, the defendant said that she used \$250,000 from her "personal account to pay for the construction of the Fowlie Road property".[\[note: 34\]](#) The defendant stated that she has "a lot of lines of credit of [her] own". It was for that reason that I ordered her to produce her bank statements.

40 In response, the defendant produced documents pertaining to her credit card lines of credit for 2005 and 2006 (exhibits D1 and D2) as well as lines of credit for 2005 and 2006 (exhibits D3 and D4). The defendant acknowledged that she used "credit cards to pay for meals, holiday, shopping; [she didn't] pay contractors."[\[note: 35\]](#) Subsequently, the defendant revealed that the construction cost for the development of Fowlie Road "was financed by a bank loan". She admitted that she "made a mistake" earlier when she said that she "put in \$250,000 towards the construction cost."[\[note: 36\]](#) She stated that "all this \$250,000 is to pay to service the bank's loans", "not to pay contractors".[\[note: 37\]](#)

41 Additionally, the defendant stated in the course of re-examination that she used her "credit card facility to pay for expenses connected to Fowlie Road construction" "to buy some fixtures and fitting for the house" such as "oven cooker-hood and some lighting." She also used her credit card to "balance transfer by the bank to current account because credit card... just like a loan transfer, then at a lower interest."[\[note: 38\]](#)

42 The defendant gave testimony that she "still had \$30,000 savings, even after juggling here and there and paying back credit lines". I then ordered the defendant to produce her income tax returns for years 2002 to 2006 in an attempt to verify her evidence on her sound financial standing.[\[note: 39\]](#)

43 Selvanayagam Nadarajah ("Nadarajah"),[\[note: 40\]](#) the architect in charge of the redevelopment of Fowlie Road, testified that the defendant "conceived the project". Also, the signboard that was placed outside 18 Jalan Tari Payong and 18A Jalan Tari Payong while they were being developed listed out the defendant's name "[b]ecause the application to URA and all the [government] departments was only her name."[\[note: 41\]](#) In re-examination, Nadarajah agreed that the meetings for the Tari Payong project "carried out without Tommy Yeo."[\[note: 42\]](#)

44 The defendant disagreed that for "Fowlie Road, Jalan Tari Payong, [the deceased] was the brains behind it because as an accountant, he knows about business, banking facilities" and instead said that the deceased "gave [her] all to manage."[\[note: 43\]](#) Further, she stated that it was she who came up with the idea to "buy old properties, redevelop, sell for a profit",[\[note: 44\]](#) not the deceased.

The Decision

45 The defendant's closing submissions at [11] asserted that "there is no room for the presumption of resulting trust in favour of the deceased's estate to apply because the defendant was equally responsible for the loans needed to purchase the property".

46 I am of the view that both on the law and on the facts, the defendant's defence fails. The defendant was an unconvincing witness who was both unreliable and evasive. Granted that the deceased paid for the initial monies to acquire the properties, but regard must also be given to other competing factors, which I will now deal with *in seriatim*.

The law on resulting trusts

47 In *Liew Choy Hung v Fork Kian Seng* [2000] 1 MLJ 635, the High Court of Malaysia opined:

The principle of law that I invoke in this case, and for this I quote Dillon LJ in ***Springette v Defoe***[1992] 2 FLR 388 at p 391:

... is the age old principle that if two (or more) persons purchase property in their joint names and there has been no declaration of trusts on which they are to hold the property, they will, as a matter of law in the absence of evidence to the contrary, hold the property on a resulting trust for the persons who provided the purchase money in the proportions in which they provided it: see ***Dyer v Dyer*** [1788] 2 Cox Eq Cas 92 and the speech of Lord Upjohn in ***Pettitt v Pettitt*** [1970] AC 777 at p 814.

...

According to Megarry J (see ***Re Vandervell's Trusts (No 2)*** , ***White v Vandervell Trustees Ltd***[1974] Ch 269 at p 287 et seq) there are two categories of resulting trusts, namely, the purchase of property in the name of another and the voluntary transfer of property into the name of another, which have been classified as 'presumed resulting trusts'. This is because these two types of resulting trusts depend on the presumed intention of the grantor that the property is to be held by the grantee on trust for the grantor, so that the beneficial interest returns (results) to the grantor. The other class of resulting trust is classified as an 'automatic resulting trust' because it does not depend on any presumed intention of the settlor. An automatic resulting trust exists where property has been conveyed to another on express trust, but the beneficial interest returns (results) to the transferor because the beneficial destination of the property is undermined. This may happen when there is an entire or partial failure of the objects of the trusts. The part of the trust undisposed of will then result (return) automatically to the settlor.

...

Presumed resulting trusts are rebuttable by evidence of an alternative intention. In the case of a voluntary transfer into the name of another, it can be rebutted by evidence of an intention to make a gift of the property to the transferee. Where property is conveyed to the transferor's wife or child, the intention to make a gift of it to them is presumed. This presumption of an intention to make it a gift where property is conveyed from husband to wife or from father to child is known as the presumption of advancement. Or, in the case of a purchase in the name of another or in joint names, it is rebuttable by evidence of an intention that the money for the purchase of the property is to be provided by way of gift, loan, or rent. The presumption of such a _ resulting trust (that is, where the parties hold each other's shares in the property as trustees for one another proportionate to their contributions to the purchase price) can also be displaced by evidence of the parties' common intention to share the property on a wholly different basis for

apportioning the parties' shares, notwithstanding the inequality of their contributions to the purchase price (see *Springette v Defoe*)."

[emphasis added]

48 The Singapore Court of Appeal observed in *Cheong Yoke Kuen and Others v Cheong Kwok Kiong* [1999] 2 SLR 476:

11 We now come to the essence of this appeal. The appellants claim that the mother was the owner of the flat and upon her death it forms part of her estate to which they are each entitled in equal shares together with the respondent pursuant to the rules of distribution under the Intestate Succession Act (Cap 146). The respondent, however, claims that he is the beneficial owner of the flat by operation of a resulting trust, because he had paid the purchase price for the flat as well as its outgoings. When he transferred his entire interest in the flat to the mother in 1986, no consideration was paid to him by the mother, and he did not intend to make a gift of that flat to her. Thus, the beneficial ownership of the flat remained with him by operation of a resulting trust.

12 The position in equity as to the ownership of a property by a person who has contributed any money towards purchase thereof is well settled. Where a person has paid the purchase price of a property ("the purchaser") and the property is conveyed or transferred to him jointly with others, or to one or more persons other than the purchaser, a resulting trust arises in favour of the purchaser, and he is the beneficial owner of the property: *Dyer v Dyer* (1788) 2 Cox Eq Cas 92. If there are more than one purchaser and they paid the purchase money in unequal shares, the beneficial interest acquired by each of them will be in proportion[\[note: 45\]](#) to their respective contributions. Such a _ resulting trust is based on the presumed intention of the parties and such presumption is rebuttable by evidence of an intention on the part of the purchaser to make a gift or by the presumption of advancement which arises when a voluntary conveyance or transfer is made to a person to whom the purchaser stands in loco parentis.

13 Hence, in the instant case, if the flat were not an HDB property, the position would be abundantly clear. Whatever purchase money that had been paid for the flat had been paid solely by the respondent. Thus, at the time when the flat was purchased and registered in the joint names of the mother and the respondent, a resulting trust of the property arose in favour of the respondent as he had provided the entire purchase money, and he was the beneficial owner of the flat. There was no evidence that by taking the property jointly with the mother, the respondent intended to make a gift of half or any share of the flat to the mother. Also, there was in such a case no presumption of advancement arising in favour of the mother to displace the presumption of resulting trust. At the time when the respondent transferred his entire interest in the flat to the mother, the resulting trust continued to operate in his favour and the beneficial ownership of the flat continued to vest in him despite the transfer of legal ownership to the mother. Hence, if the flat were not an HDB property, the beneficial ownership in the flat would remain with the respondent by operation of a resulting trust.

[emphasis added]

Decision

Minton Rise

49 The defendant claimed that she paid for the property using withdrawals from her CPF account

and monthly instalments in the form of cash as well her CPF contributions. However, she did not produce one iota of evidence to support this assertion. I therefore had grave doubts on whether let alone the extent, the defendant actually contributed to the properties as she was unable to prove that she had money in her savings to contribute towards the maintenance of the properties.

50 My finding can be supported by the defendant's income and expenses for 2005 and 2006. From exhibit D3, it can be seen that the defendant's lines of credit with various banks for November – December 2005 totalled to \$37,407.00. Her credit cards line of credit for November – December 2005 according to exhibit D1 amounted to a sum of \$30,700. Her expenditure for November – December 2005 added up to approximately \$16,000.

51 As for July – August 2006, the defendant's lines of credit with various banks in exhibit D4 amounted to \$37,407.00. In exhibit D2, her credit cards line of credit for July – August 2006 amounted to \$30,700. Her expenses for November – December 2005 were estimated to be \$14,600 (see exhibit D2).

52 The earnings of the defendant were as follows (see exhibit D5):

Year Assessment	of	Annual Income	Monthly Income
2001		\$27,978	\$2,331.50
2002		\$41,600	\$3,466.67
2003		\$44,000	\$3,666.67
2004		\$41,190	\$3,432.50

53 It appeared that the defendant was spending beyond her means. Her monthly expenditure greatly exceeded her monthly income. Given the defendant's monthly salary, it was clear that she did not have very much savings to contribute to the construction of the properties. In fact, after examining the defendant's income tax returns from 2001 to 2004, I concluded that she did not have any savings at all.

54 In their pleadings, the plaintiffs had prayed for a declaration that Minton Rise was held by the defendant on trust for the deceased's estate (see also their closing submissions dated 4 December 2006 at [16]). In essence, the plaintiffs sought an absolute title of Minton Rise to result back to the deceased's estate. However, the defendant could not be deprived of any interest in the properties. She was after all, the joint borrower of the Standard Chartered loan for Minton Rise. While the deceased was alive, Minton Rise was the matrimonial home of the deceased and the defendant and she continues to reside there.

55 In my view, there was a resulting trust over Minton Rise in the proportions of the financial contributions of the deceased and the defendant. To reiterate, Minton Rise was bought for \$495,000. The tenure of the loan was 25 years. The deceased passed away on 23 November 2004. The repayment scheme was as follows (see 2AB-69):

Repayment	First year: S\$1,982.47
	Second year: S\$2,193.61
	Subsequent years: S\$2,299.80

56 The Standard Chartered housing loan, inclusive of interest rates, totalled $(\$1,982.47 \times 12) + (\$2,193.61 \times 12) + (\$2,299.80 \times 12 \times 23) = \$684,857.76$. Therefore, the sum of money used to purchase Minton Rise was $(\$495,000 - \$396,000) + \$684,857.76 = \underline{\$783,857.76}$. I noted that the loan period commenced on 6 June 2000. The tenure of the loan was 25 years. The deceased passed away on 23 November 2004.

57 Assuming the defendant was currently paying the monthly mortgage instalments of Minton Rise, the breakdowns of the purchase price borne by the deceased and the defendant were as follows:

What the deceased was responsible for	Percentage of the total price of \$783,857.76 borne by the deceased		What the defendant was responsible for	Percentage of the total price of \$783,857.76 borne by the defendant
\$90,000	11.48%		-	-
-	-		\$495,000 - \$396,000 - \$90,000 = \$9,000 from the defendant's CPF savings	1.15%
$(\$1,982.47 \times 12) + (\$2,193.61 \times 12) + (\$2,299.80 \times 24) = \$105,308.16$ [for four years from 2000 to 2004]	13.43% (assuming 6.715% each)		$(\$1,982.47 \times 12) + (\$2,193.61 \times 12) + (\$2,299.80 \times 24) = \$105,308.16$ [for four years from 2000 to 2004]	13.43% (assuming 6.715% each)

-	-		$\$2,299.80 \times 2 = \$4,599.60$ [for two years from 2004 to 2006]	0.59%
$\$2,299.80 \times 12 \times 19 = \$524,354.40$ [for the remaining 19 years]	66.89% (assuming 33.445% each)		$\$2,299.80 \times 12 \times 19 = \$524,354.40$ [for the remaining 19 years]	66.89% (assuming 33.445% each)
-	-		Monthly conservancy charges	6.46%
Total	51.64%		Total	48.36%

58 Even if the deceased added the defendant's name in the bank loans for the purposes of obtaining a larger loan figure and a longer repayment period, this did not negate the fact that she was a joint borrower of the loan. Upon the deceased's death, the defendant would be solely responsible for the repayment of the loan. Bearing in mind that a large bulk of the housing loan had yet to be repaid, rough and ready justice dictated that it was ideal to apportion 50% to the deceased's estate, to be held on trust by the defendant for the estate, and 50% to the defendant.

18 Jalan Tari Payong

59 The plaintiffs had asked for a declaration that 18 Jalan Tari Payong was held by the defendant on trust for the deceased's estate. Alternatively, they prayed for a declaration that 18 Jalan Tari Payong was held on trust by the defendant as to half share for the deceased's estate: see the Amended (No. 2) SOC and the plaintiffs' submissions dated 4 December 2006 at [16].

60 The defendant asserted that the \$250,000 to pay for the extra construction costs that she was claiming against Fowlie Road originated from her "salary, [her] line of credit, and [her] overdraft[from] the UOB bank". She "used the Tari Payong money to pay for the Fowlie loan". Eventually, she conceded that she did not have her own money, i.e. \$250,000. [\[note: 46\]](#) I was not convinced that the defendant used her own money to pay \$250,000 to put into the redevelopment of Tari Payong. As shown in paras [50] and [51] above, the evidence did not support her positive assertion.

61 To recapitulate, 18 Jalan Tari Payong was bought for \$1.1m. Nowhere in the evidence was it stated who paid for the monthly instalments of the housing loan from UOB. As it was a joint loan, I would have to assume that the payment of monthly instalments were in equal proportions. The breakdowns of the price borne by the deceased and the defendant were as follows:

What the deceased was responsible for	Percentage of the total price of \$1.1m borne by deceased		What the defendant was responsible for	Percentage of the total price of \$1.1m borne by the defendant
10% down payment = \$330,000 from the Fowlie Road mortgage which belonged solely to the deceased at the material time	30%		-	-
Joint loan of \$770,000 from UOB	70% (assuming 35% each)		Joint loan of \$770,000 from UOB	70% (assuming 35% each)
Total	65%		Total	35%

62 As reinforced by case law, I am of the opinion that the property ought to be held on a resulting trust for the persons who provided the purchase money in the proportions in which they contributed. Accordingly, I apportion 65% of 18 Jalan Tari Payong to the deceased's estate, which would be held on trust by the defendant for the estate, and 35% to the defendant.

The presumption of advancement

63 In the plaintiffs' Opening Statement at [7], it was stated "Tommy Yeo would not have intended to give the two new houses to the defendant as a gift. If he had that intention, the property would have been purchased only in the name of the defendant".

64 The defendant submitted on the other hand that "the presumption of advancement applied to Minton Rise": see the defendant's submissions at [12]. The defendant's Opening Statement (at [10]) stated:

- (a) Furthermore, the evidence negates any presumption of resulting trust in favour of the estate of the deceased.
- (b) The purchase price of each property was paid from the respective housing loans obtained by both of them;
- (c) The deceased said many times that when he dies, everything would go to the defendant;
- (d) The deceased made a will on 20 May 1996 in favour of the defendant; and

(e) The properties were held in their joint names.

65 I reject the defendant's argument – I find that the presumption of a resulting trust was not displaced in this case by the presumption of advancement. I would add that Singapore courts have moved away from the presumption of advancement, on the basis that the presumption of advancement is no longer applicable in modern times unless there is evidence to support the same.

66 “Thus the current judicial approach towards the presumption of advancement is to treat it as an evidential instrument of last resort where there is no direct evidence as to the intention of the parties rather than as an oft-applied rule of thumb”: *Teo Siew Har v Lee Kuan Yew* [1999] 4 SLR 560 at [29].

67 I had opined in *Lai Min Tet v Lai Min Kin* [2004] 1 SLR 499 at [46]:

... It should also be borne in mind that *Tinker v Tinker* is a 1970 case. Since then, the presumption of advancement has increasingly been applied as a principle of last resort. *Tinker v Tinker* was decided by the Court of Appeal in December 1969. It was preceded by the House of Lords decision in *Pettitt v Pettitt* [1970] AC 777 where their Lordships (Lord Reid, Lord Hodson and Lord Diplock) opined that there is no longer any reasonable basis for the presumption of advancement and the considerations which gave rise to it, to apply in modern times.

68 Further, the Court of Appeal in *Lee Hiok Tng (in her personal capacity) v Lee Hiok Tng and another (executors and trustees for the estate of Lee Wee Nam, deceased) and Others* [2001] 3 SLR 41 observed that the presumption of advancement in the context of husband and wife was readily rebutted by comparatively slight evidence. It was stated at [36]:

... This presumption is essentially an evidential rule, based on relationship (eg husband and wife, father and son), to rebut the opposing presumption of a resulting trust where a transfer of property is made by one person to another without consideration. In *Teo Siew Har v Lee Kuan Yew* [1999] 4 SLR 560, this court, after considering *Pettitt v Pettitt* [1970] AC 777; [1969] 2 All ER 385, observed that, in the context of husband and wife, the application of this presumption has diminished in recent years in line with changing social norms. It also noted that the current approach is to treat the presumption “as an evidential instrument of last resort where there is no direct evidence as to the intention of the parties rather than as an oft-applied rule of the thumb”.

69 As encapsulated succinctly in the headnote of *Neo Tai Kim v Foo Stie Wah* [1980-1981] SLR 215:

If the parties were husband and wife and the husband was the provider of the funds for the purchase of the property and put it in the name of his wife, a resulting trust in favour of the husband did not arise as the doctrine of the presumption of advancement came into play on behalf of the wife to negative to resulting trust in favour of the husband. The doctrine of presumption of advancement was a rebuttable presumption and could be rebutted if the husband could show that, at the time of the transaction there was, as between them, a common intention that it was to be otherwise. Common intention might be proved by the acts and declarations of the parties before or at or immediately after the time of purchase, constituting part of the same transaction but subsequent declarations were admissible as evidence only against the party who made them and not in his favour.

70 I note that in *Low Gim Siah & others v Low Geok Khim & Another* [2006] SGCA 45 (*Low Gim*

Siah's case), Chan Sek Keong CJ reaffirmed the applicability and relevance in Singapore of the presumption of advancement for *in loco parentis* relationships. This recent pronouncement from the Court of Appeal has no impact on my findings for several reasons. First, even in *Low Gim Siah's* case, Chan CJ cautioned (at [33]) that *the presumption is not absolute and may be rebutted by evidence*. Second, he noted that recent court decisions in England and Singapore have held that because of changed social conditions, the presumption of advancement may be rebutted by very little evidence.

71 The presumption of advancement between husband and wife would not apply to our facts as it was a reverse situation here – the deceased husband did not work and it was the defendant who worked and who was apparently the bread winner. Consequently, our case is unlike that of the appellant wife in *Teo Siew Har v Lee Kuan Yew* (supra [66]) who was a full-time home-maker and had no financial means of her own.

72 I am therefore of the view that there was no evidence indicating any intention on the part of the deceased to present Minton Rise or 18 Jalan Tari Payong as outright gifts to the defendant. The presumption of a resulting trust was not rebutted by the presumption of advancement. Accordingly, the defendant's argument on a presumption of advancement fails.

The right of survivorship

73 It is well established that in a joint tenancy, there is a right of survivorship when one of the co-tenants die. In the present case, it was axiomatic that the right of survivorship dictated that the entire property in a joint tenancy belongs to the defendant. However, this will result in the deceased's estate being left with nothing. This seems to be unfair and unjust. Case law states that equity intervenes to ensure that although the deceased and the defendant remain joint tenants *at law*, they are actually tenants in common *in equity*, according to the proportion of their respective financial contributions. Accordingly, I hold that the existence of a resulting trust overrides the right of survivorship in the joint tenancies of both Minton Rise and 18 Jalan Tari Payong.

74 Judith Prakash J rightly opined in *Neo Boh Tan vs Ng Kim Whatt* (Originating Summons No 74 of 2000, unreported [2000] SGHC 31) (at [11]):

As joint tenants of the flat, the plaintiff and defendant have at law an identical interest in the whole of the flat. The position is, however, different in equity because of the way in which they paid for the flat. The governing principle is that where two or more persons buy a property together but pay for it in unequal shares, then even if they register themselves as joint owners of the property, the law will presume that the express joint tenancy has been severed in equity into an implied tenancy in common in unequal shares proportioned to the amount of the purchase price contributed by each co-owner. As Professor Tan Sook Yee puts it in *Principles of Singapore Land Law* (at pp 91 to 92):

'Equity leans in favour of tenancies in common in given situations because of the inherent unfairness of the right of survivorship that obtains where there is a joint tenancy. For example, where A and B have contributed to the purchase price of property in unequal shares or have lent money on mortgage, or are business partners but the conveyance contains no words of severance, at law there would be a joint tenancy. If they are also joint tenants in equity, on the death of one of the joint tenants, the surviving joint tenant will succeed to the 'share' of the deceased joint tenant by the right of survivorship, so that the estate of the deceased joint tenant will get nothing. In the circumstances, this result is manifestly unfair and equity will recognise that while A and B are joint tenants at law, they are also tenants in common in equity and each should be entitled to a share proportionate to

his contribution. The net result is that A and B are joint tenants in law, holding in trust for themselves as tenants in common in shares proportionate to their contributions.'

Professor Tan goes on to state in a footnote that this is a resulting trust and can be rebutted by evidence to the contrary.

[emphasis added]

Conclusion

75 For the foregoing reasons, on a balance of probabilities, I am satisfied that the plaintiffs have discharged their burden of proof. I therefore grant them judgment as follows:

- (a) For Minton Rise, 50% results back to the deceased's estate and 50% belongs to the defendant; and
- (b) For 18 Jalan Tari Payong, 65% results back to the deceased's estate and 35% belongs to the defendant.

The defendant is required to execute instruments of Transfer for both the properties in favour of the estate's interest within 30 days of today's date, failing which the Registrar is hereby empowered under s 14(1) of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) to do so on her behalf. I further give the plaintiffs liberty to apply. The plaintiffs shall have their costs on a standard basis.

[\[note: 1\]](#)PW2.

[\[note: 2\]](#)PW1.

[\[note: 3\]](#)DW1.

[\[note: 4\]](#)NE at p 163 on 21 September 2006.

[\[note: 5\]](#)NE at p 163 on 21 September 2006.

[\[note: 6\]](#)NE at p 165 on 21 September 2006.

[\[note: 7\]](#)NE at pp 174-175 on 21 September 2006.

[\[note: 8\]](#)NE at pp 32-34 on 20 September 2006.

[\[note: 9\]](#)NE at p 38 on 20 September 2006.

[\[note: 10\]](#)NE at p 51 on 20 September 2006.

[\[note: 11\]](#)NE at pp 179-180 on 21 September 2006.

[\[note: 12\]](#)PW3.

[\[note: 13\]](#)NE at p 78 on 20 September 2006; also see Donald's affidavit at [15].

[\[note: 14\]](#)NE at p 148 on 21 September 2006.

[\[note: 15\]](#)NE at p 104 on 20 September 2006.

[\[note: 16\]](#)NE at pp 186-187 on 21 September 2006.

[\[note: 17\]](#)NE at pp 160-161 on 21 September 2006.

[\[note: 18\]](#)NE at p 162 on 21 September 2006.

[\[note: 19\]](#)NE at p 17 on 20 September 2006.

[\[note: 20\]](#)NE at p 14 on 20 September 2006.

[\[note: 21\]](#)NE at p 24 on 20 September 2006.

[\[note: 22\]](#)NE at p 41 on 20 September 2006.

[\[note: 23\]](#)NE at p 44 on 20 September 2006.

[\[note: 24\]](#)NE at p 56 on 20 September 2006.

[\[note: 25\]](#)NE at p 61 on 20 September 2006.

[\[note: 26\]](#)NE at pp 70-71 on 20 September 2006.

[\[note: 27\]](#)NE at p 120 on 21 September 2006.

[\[note: 28\]](#)NE at p 203 on 21 September 2006.

[\[note: 29\]](#)NE at pp 32-34 on 20 September 2006.

[\[note: 30\]](#)NE at p 37 on 20 September 2006.

[\[note: 31\]](#)NE at p 223 on 22 September 2006.

[\[note: 32\]](#)NE at p 224 on 22 September 2006.

[\[note: 33\]](#)NE at p 201 on 21 September 2006.

[\[note: 34\]](#)NE at p 204 on 21 September 2006.

[\[note: 35\]](#)NE at p 227 on 22 September 2006.

[\[note: 36\]](#)NE at pp 230-231 on 22 September 2006.

[\[note: 37\]](#)NE at pp 232-233 on 22 September 2006.

[\[note: 38\]](#)NE at p 251 on 22 September 2006.

[\[note: 39\]](#)NE at pp 246-247 on 22 September 2006.

[\[note: 40\]](#)DW3.

[\[note: 41\]](#)NE at pp 255 and 257 on 22 September 2006.

[\[note: 42\]](#)NE at p 258 on 22 September 2006.

[\[note: 43\]](#)NE at p 153 on 21 September 2006.

[\[note: 44\]](#)NE at p 154 on 21 September 2006.

[\[note: 45\]](#)Also see *Sitiawah Bee bte Kader v Rosiyah bte Abdullah* [2000] 1 SLR 612.

[\[note: 46\]](#)NE at pp 289-292 on 25 September 2006.

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