IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 225

Originating Summons No 803 of 2015

Between

Foo Jee Boo

… Plaintiff

And

Foo Jee Seng

… Defendant

GROUNDS OF DECISION

[Land] — [Sale of land] — [Sale under court order]

[Trusts] — [Resulting trusts] — [Presumed resulting trusts]

[Equity] — [Remedies] — [Equitable accounting]

Foo Jee Boo
v
Foo Jee Seng

[2016] SGHC 225

High Court — Originating Summons No 803 of 2015
Debbie Ong JC
23 May; 15 June; 15 July 2016

12 October 2016

Debbie Ong JC:

Introduction and brief facts

1 The Plaintiff, Foo Jee Boo, and the Defendant, Foo Jee Seng, are brothers whose legal interests in the property known as 6 Geylang East Avenue 2 #08-02 Singapore 389756 ("the Property") as tenants in common are in the shares of 44% and 56% respectively. In the present action, the Plaintiff sought an order that the Property be sold and the net sale proceeds be apportioned according to the parties' respective legal interests, which the Plaintiff asserted represents the parties' respective beneficial interests in the Property. The Defendant disputed the manner of apportionment and claimed that his beneficial interest in the Property is 93.4% and the Plaintiff's is 6.6%.

2 The Plaintiff is the younger brother and is at present, 45 years old. The Defendant is presently 56 years old. At the time the purchase of the Property

was completed in 1998, the Plaintiff had only recently graduated from university and started work. He was still studying in university when the option to purchase was initially obtained in 1995. The Property was purchased for $685,900. To purchase the Property, the parties had obtained a housing loan of $160,000 initially from POSB Bank and this loan was subsequently re-financed in 2002 by Hong Leong Finance ("the Loan"). It was not disputed that most of the Loan instalments were paid by the Defendant. The Plaintiff admitted that by 2005, he had stopped paying instalments on the Loan.

The parties' arguments

3 The Plaintiff relied on the apportionment reflected in their respective legal interest registered at the time of purchase to claim that he has a legal and beneficial interest of 44% in the Property. Although he could not show that he had provided 44% in financial contributions towards the purchase, he submitted that a substantial portion of the sums paid were provided by their late mother, Yap Wee Kien ("Mdm Yap"), who had the intention of helping him contribute towards the purchase of the Property. In other words, he claimed that the cheques signed by Mdm Yap and used towards the purchase of the Property were a gift from her to him. The Plaintiff also submitted that in the Defendant's divorce proceedings, the Defendant admitted that the Plaintiff owned 44% of the Property.

4 The Defendant, in deriving the percentage of 93.4% as his beneficial interest, included the following sums which were progressive payments made to the developer of the Property:

(a) payments out of the Defendant's POSB bank account in his sole name;

(b) payments out of the OUB bank account held in the joint names of the Defendant and Mdm Yap (which are the same sums which the Plaintiff claimed were a gift to himself);

(c) withdrawals from the Defendant's CPF account; and

(d) the full value of the Loan in the sum of $160,000 which the Defendant claimed he was still servicing.

5 Although the Defendant credited the full value of the Loan to himself under this calculation, he accepted at the hearing that the Plaintiff has made payments amounting to $47,000, including $17,100 paid from the Plaintiff's CPF account in respect of the purchase of the Property. In the Defendant's affidavit, he had further admitted that the Plaintiff had made payments towards the Loan instalments of about $26,520, on the basis that he had paid $520 a month for 51 months. It was therefore not disputed that the Plaintiff had made some contributions towards the Loan repayments and it would be wrong to credit the full value of the Loan to the Defendant as his contribution to the Property. However, it seemed clear that, at least in respect of subsequent repayments of the Loan, the Defendant made significantly far more repayments.

6 In my judgment, I found that the Plaintiff has a 44% legal and beneficial interest and the Defendant a 56% legal and beneficial interest in the Property. I ordered a sale of the Property and that the proceeds of sale shall be divided in the proportion of their respective interests found to be 44% for the Plaintiff and 56% for the Defendant. I also ordered that the Defendant shall be reimbursed, from the Plaintiff's share of the proceeds, the mortgage repayments made by him which the parties had understood ought to have been

borne by the Plaintiff. As the Defendant has appealed against my decision, I now give my reasons.

Issue and the Law on resulting trusts

7 The main issue was whether each party's beneficial interest in the Property was the same as their legal interests, in the light of the Defendant's argument that he has a beneficial interest greater than his legal interest of 56%, either on the basis of a constructive trust or, though not specifically argued by him, a resulting trust.

8 The Court of Appeal in *Su Emmanuel v Emmanuel Priya Ethel Anne and another* [2016] 3 SLR 1222 ("*Su Emmanuel*") had recently elucidated further on the law on resulting trusts, and in particular, on how mortgage repayments by a party in excess of what had earlier been contemplated by parties should be treated in this context. The decision was applicable to the present dispute and I was guided by it in coming to my decision. Sundaresh Menon CJ explained in *Su Emmanuel*:

> 78 We also considered, in *Chan Yuen Lan*, that the doctrinal basis for the presumption of resulting trust is that an intention on the part of the payor of the purchase price to benefit the recipient (who receives property in his legal name but who has not paid for the property) will not be readily inferred (at [43]–[44]; see also *Lau Siew Kim* at [35]). Put simply, a resulting trust arises by operation of law unless the court is satisfied that there was indeed an intention on the part of the person paying the purchase price for the property to benefit the recipient of the legal title (*Chan Yuen Lan* at [38]).
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> 79 Where the presumption of a resulting trust is invoked, it is the lack of intention to benefit the recipient of the property that is being *inferred*. It follows that the presumption of resulting trust (and the opposite presumption of advancement) will be not called in aid when the evidence that is before the court adequately reveals the true intention of the transferor. After all, if the evidence before the court directly

> reveals the actual intentions of the transferor it will *not be necessary* to draw the inference of a lack of intention to benefit the recipient. This was a point that we had made in *Lau Siew Kim* (at [36] and [59]) and reiterated in *Chan Yuen Lan (*at [51]–[52]).
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> 87 In *Lau Siew Kim* ([77] *supra*), we addressed the question of whether subsequent mortgage payments could amount to a direct contribution to the purchase price for the purpose of establishing a resulting trust. We adopted (at [112]–[113]) the orthodox conception of the resulting trust as a trust which crystallises at the time the property is acquired. On this basis, we concluded (at [117]) that *the extent of the parties' beneficial interests under a resulting trust must be determined at the time the property is purchased because that is when the trust arises*. In line with this approach, we held in *Lau Siew Kim* that subsequent mortgage payments may only be taken into account *if* there was a prior agreement between the parties at the time the mortgage was obtained as to who would repay the mortgage. If, however, there was no such agreement, then subsequent mortgage payments would not count as direct contributions. In short, the critical question is whether the parties were in agreement, at the time of the acquisition of the property, as to what liability each party would undertake in respect of the mortgage.
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> 89 In our judgment, it is correct to analyse the position by reference to the responsibility that is undertaken by each party for loan repayments at the time the property is acquired. When a mortgage is taken out, the crucial consideration is the parties' intentions, at the time the property is acquired, as to the ultimate source of the funds for purchase of that property (see *Lau Siew Kim* at [116] and *Bertei v Feher* [2000] WASCA 165 at [44]). Actual mortgage payments made at a later time would therefore only count as direct contributions to the purchase price where these are referable to, and in keeping with, a prior agreement between the parties as to who would be liable to repay the loan. It is, as we have said earlier, the parties' agreement at the time of acquisition that is critical.
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> [emphasis added]

Application of legal principles to present facts

9 The Court of Appeal had made it amply clear that the parties' intention *at the time of acquisition* of the property is critical in determining the parties' beneficial interests. It was therefore necessary in the present case to determine the parties' intentions towards their respective interests in the Property at the time of its purchase.

Context of the parties' acquisition of the Property

Deriving the ratio of 44:56

10 A crucial piece of evidence which assisted me in understanding how the ratio of 44:56 came to be registered as the parties' legal interests in the property is a table ("Table") which can be found at p 23 of the Plaintiff's second affidavit filed on 1 March 2016. This Table records calculations of the financing ratio, loan ratio and sharing ratio between the parties. The Table appeared to provide a *prima facie* explanation for how the percentages of 44% and 56% were arrived at as the parties' respective shares in the Property that were eventually registered. It demonstrated that the percentages were not random ones; there was a logical basis for deriving the figures. The Table was prepared by the Plaintiff before the interests were registered in 2000. The Plaintiff explained that it was prepared on the instructions of their mother. The Defendant accepted that this Table was made prior to the dispute and before the parties were estranged. At the hearing, he informed the court that he was similarly of the view that the Table was prepared in 2000.

11 The Table demonstrated that the Defendant and the Plaintiff's respective contributions of 56% and 44% were derived from contributions comprising the following:

Source	Defendant	Plaintiff
Cash	$246,828.39	
CPF	$75,900.00	$17,100.00
Loan	$71,111.11	$88,888.89
Total (solely from each party)	$393,839.50	$105,988.89
YWK Cash		$205,770.00
Total	**$393,839.50 (56%)**	**$311,758.89 (44%)**

12 The amount of $205,770.00 attributed to "YWK Cash" was the total of the sums paid by way of cheques from the OUB joint account of Mdm Yap and the Defendant, which were signed solely by Mdm Yap.

13 As can be shown from the Table, the sums paid out from the OUB bank account were credited to the Plaintiff in the "sharing ratio" to derive the 44% share in the Property for the Plaintiff. The Plaintiff highlighted that even though these cheques were drawn from the OUB bank account in the joint names of Mdm Yap and the Defendant, they had always been signed solely by Mdm Yap. He explained that their mother Mdm Yap signed the cheques as she had intended the sums to be a gift to him to enable him to obtain a substantial share of the Property. The Defendant disagreed that these sums should be credited to the Plaintiff, alleging that the Plaintiff had not proven that their mother intended to benefit him solely.

14 Absent any evidence proving the contrary, the monies in the OUB bank account were owned jointly by the two joint bank account holders, Mdm Yap and the Defendant. One joint account holder is entitled to use the monies

in the joint account as he wishes; he can, for instance, withdraw the monies to purchase items for himself. There is nothing in the evidence that showed that Mdm Yap was not entitled to use the $205,770.00 in the manner alleged by the Plaintiff. The parties had accepted then, at the time of acquisition of the Property, that the sum of $205,770.00 would be included as the Plaintiff's contribution in reaching the ratio of 44:56 eventually registered as their respective legal interests as tenants in common. The evidence supported the finding that Mdm Yap had used the sum of $205,770.00 towards the purchase of the Property, as it were, on the Plaintiff's behalf.

What were the parties' intentions at the time of the purchase of the Property?

15 I was of the view that, given its fairly contemporaneous nature, the Table reflected the common understanding between the parties at the time of the purchase of the Property. It explained how the specific ratio of 44:56 was reached. The parties had intended to acquire the property in those shares, where each was to be financially responsible towards the purchase in accordance with the shares stated: the Table showed quite specifically that the parties intended that the Plaintiff would bear $88,888.89 and the Defendant would bear $71,111.11 of the Loan.

16 The Plaintiff and the Defendant's interests in the Property were eventually registered as tenants in common in unequal shares of the percentages 44% and 56% respectively. Although the Defendant alleged in his written submissions that it was on the basis of the Plaintiff providing false information to the Singapore Land Authority that these percentages were registered, he clearly admitted at the hearing that, at the material time, he had accepted the conveyance in that manner as the parties were then on good terms and he did not want to make an issue of it. He explained that he trusted that the

Plaintiff would return his share in due time when the Plaintiff was able to do so. By this, he could have meant that he should not be out of pocket for repayments made in excess of what was agreed he should bear in terms of loan instalments. I shall address this point by the application of the remedy of equitable accounting below.

Should the mortgage repayments be taken into account in analysing whether a resulting trust had arisen, and in this case, in favour of the Defendant?

17 The Court of Appeal in *Su Emmanuel* has explained (at [89]) that mortgage payments made at a later time would only count as direct contributions to the purchase price "where these are referable to, and in keeping with, a prior agreement between the parties as to who would be liable to repay the loan".

18 Thus if there was a prior agreement that the Defendant was to bear 93.4% of the Loan and this was in fact carried out, such mortgage repayments could be counted as direct contributions to the purchase price. However, the evidence showed that the agreement was in fact for the Plaintiff to be responsible for a larger sum of the Loan in accordance with his legal interest in the Property.

19 I note that the Defendant had argued his case on the basis of a constructive trust. However, he had not provided evidence that proved a common intention that the parties were to hold the beneficial interest in the Property in a manner different from their legal interests.

20 I therefore found that the legal interest of the Property reflected the parties' beneficial interests, which was that the Plaintiff had a 44% legal and

beneficial interest in the Property and the Defendant had a 56% legal and beneficial interest in the Property.

Should a sale of the Property be ordered?

21 The Court of Appeal in *Su Emmanuel* gave helpful guidance on whether a sale of property should be ordered (at [57]):

> (a) In deciding whether it is necessary or expedient for a sale to be ordered in lieu of partition, the court conducts a balancing exercise of various factors, including (i) the state of the relationship between the parties (which would be indicative of whether they are likely to be able to co-operate in the future); (ii) the state of the property; and (iii) the prospect of the relationship between the parties deteriorating if a sale was not granted such that a "clean-break" would be preferable.
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> (b) Regard should be had to the potential prejudice that the various co-owners might face in each of the possible scenarios, namely, if a sale is granted and if it is not granted.
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> (c) A sale would not generally be ordered if to do so would violate a prior agreement between the co-owners concerning the manner in which the land may be disposed of.

22 At the hearing, the Defendant indicated that he was recently divorced and intended to move into the Property in due course. He was willing to pay the Plaintiff a 6.6% share in order to have the Property.

23 Neither party was presently living in the Property. The relationship between the parties was acrimonious and it was difficult for them to cooperate in respect of matters involving the Property. I found it fair to order a sale of the Property and to also give an option to the Defendant to buy over the Plaintiff's share in the property in accordance with what I had determined it to be.

Equitable accounting

24 The Court of Appeal also dealt with the issue of "equitable accounting" in *Su Emmanuel* (at [105]):

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

25 Although I had determined that the legal and beneficial interest of the parties are 44% and 56% respectively, I also considered whether the principles of equitable accounting as set out in *Su Emmanuel* should be applied to this case in the Defendant's favour. The Court of Appeal had held that if there is a material departure from the parties' common understanding, and one party repays more of the mortgage than was initially envisaged, then equitable accounting may be brought into play, unless it is shown that at the time the mortgage repayments were made, the payor had the intention to benefit the other co-owners.

26 Having ascertained that the legal and beneficial interest of the Plaintiff and the Defendant in the Property is 44% and 56% respectively, the question that arose here was what the common understanding between the parties as to

the repayment of the mortgage was at the time it was obtained. In this regard, the Table provided clear evidence that the parties contemplated that each would be responsible for the loan repayments in accordance with their legal and beneficial interests: the Plaintiff was to be responsible for $88,888.89 and the Defendant for $71,111.11.

27 From the evidence presented in respect of the Defendant's subsequent Loan repayments, it was clear that the Defendant had paid a much higher amount than contemplated, which was a departure from what the parties had contemplated at the time of purchase. The Plaintiff had made repayments to the Property but had stopped in May 2004. At that point in time, his repayments were about $279 per month. From June 2004, the Defendant started funding the monthly repayments. In 2016, the repayments were about $569 per month. There were no fuller details of the monthly repayments of every month in the relevant period, but the Defendant's cumulative repayment of the mortgage, based on these two different time periods of differing lengths and amounts, was clearly at variance with the common understanding between the parties at the time the Loan was obtained. In the circumstances, I found that the Defendant was entitled to call in aid the remedy of equitable accounting. I therefore ordered that the Plaintiff shall reimburse the Defendant the sums paid by the latter towards the Loan in excess of his own agreed share of the obligations. These sums include payments towards the interest as well.

Conclusion

28 For the above reasons, I ordered that the Property shall be sold within three months from the date of my oral judgment on this matter, delivered on 15 July 2016, and the proceeds of sale shall be divided in the proportion of the parties' respective interests found to be 44% for the Plaintiff and 56% for the

Defendant, subject to an option exercisable by the Defendant to purchase the Plaintiff's share of the Property. The value of the Property was to be agreed by the parties but if they were unable to agree, a valuation of the Property shall be obtained.

29 I further ordered that the Defendant shall be reimbursed a sum, to be determined by the Assistant Registrar ("AR"), from the Plaintiff's share of the proceeds of sale, as reimbursement for the mortgage payments made by the Defendant in excess of what the parties had intended he should bear. The scope of the AR's assessment was to be limited to determining the difference between the amount that ought to have been paid in terms of mortgage repayments by each party, and the amount that was in fact paid.

30 Lastly, I ordered that any refunds required to be made to each party's CPF accounts shall be made out of that party's share of proceeds.

Debbie Ong
Judicial Commissioner

Plaintiff in person;
Defendant in person.
