Chin Kim Yon
v
Chin Kheng Hai

[2016] SGHC 02

High Court — Suit No 1213 of 2014
Tan Lee Meng SJ
3–5 August; 9 October 2015

Family law — Advancement — Presumption

Trusts — Resulting trusts — Presumed resulting trusts

6 January 2016 Judgment reserved.

Tan Lee Meng SJ:

1 This case concerns a dispute between the plaintiff, Mr Chin Kim Yon ("Chin"), and his illegitimate son, the defendant, Mr Chin Kheng Hai ("Hai"). The dispute relates to the ownership of 27 Hillview Avenue #08-06, Singapore 669559 ("the Hillview property"). Although Chin paid for the Hillview property when it was purchased in 2000, it was registered in the names of his illegitimate daughter, Ms Chin Yun Qin ("Qin"), who is Hai's sister, and Hai. Chin contended that the Hillview property is held for him under a purchase money resulting trust and sought a declaration that he is the beneficial owner of the said property. He also sought an order that Hai transfer all rights to the Hillview property to him within 14 days of the order.

2 Hai, who denied that the Hillview property is beneficially owned by his father, contended that the property was a gift to him and Qin. He relied on the presumption of advancement and equitable estoppel to thwart his father's claim.

3 Hai also asserted that upon the death of Qin, who died intestate in January 2014, he was entitled to the latter's half share of the Hillview property, which was transferred to his father after Qin's death. In his counterclaim, Hai sought an order that his father transfer Qin's half share of the Hillview property to him.

Background

4 Chin, aged 76, worked for a long time as an illegal street hawker before he secured a contract with Singapore Press Holdings for the distribution of newspapers in Jurong. Subsequently, he expanded his newspaper distribution business by acquiring a licence to distribute newspapers in Pasir Panjang.

5 In 1958, Chin married Mdm Sim Ah Swan. The couple had three sons and two daughters.

6 Chin said that he and Mdm Sim often quarrelled and they ceased to contact each other in 1969. By then, Chin was in a relationship with Hai's mother, Mdm Lim Ya. He and Mdm Lim Ya had two illegitimate children, namely, Qin, who was born in 1965, and Hai, who was born in 1967.

7 Mdm Lim Ya helped Chin in his newspaper distribution business in the Jurong area. Subsequently, Chin transferred his licence to distribute newspapers in Jurong to her. Hai claimed that when he and Qin were in primary school, they helped in the family's newspaper distribution business.

8 After Hai completed his national service, Chin sent him to the United States to study. Hai was abroad for six years and, after his graduation, he returned to Singapore and stayed with Qin in the Hillview property, which was then rented by the latter. At that time, Qin was running a business called "Sofa Culture" at Shaw Centre in Scotts Road and Hai helped her in this business after he returned to Singapore from the United States.

9 On 20 January 2000, Qin, who was then renting the Hillview property, took an option for the purchase of the said property at $700,000 from her landlord. An attempt by Qin and Hai to secure a loan from a bank for the purchase of this property was unsuccessful. Chin, who said that Qin asked him for help, said that he had "no choice" but to step in and pay for the said property. The Hillview property was registered in the names of Hai and Qin as tenants in common with equal shares. Chin said that, as a father, he had to act fairly and that was why the Hillview property was registered in the names of both his children. At the time the Hillview property was purchased, Hai was 33 years old while Qin was 35 years old. Both of them were unmarried.

10 In June 2003, the Hillview property was mortgaged to DBS bank for a term loan of $400,000 ("the DBS loan") repayable over 20 years. Although the loan was stated in the loan documents to be for "working capital financing", it was intended for the purchase of another property by Qin. Chin and Hai were named as the borrowers of the DBS loan. Shortly after obtaining the said loan, Qin, who was single, asked her father to add his name to hers for the purpose of purchasing a HDB flat at 4 Holland Close #06-01 ("the Holland Close HDB flat") in July 2003.

11 The relationship between Chin and Hai deteriorated around 2013. Hai alleged that his father did not treat his mother well and that he and his sister

had to look after their mother until she passed away on 30 March 2013. Chin, who did not deny that Mdm Lim Ya left him to stay with her children, claimed that she also stayed with him whenever she wanted to do so.

12 On 11 July 2013, a few months after his mother passed away, Hai went to a house in Johor, at which his father and mother had stayed. Chin was also there with some of his workers. According to Chin, Hai assaulted him and hit him with a bottle after he told Hai to leave the house. However, Hai denied hitting his father and alleged that it was in fact his father who had hit him and who had asked his workers to do likewise. Police reports were lodged in Johor by Hai and his father. In his police report, Chin said that Hai took items from his home and that he was "really afraid of what could happen to [him] in the future".

13 Qin passed away on 22 January 2014. Chin claimed that he was entitled to Qin's half share of the Hillview property under the Intestate Succession Act (Cap 146, 2013 Rev Ed) and applied for the Grant of Letters of Administration for her estate. Qin's half share of the Hillview property was transferred to him on 13 December 2014. Hai did not object to this transfer at the material time.

14 Chin discovered after the said transfer that Qin and Hai had defaulted in the payment of some of the instalments due under the DBS loan. He also found out that money was owed to the Management Corporation of the Hillview property for maintenance fees and contributions to the sinking fund.

15 After making some payments for the outstanding maintenance fees for the Hillview property and instalments for the DBS loan, Chin decided that the said property should be sold as he did not wish to continue to make payments for the DBS loan. His then solicitors, Toh Tan LLP, wrote to Hai on 11 July

2014 to propose that the Hillview property be sold by public auction by Knight Frank Pte Ltd. In a number of letters and emails to Hai, Chin's solicitors never referred to the alleged resulting trust and did not assert that he was the beneficial owner of Hai's half share of the Hillview property. Instead, Chin sought the co-operation of Hai as "co-owner" to sell the Hillview property by public auction. As Hai had his doubts as to whether the said property should be sold by public auction, no action was taken to sell it by public auction. In the meantime, on 22 August 2014, the Hillview property was valued at $1.25m by Jones Lang LaSalle.

16 Chin replaced his solicitors, Toh Tan LLP, with Winston Quek & Co. On 27 October 2014, Winston Quek & Co wrote to Hai to assert for the first time in writing that Hai and Qin held the Hillview property on trust for their father and to demand that Hai transfer his interest in the property to his father within 14 days. As Hai did not accede to the demand, the suit before the court was filed on 14 November 2014.

Abandonment of the counterclaim

17 In his counterclaim, Hai asserted that a father of an illegitimate child is not entitled to a share of the child's property under the Intestate Succession Act and that his father had wrongfully acquired Qin's half share of the Hillview property after she died intestate in 2014. Hai further contended that as he is Qin's only sibling, he is entitled under the Intestate Succession Act to Qin's half share of the property. In view of this, Hai sought an order that his father transfer Qin's half share of the Hillview property to him.

18 At the commencement of the trial, Chin and Hai entered into a written agreement for the counterclaim to be withdrawn with no order as to costs and

on certain other terms. As such, the counterclaim need not be considered any further in this judgment.

The two-stage test for the presumptions of resulting trust and advancement

19 As mentioned, while Chin contended that the Hillview property was held on a resulting trust for him, Hai denied that there was any such trust and relied on the presumption of advancement.

20 In *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*"), VK Rajah JA, delivering the judgment of the Court of Appeal, pointed out that there is a two-stage test to be applied when considering the presumptions of resulting trust and advancement. He stated (at [57]) as follows:

> … We are of the view that a two-stage test remains helpful and, indeed, necessary. The court must first determine if the presumption of resulting trust arises on the facts; and it is *only* if a resulting trust is presumed that the presumption of advancement would apply to displace that initial presumption. In addition, it should also be noted that the actual *effect* of the presumptions of resulting trust and advancement relates to the *burden of proof* in the particular case. … [emphasis in original]

21 In line with the two-stage test, whether there is a presumption of resulting trust in favour of Chin will first be considered before the presumption of advancement in Hai's favour is dealt with.

The presumption of resulting trust

22 Chin claimed that as he paid for the Hillview property with his own funds, it is presumed that there is a resulting trust of the said property in his favour. It is trite law that when a person pays for a property and registers it in the name of another person without any apparent reason, a resulting trust arises

in favour of the former in the absence of contrary evidence. In *Dyer v Dyer* (1788) 2 Cox Eq Cas 92, Eyre CB said as follows (at 93):

> … The clear result of all the cases, without a single exception, is, that the trust of a legal estate, whether freehold, copyhold, or leasehold; whether taken in the name of the purchasers and others jointly, or in the names of others without that of the purchaser; whether in one name or several; whether jointly or successive, results to the man who advances the purchase-money. …

23 As it was common ground that Chin paid the $700,000 required for the purchase of the Hillview property, there is, without more, a presumption of resulting trust in his favour. This is a rebuttable presumption and it is for Hai to disprove it.

24 Hai accepted that there was a presumption of resulting trust in his father's favour. As such, Hai's counsel, Mr Goh Peck San, advanced his case on the basis of a presumption of advancement. This is understandable because if there is a presumption of advancement, then it is for Chin to rebut the presumption.

The presumption of advancement

25 The existence of a special relationship between a person who pays for property and the person who is registered as the legal owner of that property gives rise to a presumption of advancement in the sense that this relationship is regarded as *prima facie* evidence that the former intends to give the property to the latter. In *Murless v Franklin* (1818) 1 Swans 13, Lord Eldon LC explained (at 17) that the "general rule that on a purchase by one man in the name of another, the nominee is a trustee for the purchaser, is subject to exception where the purchaser is under a species of natural obligation to provide for the nominee".

26 The most common examples of a special relationship that gives rise to a presumption of advancement are when a husband transfers property to his wife or pays for property registered in her name and where a father does the same for his children. In the context of gratuitous transfers from a father to his child, the presumption of advancement has, as was accepted by the Court of Appeal in *Lau Siew Kim* (at [68]), also been justified on the basis of parental love and affection.

27 The interplay between the presumptions of resulting trust and advancement was considered by the Privy Council in *Antoni and another v Antoni and others* [2007] All ER (D) 335 ("*Antoni v Antoni*"), where Lord Scott of Foscote said (at [20]) that "[i]n the absence of adequate rebuttable evidence, the presumption [of advancement] bars the application of the converse presumption, namely, the presumption of a resulting trust". Traditionally, the presumption of advancement in favour of a child is regarded as quite strong. In the oft-cited words of Evershed J in *In re Roberts, Deceased* [1946] Ch 1 (at 5), it "is well-established that a father making payments on behalf of a son prima facie, and in the absence of contrary evidence, is to be taken to be making and intending an advance in favour of the son and for his benefit". In *Soar v Foster* (1858) 4 K & J 152, Sir W Page Wood VC stated (at 158) that the presumption of advancement extends to a purchase by a father in the name of his illegitimate child. It also extends to relationships between a child and a person standing *in loco parentis.* While explaining the rationale for this extension in *Bennet v Bennet* (1879) 10 Ch D 474, Jessel MR said (at 477) that, in relation to a child, "a person not the father of the child may put himself in the position of one *in loco parentis* to the child, and so incur the obligation to make a provision for the child".

28 The presumption of advancement has been criticised and there may be room for debate on the scope of the decision of the House of Lords in *Pettitt v Pettitt* [1970] AC 777 in relation to the application of the presumption of advancement in the changed social circumstances of today. In that case, Lord Reid noted (at 793) that the considerations that underpinned the presumption of advancement in spousal relationships have largely lost their force so that the strength of this presumption should generally have diminished significance in the case of spousal relationships. However, it is pertinent to note that in the local Court of Appeal decision of *Low Gim Siah and others v Low Geok Khim and another* [2007] 1 SLR(R) 795 ("*Low Gim Siah*"), Chan Sek Keong CJ pointed out (at [43]) that the cases where the presumption of advancement was held to have lost its robustness or diminished in importance concerned joint contributions by married couples in acquiring the matrimonial home or properties acquired using joint savings and not the traditional and well-established categories, such as that of father and child. For transfers of property made in the context of these traditional relationships, Chan CJ said (at [44]) that "*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 added].

29 Chin's counsel, Mr Winston Quek Seng Soon, pointed out that in *Teo Siew Har v Lee Kuan Yew* [1999] 3 SLR(R) 410 ("*Teo Siew Har*"), Chao Hick Tin JA, who delivered the judgment of the Court of Appeal, stated (at [29]) that the "current 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". However, in *Low Gim Siah*, Chan CJ explained (at [44]) that Chao JA's

statement in *Teo Siew Har* is relevant only in a situation where the court needs to determine the *intention of both parties*, as would be the case where both parties have contributed or agreed to contribute to the acquisition and subsequent upkeep of a matrimonial property. He added that it is obvious that the intention of both parties would not be relevant in the traditional type of relationship, such as that of father and son, where one provides for the other and it is the provider's intention alone that is relevant. Chan CJ added (at [47]) that "the proper principle to apply in relation to rebutting the presumption of advancement is that the more readily the presumption may be inferred from the relationship, the greater is the evidence needed to rebut it, and conversely, the less readily the presumption is inferable, the lesser is the evidence needed to rebut it".

30 In *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048, the Court of Appeal issued a timely reminder (at [51]) that the presumption of advancement will operate only where there is no direct evidence of the intention of the parties. However, it does not follow, as was asserted by Chin's counsel in his written submissions, that the court should not apply the presumption of advancement here merely because Chin is alive and has given evidence of his intention in court. Much depends on whether his evidence of his intention at the time the Hillview property was purchased is believable and whether there is other evidence to rebut the presumption of advancement. That is why the Court of Appeal stressed in *Lau Siew Kim* (at [78]) that the strength of the presumption of advancement depends on the circumstances of each case.

31 Depending on the circumstances, it may not be easy to rebut the presumption of advancement where there has been a gratuitous transfer of property from a father to his children. In *Grey v Grey* (1677) 2 Swans 594 ("*Grey v Grey*"), a father paid for a property that was registered in his son's

name. No express trust was declared. Although there was evidence that the father received the profits from the property for twenty years, entered into leases, took fines, enclosed part of the property, built on the property and directed a settlement to be drawn, it was held (at 598) that the "natural consideration of blood and affection" was not displaced and the presumption of advancement was not rebutted. *Grey v Grey* is still good law and is referred to in Lynton Tucker, Nicholas le Poidevin and James Brightwell, *Lewin on Trusts* (Sweet & Maxwell, 19th Ed, 2015) at para 9-045. This text cites several cases that have followed this decision, including *Commissioner of Stamp Duties v Byrnes* [1911] AC 386, where the Privy Council took the view that a father's receipt of rents from properties given to his two sons did not convert a presumption of advancement in favour of the sons into a trust in favour of the father.

32 While it has often been difficult to rebut the presumption of advancement in a father-child relationship, it may be rebutted by evidence that the father did not intend to give the property in question to the child. In *Re Gooch* (1890) 62 LT 384, a father, who transferred certain shares in a company to his eldest son, kept the share certificates and the son paid the dividends received from those shares to his father. Kay J held that the presumption of advancement was rebutted by evidence that the father transferred the shares to his son in order to enable the latter to become eligible for appointment as a director of the company and had not intended to give the shares to his son.

33 In *Lavelle v Lavelle and others* [2004] EWCA Civ 223 ("*Lavelle v Lavelle*"), the presumption of advancement was also rebutted. The facts in this case, shorn of details relating to an allegation of forgery, are as follows. In 1997, G purchased a flat in the outskirts of Manchester in the name of T, his daughter. G contended that he bought the flat for his own use and that he

retained the beneficial interest in the flat. However, T, who pointed out that her father had been taking advice on inheritance tax, asserted that he told her in November 1996 that he wanted her and her brother, C, to be registered as the owners of the flat in order to save on inheritance tax. As such, when the flat was finally registered in her sole name, she considered that the effect of this was to vest the flat in her to hold for the benefit of herself and her brother absolutely. The trial judge started on the basis that, as T was G's daughter, there was a presumption of advancement but found that this presumption was comprehensively rebutted by evidence that G bought the flat for his own use and that he intended to retain the beneficial interest in the flat. The trial judge thus gave a declaration that T held the flat on trust for her father. The judgment was criticised by the English Court of Appeal as discursive and not clearly setting out and resolving material issues but it was nonetheless affirmed. What was "significant" to the Court of Appeal were two statements, the first of which was made by T's husband, who stated as follows (at [46]):

> … Solicitors were concerned that when the full truth of this actually dawned on [G], that he would do something stupid such as cause damage to the Property. Accordingly, in agreement with their solicitors, [T and her brother, C] had resolved that the best thing to do was to change the locks on the Property.

34 T's husband's "plainly hearsay" statement was held to do nothing more than corroborate C's witness statement, in which the latter stated as follows (at [46]):

> … [W]hen my father began to make his allegations about the Property, my solicitors suggested that we should change the locks. Without waiving privilege on the advice we received, their concern was that when my father realised that he had given the Property as a gift and he could not claim it back, he might do something stupid such as cause damage.

35 Lord Phillips MR, with whom May and Parker LJJ agreed, found that the two statements referred to above suggested that G's two children and their solicitors were not confident that G had appreciated that he was giving away his flat to his children when the property was purchased in 1997. His Lordship added that the children's contention that their father had intended to give them the flat was based on a subsequent analysis of the legal effect of events at the material time rather than upon their belief throughout that their father had given the flat to them. Thus, the Court of Appeal held that G had a beneficial interest in the property even though it was registered in his daughter's name.

The decision of the court

36 In the present case, attention must be focussed on Chin's intention at the time the Hillview property was purchased and registered in the names of his children in 2000.

The state of the parties' relationship in 2000

37 In *Lau Siew Kim*, the Court of Appeal stated (at [78]) that in relation to the presumption of advancement, the state of the relationship between the transferor of the property and the transferee is a factor to be considered to determine whether, in the entirety of the circumstances, it may be readily presumed that the transferor intended to make a gift to the transferee and, if so, whether the evidence is sufficient to rebut the presumption, given the appropriate strength of the presumption in a particular case. As such, it is relevant whether the relationship between the parties was a close and caring one or one of formal convenience when the Hillview property was purchased.

38 In the present case, the relationship between Chin and his illegitimate children before and at the time of the purchase showed that he cared for them.

Chin testified that Qin tended "to look for" him and ask him for help and added that, given Qin's "character and temperament", he had to "give her advice every now and then". As for Hai, Chin stated in his affidavit of evidence-in-chief ("AEIC") that he fulfilled all his duties as a father to Hai. Although he also said that his relationship with Hai was only "for show" and only "just to please each other", he testified that whether or not the relationship between him and Hai was sour, he did not just ignore the latter and he, in his own words, took "good care" of Hai. Admittedly, Hai testified that his father was vulgar and he did not feel his father's love. However, when cross-examined, Hai was emphatic that he did not, as was suggested by Chin's counsel, say that he had a "lousy" father.

39 It is also worth noting that when Hai did not do well in his GCE "O" Level examinations and did not qualify for admission to pre-university courses in Singapore, his father sent him to Canada and subsequently to the United States to study. Hai said that he was in Canada for a foundation course and he studied Business Administration in the United States. Chin said that he remitted $36,000 per annum to Hai for more than seven years. Furthermore, when Hai fell and injured his leg in a skiing accident in the United States in 1997, Chin was concerned enough to want him to return to Singapore for treatment and went so far as to send Qin to the United States to accompany Hai on the flight back to Singapore. When cross-examined on the accident and the proposed surgery for his son's legs, Chin said that while he left it to Hai to decide on whether an operation was necessary, he preferred to have his friend, a master masseur in Simpang Renggam, Johor, massage Hai's leg. Chin accompanied Hai for the treatment on some occasions.

40 Subsequently, Hai returned to the United States to complete his studies and, when he graduated, Chin gave Hai's mother and Qin money to go to the United States to attend his commencement ceremony.

41 Chin also showed his fatherly concern for Qin and Hai when he testified as follows as to why he paid $700,000 for the Hillview property:[1]

> Q: … [I]n the year 2000, when your son and your daughter wanted to buy the condo, they could not obtain a bank loan. You actually provided them with the [$]700,000.
>
> A: It was last minute, the payment was already due, *I had no choice but to help to pay.*
>
> [emphasis added]

Evidently, Chin had "no choice" but to give his children $700,000 only because he cared for them.

42 Chin was also rather concerned that he should be a fair father to both Hai and Qin. That was why he wanted the property registered in both their names. When cross-examined, he stated as follows:[2]

> Q: … Now, did you tell the solicitor to put the property in your daughter and your son's name in equal shares?
>
> A: Yes, 50% each.
>
> Q: Why 50% each?
>
> A: It's fair.
>
> Q: Fair to who?
>
> A: *There are my children, so half share for each.*
>
> [emphasis added]

[1] Notes of Evidence, Day 2 at p 14 lines 6–10.
[2] Notes of Evidence, Day 1 at p 28 lines 4–10.

43 When asked why he did not register the property solely in Qin's name, Chin reiterated as follows that he had to be fair to both Qin and Hai:[3]

> Q: … [W]hy wouldn't you just have [Qin] alone as the owner?
>
> A: They are sister and brother, so it's for fairness.
>
> …
>
> A: *As a father, I have two children, it's better for … the property to be put under both names.*
>
> [emphasis added]

44 Notably, Chin testified that if he should die, the Hillview property would belong to Qin and Hai although he reserved the right to dispose of the property while he was alive. This explains why he had arranged for the property to be registered in both their names as tenants in common with equal shares.

45 Chin's evidence convinced me that he cared for Hai and Qin at the time he purchased the Hillview property in their names in 2000. I was satisfied that the state of the relationship between Chin and his illegitimate children at the material time was such that this factor must be taken into account when considering the weight to be given to the presumption of advancement in the present case and whether or not there is sufficient evidence to rebut this presumption. In holding that there is ample room for the operation of the presumption of advancement in this case, I was mindful of the fact that Hai and Qin were already adults when the Hillview property was purchased in 2000. However, this is no reason to exclude the presumption of advancement. Admittedly, in *Pecore v Pecore* [2007] 1 SCR 795 ("*Pecore*"), a decision of the Canadian Supreme Court, the majority took the view that given that a principal justification for the presumption of advancement is parental

[3] Notes of Evidence, Day 1 at p 26 lines 32 to p 27 line 5.

obligation to support their dependent children, the presumption of advancement should not apply in respect of independent adult children. However, Abella J dissented and stated (at [98]) that the origin and persistence of the presumption of advancement in gratuitous transfers to children cannot be attributed to their father's obligation to support them and natural affection was also an underlying factor in the presumption of advancement in the case of a gratuitous transfer to a child of any age. Notably , in *Lau Siew Kim*, the Court of Appeal expressed (at [68]) that it was more inclined to Abella J's view in *Pecore* that the presumption of advancement emerges no less from affection than from dependency. The court added that despite the majority view in *Pecore,* the presumption of advancement should "apply to all gratuitous transfers from parents to *any* of their children, regardless of the age of the child or dependency of the child on the parent" [emphasis in original]. It follows that the fact that Hai and Qin were adults when the Hillview property was purchased and registered in their names does not stand in the way of the application of the presumption of advancement.

Chin's former solicitors' letters and emails

46 Crucially, despite Chin's assertion that he intended to keep the Hillview property for himself and that he had told Qin and Hai about this, he made several statements through his former solicitors, Toh Tan LLP, which totally undermined his attempt to rebut the presumption of advancement. These statements made by him in 2014, long after the purchase of the Hillview property in 2000, are admissible against him. In *Shephard and another v Cartwright and others* [1955] AC 431 ("*Shephard v Cartwright*"), Viscount Simonds explained as follows (at 445) that declarations by a beneficiary of an alleged trust against his own interest that are made after the purchase of the property may be taken against him:

> It must then be asked by what evidence can the presumption be rebutted … It is, I think, correctly stated in substantially the same terms in every textbook that I have consulted and supported by authority extending over a long period of time. I will take, as an example, a passage from Snell's Equity, 24th ed, p 153, which is as follows:
>
> > "The acts and declarations of the parties before or at the time of the purchase, or so immediately after it as to constitute a part of the transaction, are admissible in evidence either for or against the party who did the act or made the declaration … *But subsequent declarations are admissible as evidence only against the party who made them, and not in his favour.*"
>
> [emphasis added]

47 In *Teo Siew Har*, Chao JA, who delivered the judgment of the Court of Appeal, stated (at [34]) that the principle enunciated by the House of Lords in *Shephard v Cartwright* that subsequent declarations made after the purchase of property are only admissible against the party who made them and not in his favour "makes a lot of practical sense" for if this was not the rule, a party could advance his own case by making unilateral statements in favour of the existence of a resulting trust.

48 Notably, Chin testified that he had informed his then solicitors, Toh Tan LLP, that the Hillview property was held on trust for him. Despite this, Toh Tan LLP's letters and emails to Hai, which were written on Chin's behalf, consistently acknowledged that Hai had an interest in the Hillview property and the question of a resulting trust in Chin's favour or his beneficial interest in the said property was never brought up.

49 The first opportunity for Toh Tan LLP to place on record that Chin is beneficially entitled to the Hillview property was when the firm wrote to Hai on 29 January 2014, very shortly after Qin's death, as follows:

> We are instructed Ms Chin Yun Qin, *your co-owner* of the abovementioned property as tenant-in-common of an equal share, has passed away.
>
> Upon Ms Chin's demise, our client, as the sole parent, would be entitled to the assets of Ms Chin if she had died intestate.
>
> In the circumstances, we shall be grateful if you will let us know whether any Will has been drawn by Ms Chin and, if so, whether any steps have so far been taken by you in regard to application for probate.
>
> Please let us hear from you as soon as possible.
>
> [emphasis added]

50 In the above-mentioned letter, there is no mention of a resulting trust or Chin's beneficial interest in the Hillview property. Instead, Toh Tan LLP referred to Qin as Hai's "co-owner" of the said property. Rather telling is the fact that Chin claimed to be entitled to Qin's half share of the Hillview property not because he held the beneficial interest in that half share but on the disputed ground that he is entitled to it by virtue of the Intestate Succession Act. In claiming Qin's half share on the basis of an alleged entitlement under the said Act, he was in fact implicitly conceding that had Qin not died intestate but had willed her half share of the Hillview property to Hai, the bequest would have been valid. This contradicts his claim that there is a resulting trust of the Hillview property in his favour.

51 Following Chin's decision to sell the Hillview property, Toh Tan LLP wrote to Hai on 11 July 2014. The contents of this letter also undermined Chin's claim that Hai held a half share of the Hillview property on trust for him. The said letter was worded as follows:

> We act for Mr Chin Kim Yon who *is now the joint owner* of the property being a tenant in common of a half share *with you holding the other half share.*

> We are instructed our client intends to put the property up for sale by auction to be conducted by the firm of Knight Frank Pte Ltd ("Knight Frank").
>
> In the event the auction is unsuccessful, our client will engage Knight Frank to secure a buyer by private treaty.
>
> As Knight Frank is a reputable firm of property consultants, *our client trusts you will accept that there is no issue of transparency.*
>
> To facilitate the foregoing, please let us have as solicitors a set of the keys to the property within seven (7) days from the date hereof.
>
> [emphasis added]

52 Two points may be noted about this letter of 11 July 2014. First, if there was a resulting trust and Chin is the beneficial owner of the Hillview property, he would surely have laid claim to the whole property. Instead, Toh Tan LLP described Chin as the "joint owner" of the property and referred to Hai as the person "holding the other half share". Secondly, apart from acknowledging that Hai is a joint owner holding the other half share, Toh Tan LLP referred to the issue of transparency in the auction process for the sale of the house. The question of transparency will only arise if Hai had an interest in the Hillview property and is entitled to a share of the sale proceeds. If he does not have an interest in the said property, the transparency of the auction process is of no concern to him as his father would be entitled to all the sale proceeds.

53 When cross-examined on why his solicitors did not mention the alleged resulting trust in their letter dated 11 July 2014, Chin had no credible answer and merely said that there was no need to mention the trust because "it is very clear". When it was pointed out to him that Toh Tan LLP had acknowledged Hai's half share of the property, Chin gave the absolutely ridiculous answer that the contents of this letter were intended to "make [Hai] happy" and did not

affect the alleged resulting trust. The relevant part of the proceedings is as follows:[4]

> Q: … Now, in this letter, first of all, there is no mention of any alleged resulting trust.
>
> A: It is very clear it is not necessary to mention. He knew it.
>
> Q: In this letter on the contrary, it … recognises … the defendant's beneficial rights. …
>
> …
>
> A: I instructed my lawyer to write this letter because … I wanted to sell the property by auction. And selling the property by auction, his name would be there and that he needed to sign the document.
>
> …
>
> A: *It was just to make him happy. Most of the time, he said that he was unhappy.* The sales proceed will still belongs [*sic*] to me ---
>
> …
>
> Q: … I want to stick to the contents of this letter, Mr Chin. Now this letter, it also … recognises our client's right to have a choice of … property consultant, isn't it? He has a choice.
>
> A: *That's what I'm saying that --- just to make him happy.* When I asked for a set of key[s] from him, he was unhappy; he didn't want to give me … a set of keys.
>
> [emphasis added]

54 In an email dated 18 August 2014 to Hai to persuade him to agree to the sale of the property by auction, Toh Tan LLP again acknowledged Hai's interest in the property. The relevant part of this email was as follows:

> If our client negotiates a private treaty at a certain price, *you can say that it was not the best price secured,* the process is not transparent etc, etc.
>
> …

[4] Notes of Evidence, Day 2 at p 21 line 8 to p 22 line 11.

> Our client *as a co-owner* wishes to sell. … You say you do not want to go ahead with this plan. What does this mean? *Do you want the Bank to force-sell in the end at a force-sale price which is not to your interest?*
>
> [emphasis added]

55 As stated earlier, if Hai has no interest in the Hillview property and no share of the sale proceeds, he has no basis for complaining that the best price has not been secured. By fearing that Hai might make such a complaint, Chin accepted that Hai had an interest in the said property and especially so when Toh Tan LLP again referred to him as a "co-owner" of the property without mentioning the alleged resulting trust. Furthermore, Chin's solicitors asked Hai whether or not he wanted the bank to intervene and have a forced sale of the property and remarked that a forced sale was not to Hai's interest. If Hai had no share of the sale proceeds, it is Chin and not Hai who will be disadvantaged if a forced sale results in the property being sold at a lower price. When cross-examined on why his solicitors had said that Hai would be disadvantaged by a forced sale, Chin had no coherent answer, missed the point altogether and started to talk about Qin's death. His testimony was as follows:[5]

> Q: … If the property was purely held on resulting trust, any loss as a result of a force-sale will not fall on my client. It is you to suffer, not my client. So despite you having come to Court having said that you have informed your daughter that the property was yours to control, your subsequent conduct from the time you bought the property to the time the relationship soured, you have not in any way showed that you were retaining the rights.
>
> A: The defendant also knew --- he was fully aware I was the one who paid for the property.
>
> …
>
> Q: … I put it [to you] that despite you today coming to Court telling us that you have informed your daughter that you were retaining your rights to the property … there is nothing which you have done to show that you were retaining the rights.

[5] Notes of Evidence, Day 2 at p 25 line 29 to p 26 line 21.

> A: *My daughter already pass[ed] away. It is not that my daughter is still surviving.*
>
> …
>
> A: *Because [Qin] already passed away, so there [was] this communication between the lawyer and the defendant.*
>
> [emphasis added]

56 In his reply to Toh Tan LLP's email of 18 August 2014 on 25 August 2014, Hai stated as follows:

> When I said, "I do not want to go ahead with this plan" I mean sell by auction. Since auction is not my first choice, therefore it is not my preference.
>
> Although your client prefer selling the property by auction, but in the event the auction is unsuccessful [your] client will secure a buyer by private treaty.
>
> So whether is by private treaty or auction, *both owners* have to agree on a selling price first right?
>
> [emphasis added]

57 Although it was evident from Hai's email on 25 August 2014 that he was asserting his right to agree to the selling price for the Hillview property on the basis that he had a half share of the property, Chin admitted that Toh Tan LLP did not reply to this letter to point out that Hai had no interest in the said property.

58 Chin claimed that he did not know why his solicitors, Toh Tan LLP, repeatedly acknowledged Hai's half share of the Hillview property and failed to assert on his behalf that there was a resulting trust. He should have but did not call anyone from Toh Tan LLP to testify on whether he had given instructions about the alleged resulting trust as he claimed and why his then solicitors did not assert his claim to the beneficial ownership of the Hillview property in this and several other letters and emails written by them to Hai. As for Chin's repeated assertion that he is an illiterate traditional Chinese man who

settled the issue of the alleged resulting trust verbally, Hai's counsel reminded him that the cross-examination concerned letters written by his solicitors in 2014, at a time when his relationship with Hai had already soured. Chin's inadequate response was as follows:[6]

> Q: … [L]et's put … aside whether you are … educated, whether you know how to write. … [B]y the time you consulted Toh Tan LLP in January 2014, you have perfectly the opportunity to seek legal advice. And I put it to you … at that point, even the relationship was already so bad, there is no mention of resulting trust.
>
> A: Though we had squabbles, but then I did not keep it in my heart. I'm a traditional Chinese man, and even my son assaulted me but I did not bear any grudge against him.
>
> …
>
> Q: … The put question is this – that even after your relationship has soured, 2014, lawyers have already started corresponding with my client. … Do you agree there was nothing said?
>
> A: It did not occur to me to take back the title deeds, but then I do not agree to your suggestion.

59 What is quite clear is that the cumulative effect of Toh Tan LLP's letters and emails to Hai in the face of Chin's claim that they were aware of his beneficial interest in the Hillview property totally undermined his case against the presumption of advancement in Hai's favour.

Chin's unsatisfactory evidence

60 Apart from the damning admissions in Toh Tan LLP's letters against his alleged interest in the Hillview property, Chin's evidence on whether or not the Hillview property was a gift to Qin and Hai left much to be desired.

[6] Notes of Evidence, Day 2 at p 28 lines 1–18.

61 Hai said that his father purchased the Hillview property for him and his sister, Qin. He stated in his AEIC that when the Hillview property was about to be purchased, his father told him and Qin that it was purchased for both of them. During the trial, Hai steadfastly maintained that his father had made it clear that he and Qin owned the said property absolutely.

62 In contrast, Chin claimed that he intended to keep the Hillview property for himself. In his AEIC, he stated as follows:

> I had made it very clear to my daughter and the Defendant that although the property is registered in their names, it belongs to me and not to them. At no material time did I evince any intention that the property was purchased for the two of them. Contrary to what the Defendant asserts, I have never given them any reason to believe that the property belongs to them and that they can do whatever they wish to. I had informed my daughter and the Defendant that they had to consult and to seek my permission if they wish to do anything with regards to the property. I told them specifically that they cannot do as they wish regarding the disposal or otherwise of the said property.

63 Chin testified that he spoke to his late daughter, Qin, about his vested interest in the Hillview property only *after* the purchase of the property was completed on 24 September 2000. Surprisingly, he could not remember where he had this important conversation with Qin and testified that this was "only a small matter". Had Chin wanted to retain the beneficial interest in the property, it is more likely than not he would have made this clear to Qin and Hai before he parted with the $700,000 and not after the purchase of the Hillview property. When asked who else was present when he spoke to Qin about the alleged resulting trust, Chin said that her mother was present and that he could not remember if anyone else was there. At this juncture of the cross-examination, Chin did not refer to any conversation with Hai about the resulting trust although he mentioned that Qin telephoned Hai to tell the latter about their father's beneficial interest in the Hillview property. However, Chin

subsequently testified that he also told Hai about the said beneficial interest in his favour, an assertion vehemently denied by Hai.

64 If Chin wanted to keep the Hillview property for himself, he could easily have had it registered in his own name. When cross-examined on why this was not done, he gave a number of unsatisfactory answers. To begin with, he testified that the property was registered in the names of his children because he intended to acquire another property. He did not explain why the proposed acquisition of another property was relevant to his decision not to register the property in his own name. At that time, there were no additional stamp duties for purchasing a second property.

65 Chin also testified that registering the property in the names of Qin and Hai was a "temporary" measure to enable them to obtain a loan from the bank. Chin did not explain why a loan was required when he had paid the purchase price for the Hillview property. Did he expect his children to return him the $700,000 that he paid for the Hillview property? However, Chin testified that Qin and Hai had financial problems and could not even pay the rental for their rented apartment before he purchased the Hillview property for them to stay in 2000. Furthermore, when Qin and Hai wanted to mortgage the Hillview property to DBS in 2003, Chin stated in his AEIC that he was "reluctant" to have the property mortgaged as he "had doubts on the ability of both of them to pay the loan". He added that it was only after his children continued to badger him that he finally relented and agreed to the DBS loan. I thus do not believe Chin's assertion that registration of the Hillview property in the names of his children in 2000 was to enable them to mortgage the property.

66 Chin next said that in 2000, he was already in his 60s and it made no difference whether he registered the property in his own name or the names of

Qin and Hai. However, it is clear that he had given much thought to the registration process from his evidence that he had wanted both Qin and Hai to be the registered owners of the property as he, as a father, wanted to be fair to the both of them. Furthermore, while he was not fully conversant with the laws of bankruptcy, he knew that Qin was then running a sofa business and conceded that he knew generally that if her business failed, there was a risk that creditors might take over her share of the Hillview property. It was suggested to him that as he knew about this risk, he would not have wanted to run it and would have not have registered the said property in Qin's name as well if he did not intend to give her a half share of it. When questioned about this risk, Chin denied saying that he did not know about creditors taking over a debtor's property but said that he was not too sure about this matter. All he could say was that, should this problem arise, Qin would think of a way to solve the problem.

67 Notably, Chin went so far as to state that the Hillview property was registered in the names of both his children so that they would each get a half share of it after his death. The relevant part of his testimony was as follows:[7]

> Q: … I put it to you that these two children were your only two children in your second marriage. And when you decided to pay for the property, your intention was to give it to them, and that was why you are putting it in equal shares.
>
> A: Intention is one thing. *If I --- should … die, then the property will be theirs.* But then I'm still alive, so I might want to sell the property or whatever I … want to do with the property.
>
> [emphasis added]

68 What Chin meant by "[i]ntention is one thing" was unclear but the fact remains that he had thought about Qin and Hai each having a half share of the property after his death. Furthermore, he never asked for the certificates of title

[7] Notes of Evidence, Day 1 at p 29 line 30 to p 30 line 5.

for the Hillview property to be kept by him and although he said that he had asked for the keys to the said property, he was not given a set of keys. In fact, he said that after the purchase of the property, he went to the premises only "once or twice" several years after the purchase and only because he had asked a friend to do painting works there for his children.

69 To sum up, Chin's evidence on his intentions when the Hillview property was purchased in 2000 did not rebut the presumption of advancement in Hai's favour.

Whether the DBS loan rebutted the presumption of advancement

70 I now turn to consider Chin's assertion that the fact that he was involved in the DBS loan, which concerned the mortgage of the Hillview property in 2003 to DBS bank for $400,000, showed that Hai and his sister were not the beneficial owners of the property. This assertion did not further his case for two reasons.

71 First, only events that constitute part of the original transaction regarding the purchase of a property in the name of another are relevant for the purpose of rebutting the presumption of advancement. Secondly, even if the DBS loan is taken into account, the evidence before the court with respect to this loan did not buttress his argument that he held the beneficial interest in the Hillview property.

72 Numerous cases support the proposition that the mortgage of the Hillview property to DBS bank in 2003, which was undertaken three years after the purchase of the Hillview property, is not relevant as it does not shed light on the state of Chin's mind at the time the property was purchased in 2000. In *Shephard v Cartwright*, a father, who purchased shares in the names of his

children, dealt with those shares and the proceeds of the said shares without the informed consent of his children. When the children sought an account after he died, his executors sought to rebut the presumption of advancement by pointing out that there was a course of dealings beginning some five years after the purchase of the shares that showed that the father had dealt with the shares for several years as if they belonged to him and that it followed that the shares belonged to the father's estate. The House of Lords held that such evidence was inadmissible as it was not connected to the original transaction giving rise to the presumption of advancement and did not show that the father did not intend to give the shares to his children at the time they were purchased in the names of the children.

73 Subsequently, the strict approach in *Shephard v Cartwright* was relied on by the Privy Council in *Antoni v Antoni*. In this case, a father, who was the beneficial owner of shares in a property investment company, transferred his beneficial interest in three of the said shares to his three children, with each child getting one share. Subsequently, he remarried and revoked his old will that left his property to his children. He made a fresh will to leave everything to his new wife. After he died, the said wife claimed that the children held the shares in question on resulting trust for their father. The Privy Council took the view that the new will, which was made after the transfer of the shares, shed no light on the father's intention at the time of the transfer of the father's beneficial interest to the children and could not be used as evidence to rebut the presumption of advancement because subsequent acts and declarations of a transferor cannot be relied on to rebut the presumption of advancement. Lord Scott reiterated (at [20]) that it is "well established that evidence to rebut the presumption of advancement cannot take the form of denials of a transferee's beneficial ownership made by the transferor after the event".

74 Admittedly, there are a number of English cases favouring what may be called a "looser approach". In *Lavelle v Lavelle*, the court, which preferred this looser approach, stated as follows (at [19]):

> … It seems to me that it is not satisfactory to apply rigid rules of law to the evidence that is admissible to rebut the presumption of advancement. Plainly, self-serving statements or conduct of a transferor, who may long after the transaction be regretting earlier generosity, carry little or no weight. *But words or conduct more proximate to the transaction itself should be given the significance that they naturally bear as part of the overall picture.* …
>
> [emphasis added]

75 In *United Overseas Bank Ltd v Giok Bie Jao and others* [2012] SGHC 56, Belinda Ang Saw Ean J, who observed, *obiter*, (at [16]) that the looser approach seems "eminently sensible", referred to the following revised view in *Snell's Equity* (John McGhee gen ed) (Sweet & Maxwell, 32nd Ed, 2010) at para 25-013:

> … The preferable approach nowadays may be to treat the parties' subsequent conduct as admissible even in their own favour, and to leave the court free to assess its probative weight. This approach would be consistent with the looser significance attached to the presumptions of resulting trust and of advancement in the modern authorities.

76 More recently, the strict and looser approaches were considered by Vinodh Coomaraswamy J in *Tan Chin Hoon and others v Tan Choo Suan (in her personal capacity and as executrix of the estate of Tan Kiam Toen (deceased) and others and other matters* [2015] SGHC 306, where he aptly pointed out (at [195]) as follows:

> The present case too does not require me to conclude whether the rule in *Shephard v Cartwright* continues to apply. To my mind, the new approach is not inconsistent with the general rule insofar as it accommodates the caution with which a court must approach subsequent self-serving declarations, because of the risk of a party using post-transaction declarations with

> hindsight to recast their initial intent in order to bolster the case they now advance. The principle that self-serving evidence is of little probative value underpins both the established approach which excludes it entirely and the new approach which makes its self-serving potential ultimately a matter of weight.

77 In line with the strict approach endorsed by the Court of Appeal in *Teo Siew Har*, the DBS loan cannot be taken into account for the purpose of determining Chin's intention with respect to the beneficial interest in the Hillview property when he paid the purchase price for this property in 2000.

78 Even if the looser approach is adopted, the fact that Qin included her father's name in the purchase of the Holland Close HDB flat long after the purchase of the Hillview property did not, without more, rebut the presumption of advancement as there was no proof that it is more probable than not that he was involved because his consent was required for the mortgage of the Hillview property. Hai said that he and his sister initially wanted to sell the Hillview property and purchase two properties so that they would each have one property. However, they realised that the proceeds of sale of the Hillview property might not be enough for the purchase of two properties and they then agreed to mortgage this property so that Qin could buy her own property and they would have two properties in this way. Hai said that his father was involved in the DBS loan only because Qin, who was then single, wanted to purchase the Holland Close HDB flat and needed her father to be a joint purchaser of the flat for the proposed purchase of the said flat to be processed. Chin confirmed that Qin told him that he had to be a co-purchaser of the Holland Close HDB flat before she could proceed with the purchase of the said flat. I believe Hai's version of events and do not accept that Chin was involved with the DBS loan because his consent was needed for the Hillview property to be mortgaged to DBS. It is more probable than not that this was just another

case where Chin's fatherly love or concern for Qin led him to help her acquire another property.

79 Chin's evidence on the DBS loan undermined his credibility. When the cross-examination on the loan proved vexing for him, he claimed that the matter was "complicated". Although he testified that he could not remember details about the loan, he complained in his AEIC about the DBS loan at paras 16, 17 and 19 of his AEIC as follows:

> 16 … At that time, both my daughter and the Defendant had informed me that she and the Defendant were considering to buy another property and suggested to me to mortgage the property to secure a overdraft facility of $400,000.00. At first, I was reluctant to agree to mortgage the property because I had doubts on the ability of both of them to repay the loan.
>
> 17 However, my daughter and the Defendant continued to badger me to agree to the mortgage and I finally relented.
>
> ….
>
> 19 However, it transpired that both the Defendant and my daughter did not proceed with the purchase of another property but had utilised the loan for their own personal use. *I felt betrayed and cheated by their action[s].*
>
> [emphasis added]

80 Chin's assertion that the DBS loan was not utilised for the purchase of another property could not be substantiated as Qin purchased the Holland Close HDB flat together with him after the loan was obtained. When cross-examined, Chin's testimony on the alleged betrayal and cheating did nothing to enhance his credibility. Initially, he insisted that no property was bought with the money obtained from DBS loan as he stated as follows:[8]

> Q: … [Y]ou maintain that you were cheated and betrayed because no property was bought? ….

[8] Notes of Evidence, Day 1 at p 32 lines 11–14.

> A: … I do not want to say something bad about them but they know themselves that they took the money *but they did not acquire another property*.
>
> [emphasis added]

81 When confronted with evidence that the Holland Close HDB flat was purchased after the DBS loan was obtained and that he had, as a co-lessee, signed various documents for the purchase of this flat, Chin changed tack and said that he was not sure whether the said loan was utilised for the purchase of the said HDB flat. His testimony was as follows:[9]

> Q: So are you still saying that the property was never bought?
>
> A: Has nothing to do with the loan. It is complicated. I cannot remember many details.
>
> …
>
> A: I'm not sure. And I … do not know whether the property was bought with the overdraft.
>
> …
>
> Q: And yet, in your affidavit, paragraph 15, you said that you were cheated, betrayed because no property was ever bought.
>
> A: You cannot say that I'm … lying because they confuse me. On one hand, they say that they wanted to acquire another property, then acquire a flat, and then they want to do something else.
>
> …
>
> Q: So Mr Chin, if you … did not know what they were doing … you cannot in your affidavit say that they did not buy the property, can you?
>
> A: I do not have any … recollection about the HDB flat but I do not know … they had used the money to buy the flat.
>
> Q: … [Y]ou could have said in your affidavit … that you did not know what the money was used for but you chose to say

[9] Notes of Evidence, Day 1 at p 32 line 24 to p 36 line 8.

> that no property was ever bought. It's a very specific assertion.
> …
>
> A; Perhaps I'm uneducated, I do not [know] how to put it the right way. I'm not like you as a lawyer.

82 I thus find that even if one adopts the looser approach in relation to events subsequent to the purchase of the Hillview property, Chin's unsubstantiated assertions in relation to the DBS loan did not rebut the presumption of advancement in Hai's favour.

Equitable estoppel

83 As I have found in favour of Hai on the basis of the presumption of advancement, Hai's alternative case on equitable estoppel, which was rather poorly presented, need not be considered. While it is much easier for Hai to rely on the presumption of advancement to support his claim to a half share of the Hillview property as that presumption has to be rebutted by Chin, it is Hai who has to establish that he is entitled to rely on equitable estoppel. There was clearly insufficient evidence to satisfy me that the question of equitable estoppel arose.

Conclusion and costs

84 It appears that Chin's change of position after having consistently acknowledged Hai's interest in the Hillview property was due to his new solicitors' analysis of the possible legal effect of events in 2000 when the Hillview property was purchased rather than on his genuine belief that he held the beneficial interest in the Hillview property.

85 For the reasons stated, Chin's claim against Hai is dismissed with costs.

Tan Lee Meng
Senior Judge

Winston Quek Seng Soon (Winston Quek & Co) for the plaintiff;
Goh Peck San (P S Goh & Co) for the defendant.
