

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2022] SGHC 195

Suit No 350 of 2019

Between

Chee Yin Meh

... Plaintiffs

And

- (1) Sim Guan Seng
- (2) Khor Boon Hong
- (3) Goh Yeow Kiang Victor

... Defendants

JUDGMENT

[Trust — Constructive trust — Common intention constructive trust]

[Equity — Estoppel — Proprietary estoppel]

[Land — Residential Property Act]

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Chee Yin Meh
v
Sim Guan Seng and others

[2022] SGHC 195

General Division of the High Court — Suit No 350 of 2019
Vinodh Coomaraswamy J
23–25 February, 2 March, 14 May 2021

26 August 2022 Judgment reserved

Vinodh Coomaraswamy J:

Background Facts

1 On 30 March 2017, a bankruptcy order was made against a businessman known as Fan Kow Hin (“the Bankrupt”). The order was made on the Bankrupt’s own application, which he had filed earlier that month. The order appointed the defendants jointly as his trustees in bankruptcy (“the Trustees”). With effect from 30 March 2017, therefore, all of the Bankrupt’s property vested in the Trustees under s 76(1) read with s 36(2) of the Bankruptcy Act (Cap 20, 2009 Rev Ed).

2 The plaintiff is the Bankrupt's wife. They were married in 1981 and remain married to date. They have three adult children.

3 The Bankrupt is the sole registered owner of a property known as 62 Sunrise Drive, Singapore 806565 (“the Property”). He bought the Property in

August 2011 in his sole name. The Property was purchased to be a home for the Bankrupt, the plaintiff and their children.

4 The plaintiff now brings this action against the Trustees seeking a declaration that the Bankrupt holds 50% of the beneficial interest in the Property on a common intention constructive trust for her. Alternatively, she seeks a declaration that a proprietary estoppel has arisen in her favour, entitling her to 50% of the beneficial interest in the Property or such other beneficial interest in the Property as the court determines. The plaintiff has expressly disavowed any reliance on any other equitable basis for the beneficial interest which she claims in the Property, including any reliance on a resulting trust.

5 The Trustees' position is that the Bankrupt is not only the sole legal owner of the Property but also the sole beneficial owner of the Property. They therefore deny that the plaintiff has any beneficial interest in the Property of any kind.

6 The Property has at all material times been subject to the provisions of the Residential Property Act (Cap 274, 2009 Rev Ed) ("the Act"). The plaintiff was a Malaysian citizen from birth in 1955 until December 2011. From shortly after her marriage to the Bankrupt in 1981 until December 2011, she was also a permanent resident of Singapore. In December 2011, she renounced her Malaysian citizenship and became a Singapore citizen. She remains a Singapore citizen to this date.

7 The Trustees' position is that the plaintiff's claim should be dismissed on the following principal grounds:

- (a) The factual basis on which the plaintiff claims a common intention constructive trust and seeks to establish a proprietary estoppel is a lie.
- (b) The Act prohibits either a common intention constructive trust or a proprietary estoppel from arising in the plaintiff's favour.
- (c) The plaintiff has suffered no detrimental reliance sufficient to give rise to either a common intention constructive trust or a proprietary estoppel.
- (d) The plaintiff should be denied equitable relief because she has engaged in unconscionable conduct and because she does not come to equity with clean hands.

The Bankrupt

8 The Bankrupt is not a party to this action. But he lies at the heart of the factual underpinning of this action. I therefore begin with a thumbnail sketch of the Bankrupt and his path to bankruptcy.

9 The Bankrupt is an entrepreneur and businessman. He appears to have displayed conspicuous acumen and, at least until his bankruptcy, to have enjoyed considerable success in both of these capacities.

10 Until his bankruptcy, the Bankrupt's principal business interests were his substantial shareholding and his executive or consulting roles in two

companies operating in the healthcare sector which he co-founded¹ and took to listing on the Catalist board of the Singapore Exchange: (a) Healthway Medical Corporation Limited and (b) International Healthway Corporation Limited (“IHC”). The financial distress which led to the Bankrupt applying to have himself adjudicated bankrupt had its origin in a 70% collapse in the price of IHC shares in September 2015.

Chronology of events

11 I now set out the chronology of events by which the Bankrupt came to be the sole owner of the Property.

12 In May 2011, the vendor of the Property granted the Bankrupt and the plaintiff jointly an option to purchase the property at a price of \$3.1m.² The Bankrupt and the plaintiff paid the vendor a total of \$155,000 in two tranches, being 5% of the Property’s purchase price. The plaintiff’s case is that she and the Bankrupt paid this \$155,000 as follows: (a) \$31,000 by a cheque drawn on their joint account with the Oversea-Chinese Banking Corporation Ltd (“the OCBC Joint Account”); and (b) \$124,000 by a cheque drawn on their joint account with the POSBank.³

13 The Bankrupt and the plaintiff were advised by their solicitor, Ms Angela Ng, that the plaintiff was not an approved purchaser within the meaning of s 2(1) of the Act because she was not a citizen of Singapore. The plaintiff was therefore ineligible to purchase the Property jointly with the Bankrupt. On their

¹ The Bankrupt’s Affidavit of Evidence-in-Chief (“AEIC”) at [16] and [23] (3 BA 1367-1368).

² Ng Beng Hua Angela’s AEIC dated 6 March 2020 (“AN’s AEIC”) at [4] (7 BA 4287).

³ Plaintiff’s AEIC at [50] (1 BA 10).

instructions, Ms Angela Ng informed the vendor that the Bankrupt would exercise the option and purchase the Property in his sole name.⁴ The plaintiff's name was accordingly struck out of the option.

14 On 2 June 2011, the Bankrupt duly exercised the option in his sole name.⁵ He needed to finance 80% of the purchase price. He secured a housing loan from DBS Bank Ltd ("DBS") in the sum of \$2.48m, being 80% of the purchase price. He was the sole borrower for this loan.⁶

15 In June 2011, as I have mentioned, the plaintiff applied for Singapore citizenship.

16 In August 2011, while that application was pending, the purchase of the Property completed, and it was conveyed into the Bankrupt's sole name. Upon completion, he paid the vendor: (a) \$2.48m, being 80% of the purchase price, by drawing down the DBS loan; and (b) \$465,000, being 15% of the purchase price, by a cheque. It is the plaintiff's case that this cheque was drawn on the OCBC Joint Account.⁷

17 As a condition for drawing down the DBS loan, the Bankrupt executed upon completion a mortgage instrument in respect of the Property in favour of DBS. By that instrument, he undertook an express obligation to DBS not to "dispose of or deal with or part with possession of the ... Property [or] any estate

⁴ Goh Yeow Kiang Victor's AEIC dated 23 March 2020 ("D3's AEIC") at p 2344 (6 BA 3809).

⁵ AN's AEIC at [8] (7 BA 4288).

⁶ The Bankrupt's AEIC at [43] (3 BA 1371).

⁷ Plaintiff's 1st Affidavit dated 24 July 2018 at [2.2.1] (7 AB 3500).

or interest in it...or agree to do any of the aforesaid without the consent of [DBS]”.⁸

18 In December 2011, as I have mentioned, the plaintiff became a Singapore citizen.⁹

19 From completion in August 2011 to October 2012, the Property underwent substantial renovations. The renovations were financed by a loan of \$604,000 which the Bankrupt took out in his sole name.¹⁰

20 When the renovations were complete in October 2012, the Bankrupt and the plaintiff began residing in the Property with their two younger children.

21 In March 2017, as I have mentioned, the Bankrupt was adjudicated bankrupt, and the Trustees were appointed his trustees in bankruptcy.

22 In May 2017, the defendants sold the Property at a price of \$3.82m, yielding net proceeds of sale of \$1.36m. This action will decide how the Trustees deal with those net proceeds of sale.¹¹

23 In July 2017, solicitors appointed by the plaintiff wrote to the Trustees claiming a beneficial interest in 50% of the Property, and therefore in the net

⁸ D3’s AEIC at [35(1)] (3 BA 1486); D3’s AEIC p 501 (clause 1.12.1) (4 BA 1966).

⁹ Plaintiff’s AEIC at [6] (1 BA 2).

¹⁰ Plaintiff’s AEIC at [58] (1 BA 12); Plaintiff’s AEIC at pp 483 (Clause d(iii)) (1 BA 483).

¹¹ D3’s AEIC at [5] (3 BA 1469).

proceeds of sale.¹² The Trustees having rejected her claim, the plaintiff commenced this actioning January 2019.

The plaintiff's case

Common intention constructive trust

24 The plaintiff's case is that the Bankrupt and the plaintiff had an express common intention, arising from express discussions between the Bankrupt and the plaintiff, that the plaintiff should have a 50% beneficial interest in the property. Alternatively, it is her case that this common intention can be inferred from their conduct.

25 The plaintiff does not invite the court to impute a common intention to the Bankrupt and herself as the basis for the common intention constructive trust which she claims.

Express common intention

26 As far as an express common intention is concerned, the plaintiff's pleaded case relies on two sets of discussions with the Bankrupt. The first set took place in early May 2011, before they were granted an option to purchase the Property. The Bankrupt and the plaintiff formed a general intention then to search for a property for both of them to purchase and own jointly as a family home.¹³ I accept that these general discussions took place.

27 The second set of discussions comprise two or more discussions which took place between 19 May 2011 (when the option to purchase the Property was

¹² D3's AEIC at [6] (3 BA 1469).

¹³ Statement of Claim Amendment No 1 ("SOC Am1") at [2.1.2].

granted in their joint names) and 2 June 2011 (when the Bankrupt exercised the option in his sole name) specifically about the plaintiff having a 50% beneficial interest in the Property.

28 The plaintiff pleads expressly that the Bankrupt and the plaintiff agreed in these discussions that, even though the Bankrupt was to purchase the Property in his sole name, the Bankrupt would hold half the beneficial interest in the Property on trust for the plaintiff.¹⁴

29 The plaintiff also relies on discussions to the same effect which she had with the Bankrupt after the Property was conveyed to the Bankrupt in August 2011¹⁵ and which their children witnessed.¹⁶ She does not rely on these discussions as, in themselves giving rise to a fresh, post-completion common intention. Instead, she relies on these discussions as circumstantial evidence that the Bankrupt and her had the specific pre-completion common intention on which she relies (see [27] above).¹⁷

Inferred common intention

30 As far as an inferred common intention is concerned, the plaintiff relies on the following: (a) her direct financial contributions towards the purchase price of the property in May 2011 (see [12] above); (b) the fact that the option to purchase the Property was granted to the Bankrupt and the plaintiff jointly; (c) her direct contributions to the repayment of the DBS loan both from the

¹⁴ SOC Am1 at [2.1.4].

¹⁵ SOC Am1 at [2.16A].

¹⁶ SOC Am1 at [2.16A.3] to [2.16A.6].

¹⁷ Certified Transcript, 23 February 2021, page 89 lines 2 to 17.

couple's joint accounts and also from a loan raised on the security of another property which the couple owned jointly; and (d) her contribution to the cost of renovating the property.

Proprietary estoppel

31 In the alternative to a common intention constructive trust, the plaintiff relies on the express discussions which I have summarised at [26]–[29] above as the express representations necessary to raise a proprietary estoppel against the Bankrupt, warranting a declaration that he holds 50% of the beneficial interest for the plaintiff.

My decision

32 I begin my analysis of the plaintiff's case by assuming that the plaintiff's case on both constructive trust and proprietary estoppel is true and considering whether, on that basis, the Act operates to defeat her claim. My conclusion is that it does. That renders it unnecessary for me to consider the remaining issues which both the plaintiff and the defendants have raised.

33 I now explain how I have come to this conclusion.

The Act

The provisions of the Act

34 The Trustees' case is that ss 3, 23(1) and 25(2) of the Act defeat the plaintiff's claim *in limine* because they operate to prevent her, as a non-citizen at the time of the conveyance in August 2011, from acquiring any interest in the Property under a common intention constructive trust or by way of a proprietary estoppel.

35 The Act prohibited the plaintiff from acquiring any estate or interest in the Property in August 2011 or at any time before December 2011. It is common ground that the plaintiff was a “foreign person” within the meaning of s 2(1) of the Act at all times before December 2011. It is also common ground that the Property is and has at all times been “residential property” within the meaning of s 2(1) of the Act. Section 3(1)(b) of the Act prohibits any person from creating any “estate or interest” in residential property in favour of a foreign person. Section 3(2)(b) of the Act renders void any “estate or interest” created by any person in favour of a foreign person in contravention of s 3(1) of the Act. A breach of s 3(1)(b) of the Act is a criminal offence under s 36 of the Act and is punishable on conviction by a fine not exceeding \$20,000 or imprisonment for a term not exceeding three years or both.

36 The Act also prohibited the Bankrupt from holding any interest in the Property on trust for the plaintiff in August 2011 or at any time before December 2011. Section 23(1) of the Act prohibits any Singapore citizen from purchasing residential property as a nominee of any foreign person with the intention of holding it in trust for that foreign person. Section 23(2) renders void any trust “created in whatever manner or form” contrary to s 23(1). A contravention of s 23(1) of the Act is a criminal offence under s 23(4) of the Act and is punishable upon conviction by a fine not exceeding \$100,000 or imprisonment for up to three years or both.

37 Section 25(2) of the Act obliges any foreign person who desires to purchase or acquire any estate or interest in residential property to secure the Minister’s approval to do so. It is common ground that the plaintiff has at no time made any such application.

The common intention constructive trust is void

38 In my view, the common intention constructive trust which the plaintiff pleads is caught by the terms of the Act and is void under both ss 3(2)(b) and s 23(2) of the Act. That is because her case rests on an express common intention by which the Bankrupt and she agreed that he would hold 50% of the beneficial interest in the Property on trust for her.

39 The plaintiff submits that the words “estate or interest” in s 3(1)(b) are not wide enough to capture a beneficial interest arising under a common intention constructive trust. I do not accept this submission. In my view, that reads the words too narrowly. Those words are certainly wide enough to capture a common intention constructive trust said to arise from an express intention to create a beneficial interest. Any narrower interpretation would eviscerate the purpose of these prohibitions in the Act. I say nothing about a common intention constructive trust which does not arise from an express intention, *ie*, which arises from an inferred or imputed intention.

40 The plaintiff relies on the decision of Yong Pung How CJ in *Public Prosecutor v Intra Group (Holdings) Co Inc* [1999] 1 SLR(R) 154 (“*Intra Group*”) as authority for the proposition that the Act does not prohibit a constructive trust arising by operation of law. *Intra Group* is not authority for such a wide proposition. *Intra Group* is authority only for the limited proposition that a constructive trust which arises from a transfer of a person’s property against his wishes, *eg*, by reason of fraud – and which therefore arises to reverse a detriment which that person has suffered – is not within the scope of the Act (at [36]).

41 Indeed, Yong Pung How CJ made clear in *Intra Group* that any trust arising from the parties' intention to create a proprietary interest in the beneficiary's favour would still be within the scope of the prohibitions in the Act, even if the parties did not reach an express agreement to create a trust (at [19]). As he held, that is because the Act prohibits "trusts created by a transfer of property with the consent of, or the intention to benefit, the beneficiary" (at [19]). That is precisely the type of trust which the plaintiff claims arose in her favour. That type of constructive trust is outside any proposition for which *Intra Group* is authority.

42 The plaintiff submits that s 23 of the Act does not deal with a case where a Singapore citizen acquires property and holds it on trust for a foreign person who eventually acquires Singapore citizenship, as the plaintiff did in December 2011. I do not accept this submission. The prohibition in s 23(1) of the Act is clear: no citizen shall hold residential property on trust for a foreign person. The purpose of s 25 of the Act is equally clear: every foreign person who wishes to purchase or acquire an estate or interest in any residential property must secure prior approval from the Minister. There is no exception in either provision for a foreign person who later acquires Singapore citizenship. The plaintiff's submission would eviscerate the purpose of these two provisions.

43 The plaintiff submits that it was never the plaintiff's intention to breach the Act. She points to the fact that she applied for Singapore citizenship in June 2011 and obtained it in December 2011. She also points to the fact that the Property was acquired, not for investment or speculation, but to be a family home. I reject these submissions. The policy of the Act and the purpose of its prohibitions is clear. There is no basis on which I can disregard the effect of the

Act on a prohibited estate or interest simply because the beneficiary had no intention to breach the Act or was purchasing the property as a family home.

44 The plaintiff submits that I should interpret the prohibitions in the Act purposively, by analogy with s 51 of the Housing and Development Act (Cap 129, 2004 Rev Ed) (the “HDB Act”). The case law under the HDB Act has established that, despite the prohibition in s 51 of the HDB Act, an implied trust may arise in favour of a beneficiary if that beneficiary is eligible at the time the implied trust arises to own an interest in an HDB flat (see *Tan Poh Soon v Phua Sin Yin* [1995] 2 SLR(R) 583 at [15]).

45 I reject this submission. As the Trustees point out, the HDB Act has a different underlying policy and the prohibition in the HDB Act have different purposes. That is why the case law on the two acts has diverged (see *V Nithia v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 (“*V Nithia*”) at [75]).

46 The policy of the Act is to prevent foreign persons speculating in a particular class of residential property in Singapore, *ie*, landed property, and thereby causing the prices of that class of property to rise (*Tan Cheow Gek and another v Gimly Holdings Pte Ltd* [1992] 2 SLR(R) 240 at [23]). The purpose of the prohibitions in the Act is to ensure that no such speculation takes place. It is impossible to recognise, as a class, common intention constructive trusts which arises from an express common intention without undermining the policy of the Act and the purpose of the prohibitions in it.

47 The same cannot be said of the HDB Act. The policy of the HDB Act is to regulate the manner by which the HDB provides a home for the owners of an HDB flat and their family members. The purpose of the prohibitions in the HDB

Act is to restrict the circumstances in which: (a) the owners of an HDB flat can be put at risk of losing their home and thereby being made homeless; and (b) the owners of an HDB flat can use it otherwise than as a home for themselves and their family members, *eg*, as a home for someone else. It is entirely possible to recognise an implied trust in an HDB flat without undermining the policy of the HDB Act or the purpose of the prohibitions in it.

48 In any event, even on the case law under the HDB Act, a common intention constructive trust which arises from the express intention of the parties is not invariably recognised (*Lim Kieuh Huat v Lim Teck Leng and another* [2021] 1 SLR 1328 at [11]).

49 For all of these reasons, I hold that the common intention constructive trust which the plaintiff has pleaded and which rests on an express common intention is contrary to s 3(1)(a) of the Act and is void under s 3(1)(b) of the Act.

No proprietary estoppel can arise

50 The plaintiff's alternative claim is for a declaration that the Bankrupt holds 50% of the beneficial interest in the Property for the plaintiff by reason of a proprietary estoppel.

51 In my view, s 3(2)(b) of the Act renders void any such proprietary estoppel as well.

52 In *Joshua Steven v Joshua Deborah Steven* [2004] 4 SLR(R) 403, the defendants sought to amend their counterclaim to claim a proprietary estoppel giving them a beneficial interest in a residential property within the scope of the

Act. Three of the defendants were foreign persons. Tan Lee Meng J dismissed the application to amend on the basis that the prohibitions in the Act applied to a beneficial interest arising from a proprietary estoppel in the same way it applies to a beneficial interest arising from a trust (at [15]):

Three of the ... defendants were foreigners when [the residential property] was purchased. As these foreigners did not apply for and were not given any approval to acquire an interest in [the residential property], they cannot hold a beneficial interest in the said property either by means of a trust or an estoppel.

The plaintiff acted with intent to circumvent the Act

53 I am also prepared to find that, on the plaintiff's own primary pleaded case, she acted with intent to circumvent the Act.

54 All of the following appears from the plaintiff's own case as to the Bankrupt's and her common intention. They formed the common intention by their express discussions in May and June 2011.¹⁸ The real reason the Bankrupt bought the property in his sole name was not to be its sole owner at law and in equity, but because the plaintiff was not a Singapore citizen and could not therefore be a joint owner.¹⁹ The Bankrupt and the plaintiff were advised that, even though the Bankrupt had purchased the Property in his sole name, she could have the benefit of a trust over half of the Property until she became a citizen.²⁰ The common intention constructive trust was therefore to take effect upon the Property being conveyed to the Bankrupt's sole name and to last until

¹⁸ SOC Am1 at [2.1.4] (SDB-57); Certified Transcript, 23 February 2021, page 79 lines 8 to 12, page 81 lines 4 to 6, page 81 line 21 to page 82 line 8, page 84 lines 14 to 21.

¹⁹ Certified Transcript, 24 February 2021, page 25 line 2 to page 26 line 9.

²⁰ Plaintiff's AEIC at [38]-[39] (1 BA 7).

the plaintiff acquired Singapore citizenship.²¹ At that point, they would include the plaintiff's name on the title to the property. She would then not just be a beneficial co-owner but also a legal co-owner.

55 There can be no clearer scheme to circumvent the prohibition in the Act.

56 This finding disentitles the plaintiff to any equitable relief on the basis that she does not come to equity with clean hands. This includes any equitable relief flowing from the plaintiff's alternative case: a common intention constructive trust arising from an inferred intention. Having asserted positively, as part of her own case, that she and the Bankrupt had an express common intention a common intention which amounted to a scheme to circumvent the Act, she cannot avoid the consequences of the Act by withdrawing that positive case when its consequence is revealed to her.

Conclusion

57 I therefore find that, even if the plaintiff's claims as to a common intention constructive trust and a proprietary estoppel are well founded, her claims for relief would fail by reason of s 3(2) of the Act or on the basis that she has not come to equity with clean hands.

58 It is therefore unnecessary to analyse the remaining points raised by the Trustees to resist the plaintiff's claim.

59 For all of the foregoing reasons, I dismiss the plaintiff's action. I will hear from the parties on costs.

²¹ Plaintiff's AEIC at [10] and [39] (1 BA 2 and 1 BA 7); Certified Transcript, 23 February 2021, page 64 lines 2 to 8; page 67 lines 17 to 24.

Vinodh Coomaraswamy
Judge of the High Court

Goh Kok Leong, Daniel Tan, Dillion Chua and Henry Setiono
(Ang & Partners) for the plaintiff;
Andrew Chan, Alexander Yeo, Chew Jing Wei and Cherlyn
Lee (Allen & Gledhill LLP) for the defendants.
