

Lee Yee Mui v Chau Hong Loan
[2015] SGHC 314

Case Number : Suit No 1101 of 2013
Decision Date : 10 December 2015
Tribunal/Court : High Court
Coram : Chua Lee Ming JC
Counsel Name(s) : Foo Jong Han Rey (KSCGP Juris LLP) for the plaintiff; Wong Xun-Ai and Chia Ho Choon (KhattarWong LLP) for the defendant.
Parties : Lee Yee Mui — Chau Hong Loan

Trusts – Resulting trusts – Presumed resulting trust

Land – Interest in land

10 December 2015

Chua Lee Ming JC:

Introduction

1 This was a dispute between the plaintiff, Lee Yee Mui, and her daughter-in-law Chau Hong Loan, the defendant, over S\$955,867.84. This amount represented the net proceeds (“the Net Proceeds”) of the sale of an apartment at 26F Toh Tuck Road #03-01, Toh Tuck Lodge, Singapore 596221 (“the Property”). The plaintiff claimed a half-share of the Net Proceeds whilst the defendant counterclaimed for the entire amount.

2 At the end of the trial, I gave judgment in favour of the plaintiff and dismissed the defendant’s counterclaim. I awarded costs to the plaintiff for both the claim and counterclaim fixed at S\$90,000 excluding reasonable disbursements. The defendant has appealed against the whole of my decision.

The facts

3 The defendant is a Vietnamese national. She met the plaintiff’s son, Chang Koon Yuen (“Koon Yuen”) in Vietnam in 1995 and married him in early 2003. They lived in Vietnam after their marriage.

4 The plaintiff and defendant bought the Property in April 2003 for S\$630,000. Both signed the Offer to Purchase the Property dated 3 April 2003. [\[note: i\]](#)

5 By way of letter dated 14 April 2003, Oversea-Chinese Banking Corporation Ltd (“OCBC”) offered the plaintiff and defendant a loan of S\$378,000 to finance their purchase of the Property. [\[note: ii\]](#)

6 On 17 April 2003, the plaintiff and defendant signed the following documents in the presence of the Attache at the Singapore Consulate in Vietnam:

- (a) The Acceptance Copy of the Option to Purchase the Property. [\[note: iii\]](#)

(b) OCBC's letter of offer, confirming their acceptance of the loan offer. [\[note: iii\]](#)

(c) Two similar letters addressed to Koon Yuen, one signed by each of the plaintiff and the defendant ("the April 2003 Letters"). [\[note: iv\]](#) In their respective letters, the plaintiff and defendant agreed to allow Koon Yuen to use their names "in [his] purchase" of the Property. The plaintiff and the defendant also confirmed that they were signing their respective letters "voluntarily for no benefit" to themselves, and Koon Yuen confirmed that he would be "fully responsible for the purchase" of the Property.

7 The purchase of the Property was completed in June 2003. The Property was registered in the plaintiff's and defendant's names as joint tenants.

8 The purchase price of the Property was paid for as follows:

(a) S\$6,300 was paid following the signing of the Offer to Purchase, by way of a cheque dated 4 April 2003 issued by the plaintiff's daughter, Chung Soh Mei ("Soh Mei"); [\[note: v\]](#)

(b) S\$32,750 was paid in June 2003 by way of a cheque dated 6 June 2003 issued by the plaintiff; [\[note: vi\]](#)

(c) S\$212,950 was paid on 4 June 2003 by the defendant by way of remittance from her bank; [\[note: vii\]](#) and

(d) the balance was paid using the loan of S\$378,000 from OCBC.

9 At the material time, the defendant was managing a company called A K Company Ltd ("AK Co") in Vietnam. According to the defendant, AK Co was a family business set up by her parents. Although the plaintiff suggested that AK Co belonged to Koon Yuen, no evidence was adduced in support of this. The defendant gave evidence that she set up several businesses in Singapore, together with Soh Mei and Soh Mei's younger sister, Chung Kim Mei. These businesses were all registered as sole proprietorships in Soh Mei's name:

(a) Acera Ken Enterprises ("Acera") – Acera was first registered on 27 August 1999. The registration was cancelled after it expired on 27 August 2009. [\[note: viii\]](#)

(b) Chiho Enterprises ("Chiho") – Chiho was first registered on 28 April 2003. [\[note: ix\]](#)

(c) Meiyo Enterprises ("Meiyo") – Meiyo was first registered on 29 August 2006. [\[note: x\]](#)

(d) Bizfam Enterprises ("Bizfam") – Bizfam was first registered on 20 October 2006. The registration was cancelled after it expired on 20 October 2012. [\[note: xi\]](#)

In these grounds of decision, Acera, Chiho, Meiyo and Bizfam will be referred to collectively as the "Singapore businesses". The Singapore businesses sourced products for AK Co. According to the defendant, she stopped doing business with the Singapore businesses by early 2013.

10 In 2011, the plaintiff severed the joint tenancy by registering a Statutory Declaration to Change Manner of Holding. [\[note: xii\]](#) Thereafter the plaintiff and defendant held the Property as tenants-in-common in equal shares. The Property was sold in September 2013 for S\$1,210,000.

11 On 1 May 2014, the defendant and Koon Yuen signed a document ("the May 2014 Document") which stated that both of them had bought the Property and that they agreed to divide the net proceeds from the sale of the Property equally between the two of them. [\[note: xiii\]](#)

The issues

12 The plaintiff and defendant held the legal interest in the Property in equal shares. The question was whether the beneficial interests were held in different proportions.

13 Both parties relied on *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*"). The relevant principles from *Chan Yuen Lan* for the purposes of this case were the following:

- (a) Parties will be presumed to hold the beneficial interest in a property in proportion to their respective contributions to the purchase price, *ie* the presumption of resulting trust arises.
- (b) However, if there is an express or inferred common intention as to how the beneficial interest in the property will be held, then the parties will hold the beneficial interest in accordance with that common intention. In this regard, the question is whether a common intention in fact exists; the court may not impute a common intention where it did not in fact exist.
- (c) If there is insufficient evidence of the parties' respective financial contributions or of a common intention, the beneficial interest will be held in the same manner in which the legal interest is held.

14 The plaintiff's case was that there was no clear evidence of (a) the direct financial contributions towards the purchase price of the Property, or (b) any common intention that the beneficial interest in the Property was to be held differently from the legal interest. Accordingly, the plaintiff submitted that the parties held the beneficial interest in the Property in the same proportion as their legal interests. Hence the plaintiff's claim for a half-share of the Net Proceeds.

15 The defendant's case was that she had contributed to the entire purchase price of the Property and therefore the plaintiff's share in the Property was held on a resulting trust for the defendant. The defendant's alternative case was that there was a common intention that she would hold the entire beneficial interest in the Property. The defendant therefore laid claim to the entire Net Proceeds.

16 The issues before me were as follows:

- (a) What were the defendant's financial contributions to the purchase price of the Property?
- (b) Was there a common intention (whether express or inferred) that the defendant should hold the entire beneficial interest in the Property?

17 The plaintiff's claim to a half share of the Net Proceeds rested on her legal interest in the Property. This meant that the defendant bore the burden of proving her assertions that she paid the entire purchase price of the Property and/or that there was a common intention that she held the entire beneficial interest in the Property such that she should be entitled to the whole of the Net Proceeds.

The defendant's financial contributions to the purchase price

The defendant's material contributions to the purchase price

18 The four categories of payments made towards the purchase price of the Property have been set out at [8] above.

19 In her counterclaim, the defendant had pleaded that she paid the maintenance and utilities charges in relation to the Property. However, in her closing submissions, the defendant accepted (and in my view, correctly) that such payments were irrelevant for the purposes of determining the parties' contributions towards the purchase price. [\[note: xiv\]](#)

Payment of S\$6,300 in April 2003

20 It was not disputed that the first payment of S\$6,300 to the seller was made by way of a cheque dated 4 April 2003 issued by Soh Mei. [\[note: xv\]](#) Soh Mei gave evidence that she made the payment on behalf of the plaintiff.

21 The defendant claimed that the funds for this payment were provided by her. She claimed that she gave Soh Mei "\$10,000 to \$20,000" in cash, on Koon Yuen's instructions, when Soh Mei was in Vietnam sometime in March 2003. [\[note: xvi\]](#) However, this was nothing more than a bare assertion. Under cross-examination, the defendant was unable to say whether the cash was in Singapore dollars or US dollars, or what the actual amount was [\[note: xvii\]](#) and had no satisfactory explanation as to why she had such a large sum of money in cash and in a *foreign currency* in her house. [\[note: xviii\]](#) The defendant did not ask Soh Mei to sign any receipt of this cash or provide evidence of any subsequent correspondence with Soh Mei wherein this cash amount was referred to. There was no documentary evidence before the court to show that this amount was given by the defendant and received by Soh Mei.

22 I found it odd that the defendant did not keep any record of the amount allegedly given to Soh Mei or of how the amount was spent, especially since at that point in time no property had been found yet and so it was not known what amounts would be needed to pay for the property.

23 In my view, the defendant's claim was improbable. I concluded that the defendant had not proven her claim that the payment of S\$6,300 by Soh Mei was made using monies provided by her.

Payment of S\$32,750 in June 2003

24 It was not disputed that the payment of S\$32,750 in June 2003 was made by way of a cheque dated 6 June 2003 issued by the plaintiff. [\[note: xix\]](#) The defendant claimed that she provided the funds for this payment. In support of her claim, the defendant alleged that she paid S\$8,820 on 13 March 2003 and S\$29,860 on 27 March 2003 (total S\$38,680) to Bizfam and that the plaintiff's payment came from these funds. [\[note: xx\]](#)

25 In my view, there were several difficulties with the defendant's claim. First, the two payments were made in the same month in which the defendant allegedly gave "\$10,000 to \$20,000" (in either Singapore or US dollars) to Soh Mei in cash. The defendant's evidence was that at that time she did not know which apartment she was buying. [\[note: xxi\]](#) Yet, the defendant kept no records of how the funds were used. If the defendant was to be believed, she would have given Soh Mei at least S\$48,680 in March 2003 for the purchase of a property that had not yet been found. I found it most unusual that she would have kept no records if her allegations were true.

26 Second, I found it equally if not more unusual that she allegedly made payments in those very specific amounts (S\$8,820 and S\$29,860) in March 2003 when it was not yet known what amount would be needed to pay for the Property or when payments would have to be made.

27 Third, the two payments were not made as discrete payments in the two specified amounts. Instead, they were alleged to have been part of two larger amounts remitted by AK Co to Bizfam. The payment of S\$8,820 was allegedly part of US\$13,593.13 remitted by AK Co to Bizfam on 13 March 2003. [\[note: xxii\]](#) The payment of S\$29,860 was allegedly part of US\$43,924.97 remitted by AK Co to Bizfam on 27 March 2003. [\[note: xxiii\]](#) As I shall explain later, I found that the defendant had not proven the nexus between the remittances by AK Co to the Singapore businesses and the payments towards the purchase price of the Property.

28 For the above reasons, I concluded that the defendant had not proven her claim that the payment of S\$32,750 was made using monies provided by her.

Payment of S\$212,950 on 4 June 2003

29 It was not disputed that the defendant was the one who paid the sum of S\$212,950 to the lawyers acting for the plaintiff and defendant in the purchase of the Property. However, it was also not disputed that Soh Mei deposited three amounts (which came up to a total of US\$125,000) into the defendant's account in Singapore to enable her to make the payment of S\$212,950 to the lawyers. [\[note: xxiv\]](#) The three deposits were US\$33,500 made on 17 April 2003 and US\$47,000 and US\$45,000, both made on 27 May 2003. [\[note: xxv\]](#)

30 The defendant claimed that the funds for the three amounts deposited by Soh Mei came from three payments by AK Co to Bizfam: S\$52,100 in April 2003, S\$112,510 in May 2003 and S\$11,990 in June 2003. Again, I found several difficulties with this claim. First, these three amounts were also not paid as discrete sums but were allegedly part of larger amounts remitted by AK Co to Bizfam. [\[note: xxvi\]](#) The defendant alleged as follows:

- (a) The payment of S\$52,100 in April 2003 was part of two remittances by AK Co to Bizfam on 7 and 15 April 2003. The total amount of these two remittances was US\$87,572.55.
- (b) The payment of S\$112,510 in May 2003 was part of six remittances by AK Co to Bizfam between 5 and 23 May 2003. The total amount of these six remittances was US\$148,244.70.
- (c) The payment of S\$11,990 in June 2003 was part of a remittance of US\$20,000 by AK Co to Bizfam on 24 June 2003.

Again, as I shall explain later, I found that the defendant had not proven the nexus between the remittances to Soh Mei's Singapore businesses and the payments towards the purchase price of the Property.

31 Second, the payments relied on by the defendant added up to a total of S\$176,600, which was S\$36,350 short of S\$212,950. In her affidavit of evidence in chief ("AEIC"), the defendant tried to explain the shortfall by claiming that there was a document that was missing. [\[note: xxvii\]](#) However, under cross-examination, the defendant changed her evidence and claimed instead that the shortfall was made good using the cash that she had allegedly given to Soh Mei in March 2003. [\[note: xxviii\]](#) This was a material unexplained change in her evidence. Yet, even if one assumed that the amount

given to Soh Mei in cash in March 2003 was US\$20,000 (which would be approximately S\$34,000 based on the conversion rate then [\[note: xxix\]](#)), the balance of that amount after making the first payment of S\$6,300 (see [20] – [21] above) would be S\$27,700 which was still insufficient to make up the shortfall of S\$36,350.

32 Third, the defendant sought to rely on the payment of S\$11,990 made on *24 June 2003*. The defendant alleged that this amount was part of the funds that enabled Soh Mei to make the three deposits into her account. However, this allegation simply could not be true as the evidence showed that Soh Mei had made the three deposits into the defendant's account by *27 May 2003*! Not only did this challenge the defendant's credibility, it also meant that the unexplained shortfall (see [31]) would be an even bigger amount.

33 Fourth, if the funds remitted by AK Co were indeed meant to be used to pay for the Property, Soh Mei and/or the plaintiff could have easily used the money to make payment directly to the lawyers. When questioned about this, the defendant was at first unresponsive but in the end said Koon Yuen told her the money had to be put into her account to avoid any dispute in future. [\[note: xxx\]](#) I found the defendant's explanation unconvincing. After all, according to the defendant's own case, she had made all the other payments (both before and *after* this payment of S\$212,950) for the Property through Soh Mei and the plaintiff, without going through this convoluted procedure of having the monies deposited into her own account in Singapore first.

34 I rejected the defendant's claim that the payment of S\$212,950 was made using funds remitted by AK Co. In my view, the evidence was not credible.

Mortgage payments

35 It was not disputed that the mortgage payments were made by GIRO deductions from the plaintiff's bank account. The defendant claimed that she provided the funds for these payments. [\[note: xxxi\]](#) These funds were allegedly part of larger amounts remitted by AK Co to the Singapore businesses. For the reasons set out below, I found that the defendant had not proven the nexus between the remittances by AK Co to Soh Mei's Singapore businesses and the payments towards the purchase price of the Property. Accordingly, I concluded that the defendant had not proven her allegations.

Nexus between the remittances by AK Co and the payments for the Property

36 As has been seen, the defendant alleged that all of the payments towards the purchase price of the Property (except for the first payment of S\$6,300) came from funds remitted by AK Co to the Singapore businesses (see [27], [30] and [35] above). To prove her allegation, the defendant had to prove that:

- (a) AK Co did remit the funds to the Singapore businesses; and
- (b) part of those funds were in fact used towards payment of the purchase price of the Property.

37 The defendant produced the records of the remittances ("remittance records") by AK Co to the Singapore businesses. The plaintiff did not challenge these records. The remittance records proved that funds were remitted by AK Co to the Singapore businesses but they did not show whether any part of those funds were used to pay for the Property. Indeed, based on the remittance records, the

funds were intended as payments under certain contracts specified in the remittance records.

38 There was no direct evidence that any part of the monies remitted by AK Co were in fact used to make payments for the Property. The question then was whether this conclusion could be inferred from the evidence. What was needed was a nexus between the remittances by AK Co and the payments for the Property.

39 The defendant relied on monthly statements of account ("Statements") as part of her case. Each Statement contained a table which showed the amounts to be paid for a list of items in a particular month. The lists included items that appeared to be products for AK Co's business. But the lists also included items described as "All fees" and "Toh Tuck – Monthly payment for [month]". The defendant alleged that these items referred to payments for the purchase of the Property. [\[note: xxxii\]](#)

40 The defendant's contention was that:

(a) the Statements were prepared by Soh Mei; and

(b) the amounts remitted by AK Co to the Singapore businesses were made based on the Statements.

41 In my view, proof of both (a) *and* (b) would give rise to the inference that part of the monies remitted by AK Co were in fact used to make payments for the Property. The burden would then shift to the plaintiff to prove otherwise.

Whether the Statements were prepared by Soh Mei

42 Soh Mei denied preparing the Statements. In the defendant's oral testimony, she said that Koon Yuen told her that the Statements were prepared by Soh Mei. In my view, this was clearly hearsay evidence. Koon Yuen was not in court to give evidence.

43 The defendant submitted that the court should look at the totality of the evidence and emphasised the fact that she had acted on the Statements in arranging the remittances by AK Co. However, the fact that the defendant acted on the Statements merely proved that she intended part of the monies remitted by AK Co to be used to make payments for the Property. Her intention alone did not give rise to the inference that the monies were in fact used to pay for the Property. For the inference to arise, she had to also prove her allegation that the Statements were prepared by Soh Mei.

44 The defendant referred to five emails purportedly sent by Soh Mei to Koon Yuen. [\[note: xxxiii\]](#) These emails purported to provide details of payments to be made by AK Co. Of the five emails, three contained items describing payments for the Property. [\[note: xxxiv\]](#) Presumably (the defendant did not make it clear), the defendant was relying on the emails to support her allegation that the Statements were prepared by Soh Mei.

45 The plaintiff objected to the authenticity of these emails. Soh Mei did not deny providing information on the amounts to be paid for products sourced for AK Co, but said under cross-examination that the emails she had sent to Koon Yuen did not concern the Property. [\[note: xxxv\]](#)

46 Each of the emails showed that it was sent to an email address that, according to the defendant, was used by Koon Yuen. However, what was strange was that four of the emails [\[note:](#)

[xxxvii](#) (including the three emails containing items relating to the Property) were then forwarded to that same email address allegedly used by Koon Yuen. The defendant did not produce these emails in the form that they were received, *ie*, before they were forwarded. The defendant admitted during cross-examination that she was aware that once forwarded, the contents of the original email could be edited. [\[note: xxxvii\]](#) There was no evidence that the defendant had edited the emails. However, as Koon Yuen was not called as a witness, there was no explanation as to why the emails had to be forwarded to the same email address as in the original email. Without Koon Yuen's evidence, I did not consider it safe to rely on these emails. In addition, there was no evidence that those emails were received by Koon Yuen from Soh Mei. Evidence from the defendant as to what Koon Yuen told her about the emails was hearsay evidence and therefore not admissible as to the truth of its contents.

47 For the above reasons, I concluded that the defendant had not proven that the Statements were prepared by Soh Mei.

48 I should add that during her oral testimony, the defendant had changed her evidence and said that the Statements were prepared by Koon Yuen but based on information provided by Soh Mei. [\[note: xxxviii\]](#) However, in her closing submissions, the defendant went back to her original case that the Statements were prepared by Soh Mei. In any event, I did not think it made any difference whether the defendant's case was that the Statements were prepared by Soh Mei or that they were prepared by Koon Yuen based on information provided by Soh Mei. First, the inference could still be drawn that part of the monies remitted by AK Co were used to make payments for the Property, if the defendant could prove either case and that the remittances were made based on the Statements. Second, since Koon Yuen was not called as a witness, there was also no evidence to prove that Koon Yuen prepared the Statements based on information provided by Soh Mei. The defendant's evidence in this regard was hearsay evidence. In my view, the only consequence of the defendant changing her evidence was to question her overall credibility as a witness.

Whether the remittances from AK Co to the Singapore businesses were based on the Statements

49 The defendant's case was that she remitted the relevant amounts to the Singapore businesses based on the amounts reflected in the Statements. [\[note: xxxix\]](#) She tried to prove this by linking each Statement to one or more remittance records. The only links were (a) that the remittances were either made in the same month as that of the Statement, or soon after, and (b) that the total amount to be paid (or in some cases, paid) under each Statement corresponded to the total amount remitted. However, as explained below, the link in (b) was not always clear and without this link being established, it could not be said that the remittances by AK Co were made based on the amounts shown in the Statements.

50 First, the remittance records were incomplete. In some cases, the remittance records allegedly linked to each Statement were not produced in evidence. [\[note: xli\]](#) In other cases, only some of the remittance records linked to each Statement were produced in evidence. [\[note: xlii\]](#)

51 Second, in some instances, the remittance record linked to a Statement appeared to have no relevance to the Statement at all. For example, the Statement for May 2006 showed that the total amount payable was S\$99,522.64, and that a total amount of S\$60,597.43 was paid from funds carried forward from April 2006. [\[note: xlii\]](#) A remittance record for a remittance of US\$51,283 to Chiho in July 2006 was linked to that Statement but its relevance remained a mystery. [\[note: xliii\]](#) There were other similar examples. [\[note: xliv\]](#)

52 Third, the total amount stated on each Statement did not always correspond to the total amount of the remittances linked to the Statement. In some of these cases, there were typewritten and/or handwritten notes and computations on the Statements. How these notes and computations provided the necessary link (if at all) between the Statements and remittance records was not always apparent. [\[note: xlv\]](#) The evidence also did not show whether these notes and computations were done at the time the remittances were made or later. If later, the question arose as to whether the remittances were made based on the Statements. The defendant said that these computations and figures were done by Koon Yuen but he was not in court to provide any explanations.

53 Fourth, in some cases, the amount remitted exceeded the total amount on the Statement. [\[note: xlvii\]](#) This was odd as the defendant's case was that she would transfer the relevant amounts to the Singapore businesses based on the amounts reflected in the Statements. [\[note: xlviii\]](#) Based on the defendant's case, there was no reason why the amount remitted should exceed the amount stated on the Statement.

54 Fifth, Statements did not show when they were prepared. Without knowing when the Statements were prepared, one could not match the amounts on the Statements with the amounts remitted, especially where several remittances were made with respect to a particular Statement. [\[note: xlviii\]](#)

55 Sixth, the Statements did not show any contract numbers. This meant that one could not tell whether the items listed in a Statement did in fact relate to contracts specified in the remittance records linked to the Statement.

56 The defendant could not provide any explanation. Her frequent response when cross-examined on the Statements and remittances was that she did not remember. The defendant said that the Koon Yuen handled the Statements. As seen earlier at [52], the notes and computations on the Statements were allegedly made by Koon Yuen. Clearly, explanations were needed from Koon Yuen. In my view, the evidence as it stood before me was unreliable.

57 I concluded that the defendant had not proven that the remittances by AK Co to the Singapore businesses were made on the basis of the Statements.

No inference that remittances by AK Co were used to make payments for the Property

58 The defendant failed to prove that the Statements were prepared by Soh Mei and that the remittances by AK Co were made based on the Statements. In the circumstances, no inference could be drawn that part of the monies remitted by AK Co were in fact used to make payments for the Property. There was no nexus between the remittances by AK Co and the payments for the Property.

59 It should be noted that the absence of a nexus between the remittances and the payments for the Property was the reason for rejecting the defendant's claim that she had paid the mortgage payments. It was not a reason for rejecting the defendant's claim as regards the first payment of S\$6,300, and it was only one of the reasons for rejecting the defendant's claims as regards the second and third payments of S\$32,750 and S\$212,950 respectively.

Whether there was any common intention that the defendant was to hold the entire beneficial interest in the Property

60 In her AEIC, the defendant made a bare assertion that the plaintiff knew and understood that

she would have no share in the property. [\[note: xlix\]](#) During cross-examination, the defendant explained that this statement was based on what Koon Yuen had told her [\[note: li\]](#) and that the agreement that the property would belong to the defendant alone was made between Koon Yuen and the plaintiff. [\[note: li\]](#) This evidence was clearly hearsay and therefore inadmissible as to the truth of its contents. In any event, this did not amount to evidence of any common intention as between the plaintiff and the *defendant*. The defendant adduced no other evidence to support her assertion that the common intention was that she would hold the entire beneficial interest in the Property.

61 On the contrary, the April 2003 Letters (see [6(c)] above) and the May 2014 Document (see [11] above) showed that there could not have been any such common intention.

62 It will be recalled that in the April 2003 Letters, the plaintiff and the defendant confirmed their respective agreements to allow Koon Yuen to use their names in "[his] purchase" of the Property. The Letters also confirmed that Koon Yuen would be fully responsible for the purchase. [\[note: lii\]](#) This was clearly inconsistent with the existence of the common intention which the defendant claimed existed. Under cross-examination, the defendant confirmed that she understood the contents of her April 2003 Letter at the time that she signed it. She then tried to explain away her April 2003 Letter by claiming that she signed the letter because Koon Yuen told her that the bank required it for the purpose of granting the housing loan for the Property. [\[note: liii\]](#) She also claimed that Koon Yuen told her that as she was not a Singaporean, she had to sign the letter so that "the bank will trust that the loan can be paid". [\[note: liv\]](#)

63 The defendant's explanations were clearly illogical. How such a letter could possibly be thought to be necessary for a housing loan was beyond comprehension. During cross-examination, the defendant was asked whether she thought that a document stating that she was not the owner of the Property would cause the bank to give her a loan. To this, the defendant replied that the bank had already approved the loan. However, this answer contradicted her explanation that her April 2003 Letter was necessary for the bank to grant the loan. The defendant subsequently changed her answer and said that she signed the letter before the loan was approved. [\[note: lv\]](#) It seemed to me that the defendant changed her answer because she realised that her previous answer contradicted her explanation for the letter.

64 In any event, the defendant's April 2003 Letter was in fact signed *after* OCBC had offered the plaintiff and defendant the housing loan. [\[note: lvi\]](#) Therefore, not only was the defendant's explanation illogical, it was also not supported on the facts. There was no question that the defendant knew on 17 April 2003 that OCBC had already made its offer because the plaintiff and defendant accepted and signed OCBC's letter of offer on that same day in the presence of the same Attache at the Singapore Consulate in Vietnam (see [6(b)] above). [\[note: lvii\]](#) In my view, the objective evidence showed that the defendant's explanation for her April 2003 Letter was a concoction.

65 As for the May 2014 Document, that document stated that the defendant had bought the Property together with her husband. In that document, she also agreed with her husband that the net proceeds from the sale of the property will be divided equally between the two of them. This document too was inconsistent with any common intention that the defendant would hold the entire beneficial interest in the Property. Under cross-examination, the defendant first claimed not to have understood the document and dismissed it as being "not important". [\[note: lviii\]](#) However, after further questioning, she finally admitted that she had understood the document when she signed it because

Koon Yuen had explained it to her. [\[note: lix\]](#) The defendant claimed that Koon Yuen asked her to sign the document to appease the plaintiff as the plaintiff was worried that Koon Yuen would be left with nothing. I was not persuaded by the defendant's explanation. Koon Yuen already had the April 2003 Letters which effectively confirmed that the defendant had no interest in the Property. He did not need the May 2014 Document in order to "appease" the plaintiff.

66 I concluded that there was insufficient evidence to prove a common intention (whether expressed or inferred) between the plaintiff and the defendant that the defendant would hold the entire beneficial interest in the Property.

Payment by the defendant in July 2013

67 The defendant pleaded in her defence that she paid the plaintiff S\$56,634.18 in July 2013 pursuant to the plaintiff's request. [\[note: lix\]](#) This amount was said to include a sum of S\$35,000 as a "refund" to the plaintiff for the amount of S\$39,050 (*ie* S\$6,300 plus S\$32,750) paid by the plaintiff towards the purchase price of the Property (see [20] and [24] above).

68 However, as has been seen in her AEIC, the defendant told a different story about the source of funds for the payments of S\$6,300 and S\$32,750. When cross-examined on this, the defendant's only explanation was that she could not remember and that there had been a mix-up. There was also no explanation why the amount of the refund was S\$35,000 when the amount paid by the plaintiff was S\$39,050. I did not find the defendant's explanation at all persuasive.

69 The payment of S\$56,634.18 was also made by way of a remittance by AK Co to one of the Singapore businesses. There was no evidence that provided the nexus between this remittance and the alleged "refund" to the plaintiff.

70 In my view, the defendant had not proven that S\$35,000 was paid to the plaintiff as a "refund" of part of the payments made by the plaintiff for the Property.

Failure to call Koon Yuen as a witness

71 The defendant submitted that the plaintiff should have called Koon Yuen as a witness and that an adverse inference should be drawn against her for failing to do so. In my view, this submission was plainly unmeritorious. The burden was on the defendant to prove her allegations and, as has been seen, Koon Yuen was a material witness for her case.

Conclusion

72 The plaintiff's evidence was not satisfactory; she admitted that herself. However, neither was the defendant's. The defendant's evidence was riddled with questions that only Koon Yuen could answer but the defendant did not call him as a witness. Without Koon Yuen's evidence, material parts of the defendant's evidence was hearsay evidence.

73 I agreed with the plaintiff that there was insufficient evidence of (a) the parties' respective financial contributions to the purchase price of the Property, and (b) any expressed or inferred common intention that the defendant held the entire beneficial interest in the property.

74 In the circumstances, I was driven to the inescapable conclusion that the parties held the beneficial interest in the property in the same proportions as their legal interests. I therefore ordered that \$477,933.92 be paid from the Net Proceeds to the plaintiff and dismissed the defendant's

counterclaim. I awarded costs to the plaintiff for both the claim and counterclaim fixed at S\$90,000 excluding reasonable disbursements.

[\[note: \]](#) Defendant's AEIC, p 39.

[\[note: i\]](#) AB119-139.

[\[note: ii\]](#) Defendant's AEIC, p 43.

[\[note: iii\]](#) AB123.

[\[note: iv\]](#) AB22 and AB24.

[\[note: v\]](#) AB12.

[\[note: vi\]](#) AB29.

[\[note: vii\]](#) Defendant's AEIC, pp 81-83

[\[note: viii\]](#) Defendant's AEIC, pp 28-29.

[\[note: ix\]](#) Defendant's AEIC, pp 32-33

[\[note: x\]](#) Defendant's AEIC, pp 34-35.

[\[note: xi\]](#) Defendant's AEIC, pp 30-31

[\[note: xii\]](#) AB77-80.

[\[note: xiii\]](#) AB 349.

[\[note: xiv\]](#) Defendant's Closing Submissions, paras 177, 179.

[\[note: xv\]](#) AB12.

[\[note: xvi\]](#) Defendant's AEIC, para 26.

[\[note: xvii\]](#) Transcript of evidence, 29 April 15, pp 70-71.

[\[note: xviii\]](#) Transcript of evidence, 29 April 15, p 71 lines 7-12.

[\[note: xix\]](#) AB29.

[\[note: xx\]](#) Defendant's AEIC, para 27 and exh CHL-9.

[\[note: xxi\]](#) Defendant's AEIC, para 27.

[\[note: xxii\]](#) Defendant's AEIC, pp 61-62.

[\[note: xxiii\]](#) Defendant's AEIC, pp 63-64.

[\[note: xxiv\]](#) Defendant's AEIC, paras 28-29 and AB 27-28.

[\[note: xxv\]](#) AB 23 and 25.

[\[note: xxvi\]](#) Defendant's AEIC, paras 28-29, pp 67-79.

[\[note: xxvii\]](#) Defendant's AEIC, para 28.

[\[note: xxviii\]](#) Transcript of evidence, 29 April 2015, p 80 lines 4-10.

[\[note: xxix\]](#) See Defendant's AEIC, p 63 for conversion rate.

[\[note: xxx\]](#) Transcript of evidence, 29 April 2015, pp 87-89.

[\[note: xxxi\]](#) Defendant's AEIC, paras 31-38.

[\[note: xxxii\]](#) Defendant's AEIC, paras 27-28; Transcript of evidence, 29 April 2015, p 55-56.

[\[note: xxxiii\]](#) DB46, DB58, DB62, DB92/DB95 and DB124. DB92 and DB95 are the same email except that DB95 has some additional handwritten notes.

[\[note: xxxiv\]](#) DB46, DB58, DB62.

[\[note: xxxv\]](#) Transcript of evidence, 28 April 2015, p 66 line 28.

[\[note: xxxvi\]](#) DB46, DB58, DB62, DB92/DB95.

[\[note: xxxvii\]](#) Transcript of evidence, 29 April 2015, p 61 lines 1-8.

[\[note: xxxviii\]](#) Transcript of evidence, 18 June 2015, p18 line 31 to p 19 line 16.

[\[note: xxxix\]](#) Defendant's AEIC, para 33.

[\[note: xl\]](#) See, eg, DB 61, DB78, DB141, DB233, DB261.

[\[note: xli\]](#) See, eg, DB65-66, DB107-109, DB110-111, DB118-120, DB137-138, DB194-195, DB223-225, DB226-228.

[\[note: xlii\]](#) DB94.

[\[note: xliii\]](#) DB96.

[\[note: xliv\]](#) See, eg, DB69-70, DB94-96, DB121-122, DB145-146, DB147-148, DB152-153, DB166-167, DB187-188, DB244-245.

[\[note: xlv\]](#) See, eg, DB79, DB92, DB117, DB166, DB242, DB247, DB249, DB262,

[\[note: xlvii\]](#) See, eg, DB99-100, DB158-159, DB194-195.

[\[note: xlviii\]](#) Defendant's AEIC, para 33.

[\[note: xlviii\]](#) See, eg, DB18-20, DB21-28, DB54-57, DB107-109, DB118-120.

[\[note: xlix\]](#) Defendant's AEIC, para 18.

[\[note: l\]](#) Transcript of evidence, 29 April 2015, p 64.

[\[note: li\]](#) Transcript of evidence, 29 April 2015, p 66.

[\[note: lii\]](#) AB22 and AB24.

[\[note: liii\]](#) Defendant's AEIC, para 23; Transcript of evidence, 18 June 2015, p 4 lines 26-29.

[\[note: liv\]](#) Transcript of evidence, 18 June 2015, p 5 lines 19-22.

[\[note: lv\]](#) Transcript of evidence, 18 June 2015, p 5 lines 1-10.

[\[note: lvi\]](#) AB17-21.

[\[note: lvii\]](#) AB123.

[\[note: lviii\]](#) Transcript of evidence, 18 June 2015, p 9 lines 2-12.

[\[note: lix\]](#) Transcript of evidence, 18 June 2015, pp 10-11.

[\[note: lx\]](#) Defence, para 5(11).

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