

United Overseas Bank Ltd v Giok Bie Jao and others  
[2012] SGHC 56

**Case Number** : Originating Summons No 514 of 2010  
**Decision Date** : 16 March 2012  
**Tribunal/Court** : High Court  
**Coram** : Belinda Ang Saw Ean J  
**Counsel Name(s)** : Tan Hee Joek (Tan See Swan & Co) for the 1st and 3rd defendants; Wong Soo Chih (Ho, Wong & Partners) for the 2nd defendant.  
**Parties** : United Overseas Bank Ltd — Giok Bie Jao and others

*Trusts – Resulting Trusts – Presumed Resulting Trusts*

16 March 2012

**Belinda Ang Saw Ean J:**

**Introduction**

***Interlocutory and Joinder applications***

1 United Overseas Bank (“UOB”) was the mortgagee of a property known as 530 East Coast Road, #18-04 Ocean Park, Singapore (“Ocean Park”). On 5 June 2009, UOB exercised its power of sale over the property following a default on the repayment of the loan secured by the mortgage. The property was sold for the price of \$1,650,000. After the sale proceeds were used to settle all outstanding sums due and owing to UOB, the sum of \$1,092,086.70 remained as balance sale proceeds. UOB tried to return the balance sale proceeds to the registered proprietors, Giok Bie Jao (“Madam Giok”) and Jaury Jacob (“Jaury”). In the ordinary course of things, this would have happened. After a lengthy discourse, UOB found itself faced with conflicting views: Jaury agreed to the release of the balance sale proceeds to the registered proprietors but Madam Giok wanted the balance sale proceeds to be divided equally amongst five people: the registered proprietors, Jimmy Jonathan (“Jimmy”), Arifin Jacob, and Antonius Jao. In those circumstances, UOB interpleaded and filed Originating Summons No 514 of 2010 against Madam Giok as the first defendant, and Jaury as the second defendant. I need only note that pending the determination of the rival contentions in the present case, UOB was ordered to pay into Court the balance sale proceeds and its solicitor’s attendance at all future hearings was dispensed with.

2 On 4 March 2011, Jimmy was joined as a party to the proceedings. He was the named third defendant.

3 By an Order made by the Senior Assistant Registrar, the interpleader issues to be tried were as follows:

- (i) Whether [Jaury or Jimmy] is the beneficial owner of the property ... which was purchased under the names of [Madam Giok and Jaury] [and] who is therefore entitled to the balance sale proceeds from [UOB’s] mortgagee sale of the property; and
- (ii) Whether [Jaury] was aware of and executed the UOB Mortgage for the property in

Surabaya, Indonesia in 2004.

4 It was also directed that the interpleader issues be tried with Jaury in the position of plaintiff.

5 I hasten to mention at the outset that I declined to rule on the second interpleader issue as it was concerned with the circumstances surrounding the procurement of the mortgage which had no relevance at all to the substance of the interpleader relief sought by UOB in the light of the competing claims to the balance sale proceeds paid into Court. The purpose of interpleader relief is observed in *Australia and New Zealand Banking Group Ltd v Ding Pei Chai and others* [2004] 3 SLR(R) 489 at [3]:

an interpleader issue directed under O 17 of the Rules of Court (Cap 322, R 5 [2006] Rev Ed), is a means for the court to decide the claims as between the persons present at the proceedings in order that the person interpleading may get the relief to which he is entitled (see *De La Rue v Hernu, Peron & Stockwell, Limited* [1936] 2 KB 164 at 173).

### **Background Facts**

6 The parties in the present proceedings are siblings from an Indonesian family. As is common with fairly well to do Indonesians, they bought properties in Singapore and their children spent their growing up years in Singapore.

7 In the 1980s, Jaury sent his children to be educated in Singapore. In 1983, he purchased an apartment at 20 Amber Road, #14-02 King's Mansion, Singapore ("King's Mansion") to accommodate his children. Madam Giok, Jaury's sister, took care of his children in Singapore. King's Mansion was subsequently sold in 1989. In 1985, Jaury purchased an apartment at Shelford Road, which he later sold on 4 May 1992.

8 On 26 November 1986, a property known as 7 Siglap Road, #20-65 Mandarin Gardens, Singapore ("Mandarin Gardens") was purchased in the sole name of Jimmy. On 16 January 1988, Jimmy transferred one-half share of Mandarin Gardens to Jaury. Stamp duty was duly paid but no consideration passed in respect of this transfer. Consequently, Jimmy and Jaury became registered proprietors holding as tenants in common in equal shares. Ocean Park was acquired in June 1990 and it was at all times registered in the names of Madam Giok and Jaury as tenants in common in equal shares.

### **The competing claimants**

9 The dispute was squarely between Jimmy and Jaury. Although Madam Giok was the registered owner of one-half share in the Ocean Park property, she did not assert any beneficial interest in the same.

10 Jimmy's pleaded case was tolerably straightforward – Jimmy had purchased the Ocean Park property which was registered in the names of Madam Giok and Jaury. He argued that there was a resulting trust in his favour in respect of the property, with the result that he held beneficial ownership. As such, he was entitled to the balance sale proceeds in Court. On the other hand, Jaury said he provided the purchase money arguing that Jimmy's claim of beneficial ownership must fail. In short, Jimmy and Jaury were contending for a purchase money resulting trust. I had to decide where the beneficial interest in the Ocean Park property lay. The main factual issue in dispute was the provenance of the purchase money.

### **Presumption of resulting trust**

## **The legal principles**

11 The type of resulting trust relied upon in these proceedings is what is commonly known as a purchase money resulting trust, and the classic statement of the law on this subject is to be found in the judgment of Eyre CB in *Dyer v Dyer* (1788) 30 ER 42 at 43. The passage below was cited with approval and followed in *Peh Eng Leng v Pek Eng Leong* [1996] 1 SLR(R) 939 at [16]:

The clear result of all the cases, without a single exception, is, that the trust of a legal estate ... whether taken in the names of the purchasers and others jointly, or in the name 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. This is a general proposition supported by all the cases, and there is nothing to contradict it; ... .

12 It was also noted in *Dyer v Dyer* that such a resulting trust may be rebutted by circumstances in evidence.

13 The modern day authority on this species of resulting trust is by Lord Browne-Wilkinson's observations in *Westdeutsche Landesbank Girozentrale v Islington Borough Council* [1996] AC 669 at 708, cited with approval by the Court of Appeal in *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*") at [34]:

*Under existing law a resulting trust arises in two sets of circumstances: (A) where A makes a voluntary payment to B or pays (wholly or in part) for the purchase of property which is vested either in B alone or in the joint names of A and B, there is a presumption that A did not intend to make a gift to B: the money or property is held on trust for A (if he is the sole provider of the money) or in the case of a joint purchase by A and B in shares proportionate to their contributions. It is important to stress that this is only a presumption, which presumption is easily rebutted either by the counter-presumption of advancement or by direct evidence of A's intention to make an outright transfer ... (B) Where A transfers property to B on express trusts, but the trusts declared do not exhaust the whole beneficial interest ... Both types of resulting trust are traditionally regarded as examples of trusts giving effect to the common intention of the parties. A resulting trust is not imposed by law against the intentions of the trustee (as is a constructive trust) but gives effect to his presumed intention. [emphasis in original]*

For present purposes, it is sufficient to refer to the first circumstance above where A pays for the purchase of property in the name of B alone, or in the joint names of A and B.

14 The Court of Appeal in *Lau Siew Kim* explained that where a transfer of property to another takes place for which the recipient does not provide the whole of the consideration, the lack of intention to benefit the recipient on the part of the purchaser is the fact that is being inferred when the presumption of resulting trust is applied. The presumption is based on a traditional commonsense presumption that, outside of certain relationships (that is, relationships giving rise to the presumption of advancement), an owner of property never intends to make a gift, and, by extension, that a person who provides the money required to purchase a property intends to obtain an equivalent equitable interest in the property acquired (see *Lau Siew Kim* at [35] to [36]).

15 From the passages quoted, for the presumption of resulting trust to apply, the money must be provided by the person claiming beneficial interest in the property in his capacity as purchaser, or that his contributions of money were to the purchase price. This means that his beneficial interest under a resulting trust will be determined (a) in the proportion of his direct financial contribution to

the purchase price and (b) assessed as at the time when the property was purchased and the trust created.

16 A presumption of resulting trust can be rebutted by contrary evidence (see [\[12\]](#) above and *Lau Siew Kim* at [52] to [55]). Intention may also be found or inferred from conduct (see generally *Hohol v Hohol* [1981] VR 221 at p 226). For a guide to the type of evidence admissible to rebut a presumption of resulting trust, I refer to the case of *Shephard v Cartwright* [1955] 1 AC 431. In that case, the House of Lords approved of a passage from the 24<sup>th</sup> Edition of *Snell's Equity* which stated that 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. As for subsequent declarations, they are admissible as evidence only against the party who made them, and not in his favour. However, in the latest edition the authors of *Snell's Equity* (32<sup>nd</sup> Ed, 2010) suggested that such evidence should not be excluded but left to the court to decide on the weight to be given to it (see emphasis in bold below). Para 25-013 states:

*Contemporaneous and subsequent conduct.* 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. It has been held that subsequent acts and declarations may only be admissible as evidence against the party who made them, and not in his favour. **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 .**

[emphasis in original in italics] [emphasis added in bold]

While local courts have previously expressed approval of the rule originally cited in *Shephard v Cartwright*, the new approach seems eminently sensible. However, it is unnecessary for me to express a formal view on the matter to dispose of this case and I leave it to another forum to ponder on the new approach.

### **The Burden of Proof**

17 The distinction between legal and evidential burdens of proof was restated in *Britestone Pte Ltd v Smith & Associates Far East, Ltd* [2007] 4 SLR(R) 855 at [58]:

The term "burden of proof" is more properly used with reference to the obligation to prove. There are in fact two kinds of burden in relation to the adduction of evidence. The first, designated the legal burden of proof, is, properly speaking, a burden of proof, for it describes the obligation to persuade the trier of fact that, in view of the evidence, the fact in dispute exists. This obligation never shifts in respect of any fact, and only "shifts" in a matter of loose terminology when a legal presumption operates. The second is a burden of proof only loosely speaking, for it falls short of an obligation to prove that a particular fact exists. It is more accurately designated the evidential burden to produce evidence since, whenever it operates, the failure to adduce some evidence, whether in propounding or rebutting, will mean a failure to engage the question of the existence of a particular fact or to keep this question alive. As such, this burden can and will shift.

18 It is well accepted that for a resulting trust to arise, proof of payment of the purchase price is crucial. This is because where the money used for the purchase of the property in the name of B was

provided by A, there is a *prima facie* implication of a resulting trust in favour of A. The legal burden of proof is on that person A who is asserting the existence of a resulting trust to establish that he provided the entire purchase price of the property at the time of the purchase. It has been said that mortgage repayments do not constitute a direct contribution to the purchase price, but the assumption of liability under a loan such as by way of mortgage can constitute such a direct contribution (see *Calverley v Green* [1984] 155 CLR 242 ("*Calverley*") at pp 252, 257-8). In cases where only a proportion of the price was provided by A, then only a proportionate interest can be claimed in reliance of the presumption. The evidential burden is on B to adduce evidence of circumstances that would rebut the implication of a resulting trust in favour of A. This approach (*ie*, he who asserts must prove (see s 103 of the Evidence Act Cap 97, Rev Ed 1997)) is similarly taken by the Hong Kong Court of First Instance in *Lee Tso Fong v Kwok Wai Sun & anor* [2008] 4 HKC 36 at [25] to [26]:

I do not think there is any simple rule that the burden of proof lies upon the party against whom the presumption [of resulting trust] operates. Presumptions are rules of evidence. They are not determinative of which party bears the legal burden of proof. The legal burden of proof in any particular case depends on the circumstances in which the claim arises. The general rule is *Ei qui affirmat non ei equi negat incumbit probatio*. Proof rests on he who affirms, not he who denies. It therefore lies upon the party who substantially asserts the affirmative of the issue: see *Constantine Line v Imperial Smelting Corp* [1942] AC 154 at 174. This burden is fixed at the beginning of the trial by the state of the pleading.

*Prima facie*, beneficial ownership goes hand in hand with legal ownership. If a plaintiff seeks to divorce the beneficial ownership from legal ownership and to claim the beneficial ownership in the property which he purchased and transferred to the name of another, he must bear the burden of proving his equitable right which is inconsistent with the undisputed legal title. He may discharge that burden by proving an express trust. Or, he may be assisted by the presumption of resulting trust by proving that he paid the purchase price of the property. But, like all presumptions, the presumption of resulting trust operates only in the absence of evidence to the contrary. Once this presumption is raised, the party seeking to challenge it bears the evidential, but not legal burden, of adducing evidence to displace the presumption of resulting trust. That party may adduce evidence of a contrary common intention of making a gift. If that evidence is insufficient to displace the presumption of resulting trust, the presumption prevails. But if that evidence is sufficient to displace the presumption of resulting trust, the party who has the legal burden will fail unless he can prove the resulting trust.

19 The upshot of the stated propositions in the present case is that Madam Giok held her one-half interest in Ocean Park on a resulting trust, and the extent of the trust is measured by the proportion of the purchase money which either Jaury or Jimmy provided. Since Jaury already has one-half legal interest in Ocean Park, the trust is in respect of so much of his beneficial interest as exceeds one-half. As registered owner of one-half interest in Ocean Park, Jaury was *prima facie* the beneficial owner of that one-half interest. However, if Jimmy did provide the whole of the purchase price, the presumption arises that the property was held on a resulting trust by Madam Giok and Jaury in favour of Jimmy. As this presumption can be rebutted by evidence of contrary intention, the next question is whether there was evidence which showed that Jimmy possessed the intention to benefit Madam Giok and Jaury. The evidential burden of proving such intention would lie with Jaury.

20 In the present case, the nub of the issue concerns the purchase moneys. The legal burden of establishing the payment(s) giving rise to a presumption of resulting trust lay with the person who asserts the existence of a resulting trust. Jimmy asserts beneficial ownership of Ocean Park on a claim that he provided the entire purchase price of Ocean Park. In the event Jimmy establishes his financial

contribution to the entire purchase price, the entire beneficial ownership is claimed in reliance of the presumption. At that stage, the evidential burden shifts to Jaury. However, if Jimmy is able to establish that only a proportion of the price was provided, then only a proportionate interest can be claimed in reliance of the presumption. Again, the evidential burden shifts to Jaury to rebut the proportionate interest. Jaury has to show by countervailing evidence that Jimmy's beneficial interest in Ocean Park is not proportionate to his contribution to the purchase price. For example, the money was contribution other than to the purchase price; or that it was money subsequently expended on improvements to the property.

## **The Provenance of the Purchase Money**

### ***Outline of the decision***

21 It was common ground that the purchase price of Ocean Park was funded by the proceeds of sale of Mandarin Gardens. The dispute in the main was on the source of funds for the purchase of Mandarin Gardens.

22 Initially, Mandarin Gardens was registered in Jimmy's name. After a year, Jimmy transferred one-half share to Jaury so that the registered tenants in common in equal shares were Jimmy and Jaury. I should explain that the beneficial interest established at the time of purchase could be altered by subsequent events. One example is where the resulting trust is superseded by an express or constructive trust. Again, beneficial interests can be altered if, for example, the parties came to a later agreement about those interests. Neither party submitted, as it was not their case, that the beneficial interest under the resulting trust (which was created at the time the property was purchased) was altered by the transfer of one-half share to Jaury's name. In the circumstances, my decision proceeded on the basis that the beneficial interest under the resulting trust was not altered by the transfer of one-half share to Jaury.

23 In this written Grounds of Decision, I will first deal with Jimmy's evidence that he contributed to the whole of the purchase price to acquire Mandarin Gardens. I will examine Jimmy's oral evidence as to the source of funds for the purchase of Mandarin Gardens. I will also consider Jaury's evidence on the source of funds for the purchase of Mandarin Gardens.

24 If Jaury had contributed the entire purchase price of Mandarin Gardens, Jaury would be entitled to the entire sale proceeds when Mandarin Gardens was sold in 1990. Thus, on the basis that the purchase of Ocean Park was derived from the application of the sale proceeds of Mandarin Gardens, a presumption of resulting trust arose in favour of Jaury. His beneficial interest in Ocean Park would commensurate with his proportionate contribution to the purchase price of Ocean Park.

### ***Purchase of Ocean Park and sale of Mandarin Gardens***

25 Before Mandarin Gardens was sold, Jimmy and Jaury opened a DBS joint account numbered [xxx] (the "DBS account") into which the sale proceeds were eventually deposited. The sale of Mandarin Gardens was completed on 28 July 1990. As stated, the purchase price of Ocean Park was funded by the proceeds of sale of Mandarin Gardens.

26 The purchase price of Ocean Park was stated to be \$665,000. [\[note: 11\]](#) However, a total sum of \$687,940.85 was in fact paid. This total sum can be split into three sums paid on separate occasions, namely, a booking fee, the balance of the 10% deposit, and the balance of the purchase price. These payments will be discussed not chronologically but in accordance with size of the payment in decreasing order of quantum. The advantage of adopting such an approach is plain as a person's

beneficial interest is determined by the proportion of his direct financial contribution towards the purchase price. The largest payment was \$621,440.85 made up of three cheques issued on 4 August 1990 from the DBS account. In percentage terms, this amount works out to approximately 90.33% of the total sum paid. I will refer to this payment as "the 90% payment". The next payment was for \$61,500 and a cheque was issued on 6 June 1990 from the same DBS account. In percentage terms, this amount works out to be approximately 8.94% of the total sum. I will refer to this payment as "the 9% payment". Finally, the smallest payment was the booking fee of \$5,000. This was 1% of the purchase price, or the booking fee as it will be referred to below.

(1) *90% Payment towards acquisition of Ocean Park*

27 The immediate origin of the 90% payment was not in dispute. The parties agreed that three cheques from their DBS account totalling \$621,440.85 were issued to Messrs Teo & Lim, a firm of solicitors, for the purchase of Ocean Park. [\[note: 2\]](#) It was common ground that the sum of \$621,440.85 was from the sale proceeds of Mandarin Gardens which had been deposited into the DBS account.

28 At the time Mandarin Gardens was sold, the property was registered in the joint names of Jimmy and Jaury. It was not either party's case that Mandarin Gardens was *prima facie* jointly owned in equity. I was persuaded on the overall evidence that it was Jaury who more probably than not provided the purchase money for this property at the time of its acquisition, and that at the time the resulting trust was created in favour of Jaury with the property registered in Jimmy's sole name. Jaury produced two HSBC cheques made payable to Messrs Lee Bon Leong & Co totalling \$657,067.35 for the purchase of Mandarin Gardens. [\[note: 3\]](#) The HSBC account from which the cheques were issued was in the name of one Jao Joe Hok, a name by which Jaury was also known. Jaury also produced some documents issued by the Singapore and Jakarta offices of HSBC documenting foreign currency deposits into the HSBC account in Singapore *via* telegraphic transfers from a separate HSBC account in Jakarta which was also in the name of Jao Joe Hok. His evidence as to the source of funds for the purchase of Mandarin Gardens was more consistent than that of Jimmy, and was also supported by some of the documents disclosed. Compared to Jimmy's evidence, Jaury had substantial funds available to him in his HSBC account in Singapore to fully pay for the purchase of Mandarin Gardens. In particular, there were deposits into the Singapore HSBC account from as early as 30 December 1981. At that time, US\$100,000 was sent by telegraphic transfer from the Jakarta HSBC account to the Singapore HSBC account. [\[note: 4\]](#) Over the next two years, a further US\$450,000 was sent to the HSBC account in Singapore in the same manner. [\[note: 5\]](#) An audit confirmation showed that on 31 October 1983 there was \$1,342,294.90 in Jaury's HSBC account in Singapore dollars. [\[note: 6\]](#) On 16 June 1986, five months before the purchase of Mandarin Gardens, the available funds appeared to be \$3,607,347.20. [\[note: 7\]](#) At the end of September 1987, a customer statement for the US Dollar account still showed a healthy balance of US\$4,151,688.24. [\[note: 8\]](#)

29 I now come to Jimmy's evidence. He contended that he paid for the purchase, alleging that he had deposited his funds from his overseas business in Jaury's HSBC account in Jakarta, from which they were transferred to the HSBC account in Singapore and subsequently used to purchase Mandarin Gardens. Jimmy claimed that Jaury's HSBC accounts were merely used as a conduit for funds transfer, an arrangement which was not unusual given the cordial relationship between the parties at the time. I make two comments. First, Jimmy proffered no evidence to substantiate his claim. If the documentation produced by Jaury was to be understood differently from what appeared at face value, Jimmy had not adduced contextual evidence to assist this Court. Second, Jimmy's story that the funds came from his overseas business was later changed to something else in cross-examination.

In fact, the versions he came up with were extraordinary. His case simply deteriorated with each tale.

30 The number of times Jimmy changed his evidence happened when it came to explaining the source of funds, and each time, the explanation was at odds with the earlier version. I begin with his first affidavit dated 27 May 2011 where Jimmy stated: [\[note: 9\]](#)

[Jaury] makes bare and unsubstantiated claims that all the monies in the DBS Joint Account were monies provided from the sale proceeds of his previous properties sold in Singapore. He did not identify which properties the sale proceeds relate to and provided no documentation to substantiate his claim. [Jaury's] claim is not true as I was responsible for furnishing most of the funds into the said DBS Joint Account to finance the purchase of the property. *To the best of my recollection, some of the funds came from overseas business and some came from sale proceeds of properties that I owned.*

[emphasis added]

31 In his second affidavit dated 30 June 2011, Jimmy stated that the purchase of Ocean Park was funded from the sale proceeds of Mandarin Gardens, which was in turn funded through his overseas business. [\[note: 10\]](#) He therefore asserted that Madam Giok and Jaury held Ocean Park on resulting trust for him and he was the sole beneficial owner of the property. [\[note: 11\]](#)

32 At trial, when examined by his counsel, Mr Tan Hee Joek ("Mr Tan"), Jimmy clarified that the funds in Jaury's HSBC account were his earnings from his family business, a business which involved his siblings. During cross-examination, Jimmy said that he had no personal bank accounts of his own at the relevant times, and that his salary and profits were left in the company's bank account which he had access to as a signatory of the account. Whenever he needed funds, whether for expenses, to go overseas, for the children's education or to purchase houses, money would be transferred to the HSBC account in Jaury's name. This was the arrangement back then as the family was united and the business was a family business. It therefore did not matter where and in whose name the funds were placed. Counsel for Jaury, Ms Wong Soo Chih ("Ms Wong"), then asked if the other siblings had the same arrangement as regards their salaries and profits, to which Jimmy replied in the affirmative. He accepted Ms Wong's reasoning that if this was true the money in the HSBC account would belong to "everybody" and not just Jimmy. Later on in cross-examination, Jimmy shifted his position to one whereby Ocean Park was regarded as the family's property.

33 It is to be noted that none of Jimmy's evidence narrated thus far was part of his pleaded case. The assertion that the property belonged to the family was inconsistent with his claim to sole beneficial ownership of Ocean Park and, hence, his entitlement to the balance sale proceeds in Court. It was obvious to me that his claim that the property belonged to the family was made up in the witness box. Under pressure of cross-examination, his evidence took on an iridescent quality which did nothing for his pleaded case. He was uncooperative to his own detriment, such as when he refused to explain the source of funds and became dismissive of Ms Wong's questions, preferring to adopt the attitude that as the money was his, there was no need to explain where it came from.

34 Jimmy was relying on Madam Giok to provide corroborative evidence since she had disavowed any beneficial interest in Ocean Park. I found her to be an unreliable witness. Her oral testimony under cross-examination contradicted her earlier written statement that it was Jimmy who had paid for Ocean Park. In addition, her other assertions were also at odds with Jimmy's evidence. Madam Giok herself had taken different stances at various occasions. First, her initial instructions to UOB were for the balance sale proceeds to be divided five-ways between the registered proprietors, Jimmy and two



other siblings. Next, in her affidavit supporting Jimmy's joinder as a party to the proceedings, she claimed that it was Jimmy who had provided all of the purchase money. In cross-examination, Madam Giok took yet another position. This time she said that the purchase money had been provided by Jimmy and their brother Arifin and that they were the true beneficial owners of Ocean Park. She was asked in cross-examination as to why she had taken inconsistent positions, and her answer in reply was that it was because Jaury had insisted that the entire property belonged to him. Eventually, she admitted to having no personal knowledge of who provided the purchase price for Ocean Park.

35 Mr Tan tried to salvage the disastrous situation. In his closing submissions, he relied on other evidence which I have set out below. I rejected their probative value. Evidentially, the other evidence did not establish what was required of Jimmy, which had to be evidence in the nature of direct financial contribution to the purchase price at the time the property was purchased (see [\[15\]](#) and [\[18\]](#) above). To repeat, for a resulting trust to arise, proof of the payment of the purchase price is crucial. It was clear to me that the other evidence relied upon either in isolation or collectively would not and did not satisfy this evidential fact.

36 First, it was Jimmy who viewed Mandarin Gardens and handled all the paperwork relating to the purchase, including liaising with the conveyancing solicitors for the purchase; that the HSBC cheques referred to above were issued in response to a letter from Messrs Lee Boon Leong & Co addressed to Jimmy requesting payment for the purchase of Mandarin Gardens at best is part of the background facts but falls short of proof of payment of the purchase price.

37 Second, Jimmy's explanation that one-half share of Mandarin Gardens was subsequently transferred to Jaury in order to enjoy concessionary property tax rates. He had been advised by a friend that lower rates would apply to foreigners if it could be shown that the property was for the purpose of enabling the owner's children to study in Singapore. As stated, this evidence explaining the reason behind the transfer had nothing to do with and could not constitute a direct contribution to the purchase price (see [\[15\]](#) and [\[18\]](#) above). It may be that a constructive trust rather than a resulting trust governs the ownership in this case but it is not necessary for me to express a view on this issue for the reasons stated in [\[22\]](#) above.

38 Third, Jimmy sought to establish that he had control of the sale proceeds of Mandarin Gardens in the DBS account, and by virtue of control, he owned the proceeds. He argued that he had sole custody of the cheque book and was the person who issued the three cheques used for the 90% payment to acquire Ocean Park. The cheques were drawn from a joint account and his signature of itself was hardly evidence determinative of Jimmy's financial contribution to the purchase price of the property. Similarly, the withdrawal of \$169,200 from the joint account and the subsequent deposit of the money into a bank account with BNP in his own name was not proof that the money in the DBS account was his.

39 Fourth, Jimmy asserted that, as with Mandarin Gardens, he had also handled the purchase of Ocean Park. His called as his witness, Sim Chai Huat, also known as Roland Sim ("Mr Sim"). Mr Sim confirmed that Jimmy had told him that he was looking to purchase a freehold property in the East Coast area. Mr Sim referred Ocean Park to Jimmy and they viewed it together. Mr Sim paid 1% of the purchase price for the option to purchase Ocean Park, and he was subsequently reimbursed for this outlay. However, Mr Sim did not know whose money was used to reimburse him.

40 Finally, Jimmy gave reasons for placing Ocean Park in the names of Madam Giok and Jaury. It had to do with assisting Madam Giok's application for permanent residency, as well as to reduce the property tax rate as Jaury's children were studying in Singapore. Neither the reasons proffered nor the fact of registering ownership in the name of another would of itself be good enough. What is crucial

was evidence of Jimmy's financial contribution towards the purchase price at the time the property was purchased and there was no such evidence.

41 I rejected attempts to undermine Jaury's credibility for mistakes made in his earlier testimonies in an attempt to overcome the deficiencies in Jimmy's evidence. I do not see that it is necessary to narrate these mistakes. Suffice it to say that the legal burden was on Jimmy and it could not be discharged by simply attacking the credibility of a witness.

42 To summarise, having heard the parties' evidence as well as the criticism of Jaury's credibility as a witness, I concluded that it was Jaury and not Jimmy who had, on a balance of probabilities, contributed the 90% payment to acquire Ocean Park.

#### *(2) 9% Payment towards acquisition of Ocean Park*

43 It was undisputed that this 9% payment was from a cheque drawn on the DBS account and encashed on 6 June 1990, prior to the receipt of the Mandarin Gardens sale proceeds and the subsequent deposit of the money into the DBS account. [\[note: 12\]](#) This 9% was the balance of the 10% due upon exercise of the Option to purchase. According to Jimmy, the money came from his company in Hong Kong called Cosmos Faith Pte Ltd ("Cosmos Faith"). The latter company had used money withdrawn from its Bangkok Bank account to purchase a banker's order in the sum of \$65,000 made payable to Jimmy and Jaury. Jimmy was able to produce a copy of the banker's order. [\[note: 13\]](#) In contrast, Jaury in his affidavit asserted that he had deposited a cheque for \$65,000 drawn on a Bangkok Bank account belonging to him into the DBS account. However, in cross-examination Jaury accepted that the Bangkok Bank account was in the name of Cosmos Faith.

44 In this state of the evidence, neither Jimmy nor Jaury could show on a balance of probabilities the provenance of this \$65,000. Both were shareholders of Cosmos Faith, and even accepting for the sake of argument that Jimmy had caused the company to purchase the banker's order, that fact in itself did not prove anything significant. In fact, the testimonies generated more questions than answers. Was Jimmy as shareholder entitled to and had the right to claim the money as dividends? If it was the company's money, was it a loan from the company? In the result, I found that neither party had proven his contribution of this 9% payment towards the acquisition of Ocean Park.

#### *(3) 1% Booking Fee for the Option to purchase Ocean Park*

45 Initially, Jaury claimed that he had paid the 1% booking fee directly to the vendors of Ocean Park. However, he later conceded that this was incorrect. It was Mr Sim who paid the booking fee and was later reimbursed for it. In his affidavit, Mr Sim stated that he was reimbursed by Jimmy. However, at trial he clarified that he was paid by a Mr Foo. Mr Sim's impression was that Jimmy and Mr Foo were involved in a trading company. However, no further light was shed on this company. It was also not clear whose company it was; whether it was this company that had paid Mr Sim, or that Mr Foo had merely handed the money over to Mr Sim on Jimmy's behalf. I was unwilling to conclude on the basis of such flimsy evidence that it was Jimmy who had provided the booking fee.

### **The overall position on the contributions**

46 In summary, Jaury had established that he had contributed 90% of payments to acquire Ocean Park. Neither Jimmy nor Jaury could establish that the remaining 10% of the payments towards the purchase of Ocean Park was contributed by either of them.

47 Jaury was the registered owner of half of the property and Jimmy had not rebutted Jaury's

*prima facie* beneficial interest in the same. However, separately and independently, the overall picture is that Jaury had contributed 90% of the payment towards the purchase of Ocean Park. In the context of a purchase money resulting trust, Jaury's beneficial interest would be in the proportion of his direct financial contribution to the purchase price (see [\[15\]](#) above and *Calverley* at pp 246, 253, 258 & 266-267). In other words, his beneficial interest in the property based on the proportion of his financial contribution to the purchase price was 90%.

48 In relation to the remaining 10% of the payments, Ms Wong conceded that Jaury was unable to establish that the money came from him. Since Jimmy's situation was also the same, she proposed an amicable resolution by sharing equally the remaining 10%. She justified this solution by alluding to the fact that the 9% payment came from Cosmos Faith, a company owned by both parties. Mr Tan supported Ms Wong's proposal. He reasoned that since the immediate source of the 9% payment was from the DBS account which was jointly held by Jimmy and Jaury, the share attributable to this sum should also be jointly held.

49 The proposal, which was acceptable to both parties, was practical. In effect, it served to treat by agreement the parties' contributions towards 10% of the purchase price as equal, and I agreed to it.

## **Result**

50 Accordingly, I found and declared that Jaury's beneficial interest in Ocean Park was 95% and with the remaining 5% to Jimmy. Therefore, the balance sale proceeds paid into Court were to be paid out in the percentages declared, with any interest earned to be paid out in the same proportions. Jimmy was ordered to pay 95% of Jaury's costs to be taxed if not agreed.

---

[\[note: 1\]](#) Jaury's Second Affidavit dated 26 July 2010 at para 6

[\[note: 2\]](#) Jaury's Second Affidavit dated 26 July 2010 at page 21

[\[note: 3\]](#) Jaury's Fourth Affidavit dated 22 August 2011 at page 94

[\[note: 4\]](#) Jaury's Fourth Affidavit dated 22 August 2011 at page 12

[\[note: 5\]](#) Jaury's Fourth Affidavit dated 22 August 2011 at pages 13 to 21

[\[note: 6\]](#) Jaury's Fourth Affidavit dated 22 August 2011 at page 26

[\[note: 7\]](#) Jaury's Fourth Affidavit dated 22 August 2011 at page 33

[\[note: 8\]](#) Jaury's Fourth Affidavit dated 22 August 2011 at pages 41 and 42

[\[note: 9\]](#) Jimmy's First Affidavit dated 27 May 2011 at para 5

[\[note: 10\]](#) Jimmy's Second Affidavit dated 30 June 2011 at paras 3 & 4

[\[note: 11\]](#) Jimmy's Second Affidavit dated 30 June 2011 at para 11

[\[note: 12\]](#) Jimmy's First Affidavit dated 27 May 2011 at page 9

[\[note: 13\]](#) Jimmy's First Affidavit dated 27 May 2011 at page 23

Copyright © Government of Singapore.