

Lee Kim Kiat v Lee Biow Neo and Others
[2007] SGHC 213

Case Number : Suit 629/2006
Decision Date : 28 December 2007
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Lim Seng Siew (Ong Tay & Partners) for the plaintiff; Michael Khoo SC, Josephine Low, Ong Lee Woei and Cleophas Pfang (Michael Khoo & Partners) for the first and second defendants
Parties : Lee Kim Kiat — Lee Biow Neo; Krishnamoorthy Sittampalam; Overseas-Chinese Banking Corporation Limited

Trusts – Express trusts – Formalities – Alleged contribution agreement to divide sale proceeds of properties sold in public auction – Ample opportunity to evince intention to create a trust – Bare assertion – Section 7(1) Civil Law Act (Cap 43, 1999 Rev Ed)

Trusts – Resulting trusts – Amount of contribution towards purchase price of property – Presumed intentions of parties

28 December 2007

Judgment reserved.

Tan Lee Meng J:

1 This case involves another bruising legal battle between siblings and relatives over money. Their dispute concerns the distribution of the balance of the proceeds of sale (“the surplus sale proceeds”) of Nos 9 and 10 Purvis Street and an adjacent property, Lot 460U Town Subdivision 11 (the “Purvis properties”), which were owned by the plaintiff, Mdm Lee Kim Kiat (“JK”), her elder sister, the first defendant, Mdm Lee Biow Neo (“LBN”), and LBN’s husband, the second defendant, Dr Krishnamoorthy Sittampalam (“KMS”). The surplus sale proceeds of more than \$1.8m are presently held by Harry Elias Partnership, the solicitors of the third defendant, the mortgagee of the Purvis properties, Overseas-Chinese Banking Corporation Ltd (“OCBC”).

Background

2 JK is a business-woman, LBN is a homemaker and KMS is an orthopaedic surgeon. In 1992, JK wanted to purchase 2 or 3 adjoining properties along Purvis Street for the purpose of redeveloping them into a mixed development with commercial units on the first floor and residential serviced apartments on the upper floors (the “development project”).

3 In September 1992, JK paid \$99,000 as a deposit for No 9 Purvis Street, which was purchased for \$990,000, and a deposit of \$93,500 for No 10 Purvis Street, which was purchased for \$935,000.

4 Although JK paid the deposits for Nos 9 and 10 Purvis Street, the sale and purchase of these properties was completed in the names of JK, LBN and KMS. The reason for this was disputed. JK claimed that LBN and KMS pressured her to “concede” a share of the Purvis properties to them. On the other hand, LBN and KS contended that they were invited by JK to become co-owners because JK had cash flow problems and was then unable to obtain the requisite financing for the purchase of the said properties and the development project. Whatever may have been the reason for the entry of LBN and KMS into the picture, on 25 January 1993, JK wrote to Mr Sng Tai Ek, the vendor of No 9

Purvis Street as follows:

By an agreement dated 13.11.92, I agreed to purchase the above mentioned property from you.

Lee Biow Neo ... and Dr Krishnamoorthy Sittampalam ... have agreed to join me in the purchase such that they should be jointly entitled to *one equal undivided half share* of the property.

I, therefore, request and direct that credit be given to them for 50% of the purchase hitherto paid by me upon payment of the full purchase price and the property be assigned to me, Lee Biow Neo and Dr Krishnamoorthy Sittampalam such that I be entitled to *one equal half share* and Lee Biow Neo and Dr Krishnamoorthy Sittampalam be jointly entitled to the *remaining one undivided half share* and that the property be held as tenants-in-common.

[emphasis added]

5 On the same day, a similar letter was forwarded by JL to the vendor of No 10 Purvis Street, Mr Tony Lee Soo Chew.

6 The bulk of the purchase price for Nos 9 and 10 Purvis Street was paid from funds provided by Citibank, who gave JL, LBN and KMS a loan to finance the said purchase and the development project (the "Citibank loan"). The loan package included a term loan of \$1,260,000 and overdraft facilities for \$2,062,000. As for the contribution by LBN and KMS towards the purchase price of the Purvis properties, both of them claimed that they had contributed half of the initial deposit paid by JL by way of a set-off because JL owed them around \$85,575 for a 50% interest in a unit in Sucasa Apartments in Kuala Lumpur (the "Sucasa apartment"), which had been purchased by the parties earlier on. Notwithstanding this set-off, there was a shortfall of around \$15,675 but LBN and KMS said that this was a small sum that was ignored. JL denied owing LBN and KMS any money for the Sucasa apartment and maintained that she had paid the entire deposit herself.

7 Mr Ramalingam Joethy ("Mr Joethy") from Choo & Joethy acted for JL, LBN and KMS in the sale and purchase of the Purvis properties. No 10 Purvis Street was conveyed to JL, LBN and KMS on 9 February 1993 and No 9 Purvis Street was conveyed to them on 2 March 1993. The said properties were conveyed on the basis that JL held an undivided half share while LBN and KMS held the other half share as tenants-in-common. As between LBN and KMS, they held their share of the properties as joint tenants.

8 Subsequently, by an alienation agreement dated 13 July 1993, a parcel of state land (the "state land") was purchased by JL, LBN and KMS for \$386,100 as it was required for the development project. LBN and KMS contributed a large sum of money for the acquisition of this property. Mr Joethy also acted for JL, LBN and KMS in the acquisition of the state land, which was also conveyed on the basis that JL held an undivided half share while LBN and KMS held the other half share as tenants-in-common.

9 The parties agreed to use one of JL's companies, which was renamed "Purvis Development Pte Ltd" ("Purvis Development"), as the vehicle for the development project. It was intended that after developing the Purvis properties, Purvis Development would enter into a long-term lease with JL, LBN and KMS to manage the leasing of the redeveloped units.

10 In August 1994, JL, LBN and KMS approached Focal Finance Ltd ("Focal"), OCBC's predecessor in title, to refinance the Citibank loan on better terms. By a facility letter dated 29 August 1994 addressed to Purvis Development, Focal offered to refinance the purchase and redevelopment of the

properties with the following two loans:

- (a) Term Loan I of up to \$1,412,000 to redeem the existing loan from Citibank; and
- (b) Term Loan II of up to \$2,880,000 or 90% of the actual construction cost, whichever was lower.

11 Purvis Development accepted the offer on 5 September 1994. The loans in question were secured by, inter alia, personal guarantees by JL, LBN and KMS.

12 Regrettably, by November 1994, JL had fallen out with LBN and KMS, apparently over the allotment of shares in Purvis Development. JL had allotted 75% of the shares in the company to herself and 25% to LBN. KMS and LBN, who thought that shares in Purvis Development should have been allotted in accordance with the shares that the respective parties had in the Purvis properties, regarded JL's refusal to allot any shares to KMS as a reneging of their agreement on the purchase and redevelopment of the Purvis properties. By late November 1994, LBN and KMS ceased to be involved in the affairs of Purvis Development.

13 On 12 March 1999, JL became a bankrupt.

14 The parties failed to service the loan provided by Focal, which arranged for the Purvis properties to be sold by public auction on 17 June 1999 for \$3,950,000. The sale and purchase was completed on 26 August 1999. After deducting the amount owed to Focal, the expenses of the sale and legal costs, there was a balance of \$1,839,442.85 ("surplus sale proceeds") on 25 October 1999.

15 The parties failed to agree on the division of the surplus sale proceeds. On 9 June 2005, JL's then solicitors, Tan Lee & Partners, filed Originating Summons No 723 of 2005 ("the OS"). However, JL changed solicitors and it was only on 8 December 2005 that her then solicitors, Alfred Dodwell, served the OS on LBN and KMS. As there were disputes of fact, it was ordered that the OS be converted to a writ.

16 Despite the strained relationship between the parties, LBN agreed to lend JL \$100,000 on 9 March 2006 to enable JL to pay United Overseas Bank ("UOB"), one of her creditors who had filed a proof of debt against her for the sum of \$910,000. With this payment, UOB withdrew its proof of debt. This made it easier for JL to be discharged from bankruptcy on 25 January 2007.

17 LBN's loan of \$100,000, which went some way to help JL to get herself discharged from her bankruptcy, did not lead to a reconciliation between the two sisters. Attempts by their brother, Mr Steven Lee Biaw Kok ("Steven"), to resolve their differences did not bear fruit and trial dates were duly fixed.

The issues before the court

18 Although the legal documents relating to the sale and purchase of the Purvis properties indicated that JL had only a half share of the said properties, she claimed that she was entitled to more than 50% of the surplus sale proceeds for two reasons.

19 To begin with, JL alleged that she was entitled to around 85% of the surplus sale proceeds by virtue of an alleged agreement ("contribution agreement") that the parties' share of the Purvis properties will be computed on the basis of the amounts paid by them for the purchase of the said properties. In the alternative, she claimed that she was entitled to 75% of the surplus sale proceeds

because LBN held 25% of the Purvis properties on trust for her.

20 LBN and KMS, who contended that they were entitled to a half share of the Purvis properties, also asserted that JL's claim is time-barred by s 22 of the Limitation Act (Cap 163, Rev Ed 1996). Furthermore, LBN counterclaimed for the repayment of the loan of \$100,000 which she had extended to JL in 2006.

The affairs of Purvis Development and the role of forensic accountants

21 There were numerous allegations and counter-allegations by both parties regarding impropriety in the management of the financial affairs of Purvis Development and both parties engaged forensic accountants to assist the court on matters relating to the purchase of the Purvis properties and the finances of Purvis Development. JL's expert witness was Mr Goh Boon Kok ("Mr Goh") while the expert retained by LBN and KMS was Mr Tay Swee Sze ("Mr Tay").

22 The bulk of the expert reports focussed on the affairs of Purvis Development. For instance, LBN and KMS alleged that JL had misappropriated the company's money to redecorate her own apartment, which she claimed had been converted into a show flat for her and LBN to look at and that JL had taken the company's money for herself although she had claimed that the said money was taken to pay contractors. All these need not be considered in this judgment for the simple reason that the issue before the court relates to the existence or non-existence of a trust and the distribution of the surplus sale proceeds and not the misdeeds of the officers of Purvis Development. Although the accountants' reports and evidence shed little light on the existence of the trusts or agreements alleged by JL, it is worth noting that while Mr Tay attempted to look at matters from the point of view of a forensic accountant, it was rather surprising that Mr Goh looked at the financial affairs primarily on the basis that the instructions that he had received from JL represented the true position. Why he did not realise that an expert witness must give an independent view cannot be fathomed. Needless to say, his evidence was not very useful.

Whether the parties entered into the alleged contribution agreement

23 JL's assertion that she is entitled to around 85% of the surplus sale proceeds will first be considered. JL rests her claim for the said 85% on an alleged contribution agreement between herself, LBN and KMS. JL referred to its terms in her statement of claim at [8] as follows:

The respective parties would contribute their respective portion of the costs of the acquisition of the Purvis properties, the repayment of any bank financing and the costs of the subsequent development of the Purvis properties. However, if [LBN and KMS] fail to contribute their portion, the respective parties' beneficial interests in the Purvis Properties would be divided according to the amounts the respective parties paid.

24 Both LBN and KMS vehemently denied the existence of the contribution agreement. They pointed out that, in any case, JL had not proven that she had contributed around 85% of the purchase price. They asserted that JL had regarded as her contribution towards the purchase price a sum of \$530,000, which was in fact a loan from Citibank, in respect of which all three parties had assumed liability. The forensic accountant appointed by LBN and KMS, Mr Tay, testified that, based on his review of the list of documents filed by JL, the claim by JL that the \$530,000 was her contribution was not substantiated.

25 It is important to note that JL's assertion regarding the alleged contribution agreement surfaced for the first time almost *7 years after the mortgagee's sale of the Purvis properties* in June 1999. On

26 April 2006, she referred to this alleged agreement for the first time when she stated in her affidavit filed in support of her case in the OS at [20] as follows:

After much persuasion, I said that I am only agreeable to 25% for [LBN] ... provided that she contributes this portion towards the properties and the project. If she was not able to make such contributions, then her share will be correspondingly reduced to match her contribution.

26 Prior to her affidavit of 26 April 2006, JL had ample opportunities to refer to the alleged contribution agreement but did not do so. In fact, since the dispute between the parties started in 1994, JL had instructed the following 13 law firms to represent her:

- (i) Daniel Loh & Partners;
- (ii) Ang & Partners;
- (iii) Allen & Gledhill;
- (iv) Remedios & Co;
- (v) Chong, Yeo & Partners;
- (vi) Aw Loh & Chai
- (vii) May Oh & Partners;
- (viii) Simon Lee & Chew;
- (ix) Winston Chen & Partners;
- (x) Lau Teik Soon & Partners;
- (xi) Tan Lee & Partners;
- (xii) Alfred Dodwell; and
- (xiii) Ong Tay & Partners, her present solicitors.

None of her solicitors had mentioned the existence of the alleged contribution agreement before 26 April 2006. Their deafening silence does not advance JL's case.

27 As early as 13 October 1995, JL's then solicitors, Daniel Loh & Partners, raised the issue of the alleged trust of 25% held by LBN on behalf of JL in a letter to Purvis Development but did not mention the alleged contribution agreement. When asked during cross-examination why the alleged contribution agreement was not mentioned in the said letter, JL was very evasive and failed to provide a satisfactory explanation. The relevant part of the cross-examination is as follows:

Q You have not made [this allegation about the contribution agreement] when [your lawyers, Daniel Loh & Partners] wrote to the defendants on 13th October ... [and] you have not made this allegation when you wrote to Mr Joethy, correct?

A I make no comments until I look at all the rest of the papers but *it is in the understanding between the first and second defendants and me...*

Q Have you re-read this letter, 13th October, last paragraph?

A Yes.

Q Does it say that the agreement was 75/25 or subject to the contribution of the parties?

A ... I am a layperson, not a lawyer, so *this is what is written by the lawyer, not by me...*

Q You did not see fit to tell Mr Daniel Loh, having read his letter, that he has not properly conveyed your instructions as to what the agreement was in paragraph 4 of that letter?

A ... Mr *Daniel Loh would know best*. As I said, *it would have been presumed* that the parties would pay according to their contributions.

[emphasis added]

28 It is also important to note that *after* the Purvis properties had been sold in 1999, JL's then solicitors, Winston Chen & Partners ("Winston Chen"), wrote to Michael Khoo & Partners, the solicitors of LBN and KMS, on 13 January 2000 to assert that JL had a 75% share of the Purvis properties. Nothing was said about the alleged contribution agreement. In fact, Winston Chen went so far as to state as follows at [4]:

Our client further instructs that the aggregate amount paid or contributed by her towards the purchase price, servicing of loans, development expenses etc, exceed 75% share of all contributions *and she requires your clients to reimburse the excess payments made by her*.

[emphasis added]

29 In short, all that JL required of LBN and KMS on 13 January 2000 was that they top up their contribution to 25%. If there had been a contribution agreement as alleged, Winston Chen would surely have mentioned this as the Purvis properties had already been sold by then.

30 JL also did not mention the alleged contribution agreement when she wrote to Mr Joethy on 10 November 1995 to accuse him of not having looked after her interests and of failing to prepare the trust documents recording that LBN held 25% of the Purvis properties on trust for her. When cross-examined, she finally admitted that she did not inform Mr Joethy about the contribution agreement. The relevant part of the cross-examination is as follows:

Q And you did not say [to Mr Joethy that] the agreement was 75/25 or subject to contributions of the parties?

A As far as I'm concerned *it is understood by the parties...*

Q *It must have been understood by Mr Joethy although you did not tell him?*

A *I learn today that I have to tell them in details.*

Ct Can you repeat what you have just said?

A *I have learnt today that I have to tell the lawyers in great details.*

[emphasis added]

31 Finally, it should not be overlooked that when JL wrote to LBN on 19 October 1995, she did not mention the alleged contribution agreement that would have given her around 85% of the surplus amount. Her letter was as follows:

I refer to our brief telephone conversation on 18 October 95 with regard to the 25% share of the properties currently being held in trust by you and Krish.

I am utterly shocked from Michael Khoo's letter and my phone conversation with you that both of you are now denying this arrangement, which was done out of mutual trust. If your memory does not fail you, you have, singly and jointly, on numerous occasions assured me in the presence of third parties (in your exact words):- "We will not cheat you of your 25% share held in trust".

32 After having had the opportunity to assess the witnesses, and after considering the evidence before me, I had no doubt that JL failed to prove the existence of the alleged contribution agreement.

Whether there was an express trust

33 JL's contention that LBN and KMS held a 25% share of the Purvis properties on trust for her ("the trust"), will next be considered. As far as JL's case on an *express* trust is concerned, it did not get off the ground because of s 7(1) of the Civil Law Act (Cap 43, Rev Ed, 1999) ("the Act"), which provides as follows:

A declaration of trust respecting any immovable property or an interest in such property must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will.

34 As s 7(1) of the Act had not been complied with, the alleged express trust, even if intended to be created, cannot be relied on by JL.

35 Apart from failing to comply with the formalities required by s 7(1) of the Act, JL's evidence on the creation of the alleged express trust was flawed in many ways. At this juncture, it is worth noting that in *Stack v Dowden* [2007] 2 WLR 831, Baroness Hale said at p 853 that the burden is "on the person seeking to show that the parties did intend their beneficial interests to be different from their legal interests, and in what way". She added that this "is not a task to be lightly embarked on". In the present case, JL had an uphill task because the relevant documents had made it clear that LBN and KMS were entitled to "*one equal undivided half share*" of the Purvis properties.

36 To bolster her case, JL asserted the following:

- (i) Both LBN and KMS were the trustees of 25% of the Purvis properties;
- (ii) She had instructed Mr Joethy to prepare the trust documents but he had failed to do so; and
- (iii) LBN has stated in front of other people that she would not cheat her of the 25%.
- (iv) The shareholding of the parties in Purvis Development reflects the real position on the ownership of the Purvis properties.

37 For a start, JL was not even sure about who were the trustees of the alleged trust. In a letter to Mr Joethy on 10 November 1995, she made it clear that both LBN and KMS were her trustees. The relevant part of the said letter is as follows:

I appreciate the fact that you were appointed by Mr Krishnamoorthy to act on behalf of all three purchasers BUT I would still expect you to exercise due diligence and professionalism in order to protect the interests of the three purchasers, especially that of a majority owner. When you were advised prior to completion of the sale and purchase of the said properties of my 25% shareholding *held in trust for me by my sister [LBN] and [KMS] jointly*, you only advised that this was a private arrangement and failed to advise on the need for a written agreement to reflect the trust in order to protect my interests.

38 JL's pleaded case was also that LBN and KMS were her trustees. However, during cross-examination, JL altered her position and claimed that only LBN held the 25% on trust for her. The relevant part of the cross-examination is as follows:

Q You told [Mr Joethy] that it was agreed between you and the two defendants that the conveyance was to be in the three names as to 50% in your name and 50% in the joint names of the two defendants, but that of their 50% 25% was to be held in trust for you?

A Yes, by my sister...

Q Not by [KMS]?

A No.

Q So, if at all, you should be suing only your sister, because there was no trust, no agreement to hold in trust for you by [KMS]?

A Mr Joethy said he would prepare the trust documents.

Q Forget about what Mr Joethy said he would prepare. You said the agreement was that your sister was to hold 25% of the 50% in trust for you and therefore the agreement was not the agreement of [KMS], only your sister; that is what you told us?

A Yes.

[emphasis added]

39 In his closing submissions, JL's counsel glossed over his client's oral testimony and submitted that her case is based on a trust "whereby [LBN and KMS] agreed to hold a 25% interest in the Purvis properties on trust for her". Such a shifting of position cannot but damage JL's case regarding the creation of an express trust.

40 As for JL's alleged instructions to Mr Joethy to prepare documents to record the alleged trust before the sale and purchase of the Purvis properties was completed, Mr Joethy denied having received any such instructions. In a letter to JL dated 23 November 1995, Mr Joethy stated as follows:

An objective review of the facts and instructions given to us would make it abundantly clear that there was no suggestion whatsoever that [KMS and/or LBN] were to hold 25% (or any) of their

share-holdings in trust for you.

In this connection we invite your particular attention to your two letters of authority dated 1st March 1993 in respect of No 9 Purvis Street and 25th January 1993 in respect of No 10 Purvis Street.

These two letters reflect the intention of the parties right from the beginning and there was no change at any stage insofar as we are aware.

Your interests were adequately protected pursuant to instructions.

For reasons best known to your goodself you are raising the "trust" issue at this stage and in this manner.

41 Mr Joethy stood his ground during cross-examination. I was impressed with his evidence and had no doubt that he was telling the truth.

42 In contrast, JL's testimony was quite unconvincing. She claimed that she had reminded Mr Joethy many times to prepare the trust documents but she conceded that all her reminders were oral. She was cross-examined as to why her alleged reminders were not in writing. The relevant part of the cross-examination is as follows:

Q Why didn't you write to [Mr Joethy] and tell him ... what your instructions were?

A I mention earlier that during this time I had to travel almost every week.

Q So, if you had time you would have written to him?

A Yes.

[emphasis added]

43 Mr Michael Khoo SC, counsel for LBN and KMS, then revealed that JL had found the time to write a two-page letter to Mr Joethy on 6 February 1993 to give detailed instructions on the completion of the purchase of 10 Purvis Street and she could have mentioned the preparation of the trust documents in that letter if there was an intention to create a trust. JL's answers to questions about this letter were evasive and time-consuming. Initially, she went so far as to assert that the said letter had not been signed by her. The relevant part of the cross-examination is as follows:

Q And yet you had time to give him detailed instructions on the completion of the purchase and mortgage but you had failed to point out in this fax your instructions to him that 25% was to be held in trust by the first defendant and his omission to prepare the trust documents, correct?

A I rely on the trust I have with my sister....

Q [Y]ou said to his Honour a short while ago that if you had the time would have written to him. Now we have produced this letter showing that you had plenty of time and yet you never took issue with him on the allegation of trust, correct?

A *This letter was not signed by me, though it says from me. I could have been assisted by another sister, Lee Kim Huay, at that time in 1993. She is a trained lawyer.*

[emphasis added]

44 In the face of evidence that she could not deny, JL finally admitted that she had signed the letter in question and claimed that she had overlooked the alleged trust when she wrote to Mr Joethy on 6 February 1993.

45 It should be borne in mind that if there was a trust, JL had ample opportunities to take steps to rectify the impression in the conveyancing documents that she had a half share of the Purvis properties but she did not do so. Indeed, the conveyance of the state land that was acquired for the development project was finally executed only on 26 January 1999, long after the dispute between the parties had started in 1994 but JL did not take steps to ensure that her alleged trust was taken into account at the time of the conveyance of the state land.

46 As for JL's assertion that LBN had admitted in front of third parties that she would not cheat JL of the 25% held on trust for the latter, JL revealed during cross-examination that the third parties were her brother, Steven, and another of her sisters, Mdm Esther Lee Biow Tin ("Esther"). However, neither Steven nor Esther mentioned anything about the alleged trust in their affidavits of evidence-in-chief. More importantly, when Steven and Esther testified during the trial, JL's counsel, Mr Lim Seng Siew ("Mr Lim"), did not question them as to whether they had, as had been alleged by JL, heard LBN acknowledge the existence of the alleged trust. As such, JL's assertion that Steven and Esther were present when LBN allegedly admitted the existence of the alleged trust cannot be taken seriously.

47 As for JL's assertion that her shareholding in Purvis Development reflected the real position on ownership of the Purvis properties, this was a bare assertion that was denied by LBN and KMS. As such, it need not be further discussed.

48 For the many reasons stated above, JL's claim that the alleged express trust in her favour was created cannot be countenanced.

Whether there was a purchase money resulting trust

49 JL next contended that if an express trust had not been created, there was a purchase money resulting trust in her favour. Admittedly, such a resulting trust is outside the ambit of s 7 of the Act, which requires a declaration of trust with respect to immovable property or an interest in such property to be proved by some writing signed by some person who is able to declare such trust or by his will.

50 JL's counsel, Mr Lim, relied on the following passage from Slade LJ's judgment in *Huntingford v Hobbs* [1993] 1 FLR 736 with respect to a purchase money resulting trust:

The application of this principle ordinarily gives rise to no difficulty where the whole of the initial purchase price has been contributed by the two or more interested parties in the form of cash derived out of their respective resources without the benefit of a loan. Greater problems arise in cases such as the present where part of the money required has been borrowed on mortgage. On the particular facts of some such cases the court, for the purpose of ascertaining the parties' proportionate interests in the property, has thought it right to impute to them the intention that their contributions to the purchase should be ascertained as at the date when the property eventually came to be sold.

51 Each case must depend on its own facts but it ought to be noted that in *Tay Yok Swee v*

United Overseas Bank & Ors [1994] 2 SLR 217, LP Thean JA, who delivered the judgment of the Court of Appeal, said at p 222 as follows:

[T]he contention of a resulting trust ... is premised upon the presumption that the parties intended to hold the property in the shares they had contributed. It is an implied trust which operates to give effect to the presumed intentions of the parties. *Implications of such a trust, however, are rebutted whenever there exists clear evidence that the parties' intentions were to the contrary.* In the present case, the parties had made prior statements or declarations of their interests in the property: both the conveyance and the mortgage stated that the property was held by the joint venture parties as tenants-in-common, each in ... In our view, these express statements or declarations of the parties' shares in the property rule out completely any implication of a resulting trust arising from unequal contributions made by the parties to the 'costs of acquisition' of the property, assuming that the parties did make such unequal contributions as alleged...."

[emphasis added]

52 In the present case, there was clearly no room for the implication of any purchase money resulting trust. All the conveyancing and mortgage documents provided that JL had only a half share of the Purvis properties. In any case, after evaluating the evidence and listening to the witnesses, I am persuaded by LBN and KMS that their evidence that they had a half share of the Purvis properties is, on balance, more credible than that of JL's. As such, the question of a purchase money resulting trust in favour of JL does not arise and if JL has contributed more than her share for the Purvis properties, this should be taken into account when the amounts to which the parties are entitled from the surplus sale proceeds are computed. Needless to say, this will be another major stumbling block to the resolution of the dispute between the parties as neither they nor their accountants shed enough light on how much the parties contributed towards the purchase price of the Purvis properties and whether JL owed LBN and KMS any money for the Sucasa apartment in Kuala Lumpur.

Limitation of action

53 As I have found that there was no trust in favour of JL, whether or not JL's action is time-barred by virtue of s 22 of the Limitation Act need not be considered.

The counter-claim

54 As has been mentioned, LBN and KMS claimed that a sum of \$100,000 is due to them as this sum was loaned to JL on 9 March 2006 to allow her to pay United Overseas Bank, one of JL's creditors who had filed a proof of debt against her for the sum of \$910,000. JL did not deny the existence of the said loan but she contended that she "had a valid set-off" and claim that will extinguish the counter-claim. As such, I hold that LBN succeeds in her counter-claim.

Conclusion

55 JL's claims against LBN and KMS are dismissed with costs while LBN's counter-claim is allowed with costs.