Pereira Dennis John Sunny
v
Faridah bte V Abdul Latiff

[2017] SGHC 167

High Court — Suit No 37 of 2016
Chan Seng Onn J
16, 23, 26 January 2017; 25 March 2017

Trusts — Resulting trusts — Presumed resulting trusts

Trusts — Constructive trusts — Common intention constructive trusts

Equity — Fiduciary relationships — When arising

13 July 2017 Judgment reserved.

Chan Seng Onn J:

Introduction

1 The present action concerns a dispute over the beneficial ownership of several properties jointly owned by an estranged couple whose marriage turned sour. It commenced with the present suit taken out by the husband, Pereira Dennis John Sunny ("the Plaintiff"), against his then-wife, Faridah Binte V Abdul Latiff ("the Defendant") seeking a determination of the parties' respective share of four properties held in the joint names of the Plaintiff and the Defendant ("the Parties").

2 At the outset, I must state that on 14 February 2017, after the conduct of the trial and before I rendered this decision, the Parties were granted a divorce by the Singapore Syariah Court ("the Syariah Court"). However, the fact that the Parties are divorced has no bearing on my decision in the present suit, which relates to a determination of the pre-divorce positions of the Parties as beneficial owners of the four properties concerned. I will elaborate further on this distinction below (see [12]–[22]).

Background facts

3 The Parties were solemnised under Syariah law on 28 December 1995.[1] The Parties have a daughter in their marriage, who is now around 18 years old ("the daughter").[2] During the subsistence of the marriage, the primary breadwinner of the family was the Plaintiff, who earned income through his business, Offshore Logistics (Asia Pacific) Pte Ltd ("the Plaintiff's business"), as well as the rental proceeds collected from several properties that the Parties had purchased both abroad and in Singapore.[3] Before tying the knot with the Plaintiff, the Defendant was a divorcee[4] and had a son from her previous marriage ("the son").[5] The Plaintiff paid for the financial expenses of the son, including about $600,000 for his undergraduate studies in Australia.[6]

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1 Defendant's Closing Submissions at para 4.

2 Notes of Evidence, 16 January 2017, Cross-ex of the Plaintiff.

3 Notes of Evidence, 16 January 2017, Cross-ex of the Plaintiff; Notes of Evidence, 23 January 2017, Cross-ex of the Defendant; Notes of Evidence, 26 January 2017, Cross-ex of the Defendant.

4 Plaintiff's Reply Affidavit dated 29 December 2015 at para 7.

5 Notes of Evidence, 23 January 2017, EIC of the Defendant.

6 Notes of Evidence, 16 January 2017, Cross-ex of the Plaintiff; Notes of Evidence, 23 January 2017, Cross-ex of the Defendant.

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4 Between 1992 and 1998, the Defendant worked as a freelance aerobics instructor,[7] earning about $2,000 to $3,000 per month.[8] When the Defendant became pregnant sometime around November 1998,[9] the Defendant quit her job to become a full-time homemaker[10] and subsequently spent most of her time taking care of the daughter[11] with the assistance of a domestic helper.[12] Thereafter, from June 2004 to 2007, the Defendant operated a spa and fitness centre ("the Defendant's business") with her sister.[13] The Defendant did not herself provide any funds to run this business – $10,000 was contributed by the Defendant's sister and the remaining capital of about $90,000 was borne by the Plaintiff.[14] During the first two years of operation, the Defendant's business did not make any profits. Subsequently, when it started losing money, the Plaintiff had to pump in money to supplement its operating expenses.[15] The Defendant's business was eventually struck off in 2013.[16]

5 The Parties purchased several properties in their joint names throughout the course of their marriage. The present dispute, however, concerns only the following four properties (collectively referred to as "the disputed properties"):

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7 Defendant's Reply Affidavit dated 18 December 2015 at para 7.

8 Notes of Evidence, 26 January 2017, Cross-ex of the Defendant.

9 Notes of Evidence, 26 January 2017, Cross-ex of the Defendant.

10 Notes of Evidence, 23 January 2017, Cross-ex of the Defendant.

11 Defendant's Reply Affidavit dated 18 December 2015 at paras 11–12.

12 Notes of Evidence, 23 January 2017, EIC and Cross-ex of the Defendant.

13 Notes of Evidence, 23 January 2017, Cross-ex of the Defendant; Notes of Evidence, 26 January 2017, Re-ex of the Defendant.

14 Plaintiff's Supplementary Bundle of Documents at pp 4–5; Notes of Evidence, 23 January 2017, Cross-ex of the Defendant.

15 Notes of Evidence, 23 January 2017, Cross-ex of the Defendant.

16 Plaintiff's Supplementary Bundle of Documents at pp 4–5.

(a) 700 Upper Changi Road East, #02-08, Singapore 486830, which is a condominium ("the Changi Court property");

(b) 44 Toh Crescent, Singapore 507956, which is a landed property ("the Toh Crescent property");

(c) 209 Jalan Loyang Besar, Aston Residence, #01-14, Singapore 509489, which is a condominium ("the Aston Residence"); and

(d) 4 Queen's Road, Singapore 260004, #03-139, which is a Housing Development Board ("HDB") property ("the Queen's Road HDB").

6 Since the present dispute throws up several properties that were bought and sold at different times by the Parties, it is helpful to set out a chronology of the events that are not in dispute between the Parties, based on the evidence that is before the court:[17]

Date	Event	Remarks
28 Apr 1995	The Defendant sold her 3-room HDB flat situated at Block 83, Bedok North Road, #02-336, Singapore 460083 ("the 3-room flat").	The Defendant received cash from the sale proceeds in the amount of $72,894.51.

[17] See generally Plaintiff's Closing Submissions at paras 38 and 43; Defendant's Closing Submissions at para 4; Defendant's Reply Submissions at para 21.

No exact date available	The Defendant bought a 3 ½-room HDB flat situated at Block 83, Bedok North Road, #04-376, Singapore 460083 ("the 3 ½-room flat").	It was bought immediately after the sale of the 3-room flat.
28 Dec 1995	The Parties' marriage was solemnised under Syariah law.	
26 Nov 1997[18]	The Parties purchased a unit of Kemayan Riverview/Riverria Condovilla situated at Block MG3 Aronia, #08-10, Johor Bahru, Malaysia ("the Riverria condominium").	It was purchased at a price of RM408,000. No bank loan was taken. It was not sold until 2015.
24 Dec 1997[19]	The Plaintiff's business was incorporated and registered.	
22 Oct 1998	The Defendant sold her 3 ½-room flat.	The Defendant received cash from the sale proceeds in the amount of $83,447.84.
Nov 1998	The Defendant stopped working.	

[18] Plaintiff's Supplementary Bundle of Documents at p 9.

[19] Plaintiff's Bundle of Documents at p 270.

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23 Apr 1999[20]	The Plaintiff sold his mansionette situated at Block 54B, Jurong West Street 42, #04-173, Singapore 2264 ("the Jurong mansionette").	It was sold at the price of $366,000. The Plaintiff received $197,475.53 from the sale of the Jurong mansionette.
26 May 1999[21]	The Parties purchased a unit of Kondominium Petrie situated at Jalan Tengku Petrie Satu, #04-07, Johor Bahru, Malaysia ("the Petrie condominium").	It was purchased for a total sum of RM560,000.[22] No bank loan was taken. It was not sold until 2015.
10 Dec 1999	The Parties purchased the Changi Court property.	It was purchased for $665,000.[23] For the initial acquisition of the property, the Defendant paid $7,700 through her Central Provident Fund ("CPF") and the Plaintiff paid $57,300 through his CPF.[24] A housing loan of about $422,000 was taken by the Parties.[25] The rest was probably paid through cash. This property was repossessed by United Overseas Bank ("UOB") in November 2016 and subsequently sold.

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20 Plaintiff's Supplementary Bundle of Documents at p 1.

21 Plaintiff's Supplementary Bundle of Documents at pp 36 and 52.

22 Plaintiff's Supplementary Bundle of Documents at pp 37 and 54.

23 Plaintiff's Bundle of Documents at p 33.

24 Plaintiff's Bundle of Documents at p 34.

25 Plaintiff's Bundle of Documents at p 205.

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4 Dec 2003	The Parties purchased the Toh Crescent property.	It was bought for $1.75m[26] and the Plaintiff spent $1.2m on rebuilding the property.[27] Credit facilities of about $1.7m were taken out by the Parties.[28] This property was repossessed by UOB in November 2016.
22 Jun 2007	The Plaintiff purchased a unit of the One KL Condominium situated at Jalan Pinang City Centre, Unit 5-F, Kuala Lumpur, Malaysia, under the joint names of the Plaintiff and the son.[29]	It was purchased for RM3,942,000.[30]
May 2008	The Parties purchased the Aston Residence.	It was bought for $2.75m.[31] A loan of about $2.2m was taken by the Parties.[32] This property was primarily rented out after it was bought. It was sold to a third party in June 2016 but the sale proceeds are being held as stakeholders' monies pending the present decision or consent of the Parties.[33]

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26 Plaintiff's Bundle of Documents at p 25.

27 Plaintiff's Affidavit dated 4 November 2015 at para 9.

28 Plaintiff's Bundle of Documents at p 19.

29 Notes of Evidence, 16 January 2017, Cross-ex of the Plaintiff; Defendant's Reply Affidavit dated 18 December 2015 at Exhibit FBVAL-2.

30 Plaintiff's Supplementary Bundle of Documents at p 150.

31 Plaintiff's Bundle of Documents at p 40.

32 Plaintiff's Bundle of Documents at p 40.

33 Plaintiff's Closing Submissions at para 50.

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22 Aug 2008[34]	The Parties purchased a condominium situated at 10 Simei Rise, #02-26, Singapore 528804 ("the Changi Rise condominium").	It was bought for $617,000.[35] A loan of $431,900 was taken out from UOB by the Parties.[36]
28 Aug 2008	The Parties purchased a condominium situated at 3 Sandilands Road, #05-04, Singapore 546066 ("the Kovan condominium").	It was bought for $408,000.
2009	The Parties sold the Kovan condominium.[37]	
24 Sep 2009	The Parties purchased the Queen's Road HDB.	It was bought for $250,000.[38] The Plaintiff paid $870 through his CPF[39] and the Parties took a loan of about $200,000 from Oversea-Chinese Banking Corporation Limited.[40] The Queen's Road HDB was rented out after its purchase, with all of the rental proceeds collected by the Plaintiff.[41]

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34 Plaintiff's Supplementary Bundle of Documents at p 130.

35 Plaintiff's Supplementary Bundle of Documents at p 134.

36 Plaintiff's Supplementary Bundle of Documents at p 87.

37 Defendant's Reply Affidavit dated 18 December 2015 at para 17.

38 Plaintiff's Bundle of Documents at p 58.

39 Plaintiff's Bundle of Documents at p 57.

40 Plaintiff's Bundle of Documents at p 61.

41 Notes of Evidence, 16 January 2017, Cross-ex of the Plaintiff; Notes of Evidence, 26 January 2017, Cross-ex of the Defendant.

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Oct 2009	The Parties sold the Changi Rise condominium.[42]	It was sold for $735,000.[43]

The submissions of the Parties

The Plaintiff's case

7 In relation to the disputed properties, the Plaintiff seeks declarations for the vesting in him of a proportionate percentage of the beneficial interest in these properties, commensurate with his financial contribution. Further, where the Plaintiff is the 100% beneficial owner of the property, for the property to be transferred to his sole name if it has not yet been sold, or for him to be at sole liberty to deal with 100% of the sale proceeds if it has already been sold.

8 In this connection, the Plaintiff submits that he is effectively the sole contributor of all payments (including the purchase price and all outgoings) for the disputed properties. The Defendant had made no financial contribution to the disputed properties except for a nominal payment of $7,700 from her CPF in the acquisition of the Changi Court property.[44] Accordingly, the Plaintiff submits that he is (or was, depending on whether the relevant property has been sold) the 98.85% beneficial owner of the Changi Court property and the sole beneficial owner of the other three properties. Since these disputed properties are held in the Parties' joint names, on a resulting trust analysis, the Defendant holds the disputed properties (or the proceeds) on trust for him.[45]

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42 Defendant's Reply Affidavit dated 18 December 2015 at para 17.

43 Plaintiff's Supplementary Bundle of Documents at p 120.

44 Plaintiff's Closing Submissions at paras 42–43.

45 Plaintiff's Closing Submissions at paras 44 and 52.

9 In addition, the Plaintiff submits that the Defendant, by refusing to sign certain documents in relation to the re-financing of the disputed properties, had acted in breach of her duties as a trustee. The Plaintiff suffered damages in the form of losses to his company and personal finances, and thus seeks to claim the same from her.[46]

The Defendant's case

10 The Defendant submits that it is unmeritorious and/or duplicitous and/or not within the proper administration of justice for the High Court, as a civil court, to determine matters concerning the Parties' divorce, including the issue of how their matrimonial properties should be divided, given that the Parties were married under Syariah law and that their divorce has been registered at the Syariah Court.[47]

11 In the alternative, the Defendant submits the following:

(a) It is unnecessary and superfluous to determine the Parties' interest in the disputed properties as three out of the four properties have either been sold or repossessed by the mortgagee bank.[48]

(b) The Defendant contributed approximately $123,447.84 towards the purchase of the disputed properties, by using the sale proceeds of her two HDB flats to fund the Plaintiff's business.[49]

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46 Plaintiff's Closing Submissions at paras 51 and 52(2).

47 Defendant's Closing Submissions at paras 6–12.

48 Defendant's Closing Submissions at paras 13–15.

49 Defendant's Reply Submissions at paras 20-21.

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(c) The court must apply matrimonial principles in its determination of the Parties' interest in the disputed properties because the Parties are in the midst of divorce proceedings in the Syariah Court.[50]

(d) The court should apply Syariah matrimonial principles in its determination of the Parties' interest in the matrimonial properties.[51]

(e) There was, at the time of acquisition of the disputed properties, no intention on the part of the Plaintiff to create a trust over the properties and his arguments to that effect are merely afterthoughts.[52]

Not an exercise of matrimonial jurisdiction

12 Before I deal with the substance of the dispute, I shall first address the arguments made by the Defendant in relation to the overlap between civil jurisdiction and Syariah matrimonial law. It is clear to me that these arguments stem from a misunderstanding by the Defendant of the nature of the Plaintiff's claim in the present dispute. As I have alluded to above at [2], the suit brought by the Plaintiff concerns only the respective beneficial ownership of the Plaintiff and the Defendant in the disputed properties. This suit does not relate to the court's exercise of its matrimonial jurisdiction to divide the Parties' matrimonial assets. All that is being asked in the present suit is for the court to determine the respective shares of the Parties' beneficial interest. I am thus not exercising any form of matrimonial jurisdiction. In other words, the fact that the Parties are married (or divorced) has no relevance to the question of ownership in the

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50 Defendant's Closing Submissions at paras 23–33.

51 Defendant's Closing Submissions at paras 34–40.

52 Defendant's Closing Submissions at paras 41–45.

present case, which falls to be decided exclusively on an application of the common law principles of property ownership.

13 In a related vein, in connection with the operation of the presumption of advancement, the Court of Appeal in *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*") made the following observations:

> 80 Sections 51 and 52 of the [Women's Charter (Cap 353, 1997 Rev Ed)], taken with s 112 of the same legislation, have resulted in a "deferred community of property" approach in the determination of the property rights of spouses. The former two sections have *the effect of rendering the fact, that a woman is married, irrelevant to her proprietary interests; her entitlement to proprietary interests depends on the same rules as the entitlement of an unmarried woman or man.* The latter section, on the other hand, has empowered the courts with a broad discretion to divide "matrimonial assets" between spouses during or after matrimonial proceedings to terminate their marriage; it is based on the principle of "community of property", under which both spouses have a joint interest in certain property, regardless of which spouse purchased or otherwise acquired it: see Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at pp 799–800.
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> 81 Therefore, the "community of property" approach to the property rights of spouses only operates where there are matrimonial proceedings terminating a marriage. When the marriage subsists, property law, including the law of resulting trusts, applies, without modification, to determine the respective proprietary rights of spouses. The application of the ordinary rules of law and equity relating to real and personal property are discussed by Anthony Dickey QC in *Family Law* (LBC Information Services, 3rd Ed, 1997). He noted at p 587 that "*there are no special rules concerning the normal interests of spouses in property*"…
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> [emphasis added; original emphasis omitted]

14 Having set out this background, I turn now to address the Defendant's arguments in sequence. The Defendant submits that it is unmeritorious and/or duplicitous and/or not within the proper administration of justice for a civil court to determine property interests in matrimonial proceedings when the Parties are both Muslims and the marriage is itself governed by Syariah law. In fact, this

was the subject matter of an application (Summons No 1909 of 2016) taken out by the Defendant seeking a stay of the present suit ("the Stay Application") pursuant to s 17A(3)(*a*) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA"). The material part of s 17A of the SCJA reads as follows:

> **Civil jurisdiction — concurrent jurisdiction with Syariah Court in certain matters**
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> **17A.**—(1) Notwithstanding sections 16 and 17 [which deal with the High Court's general and specific civil jurisdiction], the High Court shall have no jurisdiction to hear and try any civil proceedings involving matters which come within the jurisdiction of the Syariah Court under section 35(2)(*a*), (*b*) or (*c*) of the Administration of Muslim Law Act (Cap. 3) in which all the parties are Muslims or where the parties were married under the provisions of the Muslim law.
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> (2) Notwithstanding that such matters come within the jurisdiction of the Syariah Court under section 35(2)(*d*) or (*e*), 51 or 52(3)(*c*) or (*d*) of the Administration of Muslim Law Act, *the High Court shall have jurisdiction as is vested in it by any written law to hear and try any civil proceedings involving matters relating to* —
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> (*a*) maintenance for any wife or child;
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> (*b*) custody of any child; and
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> (*c*) *disposition or division of property on divorce*.
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> (3) Where civil proceedings involving any matter referred to in subsection (2)(*b*) or (*c*) and involving parties who are Muslims or were married under the provisions of the Muslim law are commenced in the High Court, *the High Court shall stay the civil proceedings* —
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> (*a*) involving any matter referred to in subsection (2)(*b*) or (*c*), *if the civil proceedings are commenced on or after the commencement of proceedings for divorce in the Syariah Court* or after the making of a decree or order for divorce by the Syariah Court or on or after the registration of any divorce under section 102 of the Administration of Muslim Law Act (Cap. 3) *between the same parties*, unless a Syariah Court commencement certificate in respect of the civil proceedings has been filed with the High Court;
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> […]
>
> [emphasis added]

15 At the time of the hearing for the Stay Application, there was a pending Originating Summons No 49735 taken out by the Defendant in the Syariah Court on 29 March 2016, seeking an order for divorce *vis-à-vis* the Plaintiff. The Assistant Registrar ("AR") hearing the Stay Application dismissed the application for two reasons. First, since the present suit (commenced on 6 November 2015) was not "commenced on or after the commencement of proceedings for divorce in the Syariah Court" (*ie*, 29 March 2016), there was no basis to order a mandatory stay under s 17A(3)(*a*) of the SCJA. Second, there was no other basis for the court to exercise its discretion to order a stay of the present suit. The AR's written Judgment was issued in *Pereira Dennis John Sunny v Faridah bte V Abdul Latiff* [2016] SGHCR 9. The AR's decision was appealed against and I dismissed the appeal in Registrar's Appeal 251 of 2016.

16 Viewed against this backdrop, the Plaintiff submits that this issue raised by the Defendant is *res judicata*, vexatious and an abuse of process.[53] The Defendant submits that it is not *res judicata* because the Syariah Court backdated the date of divorce to 5 October 2015, whereas the present suit was commenced only on 6 November 2015.[54] Presumably, the Defendant is relying on the argument that there has been a material change in circumstance since the Stay Application was decided: the Parties were declared to have been divorced on 5 October 2015, which is before the civil proceedings commenced on 6 November 2015.

17 In my judgment, the Defendant's argument is misguided. As evident from the language of s 17A(2) read with s 17A(3) of the SCJA (see above at

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53 Plaintiff's Reply Submissions at paras 5–6.

54 Defendant's Reply Submissions at paras 13–15.

[14]), what matters is whether the civil proceeding was "commenced on or after the *commencement of proceedings for divorce* in the Syariah Court" [emphasis added]. The key date is thus the date of *commencement* of the divorce proceedings and not the actual date of divorce as declared by the Syariah Court. To this extent, the issue is clearly *res judicata* and need no further consideration.

18 Even if I am wrong on this point, I take the view that the present suit does not relate to "disposition or division of property on divorce", as stated in s 17A(2) of the SCJA. Instead, as emphasised above, it relates to a determination of the beneficial ownership of the disputed properties *irrespective* of the marital status of the Parties. This means that the question of whether the High Court has concurrent jurisdiction with the Syariah Court under s 17A(2) of the SCJA to try this dispute does not arise in the first place. The High Court has not eclipsed or replaced the matrimonial jurisdiction of the Syariah Court.

19 In fact, following the present suit, the Parties are free to seek a ruling from the Syariah Court on the division of their matrimonial assets, in connection with their divorce. In exercising its matrimonial jurisdiction, the Syariah Court will divide and apportion *post-divorce* all the matrimonial assets as it thinks "just and equitable": see s 52(7) of the Administration of Muslim Law Act (Cap 3, 2009 Rev Ed) ("AMLA"). Here, not only a *wider* pool of assets than the disputed properties will be considered, all the facts and considerations stated in s 57(8) of the AMLA will also be taken into account. This would be akin to the "community of property" approach as it was referred to by the Court of Appeal in *Lau Siew Kim* (see above at [13]).

20 From the foregoing analysis, it is clear that neither matrimonial principles nor Syariah law is relevant to the present dispute, although they may arise at the stage where the Syariah Court is asked to divide the matrimonial

assets between the Parties. This point is also echoed by a local commentator (see Ahmad Nizam bin Abbas, "The Islamic Legal System in Singapore" [2012] 21(1) Pacific Rim Law & Policy Journal 163 at p 175):

> Furthermore, sometimes cases that begin in the civil courts evolve into cases that fall within the jurisdiction of the Syariah Court. For example, prior to the commencement of a divorce case[,] Muslim spouses may *litigate issues of property ownership. These issues are governed not by Muslim law but by the common law of property, subject to the equitable doctrines of trusts* [citing *Madiah Bte Atan v Samsudin Bin Budin* [1998] 2 SLR 679]. However, when a divorce case is commenced, the Syariah Court acquires not only the power to issue a divorce decree, but also to make ancillary orders regarding that divorce, including orders about matrimonial assets. In such cases, the courts must work out some method of *avoiding conflicting rulings*.
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> [emphasis added]

21 As cautioned by Mr Nizam, the courts must seek to avoid inconsistent rulings. Thus, if, hypothetically, I declare that the Changi Court property belongs solely to the Plaintiff and the Aston Residence belongs solely to the Defendant, the Syariah Court should, in the division of the matrimonial assets, avoid making or relying on a different finding of fact that the Changi Court belongs solely to the Defendant and the Aston Residence belongs solely to the Plaintiff. Similarly, if I find that the Plaintiff made all the financial payments in the acquisition of the Changi Court property, the Syariah Court should avoid finding that the Defendant had paid for the same property in whole or in part for the purpose of ascertaining the respective financial contributions of the parties towards the acquisition of the property. The same would apply if the Syariah Court had first made certain findings of fact; the civil courts, including the High Court, should similarly avoid making any inconsistent findings. Conflicting decisions on factual findings should thus be avoided.

22 Otherwise, the Syariah Court's jurisdiction to divide matrimonial assets is fully protected. For instance, if the Syariah Court takes the view, as a matter of what is "just and equitable" in dividing the matrimonial assets and in taking into account other factors such as the significant non-financial contributions made by the Defendant as the primary caregiver of the daughter, that the Changi Court property held in the joint names of the Parties should be allocated wholly to the Defendant instead of the Plaintiff as part of the Defendant's share of all the matrimonial assets, the Syariah Court is fully entitled to order the Plaintiff to transfer his interest in the Changi Court property to the Defendant. Such a possible determination does not contradict my decision in the present suit nor does it necessarily make my decision duplicitous because what I am deciding in this case is completely non-matrimonial in nature. To that extent, given the additional factors and considerations operative in the division of matrimonial assets (apart from purely financial contributions of the respective parties in the acquisition of various matrimonial assets), there is no overlap between the decision in the present suit concerning the Parties' respective beneficial interest in the disputed properties and the possible subsequent division of all matrimonial assets owned by the Parties in the Syariah Court. Further, following the present suit, it might well be that neither of the Parties would apply for a division of matrimonial assets by the Syariah Court under s 52(3)(*d*) of the AMLA or by the civil courts.

My decision

23 Having explained that the present suit solely concerns the determination of the Parties' beneficial interest in the disputed properties, I am guided by the following structured approach laid down by the Court of Appeal in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("C*han Yuen Lan*") at [160]:

(a) Is there sufficient evidence of the parties' respective financial contributions to the purchase price of the property? If the answer is "yes", it will be presumed that the parties hold the beneficial interest in the property in proportion to their respective contributions to the purchase price (*ie*, the presumption of resulting trust arises). If the answer is "no", it will be presumed that the parties hold the beneficial interest in the same manner as that in which the legal interest is held.

(b) Regardless of whether the answer to (a) is "yes" or "no", is there sufficient evidence of an express or an inferred common intention that the parties should hold the beneficial interest in the property in a proportion which is different from that set out in (a)? If the answer is "yes", the parties will hold the beneficial interest in accordance with that common intention instead, and not in the manner set out in (a). In this regard, the court may not impute a common intention to the parties where one did not in fact exist.

(c) If the answer to both (a) and (b) is "no", the parties will hold the beneficial interest in the property in the same manner as the manner in which they hold the legal interest.

(d) If the answer to (a) is "yes" but the answer to (b) is "no", is there nevertheless sufficient evidence that the party who paid a larger part of the purchase price of the property ("X") intended to benefit the other party ("Y") with the entire amount which he or she paid? If the answer is "yes", then X would be considered to have made a gift to Y of that larger sum and Y will be entitled to the entire beneficial interest in the property.

(e) If the answer to (d) is "no", does the presumption of advancement nevertheless operate to rebut the presumption of resulting trust in (a)? If the answer is "yes", then: (i) there will be no resulting trust on the facts where the property is registered in Y's sole name (*ie*, Y will be entitled to the property absolutely); and (ii) the parties will hold the beneficial interest in the property jointly where the property is registered in their joint names. If the answer is "no", the parties will hold the beneficial interest in the property in proportion to their respective contributions to the purchase price.

(f) Notwithstanding the situation at the time the property was acquired, is there sufficient and compelling evidence of a subsequent express or inferred common intention that the parties should hold the beneficial interest in a proportion which is different from that in which the beneficial interest was held at the time of acquisition of the property? If the answer is "yes", the parties will hold the beneficial interest in accordance with

> the subsequent altered proportion. If the answer is "no", the parties will hold the beneficial interest in one of the modes set out at (b)–(e) above, depending on which is applicable.

24 In summary, I find that under step (a), whilst there is sufficient evidence of the Plaintiff's contribution in respect of all of the disputed properties, there is, at best, evidence of the Defendant's contribution only in respect of the Changi Court property. Under steps (b) and (f), there is no sufficient evidence of any common intention between the Parties during any point in time, at and after the acquisition. Under steps (d) and (e), the evidence reveals that the Plaintiff did not intend his contributions to the property as a gift to the Defendant and the presumption of advancement applied to rebut the presumed resulting trust arising under step (a) in respect of the Changi Court and the Toh Crescent properties. My detailed reasons are as follows.

Step (a) – Resulting trust analysis

The law on resulting trusts

25 The starting point is that legal joint tenants who have contributed unequally to the purchase price of the property will be presumed to beneficially own a share of the property proportionate to their respective contributions to its purchase price (*Lau Siew Kim* at [83]; *Neo Hui Ling v Ang Ah Sew* [2012] 2 SLR 831 at [14]–[15]). However, as the Court of Appeal emphasised in *Chan Yuen Lan*, it is generally right to apply the presumption of resulting trust *only* where there is no or insufficient evidence from which to prove or infer the intention of the transferor or contributor, at least on a balance of probability (at [51]–[52]; see also *Lau Siew Kim* at [36]). Thus, the main question is whether there is sufficient evidence which adequately reveals the intention of the transferor or contributor. If not, (or for that matter, if the evidence is so finely balanced as to be equivocal), the presumption of resulting trust will be relied

upon. This is in line with the lack-of-intention analysis being the doctrinal basis for resulting trusts (*ie*, the resulting trust is a response to a lack of intention on the part of the person providing the purchase price to benefit the recipient), as alluded to by the Court of Appeal in *Chan Yuen Lan* at [44].

26 It is also trite that resulting trusts crystallise at the time of acquisition and direct financial contributions are contributions to the purchase price of the property at the time of its acquisition (see *Lau Siew Kim* at [112]; *Chan Yuen Lan* at [53]).

27 The more vexed question is the relevance of subsequent mortgage payments and this has invited much exposition by the apex court in Singapore. In *Lau Siew Kim*, the Court of Appeal expressly limited direct contributions to mortgage repayments made on the basis of an agreement when the loan was taken out for the purpose of acquisition of the property at that time. Mortgage repayments without a prior agreement are thus not direct contributions to the purchase price in the context of resulting trusts (at [116]). In *Chan Yuen Lan*, there was a slight step back from this, as the Court of Appeal stated that it was minded to consider whether this rule ought to be relaxed such that subsequent mortgage payments, even where there was no prior agreement, can be considered direct contributions (at [55]–[57]). Subsequently, in *Su Emmanuel v Emmanuel Priya Ethel Anne and another* [2016] 3 SLR 1222 ("*Su Emmanuel*"), the Court of Appeal conclusively determined that subsequent mortgage payments cannot be taken into account, unless they are referable to a prior agreement between the parties at the time the loan for the purchase of the property is taken out on how they are to service the loan repayments, *ie*, reverting back to the position in *Lau Siew Kim*:

> 89 In our judgment, it is correct to analyse the position by reference to the responsibility that is undertaken by each party

> for loan repayments at the time the property is acquired. When a mortgage is taken out, the crucial consideration is the parties' intentions, at the time the property is acquired, as to the ultimate source of the funds for purchase of that property (see *Lau Siew Kim* at [116] and *Bertei v Feher* [2000] WASCA 165 at [44]). *Actual mortgage payments made at a later time would therefore only count as direct contributions to the purchase price where these are referable to, and in keeping with, a prior agreement between the parties as to who would be liable to repay the loan.* It is, as we have said earlier, the parties' agreement at the time of acquisition that is critical.
>
> …
>
> 92 In contrast, *actual repayments that are not referable to the parties' agreement as to how they intend to service the mortgage should not be taken into account for determining the ownership interest on a resulting trust analysis* because, as we have said, the interest under a resulting trust crystallises at the time of purchase. If such subsequent payments were computed as part of the parties' contributions to the purchase price, it would mean that the parties' interests under the resulting trust are in a state of flux, increasing or decreasing as the case may be when one party makes repayment of the mortgage. In our judgment, this would be wrong in principle.
>
> [emphasis added]

28 This was reiterated in the more recent decision of the Court of Appeal in *Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 ("*Tan Yok Koon*"), which affirmed the view in *Lau Siew Kim* and *Su Emmanuel* as follows (at [142]):

> 142 In a resulting trust analysis, the loan repayments are relevant only in so far as there is an agreement on how the loan is to be repaid at the time the asset is acquired: see the decision of this court in [*Lau Siew Kim*] at [116]–[117]. We agree with the Judge that the focus should therefore generally be on who took on liability for the [loan]. What this refers to is whether there was any agreement, at the time the loan was taken, as to the *ultimate source* of the funds that would be used to repay the loan. As this court recently cautioned in [*Su Emmanuel*] at [90], the persons who took on the liability is only one piece of evidence in the puzzle, and subsequent conduct may also be relevant insofar as it is proof of the agreement made at the date of the loan:

> Many factors are engaged in the determination of the precise agreement or understanding between the parties as to who would repay the mortgage. **The focus should not lie exclusively on who took on *liability* for the mortgage as against the bank.** Often such liability will be joint because the bank would like to have the widest choice of the parties against whom it can enforce the liability under the mortgage. Rather, the question will turn on what the operating agreement was between the co-owning parties at the time the loan was taken out. In this regard, **subsequent conduct may be relevant to the extent that it sheds light on such an agreement (if any) between the co-owners.** … [emphasis in original in italics; emphasis added in bold]

[emphasis in original]

Presumed resulting trust arises in the Plaintiff's favour

29 Applying these principles to the facts of the present case, I find that a presumed resulting trust arises in the Plaintiff's favour in respect of all four of the disputed properties, albeit the content of each presumption varies. In summary, I find that there is a presumed resulting trust held by the Defendant in favour of the Plaintiff in respect of the entire beneficial ownership of the Toh Crescent property, the Aston Residence, and the Queen's Road HDB (or the sale proceeds if the relevant property has been sold). In relation to the Changi Court property, the Defendant holds a presumed resulting trust over (at best for the Defendant) 80.3% of the net sale proceeds in favour of the Plaintiff. I shall now turn to explain these findings.

(1) Plaintiff's financial contributions

30 In the present case, there is no direct evidence of the Parties' respective financial contributions to the disputed properties at the time of their acquisition. The bank statements adduced are of limited utility because they only reflect the

transactions made after 2010,[55] whereas all the disputed properties were purchased prior to that time, the last being the Queen's Road HDB which was acquired in September 2009.

31 Notwithstanding the absence of such direct evidence, it is undisputed between the Parties that the Plaintiff had financially contributed towards the upfront purchase price of all the disputed properties and the Defendant had contributed $7,700 of her CPF towards the upfront purchase price in respect of the Changi Court property.[56] With respect to the mortgages taken out to pay for the balance of the purchase prices, I note that all the mortgages were taken out in the joint names of the Parties such that the default position in the absence of evidence of any operating agreement as to who would be repaying the mortgage would be that both of them are assumed to have contributed equally to a part of the total purchase price through the taking up of the various mortgages for which both are jointly liable to the mortgagee bank (see *Su Emmanuel* at [91]; *Curley v Parkes* [2004] EWCA Civ 1515 at [14], cited in *Chan Yuen Lan* at [53]). As I explained earlier (see above at [27]–[28]), this default position can be altered if there is evidence of any prior agreement between the Parties at the time the various mortgages were taken as to who was ultimately to bear responsibility for the mortgage payments.

32 In the present case, although there was no express agreement between the Parties at the time the mortgages were taken out for acquiring the various disputed properties as to who should pay for the mortgage instalments, it is clear to me that there was an implied agreement between them that the Plaintiff was

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55 Plaintiff's Bundle of Documents at pp 60–218.

56 Notes of Evidence, 23 January 2017, Cross-ex of the Defendant.

to pay for all the instalments. This only made sense as the Defendant was a homemaker and had no sources of income of her own. Consistent with this agreement, the available bank statements show that the Plaintiff paid for most of the mortgage instalments.[57] The Defendant does not dispute that the Plaintiff had paid for *all* the mortgage instalments.[58]

33 This outcome is consistent with the following observation made in *Su Emmanuel*, which applies squarely to the present case:

> 91 In most cases, the context in which the loan was taken out would show what the understanding between the parties was. For example, if a couple in a spousal relation obtained a joint loan for purchase of a property as their matrimonial home where both spouses are gainfully employed, it would usually follow, in the absence of any other contrary indication, that the understanding between them was that each would do their utmost to assist and contribute to the cost of servicing the mortgage. If, on the other hand, *only one spouse is working at the time, then the inferred understanding will likely be that the working spouse would be the one to pay off the loan.* These examples are merely illustrative of the importance of context in discerning the understanding and agreement between the parties at the time the loan is obtained….
>
> [emphasis added]

34 Accordingly, even though the mortgages were taken out in the joint names of the Parties, I find that there was an agreement between the Parties, in respect of each of these mortgages, at the time the loans were taken, that the Plaintiff would service all the mortgage instalments. This means that the Plaintiff should be taken to have contributed *entirely* to the acquisition of these four disputed properties, by paying not only for the upfront purchase price but also the balance, through an agreement with the Defendant that he would be

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57 See, *eg*, Plaintiff's Bundle of Documents at pp 67, 70–74, 78–81 and 84–110.

58 Notes of Evidence, 26 January 2017, Re-ex of the Defendant.

responsible to service all the mortgage instalments. The only exception is the Changi Court property, to which the Defendant contributed (at best) 19.7% of the total purchase price (as will be explained later).

(2) Defendant's financial contributions or lack thereof

35 The way in which the Defendant seeks a share in the disputed properties is through her contribution of $123,447.84 to the Plaintiff. This amount is derived from the sale proceeds of the 3-room ($72,894.51) and 3½-room flats ($83,447.84), which were previously owned by the Defendant. The Defendant admitted to using part of the $72,894.51 to pay for the purchase price and renovation works of the 3 ½-room flat and for the deposit of a Proton Saga motor vehicle such that she was only left with about $40,000.[59] Her evidence was that this sum of $40,000 as well as the amount of $83,447.84, giving a total of $123,447.84, was left in her bank account to which the Plaintiff had free access.[60] In this connection, the Defendant stated the following in her affidavit:[61]

> 6. … I had provided the early platform by using the net sales proceeds of my two previous HDB flats owned by me to financially support him, and to start off his company and his business.
>
> …
>
> 16. … I had contributed towards the capital of the Plaintiff's business which had subsequently prospered and led to his income that he had mentioned and naturally took over all of our finances. I had stood by him and supported him financially and emotionally when he was jobless and penniless. As mentioned in paragraph 6 above, the sales proceeds of my two previous HDB flats was used for his business capital, a car for him to

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59 Notes of Evidence, 26 January 2017, Cross-ex of the Defendant.

60 Notes of Evidence, 23 January 2017, Cross-ex of the Defendant; Notes of Evidence, 26 January 2017, Cross-ex of the Defendant.

61 Defendant's Reply Affidavit dated 18 December 2015 at paras 6 and 16.

(*cont'd on next page*)

navigate around and the purchase of a condominium in Johor Bahru.

36 Upon further questioning of the Defendant ("Df") during cross-examination by the Plaintiff's counsel, Mr Ignatius Joseph ("IJ") and when questioned by the court ("Ct"), the Defendant stated the following:[62]

Ct: When did you give [your money] to him?

Df: During the course of marriage, *the money is being used together.*

Ct: Used together is different from giving! Giving means you write a cheque or give the money to his account.

Df: No. As husband and wife, we do not issue cheques to each other.

Ct: Sure. But listen to my question – my question is a very specific one: was the [sale proceeds] in your bank account or a joint bank account?

Df: Into my own bank account.

Ct: So from your own bank account, did you actually transfer [the money] to his bank account or it remained in your bank account?

Df: It remained in my bank account.

Ct: And then slowly it is being drawn down by you?

Df: Yes.

Ct: So you used that money to do what?

Df: To give it to my husband.

Ct: How did you give it to him? This and that – $10 each time. When you draw money, how do you give? It is not like you gave him one lump sum of $50,000 example, am I right?

Df: I did not do that but partially.

Ct: Then what did you do? You take out drips and draps and give him then and then like pocket money ah? How

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62 Notes of Evidence, 23 January 2017, Cross-ex of the Defendant.

did you do it? $1000 at a time, $50 at a time – so tell me how did you give him the money? Simple as that.

Df: Okay, I will tell you now. ***It was withdrawn partially whenever he needs the money or he wants to pay for something. He will just withdraw the money and use.***

…

IJ: So you are saying the whole amount of [the sale proceeds] went in?

Df: … gradually [the $123,447.84] was given to my husband.

IJ: Right, do you have any documentation to show how this amount was drawn down?

Df: Hmm, sometimes we use the ATM machine. Hmm yah but it will not be stated in my statement of account. And as husband and wife –

IJ: No no no just answer the question, *do you have any documents showing this?*

Df: ***At this point, no***.

IJ: … Now, is it your evidence that the entire money you received from the sale of your flat went into your bank account and from your bank account, you drew down the monies?

Df: Okay, naturally it is under my name. It will go into my bank account and from the bank account, we got an ATM card. So my husband can also draw the money using my ATM card.

IJ: *So are you saying that your husband drew out all of the monies using your ATM card?*

Df: *He* ***must*** *have because it has been used and* ***I never questioned him actually***.

…

Ct: After you got this money, what big sums came out that were used? For purchases of properties? Then it must tally with the bank claims.

Df: Now I have a clear picture. My money came in April or early 1998. This was used to pay partial payment for the Riverria Condo. Because there is a deposit and we did

not take loan from the bank. And we used the money to pay for the Riverria Condo in 1997 we bought.

Ct: What else was it used for?

Df: ***It is all in my husband's hand I think by then. And he uses it for his business also.***

Ct: So you ***think*** he used for his business ah?

Df: ***Yes***.

…

Ct: The picture she is painting is that she did not invest any money. She just allowed the husband to use [her money] for whatever purposes he saw fit and trusted him to do the right thing. Your evidence today simply is that *your husband invested your money – you are not sure what he did specifically with it*. To me, the Defendant behaved like a housewife and this is quite believable. Am I right witness?

Df: Yes.

…

IJ: So you are now saying that it went towards the acquisition of the properties as well?

Df: Hmm. Yes. It can be. Because it was given to him. ***How he manage the money; how he manages the finance, I don't know.***

[emphasis added in italics and bold italics]

37 From the above testimony, it is clear that there is no evidence whatsoever to show that the Defendant had directly contributed to the purchase price of the disputed properties. In fact, the Defendant herself could not positively confirm that the monies had been so used. To the contrary, the Defendant's evidence in her affidavit (see above at [35]) suggests that the sale proceeds of her two HDB flats was not used to purchase any of the disputed properties: she only stated that it was used to fund his business capital, a car, and to buy a condominium in Johor Bahru. No reference was made to the purchase of any of the disputed properties in her affidavit.

38 In the circumstances, all I can decipher is that the Defendant had $123,447.84, which was used by the Plaintiff to do whatever he wanted to do. She could not be sure whether it was used for the Plaintiff's business, to buy properties, or to do something else because she did not control or monitor his usage of her funds.

39 I will make some key observations in relation to the evidence. First, the Defendant claims to have a property interest in the disputed properties by virtue of the fact that the properties were bought from the income generated through the Plaintiff's business, for which she had provided initial capital. However, the Defendant is unable to prove exactly how much she had contributed to the Plaintiff's business. Leaving aside the evidential point, even if it could be proved that she had contributed a quantifiable sum of money to the Plaintiff's business capital, I find it difficult to conclude that this would, without more, constitute a *direct* financial contribution to the *purchase price* of the disputed properties: see *Lau Siew Kim* at [114]. If indirect contributions in relation to the property (*eg*, in the form of repairs, insurance or taxes) are not in themselves generally sufficient to constitute a "direct" contribution capable of constituting a presumed resulting trust, it will be anomalous for the contribution claimed by the Defendant here to be considered "direct" when it has passed through the vehicle of the Plaintiff's business.

40 Second, during the examination-in-chief of the Defendant by her counsel, Mr Mohammed Shakirin ("MS"), the Defendant alluded to the fact that she had also taken care of the household and their daughter, and indirectly

supported the Plaintiff's business, such that she should be given an interest in the disputed properties:[63]

> Df: Well at the beginning, we had no domestic helper. So I did everything. I was also working and supporting the family. I was an aerobics instructor, doing freelance. I also had a son to look after. In 1999, I gave birth to my daughter and it was then I was provided with a helper. I was the only one who raised her up until she was 16.
>
> MS: Apart from taking care of the daughter, was there anything you did for the house?
>
> Df: Well, by then, I was running errands for my husband's business too. So wherever he wants me, he wants to purchase assets or anything like that, he wants me to come along with him and see and he will always be discussing with me what are the properties that he should buy. Even when he wanted to start a business, he asked me the question: "do you think I can make it?" That is the question he asked me. So I was all the way there to support him. Even in his business also indirectly.

41 These are clearly not direct contributions to the acquisition of the disputed properties. Whilst these contributions by the Defendant may be taken into consideration in matrimonial proceedings for the purpose of division of matrimonial assets, it is not appropriate for the court to take cognisance of these contributions in the context of a resulting trust analysis to determine the Parties' respective beneficial interest in the disputed properties. This point is similarly echoed by Professor Leong Wai Kum (see Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 2nd Ed, 2013) at pp 463–464):[64]

> The dispute between spouses is regulated and resolved by the same principles that regulate and settle similar disputes between strangers. To have any interest in property a spouse must have contributed money's worth towards its acquisition.

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63 Notes of Evidence, 23 January 2017, EIC of the Defendant.

64 Plaintiff's Closing Submissions at para 8.

> In particular, *contributing in non-monetary efforts such as homemaking or taking care of children does not entitle the spouse to any interest in the property*.
>
> [emphasis added]

42 Third, and most importantly, when questioned by the court as to when her sum of $123,447.84 had been used up, it was the Defendant's evidence that her bank account had been substantially depleted by 1999:[65]

> Df: I can't tell you exactly but I know that by the time –
>
> Ct: Which year?
>
> Df: 1999
>
> Ct: By 1999, become small already?
>
> Df: Small already and then yah – he was saying that I was living with the rental money in Johor – yah – I do not have money – I was living with the rental of that other apartment from year 2000 onwards.

43 As argued by the Plaintiff, this is an important fact in the resulting trust analysis.[66] This is because if the Defendant had no remaining monies of her own after 1999, she could not logically have contributed any funds to the acquisition of the Toh Crescent property, the Aston Residence, as well as the Queen's Road HDB, because all of these properties were acquired after 1999. The only properties acquired during or before 1999 are the Riverria condominium, Petrie condominium, and the Changi Court property. If it is true that the Defendant had directly paid for the acquisition of any of the properties jointly owned by the Parties using her sum of $123,447.84, it could only have been for these three properties, of which only the Changi Court property forms part of the disputed properties in the present proceedings. There is also no possibility of these

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65 Notes of Evidence, 23 January 2017, Cross-ex of the Defendant.

66 Plaintiff's Closing Submissions at paras 39–40.

monies being ploughed back into other disputed properties, as the Malaysian properties and the Changi Court property were not sold until 2015 (for the Riverria and Petrie condominiums) and 2016 (for the Changi Court property). The Defendant not having demonstrated any other source of funds from her, this foregoing analysis strongly suggests that only the Plaintiff's monies could have been used to purchase the other disputed properties (*ie*, the Toh Crescent property, the Aston Residence and the Queen's Road HDB). This would buttress the finding that a presumed resulting trust over 100% of the beneficial interest in each of these three properties arises in favour of the Plaintiff.

44 In relation to the Changi Court property, it is undisputed that the Defendant had used $7,700 of her CPF to pay for the upfront cost of the property (amounting to 1.16% of the total purchase price of $665,000). Other than that, there is no clear evidence of how much the Defendant had paid (out of the $123,447.84 cash that she had) for the acquisition of the Changi Court property. The Defendant herself was not able to point to a figure as her evidence was simply that the Plaintiff could do whatever he wanted with that sum of money. Thus, it might well be possible that the entire sum of $123,447.84 was used to purchase the earlier properties, *ie*, the Riverria and Petrie condominiums (or either one of them) in Johor Bahru, before the Changi Court property was purchased in 1999. If so, this would mean that no part of the $123,447.84 was used to purchase the Changi Court property, such that the Defendant should similarly hold the Changi Court property on a presumed resulting trust for the Plaintiff except for her share of 1.16%.

45 However, even though the Defendant cannot prove exactly how much she paid for the acquisition of the Changi Court property, I find that the Defendant has, on her best case, paid $131,147.84 (*ie*, the sum of $123,447.84

and $7,700) towards the purchase price of the Changi Court property. This is evident from the following exchange between the Defendant and the court:[67]

> Ct: … as far as you are concerned, your donation to the family is $120,000. The rest were all spent. In short. Right?
>
> Df: To start the family – to start the business.
>
> Ct: All families need expenditure what.
>
> Df: Yup but I was working too then.
>
> Ct: Yes I know. *What I am saying is that you can't say that your contribution was more than $120,000?*
>
> Df: *Yes.*
>
> [emphasis added]

46 This leads me to conclude that the Defendant has, on her best case, beneficial ownership over 19.7% (as opposed to the worst case of 1.16%) of the net sale proceeds from the Changi Court property (*ie*, Defendant's contribution at best is a total of $131,147.84 out of the purchase price of $665,000 for the Changi Court property, which works out to be 19.7%). In the final analysis, this precise calculation is moot because I find that the presumption of advancement applies unrebutted in relation to the Changi Court property such that the Parties are joint tenants in equity for this property (see below at [60]–[63]).

Steps (b) & (f) – Common intention constructive trust analysis

47 I turn next to the question of whether there is a common intention constructive trust ("CICT") that exists between the Parties in respect of the disputed properties.

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[67] Notes of Evidence, 23 January 2017, Cross-ex of the Defendant.

(*cont'd on next page*)

48 None of the Parties made any argument on this issue. Nevertheless, I shall briefly address this because the Defendant alluded to some kind of common intention in her testimony during cross-examination:[68]

> IJ: Was your $83,000 used to buy a property?
>
> Df: It wasn't planned to buy any property at that point. It was just for us to buy a house for us to live in. So that $83,000 in 1998, when I sold my [3 ½-room flat], I did not buy another flat or any other things, except for a house in [Johor Bahru], which as the Plaintiff says is the Riverria condominium. Also part of that money was used for his business. So the business was supposed to be also my business but he quietly just put his name. *So that's where he promise me that anything from the business that he buys – personal property – will be shared between the two of us 50:50.*
>
> …
>
> IJ: With respect to the 4 properties involved today, do you confirm that they were all investments?
>
> Df: As far as I am concerned, my husband told me that it was bought for the family. So it is family investment. *So anytime we buy or we sell, we share the profits*. And whenever he buys, those moneys that he has accumulated – it is both our moneys. It is not only his. That's what he told me.
>
> [emphasis added]

49 The Plaintiff denied the existence of any intention to share the disputed properties or their sale proceeds with the Defendant.[69] Given this situation of having to weigh one person's word against another's, it is important for me to consider the requirements to be satisfied in order to prove a CICT. According to the test in *Chan Yuen Lan*, which was restated in *Su Emmanuel*:

> 83 … In *Chan Yuen Lan*, we surveyed the law on the common intention constructive trust in the UK, Australia and

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68 Notes of Evidence, 23 January 2017, Cross-ex of the Defendant.

69 Notes of Evidence, 16 January 2017, Cross-ex of the Plaintiff.

> Canada. It is not necessary to retrace the comprehensive discussion in *Chan Yuen Lan* (at [95]–[161]), save to restate a few principles. First, in the absence of any evidence of a common intention between the parties as to how the beneficial interest in the property concerned is to be held, the resulting trust remains the default analysis (*Chan Yuen Lan* at [158]). Second, to successfully invoke the common intention constructive trust, the common intention (which may subsist either at, or subsequent to, the time the property was acquired) between the parties may either be express or inferred. Third, *there must be sufficient and compelling evidence of the express or inferred common intention* (see *Chan Yuen Lan* at [160(b)] and [160(f)]).
>
> [emphasis added; original emphasis omitted]

50 On the evidence, I find that there is no sufficient and compelling evidence of a CICT in respect of each of the four disputed properties. Even if it is to be accepted that the Defendant had believed all along that she held an equal share in the properties, for a CICT to be found the intention "must in fact be *common* to all the parties involved" (*Su Emmanuel* at [84]) [emphasis in original]. There is no evidence in the present case from which it may be inferred such a *common* intention in respect of the Aston Residence and the Queen's Road HDB, which were purchased primarily as part of the Plaintiff's personal investments in properties. For the other two disputed properties (*ie*, the Changi Court and Toh Crescent properties), which I accept to be intended for the Parties' familial use, I also find that there is insufficient evidence of a common intention between the Parties in order to justify a CICT. Instead, I find that the presumption of advancement is applicable and unrebutted (see below at [56]–[63]).

51 In relation to the point on CICT with respect to the Aston Residence and the Queen's Road HDB, contrary to the Defendant's submissions, any common intention to jointly own the property in equity is inconsistent with the objective evidence. First, the rental proceeds in respect of these two properties were

exclusively collected by the Plaintiff, and the Defendant admitted that she had never asked the Plaintiff for a share of these proceeds.[70] The Defendant attempted to explain this away on the basis of her understanding that the Plaintiff was to use these rental proceeds to discharge the mortgages procured on all the properties they owned.[71] However, this understanding was in no way substantiated. In fact, the evidence suggests that the Defendant did not bother or take steps to find out how the Plaintiff managed the finances (see above at [36]).[72] Second, when previous properties such as the Kovan and the Changi Rise condominiums (both of which were investments acquired in the joint names of the Parties) were sold, no part of the sale proceeds was shared with the Defendant – a fact which was admitted to by the Defendant.[73] She again tried to explain this away on the basis that the Plaintiff had promised to use these sale proceeds to buy another investment in their joint names but eventually used those funds to purchase a building for the Plaintiff's business.[74] This allegation of a promise was similarly unsubstantiated. Third, I find incredible the Defendant's evidence that she was told by the Plaintiff that the Plaintiff's business was "supposed to be also [her] business" and that she had an equal share in all the properties acquired from the business profits (see above at [48]). If she truly believed that she owned a share of the business, it is inconceivable for her not to have requested any kind of shares or dividends in the past 20 odd years of their marriage. In any event, this intention or belief is unlikely to have

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70 Notes of Evidence, 26 January 2017, Cross-ex of the Defendant.

71 Notes of Evidence, 26 January 2017, Cross-ex of the Defendant.

72 Notes of Evidence, 26 January 2017, Cross-ex of the Defendant.

73 Notes of Evidence, 23 January 2017, Cross-ex of the Defendant.

74 Notes of Evidence, 23 January 2017, Cross-ex of the Defendant.

(*cont'd on next page*)

been shared by the Plaintiff, who would naturally credit all income earned from the business to his personal "efforts and hard work".[75]

52 I accordingly decline to find that there was any CICT in respect of the disputed properties, whether at the time of their purchase or subsequent to their acquisition.

Steps (d) & (e) – Gifts or presumption of advancement

Insufficient direct evidence of an intention to make a gift

53 Since a purchase price resulting trust arises in relation to each of the four disputed properties and there is no evidence of a CICT, steps (d) and (e) of the framework set out in *Chan Yuen Lan* have to be considered. The key inquiry here is whether the Plaintiff, who made the sole or larger financial contribution to the acquisition of the disputed properties, intended a gift of his contribution to the Defendant.

54 There is insufficient evidence of a gift and thus the answer to step (d) is unequivocally in the negative. I thus have to consider the applicability of the presumption of advancement in step (e).

Presumption of advancement operates to varying degrees in relation to the disputed properties

55 In certain categories of relationships, a presumption of advancement may arise such that the transferor or contributor is presumed to have intended a gift of the property to the recipient. As cautioned by the Court of Appeal in *Lau Siew Kim* at [59], just like the presumption of resulting trust, the presumption

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[75] Plaintiff's Closing Submissions at para 34(c).

of advancement is only an evidential tool relied upon as a matter of last resort where there is a paucity of evidence that reveals the intention of the transferor or contributor, or where such evidence is inconclusive or equivocal.

56 In the present case, the presumption of advancement clearly arises as it concerns a spousal relationship: see *Lau Siew Kim* at [70]. The only contentious questions are the strength of the presumption and whether the presumption is rebutted. First, in assessing the strength of the presumption of advancement, the Court of Appeal in *Lau Siew Kim* noted the following:

> 78 The overall aim of the presumption of advancement is to discern the intention of the transferor… [*A*]*ll* the circumstances of the case should be taken into account by the court when assessing how strongly the presumption of advancement should be applied in the particular case. The financial dependence of the recipient on the transferor or contributor… is but one factor which may affect the strength of the presumption of advancement. In our judgment, two key elements are crucial in determining the strength of the presumption of advancement in any given case: *first*, the *nature* of the relationship between the parties (for example, the obligation (legal, moral or otherwise) that one party has towards another or the dependency between the parties); and *second*, the *state* of the relationship (for example, whether the relationship is a close and caring one or one of formal convenience). The court should consider whether, in the entirety of the circumstances, it is readily presumed that the transferor or contributor intended to make a gift to the recipient and, if so, whether the evidence is sufficient to rebut the presumption, given the appropriate strength of the presumption in that case.
>
> [emphasis in original]

57 In my view, the nature of the relationship is sufficient in this case to trigger the operation of a relatively strong presumption of advancement. The Defendant was financially dependent on the Plaintiff to an appreciable extent. She was a homemaker since November 1998 and had a barren income stream from 1998 to the present. Even though she operated a spa and fitness centre

from 2004 to 2007, this business did not earn any profits.[76] The fact that the Defendant was completely dependent on the Plaintiff-husband is also demonstrated by the fact that she did not even contribute any money towards the business that she operated for three years. A major part of the initial capital (the rest being supplied by the Defendant's sister), as well as the operating expenses of the Defendant's business, were borne solely by the Plaintiff.[77] With respect to the state of the relationship, there is nothing to suggest from the evidence that the Parties led an unhappy married life in the period when these properties were acquired – the marriage turned sour in 2013,[78] some four years after the last of the disputed properties (*ie*, the Queen's Road HDB) was purchased in 2009. In the circumstances, a relatively strong presumption of advancement arises in respect of the disputed properties.

58 I turn now to consider whether this presumption is rebutted in the present case. In attempting to rebut the presumption, the Plaintiff submits that his intention in naming the Defendant as a joint tenant of the disputed properties was not to give the Defendant an interest in the property "absolutely with immediate effect, but, rather, for the rule of survivorship to operate to pass the absolute interest of the property to the survivor of the two spouses".[79] In doing so, the Plaintiff relies on the following observations in *Lau Siew Kim*:[80]

> 105 … On our extension of the presumption, the intention that is presumed is not an intention to give absolutely with *immediate* effect, but, rather, for the rule of survivorship to operate to pass the absolute interest of the property to the

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76 Notes of Evidence, 23 January 2017, Cross-ex of the Defendant.

77 Notes of Evidence, 23 January 2017, Cross-ex of the Defendant.

78 Notes of Evidence, 23 January 2017, Cross-ex of the Defendant.

79 Plaintiff's Closing Submissions at paras 23–24.

80 Plaintiff's Closing Submissions at paras 17–19.

> survivor of the two spouses. This interpretation is supported by the fact that a resulting trust need not necessarily relate to the entire interest in the property. The presumption of *resulting trust* may be rebutted as to a life interest, but may still operate in respect of the interest in remainder: see, for example, *Napier v Public Trustee* (1980) 32 ALR 153. Conversely, the intention may be that the contributing party should receive the income from the purchased property during his life – to this extent the resulting trust prevails, but the property should belong to the benefiting party after his death, *ie*, the resulting trust is rebutted as to the remainder: see, for example, *Young v Sealey* [1949] Ch 278. We are of the view that the presumption of advancement could similarly operate with respect to only *part* of the interest in the property in question; it may be rebutted as to the life interest of a property but prevail as to the remainder – one such case would be where a property is held on joint tenancy and it is inferred that there is an intention for the rule of survivorship to operate.
>
> …
>
> 107 To summarise, both the presumption of resulting trust and the presumption of advancement may feature whenever there is a legal joint tenancy in place and there are unequal contributions to the purchase price of the jointly-owned property. The presumption of resulting trust will operate in such a situation since equity abhors joint tenancy as a form of common ownership. The presumption of advancement, on the other hand, comes into play to displace the presumption of resulting trust where there is a pre-existing relationship between the parties which falls into one of the established categories of relationships. In particular, where the joint tenants are spouses, the presumption of advancement applies to presume an intention on the part of the parties for the rule of survivorship to operate; the scope of the presumption should be expanded to include (if it does not already so include) the inference of an intention for the absolute beneficial ownership of the property to be conferred on the surviving joint tenant…
>
> [emphasis in original]

59 In my judgment, the Plaintiff's reliance on *Lau Siew Kim* is misplaced. The Court of Appeal was simply alluding to the fact that the presumption of advancement should be *broadened* to encompass the operation of the rule of survivorship. What this means is that in every case of joint tenancy, where the presumption of advancement applies, two different intentions will be presumed:

(1) the intention of the primary or sole contributor to share jointly in equity with the co-owner while both spouses are alive and (2) the intention of the contributor for the rule of survivorship to operate upon his passing. In this connection, the latter intention is irrelevant at present as both spouses are alive. The key dispute is whether the former intention to share jointly in equity is rebutted. In rebutting this intention, especially given the considerable strength of the presumption of advancement that arises in the present case, it is not enough for the Plaintiff to merely assert that his intention was exclusively for the rule of survivorship to operate.

60 On the evidence, I find that the presumption of advancement to share jointly in equity is rebutted in respect of the Aston Residence and the Queen's Road HDB, but not in respect of the Changi Court and Toh Crescent properties. The key distinguishing fact between these two groups of properties is that the former two were acquired with the intention of them being investments of the Plaintiff for his *own benefit* whereas the latter two were intended to be used as the Parties' places of familial residence for their *joint benefit*. I shall elaborate further.

61 The Aston Residence and the Queen's Road HDB have both been primarily rented out since their acquisition with the Plaintiff keeping to himself all the rental proceeds for his own benefit and use.[81] These two properties thus belong in the same class as the other personal investments in properties made by the Plaintiff, such as the Changi Rise condominium, the Kovan condominium and the several other Malaysian properties. The intention of the Plaintiff with respect to these personal investments is clear from the way he treated them: he

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[81] Notes of Evidence, 26 January 2017, Cross-ex of the Defendant.

primarily rented them out, and sold them where a profit could be made. He, and not the Defendant, collected all the rental proceeds and also the sale proceeds where applicable. None of these were shared with the Defendant and there was no evidence before me that the Plaintiff had committed any of these investment returns or proceeds to the Defendant's benefit. Rather, the evidence shows that the Plaintiff had kept to himself all the rental proceeds for his own benefit and use.[82] Accordingly, I find that the presumption of advancement has been rebutted with respect to the Aston Residence and the Queen's Road HDB because the intention of the Plaintiff, at the time these two properties were acquired, was not to share jointly in equity with the Defendant.

62 In contrast, the intention of the Plaintiff in acquiring the Changi Court and Toh Crescent properties is different. The Parties lived together in the Changi Court and the Toh Crescent properties for a substantial period of time. The Parties lived in Changi Court property from 1999 (the year it was purchased) to 2003. The Plaintiff himself admitted in his affidavit that the Changi Court property was "[the Parties'] matrimonial home and property and remains so".[83] He also expressly admitted in cross-examination that the Changi Court property was not a personal investment.[84] As for the Toh Crescent property, the Plaintiff had spent a very significant sum of $1.2m in rebuilding the house. The Parties lived in this property for ten years from 2003 (the year it was purchased) to 2013. Even after 2013, the Defendant continued to live in the house while the Plaintiff moved out[85] – the fact that the Plaintiff allowed the Defendant to

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82 Notes of Evidence, 26 January 2017, Cross-ex of the Defendant.

83 Plaintiff's Affidavit dated 4 November 2015 at para 8.

84 Notes of Evidence, 16 January 2017, Cross-ex of the Plaintiff.

85 Plaintiff's Affidavit dated 4 November 2015 at para 9.

continue living in the house also points strongly to an inference that he intended the Defendant to have a share in the property at the time it was purchased, *ie*, the presumption of advancement applies unrebutted with respect to the Toh Crescent property.

63 Since the presumption of advancement remains unrebutted with respect to the Changi Court and the Toh Crescent properties, the beneficial interest of the Parties is reflected by the legal title of the property: see *Lau Siew Kim* at [57]. Since both these properties are held on a joint tenancy, the Parties hold the beneficial interest in the Changi Court and Toh Crescent properties jointly. However, the presumption of advancement is rebutted in relation to the Aston Residence and the Queen's Road HDB such that the presumed resulting trusts that arise in step (a) govern the ownership of these two properties, *ie*, the Plaintiff is the 100% beneficial owner of these properties.

Plaintiff's claim for losses on account of the Defendant's breach of trustee duties

64 It leaves me now to address the Plaintiff's claim for losses arising from the Defendant's refusal to sign the re-financing documents related to the disputed properties, in purported contravention of her duties as a resulting trustee.[86] Given the finding above that the Defendant is a resulting trustee only in respect of the Aston Residence and the Queen's Road HDB, I will only have to consider whether the Plaintiff's claim can be made out in respect of these two properties.

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86 Plaintiff's Statement of Claim at para 14; Plaintiff's Closing Submissions at paras 51 and 52(2).

65 In order for the Plaintiff's claim to succeed, he has to show that if the Defendant had agreed to refinancing, these two properties (one of which is a HDB flat) could have been refinanced. He also has to prove the quantum of funds that could have been obtained, and that as a result of the failure to obtain that specific amount of funds from refinancing these two properties, the Plaintiff had suffered consequential losses that are causally connected to the Defendant's failure to secure such refinancing. However, the Plaintiff did not adduce any such evidence to establish in principle that his losses have a causal link with the Defendant's alleged breach that is not too remote. The Plaintiff's bald assertion that his business suffered as a result of the Defendant's breach in failing to assist in securing extra funding (*ie*, to the extent that those funds would be available from the refinancing of these two properties), is too vague and not sufficiently probative to show a causal link between the purported breach and his alleged losses. Thus, I dismiss the Plaintiff's claim on this basis.

66 However, even if the Plaintiff can subsequently prove causal loss, I am hesitant to find, in the present case, that the Defendant (as a resulting trustee) owed a duty to the Plaintiff (as the beneficiary of the resulting trust) to agree to the Plaintiff's request to refinance the two properties. Here, I understand the Plaintiff's expression of the duty owed by the Defendant to be an instantiation of the general principle that trustees ought to act in the best interests of the beneficiary.

67 The duties owed by a resulting trustee (albeit in a general context) was recently considered by the Court of Appeal in *Tan Yok Koon* where it was opined at [190] that a resulting trust is "very often a bare trust and, as such, *only* requires the trustee to convey the trust property when called upon to do so" [emphasis added]. The Court of Appeal then went on to make the following observations:

194 … *[F]iduciary obligations are voluntarily undertaken*… [T]he fiduciary undertaking is voluntary in the sense that it arises as a consequence of the fiduciary's conduct, and is not imposed by law independently of the fiduciary's intentions. This is not to state that the fiduciary must be subjectively willing to undertake those obligations; the undertaking arises where the fiduciary voluntarily places himself in a position where the law can objectively impute an intention on his or her part to undertake those obligations. The corollary of this principle is that not every duty owed by a fiduciary is necessarily a fiduciary duty. However … the duty to perform a trust honestly and in good faith for the benefit of the beneficiaries is fiduciary in nature.

…

196 When the attributes of a resulting trustee and a fiduciary are juxtaposed, one can very justifiably ask the question whether a resulting trustee is or can be a fiduciary. As a matter of principle, *the idea that a fiduciary relationship is possible sits uncomfortably with the fact of a resulting trust*. The latter is imposed by law whereas the former is voluntarily undertaken. It is certainly not the case that every resulting trustee is subject to a fiduciary relationship. However, in the rare case, it may well be that the facts and circumstances leading to the imposition of a resulting trust may also disclose an undertaking by the trustee – whether express or implied – to act in a certain way.

…

205 … [R]esulting trustees can be located on a continuum. At one end are the innocent recipients of property, and at the other end are recipients of property which forms the subject of a failed express trust. It is therefore conceivable that a person who becomes a resulting trustee on the basis of a failed express trust may still owe fiduciary duties; we agree with Prof Chambers and Prof Virgo that it is generally difficult to say that that undertaking to act in another's benefit – or in more abstract terms the undertaking to act in self-denial – should cease when that express trust fails. …

206 The real question, in our view, is whether, *objectively speaking, the resulting trustee can be said to have undertaken (whether expressly or impliedly) to act in a particular way which is fiduciary in nature*. In this regard, *the knowledge that one does not hold the beneficial interest in the property is, while not a sufficient condition by itself, strictly necessary because the conscience cannot otherwise be affected in a way that equity can take cognisance of*. The duties that are applicable to each resulting trustee will vary significantly, and are *very fact-*

> *specific*. The duties owed by a resulting trustee to the settlor-beneficiary will, however, almost invariably be narrower than the duties owed by an express trustee in relation to the beneficiaries.
>
> [emphasis added; original emphasis omitted]

68 As evident from the above, although the Court of Appeal opined that resulting trustees do not generally owe any fiduciary duties, it was prepared to accept that a resulting trustee of a *failed express trust* may owe such duties of a fiduciary nature. Although the above observations were made in the context of a failed express trust, I see no reason why it does not equally apply in the context of a purchase money resulting trust. The crux of the inquiry is the same regardless of the context: whether the resulting trustee had voluntarily placed himself in a position where the law can objectively impute an intention on his or her part to undertake the fiduciary obligations. On an objective test, where the resulting trustee can be said to have undertaken to act in this manner, it is only fair and equitable for fiduciary obligations to be owed by the resulting trustee. If it were otherwise, then resulting trustees can escape from the duties that they have undertaken.

69 Although the test is the same, the situations in which a purchase money resulting trustee can be said to have voluntarily undertaken to act in a way that is fiduciary in nature will likely be less commonplace than in the case of a failed express trust. In the context of a failed express trust, even though the conditions for creating an express trust are not met, the resulting trustee may conceivably be aware and cognisant of the fact that he does not own the property beneficially (when transferred from the settlor) and that he only holds the property on trust for the beneficiary. In contrast, such knowledge is unlikely to be present where it concerns a purchase money resulting trustee, especially in a domestic and informal spousal context. However, in the rare case where the resulting trustee

had the requisite knowledge, and can be said to have voluntarily undertaken fiduciary obligations, then the resulting trustee ought to owe fiduciary duties to the beneficiary.

70 Applying the test laid down in *Tan Yok Koon* at [206] as to whether the Defendant had undertaken to act in a way that is fiduciary in nature, the Defendant's knowledge that she does not hold beneficial interest in the property is "strictly necessary": see *Tan Yok Koon* at [206]. Such knowledge is absent in the present case – the Defendant believed all along that she had a beneficial interest in the Aston Residence and the Queen's Road HDB. In fact, she had no knowledge that she did not hold the beneficial interest in any of the properties that the Parties had purchased in joint names. This is evident in the following testimony of the Defendant during cross-examination:[87]

> IJ: Do you recall that from 2011 onwards, the Plaintiff was asking you to re-finance all these properties?
>
> …
>
> Df: If you are talking about these *four properties*, he was doing very well then and he did not need to refinance until 2012 or 2013. It is only then he approached me. By then, he had already bought the building under his company. Here, he refused to put my name in the building. So of course, I was getting very suspicious because I had already let him sell off two of the properties and refinance one of the properties in KL – $2.5 million. Plus, by that point in time, he had already moved out of the house. He had a lot of problems – he was not clear, he was not honest to me and that is why I was reluctant to sign anything after that. Nevertheless, in 2015, I did sell one more property in JB to support his business still…

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[87] Notes of Evidence, 23 January 2017, Cross-ex of the Defendant.

(*cont'd on next page*)

71 Similar evidence was adduced by the Defendant during her re-examination:[88]

> MS: The Plaintiff's counsel repeatedly asked you why you did not sign the refinancing documents. Please let us know the state of your marital affair at that point in time.
>
> Df: At that point of time, when he was asking me to sign, he had already went back to his words of promising to buy the building and put under my name after selling Kovan and Changi Rise. He did not tell me that he bought it under his company. So I felt that he had cheated me and there were a lot of fights and arguments. At one point in time, he left me and he came back badgering me and most of the time when we had argument, he will always say that he wants to put me on the street without a single cent in my hand. He will do that – that's what he says.
>
> MS: What you mean badgering you?
>
> Df: He was badgering me to sign every time when he comes back from time to time after he left me and my daughter. And I refused to sign – I said this is *our matrimonial home and I have to save this house for our children and also for him.* But he will always come down to a fight and he will get very angry and he told me that he will not give me a single cent.
>
> [emphasis added]

72 Being a lay person, her lack of knowledge is entirely understandable as she was unlikely to have known that she was a resulting trustee in respect of the disputed properties, all of which she is legally a joint tenant with the Plaintiff. She had all along believed that she beneficially owned these disputed properties jointly with the Plaintiff. In the circumstances, there is no indication that the Defendant voluntarily placed herself in a position where the law can objectively impute an intention onto her to undertake fiduciary obligations in respect of the Aston Residence and the Queen's Road HDB.

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[88] Notes of Evidence, 26 January 2017, Re-ex of the Defendant.

73 Since I have found that the Defendant did not undertake to act in a manner that is fiduciary in nature, she does not owe the Plaintiff a duty to re-finance the property in the best interests of the beneficiary. The question may arise as to whether such a duty will be owed in the first place (or for that matter what specific duties will be owed) by a purchase money resulting trustee to the beneficiary when there is an undertaking to act in a particular way which is fiduciary in nature. Since this question does not arise on the facts (because I find that the Defendant did not know of the existence of the resulting trust) and no arguments have been made on this point by the Parties, I need not say further other than to repeat the Court of Appeal's point in *Tan Yok Koon* at [206] that the duties that are owed by a resulting trustee is "very fact-specific". It is preferable to leave this question open for future consideration when the specific need arises.

74 I accordingly decline to allow the Plaintiff's claim for losses allegedly suffered in connection with the Defendant's refusal to sign the re-financing documents.

Conclusion

75 For the reasons stated above, I make the following findings:

(a) the Parties are joint tenants in equity in respect of the Changi Court property and the Plaintiff and the Defendant are each entitled to 50% of the net sale proceeds (if any) after deduction of the mortgage loan, outstanding interest and sale expenses;

(b) the Parties are joint tenants in equity in respect of the Toh Crescent property and the Plaintiff and the Defendant are each entitled to 50% of the net sale proceeds (if any) after deduction of the mortgage

loan, outstanding interest and sale expenses in the event the repossessed property is sold;

(c) the Plaintiff is the sole beneficial owner of the Aston Residence and he is entitled to the net sale proceeds of the Aston Residence held presently by the stakeholders;

(d) the Plaintiff is the sole beneficial owner of the Queen's Road HDB; and

(e) for the avoidance of doubt, the above orders are without prejudice to any applicable orders of the Syariah Court concerning division and transfer of matrimonial assets pursuant to the ongoing divorce proceedings of the Parties before the Syariah Court.

76 I decline to find in favour of the Plaintiff's claim for losses or damages allegedly caused on occasion of the Defendant's refusal to sign the re-financing documents.

77 I will hear the Parties on costs if there is no agreement.

Chan Seng Onn
Judge

Ignatius Joseph and Chong Xin Yi (Ignatius J & Associates) for the Plaintiff;
Abdul Rahman bin Mohd Hanipah and Mohammed Shakirin bin Abdul Rashid (Abdul Rahman Law Corporation) for the Defendant.
