Low Geok Khim (administratrix of the estate of Low Kim Tah, deceased) v Low Geok Bian and Others
[2006] SGHC 41

Case Number : OS 826/2003

Decision Date : 10 March 2006

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : Tan Kay Kheng, Sim Bock Eng and Lim Mui Ern Joyce (Wong Partnership) for the plaintiff; Manoj Sandrasegara, Tan Mei Yen, Benjamin Gaw and Tan MingFen (Drew & Napier LLC) for the first defendant; Yap Neng Boo Jimmy (Jimmy Yap & Co) for the third defendant; Khoo Kah Lip Michael SC, Low Miew Yin Josephine, Ong Lee Woei and Chiok Beng Piow Andy (Michael Khoo & Partners) for the fourth to 16th defendants

Parties : Low Geok Khim (administratrix of the estate of Low Kim Tah, deceased) — Low Geok Bian; Low Geok Khim; Low Gim Siah; Low Chay Lin; Low Gim Har; Low Gim Tan @ Low Gin Tin Renna; Low Gim Lay; Low Gim Hong Richard; Low Gim Tee; Low Gim Chiong; Low Gim Pheng; Frey-Low Daisy; Low Chay Ghee; Low Nancy; Low Lina; Low Chye Chim

Banking – Accounts – Joint – Deceased and deceased's son joint holders of bank accounts – Moneys in bank accounts provided entirely by deceased – Whether moneys vesting in deceased's son or in deceased's estate upon deceased's death – Whether deceased intending to open joint accounts at material time

Family Law – Advancement – Presumption – Parent and child jointly holding bank accounts – Whether presumption of advancement applying such that moneys in bank accounts amounting to gifts to child from parent – Whether presumption of advancement

10 March 2006 *Judgment reserved.*

Kan Ting Chiu J:

1 An old man died leaving moneys in seven joint bank accounts, six held jointly with one of his sons, and another with one of his daughters. He did not leave any instructions on the disposal of the moneys. The question in this action is: To whom did the moneys belong after his death?

The parties

2 Low Kim Tah ("the deceased") died intestate on 6 December 1997 at the age of 91. He had six sons and four daughters. Two sons and one daughter died before him. His children described him as an autocratic person and a man of few words.

3 The plaintiff, Low Geok Khim, a daughter of the deceased, is the administratrix of his estate. The first defendant, Low Geok Bian, is his youngest son. He was the joint holder of six joint banking accounts with the deceased, *ie*:

(a) POSB Account No 045-07218-5 opened on 4 March 1983 with $221,207.11 now in the account;

(b) OCBC Account No 516-054889-001 opened on 25 February 1995 with $2,004,604.97 now

in the account;

(c) OCBC Account No 516-054889-002 opened on 25 February 1995 with $2,004,604.97 now in the account;

(d) OCBC Account No 516-054889-003 opened on 11 March 1995 with $114,441.89 now in the account;

(e) OCBC Account No 516-054889-004 opened on 19 April 1995 with $114,072.52 now in the account; and

(f) OCBC Account No 516-549706-501 opened on 23 March 1990 with $12,212.82 now in the account.

These accounts will be referred to as accounts (a) to (f) respectively for ease of reference.

4 The plaintiff held one joint account with the deceased, *ie*, POSB Account No 045-07218-3 with a sum of $90,028.84. She became the second defendant in this capacity but she subsequently relinquished any claim to this account, and the action against her was discontinued.

5 The other 14 defendants, *ie*, the third to the 16th defendants, are some of the children of the two sons who had died before the deceased. They claim that the moneys in the joint accounts belonged to the deceased's estate, to which they are beneficiaries. I shall refer to these 14 grandchildren as "the grandchildren". (The deceased had other grandchildren who are not involved in this action.)

The question for determination

6 In this action, the plaintiff had asked the court to determine whether the moneys in the joint accounts the deceased held with her and with the first defendant belonged to the deceased's estate or to the respective surviving account holders upon the death of the deceased. After the plaintiff relinquished her claim on the joint account she held with the deceased, the sole question to be determined is whether the moneys in accounts (a) to (f) vested in the first defendant as the surviving account holder or in the estate of the deceased upon the death of the deceased.

7 It is common ground that the first defendant did not put in any moneys into those six accounts. Accounts (a) and (f) are fixed deposit accounts. Accounts (b) to (e) are "EasiSave" accounts, which are saving accounts with cheque-issuing facilities. The moneys in the four EasiSave accounts had come out of account (f).

The issues to be decided

8 The issues to be considered are:

(a) whether the deceased had intended to open joint accounts when he opened the accounts;

(b) if the deceased had intended to open the joint accounts, whether the presumption of advancement can arise in favour of the first defendant; and

(c) if the presumption of advancement can apply, whether it is rebutted on the facts.

Whether the deceased intended to open joint accounts

9 There are two aspects to this issue: first, whether he had the mental capacity to decide to open the joint accounts and second, whether he knew he was opening joint accounts.

Whether the deceased had the mental capacity to decide to open the joint accounts

10 The grandchildren relied on the evidence of two doctors. The first doctor is Dr Tang Kok Foo. Dr Tang, a neurologist, had seen the deceased between 10 February 1995 and 22 October 1997.

11 Dr Tang's evidence was that when he saw the deceased on the first occasion:

> He was suffering from advanced dementia at that time. He was alert and polite but could not engage in any meaningful conversation, as he had no recollection of recent events. He invited me to sit down and offered me a cup of coffee. He repeated this several times during the consultation. His gait was slow and unsteady and he had to hold onto surrounding objects now and then as he walked about the room. He was smoking non-stop and appeared to be reading a newspaper when in fact he could not remember what he had just read.
>
> On further examination, I found that he had bilateral carotid bruits. Carotid bruits are sounds we can hear with a stethoscope and they occur synchronously with the systolic phase of each heartbeat. The bruits were loud and of significant duration. This indicates that both the left and right carotid arteries supplying blood to his brain were narrowed.

12 Dr Tang also deposed that when he saw the deceased in November 1996, his dementia was already very advanced, and it was likely to be due to Alzheimer's disease. The deceased's family members informed him that the deceased had been in the same condition for a number of years. A daughter of the deceased told him that the deceased needed help in bathing and in toilet, but Dr Tang did not record the identity of the informant, and none of the deceased's daughters came to court to confirm that conversation.

13 Dr Tang was of the opinion that the deceased had mild dementia in 1990. He explained that a person with mild dementia would have short-term memory impairment and might not remember events that happened a few hours or a few weeks ago, but such a person would usually be able to make reasonably good decisions.

14 The second doctor the grandchildren relied on is psychiatrist Dr Tan Chue Tin. Dr Tan did not examine the deceased, but rendered his opinion on the basis of the findings of Dr Tang and the notes of the deceased's evidence given in Suit No 854 of 1991 (see [21] below).

15 Dr Tan's opinion after reviewing the material was that:

> [T]he Deceased would have very limited or little awareness of his situation when he opened the 4 'Easisave' accounts [accounts (b) to (e)] in 1995, based on his severely impaired mental state while giving Court evidence on 15 April 1994 and the clinical and MMSE [Mini Mental State Examination] assessment by Dr. Tang Kok Foo on 10 February 1995. As for the March 1990 Fixed Deposit Account [account (f)], it is also my opinion that <u>more likely than not</u> the Deceased was similarly limited in his awareness of situation, given the fact that Alzheimer's Type Dementia has an insidious onset and gradual deterioration. [emphasis in original]

and he concluded that:

(a) [A]t the time the Deceased opened the 4 Easisave joint saving accounts with the 1st Defendant, on 25.2.95, 25.2.95, 11.3.95 and 19.4.95 respectively, with a total amount of $3,843,823/-, he was suffering from advanced dementia with severe impairment of his memory, attention/concentration, cognitive functions, reasoning ability and ability to calculate.

(b) At the time the Deceased deposited $3,009,225.19 into his personal Balestier OCBC Account (Account No. 516-033719-001) on 23 March 1990 and made 2 Placement Forms on the same day to transfer a total of $3,000,000 from this personal account to a Balestier OCBC Joint Account (Account No. 516-549706-501 jointly with the 1st Defendant), the Deceased was likely to suffer significant impairment of his memory, attention/concentration, cognitive functions, reasoning ability and ability to calculate.

16 Dr Tan expanded on these conclusions. He explained that at the early stages of the onset of Alzheimer's Disease, the patient's judgment and memory would be affected. They would be mildly deficient at that stage and the further deterioration would be very gradual and take place over years. In the deceased's case, Dr Tan stated that the deceased's Alzheimer's Dementia was probably in its early stage in March 1990. At the early stage, although the person afflicted might not be able to handle complicated negotiations or complicated issues, he would have the capacity to make simple deals, or decide to put money into a bank.

17 The first defendant relied on the views of two other doctors. Dr Lee Suan Yew treated the deceased from September 1987 to February 1992. The first defendant's solicitors informed him about this action and explained to him that the issue in dispute was the deceased's physical and mental health between 1990 and his death in 1997, and sought his assistance and input. In his reply to them, Dr Lee gave a history of the attendances and stated that when he saw the deceased on 22 February 1992, the deceased complained of a cough, but was mentally alert. Although Dr Lee was not a witness at the trial as he had informed the solicitors that he was unable to attend court, the solicitors' letter and his reply were admitted in evidence without objections.

18 The first defendant obtained an opinion from psychiatrist Dr Brian Yeo Kah Loke on the deceased's mental condition. Dr Yeo, like Dr Tan, did not see the deceased, and had referred to Dr Tang's report and attendance notes on the deceased, Dr Lee's letter, and the notes of the deceased's evidence in Suit No 854 of 1991.

19 Dr Yeo was of the opinion that if the deceased had dementia in 1995, he was more likely to be suffering from Vascular Dementia than Alzheimer's Dementia, and he added:

> It is my opinion that it would not be possible to conclude from an examination of the deceased in 1995, that he was not in a coherent mental state a few years prior to 1995, much less in 1990. In fact, from the chronology of events that took place, it would appear that the deceased was in a more coherent mental state as late as April 1994 when he gave evidence in Court.

and

> In view of the gradual and insidious progression of the disorder, it is my opinion that even if the deceased had symptoms of Alzheimer's Dementia in 1995, it would not necessarily mean that he was not able to reason prior to 1990 or in 1994 when he gave evidence in Court.

20 There was also evidence from non-medical sources relating to the deceased's mental condition. The plaintiff, Low Geok Khim, and the first defendant, Low Geok Bian, both deposed that the deceased was in good health up to his death.

21 There is further evidence from an independent source on the deceased's mental capacity as at 1994. On 15 April 1994, he was called as a witness in Suit No 854 of 1991, *Re Low Gim Har Janet*, reported at [1996] 3 SLR 343. He gave evidence for about two and a half hours before Lai Kew Chai J who noted in his judgment at 357, [84] that:

> He was 89 years old and suffered both from a fairly serious hearing defect and the attendant problems of an ageing man's memory and comprehension.

Lai J nevertheless went on to accept the deceased's evidence over that of another witness in those proceedings.

22 It is useful to review the evidence for the different periods in which the deceased opened joint accounts. There was no evidence whatsoever of any mental impairment in 1983 when he opened account (a). For the year 1990 when account (f) was opened, there is evidence from the four doctors. Dr Lee saw him in 1992 and found him to be mentally alert. Dr Tang, who saw him in 1995, believes that the deceased may have had mild dementia, which may have impaired his short-term memory without affecting his ability to make decisions. Dr Tan's diagnosis, made without the benefit of seeing the deceased, was that the deceased was likely to have suffered significant impairment to his memory, cognitive faculties and reasoning, but Dr Yeo, who likewise had not seen the deceased, did not agree with Dr Tang's and Dr Tan's opinions on the deceased's mental state in 1990.

23 What constitutes sufficient mental capacity to do an act? I adopt the answer given by the High Court of Australia in *Gibbons v Wright* (1954) 91 CLR 423 at 438 that:

> [T]he mental capacity required by the law in respect of any instrument is relative to the particular transaction which is being effected by means of the instrument, and may be described as the capacity to understand the nature of that transaction when it is explained.

24 The deceased was an experienced and successful businessman. He was not a stranger to bank accounts. He had opened bank accounts from 1983 and, very probably, even earlier in the course of his business activities. The question is whether he had the mental capacity to decide to open a fixed deposit bank account, and to decide whether it was to be a single or joint account. These are not difficult or complex decisions to make. I find on the evidence that he had the mental capacity to open account (f) in 1990.

Whether the deceased knew he was opening joint accounts

25 The grandchildren raised questions as to whether the deceased knew he was opening joint accounts, in particular, over the opening of account (f) on 23 March 1990. They referred to documents related to the account which were recovered from the deceased's office after his death:

(a) two placement of fixed deposit forms dated 23 March 1990 signed by the deceased for opening two deposit accounts of $1.5m each from funds from his personal current account;

(b) an account application form dated 23 March 1990 for opening a joint fixed deposit account signed by the deceased and the first defendant;

(c) a copy of an undated specimen signature card signed by the deceased and the first defendant which suggested that the deceased's name and the first defendant's name were not typed onto the card at the same time, but that the deceased's name was typed first, after which

the card had been re-inserted into the typewriter to have the first defendant's name typed in.

26 The first defendant's evidence was that he and the deceased had attended at the bank to open the accounts, and that they had brought with them the prepared forms and signature card for the purpose.

27 Ms Jennifer Ng, an assistant vice-president of OCBC Bank, gave evidence on the account opening and operating procedures followed by the bank. Ms Ng was an employee of the bank at the time account (f) was opened, but she was not involved with the opening and had no direct knowledge on the account. Her evidence was that it was possible for an existing customer of the bank, such as the deceased, to open other accounts without attending at the bank if the bank had a specimen signature card to verify his signature. However, she had no knowledge whether the deceased had attended at the bank or not.

28 When the first defendant was cross-examined by counsel for the grandchildren, allusions were made that some of the forms had been tampered with. Attention was also drawn to the fact that the two fixed deposit placement forms were signed only by the deceased.

29 However, they did not assert misconduct against the first defendant in the closing submissions. The third defendant questioned whether the deceased knew that he was opening a joint account with the first defendant in view of the fact that the first defendant had "single-handedly helped" him to open the joint fixed deposit account.

30 The fourth to 16th defendants submitted that:

> [T]he documentary evidence relating to [account (f)] opened in the joint names of the 1st Defendant and [the deceased] gives rise to grave suspicion, alternatively establishes in all probability, that [the deceased] either did not intend that the two sums of $1,500,000 to be placed on fixed deposit were to be placed in a fixed deposit joint account in the names of himself and the 1st Defendant, or was not aware that the 1st Defendant's name was added as co-account holder.

31 It is useful to establish the functions of the different forms used. The placement forms were intended specifically for placement of fixed deposits. In the two forms signed by the deceased, he instructed the bank to transfer moneys from his individual current account and place them into the fixed deposit accounts. For this purpose, only he could and needed to give the instructions to the bank.

32 The account application form was a more general document. The intended account holder(s) had to specify the type of account to be opened, *eg* savings, current or fixed deposit, and to state the names of the joint account holders. The form also required that the applicants confirm that:

> Where the Account is a Joint Account, we agree that on the death of any of us any credit balance in our Joint Account(s) and any securities held by the Bank in joint names shall be held to the order of the survivor(s). We shall be jointly and severally responsible and liable to the Bank for all monies owing and liabilities incurred to the Bank by us on our Joint Account(s).

This form needed to be signed by all the joint account holders to bind them to these terms, whether or not they contributed moneys to the account to be opened.

33 Against that background, there was nothing irregular in the way the placement and account

application forms were signed by the deceased and the first defendant.

34 The strongest position that could have been taken would be that the first defendant had tampered with the specimen signature card after it was signed by the deceased and without his knowledge or consent and thereby perverted the deceased's instructions. But the grandchildren and their counsel may have realised that this would be difficult to prove, and they did not put that as their case. Their case was that when the deceased opened the account with the assistance of the first defendant, he might not have intended or was not aware that a joint account was opened, without alleging wrongdoing on the part of the first defendant.

35 There was little evidence from which the deceased's state of intention or knowledge could be ascertained. It was disputed whether he was at the bank when account (f) was opened. It is not known if any bank officer met or spoke with the deceased on the type of account he wanted to open. However, the bank did accept and act on the application, and opened the account, and there is no evidence that the deceased had complained about the account which was opened.

36 Against the background that:

(a) the deceased had the mental capacity to open a joint account,

(b) the first defendant did not tamper with the forms, and

(c) the deceased had opened joint accounts previously in 1983,

I find that there was no evidence that the deceased did not intend or was not aware of the opening of the joint account in 1990.

37 For the four EasiSave accounts opened in 1995, I find that if the deceased had dementia, it was mild dementia, and not severe dementia. As Dr Tan and Dr Tang attested, mild dementia does not deprive a person of his mental abilities. Alzheimer's Dementia, which they thought the deceased to be suffering from, is a progressive condition which begins with short-term memory loss, and develops gradually over the years. Dr Tan believes that a person with mild dementia is capable of making uncomplicated decisions. *Williams, Mortimer and Sunnucks on Executors, Administrators and Probate* (Sweet & Maxwell, 18th Ed, 2000) states at para 13-09 that "memory impairment of itself may not necessarily result in loss of testamentary capacity", and that would apply by analogy to the capacity to open a bank account.

38 I find that the deceased had the capacity to open the joint EasiSave accounts in 1995.

39 I should add that the deceased's mental condition in 1990 is of more significance in this action than his mental condition in 1995. The reason is that if the deceased was not *compos mentis* in 1995 when he opened accounts (b) to (e), the *status quo ante* of 1990 when account (f), the source of the moneys in accounts (b) to (e), was opened would apply, and the moneys will be taken to have remained in account (f) which was held jointly by the deceased and the first defendant.

40 The grandchildren also raised questions on the operations of the accounts after March 1990, and complained that the first defendant was not operating the accounts properly. These complaints do not relate to the question to be answered in this originating summons, and do not need to be dealt with.

Whether the presumption of advancement can apply

41 Counsel for the third defendant argued that:

> A presumption of advancement arises when a person who transfers property or provides money to another person is under an equitable obligation to support or make provision for that person. The learned author of *Snell's Equity* [(Sweet & Maxwell, 31st Ed, 2005) at para 23-02] wrote:
>
> > The presumption of advancement applies to certain transfers between parties where it may be readily inferred that A would have intended to make a gift to B. It is found therefore where A is under an equitable obligation to support or make provision for B. Examples are where A is the husband or father of B. It is, in effect, a counter-presumption which provides *prima facie* evidence about A's intentions as to where the beneficial interest in the property should lie. Its effect is to negative any initial presumption that the transfer creates a resulting trust.

42 Counsel also cited *Ang Toon Teck v Ang Poon Sin* [1998] SGHC 67 where Judith Prakash J stated at [48] that:

> The presumption of advancement should not apply as between a father and son in these circumstances as there is no need for the one to make financial provision for the other.

and found that the presumption of advancement could not apply between a father and a 50-year-old financially self-supporting son, but she went on to say that if that approach was wrong, the presumption did not apply because it was rebutted on the facts.

43 There is a significant difference between taking the position that the presumption cannot apply when there is no need for financial provision, and finding that the presumption is rebutted. The former states a proposition of law applicable to all similar cases, while the latter is a finding that is made on the facts of a particular case.

44 The presumption of advancement between a father and his child has been explained without reference to the need for financial support. Lord Eldon explained the presumption in *Murless v Franklin* (1818) 1 Swans 13 at 18; 36 ER 278 at 280 thus:

> It is settled that though, in general cases, if *A*. purchases with his own money, and the conveyance is taken in the name of *B*., an implied trust in favour of *A*. arises from the payment of the purchase money; yet that doctrine has exceptions. One exception is, that if a man purchases in the name of his son, and no act is done to manifest an intention that the son shall take as trustee, that intention will not be implied from the payment of the purchase money by the father, but the purchase is *prima facie* an advancement.

45 More recently, the English Court of Appeal considered the presumption of advancement and the presumption of undue influence in transactions involving a parent and a child in *In re Pauling's Settlement Trusts* [1964] Ch 303. Willmer LJ held at 336:

> The doctrine of undue influence, much discussed before us, merely arises out of the fact that while equity approves of gifts by a father to a child, and therefore invented the doctrine of presumption of advancement, so on the other hand it dislikes and distrusts gifts by a child to a parent, and therefore invented the presumption of undue influence. Both these presumptions merely mean, in our opinion, that in the absence of evidence, or if the evidence on each side be evenly balanced, in the first case equity will presume that the parent who puts property in a

child's name intends to make a gift or give a benefit to the child, while on the other hand money or property passing from the child to the parent cannot be retained by the latter because it is assumed that so unnatural a transaction would have been brought about by undue use of the natural influence that a parent has over a child, and of the filial obedience which a child owes to his parent. Both presumptions may be rebutted; each is in truth a convenient device in aid of decisions on facts often lost in obscurity, whether owing to the lapse of time or the death of the parties.

46 Prakash J did not refer to any cases which stated that the presumption of advancement could only arise in a transaction of property from a parent to a child when it could be inferred that the parent was making a financial provision for the child. Counsel for the third defendant did not produce any other judgment which espoused that view.

47 When one considers the presumption of advancement as expounded in *Murless v Franklin* and *In re Pauling's Settlement Trusts*, one must be cautious about adopting the narrower approach. As the presumption operates as an exception to the rule on resulting trusts, the rationale for the presumption should be considered. The underlying reason for having an exception is that the parent would have intended the child to have the benefit of the property because of the parent-child relationship between them. There is no necessity to restrict the operation of the presumption of advancement to a child in need of financial support. There is no reason to suppose that a parent could have intended the child to have the benefit if the latter was financially dependent, but not if he was financially sound.

Is the presumption rebutted?

48 The presumption of advancement has lost its robustness over the years. The process started with the House of Lord's decision in *Pettitt v Pettitt* [1970] AC 777 where the law lords were unanimous that the strength of the presumption in a transaction affecting husband and wife had diminished and the Privy Council on appeal from Singapore took the same position in *Neo Tai Kim v Foo Stie Wah* [1985] 1 MLJ 397. In *McGrath v Wallis* [1995] 2 FLR 114, the English Court of Appeal expressed the same view in a case between father and child.

49 The Court of Appeal in *Teo Siew Har v Lee Kuan Yew* [1999] 4 SLR 560 referred to the three cases and concluded at [29] that:

> [T]he current judicial approach towards the presumption of advancement is to treat it as an evidential instrument of last resort where there is no direct evidence as to the intention of the parties rather than as an oft-applied rule of thumb.

50 Neither the first defendant nor the grandchildren had any direct evidence of the deceased's intentions when he opened the six joint accounts. The first defendant's case was that the deceased must have intended him to have the money because he was the youngest and favourite son of the deceased. The grandchildren, on the other hand, argued that if the deceased had knowingly opened those joint accounts, he opened them for his convenience, safety or security.

51 The first defendant's claim that he was the deceased's favourite son was disputed by the grandchildren and there was no reliable evidence because the deceased did not name any child as his favourite.

52 The first defendant believed that the deceased intended him to have the moneys in the accounts because he had been managing the family business after the death of Low Yok Kay, the

deceased's eldest son in 1983. He also relied on the fact that in the case before Lai J, the third defendant herein described the first defendant as the deceased's blue-eyed boy, but that was somewhat neutralised by the plaintiff's evidence in this case that she felt that, Low Geok Beng, the deceased's fifth son, was the deceased's favourite son.

53 In his past actions, the deceased did not treat his children with absolute equality in financial matters. The deceased had made one distribution of assets to his children in his lifetime. This took place when he incorporated the family business into a limited company, Hup Choon Kim Kee Ltd, in February 1963.

54 In the fourth defendant's words, the deceased provided all his children with shareholdings in the company. The sons were provided with more shares than the daughters. Amongst the sons, Low Yok Kay received the most, 1,005 shares, followed by the first defendant who received 905 shares. The other four sons had 730 shares each. Amongst the daughters, the plaintiff received 160 shares while the other daughters had 150 shares each. The deceased allotted to himself 1,060 shares. From this distribution, it can be inferred that Low Yok Kay was the most favoured son, and the first defendant was the next most favoured in 1963.

55 When account (f) was opened in 1990, Low Yok Kay was already dead, having died in 1985, and the first defendant was the most favoured surviving child if the *status quo* remained. There was no indication that the relationship had changed since 1963 and the deceased had dinners in the first defendant's house regularly.

56 The grandchildren pointed out that he was 84 years old in 1990, and the bank was situated along a busy road. They argued that it was more convenient for him to open the joint accounts with the first defendant so that he could operate the account for him.

57 On the other hand, it was common evidence that the deceased was well taken care of in his old age. He called on his children and grandchildren to take him when he needed to go out, and they also ran errands for him. He did not have to do everything himself, or rely on public transport. In addition to that, there was also evidence that his attendance might not have been required for the opening and operation of the bank accounts.

58 How do the factors weigh up? The first defendant had worked with the deceased and the family business and was one of the favoured children when the company shares were allotted in 1963, and they remained close at least to the extent that they had dinners together.

59 The $3m the deceased placed in the two joint fixed deposit accounts on 23 March 1990 was probably more than the deceased required for his needs at that stage of his life when he was 84. If he had not intended for the first defendant to have the moneys after he died, he would have left instructions for their distribution. Is it likely that a Chinese patriarch such as him intended his sons and daughters to have equal shares of the moneys when he died? His distribution of the shares in the family company reflected a more traditional and conservative outlook.

60 After giving the matter careful consideration, I find it more probable than not that when the deceased opened the six accounts, he intended the first defendant to have the moneys upon his death. Consequently, the presumption of advancement is not rebutted.

Conclusion

61 In answer to the question posed in the originating summons, I find that the moneys in

accounts (a) to (f) vested in the first defendant as the surviving account holder of the accounts upon the death of the deceased.

62 I will hear submissions on the question of costs.