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### A principled and structured approach for ascertaining beneficial interests in property disputes: Chan Yuen Lan v See Fong Mun [2014] SGCA 36

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# SINGAPORELAWBLOG

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## **A Principled and Structured Approach For Ascertaining Beneficial Interests in Property Disputes: Chan Yuen Lan v See Fong Mun [2014] SGCA 36**

### **Introduction**

In *Chan Yuen Lan v See Fong Mun* [2014] SGCA 36, the Court of Appeal provided important clarifications about the relationship between a resulting trust and a common intention constructive trust for the purpose of ascertaining beneficial interests in cases of property dispute. This issue, which has attracted much speculations, was left open in *Lau Siew Kim v Yeo Guan Chye Terence* [2007] SGCA 54 where the same court merely confirmed the continued relevance of the twin presumptions of resulting trust and advancement.

### **Facts and dispute**

The parties to the present dispute are two married octogenarians, Mr See and Mdm Chan. The subject matter of dispute was a bungalow house purchased in 1983 for about \$1.8 million (now worth about \$20 million) and registered in Mdm Chan's sole name. The purchase price came from a number of sources:

- (1) \$290,000 from Mdm Chan's life savings;
- (2) \$400,000 from a term loan taken out in Mdm Chan's name;
- (3) \$400,000 from an overdraft facility granted to Mr See's company;
- (4) \$8,117.35 from an account jointly held by Mr See and their eldest son;
- (5) \$10,000 from their eldest son; and
- (6) \$723,641.55 from Mr See's savings and CPF monies.

After the purchase, Mdm Chan executed a power of attorney in favour of Mr See and their eldest son, authorising them to manage the house and to sell it for such price as they see fit. In 2011, Mdm Chan revoked the power of attorney

fearing that that Mr See was trying to sell the house. This prompted Mr See to seek a declaration that he was the beneficial owner of the house under a resulting trust. Mdm Chan, on the other hand, counterclaimed that the house was a gift to her under a presumption of advancement.

**High Court** (*See Fong Mun v Chan Yuen Lan* [2013] SGHC 99)

One of the main disagreements in this case relates to who should be regarded as the contributor of the money from sources (1) and (2). The High Court found that Mdm Chan had transferred the sum of \$290,000 as a loan to Mr See and therefore the true contributor was Mr See. With regards to the \$400,000 from the term loan taken out in Mdm Chan's name, the court found it unlikely that Mdm Chan agreed to repay the loan since the \$290,000 loaned to Mr See represented her entire life savings. Instead, it was more likely that Mr See repaid the loan himself pursuant to an agreement prior to the purchase that he would be responsible for doing so. Therefore, following *Lau Siew Kim*, the \$400,000 contribution was attributed to Mr See. For completeness, it is also necessary to note that the real litigants behind the scenes were two of their children. The eldest son supported Mr See while the youngest son supported Mdm Chan. This explains why the eldest son was seemingly happy to attribute his contribution to the purchase price (sources (4) and (5)) as Mr See's. Applying the resulting trust approach, by which each party's beneficial entitlement is in proportion to his or her respective contribution to the purchase price, the High Court held that Mr See was fully entitled to the beneficial interest of the house.

The court also held that the presumption of advancement raised by Mdm Chan's was rebutted. In light of Mr See's extramarital affair, which started prior to the purchase of the house, his marriage with Mdm Chan existed in name only. It was very unlikely that he would spend so much money and incur substantial financial risk to make Mdm Chan such a gift. The unlikelihood of a gift was also supported by the existence of the power of attorney granted to Mr See.

Moreover, the High Court found that there was sufficient evidence to support Mr See's allegation that he and Mdm Chan agreed prior to the purchase of the house that he would be the owner. In light of such common intention, which was buttressed by the granting of the power of attorney to Mr See, the court questioned whether it was necessary to resort to the presumption of resulting trust. The court opined that the common intention constructive trust is 'a sounder solution' in such a case (citing *Stack v Dowden* [2007] 2 AC 432; *Jones v Kernott* [2012] 1 AC 776) but recognised that Mr See's claim was clearly supported by *Lau Siew Kim*. Based on the court's findings of facts, however, the result would have been the same regardless of which approach the court adopts.

The question impliedly put to the highest court is whether Singapore should follow the English footstep in adopting a common intention constructive trust as the preferred method of dealing with property disputes, at least in the domestic context.

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## **Court of Appeal**

The Court of Appeal affirmed its own decision in *Lau Siew Kim* that the twin presumptions of resulting trust and advancement shall be retained to address property disputes. However, it agreed with the High Court that 'there can generally be no justification to resort to presumptions, however much they may reflect the norms, customs and mores of society, if the court is faced with the *actual* intentions and desires of the transferor' ([51], agreeing also with *Neo Hui Ling v And Ah Sew* [2012] 2 SLR 831; *Lim Chen Yeow Kelvin v Goh Chin Peng* [2008] 4SLR(R) 783). This is consistent with the Court of Appeal's recognition in *Lau Siew Kim*, which was again affirmed in the present case, that a resulting trust may arise independently of any presumption if it could be proven by evidence that the contributor of the purchase price did not intend to benefit the recipient. Similarly, a presumption of resulting trust may be rebutted by actual evidence of gift without relying on a presumption of advancement. Thus, even if the parties advance their cases based on presumptions, it remains necessary to consider if there is any evidence that may adequately reveal their actual intentions ([49]–[52]).

In the present case, the Court of Appeal observed that the respective cases put forth by Mr See and Mdm Chan were largely attempts by their children to 'reconstruct versions of the material events which would be favourable to their cause based on whatever documentary evidence there was available' and therefore any alleged evidence of the parties' intentions had to be approached with 'extreme caution' ([71]). It disagreed with the High Court's finding as to the existence of a prior agreement between the parties that Mr See shall be the owner of the house ([161]), and therefore there was no reason to justify a departure from the resulting trust analysis.

Focusing on the parties' respective contributions to the purchase price of the house, the Court of Appeal held that Mr See failed to discharge the burden of proving that the \$290,000 from Mdm Chan was a loan to him, thus reversing the High Court's finding. That money was therefore taken to be Mdm Chan's contribution to the purchase price. As for the \$400,000 term loan, the court agreed with the High Court's finding that Mr See's repayment was pursuant to a prior agreement ([85]), and it added that had it not come to this conclusion, it would be willing to invoke 'the remedy of equitable accounting to adjust Mr See's and Mdm Chan's respective shares of the beneficial interest in the Property so as to attribute the \$400,000 from the [term loan] to Mr See' ([86], adopting Lord Neuberger's suggestion in *Stack*, [117]). As Mdm Chan's contribution to the purchase price was only \$290,000, she held 84.17% of the beneficial interest of the house on a resulting trust for Mr See. As to Mdm Chan's allegation of a gift, the Court of Appeal found it unlikely for the same reasons stated by the High Court. The presumption of advancement was therefore also rebutted.

Although the Court of Appeal found that the dispute is sufficiently resolved by the resulting trust analysis, it nonetheless went on to examine the relationship between the resulting trust analysis and a common intention constructive trust analysis in light of recent developments in English law. The aim is to determine the appropriate default regime to apply for the purposes of resolving property disputes, particularly in the domestic context ([99]).

The common intention constructive trust arises from an express or inferred common intention that the claimant was to have a beneficial interest in the property. Traditionally, a common intention will only be inferred if the claimant has contributed directly to the purchase price of the property, although the notion of direct contribution may be looser here compared to the similar notion under the resulting trust approach: see *Gissing v Gissing* [1971] AC 886; *Lloyd's Bank Plc v Rossett* [1991] 1 AC 107. In *Stack*, the House of Lords decided to expand the common intention constructive trust in two ways. First, it held that the common intention constructive trust displaces the resulting trust as the applicable regime in addressing disputes relating to beneficial interests in family homes. Second, the parties' common intention is to be ascertained 'in the light of their whole course of conduct in relation to it' ([60]), thus departing from the traditional focus on financial contribution.

The Court of Appeal refused to follow *Stack* in replacing the resulting trust with a common intention constructive trust as the preferred method of ascertaining beneficial interests in family homes. A few reasons were given ([152]). First, the social and economic landscape of Singapore has yet to change so as to make the operation of the twin presumptions inappropriate. Second, it is difficult to identify what kind of cases is truly 'domestic' so as to attract the approach in *Stack*. Third, the large degree of subjectivity and uncertainty in the approach in *Stack* is likely to result in an increase in litigation as well as legal costs. Solicitors would find it difficult to advise their clients on the likelihood of success of their clients' claims.

Instead, the Court of Appeal preferred an approach that would allow each party's beneficial interest to be determined in 'a principled and fairly predictable manner' ([159]). It decided that Lord Neuberger's minority approach in *Stack* satisfies this requirement. His Lordship's approach, as accepted in Singapore, could be summarised as follows ([160]):

(a) If there is evidence of the parties' respective contributions to the purchase price of the property, the parties' beneficial interests will be determined using the resulting trust approach. Each party will be beneficially entitled to the property in proportion to his or her contribution.

(b) If there is evidence of an express or inferred common intention that the parties shall hold the beneficial interest in a proportion which is different from that arrived at in (a), the parties' beneficial interests will be in accordance with such common intention. For this purpose, there is no room for the imputation of an intention where none exists.

(c) If neither (a) nor (b) applies, the parties' equitable interests will follow their legal interests.

(d) If only (a) applies, it remains necessary to ask whether there is sufficient evidence to show that the party who paid the larger part of the purchase price intended the payment to benefit the other party.

(e) If the question in (d) is answered in the negative, a further question to be asked is whether a presumption of advancement applies. If it does, it will rebut the presumption of resulting trust in (a).

(f) If, subsequent to the purchase, the parties have evinced common intentions, either express or inferred, that they shall hold the beneficial interest of the property in a proportion which is different from that in which the beneficial interest was held at the time of the property's acquisition, the parties will hold the beneficial interest in accordance with such common intention. This is known as the 'ambulatory constructive trust'.

This structured and principled approach not only avoids many of the problems inherent in the majority's approach but also 'provides pragmatic and clear guidance on when a resulting trust and when a common intention constructive trust ... applies in this complex and difficult area of the law ([154])'.

## **Commentary**

It is only necessary to add a few observations and comments. First, in *Lau Siew Kim*, it was held that where the parties have contributed equally to the purchase price, they will be joint tenants at law and no resulting trust arises. Although this statement of law has not been repeated by the court in the present case, it is likely to remain true.

Second, by allowing equitable accounting of the kind suggested by Lord Neuberger in relation to the repayment of a loan, the Court of Appeal is essentially expanding the types of financial contribution that are relevant to the quantification of beneficial interests under the resulting trust approach ([56]). This departs from the position adopted in *Lau Siew Kim*, under which mortgage repayment is only relevant if it is pursuant to a prior agreement to do so ([115]–[117]). The implication of this change is significant given that the majority of properties are purchased with the assistance of secured loans.

Third, in determining whether a common intention constructive trust arises to alter the parties' beneficial entitlements, the court will have regard to 'all the circumstances of the relationship' (*Stack*, [131]). However, since the imputation of a common intention is prohibited even at the quantification stage (cf *Jones*, [47]), it would be insufficient for a claimant to merely show that there was a common intention to share beneficial interest in the property and that his or her share is larger than what was determined under a resulting trust approach. Instead, the available evidence must sufficiently reveal how the parties intended the beneficial interest of the property to be divided between them. Under English law, an example where the court found it impossible to infer such an intention is *Aspden v Elvy* [2012] EWHC 1387, where there was no discussion about the claimant's beneficial share and the only available evidence was his financial contribution. Having said this, the amount of evidence that is necessary will depend on the judicial approach to inferring such an intention.

Although the distinction between inference and imputation may be less well defined in practice, the Court of Appeal is unlikely to adopt an overly wide approach to inferring the relevant intention given its preference for a more predictable approach.

Fourth, by denying special treatment to disputes concerning family homes, the common intention constructive trust is now applicable in the commercial context ([157], cf *Laskar v Laskar* [2008] 1 WLR 2695). This incidentally lends support to a common intention constructive trust analysis of the *Pallant v Morgan* equity adopted in *Banner Homes Group Plc v Luff Developments Ltd & anor* [2000] Ch 372 (cf *Crossco No 4 Unlimited v Jolan Ltd* [2011] EWCA Civ 1619), which was approved by the High Court in *Ong Heng Chuan & anor v Ong Boon Chuan & anor* [2003] 2 SLR(R) 469.

Fifth, despite its preference for the structured approach, the Court of Appeal admitted that 'the court is generally constrained by the manner in which counsel decide to present their clients' cases' ([98]). Thus, the courts may not have a free hand in deciding whether to invoke a common intention constructive trust if it is not pleaded by the parties. However, the court could, in an appropriate case, invite parties to make further submissions on a possible cause of action.

## **Conclusion**

The Court of Appeal's clarification of the applicable approach in ascertaining beneficial interests in cases of property dispute is timely in light of the ever increasing property prices. The emphasis on principle and certainty is patently sensible and is likely to be effective in addressing important policy concerns, particularly the need to avoid an increase in litigation and associated costs. The decision also marked another departure from English law, reflecting the court's emphasis on the need to tailor legal rules to fit local circumstances.

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