

**IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2024] SGHC(A) 21

Appellate Division / Civil Appeal No 130 of 2023

Between

Khoo Jee Chek

... Appellant

And

Lim Beng Tiong

... Respondent

In the matter of Suit No 819 of 2021

Between

Khoo Jee Chek

... Plaintiff

And

Lim Beng Tiong

... Defendant

JUDGMENT

[Civil Procedure — Judgments and orders — Order for division of net sale proceeds between co-owners — Whether court was *functus officio* when ordering equitable accounting of co-owners' contributions towards repayment of mortgage loan in division of net sale proceeds where judgment was previously rendered declaring their beneficial interests in co-owned property]

[Equity — Remedies — Equitable accounting — Accounting for contributions of co-owner towards repayment of mortgage loan in absence of prior agreement]

[Equity — Remedies — Equitable accounting — Accounting for sole occupation of property by co-owner by way of setting-off against interest element of mortgage payments]

TABLE OF CONTENTS

INTRODUCTION	1
RELEVANT BACKGROUND	3
FACTUAL BACKGROUND OF DISPUTE	3
PROCEDURAL HISTORY OF THE TRIAL BELOW	6
THE PARTIES' POSITIONS BELOW	6
THE JUDGE'S JUDGMENT DATED 23 AUGUST 2023	8
THE JUDGE'S ORDER DATED 1 NOVEMBER 2023	9
THIS APPEAL	11
CASE FOR MR KHOO ON APPEAL	12
CASE FOR MR LIM ON APPEAL	14
ISSUES TO BE DECIDED	16
ISSUE 1: WHETHER THE JUDGE WAS <i>FUNCTUS OFFICIO</i> ON THE ISSUE OF EQUITABLE ACCOUNTING OF THE PARTIES' CONTRIBUTIONS TOWARDS THE REPAYMENT OF THE MORTGAGE LOAN	16
ISSUE 2: WHETHER THE JUDGE WAS CORRECT TO ORDER EQUITABLE ACCOUNTING OF MR LIM'S CONTRIBUTIONS TOWARDS THE MORTGAGE LOAN WITHOUT ACCOUNTING FOR HIS SOLE OCCUPATION OF THE PROPERTY	19
WHETHER THE JUDGE WAS CORRECT TO ORDER AN EQUITABLE ACCOUNTING OF THE FACT THAT MR LIM HAS MADE GREATER CONTRIBUTIONS TOWARDS THE REPAYMENT OF THE MORTGAGE LOAN OF THE PROPERTY COMPARED TO THAT OF MR KHOO.....	19

WHETHER THE JUDGE WAS CORRECT NOT TO ORDER EQUITABLE ACCOUNTING OF THE FACT THAT MR LIM HAS ENJOYED SOLE OCCUPATION OF THE PROPERTY	24
CONCLUSION.....	29

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Khoo Jee Chek
v
Lim Beng Tiong

[2024] SGHC(A) 21

Appellate Division of the High Court — Civil Appeal No 130 of 2023
Woo Bih Li JAD, Kannan Ramesh JAD and Philip Jeyaretnam J
17 May 2024

17 July 2024

Judgment reserved.

Philip Jeyaretnam J (delivering the judgment of the court):

Introduction

1 The appellant is Mr Khoo Jee Chek (“Mr Khoo”), while the respondent is Mr Lim Beng Tiong (“Mr Lim”). They are co-owners of a two-storey commercial property (“the Property”),¹ which they have held on a joint tenancy in law since September 2017.²

2 In 2018, they decided to part ways but could not agree on what their respective beneficial ownership in the Property was. They brought their dispute to court. Mr Lim asserted beneficial ownership of 99% or 100% on the basis of

¹ Valuation Report of the Property of OrangeTee Advisory Pte Ltd dated 1 December 2020 at pp 1 and 3 (Record of Appeal (“RA”) Vol III Part A at pp 332 and 334).

² Confirmation of Manner of Holding for the Property dated 15 September 2017 (RA Vol V Part A at p 191).

a common intention trust. Mr Khoo claimed 50% beneficial ownership based on a (different) common intention. In *Khoo Jee Chek v Lim Beng Tiong* [2023] SGHC 233 (“the Judgment”), the Judge rejected both parties’ primary cases, holding that there was insufficient evidence of common intention. Instead, she gave judgment based on a presumption of resulting trust analysis, in respect of which she had heard parties’ submissions concerning their respective contributions to the purchase price. Noting that they were both jointly liable for the mortgage, the Judge counted the mortgage loan as contribution by them both equally and consequently concluded (after considering the proportions of their initial contributions to the purchase and other ancillary payments) that Mr Khoo’s beneficial ownership was 38.38% while Mr Lim’s was 61.62%.

3 There is no appeal from the Judgment. Rather the appeal concerns the order the Judge subsequently made for equitable accounting in connection with the sale proceeds from the Property. In this exercise, the Judge made an adjustment to account for the differential contributions to repayment of the mortgage loan. However, she declined to make any adjustment to account for Mr Lim’s sole occupation of the Property.

4 Mr Khoo seeks to persuade us that the Judge was *functus officio* regarding any issue of equitable accounting upon delivery of the Judgment. Alternatively, he submits that there should have been no equitable accounting in respect of Mr Lim’s repayments of the mortgage loan or that there should also be an equitable accounting of Mr Lim’s sole occupation of the Property in the division of the net sale proceeds between them.

5 Having considered the parties’ arguments, we allow the appeal in part. The Judge was not *functus officio*. However, in exercising her discretion to order an equitable accounting, the Judge did not consider the point that Mr Lim was

not only in sole occupation of the Property but also derived financial gain from it.

6 The objective of equitable accounting is to do broad justice between the parties. In order to achieve such broad justice, we find that the process of equitable accounting should take into account Mr Lim’s sole occupation of the Property from which he derived financial gain. In terms of amount, we consider that it would do broad justice between the parties for the adjustment in respect of Mr Lim’s repayments of the mortgage loan to be only in respect of the principal. In other words, his payment of the interest element of the mortgage loan should be absorbed by him given that he was deriving financial gain from his sole occupation of the Property.

7 We now explain our reasons for arriving at this outcome.

Relevant background

Factual background of dispute

8 Mr Lim is the founder, manager, and owner of the Zhun Ti Tang temple (“the Temple”).³ Mr Khoo was a Buddhist worshipper at the Temple who was actively involved as a volunteer there from 2016–2018.⁴

³ Affidavit of Evidence-in-Chief of Mr Lim Beng Tiong in HC/S 819/2021 affirmed on 3 August 2022 (“LBT”) at para 3 (RA Vol III Part B at p 357).

⁴ Affidavit of Evidence-in-Chief of Mr Khoo Jee Chek in HC/S 819/2021 affirmed on 20 July 2022 (“KJC”) at paras 8–9 (RA Vol III Part A at p 6); LBT at paras 6–7 (RA Vol III Part B at pp 358–359).

9 Prior to the parties' acquisition of the Property, the Temple was housed at Mr Lim's residential address.⁵ In 2017, Mr Lim wished to move the Temple to a separate location.⁶

10 Mr Lim approached Mr Khoo and proposed purchasing a commercial property in their joint names for the Temple. The parties thus agreed to purchase a property together for use as the Temple's premises.⁷

11 The parties obtained an option to purchase a leasehold estate in the Property in their joint names from the vendor-developer on 9 August 2017.⁸ They executed the sale and purchase agreement over a leasehold estate in the Property with the vendor-developer on 6 September 2017.⁹ They declared their manner of holding the Property to be as joint tenants on 15 September 2017.¹⁰

12 To assist in their acquisition of the Property, the parties obtained a mortgage loan in their joint names, for which they are jointly and severally liable to the mortgagee-bank.¹¹ They executed a deed of assignment of the

⁵ KJC at para 7 (RA Vol III Part A at p 6); LBT at para 12 (RA Vol III Part B at p 364).

⁶ KJC at para 15 (RA Vol III Part A at p 8); LBT at para 12 (RA Vol III Part B at p 364).

⁷ KJC at paras 16–22 (RA Vol III Part A at pp 9–10); LBT at paras 15–17 (RA Vol III Part B at pp 365–366).

⁸ Option to Purchase the Property dated 9 August 2017 (RA Vol V Part A at pp 42–56); KJC at para 26 (RA Vol III Part A at p 11); LBT at para 18 (RA Vol III Part B at p 366).

⁹ Sale and Purchase Agreement relating to the Property dated 6 September 2017 (RA Vol V Part A at pp 73–122).

¹⁰ Confirmation of Manner of Holding for the Property dated 15 September 2017 (RA Vol V Part A at p 191).

¹¹ KJC at para 37 (RA Vol III Part A at p 15); Annex 1 Additional Terms Covenants and Conditions of Deed of Assignment and Mortgage for the Property dated 4 October 2017 at cl 1.1 (RA Vol V Part A at p 201); Deed of Assignment Executed by the Mortgagee, Mr Lim Beng Tiong, and Mr Khoo Jee Chek dated 4 October 2017 at cl 7.1 (RA Vol V Part A at p 218).

Property to the mortgagee-bank, holding only the equity of redemption from then on,¹² dated 4 October 2017 (and signed by them on 15 September 2017).¹³

13 Mr Khoo made the first two mortgage payments for the months of November and December 2017.¹⁴ Mr Lim made all the other monthly mortgage repayments from the month of January 2018 onwards.¹⁵

14 The parties collected the keys to the Property from the vendor-developer in or around July 2018.¹⁶ The second floor of the Property was then used as the premises for the Temple, while the first floor was used for a business selling handicrafts, collectibles, gifts, and Buddhist idols and statues, known as Zhen Ru Ge. Mr Lim is the sole proprietor of this business (“the Business”).¹⁷

¹² Deed of Assignment and Mortgage for the Property dated 4 October 2017 (RA Vol V Part A at pp 196–203); Deed of Assignment Executed by the Mortgagee, Mr Lim Beng Tiong, and Mr Khoo Jee Chek dated 4 October 2017 (RA Vol V Part A at pp 216–225).

¹³ Deed of Assignment Executed by the Mortgagee, Mr Lim Beng Tiong, and Mr Khoo Jee Chek dated 4 October 2017 at pp 1 and 10 (RA Vol V Part A at pp 216 and 225).

¹⁴ KJC at para 76 (RA Vol III Part A at p 33); *Khoo Jee Chek v Lim Beng Tiong* [2023] SGHC 233 at [48]–[50].

¹⁵ KJC at para 78 (RA Vol III Part A at pp 33–34); LBT at paras 29–33 (RA Vol III Part B at pp 370–373); *Khoo Jee Chek v Lim Beng Tiong* [2023] SGHC 233 at [72].

¹⁶ KJC at para 79 (RA Vol III Part A at p 34); LBT at para 44 (RA Vol III Part B at p 378).

¹⁷ KJC at paras 24 and 77 (RA Vol III Part A at pp 11 and 33); LBT at paras 4 and 45 (RA Vol III Part B at pp 357 and 378).

15 The relationship between the parties broke down in or around October 2018. Hence, Mr Khoo indicated to Mr Lim that he no longer wished to be an owner of the Property.¹⁸ The parties agreed that this would be effected in 2020.¹⁹

16 When the parties discussed the matter in 2020–2021, they disagreed on how Mr Khoo’s name would be removed from the Property’s legal title including because they did not agree on what Mr Khoo’s interest in the Property was. Mr Khoo considered that he held a half-share in the Property, but Mr Lim’s view was that Mr Khoo was not a beneficial owner of the Property at all or at most beneficially owned a 1% share in the Property.²⁰

Procedural history of the trial below

The parties’ positions below

17 As parties were not able to resolve their differences concerning their respective shares in the Property, Mr Khoo filed HC/S 819/2021 (“the Suit”) against Mr Lim on 4 October 2021.²¹

18 In the Suit, Mr Khoo took the position that the parties held the beneficial ownership of the Property in equal shares. Mr Lim’s position was that he was the sole beneficial owner of the Property or that Mr Khoo held only a 1% share in the beneficial ownership.

¹⁸ KJC at paras 82–83 (RA Vol III Part A at pp 35–36); LBT at paras 48–49 (RA Vol III Part B at p 380).

¹⁹ KJC at para 84 (RA Vol III Part A at p 36); LBT at para 51 (RA Vol III Part B at p 381).

²⁰ KJC at paras 84–102 (RA Vol III Part at pp 36–41); LBT at paras 55–73 (RA Vol III Part B at pp 383–391).

²¹ Writ of Summons filed 4 October 2021 (RA Vol II at pp 12–13).

19 More specifically, Mr Khoo's case was that the parties had a common intention, when the Property was acquired, that they would hold it as equal beneficial owners, giving rise to a common intention constructive trust.²² Mr Lim's primary case was that there was a common intention between parties that Mr Lim would beneficially hold a 99% share in the Property or that he be the sole beneficial owner, thereby giving rise to a different common intention constructive trust.²³ Mr Lim's alternative case was that the parties held the Property on a presumed resulting trust based on their financial contributions towards its acquisition,²⁴ asserting that he contributed to 100% of that financial contribution.²⁵

20 Mr Lim argued in his closing submissions that, when the parties took out the mortgage loan, the common understanding between them was that he would be responsible for making 100% of all mortgage repayments.²⁶ Mr Khoo argued in his closing submissions that the parties' common understanding was that they would pay for the purchase of the Property in equal shares.²⁷

²² Hearing Transcript in HC/S 819/2021 dated 24 August 2022 at p 2 lines 12–23 and p 3 lines 20–27 (RA Vol III Part C at pp 838–839).

²³ Hearing Transcript in HC/S 819/2021 dated 24 August 2022 at p 4 lines 8–14 and 24–30, p 5 lines 6–29 and p 7 lines 1–32 (RA Vol III Part C at pp 840–841 and 843).

²⁴ Hearing Transcript in HC/S 819/2021 dated 24 August 2022 at p 6 lines 13–18 (RA Vol III Part C at p 842).

²⁵ Hearing Transcript in HC/S 819/2021 dated 24 August 2022 at p 6 lines 29–32 (RA Vol III Part C at p 842); LBT at para 73 (RA Vol III Part B at p 391).

²⁶ Mr Lim Beng Tiong's Closing Submissions in HC/S 819/2021 dated 5 May 2023 at paras 86–91.

²⁷ Mr Khoo Jee Chek's Closing Submissions in HC/S 819/2021 dated 5 May 2023 at paras 95–100.

The Judge's Judgment dated 23 August 2023

21 Following the trial in August 2022 and March 2023, the Judge delivered the Judgment on 23 August 2023.

22 She rejected both parties' assertions of a common intention constructive trust as they both failed to prove that they had formed any common intention as to their beneficial shares in the Property (see the Judgment at [59], [62], [110]–[111]). Accordingly, they held the Property on a presumed resulting trust, in the proportions of their respective financial contributions towards its acquisition (see the Judgment at [112]).

23 She found that the parties contributed towards the Property's purchase in the following proportions – 38.38% from Mr Khoo and 61.62% from Mr Lim (see the Judgment at [122]–[125]). In arriving at that computation, she attributed the mortgage loan amount of \$560,000 as a contribution of the parties in equal shares (see the Judgment at [124]), as there was no evidence that parties made any agreement as to who would repay the mortgage loan, and the parties were jointly and severally liable to repay it (see the Judgment at [118]–[119]).

24 She found that, although Mr Khoo paid the mortgage repayments for the months of November and December 2017, and Mr Lim paid for the remaining months, she would not adjust the parties' beneficial shares in the Property based on their unequal contributions towards the repayment of the mortgage loan. This was because Mr Lim enjoyed sole use and occupation of the Property. Mr Khoo had not enjoyed any benefit in the Property (see the Judgment at [120]).

25 Accordingly, the parties held the Property on a presumed resulting trust in the proportions of a 38.38% share for Mr Khoo and a 61.62% share of Mr Lim (see the Judgment at [125]). As their relationship had broken down, she held

that she would hear parties concerning further orders and directions to deal with the Property so the parties would not have to remain co-owners (see the Judgment at [126]).

The Judge's Order dated 1 November 2023

26 A further hearing was fixed on 11 September 2023 for the court to decide on the necessary orders. It was at this hearing that Mr Lim attempted to clarify the orders in the Judgment and raised, for the first time, the issue of his entitlement to equitable accounting in relation to the mortgage payments. Counsel for Mr Lim pointed out that although the Judge decided at [120] of the Judgment that there was no need to apply equitable accounting to retrospectively adjust the beneficial interest, the Judgment did not deal with the issue of whether there should be an equitable account to Mr Lim for the mortgage payments he made in excess of half the mortgage loan amount.²⁸ The Judge then directed parties to file and serve further submissions on how the sale proceeds of the Property should be apportioned between parties,²⁹ which they did.

27 On 1 November 2023, the Judge dealt with how the net sale proceeds of the Property would be divided between the parties in the event of a sale (“the Order”).

28 She held that there should be an equitable accounting of the parties’ respective contributions towards the repayment of the mortgage loan, and she was not *functus officio* to make that order because her Judgment dealt only with the question of their beneficial shares in the Property based on a presumed

²⁸ Minute Sheet in HC/S 819/2021 dated 11 September 2023 at pp 1–2.

²⁹ Minute Sheet in HC/S 819/2021 dated 11 September 2023 at p 2.

resulting trust, and not how the net sale proceeds should be divided in the event of a sale.³⁰

29 The Judge further held that the process of equitable accounting should not take into account the fact that Mr Lim had enjoyed sole occupation of the Property, as she had already attributed the mortgage loan amount equally to the parties (despite their unequal payment of the loan amount) due to Mr Lim's sole occupation of the Property. Moreover, she held that Mr Khoo was not entitled to 'occupation rent' as of right just because Mr Lim was in sole occupation of the Property.³¹

30 She ordered that, on disposal of the Property, the sale proceeds would be applied to repay the outstanding liability of the mortgage loan and expenses of the sale. After which, Mr Lim would be reimbursed for his contributions towards repayment of the mortgage loan from the remaining net sale proceeds.³² The balance sum would then be divided between the parties in proportion to their beneficial shares in the Property.³³

31 At the hearing of 1 November 2023, Mr Lim also indicated that he wanted to buy Mr Khoo's share in the Property, while Mr Khoo was content with that outcome or for the Property to be sold to a third party.³⁴

³⁰ Notes of Evidence in HC/S 819/2021 dated 1 November 2023 at p 2 lines 15–32 and p 3 lines 1–4 (RA Vol III Part C at pp 1210–1211).

³¹ Notes of Evidence in HC/S 819/2021 dated 1 November 2023 at p 3 lines 5–25 (RA Vol III Part C at p 1211).

³² Notes of Evidence in HC/S 819/2021 dated 1 November 2023 at p 3 lines 26–33 and p 4 lines 1–2 (RA Vol III Part C at pp 1211–1212).

³³ Notes of Evidence in HC/S 819/2021 dated 1 November 2023 at p 4 lines 3–5 (RA Vol III Part C at p 1212).

³⁴ Notes of Evidence in HC/S 819/2021 dated 1 November 2023 at p 2 lines 1–8 (RA Vol III Part C at p 1210).

32 On 15 November 2023, the Judge made further orders in respect of the minimum sale price for the Property and the date by which it was to be sold.³⁵ She also ordered that, on sale of the Property, the sale proceeds should be applied to discharge the remaining amount of the mortgage loan and the expenses of sale. The net sale proceeds would be divided between the parties in proportion to their beneficial shares in the Property. Mr Khoo was to account to Mr Lim for 50% of the mortgage loan repayments made by Mr Lim, taking into account the amounts paid by Mr Khoo toward the mortgage loan.³⁶

This appeal

33 Mr Khoo lodged his appeal in AD/CA 130/2023 on 12 December 2023 (“AD 130”), appealing against the Order *without* appealing her Judgment or her further orders of 15 November 2023.³⁷

34 We heard parties’ oral submissions on 17 May 2024. At the close of the hearing, we reserved judgment and gave further directions for parties to file the completion account in relation to the transfer of the Property and their calculations of the payments made by Mr Lim towards the principal element and interest element of the mortgage loan.

³⁵ Notes of Evidence in HC/S 819/2021 dated 15 November 2023 at p 2 lines 1–19 (RA Vol III Part C at p 1215).

³⁶ Notes of Evidence in HC/S 819/2021 dated 15 November 2023 at p 2 lines 20–33 (RA Vol III Part C at p 1215).

³⁷ Notice of Appeal in AD/CA 130/2023 filed on 12 December 2023 (RA Vol II at pp 5–7).

35 This was filed in court on 24 May 2024 and agreed between parties (“the Further Information”).³⁸ The Further Information stated that, as of 6 May 2024, Mr Lim’s financial contributions towards the mortgage repayments amounted to \$352,684.20 in total.³⁹ The interest component of his repayments amounted to \$116,792.83 while the principal component amounted to \$235,891.37.⁴⁰ The parties had agreed that Mr Lim would purchase the share of Mr Khoo based on a valuation of the Property at \$761,000,⁴¹ and that, following the approach of the Judge’s order made on 15 November 2023, the position after equitable accounting would be \$439,272.68 standing to the credit of Mr Lim while Mr Khoo would be \$11,709.30 “out of pocket”.⁴²

Case for Mr Khoo on appeal

36 Mr Khoo argues that the Judge was *functus officio* concerning whether there should be an equitable accounting of parties’ contributions to the mortgage loan upon delivery of her Judgment. This is because the Judgment found that the parties’ unequal contributions towards the mortgage loan would *not* be used to adjust their respective beneficial shares in the Property and so attributed the

³⁸ Annex B of Letter of Counsel for Mr Lim Beng Tiong to the Registrar of the Supreme Court dated 24 May 2024; Email from Counsel for Mr Khoo Jee Chek to Counsel for Mr Lim Beng Tiong dated 23 May 2024.

³⁹ Annex A of Letter of Counsel for Mr Lim Beng Tiong to the Registrar of the Supreme Court dated 24 May 2024; Summary of Financial Information pertaining to Property at p 1.

⁴⁰ Annex A of Letter of Counsel for Mr Lim Beng Tiong to the Registrar of the Supreme Court dated 24 May 2024; Summary of Financial Information pertaining to Property at p 4.

⁴¹ Annex A of Letter of Counsel for Mr Lim Beng Tiong to the Registrar of the Supreme Court dated 24 May 2024; Summary of Financial Information pertaining to Property at p 1.

⁴² Annex A of Letter of Counsel for Mr Lim Beng Tiong to the Registrar of the Supreme Court dated 24 May 2024; Summary of Financial Information pertaining to Property at p 2.

loan amount equally to the parties to calculate their contributions to its purchase.⁴³ By ordering an equitable accounting of Mr Lim's repayment of the mortgage loan in her Order, the Judge effectively varied that substantive finding made in her Judgment.⁴⁴

37 Even if the Judge was not *functus officio* on this issue, Mr Khoo argues in the alternative that she ought not to have made any adjustment for Mr Lim's contributions towards the mortgage loan repayments. An equitable accounting for mortgage loan repayments under the Court of Appeal's approach in *Su Emmanuel v Emmanuel Priya Ethel Anne and another* [2016] 3 SLR 1222 ("*Su Emmanuel*") is only possible where parties reached a common understanding as to the proportions in which they would repay the loan.⁴⁵ Only if the parties' actual repayments materially depart from that agreement is it then fair and just for the court to order an equitable accounting of parties' payments towards the mortgage loan.⁴⁶ It is clear from the Judgment that the Judge found that there was no evidence that parties reached any common understanding on this issue.⁴⁷ Thus, there is no room to order an equitable accounting of Mr Lim's repayments of the mortgage loan.⁴⁸

38 Finally, Mr Khoo argues that the process of equitable accounting ought to take into account the fact of Mr Lim's sole occupation of the Property, in the interest of doing broad justice between the parties.⁴⁹ It was unfair for the Judge

⁴³ Appellant's Case dated 23 February 2024 ("AC") at paras 20–22 and 40.

⁴⁴ AC at paras 31–39.

⁴⁵ AC at para 44.

⁴⁶ AC at para 44(b).

⁴⁷ AC at para 46.

⁴⁸ AC at para 47.

⁴⁹ AC at paras 59–61.

to account for the fact of Mr Lim's greater contributions towards the mortgage loan repayments without correspondingly giving credit to Mr Khoo for Mr Lim's sole occupation of the Property to the exclusion of Mr Khoo.⁵⁰ Mr Lim had the benefit of being able to use the Property for the Temple and to run the Business (potentially earning an income from the Business) while Mr Khoo has seen no benefit from the Property at all. Thus, Mr Khoo is entitled to 'occupation rent' from Mr Lim, which should be set-off against any reimbursements to Mr Lim for his payments towards the mortgage loan.⁵¹

Case for Mr Lim on appeal

39 Mr Lim argues that the Judge was not *functus officio* on the question of whether to order an equitable accounting of his payments towards the mortgage loan. The Judgment only addressed the question of equitable accounting of the parties' payments towards the mortgage loan to adjust the parties' shares in the beneficial ownership of the Property.⁵² It did not pronounce at all upon whether there should be any equitable accounting of their payments when it came to deciding how the net sale proceeds of the Property should be divided between them.⁵³ Hence, the Judge was not *functus officio* on the matter when she ordered that Mr Lim should be reimbursed for his mortgage loan repayments out of the net sale proceeds without amending parties' beneficial shares in the Property.

40 Mr Lim argues that the Judge properly exercised her discretion to order an equitable accounting of his payments towards the mortgage loan. It is not disputed that Mr Lim has contributed more to the repayment of the mortgage

⁵⁰ AC at para 72.

⁵¹ AC at para 78.

⁵² Respondent's Case dated 22 March 2024 ("RC") at para 16.

⁵³ RC at paras 16–19.

loan, thereby increasing the value of the parties' equity of redemption in the Property. It is only fair that Mr Khoo should have to account to Mr Lim for the increase in the value of their co-owned asset which was made possible only because of Mr Lim's contributions.⁵⁴

41 Applying *Su Emmanuel*, Mr Lim's payments towards the mortgage loan departed from a common understanding that the parties would contribute equally towards its discharge. This inference is based on the fact that the Judge, in her Judgment, attributed the mortgage loan amount equally to the parties.⁵⁵ In the alternative, if the Judgment is to be read as finding that there was no evidence of such a common understanding between the parties as to how the mortgage loan would be repaid, Mr Lim argues that he should be permitted to argue for such an inference to be made in response to Mr Khoo's appeal.

42 Finally, Mr Lim argues that no occupation rent is owed to Mr Khoo on account of his sole occupation of the Property. The position in law is that, where property is co-owned, a non-occupying co-owner is not entitled to occupation rent merely because the other co-owner is the only one occupying it.⁵⁶ No occupation rent is owed unless there is some factor justifying a departure from that position, such as the ouster or forcible exclusion of the other co-owner from the property.⁵⁷ There was no such ouster here. Instead, Mr Khoo allowed Mr Lim to use the Property for the Temple and the Business as that was their

⁵⁴ RC at paras 21 and 33–35.

⁵⁵ RC at paras 29–31

⁵⁶ RC at paras 39–41.

⁵⁷ RC at para 45.

understanding when the Property was acquired. Mr Khoo has never sought to occupy or to use the Property since that acquisition.⁵⁸

Issues to be decided

43 There are two questions for us to answer:

(a) First, was the Judge *functus officio* on the issue of equitable accounting of the parties' contributions towards the repayment of the mortgage loan upon delivery of the Judgment?

(b) Secondly, did the Judge err in her exercise of judicial discretion in the adjustments made by equitable accounting to the allocation of the net sale proceeds of the Property between the parties? This question concerns two related sub-questions:

(i) First of all, did the Judge err in ordering an equitable accounting of Mr Lim's greater contributions towards the repayment of the mortgage loan for the Property?

(ii) Secondly, did the Judge err in omitting to order equitable accounting of Mr Lim's sole occupation of the Property?

44 We shall consider each of these issues in turn.

Issue 1: Whether the Judge was *functus officio* on the issue of equitable accounting of the parties' contributions towards the repayment of the mortgage loan

45 Parties did not disagree that upon delivery of the Judgment, the Judge became *functus officio* concerning the matters decided by her and not reserved

⁵⁸ RC at para 46.

for later decision, subject only to the slip rule and to the inherent powers of the court to make or give further orders or directions incidental or consequential to the Judgment.⁵⁹ Consequently, the short question was whether the Judge had already dealt with equitable accounting in the sense in which it was undertaken in the Order after she delivered the Judgment.

46 The Judge indeed used the phrase “equitable accounting” in the Judgment, but she used it in a different sense, referring to a different exercise concerning a different issue. At [120] of the Judgment, the Judge considered and rejected making a retrospective adjustment to the parties’ respective shares of the beneficial interest in the Property on account of their contributions to mortgage repayments. She described this as “equitable accounting” and her reason for not making any adjustment was that Mr Lim had had sole use of the Property and Mr Khoo had not enjoyed any benefit from the Property. What the Judge referred to here was a different form of equitable accounting, namely as a mechanism for retrospectively adjusting, after the date of acquisition of the property, the parties’ respective shares of the beneficial interest in the property under the resulting trust analysis. She expressly referred to the Court of Appeal’s decision in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 (“*Chan Yuen Lan*”) at [55]–[56] in her Judgment at [120]. Her observation concerned equitable accounting “as a possible mechanism for retrospectively adjusting ... parties’ respective shares of the beneficial interest in the property”, not equitable accounting in any other sense.

47 Thus, in the Judgment, she was considering the possible reference to the proportions of mortgage repayments made by the parties in relation to the question of their beneficial ownership proportions under a presumed resulting

⁵⁹ AC at paras 32 and 37; RC at paras 17–18.

trust analysis (see *Chan Yuen Lan* at [56]). After the Judgment, she was requested to consider a different issue, namely, the making of appropriate adjustments to the proceeds each party would receive upon the sale of the Property.

48 The leading case concerning equitable accounting between co-owners in relation to the sale proceeds of the co-owned property is *Su Emmanuel*. Per *Su Emmanuel* at [95], equitable accounting (*ie*, a right to an account in equity) is a remedy provided upon an order for partition or sale as part of the court’s inquiry into the financial position as between co-owners at the time of sale and the making of appropriate adjustments to the proceeds each party would receive upon the sale. This is a process by which the court endeavours to do “broad justice or equity as between co-owners” (see *Su Emmanuel* at [95], citing Lawrence Collins J in *Byford v Butler* [2003] EWHC 1276 (Ch) at [40]), by adjusting “the financial burdens and benefits of land shared by co-owners”: see *Snell’s Equity* (John McGhee gen ed) (Sweet & Maxwell, 33rd Ed, 2015) at para 20–080, cited in *Su Emmanuel* at [96]. Matters which may be taken into account in this process of adjustment include mortgage repayments, improvements and repairs to the property, and rents and profits derived: *Su Emmanuel* at [97].

49 Equitable accounting on partition or sale of a co-owned property is thus distinct from the question of determining the parties’ respective proportions of beneficial ownership. It could arise, for example, even if parties had clearly agreed the proportion of co-ownership at the time of purchase such that no question concerning that proportion arose. It would arise only if and when either co-owner sought an order for partition or sale.

50 Further, it is implicit in the Judgment at [126] that the Judge had reserved matters not expressly dealt with by her already to the intended subsequent hearing on necessary orders relating to the sale of the Property. Accordingly, she was not *functus officio* on the question of equitable accounting in relation to adjustments to be made to the share of proceeds parties would receive upon sale of the Property.

Issue 2: Whether the Judge was correct to order equitable accounting of Mr Lim's contributions towards the mortgage loan without accounting for his sole occupation of the Property

Whether the Judge was correct to order an equitable accounting of the fact that Mr Lim has made greater contributions towards the repayment of the mortgage loan of the Property compared to that of Mr Khoo

51 Following *Su Emmanuel* at [101]–[103], the basis of equitable accounting rests on the right of contribution as between co-owners where there was disproportionate expenditure by one co-owner improving the value of their co-owned asset or preserving or enhancing the equity of redemption, for the benefit of both.

52 The Judge ordered that the adjustment of the parties' respective shares of the net sale proceeds should take into account Mr Khoo's 50% liability for the mortgage loan repayments. Her basis for doing so seems to have been that she had given credit to Mr Khoo for 50% of the mortgage loan when computing his financial contributions for the purpose of determining the ownership proportions under a presumed resulting trust. This is because the parties had assumed liability for the loan jointly with no evidence of any other agreement as to how the purchase price of the Property would be paid or who would repay the mortgage instalments between them: Judgment at [119].

53 Counsel for Mr Khoo points out that the Judge had rejected both Mr Lim's and Mr Khoo's claims concerning what if anything was agreed or understood concerning the purchase. Mr Lim's claim that there had been an agreement that he would meet all the mortgage repayments, supporting a common intention that he beneficially own the Property entirely, was rejected at [60]–[62] of the Judgment. Mr Khoo's claim that there was an agreement to contribute equally to the purchase of the Property, with a further agreement that Mr Khoo's half-share of the liability to repay the mortgage loan would be paid by Mr Lim in exchange for Mr Khoo allowing "him sole use of the Property without collecting rent from him" was also rejected at [73]–[75] of the Judgment. Thus, there was no agreement or understanding between them concerning liability for the mortgage loan.

54 Counsel for Mr Khoo contends that any adjustment by way of equitable accounting in relation to mortgage loan repayments would derive from material departure from that common understanding. He relies on *Su Emmanuel* at [105]:

In our judgment, the extent to which each party is expected to contribute to mortgage repayments will largely depend on the common understanding or agreement between the parties at the time the mortgage is taken out. As we have noted above, this will usually affect the beneficial interests of the parties. If there is a *material* departure from that common understanding, and one party repays more of the mortgage than was initially envisaged, then equitable accounting may be brought into play, unless it is shown that at the time the mortgage repayments were made, *the payor had the intention to benefit the other co-owners*. This follows from the fact that the basis underlying the remedy of equitable accounting is a notional request to contribute so as to restore the parties to what had been their common understanding at the time the mortgage was taken out; but if the evidence is that the payor intended to benefit the other co-owners, there would be no room for any such notional

request for contribution to be inferred. In these circumstances, equity will not require a co-owner to contribute.

[emphasis in original]

55 Accordingly, there never having been any agreement or understanding concerning the parties' respective shares of the liability to repay the mortgage loan, there could be no "material departure from that common understanding" to justify this court making an adjustment by equitable accounting. We note that the phrase "that common understanding" in *Su Emmanuel* at [105] is a reference to "the extent to which each party is *expected to contribute to mortgage repayments* [which] will ***largely*** depend on the common understanding or agreement between the parties at the time the mortgage is taken out [emphasis added]" in the preceding sentence of the same paragraph. In other words, the starting point is to consider the proportions in which the co-owner borrowers are *expected* to repay the mortgage loan amount as between them. Where there is a specific agreement between them on that very issue, that agreement will determine the proportions in which they are expected to repay the loan, such that, if co-owners pay in accordance with that agreement, in "such circumstances, equity will not require a co-owner to contribute". Where there is *no* such express agreement, however, it falls to be determined "the extent to which each party is expected to contribute to mortgage repayments" in the absence of an agreement between them, to determine whether equity will or will not "require a co-owner to contribute". Further, where there is an agreement or common understanding but there is then a material departure from it, equitable accounting may be brought into play unless it can be shown that the party making the larger contribution intended to gift that portion to the other: per *Su Emmanuel* at [105].

56 Where two parties, as here, agree to joint and several liability for a loan (see at [12] and [23] above), the lender may proceed to recover the full amount of the loan from either borrower. The borrower who repays the lender would be entitled to contribution from the other borrower up to half of what he has repaid. The Court of Appeal in *Su Emmanuel* at [99] cited with approval the following articulation of the underlying principle by Gibbs CJ of the High Court of Australia in *Muschinski v Dodds* (1985) 62 ALR 429 at 437, that when parties are under a common obligation to pay the debt, “the general principle applicable both in law and equity [obliges] them to bear the burden equally with the consequence that, if one discharged more than his or her proper share, he or she could call upon the other for contribution”.

57 Thus, the Judge was entitled in the Judgment to find that, in the absence of any agreement or understanding concerning the parties’ joint and several liability for the mortgage loan, their ultimate responsibility for it was shared equally. Accordingly, she treated the mortgage loan as their respective equal contributions to the purchase of the Property under a presumption of resulting trust analysis. In view of that finding, we further agree that it was appropriate for the Judge to then provide for Mr Khoo’s share of the proceeds to be adjusted in accordance with his 50% liability to pay the mortgage loan, a fact which had benefited him when computing his ownership proportion. In short, as liability for the mortgage loan was 50/50, departure from that position would attract equitable accounting.

58 It might be thought that it is unfair to conclude that Mr Khoo has only a 38.38% in the sale proceeds when he has 50% liability for the mortgage loans. However, that result is because he contributed less towards the initial contributions as mentioned in [2] above.

59 We would add that the fact that the Judge rejected Mr Lim’s reliance on his having paid a greater share of the mortgage loan instalments when computing his beneficial ownership interest is not inconsistent with her consideration of this same fact when it came to the question of the equitable accounting of the sale proceeds. It is a different analysis, for a different purpose, and with a different effect. This is not a mere difference of doctrine or legal principle. It is one of *practical* effect as well.

60 When there is an equitable accounting of a co-owner’s contribution in the context of the division of the net sale proceeds, the contributing party receives back only what he put in – no more, no less. It is a reimbursement of the party who contributed to the increase in value to enable them to *recover* that expense (see *Su Emmanuel* at [96], citing in reliance Cotton LJ’s reasoning in *Leigh and another v Dickeson* (1884) 15 QBD 60 at 67, speaking of equitable accounting in this context as “a mode by which money expended by one tenant in common for repairs can be recovered”). This is illustrated by the hypothetical provided by Bagnall J in *Cowcher v Cowcher* [1972] 1 All ER 943 at 951, reproduced in *Su Emmanuel* at [98], which presented a scenario where one co-owner pays £2,000 towards the mortgage loan of the *other* co-owner, despite owing no obligation to do so. His share in the property under the resulting trust remains unchanged – only one-third, based on the mortgage loan amount being attributed *entirely* to the other co-owner, who was the sole person liable under that loan. However, what he receives is a repayment of the *exact* £2,000 amount.

61 Consequently, we hold that the Judge did not err in ordering an equitable accounting of Mr Lim’s greater contributions towards the repayment of the mortgage loan in excess of his equal responsibility for the same (see at [56]–[57] above).

Whether the Judge was correct not to order equitable accounting of the fact that Mr Lim has enjoyed sole occupation of the Property

62 Leaving aside the judicial discretion to order equitable accounting upon partition or sale, a co-owner in occupation of co-owned property generally has no liability to pay co-owners any occupation fee or rent, unless there is an agreement to that effect or there has been actual or constructive ouster of the other co-owners (see *Jones (AE) v Jones (FW)* [1977] 2 All ER 231 at 235; *Dennis v McDonald* [1981] 2 All ER 632 at 636–638; and *Davis (as trustee in bankruptcy of Jackson) v Jackson* [2017] EWHC 698 (Ch) at [61]–[63] and [71]–[75]). Moreover, while co-owners are liable to account to each other “for receiving more than his share or proportion of any rents or profits arising from the property” (per s 73A, Conveyancing and Law of Property Act 1886 (2020 Rev Ed)), this is limited to receipt of rents or profits and does not extend to any inquiry into rents or profits that *could* have been earned but were not *in fact* received.

63 However, once there is an order for partition or sale in lieu of partition, the court has the discretion as part of equitable accounting to make an adjustment for sole occupation by one party of co-owned property, where this would achieve broad justice between the parties. Returning to *Su Emmanuel*, the Court of Appeal noted at [102] that “... courts have also allowed the recovery of the interest element of mortgage payments but would often apply a setoff against any occupation rent chargeable for sole occupation by the co-owner paying the mortgage”, quoting Ormrod LJ from *Suttill v Graham* [1977] 3 All ER 1117 (“*Suttill v Graham*”) at 1121.

64 *Suttill v Graham* concerned a residential property co-owned by divorcing spouses where the ex-husband both paid the mortgage instalments and occupied the home following the ex-wife’s departure from it. There, the

husband was not entitled to recover a half-share of the mortgage *interest* payments he was making on the property unless he were willing to be charged an occupation rent for his sole occupation of the premises. This conclusion was arrived at “by regarding the mortgage interest paid by the husband while in possession as something equivalent to rent or payment for use and occupation. That will normally produce a fair result and save costs” (see *Suttill v Graham* at 1119–1120, *per Stamp LJ*). We note, for completeness, that while *Su Emmanuel* at [102] held that “there is no reason to draw a distinction between mortgage payments which go towards capital and those which go towards interest”, this observation was made in the context of not distinguishing between the interest element and capital element of the mortgage for the purpose of *reimbursing* a party who contributed towards both elements of the mortgage loan liability, since “both these payments ultimately preserve or enhance the equity of redemption and accordingly there will generally be a right of contribution as between co-owners” (see *Su Emmanuel* at [103]). This remark cannot be taken out of context and applied to the different situation of setting-off of the notional value of occupation rent against the interest element of an occupying co-owner’s contribution towards the repayment of the same.

65 Counsel for Mr Khoo cited to the court below and on appeal a more recent English Court of Appeal decision, *Ali (as personal representative of Farzand Ali (deceased)) v Khatib (as personal representative of Fateh Bibi (deceased)) and others* [2022] EWCA Civ 481 (“*Ali v Khatib*”). In it, Andrews LJ at [72] mentioned as an example of when it might be just and equitable to account for an occupation rent the situation where the co-owner in occupation “is exploiting the property for his own financial gain”.

66 Turning to this matter, the Judge declined to make any adjustment to account for Mr Lim’s occupation of the Property because she had found that

there was no rental agreement between parties (per [75] of the Judgment), and because there is no default position where a co-owner out of occupation is entitled as of right to occupation rent.⁶⁰

67 The Judge did not consider whether it was fair for Mr Lim to receive the benefit of an adjustment for his repaying part of Mr Khoo's share of the mortgage instalments while retaining the benefit of his own financial gain derived from his use and occupation of the Property, namely for the Temple and Business, without any consideration of any allowance for notional occupation rent. With respect, not considering the question of Mr Lim's financial gain from his use of the Property was an error of principle in the exercise of her judicial discretion.

68 Counsel for Mr Lim contends that Mr Khoo never asked Mr Lim for any occupation rent even though he knew that Mr Lim was using the Property for the Temple and the Business. That is true, but conversely, Mr Lim paid the mortgage instalments without asking Mr Khoo to contribute, notwithstanding that he was jointly liable for the mortgage loan. This suggests an element of give-and-take between them that supports adjustment both ways and not merely in Mr Lim's favour. Indeed, this reciprocity and mutuality was alluded to by the Judge in the reasoning in her Judgment at [120], when she declined to make an adjustment of parties' beneficial shares to account for Mr Lim's repayments of the mortgage loan in excess of Mr Khoo's, for while "[Mr Khoo] made only the first two monthly mortgage repayments and [Mr Lim] has been making the monthly mortgage repayments thereafter, [Mr Lim] has had sole use of the Property since the TOP was issued to the exclusion of [Mr Khoo], and hence

⁶⁰ Notes of Evidence in HC/S 819/2021 dated 1 November 2023 at p 3 lines 17–20 (RA Vol III Part C at p 1211).

the latter has not enjoyed any benefit from the Property. To make any adjustments in [Mr Lim's] favour (by taking into account his contributions to the monthly mortgage repayments) would be unfair to [Mr Khoo]." It is not right to equitably account for Mr Lim's greater repayments towards the mortgage loan, in the division of the net sale proceeds, while at the same time disregarding the fact of Mr Khoo, unlike Mr Lim, having "not enjoyed any benefit from the Property".

69 Mr Lim did not disclose the income of the Business but neither did Mr Khoo seek such information. Mr Khoo for his part did not adduce evidence of the rental that the property might fetch on the market. The question is how, in the absence of full information, the court should account for the benefit of occupation that Mr Lim, unlike Mr Khoo, had. We return to the practice of the court described in *Suttill v Graham* at 1121, described at [63]–[64] above. This is a rule of convenience that allows the court to avoid protracted inquiries and simply treat the interest element of the mortgage instalments as set off against a notional occupation rent. An academic article, Lim Sing Yong and Tang Hang Wu, "Trust, contribution and equitable accounting: Analysing imbalances in contribution towards mortgage payments" (2020) *Conveyancer and Property Lawyer* 310, summarises the practice in the English courts:

...when one co-owner seeks a right to contribution in respect of mortgage payments, the court may, when taking an equitable account, credit the interest element of the mortgage payment against an occupational rent where the claimant has enjoyed sole possession of the land where it is 'necessary to do equity between the parties'. The practice in the English courts appears to apply 'a rule of convenience', where the court takes separate accounts the payment of mortgage capital and interest, and credits the interest component against a notional occupation

rent so that the two sums effectively cancel each other out.
[Footnotes omitted]

70 One should note that English authorities after 1996 have been decided either pursuant to or at least against the backdrop of a specific statutory regime, namely the Trusts of Land and Appointment of Trustees Act 1996, for which there is no equivalent in Singapore. The practice described in *Suttill v Graham* however predated that statute and relates to equitable accounting, albeit in the context of a matrimonial home following the departure from it of one spouse. Moreover, the passage in *Ali v Khatib* referred to by counsel for Mr Khoo (see [65] above) concerned equitable accounting and not the statutory regime.

71 The relationship between parties in the case before us differs from the spousal context in the English cases where the rule of convenience was developed. Theirs was a friendship that broke down rather than a marriage. Nonetheless, we consider that the rule of convenience may potentially be applied to the parties in this case, given that their relationship was informal and initially based on mutual trust. The co-owners of the Property, Mr Khoo and Mr Lim, appear to have approached their co-ownership without articulating or recording their respective financial obligations, nor how Mr Lim's benefit of sole occupation (and financial gain) would be accounted for, but the evidence did not establish any understanding that Mr Lim would not have to account for that benefit of sole occupation. In the same way that while their friendship was intact Mr Khoo did not demand occupation rent, Mr Lim did not require Mr Khoo to contribute to repayment of the mortgage loan. It was only after their relationship broke down that these matters were ventilated between them. In these circumstances, a broad-brush approach may be justified, in order to avoid protracted and costly inquiries that may not ultimately achieve the clarity required for a more precise answer.

72 In our view, several factors present in the matter before us support the adoption of this rule of convenience:

- (a) Equitable accounting was raised by Mr Lim as a matter consequential to the Judgment, without it having been pleaded in the action;
- (b) Although Mr Khoo raised the objection that the Judge was *functus officio*, all parties appeared content to deal with equitable accounting summarily, without further discovery or evidence.
- (c) The amount of income derived from the Business is within Mr Lim's knowledge and it is not apparent how readily accounts of such income could be drawn up or verified. Mr Lim did not volunteer this information to the court.

73 Accordingly, we hold that treating the interest element of the mortgage instalments as set off against a notional occupation rent achieves broad justice between the parties. We emphasise that the facts of this case are unusual, including because the issue of equitable accounting was raised in the court below only after judgment and parties did not lead further evidence whether documentary or oral. Ordinarily, for equitable accounting, parties should plead and prove their respective cases.

Conclusion

74 In conclusion, we allow Mr Khoo's appeal in AD 130 in part. We vary the Judge's Order as follows:

- (a) Upon the disposal of the Property, the sale proceeds shall be utilised first to discharge the remaining mortgage amount and to pay the expenses relating to the sale of the Property;
- (b) The net sale proceeds of the Property are to be divided between parties in the proportions of their beneficial interests in the Property, based on the shares recognised in the Judgment at [125].
- (c) Mr Lim shall then be reimbursed out of Mr Khoo's share of the remaining balance of the sale proceeds by such amount as equalises their respective contributions towards repayment of the *principal* of the mortgage loan;
- (d) Mr Lim shall *not* be reimbursed for any part of his contributions towards the *interest* accruing on the mortgage loan, which are in effect to be set-off against a notional occupation rent to credit Mr Khoo for Mr Lim's sole use and occupation of the Property;

75 For completeness, the amounts in [74(a)], [74(c)], and [74(d)] above should be assessed with reference to the *agreed* figures of the parties in the Further Information they gave to this court. Accordingly, as of 6 May 2024, Mr Lim's contribution to the principal element was \$235,891.37 while his contribution to the interest element was \$116,792.83 (see at [35] above). Adjustments may be made to those figures to account for any further contributions Mr Lim makes to the mortgage loan for the monthly instalments *after* May 2024.

76 Turning to costs, Mr Khoo has been partially successfully in the appeal. We award him costs in the amount of \$20,000 all-in. We do not disturb the costs orders made below. The usual consequential orders apply.

Woo Bih Li
Judge of the Appellate Division

Kannan Ramesh
Judge of the Appellate Division

Philip Jeyaretnam
Judge of the High Court

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