

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

[2023] SGHC 22

Suit No 78 of 2022

Between

Cheng Ao

... Plaintiff

And

Yong Njo Siong

... Defendant

And

Yong Njo Siong

... Plaintiff in Counterclaim

And

Cheng Ao

... Defendant in Counterclaim

JUDGMENT

[Land — Interest in land — Tenancy in common]

[Trusts — Express trusts — Constitution]

[Trusts — Resulting trusts — Presumed resulting trusts]

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Cheng Ao
v
Yong Njo Siong

[2023] SGHC 22

General Division of the High Court — Suit No 78 of 2022
Philip Jeyaretnam J
19–23 September, 2 November 2022

31 January 2023

Judgment reserved.

Philip Jeyaretnam J:

Introduction

1 The patriarch of a family expressed his wishes concerning the distribution of funds from the sale of a business he had founded in China, including the wish that a certain share was for his wife. In this case, the question arose of whether the son used funds allocated by his father to his mother to purchase a property for her while including himself on the register as her co-owner at law but not in equity, or instead used his own funds to purchase that property as his own investment, while giving her the comfort that she could stay there as long as she wanted by adding her name as a tenant in common. There was a further question of whether the mother could claim from him the balance of her share from the father not used for the purchase of that property.

Facts

The parties

2 The defendant, Mdm Yong Njo Siong (“Mdm Yong”), and her late husband, Mr Tondo Satrio (“Satrio”), had three children.¹

3 The plaintiff, Mr Cheng Ao (“Cheng”) is their second child. Cheng has an older brother, Mr Chen Sie (“Chen”) and a younger sister, Ms Bai Yun (“Bai”).²

4 Satrio passed away on 9 November 2021.³ While he was alive, Satrio made all the decisions for and controlled the finances of the family.⁴ Mdm Yong is a housewife⁵ and neither understands nor speaks English.⁶

¹ Yong Njo Siong’s Affidavit of Evidence-in-Chief (“AEIC”) dated 1 August 2022 (“Yong’s AEIC”) at paras 1, 3 (Bundle of Affidavits of Evidence-in-Chief (“BAEIC”) at pp 34–35).

² Cheng Ao’s Affidavit of Evidence-in-Chief (“AEIC”) dated 21 July 2022 (“Cheng’s AEIC”) at para 4 (Bundle of Affidavits of Evidence-in-Chief (“BAEIC”) at p 4); Yong’s AEIC at paras 1, 3 (BAEIC at pp 34–35); Chen Sie’s AEIC dated 1 August 2022 (“Chen’s AEIC”) at paras 1, 3 (BAEIC at pp 45–46); Bai Yun’s AEIC dated 21 July 2022 (“Bai’s AEIC”) at paras 1, 3 (BAEIC at pp 23–24).

³ Cheng’s AEIC at para 43 (BAEIC at p 12); Yong’s AEIC at para 17 (BAEIC at p 41).

⁴ Cheng’s AEIC at para 6 (BAEIC at p 4); Yong’s AEIC at para 5 (BAEIC at p 35); Bai’s AEIC at para 4 (BAEIC at p 24).

⁵ Yong’s AEIC at para 1 (BAEIC at p 34).

⁶ 22/9/22 NE p 2, lines 6–10, p 4, lines 8–9, p 26, lines 1–15.

Satrio’s China businesses: Inhwa Tile Products Ltd and Inhwa Tile Products Ltd (Qingdao)

5 Sometime before 1988, Satrio set up Inhwa Tile Products Ltd (“Inhwa Xiamen”) in Xiamen, China.⁷ Satrio was the sole legal representative and Managing Director of Inhwa Xiamen.⁸

6 In or around April 1988, at Satrio’s request, Cheng joined Inhwa Xiamen and worked as an assistant to the General Manager.⁹ Cheng was promoted to Deputy General Manager of Inhwa Xiamen in 1990 and held that position until 2010.¹⁰ Chen was appointed Deputy General Manager of Inhwa Xiamen in 2002 and still holds this position.¹¹

7 In 1992, Satrio incorporated Inhwa Tile Products Ltd (Qingdao) (“Inhwa Qingdao”). Inhwa Qingdao conducted business in Qingdao, China.¹² While Cheng initially claimed that Inhwa Qingdao was a subsidiary of Inhwa Xiamen,¹³ his counsel clarified that the two entities were legally distinct.¹⁴

⁷ Cheng’s AEIC at paras 5, 7 (BAEIC at pp 4–5).

⁸ Cheng’s AEIC at para 8 (BAEIC at p 5).

⁹ Cheng’s AEIC at para 8 (BAEIC at p 5).

¹⁰ Cheng’s AEIC at para 9 (BAEIC at p 5); Chen’s AEIC at para 5 (BAEIC at p 46).

¹¹ Chen’s AEIC at para 5 (BAEIC at p 46); 23/9/22 NE p 3, lines 11–16.

¹² Cheng’s AEIC at para 10 (BAEIC at p 5); Chen’s AEIC at para 4 (BAEIC at p 46).

¹³ Cheng’s AEIC at para 10 (BAEIC at p 5).

¹⁴ 23/9/22 NE p 4, line 12 to p 6, line 23; Agreed Bundle of Documents (Volume 1) (“1AB”) at p 240.

8 Satrio was similarly the sole legal representative and Managing Director of Inhwa Qingdao.¹⁵ Cheng served as Deputy General Manager of Inhwa Qingdao from December 1992 to sometime in 2010.¹⁶

9 Mdm Yong and Bai were not involved in the business of Inhwa Xiamen and Inhwa Qingdao.¹⁷

Sale of Inhwa Qingdao

10 In 2011, Inhwa Qingdao was sold to a private developer, Qingdao Zhongrunhai Real Estate Development Co Ltd.¹⁸

11 Satrio was meant to receive RMB168m from the sale of Inhwa Qingdao.¹⁹ Satrio expressed his intention to distribute the moneys in a handwritten note dated 25 June 2011 (“25/6/11 Note”).²⁰ In particular, he allocated RMB50m to himself, RMB50m to Cheng and RMB13.1m to each of Mdm Yong and Chen.²¹

12 That said, to circumvent a potential delay in receiving the purchase moneys for Inhwa Qingdao’s land, the sale price of Inhwa Qingdao was revised

¹⁵ Cheng’s AEIC at para 10 (BAEIC at p 5).

¹⁶ Cheng’s AEIC at para 10 (BAEIC at p 5); 19/9/22 NE p 10 line 2 to p 11 line 6.

¹⁷ Yong’s AEIC at para 5 (BAEIC at p 35).

¹⁸ Cheng’s AEIC at para 58(a) (BAEIC at p 15); Chen’s AEIC at para 4 (BAEIC at p 46); 1AB at pp 240–247; Yong’s AEIC at para 4 (BAEIC at p 35).

¹⁹ Cheng’s AEIC at para 58(c) (BAEIC at p 15); Chen’s AEIC at para 16 (BAEIC at pp 50–51).

²⁰ 2AB at pp 470–471.

²¹ Cheng’s AEIC at para 58(c) (BAEIC at p 15); Chen’s AEIC at paras 10–11, pp 90–91 (BAEIC at p 49).

downwards and Satrio only received RMB158m from the sale of Inhwa Qingdao.²² I shall refer to the sum of RMB158m as the “Moneys”.

13 Consequently, Satrio reduced the sums he intended to distribute to the parties. Satrio and Cheng would each receive RMB45.35m while Mdm Yong and Chen would each receive RMB12.75m.²³

14 Cheng and Chen do not dispute that they received their shares of the Moneys. Cheng accepts that he received RMB46.5m (which is, in fact, more than the sum he should have received) between 2011 and 2016.²⁴ Chen acknowledges receipt of RMB12.75m between 15 December 2011 and 20 April 2016.²⁵

Apartments at King’s Mansion and Tropical Spring

15 Mdm Yong and Satrio were resident in China between 1992 and 2019. During this period, they would occasionally travel to Singapore.²⁶ Each time they did so, Mdm Yong and Satrio resided at King’s Mansion, an apartment Satrio purchased sometime in 1981.²⁷

²² Cheng’s AEIC at para 58(c) (BAEIC at p 15); Chen’s AEIC at para 16, p 92 (BAEIC at pp 50–51).

²³ Cheng’s AEIC at para 58(e) (BAEIC at p 16); Chen’s AEIC at para 16, p 92 (BAEIC at pp 50–51).

²⁴ Cheng’s AEIC at para 58(f) (BAEIC at p 16); Plaintiff’s Opening Statement dated 12 September 2022 at para 20.

²⁵ Chen’s AEIC at para 19 (BAEIC at pp 52–53).

²⁶ Yong’s AEIC at para 8 (BAEIC at pp 36–37); Chen’s AEIC at para 24 (BAEIC at p 54).

²⁷ Cheng’s AEIC at paras 16–17 (BAEIC at p 6); Yong’s AEIC at para 8 (BAEIC at pp 36–37); Bai’s AEIC at para 8.

16 Bai lived in King’s Mansion with her son and domestic helper, Rita Zafrina Suryanti (“Suryanti”), from approximately 1999 to 2019.²⁸

17 Cheng moved to Singapore in 2000. He purchased an apartment at Tropical Spring (“Cheng’s Unit”) in 2001 and has since lived there with his wife, Nelly Winarso (“Winarso”), and children.²⁹

18 In 2011, Cheng and Mdm Yong purchased a second unit at Tropical Spring (“Disputed Unit”) for \$1.515m. They were assisted by solicitors from Sim Mong Teck & Partners (“SMTP”).³⁰ Mother and son jointly exercised the option to purchase the Disputed Unit (“OTP”) on 13 September 2011.³¹ They were registered as tenants in common in equal shares on 3 January 2012.³²

19 The purchase of the Disputed Unit was paid in the following manner:

(a) Cheng paid \$15,150 for the option to purchase the Disputed Unit.³³

(b) Cheng and Winarso jointly issued a cheque of \$60,600 in favour of the seller’s solicitors to exercise the OTP.³⁴

²⁸ Bai’s AEIC at para 9 (BAEIC at p 24); Yong’s AEIC at paras 9, 20 (BAEIC at pp 37, 42); Rita Zafrina Suryanti’s AEIC dated 21 July 2022 (“Suryanti’s AEIC”) at para 4 (BAEIC at p 31); 21/9/22 NE p 3, lines 2–7.

²⁹ Cheng’s AEIC at para 14 (BAEIC at p 5).

³⁰ Cheng’s AEIC at para 31 (BAEIC at p 8); Yong’s AEIC at para 12 (BAEIC at p 38).

³¹ Cheng’s AEIC at para 34, pp 40–51 (BAEIC at p 9).

³² Cheng’s AEIC at para 37, pp 64–68 (BAEIC at p 10).

³³ Cheng’s AEIC at para 34, p 42 (BAEIC at p 9).

³⁴ Cheng’s AEIC at p 41.

(c) Cheng took a mortgage of \$790,000 (“the Mortgage”) from DBS Bank Ltd (“DBS”).³⁵

(d) Winarso’s nephew, Jourdan, obtained two cashier’s orders, one of \$495,737.63 and the other of \$153,701.27, from DBS and issued them to the sellers of the Disputed Unit. The cashier’s orders were each dated 8 December 2011.³⁶

20 Cheng did not reside at the Disputed Unit.³⁷ He nevertheless serviced the Mortgage³⁸ and paid for the property tax, maintenance fees and utility bills associated with the Disputed Unit.³⁹

21 Mdm Yong and Satrio lived at the Disputed Unit after permanently moving to Singapore in December 2019.⁴⁰

22 Satrio passed away on 9 November 2021.⁴¹ As a result, Mdm Yong became the sole owner of King’s Mansion.⁴²

23 On 30 November 2021, Mdm Yong’s solicitors wrote a letter to Cheng. This stated that Mdm Yong wished to sever the joint tenancy associated with

³⁵ Cheng’s AEIC at para 34, pp 52–54 (BAEIC at p 9).

³⁶ Cheng’s AEIC at pp 58–62.

³⁷ Cheng’s AEIC at para 39 (BAEIC at p 10).

³⁸ 19/9/22 NE p 5, lines 8–15.

³⁹ Cheng’s AEIC at para 39, pp 70–170 (BAEIC at pp 10–11); 19/9/22 NE p 5, lines 8–15.

⁴⁰ Yong’s AEIC at para 11 (BAEIC at p 37).

⁴¹ Cheng’s AEIC at para 43 (BAEIC at p 12); Yong’s AEIC at para 17 (BAEIC at p 41).

⁴² Cheng’s AEIC at para 43 (BAEIC at p 12); Yong’s AEIC para 10 (BAEIC at p 37).

the Disputed Unit.⁴³ It is, however, undisputed that Cheng and Mdm Yong held the Disputed Unit as tenants in common in equal shares.⁴⁴ Consequently, there was no joint tenancy to sever.

Parties' cases

Plaintiff's case

24 Cheng avers that Mdm Yong holds her half-share of the Disputed Unit on a resulting trust for him.⁴⁵ He claims to have received RMB26m of his share of the Moneys by 6 December 2011 and purchased the Disputed Unit with this sum.⁴⁶ This is purportedly consistent with Cheng: (a) paying for and exercising the OTP with moneys from a bank account he jointly held with Winarso;⁴⁷ (b) transferring \$649,438.90 to Jourdan around 8 December 2011;⁴⁸ (c) securing⁴⁹ and servicing the Mortgage;⁵⁰ and (d) furnishing and maintaining the property.⁵¹

25 Whilst Mdm Yong suggests that an email Cheng sent to Chen on 6 December 2011 ("6/12/11 Email") shows that Cheng used her share of the

⁴³ Agreed Bundle of Documents (Volume 1) ("2AB") at pp 400–403.

⁴⁴ 1AB at p 124; 22/9/22 NE, p 57, lines 12–25.

⁴⁵ Plaintiff's Closing Submissions dated 25 October 2022 ("PCS") at paras 3.1.3, 4.7.1–4.7.10; Statement of Claim dated 28 January 2022 ("SOC") at paras 9–10.

⁴⁶ PCS at paras 4.1.1–4.1.3; 20/9/22 NE, p 43, lines 18–25.

⁴⁷ PCS at para 4.1.5(a).

⁴⁸ PCS at para 4.1.5(b).

⁴⁹ PCS at paras 4.2.20–4.2.24.

⁵⁰ PCS at para 4.1.5(c).

⁵¹ PCS at para 4.4.8; SOC at para 13.

Moneys to acquire the Disputed Unit, Cheng contends that the 6/12/11 Email must be understood in context.⁵² In particular:

(a) Cheng did not mean to say that he possessed the Moneys, but only that the Moneys were in Inhwa Qingdao’s bank account in the 6/12/11 Email.⁵³ The latter position is consistent with the Equity Transfer Agreement dated 6 November 2010 (“Transfer Agreement”) which provides that the sale proceeds are to be deposited into a bank account in Inhwa Qingdao’s name (“Inhwa Qingdao’s Bank Account”).⁵⁴

(b) Cheng sent the 6/12/11 Email after he orally discussed the potential interest the Moneys could generate with Chen. Cheng sent the email to Chen to provide him with greater clarity concerning this issue.⁵⁵

(c) It was unexceptional that Cheng was able to calculate the monthly instalments on the Mortgage in the 6/12/11 Email. He had secured the Mortgage by this time. In any event, Cheng’s calculations did not show that he purchased the Disputed Unit with Mdm Yong’s share of the Moneys.⁵⁶

(d) In July 2011, Cheng spoke to Satrio about the possibility of Satrio “tak[ing] over” the Disputed Unit for the benefit of Mdm Yong.

⁵² 2AB at pp 301–302; PCS at para 4.2.1.

⁵³ PCS at para 4.2.2.

⁵⁴ PCS at para 4.2.3; 1AB at p 242 (cl 3).

⁵⁵ PCS at paras 2.1.6, 4.2.6–4.2.18.

⁵⁶ PCS at paras 4.2.19–4.2.27.

The calculations in the 6/12/11 Email thus also related to Satrio's potential "takeover of the [Disputed Unit]" from Cheng.⁵⁷

26 In the round, Cheng claims that he purchased the Disputed Unit for his own investment or retirement.⁵⁸ He nevertheless permitted Mdm Yong to stay at the Disputed Unit because Mdm Yong disliked living at the dilapidated King's Mansion.⁵⁹ Additionally, although Cheng and Mdm Yong purchased the Disputed Unit as tenants in common in equal shares, Cheng named Mdm Yong as the co-owner of the Disputed Unit to assuage her concerns that Cheng would "change his mind about letting her reside at [the Disputed Unit] and she would have to return to King's Mansion".⁶⁰ He also did so because Mdm Yong orally agreed to return her share of the Disputed Unit to Cheng upon her passing, when she no longer wished to reside at the Disputed Unit or when Cheng decided to sell the property.⁶¹

27 Cheng's position is allegedly buttressed by Mdm Yong's inconsistent positions on the nature of her interest in the Disputed Unit,⁶² her concession that Cheng informed her that she was free to stay at the Disputed Unit when she travelled to Singapore alone,⁶³ and her failure to inform Satrio that Cheng had brought her to SMTP to purchase the Disputed Unit.⁶⁴ In the latter regard, it is

⁵⁷ PCS at paras 4.2.28–4.2.32; 19/9/22 NE, p 62, lines 7–16.

⁵⁸ PCS at paras 1.1.2, 4.4.1–4.4.5.

⁵⁹ PCS at paras 1.1.4, 4.5.3–4.5.4; SOC at para 10.

⁶⁰ PCS at paras 1.1.5, 1.1.7, 4.5.5.

⁶¹ PCS at paras 4.5.6–4.5.8, 4.5.11; SOC at para 11.

⁶² PCS at paras 4.6.1–4.6.9.

⁶³ PCS at para 4.6.10.

⁶⁴ PCS at paras 4.6.17–4.6.21.

also significant that Chen never complained to Satrio that Cheng had misused Mdm Yong's share of the Moneys.⁶⁵

28 Turning to Mdm Yong's counterclaim that Cheng holds her share of the Moneys on a constructive trust for her, Cheng submits that Satrio had absolute control over the Moneys. The proceeds of the sale of Inhwa Qingdao were paid to the company's five shareholders, which included Satrio, and Satrio subsequently deposited the Moneys into a bank account he controlled.⁶⁶ Cheng's transfer of his and Chen's shares of the Moneys was done at Satrio's behest and Cheng was not tasked to distribute the Moneys to any other individuals.⁶⁷

29 Cheng argues alternatively that Satrio could not have declared an express trust over the Moneys. There is no certainty of intention. The Sale Proceeds collectively belonged to the five shareholders of Inhwa Qingdao and there is no evidence that all the shareholders agreed to Satrio's distribution of the Moneys.⁶⁸ Moreover, Satrio expressed his intention for Mdm Yong's share of the Moneys to be loaned to Inhwa Xiamen in the 25/6/11 Note.⁶⁹ There is no certainty of subject-matter. Cheng transferred the Moneys to Satrio in tranches and it is unclear which tranche contained Mdm Yong's share of the Moneys.⁷⁰ Finally, there is no certainty of objects. It is unclear whether Mdm Yong or Inhwa Xiamen is the beneficiary of the disputed sum.⁷¹

⁶⁵ PCS at paras 4.3.6 – 4.3.7

⁶⁶ PCS at paras 5.1.1–5.1.7.

⁶⁷ PCS at paras 5.2.1–5.2.6.

⁶⁸ PCS at para 5.4.4–5.4.5.

⁶⁹ PCS at paras 3.2.4, 5.4.8–5.4.14; 2AB at pp 470–471.

⁷⁰ PCS at para 5.4.23.

⁷¹ PCS at paras 5.4.26–5.4.28.

Defendant's case

30 Mdm Yong claims that Satrio settled the Moneys on an express trust with Cheng as trustee and Mdm Yong the beneficiary of RMB12.75m.⁷² Satrio's intention to create a trust of the Moneys and for Mdm Yong to receive RMB12.75m is evinced by the 25/6/11 Note.⁷³ It is also consistent with and buttressed by the following:

(a) Satrio's lack of control of the Moneys. The Transfer Agreement stated that Cheng is the representative of Inhwa Qingdao's shareholders.⁷⁴ Satrio also wrote two letters to Cheng dated 8 July 2013 and 20 August 2013 in which he asked Cheng for his share of the Moneys as well as moneys Inhwa Qingdao owed Inhwa Xiamen.⁷⁵

(b) Cheng's control of the Moneys. Cheng claimed to have control over the distribution of the Moneys in the 6/12/11 Email and a further email he sent to Chen on 6 July 2016.⁷⁶ In the 6/12/11 Email, Cheng admitted to using Mdm Yong's share of the Moneys to purchase the Disputed Unit.⁷⁷ Cheng also admitted, under cross-examination, to having transferred Chen's share of the Moneys from Inhwa Qingdao's Bank Account to his own bank account before distributing the moneys to Chen.⁷⁸ An adverse inference should also be drawn against Cheng for

⁷² Defendant's Closing Submissions dated 25 October 2022 ("DCS") at para 8.

⁷³ DCS at paras 11–13.

⁷⁴ DCS at paras 14–15.

⁷⁵ DCS at paras 16–17; 1AB at pp 240–247; 2AB at pp 308–309.

⁷⁶ DCS at para 23 (S/N 8); 2AB at pp 301, 335–336.

⁷⁷ DCS at paras 25–27.

⁷⁸ DCS at para 23 (S/N 10); 19/9/22 NE at p 142, lines 8–19.

his failure to adduce any bank statements pertaining to Inhwa Qingdao's Bank Account.⁷⁹

(c) Cheng's poor credibility as a witness. Cheng said that he had no knowledge of what happened to the Moneys (apart from his share) in his affidavit.⁸⁰ This is inconsistent with his testimony that he received and distributed Chen's share of the Moneys and that a portion of Mdm Yong's share of the Moneys was transferred to Satrio in 2012.⁸¹ Additionally, his claim that Satrio controlled the withdrawal of moneys from Inhwa Qingdao's Bank Account is not on affidavit.⁸² His claim to have a limited understanding of the 25/6/11 Note is betrayed by his handwritten reproduction and annotations of the note.⁸³

31 Next, Cheng used Mdm Yong's share of the Moneys to purchase the Disputed Unit.⁸⁴ Pertinently, Cheng admitted to using RMB4m for "[Mdm Yong's] house" and the interest generated on the remaining RMB4.25m for "mom housing loan payment" in the 6/12/11 Email. These sums broadly cohere with the purchase price of the Disputed Unit and the monthly Mortgage instalments.⁸⁵ It follows that Cheng holds his share of the Disputed Unit on a resulting trust for Mdm Yong.⁸⁶

⁷⁹ DCS at paras 39–40.

⁸⁰ Cheng's AEIC at para 58(h).

⁸¹ DCS at paras 29–32; 19/9/22 NE at p 96, lines 5–9.

⁸² DCS at paras 33–34.

⁸³ DCS at paras 37–38, 69–71.

⁸⁴ Defence and Counterclaim (Amendment No 1) dated 22 March 2022 ("Defence") at paras 9–11, 23.

⁸⁵ DCS at paras 45–50.

⁸⁶ DCS at paras 86–88.

32 Mdm Yong argues that Cheng's claim that he was speaking in hypothetical terms in the 6/12/11 Email cannot be believed. It sits uncomfortably with the plain language of the email, the fact that Cheng sent the 6/12/11 Email at about the same time the Disputed Property was purchased and Cheng's own claim that Mdm Yong's share of the Moneys was loaned to Inhwa Xiamen.⁸⁷

33 Alternatively, Mdm Yong contends that Cheng holds her share of the Moneys on a constructive trust. Cheng is a fiduciary because of the relationship of trust and confidence between mother and son.⁸⁸ He breached his fiduciary duties by either personally taking the RMB12.75m Mdm Yong was entitled to or transferring this sum to Satrio.⁸⁹

34 Mdm Yong's pleadings concerning her claims either to the balance of RMB8.75m after the purchase or to the entire RMB12.75m are brief and sketchy. Neither express trust nor constructive trust is clearly pleaded.

Applicable law

35 Three certainties must be present for the creation of an express trust: certainty of intention, certainty of subject matter and certainty of the objects of the trust. Certainty of intention requires proof that a trust was intended by the settlor. While no particular form of expression is necessary, there must be clear evidence of an intention to create a trust. Next, the trust must define with sufficient certainty the assets which are to be held on trust and the interest that the beneficiary is to take in them. Finally, certainty of objects requires clarity as

⁸⁷ DCS at paras 53–56, 61, 65–66.

⁸⁸ DCS at paras 89–93.

⁸⁹ DCS at paras 94–98.

to the intended beneficiaries so it is possible to ascertain those who have standing to enforce the trustee's duties under the trust (*Guy Neale and others v Nine Squares Pty Ltd* [2015] 1 SLR 1097 ("*Guy Neale*") at [51]–[52], [59], [60]).

36 Turning to the law on resulting trusts, where a transferor appears to have paid for the acquisition of an interest in property in the name of a different party or to have transferred some interest in property to a transferee, the court presumes that the transferor intended to retain the beneficial interest in the property in proportion to his financial contribution towards the acquisition of the property (*Koh Lian Chye and another v Koh Ah Leng and another and another appeal* [2021] SGCA 69 at [23]–[26]). Importantly, however, the court will not rely on the presumption of resulting trust when the evidence adequately reveals the true intentions of the transferor (*Su Emmanuel v Emmanuel Priya Ethel Anne and another* [2016] 3 SLR 1222 at [79]).

37 Finally, an institutional constructive trust arises by operation of law. The liability of the constructive trustee is predicated on his knowing of some factor that affects his conscience (*Guy Neale* at [124]–[125]). That said, a constructive trust is not equity's response to conduct by an individual which is unconscionable only in the general sense of being conduct which is not right or reasonable. Rather, an individual, T, holds his rights in property on constructive trust for another, B, if a set of circumstances have transpired in relation to those rights which equity recognises by accretion of judicial decision are sufficient to render it unconscionable for T to exercise those rights in disregard of B. The specific categories of unconscionability which equity recognises as being capable of giving rise to an institutional constructive trust include fraud (*Zaiton bte Adom v Nafsiah bte Wagiman and another* [2022] SGHC 189 at [104]–[108]).

Issues to be determined

38 The following issues arise for my determination:

- (a) Is the share in the Disputed Unit registered in Mdm Yong’s name held on resulting trust for Cheng?
- (b) Is the share in the Disputed Unit registered in Cheng’s name held on resulting trust for Mdm Yong?
- (c) Subject to the pleading point, is Cheng liable to Mdm Yong for the balance or the whole of her share of the Moneys on the basis that he is in breach of an express or constructive trust?

Issue 1: Resulting trust of Mdm Yong’s share in the Disputed Unit in favour of Cheng

39 There is no doubt that Cheng effected all the payments concerning the Disputed Unit. The question is whether he used moneys that were his or moneys that came from Mdm Yong’s share of the Moneys. The 6/12/11 Email appears to indicate that as of that date, which fell between contract and completion of the purchase of the Disputed Unit, the entire purchase of the Disputed Unit was to come from her share of the Moneys. This expressly included the mortgage repayments. Moreover, Cheng described the Disputed Unit as “her house”. I do not believe Cheng’s evidence that he was merely speaking hypothetically or that this was only what he would do if Satrio agreed to his proposal that Satrio take over the purchase. Cheng describes the funds as “actually in [his] hand” and as having been “distributed by [Satrio]” in the shares stated, including the share

for Mdm Yong, against which he sets out the remarks and calculations concerning the ongoing purchase of the Disputed Unit.⁹⁰

40 This case has been fought on presumed resulting trust and neither party has put the case on the basis of a common intention. Nonetheless, what parties separately intended in relation to the Disputed Unit was explored in evidence as a way of evaluating the strength of the contending arguments concerning the source of funds. I comment on five aspects of this evidence.

41 First, beyond just evidencing the true source of the funds, the 6/12/11 Email evidences Cheng's belief that the Disputed Unit was to be Mdm Yong's. Cheng was addressing his brother Chen and if he was buying the property for his own investment merely intending to allow his mother to stay there, he would surely have made that clear. Cheng struck me as careful to the point of guarded, so that even assuming that in 2011 he and his brother were on good terms, Cheng would not have spoken loosely of its being his mother's house if that was not what he intended.

42 Secondly, having heard Mdm Yong, and having evaluated her limited level of education and experience as well as considered her evidence as a whole, I find that she believed that the Disputed Unit was purchased for her by way of Satrio's making general provision for her but had no precise knowledge or understanding of what that entailed in terms of legal arrangements or financial flows. She attended at the lawyers' office and signed the documents that she was requested to sign. This is not to say that such documents were not duly explained to her. She simply trusted that her son, Cheng, was acting in good

⁹⁰ 2AB at pp 301–302.

faith in her interests and in accordance with her husband's wishes, without applying her mind to specific details.

43 Thirdly, Mdm Yong's lack of clarity, including the subsequent mistaken suggestion that there was a joint tenancy to be severed, are broadly explicable in the context of her level of education and experience, and her dependent relationship initially on husband and in later years children.

44 Fourthly, Cheng, by contrast with Mdm Yong, was savvy and knowledgeable in business. Cheng has claimed that the Disputed Unit was co-owned at law rather than solely owned by him because he wanted to give Mdm Yong comfort that she could stay there as long as she wanted. I do not accept this claim, but in any event, it would not explain the use of tenancy in common rather than joint tenancy. Given the difference in their ages and the natural order of things, and keeping in mind Cheng's level of sophistication, he would have understood that a joint tenancy with its right of survivorship would fulfil any such intention of giving comfort while being more convenient and fitting better the alleged fact that the Disputed Unit was really his.

45 Fifthly, Cheng has made allegations that he and his mother are in this dispute because Chen manipulated her into forming the intention to will all her assets, including the Disputed Unit, to Chen, when he had an agreement with her that she would "return her shares in the [Disputed Unit] to [him] upon her passing".⁹¹ The evidence does not support a finding that Mdm Yong had previously given him any assurance that he would have the Disputed Unit after her passing. Indeed, if that had been discussed as Cheng claims, it would likely have resulted in a joint tenancy rather than tenancy in common. Moreover, even

⁹¹ Cheng's AEIC at paras 6 and 45.

if Mdm Yong had previously told Cheng that she would leave her share of the Disputed Unit to him when she passed away, this does not support his case that he already beneficially owned the whole of the Disputed Unit upon its purchase.

Issue 2: Resulting trust of Cheng’s share in the Disputed Unit in favour of Mdm Yong

46 My reading of the 6/12/11 Email established that for Issue 1, Cheng had not proved that he had used his own moneys to purchase the Disputed Unit. It is a distinct question whether Mdm Yong has met her burden to prove in respect of Cheng’s share that the funds came from her. If neither party proves this on a balance of probabilities then (absent plea and proof of a common intention that one or other would beneficially own the whole property) the Disputed Unit would simply be held as tenants in common in equal shares both at law and in equity.

47 In my view, the proper analysis is that what Cheng wrote in the 6/12/11 Email adduced as evidence by Mdm Yong shifted the evidential burden to him to rebut the inference that he used funds transferred to him by Satrio that were intended for Mdm Yong’s benefit. Cheng failed to rebut this inference.

48 It is important to explain that for this issue it is not necessary to find that Mdm Yong had a beneficial interest in the moneys prior to those moneys being used to purchase the Disputed Unit. It is enough that the moneys came to Cheng’s possession or control on the instruction of Satrio and with the knowledge of what Satrio intended him to do with those moneys, namely to use them for Mdm Yong’s benefit. The 6/12/11 Email shows that RMB12.75m was for Mdm Yong and from that amount RMB4m was to be used for the purchase of the Disputed Unit as “her house”. This purchase was carried out, and so even if Satrio had not declared any trust over the Moneys in favour of Mdm Yong

among other beneficiaries, the intended gift to her was completed and perfected (*via* Cheng) upon the funds being used for the purchase. It is also not necessary for Mdm Yong to prove that the purchase drew specifically and exclusively from those earmarked funds. Money is fungible and the point is that to the extent that Cheng might have used money from another source he had Mdm Yong's share of the Moneys "in his hand" to reimburse himself.

49 Accordingly, I hold that Cheng holds his share of the Disputed Unit on resulting trust for Mdm Yong.

Issue 3: Express or constructive trust in respect of Mdm Yong's share of the Moneys

50 Given my findings on the first two issues, the third issue concerns only the balance of Mdm Yong's share of the Moneys, namely RMB8.75m. This entails a different analysis. For Mdm Yong to succeed in showing a breach of trust on Cheng's part, she must first establish that he held that balance on trust for her, whether expressly or constructively.

51 The evidence does not establish an express trust, whether on Satrio's or on Cheng's part. Nor have circumstances been shown that compel the imposition of a constructive trust. I find that even once the moneys were in Cheng's account it remained open to Satrio to ask that Cheng pay Satrio the balance of Mdm Yong's share instead, whether because he had changed his mind about allocating that amount to Mdm Yong or because he had decided that he would use the moneys for Mdm Yong's benefit himself, rather than leave them with Cheng. I accept that at the material time Satrio made decisions for and ultimately controlled the finances of the family.

52 Moreover, these proceedings came too late to hear evidence from Satrio concerning dealings between himself and Cheng. In the absence of documentary evidence, I am not able to find, as Cheng testified, that Cheng in fact returned the moneys allocated to Mdm Yong to Satrio, but I am also not able to find that he did not do so.

53 Given this analysis, I need not deal with the pleading difficulties.

Conclusion

54 With the passage of time and the passing of the patriarch, much remains in the shadows. Nonetheless, the 6/12/11 Email, taken together with parties' testimonies, sheds sufficient light to show that funds earmarked by Satrio for Mdm Yong and controlled by Cheng were used directly or indirectly to purchase the Disputed Unit. Cheng's claim fails, and I grant Mdm Yong's counterclaim for a declaration that she is the sole beneficial owner of the Disputed Unit. I dismiss her counterclaim in respect of the balance moneys. Parties are to file submissions on costs limited to five pages each, excluding supporting documents for disbursements, within 14 days of the date of this judgment. I will proceed to notify parties of my decision on costs thereafter.

Philip Jeyaretnam
Judge of the High Court

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