IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 5

Originating Summons No 1560 of 2019 (Registrar's Appeal No 214 of 2020)

Between

Timing Limited

… *Appellants*

And

(1) Tay Toh Hin
(2) Tay Cindy Iwasaki

… *Respondents*

JUDGMENT

[Banking] — [Garnishee orders] — [Joint accounts]
[Credit and Security] — [Remedies] — [Garnishee orders]
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v
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Aedit Abdullah J
30 September 2020

11 January 2021 Judgment reserved.

Aedit Abdullah J:

Introduction

1 This Registrar's Appeal ("RA 214") is an appeal against part of the decision by the Assistant Registrar in HC/SUM 1320/2020 ("SUM 1320"). SUM 1320 was the appellant's application, pursuant to O 49 r 1 of the Rules of Court (Cap 322, R 5, 2014 Ed) ("ROC"), for an order that, *inter alia*, all debts due and/or accruing from Standard Chartered Bank ("SCB"), to Mr Tay Toh Hin ("Mr Tay"), be attached to answer Mr Tay's debt under a judgment dated 9 January 2020. Of the four accounts which Mr Tay had with SCB, the Assistant Registrar attached the moneys contained in two accounts, which were in Mr Tay's sole name. As for the remaining two accounts, which were in joint names with Mr Tay's wife, Ms Tay Cindy Iwasaki ("Ms Tay"), the Assistant Registrar

declined to order that they be attached. This appeal centres on the two joint accounts.

Background

2 In *Timing Limited v Tay Toh Hin and another* [2020] SGHC 169 ("*Timing No. 1*"), I had previously considered whether or not an order ought to be made for the garnishee to show cause why Mr Tay's four SCB accounts should not be garnished (the "show cause order"). The relevant background facts for the present dispute are set out from [4] to [7] of that judgment, and I do not propose to reproduce them in full here. What I will note is that the appellant sought to attach Mr Tay's bank accounts with SCB by way of a garnishee order to satisfy a debt owed by Mr Tay to it, and that Mr Tay unsurprisingly resisted those attempts.

3 In *Timing No. 1*, I was satisfied that there was a strong *prima facie* case that the whole of the moneys in all four SCB joint accounts belonged to Mr Tay alone, and accordingly granted the show cause order. I thus focus at this juncture on developments following that order.

4 The show cause order was duly served on SCB on 15 July 2020. On 20 July 2020, notice of the show cause order was given to Ms Tay through her counsel, Providence Law Asia LLC.

5 In a letter dated 24 July 2020, SCB informed Mr Tay that it had placed restrictions on the following amounts in the SCB accounts he held:

(a) S$8,384.46 in Mr Tay's account with account number ending in 0666;

(b) US$812.54 in Mr Tay's account with account number ending in 9603;

(c) S$178,277.70 in Mr Tay's joint account with Ms Tay, with account number ending in 4885 (the "4885 account"); and

(d) S$10,028.64 in Mr Tay's joint account with Ms Tay, with account number ending in 4259 (the "4259 account").

6 It appears that it was only after having had sight of SCB's letter of 24 July 2020 that the appellant realised that only two of the four accounts Mr Tay held with SCB were joint accounts. In fact, two were accounts in Mr Tay's own name. This was at odds with Mr Tay's answers to the questionnaire in the examination of judgment debtor process (the "EJD process"), in which he had stated that all four accounts he held with SCB were joint accounts. I note that Mr Tay had also indicated at the EJD hearing on 19 June 2020 that his four accounts with SCB were joint accounts. At any rate, it appears that SCB's letter of 24 July 2020 has since clarified this inaccuracy.

7 The hearing for the garnishee to show cause in SUM 1320 took place before an Assistant Registrar on 20 August 2020. Reply affidavits were filed by both Mr and Ms Tay prior to the hearing. At the hearing, both written and oral submissions were made. Judgment was reserved, and was eventually released on 1 September 2020.

The Decision Below

8 In her decision, the Assistant Registrar ordered that a final garnishee order be granted in respect of the two SCB accounts in Mr Tay's sole name. She dismissed the appellant's application to garnish the moneys standing credit in

the two joint accounts (the 4885 account and the 4259 account) because, in her view, the appellant had failed to show "on the balance of probabilities, that the beneficial ownership of the entire sum of money held in the SCB Joint Accounts was held by Mr Tay alone". Rather, the Assistant Registrar accepted that the evidence given by Mr and Ms Tay in their reply affidavits was "direct evidence of the intentions of Mr Tay and Mrs Tay", and that Mr Tay's oral evidence at the EJD hearings was "inconclusive" and "equivocal" on the specific issue of the beneficial title to the moneys in the joint accounts.

9 The Assistant Registrar further held that there was no basis for finding that Mr and Ms Tay's affidavit evidence was untrue. The documentary evidence did not contradict their accounts, nor were their assertions inherently improbable. While Mr Tay appears to have inaccurately claimed that all four SCB bank accounts were jointly held, the Assistant Registrar took the view that there was no evidence to suggest that Mr Tay was seeking to ring-fence assets from his creditors by transferring them into the joint accounts.

10 As outlined above, the appellant is only appealing against the Assistant Registrar's decision to not grant a final garnishee order in relation to the 4885 account and the 4259 account.

Analysis

The burden of proof

11 The first issue to be considered concerns the relevant burdens and standard of proof which apply in the instant context. The respondents rightly observe that the judgment creditor bears the burden of proving that there is a debt due or accruing from the garnishee to the judgment debtor, notwithstanding

the granting of the provisional garnishee order, and that the judgment debtor in fact beneficially owns that debt. This is not controversial, and is the position adopted by the appellant as well. The parties diverge, however, on how the burden of proof should operate after the provisional garnishee order has been made.

12 The appellant argues that since a provisional garnishee order will only be made over joint accounts where there is a strong *prima facie* case that the moneys in the joint accounts belong solely to the judgment debtor, the granting of a provisional garnishee order must then operate to place a tactical burden on the garnishee to contradict the judgment creditor's case. This, the appellant further contends, is consistent with the view that a third party who claims to be entitled to the debt sought would bear the burden of proving his claim to the debt. The appellant therefore took the view that it was the respondents who bore the burden of proof to rebut the strong *prima facie* case which had already been made out. A summary judgment approach ought to be adopted, where, since the respondents had failed to raise anything which would raise a defence to summary judgment, the garnishee orders over the joint accounts ought to be made final.

13 In support of its position, the appellant points to two cases. In *Westacre Investments Inc v The State-Owned Company Yugoimport SDPR (also known as Jugoimport-SDPR) and others* [2015] 4 SLR 529 ("*Westacre*"), the judgment creditor obtained two interim garnishee orders – one against Deuteron, a subsidiary of the judgment debtor, and the other against a bank with which Deuteron maintained accounts. Thereafter, three new and separate parties (the "Other Parties") asserted claims to the funds in the said bank. Deuteron and the judgment debtor both expressed support for the Other Parties' claims, and

agreed that the moneys in the accounts belonged to the Other Parties. At [27] to [29] of *Westacre*, Edmund Leow JC held that the Other Parties bore the legal burden of showing ownership of the funds. In particular, at [27], Leow JC observed that:

> … However, while Deuteron is merely defending the [judgment creditor]'s claim to the purported debt, the Other Parties are essentially asserting an ownership claim over that debt. Therefore, the question of whether the funds in Deuteron's accounts with the Bank belonged beneficially to the Other Parties is really a tussle between the Other Parties and the [judgment creditor]. For this issue, I cannot accept that the [judgment creditor] bears the legal burden of proving that the funds are *not* held on trust for the Other Parties. That would require the [judgment creditor] to prove a negative. If the counsel for the Other Parties is right, the logical conclusion is that a third party can establish its claim to the money without having to prove the claim on a balance of probabilities. A *bona fide* judgment creditor would have to constantly fend off a random array of third party claimants if all that these claimants have is an evidential burden.
>
> [Emphasis original].

On appeal, the Court of Appeal found that there was no need to discuss the issue of the third party's burden of proof since the Other Parties did not appeal against Leow JC's decision. That said, the Court of Appeal observed at [87] of *The State-Owned Company Yugoimport SDPR (also known as Jugoimport-SDPR) v Westacre Investments Inc and other appeals* [2016] 5 SLR 372 that Leow JC was "correct in his view that the third party would bear the burden of proving his claim to the debt". Accordingly, the appellants argued that Ms Tay ought to bear the burden of showing her claim to the moneys held in the joint SCB accounts.

14 The second case the appellant relied on was that of *Telecom Credit Inc v Star Commerce Pte Ltd* [2017] SGHCR 3, in which the Assistant Registrar

applied the principles governing a summary judgment application in the context of O 49 r 5 of the ROC, where the garnishee challenged the making of the garnishment order. At [4], the Assistant Registrar observed that:

> … I consider it useful to borrow from summary judgment principles to say that once a provisional garnishee order is granted, the judgment creditor must be taken to have established at least the *prima facie* existence of the debt which places a tactical burden on the garnishee to contradict the judgment creditor's case. It is of course then open to the judgment creditor to introduce evidence or raise arguments to undermine the garnishee's defence but if, once all the evidence is in, the court is satisfied that the garnishee has at least an arguable defence, a trial will be ordered.

I note for completeness that the Assistant Registrar's decision was upheld on appeal before the High Court, and that the appeal against the High Court's decision was subsequently dismissed by the Court of Appeal.

15 The respondents took the position that it was for the appellant to show, on a balance of probabilities, that Mr Tay owns the entire beneficial interest in the joint accounts. The respondents' analysis did not appear to expressly distinguish between legal and tactical burdens, but instead adopted a broad position that the burden of proof lay wholly on the appellant.

16 In evaluating both positions, the differences between them should not be overstated. It is clear, and the appellant itself accepts, that the legal burden of proof in showing that a provisional garnishee order should be made final lies firmly on the party seeking the benefit of that garnishee order. It is for that party to establish, on balance of probabilities, that the judgment debtor does in fact own the moneys in the account for which garnishment is sought, and that a garnishment order ought to be made. This is not in contention.

17 What is in contention appears to be the precise effect of a provisional garnishee order being made. In this regard, the tactical burden may shift following the determination that an applicant for a garnishee order has made out at least a strong *prima facie* case, but that does not in any way affect the legal burden, which remains firmly on the said applicant. The difference in position between the appellant and respondents in this regard may thus be said to be one of degree. The appellant appears to suggest that once a provisional garnishee order is made, it is for the respondents to then rebut the appellant's *prima facie* case. This is not objectionable if one refers only to the evidential burdens which apply (which I refer to in this context interchangeably with the applicable "tactical" burdens), but it is important to not overstate the effects of a provisional order. As the Court of Appeal observed at [33] of *Telecom Credit Inc v Midas United Group Ltd* [2019] 1 SLR 131:

> … The appellant does not want just a provisional garnishee order. It wants an absolute garnishee order, and part of the process of obtaining such an order is to obtain a provisional order attaching the debts of the garnishee and requiring the garnishee to show cause. In the show cause proceedings, the legal (as opposed to tactical) burden remains on the appellant to prove that the garnishee owes the respondent a debt …

Put in other words, the Court must still be satisfied that there is sound basis to make the final garnishee order(s). Simply receiving a provisional garnishee order cannot be said to be determinative of whether or not a final order will be made.

18 A further point I make in relation to the issue of burdens of proof concerns the applicability of the cases cited by the appellant. While I accept that the differences between the appellant and respondents' positions in relation to the burden of proof were not particularly substantial, I nonetheless wish to briefly comment on the applicability of *Westacre* to the instant facts. What the

Court of Appeal stated in *Westacre* was that the legal burden in that case lay on the third parties claiming the money. This was unsurprising – the third parties did not have any apparent basis to assert beneficial ownership over the money. Here, by contrast, Ms Tay's assertion of beneficial ownership was readily explicable in light of her legal interest as a joint account holder. The question was then who had the burden of showing that she either did or did not have any beneficial interest in the moneys in the SCB joint accounts. In the absence of any other evidence, Ms Tay was entitled to rest on her legal title to assert beneficial ownership over at least half the moneys in the accounts; the burden should therefore lie on the applicant to show otherwise.

19 In any event, I adopt the question as framed in *Telecom Credit* at [5], that "[u]ltimately, the court must be satisfied based on *all the evidence put before it*" (emphasis added) that a final garnishee order ought to be made. The provisional garnishee order might place a tactical/evidential burden on the respondents to challenge the appellant's *prima facie* case, but the assessment will ultimately be a holistic one based on the entirety of the evidence adduced.

The evidence

20 I turn therefore at this juncture to the evidence relied on by the parties. Broadly, both the appellant and respondents pointed to the same pieces of evidence, with the primary difference being in the conclusions and inferences drawn from them. My analysis will therefore take each piece of evidence relied upon by the parties in turn.

21 The first piece of evidence both parties examined was an extract from the EJD hearing on 6 March 2020, as follows:[1]

> Q: 11 September 2019 withdrawal of $50,000. Appears to us that it was credited to the joint account of you and your wife. Will show you statement. Marking this as JT-1. I will show you the relevant entry. Page 17, 11 September, you see ANZ 000655 (SGD) $50,000.
>
> A: Yes.
>
> Q: And go back PS-2, page 11, $50,000 withdrawal. You accept it was transferred to your joint account.
>
> A: Yes.
>
> Q: Please explain.
>
> A: It was an advance to me.
>
> Q: Can you explain why, if this was an advance to you as a director/shareholder of the company, the moneys were not transferred to your own bank account but to a joint account with your wife.
>
> A: This is my main account.
>
> Q: You have other accounts which are not with your wife correct?
>
> A: This is the primary account I use. I don't put into Credit Suisse account. I put into this account. There is no other reason.
>
> Q: So is it your evidence to this court that moneys that were paid to you personally were put into this joint account because this was your practice?
>
> A: Yes.
>
> Q: And these moneys, since they were paid to you, actually do not belong to your wife.
>
> A: Yes.

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1 Appellant's Written Submissions ("AWS") at [7].

22 The appellant argues that the extract above shows that the moneys in the SCB joint accounts were paid to Mr Tay personally, and did not belong to his wife. It therefore followed, according to the appellant, that the moneys in the joint accounts were beneficially owned by Mr Tay alone. Moreover, the appellant pointed out that while the questions in this extract were directed at the 4885 account, there was no evidence suggesting that there was any distinction in the way Mr Tay dealt with all of the SCB accounts.

23 I am unable to accept the appellant's argument that the extract suffices to show on balance of probabilities that all of the money in the SCB joint accounts was beneficially owned by Mr Tay alone for the following reasons:

(a) First, as Mr Tay explained in his affidavit of 7 August 2020 ("Mr Tay's affidavit") at [7], the questions he was asked in the extract related to the "nature of one particular transaction". While the payment of a significant sum of S$50,000 might be indicative of certain practices *vis-à-vis* payments, I was not satisfied that it established on balance of probabilities that Mr Tay's answers in relation to one transaction could be extrapolated to all the moneys in the account. In any event, Mr Tay has flatly denied that in his affidavit.

(b) Second, Mr Tay was not asked in this hearing at all about the 4259 account. There is also nothing in the questions asked shortly before and shortly after the questions in this extract where counsel for the appellant sought to extend the effect of Mr Tay's answers to the 4259 account. There was also no direct evidence that Mr Tay necessarily treated the 4259 account in the same manner as the 4885 account, and the appellant's argument that "there [was] no evidence suggesting that there was any distinction" in the way Mr Tay dealt with both joint

accounts came dangerously close to flipping the burden of proof and foisting it on the respondents. In Mr Tay's affidavit, he expressly states at [13] that his answers in the extract were only "in respect of one of the two SCB joint accounts", and I am again not persuaded that the appellant has succeeded in establishing otherwise on the balance of probabilities.

(c) Third, I note that even at its very highest, the answers provided by Mr Tay in this extract relate only to questions of the use and origin of the money in the account. I was not persuaded that, in this context, merely referring to the use and origin of the money in the accounts sufficed as being determinative of the question of who beneficially owned that money. Put another way, I had concerns that these issues were being conflated.

24 I turn therefore to the second piece of evidence which the parties joined issue over. In this regard, the parties relied on extracts from the EJD hearing of 2 April 2020 and the EJD hearing of 19 June 2020. I begin by setting out the earlier extract:[2]

> Q: 12th September, $30,000.
>
> A: Yah.
>
> Q: Just wanted to check with you: Are you able to explain why there's this deposit of 30,000 made into your bank account?
> A: If you were to turn to page 17 of the SCB account?
> Q: Yes?
>
> A: Page 17 of the Standard Chartered Bank.
>
> Q: Yes.
>
> A: You see that it's the same date.

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[2] AWS at [9].

> Q: Yes.
>
> A: So I transferred money from my SCB to DBS for maintaining---to my wife for maintaining household expenses. So that's where the money came from.

25 The second extract, from 19 June 2020, is as follows:[3]

> Q: There was a cheque issued on 31 January 2020 from the joint account –
>
> A: Right.
>
> Q: -- of you and Mrs Tay and this account number is 0108324885.
>
> A: Yes.
>
> Q: To Mrs Cindy –
>
> A: My wife.
>
> Q: Yes. Why did you issue a cheque out to your wife?
>
> A: No, she then put it into our household account in DBS for her to do her household grocery shopping. So I could top it up, this was deposited into the DBS bank account.
>
> Q: At page 30, there was $50,000 that was paid to Ms – I assume Ms Kathleen Tay CK, and it is dated 31 January 2020.
>
> A: I borrowed some money from her.
>
> Q: Who is Ms Kathleen?
>
> A: My sister.
>
> Q: So this was a payment to your sister?
>
> A: Yes, ma'am.
>
> Q: As a creditor?
>
> A: Yeah.

26 The appellant argues that these extracts show that Mr Tay treated the SCB accounts as "his" accounts and freely transferred the moneys from the SCB

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[3] AWS at [11].

accounts to his other accounts. The appellant further contends that if Ms Tay indeed owned part of the money in the joint accounts, Mr Tay would not need to deliberately transfer moneys out of the 4885 account by issuing a cheque to Ms Tay just so that she could deposit the cheque into another joint account with DBS Bank that she held with him. Ms Tay could have simply made the withdrawal or effected a transfer by herself, and the inference to be drawn from the fact that she did not is that she does not own any of the moneys in the SCB joint accounts, nor does she have free access to them.

27 I was once again not convinced that this piece of evidence comprising the two extracts sufficed to show, on balance of probabilities, that the entirety of the moneys in the SCB joint accounts was beneficially owned by Mr Tay. My reasons are as follows:

(a) First, I accept the evidence given by Mr and Ms Tay that they are a close, long-married couple and that both of them have historically used these joint accounts as and when they needed. This included, as both Mr and Ms Tay indicated in their affidavits, using the moneys for household purposes. I note Ms Tay's affidavit dated 7 August 2020 ("Ms Tay's affidavit") at [6], where she points out that as she is a homemaker, she is "dependent on [Mr Tay] depositing monies into the Joint Accounts" for her use, and that both of them "fully intended for both of [them] to make full use of the monies in the Joint Accounts". This goes directly towards addressing the suggestion that Mr Tay dealt with the joint accounts purely as "his" accounts. I took the view that the appellant may be reading too much into Mr Tay's use of the descriptor "my" to describe the account in question. Viewed in light of Mr and Ms Tay's

affidavits, I am satisfied that Mr Tay's use of that descriptor cannot be said to be decisive.

(b) Second, I also note the clear evidence from both Mr and Ms Tay that the moneys from the joint account were expended on expenses that both of them incurred. According to Ms Tay's affidavit at [7], this included payments for the maintenance of their place of residence and another property (which included weekly maintenance of the swimming pool, gardening, security, garbage collection, and other property repair services), payments for income tax to the Inland Revenue Authority of Singapore, utility payments to SP Services and iSwitch Pte Ltd, and telecom bills to Singapore Telecommunications. I accept that spending money from the joint accounts on these expenses did not *ipso facto* preclude Mr Tay from having beneficial title to the moneys in the joint accounts, but these expenses do buttress the narrative of Mr and Ms Tay as a close and long-married couple who shared their funds and pooled them accordingly.

(c) Third, I also noted that Ms Tay provided a good reason in her affidavit at [10] for why moneys were periodically transferred from the couple's SCB joint account to their joint account with DBS Bank. The reason for these transfers was simply that there are more DBS ATMs around, and it would therefore be easier for Ms Tay to withdraw cash for payments such as grocery shopping or topping up her cash card if she could withdraw cash from DBS ATMs. There thus appears to be good reason for Mr Tay transferring money from the SCB joint account into the DBS joint account. I did not accept the appellant's response – that Ms Tay could have used cashless modes of payment – as I saw no

reason why Ms Tay's payment habits should be impugned just to fit the appellant's case theory.

(d) Fourth, I noted once again that both extracts were merely illustrative of use rather than ownership of the moneys in the joint accounts. I have made this point at [23(c)] above and will not belabour it here.

(e) Fifth, I accept that the transfers appear to have been effected by Mr Tay as opposed to Ms Tay, but that in my view is not decisive as to the ownership of the moneys because it may simply be the case that Mr Tay holds the relevant chequebook. I was not satisfied on a balance of probabilities that Mr Tay having effected the transactions in question necessarily precluded Ms Tay being able to do so in her own right, and in any event was even less convinced that these payments should be taken as decisive on the question of the beneficial ownership of the moneys.

28 The third piece of evidence relied on by the appellant to show that the entirety of the moneys in the joint accounts belonged to Mr Tay centred on Mr Tay's evidence at the EJD hearing of 2 April 2020 that a sum of S$13.6m was paid into the 4885 account on 28 January 2020 as a "loan" he had obtained from Camdolane Pte. Ltd., which was described as his "Indonesian partner in Bintan Lagoon".[4] The very next day, on 29 January 2020, several payments were paid out of the 4885 account for Mr Tay's business purposes. These included a payment of S$235,000 to one "Ho Bee" for office rental, and S$3.014m to

[4] AWS at [13].

"Pacific Star" for "payroll" and "expenses in the company" to "maintain it as a going concern".

29 The argument which the appellant makes from the third piece of evidence is that these transactions related only to Mr Tay and his business, and had nothing to do with Ms Tay at all. Accordingly, it was contended that the moneys in the joint accounts must have belonged entirely to Mr Tay. Otherwise, Ms Tay might have been able to lay claim to the S$13.6m which was transferred into the account.

30 Once again, I had difficulty accepting that, on a balance of probabilities, this piece of evidence sufficed to establish that all of the moneys in the joint accounts belonged to Mr Tay. I highlight the following points:

(a) First, it cannot be said that the mere fact that business transactions were occasionally made out of one of the joint accounts is decisive in indicating that Ms Tay did not have any ownership over the accounts. It is entirely plausible that the $13.6m was intended by the parties to be treated separately from their own moneys which were mixed in the accounts. I was not satisfied on the balance of probabilities that the mere use of one joint account by Mr Tay for some business purposes necessarily precluded Ms Tay from having beneficial ownership over the funds which were not for business purposes in the account. The money for business purposes which flowed through the 4885 account appeared to be, from the evidence placed before me, merely transitory.

(b) Second, even if one were to accept the appellant's reasoning that the moneys in both joint accounts must be beneficially owned by Mr

Tay simply because he had used the joint account for his own business purposes, that argument runs into difficulty given Ms Tay's own spending of money from the joint accounts for her individual purposes as well. Ms Tay points out in her affidavit at [13] that she spent money from the joint bank accounts to pay for, *inter alia*, her own Japanese Association membership fees and American Club fees. While documentary evidence to show that she did in fact pay for these memberships in her name was sorely lacking from the affidavits, I note that there were other expenses which she appears to have personally taken the initiative to pay for. These include, as exhibited in her affidavit, payment that was sought to be made in her own name to the Ministry of Manpower for her foreign domestic helper's levy. Given that Ms Tay appears to be herself using the moneys in the joint accounts for her own ends such as club membership, and in her own name in the context of the foreign domestic helper's levy, I am not convinced that Mr Tay's use of one account for a brief period to effect business transfers is determinative of the beneficial ownership of the moneys in the joint accounts.

(c) Third, and as a general issue, it is not clear to me that it can safely be said that once a joint account is used for a non-joint purpose, that will, without more, determine the ownership of moneys in the account. That would be unrealistic, and more importantly, would lose sight of the fundamental question which determines the beneficial ownership of moneys in the account – the intentions of the parties as may be discerned from the available evidence.

31 I have thus considered all the three bases upon which the appellant invites me to conclude that all the moneys in the joint accounts belonged beneficially to Mr Tay. Even taken cumulatively, I am not satisfied that the three pieces of evidence relied on establish that claim on the balance of probabilities. While I had previously accepted that the appellant had illustrated a strong *prima facie* case in *Timing No. 1*, it should be borne in mind that (a) such a determination made at an interlocutory stage cannot ossify into a *fait accompli* at the confirmatory stage, (b) a strong *prima facie* case is not watertight, and needs to be weighed against the evidence adduced by the respondents in determining whether or not the final garnishee order should be granted, and (c) the burden of proof ultimately remains on the party seeking to garnish the account to show, on the balance of probabilities and weighing all the relevant evidence adduced, that the garnishment should be made final. I emphasise at this point the *ex parte* and interlocutory nature of the hearing which preceded the findings made in *Timing No. 1* and highlight that what constitutes a "strong *prima facie* case" at that stage may cease to be so when met with the evidence and explanations provided by the garnishee and/or joint account holder. It is unsurprising that a more holistic presentation of the evidence will affect the strength and persuasiveness of what was initially a strong *prima facie* case.

32 On the facts, I found the affidavit evidence raised by the respondents to have met and, at least in part, explained the issues previously raised by the appellant. While I was mindful that there was limited documentary evidence in support of the claims made in the affidavits, I did not view that as meaning that the affidavits should necessarily be ignored. Rather, certain facts – such as Mr and Ms Tay's long marriage, the use of the moneys in the joint accounts to pay for shared expenses, and the greater prevalence of ATM machines for DBS

Bank explaining why the couple transferred money from an SCB joint account to their DBS joint account – spoke for themselves.

33 Another observation I noted relating to Ms Tay's financial position is that, based on the evidence before me, she does not appear to have any accounts in Singapore which are not joint. At [10] of her affidavit, she states that save for the SCB joint accounts and another joint account with DBS Bank, she does not have any other bank accounts in Singapore. It would strike me as very odd if someone who had been married for 36 years, and with no separation of moneys between the couple, could be said to not beneficially own any of the moneys in the bank accounts she had. Ms Tay described the SCB joint accounts as her "primary accounts", and while I am not inclined to accept that descriptor at face-value, the fact that she has no accounts in her own name in Singapore does suggest that the descriptor is accurate. The appellant's case would not only deny Ms Tay any share in the beneficial ownership of her bank accounts, but would more importantly undermine what appears to be a fairly clear mutual intent on the part of Mr and Ms Tay that Ms Tay should have a beneficial interest in the moneys.

34 I add at this juncture that while Mr Tay does appear to have inaccurately reflected the nature of his holdings with SCB by characterising all four of his accounts with the bank as joint accounts, when in fact only two of them were, this does not necessarily tar the entirety of his evidence. As this Court made clear in *Lim Chen Yeow Kelvin v Goh Chin Peng* [2008] 4 SLR(R) 783 at [51]:

> By not being forthright under cross-examination and by slanting their evidence initially to suit the plaintiff's case … it did to some extent affect their credibility and did cause me to scrutinise carefully whether they could be telling or embellishing the truth when it came to the other crucial disputed elements of the case. Of course, I must still carefully

> consider all the relevant circumstances surrounding and pertaining to each disputed fact before I decide whether to believe or disbelieve their evidence on each disputed fact, and there were a number of disputed facts in this case. It would be wrong to disbelieve every aspect of the plaintiff's … evidence simply because I disbelieved [him] on one part of [his] evidence or for that matter, [he] had been shown not to have been forthright in another part of [his] evidence.

I therefore did not view Mr Tay's less than forthright and/or inaccurate statement of the nature of his SCB accounts as necessitating that the rest of his evidence not be believed.

35 On the above-outlined bases, I do not find that the appellant has discharged its burden of proof that the moneys in the SCB joint accounts should be garnished.

The presumption of advancement

36 While my factual findings above would suffice to dispose of this appeal, I will go on to briefly consider the alternative arguments raised before me.

37 The respondents argue that a strong presumption of advancement arises over Mr Tay's contributions to the SCB joint accounts given the nature and strength of Mr and Ms Tay's 36-year spousal relationship. According to the respondents, this in turn means that Mr Tay can be presumed to have gifted Ms Tay a joint interest in his contributions to the joint accounts.

38 I begin by setting out the operation of the presumption of advancement. In this regard, the guidance provided by the Court of Appeal in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*") at [160] is apposite:

> In view of our discussion above, a property dispute involving parties who have contributed unequal amounts towards the

purchase price of a property and who have not executed a declaration of trust as to how the beneficial interest in the property is to be apportioned can be *broadly* analysed using the following steps in relation to the available evidence:

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

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

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

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

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

(f) Notwithstanding the situation at the time the property was acquired, is there sufficient and compelling evidence of a subsequent express or inferred common intention that the

> parties should hold the beneficial interest in a proportion which is different from that in which the beneficial interest was held at the time of acquisition of the property? If the answer is 'yes', the parties will hold the beneficial interest in accordance with the subsequent altered proportion. If the answer is 'no', the parties will hold the beneficial interest in one of the modes set out at (b)–(e) above, depending on which is applicable.
>
> [Emphasis original]

While *Chan Yuen Lan* dealt with the issue of jointly-owned real property, I saw no reason why the reasoning therein concerning the presumptions applicable to joint ownership should not also apply to jointly-owned intangible property. I note for completeness that the approach in *Chan Yuen Lan* has been consistently applied, including recently in the case of *Ranjit Singh s/o Ramdarsh Singh (suing as co-executor of the estate of Ramdarsh Singh s/o Danukdhari Singh @ Ram Darash Singh, deceased, and as a beneficiary of the estate) v Harisankar Singh (sued as co-executor of the estate of Ramdarsh Singh s/o Danukdhari Singh @ Ram Darash Singh, deceased, and in his personal capacity)* [2020] SGHC 243 ("*Ranjit Singh*") at [16].

39 The respondents' argument on the presumption of advancement centres on stage (e) of the *Chan Yuen Lan* framework as set out above. Specifically, the respondents argue that the presumption of advancement operates such that Mr Tay's greater contribution to the SCB joint accounts notwithstanding, they hold the beneficial interest in the joint accounts jointly. This would in turn rebut any suggestion or presumption of a resulting trust arising over the moneys in the SCB joint accounts, and prevent the appellant from claiming that Mr Tay had sole beneficial ownership over the moneys in those accounts.

40 In determining whether the presumption of advancement can be rebutted, the court has to consider both the strength of the presumption and the

evidence that is adduced to rebut the presumption: *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*") at [67]. The strength of the presumption of advancement varies in strength according to the specific facts of each case: *Low Gim Siah and others v Low Geok Khim and another* [2007] 1 SLR(R) 795 at [33]. The stronger the presumption, the more cogent the evidence adduced by the other party has to be for it to be rebutted: *Ranjit Singh* at [18]. The weaker the presumption, the less weighty the evidence will need to be for the challenging party to succeed in rebutting it: *Lau Siew Kim* at [68]. It bears note, however, that the strength of the presumption is not "generally diminished" even today for the traditional categories of relationship where the presumption applies. As the Court of Appeal in *Lau Siew Kim* cautioned at [77]:

> … Instead, it should only be where the present realities are such that the putative intention inherent in the presumption of advancement is not readily inferable from the circumstances of the case, that the presumption would be a weak one easily rebuttable by any slight contrary evidence.

41 Turning to the specific factors which contour the strength of the presumption of advancement, the Court of Appeal observed at [78] of *Lau Siew Kim* that the assessment of the presumption's strength calls for consideration of all the circumstances, but certain elements are central to the analysis:

> … [*A*]*ll* the circumstances of the case should be taken into account by the court when assessing how strongly the presumption of advancement should be applied in the particular case. The financial dependence of the recipient on the transferor or contributor, mentioned in *Low Gim Siah*, is but one factor which may affect the strength of the presumption of advancement. In our judgment, two key elements are crucial in determining the strength of the presumption of advancement in any given case: *first*, the *nature* of the relationship between the parties (for example, the obligation (legal, moral or otherwise) that one party has towards another or the dependency between the parties); and *second*, the *state* of the relationship (for

> example, whether the relationship is a close and caring one or one of formal convenience). The court should consider whether, in the entirety of the circumstances, it is readily presumed that the transferor or contributor intended to make a gift to the recipient and, if so, whether the evidence is sufficient to rebut the presumption, given the appropriate strength of the presumption in that case.
>
> [Emphasis in original]

42 Applying these considerations to the instant facts, it would appear that the strength and nature of Mr and Ms Tay's relationship gives rise to a strong presumption of advancement. First, they have a close relationship, having been married for over 36 years and having relocated as a couple from the United States to Singapore. Nothing placed before me has suggested anything to the contrary, nor has the appellant denied this aspect of Mr and Ms Tay's affidavit evidence. Second, Ms Tay appears to be financially dependent on Mr Tay providing moneys for her use. This stems from her role as a homemaker, and is all the more the case given the absence of any Singapore bank accounts she holds in her sole name. In *Lau Siew Kim*, the Court of Appeal made clear at [138] that the presumption of advancement is "stronger and more readily inferable in cases where the beneficiary is finally dependent on the transferor or contributor". This appears to be entirely apropos to the instant facts.

43 In this regard, I note the decision in *Estate of Yang Chun (Mrs) nee Sun Hui Min, deceased v Yang Chia-Yin* [2019] 5 SLR 593 ("*Estate of Yang Chun*"), where Ang Cheng Hock JC found at [82] that a strong presumption of advancement arose over the funds in bank accounts that were jointly held by a spousal couple who had made unequal contributions to the accounts. In that case, Ang JC observed at [72] and [75] that the marriage was "traditional in nature", with the wife as a homemaker and financially dependent on the husband, who was the sole breadwinner. The marriage had lasted more than 50

years, and the husband, who was by the time of the trial already deceased, had made express provision to ensure that the wife would be maintained and cared for comfortably after his passing. It was observed at [72] that the couple's living arrangement reflected one of the original rationales behind the spousal presumption of advancement:

> As explained by Lord Reid in *Pettit v Pettit* [1970] AC 777 at 793, 'wives' economic dependence on their husbands made it necessary as a matter of public policy to give them this advantage'. Applying this reasoning, a greater level of dependence in the relationship points to a stronger presumption.

Significantly, the Court also went on to find at [83] that the level of control exercised by the husband over the moneys in *Estate of Yang Chun* was equivocal on the issue of whether the presumption of advancement had been rebutted.

44 Having carefully considered the circumstances of Mr and Ms Tay's relationship, as well as the evidence placed before me, it appeared to me that a strong presumption of advancement would arise in this case. To rebut such a presumption, the appellant would need to adduce weighty and cogent evidence. I am not satisfied that it has done so on the present facts, primarily for the reasons which I have already outlined above from [21] to [33]. Further, the entirety of the evidence relied on by the appellant to rebut any presumption of advancement centred on answers provided at the EJD hearings on the use of the moneys in the SCB joint accounts. Like in *Estate of Yang Chun*, I took the view that the use of the moneys in the accounts was a relevant but ultimately equivocal factor when it came to rebutting the strong presumption of advancement which arose on the instant facts. Accordingly, this would provide a further basis for dismissing the appeal.

45 In her oral arguments, counsel for the appellant argued that the presumption of advancement should not apply on the instant facts given the direct evidence which allegedly illustrated Mr Tay's intention to hold all the moneys in the joint account solely. Reliance was placed on *Chan Yuen Lan* at [52], as well as on *Lau Siew Kim* at [50] and [51]. The former authority underscored the centrality of direct evidence, which would obviate the need for reliance on the presumptions, while the latter authority appeared to cast doubt on the rationale for the presumption of resulting trust. I was unconvinced by any of these arguments. First, I have already found that the evidence of the parties' intentions militates towards Mr and Ms Tay sharing in the beneficial ownership of the money in the SCB joint accounts. Accordingly, the direct evidence on the facts was not such as to preclude the operation of the presumption of advancement altogether. Second, *Lau Siew Kim* at the paragraphs cited did not assist the appellant because immediately after those paragraphs, the Court of Appeal at [52] declined to "radically [abolish] the presumption of resulting trust or "downgrad[e]" the presumption from a rebuttable presumption of law to a presumption of fact which may be applied in a judge's discretion". Instead, the Court of Appeal indicated that a more nuanced approach aligning the presumption of resulting trust with modern expectations by varying the strength of the applicable presumption would be appropriate. This then goes towards my analysis (from [41] to [44] above) on the strength of the presumption, and thus does not assist the appellant.

46 A further argument levied by counsel for the appellant was that there was neither an express statement in the affidavits of both Mr and Ms Tay that the money belonged to the both of them, nor was there anything which expressly stated that Mr Tay had made a gift to Ms Tay. While I did find the absence of clear statements in the affidavits to that effect somewhat unusual, I take the view

that there was no need for particular words or phrases to be used in order to establish the relevant intention(s). In any event, Ms Tay did point out at [5] of her affidavit that it is "untrue that all of the monies in the Joint Account belong solely to [Mr Tay]". Moreover, she also stated that the couple used the SCB joint accounts "as [their] main accounts from which [they] would make payment of our household and person expenses". It is clear from the evidence that, the absence of an express statement of the intention to make a gift notwithstanding, the parties did intend to jointly share in the moneys in the joint account. The absence of an express statement to that effect is not fatal to the presumption of advancement in the present case, particularly when one considers the full panoply of the evidence before me.

47 In sum, the application of a strong presumption of advancement on the facts provides a further basis for finding that Ms Tay did in fact share in the beneficial ownership of the money in the SCB joint accounts, and for dismissing the instant appeal.

48 I note for completeness at this point that counsel for the appellant sought to argue before the Assistant Registrar that a trial should be ordered after it was unsuccessful in obtaining final garnishee orders for the two SCB joint accounts. In particular, the appellant pointed to the fact that the respondents were relying on assertions made in their affidavits which had not been tested by cross-examination. Further, there was no express assertion that the moneys in the joint accounts had in fact been gifted or were subject to a presumption of advancement, and a trial might uncover and test the reasons behind such an omission. The Assistant Registrar rightly observed that the appellant had previously taken the position that the matter should not proceed to trial, and the appellant conceded as much. However, the appellant still sought that a trial be

ordered, after having been unsuccessful in relation to the SCB joint accounts. Since the question of whether the matter should proceed to trial was not raised before me by the appellant, I will not touch on it in any great detail. All I will observe at this point is that very good reasons will need to be provided for why the appellant should be allowed to have a second bite of the cherry to seek a final garnishee order at trial after its first attempt was unsuccessful. I was unable to discern any such reasons on the facts.

Conclusion

49 On the facts, I find that the evidence does not show that, on a balance of probabilities, the provisional garnishee orders against the two SCB joint accounts should be made final. I am not satisfied that Mr Tay owns the entire beneficial interest in those joint accounts, and in any event a strong presumption of advancement operates in Ms Tay's favour to indicate that she shares in that beneficial interest. Accordingly, I dismiss the appeal.

50 I will deal with the matter of costs separately.

Aedit Abdullah
Judge

Koh Swee Yen, Lin Chunlong, Goh Mu Quan, and Dana Chang Kai Qi (WongPartnership LLP) for the appellant;
Abraham Vergis SC and Lim Mingguan (Providence Law Asia LLC) for the respondents.