

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 181

Originating Summons No 1329 of 2019

Between

(1) Lim Kieuh Huat
(2) Leong Ah Chue

... Plaintiffs

And

(1) Lim Teck Leng
(2) Zhang Honghong

... Defendants

JUDGMENT

[Land] — [Interest in land]
[Trusts] — [Constructive trusts] — [Common intention]
[Trusts] — [Resulting trusts]
[Trusts] — [Unlawful trusts]

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Lim Kieuh Huat and another
v
Lim Teck Leng and another

[2020] SGHC 181

High Court — Originating Summons No 1329 of 2019
Andre Maniam JC
24 June 2020

1 September 2020

Judgment reserved.

Andre Maniam JC:

Introduction

1 The Housing and Development Board (“HDB”) promotes home ownership by selling flats on a subsidised basis. When purchasers resell their flats after satisfying the Minimum Occupation Period, they can thus expect to make a profit, with some resale transactions even breaching the \$1 million mark (partly due to a rising property market).

2 The HDB does not however allow purchasers to buy a series of flats as if they were first-time owners. A resale levy is imposed to maintain a fair allocation of public housing subsidies between first-time purchasers and repeat purchasers by reducing the subsidy enjoyed on the second (or subsequent) subsidised HDB flat. Can that resale levy be evaded by using a nominee to

purchase the subsequent flats, without jeopardising one's ability to be recognised as the real owner?

3 In the present case, Mr and Mrs Lim (the plaintiffs) claimed to have done so. They contended that the HDB flat in the sole name of their son, Teck Leng (the first defendant), was beneficially owned by them, and that Teck Leng had no beneficial interest in it whatsoever. Mr and Mrs Lim said (and Teck Leng agreed) that one reason for this alleged arrangement was to avoid paying a \$40,000 resale levy to the HDB. They contended that the law nevertheless allowed them to be recognised as the real owners of the flat.

4 This judgment examines the legal consequences of such an arrangement, which prospective HDB flat owners would do well to bear in mind.

5 The HDB flat in question was located along Kim Tian Road (the "Kim Tian Flat"). Teck Leng had paid for the Kim Tian Flat using: proceeds from an earlier flat that was also in his sole name (the "Silat Flat"); money from his Central Provident Fund ("CPF") account; and an HDB housing loan that was serviced from his CPF account. It was however alleged that Teck Leng was a mere nominee, and that this arrangement was intended to have the dual purpose of (a) allowing the parents to evade payment of a resale levy to the HDB, and (b) allowing for a housing loan to be obtained from the HDB (which Teck Leng, but not his parents, was eligible for). The parents alleged that this was their common understanding with Teck Leng. They also argued that they should be regarded as having paid for the Kim Tian Flat, because they had given Teck Leng more than enough money to pay for it. Teck Leng's position, however,

was that the bulk of that money had been lost by him in failed investments or spent by him.¹

6 Curiously, in these proceedings, Teck Leng agreed with his parents that he had no beneficial interest in the Kim Tian Flat. This was despite his having taken the opposite position in earlier matrimonial proceedings – there, he asserted that the Kim Tian Flat was *his*, that it was a *matrimonial asset*, and that all financial contributions towards it should be regarded as having been made by *him*.

7 On 25 August 2017, the Family Justice Courts (“FJC”) made an ancillary order (the “Ancillary Order”) under which Teck Leng was to pay his ex-wife, Honghong (the second defendant), \$175,000 in relation to the division of matrimonial assets.² This was to be paid within six months from the date of the Ancillary Order. An order for the sale of the Kim Tian Flat was not made at that time, but it was later made on 10 May 2019 after Honghong had applied to enforce the Ancillary Order. Teck Leng was ordered to sell the Kim Tian Flat if he did not pay Honghong \$175,000 by 10 August 2019 (the “Sale Order”).

8 The plaintiffs commenced this action on 21 October 2019, more than five months after the Sale Order had been made.

9 I find that Teck Leng was the beneficial owner of the Kim Tian Flat, not his parents. The Housing and Development Act (Cap 129, 2004 Rev Ed) (“HDA”) did not allow the parents to become entitled to the Kim Tian Flat (or any interest in it) under the nominee arrangement that they alleged.

¹ Lim Teck Leng’s affidavit dated 14 February 2020, p 2, at para 6.

² Zhang Honghong’s affidavit dated 17 February 2020, Tab A, p 17.

10 Even if the nominee arrangement survived the HDA, the parents would still not be the beneficial owners of the Kim Tian Flat. The facts did not support either a resulting trust or a common intention constructive trust in favour of the parents. What Teck Leng received from his parents was more in the nature of a loan, rather than money he had been entrusted with for the purpose of purchasing the Silat Flat and the Kim Tian Flat. In any event, only some 9.1% of the cost of acquiring the Kim Tian Flat could be traced back to money Teck Leng had received from his parents, and any interest that his parents had would not exceed that proportion. Teck Leng admitted that he had “depleted” the rest of the money from his parents.³

Procedural history

11 Teck Leng married Honghong on 7 September 2010. In the course of their short marriage, two children were born (in 2011 and 2012). On 18 July 2015, Honghong filed for divorce in FC/D 3244/2015, and interim judgment was granted on 8 March 2016.

12 On 25 August 2017, the District Judge made the Ancillary Order in which Teck Leng was ordered to pay Honghong \$175,000 within six months from the date of the order, in relation to the division of matrimonial assets. Teck Leng was also ordered to pay Honghong a sum of \$300 per month as spousal maintenance for a period of one year, starting from 1 September 2017; and \$1,500 per month as maintenance for the two children (who were in their joint custody, with Honghong having care and control of them).

³ Lim Teck Leng’s affidavit dated 14 February 2020, p 3, at para 8.

13 Teck Leng paid nothing towards Honghong's share of the matrimonial assets. He was also in arrears of maintenance. On 10 May 2019, the District Judge made the Sale Order requiring that the Kim Tian Flat be sold to satisfy his overdue payment of \$175,000 to Honghong, unless he could make such payment by 10 August 2019.⁴ 10 August 2019 came and went, but Honghong still did not receive her share of the matrimonial assets, nor indeed any payment from Teck Leng.

14 The parents filed this Originating Summons on 21 October 2019 seeking a declaration that they were the beneficial owners of the Kim Tian Flat, and alternatively, a determination of the beneficial and legal interests of all parties in the Kim Tian Flat. The same day, the parents also filed an application as interveners in the matrimonial proceedings, asking to set aside the Ancillary Order.

15 Teck Leng did not appeal against the Ancillary Order or the Sale Order, but on 1 November 2019 he applied to vary the Ancillary Order as regards division of matrimonial assets, such that payment of the sum of \$175,000 would instead be by way of transfer from his CPF account to Honghong's.

16 These two applications by Teck Leng and his parents are still pending in the FJC.

Issues to be determined

⁴ Zhang Honghong's affidavit dated 17 February 2020, Tab D, p 41.

17 It was common ground that Teck Leng had received some money from his parents, but (a) the *amount* he had received, (b) the *basis* on which he received it, and (c) *what he did with it*, were all in dispute.

18 The parents contended that they were entitled to the Kim Tian Flat because they had an understanding with Teck Leng that he was merely their nominee. They claimed to be entitled to the whole Kim Tian Flat on the basis of a resulting trust or a common intention constructive trust. Teck Leng supported his parents' claim in these proceedings, although he had taken the opposite position in the FJC proceedings.

19 Honghong resisted the parents' claim. She argued that the parents' claim was precluded by the HDA, in particular, s 51(10) of the HDA.⁵ She also disputed the parents' claim to have paid for the Kim Tian Flat, and their alleged understanding with Teck Leng.

20 The evidence was messy, not least because of the contradictory positions taken by Teck Leng and his parents – not only was Teck Leng's position here diametrically opposed to his position in the FJC proceedings, the evidence of Teck Leng and his parents in this action was also internally inconsistent.

21 I will first set out the facts and then address the following questions:

- (a) Is the parents' claim precluded by the HDA?
- (b) Did the parents contribute to the acquisition of the Kim Tian Flat, such that a resulting trust could arise in their favour?

⁵ Second defendant's Written Submissions dated 19 June 2020, pp 9 and 12–13.

(c) Did Teck Leng and his parents have an understanding that the parents owned the Kim Tian Flat, such that a common intention constructive trust could arise in the parents' favour?

(d) Should any equitable accounting be ordered in favour of the parents?

A tale of three flats

The Choa Chu Kang flat (the "CCK Flat")

22 On 1 August 1994, the parents purchased the CCK Flat for \$106,900. Their eldest son, Teck Leng, was then 17 years old. Teck Leng lived with his parents, as did his younger brother and sister.

23 The parents took a housing loan and used money from their CPF accounts towards the purchase. Mr Lim worked with PSA Singapore until February 2003, when he was 60 years old.⁶ Mrs Lim was a housewife who had at some point done part-time work to contribute to the family's finances. By 2004, they had paid up the housing loan and discharged the mortgage.⁷

24 The CCK Flat was sold in 2007.⁸ By then, Mr Lim had stopped working (he would work again later on, this time as a gardener, from 2014 till December 2017).

⁶ Lim Kieuh Huat and Leong Ah Chue's joint affidavit dated 29 August 2019, p 4, at para 14.

⁷ Lim Kieuh Huat and Leong Ah Chue's joint affidavit in reply dated 1 April 2020, Tab 1, p 22.

⁸ Lim Kieuh Huat and Leong Ah Chue's joint affidavit in reply dated 1 April 2020, Tab 1, p 19.

25 The parents said that sometime in 2007, Teck Leng had persuaded them to sell the CCK Flat; Teck Leng suggested that a flat be bought in Silat Walk as the flats in Silat Walk would be undergoing the Selective En bloc Redevelopment Scheme (“SERS”) and a replacement flat at Kim Tian Road would be offered.⁹ The documents show that the Silat Flat had been notified for compulsory acquisition on 15 February 2007 and gazetted accordingly on 23 February 2007.¹⁰ On, 26 September 2007, Teck Leng obtained the HDB’s approval for *him* to purchase the Silat Flat.¹¹

26 The discussion between Teck Leng and his parents about selling the CCK Flat and buying the Silat Flat would thus have taken place sometime between 15 February 2007 and 26 September 2007.

27 The HDB’s completion account of 13 November 2007 shows that the declared resale price for the CCK Flat was \$280,000, from which there was: a refund of \$49,708.21 to Mr Lim’s CPF account; a refund of \$7,637.07 to Mrs Lim’s CPF account; and a net amount of \$217,654.72 payable to them.¹² That sum of \$217,654.72 was deposited into a bank account jointly held by Mr Lim and Teck Leng on 31 December 2007.¹³ Shortly thereafter, on 2 January 2008, a sum of \$215,036.82 was withdrawn.¹⁴

⁹ Lim Kieuh Huat and Leong Ah Chue’s joint affidavit dated 29 August 2019, p 6, at para 21.

¹⁰ Lim Kieuh Huat and Leong Ah Chue’s joint affidavit in reply dated 1 April 2020, Tab 2, p 33.

¹¹ Lim Kieuh Huat and Leong Ah Chue’s joint affidavit in reply dated 1 April 2020, Tab 2, p 42.

¹² Lim Kieuh Huat and Leong Ah Chue’s joint affidavit in reply dated 1 April 2020, Tab 1, p 19.

¹³ Lim Kieuh Huat and Leong Ah Chue’s joint affidavit dated 29 August 2019, Tab 3, p 22.

The Silat Flat

28 While the CCK Flat was in the joint names of the parents, the Silat Flat was purchased in Teck Leng's sole name.

29 The HDB's letter dated 23 October 2007¹⁵ states 1 November 2007 as the date with effect from which Teck Leng would be the sole owner of the Silat Flat. Teck Leng moved into the Silat Flat together with his parents and siblings in December 2007.¹⁶

30 It appears that the Silat Flat was fully paid up in cash upon purchase – the documents do not reflect any loan, at least not from the HDB. There is also no reference to any CPF refund in the documents that show the compensation from the HDB for the compulsory acquisition of the Silat Flat.

31 The government took possession of the Silat Flat on 11 May 2012. The HDB's letter of even date shows that the total compensation for the compulsory acquisition of the Silat Flat under SERS was \$160,400, of which an advance payment of \$25,000 had been made; there was a contra to purchase price of new flat of \$27,269.55; and balance compensation of \$108,130.45 from the HDB.¹⁷ That balance compensation of \$108,130.45 was paid to Teck Leng by a cheque

¹⁴ Lim Kieuh Huat and Leong Ah Chue's joint affidavit dated 29 August 2019, Tab 3, p 22.

¹⁵ Lim Kieuh Huat and Leong Ah Chue's joint affidavit in reply dated 1 April 2020, Tab 2, p 39.

¹⁶ Lim Kieuh Huat and Leong Ah Chue's joint affidavit dated 29 August 2019, p 9, at para 32.

¹⁷ Lim Kieuh Huat and Leong Ah Chue's joint affidavit in reply dated 1 April 2020, Tab 2, p 30.

sent under cover of that letter,¹⁸ and he would have received the advance payment of \$25,000 prior to that date.

32 The total compensation of \$160,400 was less than the \$175,000 at which Teck Leng had purchased the Silat Flat,¹⁹ *ie*, there was a loss of \$14,600 from the Silat Flat.

The Kim Tian Flat

33 The Kim Tian Flat, like the Silat Flat, was purchased in Teck Leng's sole name.

34 The effective date of sale, as stated in the HDB sales order,²⁰ was 15 September 2011. The HDB sales order shows that an amount of \$27,269.55 in compensation from the HDB (for the compulsory acquisition of the Silat Flat) was applied towards the initial capital payment for the Kim Tian Flat as a "SER contra" (*ie*, set off). Besides the SERS contra, the initial capital payment also included a sum of \$3,054.80 from Teck Leng's CPF account. For the balance of \$264,500, Teck Leng took a loan from the HDB, for which the monthly instalments were to come from Teck Leng's CPF account. The HDB agreement order for the Kim Tian Flat shows that a further payment of \$4,880.20 was made from Teck Leng's CPF account.²¹

¹⁸ Lim Kieuh Huat and Leong Ah Chue's joint affidavit in reply dated 1 April 2020, Tab 2, p 30.

¹⁹ Lim Kieuh Huat and Leong Ah Chue's joint affidavit in reply dated 1 April 2020, Tab 2, p 42.

²⁰ Lim Kieuh Huat and Leong Ah Chue's joint affidavit dated 29 August 2019, Tab 6, pp 30–31.

²¹ Lim Kieuh Huat and Leong Ah Chue's joint affidavit dated 29 August 2019, Tab 6, p 32.

35 From the HDB documentation, Teck Leng paid the full cost of acquiring the Kim Tian Flat in the sum of \$299,704.55 in the following manner: \$27,269.55 from the sale proceeds of the Silat Flat that he had owned; specific payments of \$3,054.80 + \$4,880.20 = \$7,935 from his CPF account; and the balance of \$264,500 by way of a loan that he was responsible for, and which he serviced using his CPF account.

36 Teck Leng lives in the Kim Tian Flat with his parents and his sister. His brother did too until he moved out in 2018 after he got married. After Teck Leng married Honghong, she too lived in the Kim Tian Flat for a period of time; she moved out in November 2014.

The parents' narrative

37 In the face of the HDB documentation, the parents claimed that they had paid for the Kim Tian Flat in full. They also asserted that they had a common understanding with Teck Leng that they (the parents) were the owners of the Silat Flat and the Kim Tian Flat, although those flats were registered in Teck Leng's sole name.²²

38 The alleged understanding is described as follows in the parents' first joint affidavit dated 29 August 2019:

...

7 ... It was our understanding that [Teck Leng] ... was holding [the Kim Tian Flat] on trust for us ...

...

²² Lim Kieuh Huat and Leong Ah Chue's joint affidavit dated 29 August 2019, pp 7–8, at para 27.

27 ... [I]t was always the understanding between us and [Teck Leng], who was assisting us in the sale of the CCK Flat, since before the sale of the CCK Flat in late 2007 that the three flats, namely the CCK Flat, the flat we were intending to purchase at Silat Walk as well as the replacement flat under the SERS of the Silat Walk flat at Kim Tian Road, would belong to us only, as we had contributed fully to the purchase price of the flats.

28 ... We entrusted [Teck Leng] to deal with the sale of the CCK Flat as well as the monies from the sale of the CCK Flat.

...

30 As the Silat Flat was purchased using the sales proceeds from the CCK Flat, we wanted the Silat Flat to be under our names, just like the CCK Flat. However, [Teck Leng] convinced us to register the Silat Flat under his name, leaving us as permitted occupiers as our old age prevented us from obtaining housing loans to finance the flat. Further, as we had bought and sold an HDB flat previously, we would have incurred an HDB resale levy if we were to be the owners of the [Kim Tian Flat]. This resale levy would have been a substantial portion of our savings, which would have been better served as payment to the [Kim Tian Flat] itself.

31 We reiterate that when the Silat Flat was purchased, the understanding between us and [Teck Leng] was that [Teck Leng] would use the sales proceeds from the CCK Flat to fully pay off the Silat Flat and use the compensation of the Silat Flat under SERS to subsequently pay off the replacement SERS flat at Kim Tian Road.

...

39 ... [I]t was always our understanding that the Silat Flat and the [Kim Tian Flat] belonged to us as the monies used to purchase these properties were from the sale proceeds of the CCK Flat, which we had paid for fully with our CPF and life savings, as well as our life savings that we had entrusted to [Teck Leng].

...

42 We aver that the total monies we had entrusted to [Teck Leng] amounting to \$332,626.08 was sufficient to fully pay for the Silat Flat and subsequently, the [Kim Tian Flat]. Hence, we verily believe that any financial contributions [Teck Leng] had made to the purchase of the [Kim Tian Flat] and all the money that he paid towards the [Kim Tian Flat] were from the monies we had entrusted to him, either as the nett sales proceeds from the sale of the CCK Flat or as our life savings which he was to

invest for higher returns. [Teck Leng] thus made no financial contributions to the [Kim Tian Flat].

...

39 The parents' case was that there was an understanding that Teck Leng would merely be their nominee for purchasing subsequent flats. In particular, they claimed that it was agreed amongst them that the parents would be the beneficial owners of the Kim Tian Flat although the flat would be registered in Teck Leng's sole name – the primary motivation for this nominee arrangement being the parents' desire to avoid payment of a \$40,000 resale levy.

40 The alleged understanding that the parents were the owners of the Silat Flat and then the Kim Tian Flat is premised on Teck Leng's being obliged to use the parents' money to pay for those flats (see [38] above). This is reinforced by para 13 of the parents' second joint affidavit dated 1 April 2020, where they said that the entire net sales proceeds for the CCK Flat went into Mr Lim's and Teck Leng's joint account, but clarified that "... this [was] not a gift or advancement to [Teck Leng] but was for the *sole purpose* of purchasing the Silat Flat or any other property for us (i.e. us, [Teck Leng], and our children) to stay in" [emphasis added].

41 Teck Leng supported his parents' claim. His account, as set out in his affidavit dated 14 February 2020, is as follows:

6 What the [parents] stated in their affidavit are true. My parents owned the [CCK Flat]. I knew that the Silat Walk flat was announced under the SERS and a new replacement flat in Kim Tian Road will be allocated so I discussed with my parents on the opportunity to make a profit out of the new replacement flat and moving to a new flat in a better location. They agreed and they handled [sic] me their life savings and sold the [CCK Flat] and handed me all the monies to put into the Silat Walk flat. Not longer after, the Silat Walk flat was compulsory [sic] acquired under the SERS programme and HDB gave us a replacement flat in Kim Tian Road. The monies from my parents

was sufficient to pay for the Kim Tian Road flat but I took a loan as it made more economic sense. I enjoy a low interest rate from HDB and get free cash to invest and spend. However, the investments failed and I spent the monies on the family after the marriage. I lavish gifts on [Honghong] and the family did not watch my spending. When we were on good terms, I did not think much of how I spend on the family. ...

...

8 Besides giving me all the sale proceeds from the [CCK Flat], my parents passed me their life savings for payment of the [Kim Tian Flat] and I have depleted all during the marriage. I am terribly embarrassed and sorry to them.

42 Based on the parents' evidence (and Teck Leng's), the parents asserted that they were entitled to the Kim Tian Flat on a resulting trust or a common intention constructive trust. However, a threshold question is whether the HDA precludes them from becoming entitled to the Kim Tian Flat (or any interest in it) under the alleged trusts.

Is the parents' claim precluded by the HDA?

Executive summary

43 The nominee arrangement which the parents assert, and which Teck Leng in this action supports, purports to create a trust in respect of the Silat Flat and then the Kim Tian Flat.

44 I find that such a trust would offend ss 51(8) and 51(9) of the HDA, which read:

(8) No trust in respect of any protected property shall be created by the owner thereof without the prior written approval of the Board.

(9) Every trust which purports to be created in respect of any protected property without the prior written approval of the Board shall be null and void.

“Protected property” is defined in s 51(11) of the HDA to mean “any flat, house or other building that has been sold by the Board under the provisions of [Part IV of the HDA]”, which includes the HDB flats in this case.

45 The purported creation of a trust over the Silat Flat and then the Kim Tian Flat (as alleged by the parents and Teck Leng in this action), without the prior written approval of the HDB, goes against the prohibition in s 51(8) of the HDA.

46 Rather than alleging an oral express trust, the parents asserted a resulting or constructive trust, perhaps hoping that s 51(10) of the HDA (and the relevant authorities interpreting that provision) might provide a safe harbour from the preceding subsections of ss 51(8) and 51(9) of the HDA. Section 51(10) of the HDA reads:

(10) No person shall become entitled to any protected property (or any interest in such property) under any resulting trust or constructive trust whensoever created or arising.

47 I find that a trust that has purportedly been created in contravention of ss 51(8) and 51(9) of the HDA cannot be saved by seeking to recharacterise it as a resulting or constructive trust. Moreover, applying s 51(10) of the HDA to the present case would also defeat the parents’ claim to have become entitled to the Silat Flat and then the Kim Tian Flat (or any interest in those flats) under the alleged resulting or constructive trust.

The purported creation of the alleged trust is prohibited by s 51(8) of the HDA, and the alleged trust is null and void under s 51(9) of the HDA

48 I find that the alleged trust is prohibited by s 51(8) of the HDA and therefore null and void under s 51(9) of the HDA for three main reasons. First, on the parents’ own account, the alleged trust was created with the express

intention of defeating HDB regulation or policy. Second, even if the alleged trust had been created for legitimate reasons, it would still contravene s 51(8) of the HDA as the parents did not obtain the HDB's prior written approval. Third, the parents' eligibility to purchase the Silat Flat and Kim Tian Flat themselves is irrelevant to the applicability of ss 51(8) and 51(9) of the HDA; but even if their eligibility were relevant, they *were* ineligible owners in that they could not have purchased the Silat Flat and then the Kim Tian Flat without paying a resale levy (payment of which they sought to evade) or with the benefit of an HDB housing loan (which they were not eligible to obtain).

49 In *Cheong Yoke Kuen and others v Cheong Kwok Kiong* [1999] 1 SLR(R) 1126 ("*Cheong*"), the Court of Appeal considered the predecessors to the present ss 51(8) and 51(9), namely, ss 51(4) and 51(5) of the Housing and Development Act (Cap 129, 1997 Rev Ed) (the "1997 HDA"), which read as follows:

(4) No trust in respect of any such flat, house or other building shall be created by the owner thereof without the prior written approval of the Board.

(5) Every trust which purports to be created in respect of any such flat, house or other building without the prior written approval of the Board shall be void.

There is no material distinction between the above provisions and ss 51(8) and 51(9) of the HDA in their present form. The phrase "such flat, house or other building" has been replaced with the phrase "protected property" as defined in s 51(11) of the HDA, but it was common ground amongst the parties that the flats in the present case were "protected property", and that s 51 of the HDA did apply to them.

50 The respondent in *Cheong* brought his claim on the basis of a resulting trust. By way of background, the HDB flat in question was registered in the joint

names of the respondent and his mother. The respondent was subsequently allocated a new HDB flat (the “new flat”). As individuals could not own more than one flat at any one time (by virtue of s 47(1)(a) of the 1997 HDA), the respondent ostensibly transferred his interest in the first flat to his mother, who thereby became the sole owner of the first flat. After his mother’s death, however, the respondent asserted that he still had a beneficial interest in the first flat by way of a resulting trust as he had paid the purchase price and all outgoings of that flat.

51 The Court of Appeal held that the alleged trust was prohibited by s 51(4) and was null and void under s 51(5) of the 1997 HDA. In arriving at its conclusion, the Court of Appeal was guided by the underlying purpose of the prohibition and the policy of the 1997 HDA. The following passage from *Cheong* (at [19]) is especially relevant to the present case:

Despite the relaxation of the prohibition to permit creation of trusts with the prior written approval of HDB, the underlying purpose of the prohibition remains unchanged. In our view, the respondent’s contention that resulting trusts over HDB properties are not prohibited by s 51(4) of the [1997 HDA] would give rise to a highly unsatisfactory result and *would open the way to abuse by persons who would and could easily purchase HDB properties through nominees*. For instance, if a purchaser pays the purchase money for the property and the property is registered in the name of a nominee but he takes a declaration of trust executed by the nominee in his favour without HDB’s prior written approval, such a trust will be prohibited by s 51(4) and becomes void under s 51(5) of the [1997 HDA]. *On the other hand, if no such declaration is executed, the trust which arises by operation of law is not caught by s 51(4). Such a construction is untenable and would frustrate the policy of the [1997 HDA] and could not have been intended by Parliament.*

[emphasis added]

52 At [20] of *Cheong*, the Court of Appeal reasoned that the respondent had “created” the alleged trust in his favour as he had intended to remain the beneficial owner of the first flat when transferring his interest in that flat to his

mother. The alleged trust was thus subject to ss 51(4) and 51(5) of the 1997 HDA. It was immaterial that the respondent had sought to style the alleged trust as a resulting trust, which his counsel unsuccessfully contended did not fall within the ambit of ss 51(4) and 51(5) of the 1997 HDA as it could not be “created” by anyone.

53 Counsel for the respondent in *Cheong* ([48] *supra*) argued that the policy consideration behind ss 51(4) and 51(5) of the 1997 HDA was that the HDB should not be deceived into selling HDB properties to persons who would not be entitled to purchase such properties.²³ It should be noted that the Court of Appeal did not accept that this was indeed a policy consideration of the HDB. The Court of Appeal simply held (at [22]–[23]) that *if* this were true, the restrictions on dual ownership of HDB properties (per s 47 of the 1997 HDA) meant that the respondent was in any event ineligible to hold any interest in the first flat upon acquiring the new flat. The Court of Appeal thus did not limit the application of ss 51(4) and 51(5) of the 1997 HDA only to cases where the alleged beneficiary of the trust was not entitled or ineligible to purchase the flat himself. This is also how *Cheong* was interpreted in *Tan Chui Lian v Neo Liew Eng* (“*Tan Chui Lian*”) at [13].

54 I find that ss 51(8) and 51(9) of the HDA are not subject to any such limitation, *ie*, they apply even where the intended beneficiary under a nominee arrangement was eligible to purchase the flat himself.

55 The terms of ss 51(8) and 51(9) of the HDA do not support any such limitation. This is supported by the decision in *Cheong* ([48] *supra*) as well as

²³ *Cheong* at [22].

the Ministerial Statement when those provisions were introduced (in their earlier form). Prior to their introduction, there was a blanket prohibition against the creation of any trust over HDB flats. The introduction of the subsections relaxed this categorical prohibition to “permit the creation of trusts for legitimate reasons”: see *Singapore Parliamentary Debates, Official Report* (24 August 1984) vol 44 at col 2025 (Teh Cheang Wan, Minister for National Development). The following extract from the Ministerial Statement was quoted in *Cheong* at [18]:

As the Act now stands, no trust in any form can be created in respect of an HDB dwelling or property. The original intention of this provision was to prevent abuse by persons not eligible for HDB flats from purchasing a flat in the name of nominees. Over the years, however, there has been increasing need for the HDB to permit the creation of trusts for legitimate reasons. For example, it is necessary to empower trustees to hold flats in trust for minor children who are citizens in the event of death of the lessee parent, and where the surviving parent is neither a citizen nor a permanent resident and therefore not eligible to assume ownership of the flat. Similarly, in some cases of legal separation or divorce, flats have to be held in trust for minor children until they reach the age of 21 years. Clause 3 of this Amendment Bill, therefore, seeks to allow a trust to be created in respect of an HDB dwelling *provided such trust is approved by the Board*.

[emphasis added]

56 It should be noted that in relaxing the earlier blanket prohibition, Parliament chose approval by the HDB as the control mechanism. Thus, it would not suffice for a party to claim that a trust was created for legitimate reasons, not even reasons mentioned in the Ministerial Statement. As the then Minister for National Development said, such a trust could only be created “provided such trust is approved by the Board”.

57 The lack of prior written approval from the HDB aside, the alleged trust in the present case was in any event not created for legitimate reasons. First, it

was created to evade payment of a \$40,000 HDB resale levy, which the parents would have had to pay if the Silat Flat and then the Kim Tian Flat were purchased in their names. Second, it was intended to allow for an HDB housing loan to be obtained. The parents were then not eligible for such a loan,²⁴ but Teck Leng was; this manoeuvre, however, entailed misleading the HDB as to who really owned the flats.

58 The HDB resale levy maintains a fair allocation of public housing subsidies between first-time purchasers and second-time purchasers by reducing the subsidy enjoyed on the second (or subsequent) subsidised HDB flat. As the HDB's letter of 12 March 2008 to Teck Leng stated,²⁵ applicants who have sold a flat bought directly from the HDB must pay the requisite levy with interest "before they are allowed to take possession of the replacement flat". If the parents had evaded payment of that levy by using Teck Leng as a nominee, this would have breached HDB regulation or policy, and they would have obtained possession of the Kim Tian Flat under false pretences.

59 As for the HDB housing loan, Teck Leng acknowledged that he enjoyed a low interest rate from the HDB.²⁶

60 The HDB's policy of fairly promoting home ownership would be undermined if a nominee arrangement could be used to evade payment of the

²⁴ Lim Kieuh Huat and Leong Ah Chue's joint affidavit dated 29 August 2019, Tab 9, p 38, at para 4.

²⁵ Lim Kieuh Huat and Leong Ah Chue's joint affidavit in reply dated 1 April 2020, Tab 2, p 36.

²⁶ Lim Teck Leng's affidavit dated 14 February 2020, p 3, at para 6.

housing levy, and moreover to obtain an HDB loan which the intended owners of a flat were themselves not eligible for.

61 The parents' argument that s 51 of the HDA should not apply to defeat their claim, because they would have been eligible to purchase the Silat Flat and then the Kim Tian Flat, rings hollow. It is based on a narrow concept of eligibility, *ie*, that the parents themselves form the requisite family nucleus for purchasing a flat. But the parents were not eligible to buy the flats without paying a \$40,000 resale levy, so they chose instead to evade it by using Teck Leng as their nominee; they were not eligible to obtain a housing loan, so they again chose to circumvent this by using Teck Leng as their nominee. If the parents' "eligibility" were relevant to whether ss 51(8) and 51(9) of the HDA defeat their claim (and I am not persuaded that it is relevant – see [53]–[56] above), I would have found that the parents were not eligible to purchase the Silat Flat and then the Kim Tian Flat without paying a resale levy or with the benefit of an HDB housing loan.

62 In *Cheong* ([48] *supra*), the respondent had created a façade that his mother was the sole owner of the first flat, whilst intending to retain a beneficial interest in it; here, the parents and Teck Leng (as they allege) created a façade that Teck Leng was the sole owner of the Silat Flat and then the Kim Tian Flat, while supposedly intending that the parents would be the beneficial owners of those flats. Such conduct was not allowed under ss 51(4) and 51(5) of the 1997 HDA, and I see no reason to permit it under ss 51(8) and 51(9) of the HDA.

63 In *Chong Sze Pak v Chong Ser Yoong* [2011] 3 SLR 80 ("*Chong*"), the plaintiff's claim based on a trust purportedly created without the prior written approval of the HDB failed, even though the plaintiff had tried to salvage his claim on the basis of a resulting or constructive trust.

64 The plaintiff alleged that when the defendant bought an HDB flat at Tronoh Road (the “Tronoh Road property”), they agreed that the defendant would hold the Tronoh Road property on trust for the plaintiff if the plaintiff paid for all of the Tronoh Road property’s outgoings. The defendant then executed a trust deed to this effect, with the plaintiff’s son as the beneficiary. The Tronoh Road property was subsequently acquired by the relevant authority and the defendant accepted a replacement flat at McNair Road (the “McNair Road property”) as compensation for the acquisition. When the McNair Road property was sold, the plaintiff claimed the net sale proceeds.

65 The court held (at [42] and [58]) that the trust purportedly created by the trust deed was an express trust that was null and void under ss 51(4) and 51(5) of the 1997 HDA. At [54], the court stated: “... As can be seen, the [p]laintiff acknowledged the statutory prohibition against a trust. He sought to avoid the prohibition by suggesting that while he could not claim either property through the [t]rust [d]eed, he could claim the sale proceeds of the McNair Road property in equity.” On this, the court concluded at [59]: “The [p]laintiff’s attempt to claim the sale proceeds (of the McNair Road property) under a resulting trust, must also fail, see *Cheong Yoke Kuen v Cheong Kwok Kiong* [1999] 1 SLR(R) 1126 (“*Cheong*”) at [13]–[19]. As for his claim under a constructive trust, this is not a case of a constructive trust as explained in *Cheong*.”

66 In *Sitiawah Bee bte Kader v Rosiyah bte Abdullah* [1999] 3 SLR(R) 606 (“*Sitiawah*”), the issue was whether the legal co-owners’ respective beneficial interests in the property could be determined on the basis of a resulting trust analysis, notwithstanding ss 51(4) and 51(5) of the 1997 HDA. The court held (at [19]) that this was permissible: “There was, in this case, no intention on the part of any party to “create” a resulting trust to defeat the objectives of the [1997

HDA]. The conduct of the parties in this case was within the parameters set by the HDB and they at all times remained the registered owners of the flat.”

67 In the present case, the parents were not legal co-owners with Teck Leng of the Silat Flat and then the Kim Tian Flat; they claimed to have become co-owners pursuant to the alleged nominee arrangement. They had sought to create a trust, and indeed to defeat the objectives of the HDA thereby. That would fall squarely within the scenario described in *Sitiawah* at [20]: “If a party sets about creating a situation where a resulting trust will arise in his favour in order to circumvent the provisions of the HDB flat [*sic*] (as was the situation in [*Cheong*]) the resulting trust so created would be prohibited under s 51(4) [of the 1997 HDA].”

68 The court in *Neo Boh Tan v Ng Kim Whatt* [2000] SGHC 31 (“*Neo*”) adopted the interpretation of *Cheong* ([48] *supra*) as set out in *Sitiawah*, observing as follows (at [17]–[18]):

17 The obvious difference between *Cheong*’s case and the present is that the parties here had *no intention of circumventing any HDB regulation or policy*. Nor did they do so since the HDB has no interest in the proportions inter se in which eligible persons hold HDB flats. The respondent in *Cheong*’s case, on the other hand, *deliberately created the impression that he no longer had any legal or beneficial interest in the first flat*.

18 Here both plaintiff and defendant were at all times the registered legal owners of the flat and they were acceptable to the HDB as such. There was no question of either of them having to get the other to act as the nominee owner ... [The respondent in *Cheong*] had *taken a deliberate action to misrepresent the ownership situation and thereby create the appearance of sole ownership in his mother whilst all along intending to retain his own beneficial interest in the first flat*. ... The Court of Appeal gave a purposive definition to the word ‘created’ in the section so as to ensure that *the legislative intent to prevent nominee ownership would not be flouted*.

[emphasis added]

69 Here, the parties (as they allege) had the intention of circumventing HDB regulation or policy as regards payment of a resale levy and eligibility for an HDB housing loan. Much like the respondent in *Cheong* ([48] *supra*), Teck Leng and his parents (so they say) deliberately misrepresented the ownership situation – to create the illusion that the Kim Tian Flat was purchased by a first-time HDB flat owner who therefore did not have to pay the resale levy; and moreover, that he was eligible for an HDB housing loan (without revealing that he was just a front for his parents who were not then eligible for such a loan). The court’s reasoning in *Neo* forcefully applies to invalidate the parents’ claim to have become entitled to the Silat Flat and then the Kim Tian Flat through nominee ownership.

70 The court in *Neo* emphasised (at [18]) the legislative intent to prevent nominee ownership. That is precisely what we have here.

71 For completeness, I highlight *Lim Young Ching v Lim Tai Ching* [2020] SGHC 103 (“*Lim Young Ching*”). The brief facts are as follows. The plaintiff and the defendant were siblings; the deceased (their mother) and the defendant held the HDB flat in question by way of a tenancy in common in a 99:1 ratio. The deceased subsequently passed away. It was undisputed that the plaintiff was entitled under the deceased’s estate to a half share of 99% of the flat. The plaintiff and the defendant then orally agreed that the HDB flat would be transferred to the defendant in exchange for the defendant’s payment of \$325,000 to the plaintiff, as payment for the plaintiff’s half share of 99% of the flat.

72 The defendant averred that in claiming half of 99% of the flat after transferring his legal interest in the same to the defendant, the plaintiff was in effect stating that he remained the beneficial owner of a 49.5% interest in the

flat and that the defendant held this interest on trust for him (see [49] of *Lim Young Ching*). The court held (at [115] read with [103]–[104]) that there was no trust created in the plaintiff’s favour because the defendant had paid him for his share in the flat. But, citing ss 51(8), 51(9) and 51(10) of the HDA, the court further held (at [116]) that even if such a trust had been created by the oral agreement, the trust would be void under s 51 of the HDA.

73 It appears from [118]–[119] of *Lim Young Ching* that the court was partly guided by the consideration that the plaintiff owned another HDB flat, and so could not claim any interest in the flat in question by virtue of s 47(1) HDA.

74 The HDB’s letter dated 16 August 2012 to Teck Leng lays any residual doubt as to the impermissibility of the alleged nominee arrangement to rest. In its letter, the HDB expressed that were Teck Leng to transfer ownership of the Kim Tian Flat to his parents, his parents would not only have to raise the required funds to discharge the outstanding loan for the flat and pay a \$40,000 resale levy, but also effect a refund to Teck Leng’s CPF account for the amount that Teck Leng had utilised towards the purchase of the flat.²⁷ If the alleged nominee arrangement were permissible, the HDB’s stated requirement of effecting a refund to Teck Leng’s CPF account would be otiose, and the HDB would in effect have permitted Teck Leng to withdraw and use his CPF money as he pleased.

Under s 51(10) of the HDA, the parents cannot become entitled to the Silat Flat or the Kim Tian Flat (or any interest in those flats) under an alleged resulting trust or constructive trust

²⁷ Lim Kieuh Huat and Leong Ah Chue’s joint affidavit dated 29 August 2019, Tab 9, p 38.

75 As mentioned, the parents endeavoured to characterise the purported trust as a resulting trust or a constructive trust rather than an express trust. I find that even if the alleged trust in this case was a resulting trust or a constructive trust, such a trust would fall afoul of s 51(10) of the HDA and the parents' claim to beneficial ownership of the Kim Tian Flat would thus fail.

76 Section 51(10) of the present HDA was introduced as s 51(6) of the version of the HDA then in force in 2005 (the "2005 HDA"). In introducing the amendment, the then Minister for National Development said:

Clause 6 of the Bill amends section 51 to make it clear that, in addition to prohibiting the voluntary creation of trusts over an HDB flat, the Act also prohibits any person from becoming entitled to a HDB flat under a resulting trust or constructive trust. This will help to prevent a situation where a person who is ineligible to own an HDB flat may become entitled to own one, for example, by paying the purchase price of the flat on behalf of the owner.

See *Singapore Parliamentary Debates, Official Report* (15 August 2005) vol 80 at col 1259 (Mah Bow Tan, Minister for National Development), quoted in *Tan Chui Lian* ([53] *supra*) at [9].

77 The Housing and Development (Amendment) Act 2005 (No 29 of 2005) then came into force on 15 September 2005, after which s 51(6) of the 2005 HDA read:

(6) No person shall become entitled to any such flat, house or other building under any resulting trust or constructive trust, whensoever created.

78 It should be noted that the new subsection was described in the Ministerial Statement as an additional prohibition, on top of the prohibition already contained in ss 51(4) and 51(5) of the 2005 HDA (the predecessors to the current ss 51(8) and 51(9)). The new subsection was not said to be a

provision intended to relax the existing prohibitions, allowing parties to save trusts they had purportedly created in contravention of ss 51(4) and 51(5) of the 2005 HDA by recasting them as resulting or constructive trusts. To the contrary, the Ministerial Statement suggests that a party could not achieve by a purchase money resulting trust, what he could not achieve by purportedly creating a trust in his favour.

79 The phrase in the Ministerial Statement that “[t]his will help to prevent a situation where a person who is ineligible to own an HDB flat may become entitled to own one ...” however raises the question of whether the new subsection *only* applied to ineligible owners. Put another way, if a person were eligible to own an HDB flat, would s 51(6) of the 2005 HDA and s 51(10) of the HDA then not apply to prevent him becoming entitled to any such flat under a resulting trust or constructive trust?

80 On the face of it, what is now s 51(10) of the HDA draws no distinction between eligible and ineligible persons, in relation to whether they can “become entitled” to an HDB flat. The language of s 51(10) of the HDA is “[n]o person shall become entitled ...”, not “[n]o *ineligible* person shall become entitled ...”. To adopt the reasoning in *Tan Chui Lian* ([53] *supra*) at [11], the latter would have been a plainer, simpler and indeed, clearer formulation had Parliament intended for s 51(10) of the HDA to apply only to ineligible persons.

81 The phrase “become entitled” has been judicially interpreted, first in *Tan Chui Lian* ([53] *supra*) where the court considered s 51(6) of the 2005 HDA. In *Tan Chui Lian*, the court cited the Ministerial Statement at [9] and then elaborated at [10]–[11]:

10 It becomes clear when one has regard to [the Ministerial Statement] that Parliament’s intention was *not* to prevent any

interest in an HDB flat arising under a resulting trust or a constructive trust regardless of the circumstances, but rather to prevent any entitlement to own an HDB flat arising in favour of a person by virtue of the law implying a resulting or constructive trust, where that person would otherwise have been ineligible to acquire such an interest. In my judgment, having regard to the mischief underlying the section, the provision was not intended to have any application where the parties concerned were already entitled to some interest in the property and therefore no issue could arise as to their eligibility to such entitlement. In such circumstances, the parties concerned would not be claiming to *become* entitled to own an interest in the flat by virtue of the implied trust and there would be no concern of their bypassing the eligibility criteria set by the HDB from time to time.

11 This appeared to me to be the purpose of the statutory provision and it is borne out by two further points. First, the statutory enactment provides that no person shall “become entitled” to any flat under any resulting or constructive trust. This may be contrasted with a much plainer and simpler formulation such as that no person shall “be entitled to any interest in” or shall “acquire any interest in” such a flat by virtue of a constructive or resulting trust. The Ministerial Statement which used precisely the same language as is found in the statute, *ie*, “become entitled”, and which then explained this by reference to the case of an ineligible person becoming entitled to own a flat through an implied trust, provides strong support for my view.

[emphasis in original]

82 On the facts, the court concluded at [17]: “Since there was no suggestion that either party before me was ineligible or did not already have some entitlement to the flat, s 51(6) of the [2005 HDA] had no application to the case before me.”

83 Applying the same phraseology to the present case, I would say that the parents *were* ineligible and that they *did not* already have some entitlement to the Kim Tian Flat. They were claiming to “become entitled” to the flat under the alleged resulting or constructive trust, and as such s 51(10) of the HDA applied to bar their claim.

84 *Tan Chui Lian* ([53] *supra*), *Neo* ([68] *supra*) and *Sitiawah* ([66] *supra*) were all cases where the parties were registered co-owners of the flats in question, and there was no issue as to their eligibility either. They were not claiming to “become entitled” to the flats (or any interest in them) by a resulting or constructive trust – they already had such an entitlement. Moreover, there was no intention to circumvent any HDB regulation or policy, and the court was simply asked to determine the parties’ beneficial interests in the properties. As the court in *Sitiawah* observed at [14], if parties wish to hold a property in certain proportions, they can arrange to do so as tenants in common, and that would not be objectionable to the HDB; for the court to declare the proportions in which legal joint tenants hold their beneficial interests would likewise not offend the HDA or HDB policy. None of those cases concerned nominee ownership, whereas the parents’ purported ownership of the Silat Flat and the Kim Tian Flat was not known to the HDB: they were not registered owners, and indeed whatever interests they claimed to have were hidden from the HDB. Had the parents arranged to hold their legal interests in the same manner that they argued their beneficial interests were held, *ie*, 100% to the parents and 0% to Teck Leng, two consequences would have ensued – they would have had to pay the HDB a \$40,000 resale levy, and they would not have gotten a housing loan from the HDB. That illustrates the mischief of the nominee ownership contended for here.

85 The parents were not already entitled to the Silat Flat or the Kim Tian Flat independent of the trust that they alleged. Their own case was that they had “become entitled” to those flats under the alleged trust, and the prohibition in s 51(10) of the HDA accordingly bites.

86 The prohibition in s 51(10) of the HDA does not merely apply to bar otherwise ineligible owners from becoming entitled to an HDB flat (or an

interest in it) under a resulting trust or a constructive trust. In any event, I find that the parents were not “eligible” to purchase the Silat Flat or the Kim Tian Flat (a) without paying a \$40,000 resale levy, and (b) with the benefit of an HDB housing loan (which they were not eligible for).

87 Section 51(10) of the HDA does not allow persons to become entitled to an HDB flat (or an interest in it) in circumvention of HDB regulation or policy. It would defeat the legislative purpose of s 51(10) of the HDA to interpret that provision as allowing nominee ownership in a case like the present.

When can and should the court impose a constructive trust?

88 In this action, the parents assert a constructive trust – specifically, a common intention constructive trust. A common intention constructive trust is an institutional constructive trust arising out of the operation of law from the facts, and not as the result of the exercise of judicial discretion (unlike a remedial constructive trust): see *Sumoi Paramesvaeri v Fleury, Jeffrey Gerard and another* [2016] 5 SLR 302 at [61].

89 The nature of a constructive trust was also explained by the Court of Appeal in *Cheong* ([48] *supra*) at [17]:

... The nature of a constructive trust is such that it could not be said to be ‘created’ by the parties. It is a trust which is *imposed* by equity in respect of an interest in a property in a variety of circumstances which would render it inequitable for the owner of the property or any interest therein to hold it for his benefit. It arises independently of the intention of the parties. A resulting trust, however, is different. It arises from a certain transaction carried out intentionally by the parties concerned and the court infers an intention to create a trust in favour of a party. ...

[emphasis in original]

90 At [16]–[17] of *Cheong* ([48] *supra*), the Court of Appeal considered the High Court’s decision in *Tan Poh Soon v Phua Sin Yin* [1995] 2 SLRI 583 (“*Tan Poh Soon*”), where the court had held (at [15]) that the Housing and Development Act (Cap 129, 1985 Rev Ed) (the “1985 HDA”) “does not nullify the power of the court under s 56 or s 106 of the Women’s Charter to declare an interest in an HDB flat whether in the nature of a trust or otherwise for such trust is not created by the owner. It is decreed by the court under a statutory power.” The court in *Tan Poh Soon* was considering the predecessors to ss 51(8) and 51(9) of the present HDA, which were found in ss 51(4)(a) and 51(4)(b) of the 1985 HDA.

91 It is also noteworthy that the predecessor to those subsections, *ie*, s 44(4) of the original HDA (as set out in [18] of *Cheong*) read as follows:

Every trust or alleged trust, whether the trust is express, implied or constructive, which purports to be created in respect of any such flat, house or other building by the owner thereof shall be null and void and shall be incapable of being enforced by any court.

There, Parliament had grouped express, implied and constructive trusts together as trusts which might purport to be created by parties.

92 As noted in *Koh Cheong Heng v Ho Yee Fong* [2011] 3 SLR 125 (“*Koh*”) at [56], the addition of the words “or arising” in s 51(10) of the current HDA only clarifies that a resulting trust or a constructive trust may be more properly said to arise by operation of law, rather than by the creation of parties. The court held that Parliament had not intended to change the law as it stood in *Tan Chui Lian* ([53] *supra*), noting (at [54]) the holding in *Tan Chui Lian* that

s 51(6) of the 2005 HDA²⁸ “was not intended to have any application where the parties concerned were already entitled to some interest in the property and therefore no issue could arise as to their eligibility to such entitlement”. In a similar vein is *Low Heng Leon Andy v Low Kian Beng Lawrence (administrator of the estate of Tan Ah Kng, deceased)* [2013] 3 SLR 710 at [19].

93 I would respectfully add that the law as it then stood, when *Tan Chui Lian* ([53] *supra*) was decided, also included the Court of Appeal decision in *Cheong* ([48] *supra*) and the High Court decision in *Tan Poh Soon*.

94 By introducing what is now s 51(10) of the HDA, Parliament intended to plug any loopholes in the prohibition contained in ss 51(8) and 51(9) of the HDA that parties might seek to exploit by recasting the trusts that they sought to create (or which they might say was not created but arose from their acts – see *Cheong* ([48] *supra*) at [17]) as resulting or constructive trusts. But Parliament did not intend to take away the court’s power to impose remedial constructive trusts; the court retained this power notwithstanding s 51 of the HDA, as recognised in *Tan Poh Soon* ([90] *supra*) and *Cheong*.

95 *Koh* considered s 51(10) of the present HDA. By this time, this subsection used the phrase “protected property” in place of “such flat, house or other building”; the phrase “(or any interest in such property)” had been added; and the words “or arising” had been added at the end of the subsection.

96 *Koh* ([92] *supra*) concerned a *donatio mortis causa* which the donor sought to revoke. The court held (at [33] and [48]) that a *donation mortis causa*

²⁸ *Ie*, the predecessor to s 51(10) of the HDA.

did not involve the constitution of an express trust: it involved instead the donor’s giving of a defeasible gift. Where legal title had been vested in the donee, upon revocation by the donor the court could impose a remedial constructive trust such that the donee holds the subject matter on trust for the donor (*Koh* at [43]).

97 In that situation, it might be said that the trust was neither “created” nor “arising” within s 51(10) of the HDA. Instead it was imposed by the court in the exercise of its discretion, as explained in [44] of *Koh* ([92] *supra*):

44 ... If the court exercises its discretion to award a constructive trust, the resulting beneficial entitlement can be said to have been “imposed” by the court, which does not merely recognise a pre-existing proprietary interest (*Pearce, Stevens & Barr* at p 315). Therefore, the donor’s equitable proprietary interest may not have to arise from the facts *per se*, but rather, from the exercise of the court’s discretion to award such a remedy (*Pearce, Stevens & Barr* at p 315).

98 I recognise, though, that the court in *Koh* ([92] *supra*) did not rest its decision on the basis that a remedial constructive trust imposed by the court did not fall within s 51(10) of the HDA, but instead on the basis that “... resulting and constructive trusts are not precluded by the HDA if the beneficiary is eligible to own an HDB flat” (*Koh* at [57]).

99 In *Philip Antony Jeyaretnam and another v Kulandaivelu Malayaperumal and others* [2020] 3 SLR 738, the plaintiffs submitted, *inter alia*, that the first defendant held his interest in an HDB flat on an institutional constructive trust for them. As there was no dispute that the plaintiffs were ineligible persons for the purposes of the HDA, the court held (at [29]) that the prohibition under s 51(10) of the HDA applied and so no constructive trust could arise in their favour.

100 The parents relied on a common intention constructive trust. They did not ask the court to impose a remedial constructive trust in their favour, but if they had I would not have done so. That would only enable the parents to flout HDB regulation or policy, namely, to evade payment of a \$40,000 resale levy and to use a nominee to obtain an HDB housing loan for purported beneficial owners who were themselves ineligible for such a loan.

Did the parents contribute to the acquisition of the Kim Tian Flat, such that a resulting trust could arise in their favour?

101 It was common ground that I should apply the analytical framework set out in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 (“*Chan Yuen Lan*”) at [160]. At step (a), the court asks: is there sufficient evidence of the parties’ respective financial contributions to the purchase price of the property?

102 I first consider what it cost to acquire the Kim Tian Flat, before examining who bore those costs.

Cost of acquisition

Purchase price and fees

103 The HDB sales order for the Kim Tian Flat shows the purchase price as \$293,900, to which were added various fees amounting to \$924.35, for an aggregate of \$294,824.35 in total fees and selling price.²⁹ The HDB agreement order for the Kim Tian Flat shows that a further payment of \$4,880.20 was paid from Teck Leng’s CPF account (\$4,678 for a lease stamp fee and \$202.20 for a

²⁹ Lim Kieuh Huat and Leong Ah Chue’s joint affidavit dated 29 August 2019, Tab 6, pp 30–31.

conveyancing fee).³⁰ Based on the HDB documentation, the Kim Tian Flat thus cost $\$294,824.35 + \$4,880.20 = \$299,704.55$.

Renovation costs

104 In *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 (“*Lau Siew Kim*”), the Court of Appeal accepted (at [126]) that “... contributions to the cost of repairs or renovation of a property *may* be relevant when computing a party’s contribution to the purchase price of property” [emphasis in original] and that “... where a property is redeveloped *closely after purchase* and where its value is increased by the redevelopment, contributions to the costs of redevelopment can be relevant in determining the respective proportion of contributions to the purchase price of the property for the purposes of a presumption of resulting trust” [emphasis in original].

105 There was, however, no documentary evidence of any renovation expenses in the present case.

106 All that the parents put forward was “a table summarising the relevant information relating to their family home”.³¹ That was a list of items and figures, including “Renovation – \$18,140.00” with the remark “Supported by quotation – close estimate”, but no quotation was produced. There were other items of furniture and furnishings listed – air-conditioner, living room television, beds, wardrobes, gas water heater and cooker hoods – with the remark “Supported by invoice” but no invoice was produced.

³⁰ Lim Kieuh Huat and Leong Ah Chue’s joint affidavit dated 29 August 2019, Tab 6, p 32.

³¹ Lim Kieuh Huat and Leong Ah Chue’s joint affidavit dated 29 August 2019, p 10, at para 38; Tab 7, p 34.

107 I replicate the table below:

	S\$	
CCK Flat sales proceeds	217,654.72	
Savings and earnings	114,971.36	
Payment made from Lim Kieuh Huat and Leong Ah Chue to Lim Teck Leng:	332,626.08	
As settlement for:		
Total fees & selling price of flat	294,824.35	
Agent comm & GST for CCK flat	5,992.00	Supported by invoice
Renovation	18,140.00	Supported by quotation – close estimate
Aircon	4,808.00	Supported by invoice
Living room TV	499.00	Supported by invoice
Beds	1,804.00	Supported by invoice
Wardrobes	1,730.00	Supported by invoice
Gas water heater	328.00	Supported by invoice
Cooker hoods	474.00	Supported by invoice
Others: Painting of whole flat (\$1200),	4,000.00	

TV console (\$400), dining table (\$600), Otto storage bench x 3 (\$450), Master bedroom TV (\$500), curtains & curtains rods for living rooms and 3 bedrooms (\$600), 2 bathrooms mirrors and accessories (\$250)	332,599.35		
Excess	26.73	0.00	(immaterial)

108 I noted that the various figures under the “Others” item were in multiples of \$50 or \$100. This seemed artificial in comparison with the other items listed, especially since it did not appear from the evidence that Teck Leng had in mind the total amount received from his parents and sought to keep within that amount. To the contrary, he said that he had lost some of that money in failed investments and that he had spent the rest,³² leaving only the SERS contra of \$27,269.55 from the Silat Flat that had gone towards paying for the Kim Tian Flat.

109 A total figure of \$332,599.35 is stated in the table as the cost of the Kim Tian Flat plus listed expenses, which would then be nicely met by the sum of \$332,626.08 that the parents claimed to have given to Teck Leng, leaving a small surplus of \$26.73. The table was put forward to show that the parents had paid for the Kim Tian Flat in full, but it lacked substantiation. There were also the following obvious problems with the table:

³² Lim Teck Leng’s affidavit dated 14 February 2020, p 2, at para 6.

- (a) There is no mention of the resale levy of \$40,000.
- (b) The table does not mention any expenses, whether for renovation or otherwise, in relation to the Silat Flat. For instance, the parents' pocketbook entries include an entry on 31 December 2007 for \$1,718 with the remark "Pyt for Silat Reno",³³ which I understand to mean "payment for Silat [Flat] renovations".
- (c) The loss of \$14,600 from the Silat Flat is not accounted for.
- (d) The table does not mention the \$4,880.20 paid from Teck Leng's CPF account for a lease stamp fee and a conveyancing fee for the Kim Tian Flat.

110 If any of these items were accounted for, there would not be enough money to pay for the Kim Tian Flat and related expenses (per the table).

111 Put another way, if the "Agent comm & GST for CCK flat – \$5,992.00" mentioned in the table (which I understand to be the agent's commission for the sale of the CCK Flat) were deducted from the CCK Flat cash proceeds of \$217,654.72, that would leave \$211,662.72. Deducting the \$14,600 loss from the Silat Flat leaves \$197,062.72. Adding to that the parents' figure of \$114,971.36 supposedly given to Teck Leng,³⁴ results in a total of \$312,034.08. Superficially, that would be enough for the \$299,704.55 purchase price and fees payable for acquiring the Kim Tian Flat. But it would not be enough if a \$40,000

³³ Lim Kieuh Huat and Leong Ah Chue's joint affidavit in reply dated 1 April 2020, Tab 3, p 46.

³⁴ Lim Kieuh Huat and Leong Ah Chue's joint affidavit dated 29 August 2019, p 7, at para 26.

resale levy were paid, and it would not be enough to meet the Kim Tian Flat renovation costs and other expenses listed in the table; if the Silat Flat renovation costs or other expenses were also paid for from the same money, the position would be worse.

112 For present purposes, the parents' own case was that they had left it to Teck Leng to handle the sale of their CCK Flat, subsequent property purchases and related matters.³⁵ They would not have personal knowledge of what might have been spent on renovation. Teck Leng, however, only filed a short first affidavit comprising just eight paragraphs, in which he said nothing specifically about renovation expenses. His second affidavit merely exhibited certain correspondence with the HDB and made no mention of renovation.

113 In the matrimonial proceedings, Teck Leng did not put forward any renovation expenses in his affidavits, but in his submissions it was then asserted that he had spent a sum of \$150,000 on renovations and furnishings;³⁶ that was not supported by documentary evidence, or indeed any evidence. The District Judge did not accept his claim. The figure of \$150,000 (which I will return to) also contrasts sharply with the figures in the parents' table (see [107] above):³⁷ if the figures for furniture and furnishings are added to the stated renovation costs of \$18,140, the total is just \$31,783, not \$150,000. There is moreover an issue of whether furniture and furnishings count as renovation that increases the value of the property, within the principle in *Lau Siew Kim* ([104] *supra*): see

³⁵ Lim Kieuh Huat and Leong Ah Chue's joint affidavit dated 29 August 2019, p 8, at paras 28–29.

³⁶ Zhang Honghong's affidavit dated 17 February 2020, Tab B, p 27, at [54(c)].

³⁷ Lim Kieuh Huat and Leong Ah Chue's joint affidavit dated 29 August 2019, Tab 7, p 34.

Tan Chui Lian ([53] *supra*) at [3] where soft furnishings were not regarded as such, and *Jarret Pereira v Mascreeenos Bridjet w/o Moses and another* [2018] SGHC 120 at [6] where chattels like television sets were not regarded as such. Even for the “renovation” item itself, there was no information as to what renovation was done.

114 There was no sufficient evidence as to what, if anything, had been spent on renovation that increased the value of the Kim Tian Flat within the principles in *Lau Siew Kim* ([104] *supra*).

115 I thus regard the cost of acquiring the Kim Tian Flat to be just the sum of \$299,704.55 per the HDB documentation, as stated at [103] above.

Who paid for the acquisition of the Kim Tian Flat?

116 I have set out at [38] above the parents’ claim in their first affidavit to have paid for the Kim Tian Flat in full.³⁸ In their written submissions, they similarly assert that the sales order for the Kim Tian Flat shows that “the purchase price of the [Kim Tian Flat] was financed by the SERS [c]ontra and the CPF of Teck Leng, *both of which was financed by the sale of the Silat Flat*” [emphasis added].³⁹ But the submissions go on to state, “[t]he rest of the purchase price was financed by a housing loan maintained by [Teck Leng’s] CPF”.⁴⁰

³⁸ Lim Kieuh Huat and Leong Ah Chue’s joint affidavit dated 29 August 2019, p 11, at para 42.

³⁹ Plaintiffs’ Written Submissions dated 18 June 2020, p 24, at para 25.

⁴⁰ Plaintiffs’ Written Submissions dated 18 June 2020, p 24, at para 25.

117 It is fanciful for the parents to contend that Teck Leng's CPF account was somehow financed by the sale of the Silat Flat. The evidence did not show any part of the Silat Flat proceeds (or any of the parents' money) going into Teck Leng's CPF account. There was nothing to show that any voluntary contributions had been made to Teck Leng's CPF account, and indeed his evidence was to the contrary. In his first affidavit, he said: "The monies from my parents was [*sic*] sufficient to pay for the Kim Tian Road flat but I took a loan as it made more economic sense. I enjoy a low interest rate from HDB and get free cash to invest and spend."⁴¹ He did not put his parents' money *into* his CPF account as he wanted the money as free cash; instead, he took money *out of* his CPF account to purchase the Kim Tian Flat.

118 The evidence shows three components of the payments towards the Kim Tian Flat, which I will address in turn:

- (a) the lump sum payments from Teck Leng's CPF account;
- (b) the HDB housing loan which Teck Leng was responsible for, and which he used his CPF money to pay towards; and
- (c) the SERS contra from the Silat Flat.

⁴¹ Lim Teck Leng's affidavit dated 14 February 2020, p 2, at para 6.

119 The lump sum payments of \$3,054.80⁴² and \$4,880.20⁴³ from Teck Leng's CPF account were made from *his* money. They did not come from his parents.

120 The HDB housing loan which Teck Leng took was not paid for out of money that his parents had entrusted to him. The only payments which appear to have been made in repayment of the housing loan were from Teck Leng's CPF account.

121 More fundamentally, the party responsible for the housing loan was Teck Leng, not his parents.⁴⁴ This, coupled with the parents' admission that the Silat Flat and the Kim Tian Flat were registered in Teck Leng's sole name so that (*inter alia*) he could take an HDB housing loan (which was serviced from his CPF account), gives rise to a strong inference that the understanding between Teck Leng and his parents was always that *he* would repay the HDB housing loan. Consequently, the mortgage payments count as *Teck Leng's* contribution and not his parents': see *Su Emmanuel v Emmanuel Priya Ethel Anne and another* [2016] 3 SLR 1222 ("*Su Emmanuel*") at [87]–[90]. It also bears emphasising that, according to the parents, one of the two reasons why the Silat Flat and then the Kim Tian Flat were in Teck Leng's name was that he could get an HDB housing loan (which the parents were then not eligible for). But this

⁴² Lim Kieuh Huat and Leong Ah Chue's joint affidavit dated 29 August 2019, Tab 6, p 30.

⁴³ Lim Kieuh Huat and Leong Ah Chue's joint affidavit dated 29 August 2019, Tab 6, p 32.

⁴⁴ Lim Teck Leng's affidavit dated 14 February 2020, p 2, at para 6; Lim Kieuh Huat and Leong Ah Chue's joint affidavit dated 29 August 2019, Tab 6, pp 30–31; Zhang Honghong's affidavit dated 17 February 2020, Tab F, p 57, at para 7(f).

fatally contradicts the foundation of their alleged understanding, *ie*, that he was to pay for the flats in full from the money they gave him.

122 One might also ask why a loan was contemplated if, as the parents say, the sale proceeds from their CCK Flat were expected to be enough to fully pay for the Silat Flat.⁴⁵ Why not just purchase the Silat Flat in the parents' joint names and pay for it with the CCK Flat proceeds (which were expected to be enough, and were in fact enough)? The other reason that the parents proffered – to evade payment of a \$40,000 resale levy to the HDB – does not explain why Teck Leng might take a loan rather than use his parents' money.

123 The answer may lie in what Teck Leng and his parents alluded to about his *investing* their money. In his first affidavit, Teck Leng stated: “The monies from my parents was [*sic*] sufficient to pay for the Kim Tian Road flat but I took a loan as it made more economic sense. I enjoy a low interest rate from HDB and get free cash to invest and spend.”⁴⁶ In a similar vein, the parents said in their first joint affidavit that they had entrusted Teck Leng with money “to invest for higher returns”.⁴⁷ In the context of their deciding to give Teck Leng their life savings, they mention in the same affidavit that he “had experience in the finance sector as an accountant”.⁴⁸ If all Teck Leng was expected to do was to pay off the Silat Flat using the CCK Flat proceeds, and thereafter pay off the Kim Tian Flat using the Silat Flat proceeds and his parents' life savings (all of

⁴⁵ Lim Kieuh Huat and Leong Ah Chue's joint affidavit dated 29 August 2019, pp 6–7 at para 24; p 8 at para 29.

⁴⁶ Lim Teck Leng's affidavit dated 14 February 2020, p 2, at para 6.

⁴⁷ Lim Kieuh Huat and Leong Ah Chue's joint affidavit dated 29 August 2019, p 11, at para 42.

⁴⁸ Lim Kieuh Huat and Leong Ah Chue's joint affidavit dated 29 August 2019, p 7, at para 26.

which he was to keep intact), his “experience in the finance sector as an accountant” would have been irrelevant.

124 The picture which emerges is that both Teck Leng and his parents intended that he could take an HDB housing loan so as to have free cash “to invest for higher returns”. But this in turn raises other issues.

125 First, if instead of paying for the properties in full using his parents’ money, Teck Leng took a loan and invested his parents’ money, whose responsibility was that loan? It could only be Teck Leng’s. The parents never took the position that Teck Leng’s housing loan was their responsibility. And if Teck Leng was investing his parents’ money, while taking a loan and paying it off with his CPF money, it would amount to double counting to say that the parents were entitled to the investments that Teck Leng made with their money, *as well as* the Kim Tian Flat which was financed by a loan that he was using his CPF money towards.

126 Given the family’s supposed concern about the parents’ inability to pay for the Kim Tian Flat,⁴⁹ one would expect the parents to want the Kim Tian Flat to be paid up using their money, rather than for Teck Leng to take a loan and invest the parents’ money instead. Taking a loan would incur interest, and investing “free cash” would carry the risk of loss. This does not sit well with the stated concern about being able to afford to pay for the Kim Tian Flat.

⁴⁹ Lim Kieuh Huat and Leong Ah Chue’s joint affidavit dated 29 August 2019, p 7, at para 25.

127 Second, what if some of the money invested was lost in failed investments, as Teck Leng claimed?⁵⁰ If the money was entrusted to Teck Leng for investment, then any gains or losses would be on the parents' account. If there were losses, then the original principal amount would no longer be fully available to pay for the Kim Tian Flat. The parents cannot say, on the one hand, that they wanted Teck Leng to invest their money; but, on the other hand, that losses from such investments do not count, and that they should still be regarded as having paid for the flats (simply because the original principal sum they had given to Teck Leng was enough). The parents did not say that the investments made with their money were "principal guaranteed" by Teck Leng, nor would that make sense.

128 I shall revisit what the understanding between Teck Leng and his parents was (if there was one). For present purposes, if Teck Leng decided to take a loan, rather than to tie up cash in the Kim Tian Flat, the amount of that loan was *his* responsibility, and *his* contribution towards the purchase of the Kim Tian Flat; it was *not* his parents' contribution.

129 That leaves the SERS contra of \$27,269.55 from the compensation for the compulsory acquisition of the Silat Flat, which formed part of the initial capital payment of the Kim Tian Flat; the Silat Flat appeared to have been fully paid up in cash. Whose contribution was the SERS contra then?

130 On the face of the HDB documentation, it would be Teck Leng's contribution because he was the sole owner of the Silat Flat, and thus the one entitled to the compensation. Indeed, the other components of the compensation

⁵⁰ Lim Teck Leng's affidavit dated 14 February 2020, p 2, at para 6.

from the HDB were paid to him.⁵¹ But the parents claimed that they were the ones who had paid for the Silat Flat, and moreover that they had an understanding with Teck Leng that they (*ie*, the parents) owned that flat.⁵²

131 Specifically, the parents stated that the payment for the Silat Flat was made entirely from the CCK Flat proceeds.⁵³ But there is a timing issue on the documents. It appears that the purchase of the Silat Flat was completed on 1 November 2007,⁵⁴ which is earlier than the sale of the CCK Flat (for which the completion account is dated 13 November 2007⁵⁵ and the cash proceeds of \$217,654.72 were only deposited into the joint account of Mr Lim and Teck Leng on 31 December 2007).⁵⁶ Moreover, \$215,036.82 was withdrawn from that joint account on 2 January 2008,⁵⁷ but Teck Leng and his family had already moved into the Silat Flat in December 2007.⁵⁸

⁵¹ Lim Kieuh Huat and Leong Ah Chue's joint affidavit in reply dated 1 April 2020, Tab 2, at p 30.

⁵² Lim Kieuh Huat and Leong Ah Chue's joint affidavit dated 29 August 2019, pp 7–8, at para 27.

⁵³ Lim Kieuh Huat and Leong Ah Chue's joint affidavit dated 29 August 2019, p 8, at paras 29–30; Lim Kieuh Huat and Leong Ah Chue's joint affidavit in reply dated 1 April 2020, p 9, at para 11.

⁵⁴ Lim Kieuh Huat and Leong Ah Chue's joint affidavit in reply dated 1 April 2020, Tab 2, p 39.

⁵⁵ Lim Kieuh Huat and Leong Ah Chue's joint affidavit in reply dated 1 April 2020, Tab 1, p 19.

⁵⁶ Lim Kieuh Huat and Leong Ah Chue's joint affidavit dated 29 August 2019, Tab 3, p 22.

⁵⁷ Lim Kieuh Huat and Leong Ah Chue's joint affidavit dated 29 August 2019, Tab 3, p 22.

⁵⁸ Lim Kieuh Huat and Leong Ah Chue's joint affidavit dated 29 August 2019, p 9, at para 32.

132 If the Silat Flat purchase had been completed before the parents received the net compensation amount from the sale of the CCK Flat, where did the money to pay for the Silat Flat come from?

133 From the sale of the CCK Flat, there had been a refund of \$49,708.21 to Mr Lim's CPF account and a refund of \$7,637.07 to Mrs Lim's CPF account, totaling \$57,345.28.⁵⁹ No information was however provided as to how much more the parents might have had in their CPF accounts then, or as to what they might have used from their CPF accounts to purchase the Silat Flat or the Kim Tian Flat; but it does not appear that anyone's CPF money was used towards the Silat Flat.

134 Could the Silat Flat have been paid for out of the savings that the parents or Teck Leng had? To support their assertion that they gave their life savings to Teck Leng (in addition to the CCK Flat proceeds), the parents produced a pocketbook with handwritten entries,⁶⁰ totaling the sum of \$114,971.36 which they say Teck Leng received from them: the first entry was for \$60,000 on 9 February 2006, and the last entry was for \$5,000 on 12 April 2010. I noted that by the end of 2006, the entries totaled \$67,000; and by 5 October 2007 (*ie*, before the completion of the Silat Flat purchase on or about 1 November 2007), the entries totaled \$75,000.

⁵⁹ Lim Kieuh Huat and Leong Ah Chue's joint affidavit in reply dated 1 April 2020, Tab 1, p 19.

⁶⁰ Lim Kieuh Huat and Leong Ah Chue's joint affidavit in reply dated 1 April 2020, Tab 3, pp 46–47.

135 It is quite possible that the additional sum of \$100,000 (to make up the \$175,000 resale price of the Silat Flat) came from savings that the parents or Teck Leng had when the Silat Flat was purchased.

136 The parents claimed that the Silat Flat was entirely paid for using the CCK Flat proceeds. In the FJC proceedings, however, Teck Leng stated the following in his affidavit of assets and means: “The previous flat [*ie*, the Silat Flat] was purchased with sale proceeds from the sale of my parents’ previous matrimonial flat [*ie*, the CCK Flat] *and their savings* in my sole name in 2007”⁶¹ [emphasis added]. The reference to “savings” is curious because the CCK Flat proceeds alone were sufficient to pay for the Silat Flat – it may be a nod to the CCK Flat proceeds not having come in at the time when payment had to be made for the Silat Flat.

137 Although the Silat Flat was in his sole name, Teck Leng referred to the Silat Flat as “my parents [*sic*] flat”⁶² and said that his parents “sold their previous home at Silat Road under the Selective En Bloc Redevelopment Scheme”⁶³ in the FJC proceedings. However, the Silat Flat was not in issue, as such, in the FJC proceedings – the focus was on the present flat, *ie*, the Kim Tian Flat.

138 On the evidence before me, it is likely that the parents’ money was used by Teck Leng to pay for the Silat Flat. Part of the compensation for the compulsory acquisition of the Silat Flat was the SERS contra of \$27,269.55, which then formed part of the initial capital payment of the Kim Tian Flat. As

⁶¹ Zhang Honghong’s affidavit dated 17 February 2020, Tab F, p 61, at para 17(a).

⁶² Zhang Honghong’s affidavit dated 17 February 2020, Tab F, p 126, at para 27.

⁶³ Zhang Honghong’s affidavit dated 17 February 2020, Tab F, p 130, at para 43.

such, \$27,269.55 of the \$299,704.55 which it cost to acquire the Kim Tian Flat (ie, 9.1%) appeared to have come from the parents' money.

139 In the next section, I will consider the *basis* on which the parents gave Teck Leng money.

Did Teck Leng and his parents have an understanding that the parents owned the Kim Tian Flat, such that a common intention constructive trust could arise in the parents' favour?

140 Step (b) in the *Chan Yuen Lan* ([101] *supra*) framework (at [160(b)] of the judgment) has the court asking: 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 step (a)? In this regard, the evidence must be sufficient *and compelling* (*Su Emmanuel* ([121] *supra*) at [83]).

Teck Leng's position in the FJC proceedings is contrary to the alleged understanding

141 The parents contended that it was always the understanding between them and Teck Leng that the Silat Flat, and thereafter the Kim Tian Flat, would belong only to the parents, as Teck Leng was supposed to use their money to fully pay for those flats.

142 In relation to the Kim Tian Flat, however, Teck Leng took the opposite position in the FJC proceedings: he said that the Kim Tian Flat was *his*, that it was a *matrimonial asset*, and that all financial contributions towards it should be regarded as having been made by *him*. These themes ran through his affidavits filed in the FJC proceedings, up to the Ancillary Order of 25 August 2017. His claim in his first affidavit in this action to have “always maintained

that the [Kim Tian Flat] is not part of matrimonial assets available for division” is disingenuous.⁶⁴

143 In his affidavit of assets and means, Teck Leng listed the Kim Tian Flat as one of his assets.⁶⁵ He also set out that he had withdrawn a principal sum of \$51,542 from his CPF account towards its purchase, on which sum there was accrued interest of \$3,774.48, thus making it a total of \$55,316.48 that would have to be returned to his CPF account if he were to sell the Kim Tian Flat.⁶⁶

144 Under the section titled “Contributions to the Matrimonial Assets” in his affidavit of assets and means, Teck Leng said:⁶⁷

17. I have made the following direct and indirect financial contributions towards the acquisition or improvement of the matrimonial asset(s):

Purchase of the HDB flat:

- (a) Principal amount paid through CPF (excluding accrued interest) to the HDB: \$51,542.00 as at 29 March 2016

The previous flat [*ie*, the Silat Flat] was purchased with sale proceeds from the sale of my parents’ previous matrimonial flat and their savings in my sole name in 2007. Later that year, the flat was placed under the SERS scheme so my parents and I opted to move to the current flat.

Due to our choice, my parents and I had to top up another \$150,000.00 for the present flat and the monthly HDB mortgage loan repayments is [*sic*] currently repaid by me through my CPF.

⁶⁴ Lim Teck Leng’s affidavit dated 14 February 2020, p 2, at para 5.

⁶⁵ Zhang Honghong’s affidavit dated 17 February 2020, Tab F, p 56, at para 7(a).

⁶⁶ Zhang Honghong’s affidavit dated 17 February 2020, Tab F, p 59, at para 13.

⁶⁷ Zhang Honghong’s affidavit dated 17 February 2020, Tab F, p 61, at para 17.

(b) Cash used for initial capital payment: NIL

145 Under the section on indirect contributions, Teck Leng stated in his affidavit: “The [Kim Tian Flat] was purchase by my parents and I and it was already in my ownership when [Honghong] and I got married on 7 September 2010.”⁶⁸

146 In his affidavit dated 17 May 2016 and filed in the FJC proceedings, he referred to the Kim Tian Flat as the “matrimonial flat”⁶⁹ and proposed that he retain it in his sole name, stating: “The matrimonial flat [*ie*, the Kim Tian Flat] was purchased in my sole name but the payment of the matrimonial flat was financed by my parents and I. Part of the matrimonial flat’s initial capital payment was paid by my parents through their previous flat’s sale proceeds and their savings. Subsequent repayment of the outstanding mortgage loan was paid through my CPF contribution.”⁷⁰ He elaborated that: “... when my parents and I decided to purchase [the Kim Tian Flat], the original intent was for my parents and my younger siblings’ sole enjoyment”.⁷¹

147 Teck Leng said, for the first time, that the Kim Tian Flat was not a matrimonial asset, in his affidavit dated 31 October 2016,⁷² but this was on the basis that Honghong had not stayed in the flat for most of the duration of their marriage and that she did not improve the flat substantially during the marriage. In his affidavit, he added: “Furthermore, while this flat is under my name, my

⁶⁸ Zhang Honghong’s affidavit dated 17 February 2020, Tab F, p 61, at para 18(a).

⁶⁹ Zhang Honghong’s affidavit dated 17 February 2020, Tab F, pp 115–116, at para 4.

⁷⁰ Zhang Honghong’s affidavit dated 17 February 2020, Tab F, p 116, at para 7.

⁷¹ Zhang Honghong’s affidavit dated 17 February 2020, Tab F, p 116, at para 8.

⁷² Zhang Honghong’s affidavit dated 17 February 2020, Tab F, p 129, at para 40.

parents paid about \$17K towards the purchase price. The Kim Tian Road flat was intended to be a replacement flat for my parents, who sold their previous home at Silat Road under the Selective En Bloc Redevelopment Scheme. If this house were to be transferred to [Honghong], my parents and siblings would lose their place to stay.”⁷³

148 If the parents had paid for the Kim Tian Flat, and if there were a common understanding that the parents owned the flat, one would have expected Teck Leng to say so. When arguing in the FJC proceedings that the Kim Tian Flat ought not to be transferred to Honghong, why did he not say what would have been the obvious – that the Kim Tian Flat was owned by his parents and that he had no beneficial interest in it?

149 Significantly, in para 36 of the same affidavit dated 31 October 2016, Teck Leng said, “... my parents actually entrusted their monies for me to invest for them. As such, any shares that were purchased were for their account, and also unfortunately, the value of the shares that I had purchased for my parents have been greatly reduced”.⁷⁴ This was in response to Honghong’s affidavit of 16 September 2016 where she had stated: “... my husband also had serious argument with his parents, because he took his parents money (around SGD 300,000 from selling their house in 2007 and refused did not return to his parents”.⁷⁵

150 Conspicuously, Teck Leng never said that he had been “entrusted” with his parents’ money to purchase the Kim Tian Flat on their behalf.

⁷³ Zhang Honghong’s affidavit dated 17 February 2020, Tab F, p 130, at para 43.

⁷⁴ Zhang Honghong’s affidavit dated 17 February 2020, Tab F, p 128, at para 36.

⁷⁵ Zhang Honghong’s affidavit dated 17 February 2020, Tab G, p 297, at para 6.

151 Instead, Teck Leng’s position in at least two of the affidavits that he filed in the FJC proceedings was unambiguously that the Kim Tian Flat was a matrimonial asset.⁷⁶ It was contended that Teck Leng had contributed \$55,316.48 from his CPF account (which the District Judge accepted) and \$150,000 in cash for “renovations and furnishings” (which the District Judge did not accept).⁷⁷ As the District Judge noted, nothing was said about the Kim Tian Flat being owned by the parents, or that they had paid for it, or indeed that they had made any contribution such that they would have an interest in the Kim Tian Flat.⁷⁸ Whether or not Teck Leng may have obtained the sum of \$150,000 (or any part of it) in cash for alleged “renovations and furnishings” from his parents, the whole sum was presented as *his* contribution. From the District Judge’s grounds of decision, it appears that the sum of \$17,000, which Teck Leng said in his 31 October 2016 affidavit that his parents had paid towards the purchase price,⁷⁹ was not specifically mentioned in his submissions; perhaps it was subsumed in the \$150,000 contribution he claimed to have made.⁸⁰

152 In making the Ancillary Order, the District Judge included the Kim Tian Flat in the pool of matrimonial assets, attributing to it a value of \$498,948.72, *ie*, \$750,000 (its market value) less the outstanding loan of \$251,051.28.⁸¹ She allowed the figure of \$55,316.48 from the Teck Leng’s CPF documentation as

⁷⁶ Zhang Honghong’s affidavit dated 17 February 2020, Tab B, pp 24–25, at [48].

⁷⁷ Zhang Honghong’s affidavit dated 17 February 2020, Tab B, pp 26–27, at [53]–[55].

⁷⁸ Zhang Honghong’s affidavit dated 17 February 2020, Tab B, p 25, at [49].

⁷⁹ Zhang Honghong’s affidavit dated 17 February 2020, Tab F, p 130, at para 43.

⁸⁰ Zhang Honghong’s affidavit dated 17 February 2020, Tab B, p 27, at [54].

⁸¹ Zhang Honghong’s affidavit dated 17 February 2020, Tab B, p 25, at [50].

a direct contribution by him, but not the figure of \$150,000 (or any other figure) for alleged “renovations and furnishings”.⁸²

153 If the Kim Tian Flat were beneficially owned by the parents, it would not be a matrimonial asset: “... to qualify as a matrimonial asset, the property concerned must have been acquired beneficially by either or both parties to the marriage who are now involved in the matrimonial proceedings” (*UDA v UDB and another* [2018] 1 SLR 1015 (“*UDA*”) at [31]). But by the time of the hearing on 25 August 2017 when the Ancillary Order was made, it was common ground that the Kim Tian Flat *was* a matrimonial asset.

154 The District Judge noted at [49] of her grounds of decision: “While [Teck Leng] did allude to his parents contributing to the purchase price and that the Kim Tian Flat was meant as a replacement flat for his parents, there is no claim by his parents or [Teck Leng] that his parents had an interest in the Kim Tian Flat. As such, the entire nett value of the Kim Tian Flat (which is under Teck Leng’s sole name) is to be placed in the matrimonial pool of assets to be divided.”⁸³

155 In this action, the parents sought to resuscitate the references to the sum of \$150,000. When Teck Leng first mentioned that figure, though, what he had said was:⁸⁴

Due to our choice [to move to the Kim Tian Flat], my parents and I had to top up another \$150,000.00 for the present flat ...

⁸² Zhang Honghong’s affidavit dated 17 February 2020, Tab B, pp 26–27, at [53]–[55].

⁸³ Zhang Honghong’s affidavit dated 17 February 2020, Tab B, p 25, at [49].

⁸⁴ Zhang Honghong’s affidavit dated 17 February 2020, Tab F, p 61, at para 17(a).

156 To me, that simply meant that the Kim Tian Flat (which I found cost \$299,704.55) cost around \$150,000 more than the \$160,400 received in compensation for the Silat Flat. It did not mean that \$150,000 was paid in cash for the Kim Tian Flat. Moreover, the documents show that *nothing* was paid in cash to acquire the Kim Tian Flat – the Kim Tian Flat was paid for by the SERS contra from the Silat Flat, money from Teck Leng’s CPF account, and an HDB housing loan.

157 The parents nevertheless contended that because there was an understanding between them and Teck Leng that they owned the Kim Tian Flat, I should find (contrary to the Ancillary Order) that the Kim Tian Flat is not a matrimonial asset at all, but instead wholly owned by them. The parents also relied on an unsigned “will” of Teck Leng’s, and Teck Leng’s correspondence with the HDB, to support this alleged understanding. I will address these in turn.

The parents’ own narrative does not support the alleged understanding

158 As I noted at [121] above, it is inconsistent for the parents to say that Teck Leng was supposed to use their money (*ie*, the CCK Flat proceeds and their life savings) to fully pay for the Silat Flat and then the Kim Tian Flat, whilst acknowledging that he could take an HDB housing loan. This is particularly so when the CCK Flat proceeds were expected to be enough (and indeed they were) to pay for the Silat Flat in full, such that no loan was needed.

159 This alone is fatal to the alleged understanding.

160 The alleged understanding was premised on Teck Leng’s being required to pay for the flats in full using his parents’ money. Yet in the same breath, the parents acknowledged that Teck Leng could take an HDB housing loan, use his

CPF account to service the loan and invest the “free cash” from them. Indeed, one of the reasons for the Silat Flat and Kim Tian Flat being in Teck Leng’s name was so that he could take an HDB housing loan.

161 But did Teck Leng’s parents give him the money as a gift, or as a loan from them, or was he entrusted with the money (such that the parents intended to retain the beneficial interest in the money, and to have an interest in what it might be invested in)?

162 It is implausible that the money was a gift by Teck Leng’s parents to him. The money comprised the proceeds of the CCK Flat (which was the parents’ matrimonial flat and apparently their main asset) and what was said to be their life savings. Moreover, it is unthinkable that the parents would make such a generous gift to Teck Leng (and him only) when they had two other children, particularly in light of the parents’ professed lack of favouritism towards any of their children⁸⁵ (see also *Low Yin Ni and another v Tay Yuan Wei Jaycie (formerly known as Tay Yeng Choo Jessy) and another* [2020] SGCA 58 at [5]).

163 In the FJC proceedings, Teck Leng characterised what was paid towards the Kim Tian Flat (whether that was said to be \$17,000 or \$150,000) as *his* contribution, whether or not it had come from money he received from his parents. In effect, Teck Leng’s position was that the money was a gift or loan to him from his parents; either way, what was paid towards the Kim Tian Flat was said to be *his* contribution to the matrimonial assets, and he regarded the Kim Tian Flat itself as a matrimonial asset.

⁸⁵ Lim Kieuh Huat and Leong Ah Chue’s joint affidavit dated 29 August 2019, p 9, at para 34.

164 In his first affidavit in this action, Teck Leng then said that he had spent some of the money on the family; as a result of both failed investments and his spending, by the end of his marriage he had depleted all of the cash that his parents had given him (leaving only the SERS contra of \$27,269.55 that went towards the Kim Tian Flat).⁸⁶ If he had spent what was entrusted to him by his parents, that would have been a breach of trust; but there would be no such breach if the money were a gift or loan to him.

165 In the FJC proceedings, Honghong recounted an incident when Teck Leng had a serious argument with his parents, because he had taken his parents' money (which she said was around \$300,000 from selling the CCK Flat in 2007) and refused or did not return it to his parents.⁸⁷ In response, Teck Leng said that he had been "entrusted" with the money to invest on his parents' behalf; he had not "borrowed" it as Honghong suggested.⁸⁸ He did not however dispute the incident that Honghong had mentioned.

166 Notably, if there were an alleged understanding that the parents owned the Kim Tian Flat, no one told Honghong about it.

167 The parents' narrative was also contradicted by the pocketbook which they put forward as a record of their life savings of \$114,971.36 given by them to Teck Leng. In their first joint affidavit, they said that they gave him this sum "between the sale of the CCK Flat and up till the time [they] purchase[d] the

⁸⁶ Lim Teck Leng's affidavit dated 14 February 2020, pp 2–3, at paras 6 and 8.

⁸⁷ Zhang Honghong's affidavit dated 17 February 2020, Tab G, p 297, at para 6.

⁸⁸ Zhang Honghong's affidavit dated 17 February 2020, Tab F, p 128, at para 36.

flat at Kim Tian Road ... for him to put into the replacement flat at Kim Tian Road and fully pay off the same”.⁸⁹

168 However, the pocketbook shows that the parents had already given Teck Leng \$75,000 out of the said \$114,971.36 by the time the CCK Flat was sold on 13 November 2007.⁹⁰ Indeed, the pocketbook shows that the parents had given Teck Leng a total of \$67,000 *before 2007*,⁹¹ *ie*, before any discussion about selling the CCK Flat and purchasing the Silat Flat (for which the Kim Tian Flat would then be offered as a replacement) had taken place (see [26] above).

169 That sum of \$67,000 was thus not given “for [Teck Leng] to put into the replacement flat at Kim Tian Road”. At best, it had been given to Teck Leng to invest on the parents’ behalf, without any reference to any potential purchases of HDB flats.

170 Aside from the pocketbook, there is no documentary evidence to support the parents’ assertion of how much of their “life savings” they gave to Teck Leng; nor is there any documentary evidence to show what Teck Leng did with the money. Teck Leng said that he had invested in shares and lost money as a result, but he did not state how much he had invested or lost.

171 On the evidence, it does appear that Teck Leng received at least the amount of the CCK Flat proceeds, *ie*, \$217,654.72. Honghong understood that

⁸⁹ Lim Kieuh Huat and Leong Ah Chue’s joint affidavit dated 29 August 2019, p 7, at para 26.

⁹⁰ Lim Kieuh Huat and Leong Ah Chue’s joint affidavit in reply dated 1 April 2020, Tab 3, p 46.

⁹¹ Lim Kieuh Huat and Leong Ah Chue’s joint affidavit in reply dated 1 April 2020, Tab 3, p 46.

he had taken some \$300,000 from his parents following the sale of the CCK Flat; his parents said that they gave him \$332,626.08 (\$217,654.72 in CCK Flat proceeds + \$114,971.36 in their “life savings”). But the crucial question remains: was there an understanding that the parents would be regarded as the owners of the Silat Flat and then the Kim Tian Flat?

172 One of the reasons the parents gave for the Silat Flat and then the Kim Tian Flat being purchased in Teck Leng’s name was the \$40,000 resale levy which the parents would otherwise have had to pay. Registering Teck Leng as the legal owner while the parents were the beneficial owners would allow the parents to evade payment of the levy. If, however, Teck Leng were both the legal and beneficial owner of the flats, there would be no evasion of payment: as a first-time buyer, Teck Leng was not subject to the levy. Could the parents have actually intended that Teck Leng would be the legal *and* beneficial owner of the flats? If so, the money that they gave him would be in the nature of a gift or loan, rather than money entrusted to him to buy the flats for them.

173 Similarly, when Teck Leng took a loan from the HDB, which he was entitled to but his parents were not, was the HDB being misled as to who the real owner was? Or was Teck Leng really the owner?

174 As I mentioned at [124] above, it appears that the parents were minded for Teck Leng to invest their money and take an HDB loan (which would be serviced from his CPF account), rather than to tie up their money in the flats. The money was not given to him for the “sole purpose of purchasing the Silat Flat or any other property for us (i.e. us, [Teck Leng], and our children) to stay in”, as the parents claimed in their second joint affidavit in relation to the CCK

Flat proceeds.⁹² Teck Leng could well have decided not to use any of his parents' money for the Silat Flat purchase, but instead to use his CPF money and an HDB housing loan (as he did with the Kim Tian Flat, in addition to the SERS contra). If so, the parents would not have contributed at all towards the Silat Flat, and that would undermine any understanding that they be regarded as its owners.

175 I now turn to the matter of Teck Leng's unsigned "will".

Teck Leng's unsigned "will" does not support the alleged understanding

176 The parents relied on an unsigned "will" dated 19 October 2010 which they claimed Teck Leng had made just after his marriage to Honghong, while Teck Leng, his parents and his siblings were living at the Silat Flat. A copy of the unsigned "will" was produced in evidence,⁹³ together with a letter dated 13 January 2011 from the Public Trustee to Teck Leng stating that there had been a deposit with the Wills Registry.⁹⁴ The unsigned "will" stated that upon Teck Leng's death, the Silat Flat would go to Mr Lim and Mrs Lim in a 45:55 ratio. The unsigned "will" went on to state that certain commemorative coins sets would be left to Honghong, and that the rest of Teck Leng's property would be distributed as such: 20% to Honghong; 28% to Mrs Lim; 22% to Mr Lim; 18% to Teck Leng's brother; and 12% to Teck Leng's sister.

⁹² Lim Kieuh Huat and Leong Ah Chue's joint affidavit in reply dated 1 April 2020, p 10, at para 13.

⁹³ Lim Kieuh Huat and Leong Ah Chue's joint affidavit dated 29 August 2019, Tab 4, p 26.

⁹⁴ Lim Kieuh Huat and Leong Ah Chue's joint affidavit dated 29 August 2019, Tab 5, p 28.

177 The parents’ argument appeared to be: since Teck Leng had intended for the Silat Flat to go to them both upon his death, the common intention was thereby for them to also own it fully while he was alive.⁹⁵ I found that the unsigned “will” did not support the parents’ contention; instead, it pointed to the contrary.

178 If the will that Teck Leng had deposited with the Wills Registry is in the same terms as the unsigned “will” that the parents relied on, the will would only take effect upon his death. A will is not an immediate gift of property, whether by trust or otherwise. Nor is a will a recognition that all of the beneficiaries are already the owners of the property that they are to receive upon the testator’s death. By including the Silat Flat in a will, Teck Leng was acting as its owner. If he had regarded himself as merely a nominee, the Silat Flat was not his to give away. Instead, it was for his parents to assert their alleged 100% beneficial ownership if he should pass away, or indeed, at any time – like they did in these proceedings.

179 The fact that the unsigned “will” has a 45:55 split of the Silat Flat as between Mr Lim and Mrs Lim is also curious. It goes against the parents’ Originating Summons, first joint affidavit, and submissions: all of which were to the effect that they should be regarded as *jointly* holding their interest in the Kim Tian Flat. The Originating Summons simply asked for “[a] declaration that the 1st and 2nd [p]laintiffs are the beneficial owners of the [Kim Tian Flat]”, and no particular proportions of their respective interests were advanced in their first joint affidavit. In their second joint affidavit, however, they referred to the

⁹⁵ Lim Kieuh Huat and Leong Ah Chue’s joint affidavit dated 29 August 2019, pp 9–10, at para 35; Lim Kieuh Huat and Leong Ah Chue’s joint affidavit in reply dated 1 April 2020, p 12, at para 21.

unsigned “will” and contended that the beneficial interest in the Kim Tian Flat was held under a common intention constructive trust in the proportion as stated in the unsigned “will”, *ie*, 45% to Mr Lim and 55% to Mrs Lim.⁹⁶ No explanation was offered as to why the alleged common intention was for a holding in those particular proportions, and no evidence was provided that they had contributed in those proportions. The contention in their second joint affidavit for this specific common intention was then abandoned, and indeed contradicted, in their written submissions, which stated: “It is also important to note that the [parents’] case is also predicated on their beneficial interests in the [Kim Tian Flat] to be found jointly, as they were joint tenants in the CCK Flat and there was no formal severance of their interests.”⁹⁷

Teck Leng’s correspondence with the HDB does not support the alleged understanding

180 Teck Leng’s correspondence with the HDB does not support any finding of a trust in favour of the parents.

181 The evidence shows that there were tensions between Honghong and the parents, and Teck Leng had been exploring options for him and Honghong to live separately from the parents.

182 The consistent thread through the correspondence is that Teck Leng always described the Silat Flat and the Kim Tian Flat as *his*; he never said that they were beneficially owned by his parents, with him as a mere nominee

⁹⁶ Lim Kieuh Huat and Leong Ah Chue’s joint affidavit in reply dated 1 April 2020, p 14, at para 25.

⁹⁷ Plaintiffs’ Written Submissions dated 18 June 2020, p 7, at para 5(d).

holding the flats on trust for them; and he never said that his parents had paid for the flats.

183 The first option Teck Leng explored was to remove the parents as occupiers of the Silat Flat and the Kim Tian Flat, which runs counter to the parents being the beneficial owners of those flats.

184 On 25 July 2011, Teck Leng appealed to the Minister of National Development to withdraw the parents' names as occupiers of the Silat Flat, and to allow the parents to purchase a flat on their own.⁹⁸ Of note, however, is that if the parents were the beneficial owners of the Silat Flat, they could not have owned another HDB flat as well: see *Cheong* ([48] *supra*) at [22]–[23].

185 On 10 August 2011, the HDB replied to say that the parents could not be removed as occupiers. They had been included as essential occupiers to form a family nucleus with Teck Leng to enable his purchase of the Silat Flat, and their names could not be withdrawn from the Silat Flat or the prospective Kim Tian Flat until the expiry of the Minimum Occupation Period.⁹⁹

186 Teck Leng emailed the Ministry of National Development on 16 August 2011 to explain that he had appealed to allow his parents to purchase a flat on their own because of Honghong's great difficulties in getting along with them.¹⁰⁰

⁹⁸ Zhang Honghong's affidavit dated 8 June 2020, pp 9–10.

⁹⁹ Zhang Honghong's affidavit dated 8 June 2020, p 9.

¹⁰⁰ Zhang Honghong's affidavit dated 8 June 2020, p 10.

187 Teck Leng made another appeal on 20 February 2012 to the Minister, asking to delete his parents' names, this time from the Kim Tian Flat.¹⁰¹ The HDB replied on 29 February 2012, stating that his parents' names could not be deleted from the Kim Tian Flat as they were essential occupiers thereof under the SERS.¹⁰² In its reply, the HDB also stated: "During our interview with you on 5 November 2011, we have also explained to you that if your parents were to take over the existing flat, they will have to pay a resale levy of \$40,000 for the sale of their previous subsidized flat as well as fully discharge the current mortgage loan and refund the CPF monies you have utilised for the purchase of the flat."

188 Teck Leng responded to the HDB on the same day to say: "Can you comes [*sic*] up with a detailed calculation ... [in order] for me to have an idea how much I need to borrow or beg to resolve it. Thanks."¹⁰³ On 2 March 2012, Teck Leng wrote further to say: "Base [*sic*] on my calculation, my parents need to top up around \$315k. Please provide a calculation at your end as I need to raise a sufficient amount to pursue option 3 of transferring the flat to my parents."¹⁰⁴ However, Teck Leng did not follow through with this. It would appear that, even if his parents had given him enough money to purchase the Silat Flat and then the Kim Tian Flat, by early 2012 he did not have enough money left to pay the HDB what was required to transfer registered ownership of the Kim Tian Flat to his parents.

¹⁰¹ Zhang Honghong's affidavit dated 8 June 2020, pp 13–14.

¹⁰² Zhang Honghong's affidavit dated 8 June 2020, pp 13–14.

¹⁰³ Lim Teck Leng's affidavit dated 29 June 2020, p 4.

¹⁰⁴ Lim Teck Leng's affidavit dated 29 June 2020, p 4.

189 On 25 May 2012, Teck Leng emailed the HDB to say, “I have to transfer my replacement flat to my parents. Can I do it? Please assist. Thanks.”¹⁰⁵ His Member of Parliament (“MP”) also made representations on his behalf to the HDB by a letter dated 30 July 2012.¹⁰⁶

190 In his affidavit filed in the FJC on 8 April 2019 to oppose the sale of the Kim Tian Flat, Teck Leng alleged for the first time that “[t]he Kim Tian Flat though registered in my name belongs to my parents and I hold this flat on trust for them”.¹⁰⁷ He cited the MP’s letter of 30 July 2012 and claimed that “[i]n the letter, specific reference was made to the manner of holding of the Kim Tian Flat, and that I was holding it on trust for my parents”.¹⁰⁸

191 The MP’s letter however said nothing of the sort. Instead, it read: “He [ie, Teck Leng] is the sole owner of the flat and his parents are the occupier.” The letter also referenced Teck Leng’s and Honghong’s disputes with Teck Leng’s family, and noted that the situation had worsened now that they were staying together in “*his* new flat” [emphasis added]; as such, Teck Leng was seeking to transfer the flat to his parents to allow his parents to stay with his siblings in “*his* flat” [emphasis added].¹⁰⁹

192 The letter continues: “As his parents are elderly, he hopes to be able to continue serving the current loan after the transfer as they will not be able to

¹⁰⁵ Lim Kieuh Huat and Leong Ah Chue’s joint affidavit dated 29 August 2019, Tab 8, p 36.

¹⁰⁶ Zhang Honghong’s affidavit dated 17 February 2020, Tab F, p 272.

¹⁰⁷ Zhang Honghong’s affidavit dated 17 February 2020, Tab F, p 177, at para 29.

¹⁰⁸ Zhang Honghong’s affidavit dated 17 February 2020, Tab F, p 186, at para 93.

¹⁰⁹ Zhang Honghong’s affidavit dated 17 February 2020, Tab F, p 272.

afford to pay for the whole flat.”¹¹⁰ That letter does not say that Teck Leng’s parents were the beneficial owners of the Kim Tian Flat, nor that they had provided him with enough money to pay for it. It says the opposite: that Teck Leng was the sole owner; that his parents were the occupiers; that the Kim Tian Flat was *his* flat; and that his parents would not be able to afford to pay for the flat if it were transferred to them.

193 In the HDB’s reply dated 16 August 2012¹¹¹, the HDB indicated that it had had a discussion with Teck Leng on 25 June 2012 on the various options available to him. Following that discussion, Teck Leng had conveyed to the HDB his wish to transfer the ownership of the Kim Tian Flat to his parents outright so that he and Honghong could move out and buy another flat directly. The HDB informed him that approval for such a course of action would have to be obtained from its management. In its reply, the HDB also stated: “... as your parents are not working, they are not eligible to obtain a housing loan from HDB to take over the ownership of the flat. We have clarified that your parents would need to raise the required funds to discharge the outstanding loan for the flat, effect refund to your CPF account for the amount utilized by you for the purchase of the flat and the \$40,000 resale levy which your parents are liable to settle. Additionally, there will be legal and stamp fees payable to effect the change in the flat ownership.”

194 The HDB’s letter of 16 August 2012 confirms that the parents could not have purchased the Kim Tian Flat in their own names (a) without paying a

¹¹⁰ Zhang Honghong’s affidavit dated 17 February 2020, Tab F, p 273.

¹¹¹ Lim Kieuh Huat and Leong Ah Chue’s joint affidavit dated 29 August 2019, Tab 9, p 38.

\$40,000 resale levy, and (b) with an HDB housing loan (which they were then not eligible for).

195 After the HDB’s letter of 16 August 2012, Teck Leng did not follow up to get the transfer approved by the HDB’s management or effected in the manner described by the HDB.

196 Throughout all of this correspondence, Teck Leng never told the HDB, the Minister/Ministry of National Development, or his MP that he was merely a nominee and that his parents were the beneficial owners of the Kim Tian Flat: instead, he called it “*my replacement flat*”¹¹² [emphasis added]. Teck Leng and his parents would now have the court believe that through it all, Teck Leng lied to everyone and that his parents were complicit in their joint endeavour: to evade payment of the resale levy, and to facilitate Teck Leng’s obtaining an HDB housing loan that the parents themselves were not eligible for.

197 In any event, Teck Leng’s radio silence as to his parents’ purported beneficial ownership of the Kim Tian Flat, in his correspondence with the HDB, speaks for itself. It could mean one of two things: either that there was never a nominee arrangement and so Teck Leng was both the legal and beneficial owner of the Kim Tian Flat; or that Teck Leng was well aware that such a nominee arrangement offended the HDA and thus his reluctance to inform the HDB of the same. Either of these scenarios leads to the inevitable conclusion that the parents’ claim must fail.

¹¹² Lim Kieuh Huat and Leong Ah Chue’s joint affidavit dated 29 August 2019, Tab 8, p 36.

198 On her part, Honghong wrote to the Minister on 21 February 2012 to ask if the couple's names could be separated from the parents' names, and if the parents could buy or rent another apartment.¹¹³ As I mentioned earlier, neither Teck Leng nor his parents told Honghong that the Kim Tian Flat actually belonged to the parents.

Conclusion on the alleged understanding

199 I find that there was no understanding that the parents were the beneficial owners of the Kim Tian Flat.

200 First and foremost, the foundation of that understanding – that Teck Leng was to fully pay for the Silat Flat and then the Kim Tian Flat using his parents' money – is contradicted by the parents' own position that he could take an HDB housing loan to pay for the flats and invest their money instead. Indeed, one of the two reasons advanced for those flats being in Teck Leng's name was so that he could take such a loan.

201 My conclusion is reinforced by: the position which Teck Leng took in the FJC proceedings up to the making of the Ancillary Order; how he regarded the Silat Flat as his to deal with in his unsigned "will" (as well as his apparent allocation of unequal proportions of the Silat Flat to the parents therein); what he told the HDB, the Minister/Ministry of National Development, and his MP; and Honghong's being unaware of any such understanding. Moreover, on the parents' own case, they had started giving Teck Leng money in 2006, before there was any discussion about any potential purchases of further HDB flats.

¹¹³ Zhang Honghong's affidavit dated 8 June 2020, p 11.

202 Teck Leng’s position only changed after the Ancillary Order had been made, when Honghong applied for an order that the Kim Tian Flat be sold. The sea change came with his affidavit in the FJC proceedings dated 8 April 2019. There, he claimed that he did not make any financial contributions whatsoever to the purchase of the Kim Tian Flat,¹¹⁴ when he had taken the completely opposite position up to the making of the Ancillary Order; indeed, he had claimed and *been given credit* for the amount withdrawn from his CPF account and used for the Kim Tian Flat, together with accrued interest.

203 I find that the money which the parents gave to Teck Leng was in the nature of a loan; it was not money they had “entrusted” him with. Thus, when he purchased the Silat Flat and then the Kim Tian Flat in his own name, he was the legal *and beneficial* owner of those flats. The HDB was not misled as to who the real owner was. When the HDB extended a loan to Teck Leng for the Kim Tian Flat, again, the HDB was not misled as to who the real owner was.

204 In the FJC proceedings, when Honghong described the Kim Tian Flat a matrimonial asset and sought its division, Teck Leng went along with that – he agreed that the flat *was* a matrimonial asset susceptible to division, and he claimed credit for his contributions to the flat (including any money he had received from his parents and used to pay towards the flat). It is incredible that Teck Leng would have remained silent about his parents being the beneficial owners of the Kim Tian Flat, and about their contributions to the purchase of the flat, if there had really been the alleged understanding. This is particularly so given that Teck Leng appeared to have been alive to the possibility of Honghong seeking a sale of the Kim Tian Flat – in his own words, she “[sought]

¹¹⁴ Zhang Honghong’s affidavit dated 17 February 2020, Tab F, p 186, at para 94.

to deprive [his] elderly parents of their home”.¹¹⁵ However, not only was he silent about the alleged understanding, he even took the opposite position – portraying the Kim Tian Flat as *his*, and the contributions to the flat also as *his*.

205 The parents may well have recourse against Teck Leng for the money which they gave him, but they do not have an interest in the Kim Tian Flat.

Should any equitable accounting be ordered in favour of the parents?

206 In the Originating Summons, the parents sought a declaration that they were the beneficial owners of the Kim Tian Flat, and alternatively, a determination of the beneficial and legal interests of all parties in the Kim Tian Flat. In their written and oral submissions, counsel for the parents also relied on an alternative argument that the parents should be entitled to equitable accounting of their financial contributions to the Kim Tian Flat.¹¹⁶

207 As the money the parents gave Teck Leng did not translate into an interest in the Kim Tian Flat, any “accounting” between them was outside the scope of the Originating Summons. Moreover, it would not be within the principles of equitable accounting discussed by the Court of Appeal in *Su Emmanuel* ([121] *supra*) at [95]–[105]. Equitable accounting is a process where the court endeavours to do “broad justice or equity as between co-owners” (*Su Emmanuel* at [95]), but the parents were not co-owners with Teck Leng. I have found that the understanding between them was that of a loan by the parents to Teck Leng, which Teck Leng could use to invest in shares, or to buy HDB flats

¹¹⁵ Zhang Honghong’s affidavit dated 17 February 2020, Tab F, p 186, at para 95.

¹¹⁶ Plaintiffs’ Written Submissions dated 18 June 2020, pp 38–39, at para 46.

that he would be the owner of, or indeed to spend on the family. If the parents have recourse against Teck Leng, it is for repayment of that loan, not by way of equitable accounting. If they wish to proceed against Teck Leng in that regard, they should do so in other proceedings.

Observations on the interplay between FJC proceedings and proceedings with third parties to determine ownership of assets

208 This case vividly illustrates what can happen if supposed third party interests are not raised by the parties in prior FJC proceedings.

209 In *UDA* ([153] *supra*) at [51], the Court of Appeal outlined four possible situations in which property may come before a court that is hearing an ancillary matters proceeding, namely:

- (a) the property is accepted as a matrimonial asset, having been acquired jointly by the spouses or solely by one of them, and the only question is how it should be divided;
- (b) the property is in the name of one of the spouses and the issue is whether the circumstances of its acquisition render it a matrimonial asset;
- (c) the property is in the name of one of the spouses who claims to be holding it in trust for a third party, whilst the other spouse disputes this and contends that the property belongs beneficially to the legal owner and is therefore a matrimonial asset; and
- (d) the property is in the name of a third party but one or both spouses claims that it is a matrimonial asset because the third party is holding the whole or part of the property on trust for one or both spouses.

210 The present case initially fell within situation (a), with Teck Leng accepting in his affidavit of assets and means that the Kim Tian Flat was a

matrimonial asset.¹¹⁷ He did not say that his parents owned the Kim Tian Flat beneficially, in which case it would not be a matrimonial asset – that would have brought the case within situation (c) (see *UDA* ([153] *supra*) at [31]). Teck Leng belatedly contended in the FJC proceedings that the Kim Tian Flat was not a matrimonial asset on the basis that Honghong had neither stayed in the flat for most of the duration of their marriage nor improved the flat substantially during the marriage,¹¹⁸ moving the case into situation (b). But whether it was situation (a) or (b), Teck Leng’s position in the FJC proceedings until the Ancillary Order was made, was that the Kim Tian Flat belonged to *him*.

211 This being either a situation (a) or (b) case, when the FJC made the Ancillary Order, there was no issue as to its jurisdiction to do so. As the Court of Appeal stated in *UDA* ([153] *supra*) at [52]: “Situations (a) and (b) above result in a dispute that is, and can only be, between the spouses. Thus, they sit comfortably within the four corners of s 112 of the [Women’s] Charter. The family justice court thus has complete jurisdiction to hear the dispute and, having made its decision, exercise its powers to divide the property (assuming it has held the same to be a matrimonial asset) and to provide for its disposal in accordance with s 112. In situations (a) and (b), no third party is involved.”

212 When Honghong applied to vary the Ancillary Order to require the sale of the Kim Tian Flat, and Teck Leng changed his position to then say that the Kim Tian Flat was in fact beneficially owned by his parents, he ought to have initiated proceedings (with his parents included) to determine the ownership of the Kim Tian Flat; or he should have informed his parents, so they could initiate

¹¹⁷ Zhang Honghong’s affidavit dated 17 February 2020, Tab F, p 61, at para 17.

¹¹⁸ Zhang Honghong’s affidavit dated 17 February 2020, Tab F, p 129, at para 40.

such proceedings. But he did not initiate such proceedings, and his parents claimed that he did not inform them until June 2019,¹¹⁹ by which time the Sale Order had already been made. This was the situation described by the Court of Appeal in *UDA* ([153] *supra*) at [58]:

The other situation is where the property is in the name of one of the spouses and the third party is a “shadowy” figure in the wings whom that spouse claims has an interest in the property but no order is sought by or against the third party directly. In such a case, because no order is sought by or against the third party, it is permissible for the court to make an order exercising its powers under s 112 because the only parties directly affected by the order will be the parting spouses. This, again, is an Option 1 course. The choice of Option 1 would have the same risks for the spouses as alluded to in [57] above. Thus, for instance, the spouse in whose name the property stands, having been ordered to share the value of the property with the other spouse, may later find he or she has to account to the third party for such value or to transfer the property outright to the third party. This is because the determination of the ownership of the disputed property in the s 112 proceedings will not bind the third party who may challenge it in separate proceedings. But that is the risk the spouse takes by not seeking an order that will bind the third party. Once such an order is sought, in our view, this would be the same situation as discussed in [56(b)] above and a separate set of proceedings would have to be issued.

213 Teck Leng chose simply to resist the making of the Sale Order, and failed. The District Judge, having already decided in the Ancillary Order that the Kim Tian Flat was a matrimonial asset (given that Teck Leng’s position then was that the flat belonged to him), made the Sale Order on the same basis.

214 When the parents’ action came before me, having regard to the history in the FJC proceedings, I did not accept Teck Leng’s and the parents’ evidence about the alleged understanding amongst them. But even if I had accepted their

¹¹⁹ Lim Kieuh Huat and Leong Ah Chue’s joint affidavit dated 29 August 2019, p 3, at para 8.

version of events in these proceedings, it does not follow that Teck Leng would have grounds to challenge the Ancillary Order – *prima facie* that remains binding on him, even if it does not bind his parents.

215 I should add, though, that I had difficulty believing the parents’ account of what they knew, or did not know, about the FJC proceedings.

216 The parents claimed that although they knew that a divorce was underway, they were not aware nor were they informed that the Kim Tian Flat had been included in the pool of matrimonial assets.¹²⁰ I found this hard to believe given that the Kim Tian Flat was in Teck Leng’s sole name, and moreover, that the parents were staying there with him. Although they claimed that he was holding the Kim Tian Flat on trust for them, that was entirely undocumented, and they must have realised that there was a risk of the flat being regarded as a matrimonial asset. Instead, they claimed that they were only informed by Teck Leng in June 2019 that the Sale Order had been made,¹²¹ and that prompted them to commence these proceedings.

217 I also noted Honghong’s remarks in her 24 May 2017 affidavit filed in the FJC proceedings that the parents had accompanied Teck Leng to the ancillary matters hearing on 24 April 2017, although they were then not allowed to attend the hearing.¹²² This casts serious doubt on the parents’ claim to have

¹²⁰ Lim Kieuh Huat and Leong Ah Chue’s joint affidavit dated 29 August 2019, p 2, at para 6.

¹²¹ Lim Kieuh Huat and Leong Ah Chue’s joint affidavit dated 29 August 2019, p 3, at para 8.

¹²² Zhang Honghong’s affidavit dated 17 February 2020, Tab G, p 379, at para 2.

been in the dark as to the inclusion of the Kim Tian Flat in the pool of matrimonial assets.

218 The Court of Appeal stated in *UDA* ([153] *supra*) at [54]: “A third party claiming an interest in any property alleged to be a matrimonial asset is entitled to have his rights ruled on by the court and is, further, entitled to the benefit of a final ruling which he can assert against the rest of the world.” The Court of Appeal elaborated at [58]: “... the determination of the ownership of the disputed property in the s 112 proceedings will not bind the third party who may challenge it in separate proceedings”. However, if the third party *knows* that determination of the ownership of the disputed property is underway in the FJC proceedings, but willfully chooses to wait until after an adverse decision has been rendered by the FJC, before commencing proceedings seeking the opposite outcome, he may have to confront the “extended” doctrine of *res judicata*/defence of abuse of process – see *Goh Nellie v Goh Lian Teck and others* [2007] 1 SLR(R) 453 at [19]–[24] and *The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd (nTan Corporate Advisory Pte Ltd and others, other parties) and another appeal* [2015] 5 SLR 1104 at [98] and [104]. But I will not explore this further, given that my other findings are enough to dispose of this matter.

Conclusion

219 The system of family justice is not an adversarial one, but a problem-solving one. The court seeks to help the parties “let go” and “move on”. But the parties must play their part. When the fighting stops, healing can begin (see the Court of Appeal’s note on the importance of Therapeutic Justice in *VDZ v VEA* [2020] SGCA 75 at [75]–[79]).

220 This sad saga has already seen both Honghong and Teck Leng serving jail terms for offences of harassment against the District Judge; Teck Leng's repeated incarceration for non-compliance with the Ancillary Order; maintenance for the children remaining in arrears; and Teck Leng's parents becoming litigants in this failed attempt to claim Teck Leng's Kim Tian Flat for themselves (and to thus keep the flat from being sold pursuant to the Sale Order in order to satisfy the Ancillary Order). There are still pending applications in the FJC. My hope is that the parties will be able to resolve their remaining differences sooner rather than later, and finally move on with their lives.

221 I dismiss this action and will hear the parties on costs.

Andre Maniam
Judicial Commissioner

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