Tan Chui Lian v Neo Liew Eng
[2006] SGHC 203

Case Number	: OS 961/2006
Decision Date	: 15 November 2006
Tribunal/Court	: High Court
Coram	: Sundaresh Menon JC
Counsel Name(s)	: Edwin Loo (Leonard Loo & Co) for plaintiff; Chai Ming Kheong (Kweh Lee & Partners) for defendant
Parties	: Tan Chui Lian — Neo Liew Eng

Trusts – Constructive and resulting trusts – HDB flat bought and held in joint tenancy later severed and held by plaintiff and defendant as tenants-in-common – Plaintiff and defendant contributing to various expenses incurred in purchasing and renovating flat – Moneys expended on renovation at time of purchase of flat and much later – Plaintiff applying to have flat sold and for proceeds to be divided between parties according to ratio of parties' contributions – Whether resulting trust adjusting parties equities in flat arising – Scope of statutory bar under s 51 (6) Housing and Development Act against interest in HDB flat arising from constructive or resulting trust – Whether renovation expenses incurred long after purchase of flat should be factored into determining equities of parties in flat – Section 51(6) Housing and Development Act (Cap 129, 2004 Rev Ed)

15 November 2006

Sundaresh Menon JC:

1 These proceedings concern a number of issues of practical importance to many in this country. The proceedings were commenced by the plaintiff seeking an order that the Housing and Development Board ("HDB") flat, located at Block 18, Hougang Avenue 3 #11-159, Singapore ("the property") and owned by the two parties before me as tenants-in-common, be sold on the open market, with the net sale proceeds to be divided in the ratio of the contribution of the parties towards the purchase of the flat. At the conclusion of the arguments, I granted the plaintiff's application and I ordered that the proceeds from the sale of the property be apportioned with 53.4% going to the plaintiff and 46.6% to the defendant. In view of the wider relevance of these issues arising, I thought it appropriate to set out, at least briefly, my grounds for that decision.

The factual background

2 At the outset, I should say that although there was a considerable amount of material filed in these proceedings, much of it in the final analysis proved unnecessary and was also unhelpful. The undisputed facts are these. The property was purchased on or about 30 July 1979 by the plaintiff and his father (who is now deceased) as joint tenants. Sometime in 1997, the father unilaterally severed the joint tenancy and the property was then held by the parties as tenants-in-common in equal shares. In his last will and testament dated 10 December 1997, the father bequeathed his share in the property to the defendant who was the father's wife and is the plaintiff's stepmother. The defendant became the joint owner of the property upon the father's death on 18 December 2000.

3 A sum of $29,088.59 was paid for the acquisition of the flat. In addition, a sum of $10,395 was paid for renovations at the time the property was purchased. Further amounts of $5,300 and $3,553.45 were paid for some renovations and upgrading work, respectively, in 1997. This was some 18 years after the flat had been purchased. It was agreed that the latter sum (*ie*, $3,553.45) was

expended in respect of charges imposed by the HDB for the upgrading of the estate. There were also various other amounts expended for soft furnishings which I have regarded as irrelevant for the present purposes.

4 In respect of these various amounts, the following payments were not disputed as having been made by the father or by the defendant:

(a) the sum of $8,000 towards the purchase price of the property;

(b) the sum of $10,395 towards the renovations undertaken at the time the property was purchased;

(c) the sum of $5,300 towards the renovations undertaken in 1997; and

(d) the sum of $3,553.45 being the estate upgrading costs imposed by the HDB since 1997.

5 The plaintiff claimed that he had made the rest of the payments for the cost of acquiring the property. This amounted to $21,088.59. This was initially disputed by the defendant on various grounds including, in particular, the suggestion that the plaintiff's income would have made it impossible for him to afford the mortgage payments. In the light of the tax returns that were filed by the plaintiff, this suggestion seemed untenable. In the end, it was resolved by consent that I should treat the facts I have just recited as agreed.

6 I accordingly proceeded on that basis.

Ownership in the property

7 The starting point of the analysis is s 51(6) of the Housing and Development Act (Cap 129, 2004 Rev Ed) ("the Act") which was recently enacted in September 2005 and which provides that:

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

8 On the face of it, the provision has retroactive effect. At first blush, the section might appear to render it impossible for a party to acquire any interest in an HDB flat through a resulting or constructive trust. Section 51(4) read with s 51(5) of the Act already prohibits the creation of express trusts and in *Sitiawah Bee bte Kader v Rosiyah bte Abdullah* [2000] 1 SLR 612 ("*Sitiawah*"), it was clarified by Rajendran J that this applied to any trust that could in some way be said to have been "created" through a connivance between the parties even if the form of the transaction was such that it might have given rise to a resulting trust. Rajendran J noted as follows 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 (as was the situation in [*Cheong Yoke Kuen v Cheong Kwok Kiong* [1999] 2 SLR 476]) the resulting trust so created would be prohibited under s 51(4).

(See also *Sitiawah* at [13]–[19].)

9 Section 51(6) of the Act was enacted subsequent to *Sitiawah* and the Ministerial Statement that was read at the second reading of the Bill is helpful in clarifying the legislative intent. The statement reads as follows (see *Singapore Parliamentary Debates, Official Report* (15 August 2005) vol 80 at col 1252 (Mah Bow Tan, Minister for National Development)):

> 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 [*sic*] HDB flat under a resulting trust or a 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.* [emphasis added]

10 It becomes clear when one has regard to that 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.

12 Secondly, the provision was enacted with retrospective effect and in my judgment this also points towards the provision being construed in the way that I have suggested it should be. On that basis, it would mean that the enactment was going no further than the decision of the Court of Appeal in *Cheong Yoke Kuen v Cheong Kwok Kiong* [1999] 2 SLR 476 ("*Cheong Yoke Kuen*"). In that case, there was a dispute between siblings over the ownership of an HDB flat after their mother's death. The appellants claimed that their mother was the owner of the HDB flat and that it formed a part of her estate upon her death. As against this, the respondent asserted that since he had paid the purchase price and all outgoings even after their mother's death, he was the beneficial owner of the flat by operation of a resulting trust even though he had transferred his legal interest in the flat to his mother after buying another HDB flat with his family. The respondent further argued that resulting trusts over HDB properties were not prohibited by s 51(4) of the Act.

13 It was held by the Court of Appeal in *Cheong Yoke Kuen* that the resulting trust of the flat in the respondent's favour was prohibited by s 51(4) and was void under s 51(5) of the Act. The court found that as the respondent had intended to remain the beneficial owner of the flat when he transferred his legal interest in the flat to his mother, he had, in effect, "created" a trust of the flat in his favour. The resulting trust which the respondent contended had arose in his favour thus fell foul of the statutory restriction. Furthermore, the court also held that the resulting trust was contrary to the policy considerations inherent in s 47 of the Act in that upon acquiring a new HDB flat, the respondent was not eligible to hold any interest in the previous flat.

14 The effect of *Cheong Yoke Kuen* was therefore that a person could not acquire an interest in an HDB flat through a constructive or resulting trust if he was ineligible to do so under the provisions

of the Act and the HDB's eligibility criteria. I note that this was how the case was construed and applied by Judith Prakash J in *Neo Boh Tan v Ng Kim Whatt* [2000] SGHC 31 ("*Neo Boh Tan*") where she stated as follows at [17]–[18]:

> 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.
>
> 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. At the beginning, the situation was unclear as to how the beneficial interests were divided since the flat had to all intents and purposes not been paid for. As time went on, each of the parties could have acquired substantial beneficial interest in the flat by contribution towards its purchase price. As it happened, the defendant failed to make any contribution leaving it to the plaintiff to bear the entire cost. As a result, she gained an equitable interest in all, rather than a part, of the flat. This interest was, I considered, implied in her favour by law (to reflect the equities of the situation) rather than created by her. Although the respondent in *Cheong's* case had not in the literal sense of the word 'created' a trust by executing a trust document, he 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. In that way, he did, as the Court of Appeal held, in effect create a trust in the flat in his favour. 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.

15 In my judgment, s 51(6) of the Act codifies the position as declared in *Cheong Yoke Kuen* and does not amend the previously existing substantive law in this regard. This is a significant point because if it were construed otherwise, it would mean that Parliament was retrospectively displacing accrued property rights and there was nothing at all in the Ministerial Statement to suggest that this was intended in the enactment.

16 Such a purposive interpretation of s 51(6) of the Act accords with s 9A(1) of the Interpretation Act (Cap 1, 2002 Rev Ed) which states that:

> In the interpretation of a provision of a written law, an interpretation that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to an interpretation that would not promote that purpose or object.

In addition, ss 9A(2) and 9A(3) of the Interpretation Act also expressly permits the court to take into consideration materials such as parliamentary debates in construing a legislative provision so as to ensure that where appropriate, regard is had to the purpose underlying the written law. Accordingly, I am satisfied that it is appropriate to construe s 51(6) in the manner I have set out.

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 Act had no application to the case before me.

18 I then turned to consider the entitlement of the parties on the basis of the principles as set out in *Sitiawah* ([8] *supra*) where the position in equity of joint tenants who had contributed

unequally towards the purchase price was succinctly summarised by Rajendran J at [11] as follows:

> [W]here two or more co-owners at law contribute different amounts to the purchase price of a property, equity recognises a presumed intention that the parties intended to hold the property in proportion to their relative contributions, and raises a resulting trust which adjusts the equities accordingly.

19 There is no immediate reason to depart from those principles in this case. Mr Joseph Chai, counsel for the defendant, suggested that the fact that the property in the present case had originally been held on a joint tenancy albeit one that was later severed into a tenancy-in-common excluded the application of a purchase money resulting trust. On the other hand, Mr Edwin Loo, who appeared for the plaintiff, submitted this was precisely what had happened in *Sitiawah* where a joint tenancy had been severed and yet Rajendran J applied the analysis of a purchase money resulting trust to determine the equities. Mr Chai accepted that this was the effect of *Sitiawah* and in my judgment, there is no basis for concluding that the approach taken by Rajendran J in *Sitiawah* is displaced in the present circumstances.

20 I further note that the point is in fact resolved in the judgment of Judith Prakash J in *Neo Boh Tan* ([14] *supra*) where she noted as follows at [11]:

> As joint tenants of the flat, the plaintiff and defendant have at law an identical interest in the whole of the flat. The position is, however, different in equity because of the way in which they paid for the flat. The governing principle is that where two or more persons buy a property together but pay for it in unequal shares, then even if they register themselves as joint owners of the property, the law will presume that the express joint tenancy has been severed in equity into an implied tenancy in common in unequal shares proportioned to the amount of the purchase price contributed by each co-owner.

21 In *Neo Boh Tan*, Prakash J held that the same principle applied to HDB flats just as it did to other properties.

Renovation costs

22 This gives rise to the next issue and that is the manner in which renovation costs are to be treated. In *Sitiawah* ([8] *supra*), Rajendran J was faced with a situation of renovation costs expended by one party at the time the property was acquired and further costs expended by the other party several years later. More specifically, the plaintiff had borne the initial renovation costs of about $5,000 in or around 1980 while the defendant had, in later years, also incurred considerable expenses in renovating the flat. Rajendran J chose to ignore both sets of contributions towards renovations in arriving at his assessment of the contributions made by the parties towards the acquisition of the flat. He noted as follows at [9]:

> [I]t would be wrong to weigh the relative values of renovation works carried out in the early eighties (when the capital costs of the flat was $27,100) with works carried out in the mid-nineties (by which time the cost of the flat had multiplied manifold) on a purely dollar basis. That would be to ignore the spectacular way property prices and renovation costs have risen over the years.

23 Further, on the facts of the case before him, Rajendran J was of the view that at least in one instance, the cost of renovations appeared to be moneys expended gratuitously after the purchase of the flat and thus could not be a factor in ascertaining the equitable interests of the parties in the flat

at the time of the purchase: see *Sitiawah* at [9].

24 In *Gurnam Kaur d/o Sardara Singh v Harbhajan Singh s/o Jagraj Singh* [2004] 4 SLR 420 ("*Gurnam Kaur*"), Tan Lee Meng J dealing with a private property held by the parties initially as joint tenants, did sever the tenancy. In dealing with the distribution of the proceeds, Tan J held that the contributions claimed to have been made by one party years after the purchase by way of renovation costs could not be regarded as a contribution towards the acquisition of the property. In my judgment, the approach taken by Tan J in *Gurnam Kaur* is entirely correct especially given the time lag between the expenditure in question being incurred and the acquisition of the flat and also given that on the facts before Tan J, the party who had paid the whole of the purchase price was seeking only 70% of the proceeds of sale. The party who claimed to have carried out the renovations therefore was in any event more than amply compensated by the 30% share that was given to him.

25 However, I do not accept that the approach taken by Rajendran J in *Sitiawah* in relation to the renovation costs incurred at the time of the acquisition of the property is applicable outside of its own factual context. In my judgment, it would be artificial to ignore the reality of the situation when dealing with a case where such costs are expended at about the same time that the property was acquired. This is all the more so in dealing with properties such as HDB flats where purchasers very often intend and expect to spend considerable sums of money on renovations or improvements or remodelling soon after a flat is purchased. In such cases, the reason that a large portion of the cash reserves that are available to the purchasers is applied towards the renovation costs rather than the purchase price of the flat is driven by the mechanics of obtaining financing rather than by reason of a conscious choice as to the effect this is to have on the apportionment of the beneficial interest in the property. Simply put, it is possible to get longer terms and cheaper financing for the acquisition of a property than it is for the cost of carrying out renovations.

26 In *Sitiawah*, Rajendran J was clearly influenced by the fact that substantial sums had been expended by each party at different points in time when the dollar values of the renovation costs in themselves, and also as a proportion of the overall capital costs were incomparably different: see *Sitiawah* at [9]. That does not, in my view, warrant the formulation of a general rule that renovation costs expended at the time the property was acquired may be ignored in assessing the contributions of each party towards the cost of the property. In the case before me, there was no dispute that the sum of $10,395 was expended by the father on the renovations undertaken at the very time the property was purchased and I am satisfied that this should be taken into account in assessing each party's contributions towards the purchase price of the property.

27 However, I also agree with Tan J in *Gurnam Kaur* ([24] *supra*) that where such costs are expended much later and are not referrable to the initial acquisition they should not be taken into account in assessing the property interests of the parties. Yet, it does not necessarily follow that such contributions are wholly irrelevant. In my view, in the appropriate circumstances, it may be possible to find that the circumstances in which money has been expended on renovations at a later point may give rise to an equity which may be realised by an appropriate equitable remedy. This was not suggested in the case before me. Nor do the facts appear to support it and I do no more than raise this as a possibility.

28 Aside from this, where a power of sale is being ordered, it may be appropriate in certain circumstances to order that the money expended by one party to improve the property to enhance its value be compensated by the other. The principle has been recognised in a line of cases in other jurisdictions, to which my attention was drawn.

29 In *Leigh v Dickeson* (1884) 15 QBD 60, the plaintiff and the defendant were tenants-in-

common of a property. The defendant claimed that he had expended moneys on the repairs of the property and sought a contribution from the plaintiff in respect of the moneys so expended in proportion to the respective shares in which the property was owned between them. It was held by the court that where a power of sale was being ordered, such a remedy could be obtained. Cotton LJ stated as follows at 67:

> [B]ut in a suit for a partition it is usual to have an inquiry as to those expenses of which nothing could be recovered so long as the parties enjoyed their property in common; *when it is desired to put an end to that state of things, it is then necessary to consider what has been expended in improvements or repairs: the property held in common has been increased in value by the improvements and repairs ; and whether the property is divided or sold by the decree of the Court, one party cannot take the increase in value, without making an allowance for what has been expended in order to obtain that increased value; in fact, the execution of the repairs and improvements is adopted and sanctioned by accepting the increased value.* There is, therefore, a mode by which money expended by one tenant in common for repairs can be recovered, but the procedure is confined to suits for partition. [emphasis added]

3 0 *Leigh v Dickeson* was applied by the High Court of Australia in *Brickwood v Young* (1905) 2 CLR 387.

31 It was also followed in *In Re Pavlou* [1993] 1 WLR 1046 where it was held that on an order for sale, the proportions in which the property was to be divided between the former co-owners had to be assessed with due regard to any increase in its value which had been brought about by expenditure incurred by one of them. The guiding principle was that neither party should be allowed to take the benefit of an increase in the value of the property without making an allowance for what had been expended by the other in order to achieve that increase. In that case, the wife had paid for repairs and improvements to the matrimonial home after she and her husband had separated and the husband had left the wife in sole occupation of the property. The following passage in the judgment of Millett J (as he then was) at 1048 is instructive:

> In my judgment there is no distinction for this purpose between a beneficial tenancy in common and a beneficial joint tenancy. In neither case could a co-owner formerly obtain contribution from his or her co-owner; any reimbursement had to await a suit for partition or an order by the court for sale of the property. On a partition suit or an order for sale adjustments could be made between the co-owners, the guiding principle being that neither party could take the benefit of an increase in the value of the property without making an allowance for what had been expended by the other in order to obtain it: see *Leigh v. Dickeson* (1884) 15 Q.B.D. 60. That was a case of tenants in common, but in my judgment the same principle must apply as between joint tenants; the question only arose on a partition or on the division of the proceeds of sale, the very point of time at which severance occurred if there was a joint tenancy. The guiding principle for the Court of Equity is that the proportions in which the entirety should be divided between former co-owners must have regard to any increase in its value which has been brought about by means of expenditure by one of them.

32 The principle underlying these cases is founded on the notion that the other party implicitly accepts the benefit of the renovation that is later realised in the sale. The principle rests on equity and the court has a discretion as to how it may be given effect. Thus in *In Re Pavlou*, Millett J noted at 1049 as follows:

> I must make it clear of course that, in deciding as I do that the wife is entitled … to credit for one half of any repairs or improvements, there has to be an inquiry as to the amount expended

> and the increase, if any, in the value of the property thereby realised. Much expenditure on property is not reflected in any increase in value, and most expenditure on property results in a much smaller increase in value than the amount expended. The wife will be entitled, … to credit only for one half of the lesser of the actual expenditure and any increase in the value realised thereby.

33 In my view, the extent to which this principle is applied will depend on all the facts and circumstances of each case including (a) when these works were done; (b) whether these were in the nature of works done to enhance the capital value or merely to attend to necessary repairs; (c) whether in fact there has been an enhancement in the resale value of the property as a result of the expenditure; and (d) whether these have already been enjoyed by a party in occupation so as to warrant no further remedy or to limit it.

34 In the present circumstances, I am satisfied that the contributions made by the defendant towards the HDB upgrading program should be compensated because these clearly went towards enhancing the value of the flat and this enhancement accrued to the benefit of the plaintiff. However, there was no basis for me to form the view that the other amounts expended on renovation works in 1997 either went to enhance the value of the flat or were deserving of compensation in any case. There was also no material before me to form a view on the extent of the enhancement in value. I therefore only considered the actual contribution made.

Conclusion

35 Applying the approach laid down in *Sitiwah* ([8] *supra*) towards determining the entitlement of the parties (see at [18] above), but also taking into account the renovation costs expended by the father at the time of the purchase of the property, I held that the plaintiff was entitled to a 53.4% share in the property whilst the defendant was entitled to the remaining 46.6%. In addition, I directed the plaintiff to pay the defendant 53.4% of the amount paid by the defendant towards the HDB upgrading exercise, such payment coming from the plaintiff's share of the proceeds of sale of the property.

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