

Kua Tee Beng v Ye Caiyan
[2015] SGHC 53

Case Number : Suit No 100 of 2014
Decision Date : 26 February 2015
Tribunal/Court : High Court
Coram : George Wei JC
Counsel Name(s) : Subbiah Pillai (M/s Tan & Pillai) for the plaintiff; Ramalingam Kasi (instructed) (M/s Raj Kumar & Rama) / Chong Thian Choy Gregory (M/s Loo & Chong Law Corporation) for the defendant
Parties : Kua Tee Beng — Ye Caiyan

Trusts – Presumed resulting trusts

26 February 2015

Judgment reserved.

George Wei JC:

1 These proceedings arise in connection with several purported or disputed gifts made by the Plaintiff to the Defendant from May 2011 to March 2013. The Plaintiff commenced these proceedings to recover the gifts in cash and in kind that he gave to the Defendant.

Brief factual background

2 The Plaintiff is a 67-year old Singaporean man who works in the motor-workshop industry. He is currently married to a Singapore Permanent Resident, who is a Chinese national from Shanghai. He has three children from his previous marriage (now aged 44, 40 and 38) but none from his present marriage.

3 The Defendant is a Chinese national who became a Singapore citizen after her marriage to her present husband, who is also a Singapore citizen. While the Defendant is still legally married, she has been legally separated from her husband since 2003. She is currently living apart from her husband at the matrimonial home with her three school-going children. The Defendant is a trained hair-stylist, and was the sole proprietor of various hairdressing salons between 2003 and 2010. By early 2011, she sold her salons and stopped working. However, she has since resumed work.

4 The parties met in August 2010 through a fortuitous confluence of events. The Defendant's nephew, a Chinese national, came to Singapore to seek work. He found a job at the Plaintiff's motor workshop, "Ellipse Auto Transmission". Given that he was rather young then (18-years old), and it was his first time in Singapore, the Defendant accompanied him to the workshop on his first day of work. That was where the parties met for the first time. They chatted, *inter alia*, about their common home province, Anxi County in Fujian Province, China. With a view to advertising her salon and gaining customers, the Defendant distributed her name card to all the staff at the workshop, including the Plaintiff.

5 Thereafter, the Plaintiff and Defendant continued to meet each other at the Defendant's salon and in various social settings. While the parties disagree on who was more pro-active in pursuing the other, it is undisputed that their interactions culminated in an intimate, sexual relationship from March

2011.

6 From March 2011, the Plaintiff started giving money and expensive items to the Defendant. The parties disagree on whether these were gifts or if they were voluntarily made as well as the terms (if any) on which the gifts were given. However, the following facts are undisputed:

- (a) the Plaintiff contributed \$295,000 to a property currently registered in the Defendant's sole name over a series of payments made to the Defendant between October and November 2011 ("the Hong San Walk Property");
- (b) the Defendant had been receiving a monthly maintenance from the Plaintiff from June 2011 to May 2013 (although the exact sum received each month is disputed);
- (c) the Plaintiff gave the Defendant a second-hand Rolex watch worth \$15,000; and
- (d) the Plaintiff gave the Defendant \$40,000 via cheque during their relationship.

I shall refer to these items collectively as "the Gifts".

7 The Plaintiff claims that he gave the Defendant three Rolex watches worth \$50,000, rather than only one. He also claims, in addition to the above, that he gave her jewellery valued at \$30,000. However, the Defendant denies ever having received these items. I refer to these collectively as "the Disputed Gifts".

8 In any case, the relationship between the Plaintiff and the Defendant ended on or about May or June 2013. Both sides give wildly conflicting accounts of why the relationship ended, but it is unnecessary for me discuss these accounts at this juncture.

The Plaintiff's claims in this action

9 The Plaintiff's claims have evolved over the course of these proceedings.

10 The claims set out below represent the Plaintiff's current and post-trial position as set out in his closing submissions. In summary, the Plaintiff sought the following orders:

- (a) That the Defendant transfers her legal title in the Hong San Walk Property to the Plaintiff, or in the alternative, that the Defendant returns to the Plaintiff his financial contribution of \$295,000 with interest, or in the alternative, that the Defendant be held liable to pay the Plaintiff damages for misrepresentation in relation to the purchase of the property;
- (b) That the Defendant returns the monthly maintenance monies the Plaintiff gave her from June 2011 to May 2013, totalling \$85,000;
- (c) That the Defendant returns the three Rolex watches the Plaintiff gave her, which are worth \$50,000; and
- (d) That the Defendant returns the \$40,000 she received in cheque from the Plaintiff.

11 I note that in his pleadings, the Plaintiff also prayed for an order that the Defendant return all the jewellery which he gave her, valued at \$30,000. Given that this prayer was omitted in his closing submissions, it is unclear if the Plaintiff has dropped this claim. Nevertheless, to ensure that this matter is finally and completely disposed of, I shall be dealing with his claim for the return of jewellery

as well.

Overview of the parties' submissions

12 The Plaintiff's principal submissions can be summarised as follows:

(a) The Defendant exercised undue influence and/or acted unconscionably in inducing the Plaintiff to make the various gifts to her. The Plaintiff was also acting under duress from the Defendant when making the transfers. As such, the Defendant should be ordered to return the Gifts and the Disputed Gifts to the Plaintiff;

(b) The Defendant holds the Hong San Walk Property on trust for the Plaintiff by way of a resulting trust. Importantly, the Plaintiff claims that the Defendant expressly agreed to hold the property on trust for him;

(c) If the Court finds that the Hong San Walk Property is not held on trust for the Plaintiff, the Defendant is liable to compensate the Plaintiff for his losses as a result of her misrepresentation that she would hold the Hong San Walk Property on trust for him.

13 The Defendant denies that she ever exerted any form of pressure on the Plaintiff in relation to the Gifts made to her, or made any representations about holding the Hong San Walk Property on trust for the Plaintiff. Rather, she asserts that the monies and gifts from the Plaintiff were all "love gifts", made in the context of a loving and sexually intimate relationship. In this regard, she argues that since the Gifts were voluntarily given, they cannot now be revoked or recovered.

Issues before this Court

14 In view of the above, the following issues arise for my consideration:

(a) As a preliminary issue, were the Disputed Gifts given to the Defendant?

(b) Did the Plaintiff voluntarily give the Gifts and the Disputed Gifts (if they were given) to the Defendant, or can the transfers be vitiated on grounds of duress, undue influence, or unconscionability?

(c) Does the Defendant hold the Hong San Walk Property on trust for the Plaintiff?

(d) If issue (c) above is answered in the negative, is the Defendant liable to compensate the Plaintiff for losses he suffered pursuant to any misrepresentations she made to him in relation to the purchase of the Hong San Walk Property?

15 I shall now explain my findings on the above issues.

The witnesses

16 Initially, the Plaintiff intended to call three further witnesses in addition to his own evidence. These were his ex-wife and two children from his former marriage. However, at end of the Plaintiff's evidence, the Court was informed that the Plaintiff had decided not to call the three further witnesses even though their affidavits of evidence-in-chief had been prepared and even though the Plaintiff had been questioned in cross-examination on his evidence on certain matters relating to his ex-wife and the purchase of a private property for investment purposes. This is a point which I shall touch on further below. The result is that the only witness for the Plaintiff was himself.

17 Three witnesses testified for the defence: the Defendant; her nephew, Ye Afu; and Wong Poh Yong (the estate agent who handled the sale and purchase of the Hong San Walk Property).

Issue (a): Were the Disputed Gifts given to the Defendant?

18 The Plaintiff asserts that he gave the Defendant three Rolex watches valued at \$50,000, and jewellery worth \$30,000. The Defendant denies ever having received such, save for one second-hand Rolex watch valued at \$15,000.

19 Section 103 of the Evidence Act (Cap 97, 1997 Rev Ed) ("the EA") states "[w]hoever desires any court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist". The Plaintiff is asking this Court to give judgment as to his legal right to have the Disputed Gifts returned to him. Such a right cannot arise if the Disputed Gifts were not given to the Defendant in the first place. The Plaintiff thus has the burden of proving that the Disputed Gifts were given to the Defendant.

20 In my view, the Plaintiff has not proven that the Disputed Gifts were given to the Defendant. Besides his own bare assertion that the Disputed Gifts were in fact given, the Plaintiff has not offered *a single shred of evidence* to show that such gifts were given. When pressed for details as to when or where the Rolex watches were purchased, or for receipts of the purchases, the Plaintiff could not offer anything. Similarly, in relation to the jewellery, the Plaintiff did not give details of the type of jewellery, or the dates on which the jewellery was purchased or given. He also did not produce any other evidence such as receipts, to show that such jewellery was in existence.

21 By contrast, I observe that the Plaintiff has been able to adduce ample documentary evidence in relation to the Gifts including the monthly maintenance monies, and the payment made for the Hong San Walk Property. This makes it unlikely that the Plaintiff's failure to adduce evidence of the Disputed Gifts is a result of his lack of access to records of his prior transactions or bank accounts.

22 After considering the evidence as a whole and the testimony of the parties, I find as a matter of fact, that the Disputed Gifts were never given to the Defendant. Indeed, as noted above at [11], the Plaintiff did not address his pleaded claim for the jewellery valued at \$30,000 at all in his closing submissions.

23 I therefore proceed on the basis that any claims relating to the Disputed Gifts must fail (since such gifts were never given). I now consider the Plaintiff's other claims.

Issue (b): Can the Gifts be vitiated on the grounds of duress, undue influence, or unconscionability?

24 The Plaintiff submits that he was subject to pressure, duress and undue influence from the Defendant in relation to the Gifts. He further submits that the Defendant behaved unconscionably in inducing him to give her the Gifts.

25 At this juncture, I point out that the Plaintiff's claims in relation to the monthly maintenance monies, \$40,000 paid via cheque, and the single second-hand and Rolex watch worth \$15,000, must fail if I find that there was no duress, undue influence, or unconscionable conduct on the part of the Defendant. The Plaintiff has not offered any other arguments in support of his claims to recover the Gifts.

26 It follows from the discussion of s 103 of the EA at [19] above, that the Plaintiff bears the burden of proving that there was indeed duress, undue influence, or unconscionable conduct on the part of the Defendant.

27 In his statement of claim, affidavit of evidence-in-chief ("AEIC") and during cross-examination, the Plaintiff claimed that the Defendant pressured him to give her the Gifts. The statement of claim contains numerous statements that the Plaintiff was "induced" or "pressured" or "forced" or that he had been "influenced" or subjected to her "undue influence". No particulars were set out. In his AEIC, the Plaintiff repeated the same general points together with the assertion that the Defendant had threatened to reveal their relationship to his wife and family members. No other evidence was given as to the nature of the pressure or duress that the Plaintiff faced. No other evidence of unconscionable conduct was given either, aside from his allegations concerning representations which he claims the Defendant made in respect of the Hong San Walk Property.

28 The Defendant's position on this matter is that she never exerted any pressure on the Plaintiff in relation to the Gifts. The Gifts were voluntarily given to her by the Plaintiff. Further, she explained that given their loving and sexually intimate relationship, the Gifts were not out of the ordinary. Instead, they were easily explainable as "love gifts" from the Plaintiff to her.

29 Having considered the evidence, I am of the view that there is no factual basis for a finding of duress, undue influence, or unconscionability in relation to the Gifts. I set out my reasons below:

(a) First, the Plaintiff's evidence that the Defendant threatened to tell his current wife about their relationship does not sit comfortably with the Plaintiff's own behaviour over the course of the parties' two-year relationship. According to the Plaintiff, the first time the Defendant threatened him was at the very beginning of their relationship, in early 2011. However, if right from the start or shortly after the start, the Plaintiff truly feared that the Defendant may place his current marriage in jeopardy, the question arises as to why he continued for more than two years to develop a sexual relationship with her, pay her maintenance monies consistently every month, and provide holidays for the Defendant and her children at his expense.

(b) Second, it is highly implausible that the Defendant managed to strike such strong fear in the heart of the Plaintiff, that he involuntarily paid her maintenance monies for at least two whole years, and even contributed a large sum of money towards the purchase of the Hong San Walk Property in her name. Given that the Plaintiff is an independent and successful businessman, I find it hard to believe that he would so easily succumb to the pressure that he alleges.

(c) Third, in any case, there is no corroboration of the Plaintiff's bare assertion that he was in fact threatened by the Defendant. During cross-examination, the Plaintiff testified several times to the effect that the Defendant frequently went to his office (place of work) to complain and badger him by "creating a scene" for payments. [\[note: 1\]](#) No witness was called to corroborate this. Indeed, it is undisputed that on 18 January 2013, the Plaintiff made a will in which he left his entire estate to the Defendant and the three children from his previous marriage in equal shares ("the Will"). The Will was prepared by a lawyer and contained a signed statement (by the lawyer) that the contents had been read and explained to the Plaintiff. Under the Will, it is to be noted that his current wife *did not receive any share* of his estate. Whilst the Plaintiff claimed that the Will has since been revoked and replaced by a new will (of which there was no evidence) in which the Defendant received no share, the fact remains that, in early 2013, the Plaintiff made the Will giving 25% of his estate to the Defendant. Once again, his explanation under cross-examination was that he had no choice but to make the Will in order to please the Defendant. It bears repeating that the Will was prepared by a lawyer and signed at the lawyer's office. The Plaintiff

also testified that his three adult children went with him to the lawyer's office although they did not know of the contents of the Will.

30 For these reasons, I find that the Plaintiff's claims based on duress, undue influence, and unconscionability must fail. There is no evidence that the Defendant threatened him in the manner that he alleged. Indeed, the evidence strongly supports the view that the gifts were indeed gifts made in the context of an intimate relationship which lasted for several years.

31 As an aside, I would point out that even if the Defendant had threatened to tell the Plaintiff's current wife about their relationship or otherwise had badgered or pestered him for presents and support, the Plaintiff did not in his submissions address the question as to whether this would amount *in law* to duress, undue influence, or unconscionability such as to vitiate or to constitute grounds for recovery of the gifts. I need say no more on this given my factual finding that the Plaintiff was never threatened by the Defendant in the manner that he alleged.

32 I turn now to consider the claim in respect of the Hong San Walk Property.

Issue (c): Does the Defendant hold the Hong San Walk Property on trust for the Plaintiff?

33 The Plaintiff claims that the Defendant holds the Hong San Walk Property on trust for him. He makes the following submissions in support of his claim.

(a) The Defendant expressly agreed to hold the Hong San Walk Property on trust for him, and to sign a Power of Attorney over the said property.

(b) A resulting trust of the Hong San Walk Property is presumed to arise in his favour because of his financial contribution of \$295,000 to the purchase of the said property.

(c) The presumption of a resulting trust is not rebutted. The presumption of advancement does not apply because the parties are not married. Moreover, there is no evidence that the Plaintiff intended to give the \$295,000 for the Defendant's benefit.

34 The Defendant denies that she ever agreed to hold the Hong San Walk Property on trust for the Plaintiff. She claims that it was her idea to purchase a private property for investment. Importantly, she wanted to own a private property to ensure that she and her children have a place to stay if the flat she is currently staying in (the matrimonial home of her existing marriage) is sold or disposed of in the event of a divorce. The Defendant also claims that the Plaintiff was not involved at all in the process of viewing and purchasing the property. She is the one who found the property, sourced for tenants, signed the mortgage, and who has been paying the maintenance charges and property tax over the years. The Plaintiff's only involvement in the whole transaction was his contribution of \$295,000, and his payment of the property tax in 2012 from his lottery winnings. Both of these were "love gifts" to the Defendant. On the above bases, the Defendant claims that the Plaintiff never intended to purchase the property for himself. He took little interest in the property purchased, and the property was always purchased by the Defendant and the Defendant alone. In addition, the Defendant claims that the Plaintiff even assured her that he would pay off the rest of the mortgage loan (held in her name) if she was faithful and obedient to him.

35 In brief, the evidence of the Plaintiff was that, in 2011, he formed the idea of buying a private property for investment purposes. His evidence as to why he did not want to buy the property in his own name is, however, unsatisfactory.

36 In his statement of claim at [13], the Plaintiff pleads that he informed his wife and family members of his intention to buy a property and that the Plaintiff's wife suggested that he buy the property in her name. In his AEIC at [13], the Plaintiff explains that after discussing the idea with his *former* wife, he decided to make a purchase in the name of his *former* wife who would then hold the property on trust for him.

37 Thereafter, the Plaintiff states that he told the Defendant of his plan and was persuaded by the Defendant to buy the property in the Defendant's name because "there is a strong possibility that all [his] children would fight over the said property" [\[note: 2\]](#). The Defendant at this stage allegedly promised to hold the property on trust for him and to sign the necessary documents including a Power of Attorney in his favour.

38 The Plaintiff was cross-examined on the apparent discrepancy in his evidence as to whether he originally intended to buy an investment property in the name of his current wife or ex-wife. The Plaintiff's explanation was that the statement in his AEIC that he intended to buy a property in his ex-wife's name "could be wrong" and that there was no reason why he should buy the property in the name of his ex-wife. The Plaintiff's answers to further questions from counsel for the defendant designed to clarify the position were also unhelpful. [\[note: 3\]](#) His inability to provide a clear coherent explanation is all the more puzzling given that the Plaintiff had originally intended to call his ex-wife and a son and daughter from his previous marriage to testify in support of his claim. Indeed the Plaintiff was cross-examined on this point. [\[note: 4\]](#) The Court notes, however, that at the end of the Plaintiff's evidence, his counsel informed the Court that the Plaintiff's case was closed and that no further witnesses would be called. This was despite the fact that the ex-wife and two children had already each affirmed an AEIC in support of his claim. Given the Plaintiff's decision not to call the ex-wife and children, the state of evidence relating to the Plaintiff's intention (if any, at the time) is decidedly vague and confused to say the least.

39 The Court also notes in passing that the Plaintiff also claims that he viewed the Hong San Walk Property with the Defendant and decided to make the purchase after getting advice from his friends and family members. I shall return to this point later.

Law on resulting trusts in the domestic context

40 In *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*") at [160], the Court of Appeal helpfully set out the steps that a court may take when analysing the possibility of a resulting trust arising in property disputes involving parties who have contributed unequal amounts towards the purchase price, and who have not clearly delineated their respective beneficial interest through an express declaration of trust. It would be helpful for me to set out what the Court of Appeal said in full:

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

(b) Regardless of whether the answer to (a) is "yes" or "no", is there **sufficient evidence of an express or an inferred common intention that the parties should hold the beneficial interest in the property in a proportion which is different from that set out in (a)**? If the

answer is "yes", the parties will hold the beneficial interest in accordance with that common intention instead, and not in the manner set out in (a). In this regard, the court may not impute a common intention to the parties where one did not in fact exist.

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

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

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

(f) Notwithstanding the situation at the time the property was acquired, is there **sufficient and compelling evidence of a subsequent express or inferred common intention that the parties should hold the beneficial interest in a proportion which is different from that in which the beneficial interest was held at the time of acquisition of the property?** If the answer is "yes", the parties will hold the beneficial interest in accordance with the subsequent altered proportion. If the answer is "no", the parties will hold the beneficial interest in one of the modes set out at (b)-(e) above, depending on which is applicable.

[emphasis in bold added]

41 In the present case, the Plaintiff and Defendant have both made contributions to the Hong San Walk Property. The Plaintiff now disputes that the legal title, which is in the Defendant's sole name, reflects the beneficial entitlement to the property. The above approach recommended by the Court of Appeal is thus instructive.

Is there evidence of the parties' respective financial contributions to the property?

42 The Hong San Walk Property was purchased for \$808,000, and the parties had to pay \$18,840 for stamp duty, and legal fees and expenses of about \$3000 [\[note: 5\]](#). This comes to a total sum of \$829,840.

43 On the evidence before me, it is *undisputed* that the Plaintiff contributed \$295,000 to the initial purchase price, while the Defendant contributed about \$50,000. [\[note: 6\]](#) The Defendant further took up a mortgage loan of \$484,800 from the bank in her sole name. These figures are supported by documentary evidence. I am, therefore, satisfied that the above figures represent the respective contributions of the parties. I note in passing that there is some evidence that the Defendant's contribution may have been higher on the basis of her payment of the option fee and stamp duty. That said, there is no doubt that she contributed at least \$50,000. However, given my findings below, nothing turns on this point.

44 On the above basis, a resulting trust is presumed to arise, and the parties are presumed to hold the beneficial interest in the property in proportion to their relative contributions to the purchase price.

Is there sufficient evidence of an express or inferred common intention that the parties should hold the beneficial interest in the property in a manner that is different from that under the presumed resulting trust?

45 Parties did not make submissions on the existence of a common intention to hold the beneficial interests in the Hong San Walk Property in any particular proportion. However, the Plaintiff's claim that the parties agreed to have the Defendant hold the property on trust for the Plaintiff *may* constitute evidence of such a common intention. Nevertheless, since the Plaintiff adduced evidence to attempt to rebut the Defendant's claim that he intended to benefit her with the entire \$295,000, I shall consider the evidence in that context.

If the answer to (a) is yes and (b) is no, is there sufficient evidence that either party intended to benefit the other party with the entire amount which he or she paid?

46 This is the crucial stage of the inquiry, and the primary battle ground upon which the parties fought. If I find, as the Defendant so claims, that the Plaintiff intended to benefit the Defendant with his entire contribution of \$295,000 to the purchase price, the presumption of a resulting trust is rebutted and the entire beneficial interest in the property remains with the Defendant.

47 The Plaintiff resists that conclusion on the following grounds:

(a) The Plaintiff claims he always intended that the Defendant should hold the Hong San Walk Property on trust for him. In fact, as noted earlier, the Plaintiff asserts that the Defendant agreed to hold the Hong San Walk Property on trust for him and to execute a Power of Attorney over the Property in his favour.

(b) Further, the Plaintiff submits that there is no logical reason for the Plaintiff, a man at retirement age, to invest so much in a woman whom he is not even legally married to.

48 Having considered the parties' submissions, and the evidence before me, I find that the Defendant *did not* agree to hold the Hong San Walk Property on trust for the Plaintiff, or to execute a Power of Attorney over the said property. I set out my reasons below:

(a) The only evidence there is on the trust or Power of Attorney is the Plaintiff's own testimony. No documentary or other evidence has been adduced in support of the Plaintiff's claim that a discussion about a trust or Power of Attorney ever took place.

(b) When questioned by the Defendant's counsel during cross-examination, the Plaintiff admitted that he did not know what a Power of Attorney was. Indeed, his evidence under cross-examination on this point was hard to follow save that he agreed that he had never consulted a lawyer on the matter before or after the property was purchased. [\[note: 7\]](#) This is surprising given the Plaintiff's evidence that the acquisition of a private property was for his personal investment purposes, as he had seen the appreciation of property acquired by others and he intended to use "all his coffin money" for the purchase. [\[note: 8\]](#) Whilst this not decisive, it is consistent with the Defendant's submission that it is improbable that the Plaintiff ever initiated a discussion about a Power of Attorney or trust over the Hong San Walk Property.

(c) As touched on earlier at [38], the Plaintiff himself could not give a consistent account of his actual intentions in relation to the Hong San Walk Property. While he claims that the Defendant was the one who pressured him into putting the Hong San Walk Property in her name, he could not give a coherent account of whether his original intention was to put the property in the name of his present wife, or ex-wife. Moreover, the Plaintiff's sudden decision at trial not to call his ex-wife and two children to the stand, despite the fact that they each filed an AEIC supporting his claim remains unexplained. These AEICs have since been struck out from the record, leaving the Plaintiff with no corroborative evidence of his version of events. These facts cumulatively cast strong doubt on the credibility of the Plaintiff's evidence.

(d) I agree with the Defendant that the Plaintiff's lack of involvement in the purchase of the Hong San Walk Property also contributes to a finding that he did not intend to purchase the Hong San Walk Property for himself. While the Plaintiff asserts that he spoke to his friends about potential property investments, and even viewed the Hong San Walk Property before the purchase, he has not been able to substantiate his assertions with any evidence. No witness was called to support his evidence that he had consulted his friends over the investment. Moreover, the property agent who sold the Hong San Walk Property to the Defendant, Wong Poh Yong, testified that he had never met the Plaintiff. In his statement of claim at [25], the Plaintiff pleaded that he spoke with the property agent about the Hong San Walk Property and that he also viewed the Hong San Walk Property before purchase. However, in his AEIC, the Plaintiff did not mention meeting the property agent. Indeed, under cross-examination, he accepted that he had never met the agent, although he asserts that he did consult his family and friends. The Plaintiff also testified under cross-examination that whilst he did visit the Hong San Walk Property once before the purchase, all that he managed to see were the grounds and the carpark. He did not see the flat nor did he ever meet the owner: and yet this was a private property that the Plaintiff claims he intended to purchase for investment purposes.

49 In view of the above, I find that the parties never agreed to execute any trust or Power of Attorney over the Hong San Walk Property. Moreover, contrary to the Plaintiff's submission, I do not find it extraordinary or implausible that the Plaintiff intended to benefit the Defendant with the entire \$295,000. This is perfectly understandable given that the parties were in an intimate relationship at that point. Further, the evidence points towards the Plaintiff willingly going out of his way to support the Defendant. This is especially in light of my findings that the Plaintiff voluntarily gave the Defendant expensive gifts and a substantial monthly maintenance. In this context, I accept that the \$295,000 was given by the Plaintiff to the Defendant as a "love gift".

50 In sum, I find that the presumption of a resulting trust is rebutted by the evidence of the Plaintiff's intention to benefit the Defendant with the entire \$295,000. This concludes the matter, and makes it unnecessary for me to consider if there was a presumption of advancement on the facts.

51 For completeness, in relation to [160(f)] of *Chan Yuen Lan*, I find that the parties shared no *common* intention subsequent to the purchase of the Hong San Walk Property that the beneficial interest in the said property should be held in a proportion which is different from that at the time of the acquisition of the Hong San Walk Property.

52 Finally, I note that a question would have arisen as to who the repayment of the mortgage loan of \$484,000 should be attributed to in determining the parties' contributions under a presumed resulting trust. This is especially the case since instalments were repaid with money from rental proceeds of the Hong San Walk Property, and not from the pockets of either party. However, given my finding that the presumption of a resulting trust has been rebutted, there is no need to consider this question any further.

Issue (d): Misrepresentation

53 Given my finding that there was never an agreement that the Defendant would hold the Hong San Walk Property on trust for the Plaintiff, or execute a Power of Attorney over the said property, the factual basis for the Plaintiff's claim in misrepresentation falls away. The claim must thus fail.

Conclusion

54 For the reasons set out above, I dismiss the Plaintiff's action entirely. Costs are awarded to the Defendant, to be agreed or taxed.

[\[note: 1\]](#) Notes of Evidence ("NOE") dated 14 November 2014, page 27 at line 22; page 31 at lines 25–29; and page 59 at line 29.

[\[note: 2\]](#) Plaintiff's affidavit of evidence-in-chief ("AEIC") dated 30 May 2014 at [15].

[\[note: 3\]](#) NOE dated 14 November 2014, pages 51–53.

[\[note: 4\]](#) NOE dated 18 November 2014, pages 6–8.

[\[note: 5\]](#) Defendant's AEIC dated 11 July 2014 at [30].

[\[note: 6\]](#) Defendant's Closing Submissions dated 9 January 2015 at [33] and [35]; Plaintiff's Closing Submissions dated 7 January 2015 at [156].

[\[note: 7\]](#) NOE dated 14 November 2014, page 83 at line 21.

[\[note: 8\]](#) NOE dated 18 November 2014, page 9 at lines 21–23.