

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

[2023] SGHC 115

Originating Application No 377 of 2022

Between

(1) Ho Woon Chun (administratrix
of the estate of Ho Fook Tuck,
deceased)

... Claimant

And

(1) Wang Kai Qing

... Defendant

JUDGMENT

[Trusts – Resulting trusts – Express intention of transferor]

[Trusts – Resulting trusts – Presumed resulting trusts]

[Trusts – Constructive trusts – Common intention constructive trusts]

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Ho Woon Chun (administratrix of the estate of Ho Fook Tuck, deceased)

v

Wang Kai Qing

[2023] SGHC 115

General Division of the High Court — Originating Application No 377 of 2022

Mavis Chionh Sze Chyi J

1 November 2022, 18-19 January, 9 March 2023

2 May 2023

Judgment reserved.

Mavis Chionh Sze Chyi J:

Introduction

1 The dispute in this case centres on the beneficial ownership of a Housing and Development Board (“HDB”) flat located at 458 Tampines Street 42 (“the **Flat**”). The registered owner of this property was originally one Ho Fook Tuck who purchased it in his sole name in September 1988. I will refer to him as “the **Deceased**”. On 4 July 2014, the Defendant Wang Kai Qing (“the **Defendant**”), who was married to the Deceased, was added as a joint tenant.¹ The Deceased passed away on 9 September 2016. The present application was filed against the Defendant on 22 July 2022 by Ho Woon Chun (“the **Claimant**”), a sister of the Deceased and the administratrix of his estate (“the **Estate**”). She seeks a

¹ Defendant’s Bundle of Documents at p 40.

declaration that the Defendant holds the Flat “as trustee for and on behalf of the Estate” and an order that the latter execute at her own expense all documents necessary to “re-transfer or re-convey [the Flat] to the said Estate”, or alternatively, to the Claimant herself in her capacity as administratrix of the Estate.

2 The Claimant’s application was filed as an originating application, in which both parties filed affidavits and also put in affidavits from witnesses. On 1 November 2022, I saw counsel and pointed out that the affidavit evidence indicated serious disputes of facts between the parties. I gave directions, pursuant to O 15 r 7(6) of the Rules of Court 2021, for the cross-examination of the makers of the various affidavits. The hearing took place on 19-20 January 2023, after which further written submissions were filed by both sides on 9 March 2023.

Facts

The parties

3 The Deceased Ho Fook Tuck worked as a taxi-driver when he was alive.² He had four siblings:³

- (a) Ho Woon Chun (the “**Claimant**”)
- (b) Ho Tuck Kee (“**HTK**”)
- (c) Jean Ho Woon Foong (“**Jean**”)

² Claimant’s Written Submissions 2 at para 2.2; 1st Affidavit of Ho Woon Chun at para 6.

³ Claimant’s Written Submissions 2 at para 2.1; 1st Affidavit of Ho Woon Chun at para 5.

(d) Ho Woon Fun (“**HWF**”)

Background to the dispute

4 The undisputed timeline of events is as follows. The Deceased, his mother and two of his sisters (Jean and HWF) initially stayed with HTK. After HTK allegedly chased him out, the Deceased bought the Flat in his sole name in 1988; and his mother, Jean and HWF moved in to stay with him. The Deceased paid for the Flat as well as the cost of renovation and maintenance. The Deceased’s mother passed away in 1993 and Jean moved out when she got married,⁴ while HWF continued to stay in the Flat together with the Deceased.

5 The Deceased, a Chinese national, met the Defendant when she visited Singapore in July 2009. They were married in China on 22 June 2010;⁵ and the Defendant moved to Singapore after their marriage. She subsequently became a Singapore Permanent Resident (“**SPR**”) on 3 March 2014. On 4 July 2014, the Defendant was added as a joint tenant of the Flat.⁶

6 On 2 July 2015, the Deceased and the Defendant registered their divorce in China.⁷ Shortly thereafter, on 31 July 2015, they filed a Notice of Marriage at the Registry of Marriage (“**ROM**”) in Singapore, but did not proceed with the formal solemnisation scheduled on 31 October 2015.⁸

⁴ Claimant’s Written Submissions 2 at para 2.3; Defendant’s Written Submissions 2 at para 9; 1st Affidavit of Ho Woon Chun at para 8.

⁵ Defendant’s Written Submissions 2 at para 2; 1st Affidavit of Wang Kaiqing at para 17.

⁶ Defendant’s Written Submissions 2 at para 2; Defendant’s BOD at p 16-21.

⁷ Defendant’s Written Submissions 2 at para 5; Defendant’s BOD at p 63-70.

⁸ Defendant’s Written Submissions 2 at para 5; 1st Affidavit of Wang Kaiqing at para 66.

7 On 9 September 2016, the Deceased passed away intestate. Letters of administration of his estate were granted to the Claimant on 9 January 2019.⁹ In the Schedule of Assets filed in the Claimant's application for grant of letters of administration, the Flat was included as part of the Deceased's estate, with a stated value of \$400,000.¹⁰

Parties' account of the events

8 I next summarise the parties' accounts of events.

Defendant's account of events

(1) Events leading to the marriage between the Defendant and the Deceased

9 According to the Defendant's account, she and the Deceased met in July 2009 while she was holidaying with her friend in Singapore. At that time, the Deceased was 48 years old and the Defendant was 38 years old. The Defendant, being illiterate in English, communicated with the Deceased in Mandarin.¹¹ While the Defendant was in Singapore, the Deceased asked her to consider being his girlfriend. To show her that he was sincere in wishing to start a relationship with her, he invited her to visit his home together with her friend.¹² This was the first time the Defendant visited the Flat. On that visit, the Deceased

⁹ Claimant's Written Submissions 2 at para 2.9; 1st Affidavit of Ho Woon Chun at p 10, exhibit HWC-1.

¹⁰ 1st Affidavit of Ho Woon Chun at p 11; Claimant's Written Submissions 1 at para 1.1 and p 13.

¹¹ Defendant's Written Submissions 2 at para 10; 1st Affidavit of Wang Kaiqing at para 2.

¹² Defendant's Written Submissions 2 at para 11; 1st Affidavit of Wang Kaiqing at paras 3-4.

introduced her to his younger sister (presumably HWF), but he was embarrassed when his sister behaved in an unfriendly manner towards the Defendant.¹³

10 The Defendant subsequently returned to China; and after one year of long-distance courtship, the Deceased proposed. Upon the Defendant accepting his marriage proposal, the Deceased travelled to China and obtained approval from her family before entering into a marriage with her in China. The Deceased informed the Defendant that his father was estranged from his family; that his family was not close; and that he and his four siblings usually met only during Chinese New Year.¹⁴

(2) Marriage of the Defendant and Deceased

11 Following their marriage in China, the Deceased confided in the Defendant that his younger sister HWF had lived with him in the Flat for many years, that she appeared to prefer living there rent-free despite having \$300,000 in her bank account post retirement, and that he did not know how to tell her to leave the Flat.¹⁵ The Deceased also told the Defendant that HWF had a “temper” and that she “often bullied” him; for example, by refusing to let him use the washing machine.¹⁶ The Deceased expressed concern that HWF would bully the Defendant too if the latter were to move in to the Flat, and asked if they “could

¹³ 1st Affidavit of Wang Kaiqing at para 4.

¹⁴ Defendant’s Written Submissions 2 at para 12; 1st Affidavit of Wang Kaiqing at paras 6-9.

¹⁵ Defendant’s Written Submissions 2 at para 13; 1st Affidavit of Wang Kaiqing at paras 10-13.

¹⁶ Defendant’s Written Submissions 2 at para 14; 1st Affidavit of Wang Kaiqing at paras 10-11.

temporarily live outside after [their] marriage”.¹⁷ As the Defendant sympathised with the Deceased and wanted to maintain harmonious relations with his family, she agreed.¹⁸

12 On the Deceased’s return to Singapore, he applied for permission for the Defendant to join him in Singapore. Although the Deceased rented a room for them both when the Defendant arrived in Singapore,¹⁹ he also handed the Defendant a full set of keys to the Flat, telling her “this is our home, whether we stay here or not”.²⁰

13 After the Defendant’s arrival in Singapore, the Deceased would stay with her in their rented room, while returning to the Flat to sleep at night. He did this because as a taxi driver, he had to wake up early at 3am to start his graveyard shift and did not want to disturb the Defendant’s sleep. Each morning, during his morning break, the Deceased would meet with the Defendant at their rented room, where she would prepare breakfast for him.²¹ The Deceased would also bring the Defendant to the Flat every two to three days. On these occasions, they entered the Flat quietly so as not to disturb HWF who was in the habit of sleeping during the day. The Defendant would clean the Deceased’s room; and

¹⁷ Defendant’s Written Submissions 2 at para 15; 1st Affidavit of Wang Kaiqing at paras 12-14.

¹⁸ Defendant’s Written Submissions 2 at para 16; 1st Affidavit of Wang Kaiqing at paras 15-16.

¹⁹ Defendant’s Written Submissions 2 at para 17; Defendant’s BOD at p 4-7; 1st Affidavit of Wang Kaiqing at paras 17-19.

²⁰ Defendant’s Written Submissions 2 at para 18; Defendant’s BOD at p 7; 1st Affidavit of Wang Kaiqing at para 19 and p 26.

²¹ Defendant’s Written Submissions 2 at para 20; 1st Affidavit of Wang Kaiqing at para 24.

they would also rest and share intimacy as they were trying for a baby.²² At times they ran into HWF, who was openly hostile to the Defendant. The Defendant was afraid of her and stopped saying hello to her after a while.²³

14 After marriage and up to the time of his death, the Deceased would give the Defendant an average amount of \$1,500 every month for rental and living expenses.²⁴ Although the Deceased initially found the Defendant a job as a waitress, he later suggested that she should study instead²⁵. He enrolled her in a business administration course, paid her tuition fees, and ferried her to school, until she graduated in November 2012.²⁶ He also bought hospital insurance for the Defendant and paid the premiums through his CPF account.²⁷

15 Sometime in late 2013 or early 2014, the Deceased's estranged father moved in to stay in the second room in the Flat. According to the Defendant, after the Deceased's father moved into the room, she assisted in cleaning the room and occasionally gave the Deceased's father some pocket money.²⁸

²² Defendant's Written Submissions 2 at para 21; 1st Affidavit of Wang Kaiqing at paras 25-27.

²³ 1st Affidavit of Wang Kaiqing at para 26.

²⁴ 1st Affidavit of Wang Kaiqing at para 36.

²⁵ Defendant's Written Submissions 2 at para 26; 1st Affidavit of Wang Kaiqing at para 32; Defendant's BOD at p 8-14.

²⁶ Defendant's Written Submissions 2 at para 27; 1st Affidavit of Wang Kaiqing at paras 33-34; Defendant's BOD at p 14.

²⁷ Defendant's Written Submissions 2 at para 29; 1st Affidavit of Wang Kaiqing at para 37; Defendant's BOD at p 57-60.

²⁸ Defendant's Written Submissions 2 at paras 29-30; 1st Affidavit of Wang Kaiqing at paras 38-42.

16 On 3 March 2014, the Defendant collected her blue Identity Card after a successful application for SPR made on her behalf by the Deceased.²⁹ The following month, the Deceased found her a job as a masseuse doing Chinese Traditional *tui na* at Oriental TCM. The Deceased drove the Defendant to work every morning. He would also occasionally share meals with the Defendant and her colleague Ms Li Junjuan.³⁰ During this period, the Defendant would typically visit the Flat once a week with the Defendant; and whilst there, she would clean his room and the room occupied by his father. They would also share intimacy as husband and wife. During the rest of the week, the Deceased continued to meet her at their rented room for breakfast everyday before driving her to her workplace.³¹

17 Two months after the Defendant had acquired her SPR, the Deceased informed the Defendant that he had ascertained that as a SPR, she would now be able to own a HDB flat, and that he would be applying to add her name to their home, *ie* the Flat. On 9 May 2014, the Deceased brought the Defendant to the HDB branch office in Tampines, where he filled up the application form with the benefit of assistance and explanation from a HDB officer. The Defendant could recall the HDB officer explaining that they had chosen “joint name holding” as the manner of holding the Flat, which meant that “of the two of [them], whoever [was] still alive gets the flat automatically”.³² The HDB officer also explained that the Defendant did not need to pay any money as the

²⁹ Defendant’s Written Submissions 2 at para 31; 1st Affidavit of Wang Kaiqing at paras 43-45; Defendant’s BOD at p 15.

³⁰ Defendant’s Written Submissions 2 at paras 32-33; 1st Affidavit of Wang Kaiqing at para 46; Affidavit of Li Junjuan at paras 2-7.

³¹ 1st Affidavit of Wang Kaiqing at para 46.

³² Defendant’s Written Submissions 2 at para 35; Defendant’s BOD at p 16-32; 1st Affidavit of Wang Kaiqing at para 49.

Deceased was applying to add her name to the Flat “by way of gift”; that stamp duty would have to be paid if they sold the Flat within a certain number of years; and that they would have to “pay back money to HDB” if they sold the Flat.³³

18 According to the Defendant, the Deceased explained to her that he was adding her name as an owner of the Flat; that the Flat was fully paid; and that she therefore had nothing to worry about: if anything were to happen to him, she could choose to stay in the Flat or to sell it and retire to China if she wished.³⁴

19 On 4 July 2014, the Deceased and the Defendant returned to the HDB branch office and signed the legal document after speaking with the same HDB officer.³⁵ After collecting the duplicate lease from HDB, the Deceased handed it to the Defendant for safekeeping. As the Defendant was afraid of losing the duplicate lease, she stored the original document in their master bedroom at the Flat and kept a photocopy of the document in their rented room.³⁶

(3) Subsequent Divorce of the Defendant and Deceased

20 Sometime after his father’s death in January 2015, the Deceased told the Defendant he had heard from his friends that their marriage in China did not count in Singapore, *ie*, it was not valid in Singapore. As such, the Deceased decided that they should get a divorce in China before registering their marriage

³³ 1st Affidavit of Wang Kaiqing at para 49.

³⁴ Defendant’s Written Submissions 2 at para 36; 1st Affidavit of Wang Kaiqing at para 50.

³⁵ Defendant’s Written Submissions 2 at para 41; 1st Affidavit of Wang Kaiqing at paras 49-50; Defendant’s BOD at p 33-38.

³⁶ Defendant’s Written Submissions 2 at para 44; 1st Affidavit of Wang Kaiqing at paras 51-52; Defendant’s BOD at p 50-56.

in Singapore.³⁷ On 2 June 2015, the Deceased and the Defendant registered their divorce in China. They asked the registry staff how they should proceed and were told that “the most common situation” was “to state marriage broke down because alienation of affection [*sic*]” – which was what they did. After registering their divorce, they both went on a tour of Qingdao on the same day together with the Defendant’s relatives.³⁸

21 On 31 July 2015, the Deceased and the Defendant attended at the Registry of Marriages (“ROM”) in Singapore together with the latter’s friend Dong Kou. There, the Deceased completed the online application for a Notice of Marriage, in which he stated his intention to marry the Defendant within one month from 31 July 2015. They also went shopping for wedding rings as well as formal clothes for the Deceased. Dong Kou accompanied the Deceased to buy her wedding dress and to get the dress altered.³⁹

22 Subsequently, however, the Deceased was informed by a friend that since their divorce in China had not been registered in Singapore, “Singapore records would show [they were] still husband and wife”. The Deceased’s friend claimed to have checked online and to have found that the Deceased and the Defendant “were indeed still married”. As such, the Deceased told the Defendant that they would not need to return to ROM to solemnize their marriage.⁴⁰

³⁷ Defendant’s Written Submissions 2 at para 46; 1st Affidavit of Wang Kaiqing at para 57.

³⁸ Defendant’s Written Submissions 2 at para 49; 1st Affidavit of Wang Kaiqing at paras 58-59 and p 83.

³⁹ 1st Affidavit of Wang Kaiqing at paras 61-64 and p 85-86; Affidavit of Dong Kou at para 7.

⁴⁰ Defendant’s Written Submissions 2 at para 50; 1st Affidavit of Wang Kaiqing at para 66.

23 According to the Defendant, married life with the Deceased did not change after the divorce in China.⁴¹ The Deceased continued to meet her for breakfast at their rented room every morning before driving her to work; and on her rest day, they would return to the Flat to “spend husband and wife time together”. On their birthdays, they would eat out and buy each other birthday presents.⁴²

24 In October 2015, HWF brought her boyfriend home to live with her in the Flat. The Deceased was displeased and commented to the Defendant that it was time for HWF to leave the Flat.⁴³ Perhaps feeling embarrassed about her live-in boyfriend, HWF told the Deceased that he could bring the Defendant home to live in the Flat. Around this time, the Deceased and the Defendant started making plans to rent out the second bedroom which had previously been occupied by the former’s father. Unfortunately, their plans came to nought because of HWF, who insisted that any tenant would have to use the toilet in the master bedroom (*i.e.* the room used by the Deceased and the Defendant). The Defendant was very upset that HWF was still making things difficult for them, and consequently refused to move into the Flat.⁴⁴ The Deceased was also upset and angry: he suggested that they should get his elder brother to help him sell the Flat so that the two of them could move into a smaller flat.⁴⁵ During this

⁴¹ Defendant’s Written Submissions 2 at para 51; 1st Affidavit of Wang Kaiqing at para 67.

⁴² 1st Affidavit of Wang Kaiqing at para 67.

⁴³ Defendant’s Written Submissions 2 at para 53; 1st Affidavit of Wang Kaiqing at paras 68-69.

⁴⁴ Defendant’s Written Submissions 2 at para 55; 1st Affidavit of Wang Kaiqing at para 71.

⁴⁵ 1st Affidavit of Wang Kaiqing at paras 72-73.

period, in March 2016, he also gave her money to study for and to obtain certification as a masseuse.⁴⁶

25 Unfortunately, the Deceased's plans to sell the Flat also did not materialise when he later became ill. In April 2016, the Deceased's feet became swollen, and he had to go for check-ups. The Deceased did not want the Defendant to accompany him for these check-ups, and would tell her after each check-up that "everything was fine, nothing serious". In the meantime, the Defendant arranged for him to go for Traditional Chinese Medicine treatments and tried – unsuccessfully – to get him to stop working.⁴⁷

26 In July 2016, the Defendant insisted on going to the hospital with the Deceased. On meeting the Claimant at the hospital, the Defendant offered to pay for the Deceased's medical bills, but the Claimant declined her offer. On the way back from this hospital visit, the Deceased reiterated to the Defendant that if anything were to happen to him, there was still the Flat which she could choose to stay in or to sell and retire to China. He also advised her to look to his eldest sister (*ie*, the Claimant) for help if anything were to happen to him.⁴⁸

27 The Deceased continued to work despite his illness. From July 2016 onwards, the Defendant stopped him from driving her to work daily. Sadly, he passed away on 9 September 2016. The Defendant found out about his death when he did not come to meet her as usual on that day: when she called him, his second sister answered the call and told her about his passing. The Defendant

⁴⁶ 1st Affidavit of Wang Kaiqing at para 74 and p 90.

⁴⁷ Defendant's Written Submissions 2 at para 59; 1st Affidavit of Wang Kaiqing at paras 75-76.

⁴⁸ Defendant's Written Submissions 2 at paras 60-61; 1st Affidavit of Wang Kaiqing at paras 78-80.

wanted to rush down to the hospital but was told to go to the funeral home the next day instead.⁴⁹

(4) After the Deceased's passing

28 At the funeral home, as she was leaving after the cremation of the Deceased, the Deceased was informed by the Claimant that the latter would be putting a stop to the Deceased's CPF payments for the Defendant's hospital insurance premiums.⁵⁰ Following the funeral, the Deceased returned to China to grieve. When she later returned to Singapore, she buried herself in her work as a means of coping with her grief.⁵¹

29 According to the Defendant, despite having her contact number, the Claimant never informed her of the notice from HDB about the Home Improvement Program, nor did the Claimant tell her about the application for letters of administration in respect of the Deceased's estate.⁵² Instead, the Deceased's family members apparently gave the Defendant's contact number to their lawyers; and in March 2022, the Claimant's lawyers contacted the Defendant in an attempt to get her to sign a declaration relating to the Flat. The lawyers did not accede to her request that they send her the document for her to take a look at before signing.⁵³ On 1 June 2022, the Defendant received another

⁴⁹ Defendant's Written Submissions 2 at para 62; 1st Affidavit of Wang Kaiqing at para 81.

⁵⁰ Defendant's Written Submissions 2 at para 64; 1st Affidavit of Wang Kaiqing at para 85 and p 100.

⁵¹ Defendant's Written Submissions 2 at para 65; 1st Affidavit of Wang Kaiqing at paras 88-89.

⁵² Defendant's Witten Submissions 2 at para 67; 1st Affidavit of Wang Kaiqing at paras 94-95.

⁵³ Defendant's Written Submissions 2 at para 68; Defendant's BOD at p 82.

letter from the Claimant’s lawyers: this time, the Claimant said she took the position – as the legal representative of the Estate – that the Flat belonged both legally and beneficially to the Estate; that the Defendant held the Flat “on trust” for the Estate; and that she was to take “immediate steps” to transfer the Flat to the Estate.⁵⁴

30 In cross-examination, the Defendant testified that after the Deceased’s passing, she did not dare to visit the Flat as she was afraid of HWF whom she found “very fierce”. She also did not want to “come to Court to chase ‘HWF’ out of the [Flat]” as HWF was still “family”; and the Deceased himself had not tried to chase her out during his lifetime. It was only after being sued by the Claimant and after learning that HWF had moved out of the Flat that the Defendant gathered up the courage to go to the Flat. This was sometime in late 2022. By then, the lock on the wooden door to the Flat had been changed, and she had to break open the padlock in order to enter the premises.⁵⁵

Claimant’s account of events

(1) The Flat

31 Turning to the Claimant’s account of events, she asserts that the Flat was paid for and maintained solely by the Deceased;⁵⁶ and that the Deceased continued to sleep overnight in the Flat even after his marriage to the Defendant⁵⁷. As for the Defendant, the Claimant alleges that she never stayed

⁵⁴ Defendant’s Written Submissions 2 at para 69; 1st Affidavit of Wang Kaiqing at para 96 and p 103-106.

⁵⁵ Transcript of 19 January 2023 at p 102 ln 29 to p 104 ln 7.

⁵⁶ Claimant’s Supplemental Submissions at para 26.

⁵⁷ Claimant’s Written Submissions 2 at para 4.7(a)(ii); 1st Affidavit of Wang Kaiqing at 24.

overnight in the Flat;⁵⁸ and that she had to be chaperoned by the Deceased during all her visits to the Flat.⁵⁹ The Claimant denies that the Defendant did any cleaning of the rooms in the Flat, claiming that she (the Claimant) was the one who cleaned her late father's room in the Flat.⁶⁰ Further, the Claimant felt it was significant that the Defendant had not kept the original title deed with her but had instead stored it at the Flat.⁶¹

32 The Claimant also alleges that from the time of the Deceased's death in September 2015 until sometime in late 2022, the Defendant did not visit the Flat at all,⁶² nor did she broach the topic of the Flat with the Claimant at any time.⁶³ In respect of HDB's Home Improvement Programme for the Flat, the Claimant says she alone paid for the costs of this programme together with the late payment interests, in the sums of \$18,001.09 and \$47.40 respectively. This was sometime in end November or early December 2019.⁶⁴ It was only in late 2022 that the Defendant broke the padlock to the Flat to enter the flat.⁶⁵

⁵⁸ Claimant's Written Submissions 2 at para 4.7(a)(i); 1st Affidavit of Wang Kaiqing at paras 14-16.

⁵⁹ Claimant's Written Submissions 2 at para 4.7(a)(vi).

⁶⁰ Claimant's Supplemental Submissions at para 44; Transcript of 19 Jan p 19 ln 12 to ln 24.

⁶¹ Claimant's Written Submissions 2 at para 4.7(a)(iv); 1st Affidavit of Wang Kaiqing at 51.

⁶² Claimant's Supplemental Submissions at para 40.2; Transcript of 20 Jan p 4 ln 28 to p 5 ln 15.

⁶³ Claimant's Supplemental Submissions at para 40.4; Transcript of 20 Jan p 6 ln 8 to ln 17.

⁶⁴ Claimant's Supplemental Submissions at para 27; Transcript of 19 Jan p 14 ln 16 to ln 19.

⁶⁵ Claimant's Supplemental Submissions at para 41.1; Transcript of 19 Jan p 104 ln 4 to ln 7.

(2) The marriage between the Defendant and the Deceased

33 As to the Defendant’s marriage to the Deceased, the Claimant asserts that this was a short marriage of five years which produced no children.⁶⁶ None of the Deceased’s family member attended the wedding in China. Indeed, the Deceased’s siblings did not even know about the Deceased’s marriage to the Defendant on 22 June 2010.⁶⁷ The Defendant never had a close relationship with any of the Deceased’s siblings;⁶⁸ and she attended only one family gathering with the Deceased’s family during Chinese New Year in 2011: that was the first time when the Claimant and his other siblings learnt of his marriage to the Deceased.⁶⁹

34 The Claimant also alleges that the Defendant and the Deceased did not share “intimacy as husband and wife” in the Deceased’s room. In her testimony in cross-examination, the Claimant contended that their marriage was a “sham” marriage.⁷⁰ HWF, who gave evidence at the hearing before me, claimed that when the Deceased and the Defendant came over to the Flat, they would never close the room door.⁷¹

⁶⁶ Claimant’s Written Submissions 2 at para 4.7(b)(i); Defendant’s BOD at p 63-70.

⁶⁷ Claimant’s Written Submissions 2 at para 4.7(b)(ii); Transcript of 19 Jan p 54 ln 1 to ln 30.

⁶⁸ Claimant’s Written Submissions 2 at para 4.7(b)(iv); 1st Affidavit of Wang Kaiqing at para 26.

⁶⁹ Claimant’s Written Submissions 2 at para 4.7(b)(ii); 1st Affidavit of Ho Woon Chun at para 14.

⁷⁰ Transcript of 19 January 2023 at p 24 ln 15 to p 25 ln 2.

⁷¹ Claimant’s Supplemental Submissions at paras 49-50; Transcript of 19 Jan p 59 ln 1 to ln 12.

(3) Events after the Deceased fell ill

35 According to the Claimant, when the Deceased fell ill, she was the one who brought him for his medical appointments. On his passing away, all the arrangements for his wake and funeral were carried out by his siblings, whereas the Defendant was the last one to find out about his passing.⁷²

The parties' cases

36 I next summarise the case put forward by each party.

Claimant's Case

(1) Resulting trust

37 The Claimant's case is that the Deceased alone paid for the purchase of the Flat; that he always intended to retain the entire beneficial interest in the Flat for himself, even when he added the Defendant as joint tenant; and that the Defendant therefore holds the entire beneficial interest in the Flat on resulting trust for and on behalf of the Estate.⁷³ The Claimant argues that there is sufficient evidence of such intention on the part of the Deceased such that she does not need to rely on a presumption of resulting trust to find the existence of such a trust. Further, since the Claimant is not relying on a presumption of resulting trust, there is no scope for the operation of any presumption of advancement (by virtue of the Defendant being the Deceased's wife at the material time) in the Defendant's favour to negate the finding of a trust.⁷⁴ Alternatively, the Claimant argues that even if the presumption of resulting trust is invoked, any

⁷² Claimant's Written Submissions 2 at para 4.7(b)(ix); 1st Affidavit of Ho Woon Chun at paras 21-22.

⁷³ Claimant's Written Submissions 2 at para 1.1.

⁷⁴ Claimant's Supplementary Submissions at para 59.

countervailing presumption of advancement in the Defendant’s favour will be rebutted by evidence of the Deceased’s actual intention, such that a resulting trust should still be found in favour of the Estate.⁷⁵

(2) Common intention constructive trust

38 As an alternative to her claim of a resulting trust, the Claimant submits that the Defendant acquired a beneficial interest in the Flat by way of a common intention constructive trust;⁷⁶ and that based on an “inferred common intention constructive trust” approach, the Defendant should be allotted “20% beneficial interest at the highest”. The Claimant says she arrives at this 20% figure apparently on the basis of the short duration of the marriage, the absence of any children from the marriage, the lack of monetary contributions on the Defendant’s part to the Flat, and the alleged state of the relationship between the Deceased and the Defendant.⁷⁷

39 In support of the above argument, the Claimant argues that if the Defendant is accorded the same beneficial interest as the Deceased’s four siblings, there will be five beneficiaries with beneficial interest in the Flat: *per* the Claimant’s argument, it will be “reasonable” for each beneficiary to be awarded a 20% beneficial interest in the Flat.⁷⁸

⁷⁵ Claimant’s Written Submissions 2 at para 4.9.

⁷⁶ Claimant’s Supplemental Submissions at para 60.

⁷⁷ Claimant’s Supplemental Submissions at para 67.

⁷⁸ Claimant’s Supplemental Submissions at para 68.

- (3) A trust in favour of the Estate does not contravene the Housing Development Act (“HDA”)

40 The Claimant further submits that a trust in favour of the Estate will not contravene the Housing Development Act (“HDA”). *Per* the Claimant’s argument, s 58(11) of the HDA is the identical re-enacted s 51(10) of the previous HDA; and in *Lim Choo Hin*, the Court of Appeal (“CA”) has held that s 51(10) HDA does not extend to situations where the person in whose favour the trust arises already has an interest in the flat in question. Since the Deceased in the present case already had an interest in the Flat before adding the Defendant as a joint tenant, s 58(11) HDA does not apply; and any resulting trust in favour of the Estate does not contravene the HDA.⁷⁹

Defendant’s Case

41 The Defendant’s case is that contrary to the Claimant’s argument, the evidence shows that at the time of the Deceased’s gratuitous transfer to her on 4 July 2014, he clearly intended to gift the beneficial interest in the Flat to her as a joint tenant alongside himself; and that accordingly, as the surviving joint tenant, she has acquired the entire beneficial interest in the property by virtue of the operation of the right of survivorship.⁸⁰

42 Alternatively, the Defendant submits that even if a presumption of resulting trust does arise as a result of the Deceased’s gratuitous transfer, the presumption of advancement should apply in her favour in view of her relationship with the Deceased:⁸¹ in this situation, the Claimant bears the burden

⁷⁹ Claimant’s Supplemental Submissions at paras 69-73.

⁸⁰ Defendant’s Written Submissions 2 at para 75.

⁸¹ Defendant’s Written Submissions 2 at para 76.

of rebutting the presumption of advancement by proving that the transfer was not intended to be a gift – and that the Flat is instead held on trust for the Estate by the Defendant.⁸²

43 The Defendant has asked that the court declare her the owner of the Flat and order the return of various items such as the duplicate lease and the mailbox keys to her.⁸³

Issues to be determined

44 The following issues arise for my determination:

(a) Whether there is clear evidence of the actual intention of the Deceased at the time of the transfer on 4 July 2014 to retain all beneficial interest in the Flat for himself, or conversely to make an *inter vivos* gift to the Defendant of a beneficial interest in the Flat;

(b) If there is no clear evidence of the actual intention of the Deceased at the material time, whether a presumption of resulting trust arises in favour of the Estate by virtue of the gratuitous nature of the transfer on 4 July 2014;

(c) If a presumption of resulting trust arises in favour of the Estate, whether a presumption of advancement arises in favour of the Defendant so as to rebut the presumption of resulting trust;

(d) Whether, alternatively, the Defendant and each of the Deceased's four siblings should be held to be entitled to a 20%

⁸² Defendant's Written Submissions 2 at para 76.

⁸³ 1st Affidavit of Wang Kaiqing at para 100.

beneficial interest in the Flat by virtue of a common intention constructive trust;

(e) Whether the formation of a trust over the Flat contravenes s 58(11) of the HDA.

45 In the paragraphs that follow, I address these issues *seriatim*.

Whether there is clear evidence of the actual intention of the Deceased at the time of the transfer on 4 July 2014

The applicable legal principles

46 I first summarise the applicable legal principles.

47 In *Estate of Yang Chun (Mrs) nēe Sun Hui Min, deceased v Yang Chia-Yin* [2019] 5 SLR 593 (“*Yang Chun*”), an issue arose as to whether ownership of monies in bank accounts held in the joint names of Mr Yang and his wife Mdm Sun passed to Mdm Sun by operation of the right of survivorship upon Mr Yang’s death. It was not disputed that Mr Yang and Mdm Sun had made unequal contributions to the joint accounts. Ang Cheng Hock JC (as he then was) held that the operation of the right of survivorship turned on the following successive stages of analysis. First, citing the judgment of Prakash J (as she then was) in *Collars Muriel Esther de Jesus v Sandra Audrey Jude Collars* [2008] SGHC 110 (“*Collars Muriel Esther*”, at [30]), Ang JC noted that the onus would be on the person challenging the right of survivorship to demonstrate a contrary intention (at [53]-[54] of *Yang Chun*). Where such a contrary intention could be shown, the rule of survivorship could be displaced by a resulting trust or a presumed resulting trust. The former would arise where there was evidence of a clear intention on the part of the deceased to retain beneficial ownership, whereas the latter would operate where there had been a transfer of property to

the survivor for which the survivor had not provided the whole of the consideration (*Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 (“*Lau Siew Kim*”) at [35]), and there was no evidence before the court which “adequately reveals the true intention of the transferor” (*Su Emmanuel v Emmanuel Priya Ethel Anne* [2016] 3 SLR 1222 (“*Su Emmanuel*”) at [79]). Where the presumption of resulting trust arose, the burden of proof would shift such that the deceased was presumed to have intended to retain the beneficial ownership of the property (at [55] of *Yang Chun*). Ang JC further noted (at [57] of *Yang Chun*) that the CA in *Lau Siew Kim* had made it clear that the presumption of resulting trust “should not be applied mechanically”, and that the strength of the presumption would vary depending on the particular circumstances of each case.

48 Next, Ang JC pointed out that the presumption of resulting trust, being a rebuttable presumption, was capable of being rebutted in cases where the presumption of advancement operated such that the deceased transferor was regarded as having made a gift to the transferee with no intention to retain an interest in the property concerned. The presumption of advancement would be “only relevant where a presumed resulting trust has already been found on the facts”; and if applicable, it “shifts the burden of proof back to the party who challenges the transfer to the surviving recipient” (at [58] of *Yang Chun*).

49 In respect of the application of the presumption of advancement, Ang JC also highlighted the CA’s view in *Lau Siew Kim* (at [77]) that as with the presumption of resulting trust, so too the strength of the presumption of advancement would vary according to the individual circumstances of each case. This “would allow a court to more accurately give effect to the parties’ intentions”. In this connection, the court would consider two key elements in its inquiry: first, the nature of the relationship between the parties, *eg*, the

obligation that one party has to the other; and second, the state of the relationship, *eg*, whether the parties were in a close or distant relationship (*per* the CA in *Lau Siew Kim* at [78]). Based on the weight of the evidence, the court would determine if the presumption of advancement had been successfully rebutted. If the challenging party manages to defeat the presumption of advancement, then the original presumption of resulting trust would operate; and conversely, if they failed, then the presumption of advancement would displace the presumption of resulting trust such that the right of survivorship would take effect (at [64] of *Yang Chun*).

50 In *Low Yin Ni and another v Tay Yuan Wei Jaycie (formerly known as Tay Yeng Choo Jessy) and another* [2020] SGCA 58 (“*Low Yin Ni*”), the CA noted that the presumption of advancement operates in certain circumstances to rebut the presumed resulting trust – *eg*, in the context of certain recognised categories of relationships such as parent-child relationships. Such recognised categories of relationships included transfers from husband to wife (*Lau Siew Kim* at [60]). The CA in *Low Yin Ni* reiterated that the strength of the presumption would vary based on the prevailing circumstances of the case, with key elements in the inquiry including, in particular, the nature and state of the relationship between the parties (at [5] of *Low Yin Ni*). In *Low Yin Ni*, the dispute concerned the beneficial ownership of a HDB flat originally purchased by the appellants, a married couple. Some 12 years later, the appellants added their son (the second respondent) and his then wife (the first respondent) as legal co-owners. The issue that arose on appeal before the CA was whether the presumption of advancement arising in favour of the second respondent had been rebutted. The CA held that it had. In the CA’s view, it was significant that the appellants’ financial circumstances at the time of the transfer were such that they could not conceivably have intended to make a gift of a substantial part of

what was in truth their principal asset. The CA found, moreover, that the evidence revealed that the respondents were added as legal co-owners to enable them to use their Central Provident Fund monies to help pay down part of the mortgage in light of the appellants' dire financial straits (at [9] of *Low Yin Ni*).

51 In applying the analytical approach set out by Ang JC in *Yang Chun*, it is also important to bear in mind the CA's statement in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 ("*Chan Yuen Lan*", at [52]) that "the question in every case where the claim is based on the existence of a resulting trust is still whether there is any direct evidence that may adequately reveal the intention of the transferor". The CA in *Chan Yuen Lan* endorsed the reasoning of the High Court in *Lim Chen Yeow Kelvin v Goh Chin Peng* [2008] 4 SLR(R) 783 ("*Lim Chen Yeow Kelvin*"). In that case, the High Court found that there was no necessity to make use of presumptions such as the presumption of resulting trust because it was satisfied on the basis of the evidence before it that the deceased (one "Bee Bee") had intended to give the monies in the joint bank account to the defendant. In so finding, the court observed at [116] (and its observations were cited with approval by the CA in *Chan Yuen Lan*):

... If the court could discern a clear intention on the part of the deceased to gift all the moneys in the joint account to the survivor from the evidence before it, then there should be no need to apply any presumption of a resulting trust to aid the fact-finding or decision-making process. Only when the court is not able to find any clear intention or if the evidence is inconclusive either way as to what the deceased's real intention might be, then in this rather limited and exceptional situation (where the evidence is so finely balanced on either side) should the court apply the evidential presumption of a resulting trust to tilt the balance in favour of the estate of the deceased (who solely contributed the moneys in joint account).

52 As an illustration of how the courts analyse the evidence adduced to ascertain if it discloses a clear intention on the deceased's part to gift (or not to

gift) the jointly held property, it is helpful to examine the decision of the Appellate Division of the High Court (“AD”) in *Lim Choo Hin (as the sole executrix of the estate of Lim Guan Heong, deceased) v Lim Sai Ing Peggy* [2022] 1 SLR 873 (“*Lim Choo Hin*”). In that case, the respondent was one of several children of the late Mr Lim Guan Heong (“Mr Lim”). A dispute arose over the ownership of a HDB flat in Jalan Batu. Mr Lim had originally been the sole registered proprietor of the flat, but he had added the respondent as a joint tenant in 1981 (“the 1981 Transfer”). Mr Lim passed away in 2015. The appellant, who was also one of Mr Lim’s children, brought an application in her capacity as the sole executrix of his estate for a declaration that the respondent held the flat on trust for Mr Lim’s estate. The High Court rejected the appellant’s application at first instance on the ground that the documentary evidence unequivocally showed Mr Lim’s intention to confer his beneficial interest in the flat on himself and the respondent as joint tenants by way of *inter vivos* gift. The High Court relied in particular on a stamp in the title deed which stated that the flat had been transferred to Mr Lim and to the respondent by way of gift, as joint tenants. Additionally, the transfer instrument stated that the 1981 Transfer had taken place in consideration of “natural love and affection”.

53 The High Court’s decision was reversed by the Appellate Division of the High Court (“AD”) on appeal. In allowing the appeal, the AD pointed out that though the title deed and the transfer instrument were contemporaneous records, they “could hardly be said to be conclusive of Mr Lim’s actual intent and state of mind as at the time when the 1981 Transfer was effected” (at [11] of *Lim Choo Hin*). Noting that the importance of considering the circumstantial evidence on hand in *Lim Choo Hin* was reinforced by the lack of any evidence from the late Mr Lim about his intentions, the AD found that the weight of the

evidence as a whole did not support the respondent's contention that the 1981 Transfer had been intended as a gift.

54 As the Claimant in the present case seeks to rely heavily on *Lim Choo Hin*, it is important to examine the reasons why the AD in that case found that the evidence before it did not support the contention that the transfer of the flat was intended as a gift. First (at [14]-[15]), the AD noted that Mr Lim was illiterate in English and had signed in Chinese on the transfer documents. There was also no evidence that he had been advised on the legal implications of the 1981 Transfer or that he had even read or understood the words "By Gift" on the title deed stamp. The AD contrasted those facts with the facts of *Mak Saw Ching v Yam Hui Min, Barbara Rebecca* [2014] SGHC 212 ("*Mak Saw Ching*"). In *Mak Saw Ching*, the applicant also executed a transfer of a HDB flat to the respondent as joint tenant with the applicant herself. The consideration for the transfer was also stated in the transfer document to be "Natural Love and Affection", with the transfer being described as a "Gift" on the HDB lease. In finding that the applicant had intended the transfer as a gift and not as a trust as she subsequently claimed, the High Court placed weight on the fact that both the procedure for and the effect of the transfer had been clearly explained to the applicant before she executed the transfer; and further, that the applicant had not challenged the respondent's evidence that the words "Natural Love and Affection" had been stated as the consideration at her (the applicant's) direction (at [37] of *Mak Saw Ching*).

55 Second, the AD in *Lim Choo Hin* (at [16]) found that even after the 1981 Transfer, Mr Lim continued to exercise control over the flat as if he were its sole owner: eg, by adding the appellant as a joint tenant as well in 2001 without first obtaining the respondent's consent (though the appellant herself removed

her name from the flat of her own accord in 2003); and by demanding the payment of rental from those of his children who resided in the flat.

56 Third, the AD (at [18]-[19] of *Lim Choo Hin*) found that there was no evidence of a particularly close relationship between the respondent and Mr Lim. On the contrary, the evidence showed that Mr Lim was a “traditional patriarch who favoured his only son”. In this connection, the AD found it pertinent that the evidence showed Mr Lim had added only the respondent’s name in 1981 because she was the only one out of his eight children who was suitable to become an owner of the flat at that time; and that he had added her name only as a matter of administrative convenience and/or because he feared that since he (the then owner) did not stay at the flat himself after 1981, there was a risk of it being repossessed by HDB.

57 Fourth, the AD (at [20] of *Lim Choo Hin*) was of the view that the evidence showed the respondent to have conducted herself “more like a lodger”, paying for expenses only when she was staying at the flat and giving no instructions for its maintenance or upkeep after her relocation to the United Kingdom. The respondent’s email exchanges with the appellant also made no mention of any legal or beneficial interest she had in the flat; and she did not claim any interest in it from the time of Mr Lim’s death until after she was told about his will some two years later. The AD opined that the respondent’s failure to ask about what would happen to the flat following Mr Lim’s demise suggested that she did not think she owned any interest in the flat (at [21] of *Lim Choo Hin*).

58 From the AD’s consideration of the evidence before it in *Lim Choo Hin*, it is plain that the court’s inquiry into the “actual intentions and desires” of the transferor of the property in issue is a fact-specific one: the totality of the

evidence – *ie*, direct evidence from the transferor if it is available, contemporaneous documentary evidence, and circumstantial evidence – has to be weighed in the balance.

59 It is with the above principles in mind that I have examined the evidence in this case. Having gone through the evidence, I am satisfied that it speaks to a clear intention on the Deceased’s part to gift the Defendant with a beneficial interest in the Flat by adding her as a joint tenant on 4 July 2014. I explain below my reasons for this finding.

Evidence of the Deceased’s clear intention to gift a beneficial interest in the Flat to the Defendant

(1) The Deceased had the benefit of explanation from HDB officers on the effect of the transfer in July 2014

60 First, on the basis of the evidence adduced by the Defendant, I accept that in taking the necessary steps to effect the transfer of the Flat to the Defendant and himself as joint tenants in July 2014, the Deceased – and indeed the Defendant too – had the benefit of explanation from the HDB officers regarding the procedure for and the nature of the transfer. It will be recalled that in *Mak Saw Ching*, the fact that the applicant transferor was advised by HDB officers on the procedure for and effect of the transfer was an important factor which – in the court’s view – “belied the Applicant’s allegation that she had intended to create a trust in making the transfer” (at [37] of *Mak Saw Ching*). In the present case, the Defendant gave evidence that the consultation with the HDB officers occurred on two occasions: at the first appointment on 9 May 2014 when the Deceased filled in the application form for the transfer; and at the subsequent appointment on 4 July 2014, when they returned for the signing

of “the legal document”.⁸⁴ Her evidence was corroborated by the email evidence from HDB.⁸⁵

61 In the said email, it was explained that *per* HDB’s standard operating procedure (“SOP”), flat owners applying to change the flat ownership by including another legal co-owner would have had to go through two appointments with HDB. At the first appointment (“the application appointment”), the relevant HDB officer would have gone through the “application form for change in flat ownership”, which would have necessitated the HDB officer discussing with the parties *inter alia* the “reason for change in flat ownership” and “manner of holding flat for proposed owners after the ownership change”. At this first appointment, the HDB officer would also have gone through the “Terms and Conditions for change in flat ownership”, which would have included matters such as “Manner of Holding” (whether joint tenancy or tenancy in common), as well as the “Important Notes on Change in flat ownership by way of gift”. At the second appointment (“the completion appointment”), the HDB officer would have gone through “the transfer legal instrument, highlighting to the parties who the transferor(s) and transferee(s) are and the manner of holding as per parties’ earlier indication on the application form”, prior to the parties signing the transfer instrument.⁸⁶

62 The Claimant has not disputed that the above-mentioned HDB SOP exists – and that it existed at the time of the transfer by the Deceased; nor has the Claimant disputed that the SOP was followed in the Deceased’s case.⁸⁷

⁸⁴ 1st Affidavit of Wang Kaiqing at paras 48-50.

⁸⁵ Defendant’s BOD at p 33.

⁸⁶ Defendant’s BOD at p 33.

⁸⁷ Transcript of 19 January 2023 at p 29 ln 24 to p 33 ln 12.

63 In short, the Deceased would have been informed on two separate occasions about the effect of adding the Defendant as a joint tenant of the Flat by way of gift. The Defendant was able to recall the explanation provided by the HDB officer at the first appointment on 9 May 2014 and to describe it in layman terms as follows:⁸⁸

I remember she said we chose “joint name holding” means of the two of us, whoever is still alive gets the flat automatically. She explained my husband applied to add my name to the flat with him by way of gift; I do not need to give money.

64 I further highlight that there was an intervening period of two months between the transfer application being made on 9 May 2014⁸⁹ and the actual transfer document being signed and witnessed on 4 July 2014.⁹⁰ In other words, there was ample time for the Deceased to have thought through the transfer, following the explanation received from the HDB officer on 9 May 2014 – and to have changed his mind if he wished. On the evidence adduced, there was no reason why the Deceased should have pressed on with the transfer application if he had any misgivings.

65 Indeed, for that matter, there was no reason why the Deceased should even have taken the initiative to add the Defendant as a joint tenant if his intention all along was to remain the sole beneficial owner of the Flat. The Deceased in this case was in a very different position from the appellants in *Low Yan Ni*, whose “dire” need for assistance with their mortgage repayments led to their adding both respondents as legal co-owners despite their “vehement” disapproval of the first respondent (at [8]-[9] of *Low Yin Ni*). The Deceased’s

⁸⁸ 1st Affidavit of Wang Kaiqing at para 49.

⁸⁹ 1st Affidavit of Wang Kaiqing at p 37-44.

⁹⁰ 1st Affidavit of Wang Kaiqing at p 45-46.

position is also to be contrasted with that of the late Mr Lim in *Lim Choo Hin*, where the AD found that the evidence supported the appellant’s contention that Mr Lim had added the respondent’s name “as a matter of administrative convenience, and/or because he was concerned that since he did not actually stay at the Flat after 1981 when his wife passed away, the Flat might be repossessed by the HDB if it were not occupied by its owner” (at [19] of *Lim Choo Hin*).

66 In this connection, I note that the Claimant has suggested that the Deceased arranged for the Defendant to be added as a joint tenant “in order to facilitate [her] application... to become a Singapore permanent resident”.⁹¹ I reject this suggestion. Not only was it pure speculation, it was also refuted by the objective evidence before me, which established that by 3 March 2014 (*i.e.* four months *before* the Deceased signed the transfer instrument in July 2014), the Defendant had *already* obtained SPR status and collected her NRIC.⁹²

67 Given the fact that the Deceased had the benefit of explanation from HDB officers prior to executing the transfer, and having regard as well to the other factors highlighted above, I find that the Deceased’s actions in proceeding with the transfer on 4 July 2014 constitute evidence of a clear intention to confer on the Deceased a beneficial interest in the Flat by adding her as joint tenant.

(2) Deceased’s conduct in taking care of and providing for the Defendant

68 Second, on the evidence adduced, I find that there was a close and intimate relationship between the Defendant and the Deceased: the Deceased showed genuine love and affection for the Defendant, and took pains to take

⁹¹ 1st Affidavit of Ho Woon Chun at para 18.

⁹² 1st Affidavit of Wang Kaiqing at para 45 and p 35.

care of and to provide for her – even after the registration of their divorce in China. This is borne out by objective evidence. For one, it is not disputed that the Deceased utilised his CPF account to pay the premiums for the Defendant’s hospitalisation policy during their marriage in 2014, and in 2015 and 2016 after their divorce in China.⁹³ These CPF payments ceased only after Deceased’s passing, when the Claimant put a stop to them.

69 The Defendant also gave evidence that it was the Deceased who had enrolled her in a business administration course (conducted in Chinese) in 2011, not long after she moved to Singapore.⁹⁴ According to the Defendant, the Deceased paid for her tuition fees and drove her to the school for her classes. Subsequently, when she was required to obtain certification for her job as a masseuse, the Deceased paid for her to study for a diploma in massage therapy.⁹⁵ It is worth noting that this was in March 2016, *ie*, after the registration of their divorce in China.

70 I accept the above evidence from the Defendant. There is documentary evidence that she did attend the business administration course and the diploma course in massage therapy.⁹⁶ Given that the Defendant has limited financial means, is unable to understand English, and lacks familiarity with Singapore, I believe that it was the Deceased who paid for these courses – and in the case of the business administration course, sourced for the appropriate course and sorted out the application process. Here again, his actions spoke to a considerable love for the Defendant and an earnest wish to provide for her.

⁹³ Defendant’s BOD at p 57-61.

⁹⁴ 1st Affidavit of Wang Kaiqing at paras 32-34.

⁹⁵ 1st Affidavit of Wang Kaiqing at para 74.

⁹⁶ 1st Affidavit of Wang Kaiqing at p 33 and p 90.

71 According to the Defendant, over and above taking care of her hospitalisation insurance and vocational training, the Deceased gave her a monthly allowance of about \$1,500 for her rental and other expenses, from the time of their marriage in 2011 until his death in 2016.⁹⁷ In this connection, HWF has admitted that she was told by the Deceased himself about the “monthly cash sum”⁹⁸ he gave the Defendant and about the fact that this monthly sum included payment of rent. While HWF has put the figure at \$1,400 (instead of \$1,500), I do not think the difference between the Defendant’s figure and HWF’s is significant. What is significant is that the Deceased took it upon himself to provide for the Defendant’s material needs.

(3) The Deceased continued to take care of the Defendant after the divorce in China

72 As I alluded to earlier, on the evidence before me, there was no reason for the Deceased to have taken the initiative to add the Defendant as joint tenant if his intention all along was to remain the sole beneficial owner of the Flat. Further, as counsel for the Defendant has pointed out,⁹⁹ the Deceased was free to take action to change the status quo (*ie*, in which the Defendant was a joint tenant) after the divorce in China on 2 July 2015. If the Deceased had intended all along *not* to gift the property to the Defendant, there was nothing to stop him from (*eg*) arranging for the Defendant to relinquish her rights as a joint tenant after the divorce in China. He did no such thing. Instead, the evidence showed that even after the divorce in China, he continued to take care of the Defendant.

⁹⁷ 1st Affidavit of Wang Kaiqing at para 36.

⁹⁸ Affidavit of Ho Woon Fun at para 15.

⁹⁹ Defendant’s Written Submissions 2 at para 83.

73 Thus for *eg*, Li Junjuan, who was the Defendant's colleague at Oriental TCM between 2014 and February 2016, corroborated the Defendant's evidence that the Deceased drove her to work everyday¹⁰⁰ and that he would bring food to her workplace from time to time.¹⁰¹ It is also not disputed that within the same month that the divorce in China was registered, the Deceased took steps to file a Notice of Marriage with the Defendant at the ROM in Singapore.¹⁰² The Defendant's friend Dong Kou gave evidence that she accompanied the Deceased and the Defendant to ROM on 31 July 2015, where she witnessed the Deceased completing the online application form with the assistance of the ROM staff.¹⁰³ Dong Kou subsequently accompanied the Defendant to shop for her wedding dress and to get the dress altered.¹⁰⁴

74 In this connection, while it is true that the Deceased and the Defendant did not proceed with the formal solemnisation of the marriage in Singapore, I accept the latter's explanation that this was due to the advice the Deceased received from his friend.¹⁰⁵ On the evidence adduced, it is clear that the failure to attend the formal solemnisation did not in any way signify a change of heart on the Deceased's part insofar as his love for the Defendant and his wish to provide for her were concerned. As I have earlier pointed out (at [68]-[71] above), the Deceased continued to pay for the Defendant's hospitalisation insurance and her monthly allowance up to the time of his death; and he also paid for the cost of her diploma studies in massage therapy in March 2016.

¹⁰⁰ Affidavit of Li Junjuan at para 3.

¹⁰¹ Affidavit of Li Junjuan at para 7; Transcript of 19 January 2023 at p 83 ln 23 to ln 32.

¹⁰² 1st Affidavit of Wang Kaiqing at p 85-86.

¹⁰³ Affidavit of Dong Kou at para 5.

¹⁰⁴ Affidavit of Dong Kou at para 7.

¹⁰⁵ 1st Affidavit of Wang Kaiqing at para 66; Transcript of 20 January at p 15 ln 4 to p 21 ln 31.

Dong Kou also gave evidence that when she stayed with the Defendant at the rented room in the period October to December 2015, the Deceased would drive them around on their outings and join them for meals.¹⁰⁶

75 The Deceased’s actions following the 2 July 2015 divorce demonstrate, therefore, that far from being “done” with the Defendant post-divorce, he continued to take care of her; and he took steps to further enmesh his life with hers. These actions constitute further evidence that in adding her as a joint tenant in 2014, his intention was to confer on her a beneficial interest in the Flat, so that she would continue to be provided for even after his passing.

(4) The Claimant’s arguments regarding the Deceased’s exercise of control over the Flat

76 In considering whether the evidence established a clear intention on the Deceased’s part to gift the Defendant with a beneficial interest in the Flat, I note that the Claimant has argued that the Deceased continued to exercise control over the Flat as if he were its sole owner, even after the transfer was effected on 4 July 2014.¹⁰⁷ The Claimant places great weight on the case of *Lim Choo Hin* in advancing this argument.

77 I do not think the AD’s decision in *Lim Choo Hin* is of much assistance to the Claimant. As I pointed out earlier (at [58]), the court’s inquiry into the actual intentions of a transferor of property is a fact-specific process. In *Lim Choo Hin*, the AD found that after the late Mr Lim added the respondent as a joint tenant of the Jalan Batu flat in 1981, he also added the applicant as a joint tenant without seeking the respondent’s permission and with no apparent

¹⁰⁶ Affidavit of Dong Kou at paras 8-9.

¹⁰⁷ Claimant’s Supplemental Submissions at para 28.

objections from the respondent. Mr Lim also demanded rental from those of his children who stayed in the flat, including the respondent herself. The AD also noted that even though the respondent refused to pay the rental demanded by Mr Lim, she had explained to the appellant that this was “because she had already been paying for the Flat’s renovations and expenses” – not because she was a co-owner of the flat (at [16] of *Lim Choo Hin*). In other words, Mr Lim’s actions made it clear that he saw himself as the only person entitled to make decisions about the ownership of the flat and its use, and that he did not see the respondent as a genuine co-owner of the flat. The respondent’s responses to those actions showed that she shared the same understanding.

78 No such factors were present in this case. Post the 4 July 2014 transfer, there is no evidence of the Deceased making decisions about the ownership of the Flat and its use as if he were the sole owner. On the contrary, the Deceased gave the Defendant a set of the keys to the Flat,¹⁰⁸ as well as the original title deed which she stored at the Flat while keeping a photocopy in her own possession.¹⁰⁹ The Defendant also gave evidence that sometime in or around October 2015, both she and the Deceased had made plans to rent out the room formerly occupied by the latter’s father; and that both of them had been involved in acquiring furniture for the rooms (as seen in the text message exchanged between them on 22 October 2015).¹¹⁰ It is true that their plans to rent out the room eventually came to nought. However, the point is that the Deceased appears to have made efforts to involve the Defendant in arrangements pertaining to the Flat. His conduct was thus very different from that of the late Mr Lim in *Lim Choo Hin*.

¹⁰⁸ 1st Affidavit of Wang Kaiqing at p 26.

¹⁰⁹ 1st Affidavit of Wang Kaiqing at p 66-72.

¹¹⁰ 1st Affidavit of Wang Kaiqing at paras 69-70 and p 89.

79 For the reasons I set out above, I reject the Claimant's argument that the Deceased continued to exercise control over the Flat as if he were its sole owner, even after the transfer in July 2014.

80 The Claimant has also argued that the evidence indicates the Defendant's awareness that she had no real interest in the property, since she did not sleep overnight in the Flat and took no steps to assert her ownership following the Deceased's death. I similarly reject this argument. I have examined the affidavit evidence put forward and have had the opportunity in addition to observe the Defendant in the witness stand. She strikes me as a timorous and self-effacing individual who has to be prodded into action and who prefers following others' lead to taking charge herself. When the Deceased was alive, the Defendant clearly followed his lead; and once he passed away, she was completely bereft.¹¹¹ It is not disputed, moreover, that she is illiterate in English, has no family in Singapore, and appears to have very few friends. In other words, she does not have a strong support network in Singapore. I do not find it at all strange or unbelievable that she would have preferred to stay out of the way of the Claimant, HWF, and the Deceased's other siblings, and to avoid any overt confrontation with them. That she finally returned to the Flat only after being notified of these present proceedings and after learning of HWF's departure would be entirely in keeping with her timid disposition.

81 To sum up, therefore, in light of the reasoning set out at [60] to [80] above, I am satisfied that the evidence before me shows a clear intention on the Deceased's part to gift the Defendant with a beneficial interest in the Flat by adding her as joint tenant. Given my finding, I do not find it necessary to resort to presumptions.

¹¹¹ 1st Affidavit of Wang Kaiqing at paras 88-91.

If a presumption of resulting trust in favour of the Estate arises, whether a presumption of advancement in favour of the Defendant arises and rebuts it

82 In the interests of completeness, I add that even if I am wrong in reaching the above conclusion, and assuming that a presumption of resulting trust applies in favour of the Estate, I would nevertheless hold – in light of the marriage between the Deceased and the Defendant at the time of the transfer, as well as the matters recounted at [60] to [80] – that a presumption of advancement operates in favour of the Defendant; further, that the presumption of advancement is sufficiently strong in this case to rebut the presumption of resulting trust.

Whether there was a common intention constructive trust in the Defendant’s and the Estate’s favour, whereby the Defendant and each of the Deceased’s siblings would be entitled to 20% of the Flat

The law on common intention constructive trusts

83 Finally, I address the Claimant’s alternative case of a common intention constructive trust. Before I address the Claimant’s arguments, I summarise below the applicable legal principles.

84 As a starting point, the common intention constructive trust provides for the beneficial interests of parties to be assessed in accordance with their common intention (whether express or inferred). This is based on all the conduct of the parties which sheds light on the common intention between them – rather than simply adopting a purely arithmetic approach with respect to contributions to purchase price (*Buthmanaban s/o Vaithilingam v Krishnavanny d/o Vaithilingam (administratrix of the estate of Ponnusamy Sivapakiam, deceased) and another* [2015] SGHC 35 (“*Buthmanaban*”) at [82]; *Lai Hoon Woon (executor and trustee of the estate of Lai Thai Lok, deceased) v Lai Foong Sin*

and another [2016] SGHC 113 (“*Lai Hoon Woon*”) at [95]). The common intention constructive trust arises by operation of law from the date of the circumstances giving rise to it and the court simply declares that such a trust has arisen in the past (*Sumoi Paramesvaeri v Fleury, Jeffrey Gerard and another* [2016] 5 SLR 302 at [61] and [62] citing *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 at 714G). Once a common intention between the parties has been made out, there must be detrimental reliance on the party relying on the trust (*Ong Chai Soon v Ong Chai Koon and others* [2022] 2 SLR 457 (“*Ong Chai Soon*”) at [38]-[39]; *Lai Hoon Woon* at [95]).

85 It is also crucial to note the distinction between an inferred and an imputed common intention. In *Chan Yuen Lan*, the CA agreed with Lord Neuberger’s approach in *Stack v Dowden* [2007] 2 AC 432 (“*Stack*”), where Lord Neuberger (at [125]-[127]) has observed that although an intention may be express or inferred, it may not be imputed by the court.

The Claimant’s arguments

86 The Claimant’s position is that pursuant to a common intention constructive trust, the Defendant and each of the Deceased’s siblings should be entitled to 20% of the Flat.

87 To recap, the Claimant argues that in this case, the inferred common intention constructive trust approach applies, and the Defendant should be accorded 20% beneficial interest “at the highest”, *because of the relatively short duration of the marriage, the absence of any children to the marriage, the lack of contribution by the Defendant to the Flat, and the alleged lack of intimacy*

*between the Deceased and Defendant.*¹¹² The Claimant argues, in addition, that if the Defendant is accorded the same interest as the Deceased’s four siblings, this will mean there are five beneficiaries each with an interest in the Flat; and it will be “reasonable” for each beneficiary to be entitled to a 20% beneficial interest.¹¹³

My Decision

88 With respect, the Claimant’s alternative case of a common intention constructive trust is confused and misconceived. In the first place, the Claimant brought the present proceedings in her capacity as the administratrix of the Deceased’s estate: *ie*, she is in court to represent the Deceased’s estate – and *not his four siblings*. There is no basis, therefore, for her to seek in these proceedings a five-way apportionment of the Flat as between herself, the Defendant and the Deceased’s other siblings – unless such a five-way apportionment was a common intention between the Defendant and the Deceased.

89 More fundamentally, the Claimant has misunderstood the very basis of the doctrine of common intention constructive trusts. This type of trust arises because of a common intention between the parties – not for the types of reasons raised by the Claimant (as summarised in italics in [87] above), which appear to be premised on some vague notion of fairness. Further, the CA in *Su Emmanuel* has made clear (at [83]) that for a common intention constructive trust to arise, “there must be *sufficient and compelling evidence* of the express or inferred common intention” (emphasis in original).

¹¹² Claimant’s Supplemental Submissions at para 67.

¹¹³ Claimant’s Supplemental Submissions at para 68.

90 Regrettably, in the present case, having put forward an alternative case of a common intention constructive trust, the Claimant has been unable to articulate with any coherence the “common intention” relied on, let alone to adduce “sufficient and compelling evidence” of any alleged common intention. It must be remembered that the common intention constructive trust arises at the time of the transfer; and in this case, since the transfer took place as between the Deceased and the Defendant, the relevant “common intention” must have been one that existed as between the Deceased and the Defendant at the time of the transfer on 4 July 2014. Given that the Claimant has submitted that the Defendant and each of the Deceased’s siblings is entitled to 20% of the Flat, her position must be that there was a common intention *as between the Deceased and the Defendant* at the time of the transfer that the Flat would be owned equally by the Defendant and the Deceased’s four siblings, with the Deceased and the Defendant (the registered joint tenants) holding 80% on trust for the four siblings.

91 Assuming this *is* the Claimant’s position, however, there is simply no evidence of such a common intention, whether express or inferred. Indeed, it appears to me highly improbable that the Deceased would have decided his siblings should each get 20% of the Flat without bothering to tell any of the siblings either before or after effecting the transfer on 4 July 2014.

92 In any event, when counsel for the Claimant cross-examined the Defendant, nothing was put to her about any alleged common intention she might have shared with the Deceased *vis-à-vis* the issue of his siblings’ interest in the Flat. The omission to put to the Defendant a clear case on the alternative claim of a common intention constructive trust was telling – and ultimately, fatal to the Claimant’s case.

93 For the reasons given above, I reject the Claimant's alternative claim of a common intention constructive trust whereby the Defendant and each of the Deceased's siblings would be entitled to 20% of the Flat.

Whether the formation of a trust over the Flat held by the Defendant in favour of the Defendant would contravene s 58(11) of the HDA

94 Given my finding that no trust arises over the Flat held by the Defendant, it is unnecessary for me to consider whether the formation of a trust over the Flat would contravene s 58(11) of the HDA.

Conclusion

95 In conclusion, I reject the Claimant's application in whole and allow in part the orders the Defendant is seeking. I make the following orders:

- (a) The originating application is to be dismissed;
- (b) The Defendant's absolute ownership of the Flat is affirmed;
- (c) Within 14 calendar days from the date of this order, the Claimant (in her capacity as administratrix of the Estate) is to return to the Defendant the following:
 - (i) The original Duplicate Lease No. I/HB 26082K, failing which the Estate shall bear the cost incurred in the application for a fresh title and to be paid within 14 days from demand;
 - (ii) The mailbox keys and all other keys of the Flat, including keys to the locks of the wooden door, metal gate and chain lock.

96 Finally, I note that the Defendant has also asked for the return of all letters addressed to the Deceased as well as the latter's wedding ring. I do not

think it is appropriate for me to make any orders on these items, as they appear to me to relate to matters involving the administration of the Estate and not to the issue of beneficial ownership of the Flat *per se*. That said, given my finding that the Deceased and the Defendant were in a genuinely loving relationship, I am hopeful that the Claimant will be able to reach some sort of agreement with the Defendant on the return of these items.

97 I will hear parties on the issue of costs.

Mavis Chionh Sze Chyi
Judge of the High Court

Tan Tse Chia Patrick and Nicholas Yong Yoong Han (Fortis Law
Corporation) for the Claimant;
Lim May Li (Lim & Ong) for the Defendant.
