

Tay Jui Chuan v Koh Joo Ann (alias Koh Choon Teck) and other appeals
[2010] SGCA 29

Case Number : Civil Appeals Nos 11, 27 and 28 of 2009
Decision Date : 19 August 2010
Tribunal/Court : Court of Appeal
Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s) : Wong Soon Peng Adrian, Ho Hua Chyi and Yam Wern-Jhien (Rajah & Tann LLP) for the appellants in Civil Appeals Nos 11 and 27 of 2009 and the respondent in Civil Appeal No 28 of 2009; Tan Yew Cheng (Leong Partnership) for the respondent in Civil Appeal Nos 11 and 27 of 2009 and for the appellant in Civil Appeal No 28 of 2009.
Parties : Tay Jui Chuan — Koh Joo Ann (alias Koh Choon Teck)

Land

Equity

Trusts

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [\[2009\] SGHC 87.](#)]

19 August 2010

Judgment reserved.

Chan Sek Keong CJ (delivering the judgment of the court):

1 These are three related appeals against the decisions of the High Court Judge (“the Judge”) in Suit No 163 of 2008 (“Suit 163/2008”) (see *Koh Joo Ann (alias Koh Choon Teck) v First Grade Agency Pte Ltd* [2009] SGHC 87 (“the GD”)). Suit 163/2008 concerned the beneficial ownership of a strata unit known as 88 Stevens Road, Stevens Court, #02-02, Singapore 257865 (“the Property”), which is registered in the name of Koh Joo Ann (“Koh”). On 22 August 2007, First Grade Agency Pte Ltd (“First Grade”) lodged a caveat against the Property (“the Caveat”) on the basis that Koh held the Property on trust and that the legal title to the Property was to be transferred by Koh upon demand. In Suit 163/2008, Koh sought, *inter alia*, the removal of the Caveat and a declaration that Koh is the beneficial owner of the Property (“the Declaration”). First Grade and another company, Inhil Investment Pte Ltd (“Inhil”), counterclaimed for an order for Koh to transfer the Property to a third company, Yeo Siak Hor Pte Ltd (“YSHPL”), or such other nominee as may be nominated.

2 The appeals before this court are as follows:

(a) In Civil Appeal No 11 of 2009 (“CA 11/2009”), Tay Jui Chuan (also known as Tay Juhana) (“Tay Juhana”) has appealed against the decision of the Judge in Summons No 5194 of 2008 (“SUM 5194/2008”) to dismiss an application for him to be added as a plaintiff to the counterclaim by First Grade and Inhil.

(b) In Civil Appeal No 27 of 2009 (“CA 27/2009”), First Grade and Inhil have appealed against the dismissal of their counterclaim.

(c) In Civil Appeal No 28 of 2009 ("CA 28/2009"), Koh has appealed against the decision of the Judge that the Property was held by Koh on trust for Tay Juhana and that the trust arrangement was conceived to evade the provisions of the Residential Property Act (Cap 274, 1985 Rev Ed) ("the RPA"), which was in force at the time the Property was transferred to Koh.

For convenience, First Grade, Inhil and Tay Juhana will be collectively referred to as "the Appellants" in this judgment where appropriate.

Factual background

3 First Grade, Inhil and YSHPL were incorporated in Singapore and are members of or are associated with the "Sambu Group". The Sambu Group is a group of more than a dozen companies involved in the manufacturing of coconut-based products and is controlled by Tay Juhana, its founder. Tay Juhana is also the patriarch of the Tay family and the uncle of Koh. First Grade was the "marketing arm" of the Sambu Group. At all material times, none of First Grade's shareholders and directors was a Singapore citizen. First Grade was therefore a "foreign person" for the purposes of the RPA (*per s* 2(1) of the RPA). Inhil was the property development arm of the Sambu Group and its shareholders and directors were Singapore citizens at all material times. Inhil was managed by Tay Ban Geok (also known as Tay Teng Hoei) ("Mdm Tay"), the sister of Tay Juhana and Koh's maternal aunt. Sometime around the mid-1980s, Inhil developed six strata units in a four-storey residential development (*ie*, Stevens Court) for sale. As it was a four-storey residential development, the sale of the strata units to "foreign persons" was prohibited under s 3(1) of the RPA. According to the defence and counterclaim, after Stevens Court was completed in 1996, the property market at that time was not favourable for the sale of the units. Inhil, therefore, decided to transfer all strata units, including the Property, to members of the Tay family (including Koh) who were Singapore citizens. The consideration for the transfer of the Property to Koh was stated as \$700,000. It was alleged in the defence and counterclaim that First Grade had paid \$550,000 and that Inhil had paid the balance of \$150,000 which (as Mdm Tay testified at trial) had been borrowed from Tay Juhana.

4 In Suit 163/2008, Koh's case (as found in his pleadings and his affidavit of evidence-in-chief ("AEIC") filed for the trial) is, in substance, as follows:

(a) Koh is the registered proprietor and beneficial owner of the Property, which was transferred to him in 1996 as a gift from Tay Juhana for whom Koh had worked for 28 years.

(b) Koh's mother died when he was seven years of age. He, thereafter, stayed with his grandmother, Yeo Siak Hor (Tay Juhana's mother), and was financially supported by Tay Juhana. In 1976, six months after he completed national service, Koh commenced work as a supervisor at PT Pulau Sambu Kuala Enok ("PSK"), a company which was part of the Sambu Group. Over the years, Koh worked his way up through the ranks and was eventually appointed managing director of PSK in 1994 and vice-president in the Sambu Group in 2000. He spent 28 years of his life working for Tay Juhana.

(c) Sometime in 1993, Tay Juhana told Koh (in Teochew) at a meeting that he would give Koh a unit in Stevens Court (which turned out to be the Property). The reason for the gift was not disclosed to Koh. When asked by Tay Juhana what he intended to do with the Property, Koh informed Tay Juhana that he intended to give the Property to his daughter (whom he had with his first wife) when she turned 21. One request Tay Juhana had was to be allowed to use the Property as an informal office and for meetings. Koh agreed. At that time, Tay Juhana knew that Koh would not be using the Property as his residence because Koh already had a house in Singapore and was based in Sumatra. Tay Juhana also knew that Koh had a mistress (who later

became his second wife), one Maigawaty, who was working for PSK.

(d) At no time did Tay Juhana or anyone else mention that Koh was to hold the Property on trust. Koh did not know that the Property had been registered in his name until he received a property tax bill for the Property.

(e) Koh did not pay the property tax and other outgoings for the Property as it was being used by Tay Juhana as an informal office and to hold meetings. Koh left the payments of these expenses to Tay Juhana to deal with. Similarly, Koh was content to leave the subsidiary strata certificate of title for the Property ("the SSCT") with Tay Juhana.

(f) Koh was happy to be treated as a member of the Tay family. In 1997, he acted as a guarantor for loans amounting to "millions of US dollars" extended to the Sambu Group by Bank Negara Indonesia ("BNI"). In or about 2002 and 2003, when the Sambu Group was facing cash-flow problems, he readily agreed to mortgage the Property to obtain bank loans to assist.

(g) In 2004, Tay Juhana, after a falling out with Koh, dismissed Koh as the managing director of PSK and demoted him to being a general manager in charge of purchasing and production. Koh subsequently resigned from all his positions in the Sambu Group on 16 August 2004.

(h) After Koh resigned, Tay Juhana called him for a meeting on 25 August 2004 ("the 25 August 2004 Meeting") at which Koh was asked to return all his shares in companies in the Sambu Group (which Tay Juhana had earlier given to him) in exchange for his release as a guarantor for loans granted by BNI to the Sambu Group. Koh was angry but felt helpless and so he agreed to return all his shares to Tay Juhana. Tay Juhana then told Koh that he regretted giving him two properties and asked Koh three times to transfer the Property back to him. Koh agreed. At this point, Tay Juhana said that he would support Koh financially for the rest of Koh's life.

(i) On 13 September 2004, Koh went to the office of First Grade and signed the share transfers for his shares in the Sambu Group companies. He was also asked to sign two other documents, namely:

(i) one dated 16 August 2004, which stated that he had no claim against First Grade with respect to remuneration, fees, compensation for loss of office or on any account whatsoever; and

(ii) one dated 13 September 2004, appointing Mdm Tay to sell and dispose of the Property on such terms as she thought fit ("the 13 September 2004 Letter").

He signed both documents. As at the date that he swore his AEIC, Koh did not know whether a release of his guarantee to BNI had been obtained.

(j) Between April and July 2007, Koh was asked to sign the transfer instrument to transfer the Property to YSHPL. He was prepared to do so on condition that he receive a written acknowledgement, signed by Tay Juhana, that Tay Juhana would support him financially for the rest of his life. However, Tay Juhana was unhappy with Koh for linking the issue of the transfer of the Property with his promise of financial assistance. In the end, Tay Juhana refused to provide the written acknowledgement and Koh did not sign the transfer instrument.

(k) On 22 August 2007, First Grade lodged the Caveat against the Property, pursuant to s 115

of the Land Titles Act (Cap 157, 2004 Rev Ed) ("the LTA"), claiming to be the beneficial owner:

[b]y virtue of an agreement between the Registered Proprietor and the Caveator that the Registered Proprietor would hold (the Property) on trust for the Caveator and that the legal title to the Property would be transferred to the Caveator upon demand made by the Caveator on the Registered Proprietor.

Koh attempted to have the Caveat removed. After hearing representations from Koh and First Grade, the Registrar of Titles eventually decided that First Grade's claim had to be adjudicated in court. Accordingly, Koh was requested to obtain a court order to remove the Caveat.

5 The case for First Grade and/or Inhil, as set out in the defence and counterclaim, is, in the main, as follows:

(a) The Property was transferred to Koh "on condition that [Koh] was to work for the Sambu Group until retirement, i.e. until he was 60 years of age, and that he would faithfully discharge his duties in the course of his employment".

(b) The Property was transferred to Koh not as a gift and that Koh "had agreed with Tay Juhana that he would hold the Property on trust".

(c) In the alternative, given that the purchase monies for the Property had been provided by First Grade and Inhil, Koh held the Property on an implied and/or resulting trust.

(d) Koh had an agreement with Tay Juhana, which Tay Juhana had made on behalf of First Grade and/or Inhil at the 25 August 2004 Meeting, to transfer/return the legal title of the Property to First Grade and/or Inhil or any nominee appointed by First Grade and/or Inhil and/or Tay Junana upon demand.

(e) Koh was not given possession of the SSCT and the keys to the Property. Consistent with his role as trustee, he did not have to pay the outgoings of the Property. Also, in 2002, he mortgaged the Property to United Overseas Bank Ltd ("UOB") to secure loans; in 2003, he again mortgaged the Property to UOB to secure loans for the benefit of Fairteck Holdings Pte Ltd, a wholly owned subsidiary of First Grade.

(f) Koh had agreed to relinquish the Property in consideration of Tay Juhana procuring his discharge by BNI as a guarantor of loans from BNI. In part performance of this agreement, he had, *inter alia*, signed the 13 September 2004 Letter.

(g) In breach of trust and/or the agreement with Tay Juhana, which Tay Juhana had made on behalf of First Grade and/or Inhil at the 25 August 2004 Meeting, Koh had refused to transfer the legal title of the Property.

The proceedings before the Judge

6 Koh testified on his own behalf. He also subpoenaed Mdm Tay to give evidence and she was cross-examined as a hostile witness. In the course of the trial, there was an application, *viz*, SUM 5194/2008, to add Inhil and Tay Juhana as plaintiffs to the counterclaim. The Judge only allowed Inhil to be added as Tay Juhana was "indisputably a 'foreign person' within the meaning of the [RPA] and ... could not be entitled beneficially to the Property" (see the GD at [14]). At the conclusion of Koh's case, First Grade elected to call no evidence and submitted that it had no case to answer.

7 Notwithstanding that neither First Grade, Inhil nor Tay Juhana gave evidence to support their respective allegations against Koh, the Judge rejected Koh's un rebutted evidence that the Property was a gift to him in appreciation of his services to the Sambu Group. Instead, he found that Koh's evidence was not satisfactory; accordingly, it was held that Koh never had a beneficial interest in the Property and was holding it on trust (for Tay Juhana). The Judge gave the following reasons for his decision in the GD (at [24]–[29] and [32]–[36]):

24 ... [T]he fact that Koh did not pay for the property tax and maintenance charges was an indicator that he was not the beneficial owner. Although he said that the Property was being used by Tay Juhana as an office (at one time) and also as a meeting place, it seemed to me that this begged the question - why was Koh not using the Property even to earn some rent? It seemed to me that that was because he was not the beneficial owner.

25 Secondly, Koh did not keep the title deeds to the Property. Koh's explanation was that he was working and living in a remote area, viz, Kuala Enok, and he had had marital problems with his first wife and trusted Tay Juhana more than her. This assertion, in my opinion, was dubious, as there was no reason why Koh could not have kept the [SSCT] to the Property outside the matrimonial home, if he was truly the beneficial owner. There was also no suggestion that the title deeds of other properties acquired by Koh after his marital woes started, were also not kept by Koh.

26 Thirdly, the fact that Koh did not have a set of the keys to the Property suggested that he was not the beneficial owner. He explained that he was not staying there but I would have thought that if he was the beneficial owner, he would want to keep a set of the keys so as to check on the condition of the Property from time to time.

27 Fourthly, there was the failure to move Maigawaty, Koh's girlfriend (who became his second wife) into the Property. Under cross-examination, Koh testified that in 1998, there was racial violence in Jakarta. So, he thought of moving Maigawaty to Singapore for security. However, he did not move her into the Property. His explanation was that he had promised his daughter from his first wife, who was in secondary one at that time, that she would be given the Property when she reached 21. By moving the second wife into the Property, he would be breaking his promise to this daughter and his promise was of importance to him. He claimed that he had mentioned this intention to Tay Juhana in 1993 or 1994 when the transfer to Koh was discussed. This daughter was then 11 years of age.

28 I doubted the veracity of his gift explanation. Firstly, moving Maigawaty into the Property, pending the acquisition of another property in Singapore would not in itself compromise the intended gift to this daughter. Secondly, as Koh admitted, he did not take any step to transfer the Property to the daughter when she turned 21 in about 2004. His explanation was that he was preoccupied with his divorce at that time, but he could not explain why he did not even bring up the fact that he had promised the Property to this daughter when Tay Juhana demanded the Property at the meeting on 25 August 2004.

29 After the meeting of 25 August 2004, Koh had signed a letter of appointment authorising Mdm Tay to, *inter alia*, "sell and dispose of [the Property] either by private auction for such price as to her shall deem reasonable, and to subject to terms and conditions, if any, as she shall think fit". At one point, he suggested that he did so because the letter was to allow Mdm Tay to deal with the mortgage on the Property. The second paragraph of the letter had included the following, "(including giving notice to discharge the Mortgage)" but it was clear from the letter that it was not confined to dealing with a mortgage alone. In any event, Koh's execution of that

letter could be said to be pursuant to his agreement to transfer the Property and so, it did not add anything more to the factors in support of the existence of a trust.

...

32 Koh's evidence that the Property was given to him was not satisfactory in the circumstances and I concluded that he held the Property on trust.

...

33 Since there was a trust over the Property, the next question was the identity of the beneficiary. The evidence suggested that it was Tay Juhana who had provided the money for the purchase of the Property. For instance, as mentioned above, Mdm Tay, when cross-examined, said that the \$150,000 that Inhil paid for the Property had come from Tay Juhana, although she attempted to construe the money received by Inhil as being a loan from Tay Juhana. She was later cross-examined as to the source of the money for First Grade's payment of \$550,000 for the Property. Her denials to a suggestion that it was Tay Juhana who had provided the money were unconvincing. I would add that Mdm Tay admitted that Tay Juhana had provided about 50 per cent of the money needed to buy the Stevens Court land.

34 In any event, it was not material whether it was Tay Juhana who had personally provided the money for the purchase of the Property. In the first place, I found that the purchase was a sham. Inhil had to dispose of the Property along with the other units of the Project. The market was poor as First Grade and Inhil had alleged. So each of the units was transferred to family members instead of being sold to third parties. However, the transferees could not be "foreign persons" in view of the requirements of the RPA and the transfers were made to look as if they were done pursuant to genuine sales. How could Inhil be *bona fide* selling the Property to Koh for \$700,000 and yet purportedly pay for \$150,000 of the purchase price? The other \$550,000 purportedly came from First Grade which is a company in the Sambu Group. I add that even if some of the units were meant to be beneficially owned by the transferees, it was clear to me that this did not apply to the Property for the reasons I have stated.

35 The truth of the matter was that Tay Juhana was in control of the Sambu Group. All the transfers were done on his bidding. That is why when he spoke to Koh in 1993 or 1994 about the transfer of the Property to Koh, Tay Juhana did not mention which company he was representing. It was unnecessary to do so. Likewise, when Tay Juhana spoke to Koh on 19 August 2004 to claim the Property back, he again did not say which company he was representing. That is why First Grade and Inhil had some difficulty in saying who the true owner was and why there was an attempt to bring in Tay Juhana as a plaintiff in the counterclaim as well.

36 Accordingly, I was of the view that the true beneficiary of the trust over the Property was Tay Juhana.

8 Having found that the true beneficiary of the Property was Tay Juhana, the Judge further held that since Tay Juhana was a foreign person who was prohibited by the RPA from acquiring any interest in the Property, the trust in his favour was null and void. The Judge thus concluded that the "consequence of a breach of the RPA is that the loss lies where it falls and since Koh is the registered owner, he is entitled to the beneficial ownership [of the Property] as well" (see the GD at [53]). He further held that First Grade was a foreign person under the RPA (and, for that reason, no trust could be created in its favour) and that Inhil was in substance a foreign person under the RPA as it was controlled at all material times by Tay Juhana – a fact which had probably not been disclosed to the

relevant authorities at the material time.

9 The Judge also rejected the allegation of First Grade and/or Inhil that the Property was transferred to Koh on the condition that Koh was to hold the Property on trust until he faithfully served the Sambu Group up to the age of 60 for the following reasons (see the GD at [23]):

If this allegation was true, then the payment by these others of property tax or maintenance charges was neither here nor there since their units would in any event also not belong to them. In any event, I did not accept the allegation about the condition. This was a late allegation made by way of an amendment to their pleadings. Secondly, if the Property was meant to be an incentive to Koh to serve faithfully until he reached 60, there was no valid reason why it should be transferred to him before he had met the condition especially with all the attendant expenses, like stamp duty.

10 In addition, the Judge rejected the alternative counterclaim of First Grade and Inhil that Koh had agreed (at the 25 August 2004 Meeting) to relinquish his shares in companies in the Sambu Group and to transfer the Property in exchange for his discharge as a guarantor for the liabilities of the Sambu Group to BNI. He held that Koh's agreement to return the Property was made without any consideration.

11 The Judge stated the following in conclusion (see the GD at [56]):

I ordered First Grade to remove the Caveat by a certain deadline failing which the Registrar of Titles was to cancel the notification of the Caveat. I did not declare that Koh is the beneficial owner of the Property, which was one of the reliefs sought, because, at that time, I thought that if I were to make the declaration [*i.e.*, the Declaration], I might give the impression that Koh had been given the Property and it was not necessary to make the declaration since I was ordering the removal of the Caveat. I also dismissed the counterclaim of First Grade and Inhil.

12 Koh and the Appellants have appealed against the decisions of the Judge. We will now consider the merits of their appeals.

Civil Appeal No 11 of 2009

13 In CA 11/2009, Tay Juhana has appealed against the Judge's decision not to add him as a plaintiff in the counterclaim. This application to add Tay Juhana as a plaintiff was in response to Koh's case that Tay Juhana had entered into the agreement at the 25 August 2004 Meeting in his personal capacity. It may be recalled that First Grade's pleaded case is that Tay Juhana had entered into the agreement on behalf of First Grade and/or Inhil – the agreement being that Koh would transfer the Property to either First Grade, Inhil or a nominee of any one of the Appellants (subsequently identified as YSHPL). The Judge had refused to add Tay Juhana as a party because Tay Juhana was a foreign person who was prohibited from acquiring any interest in the Property by virtue of the RPA.

14 We can dispose of this appeal summarily. In our view, the Judge was correct not to add Tay Juhana as a party, not because he was a foreign person, but because it was *unnecessary* for Tay Juhana to be a plaintiff in the counterclaim. It is clear that Tay Juhana was not making a claim to the Property in his personal capacity. If, as alleged by Tay Juhana and/or First Grade, Tay Juhana had entered into the agreement on behalf of First Grade and/or Inhil, Tay Juhana could have given evidence as a witness. It was not necessary for him to be made a plaintiff *without a substantive claim*.

15 This appeal therefore has no merit and is dismissed.

Civil Appeal No 27 of 2009

16 In CA 27/2009, the grounds for the appeal raised by First Grade and Inhil can be summarised as follows:

(a) The Judge was wrong to hold that the agreement concluded at the 25 August 2004 Meeting was not enforceable by Tay Juhana for the benefit of a non-foreign person – this being YSHPL – based on a purposive interpretation of the RPA, and furthermore, Koh had signed a letter authorising Mdm Tay to dispose of the Property at her absolute discretion (which would have allowed her to transfer the Property to YSHPL) (“ground (a)”).

(b) The agreement concluded at the 25 August 2004 Meeting was supported by consideration as Koh had agreed to relinquish the Property in exchange for Tay Juhana procuring Koh’s release as a guarantor for the loans from BNI to the Sambu Group (“ground (b)”).

(c) The agreement concluded at the 25 August 2004 Meeting would be a cause of action independent of any illegality (referring to *Tinsley v Milligan* [1994] 1 AC 340, *Geoffrey Silverwood (Executor of the Estate of Daisy Silverwood) v Arnold Silverwood, Andrew Silverwood and Gillian Whiteley* (1997) 74 P & CR 453 and *American Home Assurance Co v Hong Lam Marine Pte Ltd* [1999] 2 SLR(R) 992) (“ground (c)”).

(d) The Judge was wrong to find that Inhil was a foreign person because Tay Juhana was in control of Inhil as it is only in exceptional circumstances that the corporate veil would be lifted (referring to *Thode Gerd Walter v Mintwell Industry Pte Ltd and Others* [2009] SGHC 44) (“ground (d)”).

(e) The Judge was wrong to find that Koh was entitled to the beneficial ownership of the Property for the following reasons (“ground (e)”):

(i) there was no provision in the RPA to such effect;

(ii) if the trust over the Property in favour of Tay Juhana was null and void, an automatic resulting trust in favour of Inhil would arise (referring to *Re Sick and Funeral Society of St John’s Sunday School, Golcar* [1973] 1 Ch 51, *Vandervell v Inland Revenue Commissioners* [1967] 2 AC 291, *Air Jamaica Ltd and Others v Joy Charlton and Others* [1999] 1 WLR 1399, *Rowan v Dann* (1992) 64 P & CR 202, *Re Vandervell’s Trust (No 2)* [1974] 1 Ch 269, *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108, and *Hurndell v Hozier and another* [2008] 2 All ER (D) 285 (Mar)); and

(iii) such a resulting trust would not be prohibited by the RPA having regard to the policy behind the RPA; the RPA merely prohibits resulting trusts in favour of a foreign person and at no time was Inhil a foreign person under the RPA (referring to *Sitiawah Bee bte Kader v Rosiyah bte Abdullah* [1999] 3 SLR(R) 606, *Tan Chiu Lian v Neo Liew Eng* [2007] 1 SLR(R) 265, *Cheong Yuke Kuen and others v Cheong Kwok Kiong* [1999] 1 SLR(R) 1126, and *Neo Boh Tan v Ng Kim Whatt* [2000] SGHC 31).

(f) It would be contrary to public policy for Koh to obtain a beneficial interest from a failed illegal trust arrangement, to which he was a willing participant (referring to *Taylor v Chester* (1869) LR 4 QB 309, *Nelson and another v Nelson and others* (1995) 184 CLR 538 at 554 and

17 Our decisions on each of the grounds set out above at [\[16\]](#) are as follows:

(a) With respect to ground (a), the Judge's ruling was irrelevant since he found that the agreement made at the 25 August 2004 Meeting, in so far as it pertained to the transfer of the Property, was made without any consideration (see the GD at [40]).

(b) With respect to ground (b), the Judge's finding that there was no consideration cannot be challenged since *neither First Grade nor Inhil had testified or produced evidence to the contrary*.

(c) With respect to ground (c), it also fails for the reason that grounds (a) and (b) fail.

(d) With respect to ground (d), the finding that Inhil was a foreign person (on the ground that it was controlled by Tay Juhana) was an unnecessary finding since the Judge had held that the beneficiary of the trust arrangement over the Property was Tay Juhana (see the GD at [33]–[35], which is set out at [\[7\]](#) above). Counsel's argument is relevant to ground (e), but with respect to that ground, there was no evidence to support a finding in relation to a resulting trust in favour of Inhil (see, further, our comments on ground (e) below).

(e) With respect to ground (e), even if First Grade and/or Inhil had paid the consideration for the Property, no resulting trust would have followed, whether automatically or otherwise, in favour of them. In the first place, First Grade did not transfer the legal title to Koh. Second, there was no evidence that Inhil did not effectually dispose of its legal and equitable interest in the Property by selling it to Koh. In our view, there was no basis for the Judge to infer that the transfers by Inhil were done to avoid the RPA, given the fact that Inhil, as a licensed developer of the units, had lawful title to the strata units it had developed.

(f) With respect to ground (f), there was no evidence that Koh held the Property on trust for Tay Juhana. Neither he, First Grade nor Inhil had ever made such a claim. It was entirely unnecessary for the Judge to hold that a trust existed in favour of Tay Juhana and, concomitantly, that it was an illegal trust (see also [\[20\]](#) below).

18 For the reasons set out in [\[17\]](#) above, it is our view that the appeal in CA 27/2009 must be dismissed.

Civil Appeal No 28 of 2009

19 In CA 28/2009, Koh contended, in essence, that the Judge was wrong to have decided that the Property was held on trust for Tay Juhana. A number of grounds were submitted including the following:

(a) the Judge was wrong to hold that he had not discharged the burden of proof that he was *prima facie* the beneficial owner of the Property and that his evidence was unsatisfactory; and

(b) the Judge's finding that Tay Juhana was the beneficial owner of the Property went against the weight of the evidence.

20 We agree with Koh's submission that the Judge's finding that Koh was holding the Property on trust for Tay Juhana was contrary to the evidence before the court. Koh's uncontradicted evidence was that Tay Juhana had told him that the Property was a gift to him, the Property was later

registered in his name and that until First Grade lodged the Caveat against the Property, no one had claimed a beneficial title to the Property or that it was not a gift to him. Although the Judge did not expressly say what kind of trust was being referred to and when the trust was created, it is implicit in his reasoning that the trust was an express trust created at the same instant of time the Property was transferred to Koh (see also [\[28\]](#) below). This finding is surprising because Tay Juhana had never claimed to be the beneficial owner of the Property during the entire proceedings and First Grade, Inhil and Mdm Tay had not made such a claim on his behalf. First Grade had applied to join Tay Juhana as a plaintiff in the counterclaim only for the purpose of proving that Tay Juhana had entered into the agreement concluded at the 25 August 2004 Meeting on behalf of First Grade and/or Inhil and not for himself. This application (which must have been with the knowledge and consent of Tay Juhana given that he appealed, in CA 11/2009, against the Judge's decision) contradicts any assumption that Tay Juhana was claiming the Property as a beneficial owner. The Judge himself had in fact noted Tay Juhana's position and observed that this was not surprising because Tay Juhana was a foreign person under the RPA. Yet the Judge, contrary to the pleadings and the evidence, made the finding that the Property was held by Koh on trust for Tay Juhana from the outset.

21 Furthermore, none of the Appellants gave evidence to support their respective allegations and claims against Koh. Mdm Tay was subpoenaed by Koh to give evidence and she was cross-examined as a hostile witness. But even she admitted that she did not mention anything about a trust to the lawyer who acted in the transfer of the Property to Koh.

22 The Judge found that Koh was not the beneficial owner of the Property because he had not satisfactorily explained why he did not: (a) have possession of the SSCT, (b) pay the outgoings, (c) have the keys to the Property, (d) use the Property or even rent out the Property, and (e) move Maigawaty into the Property. It followed that if Koh did not own the Property beneficially, someone else did, and, in the Judge's view, that person was Tay Juhana because he controlled the Sambu Group.

23 With respect, we cannot agree with this conclusion for a number of reasons. The first is that none of the Appellants gave evidence to contradict the evidence of Koh that Tay Juhana had told Koh that a property in Stevens Court would be given to him. The Appellants who were parties in this action, viz, First Grade and Inhil, rested their allegations on a submission of no case to answer. The law on such a submission is established (see *Lim Swee Kiang and another v Borden Co (Pte) Ltd and others* [2005] 4 SLR(R) 141 and the authorities cited therein). The Judge found that Koh did not have the beneficial title to the Property because his explanations on what he did not do with the Property were not satisfactory (see the passages set out at [\[7\]](#) above). In our view, even assuming that Koh had the burden of proof (which is not the case here), Koh's explanations as to why he did not occupy the Property was not incredible. We would further point out:

(a) The Property had been given to Koh and he could have done as he pleased with it.

(b) Koh had another home and, therefore, there would be no particular reason for him to reside in the Property.

(c) Since Tay Juhana wanted to use the Property as a meeting place, there would be no reason for Koh to object as Tay Juhana was his benefactor and also the patriarch of the Tay family. Bearing in mind Tay Juhana's status in the Tay family, it was plausible that Koh should trust Tay Juhana with possession of the SSCT. The fact that Koh did not pay the outgoings of the Property was entirely consistent with the fact that the Property was not used by him but by Tay Juhana.

(d) Koh's unwillingness to move his mistress into the Property was not incredible even though the Judge found it unsatisfactory. Koh's explanation was that other members of the Tay family were living in Stevens Court and he did not want to embarrass them. It seems to us that this was an entirely credible explanation.

In our view, Koh's explanations should not have been rejected outright in the absence of any evidence to the contrary. Furthermore, the Judge was wrong to infer that the Property was held on trust for Tay Juhana when on the pleadings he had never claimed a trust in his favour (see [\[20\]](#) above).

24 Secondly, it would appear that the Judge had approached the case on the basis that Koh had the burden to prove that the Property was not a gift to him. In our view, Koh had no burden to prove that he is the beneficial owner. He is the registered owner of the Property and as such has a good title against the whole world until it is proved otherwise. He has indefeasible title to the Property by virtue of s 46(1) of the LTA, subject only to overriding interests referred to therein and the claims set out in s 46(2) as follows:

- (2) Nothing in this section shall be held to prejudice the rights and remedies of any person —
 - (a) to have the registered title of a proprietor defeated on the ground of fraud or forgery to which that proprietor or his agent was a party or in which he or his agent colluded;
 - (b) to enforce against a proprietor any contract to which that proprietor was a party;
 - (c) to enforce against a proprietor who is a trustee the provisions of the trust;
 - (d) to recover from a proprietor land acquired by him from a person under a legal disability which was known to the proprietor at the time of dealing; or
 - (e) to recover from a proprietor land which has been unlawfully acquired by him in purported exercise of a statutory power or authority.

Any person who claims an interest in the Property adverse to that of Koh must prove that claim. In the present case, the adverse claimants are First Grade and/or Inhil. First Grade lodged the Caveat to protect its claim; but the lodgement of a caveat does not shift the burden of proving a claim. No burden shifted to Koh, the caveatee in the present case. Koh appeared – erroneously – to be required to prove his title to the Property when the alleged protagonist in this case, Tay Juhana, was not a party to the proceedings and had made no claim that Koh did not have the full title to the Property. Indeed (according to Koh, and this was not contradicted) the fact that Tay Juhana asked him for the return of the Property in consideration of which he would secure Koh's release from his bank guarantee is an implied admission by Tay Juhana that the Property belonged to Koh.

25 The statutory provision relevant to the claims of First Grade and/or Inhil is s 46(2)(b) (see [\[24\]](#), above). It was on this basis that First Grade lodged the Caveat, claiming that Koh had agreed with Tay Juhana at the 25 August 2004 Meeting to transfer the Property to First Grade and/or Inhil or their nominees and that the consideration for the agreement was Tay Juhana's promise to procure the release of Koh's guarantee to BNI. Koh's testimony was that he agreed to do so after being pressurised by Tay Juhana and that, after Koh had agreed to do so, Tay Juhana had agreed to support him for life. The Judge accepted Koh's evidence on this point and found that Tay Juhana had provided no consideration for Koh's promise to relinquish the Property. This finding cannot be challenged as Tay Juhana did not give evidence to contradict Koh's evidence.

26 Thirdly, the finding that Koh held the Property on trust for Tay Juhana is not only contrary to Koh's un rebutted evidence, it was also inconsistent with the case as pleaded by First Grade and/or Inhil. Moreover, as we have mentioned earlier, Tay Juhana had never claimed that the Property was held on trust for him. Such a claim would be inconsistent with the terms of the 25 August 2004 Meeting.

27 Fourthly, the Judge's finding would seem to imply that Koh knew he was holding the Property on trust, secretly, for a beneficiary whose identity was unknown to him and Tay Juhana (who was the secret beneficiary) had knowingly entered into an illegal transaction and thereby committed an offence or offences under the RPA. Indeed, the Judge also found that Tay Juhana had probably not disclosed that he controlled Inhil to the authorities. In our view, such a finding of probability of criminality should not have been made against Tay Juhana when he was not a party to the proceedings.

28 Fifthly, although the Judge found a trust in favour of Tay Juhana (which was an illegal trust by reason of the RPA), he did not explicitly state how the trust was created. It was not a resulting trust since Tay Juhana did not claim to have paid the consideration (in fact, First Grade and Inhil made the claim, without providing evidence on it). Neither First Grade nor Inhil claimed a constructive trust. Accordingly, it must have been an express oral trust. If so, such a trust would have not been compliant with s 7 of the Civil Law Act (Cap 43, 1999 Rev Ed) which provides as follows:

Trusts respecting immovable property and disposition of equitable interest

7.—(1) A declaration of trust respecting any immovable property or any interest in such property must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will.

(2) A disposition of an equitable interest or trust subsisting at the time of the disposition must be in writing signed by the person disposing of the same or by his agent lawfully authorised in writing or by will.

(3) This section does not affect the creation or operation of resulting, implied or constructive trusts.

In the present case, the only person who could declare such a trust in 1996 and/or in 2004 was Koh as the registered proprietor. Not only was there no such declaration in writing, Koh denied the existence of such a trust and any disposal of an equitable interest in the Property to any person. That this was the true legal position is confirmed by the fact that First Grade and Inhil pleaded a fall-back argument of there being a resulting trust in their favour.

29 Finally, whilst Koh gave a coherent account of how he came to own the Property as the registered proprietor (which was not contradicted), the Appellants were not able to make a coherent claim to the Property. As we have mentioned earlier, First Grade, Inhil and Mdm Tay had never claimed that the Property was held by Koh on trust for Tay Juhana. In contrast, First Grade pleaded (a) that the Property was transferred to Koh "on condition that [Koh] was to work for the Sambu Group until retirement, i.e. until he was 60 years of age, and that he would faithfully discharge his duties in the course of his employment"; and also pleaded, *inconsistently* it would appear, (b) that the Property was transferred to Koh not as a gift and that Koh "had agreed with Tay Juhana that he would hold the Property on trust". There was absolutely no evidence to support these allegations. It was then argued that the Property was held on a resulting trust for the benefit of First Grade and/or Inhil because they paid the purchase consideration. The Judge was aware that First Grade had "some

difficulty in saying who the true owner was" (see the GD at [35]). In our view, this was an understatement. All their claims and arguments were shots in the dark. None of the Appellants had any idea who the beneficial owner of the Property was and the reason is, to us, obvious. There was no trust and there was no beneficiary and that is why they chose not to call any witnesses.

Conclusion

30 For the above reasons, we make the following orders:

(a) CA 11/2009 and CA 27/2009 are dismissed with costs here and below. The Judge's order directing First Grade to forthwith remove the Caveat is affirmed. We also direct that possession of the SSCT is to be delivered to Koh immediately.

(b) Koh's appeal in CA 28/2009 is allowed with costs here and below and the Declaration is granted.

(c) The usual consequential orders are to apply.

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