

Lim Geok Swan v Lim Shook Luan
[2012] SGHC 18

Case Number : S 898 of 2010
Decision Date : 30 January 2012
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Sim Yong Chan and Sangeeta Kumar (Arthur Loke & Sim LLP) for the plaintiff;
Johnny Cheo (Cheo Yeoh & Associates LLC) for the defendant.
Parties : Lim Geok Swan — Lim Shook Luan

Land – Resulting Trusts

30 January 2012

Judgment reserved.

Judith Prakash J:

Introduction

1 This case concerns the distribution of the proceeds from the sale of a Housing and Urban Development Corporation (“HUDC”) maisonette at Block 146 Hougang Street 11 #02-22 Minton Rise, Singapore 530146 (“the Property”). The Property was sold for \$617,737.25, as part of an en-bloc sale of the development, on 1 February 2007.

2 The plaintiff, Lim Geok Suan, is the mother of the defendant, Lim Shook Luan.

3 In November 1991, the plaintiff and defendant purchased the Property and were registered as joint tenants; the defendant, her two brothers, the plaintiff and, subsequently, one Mr Png Teck Kim (“Mr Png”) who is the plaintiff’s business partner, resided at the Property.

4 Following the en-bloc sale of the Property, \$463,350.08 from the sale proceeds was refunded to the defendant’s CPF account. The balance sum of \$147,030.84 was placed with Messrs Wong Thomas & Leong as stakeholders, with the consent of both parties.

The plaintiff’s case

5 The plaintiff claims \$308,868.25 being a half share of the proceeds of sale of the Property. The plaintiff and the defendant contributed in unequal shares to the purchase of the Property. In normal circumstances, this would mean that a resulting trust would be presumed to apply so that the parties would hold the Property on trust in proportion to their respective direct contributions to the purchase price. The plaintiff’s case is that this presumption was displaced by a prior agreement between the parties that they would share the Property equally.

6 The plaintiff says that an oral agreement was made between her and the defendant in or about October 1991 (“the Agreement”). The terms of the Agreement were that:

(a) If the Property were to be sold, the sales proceeds would be shared equally between the parties.

(b) Both parties would have a half share in the Property and the right of survivorship would apply.

(c) If the defendant wanted to keep the Property for herself, she would buy a three-roomed HDB flat for the plaintiff.

(d) The plaintiff would sell her apartment at Block 433, Ang Mo Kio Avenue 10 #07-1225, Singapore ("Blk 443") to help finance the purchase of the Property.

(e) The plaintiff and the defendant would take a loan from Credit POSB to finance their purchase of the Property and the defendant would pay the monthly instalments of the loan from moneys in her CPF account.

(f) The plaintiff would pay the monthly conservancy fees, utilities, property tax and household expenses for the Property.

7 In support of her case, the plaintiff gave evidence that the decision to purchase the Property was made after many discussions between the defendant, Mr Png and herself. The plaintiff alleged that the defendant would persistently, "almost daily", ask her to sell Blk 443 and buy a bigger flat jointly with the defendant. The defendant's concern was that the neighbours would complain about their keeping a large dog in Blk 443. The plaintiff further alleged that the defendant stated that they would own the new property jointly if the plaintiff sold Blk 443 to help finance the acquisition of the Property, as she had insufficient funds to finance the purchase on her own.

8 The plaintiff alleged that the defendant reassured her regarding the Agreement on various occasions. In particular, she recalled that the evening before they made an offer for the Property, she had a "panic attack" due to her "deep-seated fear that things would go wrong" and asked the defendant to promise her again that should the Property be sold, she would receive half of the proceeds or alternatively the defendant would buy her a 3-roomed flat (should the defendant wish to keep the Property). The defendant then reassured the plaintiff regarding the terms of the Agreement.

9 In her statement of claim, the plaintiff set out the terms of the Agreement and then went on to state:

(a) In accordance with the Agreement, the parties purchased the Property on October 1991 for \$280,000 (with completion in November 1991) – the Property was registered in their names as joint tenants.

(b) The Property was financed in the following manner:

(i) The plaintiff sold Blk 443 for \$47,000.00 and used \$28,000 of the sale proceeds to pay the 10% deposit for the Property;

(ii) Both the plaintiff and the defendant obtained a POSB housing loan of \$200,000;

(iii) the defendant used \$32,400 from her CPF account;

(iv) the defendant paid the mortgage instalments;

(v) the plaintiff paid outgoings comprising the monthly conservancy fees, utilities, property tax and household expenses for the Property from 1991 to 2009, which totalled

\$87,786.00;

(c) The plaintiff said that her cash contributions in relation to the purchase of the Property totalled \$65,988.28:

	Description	Amount paid (\$)
1	Option to Purchase	5,000.00
2	Fee payable on exercise of Option	23,000.00
3	Agent's fees, legal and stamp fees	12,705.67
4	Balance payable to CS Tan & Co	19,682.61
5	Agent's fees viz. sale of Blk 443	1,060.00
6	Stamp duty	3,800.00
7	Installation of grills	740.00
Total :		\$65,988.28

10 In evidence, the plaintiff stated that she had, additionally, paid \$11,218.52 for conservancy/maintenance charges, \$13,929.61 for utilities and \$2,823.46 for property tax and an unnamed figure for telephone charges/household expenses. These amounts, however, were not specifically pleaded in the statement of claim.

11 The plaintiff also pleaded that notwithstanding the Agreement, the defendant reassured her on several occasions that she was an equal owner of the Property.

12 The plaintiff said that she occupied the Property for 18 years until it was sold whilst the defendant only "resided there on and off".

13 The plaintiff's main claims are for:

(a) a declaration that she has a half share in the sale proceeds of the Property or such interest as the court deems just; and

(b) payment out of the sale proceeds in accordance with her interest in the Property.

The defendant's case

14 The defendant denies the existence of the Agreement. She says that the plaintiff decided to purchase the Property as a home for the plaintiff as well as for the defendant and her two younger brothers. The Property was purchased in the names of the plaintiff and the defendant as joint tenants in order that they would constitute a family unit. The defendant was not married and was not eligible to purchase the Property on her own.

15 The defendant denies that there was any discussion or agreement that the plaintiff would have a half share in the Property. Further, there was no discussion on the right of survivorship. Blk 443 was sold because the plaintiff could not be the owner of two HDB properties and had to sell Blk 443 in order to acquire the Property. The defendant did not admit that the sale proceeds of Blk 443 were

applied to the purchase of the Property.

16 The defendant says that the parties had obtained a loan of \$200,000 from Credit POSB secured by a mortgage over the Property and she used her CPF savings to pay the balance of the purchase price of \$280,000. Although the defendant alone made payment towards the mortgage, the mortgage was in the names of both the plaintiff and the defendant as they were the registered owners of the Property. The defendant disputes the payments which the plaintiff said she made towards the purchase.

17 The defendant avers that in equity the parties held the Property as tenants in common with shares in proportion to their respective direct contributions to the purchase price and that there is no basis for the creation of a trust as argued by the plaintiff.

Issues

18 In determining the parties' respective interests in the Property, the following issues fall for consideration:

- (a) Was there an Agreement as alleged by the plaintiff?
- (b) If there was no such agreement, on a resulting trust analysis, what were the parties' respective beneficial interests in the Property?
- (c) What contributions of the parties are to be considered?

Was there an agreement as alleged by the plaintiff?

19 The evidence as to the existence of the Agreement comes solely from the oral testimony of Mr Png and the plaintiff herself. The defendant denied the existence of the Agreement and her witnesses, who were her siblings, each denied personal knowledge of the Agreement. Thus, this issue turns on an assessment of the evidence and the reliability of the plaintiff's account.

20 There are two versions as to how the Property was acquired. The plaintiff's version was that she had purchased Blk 443 as a home for her six children (four daughters and two sons) and herself. By the time she moved in, the plaintiff and her husband were already separated and he did not occupy Blk 443. They were subsequently divorced.

21 The purchase price of Blk 443 was \$15,400. The plaintiff paid \$8,162 from her CPF account and the balance was paid by instalments. Initially, these instalments were paid by the plaintiff's eldest daughter, Lim Soh Meng. She became a joint tenant of Blk 443 in about 1979 so that her CPF contributions could be used to pay the monthly instalments for that property. When Lim Soh Meng married a few years later, the plaintiff's younger son, Lim Chan Cherng, became joint owner of Blk 443 in her place and took over that obligation. He also used the moneys in his CPF account to reimburse Lim Soh Meng's account.

22 By about 1985, some of the children had married and moved out and the persons occupying Blk 443 were the plaintiff, her two younger sons, the defendant and Mr Png. The plaintiff maintained that Mr Png was only her business partner although the defendant and her witnesses considered that he was her boyfriend. She insisted that Mr Png always slept on the floor with her two sons in one of the bedrooms while she occupied the bed by herself. Subsequently, in court, she agreed that after some of the children had moved out of the flat, she and Mr Png had shared a room from time to time.

23 In about 1985, the defendant moved out of Blk 443 to live with her boyfriend. Sometime in 1991, however, the defendant moved back to Blk 443 after this relationship ended. The defendant then wanted to buy a bigger flat because she was afraid that the neighbours would complain about her dog being kept in Blk 443. The defendant did not, however, have sufficient cash to buy a new flat and she persistently asked the plaintiff to sell Blk 443 to help finance the purchase of the new flat.

24 The plaintiff was reluctant to sell Blk 443 because it had been fully paid up and for the first time in her life she was secure in her own house and had a little money saved. She was almost 60 years old at that time and had no desire to live in a bigger flat. She thought that Blk 443 was sufficient for her old age and there was no reason for her to sell it.

25 The defendant, however, told the plaintiff that there was no need for her to worry. She said that if the plaintiff sold Blk 443 to finance the purchase of the Property, they would own it jointly. The defendant said this meant that half of the Property would belong to the plaintiff. She also said that she intended to take a loan to buy the Property and that she could use the money in her CPF account to repay this loan.

26 The defendant's version was that she did not move out of Blk 443 in 1985 but she travelled frequently in the course of her work and therefore frequently she was not at home. When the defendant broke up with her boyfriend in 1991, she wanted to rent a flat for herself, given the cramped living conditions in Blk 443 and the presence of Mr Png whom she disliked. When the plaintiff heard about this, she asked the defendant: "Don't you want to live with mummy anymore? If you don't like living here, let's get something bigger". Although acquiring a bigger flat was not, initially, the defendant's idea, she agreed to this proposal so that there would be a more comfortable home for everyone. The defendant denied having pestered the plaintiff to sell Blk 443. She said once the decision to buy the Property was made, the plaintiff had no choice but to sell Blk 443.

27 The defendant also asserted that she had agreed to the purchase although she had a strained relationship with the plaintiff because the Property would become the family home and the plaintiff agreed to her request not to allow Mr Png to reside there. As the defendant was not married, she and the plaintiff would form the family unit required to qualify them to purchase the Property.

28 Evidence was given by the defendant and some of her siblings that they had a difficult relationship with the plaintiff because the latter became abusive when drunk. She and Mr Png would frequently drink together and this was one of the reasons that the plaintiff's children did not like Mr Png. The plaintiff admitted that there were frequent quarrels between the children and herself. When it was pointed out to her that Lim Chan Cherng had given evidence that these quarrels took place especially after her drinking bouts with Mr Png, the plaintiff said that she only had one or two cans of stout when she was very tired after work. She also asserted that her daughter, Lim Soh Meng, had lied in her affidavit when she stated that Mr Png had resided in Blk 443 despite the children's objections and this had resulted in many family arguments.

29 A substantial portion of the plaintiff's case focused on establishing that it was the defendant's idea to buy the Property. In fact, most of the cross-examination of the witnesses for the defendant focused on establishing this. The problem is that even if the defendant had initiated the purchase (by showing the plaintiff and Mr Png advertisements for available properties as alleged), this does not mean that there was any agreement between the parties in the terms alleged by the plaintiff. In fact, the defendant flatly denied that there was any prior agreement that the plaintiff was to pay conservancy charges, utility bills, property tax and household expenses in return for a half-share in the Property. The defendant stated that she contemplated the purchase as if she was to be the "sole ... person financially responsible".

30 Further, the plaintiff's account of events contained many inconsistencies. The plaintiff was a difficult witness and was frequently evasive or non-responsive. The lapses in her testimony cannot be fully explained away by the facts of her age and the lapse of time between the occurrence of the events and the trial.

31 A core part of the plaintiff's evidence was that she had various discussions with the defendant where the latter allegedly agreed to split the proceeds of the Property (should there be a sale) with her; Mr Png similarly testified to this effect and asserted that he had been involved in said discussions. However, the plaintiff later contradicted herself as seen in the following extract:

Q: Right. But your earlier evidence is that you never had any discussion before the purchase of Minton Rise about selling the Property?

A: Yes, before the purchase of Minton Rise --- Minton Rise property, no one talked about it.

Q: Right.

Court: No one talked about what?

Witness: Talked about the sale.

32 This undermines the credibility of both the plaintiff's and Mr Png's testimony. Further, given the defendant's dislike of Mr Png (which was verified by her siblings and to some extent by the plaintiff herself), it is unlikely that she would have acquiesced to Mr Png's presence and input during the alleged discussions. As a matter of fact, Mr Png did not live in the Property for the first two years after it was purchased. It was the plaintiff herself who said that he only went to live there two years later. This fact supports the defendant's assertion that one of the conditions she put forward and the plaintiff accepted in relation to the purchase of the Property was that Mr Png should not live there.

33 The plaintiff had asserted that at her advanced age, she had no need for a bigger flat and that there was no need to assume the financial risk of purchasing the Property. That was no doubt true but although the plaintiff was a party to the mortgage, she did not assume a substantial financial burden in relation to the purchase because it was the defendant who paid all the instalments of the loan. The defendant also paid a lump sum of \$32,400 from her CPF account. The plaintiff knew that the defendant would be paying the instalments of the loan. She herself asserted that the defendant had agreed to do so. She was used to loan instalments for property being paid by her children from their CPF contributions as this is what had occurred in relation to Blk 443 from the time the family moved in there in 1979. Even if it was the defendant who suggested the purchase of the Property, it is safe to deduce that the plaintiff would have taken it for granted that she would bear no responsibility for the instalments as these could be satisfied from the defendant's CPF account.

34 The plaintiff would have me believe that the parties had discussed, considered and addressed all the various situations that might later develop as a result of the purchase of the Property. From the evidence, I am satisfied that at the material time the parties had a poor relationship and were not prone to long discussions with each other. The defendant did not approve of the plaintiff's relationship with Mr Png and also found the plaintiff herself to be a very difficult person who could be abusive when she was drunk. The defendant recounted an incident involving an attempted attack on her by the plaintiff when the latter was drunk and this evidence was corroborated by another daughter, Lim Soo Kheng. The plaintiff herself admitted, as noted above, that contrary to her assertion regarding the terms of the Agreement, prior to the acquisition, there was no discussion as to what would

happen on the sale of the Property.

35 Further, the plaintiff's assertion that it was agreed that if the defendant wanted to keep the Property for herself, she would buy a smaller three-roomed flat for the plaintiff does not make sense. The defendant could not have agreed to this since at that time she could not legally be the sole owner of the Property as it was an HUDC property. Sole ownership on the part of the defendant only became possible when the Property was privatised much later, in 2001. Hence, the parties could not have envisaged sole ownership by the defendant and discussed and agreed to the purported term in 1991 when the Agreement was allegedly made. During cross-examination, the plaintiff was asked how she and the defendant could have, before the purchase of the Property, foreseen that it would be privatised later. Her response was telling. She said "We did not foresee".

36 The plaintiff was not able to provide a consistent account in relation to each party's financial contributions. While precision cannot be expected given her age and the length of time that has passed since the purchase of the Property, she was not merely inconsistent but on various occasions contradicted herself. One example is that she stated during the trial that the defendant only contributed by paying the monthly instalments and taking up the loan. Later, however, she agreed that the defendant also paid a lump sum of \$32,400 from her CPF Account. Similarly, the plaintiff claimed in her affidavit to have financed the payment of the \$23,000 option fee through the sale proceeds of Blk 443. However, upon cross-examination, she claimed that Mr Png had lent her the \$23,000 and the monies were transferred through 3 blank cheques given to the defendant. Further, in examination in chief, at the start of her oral testimony, the plaintiff said that she had contributed half of the money payable for the purchase of the Property. Under cross-examination, she went further and stated that she had contributed more than half of the moneys for the purchase of the Property. These oral assertions contradicted her assertion in her affidavit that the total amount paid by her was \$62,188.28. It was only during re-examination that the plaintiff was able to "clarify" and explain that her entitlement to half the sale proceeds was not based on her contributions but rather on the Agreement.

37 There are also some doubts about the date of the alleged agreement. The statement of claim states that the agreement was made in October 1991 – which the plaintiff initially confirmed during the trial. However, during cross-examination, the plaintiff stated that she could not remember the exact date (both year and month) on which the parties made the agreement. During re-examination, the plaintiff clarified that the date October 1991 stated in her affidavit was incorrect and that the oral agreement was concluded sometime in June or July of 1991. These discrepancies are not material to the extent that, taken by themselves, they would undermine the credibility of the plaintiff's account but they must be viewed in the context of a witness who kept changing her story and as further examples of how often she changed course during trial.

38 The plaintiff also claimed that she did not seek written or formal confirmation of the alleged agreement because she trusted the defendant; she stated she "was taught a lesson" by the defendant not honouring the alleged agreement, which caused her to document in writing the loan of \$127,500 she took on 12 January 2010 from Mr Png. Nevertheless, she acknowledged in her affidavit that she was especially anxious about the purchase of the Property such that she repeatedly asked for reassurance that the Agreement had been made. However, during cross-examination, she stated that she "did not mention it to [the defendant]" as "[the defendant] already said "Yes" to me". This response is curious as her alleged level of anxiety resulting from her alleged lack of trust in the defendant, would surely have prompted her to request for some security or written confirmation regarding the Agreement.

39 I should state that Mr Png too did not impress me as a credible witness. He did not have the

plaintiff's excuse of old age, being a much younger man, and yet not only did he sometimes claim to be unable to remember but also he changed his evidence on occasion. For example, when he was asked whether he had given the defendant cash of about \$19,682.61 to pay the balance due on completion, he gave varying answers. At first he said he did not know if he had given her cash. Then he said he had bought "a piece of paper from the bank" (the amount was paid by cashier's order) and then changed his evidence again to say it was the defendant who bought the cashier's order.

40 The plaintiff bears the burden of proving the existence of the oral agreement. In all the circumstances, she has not discharged this burden. I find that there was no Agreement in the terms alleged by the plaintiff in relation to the purchase of the Property.

What are the parties' respective interests in the Property?

41 The plaintiff and defendant were joint tenants at law. Their positions at equity however require some discussion. Since they contributed in unequal shares to the purchase price of the Property (the defendant contributing the majority of the purchase price), the presumption of a resulting trust applies albeit subject to (potential) displacement by the presumption of advancement. In this case, there is no need to discuss the presumption of advancement as it was not pleaded or relied on by the plaintiff.

Applicable law

42 The type of resulting trust relevant here is the "presumed intention resulting trust", sometimes referred to as the "presumed resulting trust" ("PIRT"). The law relating to this type of trust was comprehensively considered and set out in *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 ("*Lau Siew Kim*").

43 This type of resulting trust arises as a consequence of a lack of intention to benefit the recipient. There are two ways that it may arise – first, by means of presumption (unless it can be shown that the transfer was *indeed* intended to benefit the recipient); and second, independently of the presumption so long as it can be shown that the transfer was not intended to benefit the recipient.

44 While the continued basis of the presumption of resulting trust (*ie* why such a presumption even exists) is not entirely clear (see [23-[42] of *Lau Siew Kim*), it is clear that the fact being inferred when the presumption is applied is a lack of intention to benefit the recipient.

45 As to the specific circumstances which trigger the operation of the presumption, the usual starting point is the following statement from Lord Browne-Wilkinson in *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 at 708:

A [**PIRT**] arises....where A makes a voluntary payment to B or pays (wholly or in part) for the purchase of property which is vested either in B alone or in the joint names of A and B, there is a presumption that A did not intend to make a gift to B: the money or property is held on trust for A (if he is the sole provider of the money) or in the case of a joint purchase by A and B in shares proportionate to their contributions.

(emphasis added.)

46 The following passage by Robert Chambers, in *Resulting Trusts* (Clarendon Press, Oxford, 1997) at p 32, approved by the Court of Appeal in *Lau Siew Kim* at [35], is instructive:

The facts which give rise to the presumption of a resulting trust are **(i) a transfer of property to another, (ii) for which the recipient does not provide the whole of the consideration.**

The facts which give rise to the resulting trust itself are (i) a transfer of property to another, (ii) in circumstances in which the provider does not intend to benefit the recipient.

(emphasis added.)

47 Evidence that the recipient has not provided the whole of the consideration typically comprises direct financial contributions to the purchase price of the property. However, there is a quasi exception in relation to contribution to renovations that increase the value of the property, although the property must additionally have been redeveloped "closely after purchase and ... its value...increased by the redevelopment" (*Lau Siew Kim* at [126] per VK Rajah JA).

48 It should be noted that the presumption of resulting trust is a rebuttable presumption of law. The Court of Appeal in *Lau Siew Kim* clarified that though the presumption of resulting trust must be *applied* in the circumstances described above in [45]-[47], the *strength* of the presumption must vary according to the facts of the case and the contemporary community attitudes and norms (the Court of Appeal at [46] of its judgment). A common method of rebutting the presumption is via examination of the parties' relationship – if the facts reveal a certain relationship between the parties, a counter presumption *ie* the presumption of advancement is triggered.

49 Where the presumption of a resulting trust is first, triggered and second, not subsequently rebutted, the proprietor(s) at law (*ie* the individual(s) in whom legal title is vested) are deemed to hold the legal title on trust for the parties in proportion to their direct financial contributions. In this case, the presumption of resulting trust has been triggered by the unequal contributions made by the parties. It has not been rebutted because I have rejected the plaintiff's case that there was an express agreement that the parties would be equal owners of the Property notwithstanding their unequal contributions to its acquisition.

Application to the facts

Contributions to the purchase price

50 It is undisputed that the plaintiff paid \$5000.00 (comprising the option fee), \$8,027.50 (legal fees) and \$1,878.17 (legal fees). Though the plaintiff wavered in her position on the stand, she finally agreed that the defendant had made an initial cash payment of \$32,400 from her CPF Account.

51 Thus by the close of the evidence, the following payments were *undisputed*:

	Description	Amount paid (\$)	By whom
1	Option to Purchase	5,000.00	plaintiff
2	Legal fees to C S Tan & Co	8,027.50	plaintiff
3	Legal fees to Ramdas & Wong	1,878.17	plaintiff
4	Balance	32,400.00	defendant
		Total : \$47,305.67	

52 The following payments were *disputed*:

	Description	Amount paid (\$)	Alleged to have been contributed by
1	Balance of the fee payable on exercise of Option	23,000.00	plaintiff and defendant
2	Balance payable to CS Tan & Co	19,682.61	plaintiff
3	Agent's fees, legal and stamp fees	12,705.67	plaintiff
4	Agents fees viz. sale of the Flat	\$1,060.00	plaintiff
5	Stamp duty	\$3,800.00	plaintiff
6	Installation of grills	\$740.00	plaintiff
7	Mortgage instalments	\$289,199.96	defendant

53 The parties took out a mortgage loan of \$200,000 to fund the portion of the purchase price that they could not pay in cash. It is common ground that all the instalments in respect of this loan were paid by the defendant from money in her CPF account. What is in dispute is whether the defendant should be given credit for such payments as being solely her contribution to the purchase or whether the plaintiff and the defendant should be considered to have contributed equally to the payment of the loan because both of them were parties to the mortgage and jointly and severally liable to the lender in respect thereof.

\$23,000 payable on exercise of Option (*ie* the remainder of the 10% deposit)

54 The only documentary evidence available regarding this payment is an original receipt from C S Tan & Co that is in the defendant's name. However, the defendant frankly admitted that she could not remember if she had paid this \$23,000 or not. She stated that she "cannot remember if I actually wrote out a cheque to pay for it or not. It is possible; it is possible that I did not".

55 Conversely, the plaintiff claims that she should be credited with this \$23,000 payment. The plaintiff's version of events is, however, inconsistent. In the statement of claim, she averred that she used the sale proceeds from the flat to pay this \$23,000. However, in her affidavit and also during the trial, she claimed that she borrowed monies from her partnership account with Mr Png. Mr Png supported the plaintiff's account and stated that he gave three unsigned blank cheques, drawn on a Far Eastern Bank partnership account in the joint names of the plaintiff and himself, to the defendant and that one of these was used to fund the \$23,000 payment. Unfortunately, there is no documentary evidence of this payment - the plaintiff stated that her bank passbook, account and tax returns of the partnership were thrown away and the loan from the partnership account was not documented (which Mr Png verified).

56 The plaintiff further alleged that she repaid this \$23,000 loan to Mr Png in 2008 or 2009 using compensation she received from the HDB due to the relocation of her roast meat market stall. Again, there is no documentary evidence of either the repayment of the \$23,000 loan or her receipt of the \$160,000 compensation received from the HDB (apparently, the \$160,000 compensation was not declared on the plaintiff's income tax return and the partnership accounts detailing the repayment were thrown away).

57 On the one hand, the defendant's testimony does not suggest that she should be credited for

this \$23,000 payment. The only evidence in her favour is that the receipt from C S Tan & Co was in her name. On the other, the plaintiff would have had enough cash on completion of the sale of Blk 443 to fund this amount (the evidence was that a cheque for some \$38,000 odd was issued to her and Lim Chan Cherng on completion and that she retained all this money). She also had an ongoing business with Mr Png and access to the cash and bank accounts of the business. It is possible that she contributed towards this payment though perhaps not to the full amount of the same. Having regard to the unsatisfactory state of the evidence from both parties, I would attribute the payment to both of them in equal shares *ie* \$11,500 each.

\$19,682.61 paid to CS Tan & Co

58 This sum was paid by way of a cashier's order on the completion of the purchase of the Property.

59 Again, the plaintiff claims that this \$19,682.61 was procured through a loan from her partnership with Mr Png. She stated that Mr Png gave the defendant three blank cheques, and that the latter used the/these cheque(s) to purchase the cashier's order which was given to CS Tan & Co. Again, there is no evidence of the details of the loan and the alleged receipt of the \$19,682.61 by the defendant.

60 The defendant stated during the trial that she did not remember whether she made the payment (though defendant's counsel stated that she did so from her own savings). She elaborated that she could not remember who paid for this \$19,682.61 and does not remember receiving blank cheques from Mr Png or the plaintiff. Counsel for the defendant, however, submitted that the plaintiff's account was to be disbelieved for three reasons. First, given the hostile relationship between Mr Png and the defendant, it was unlikely that Png would have freely given the defendant blank cheques. Second, that the plaintiff and Mr Png's alleged reliance on the defendant to make all payments and their concomitant apparent lack of knowledge (or concern) as to what the cheques were used to finance was illogical given that they could have asked their lawyers or the property agent what payments were necessary. Third, that Mr Png's explanation for entrusting the defendant with blank cheques, *ie* that he was illiterate, was false.

61 Apart from the oral testimony of the plaintiff and Mr Png, there is no evidence supporting the "three blank cheques story" and I accept the defendant's counsel's submissions on the inherent unlikelihood of that story. In particular I note that although all the cheques were allegedly handed over together in July 1991, they were not in sequential order as one would expect if they had been torn out of the cheque book at the same time. There was also no logical reason why they had to be handed over at one time rather than cheques being issued as and when payments had to be made.

62 On the other hand, the evidence shows that the plaintiff did make some cash contributions to the purchase and therefore I accept she was willing to make further contributions which could be recovered when she sold Blk 443. The defendant has produced no evidence that she had sufficient savings in 1991 to fund the cash payment of \$19,682.61 in its entirety. Neither party has been able to show full payment by herself and therefore I think that this payment too should be credited to both parties in equal shares *ie* \$9,841.30 each.

Agent's fees, legal and stamp fee comprising \$12,705.67

63 The plaintiff alleges that she paid a total of \$12,705.67 through one of the three blank cheques provided by Mr Png. The defendant accepted that the plaintiff paid for (some) of the legal fees incurred, specifically, first, \$1,878.00 to Ramdas & Wong and second, \$8,027.50 to C.S Tan & Co - a

total of \$9,905.50. It is the excess of \$2,800.17 claimed by the Plaintiff which the defendant disputes. Apart from the plaintiff and Mr Png's oral evidence, there is no evidence of payment of the excess \$2,800.17. Accordingly, only the payments evidenced by receipts (*ie* \$9,905.50) will be attributed to the plaintiff and considered in the apportionment of the parties' respective beneficial interests.

Agent's fees for the sale of blk 443 of \$1,060.00

64 This payment alleged made by the plaintiff must be disregarded as it certainly does not constitute a direct or indirect contribution to the purchase price of the Property. It was incurred in relation to the sale of Blk 443 and therefore between the plaintiff and the defendant, it has no significance.

Stamp duty of \$3,800

65 No evidence of this contribution was provided by the plaintiff and this was flatly denied by the defendant. In view of the lack of evidence, I will disregard this contribution.

Installation of grilles, \$740

66 The grilles were installed on 9 March 1992, after the purchase of the Property. The plaintiff claims that the defendant requested that she install the grilles and the iron-gate. No evidence was provided by either party as to whether the plaintiff incurred this expense. In any event, this expense is irrelevant as it does not constitute a direct contribution towards the purchase price.

Conservancy charge and Property tax

67 The plaintiff stated that while she is certain that she paid the property tax, she is unsure of when she started doing so as the defendant "did not tell [her]". There is evidence (from the plaintiff's bank passbook) that GIRO deductions were made for property tax payments from September 1994. However, there were also property tax deductions (accounted for in the plaintiff's bank passbook) in 1991 and 1992 – though the defendant's counsel pointed out that there was no indication of which property these payments were made in reference to. The total amount of property tax payments made by the plaintiff amounted to \$2,743.20.

68 The plaintiff claims to have paid \$10,995.52 in respect of conservancy charges levied on the Property. This was evidenced by records in her bank passbook.

69 In *Gurnam Kaur d/o Sardora Singh v Harbhajan Singh s/o Jagraj Singh* [2004] 4 SLR(R) 420, one of the parties claimed that he had contributed to the purchase price of the relevant property in dispute by paying \$150 per month for food for the family and paying the electricity and water bills. He added that he gave his mother \$40 per month for her expenses. Tan Lee Meng J rejected the assertion that these payments constituted contributions to the acquisition of the property. He said that they had nothing to do with its purchase price (at [7] of the judgment). On the same reasoning, the conservancy charges had nothing to do with the purchase price – they were indirect expenses incurred in relation to the occupation of the Property. They therefore cannot be counted as part of the plaintiff's contribution.

70 Property tax payments have, in matrimonial cases, been considered to be part of a party's contribution to the acquisition of a property. Whilst this precedent may be long established in cases where the courts have to divide matrimonial property between ex-spouses and undertake an exercise

of assessing direct financial contributions to acquisition of this property, there is no good reason to extend this policy to other cases where financial contributions are being assessed. Property tax payments are made to settle annual taxes levied on a property by the government and arise periodically after a purchase has been completed. They play no part in determining the cost of acquiring the property because the amount that is paid in taxes depends on how long the property is owned and has nothing to do with any obligation undertaken at the time of acquisition. Strictly speaking, such payments constitute household expenses and therefore cannot be direct contributions to acquisition of a property. I must therefore disregard this amount paid by the plaintiff.

\$200,000 Housing Loan

71 Generally, payments of mortgage instalments are not regarded as direct contributions to the purchase price of a property per *Calverley v Green* at [27] and *Lau Siew Kim* at [115]. However, payment of mortgage instalments pursuant to an agreement between the parties are considered direct contributions to the purchase price and will give rise to a resulting trust (*Lau Siew Kim* at [116]-[117]).

72 While it is undisputed that the defendant paid for all mortgage instalments, both parties were jointly liable for the mortgage as the mortgage was taken out in both parties' names. Accordingly, each party would be *prima facie* held to have directly contributed \$100,000 to the purchase price. However, the defendant argues that she made the mortgage payments pursuant to a prior agreement between the parties that "the defendant was to be solely responsible for the financing of the purchase and making the mortgage instalment payments". Accordingly, the "ultimate source of the funding" (*Lau Siew Kim* at [116]-[117]) was provided by the defendant (and not jointly by the parties). Following from this, she submits that the monthly mortgage payments should be considered in the apportionment of the parties' beneficial interests.

73 The plaintiff's own evidence was that it was a term of the Agreement that the defendant would arrange for the financing needed for the purchase and would pay the mortgage instalments. She not only said this in her affidavit but also repeated it in open court and specified that the Agreement was that the defendant would use moneys from her CPF account to make these payments. The plaintiff cannot now argue that she should be taken as having contributed to half the housing loan simply because she was a party to the mortgage. First, the housing loan was only in the joint names of the parties because the Property was held in their joint names. Second, as mentioned earlier, the plaintiff was used to a situation in which loan instalments were paid from her children's CPF accounts and she made no contribution to the same whatsoever. The plaintiff's stand was that she was concerned not to incur any additional financial liability by reason of the purchase of the Property. Given that position, it is a fair deduction that she only went into this purchase because she knew she would not have to pay the mortgage instalments and that these would be settled by the defendant. Further, there was no risk of the plaintiff being made liable to make the mortgage payments if the defendant defaulted as the defendant had taken out a mortgage insurance policy to safeguard against this eventuality.

74 I am satisfied that in all the circumstances of the case, the defendant's direct contributions to the purchase should include the amounts that she paid towards settling the mortgage loan. These amounts totalled \$289,199.96 as shown by the defendant's CPF statement.

Conclusion on the parties' respective beneficial interests in the Property

75 The relevant contributions to be considered are summarized in the table below:

76 By the plaintiff:

	Description	Amount paid (\$)
1	Option to Purchase	5,000.00
2	Legal fees to C S Tan & Co	8,027.50
3	Legal fees to Ramdas & Wong	1,878.17
4	Half of balance of option payment	11,500.00
5	Half of balance payable to CS Tan & Co on completion	9,841.30
		Total: \$36,246.91

77 By the defendant:

	Description	Amount paid (\$)
1	Balance of the purchase price	32,400.00
2	Instalments of housing loan	289,199.96
3	Half of balance of option price	11,500.00
4	Half of balance payable to CS Tan & Co on completion	9,841.50
		Total : \$342,941.46

78 Based on the tables above, the total amount expended by the parties in relation to the purchase of the Property was \$379,188.23 (\$36,246.97 and \$342,941.26). The plaintiff's contribution to this sum amounts to 9.56% thereof and the defendant's to 90.44%. I think it is fair to round off the plaintiff's contribution to 10%. That percentage would also represent her beneficial interest in the Property.

79 As the net proceeds of sale of the Property amounted to \$610,380.92 (comprising the sum of \$463,350.08 refunded to the defendant's CPF account and the sum of \$147,030.84 held by the stakeholders), the plaintiff is entitled to 10% thereof *ie* \$61,381.

Conclusion

80 There will be the following orders:

- (a) A declaration that the plaintiff has a 10% beneficial interest in the Property; and
- (b) The sum of \$61,381 shall be paid out to the plaintiff from the money held by M/s Wong Thomas & Leong.

81 As regard costs, the plaintiff asserted a right to half the sale proceeds whilst the defendant in

her closing submissions asserted the plaintiff's entitlement was only 5.3%. Whilst the plaintiff has succeeded in recovering more than the defendant recognised as her due, she has recovered much less than she claimed. Accordingly, I will hear the parties on what the appropriate costs order to be made is.

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