

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 28

Civil Appeal No 154 of 2020

Between

Lim Kieuh Huat

... Appellant

And

(1) Lim Teck Leng (Lin Delong)

(2) Zhang Hong Hong

... Respondents

Civil Appeal No 156 of 2020

Between

Leong Ah Chue

... Appellant

And

(1) Lim Teck Leng (Lin Delong)

(2) Zhang Hong Hong

... Respondents

In the matter of Originating Summons No 1329 of 2019

Between

- (1) Lim Kieuh Huat
- (2) Leong Ah Chue

... Plaintiffs

And

- (1) Lim Teck Leng (Lin Delong)
- (2) Zhang Hong Hong

... Defendants

EX TEMPORE JUDGMENT

[Trusts] — [Constructive trusts]
[Trusts] — [Resulting trusts]

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Lim Kieuh Huat

v

Lim Teck Leng and another and another appeal

[2021] SGCA 28

Court of Appeal — Civil Appeals Nos 154 and 156 of 2020
Sundaresh Menon CJ, Tay Yong Kwang JCA and Quentin Loh JAD
29 March 2021

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Sundaresh Menon CJ (delivering the judgment of the court *ex tempore*):

1 These appeals concern the beneficial ownership of a Housing and Development Board (“HDB”) flat at Kim Tian Road (“the Kim Tian Flat”). The first respondent in these appeals, Mr Lim Teck Leng (“the Son”) is the registered owner of the Kim Tian Flat. His parents, the appellants in each of these appeals (“the Parents”), claimed that they were the beneficial owners of that flat. The second respondent, Ms Zhang Hong Hong, the Son’s ex-wife (“the Wife”), disputed this claim. On the Parents’ application to the High Court, the High Court judge (“the Judge”) dismissed the Parents’ claim to any beneficial interest in the Kim Tian Flat: see *Lim Kieuh Huat and another v Lim Teck Leng and another* [2020] SGHC 181 (“the Judgment”).

2 Broadly speaking, there were two issues before the Judge. First, would the Parents be precluded from claiming such beneficial ownership of the Kim Tian Flat under a trust by reason of the relevant provisions of the Housing and

Development Act (Cap 129, 2004 Rev Ed) (“HDA”)? Second, if not, could the Parents’ claim to beneficial ownership of the Kim Tian Flat be sustained on the facts? The Judge held that the Parents would be precluded from making such a claim, both under ss 51(8)–(9) and s 51(10) of the HDA, and that, in any event, the Parents’ claim could not be sustained on the facts (see the Judgment at [9]–[10]).

Background

3 We begin by setting out some of the material background facts. In 1994, the Parents had purchased an HDB flat in Choa Chu Kang (“the CCK Flat”) in their joint names. In 2007, there was some discussion surrounding the purchase of a flat in Silat Walk (“the Silat Flat”) and the sale of the CCK Flat. That same year, the CCK Flat was sold. On 26 September 2007, the Son obtained the HDB’s approval for him to purchase the Silat Flat, which he then did in his sole name. In 2012, the Silat Flat was compulsorily acquired by the Government under the Selective En bloc Redevelopment Scheme (“SERS”). The total compensation of \$160,400.00 for this acquisition was paid out as follows: (a) an advance of \$25,000.00; (b) a contra for the purchase of a new flat (“the SERS Contra”) to the value of \$27,269.55; and (c) a cheque for the balance of \$108,130.45.

4 The Kim Tian Flat was purchased in 2011 by the Son in his sole name. The SERS Contra was applied towards the initial payment of the Kim Tian Flat, another \$7,935 was funded from his Central Provident Fund (“CPF”) account, and the balance of \$264,500 was funded by a loan in the Son’s name, which was serviced by funds from his CPF account.

5 The Son had married the Wife in 2010 and they divorced in 2016, with final judgment granted in 2018. This dispute arose in the context of the Son's divorce from the Wife. In the divorce proceedings, after the Son's failure to comply with certain court orders, the Wife obtained an order for the sale of the Kim Tian Flat. Shortly thereafter, the Parents commenced the action that has led to this appeal.

Parties' cases

6 It was the Parents' case both below and on appeal that they were the beneficial owners of the Kim Tian Flat under a common intention constructive trust or a resulting trust because they had funded the purchase of the Kim Tian Flat. Their account of how this was done began with the CCK Flat. The CCK Flat had been fully financed by them. They had wanted the Silat Flat to be registered in their names, but the Son convinced them to register it in his name because their age prevented them from obtaining housing loans and because they would have incurred a sales levy if they purchased the Silat Flat, being prior owners of an HDB flat. As the Silat Flat was purchased using the sale proceeds of the CCK Flat, they had fully financed the Silat Flat as well. Subsequently, the SERS Contra from the Silat Flat was used to finance the Kim Tian Flat in part, which should be taken as their contribution to the purchase of the latter. Further, the Son held the balance of the sale proceeds from the CCK Flat and the Silat Flat, as well as their life savings which they had transferred to him. As these sums exceeded the purchase price of the Kim Tian Flat, the Parents argued that they should be taken as having financed the purchase of the Kim Tian Flat as a whole. On the issue of s 51 of the HDA, they took the position that they were not ineligible owners and were therefore entitled to mount their claim to the entire beneficial interest in the Kim Tian Flat under a resulting or constructive trust.

7 On appeal, the Parents further submitted that as the Son did *not* use the moneys that they had provided for the purchase of the Kim Tian Flat, a remedial constructive trust or equitable lien ought to be imposed over the Kim Tian Flat. This seemed to us to be a belated attempt to get around various weaknesses in their case that the Judge had identified. These arguments were not raised or considered below and would require fresh findings of fact. In the circumstances and in the light of the established principles concerning when leave should be granted to raise new arguments on appeal (see *JWR Pte Ltd v Edmond Pereira Law Corporation and another* [2020] 2 SLR 744 at [27]; *Grace Electrical Engineering Pte Ltd v Te Deum Engineering Pte Ltd* [2018] 1 SLR 76 at [30]), we decline to consider these new points and do not address them any further, save to observe that, in any event, even these claims would seem to us to face considerable difficulties.

8 In response, the Wife argued that the Judge was correct to find that the HDA precluded the Parents' claim. Although she disagreed with certain aspects of the Judge's factual findings, she ultimately sought to uphold the conclusion that the facts did not support the Parents' claim in any event.

Decision

9 In our judgment, these appeals cannot succeed. The fatal flaw in the Parents' claim lies in the prohibitions stated in ss 51(8) to (10) of the HDA. In our judgment, even taking the Parents' factual case at its highest (as to which,

to be clear, we have serious reservations about), the Parents cannot, as a matter of law, claim under any trust over the Kim Tian Flat.

10 The material provisions in s 51 of the HDA read as follows:

(8) No trust in respect of any protected property shall be created by the owner thereof without the prior written approval of the Board.

(9) Every trust which purports to be created in respect of any protected property without the prior written approval of the Board shall be null and void.

(10) No person shall become entitled to any protected property (or any interest in such property) under any resulting trust or constructive trust whensoever created or arising.

It is accepted by all parties that the Kim Tian Flat is “protected property”, as defined by s 51(11) of the HDA.

11 The essential difficulty with the Parents’ case is that, on their own evidence, the entire arrangement in relation to the Silat Flat and Kim Tian Flat was an intentional arrangement for them to avoid paying the resale levy and for the Son to be able to obtain a housing loan, while they held the beneficial interest in the flats. In other words, the Son’s ownership of these flats was to be in name only. While we acknowledge that the Parents’ evidence in this regard primarily concerned the Silat Flat, it was not disputed by them that these were also the relevant considerations for registering the Kim Tian Flat in the Son’s name. Taking the Parents’ claim at its highest, we agree with the Judge that this was a nominee arrangement. In this context, the arrangement would have been, in substance, for the Son to hold the Kim Tian Flat as a bare trustee on behalf of the Parents. Although the Parents and the Son have eschewed the language of an express trust (in what we believe was an attempt to get around ss 51(8)–(9) of the HDA), that is the effect of their allegations. However one describes it, it is clear to us that this would be a trust which was “created” or “purports to be

created” in respect of the Kim Tian Flat, in the language of ss 51(8) and (9) of the HDA. That being the case, even apart from any question of the Parents’ ineligibility, the HDB’s prior written approval would have been needed. There was no such approval. Hence, s 51(9) of the HDA applies to render the purported trust null and void. The Parents’ claim fails at this stage.

12 Furthermore, the fact is that this nominee arrangement was intended to get around the resale levy imposed by the HDB. We agree with the Judge that the resale levy plays an important role in the HDB’s management of how its subsidies operate (see the Judgment at [58]). Even apart from the absence of written approval, it is clear from the authorities that no such trust which enables the parties to evade the HDB’s policy can be upheld: see *Cheong Yoke Kuen and others v Cheong Kwok Kiong* [1999] 1 SLR(R) 1126 at [18]–[19]. While ss 51(8)–(9) of the HDA apply regardless of whether the trust is intended to subvert the HDB’s policies and rules, when the trust *is* so intended the case for invalidity is *a fortiori*.

13 We also conclude that the Parents are precluded by virtue s 51(10) of the HDA from claiming beneficial ownership of the Kim Tian Flat. In this regard, we note that the Judge had held that s 51(10) of the HDA would prevent even an otherwise eligible owner from obtaining an interest under the trust if that person did not already have an interest in the flat in question (see the Judgment at [80] and [84]). With respect, this might go further than the existing authorities which have hitherto focused on ineligibility as the central consideration in determining whether s 51(10) (or its equivalent in prior versions of the HDA) precluded a claim (see *Tan Chui Lian v Neo Liew Eng* [2007] 1 SLR(R) 265 (“*Tan Chui Lian*”) at [10]; *Koh Cheong Heng v Ho Yee Fong* [2011] 3 SLR 125 (“*Koh Cheong Heng*”) at [54]). However, as it is not necessary to determine this

for our decision, and given our views on the Parents' ineligibility, we leave this open in the present appeal.

14 The authorities are clear that s 51(10) of the HDA prevents a person who is ineligible to acquire an HDB flat from obtaining or becoming entitled to an interest in such a flat by way of a resulting or constructive trust: *Tan Chui Lian* at [10]; *Koh Cheong Heng* at [57]. In our judgment, the Parents were ineligible owners. The Parents attempted to argue that they were not ineligible because the resale levy was only a condition for purchase and the Parents would otherwise have been able to purchase an HDB flat of their own. We disagreed. The concept of "eligibility" is not a merely notional one. It does not turn on whether a person could conceivably apply for an HDB flat, considered abstractly. Instead, the question must be whether the particular person could purchase the particular flat, and what conditions must be met before that purchase would be approved. Any other view would diminish the limitations that have been clearly set out in the authorities. In the present case, the Parents were not eligible to purchase the Kim Tian Flat without paying the resale levy. If the Parents were correct in their contentions, the entire subsidy scheme operated by the HDB would fall apart, as every purchaser would be able to get around paying the resale levy by entering into such an arrangement. No interpretation of s 51(10) of the HDA that would lead to that result could possibly have been intended by Parliament.

15 Hence, the Parents' case, taken at its highest, cannot succeed. Further, we observe here that in our view, the Parents' factual case is open to question on a number of fronts. With respect to counsel, the Parents' case was predicated on a very loose and imprecise understanding of the requirements of a resulting or common intention constructive trust. Mere assertions that enough money was given to the Son to pay for the purchase price of the Kim Tian Flat are clearly

insufficient. Unless the money could be shown to have been actually used to fund the purchase of the Kim Tian Flat, there is no basis for implying an equitable interest in that flat. The evidence of how the Kim Tian Flat was financed is clear (see [4] above) and none of those sources of financing we have referred to would have been contributed to by the Parents. In fact, in any event, the Son admitted that he had not put the moneys that were given to him towards payment of the Kim Tian Flat, but had expended the moneys or lost them in unsuccessful investments. In addition, even at an earlier stage, given the timelines, we agree with the Judge that the Parents had not even proved that the proceeds from the sale of the CCK Flat were in fact used to purchase the Silat Flat (see the Judgment at [131]). We also found it telling that the Son had failed to assert his Parents' interest in the Kim Tian Flat clearly in the divorce proceedings. However, given our views on the application of ss 51(8)–(10) of the HDA, it is not necessary for us to address the facts in further detail.

16 We therefore dismiss the appeals.

17 At the hearing of these appeals, we were informed by counsel for the Parents that legal aid had been withdrawn from the Parents after the filing of the respondents' cases. We were also told that, as a consequence, the Parents had not furnished security for the costs of the appeals. The withdrawal of legal aid should have been notified to the court at an earlier stage. We observe that where a Grant of Aid (which under s 2 of the Legal Aid and Advice Act (Cap 160, 2014 Rev Ed) ("LAAA") includes a Provisional Grant of Aid) is filed with the court and is subsequently cancelled, the Director of Legal Aid is directed by s 10(2) of the LAAA to file a notification of cancellation with that court. In the present case, a Provisional Grant of Aid was filed, but it is not clear from what counsel informed us whether the Provisional Grant of Aid had lapsed due to the passage of time (see reg 7(1) of the Legal Aid and Advice Regulations

(Cap 160, Rg 1, 1995 Rev Ed) (“LAAR”)) or whether the Director of Legal Aid had rejected the application for legal aid and cancelled the Provisional Grant of Aid (see reg 7(4) of the LAAR). If it had been the latter situation, we expect that the Director of Legal Aid would have informed the court accordingly. In the former situation, there does not appear to be any statutory duty on the part of the Director or counsel to inform the court. However, as a matter of good practice, in the future, where a Provisional Grant of Aid lapses or is cancelled in the course of appeal proceedings, counsel should bring this to the court’s attention promptly, as that may give rise to the question of whether security for costs would need to be furnished to enable the appeal to continue to be pursued.

18 In the light of the withdrawal of legal aid, we order the Parents to pay costs of the appeals fixed at \$20,000 (all-in) to the Wife.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Quentin Loh
Judge of the Appellate Division

Mohammad Shafiq bin Haja Maideen (Abdul Rahman Law Corporation) for the appellants;
Lai Ying Ling Jenny and Lai Ying Mei Jennifer (Lai Yanmei Jennifer) (Jenny Lai & Co) for the first respondent;
Hannah Cheang (Focus Law Asia LLC) for the second respondent.
