

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

[2021] SGHC(A) 5

Civil Appeal No 13 of 2021

Between

Soemarto Sulistio

... Appellant

And

- (1) Stukan Yetty Fang
- (2) Sulistio Yena
- (3) Hino Yenny Sulistio
- (4) Sulistio Edy

... Respondents

In the matter of Suit No 836 of 2019

Between

Soemarto Sulistio

... Plaintiff

And

- (1) Stukan Yetty Fang
- (2) Sulistio Yena
- (3) Rudy Sulistio
- (4) Hino Yenny Sulistio
- (5) Sulistio Edy

... Defendants

EX TEMPORE JUDGMENT

[Gifts] — [Inter vivos]
[Trusts] — [Constructive trusts]

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Soemarto Sulistio
v
Stukan Yetty Fang and others

[2021] SGHC(A) 5

Appellate Division of the High Court — Civil Appeal No 13 of 2021
Belinda Ang Saw Ean JAD, See Kee Oon J, Chua Lee Ming J
23 July 2021

23 July 2021

Belinda Ang Saw Ean JAD (delivering the judgment of the court *ex tempore*):

1 This appeal concerns the rightful ownership of 122 gold bars. The gold bars were purchased in 1989 from United Overseas Bank (“UOB”) in Singapore. At the time of purchase, the gold bars were held under six UOB Gold Certificates bearing various serial numbers and dated 11 February 1989 (the “Original Gold Certificates”). The Original Gold Certificates were issued in the joint names of the appellant, Mr Soemarto Sulistio (the “appellant”), and his wife (“Mdm Soemiati”). On 17 April 2016, the appellant, at Mdm Soemiati’s request, signed the Original Gold Certificates under the section with the heading “Delivery Instructions”. With the signed “Delivery Instructions”, Mdm Soemiati obtained new gold certificates in her sole name in May 2016. The Original Gold Certificates were thus cancelled. Mdm Soemiati died in April 2017, and her will bequeathed the gold bars to the respondents, who are the first, second, fourth and fifth children of the appellant and Mdm Soemiati. In

HC/S 836/2019, the appellant essentially sued the respondents for the return of the gold bars claiming a beneficial interest in the same under the new gold certificates.

2 The trial judge (the “Judge”) dismissed the appellant’s claim. The Judge’s decision is reported in *Soemarto Sulistio v Stukan Yetty Fang and others* [2021] SGHC 04 (the “Judgment”). The Judge applied *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [160] (“*Chan Yuen Lan* framework”) and held that, although the couple’s common intention in 1989 was for the gold bars to be held jointly, the couple’s subsequent common intention in 2016 was to transfer both legal and beneficial ownership of the gold bars to Mdm Soemiati.

3 The case that was argued before the Judge focused on the intention of the couple in and after April 2016. The shape of the appellant’s argument was that the gold bars were held in Mdm Soemiati’s name and remained in her custody under a common intention constructive trust. Specifically, the appellant did not contest the validity of the transfer of the appellant’s legal title to Mdm Soemiati. By the terms of his Declaration of 22 December 2017 (“2017 Declaration”), the appellant accepted that he had transferred the gold bars to Mdm Soemiati who held the same on trust for his benefit. Both parties approached the case on the basis that the dispute should be resolved by applying the *Chan Yuen Lan* framework as the Judge noted (Judgment at [17] to [23]). Consequently, the Judge approached her decision using the *Chan Yuen Lan* framework (see Judgment at [24] to [27]).

4 Dr Tang Hang Wu (“Dr Tang”), instructed to argue the appeal for the appellant, submits that the Judge was wrong to have found that the subsequent common intention of the parties in 2016 had been to transfer both beneficial and legal ownership of the gold bars to Mdm Soemiati. The correct inquiry is

whether the appellant had intended to make an *inter vivos* gift to the wife. Counsel for the respondents, Mr Jimmy Yim SC (“Mr Yim”) submits that the Judge was not wrong to apply the *Chan Yuen Lan* framework, but Mr Yim accepts that the dispositive issue is whether the appellant intended to make an *inter vivos* gift of the gold bars, and relies on the presumption of advancement in the wife’s favour. Mr Yim further argues that the burden of proof is on the appellant to establish that he had intended to maintain a joint beneficial interest in the gold bars under the new gold certificates with a right of survivorship despite his signing of the Original Gold Certificates as described above.

5 We accept that an important factual question is whether the appellant intended to gift legal and beneficial ownership of the gold bars to his wife solely when he signed the Original Gold Certificates in 2016. We also accept that the dispute need not have been resolved by applying the *Chan Yuen Lan* framework, as the transfer of the gold bars in 2016 concerned an *inter vivos* gift and it had nothing to do with the parties’ financial contributions. Notwithstanding the approach adopted by the Judge, the factual finding at [52] of her Judgment that the appellant intended such a gift is not affected and, in our view, it should not be disturbed, as the finding is not plainly wrong or against the weight of the evidence. We will elaborate on this.

6 The appellant pleaded at para 42(2) of his statement of claim (amendment no. 2) (“SOC”) that he “did not intend to give the gold bars to Mdm Soemiati during his life time”. However, the appellant *also* pleaded in his SOC, and further particularised in his further and better particulars, that Mdm Soemiati held the gold bars “on trust” – specifically, either a resulting trust, *Quistclose* trust, or constructive trust – “for the [appellant] and/or Mdm Soemiati jointly and/or for their benefit”. This was noted by the Judge in her Judgment at [14]. The reliefs sought in the appellant’s SOC, which remain

unamended in this appeal, are, *inter alia*, (a) a declaration that he is the beneficial owner of all the gold bars and (b) a declaration that the estate of Mdm Soemiati is holding the gold bars on trust and for the benefit of the appellant. By his pleaded case, therefore, the appellant accepts the existence of the trust and hence sought the aforementioned declaratory reliefs. As mentioned, the appellant's 2017 Declaration also maintained that Mdm Soemiati held the gold bars on trust for him (see Judgment at [44]).

7 It follows from the foregoing that the appellant *accepted* the fact that the legal title to the gold bars was validly transferred to Mdm Soemiati at the time the appellant signed the Original Gold Certificates. Indeed, as the Judge noted in her Judgment at [48], the appellant accepted the validity of the transfer. The issue below was whether the appellant intended to pass beneficial ownership of the gold bars to Mdm Soemiati.

8 However, on appeal, Dr Tang has raised a new argument that the precise subject matter of the gift was not effectively delivered because the Original Gold Certificates were signed by the appellant with the name of the transferee left blank. Dr Tang submits that this means that the gift is "incomplete".

9 This submission is fundamentally inconsistent with the appellant's own pleaded case outlined at [6] above, as it seeks to challenge the validity of the transfer of *legal* title. We agree with the respondents that the appellant is running a different factual case on appeal for which he has not sought leave to do. This new case is also inconsistent with the appellant's SOC, which he has also not sought to amend. The appellant is not permitted to advance this new point on appeal.

10 We now turn to the question whether a valid *inter vivos* gift was made. A valid *inter vivos* gift is made where there is a subjective intention to gift and delivery of the precise subject matter of the gift: *Toh Eng Tiah v Jiang Angelina and another appeal* [2021] 1 SLR 1176 at [52]. We have already explained that the latter requirement – the delivery of the precise subject matter of the gift – was not challenged at the trial below, and the appellant cannot resile from the position taken below. Consequently, the only remaining question is whether the appellant intended to gift beneficial ownership of the gold bars to Mdm Soemiati.

11 The appellant’s main submission on appeal is that he did not intend to gift the gold bars to Mdm Soemiati in 2016 and, as stated in the appellant’s case at para 5, “there is no change in the joint beneficial ownership of the gold bars certificates *with the right of survivorship*” such that, “[u]pon the demise of Mdm Soemiati, he became the sole beneficial owner of the original certificates” [emphasis added]. Since it is the appellant’s case that there was no *inter vivos* gift of the gold bars to his wife, it is uncontroversial that the burden is on the appellant to prove this. We agree with the respondents and the Judge that the appellant has been unable to provide any credible, clear, or coherent explanation for why he signed the “Delivery Instructions” section of the Original Gold Certificates to transfer his interest.

12 As the Judge rightly pointed out (see Judgment at [49(a)]), if the appellant’s intention was to retain full beneficial interest in the gold bars, including the right to survivorship, then his transfer of his joint legal title to his wife in 2016 would be completely inexplicable, as the appellant *already* had joint title to the gold bars prior to the transfer in April 2016. Thus, the appellant’s claim in this regard is inherently unbelievable.

13 The appellant further submits that he signed on the “Delivery Instructions” section of the Original Gold Certificates so that Mdm Soemiati could have “control” over the certificates. This explanation makes no sense because Mdm Soemiati was always in possession of the certificates.

14 Mr Yim relies on the presumption of advancement to rebut the resulting trust pleaded by the appellant, as this is a transfer of property from a husband to his wife, and the burden is on the appellant to prove that he had no intention to gift (see *Koh Lian Chye and another v Koh Ah Leng and another and another appeal* [2021] SGCA 69 (“*Koh Lian Chye*”) at [25]). We agree with Mr Yim that the appellant’s various explanations are inconsistent at best and not only fail to rebut the presumption of advancement but also point towards the appellant’s intention to gift.

(a) In the appellant’s first affidavit of evidence-in-chief (“AEIC”), the appellant claimed that he had signed to ensure that the gold bars would go to his late wife after his death (“first AEIC explanation”). However, in the appellant’s supplementary AEIC, the appellant attested that he signed simply because his wife asked him to (“supplementary AEIC explanation”). Then, at the trial, the appellant testified that “I signed to prove the gold was mine” (“trial explanation”). These inconsistent explanations undermined his credibility as a witness.

(b) The Judge found that the first AEIC explanation made little sense because the appellant himself admitted that he knew that the gold bars, being in joint names, would become solely owned by Mdm Soemiati should the appellant predecease her. The Judge’s finding is not plainly wrong.

(c) As for the supplementary AEIC explanation, the Judge found it difficult to believe that an experienced businessman like the appellant would sign the Original Gold Certificates without question. The appellant's explanation also did not sit well with his evidence that he was "surprised" when his wife asked him to sign, as it was not often that she would ask him to sign documents. This finding is also not plainly wrong. While the appellant submits that he did not ask Mdm Soemiati the reason for seeking his signature because he trusted her, this testimony is also dubious because of his earlier excuses.

(d) As for the appellant's trial explanation that he "signed to prove the gold was [his]" (see [14(a)] above), we agree with the respondents that the explanation makes no sense because he had signed under the very section of the Original Gold Certificates that had to do with the transfer of title to the gold bars. The appellant also failed to explain why there was a sudden need to sign the certificates to prove that the gold bars were his.

(e) In his appellant's case, the appellant now argues on appeal that another "possible rationale" why he had signed was because Mdm Soemiati's name on the original gold certificates was slightly different from the name in her passport. This new argument is not even the appellant's own testimony. Furthermore, this argument also does not make sense. If this claim were true, then the appellant would have known that Mdm Soemiati would need to go to UOB to effect the change in name. However, it was also the appellant's evidence that he did not know that Mdm Soemiati did so (see Judgment at [53]).

15 Dr Tang also submitted at the hearing before us that, even if the validity of the transfer of legal title cannot be challenged on appeal, the gift that was made was “conditional” on Mdm Soemiati holding the gold bars on trust for him. We reject this submission because, as Mr Yim points out, there is no evidence that the appellant had qualified his gift or signing of the gold bar certificates in any way. There is thus no basis to support an inference that the appellant had made such a “conditional” gift.

16 Even though the name of the transferee was left blank on the Original Gold Certificates, the appellant not only signed but also dated the transfer. This supports the inference that he intended to transfer title there and then. Coupled with the fact that the signature had been requested by Mdm Soemiati, and that the appellant handed the signed certificates back to Mdm Soemiati herself, we find no basis to disturb the Judge’s inference that the appellant intended to gift the gold bars to his wife.

17 The appellant also submits that the Judge had erroneously found that there was an agreement that the appellant would transfer the gold bars to Mdm Soemiati in exchange for Mdm Soemiati signing a Power of Attorney (“POA”) appointing their oldest son and third oldest child, Rudy Sulistio (also the third defendant at the trial), to transact the sale of Indonesian land jointly owned by the couple (“POA agreement”) (see Judgment at [34] to [40]). The appellant submits that this point was not pleaded by the respondents. That may be so but we agree with Mr Yim that the finding of the Judge on that aspect was not a material aspect of her Judgment and did not affect the Judge’s finding in relation to the appellant’s inability to provide a credible and coherent explanation for why he signed the Original Gold Certificates (see Judgment at [45] to [50] and [52]). For the same reason, Dr Tang’s attempt to challenge the POA agreement as supported by the evidence also does not take him far. We agree with the

respondents that the evidence fully supports the Judge's finding that the appellant intended to gift legal and beneficial ownership of the gold bars to Mdm Soemiati. There is no reason for us to disturb this finding. In any event, the Judge's finding was broader than the POA agreement: the Judge found that there was an agreement between Mdm Soemiati and the appellant for her to be given the gold bars in exchange for the appellant to have sole access to the couple's other properties (see, *eg*, Judgment at [36] and [39]).

18 By way of observation, the appellant's contention on beneficial ownership with right of survivorship is curious. On his submission, the right of survivorship would not have been relevant or necessary to the appellant's analysis, since the appellant's beneficial interest would have remained with him if the purported gift was invalid. However, the appellant *also* submits that his alleged beneficial interest in the gold bars arises from the fact that the right of survivorship continues to operate after the transfer in 2016 (see [11] above). While Dr Tang submits that, conceptually, there is no difficulty with the right of survivorship operating on the beneficial interest of Mdm Soemiati, the Court of Appeal has recently held that, in the case of a joint tenancy over property, the right of survivorship operates only on the *legal* interest and not the beneficial interest: see *Koh Lian Chye* at [24], endorsing *Estate of Yang Chun (Mrs) née Sun Hui Min, deceased v Yang Chia-Yin* [2019] 5 SLR 593 at [56]. Therefore, the beneficial interest in the gold bars cannot be held on trust for the appellant by way of survivorship after the transfer in 2016, since the appellant no longer retained legal title to the gold bars. Furthermore, if the appellant's intention in 2016 was truly to retain the right of survivorship to the gold bars, there would have been even less reason for him to give up his joint legal title to the gold bars.

19 For the foregoing reasons, we dismiss the appeal. Having considered the parties' respective costs schedules and their submissions, we award costs of S\$40,000 (all in) to the respondents. The usual consequential orders will apply.

Belinda Ang Saw Ean
Judge of the Appellate Division

See Kee Oon
Judge of the High Court

Chua Lee Ming
Judge of the High Court

Dr Tang Hang Wu (instructed) and Tan Yew Cheng (Tan YC Law
Practice) for the appellant;
Jimmy Yim Wing Kuen SC, Lee Soong Yan Kevin, Manoj Belani
and Lim Joe Jee (Drew & Napier LLC) for the respondents.
