

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

[2023] SGHC(A) 34

Appellate Division / Civil Appeal No 113 of 2022

Between

Chee Yin Meh

... Appellant

And

- (1) Ong Kian Guan
- (2) Khor Boon Hong
- (3) Goh Yeow Kiang Victor

... Respondents

In the matter of Suit No 350 of 2019

Between

Chee Yin Meh

... Claimant

And

- (1) Sim Guan Seng
- (2) Khor Boon Hong
- (3) Goh Yeow Kiang Victor

... Defendants

GROUND S OF DECISION

[Trust — Constructive trusts — Common intention constructive trusts]
[Equity — Estoppel — Proprietary estoppel]
[Land — Residential Property Act]

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Chee Yin Meh
v
Ong Kian Guan and others

[2023] SGHC(A) 34

Appellate Division of the High Court — Civil Appeal No 113 of 2022
Kannan Ramesh JAD, Debbie Ong Siew Ling JAD and Andre Maniam J
12 July 2023

27 October 2023

Andre Maniam J (delivering the grounds of decision of the court):

Introduction

1 Under the Residential Property Act (Cap 274, 2009 Rev Ed) (“RPA”), can a foreign person acquire an estate or interest in residential property by way of a common intention constructive trust or proprietary estoppel? In AD/CA 113/2022 (“AD 113”), we upheld the decision of the trial judge (“the Judge”) that this was not permissible under the RPA.

Background

2 The appellant, Mdm Chee Yin Meh (“Mdm Chee”), is married to Mr Fan Kow Hin (“Mr Fan”) (now a bankrupt). Their residence at Sunrise Drive (the “Sunrise Drive property”) was acquired in the sole name of Mr Fan. In May 2017, Mr Fan’s trustees in bankruptcy sold the Sunrise Drive property (the respondents are his present trustees). Mdm Chee filed HC/OS 906/2018

(“OS 906”) seeking a declaration that Mr Fan held half of the beneficial interest in the property on trust for her, and an order that the trustees transfer 50% of the net proceeds to her. OS 906 was converted to HC/S 350/2019 (“Suit 350”) and proceeded to trial.

3 When the Sunrise Drive property was transferred to Mr Fan on 11 August 2011, Mdm Chee was not a Singapore citizen, although she had applied for citizenship two months prior on 10 June 2011.¹ It is common ground that as at 11 August 2011:

- (a) she was a “foreign person” within s 2 of the RPA;
- (b) the Sunrise Drive property was “residential property” under s 2 of the RPA; and
- (c) she had not obtained the Minister’s approval “to purchase, acquire or retain any estate or interest in any residential property” under s 25 of the RPA.

4 Mdm Chee knew about such approvals under the RPA – she had previously obtained approval under the RPA to purchase and acquire an interest as a joint tenant with Mr Fan for their previous matrimonial home at Sunrise Terrace (the “Sunrise Terrace property”).²

5 For the Sunrise Drive property, however, Mdm Chee did not apply for and obtain the Minister’s approval under the RPA. In Mdm Chee’s affidavit of evidence-in-chief (“AEIC”), she said that the lawyer who handled her husband’s purchase of the Sunrise Drive property had advised that it would be difficult for

¹ Mdm Chee’s Affidavit of Evidence-in-Chief (“AEIC”) at [40] (ROA Vol III A, p 11).

² Mdm Chee’s AEIC at [14] (ROA Vol III A, p 6).

her to buy the Sunrise Drive property as she was not a Singapore citizen and she was already an owner of the Sunrise Terrace property. Mdm Chee says the lawyer advised that:

- (a) Mdm Chee should apply for Singapore citizenship (which she did on 10 June 2011); and
- (b) pending approval of her citizenship application, Mdm Chee should ask Mr Fan to hold 50% of the Sunrise Drive property on trust for her.³

The lawyer denied giving such advice – she said that she would not have given such advice as it would have been in contravention of the RPA.⁴

6 Mdm Chee said that after she shared the lawyer’s advice with Mr Fan, Mr Fan agreed that he would acquire the Sunrise Drive property in his name “and to hold 50% of the property for [her] until [she] acquired Singapore citizenship”.⁵

7 Mdm Chee also said that payments for the purchase of the Sunrise Drive property came from joint bank accounts (of her and Mr Fan), a housing loan which Mr Fan took, and a term loan which they jointly took. Further, Mdm Chee said that payments for furniture and fittings were made from a joint bank account and that she had made payments towards property tax.⁶

³ Mdm Chee’s AEIC at [38] (ROA Vol III A, p 10).

⁴ Ms Angela Ng’s AEIC at [5]–[12] (ROA Vol III P, pp 286–288).

⁵ Mdm Chee’s AEIC at [10]–[39] (ROA Vol III A, pp 5 and 11); see also Transcript 23 February 2021 page 64 lines 2 – 8 (ROA Vol III Q, p 69).

⁶ Mdm Chee’s AEIC at [59], [69] and [75] (ROA Vol III A, pp 16, 19 and 20).

8 Mdm Chee became a Singapore citizen on 23 December 2011, but the Sunrise Drive property remained in the sole name of Mr Fan. Thus, in Suit 350, Mdm Chee claimed that Mr Fan held 50% of the beneficial interest of the Sunrise Drive property on trust for her.

9 Mdm Chee’s claim was based on:

- (a) “a common intention constructive trust (the “CICT”) under which Fan had agreed to hold half of the [Sunrise Drive property] for the Plaintiff”, which “arose at some time in the latter part of May 2011”; and
- (b) further or alternatively, proprietary estoppel.⁷

10 The Judge held in *Chee Yin Meh v Sim Guan Seng and others* [2023] 3 SLR 1380 (the “Judgment”) that even if what Mdm Chee said was true, the RPA operated to defeat her claim. We upheld that decision, for the reasons set out below.

Findings

The RPA bars foreign persons from purchasing or acquiring an interest in residential property by way of a trust

11 We concluded, as did the Judge, that the RPA bars foreign persons from acquiring an interest in residential property under a common intention constructive trust.

12 Section 25(2) of the RPA provides that “any foreign person who desires to purchase, acquire or retain any estate or interest in any residential property

⁷ Mdm Chee’s Closing Submissions at [7] (ROA Vol IV D, p 198).

other than non-restricted residential property must apply to the Minister through the Controller for the grant of the Minister's approval to acquire or to retain residential property". That is subject to a saving provision for the retention of any estate or interest vested immediately before 11 September 1973, which does not apply in the present case.

13 Mdm Chee desired to purchase or acquire an interest in the Sunrise Drive property – she said in her AEIC that she and Mr Fan had intended to buy the Sunrise Drive property as joint tenants in the same way as they had bought the Sunrise Terrace property, and the option to purchase the Sunrise Drive property was thus made out in both their names.⁸ As a foreign person who desired to purchase or acquire an interest in the Sunrise Drive property (which was residential property), Mdm Chee was obliged under section 25(2) of the RPA to apply for the Minister's approval to do so, but she did not make the requisite application.

14 Instead, Mdm Chee sought to acquire an interest in the Sunrise Drive property by relying on an agreement with Mr Fan whereby he would acquire the property in his name, but "hold 50% of the property for [her] until [she] acquired Singapore citizenship".⁹

15 Mdm Chee thus claimed that her name was struck out from the option. Mr Fan exercised the option in his sole name on 2 June 2011, and the purchase was completed on 11 August 2011.¹⁰

⁸ Mdm Chee's AEIC at [36]–[37] (ROA Vol III A, p 9).

⁹ Mdm Chee's AEIC at paras 10 and 39 (ROA Vol III A, pp 5, 10); see also Transcript 23 February 2021 page 64 lines 2 – 8 (ROA Vol III Q p 69).

¹⁰ Mdm Chee's AEIC at [38] (ROA Vol III A, p 10).

16 In AD 113, Mdm Chee's case was that she had a 50% beneficial interest in the Sunrise Drive property under a common intention constructive trust. Section 23 of the RPA, however, prohibits foreign persons from purchasing or acquiring any estate or interest in any residential property, by way of a trust. Section 23 provides as follows:

Residential property not to be purchased or acquired by citizen or approved purchaser as nominee of foreign person

23.—(1) A —

- (a) ***citizen or approved purchaser must not purchase or acquire any estate or interest in any residential property that is not non-restricted residential property as a nominee of any foreign person with the intention that the citizen or approved purchaser is to hold it in trust for that foreign person; and***
- (b) foreign person must not authorise or appoint as the foreign person's nominee any citizen or approved purchaser to purchase or acquire any estate or interest in any residential property that is not non-restricted residential property with ***the intention that that citizen or approved purchaser is to hold it in trust for that foreign person.***

(2) ***Any trust created in whatever manner or form pursuant to subsection (1) is void and there is no resulting trust in favour of the foreign person;*** and any contract or covenant between such citizen or approved purchaser and the foreign person in respect of such residential property or any estate or interest therein is void.

...

(4) ***Any person who contravenes subsection (1)(a) or (b) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 3 years or to both.***

...

[emphasis added in **bold italics**]

17 Section 23(1)(a) of the RPA prohibits citizens from *purchasing or acquiring* an interest in residential property with the intention of holding it on trust for any foreign person. Section 23(1)(b) prohibits foreign persons from *authorising or appointing* any citizen as a nominee to acquire an interest in residential property with the intention that the citizen is to hold the interest on trust for the foreign person. Section 23(1)(a) and s 23(1)(b) work in tandem, placing prohibitions on both parties in such a trust arrangement: the foreign person (as beneficiary), and the Singapore citizen (as trustee).

18 Section 23(2) is the corresponding “voiding” provision for s 23(1), providing that any trust created in favour of the foreign person is void and that there is no resulting trust in favour of the foreign person. Section 23(4) then provides for criminal liability for any person who contravenes ss 23(1)(a) and 23(1)(b) of the RPA.

19 Thus, even on Mdm Chee’s case, ss 23(1)(a) and (b) were contravened by Mr Fan and Mdm Chee respectively:

- (a) Mr Fan purchased or acquired the Sunrise Drive property with the intention that he holds a 50% beneficial interest in it on trust for Mdm Fan; and
- (b) Mdm Fan authorised or appointed Mr Fan as her nominee to purchase or acquire the Sunrise Drive property with the intention that he holds a 50% beneficial interest in it on trust for Mdm Chee.

20 It followed that the trust was void under s 23(2) of the RPA.

21 Mdm Chee relied on the case of *Public Prosecutor v Intra Group (Holdings) Co Inc* [1999] SGHC 11 (“*Intra Group*”) to argue that there was nothing in the RPA to prohibit a common intention constructive trust. In that case, Yong Pung How CJ (as he then was) held at [36] and [37] that:

- 36 These provisions all refer to, and prohibit the creation of, express trusts. Section 14(2) prohibits a resulting trust from arising upon the failure of the express trust. This is an important provision to which I will return later. There is, however, nothing in the statute which prohibits a constructive trust from arising by operation of law. A constructive trust (at least one arising in the manner I have stated) falls into none of the prohibitions: it is neither a trust for sale nor an acquisition by a person intending to hold it only as a nominee. The Act prohibits trusts created by a transfer of property with the consent of, or the intention to benefit, the beneficiary. *The constructive trust, on the other hand, is imposed by law when the transfer occurs against the wishes of the beneficiary, often fraudulently, and without exception, to his detriment.*
- 37 The Parliamentary Debates reveal that the creation of a constructive trust in favour of a foreign person was never an issue which concerned the legislators. That is perhaps understandable – I do not see how giving effect to a constructive trust, at least one arising in the manner I have described, can contravene the objectives of the Act. If the property is purchased by a Singapore citizen intending to hold it absolutely, then, at face value, there is no violation of the Act: even if his investment is speculative, this is not the type of speculation which the Act is aimed at. *If, however, it happens that he was a fiduciary for some foreign person and had misappropriated the foreign person’s moneys to acquire the property, then the declaration of a constructive trust in the foreign person’s favour does not in any way contravene the intention of the Act. There was no intention on the part of the foreign person to speculate in Singapore property. It cannot even be said that he intended to acquire that property. The acquisition of the property on trust for him is against his wishes, and, in my view, he is entitled to trace his moneys into the property or the proceeds of its sale. In short, a constructive trust in moneys used to purchase residential property would survive the provisions of the Act.*

[emphasis added]

22 From the extract above, Yong CJ was specifically referring to constructive trusts “imposed by law when the transfer occurs against the wishes of the beneficiary”, where a foreign person’s money was misappropriated and used to acquire residential property. In such a case, the foreign person had *no intention* to acquire the residential property in question; as a corollary, the Singapore citizen had *no intention* to hold the residential property on trust for the foreign person: on its terms s 23 of the RPA would not apply. The constructive trust discussed in *Intra Group* was one imposed by law to protect an innocent party, it was not one involving a contravention of s 23(1)(a) by the Singapore citizen (as trustee), or s 23(1)(b) by the foreign person (as beneficiary).

23 Common intention constructive trusts come within the ambit of s 23 of the RPA, for they arise from the “common intention” of the parties; if the intentional conduct of the parties is prohibited by s 23 of the RPA, there is no basis to exclude common intention constructive trusts from the scope of the section. As the Judge below correctly found, “it is impossible to recognise, as a class, common intention constructive trusts which arises from an express common intention without undermining the policy of the [RPA] and the purpose of the prohibitions in it”: Judgment at [46]. This must be correct because otherwise, a foreigner can skirt the prohibitions in s 3 and 23 of the RPA and acquire an interest in residential property by alleging a “common intention constructive trust” as opposed to an “express trust”.

24 Mdm Chee also argued that the RPA should not apply to trusts in favour of foreign persons who eventually acquire Singapore citizenship. Section 2(1) of the RPA however defines “foreign person” as:

- (a) any person who is not a citizen;
 - (b) any permanent resident
- ... who ... has not been granted approval under section 25.

25 Mdm Chee was not a citizen, she was a permanent resident, and she had not been granted approval under section 25 of the RPA. The fact that she had applied for citizenship did not take her out of the statutory definition of “foreign person”. A common intention constructive trust in favour of Mdm Chee, a foreign person, was void under the RPA.

The RPA bars foreign persons from purchasing or acquiring an interest in residential property except by way of a mortgage, charge or reconveyance

26 Further, s 3(1)(c) of the RPA prohibits foreign persons from purchasing or acquiring an interest in residential property except by way of a mortgage, charge or reconveyance (and Mdm Chee’s claim did not involve any of those modes). Any purchase or acquisition prohibited by s 3(1)(c) is rendered void by s 3(2)(c).

27 Sections 3(1) and (2) of the RPA provide as follows:

Prohibition on transfer to, or purchase or acquisition by, foreign persons of residential property

3.—(1) Except as provided in this Act —

- (a) a person must not, ***whether for consideration or by way of gift inter vivos or otherwise***, transfer any residential property or any estate or interest therein to any foreign person;
- (b) a person must not create ***any trust for sale in respect of any residential property or any estate or interest therein*** in favour of any foreign person; and
- (c) a foreign person ***must not purchase or acquire any residential property or any estate or***

interest therein except by way of a mortgage, charge or reconveyance.

(2) Any —

- (a) **transfer of any residential property or of any estate or interest therein** by any person to a foreign person made in contravention of subsection (1)(a);
- (b) **trust for sale in respect of any residential property or any estate or interest therein created by any person in favour of any foreign person** in contravention of subsection (1)(b); and
- (c) **purchase or acquisition of any residential property** or of any estate or interest therein by any foreign person, except by way of a mortgage, charge or reconveyance, made in contravention of subsection (1)(c),

is void.

...

[emphasis added in **bold italics**]

28 Section 3(1)(c) of the RPA covered Mdm Chee’s claim – she purported to purchase or acquire a beneficial interest in the Sunrise Drive property by way of a trust, but that contravened the prohibition in s 3(1)(c), and was thus void under s 3(2)(c).

29 Although the trustees had more generally cited s 3 of the RPA, the Judge identified s 3(1)(b) (rather than s 3(1)(c)) as the specific sub-sub-section to apply: Judgment at [35], [39], [49]. The Judge also referred to s 3(1)(a) at [49] of the Judgment, but in the context he may have meant that as a reference to s 3(1)(b).

30 At [35] of the Judgment, the Judge said “Section 3(1)(b) of the [RPA] prohibits any person from creating any “estate or interest” in residential property in favour of a foreign person. Section 3(2)(b) of the RPA renders void any

“estate or interest” created by any person in favour of a foreign person in contravention of s 3(1) of the [RPA].” That paraphrase does not accurately capture the scope of s 3(1)(b) of the RPA – what is prohibited is not the creation of an estate or interest in residential property, but the creation of “*any trust for sale* in respect of any residential property or any estate or interest therein” [emphasis added].

31 The term “trust for sale” is a term of art — it refers to a trust which directs the trustee of that trust to sell the trust property, invest the proceeds, and hold the resulting fund upon the trusts declared by the settlor: *Foo Jee Seng and others v Foo Jhee Tuang and another* [2011] SGHC 235 at [16] and [17]. Mdm Chee’s claim did not concern a trust for sale: she did not contend that the arrangement she and Mr Fan had agreed upon, required him to sell the Sunrise Drive property; instead, she simply wanted to own that property together with him.

32 The relevant sub-sub section under s 3 of the RPA is thus s 3(1)(c), with its corresponding voiding provision in s 3(1)(c), not s 3(1)(b) read with s 3(2)(b).

Where the purchase or acquisition is barred under s 23 or s 3 of the RPA, the foreign person cannot claim an interest by proprietary estoppel

33 As an alternative to a common intention constructive trust, Mdm Chee claimed a 50% beneficial interest by proprietary estoppel. However, the factual position that Mdm Chee had put forward and given evidence on at trial, was based on a common intention constructive trust. If that claim failed because of the RPA, she could not then disavow the trust arrangement, and put forward a different factual position to support proprietary estoppel.

34 In any event, Mdm Chee’s proprietary estoppel claim was based on the same agreement between Mdm Chee and Mr Fan whereby he would “hold 50% of the property for [her] until [she] acquired Singapore citizenship”.¹¹

35 The Judge rightly rejected Mdm Chee’s alternative claim of proprietary estoppel. At [52] of the Judgment, he cited *Joshua Steven v Joshua Deborah Steven* [2004] 4 SLR(R) 403 (“*Joshua Steven*”) where the court held that the prohibitions in the RPA applied to a beneficial interest arising from a proprietary estoppel just as it applied to a beneficial interest under a trust. At [15] of *Joshua Steven*, the court stated that “it is trite that a party cannot rely on estoppel in defiance of a statute.”

36 In the present case, we had concluded that the common intention constructive trust was void under s 23 of the RPA, and moreover that Mdm Chee’s acquisition of a beneficial interest in the Sunrise Drive property was void under s 3(1)(c) read with s 3(2)(c) of the RPA. Mdm Chee’s proprietary estoppel claim was founded on the same agreement between her and Mr Fan, that ss 23 and 3 of the RPA strike at. Allowing Mdm Chee to acquire the same interest by proprietary estoppel would allow her to circumvent the RPA. In any event, Mdm Chee’s acquisition of a beneficial interest by proprietary estoppel would itself be an acquisition prohibited by s 3(1)(c) and thus void under s 3(2)(c) of the RPA.

Mdm Chee could not claim a beneficial interest pursuant to a “contingent trust”

37 At first instance, Mdm Chee’s claim was that Mr Fan held a 50% beneficial interest in the Sunrise Drive property “for [her] until [she] acquired

¹¹ Mdm Chee’s AEIC at [38] (ROA Vol III A, p 10).

Singapore citizenship”¹², pursuant to an agreement on those terms between them. That was repeated in Mdm Chee’s appellant’s case at paragraph 4. Later in her appellant’s case, however, Mdm Chee advanced an alternative (and inconsistent) argument:

- (a) that the common intention constructive trust “was alternatively a contingent trust – contingent upon [Mdm Chee] becoming a citizen” (at [38]); and
- (b) “the CICT properly construed cannot be understood to mean that Fan was to hold 50% of the property in trust for [Mdm Chee] indefinitely...properly construed, the CICT meant that Fan would hold 50% of the [Sunrise Drive property] for [Mdm Chee]. Should [Mdm Chee] not acquire citizenship, the CICT would not confer [Mdm Chee] any right or interest in the [Sunrise Drive property]. As matters turned out, [Mdm Chee] acquired citizenship within 4 months of the purchase of the [Sunrise Drive property]” (at [29] and [30]).

38 As with her proprietary estoppel claim, Mdm Chee’s “contingent trust” claim suffers from not being the factual position she had put forward and given evidence on at trial (see [33] above).

39 Moreover, this alternative was inconsistent with Mdm Chee’s *pleadings*; and not only was it unsupported by evidence, but it was also inconsistent with Mdm Chee’s *evidence*.

¹² Mdm Chee’s AEIC at paras 10 and 39 (ROA Vol III A, pp 5, 10); see also Transcript 23 February 2021 page 64 lines 2 – 8 (ROA Vol III Q p 69).

40 The following extracts from Mdm Chee’s Statement of Claim (Amendment No 1) in Suit 350 illustrate the contradiction with her pleadings:¹³

2.1.2 During the course of two or more discussions in or around early May 2011, [Mdm Chee] and [Mr Fan] identified [the Sunrise Drive property] and it was orally agreed between [Mdm Chee] and [Mr Fan] that the parties would jointly purchase [the Sunrise Drive property] for a sum of \$3,100,000 ... *It was also agreed that [Mdm Chee] and [Mr Fan] would have equal beneficial ownership of [the Property] irrespective of [the] parties’ actual contributions to the Purchase Price.*

...

2.1.4 Further to their discussions in early May 2011, during the course of two or more discussions in the period of 19 May 2011 to 2 June 2011, *[Mdm Chee] and [Mr Fan] agreed that while [the Sunrise Drive property] would be purchased in [Mr Fan’s] sole name, [Mr Fan] would still hold half the beneficial interest in [the Sunrise Drive property] on trust for [Mdm Chee].*

...

2.1.4.6 Angela Ng further advised [Mdm Chee] and [Mr Fan] that *[Mr Fan] would hold at least 50% of the property in trust for [Mdm Chee] until [Mdm Chee’s] name was added to the certificate.*

2.1.5 On or about 2 June 2011, [Mr Fan] exercised the option to purchase [Sunrise Drive property] ... *The purchase was completed on 11 August 2011 and [the Sunrise Drive property] was conveyed into the name of [Mr Fan] in accordance with the oral agreement between [Mdm Chee] and [Mr Fan]...*

[emphasis added]

41 Mdm Chee’s pleaded case was that she had agreed with Mr Fan that he would purchase the Sunrise Drive property in his sole name but still hold half the beneficial interest on trust for her upon completion, acting on advice that Mr Fan would hold that interest in trust for her until her name was added to the certificate. That was the trust which Mdm Chee claimed to exist. Nothing was

¹³ Statement of Claim (Amendment No 1) in Suit 350 (ROA Vol II, pp 61 to 72).

said about the trust, or Mdm Chee’s interest under it, being contingent on her becoming a Singapore citizen.

42 If, by her “contingent trust” argument, Mdm Chee was suggesting that until and unless she became a Singapore citizen there was no trust, or she had no beneficial interest, that was not her case at first instance.

43 Compounding Mdm Chee’s problem was her own evidence, that Mr Fan would “hold 50% of the property for [her] until [she] acquired Singapore citizenship”.¹⁴ Not only was this stated in Mdm Chee’s AEIC, but she also confirmed it in her oral testimony:¹⁵

Q. I'll ask you a simple question: is Fan's holding on trust of the 50 per cent of the property for you, did it arise before or after you became citizen?

A. It arise [*sic*] before I become a citizen.

44 Thus, her closing submission was that the trust “arose at some time in the latter part of May 2011”, *ie*, the trust was in place by the time Mr Fan exercised the option in his sole name (in June 2011) and the Sunrise Drive property was transferred to him (in August 2011). All these were inconsistent with there being *no trust*, or Mdm Fan having *no beneficial interest*, until and unless she became a Singapore citizen (which happened in December 2011) – if this was what Mdm Fan’s “contingent trust” argument meant.

45 We also noted that Mdm Chee put forward no legal authorities for the concept of a “contingent trust” that she advanced for the first time on appeal.

¹⁴ Mdm Chee’s AEIC at [38] (ROA Vol III A, p 10).

¹⁵ Transcript, 23 February 2021, page 79 line 8 to 12 (ROA Vol III Q, p 83).

Mdm Chee was not entitled to equitable relief because she lacked “clean hands”

46 We also affirmed the Judge’s decision that Mdm Chee was not entitled to equitable relief because she lacked “clean hands”: Judgment at [53]–[56].

47 We agreed with the Judge that on Mdm Chee’s case, she had acted with intent to circumvent the RPA. Having obtained the Minster’s approval to be a co-owner of the Sunrise Terrace property, Mdm Chee did not seek or obtain such approval for the Sunrise Drive property. Instead, she sought to acquire a 50% beneficial interest in it pursuant to a trust arrangement or proprietary estoppel.

The award of indemnity costs against Mdm Chee at first instance was justified

48 The Judge awarded indemnity costs against Mdm Chee because he accepted that Mdm Chee had brought and conducted Suit 350 in bad faith.

49 One aspect of this was the Judge’s finding that Mdm Chee lacked “clean hands” as discussed in the preceding section. Another aspect was that Mdm Chee had sought to change her case in response to a striking out application.

50 We would add that Mdm Chee’s conduct indicated a lack of integrity on her part:

- (a) When she initially made her claim to the trustees for 50% beneficial interest in the Sunrise Drive property, she explained that the property was purchased in the Mr Fan’s sole name because it was easier for him to obtain a housing loan in his sole name given that she was

unemployed at the material time.¹⁶ She did not mention that she was prohibited by the RPA from acquiring any interest in the Sunrise Drive property at the material time because she was not a citizen then.

(b) Similarly, in her first Statement of Claim dated 10 January 2019, there was no mention of her citizenship, or lack thereof.¹⁷ In her first affidavit filed in Suit 350 on 24 July 2018, she repeated her explanation that Mr Fan purchased the Sunrise Drive property in his sole name because it would have been easier for him to apply for a housing loan in his sole name.¹⁸

(c) Upon the trustees discovering her citizenship issues and commencing striking out applications in HC/SUM 6078/2019, she then changed her case. She amended her Statement of Claim to allege for the first time that her lawyer had advised her that she could obtain 50% beneficial interest in the Sunrise Drive property notwithstanding that the purchase would be made by Mr Fan. The court noted when giving its decision on the striking out application on 10 February 2020 that it “certainly appears that [the appellant] is changing her case now that it has come to light that she was not a Singapore citizen at the time the [Sunrise Drive property] was purchased” and that her alleged discussions with Mr Fan appeared to be “an afterthought, in a bid to avoid a striking out of the claim”.¹⁹

¹⁶ Mdm Chee’s Letter to the Trustees dated 26 January 2018 (ROA Vol III H, pp 5–11)..

¹⁷ Statement of Claim (Amendment No 1) in Suit 350 (ROA Vol II, pp 61 to 72).

¹⁸ Mdm Chee’s Affidavit filed in HC/S 350/2019 dated 24 July 2018 at [1.3.4] (ROA Vol IV O, p 251).

¹⁹ Minute Sheet dated 10 February 2020 in HC/S 350/2019.

51 Having regard to Mdm Chee’s conduct, compounded by her advancing a “contingent trust” argument for the first time on appeal (which was both unpleaded and inconsistent with her case at first instance), we decided that an award of indemnity costs was also warranted for the appeal.

Conclusion

52 For the above reasons, we dismissed Mdm Chee’s appeal in AD 113. We ordered her to pay to the trustees costs on an indemnity basis, fixed at \$50,000, and disbursements of \$8,000. The usual consequential orders were made.

Kannan Ramesh
Judge of the Appellate Division

Debbie Ong Siew Ling
Judge of the Appellate Division

Andre Maniam
Judge of the High Court

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respondents.
