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Chau Thi Thanh Lang and another

v

Lo Lai Heng

[2016] SGHC 13

High Court — Originating Summons No 280 of 2015

Chua Lee Ming JC

20, 22 October; 6 November 2015

Trusts — Resulting trusts

1 February 2016

Chua Lee Ming JC:

Introduction

1 Mr Leo Wey Jack (“the deceased”) passed away without a will on 6 August 2014. The plaintiffs are the administrators of the deceased’s estate (“the Estate”). The 1st plaintiff, Mdm Chau Thi Thanh Lang, is the deceased’s widow. The 2nd plaintiff, Mdm Lim Lai Beng is a family friend of the deceased’s family. The defendant, Mdm Lo Lai Heng, is the deceased’s mother.

2 The deceased and the defendant owned a Housing & Development Board (“HDB”) flat at Block 51 Strathmore Avenue #01-191, Singapore 140051 (“the Property”) as joint tenants. Following the deceased’s death, the defendant filed a Notice of Death on 1 December 2014 and registered herself as the sole

owner. The 1st plaintiff lodged a caveat against the Property as one of the beneficiaries of the Estate; the caveat was registered on 10 December 2014.

3 In these proceedings, the plaintiffs claimed that the deceased had contributed 91.79% of the purchase price of the Property, and that the defendant therefore held 91.79% of the interest in the Property on trust for the Estate. The defendant did not dispute the deceased's financial contributions towards the purchase price of the Property but claimed that the deceased's intention was for her to hold the entire beneficial interest in the Property.

4 The defendant applied to convert the originating summons to a writ action. I did not think it was necessary to do so but I granted leave for the deponents to be cross-examined on their affidavits. At the end of the hearing, I found in favour of the plaintiffs and granted a declaration that the defendant holds a 91.79% share in the Property on trust for the Estate, and ordered that the Property be sold and the net proceeds of sale be paid to the plaintiffs and defendant accordingly. I awarded the plaintiffs costs fixed at \$15,000 excluding disbursements.

5 Before the order was extracted, the plaintiffs applied for further arguments and asked for a further order that the plaintiffs have the first option to purchase the defendant's 8.21% share in the Property at market value within six months, failing which the Property shall be sold in the open market within three months thereafter. The defendant consented to this further order, and I made the order accordingly.

6 The defendant has appealed against my orders.

The facts

7 The deceased and the 1st plaintiff were married in Vietnam on 8 March 2009 and registered their marriage in Singapore on 21 September 2009. Also surviving the deceased are two children. Leo Kyle Ann (“Kyle Ann”), aged 15, is the 1st plaintiff’s daughter from her previous marriage. The deceased adopted her on 10 June 2014. Leo Kyle Ian (“Kyle Ian”), aged 5, is the daughter of the deceased and the 1st plaintiff.

8 The deceased and the defendant bought the Property as joint tenants in 2011 for \$560,000. As stated earlier, the financial contributions towards the purchase price of the Property were not in dispute. The defendant contributed only \$46,000 or 8.21% of the purchase price. The plaintiffs had alleged that the sum of \$46,000 was a loan from the defendant to the deceased. However, as the plaintiffs were prepared to treat the sum of \$46,000 as the defendant’s contribution towards the purchase price, I proceeded on that basis.

9 The deceased paid \$82,000 in cash and using his Central Provident Fund (“CPF”) savings. The balance was paid with a housing loan of \$432,000 (“the Loan”). The Loan was serviced entirely by the deceased using funds from his CPF account. As the deceased was using his CPF savings to pay the monthly Loan instalments, he was required to be insured under a mortgage-reducing insurance scheme called the Home Protection Scheme (“HPS”). The deceased paid the premiums for the HPS. When the deceased died, the balance of the Loan then outstanding was paid by the insurers under the HPS.

10 It was not in dispute that the defendant had left it to the deceased to take care of the Loan, and that the deceased paid the Loan instalments and the premiums for the HPS.

The law

11 Legal joint tenants who have contributed unequally to the payment of the purchase price will be presumed to hold the property as beneficial tenants in common in proportion to their contributions: *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 at [83] (“*Lau Siew Kim*”). Each party’s share of the beneficial interest is to be ascertained at the time of acquisition of the property: *Lau Siew Kim* at [112]; *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [53] (“*Chan Yuen Lan*”).

12 Only direct contributions towards the purchase price are relevant. In the case of monies borrowed by a mortgagor to pay for the property, the mortgagor (by reason of having assumed liability to pay the loan) is treated as having provided the proportion of the purchase price attributable to the monies so borrowed. The actual payments of mortgage instalments are not regarded as direct contributions unless the payments are made on the basis of an agreement made when the mortgage is taken out: *Lau Siew Kim* at [115]—[116].

Parties’ contributions

13 Since they were joint owners, the Loan was obtained by the deceased and the defendant jointly. In such a case, both the deceased and the defendant would have assumed liability on the Loan. However, in my view, the amount of the Loan ought still to be considered as the deceased’s contribution. As stated earlier, it was common ground the defendant left it to the deceased to pay the Loan. It was clear that there was agreement between the deceased and the defendant that the deceased would pay the Loan instalments. As the defendant said in her affidavit, she “was assured that [the deceased] would settle the rest of [the purchase price] by way of a HDB loan.” Since the payments by the deceased towards the Loan were made on the basis of an agreement with the

defendant, these payments are to be considered as the deceased's direct contributions. The court will give effect to any agreement between the parties at the time of acquiring the property as to the ultimate source of funds for the purchase of the property: *Lau Siew Kim* at [117].

14 It is true that when the deceased died, the balance outstanding on the Loan was repaid by the HPS. However, the deceased was the insured under the HPS and he had paid all the premiums. In my judgment, the amount paid towards the Loan by the HPS ought in all fairness to be regarded as the deceased's direct contributions as well.

15 Even if there had been no agreement between the deceased and the defendant at the time of purchase that the deceased would be responsible to repay the Loan, the remedy of equitable accounting should be considered in this case to adjust the beneficial interests in the Property so as to attribute the \$432,000 from the Loan to the deceased as his contribution to the purchase price. In *Chan Yuen Lan* (at [55]–[57]), the Court of Appeal considered allowing all mortgage instalment payments to qualify as direct contributions to the purchase price of the property, without the need for a prior agreement. In that case, the property was partly financed by a loan in the wife's name. The Court found that the husband took on the obligation of repaying the loan with the wife's agreement. However, the Court of Appeal went further to say (at [86]) that even if there was no prior arrangement that the husband would repay the loan, the Court would be willing to consider the remedy of equitable accounting to adjust the parties' beneficial interests to attribute the amount of the loan to the husband. The Court of Appeal's comments on equitable accounting are *obiter*. However, as the Court of Appeal noted (at [55]), there are persuasive arguments against the narrow view that mortgage repayments made without

prior agreement to do so cannot count as contributions towards the purchase price of the property.

16 The defendant also claimed to have contributed \$20,000, representing agency fees, movers' fees, and the cost of minor renovations and electrical appliances. The defendant's allegation was just a bare allegation; she did not produce any evidence in support of this. Neither was the defendant able to say how the \$20,000 was split among the four items. I should add that in my brief reasons given after the hearing, I had said that the defendant's other alleged contributions are not direct contributions. On reflection, that was incorrect, at least with respect to the alleged payment for the minor renovations. The alleged payment for minor renovations can be considered a direct contribution if it increases the value of the property (see *Lau Siew Kim* at [126]); however, neither the payment for minor renovations nor the effect of the alleged renovations in increasing the value of the Property was proven in this case.

17 The financial contributions towards the purchase price were therefore clear. The defendant contributed 8.21% and the deceased contributed 91.79%.

18 Based on the financial contributions, the defendant will be presumed to hold 91.79% of the beneficial interest in the Property on a resulting trust for the Estate, unless the defendant can show any of the following:

- (a) There was an express or inferred common intention between her and the deceased that she was to hold the beneficial interest in the Property in its entirety. The common intention must exist in fact; the court may not impute a common intention where it did not in fact exist; or

(b) The deceased, who paid the larger share of the purchase price, intended to benefit the defendant with the entire amount with which he paid, in which case, the deceased would have been considered to have made a gift to the defendant of that larger sum; or

(c) There is sufficient and compelling evidence of a *subsequent* express or inferred common intention that the defendant would hold the entire beneficial interest.

(See *Chan Yuen Lan* at [160]).

The defendant's case

19 The defendant's case was that the deceased had intended that she should have the entire beneficial interest in the Property. The only evidence adduced to support this assertion was the oral evidence of the defendant and her other son, Mr Leo Wey Kuen ("Kenneth"). Both claimed that the deceased had said that he wanted to purchase a HDB flat jointly with the defendant to provide her a sense of security during her sunset years.

The plaintiffs' case

20 According to the 1st plaintiff, the deceased had wanted to buy the Property to provide a home for her and the children. He had borrowed \$46,000 from the defendant as he did not have enough cash. The deceased had included the defendant's name in the title to the Property as the defendant had insisted on it to protect her loan to the deceased. In any event, the deceased could not include the 1st plaintiff's name in the title to the Property as she did not qualify since she had not acquired permanent residence ("PR") status at that time. The 1st plaintiff was included as a named occupier instead.

21 The 1st plaintiff obtained her PR status in 2012. She agreed that it was then possible to add her name to the title to the Property. According to the 1st plaintiff, this was not done as the intention was to sell the Property after the minimum occupation period of five years expired.

The evidence

22 In my judgment, the evidence showed that the 1st plaintiff's version of the facts was more probable.

23 First, the defendant's assertion was just a bare allegation. Kenneth's evidence did not add anything more substantive. In contrast, the 1st plaintiff's version was supported by the evidence of the 2nd plaintiff. The 2nd plaintiff gave evidence that the deceased had told her about the loan from the defendant and that he had included the defendant's name in the title to the Property at the defendant's insistence. The deceased also told the 2nd plaintiff that he intended to sell the Property after the minimum occupation period was over, pay the loan from the defendant, and then buy another flat together with the 1st plaintiff.

24 The 2nd plaintiff had no interest in the Property. However, she was evidently close to and cared for the deceased's family. Her son and the deceased had known each other since their primary school days and the 2nd plaintiff was a family friend to the deceased's family. Nevertheless, I found her evidence to be straightforward and factual. Her evidence remained unshaken by the cross-examination and I had no reason whatsoever to doubt her testimony.

25 Second, the deceased left his monies in his CPF account to the 1st plaintiff (50%), the defendant (30%) and Kyle Ian (20%). If the defendant's allegations were to be believed, *ie*, that the deceased was unhappy with the 1st plaintiff and that the deceased had made arrangements in Vietnam for the 1st

plaintiff, there would have been no reason for the deceased to leave as much as 50% of the monies in his CPF account to the 1st plaintiff.

26 On the other hand, if (as the evidence in fact showed) the defendant's allegations about the deceased's unhappiness and the arrangements in Vietnam were not made out, in my view, it was unlikely that the deceased would have left 30% of his CPF monies to the defendant if he did intend that the defendant would hold the entire beneficial interest in the Property. After all, the evidence showed that the deceased's assets were just the Property and the monies in his CPF account and the value of the Property far exceeded the amount of monies left in his CPF account. No evidence was adduced as to the actual amount in the deceased's CPF account at the time of his death but the evidence showed that the total amount in his CPF account as of 31 December 2012 was just \$49,479.42. If the deceased had intended that the defendant should be entitled to the entire beneficial interest in the Property, it seemed to me that there would have been no reason for him to leave the defendant an additional 30% of his CPF monies.

27 Third, if the defendant's claim was true, it would have meant that the deceased had made a conscious decision not to provide his wife and children with any accommodation. This would be unusual, to say the least, unless there were some very good reasons.

28 The defendant sought to persuade me that the deceased had reasons to exclude the 1st plaintiff/his family from having any share in the Property. These alleged reasons were that:

- (a) the deceased was unhappy with the 1st plaintiff;
- (b) the deceased had already made arrangements for his family in Vietnam;
- (c) the deceased wanted to provide the defendant with a permanent roof over her head before he returned to Vietnam with his family.

The deceased's relationship with the 1st plaintiff

29 The defendant claimed that the deceased had been unhappy with the 1st plaintiff over her conduct in relation to investments that he had made in Vietnam in her name. The 1st plaintiff denied the existence of the alleged investments and said that she was never involved in any investments in Vietnam with the deceased. According to the 1st plaintiff, the deceased never mentioned any investment in Vietnam. The defendant produced no evidence of the alleged investments. In fact, the defendant even engaged lawyers in Vietnam to conduct searches but no record was found of any purchase of land by the 1st plaintiff.

30 The defendant also alleged that the deceased had told her of several incidents where he entrusted monies and jewellery to the 1st plaintiff for specific purposes and the monies and jewellery then went missing or were unaccounted for. This was just another bare allegation without any supporting evidence.

31 The 2nd plaintiff testified that the deceased had a loving relationship with the 1st plaintiff and their children. The deceased and his family had rented a room from the 2nd plaintiff for about a year before the deceased bought the

Property. The 2nd plaintiff had ample opportunity to interact with and observe the relationship between the deceased and his family.

32 In addition, the deceased had adopted Kyle Ann (the 1st plaintiff's daughter from her previous marriage) in mid-2014 shortly before he died. The undisputed report dated 30 April 2014 by the Senior Child Welfare Officer from the Ministry of Social and Family Development ("the Adoption Report") testified to a "warm and stable relationship" between the 1st plaintiff and the deceased. In my view, this objective evidence contradicted the defendant's allegations about the deceased's relationship with the 1st plaintiff.

33 In my judgment, the defendant's allegations about the deceased's unhappiness with the 1st plaintiff were not made out.

Whether the deceased had made arrangements for his family in Vietnam

34 The defendant alleged that the deceased had made arrangements for his family in Vietnam. The defendant alleged that the deceased had invested in a motorcycle-hire business and in a piece of land in Vietnam. However, there was no evidence of these investments. In addition, even by the defendant's own account, these investments had already failed. The defendant also claimed that the deceased had invested in various other businesses in Vietnam together with the 1st plaintiff but these were just bare allegations.

35 The evidence showed that it was unlikely that the deceased had that much money to make the many investments that the defendant alleged he did. In fact, the evidence showed that when he died, the deceased was in debt in excess of \$38,000, mostly due to credit card debts. Also, at the time of his death, the deceased was employed as a Senior Manager by Thermic Coating Industries Pte Ltd. According to the Adoption Report (which was dated 30 April 2014) the

deceased had a monthly income of just \$4,800 per month. In addition, the 1st plaintiff has been working in Singapore, struggling with two jobs (one of which was as a coffee shop assistant) and earning a gross salary of just about \$2,124 a month. In my view, the evidence did not support the defendant's allegations about the deceased's many investments in Vietnam or the arrangements made by the deceased for his family in Vietnam.

Whether the deceased intended to return to Vietnam

36 The defendant's allegation that the deceased intended to return to Vietnam to continue his businesses there was also not supported by the evidence. The deceased was working in Singapore at the time of the purchase of the Property, and he continued working in Singapore after that until he died. There was no evidence of any arrangements being made to move to Vietnam. In fact, even as of late 2013, the deceased was still trying to obtain a long term pass for the 1st plaintiff's mother to stay in Singapore. Further, shortly before he died, he had also submitted an application for Singapore citizenship for Kyle Ann.

Conclusion

37 For the above reasons, I was convinced that the deceased wanted to provide a home for his family. In my judgment, the deceased could not have intended that the defendant should hold the entire beneficial interest in the Property. Neither could it be said that he intended to make a gift to the defendant of his contribution to the purchase price. Finally, the defendant did not adduce evidence of any subsequent common intention that she should hold the entire beneficial interest of the Property. The defendant's case consisted of nothing more than unsubstantiated allegations. I therefore rejected the defendant's claim and granted the plaintiffs the declaration sought.

Chua Lee Ming
Judicial Commissioner

Seenivasan Lalita and Quek Wan Yee (Virginia Quek Lalita &
Partners) for the plaintiffs;
Choh Thian Chee Irving, Kor Wan Wen Melissa and Moe Peter
(Optimus Chambers LLC) for the defendant.
