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

[2021] SGHC(A) 25

Civil Appeal No 50 of 2021

Between

Vishnumangalam Chandrasekharan Renuka

… *Appellant*

And

(1) Yeow Jen Ai Susan
(2) Ravindaranath Kalyana Ramasamy

… *Respondents*

In the matter of Originating Summons No 1116 of 2019

Between

Yeow Jen Ai Susan

… *Applicant*

And

Ravindaranath Kalyana Ramasamy

… *Respondent*

And

Vishnumangalam Chandrasekharan Renuka

… *Intervener*

JUDGMENT

[Land] — [Interest in land]
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v
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29 October 2021

23 December 2021 Judgment reserved.

Woo Bih Li JAD (delivering the judgment of the court):

Introduction

1 This is a dispute over a property at 32 Jalan Rengkam, Singapore 537585 ("the Property"). It was bought in March 2008 and is registered in the sole name of the second respondent ("H"). He is married to the appellant ("W"). They are undergoing divorce proceedings in FC/D 5697/2018. The first respondent ("Y") is a female friend of H.

2 In 2019, Y filed an originating summons in the General Division of the High Court to claim an interest in the Property. H was named as the defendant but he supported the claim of Y. W then intervened in the action in order to resist Y's claim. W also claimed an interest in the Property on the basis that she had contributed money to its purchase.

3 Both H and Y were cross-examined on the affidavits they had filed. After considering the evidence and submissions, the judge below ("the Judge") issued his judgment on 19 April 2021: see *Yeow Jen Ai Susan v Ravindaranath Kalyana Ramasamy (Vishnumangalam Chandrasekharan Renuka, intervener)* [2021] SGHC 94 ("the Judgment"). The Judge found that Y was entitled to 73% of the beneficial interest in the Property and H was entitled to 27%. He declined to make any order in respect of W's claim as he was of the view that it was irrelevant to the determination of Y's claim, and that it should be dealt with during the division of matrimonial assets in the divorce proceedings between H and W. W then filed the present appeal against the Judge's decision, contesting both the Judge's determination of Y's share in the Property and the Judge's decision not to rule on her claim to the Property.

Background to the present appeal

4 We set out below some background information from the affidavits of Y and H and from the Judgment.

5 H and W were married in 1992. In 1993, they purchased a flat in Tampines (the "Tampines Flat") and held it in their joint names. The Tampines Flat was subsequently sold in March 2008 and W claimed that its sale proceeds were used by H to pay for the Property. According to W, since she was entitled to half of the net sale proceeds of the Tampines Flat as a joint owner, she now has a beneficial interest in the Property which H holds on trust for her.

6 Based on H's affidavit, he was previously employed from 1983 to 2006 as a broker in financial institutions, a role in which he traded financial instruments on behalf of customers. He said that from 2007 to 2009, he was self-

employed and traded with his own savings using his personal proprietary trading account with Philips Futures Pte Ltd. He also claimed that he was not allowed to trade on behalf of anyone since 2007 and did not do so.

7 Y described herself as a single career lady. She was last employed by a company from April 2007 to 2009 and her last position there was a Director of Strategy, Planning and Insights for the South East Asia Pacific Management Team. She is currently running her own consultancy business. She coaches and facilitates workshops on "collaboration, strategy and change management".

8 Y and H have known each other since February 1993. They met as course mates in their Master of Business Administration programme which was a distance learning programme. The two were assigned to the same study group with three other course mates. Y referred to H as her mentor whom she learned a lot from. As a result of his guidance and tutelage, she received a masterclass in stakeholder management. She graduated in 1996 but H did not graduate with the class. She kept in touch with him and he continued to mentor her.

9 The Property was purchased in H's sole name in March 2008 for $1.7m. As regards a loan secured by a mortgage on the Property, Y said that she already had an existing relationship with OCBC Bank, with whom she had a different loan secured by a mortgage. Y explained that since H was unemployed and would not be able to obtain a loan for the Property on his own, she arranged the loan and also stood as its guarantor. Y was also a co-borrower in that Y and H jointly took up the loan of $1,360,000 from OCBC Bank. This was equivalent to 80% of the Property's purchase price.

10 Y and H contended that at the time of the Property's purchase, there was an oral agreement between them (the "Alleged OA"). This Alleged OA supposedly contained the following terms.

11 Firstly, the Property was to be held in H's sole name to "save costs on stamp duties and higher yearly property tax". At the time of the purchase of the Property, Y already owned a property whereas H would not own any property after selling the Tampines Flat. Y claimed that, at that time, there was speculation about the imposition of second property stamp duties. She also claimed that if she were to hold the Property jointly with H, an additional property tax of 3% would be levied on the Property as it would be her second property. Since the Property was purchased as an investment, they decided that it was more commercially sound for H to hold the Property in his sole name.

12 Secondly, when the selling price of the Property rose to $3.5m, the Property was to be sold and the sale proceeds were to be shared between Y and H according to the contributions made by each of them towards the Property's purchase and its other related expenses.

13 Thirdly, Y and H were to contribute to the initial payments for the Property's purchase. Y was to pay for the Property's mortgage loan repayments and related expenses. Such related expenses included insurance premiums, property tax, and general upkeep costs (*eg* for pest control, grass cutting, pond maintenance, and gutter cleaning). To this end, Y claimed that she had been transferring approximately $7,000 to $10,000 every month to H and that she was still doing so. H supported this claim. However, as W pointed out, the monthly transfers were at times for $5,000 or less, which was below the average monthly mortgage loan instalment of $5,200 per month.

14 The Judgment summarised the contributions allegedly made by Y and H as follows:

S/N	Particulars		Contributions	
			[Y]	**[H]**
1	Option fee and deposit (5%)		Nil	$85,000
2	Balance down payment (15%)	CPF	Nil	$167,000
		Cash	$30,000	$58,000
3	Stamp duty		$45,600	Nil
4	Renovation on purchase		$22,000	Nil
5	Yearly insurance from April 2008 to April 2019: S$900 per year		$9,900	Nil
6	General maintenance from 2008 to 2018: S$3,800 per year		$38,000	Nil
7	Mortgage loan repayments from April 2008 to August 2019 (ongoing): S$5,200 per month (average)		$717,600	Nil
8	Total contribution		$833,600	$310,000
9	Share in Property		73%	27%

15 On her part, W denied the existence of the Alleged OA and the contributions allegedly made by Y pursuant to that agreement.

16 Ultimately, the Judge found that Y had established the existence of the Alleged OA and his finding of the respective shares of Y and H was in accordance with the above tabulation. The Judge thus held that there was a common intention constructive trust in favour of Y to the extent of 73% of the Property. As for W's claim that she had an interest in the Property, the Judge declined to deal with the same as he was of the view that it was only relevant to W's divorce proceedings with H, but not to the determination of Y's beneficial interest in the Property.

The issues on appeal

17 The two main issues on appeal are:

(a) whether the Judge erred in declining to decide on W's share in the Property; and

(b) whether the Judge erred in his determination of Y's share in the Property.

First main issue

18 As mentioned at [5], W claimed an interest in the Property on the basis that she had made a direct financial contribution to its purchase through H's use of the sale proceeds of the Tampines Flat.

19 In our view, the Judge did not err in declining to rule on W's claim to the Property. The present action was an originating summons brought by Y for a declaration as to her share in the Property. W had intervened in the action in order to challenge Y's claim. Accordingly, Y's claim was the central issue in

the action and Y was not concerned in the dispute between H and W in respect of W's interest in the Property. Had the Judge heard evidence and submissions on W's claim, this would have been a distraction from Y's claim, which was the main issue at hand.

20 Furthermore, it was evident from the parties' cases that eventually, W did not intend to claim a share of the Property *solely* on the basis that she had made a direct financial contribution to its purchase. For example, as her own counsel acknowledged before us, W might also claim a larger share of the Property on the basis of her indirect contributions to her marriage with H, assuming that the Property (or a part thereof) falls within the pool of matrimonial assets.

21 In the circumstances, it did not make sense for W to insist that the Judge should have ruled on her present claim when both her direct and indirect financial contributions in the marriage would be appropriately considered together in the divorce proceedings as part of the division of matrimonial assets. We accordingly dismiss W's appeal on the first main issue.

Second main issue

22 We now come to the second main issue.

23 It is obvious that any share which Y has in the Property would reduce H's share. That would in turn reduce the scope of any claim that W might have to H's share in the Property as her claim can only extend to H's share, and not Y's. From W's point of view, the claim by Y would be an attempt to put as much of the Property as possible out of her reach.

24 We are mindful that an appellate court should be slow to disturb findings of fact by the court of first instance. However, we are of the view that, with respect, the Judge had placed too much weight on certain evidence, without considering or giving due weight to other relevant evidence when he found that the Alleged OA existed and that a common intention constructive trust arose in favour of Y.

25 We begin by considering the key components of Y's and H's tabulation at [14] above as regards the contributions which they allegedly made pursuant to the Alleged OA. As mentioned earlier, W rejected the existence of the Alleged OA and also generally denied Y's alleged contributions to the Property's purchase and its related expenses. In particular, W did not accept that Y had paid the $30,000 cash down payment for the purchase of the Property, the sum of $45,600 for stamp duty or $22,000 for renovation expenses.

26 In respect of the $30,000 cash down-payment which Y allegedly made, Y had adduced bank statements showing that on 20 March 2008, she had made two transfers of $20,000 and $10,000 respectively from her bank account. W contended, however, that this transfer only took place *after* the purchase of the Property was completed. Furthermore, there was no documentary evidence as to what the money was used for and the recipient bank account for these transfers was not stated. The Judge nevertheless appeared to accept Y's testimony that H had paid for the $30,000 cash down-payment first, and that the transfer of $30,000 from Y's bank account was indeed meant to reimburse H for the said payment.

27 As regards the $45,600 allegedly paid by Y for the Property's stamp duty, there was no documentary evidence showing that Y had made this

payment. The Judge simply accepted Y's and H's evidence that she had given him a cheque of $45,600 for that purpose and that this was done pursuant to the Alleged OA: see Judgment at [35].

28 As for the $22,000 in renovation expenses that Y had allegedly paid for the Property, W similarly contended that no documentary evidence had been produced to substantiate these payments. The Judge did not address this point in the Judgment.

29 W additionally denied that Y had paid for the monthly mortgage payments. H had used the money transferred from Y to make such payments. This was by far the most major component of the contributions that Y had allegedly made in accordance with the Alleged OA. As can be seen from the table set out above at [14], the monthly mortgage payments which Y allegedly made from April 2008 to August 2019 amount to $717,600 out of Y's total alleged contribution of $833,600.

30 As stated at [13] above, Y and H said that since the purchase of the Property in March 2008, Y had been paying the monthly mortgage payments and its related expenses (including insurance premiums, property tax and general upkeep costs) through monthly transfers to H. This was said to have been done pursuant to the Alleged OA. To a large extent, W could not seriously dispute that Y did make monthly transfers of money to H given that the said transfers were mostly supported by bank records. As there was a dearth of documentary evidence between April and July 2008, however, W suggested that the monthly transfers only took place from August 2008 rather than April 2008. More importantly, W alleged that these monthly transfers were actually meant to cover losses that H had incurred while trading on Y's behalf, and were *not*

made pursuant to the Alleged OA. Alternatively, these transfers were said to be loans or gifts from Y to H.

31 We are prepared to assume that Y did indeed transfer various sums of money to H, which H then applied to the Property's monthly mortgage payments and other related expenses. The key issue, however, is what the purpose of these transfers was. Specifically, the question is whether these transfers were made pursuant to the Alleged OA, as the Judge found, or for some other purpose. Only Y and H would know the true purpose as W has no personal knowledge of these matters. All that W can do is to challenge Y's and H's account of the Alleged OA. At the end of the day, however, it must be remembered that the burden is on Y to prove the existence of the Alleged OA, and not on W to disprove it. As Y and H aligned their cases in support of Y's purported interest in the Property, any material discrepancy in the evidence of either party would affect the credibility of Y's claim.

32 In this regard, it seems to us that the Judge had placed undue emphasis on the fact that Y had made monthly transfers of money to H in order to conclude that the Alleged OA existed. As we have just explained, however, the fact that Y had made monthly transfers of money to H does not necessarily mean that this was done pursuant to the Alleged OA. The alternative possibilities suggested by W were that these transfers were meant to cover Y's trading losses, or that they were simply personal loans or gifts. Whilst the Judge did not find any of these alternative possibilities to be persuasive, the question was still whether Y had proven the existence of the Alleged OA. If the Alleged OA did not exist, the transfers of money by Y to H could not have been made pursuant to that agreement. They might have been personal loans but it is not necessary

for us to decide that. For present purposes, it is sufficient for us to decide whether the Alleged OA existed. In our view, Y failed to prove its existence for the reasons stated below.

33 It is central to Y's and H's case about the Alleged OA that *at the time of the purchase of the Property in March 2008*, they had both agreed that this would be a joint investment between them and that their shares would be determined only when the Property was sold at the agreed target price of $3.5m. Their shares in the sale proceeds would supposedly be based on their respective contributions towards the purchase of the Property and its related expenses. In other words, they would not even know what their respective shares would be at the time of purchase. All the transfers of money by Y to H in relation to the Property were said to have been made pursuant to the Alleged OA.

34 In finding that the Alleged OA existed, the Judge was influenced by the fact that Y had agreed to act as a guarantor of the Property's mortgage loan: see Judgment at [42]. He reasoned that generally, a person would not choose to undertake personal liability for a loan without the expectation of some concomitant benefit. The Judge rejected W's allegations that the monthly transfers of money from Y to H were meant to cover losses that H had incurred trading on behalf of Y. He further dismissed W's suggestion that the said transfers were simply loans or gifts, reasoning that W did not adduce any credible evidence to support this submission, which was mere speculation on her part: see Judgment at [41].

35 We note, however, that there was in fact evidence that Y had been lending significant sums of money to H. It was Y's and H's own evidence that she had lent him an aggregate sum of $480,000 in 2008 and 2009. The two

insisted that these sums were given as loans to help H to pay off the massive losses that he had incurred trading on his own account ("Alleged Trading Losses Loans"). They emphasised that these loans were entirely distinct from Y's other transfers to H which were made pursuant to the Alleged OA and meant solely to pay the monthly mortgage instalments or related expenses of the Property. The point, however, is that Y was known to lend money to H. There was no ostensible benefit to her to do so but yet she did so. While H suggested in oral submissions before us that the Alleged Trading Losses Loans would be covered by the value of the Property which was purchased for $1.7m and was to be sold at $3.5m, that was beside the point. Since Y had lent $480,000 to H, it was not inconceivable that she would also be willing to lend him another $833,600 without getting any proprietary interest in the Property in return.

36 In observing that one generally does not become a guarantor of a loan without the expectation of some concomitant benefit, the Judge had overlooked the close relationship between Y and H as well as the fact that she was prepared to lend him a significant sum of $480,000 without getting anything in return.

37 Furthermore, however close a friendship may be, we do not think it likely that parties would enter into a joint investment agreement (involving a large sum of money) without any idea as to what their anticipated shares would be at the time of the agreement. Y and H were not ignorant in financial matters. Common sense would suggest that at the point of agreement, they would at least have some idea as to their intended shares if the Alleged OA was indeed genuine. It would be a separate matter if they had come to an agreement first, but subsequently varied their respective shares due to a change in financial

circumstances. It is altogether difficult to believe that they simply had no idea of their respective shares at inception.

38 We now return to the central feature of the Alleged OA, which is that Y and H had supposedly agreed *at the time of the Property's purchase in March 2008* that it would be a joint investment. Unfortunately for Y and H, H had previously filed affidavits in the divorce proceedings with W which contradicted this central feature.

39 In 2018, W had filed an application seeking maintenance from H in MSS No 3132 of 2018. In response, H filed an affidavit executed on 12 December 2018 ("MSS affidavit"), which stated at paragraph 7 as follows:

> *In March 2008, I purchased 32, Jalan Rengkam Singapore 537585 for $1.75 million.* As I did not qualify for a loan, a friend [Y] stood as guarantor for the loan from OCBC Bank. I utilised $161,870.09 from my CPF. The monthly mortgage was $5,520.33. *In 2009, I suffered major trading losses, which also included monies from [Y]. As such I proposed that the property be transferred to her absolutely to cover the losses. However, it was agreed between us that she would continue to service the mortgage payments and also assist me with some expenses. This would then reduce my share in the property accordingly and she was at liberty to sell the property whenever she wanted to.*
>
> [emphasis added]

40 As can be seen, the paragraph above starts by stating that "[i]n March 2008, *I* purchased [the Property] for $1.75 million" [emphasis added]. There was no mention by H that this was in substance a joint purchase or investment with Y. In the proceedings below, H was cross-examined on this point. According to H, he had simply stated that he purchased the Property since that was "factual[ly] [correct] at that point in time". Whilst it is true that the Property was purchased in H's sole name, it is nevertheless curious that H did not

mention his alleged agreement with Y at all. This is all the more so given that subsequently, H *continued* to make the same omission in his later affidavits during his divorce proceedings with Y.

41 Significantly, the remainder of paragraph 7 of the MSS affidavit further indicates that it was only *in 2009*, when H had allegedly suffered major trading losses, that he then made a proposal to Y about transferring his interest in the Property to her. This undermined the central feature of the Alleged OA, which was that *at inception* in March 2008, Y and H had already formed an agreement to jointly invest in the Property. Although the sequence of events mentioned in paragraph 7 of H's MSS affidavit may not have been highlighted to the Judge or H, the said paragraph was nevertheless drawn to the attention of both. The Judge did not, however, make any comment in the Judgment about this paragraph.

42 At the hearing before us, H's explanation was that prior to filing the MSS affidavit in December 2018, he had just undergone a quintuple bypass sometime in August to September 2018. However, that did not explain why he would have set out a sequence of events in his MSS affidavit which was different from his present case.

43 H then added that he did not have his bank statements with him when he executed the MSS affidavit, but that did not bring him any further. This is not a question of an error in some detail of the transaction which can be explained by the absence of documentary evidence. It is a critical fact whether there was a joint agreement to invest in the Property at inception.

44 As mentioned, the burden was on Y to establish the Alleged OA. Y relied on H's evidence in the present action, but the evidence which H had previously given in the course of W's maintenance application severely undermined the existence of the Alleged OA.

45 Furthermore, it turned out that H had also filed an affidavit of assets and means dated 28 May 2019 ("A&M affidavit") in the divorce proceedings with W, some five months after his MSS affidavit of 12 December 2018. In the A&M affidavit at paragraphs (jj) to (ll), H repeated a sequence of events similar to that set out in his MSS affidavit at paragraph 7, as follows:

> **Purchase of 32 Jalan Rengkam**
>
> (jj) *In 2008 I purchased 32, Jalan Rengkam.* As I did not have the requisite 20% for the down payment even after using my CPF I made an arrangement with a friend [Y] to leverage on her salary and get the loan. OCBC approved the loan for the purchase, with both of us as borrowers. Exhibited at pages 66 to 79 are documents from OCBC for the loan.
>
> (kk) *During the Asian Financial Crisis in early 2009* [Y] paid Philips Security $380,000.00 into my trading account RKR2616 at Phillips Futures to cover the losses. Then in late 2009 she paid another $150,000 into the same account. At this juncture I was indebted to [Y] in the sum of $530,000.00. I had approached Phillips Futures to retrieve the accounts but they had expressed that the records maintained by them go back 7 years. Exhibited at page 80 is an email from Phillips Futures.
>
> (ll) *Pursuant to the debt owed, I proposed to [Y] that I transfer the property to her. However, she proposed that she would continue to pay the mortgage on the property and also assist me with other incidental payments.* Since January 2010 [Y] has transferred the sum of $10,000.00 into my POSB account to cover both the mortgage payments of $5,336.28 and other outgoings for the maintenance and upkeep of the property. *This was on the premise that eventually the property would belong to her. We agreed that these payments would reduce my share when the property is sold.* Exhibited at pages 81 to 84 are the records of moneys paid by [Y] towards the mortgage and other

> incidentals for the property. Also Exhibited at pages 85 to 88 are records of my CPF statements.
>
> [emphasis added]

46 Again, this undermined the central feature of the Alleged OA. In substance, the A&M affidavit indicated that there was no joint investment agreement between H and Y in 2008. Instead, H only approached Y for financial help in 2009 and that was perhaps when they entered into an agreement to give Y a share in the Property in exchange for such help. In the hearing before us, we pointed out these discrepancies to both Y's counsel and H and invited them to explain the same. There was, however, no satisfactory explanation from either of them. Insofar as H had mentioned in the A&M affidavit that he owed a debt of $530,000 to Y for the Alleged Trading Losses Loans, H clarified before us that Y had corrected him and that the stated figure should have been $480,000 instead. But that was still beside the point. H's critical difficulty was not whether the Alleged Trading Losses Loans amounted to $530,000 or $480,000, but that his A&M affidavit indicated that in March 2008, the Alleged OA simply did not exist. While H again suggested that he still did not have his bank statements in May 2019 when he filed the A&M affidavit, this did not help him or Y. If the Alleged OA genuinely existed, it is difficult to see how H could have set out the sequence of events that he did in the A&M affidavit (or his MSS affidavit), whether or not he had the relevant bank statements on hand.

47 At paragraph (mm) of the A&M affidavit, H went on to elaborate that the initial payments for the Property at the time of purchase were made by him, not Y. He also stated that Y had made payments towards the discharge of the mortgage loan instalments from 2010 (not 2008) until December 2018. Even if these discrepancies could be explained by H's lack of access to his bank

statements at that time, the underlying contradiction about the existence of the Alleged OA could not be so explained.

48 Secondly, in paragraph 4 of the A&M affidavit, H stated that he owned the Property which was in his sole name. Continuing the point made at [40] above, it is true that H is the sole registered owner of the Property. Nevertheless, H's omission to mention that Y also had a beneficial interest in the Property is telling. In divorce proceedings, it is incumbent upon each party to clarify at the earliest opportunity in their affidavit of assets and means if someone else has a beneficial interest in an asset held by that party. This is so that the said interest is not included in the pool of matrimonial assets. H would know this given that he was represented by solicitors in W's maintenance application and his divorce proceedings (although he is now acting in person in the current action as his then-solicitors have switched to representing Y, presumably with his consent).

49 Thirdly, in paragraph 13 of the A&M affidavit, H identified Y as a creditor for the amount of *$1,386,500*, and not $520,000 or $480,000. At the hearing before us, both Y's counsel and H confirmed that Y's personal loans to H (*ie,* the Alleged Trading Losses Loans) amounted to $480,000 in total, and certainly never exceeded $600,000 at any given time. H's statement in the A&M affidavit that Y was a creditor for $1,386,500 was only explicable on the basis that H had treated *all* the moneys that Y had transferred to him as personal loans – including the $833,600 that he had used to pay for the Property's purchase and related expenses, as well as the initial figure of $520,000 that he had mentioned. In other words, the sum of $833,600 had not been transferred by Y to H pursuant to the Alleged OA, and did not entitle her to a beneficial interest in the Property. Indeed, H acknowledged before us that paragraph 13 of his

A&M affidavit contradicted his claim that Y had paid the sum of $833,600 towards the Property's purchase and related expenses in accordance with the Alleged OA.

50 We add that in paragraph (mm) of the A&M affidavit, H said that his total debt to Y amounted to $1,520,300. Although he did not explain the difference between this figure and the figure of $1,386,500 in paragraph 13, this is not material for present purposes.

51 We also note that H was not cross-examined on the A&M affidavit and the said affidavit was not specifically drawn to the attention of H or the Judge. Nonetheless, it was part of the documentary evidence in the proceedings below. In any event, H's A&M affidavit essentially repeated the substance of paragraph 7 of H's MSS affidavit but in greater detail. In our view, the A&M affidavit was additional evidence that Y's and H's claims about the Alleged OA were not true.

52 Furthermore, we also find Y's evidence about the Alleged OA unsatisfactory in a material respect. It was incumbent on Y to explain why she was not included as a legal co-owner of the Property if there was indeed an agreement at inception that the Property's purchase was a joint investment between her and H. Y's explanation was that the Property was solely registered in H's name in order to save costs on stamp duties and higher yearly property tax: see [11] above. Specifically, Y had informed the Judge about "speculation that the government may impose second property stamp duties".

53 We note, however, that this explanation did not come across in such terms in the evidence that Y initially gave below. Instead, in Y's first affidavit

of 3 September 2019 in the current action, she had merely said at paragraph 18 that "[a]s [she] already owned a property of [her] own, [she and H] agreed that the [P]roperty be conveyed in [H's] name". There was no elaboration *at all* as to why her ownership of another property was even relevant.

54 In her subsequent affidavit of 14 February 2020, Y elaborated at paragraph 18 that "[h]aving a second property in [her] name *would* attract a much higher stamp duty and property tax" [emphasis added] in respect of the Property's purchase. An affidavit by H dated 14 February 2020 similarly stated that "as [Y] already owns a property", purchasing the Property in "her name or [their] joint names *would* attract higher property tax and stamp duty" [emphasis added].

55 It was only in cross-examination that Y mentioned for the first time about "*speculation* that the government *may* impose second property stamp duties" [emphasis added] (see [52] above).

56 It is obvious to us that Y had shifted her evidence in a material respect. In her affidavit of 14 February 2020, Y had stated as a matter of fact that having a second property in her name "would" attract a much higher stamp duty when purchasing the Property. She later changed tack by saying that there was "speculation" that such stamp duties might be imposed. The Judge appeared to accept Y's altered explanation as he referred to it at [12] of the Judgment without further comment. He omitted to notice that Y had shifted her evidence. This was evidence on a material point. It was to explain why, if the Alleged OA was genuine, Y's name was not included as a legal co-owner. There was a material difference between the fact that higher stamp duty would be imposed, and mere speculation that it might be. Indeed, if there was only speculation at

the time of the Property's purchase that higher stamp duty might be imposed for a buyer of a second property, there was no reason why Y needed to be concerned at all given that the transaction would have been entered into before the speculation became fact.

57 This brings us to the next point. The authorities eventually imposed additional stamp duty on a buyer of a second property in 2011, not 2008. Y and H did not adduce any evidence (from independent sources or otherwise) showing that there was speculation in early 2008 about such a stamp duty being imposed, and what exactly the speculation was about. It seems to us that the Judge had erred in accepting Y's explanation about such speculation without more. Indeed, it was telling that when we asked Y's counsel about her alleged concerns over there being higher stamp duty, Y's counsel changed course and suggested that the main reason for not including Y as a co-owner of the Property was that higher property tax would be payable. However, Y did not say in her evidence below that this was the main reason. There was also no elaboration by her as to the amount that would be saved, save that she mentioned in cross-examination that an additional 3% property tax would be levied on the Property if it were her second property. It was unclear how much the 3% would amount to.

58 It is thus clear to us that Y's alleged concerns over the higher stamp duty and property tax payable if she was included as a co-owner of the Property were in fact *ex post facto* explanations. These alleged concerns do not stand up to scrutiny, and appear to have been fabricated in a desperate attempt to explain why she was not included as a co-owner of the Property if the Alleged OA genuinely existed.

59 In our view, there was simply no such agreement when the Property was purchased. The fact that Y was already a guarantor was explicable on the basis that Y was H's friend and was prepared to help him, just as she helped him with the Alleged Trading Losses Loans totalling $480,000. It was not inconsistent with the fact that only H was to have any interest in the Property.

60 Whilst H's MSS affidavit and A&M affidavit do suggest that H and Y may have subsequently entered into an agreement *in 2009* for Y to transfer money to H in exchange for a share of the Property, that is *not* the basis of Y's case before us. Her case is only that the Alleged OA existed from the outset when the Property was purchased in March 2008. For the reasons we have just given, we are not persuaded that this is true. In any case, the fact that H himself had considered Y as a creditor for $1,386,500 in the A&M affidavit militates against the suggestion that such an agreement existed even in 2009.

61 Since we have rejected the existence of the Alleged OA, it follows that contrary to the Judge's holding, there was no common intention constructive trust over the Property in favour of Y.

62 Y's claim was based solely on the Alleged OA. Nevertheless, we also considered the question of a presumption of a resulting trust which may arise where there is sufficient evidence that Y has contributed to the purchase of the Property: see *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [160]. In our view, however, the evidence of Y's alleged contributions is insufficient to trigger the said presumption: see [26]–[28] above. As regards the $30,000 cash down-payment that Y had allegedly paid towards the purchase of the Property, we have already pointed out earlier that Y's bank records do not even show where her transfers of $20,000 and $10,000 on 20 March 2008 were received.

Additionally, in H's A&M affidavit in the divorce proceedings, he had stated that it was he who made the cash down-payment for the purchase of the Property, and not Y. In respect of the $45,600 in stamp duty and $22,000 in renovation expenses allegedly paid by Y, there is also a paucity of documentary evidence showing that these payments were made. Furthermore, Y and H did not adduce any other documentary evidence (such as emails or some form of correspondence) in which their alleged initial contributions or contributions over the years were noted down. We therefore doubt whether Y had really made these initial payments for the Property's purchase. Even if she did, the presumption of a resulting trust may be displaced by evidence to the contrary. As mentioned, the evidence suggests that there was no intention in March 2008 for Y to acquire any interest in the Property.

63 Ultimately, there are too many inconsistencies in the evidence of Y and H to support Y's claim to any share in the Property.

Conclusion

64 In the premises, we allow W's appeal in respect of the Judge's decision as to Y's share in the Property. We set aside the Judgment in favour of Y and dismiss her claim to any beneficial interest in the Property. As mentioned at [21] above, we dismiss W's appeal for a decision in respect of her own interest in the Property as that will be addressed in the divorce proceedings.

65 Y is not entirely without recourse in respect of the transfers of moneys that she had allegedly made to H in relation to the Property. She may still bring a personal claim against H to recover the sums if these were loans made to him.

H is not without substantial assets since he remains the owner of the entire Property (subject to any claim of W in the divorce proceedings).

66 As for costs, W has substantially succeeded in her appeal. She is legally aided. Nonetheless, the court may make an order for costs in favour of the Director of the Legal Aid Bureau. We order Y to pay W's costs here and below fixed at $35,000 (all-in). The payment is to be made to the Director of the Legal Aid or to such other party as W and Y may agree is appropriate in the circumstances.

Woo Bih Li
Judge of the Appellate Division

Quentin Loh
Judge of the Appellate Division

See Kee Oon
Judge of the High Court

Seenivasan Lalita and Lim Ying Ying (Virginia Quek Lalita & Partners) for the appellant;
Jayagobi s/o Jayaram and Gurcharanjit Singh Hundal (Grays LLC) for the respondent;
The second respondent in person.