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

[2023] SGHC(A) 12

Civil Appeal No 54 of 2022

Between

Ong Chin Woon

… *Appellant*

And

(1) Ong Bee Hah
(Co-Administratrix of the estate of Tan Ah Moi, deceased)
(2) Ong Yew Hong
(Co-Administratrix of the estate of Tan Ah Moi, deceased)
(3) Ng Wuay Ming
(4) Ong Chin Ee
(5) Ng Yee Ping Grace
(Sole Executrix of the estate of Ong Ee Peng, deceased)
(6) Ong Bee Hah
(7) Ong Yew Hong
(8) Ong Ah Hua

… *Respondents*

In the matter of Suit No 702 of 2018

Between

Ong Chin Woon

… *Plaintiff*

And

(1) Ong Bee Hah
(Co-Administratrix of the estate of Tan Ah Moi, deceased)
(2) Ong Yew Hong
(Co-Administratrix of the estate of Tan Ah Moi, deceased)
(3) Ng Wuay Ming
(4) Ong Chin Ee
(5) Ng Yee Ping Grace
(Sole Executrix of the estate of Ong Ee Peng, deceased)
(6) Ong Bee Hah
(7) Ong Yew Hong
(8) Ong Ah Hua

… *Defendants*

GROUNDS OF DECISION

[Trusts — Resulting trusts — Presumed resulting trusts]
[Trusts — Constructive trusts — Common intention constructive trusts]

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Ong Chin Woon
v
Ong Bee Hah (co-administratrix of the estate of Tan Ah Moi, deceased) and others

[2023] SGHC(A) 12

Appellate Division of the High Court — Civil Appeal No 54 of 2022
Woo Bih Li JAD, Kannan Ramesh JAD and Debbie Ong Siew Ling JAD
17 March 2023

5 April 2023

Woo Bih Li JAD (delivering the grounds of decision of the court):

1 This appeal concerned the beneficial ownership of a house at No 8 Jalan Jermin, Singapore (the "Property"). The Property was purchased and registered in the sole name of the appellant's mother. The appellant's mother died intestate. The appellant's two sisters, who were the administratrices of their mother's estate, sold the Property and intended to distribute the sale proceeds equally among the beneficiaries. The appellant objected and commenced the suit below, claiming that he held either 83.7% or 100% of the beneficial interest in the Property by virtue of an arrangement with his mother and his financial contributions to the acquisition of the Property. He sought a share of the sale proceeds corresponding to his beneficial interest. The trial judge dismissed the appellant's claim in its entirety (see *Ong Chin Woon v Ong Bee Hah (co-administratrix of the estate of Tan Ah Moi, deceased) and others* [2022] SGHC

125 (the "Judgment")), and this was his appeal against that decision. We dismissed the appeal, and these are our grounds.

Facts

The parties

2 The appellant was Mr Ong Chin Woon ("OCW"). His mother was Mdm Tan Ah Moi ("M"). M passed away intestate, and her children are the beneficiaries of her estate. M's children, in order of birth, are:

(a) Ms Ong Siew Eng ("OSE");

(b) Ms Ong Ah Hua ("OAH"), the eighth respondent;

(c) OCW;

(d) Mr Ong Chin Ee ("OCE"), the fourth respondent;

(e) Ms Ong Ee Peng ("OEP");

(f) Ms Ong Bee Hah ("OBH"), the first and also the sixth respondent; and

(g) Ms Ong Yew Hong ("OYH"), the second and also the seventh respondent.

3 OBH and OYH were the first and second respondents respectively as co-administratrices of M's estate. They were the sixth and seventh respondents respectively as beneficiaries of M's estate. OSE passed away in 1997 and OEP passed away in 2017. OSE was represented in these proceedings by the sole beneficiary of her estate, Mr Ng Wuay Ming, the third respondent. OEP was represented by her sole executrix, Ms Ng Yee Ping Grace, the fifth respondent.

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OEP was the third co-administrator of M's estate before she passed away in 2017. OAH was given up for adoption when she was a child, but remained a beneficiary of M's estate. We note that at [2] of the Judgment, the trial judge stated that OAH was never part of the Ong family throughout the years when the events concerning the suit took place. Before us, it was clarified that OAH did in fact attend two family meetings after M's passing. In any case, this was not material, and nothing turned on it.

4 For many of the family meetings, there were handwritten notes by OYH recording what was discussed. Their authenticity and accuracy were not disputed on appeal. The notes provided much of the evidence which we will refer to in the course of these grounds.

Background to the dispute

5 The facts of the case are set out in detail in the Judgment. We will simply set out the facts that were material to our decision.

6 In the 1970s, a property at No 1 Phoenix Garden ("the PG Property") was purchased in the name of M although it was funded by monies from her husband's business and a bank facility of that business. The family moved into the PG Property in 1975. In 1977, OCW and OCE were added as joint tenants of the PG Property without any payment on their part (see the Judgment at [13]).

7 On 21 May 1988, there was a family meeting. The handwritten notes of that meeting, recorded by OYH, stated that OCW and OCE agreed to transfer the PG Property to M (see the Judgment at [18]). At this meeting, a memo was also signed by M and her children. The English translation of this memo stated "Number 1 Phoenix Garden belongs to Tan Ah Moi (Chen Zhenmei), Ong Chin Woon, Ong Chin Ee are willing to withdraw their names. Chen Zhenmei (Tan

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Ah Moi) [to] handle [it] at her discretion" (see the Judgment at [19]). However, OCW and OCE did not effect a formal transfer of any interest in the PG Property to M.

8 Around 18 August 1988, OCW and his wife were granted an option to purchase ("OTP") to buy a flat at Elmira Heights, Newton ("Elmira Heights") in their joint names.

9 Eleven days later, on 29 August 1988, an OTP for the Property was exercised by M at a purchase price of $620,000. The OTP was not in evidence, but a STARS search for the Property indicated 29 August 1988 as the "Last Contract/Option Date". M paid a deposit of $62,000 for this OTP.

10 About three weeks later, on 16 September 1988, a purchaser exercised an OTP to buy the PG Property for $540,000. This OTP was also not in evidence, but the STARS search for the PG Property indicated 16 September 1988 as the "Last Contract Date". The purchaser paid a deposit of $54,000.

11 On or about 5 October 1988, a loan from United Overseas Finance (the "UOF Loan" and "UOF" respectively) was offered to M. Under the UOF Loan, M was the sole borrower and OCW was the guarantor. The UOF Loan was for the sum of $500,000. M accepted the UOF Loan some time between 5 October 1988 and the completion of the purchase of the Property.

12 On 29 November 1988, the purchase of the Property was completed. UOF paid $500,000 towards the purchase price. M paid the balance of $58,000, which was the purchase price less the $500,000 loan and the $62,000 deposit. In addition to the purchase price of the Property, $22,500 was paid for stamp duty, legal fees, and incidental costs (the "Ancillary Payment"). The Ancillary

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Payment was paid by cheque from an account with Chung Khiaw Bank Limited in the joint names of OCW and his wife (the "CKB Account").

13 One month later, on 29 December 1988, the sale of the PG Property was completed. On this date, a total of $486,000 (the purchase price of $540,000 less the deposit of $54,000 that had already been received) was received. Of this sum, $162,000 was paid to M. The remaining $324,000 was paid to OCW and OCE jointly. Although $324,000 from the sale proceeds of PG Property were paid to OCW and OCE jointly, the family were told at a family meeting on 10 March 2009 that all the sale proceeds were given to M.

14 Two days after completion, on 31 December 1988, M lent $136,000 to Goldrich (S) Pte Ltd ("Goldrich") while OCW and OCE lent $324,000 to Goldrich. Goldrich was a family company run principally by OCW. OCE migrated to Canada in December 1988.

15 Ten days later, on 10 January 1989, Goldrich issued two cheques for two sums of $460,00 and $200,000 in favour of one Cheah Kwai Foong. These monies were used to open a joint time deposit account in sterling pounds with the Bank of America. This joint time deposit account was in the names of Cheah Kwai Foong and one Chong Yook Len. According to OCW, these two individuals were Malaysians whose names were used to avoid income tax.

16 From 9 January 1989 to 9 April 1992, monthly payments were made to UOF to repay the UOF Loan. These payments came from the CKB Account.

17 On 7 May 1992, the UOF Loan was fully redeemed with a lump sum payment of $422,695.91. This payment was made from an account with Banque Indosuez in OCW's name (the "BI Account"). There was an excess payment of

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$13,699.84 which was returned by UOF to M on 9 May 1992. M returned this sum to OCW on 14 May 1992.

18 OCW, his wife and his four children lived at the Property with M until she passed away intestate on 15 February 2015.

19 Following M's passing, her surviving children held meetings to discuss the distribution of her assets and the administration of her estate. A key concern was the sale of the Property and the distribution of the proceeds of sale. OCW and OCE did not want to act as administrators of M's estate. OBH, OYH and OEP were appointed administratrices on 3 November 2015.

20 Eventually, the Property was sold to OCW's daughter's ("OWJ") then-boyfriend (now husband) ("Mr Low") for $2.76m in October 2017. OCW and his wife still reside at the Property with OWJ and Mr Low.

21 Following the sale of the Property to Mr Low, the administratrices sought to distribute the sales proceeds amongst the beneficiaries. OCW also sought legal advice around this time. By a letter dated 26 January 2018, his lawyers asserted that M had on many occasions intimated to OCW that the Property would be left to OCW absolutely because he had contributed substantially to the purchase of the Property in 1988. OBH and OYH asked for evidence of OCW's substantial contributions. Having received no evidence from OCW, they distributed $300,000 of the sales proceeds to each of the beneficiaries in July 2018. Thereafter, OCW filed the suit below against OBH and OYH (as administratrices) on 27 July 2018. On 1 August 2019, upon application by the administratrices, others were joined as defendants and became respondents in the appeal. Due to a lack of funds, the administratrices

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adopted a neutral position in respect of OCW's claim and the other defendants contested it.

The decision below

22 At the hearing below, OCW alleged that there was an arrangement between M and him at the time of purchase of the Property that OCW was to own the Property. Also, M would utilise her share of the proceeds from the sale of the PG Property to provide the $120,000 cash payment (the $62,000 deposit and the $58,000 balance sum) for the Property, and the remaining $500,000 would be financed by the UOF Loan. OCW would be solely responsible for repaying the UOF Loan. Despite the Property belonging to OCW, it would be registered in M's name. Pursuant to this arrangement, OCW serviced the UOF Loan and made the Ancillary Payment.

23 In total, the UOF Loan was repaid with some monthly instalment payments and a lump sum payment of $422,695.91. The total amount paid to discharge the UOF loan was $591,889.85 (the "Mortgage Repayments"). Together with the Ancillary Payment, this made a total of $614,389.85. This sum, plus the $120,000 cash contributed by M, totalled $734,389.85. According to OCW, the Mortgage Repayments and Ancillary Payment were his financial contributions to the purchase of the Property. The $62,000 deposit and the $58,000 cash payment, totalling $120,000, were M's financial contributions to the purchase of the Property. The proportions of the financial contributions were therefore:

M's contributions:	$62,000 + $58,000	= $120,000
M's proportion:	$120,000 / $734,389.85 x 100%	= **16.3%**

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OCW's contributions:	$591,889.85 + $22,500	= $614,389.85
OCW's proportion:	$614,389.85 / $734,389.85 x 100%	= **83.7%**

24 OCW claimed that by virtue of his contribution of 83.7% of the Property's purchase price (being the Mortgage Repayments and the Ancillary Payment), a resulting trust over the Property arose in his favour. He thus held an 83.7% share of the beneficial interest of the Property. In the alternative, he claimed that he was the beneficial owner of 100% of the Property by virtue of a common intention constructive trust arising from the arrangement described at [22] above.

25 He also raised an argument about proprietary estoppel, but this was not pursued on appeal.

26 The beneficiaries contended that the decision to purchase the Property was made by M alone. Her intention was to be the sole owner, which is why she was registered as the sole legal owner. She had sufficient money to purchase the Property because she had received the sale proceeds of the PG Property and had various streams of income. There was no arrangement of the sort contended by OCW.

27 The Judge found that OCW was an untruthful witness, lying multiple times on the witness stand and in his affidavit of evidence-in-chief (the Judgment at [147]–[148]). His only evidence of the arrangement that he had with M was his oral evidence (the Judgment at [165]). The documentary evidence before the court did not suggest that such an arrangement existed. OCW's conduct was also inconsistent with the existence of such an arrangement; he had on various occasions acted in a way that the owner of the

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Property would not (the Judgment at [168]–[171]). This meant that OCW's claim based on an arrangement between M and him failed.

28 The Judge also found that there was no evidence of OCW's financial contributions to the purchase price of the Property. M did not need the UOF Loan which OCW admitted was taken for his sole benefit (the Judgment at [173]).

Issues to be determined

29 In the appeal, OCW's primary case was that he was entitled to an 83.7% share of the beneficial interest in the sales proceeds of the Property by virtue of a presumed resulting trust. He still claimed 100% based on a common intention constructive trust. He also ran a new alternative case that was not pursued at trial. Under this alternative case, OCW claimed that he was entitled to the return of the Mortgage Repayments by virtue of subrogation. OCW argued that the Judge's finding that he did not make the Mortgage Repayments and Ancillary Payment with his own monies (see [28] above) was against the weight of the evidence.

Whether there was a resulting trust

30 We first deal with OCW's resulting trust claim. OCW argued that on a resulting trust analysis, he was the 83.7% beneficial owner of the Property. This was because he paid the Mortgage Repayments and Ancillary Payment, which amounted to 83.7% of the money paid towards the Property's acquisition. In order to establish this claim, OCW had to prove that he was the ultimate source of funds for the Mortgage Repayments and Ancillary Payment. It was not sufficient for him to simply prove that the funds came from his bank accounts. We accept that OCW did show that the Mortgage Repayments and Ancillary

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Payment came from his bank accounts. However, this was just one fact that was relevant in determining whether he was the ultimate source of funds for those sums.

31 Further, for the Mortgage Repayments to count as OCW's financial contributions towards the purchase price of the Property, they must have been paid pursuant to a prior agreement, made at the time the Property was acquired, regarding how the UOF Loan was to be repaid: *Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 ("*Tan Yok Koon*") at [142]. We note that OCW sought to challenge this current legal position from *Tan Yok Koon*, and we will return to this at [55] below. For now, we consider whether OCW proved that:

(a) he was the ultimate source of funds for the Mortgage Repayments and Ancillary Payments; and

(b) the Mortgage Repayments were paid pursuant to a prior agreement, made at the time the Property was acquired, regarding how the UOF Loan was to be repaid.

32 For the following reasons, we found that OCW did not discharge his burden of proof to show either of the above.

OCW regarded the Property as belonging to M

33 The evidence showed that, on many occasions, OCW acted in a manner inconsistent with: (a) him being the ultimate source of funds for the Mortgage Repayments and Ancillary Payment; and (b) the existence of a prior agreement between OCW and M that he was to finance the UOF Loan. Instead, the evidence showed that OCW acted as though the Property belonged to M solely.

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34 At the hearing, OCW's counsel stressed that there was a distinction between an agreement that was relevant for a common intention constructive trust analysis and an agreement that was relevant for a resulting trust analysis. An agreement relevant to a common intention constructive trust analysis was one whereby parties agreed on their respective beneficial ownerships of the property. An agreement relevant to the resulting trust analysis was one whereby parties agreed on who was to be responsible for financing the property. While there may be a distinction in law as described, the facts underlying the agreements often overlap. This was especially so in this case, where, on OCW's case, the agreement that he was to finance the UOF Loan was *part of* the agreement that he would be the beneficial owner of the Property in that there was no suggestion by OCW that there were two distinct agreements at the material time. Therefore, any evidence which contradicted an agreement that OCW was to be the beneficial owner of the Property equally contradicted an agreement that he was to finance the UOF Loan.

35 We now turn to the various events which contradicted OCW's case.

36 First, the Property was registered in M's sole name and not OCW's. Various reasons were given by OCW as to why his name was excluded as a registered owner of the Property, but those reasons did not carry much weight. One reason, which was first raised during cross-examination, was that he was a guarantor of various loans in business and hence it was not prudent for his name to be included (see the Judgment at [83]). However, as the respondents pointed out, OCW had included his name in a joint purchase with his wife of the flat at Elmira Heights on 18 August 1988, which was just before the OTP for the Property was exercised by M on 29 August 1988. If he were really concerned that his name should not be reflected as an owner of the Property, his name would have been excluded too from the purchase of the flat at Elmira Heights.

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37 Second, on 11 September 1990, OCW sent a letter to OCE stating that M had yet to decide whether to sell the Property. The letter suggested that OCW did not have any interest in the Property, as it was M who was deciding whether to sell it. OCW's explanation that he meant that M had not decided whether to move out of the Property was contrary to what he had said in the letter. OCW did not suggest that the English translation of the letter was wrong and the letter was one of the many pieces of evidence against him.

38 Third, there was a family meeting on 26 March 2015, after M's passing, at which the siblings discussed the distribution of sale proceeds of the Property. At this meeting, OCW mentioned that, in the mid-1990s, he had offered to buy the Property from M for $800,000 under the table and she had agreed. OCW argued that he had agreed to pay M $800,000 for the Property because he had recognised that M had contributed more than $100,000 to the purchase price thereof. However, he did not explain how he then arrived at a figure of $800,000 given his position that M only paid $120,000 towards the Property's acquisition. A late submission on appeal that OCW had taken into account the passage of time did not carry any weight as it was an attempt to give evidence from the bar. Furthermore, it was still too vague to assist OCW.

39 The question of how to give a bigger share to OCW, if all affected parties agreed, was also discussed at this meeting. If OCW's alleged prior agreement existed, he would have mentioned it then. Likewise, if he had in fact paid the Mortgage Repayments and Ancillary Payment with his own money, he would also have mentioned it then to justify receiving a bigger share. He did not. It was a poor excuse to suggest that he remained silent because he did not have the evidence then. He could have stated his position and, if challenged, asked for time to produce the evidence. In fact, as we discuss below at [46], OCW's

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conduct on other occasions suggested that he was prepared to assert claims against the estate without any documentary evidence.

40 Fourth, on 20 May 2015, OCW and three siblings met the lawyers for M's estate. Again, this was a time for him to inform the lawyers that he was claiming the Property for whatever reason. Indeed, he would also have asked to be the administrator of M's estate since the sole or main asset of M's estate was the Property which he claimed to be the beneficial owner of. Yet, he was content for three of his sisters to be the administratrices.

41 Fifth, on 4 August 2016, OCW and OCE offered to pay $200,000 to each of the five other siblings to take over the Property in equal shares. This offer showed that OCW knew there was no prior agreement as contended. It also undermined his contention that the Mortgage Repayments and Ancillary Payment came from his own money. If they had, he would have said that he had already used his own money to finance the purchase of the Property. Moreover, there would be no reason for OCE to receive a share of the Property equal to OCW's if all such payments had come from OCW's own money only.

42 The offer discussed above was further corroborated by a note from OEP dated 22 January 2017. In that note, OEP said that OCW and OCE had worked very hard since young to fully pay for the Property. This was an assumption as OEP did not know the details of the financial arrangements. What was more important was that the note was countersigned by the other siblings, including OCW, and he did not say that he had paid most of the purchase price.

43 Sixth, on 18 January 2017, there was a meeting between OCW and four siblings. It was agreed that the Property be sold on the open market and OCW requested a leaseback to him for three years as he and his family were residing

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there (see the Judgment at [33] and [34]). If OCW had believed that the Property was his, or that he was entitled to a large share for whatever reason, he would have said so and the question of a leaseback would have been academic. To ensure that he could stay in the Property, he would at most have needed to pay for a small portion of the Property if his interest was limited to 83.7%.

44 Seventh, in May 2017, at a meeting between OCW, OBH and OYH, OCW requested that the Property be sold to OWJ for $2.7m. This was eventually agreed upon, save that, as noted earlier at [20], the buyer would be OWJ's husband Mr Low and the sale price would be $2.76m instead. Again, all these discussions undermined OCW's allegations.

45 Eighth, on 17 September 2017, OCW sent an e-mail to OYH. In this e-mail, he objected to any delay in the distribution of the sale proceeds of the Property. If he believed he was entitled to the entire amount or a large portion thereof, he would have said so.

46 Ninth, OCW sent a note about M's estate dated 19 September 2017 to the administratrices. He referred to "[M's] estate, apart from the house (*Fix Asset*)". This statement shows that ordinarily OCW would have treated the Property as part of M's estate, but for the purpose of the note, he was excluding it. OCW still did not claim the Property as his. Worse still for him, he alleged that M had promised to give her eldest grandchild (OCW's son) $100,000 after the sale of the Property. By asserting this claim, OCW was accepting that M was the one to decide how the proceeds of sale of the Property were to be distributed. Again, this contradicted any suggestion that the Property was his to begin with. It also illustrated that he was quite prepared to make any claim, whether he had the evidence to back it up or not. Yet, even at that time, he still did not make any claim to the Property or the assets of M, other than that stated

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in the note. The previous mention that M had offered to sell him the Property for $800,000 was not a claim as such by him.

47 OCW's counsel sought to explain the conduct described above by saying that family relationships are complex. Family members were not always direct and could be hesitant about asserting their rights against each other. This was particularly the case given that the Ong family was an old school Asian family. This explanation was unconvincing. First, the facts did not show OCW to be someone who was hesitant to raise issues with his family at the risk of offending them. As mentioned at [46] above, he was prepared to assert claims against the estate, even with no evidence. Further, in an e-mail to the administratrices on 30 September 2017, when raising this topic of M's alleged intended gift of $100,000 to his son, he was very critical of his siblings for expecting him to prove his claim with a supporting document.[1] Furthermore, he alleged that this gift had been brought up "every single time during family meetings". There was no prior record that OCW had raised the gift before. In any event, his allegation that he had raised it every single time during family meetings undermined any suggestion that he would have been hesitant to mention that he made the Mortgage Repayments and the Ancillary Payment at such meetings. Second, some of the events above still could not be reconciled, even if one were to accept that OCW was hesitant about asserting his rights. It is one thing to keep silent about one's claim to a property, but it is something very different to offer to buy a property that one has already paid for. OCW did exactly this, once before M's passing (see [38] above) and once after (see [41] above). Indeed, he was also prepared to have his daughter buy the Property from M's estate. Third, even if OCW would have been hesitant about asserting a claim against his siblings, there is no reason why he should have been hesitant about raising simple facts,

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[1] ROA VI(B) 222.

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such as: (a) the fact that he paid for the Mortgage Repayments and Ancillary Payment with his own money; (b) the fact that he and M agreed that he should be responsible for the Mortgage Repayments; or (c) the fact that he and M agreed that he would own the Property. There is nothing to suggest that simply raising any of these facts with the respondents would have caused conflict. Ultimately, it was telling that OCW's counsel could not point to *any* event where OCW acted in a manner that supported his case. Even the letter dated 26 January 2018 from OCW's lawyers (see [21] above) did not mention (b) or (c) above.

48 Therefore, all the matters mentioned above contradicted OCW's allegations that formed the basis for the appeal. When taken together, they undermined his allegations quite conclusively. This was even without having regard to M's conduct; in particular, her discussion with OBH and OYH on 11 February 2012 in which she mentioned her wish to have the Property sold after her passing and the sale proceeds distributed in a certain manner (see the Judgment at [167]). The matters mentioned above showed that it was not just M who regarded the Property as hers. OCW also regarded the Property as hers. This seriously undermined the allegations stated at [33] above.

Whether M had sufficient funds

49 We also considered whether M had sufficient funds to pay for the Property. The Judge found that this was the case at [173] of the Judgment.

50 OCW accepted that M contributed $120,000 to the Property's purchase, being the $62,000 deposit paid on 29 August 1988 and the $58,000 balance payment paid on 26 November 1988. Further, the PG Property was sold for $540,000. As agreed at the meeting on 21 May 1988, the PG Property belonged to M alone. This was confirmed in the meeting notes of 10 March 2009, which

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recorded that all the sale proceeds of the PG Property were given to M. This could mean that M had the $540,000 from the PG Property and $120,000 cash at her eventual disposal to purchase the Property. However, we noted that M's $58,000 payment came after she was supposed to have received the $54,000 deposit from the purchaser of the PG Property. This meant that the deposit from the PG Property might have been used to make up part of the $58,000 payment. That, however, could not be said of the earlier $62,000 deposit paid for the Property, because this sum was paid by 29 August 1988, before the PG Property was sold. Thus, in addition to the sale proceeds of the PG Property, amounting to $540,000, M must have had *at least* a further $62,000 in cash to contribute towards the purchase of the Property, making a total of $602,000 *vis-à-vis* the purchase price of $620,000. In any event, OCW was not challenging the Judge's finding that M had sufficient funds to pay for the Property. Instead, he argued that even if M had sufficient funds to purchase the Property, that did not necessarily mean that she in fact purchased the Property with those funds. On this point, we agreed with OCW. However, while M's ability to pay for the Property might not have been decisive, it was still relevant.

OCW did not explain what happened to the proceeds of sale of the PG Property

51 A key point which suggested that M's money was used to purchase the Property was that OCW did not explain what the proceeds of the PG Property sale were utilised for. The PG Property was sold to fund the purchase of the Property. A total of $460,000 of the sale proceeds of the PG Property were loaned to Goldrich. Of all the siblings, OCW was the one who would know about the affairs of Goldrich, and even about the financial affairs of M. The notes for the family meeting of 10 March 2009 mentioned that in return for all the sale proceeds of the PG Property, M agreed that all her shares in Goldrich

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belonged to OCW and OCE. OCE had emigrated to Canada by the time of the loan to Goldrich, *ie*, on or about 12 December 1988 (Judgment at [8]). OCW was therefore the party who could explain what ultimately happened to the $460,000. He did not do so, although there was some evidence as to how the money was used in the meantime (see [14]–[15] above). OCW's position at trial was that $324,000 (out of the $460,000) was used to maintain M, but the Judge found there was no evidence to support this allegation. There was also no evidence as to what happened to the rest of M's money. We agreed. At the appeal, OCW's counsel argued that even if, for the sake of argument, OCW had used M's money for his own purposes, that would only mean that he had to account for it but it would not affect his claim to the Property. However, that was not OCW's explanation below and it was just a hypothetical example. The issue was not whether OCW had used M's money for a proper purpose, but simply what had happened to M's money. As OCW said that he had used M's money to maintain her, it was for him to substantiate it, which he failed to do. In these circumstances, it was fair to infer that OCW was not the ultimate source of funds for all the Mortgage Repayments and the Ancillary Payment.

52 We did accept that because the sales proceeds of the PG Property were received after the completion of the purchase of the Property, they could not have been used to fund the purchase of the Property directly. All this meant, however, was that a loan was needed initially to pay for the Property. The UOF Loan could have been this loan, which was to be paid off with the sale proceeds of the PG Property once they were received. Therefore, the fact that M acquired the PG Property sale proceeds only after the purchase price for the Property was paid did not militate against the finding that they were, ultimately, meant to fund the purchase price and ancillary costs of the purchase of the Property.

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53 Therefore, although the Mortgage Repayments and Ancillary Payment were paid from OCW's bank accounts, the evidence suggested that M's money was used as the ultimate source of funds for the Property's purchase. To the extent that the Judge said that OCW had admitted that the UOF Loan was for his own benefit, we did not take this evidence into account against OCW because he was only admitting that he required time to pay the $500,000 and not that the UOF Loan was used for some other purpose of his own.

Conclusion

54 Bearing in mind all the events mentioned at [36]–[46] above, the fact that M had sufficient funds to purchase the Property, and the fact that OCW did not explain what had happened to the sale proceeds of the PG Property, we found that OCW did not discharge his burden of proof in showing that the Mortgage Repayments and Ancillary Payment ultimately came from him. If they had, he would have said so soon after M passed away when there were discussions about her estate and the Property. OCW argued that the evidential burden shifted to the respondents to show that while the money came from his bank accounts, the money was not ultimately his. He suggested that they did not have a shred of evidence to disprove his position. For the reasons above, even if the evidential burden did shift to the respondents, we were of the view that they discharged it. For the same reasons, OCW failed to prove a prior agreement between M and OCW pursuant to which OCW was to fully finance the UOF Loan. Accordingly, OCW's claim on a resulting trust failed.

55 Given our conclusion that OCW did not prove that he ultimately paid the Mortgage Repayments and Ancillary Payment with his own money, there was no need to consider his proposed departure from the current legal position on mortgage repayments as financial contributions in a resulting trusts analysis

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set out in *Tan Yok Koon* at [142]. This issue would only have arisen if we had found that OCW did make the Mortgage Repayments and Ancillary Payment with his own money, but there was no prior agreement between him and M that he would do so. Similarly, there was no need for us to consider whether ancillary payments such as stamp duties and legal fees could count as financial contributions in a resulting trust analysis.

Whether there was a common intention constructive trust

56 For the same reasons, OCW failed to show that there was an arrangement between M and him that he would own the Property entirely. This meant that his claim on a common intention constructive trust also failed.

OCW's new alternative case

57 OCW's new alternative case on subrogation also failed because of our finding that he did not prove that he was the ultimate source of funds for the Mortgage Repayments.

Laches, acquiescence and waiver

58 In the circumstances, there was no need for us to consider whether OCW's claims were barred by laches, acquiescence or waiver.

Conclusion

59 For the reasons above, we dismissed the appeal. We awarded costs of the appeal to the individual respondents, *ie*, excluding the co-administratrices, fixed at $50,000 inclusive of disbursements. This was at the request of their counsel because any costs awarded to M's estate would also benefit OCW.

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However, on the other hand, all the respondents have to ensure that there is no prejudice to OCW by such an order.

Woo Bih Li
Judge of the Appellate Division

Kannan Ramesh
Judge of the Appellate Division

Debbie Ong Siew Ling
Judge of the Appellate Division

Thio Shen Yi *SC*, Koh Li Qun Kelvin (Xu Liqun) and Terence Yeo (TSMP Law Corporation) for the appellant;
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