

# CNPLAW LLP SUCCESSFULLY ACTED FOR THE PLAINTIFFS IN A CLAIM BASED ON RESULTING TRUST (NG LAI KUEN PRISCILLA ELIZABETH AND OTHERS V NG CHOONG KEONG STEVEN [2023] SGHC 343)

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1. CNPLaw LLP's Chia Shengyou, Edwin successfully acted for the Plaintiffs in both the General Division and the Appellate Division of the High Court in obtaining a declaration that a commercial property was held on resulting trust by the surviving joint owner on their behalf. The decision of the General Division of the High Court was reported as *Ng Lai Kuen Priscilla Elizabeth and others v Ng Choong Keong Steven SGHC 343*. We have set out a summary of the case and the decision below.

## **Introduction**

2. The 1st to 3rd Plaintiffs and the Defendant are siblings. Sometime in or around 1995, a commercial property was purchased in the names of the parties' father and the Defendant as joint tenants. It was not in dispute that the father paid the entirety of the purchase price of the property, and ran his sole proprietorship business at the property at all material time. The father died intestate in December 2016, and the parties' mother died in August 2017.

3. The Plaintiffs contended that (a) the Defendant held his interest in the property on resulting trust for the father; (b) upon the father's intestacy, the Defendant held 50% of the father's beneficial interest on trust for the mother, and the other 50% on trust for the four siblings in equal shares (ie 12.5% each); and (c) under the terms of the residuary gift clause in the mother's will, the Defendant held the mother's 50% interest in the property on trust for the four siblings in equal shares (ie another 12.5% each).

4. On the other hand, the Defendant's case was that the evidence suggests that the father intended to benefit him with the right of survivorship. Alternatively, the Defendant relied on the presumption of advancement to rebut the presumption of resulting trust, and argued that he was his parents' favoured child being their only son. To this, the Defendant relied on the obiter dicta stated in *Lau Siew Kim v Yeo Guan Chye Terence* and another 2 SLR(R) 108 ("*Lau Siew Kim*"), to advance the argument that the presumption of advancement could be used to rebut the presumption of resulting trust in relation to the right of survivorship, but not as to the life interest.

5. The trial Judge accepted the Plaintiffs' contention concerning resulting trust, and rejected the Defendant's contention. The trial Judge did not accept, inter alia, the Defendant's contention that the father intended to benefit him with the right of survivorship. The trial Judge noted the Defendant's concession during cross-examination that his father did not expressly inform him of any intention to confer on him the right of survivorship at a meeting in 1995 – the Defendant conceded that this was only his "sense" and "understanding".

6. The net result was that each of the four siblings acquired a 25% share of the beneficial interest in the property through the combined effect of the father's intestacy and the mother's will. This article summaries the views expressed by the trial Judge on the issue of whether the extension to the presumption of advancement in *Lau Siew Kim* applies outside of the spousal context.

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## **Extension of the presumption of advancement in Lau Siew Kim**

7. The presumption of advancement arises when a transfer of property takes place between persons in certain recognised relationships, such as a parent-child relationship. While the trial Judge observed that the relationship between the father and the Defendant gave rise to the presumption of advancement, His Honour did not accept the Defendant's submission that the presumption of advancement can operate to rebut the presumption of resulting trust in relation to the right of survivorship in a parent-child relationship.

8. By way of context, the Defendant conceded that the father did not intend to benefit him with any beneficial interest in the property in the father's lifetime. The Defendant thus argued that the father instead intended only to confer on the Defendant a "nuanced" benefit being "the right of survivorship and the surviving joint interest of the property", and not the life interest in the property. In other words, the father did not intend for the Defendant to have any interest in the property while the father was alive, but only after the father's demise.

9. In advancing this "nuanced alternative", the Defendant separated the father's intention with respect to: (a) the beneficial interest in the property during the father's lifetime; and (b) the right of survivorship arising upon the father's death. As authority for separating the father's donative intent in this way, the Defendant relied on the extension of the presumption of advancement stated in *Lau Siew Kim*.

10. For completeness, a similar argument was also made in the decision of *Mahmud Ebrahim Kasam Munshi v Mohamed Saleh* SGHC 309 ("Mohamed Saleh"). The same Judge had presided over this matter. In *Mohamed Saleh*, the dispute was over a flat that the parties' mother and the defendant purchased as joint tenants. The grounds of decision in *Mohamed Saleh* were delivered on 27 October 2023, before the trial Judge delivered his full grounds of decision in our case.

11. The defendant in that case submitted in the alternative that even if their mother's larger contribution gave rise to a presumed resulting trust in her favour and a tenancy in common in equity of the property, it was nevertheless their mother's and the defendant's common intention when purchasing the property that the entire beneficial interest in the property should go to the surviving joint owner.

12. The authority for the defendant's alternative submission was also founded in the obiter dicta of the same passages in *Lau Siew Kim*. However, on the facts of *Mohamed Saleh*, it was not necessary for the Judge to reach a definitive view on the obiter dicta stated in *Lau Siew Kim*.

## **The trial Judge's decision**

13. Returning back to the judgment, the trial Judge rejected the Defendant's submission for three reasons. Amongst others, the trial Judge observed that the Defendant's reliance on the extension of the presumption of advancement in *Lau Siew Kim* was not well-founded.

14. As the legal basis of the Defendant's alternative submission, the Defendant relied on the obiter dicta in *Lau Siew Kim* where the Court of Appeal suggested that the presumption of a resulting trust need not

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relate to the entire beneficial interest in the trust property such that, for example, it is possible for one joint owner: (a) to hold a life interest in the property free of any trust while holding the remainder on a presumed resulting trust for the joint owner who has made a larger contribution; or (b) to hold a life interest in the property on a presumed resulting trust for the joint owner who has made a larger contribution while holding the remainder free of any trust.

15. The trial Judge held that the obiter dicta from *Lau Siew Kim* on which the Defendant relied on must be read in context. The context in which the Court of Appeal was extending the presumption of advancement only arises between spouses. The extension to the presumption of advancement recognises the very real truth that most spouses who hold property as joint tenants at law with each other but who have made unequal contributions to its purchase, intend to hold the property as joint tenants in equity as well, rather than as tenants in common in equity. That is to ensure that, upon the death of one spouse, the entire beneficial interest in the property passes automatically in equity to the surviving spouse.

16. Thus, the trial Judge held that the obiter dicta of *Lau Siew Kim* did not stand for the proposition that the presumption of advancement is capable in all contexts of applying to the right of survivorship separately from its application to a life interest, and does not apply outside the spousal context.

17. In any event, the trial Judge found that the presumption of advancement arose only weakly, and has been rebutted. The facts showed that the parents treated each of the children equally regardless of gender – if anything, the facts showed that the mother favoured daughters over sons.

### **Appeal against the trial Judge's decision**

18. The Defendant's appeal against the trial Judge's decision was held before the trial Judge delivered his full grounds. The said appeal was dismissed by the Appellate Division of the High Court. The Appellate Division found that even though the presumption of advancement applied in favour of the Defendant, this presumption was rebutted in its entirety on the evidence. Accordingly, it was unnecessary to consider the Defendant's legal arguments on whether it is possible for the presumption of advancement to be split into two components – one which relates to the life interest and one which relates to the interest under the right of survivorship.

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