

Presumption of Resulting Trust following *Chia Kok Weng*

I. Introduction

1. In the recent case of *Chia Kok Weng v Chia Kwok Yeo*,¹ the Court of Appeal clarified the law on the presumption of resulting trusts. Specifically, the Court of Appeal made a distinction between (a) an intention to make a gift and (b) an intention to not retain a beneficial interest in the property. While they appear to be two sides of the same coin, it is necessary to distinguish between them in certain situations to afford greater protection to the uninformed transferor.

II. Facts

2. The dispute revolved around the beneficial ownership of a family home (“the Property”).² Chia Chee Wah (“the Father”) and his wife (“the Mother”) lived in the Property with all their nine children, save for the eldest.³
3. The appellant, Chia Kok Weng (“Weng”), is the fourth son⁴ and younger brother of the first respondent, Chia Kwok Yeo (“Yeo”), the third son.⁵ The second respondent, Ng Chui Guat (“Mdm Ng”) is Yeo’s wife.⁶
4. The Property was acquired in 1978 and was registered in the names of the Father, the Mother, and Weng, as tenants-in-common in equal shares.⁷ To finance part of the purchase, the Father obtained a mortgage from the Overseas-Chinese Banking Corporation Limited (“OCBC”).⁸

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¹ [2017] SGCA 54.

² *Chia Kok Weng v Chia Kwok Yeo* [2017] SGCA 54 (“*Chia Kok Weng*”) at [1].

³ *Ibid.*

⁴ *Chia Hang Kiu (administratrix of the estate of Chia Chee Wah (alias Chay Ah Soo) deceased) v Chia Kwok Yeo and others and another suit* [2016] SGHC 198 (“*Chia Hang Kiu*”) at [2]

⁵ *Id.*, at [3].

⁶ *Chia Kok Weng*, *supra* n 2, at [2].

⁷ *Id.*, at [3].

⁸ *Ibid.*

5. As the Father was unable to pay off the debt from the mortgage, the Property fell into danger of being foreclosed by OCBC.⁹ To obtain fresh loans to avert this danger, the family members entered a series of transfers of ownership interests in the Property:¹⁰
- (a) In 1984, the Father transferred his one-third share to Yeo.¹¹
 - (b) In 1987, the Mother transferred her one-third share to her daughter, Chia Hang Kiu (“Ms Chia”) and Weng transferred his one-third share to Yeo (“Disputed Share”).¹²
 - (c) In 1991, Yeo transferred his one-third share to Mdm Ng.¹³
6. In 2015, Yeo and Mdm Ng purchased Ms Chia’s one-third share.¹⁴ The result of the transactions was that Yeo and Mdm Ng held the Property as tenants-in-common in equal shares.¹⁵
7. The Father died in 2001,¹⁶ and Ms Chia commenced proceedings in 2015 in her capacity as the administratrix of the Father’s estate (“the Estate”) against Yeo, Mdm Ng and Weng.¹⁷ The Estate alleged, *inter alia*, that prior to the transfer to Yeo, Weng held the Disputed Share on trust for the Father.¹⁸ It claimed that Weng’s subsequent transfer of the Disputed Share to Yeo was in breach of trust; hence, Yeo held the Disputed Share on constructive trust for the Estate.¹⁹ Weng disputed this.²⁰ He further claimed, in a separate suit, that the Disputed Share was held by Yeo on trust for him.²¹

⁹ *Chia Kok Weng*, *supra* n 2, at [6]

¹⁰ *Ibid.*

¹¹ *Id.*, at [7]-[8].

¹² *Id.*, at [9]-[12].

¹³ *Id.*, at [13]-[14]

¹⁴ *Id.*, at [18].

¹⁵ *Ibid.*

¹⁶ *Id.*, at [17].

¹⁷ *Id.*, at [19].

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Id.*, at [20].

²¹ *Ibid.*

III. High Court Judgment

8. The two actions were heard together (and dismissed) by Valerie Thean JC (“the HC Judge”) in the High Court.²² In dealing with the Estate’s claim, the HC Judge held that the Father had given the one-third share in question to Weng as a gift. Therefore, Weng did not hold the share on trust for the Father.²³
9. As for Weng’s claims regarding the Disputed Share, the HC Judge found that a presumption of resulting trust did arise in Weng’s favour as Yeo did not provide any consideration for the transfer.²⁴ However, the presumption of resulting trust was subsequently rebutted on the following grounds:²⁵
 - (a) Weng declared that he did not own any interest in a private property when he applied for a Housing Development Board (“HDB”) flat.
 - (b) Yeo’s conduct subsequent to the transfer of the Disputed Share, which included spending money on renovating the property and not claiming any part of the cost from Weng, was more consistent with him acting as the owner of the Property.
 - (c) Weng was unable to explain why he would transfer the Disputed Share to Yeo.
 - (d) Weng’s subsequent conduct was consistent with Yeo being the owner of the Property. For instance, Weng did not seek to stake a claim in the Property after the death of both the Father and the Mother.

The HC Judge found that these factors pointed to the conclusion that Weng intended to give the Disputed Share to Yeo, and it was logical for Weng to do so to prevent the Property from being seized to satisfy his business debts.²⁶ Accordingly, the HC Judge held that Yeo did not hold the Disputed Share on trust for Weng.

²² *Chia Hang Kiu*, *supra* n 4.

²³ *Chia Kok Weng*, *supra* n 2, at [23].

²⁴ *Id.*, at [24]-[25].

²⁵ *Id.*, at [25]-[26].

²⁶ *Id.*, at [26].

10. Further, the HC Judge made a finding on what she terms as “the family compact”.²⁷ The family members had the intention to “secure the [Property] for the parents and the members of the family who lived there”.²⁸ This was the primary motivation behind the series of transfers in beneficial ownership over the years.²⁹ This finding was accepted by Weng and Yeo, and both of them relied on the finding for different propositions on appeal.³⁰

IV. Court of Appeal Judgment

11. On appeal, Weng contended that the Judge had erred in holding that the presumption of a resulting trust was rebutted.³¹

A. *Observations on “family compact”*

12. The Court of Appeal agreed with the HC Judge’s finding of a “family compact”. The Court of Appeal observed that when the family was facing financial difficulties, the family members were mainly concerned with preserving their family home. This was evident from the following factors:³²
- (a) The Father transferred his one-third share to Yeo in 1984 for no consideration. The transfer was effected so that Yeo could secure a new loan to redeem the Father’s debt and prevent the Property from being foreclosed on.
 - (b) The family members treated Yeo’s loan liability as a joint responsibility and helped to service the loan.
 - (c) The 1987 Transfer was executed so that Yeo and Ms Chia could use their CPF savings to service the then existing loan and to obtain a new loan. This was done to prevent the Property from being foreclosed on.

²⁷ *Chia Kok Weng*, *supra* n 2, at [28].

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Id.*, at [31].

³¹ *Id.*, at [30].

³² *Id.*, at [35]-[41].

(d) The 1991 Transfer was also effected to allow Yeo's wife to use her CPF savings for a similar purpose.

13. In sum, the Court of Appeal found that the series of transfers were effected with the "prime aim of saving the [Property] from foreclosure."³³ The parties were cooperating to keep the Property within the family without having any regard as to who were the actual owners.³⁴ This formed an important context against which Yeo had to rebut the presumption of resulting trust.³⁵

B. Whether the presumption of resulting trust was rebutted

It is settled law that a presumption of resulting trust is "an inference, or an estimate as to what the transferor's intention is likely to be."³⁶ In this regard, the Court of Appeal clarified that, in raising the presumption, a court infers that transferor did not intend to make a gift to the transferee.³⁷ This is distinguished from an intention to retain a beneficial interest, and a presumption of resulting trust arises regardless of whether the transferor intended to retain a beneficial interest.³⁸ Consequently, in rebutting the presumption of resulting trust, it must be shown that the transferor intended to make a gift to the transferee.³⁹

14. In the current case, it was likely that Weng did not address his mind to the impact of the transfer on his beneficial ownership in the Property, as the transfer was necessary as part of the "family compact" to preserve the Property as a family home.⁴⁰ It was thus possible that Weng was unaware that he still retained a beneficial interest in the Property.⁴¹ Because of the "family compact", the distinction between the two intentions was material in the present situation.⁴² Consequently, instead of analysing whether Weng intended to retain a beneficial interest in the Property, it was more appropriate to

³³ *Chia Kok Weng*, *supra* n 2, at [39].

³⁴ *Id.*, at [34].

³⁵ *Id.*, at [40].

³⁶ *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 at [37].

³⁷ *Chia Kok Weng*, *supra* n 2, at [47].

³⁸ *Ibid.*

³⁹ *Id.*, at [48].

⁴⁰ *Id.*, at [68].

⁴¹ *Ibid.*

⁴² *Id.*, at [48].

focus on whether Weng intended to make a gift to Yeo.⁴³ In this regard, Court of Appeal observed that Yeo was unable to “adduce satisfactory evidence indicating that Weng had such a donative intent”.⁴⁴

15. Further, the court held that it was unlikely that Weng had the intention to give his one-third share in the Property to Yeo.⁴⁵ At the material time, Weng was in financial difficulties and his share in the Property was his most valuable asset.⁴⁶ It was “inconceivable” that Weng would have intended to give his share to Yeo, who was a fresh graduate with “better career and financial prospects”.⁴⁷
16. Accordingly, the Court of Appeal held that the presumption of a resulting trust was not rebutted, and Yeo held the Disputed Share on trust for Weng.

V. Discussion

17. The Court of Appeal’s decision sheds valuable light on the relevant intention in applying, and rebutting, the presumption of resulting trust. The inquiry should be focused on whether the transferor intended to make a gift to the transferee, and not whether the transferor intended to retain a beneficial interest.⁴⁸
18. There may be no discernible difference between an intention to retain a beneficial interest and an intention not to make a gift to the transferee, as a transferor who does not intend “to retain a beneficial interest in the property would usually intend to make a gift to the transferee”.⁴⁹ However, there is a practical difference. If a presumption of resulting trust is raised and a court infers that the transferor did not intend to make a gift, the transferee must prove that the transferor had a positive intention to make a gift to rebut the presumption. This cannot be established if the transferor did not address his mind to the impact of the transfer on his beneficial ownership. By contrast, if a presumption of resulting trust is raised and a court infers that the transferor intended to

⁴³ *Chia Kok Weng*, *supra* n 2, at [49].

⁴⁴ *Id.*, at [68].

⁴⁵ *Id.*, at [69].

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Id.*, at [47].

⁴⁹ *Ibid.*

retain a beneficial interest, the transferee must prove that the transferor did not intend to retain a beneficial interest in the property. This can be established by simply proving that the transferor did not address his mind to the impact of the transfer on his beneficial ownership.

19. Since the focus is on whether the transferor intended to make a gift, a higher threshold must be met for the presumption of resulting trust to be rebutted. The transferee must prove that the transferor had a positive intention to make a gift, and the presumption cannot be rebutted in situations where the transferor does not address his mind to the impact of a transfer on his beneficial ownership. The disparity between the High Court and the Court of Appeal's judgment provides a good illustration on the importance of this distinction.
20. Moreover, the Court of Appeal's observations on the interaction between the "family compact" and the presumption of resulting trust accord better with reality. A property is probably one of the most valuable assets most people will own in their lifetime, particularly in Singapore. It should be no surprise if people are willing to enter into "pseudo-transactions" to obtain fresh mortgages or loans to retain the property. And as seen from the case of *Chia Kok Weng*, the parties who are trying to redeem the property may not, at that point in time, give much thought to their beneficial ownership in the property. It is only in subsequent years where a dispute arises that the parties are forced to draw clear boundaries on the interest they hold. By placing a greater burden on the transferee who seeks to rebut the presumption of resulting trust, the law protects the transferor by not depriving him of his share in the very property that he sought to redeem.
21. In the author's opinion, the result reached in this case is right in both principle and policy. It is hoped that this case will provide valuable guidance for any future analysis of a presumption of resulting trust set in a family context.