

March 6, 2017

Introduction

Often, joint investments in real property present potential pitfalls, especially if the parties are closely related to each other and dispense with the formalities of proper records, which may often be the case. In this article, we examine the recent High Court decision of *Cheong Woon Weng v Cheong Kok Leong* [2016] SGHC 263, on the issue of establishing a beneficial interest in a joint investment of a real property. The case is currently pending appeal.

Essentially, the case raises the importance of ensuring properly drafted trust instruments are in place to record trust arrangements. This is crucial to avoid disputes over the ownership of jointly held property.

Facts

Cheong Woon Weng (CWW) and Cheong Kok Leong (CKL) are brothers. CWW is the elder of the two. A condominium property in the western part of Singapore was purchased in July 2000 at S\$880,000. It was registered solely in CKL's name.

A dispute arose as to the ownership of the property. CWW averred that his younger brother CKL proposed a joint investment in the property, to which he agreed. Both brothers visited the show flat of the property development, chose the unit, selected the building materials and also discussed the financing of the property. CWW claimed that there was an oral agreement, and pursuant to the Memorandum of Loan and a Collateral Agreement, he had half the beneficial ownership of the property. CWW claimed that as part of the agreement with this younger brother, he had contributed S\$200,000 towards the purchase price of the property.

CKL did not deny that he received a sum of S\$200,000 from his elder brother. However, CKL disputed the nature of the payment; he alleged that the sum was extended as a loan to him to buy the property, and it had since been fully repaid. CKL also counterclaimed for a sum of S\$120,000, which he claimed were given to CWW as loans.

Issues

The issues to be decided at trial were, among others:

- a. whether the two brothers made an agreement to co-own the property;
- b. if the agreement to co-own the property was made, whether a trust was created, whereby the younger brother, who had sole legal ownership of the property, held half-share of the beneficial ownership on trust for his elder brother;
- c. whether CWW had advanced the sum of S\$200,000 as a loan to CKL or as a contribution for a joint investment in the property; and

- d. whether CKL had made payments of a total of S\$320,000 to CWW (including the further loan of S\$120,000), and whether this discharged his obligation under the agreement for co-ownership of the property with CWW.

The decision

The court accepted that an oral agreement had been entered into prior to the purchase of the property, pursuant to which the Plaintiff would bear the S\$200,000 down payment, and that parties would be equal beneficial owners of the property even though the property was to be registered in CKL's sole name.

The Collateral Agreement signed between the parties indicated that the Plaintiff would obtain a share in the property which was proportionate to his contribution to the purchase price.

The trial judge found that both parties had not intended for the Memorandum of Loan and Collateral Agreement to embody their entire agreement to the exclusion of the Oral Agreement. The parole evidence rule was not applicable, and extrinsic evidence is admissible to vary the written agreements.

The oral agreement had evinced the parties' intention for the Defendant to be the registered owner of the property which was to be held on trust for both parties as tenants-in-common of equal shares, consistent with the parties' conduct from the time of purchase to many years thereafter. The Collateral Agreement then conferred on the Plaintiff an interest in the property in return for his contribution of S\$200,000.

Both the Collateral Agreement and the Memorandum of Loan made reference to CWW's contribution to the purchase of the property. If it was merely a loan, as alleged by CKL, there would be no need for a term in the Collateral Agreement requiring CWW's consent before the property was sold.

If the Memorandum of Loan was to be interpreted as a loan, it would be one encompassing the possibility that CWW would never get his money back if the property was not sold, and this made no commercial sense.

Although CWW had only contributed S\$200,000 (out of the purchase price of S\$880,000), he was entitled to half of the property because this was what the parties had agreed to.

The trial judge further found that the cheques totalling S\$87,000 received by CWW from CKL were payments for his share of the income from rental of the property, and does not amount to repayment of the alleged loan.

CKL's counter-claim was dismissed as he had failed to adduce sufficient evidence to prove that he had made any other payments to CWW besides the S\$87,000 received by his elder brother.

CKL was ordered to furnish all documents relating to the property in order to ascertain the income and expenses. CKL was also ordered to sell the property and distribute half the proceeds of sale to CWW, after deducting expenses and tax.

Takeaway

It is possible to assert beneficial ownership of a property if one can prove a trust was created by the legal owner for the benefit of the beneficial owner. In this case, the court found that a common intention constructive trust was created based on the contemporaneous documents and upon the conduct of the parties.

However, it is difficult to prove the intention of parties as to the agreement to jointly hold a property, if such agreement is not properly reduced in writing. Where family relations are involved, and oral agreements are the norm, matters can be especially complicated, which is shown in the subject case. Hence, the key takeaway would be for parties (even

and especially for family members) to expressly and clearly set out their intention in a properly drafted document to reflect the true terms of their agreement.

Dentons Rodyk acknowledges and thanks associate Quek Ling Yi for her contribution to the article.

Your Key Contacts



Kia Meng Loh

Chief Operating Officer and
Senior Partner, Singapore
D +65 6885 3888
kiameng.loh@dentons.com



Ling Yi Quek

Resident Partner, Singapore
D +65 6885 3766
lingyi.quek@dentons.com