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A Gift of Real Estate and a Child's Marriage Gone Sour

"Learn from the mistakes of others.

You won't live long enough to make them all yourself."

Mark Twain

There are many reasons why a parent might buy a home for or with a child.

In an earlier article (["A Gift of Real Estate"](#)), I considered two reasons:

- a child who can't afford it might then have a place to stay; and
- a parent may add to his or her cache of property investments without having to pay the Additional Buyer's Stamp Duty ("ABSD").

Either way, the parent runs the risk of the child claiming the property as his or her own one day.

This article is prompted by the facts of a High Court case, *Tien Choon Kuan v Tien Chwan Hoa* [2016] SGHC 16 ("*Tien Choon Kuan*"), where the property, a HDB flat, was bought by the plaintiff, a father, jointly with the defendant, his son (who only contributed 5.6% of the price), and they held the flat as joint tenants. The father later severed the joint tenancy when his son met with financial difficulties and left Singapore. Because he did so unilaterally and without his son's involvement, their shares in the flat were split 50-50, and not in proportion to their respective contributions. The father asked the Court to declare that the son only had a 5.6% share and that the rest of his 44.4% share was held on resulting trust for the father. As the Court did not have sufficient evidence of their intentions when the property was bought, it was unable to resolve the matter and had to allow the matter to continue to trial.

There may be financial reasons why a parent has his or her child become a co-owner of a property. With the Total Debt Servicing Ratio ("TDSR"), having a working child join in as co-owner (and borrower) could lift the income portion of the income to debt ratio. Where a parent was unable to borrow, he or she now can.

The situation in *Tien Choon Kuan* is not unique.

However, a further complication arose in that case: the son's wife claimed a share of the home as well. They were undergoing a divorce and she had obtained the consent of her divorcing husband to let her have half of his 50% share. The plaintiff now had to contend with proving his stake in his son's 50% share and fending off his daughter-in-law's claim for half of it.

Pointers from the Women's Charter

A child-in-law may ask a Court to decide on the division of the property when matrimonial proceedings have been instituted. A pre-requisite for division is that the property must be a matrimonial asset.

A gift from a parent to a child is not a matrimonial asset unless the couple treated it as one *and* substantially improved it during their marriage.

A home that a child acquired *before the marriage* is not a matrimonial asset unless it has been used as the couple's home during their marriage *or* has been substantially improved upon during their marriage.

A home acquired *during the marriage*, even without the participation of the other spouse, is a matrimonial asset.

Once shown to be a "matrimonial asset", the Court makes a division according to what it sees as being "just and equitable".

Promissory estoppel

A parent should also be mindful of the legal implications of promises made to a child or a child-in-law. In *Tien Choon Kuan*, the daughter-in-law asserted that she, along with her husband (the defendant) were looking to buy their own home when her father-in-law (the plaintiff) told them it was not necessary, as the home would one day be theirs. And so they did not buy their own home. The Judge pointed out that a defence of promissory estoppel could have been raised.

Promissory estoppel required a promise made by the plaintiff which became a contract, upon which the couple relied on and altered their position as a result. A Court could estop the father's failure to keep his promise as it would be unfair for the father to renege on it. However, the existence of a contract must be supported by clear and convincing proof - the Courts will not imply one from the words and conduct of the parties.

Promissory estoppel was not fully considered in *Tien Choon Kuan*, because of the sparse evidence and the fact that the daughter-in-law refused to be a party to the suit in view of the high costs of litigation. But this defence should always be in the back of every parent's mind.

Takeaways for parents

When buying property in a child's name, be clear as to whether you intend to give it to him or her. If a gift is not intended, make sure that you have sufficient proof of this. Your lawyer should be told about your intentions so that he or she can advise you and put the necessary paperwork in place.

If you have good reason to include your child as a co-owner, make sure that you clearly document such reasons and your actions are consistent with them.

Once the deed is done, there is not very much you can do to prevent the property from becoming the matrimonial home of your child and his or her spouse. Where you can, insist that the property be rented out, do not let them renovate or repair it, and undertake all works and improvements yourself.

The Judge in *Tien Choon Kuan* lamented that litigating complex family disputes to the end was a poor option. Best to be clear about your intentions at the outset and have your lawyer put the documents in place to reflect them.

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