

A Gift of Real Estate

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“It ain’t what you don’t know that gets you into trouble.

It’s what you know for sure that just ain’t so.”

Mark Twain

As a parent, instinctively you love your child. You want to smoothen his path as much as possible. And so when he comes to you for help to buy his home, you buy it for him.

You regret this later down the road. Perhaps it’s because he has not turned out to be the filial child you raised him to be, or he is not as driven and hardworking as you remember him to be, or you have underestimated your need for cash in your later years.

You wish you had not made the gift. You now want to sell the property.

This may not resonate with you, but perhaps the next scenario is a stronger possibility.

With the endless tenure of the Additional Buyer’s Stamp Duty (“ABSD”) regime and being tired of waiting for the time when it may be lifted, you decide to buy that additional property. Not wanting to pay the ABSD, the property is bought in your child’s name. But you pay the purchase price.

Your child now denies that you are the owner. He says that as far as he remembers, you bought the property for him to keep.

Because your name is not on the title deed, you need the Court to declare you to be the beneficial owner; ie. the person who is entitled to sell the property, collect rent, stay in it, and generally have all the rights and entitlements to it as an owner.

In a recent High Court case, *Chin Kim Yon v Chin Kheng Hai* [2016] SGHC 02, a father bought a house for his children and then wanted it back.

The take away point here is that a gift, once made, cannot be taken back.

Facts

The father, Chin Kim Yon ("Chin"), paid the full purchase price for a house at Hillview. He did this because his two adult children, Qin and Hai, who contracted to buy it, could not raise the purchase price. Chin was not indicated as owner on the title deed; Qin and Hai were the registered owners, as tenants-in-common equally.

The story begins in 2000 with Qin wanting to buy the house she was renting. Her landlord issued her an Option to buy it for \$700,000. Qin and Hai were unable to get a loan to pay the price, and so they turned to their father for help. Qin and Hai stayed in the house after that.

Around 2013, the relationship between Chin and Hai deteriorated, and in 2014, Qin passed away intestate; ie. without a Will. Chin being her sole heir, inherited her share of the Hillview house.

Chin wanted ownership of the whole house. He thus initiated proceedings in the High Court seeking a declaration that he is the beneficial owner of Hai's share. The basis of his claim was that having paid for the house, he is its owner.

Law

The law says that when a person pays for a property and registers its ownership in the title deed in someone else's name without any apparent reason, a resulting trust arises in his favour, unless contrary evidence is provided.

The payor is the beneficial owner unless it can be proved that he or she intended it as a gift. But all this changes where the recipient and payor are parent and child. There is an immediate presumption that works in favour of the recipient that the payor intended to gift the property.

Because of their parent-child relationship, Chin was presumed to have advanced the house to both Qin and Hai as a gift. Chin had to disprove this if he wanted beneficial ownership of Hai's share.

He was not able to convince the Judge that he did not intend a gift when he bought the house for Qin and Hai.

Take-away points

Here are some take away points from the case for a generous parent:

Intention of the parent

- The Judge will look at all the relevant circumstances of the case. Naturally, the facts at the time of the gift-purchase will be important considerations as to the intention of the payor parent.
- But equally important are all facts occurring after the time of the gift-purchase that show the intention of the payor parent. For example, Chin accepted ownership of Qin's share. If he was to be regarded as the beneficial owner of the house, Qin would not have had a share to give her father. The fact that Chin did not, in his exchanges with Hai to sell the house, lay claim to the whole house worked against him.

- Also, Chin's approach was to seek Hai's consent on the method of sale. If Chin owned the whole house, Hai's involvement and consent would not have been needed.
- A parent's control over the house is not sufficient proof that a gift was not intended. Hence a gift was upheld even where the parent received rent for 20 years, entered into leases, took fines, enclosed part of the property, built on the property and directed a settlement to be drawn.
- A parent's failure to hang on to the title deed for the house works against the parent even though he or she had asked for the keys.
- The state of the parent-child relationship just before and at the time of the gift-purchase was a crucial factor in this case. A close and caring relationship is strong proof of a gift. Any deterioration after that is irrelevant.

Presumption of advancement

- The presumption of advancement extends to a purchase for an illegitimate child or a child who the buyer stands in *loco parentis* to: ie. the buyer has taken over some of the functions and responsibilities of a parent towards the child.
- The presumption of advancement was rebutted in a case where the property was shares in a company, which had been transferred to the child's name so that the child could be appointed as a director. The parent, having no intention of giving the shares to the child, had kept the share certificates and received the dividends.
- A gift made to a child who is already an adult does not dilute the presumption to advance.
- The existence of a good reason to have the property in the child's name may rebut the presumption of advancement. Not having to pay ABSD may qualify as a good reason, but there would then be hefty consequences under the Stamp Duties Act.

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