4. BANKING LAW

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Negotiable instruments

Instrument issued to pay gambling debt in Singapore

4.1 The enforcement of gambling debts is undergoing changes in Singapore especially in respect of debts incurred in a casino. There is now a divergence between the enforcement of an ordinary gambling debt and a debt incurred in a Singapore casino when a cheque is issued in connection with the gambling transaction. The enforcement of an ordinary gambling debt continues to be governed by s 5 of the Civil Law Act (Cap 43, 1999 Rev Ed). When a negotiable instrument is issued in Singapore in payment of a wagering contract or for a debt arising from a gambling transaction, the instrument is unenforceable as it is given without consideration since a gambling debt is declared to be null and void under s 5 of the Civil Law Act. In *Star Cruise Services Ltd v Overseas Union Bank Ltd* [1999] 2 SLR 412, G P Selvam J decided that a gambling or wagering contract was null and void under s 6 of the Civil Law Act and no enforceable right or obligation arose from the contract. A cheque given to cover a debt arising from a gambling or wagering transaction was also unenforceable. Equally, in *Sun Cruises Ltd v Overseas Union Bank Ltd* [1999] 3 SLR 404, G P Selvam J arrived at a similar decision that a cashier's order issued to further a gambling transaction was unenforceable.

4.2 In Malaysia, a similar line of reasoning has also been adopted by the courts. In *Pet Far Eastern (M) Sdn Bhd v Tay Young Huat* [1999] 5 MLJ 558, Abdul Malik Ishak J decided that when fraudulently obtained bank drafts were tendered as payment in furtherance of gambling transactions, the recipient took the drafts without consideration since the gambling transactions were null and void.

Instrument issued to pay foreign gambling debt

4.3 When a negotiable instrument is issued to settle a wagering or gambling debt incurred in a foreign casino, the instrument is also unenforceable in Singapore. In *Star City Pty Ltd v Tan Hong Woon* [2002] 2 SLR 22, the Singapore Court of Appeal decided that an action

brought in Singapore by a foreign casino to recover a loan granted to a customer to gamble at the casino was unenforceable on grounds of public policy.

Foreign judgment on gambling debt

4.4 The Singapore Court of Appeal's strong stand in *Star City Pty Ltd v Tan Hong Woon* [2002] 2 SLR 22, against allowing the Singapore courts to be used as gambling debt collectors for foreign casinos appears not to apply when a foreign casino seeks to enforce a foreign judgment obtained against a gambler in respect of gambling debts. In *Liao Eng Kiat v Burswood Nominees Ltd* [2004] 4 SLR 690, the Singapore Court of Appeal decided that public policy considerations would not apply with the same rigour when it came to enforcing a foreign judgment obtained in respect of a gambling debt. In *Desert Palace Inc v Poh Soon Kiat* [2009] 1 SLR 71, the Singapore High Court followed the Court of Appeal's decision in *Liao Eng Kiat v Burswood Nominees Ltd*. The defendant gambled at Caesars Palace, a casino in Las Vegas Palace, on various occasions between 1992 and 1998. The casino obtained a default judgment against the defendant in Nevada on 29 March 1999 for US$2,000,000. On 2 June 1999, a further default judgment for US$2,453,126.33 was obtained in the Superior Court of the State of California for the County of Santa Clara. The casino filed a claim in Singapore on 19 October 2007 for a sum of US$4,378,927.63 in respect of the judgments obtained in the United States. The defendant relied on two main defences. First, the claim was for the recovery of a gambling debt and this was rendered unenforceable under s 5(2) of the Civil Law Act (Cap 43, 1999 Rev Ed). The second defence was that the claim was time-barred under the Limitation Act (Cap 163, 1996 Rev Ed). Both these defences were rejected by the court. Chan Seng Onn J acknowledged that the enforcement of a gambling debt would not be sanctioned by the courts as it would be governed by s 5 of the Civil Law Act. Chan J said (at [38]):

> In my view, if the plaintiff had sued in Singapore in reliance on the facts as set out above in [3], the plaintiff would clearly have an uphill task in persuading the court to find in its favour that it was in reality not an action brought for recovering monies won upon a wager. It did not matter that the transaction took place in a foreign jurisdiction in which action for the recovery of such monies (though prohibited in Singapore) would have been nevertheless legally enforceable in that foreign jurisdiction. If the action before me was simply to enforce the debt premised on the facts in [3], I would have immediately dismissed it as the Court of Appeal decisions cited by the defendant were binding on me and the material facts in the present case were indistinguishable from the facts in those cases.

4.5 The court, however, went on to decide that different public policy considerations applied to the enforcement of a foreign judgment obtained on a gambling debt. Chan Seng Onn J said (*Desert Palace Inc v Poh Soon Kiat* [2009] 1 SLR 71 at [40] and [54]):

> An action in Singapore to recover an overseas gambling debt was in my view materially very different from an action in Singapore upon a foreign judgment, although the cause of action underpinning that foreign judgment might be the same overseas gambling debt incurred by the defendant. The valid, final and conclusive foreign judgment itself was the basis of the present cause of action before me. In my view, an application could be made for summary judgment on the ground that there was no defence to this form of common law action in Singapore upon the foreign judgment. I further held that the issue whether or not a foreign judgment was 'valid, final and conclusive' as between the parties must be answered not from the perspective of Singapore law but must be answered based on the laws of the foreign jurisdiction in which the court issuing that foreign judgment was sited. Expert evidence on foreign law must be led on this issue, which had to be determined as a question of fact in the Singapore court in accordance with the law of evidence in Singapore.
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> … Further and for reasons based on the doctrine of comity of nations in relation to the recognition of the judgments of the courts of a foreign jurisdiction as being "enforceable" by way of a separation [*sic*] action in Singapore (irrespective whether the process of its registration as a Singapore judgment was available), I did not believe that the public policy in Singapore ought to favour the evasion of foreign judgments by persons who borrowed money abroad for the purpose of gambling abroad and after having lost those borrowed money on gambling thereafter sought to evade responsibility for those foreign judgment debts after judgment in a foreign court had been successfully obtained against them. International comity also meant that foreign court judgments should be accorded appropriate levels of deference and respect.

4.6 An appeal from *Desert Palace Inc v Poh Soon Kiat* [2009] 1 SLR 71 is currently before the Court of Appeal. With the establishment of the integrated resorts in Singapore, the position pertaining to the recovery of gambling debts incurred in a casino is set to change. Under s 108(2) of the Casino Control Act (Cap 33A, 2007 Rev Ed), a casino is permitted to accept a cheque from a casino patron to establish a deposit account for the purposes of gaming at the casino. However, a casino cannot accept a post-dated cheque from a patron. In addition, a casino is required to deposit the cheque with an authorised bank within the time specified by the Authority. It is also specifically provided in s 5(3A) of the Civil Law Act (Cap 43, 1999 Rev Ed) that s 5 will not apply to "a contract for gaming that is conducted under the control or supervision of a person or an organisation that is exempted under section 24 of the Common Gaming Houses Act (Cap 49) from the

provisions of that Act in respect of such gaming." A casino is thus in a position to recover a payment on a cheque deposited to establish a deposit account for a casino patron. This would constitute an exception to the unenforceability of a wagering contract in Singapore.

Malaysian position

4.7 In Singapore, under s 108(7) of the Casino Control Act (Cap 33A, 2007 Rev Ed), a casino is also permitted to provide credit to a patron who is not a Singapore citizen or permanent resident. If a foreign casino patron has assets in Singapore, the recovery of a gambling debt from the patron will not pose a problem for the casino. However, if a foreign casino patron has no assets in Singapore, recovery of the debt may become a problem if the foreign patron happens to be from Malaysia. The Malaysian courts have stated very clearly that they would not enforce a gambling debt or foreign judgment arising from a gambling debt. The courts will not on public policy grounds enforce a gambling debt incurred in a foreign country where gambling is legal. In *Jupiters Ltd v Lim Kin Tong* [2006] 5 CLJ 277, Ramly Ali J decided that the Malaysian courts would not as a matter of public policy act as gambling debt collectors for foreign casinos. Similarly, the courts will also not enforce a foreign judgment obtained on a gambling debt. In *The Ritz Hotel Casino Ltd v Datu Seri Osu Hj Sukam* [2005] 3 CLJ 390, Ian H C Chin J decided that a foreign judgment obtained in respect of a gambling debt was not enforceable in Malaysia on grounds of public policy.

Enforcing payment on a negotiable instrument

4.8 In an action on a negotiable instrument, a plaintiff is entitled to summary judgment unless the defendant is able to raise a defence impinging directly on the instrument. When an action on a negotiable instrument is brought by a remote party who is a *bona fide* holder for value of the instrument, defences touching on the instrument are not available to the defendant. Equally, personal defences like set-offs and counterclaims cannot be pleaded against a remote party. However, defences impinging on the instrument can be taken against an immediate party. The fact that a defendant has a counterclaim against a plaintiff suing on a negotiable instrument based on a breach of the parties' underlying contract is not sufficient to justify the granting of leave to the defendant to defend the claim because the claim on the instrument constitutes a separate and distinct contract from the underlying contract. Such a counterclaim is normally for unliquidated damages and has to be pursued in a separate action. However, in an action by an immediate party, a partial failure of consideration for a liquidated amount for the instrument may constitute a good defence for

part of the claim on the instrument. A claim for a liquidated amount provides a defendant with a common law right of set-off. A right of set-off cannot be pleaded against a third party taking the instrument in good faith and for value. A plaintiff obtaining judgment on a negotiable instrument is ordinarily entitled to levy immediate execution on the judgment. Once judgment is obtained by a plaintiff on a negotiable instrument, a stay of execution is rarely granted. These fundamental principles have been consistently applied by the courts in numerous decisions and a departure is only permitted in the presence of exceptional circumstances. In *Cheng Song Chuan v Chin Ivan* [2008] SGHC 39, the defendant, the registered owner of two plots of land at Sentosa Southern Cove, appointed the plaintiff as the project manager to put together a team to design and construct two 2-storey detached houses with a swimming pool. Following the agreement, the defendant issued a cheque to the plaintiff for $201,978 to cover the plaintiff's invoices for services rendered. The defendant later countermanded the cheque and repudiated the contract with the plaintiff. The plaintiff obtained summary judgment on the cheque and the defendant appealed contending that there had been a failure of consideration for the cheque, and on the grounds that the consideration for the cheque was illegal and/or the underlying contract was illegal because the plaintiff was not a registered architect or engineer. Rejecting all these contentions, Lai Siu Chiu J decided that the payee of a cheque was entitled to summary judgment on the cheque in the absence of a valid defence on the cheque. Lai J said (at [73]):

> Case law states that a bill of exchange or a promissory note is to be treated as cash and the court will give summary judgment for the claimant save in exceptional circumstances (see *Chalmers and Guest on Bills of Exchange, Cheques and Promissory Notes*, Sweet & Maxwell, 16th Ed, 2005 at p 233 para 4-010). The burden under s 30(3) of the said Act was on the defendant (which he failed to discharge) to prove exceptional circumstances such as that the cheque was affected by fraud, duress or illegality. I therefore affirmed the decision of the court below in awarding final judgment in the sum of $201,978 to the plaintiff under s 57 of the Bills of Exchange Act with interest plus costs.

4.9 The court also rejected the defence that there was a partial failure of consideration. Lai Siu Chiu J said (at [74]):

> In the light of my earlier observations in [71] and my dismissal of the defence of illegality (which would have rendered the consideration void), the defence of partial consideration is again unsustainable; the plaintiff was able to substantiate what he had done for the defendant through Lee as well as through the thick tender documentation. The defendant can only succeed in this defence if the amount can be ascertained and liquidated, which he did not or could not do in the court below (see *Nova (Jersey) Knit v Kammagarn Spinnerei Gmbh* [1977] 1 WLR 713 at 720).

Conversion of cheque

4.10 If a bank customer puts a stolen or fraudulently obtained cheque through his bank account, the customer's conduct constitutes a conversion of the cheque as he is exercising a dominion over the cheque inconsistent with the rights of the person entitled to the immediate possession of the cheque. A banker who assists a customer to collect a stolen cheque is similarly liable in conversion. Conversion is a tortious conduct committed by a person who deals with a chattel not belonging to him in a manner inconsistent with the lawful owner's rights thereby depriving the owner of its use and possession. Intention is not an essential ingredient in the tort of conversion. A banker who unwittingly assists a customer to collect a stolen cheque is liable in conversion even though he does not intend to convert the cheque. The right to sue in conversion rests with the person with the right to the immediate possession of a chattel at the time of the conversion. The tort of conversion covers not only personal chattels but also negotiable instruments. In *Neo Kok Eng v Yeow Chern Lean* [2008] SGHC 151, the defendant, the general manager of a construction company, was alleged to have received for his own benefit three cheques for amounts of $80,000, $100,000 and $260,000. The cheques were issued by a Mr Neo ("Neo"), the company's managing director, to a Mr Lim Leong Huat ("Lim"), who was a shareholder as well as the project and executive director of the company, as loans to the company whenever the company was in need of money. Neo later discovered that the cheques were given over for the use of the defendant. The first two cheques for $80,000 and $100,000 were paid into the defendant's bank account while the third cheque for $260,000 was passed to a company constructing a house for the defendant. When Neo confronted the defendant about the cheques, the defendant contended that the cheques were loans from Lim to assist him in the purchase of a house. Neo brought a claim against the defendant for the conversion of the cheques and in the alternative for money had and received. Lai Siu Chiu J found on the evidence that the defendant was aware that the cheques came from Neo and should not have accepted them without making further inquiries. Holding that the defendant was liable for conversion, Lai J said (at [115] and [118]):

> Applying the principles in [111] to our facts, there is little doubt that the defendant had indeed converted the two cheques of $80,000 and $100,000 to his own use without the consent of Neo. At law, it is no answer to liability for conversion for the defendant to contend that he had not intended to convert the two cheques because of his belief that the proceeds therein belonged to Lim. As noted earlier, he was aware that the two cheques came from Neo. He could have/should have inquired further of Lim or verified Lim's information with Neo.
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> … As for the $260,000 cheque, I accept the closing submission (at p 7) of the defendant that he could not have converted the same as the cheque never came into his hands, Lim having applied the proceeds

> directly towards payment of the third progress claim of AZ for construction of the property.

4.11 The court further decided that the defendant was also liable for money had and received. Lai Siu Chiu J said (at [119] and [120]):

> Notwithstanding that the defendant did not convert the $260,000 cheque, can Neo succeed in his alternative claim for money had and received against the defendant? It would appear from the requirements for such an action in [113] that he can, not only for the $260,000 cheque but also for the other two earlier cheques. An action for money had and received is a claim in quasi-contract and is a restitutionary remedy founded on the principle of unjust enrichment.
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> With the above principles in mind, it is noteworthy that Lim admitted that he took the cheques for $80,000 and $100,000. Further, he did not deny that the $260,000 cheque was applied towards payment of the invoice of AZ for $260,000 [15]. The cheque image Neo obtained from UOB confirmed that the cheque was actually deposited into AZ's bank account. The defendant not having seen AZ's invoice and/or the $260,000 cheque before these proceedings, was in no position to disagree with or challenge Neo's testimony.

4.12 The court found that there had been no change in position against the claim for money had and received. Lai Siu Chiu J said (at [127] and [128]):

> With the above caveats in mind, I return to the defendant's position. In the light of my findings on the facts, it cannot in all honesty be said that the defendant accepted the three cheques in good faith, let alone that it would be inequitable to require him to make restitution to the extent of his change in position. He provided no consideration for the three cheques but has been unjustly enriched. In any event, it was the defendant's evidence that he did not change his position and did not rely on the three cheques in his purchase and reconstruction of the property. Rather, he committed himself to the purchase and reconstruction because he had Lim's full financial support. The defendant relied on Lim because (as I found earlier) he regarded Lim as the beneficial owner. Even if the defendant relied on the three cheques to help fund his purchase, I accept the plaintiffs' closing submissions (at para 116) that by his own admission at [71], the defendant said he would not have taken an option to purchase on the property had Lim not agreed to extend loans to him.
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> Consequently, the defendant could not have changed his position to his detriment relying on any of the three cheques. The plaintiffs also submitted that for a change of position to be relied upon as a defence, as a general rule, it must occur after the receipt of the payments in question (citing Goff & Jones [*supra* 112] at p 856 para 40-009 and *South Tyneside Metropolitan Borough Council v Svenska International plc* [1995] 1 All ER 545), which was not the case here.

Letters of credit

4.13 If fraudulent or forged documents are tendered by a beneficiary to an issuing or confirming bank under a letter of credit, can the bank recover payment from the beneficiary when it discovers that the documents tendered are fraudulent or forged? If the beneficiary is privy to the fraud or forgery, there is no doubt that the bank is entitled to recover the payment. There is also no doubt that in such a situation, the beneficiary would not be allowed to benefit from his unlawful conduct. A person who deliberately creates a false document to be tendered under a letter of credit may be saddled with liability for deceit. Thus, in *Niru Battery Manufacturing Co v Milestone Trading Ltd* [2002] 2 All ER (Comm) 705, Moore-Bick J decided that a party who tendered a fraudulent document under a letter of credit was liable in an action for deceit. A beneficiary who tenders a false or fraudulent document knowing the document to be untrue or was reckless in not caring whether it was true or false is liable for deceit. In *KBC Bank v Industrial Steels (UK) Ltd* [2001] 1 Lloyd's Rep 370, David Steel J decided that a beneficiary who tendered a document he knew contained a false statement was liable in deceit.

4.14 In addition, a bank's negligence in failing to detect a fraudulent document will not constitute a defence for the fraudster. In *Standard Chartered Bank v Pakistan National Shipping Corp (No 4)* [2001] QB 167 the English Court of Appeal decided that a bank's negligence in failing to detect a fraudulent document would not constitute a defence for the person who deliberately put forward the document.

4.15 Would the same principle apply if the beneficiary is an innocent party and is ignorant of the fact that the documents tendered were fraudulent or forgeries? When a beneficiary is not privy to the issue of a fraudulent or forged document, there are no equities operating against the beneficiary. The beneficiary is an innocent party in the transaction and should not be made to suffer the loss. In *Mees Pierson NV v Bay Pacific (S) Pte Ltd* [2000] 4 SLR 393, Rajendran J decided that a confirming bank accepting a forged document from an innocent beneficiary was precluded from recovering the payment from the beneficiary once the time for the rejection of the forged document had expired. Similarly, the Singapore High Court in *DBS Bank Ltd v Carrier Singapore (Pte) Ltd* [2008] 3 SLR 261 decided that a beneficiary did not owe a duty of care to an issuing bank to whom documents were tendered under a letter of credit. A letter of credit was issued by DBS Bank Ltd in favour of Carrier Singapore (Pte) Ltd ("Carrier") to cover its sale of air conditioners to Lee Meng Brothers (S) Pte Ltd ("Lee Meng") for export to a Vietnamese customer. The letter of credit required the tender of a delivery order "showing delivery of goods from Carrier's warehouse to Lee Meng's warehouse; and … stamped and

countersigned by one authorised signatory of Lee Meng, acknowledging receipt of the goods in good order and condition." The delivery order tendered by Carrier to the bank stated that 3,936 sets of Toshiba RAS-10GKPX-V/GAX-V air conditioners, 1,003 sets of Toshiba RAS-12NKPX-V/NAX-V air conditioners and 450 sets of Toshiba RAS-18NKPX-V/NAX-V air conditioners had been delivered in "1 lot" from Carrier's warehouse to Lee Meng's warehouse. Carrier's delivery order also stated that the "Delivery Date" of the goods was made on 30 June 2006. A Lee Meng representative acknowledged receipt of the goods on the delivery order. It transpired later that the delivery order included goods which had earlier been delivered to Lee Meng in April, May and June 2006 amounting to over US$1,391,726.70. Lee Meng was later placed under insolvent receivership and the receiver discovered that the goods under the letter of credit had not been delivered in one lot on 30 June 2006. The bank sued Carrier for deceit and negligent misrepresentation in tendering the delivery order under the letter of credit. Andrew Ang J decided that the proper cause of action by the bank against Carrier was for deceit and not negligent misrepresentation. Holding that Carrier's conduct in tendering the delivery order was fraudulent, Ang J said (at [63]):

> All the above lead to the irresistible conclusion that Carrier did not honestly believe in the truth of the representations in DO50191. Carrier clearly intended to make the Representation in DO50191 to secure payment from DBS under the LC. In all probability, Lim's actions were driven by a desire for Carrier to receive payment for what were long overdue debts from Lee Meng. The e-mails exchanged with Lee Meng as disclosed in Lim's affidavit of evidence-in-chief (in particular his alleged perception of the LC as a 'debt reduction instrument') revealed that as the driving factor in his entire decision-making process. In all likelihood, that clouded Lim's judgment and pushed him over the edge into a reckless, if not an entirely, fraudulent mindset. In the circumstances, the Representation in DO50191 was made fraudulently.

4.16 The court further decided that the bank had no cause of action in negligence because the beneficiary did not owe a duty of care to the bank in tendering the delivery order. Andrew Ang J said (at [99], [106] and [107]):

> If we were to accept DBS's contention that a bank may rely on negligent misrepresentation by a beneficiary to recover any money it had paid out to the beneficiary, the law would also have to accept that banks are entitled to invoke negligent misrepresentation by the beneficiary as a ground for not paying the beneficiary in the first place. The practical effect of this would be to unravel the narrow fraud exception the House of Lords took pains to limit; banks could refuse to pay the beneficiary once there was any inaccurate statement of material fact by simply alleging that the beneficiary had been negligent. One has to bear in mind that the underlying foundation of

> the system of documentary credits is to give sellers, as far as possible, an 'assured right' to payment notwithstanding disputes in the underlying sale contract.
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> … DBS's argument in this regard is the rhetoric that a responsible seller must provide to the bank documents which are true. This does not *ipso facto* entail that the seller has assumed any responsibility towards the bank. The English Court of Appeal in *Montrod* made the apposite comment that in seeking to ensure that documents presented to the issuing bank comply with the terms of the letter of credit, a beneficiary is pursuing his *own* commercial interests: at para 66. It does not owe a duty of care to the bank. I am therefore of the view that DBS has no valid cause of action in negligent misrepresentation against Carrier.

Presumption of advancement

4.17 Have the Singapore courts made a conscious departure from the English courts concerning the issue of advancement in a wife's favour? In *Yeo Guan Chye Terence v Lau Siew Kim* [2007] 2 SLR 1, Lai Siu Chiu J decided that a presumption of advancement in a wife's favour was easily rebutted. Two sons from a testator's first marriage sued their step-mother from a third marriage over two properties registered in the couple's joint names. The plaintiffs contended that the properties were held on a resulting trust for the estate since their late father had funded the purchase of the properties. In reply, the step-mother relied on the presumption of advancement and on the principle of survivorship as the properties were in joint ownership. The court found that there was a resulting trust of the properties in the estate's favour and that the presumption of advancement was rebutted by the evidence. Each party was entitled to the properties in proportion to their contributions. The court expressed the view that in present day Singapore, the presumption of advancement in a wife's favour was no longer applicable in the absence of evidence to support the presumption.

4.18 On appeal from the trial court's decision, the Singapore Court of Appeal in *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR 108 ("*Lau Siew Kim*") disagreed with the trial court's reasoning by following its previous decision in *Low Gim Siah v Low Geok Khim* [2007] 1 SLR 795, where it decided that a presumption of advancement involving a husband and wife, parent and child, remained relevant in Singapore. It decided in *Lau Siew Kim* that there was a presumption of advancement in the step-mother's favour. V K Rajah JA, delivering the court's judgment, said (at [77]):

> We maintain the view expressed in *Low Gim Siah*. The presumption of advancement is still very relevant today in the established (both traditional and extended) categories of relationships; it is the strength of the presumption that should vary with the circumstances in

> accordance with modern social conditions. Thus, on this point, we must respectfully depart from the learned trial judge's bare assertion that the Singapore courts had moved away from the presumption of advancement and that the presumption was no longer applicable in modern times unless there was evidence to support it (see [16] above). In fact, we find that the strength of the presumption of advancement, whether in cases concerning spouses or otherwise, should not even be *generally* diminished as appeared to be suggested in *Pettitt*. Instead, it should only be where the present realities are such that the putative intention inherent in the presumption of advancement is not readily inferable from the circumstances of the case, that the presumption would be a weak one easily rebuttable by any slight contrary evidence.

4.19 The court further expressed the view that the application of the presumptions of resulting trust and advancement was fact-sensitive. When it was established that a presumption of resulting trust arose, it would be necessary to consider the relationship between the parties to see whether a presumption of advancement arose to displace the presumption of resulting trust. V K Rajah JA said (*Lau Siew Kim*, at [147] and [148]):

> The presumptions of resulting trust and advancement must be applied in accordance with the modern context; a fact-sensitive approach is necessary and courts should be both pragmatic and principled in dealing with issues where these presumptions come into play. The presumptions are judicial devices for allocating the burden of proof when property disputes arise. They continue to be relevant and can still be sensibly applied. In circumstances where there is scant evidence of the objective of a transaction, they can shield vulnerable individuals. Where a legal joint tenancy is concerned, the initial inquiry of the court should be whether a presumption of resulting trust arises in the first place. It is only where the *prima facie* circumstances of unequal contributions to the purchase price of the property exist, and there is a lack of any apparent contrary intention, that the presumption of resulting trust may operate; otherwise the legal joint tenancy will reflect the beneficial interests of the parties. Indeed, we should reiterate that where objective evidence of the considered and voluntary intention of registered legal joint tenants to hold land as such is adduced and accepted by the court, there is no room to look beneath the express intentions of the parties as reflected in the legal title; there is, consequently, no foundation for the application of the presumption of resulting trust. *If* it is established that the presumption of resulting trust applies, it is then appropriate to turn to examine the relationship between the parties. Where there is a subsisting relationship which is one of equity's darlings (for example, husband-wife, parent-child), the presumption of advancement arises to *prima facie* displace the presumption of resulting trust. The next step is then to determine the strength of the presumption of advancement based on all the facts of the case, and to consider if that presumption can be rebutted by evidence of an intention on the part of the transferor or contributor to permanently

> retain an interest in the property. On the facts of the present case, a strong, indeed one might even say compelling, presumption of advancement arises and it may properly be inferred from all the circumstances that Yeo had clearly intended to confer the benefit of survivorship to the appellant in respect of the Properties. To our minds, the respondents could not even begin to succeed in rebutting this presumption. Accordingly, and for the above reasons, we allow the appeal and affirm the appellant's *absolute* ownership of the Properties. [emphasis in original]