

**IN THE COURT OF APPEAL (CIVIL DIVISION)  
ON APPEAL FROM THE CENTRAL LONDON COUNTY COURT  
HHJ WAKEFIELD  
LOWER COURT NO: CHY08080**

Royal Courts of Justice  
Strand, London, WC2A 2LL

21 April 2010

**Before:**

**LORD JUSTICE WARD  
LORD JUSTICE WILSON  
and  
MR JUSTICE HENDERSON**

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**Between:**

**MRS ALISON CHIU YIN LUI  
(Personal Representative of Mrs Foo Man Tsang Claimant/  
Chong Deceased) Respondent**

**- and -**

**MR WAI BUN CHONG Defendant/  
Appellant**

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**Mr Gerard van Tonder (instructed by Barfields) for the Appellant  
Mr Dov Ohrenstein (instructed by Rootes & Alliot) for the Respondent  
Hearing date: 26 January 2010**

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**Mr Justice Henderson:**

**Introduction**

1. This is an appeal, brought with permission granted on paper by Lloyd LJ, against part of the order made by His Honour Judge Wakefield at the Central London County Court on 6 March 2009, after he had delivered an extempore judgment at the end of a five day hearing. By paragraph 1(a) of his order, the judge declared that the defendant in claim number CHY08080, Mr Wai Bun Chong, held the property known as 355 Cheriton Road, Folkestone, Kent (“the Property”) on bare trust for the claimant, Mrs Alison Chiu Yin Lui, in her capacity as personal representative of the estate of Mrs Foo Man Tsang Chong deceased (“Mrs Chong”). By paragraph 1(d) the judge ordered the defendant to pay 85% of the claimant’s costs of the claim, and by paragraph 1(e) he ordered a payment of £8,000 on account of those costs to be made by 6 April 2009. These are the parts of the judge’s order against which the defendant now appeals. His case on the appeal, as it was before the judge, is that he is the sole beneficial owner of the Property, it having been conveyed by Mrs Chong into the joint names of herself and the

defendant by an assent dated 5 September 1984 (“the Assent”), and having then passed to the defendant by survivorship when Mrs Chong died on 19 November 2005.

2. There is no dispute that the legal title to the Property is now vested in the defendant, and that it has devolved on him by the route which I have just mentioned. It is also common ground that Mrs Chong was the sole legal and beneficial owner of the Property at the date of the Assent. The issue that the judge had to decide was whether, when she executed the Assent, Mrs Chong intended to make a gift to the defendant (who was the youngest of her seven children) of a beneficial joint share in the Property, so that they thereafter owned it as both beneficial and legal joint tenants, or whether her intention was merely to place the Property into their joint names for reasons of administrative convenience, and not to part with any of the beneficial interest in it.
3. Having correctly directed himself that the burden lay on the claimant and Mrs Chong’s estate to prove that Mrs Chong did not intend a gift to the defendant but rather intended to retain beneficial ownership for herself (see paragraph 38 of the judgment), the judge considered the documents and the evidence before him and concluded that the burden had been discharged to his satisfaction. As he said in paragraph 50:

“I consider that Alison on behalf of the estate has discharged the burden of proof. It is proved on a balance of probabilities that Mrs Chong intended merely to transfer legal title to Bun but not beneficial title; that was to be retained for herself.”

4. This conclusion made it unnecessary for the judge to deal with an alternative claim that the gift, if there was one, had been procured by undue influence. This contention was kept alive on the present appeal by a respondent’s notice, together with a further contention (not expressly pleaded below) that the transfer of the Property in 1984 was vitiated by mistake. In the event, however, we do not need to deal with either of these further issues, because after hearing argument on the issue determined by the judge we were all of the view that he had clearly come to the right conclusion, even if valid criticisms could be made of some of the reasoning by which he had reached it. We therefore announced, without hearing further argument, that the appeal would be dismissed, for reasons to be given later in writing.
5. In this judgment I set out the reasons which have led me to that conclusion.

### **Background facts**

6. The main background facts were found as follows by the judge in paragraphs 5 to 10 of his judgment:

“5. Mrs Chong came to the United Kingdom from Hong Kong in the early 1960s. Her late husband, Mr Chong, also came to the United Kingdom. They set up a business together in Folkestone in Tontine Street. It was a restaurant of tenanted premises.

6. In 1971 Mr Chong purchased the property at 355A Cheriton Road. The property consisted of shop premises on the ground floor with residential accommodation above. After purchasing the property Mr Chong and his wife and their children moved to the property and they opened up a take-away business on the ground floor. In due course they disposed of the restaurant business in Tontine Street.

7. Mr Chong died on 29 January 1975 intestate and Letters of Administration were granted to Mrs Chong in her sole name on 16 February 1976. Mr Chong’s next of kin, of course, were Mrs Chong and his seven children. However, the value of his estate was sufficiently low as to be below the value of the surviving spouse’s statutory legacy. Mrs Chong, therefore, became entitled absolutely to the property. There is no dispute about that. She was able, therefore, to execute an assent in favour of herself as absolute owner under section 36 of the Administration of Estates

Act 1925. She made no such assent until the [Assent], which was in favour of herself and her son Bun.

8. The children of Mrs Chong all regarded the property as their home in the general sense that children do. Even when children leave and get married they refer to it as home. One of Mrs Chong's children, Charlie, returned and began to reside at the property regularly from about 1994/95. I am, however, concerned with the events of 1984 when the [Assent] was executed. At that time, Bun had graduated. That was in 1982. He was therefore still a young man. It seems that he was then the only child of Mrs Chong who was living with her at the property. The take-away business was wound up in about 1983. Bun considered that it was time that his mother retired from work.

9. Mrs Chong had been brought up in China and was from a quite wealthy family. She did not, however, read Chinese. She spoke Cantonese. Although she came to the United Kingdom in the early 1960s, she did not obtain a command of English. She knew very little English and needed help both to speak it and to read it. Bun knew English as his first language. He had a rudimentary command of Cantonese and was able to communicate with his mother. She relied on him to assist her in translating documents and doing day to day business. They opened more than one bank account in their joint names. That was a matter of convenience for Mrs Chong. One of the accounts was with the Bank of China. I have seen bank statements going back to January 1987 which show that they were in the joint names of Bun and his mother. The money, however, belonged to his mother. It was simply a matter of convenience that it was a joint account.

10. Although Bun was still a young man, there is no doubt that he attained a degree of influence over his mother and she trusted him."

7. Also of relevance are certain further findings of fact made by the judge in paragraphs 13 to 15:

"13. Although Mrs Chong had difficulty in communicating in or reading English, she was not a simpleton by any means. It was only in a strange environment that she had difficulty. It seems that she did own a property in Hong Kong, and had done so since 1960. At a late stage in her life she gave that property to her eldest son.

14. There is also evidence that she travelled to Hong Kong and then between Hong Kong and mainland China. The earliest passport that is available is one which was issued on 10 September 1984. It expired on 10 September 1994. It was therefore issued five days after the [Assent]. There is no doubt that Mrs Chong required this passport because of an imminent visit to Hong Kong and mainland China. It seems that she was in those parts from September 1984 until March/April 1985. There are several immigration stamps in the visa section of the passport which suggest that she was continuously away from the United Kingdom between September 1984 and April 1985. She returned again to Hong Kong in 1989 and again in the 1990s.

15. After Mr Chong's death a shrine was set up in an upper room of the property, according to Buddhist tradition. This is a place where the family can venerate the memory of their ancestor. There is evidence from the family, which I accept, that Mrs Chong did not wish the property to be sold because it was a shrine and a place where the children could meet and venerate their father."

8. There is no challenge to any of the above findings of fact.

9. It is convenient at this point to say a little more about the family. As I have already said, the defendant, known as Bun, was the youngest of the seven children. In his oral evidence he said he was 17 when his father died in 1975, so he must have been about 24 when he graduated in 1982 (having studied civil engineering in London), and about 26 at the date of the Assent. The other six children, in order of seniority, were:

- (a) Mrs Man Chiu Hong (“Christina”);
- (b) Mr Chong Kam Fat;
- (c) Mr Chong Kam Chuen (“Danny”);
- (d) the claimant, Mrs Alison Chiu Yin Lui (“Alison”);
- (e) Mr Wai Fong Chong (“Big Charlie”); and
- (f) Mr Wai Yin Chong (“Charlie”).

Without intending any disrespect, I will follow the example of the judge in referring to the individual children by their English nicknames as shown above.

10. All of the children, with the exception of the eldest son, Mr Chong Kam Fat, gave evidence at the hearing; and the four of them who were not parties to case number CHY 08080 (that is to say Christina, Danny, Big Charlie and Charlie) all gave their evidence in support of the claimant, Alison, thus leaving Bun without any apparent support from any of his siblings. The eldest son seems to have played no part in the proceedings, and his attitude to them is unknown. It may be material, in this connection, to note that Mrs Chong gave him a property in Hong Kong towards the end of her life (paragraph 13 of the judgment, quoted above). According to Charlie’s witness statement dated 9 July 2008, it is traditional in China for the eldest son to inherit a bigger share of the deceased’s estate than any other siblings, but his parents always agreed that because they were in England everything they owned in England would be shared equally between all the brothers and sisters.
11. In paragraph 15 of the judgment the judge accepted the evidence from the family that Mrs Chong did not wish the Property to be sold because it was a shrine, and a place where the children could meet and venerate their father. Evidence to this general effect was given by each of Alison, Christina, Danny, Big Charlie and Charlie. The fullest account is that given by Alison herself, in her witness statement dated 15 September 2006:

“10. My mother always made it clear, and it was accepted by the whole family, that [the Property] would remain as a family property and not be sold. It is the Buddhist tradition that when a parent has died the family home is retained as a shrine so that the family can visit and pay their respects to the deceased parent twice a year on specific days. This tradition was maintained while my mother was alive (except by Bunny) unless members of the family were abroad at the time – my sister and one of my brothers live in Hong Kong. Each year, one day in the spring and one day in the autumn most of our parents’ children and grandchildren visit the shrine at [the Property] in accordance with the tradition and will continue to do so provided that the property is not sold or let.

11. My mother always made it clear that the property was not to be sold but was to be retained according to Buddhist tradition as a shrine. My mother was also very clear that the property was never to be sold as it was to be somewhere available to members of the family as a sort of haven or refuge should they ever find themselves in difficulty or fall on hard times. “

### **The procedural background**

12. The procedural background is a little complex, but only the main points need to be noted here.
13. By the date of his mother’s death in November 2005, Charlie had been living at the Property with her for about ten years. Unlike the other children, he had never married or left home for any length of time. Within a few weeks of Mrs Chong’s death, however, Bun served a notice to quit on Charlie, and in February 2006 he started possession proceedings against him in the Folkestone

County Court. Charlie defended the proceedings, contending that execution of the Assent by Mrs Chong had been procured by undue influence, and that he (Charlie) had a beneficial interest in the Property as a result of substantial expenditure by him on improvements and/or on the grounds of proprietary estoppel.

14. The possession proceedings were eventually compromised following a mediation, and on 3 May 2007 a consent order was made in Tomlin form staying the proceedings on the agreed terms and ordering Bun to pay Charlie's costs. The agreed terms were that Charlie was to give up possession of the Property by 1 August 2007, and Bun was to pay him £75,000 in two instalments, the first instalment of £25,000 when possession was given up, and the balance of £50,000 upon completion of the sale of the Property or (if earlier) by 1 February 2008.
15. Before any of the agreed terms were implemented, Charlie's solicitors, now also acting for Alison, wrote to Bun on 5 July 2007 asking him to execute a declaration that he held the Property on trust for Mrs Chong's estate, Letters of Administration having been granted to Alison in the Brighton District Probate Registry on 12 June 2007. In the light of this development, Bun refused to pay the first tranche of £25,000 to Charlie, although Charlie was prepared to vacate the Property by the agreed deadline of 1 August 2007.
16. In March 2008 Charlie applied for permission to enforce the agreed terms pursuant to the Tomlin order, but his application was stayed upon Bun's intimation that he wished to issue a claim to set aside the Tomlin order. This claim was issued in the Canterbury County Court on 6 May 2008. In his particulars of claim, settled by Mr Gerard van Tonder of counsel, Bun contended that the consent order was void, or alternatively voidable, for mistake, on the footing that it was always intended and understood that the Property would belong to him exclusively upon payment of the £75,000 to Charlie, that he would be able to sell the Property in order to raise the second tranche of £50,000, that neither Charlie nor any of the other siblings would advance any claims to the Property, and that the consent order was to be in full and final settlement of all claims any of them might have to the Property.
17. Meanwhile, on 16 August 2007 Alison had started proceedings against Bun in the Chancery Division of the High Court seeking a declaration that the Assent was ineffective to transfer any beneficial interest in the Property to Bun, or alternatively an order setting aside the Assent for undue influence.
18. In due course, both sets of proceedings were transferred to the Central London County Court and they were tried together by the judge. In his judgment he refers to Alison's action (case number CHY 08080) as "the Chancery claim" or "the Chancery action". That is the only action with which we are now directly concerned. The judge dismissed the other action (case number CHY 08496), which he called "the rescission action", for the reasons given in paragraphs 52 to 60 of his judgment. There has been no appeal by Bun against that part of his order.

### **The Assent**

19. The Assent would have won no prizes for drafting in a conveyancing examination. It was expressed to be made by Mrs Chong (defined as "the Administrator"), and was executed by her under seal in the presence of a solicitor, Mr Chun Michael Ko, LLB, of 1 Gerrard Place, London W1. It recited (a) the death of Mr Chong intestate on 29 January 1975 and the grant to Mrs Chong of Letters of Administration on 16 February 1976 "out of the Principle Probate Registry of the Family Division of the Royal Court of Justice at Brighton" (sic); (b) that Mrs Chong was the surviving spouse of the intestate; (c) that he left surviving issue; and (d) that (sic)

"The value of the whole of the residuary estate of the Intestate is defined by Section 33(4) of the Administration Office Dates Act 1925 after deduction of the value of the personal chattels is less than the sum of £25,000."

20. The operative part of the Assent then provided as follows:

“NOW THE ADMINISTRATOR HEREBY ASSENTS to the vesting in the Administrator and her son WAI BUN CHONG of ALL AND SINGULAR the [Property] as comprised in the Title number A179546 to which the Administrator is entitled under the said Intestacy of all the estate and the interest vested in the Intestate at the time of his death.

It is hereby certified that the transaction hereby effected does not form part of a larger transaction or series of transactions in respect of which the amount or value or aggregate amount or value of the consideration exceeds £30,000.”

21. The mangled and uncorrected wording of the first and fourth recitals, which should have referred to the Brighton District Probate Registry of the High Court of Justice, and to section 33(4) of the Administration of Estates Act 1925, does little to inspire confidence, but the errors are nevertheless relatively trivial ones. The second of them was no doubt the product, at some stage, of a mistake by an audio-typist. Potentially more serious was the reference to £25,000 in the fourth recital, because at the date of Mr Chong’s death the amount of the fixed net sum (or “statutory legacy”) taken by the surviving spouse of an intestate who died leaving issue was only £15,000. The increase to £25,000 applied to deaths after 14 March 1977. However, this slip was again immaterial, because Mr Chong’s net estate was sworn for probate in the sum of £14,810.64, just under the £15,000 threshold.
22. The proper function of an assent is normally to transfer the legal estate in land from a personal representative, following completion of administration of the estate, to a person who is entitled to it, either beneficially or as a trustee: see section 36(1) of the Administration of Estates Act 1925. As a matter of good conveyancing practice, an assent should normally deal only with the legal estate, thereby keeping the equitable interests created by the will or arising on the intestacy off the title. This policy is reflected in section 36(7), which gives statutory effect to the operation of an assent as a “curtain” in favour of a purchaser. Whether deliberately or not, the Assent does indeed keep all equities off the title, because it says nothing about the underlying transaction or transactions which entitled Mrs Chong and Bun to have the Property vested in them, nor does it state explicitly whether they were to hold the Property beneficially or as trustees.
23. It is at this point that the certificate of value (included for the purposes of ad valorem stamp duty) becomes relevant. If the intention was that Bun was to be a bare trustee, there was, strictly speaking, no need for a certificate of value at all, because the entire beneficial interest in the Property remained vested in Mrs Chong. Thus the inclusion of a certificate of value is at least prima facie evidence that the Assent was intended to effect a transfer of value by Mrs Chong to Bun, or at any rate formed part of a wider transaction or series of transactions which did so. The force of this point is, however, somewhat blunted in my judgment by two considerations. First, the certificate may well have been included for the avoidance of doubt, even if it was not strictly necessary. Its inclusion could do no harm, and it might forestall enquiries by the Inland Revenue, when the document was submitted for adjudication, about the precise nature of the transaction which led to the Property being vested in Mrs Chong and Bun jointly, even though she was (on the face of the document) the only person beneficially entitled to it on her husband’s intestacy. Secondly, Bun’s case has always been that his mother made a *gift* to him of a joint beneficial interest in the Property; but in that event the appropriate form of certificate would have been one which referred to “the amount or value or aggregate amount or value of *the property conveyed or transferred*”, not “the amount or value or aggregate amount or value of *the consideration*”. In the light of these points, and the other drafting infelicities which I have noted, it seems to me that the evidential weight that can fairly be attached to the inclusion in the Assent of the certificate of value is slight, although not negligible.
24. I suspect that my conclusion on this point is substantially the same as the judge’s, but unfortunately he expressed himself on it with a degree of inconsistency. Having correctly observed in paragraph 39 that an assent may serve to transfer beneficial title if that is the true

intention, and in paragraph 40 that the document was silent on the question whether Mrs Chong and Bun were intended to hold the Property beneficially (whether as joint tenants or tenants in common), he continued in paragraph 41:

“Then there is some support that the assent was intended to pass beneficial title since it contains a certificate for *ad valorem* stamp duty purposes.”

I agree, and the judge then lucidly explained why the inclusion of a certificate supports such an inference.

25. However, he then fastened on the error in the fourth recital about “the Administration Office Dates Act 1925”, and appears to have concluded that, merely because it was not corrected by Mr Ko, no weight at all should be attached to the inclusion of the certificate:

“43. I cannot, therefore, rely on the fact that there was a certificate in the Assent. Mr Ko may simply have told his typist to type a document out from a precedent and the certificate may have got into the document in error. Mr Ko may have thought it prudent to put in a certificate in any event so as to resolve any doubt about whether it was liable to duty.

44. It seems to me, therefore, that I cannot and should not impute to Mrs Chong any intentions which I might have derived from looking at the certificate of value. “

26. In my opinion this conclusion goes too far, and is unduly influenced by Mr Ko’s apparent carelessness in leaving a purely verbal mistake uncorrected. The judge did not note the more substantial mistake about the form of the certificate, if a gift was intended, and although I agree with him that it may have been included for the avoidance of doubt, a speculative consideration of that nature cannot be conclusive. It seems to me, therefore, that the judge’s reasoning on this point is defective, and a more nuanced conclusion would have been appropriate.

### **Mr Ko’s retirement letter**

27. In April 1988, some three and a half years after the date of the Assent, Mr Ko wrote to Mrs Chong to inform her that he was retiring from practice and would be succeeded by a Mr Patrick Wu. He recommended Mr Wu in warm terms if Mrs Chong had any future need of legal services, and continued:

“The title deeds to the [Property] which I have been holding for you have been passed to Mr Wu who continue[s] to hold them on your behalf. Please however get in touch with Mr Wu if and when you require them.”

Enclosed with the letter was a schedule of deeds and documents, the only entry on which was the land certificate for the Property dated 3 August 1987, showing Mrs Chong and Bun as the joint registered proprietors.

28. The judge referred to this letter in paragraphs 35 and 45 of his judgment. In the latter paragraph, immediately after his discussion of the Assent, he said:

“Then there is Mr Ko’s letter of 1988 written to Mrs Chong. It is written to her as though she were entitled to the possession of the land certificate, notwithstanding that Bun was by then on the title. I think I can draw the inference that Mr Ko assumed that although the title had been changed it was Mrs Chong who still had beneficial title absolutely.”

Here, too, it seems to me that the judge drew an inference which was unwarranted by the evidence. All that can safely be inferred from the 1988 letter is that Mrs Chong was a client, or former client, of the firm, and that the land certificate was held by the firm on her behalf. Whatever the position may have been as between Mrs Chong and Bun, there is no suggestion that

Bun was ever a client of the firm, and it was entirely natural for Mr Ko to write to Mrs Chong as he did. As between herself and the firm, it was she who had the right to call for the land certificate, and nobody else. The letter is in my judgment of no probative value at all in relation to the question now in issue.

### **The grounds of appeal: discussion**

29. The judge's conclusions on the certificate of value and Mr Ko's retirement letter feature prominently in Bun's grounds of appeal, and Mr van Tonder (appearing for Bun as he did below) was able to mount a cogent attack on them in both his written and his oral submissions. As I have already indicated, I consider that there is some substance in both grounds. Shortly stated, the judge erred in attributing no significance to one point which told slightly in Bun's favour, and in attributing significance, in favour of the claimant, to another point which was at best neutral. However, these two points formed only a small part of the total evidence, both oral and documentary, which the judge had to consider and evaluate after a trial which lasted for several days. In my judgment the errors which I have identified pale into relative insignificance when the broader picture is examined, and there was abundant evidence to justify the overall conclusion reached by the judge.

30. In the first place, the judge had the benefit of evidence from Bun himself about the circumstances in which the Assent was prepared and executed. The judge reviewed this evidence in paragraphs 16 to 17, 20 to 23, 32 to 35 and 46 of the judgment, quoting relevant extracts from Bun's pleadings and witness statements in the various actions and making findings of fact based on his oral evidence, a transcript of which has been provided to us. A striking feature of this evidence is how little Bun was able to say about the circumstances and motivation of the supposed gift made to him by his mother, and how even by his own account it seemed to be a transaction of an essentially administrative nature. Thus in his reply to Charlie's defence in the possession action in the Ashford County Court, Bun said that the Assent was

"an illustration of the desire by his mother to ensure that the property would be adequately maintained at all times during the remainder of her lifetime and as further illustration of her attachment and bond to the claimant."

To similar effect, in his defence in the Chancery action, dated 28 May 2008, he said this:

"During the second half of 1984 [Mrs Chong] informed the defendant that she was determined to transfer the property into joint names. She explained to him that this was in recognition of the fact that he had responsibility for it. It was her wish that the property should pass to the defendant when she died as it had passed to her on her husband's death."

31. In his witness statement dated 18 July 2008 in the Chancery action Bun said that he recalled attending at Mr Ko's offices with his mother on two occasions, and

"to the best of my recollection she stated she understood this course of action because I was trustworthy and she wanted the property to be looked after."

Nearly two years earlier, Bun had said much the same in paragraph 19 of his witness statement dated 16 September 2006 in the possession action:

"In the second half of 1984, and I must say entirely "out of the blue", my mother informed me that she had determined to transfer the Property into our joint names. She explained that this was in recognition of the fact that I really had responsibility for it."

32. Perhaps most strikingly of all, in cross-examination it was squarely put to Bun by counsel for the claimant that "the reality of the situation is that your mother was simply trusting you to help with the administration, to help with practical matters to do with the Property in the same way as you



were helping her with the bank accounts”, and that she never intended to give him a benefit above and beyond what any of his siblings would obtain, to which Bun replied:

“I don’t know. I don’t know what my mother intended. Maybe if she was alive she could tell you, but she is not.”

33. In the light of this evidence, I cannot see any reason to disagree with the judge’s conclusion in paragraph 46:

“I have read several passages from Bun’s witness statement[s]. I have of course to approach them with caution because they may be self-serving statements. It seems to me that I can deduce and should deduce from those statements that Mrs Chong was putting the property into Bun’s name jointly with herself as a kind of custodian so that the property would be looked after rather than putting [it] in his name as a joint beneficial owner who would one day inherit the property for himself.”

34. Further support for this conclusion may be found in a number of other matters, which were rightly urged on us by counsel for the claimant. It is unnecessary to review them all, and I mention only those which seem to me to be the most telling:

(1) The unanimous and unchallenged evidence of all of Bun’s siblings (with the exception of the eldest brother, who has played no part in the proceedings) to the effect that Mrs Chong wished the Property to be retained unsold for the use of the entire family in case of need, and as the location of a shrine to her late husband (and now, no doubt, to Mrs Chong herself, following her death). This clear evidence is wholly incompatible with Bun’s case that his mother wished to give him a beneficial joint share in the Property, and intended him to be its sole beneficial owner after her death.

(2) The judge’s unchallenged finding that Bun and Mrs Chong operated a number of joint bank accounts, going back to at least January 1987, for reasons of convenience, the money at all times belonging to Mrs Chong alone (paragraph 9 of the judgment). This provides a clear, and probably contemporary, parallel for the arrangement relating to the Property.

(3) The evidence that Mrs Chong travelled to China for a lengthy visit of about six months between September 1984 and April 1985 (paragraph 14 of the judgment). This may well have been an additional motive for putting the Property into joint names just before her departure.

(4) The lack of any evidence that Bun acted as a beneficial co-owner of the Property during his mother’s lifetime, coupled with evidence that substantial repairs and improvements to the Property were paid for by Charlie and the other siblings, apparently without any discussion or agreement with Bun. Indeed, it was only in 2005, when Mrs Chong’s health was deteriorating, that the family found out that the Property was in joint names.

(5) The complete lack of any evidence that Mr Ko advised Mrs Chong about the implications of making a gift of an equitable interest in the Property to Bun, including advice on such matters as the irrevocable nature of a gift, how expenses and outgoings should be paid, the rights of occupation of the co-owners and their right to exclude third parties (including other family members), the value of the Property in relation to Mrs Chong’s other assets and resources, advice about the differences between joint beneficial ownership and tenancy in common, and advice that Bun’s beneficial share in the Property would be available to pay his creditors or satisfy the claims of his wife on a divorce, and could lead to a forced sale of the Property against Mrs Chong’s wishes. The force of this point is admittedly somewhat lessened by the judge’s finding (in paragraph 16) that, although Bun was present when Mr Ko was discussing the matter with his mother, he could not follow what they were talking about because of his rudimentary knowledge of Cantonese, and by the fact that no attendance note of Mr Ko’s has been found (paragraph 35). Nevertheless, these are all matters that any competent solicitor should have covered if a gift was

intended, and one would expect some written record of the solicitor's advice to have survived, if only in the form of a letter to Mrs Chong. One would also expect Mr Ko to have insisted on interviewing Mrs Chong in the absence of Bun, but Bun's evidence is that he was present throughout both their meetings.

35. Taking all these matters into account, I feel no doubt that the judge's conclusion was the right one, and that this appeal must therefore be dismissed.

**Lord Justice Wilson:**

36. I agree.

**Lord Justice Ward:**

37. I also agree.