

HONG KONG / JUDGMENT

YYT v. CCM AND OTHERS

[2026] HKCA 727

COURT

Court of Appeal

DECIDED

16 April 2026

CASE / FILE NUMBER

CAMP249/2023

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CAMP 249/2023, [2026] HKCA 727

On appeal from [2022] HKFC 230

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF APPEAL

MISCELLANEOUS PROCEEDINGS NO 249 OF 2023

(ON AN INTENDED APPEAL FROM FCMC 4498/2016)

BETWEEN

YYT

Petitioner

and

CCM

1st Respondent

WSC

2nd Respondent

CHL

3rd Respondent

CL

4th Respondent

CKF

5th Respondent

DG Limited

6th Respondent

Before: Hon Barma JA and Anthony Chan JA in Court

Dates of Written Submissions: 13 and 27 July 2023

Date of Judgment: 16 April 2026

J U D G M E N T

Hon Barma JA (giving the Judgment of the Court):

This is a renewed application by the respondents for leave to appeal against the judgment given by District Judge Elaine Liu (“the Judge”) on 31 October 2022 (“the Judgment”).

The judgment dealt with certain preliminary issues relating to ancillary relief in matrimonial proceedings. The preliminary issues related to the ownership of various properties and shares, and involved the petitioner (“W”) and the respondents (“Rs”). There were six respondents, namely, the 1st respondent (“H”, the former husband of W), the 2nd respondent (“R2”, H’s cohabitee), the 3rd and 4th respondents (“R3” and “R4”, the children of H and R2), the 5th respondent (“R5”, the younger sister of H) and the 6th respondent, DG Limited (“R6”, a company incorporated or established in 1988 operating a jewellery business).

The scope of the trial of the preliminary issues before the Judge was confined to the determination of:

the parties’ respective beneficial ownership of 7 landed properties (“the Properties”). These were (1) House D44 in Sai Kung (“House D44”); (2)-(4) Workshops 1-3 in Kowloon (“the 3 Workshops”); (5) Lotus Villas in Sai Kung (sold in 2005) (“Lotus Villas”); (6) House 63 in Tai Po (sold in 2010) (“House 63”); and (7) House 29 in Tai Po (“House 29”); see [1(1)] of the Judgment); and

the beneficial interest(s) in the shareholding held in the name of the 5th respondent in 5 companies (“the Companies”), namely (1) R6; (2) DGIL; (3) DGJML; (4) MCHL; and (5) WCL; see [1(2) of the Judgment]).

By the Judgment (and her Order of the same date), the Judge held and declared (for the reasons explained in the Judgment) that:

R6 is the beneficial owner of 4 of the Properties, namely House D44 and the 3 Workshops;

H is the beneficial owner of the remaining 3 properties (“the 3 Properties”), namely Lotus Villas and House 63 before their sale (and thus was the owner of their sale proceeds) and House 29; and

R5 holds her shares in the Companies (“the Shares”) on trust for H.

The Judge also ordered Rs to pay 70% of W’s costs of the preliminary issue proceedings with certificate for 2 counsel on a party and party basis.

Rs applied to the Judge for leave to appeal against the Order/Judgment. On 30 June 2023, the Judge handed down her decision on that application (“the Leave Decision”), refusing to grant leave to Rs to appeal against the Judgment (see [70] of the Leave Decision).

Background and the parties’ cases below

The material facts of this case and the parties’ respective cases have been set out at [4] to [39] of the Judgment, and we shall not repeat them in detail here.

Insofar as is relevant to Rs’ present renewed application for leave to appeal (which concerns only the 3 Properties and the Shares), it is sufficient to highlight the following aspects of the background facts and the parties’ dispute.

W and H were married in 1984, and have no children. Upon W’s presentation of a petition for divorce on 20 April 2016, a decree nisi was granted on 6 April 2017 (see Judgment, at [4]).

An unlimited company, “Old KTC”, was established in 1983 and operated a jewellery business which was run by W and H, with R5 working as a clerk at the company. W contended that this was a partnership beneficially owned by both W and H and that she had contributed to the funding of the business, whereas H’s position was that he alone provided all the funds for Old KTC (see Judgment, at [9]). There was no evidence as to the provision of funds for Old KTC other than the conflicting oral testimony of W and H (see Judgment, at [9]). W says she provided some of the ‘start-up funds’ for Old KTC from her savings and borrowings from her parents, whereas H says that he was able to, and did, solely fund the operation of Old KTC by reason of his ownership of a flat in North Point.

There was no dispute that at around the time of the cessation of Old KTC’s operation and business in 1988, R6 was incorporated as a “continuation” of Old KTC’s jewellery business (see Judgment, at [12]). W served as R6’s Company Secretary as from about November 2001 (see Judgment, at [13]).

At the outset, H held virtually the whole of the shares in R6 (9,998 of 10,000 shares), while W and R5 respectively held only 1 share each (see Judgment, at [13]). From the date of R6’s annual return of the year 2004, H’s shareholding was reduced to 9,000 shares, while the shareholdings of W and R5 increased to 500 shares each (see Judgment, at [13]). It having been W’s case that Old KTC was funded (and thus beneficially owned) by both herself and H, her position was also that R6 was beneficially owned by herself and H equally, notwithstanding the disparity in shareholdings

between them, and the fact that R5 was also a shareholder of R6 (see Judgment, at [12]). H, however, alleged that he wholly owned R6 himself, but had gifted W's and R5's shares in R6 to them (see Judgment, also at [12]). So far as the other companies are concerned, H is the largest shareholder in each, owning 99.98% of DGIL, 98% of DGJML, and 90% of MCHL and WCL respectively, with the remaining shareholding divided equally between W and R5. H's case was similarly that he was the initial owner of all the companies, but had gifted W and R5's shareholdings to them.

In 2000, another company was formed by W and H in furtherance of the jewellery business ("New KTC"). There was no dispute that W and H are equal beneficial owners of New KTC (see Judgment, [11]). The relevance of New KTC (and perhaps Old KTC), although its ownership is not part of the parties' dispute (and thus not the subject of the intended appeal), is that it was W's pleaded case that New KTC, Old KTC and R6 form the core of the family business, which W and H had always intended to be owned by them in equal shares (see Judgment, [88]).

As regards the 3 Properties:

(a)

Lotus Villas was purchased in 1999 at the price of HK\$7,720,000 and was registered in the names of H and R2 as joint tenants:

(i)

H's case was that he provided more than HK\$7,000,000 of the purchase price (Judgment, [27]), much of which was derived from what were said to be 'accountable borrowings' from the Companies (including R6) (Judgment, [27]), and that he had gifted sufficient of his interest in Lotus Villas to R2 to bring her share in it up to 50%;

(ii)

R2's evidence was initially that she had herself contributed HK\$20,000 (although her evidence on the amount of her contribution subsequently changed to HK\$300,000 to HK\$400,000) (Judgment, [27]);

(iii)

Lotus Villas was sold in 2005 for the sum of HK\$12,500,000;

(b)

House 63 was purchased in late 2007 or early 2008 at the price of HK\$9,000,000 and was registered in the names of H and R2 as joint tenants:

(i)

H's and R2's case was that the purchase was funded by the proceeds from the sale of Lotus Villas, H's borrowings from the Companies and R2's own personal funds (Judgment, [30]);

(ii)

Rs' case is that R2 had not contributed to the mortgage repayments, but that H had gifted a 50% interest to her (Judgment, [30]);

(iii)

House 63 was sold in 2010 for the amount of HK\$9,400,000;

(c)

House 29 was purchased in 2012 at the price of HK\$22,500,000 and was registered in the names of H, R2, R3 and R4 as joint tenants. Notwithstanding that R2, R3 and R4 did not contribute to the mortgage repayments and/or purchase price, Rs' case was that H had gifted them each a 25% interest in House 29 (Judgment, [33]).

W contended that she had no knowledge of, and did not approve, H's borrowings from the Companies that enabled him to fund the purchase of the 3 Properties. She pointed out that the 'loans' were neither interest bearing nor subject to any repayment term. She contended that H never intended to repay those loans (Judgment, [37]). H on the other hand, says that W must have known of his borrowings as she handled accounting matters of the Companies at the material time (an allegation which she denied) (Judgment [34]-[36]).

As regards R5's shareholding in the Companies (respectively 5%, 0.01%, 1%, 5% and 5% in R6, DGIL, DGJML, MCHL and WCL - which is identical to W's shareholding in the Companies) (see Judgment, [21]), it was undisputed that R5 did not make any payment for the acquisition of the Shares. H says that the Shares were his gift to R5 in recognition of her "efforts in the business" (see Judgment, [24]). W denies this, stating that like Old KTC and New KTC, R6 was part of the family business which was beneficially owned by her and H equally (see Judgment, [26]).

The pleading point

In the court below, Rs complained of alleged deficiencies in W's pleadings concerning her case that she was the beneficial owner of 50% of the Shares and the various properties.

W's case as regards the Shares was that she was a 50% beneficial owner of the companies with H being the other 50% beneficial owner (and thus had a 50% interest in R5's shareholdings in them) on the basis of either a common intention constructive trust and/or resulting trust (Amended Points of Claim [17]-[19]). In relation to the properties owned by R6, she made essentially the same case, contending that she and H were the 50% beneficial owners of those properties on the basis of either a common intention constructive trust or alternatively on the basis of a resulting trust (Amended Points of Claim [26]-[31] and [42]). She also alleged that there was a resulting trust in relation to the 3 Properties, whereby she was beneficially entitled to a 50% interest in the 3 Properties. The resulting trust was said to arise on the basis that W and H had equal 50% interests in the jewellery business operated by the various partnerships and companies, and as the funding for the 3 Properties came from the business, she had a 50% interest in them (Amended

Points of Claim [17], [19], [21], [52], [58] and [66]). Rs contended that W had failed to plead the necessary facts and particulars in support of constructive trust and/or resulting trust.

After considering the pleadings and the parties' submissions, and having regard to the well established principles on the importance of pleadings (Judgment, [80]-[85]) and on the law of common intention constructive and resulting trusts (Judgment, [76]-[79]), the Judge concluded that while W's pleadings did not disclose a reasonable cause of action in common intention constructive trust as regards the Shares, they did disclose a reasonable cause of action in resulting trust in respect of the Shares, D6's properties and the 3 Properties (Judgment, [87]-[110]).

Rs' case in relation to the Shares was that R5's (and W's) shareholdings were beneficially owned by R5 (and W, respectively), as H had gifted those shareholdings to them. In relation to the properties owned by R6, it was contended that these were beneficially owned by R6. As for the 3 Properties, Rs' case was that H and R2 had contributed to the purchase of Lotus Villas from their own funds (in the case of H, some of which derived from borrowings from R6), and that although the bulk of the purchase monies were funded by H, with R2 contributing about HK\$300,000 to HK\$400,000 (it having earlier been suggested that she had contributed only HK\$20,000 odd), H had made a gift to R2 of a sufficient interest in Lotus Villas to bring her beneficial interest up to 50%. In relation to House 63, their position was the same (although there was no specific allegation as to any particularly amount of funding provided by R2), in that it was said that H had gifted an interest in House 63 to R2 to bring her interest up to 50%. As for House 29, the position was similar, although with R3 and R4 also being co-owners, the case was that H had gifted R2, R3 and R4 whatever was needed to give them each a 25% interest in House 29.

The Judge's findings

Following the Judge's decision on the pleading point, she proceeded to determine the question of beneficial ownership in the Shares, the properties owned by D6, and the 3 Properties, confining her consideration to the allegations of resulting trust (Judgment, [117]).

The evidence at trial consisted of little more than the parties' oral testimony, which the Judge described as "bare assertions" (see Judgment, [40]). In assessing the evidence, the Judge took into account that it was unrealistic to expect that there would be "written records of assurances" in family disputes (see Judgment, [41]-[42]), so that although the lack of documentary evidence in support of a party's case is a relevant factor to be considered when assessing its credibility or plausibility, this may be qualified in family cases by reason of their personal and informal nature (see *Chen Tek Yee & Ors v Chan Moon Shing & Anor* CACV 136/2015, 29 February 2016).

Importantly, having heard from and seen the witnesses at trial, the Judge found H to be an incredible and dishonest witness, and that R2 and R5 gave "polished" evidence to "fit in H's case" (see Judgment, at [43][44]).

As noted above, the Judge concluded that W's pleading of her case based on common intention constructive trust in relation to the Shares and the properties owned by R6 was defective, and dismissed this claim. There is no appeal by W against this conclusion.

Further, the Judge concluded on the basis of the evidence before her that the properties owned by R6 were beneficially owned by it. There is no challenge to this conclusion by W either.

As to the 3 Properties and the Shares, the following findings and conclusions reached by the Judge on the basis of her assessment of the evidence are of particular relevance to the present application:

(1)

H's assertion that he had separated with W in 1991, and that they had since only maintained a "working relationship", was unbelievable and inherently implausible (Judgment, at [46][53]);

(2)

the 3 Properties are beneficially owned by H (Judgment, [125]), having regard to the following matters:

(a)

in respect of Lotus Villas:

(i)

it was undisputed that R2 did not contribute to the mortgage repayments (Judgment, [121]);

(ii)

R2 admitted under cross-examination that she was unsure of the origin of the figure she originally provided as her contribution to the purchase price (HK\$20,000), and was also unsure of the amount of the contribution she later testified to (HK\$300,000 to HK\$400,000) (Judgment, [122]-[123]);

(iii)

R2 claimed that her contribution of HK\$300,000 to HK\$400,000 towards the purchase price was from her savings and/or investment earnings, but she was unable to provide any documentation in support (Judgment, [123]);

(iv)

Lotus Villas was held by H and R2 as joint tenants, rather than as tenants in common, which would have better reflected H's alleged gift of a 50% interest to her (Judgment, [119]);

(b)

regarding House 63:

(i)

it was undisputed that R2 did not contribute to the mortgage repayments (Judgment, [121]);

(ii)

House 63 was held by H and R2 as joint tenants, rather than as tenants in common, which would have better reflected H's alleged gift of a 50% interest to her (Judgment, [119]);

(c)

regarding House 29:

it was undisputed that R2, R3 and R4 did not make any financial contributions towards the purchase of House 29 (Judgment, [121]);

House 29 was held by H, R2, R3 and R4 as joint tenants, rather than as tenants in common which would have better reflected H's alleged gift of a 25% interest to each of R2, R3 and R4 (Judgment, [119]);

(3)

The Shares are held by R5 on trust for H (Judgment, [135]):

(a)

H did not provide particulars of the circumstances the alleged gift of the Shares was made to R5 in his witness statements (Judgment, [127]);

(b)

H's evidence at trial was initially that he gave 5% of the shares in R6 to R5 without telling her the reason. However, he later changed his evidence to the effect that he did tell her the reason for such gift, which was that the gift was her reward for working in the business and for motivation purposes (Judgment, [127]). This rendered H's testimony incredible (see also Judgment, [130]);

(c)

while W (also a 5% shareholder in R6) was required to provide personal guarantees for the Companies' bank borrowings (Judgment, [133]), R5 was the only shareholder not required to do so (Judgment, [132]);

(d)

the evidence showed that R5 did not receive any benefits, including dividends, as shareholder (Judgment, [129][131]);

(e)

R5's evidence, which was considered to be incredible and was rejected by the Judge, was that notwithstanding that she claimed to be a beneficial shareholder in R6, she "did not know" and "did not care" about H's drawings of "substantial sums of money (tens of million[s] [of] dollars) from the Companies at his own wishes for his own personal use without any term of repayment" (Judgment, [134]).

The conclusions at [26(2)] and [26(3)] above were based on the Judge's rejection of the Rs' case of gift of interests in the 3 Properties to R2, R3 and R4, and in the Shares to R5, which led her to conclude that they remained the property of H, by operation of resulting trust.

It must also follow from the Judge's said conclusions that she rejected W's claim to be a 50% owner of the 3 Properties by operation of the resulting trust that W had alleged. There is no appeal against this by W, who is presumably content to rely on her alternative case that if (as the Judge held) the 3 Properties are beneficially owned by H, they will form part of his assets to be taken into account when assessing the division of matrimonial assets (see Amended Points of Claim [75]).

As far as the shareholdings in the companies are concerned, the Judge made it clear that she was only considering at this stage whether R5 beneficially owned the shareholdings registered in her name, and was not determining the position as between W and H in respect of their interests in the companies (Judgment, [136]).

Legal principles

Section 63A(2) of the District Court Ordinance, Cap 336, provides that leave to appeal shall not be granted unless this court is satisfied that the appeal has a reasonable prospect of success or there is some other reason in the interests of justice why the appeal should be heard.

It is well-established that there is a high threshold in place for any challenge against a trial judge's findings of fact, as they are reached with the benefit of live oral evidence. The Court of Appeal will accordingly not intervene or disturb these findings unless they are shown to be plainly wrong. A mere assertion that the finding of the judge is against the weight of the evidence is not an error coming within that category. See *Ting Kwok Keung v Tam Dick Yuen & Ors* (2002) 5 HKCFAR 336; *China Gold Finance Ltd v CIL Holdings Ltd & Ors*, unrep, CACV 11/2015, 27 November 2015; *Young Ivy Shui Heung v Yau Koon Sum & Ors* [2019] HKCA 221.

Rs have put forward four grounds of appeal in their draft Notice of Appeal ("Draft NoA") annexed to their Summons filed on 13 July 2023. Some of these are in slightly different terms to the grounds on which leave to appeal was sought from the Judge.

The grounds on which Rs now seek leave to appeal are, in summary:

(1)

the Judge should have, but failed to, dismiss W's pleaded case of resulting trust in relation to the 3 Properties, as it disclosed no reasonable cause of action ("Ground 1");

(2)

the Judge wrongly held that H had no intention to gift R2 to R4 their respective beneficial interests in the 3 Properties (“Ground 2”);

(3)

the Judge erred in finding that R1 and R5 failed to prove the gifting of the Shares to R5 by R1, and the Judge wrongly reversed the burden of proof by requiring R1 and R5 to prove positively that R1 gifted the Shares to R5 (“Ground 3”);

(4)

the Judge failed to have regard to the only live issue of the beneficial ownership of the Shares in the context of resulting trust as pleaded by W, and came to the erroneous conclusion that H was not a credible witness by having regard to various matters which are said to have been irrelevant.

Mr Aidan Tam with Mr Jonathan Tsang for Rs and Ms Yanky Lam with Ms Kwok Sin for W have respectively filed their written submissions on 13 and 27 July 2023.

Having considered the papers, we decided to exercise the power under Order 59 rule 2A(5)(a) of the Rules of the High Court, Cap 4A and we will determine this application without an oral hearing and on the basis of the written materials filed with this court.

Ground 1

Rs’ position in respect of Ground 1 is that the Judge should have held that W’s pleaded case of resulting trust in respect of the 3 Properties disclosed no reasonable cause of action (Draft NoA, [1]).

Rs essentially raises 2 broad points under this ground, namely that (1) based on W’s own pleaded case, which was that all acquisition monies and mortgage repayments for the 3 Properties were from the “family business” run by the Companies, the inference the Judge ought to have drawn was that the 3 Properties were held on trust for the Companies (Draft NoA, [1(1)(b)]-[1(2)(a)]); and (2) the defect in W’s pleading on the case of resulting trust (such as the lack of any allegation of the making of personal contribution towards the 3 Properties’ acquisition by W and H) called for the dismissal of such claim, but the Judge nonetheless proceeded to consider and determine the claim of resulting trust, eventually dismissing Rs’ case of gift and ruling in favour of W.

In respect of this proposed ground, it is necessary to bear in mind that the Judge did not, at the end of the day, uphold W’s claim to be a joint owner of the 3 Properties on the basis that there was a resulting trust whereby she and H were each beneficially interested in the 3 Properties to the extent of 50%. On the contrary, the Judge found that the 3 Properties were 100% beneficially owned by H. In coming to this conclusion, the Judge necessarily rejected W’s case. That being so, this complaint is academic, and does not give rise to any valid ground of appeal. The fact that the Judge may have considered W’s case is neither here nor there, when that case was ultimately rejected.

In any event, we are inclined to think that the Judge was right to say that W's claim was sufficiently pleaded, but even if it were not, it would still have been necessary for the Judge to consider Rs' case in relation to the 3 Properties, which was that (save for a small alleged contribution by R2, which the Judge did not accept, as she was entitled to do on her assessment of the evidence) all the funds for the 3 Properties were provided by H, who had made gifts of a partial interest in each to R2 (in the case of Lotus Villas and House 63) and R2, R3 and R4 (in the case of House 29), as opposed to W's alternative case that if the 3 Properties were to be found to belong to H, they were owned by him alone so as to be available to be taken into account as part of the assets available for division.

The suggestion that appears now to be made that, if W relies on the fact that funding for the 3 Properties came from the companies, the proper inference would be that they were owned by the companies flies in the face of the case advanced by Rs, and clearly cannot give rise to any viable ground of appeal, particularly when the Judge did not accept W's case, as we have explained above.

In [1(3)] of the Draft NoA, Rs contend that the Judge, in determining the gift issue raised by Rs, had wrongly placed "critical reliance" on the fact that the 3 Properties were registered in the relevant names as joint tenancies rather than tenancies in common. This was not the only matter considered by the Judge in coming to her conclusion. She also had regard to her assessment of H's credibility, and other matters such as (regarding Lotus Villas) the inconsistency (and thus unreliability) of R2's evidence on her alleged contribution and (regarding Houses 63 and 29) the lack of financial contribution by R2, R3 and R4.

For all of the foregoing reasons, we are of the view that Ground 1 is not reasonably arguable.

Grounds 2 and 3

Grounds 2 and 3 are in substance challenges to the Judge's findings of fact and her assessment of the witness evidence at trial (when there was no meaningful documentary evidence).

Rs essentially contend under these Grounds that the Judge wrongly decided against Rs on the issue of gift by H of interests in the 3 Properties and the Shares to the other Rs. However, given the absence of any documentary evidence, the Judge could only determine the issue based on her assessment of the oral evidence of the parties. We do not see any arguable basis for suggesting that the Judge was plainly wrong or had palpably erred in her assessment of the evidence, and the conclusions which she reached.

There is therefore also no merit in Grounds 2 and 3, and they are not reasonably arguable.

Ground 4

Insofar as Ground 4 suggests that the only live issue for consideration was in relation to the Shares, this is incorrect. As we have explained above, the Judge also had to consider Rs case that H had made gifts of shares in the 3 Properties to R2, R3 and R4 (as the case may be). The balance

of this Ground is largely an attack on the Judge's assessment of the credibility of witnesses at trial. In our view, she was entitled to have regard to the matters mentioned by her in coming to her views on credibility and we do not consider that she can be said to have plainly erred or made palpable errors in doing so.

We therefore do not consider Ground 4 to be reasonably arguable either.

Disposition and costs

As none of the proposed grounds of appeal are reasonably arguable, the threshold requirement for granting leave to appeal has plainly not been met. In our view, there is no reasonable prospect of success in this intended appeal, nor is there some other reason in the interests of justice that calls for the hearing of the intended appeal.

We therefore refuse to grant leave to appeal to the respondents (Rs), and dismiss the summons filed on 13 July 2023.

As we are of the view that the leave application is wholly without merit, we make a further order pursuant to Order 59 rule 2A(8) that no party may under rule 2A(7) request the determination of this application to be considered at an oral hearing *inter partes*.

Costs should follow the event. We make an order nisi that the respondents (Rs) do pay the petitioner (W) the costs of this application. Having considered the statement of costs of the petitioner, we shall summarily the petitioner's costs, on a gross sum basis, in the amount of HK\$90,000, also on a nisi basis.

(Aarif Barma)

(Anthony Chan)

Justice of Appeal

Justice of Appeal

Written submissions by Mr Aidan Tam and Mr Jonathan Tsang, instructed by Lee Chan Cheng, for the 1st to 6th respondents

Written submissions by Ms Yanky Lam and Ms Kwok Sin, instructed by Oliver CM Chan & Co, for the petitioner

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