



THIRD PARTY INTEREST

**HIS HONOUR JUDGE IVAN WONG
DISTRICT JUDGE**

8 July 2021

How the court would deal with disputes between a third party and a party?

(1) Application under section 17, MPPO

(Avoidance of transactions intended to defeat certain claims)

Note:

a rebuttable presumption where there was a disposition within 3 years before date of application

How the court would deal with disputes between a third party and a party?

(2) Property allegedly owned by a third party

- (in the name of a party to the marriage VS in the name of a third party)
- **LLC v LMWA** [2019] 2 HKLRD 529, at [25] where a proprietary order is sought.

How the court would deal with disputes between a third party and a party?

- In applications for financial provision where third party's interests are involved, these can be adjudicated by the Court in the same proceedings.

How the court would deal with disputes between a third party and a party?

- Where appropriate, such disputes can be determined by the Court by way of preliminary issues prior to the trial of the application for financial provision:
- **TL v ML** [2006] 1 FLR 1263 at § 36;
- **LWYA v KYW**, CACV 151/2013
(unrep.; 14 December 2014), § 30 - 31;
- **Doreen Do Ye Tong v Wesley Wai Hei Wan & Ors**
[2011] 1 HKLRD 318, at § 17.

How the court would deal with disputes between a third party and a party?

- Not every case requires a separate preliminary issue to deal with disputed ownership or that the disputed ownership issue has to be dealt with prior to FDR
- For example, where the disputed issue is minor and can be conveniently dealt with in the course of other proceedings.

How the court would deal with disputes between a third party and a party?

- On the other hand, costs and expenses can sometimes be saved with joinder of parties and/or the earlier determination by way of separate preliminary issue (for example, there may turn out to be no need to conduct expensive and time-consuming valuation exercises).
- Note: The Court of Appeal Judgment in **LLC v LMWA** [2019] 2 HKLRD 529, at [21] – [28].

Where there is a trial on Disputed Ownership

To be dealt with at trial of AR

VS

To be dealt with as a Preliminary Issue?

Where there is a trial on Disputed Ownership

In either case, a trial with pleadings and formal disclosure:

Leung Wing Yi Asther v Kwok Yu Wah

(2015) 18 HKCFAR 605, at [29].

Legal Principles

Domestic property

e.g. matrimonial home

Legal Principles

- Onus of proof ?
- The party seeking to show that the parties did intend their beneficial interests to be different from their legal interests.

Legal Principles

- “**Context is everything**” – domestic context is very different from the commercial world:

Stack v Dowden, per Lady Hale, at [69].

Legal Principles

- **Common Intention Constructive Trust –**
 - **Stack v Dowden** [2007] UKHL 17; [2007] 2 AC 432;
 - **Jones v Kernott** [2011] UKSC 53; [2012] 1 AC 776.

Legal Principles

- **Common Intention may change over time:**

Jones v Kernott

[2011] UKSC 53; [2012] 1 AC 776, at [14].

Legal Principles

- **Inferred intention and course of dealings and conduct are all relevant:**

Ip Man Shan Henry v Ching Hing Construction Co Ltd
[2003] 1 HKC 256.

Practical guidance

- **Bhura v Bhura & Ors** [2014] EWHC 727,
 - Express declaration?
 - Tacit understanding?
 - Presumption
(Beneficial ownership same as legal title, resulting trust, advancement)?

Assets outside Hong Kong?

- Generally speaking, all rights over, or in relation to, an immovable (land) are governed by the law of the country where the immovable is situate (*lex situs*): **Dicey, Morris & Collis, The Conflict of Laws, at §23R-061**

Financial Dispute Resolution

- Involving third party?
- At which stage?
- Mediator Assisted FDR?

LLC v LMWA [2019] 2 HKLRD 529

Enforcement

- Notice: Section 6A(5), Matrimonial Proceedings and Property Ordinance Cap 192
- Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance.
- Joinder VS Order 15 Rule 13A(4), RHC: see **LLC v LMWA**, at [25]

Nomenclature

- Respondent VS Intervener
- Leung For Wing v Liu Shaohuan & Ors
[2018] 4 HKLRD 352

Sharing of MPS / Pension

- No Pension Sharing Order or Pension Attachment Orders in HK: cf the UK Family Procedure Rules (2010), Chapter 8 of Part 9.
- Pre-marital?
- Discount?
- See: **SSLT v SMFC**

(Ancillary relief; Non-matrimonial Assets)

[2019] HKFLR 458

Family Contribution, Love and Sacrifice?

- Compensation for “Relationship-generated Disadvantage”
- **Miller v Miller, McFarlane v McFarlane** [2006] 2 AC 618
- **WLK v TMC** (2010) 13 HKCFAR 618
- **RC v JC** [2020] EWHC 466 (Fam); [2020] All ER (D) 196 (Feb);

Settlement Agreement

- Tri-partite Agreement?

Q & A ?

