Was it a loan or a gift made by parent to child?

It is not uncommon for a parent to help a child pay towards the purchase price or the entire amount for that first home. In making that payment, it is critical however that the parent and child are clear as to whether a gift or a loan of the money was made. This is because in making a gift, the money belongs to the child. There can be no expectation by the parent of repayment or claiming a share in the home purchased or the sale proceeds from it. A loan, on the other hand, raises the expectation by the parent to be repaid. The parent would look to the sale proceeds from the home once sold, for repayment.

The intention of the parent when handing the money is therefore important. To avoid a misunderstanding, a loan agreement or documentation as clear proof of the lending is advisable. This is even more so when the child is married.

In January 2021, the Singapore High Court had to decide if a sum of approximately $1.015 million from a mother to her married son was a gift or a loan. The suit was not brought by her or her son. Rather the mother was sued by her daughter-in-law, who was in the midst of divorce proceedings with the son.

Facts of the case[1]

In around 2014, a mother provided a sum of approximately S$1.015 million to her youngest son to buy land and construct a house in Australia. The plans were for the son to emigrate with his wife (the daughter-in-law) and live on the property. The property was in the son's name. The payment had been made by the mother with no loan agreement or any other documents to indicate which it could have been: a gift or loan.

In 2016, when the property was sold, the sale proceeds of approximately A$850,000 was deposited into a joint account held by mother and son.

During the divorce proceedings between the son and his wife (the daughter-in-law), the latter claimed the sale proceeds as a matrimonial asset. If so, the Family Court was required to decide on its division between the couple. The daughter-in-law sued her mother-in-law claiming that a gift of the money had been made by mother to son. Her contention was that neither the mother nor son had ever indicated the existence of a loan and that since it was a large sum, it would have adversely affected her and the child of the marriage financially. This being her only argument, the High Court found that she had not sufficiently discharged her burden of proving on a balance of probabilities that a gift had been made. Accordingly, she lost her suit.

[1] *Tay Amy v Ho Toh Ying* [2021] SGHC 25

Because of the lack of documentation, the High Court had to infer the mother's actual intention from the testimonies of the daughter-in-law and the mother. The daughter-in-law had disputed the mother's testimony that she had disclosed, at a family dinner in 2010, her intention to lend the sum to her son to buy the Australian property. But the High Court held that it was not sufficient to prove that the sum was therefore intended as a gift, even assuming that this disclosure had not been made.

On the other hand, the High Court accepted the mother's argument that she had two other children and would not have given such a large sum of money to her youngest son to the exclusion of the others. Moreover, the mother had made a loan of a smaller sum of $700,000 to her eldest son at or around 2009 or 2010. No explanation was offered by the daughter-in-law as to why the mother would choose to make an outright gift of a larger sum to her youngest son instead.

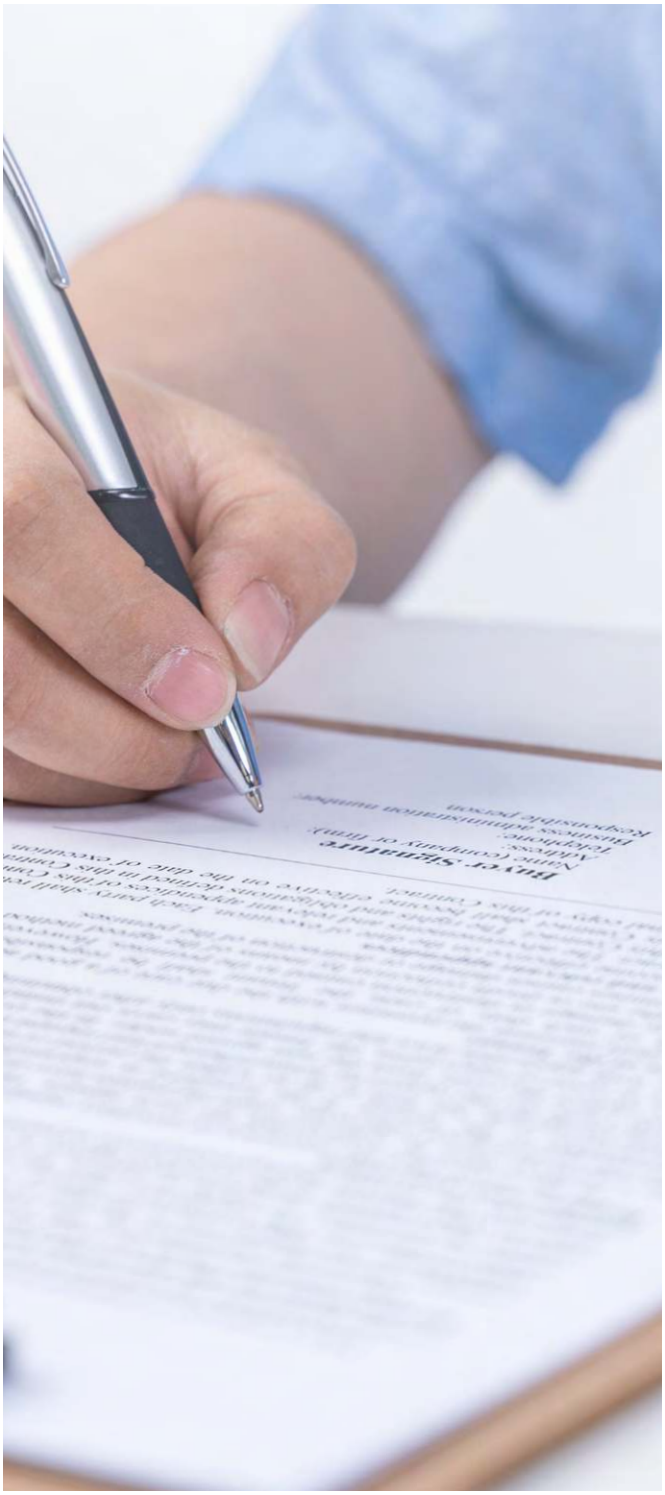
The High Court also recognised that in a mother-son relationship, neither mother nor son may fastidiously keep written records of their loan arrangements or be legalistic in their dealings with each another. Although the son did not make any repayments to the mother before the property was sold, the High Court found that the informal loan arrangement explained why the parties did not strictly follow a loan repayment schedule in this case.

Some takeaways

- It was fortunate that the mother in this case was able to provide direct evidence of her intentions. If she had passed away or lost mental capacity, the High Court would have had no evidence to infer her intentions and would have to apply a legal presumption that a gift had been intended since the money had passed from parent to child.
- To avoid the risk of the Court having to infer your intentions, a parent should have a simple loan agreement drawn up when the parent intends to make a loan and not an outright gift to his or her child.

> *Mozart combined high formality and playfulness that delights as no other composition in any other medium does.*
>
> **Roy Blount, Jr.**

- Where money is loaned to a child to buy real estate and the parent is looking to lodge a claim on the sale proceeds for repayment of that loan, it would be advisable for the real estate to be in the child's sole name rather than in the names of both the child and the non-contributing spouse.
- The High Court in this case did not raise the question as to why the sale proceeds, which was intended to be a repayment of the loan, had been placed in a joint account held by mother and child. It would have made sense for the sale proceeds to have been paid to the mother's account only. To make it clear that a loan was intended, the sale proceeds are best placed directly into the parent's account.
- If it is not possible to have a loan agreement or documentation to show its existence, ensure that the existence of the loan is vocalised in front of credible witnesses who are ready, able and willing to come forward to vouch for its existence.



> *A verbal contract isn't worth the paper it is written on.*
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> **Sam Goldwyn**

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