

Eu Yee Kai Alexander Junior (alias Eu Sandy) v Hanson Ingrid Christina
[2004] SGHC 214

Case Number : OS 283/2004
Decision Date : 23 September 2004
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Sheerin Ameen (Peter Chua and Partners) for plaintiff; Lynette Chew (Harry Elias Partnership) for defendant
Parties : Eu Yee Kai Alexander Junior (alias Eu Sandy) — Hanson Ingrid Christina
Land – Caveats – Wrongful lodgment – Whether caveat lodged against matrimonial home should be removed – Section 115 Land Titles Act (Cap 157, 1994 Rev Ed)

23 September 2004

Lai Siu Chiu J:

The application

1 Alexander Eu ("the plaintiff") applied in this Originating Summons No 283 of 2004 ("the present OS") for the following reliefs against Ingrid Christina Hanson ("the defendant"), who is his former wife:

- (a) that the defendant do forthwith remove, or otherwise show cause why, Caveat No CV/12959K lodged on 21 January 2003 ("the Caveat") against No 57 Cairnhill Road #16-03, Elizabeth Heights, Singapore 229668 ("the Property") should not be withdrawn or otherwise removed;
- (b) that the defendant do pay compensation or otherwise furnish forthwith an indemnity to the plaintiff for all pecuniary loss sustained by the plaintiff attributable to the lodgment of the Caveat by the defendant until its eventual removal;
- (c) Further or in the alternative, that an inquiry be held as to damages, costs and expenses sustained or incurred by the plaintiff as a result of the Caveat having been lodged and allowed to remain on the Property and payment of such sums or sum as may be found due as compensation to the plaintiff.

2 On the same day, the plaintiff also filed Originating Summons No 282 of 2004 ("the first OS") applying for the same reliefs as in the present OS but in respect of another property, viz No 14 East Sussex Lane, Singapore 279799 ("the Other Property").

3 Both the present OS and the first OS came up for hearing before me. I granted the plaintiff's application in the first OS and, *inter alia*, ordered the defendant to remove the caveat she had filed against the Other Property and awarded costs to the plaintiff. However, I made no orders on the present OS nor any orders on costs. The plaintiff has now appealed against my decision (in Civil Appeal No 41 of 2004).

The facts

4 From the affidavits filed by the plaintiff, it would appear the parties were divorced by a

decree nisi in Divorce Petition No 602919 of 2002 ("the divorce proceedings") granted on 24 September 2002. Hearing of ancillary issues arising from the divorce proceedings including the division of matrimonial assets took place on 31 March 2003 and 1 April 2003 before the family court judge Tan Peck Cheng who reserved judgment.

5 On 21 January 2003, the defendant filed the Caveat against the Property pursuant to s 115 of the Land Titles Act (Cap 157, 1994 Rev Ed) ("the Act") based on the following grounds:

1. the land and premises above described ... being a matrimonial asset of the [defendant] and the [plaintiff];
2. a constructive trust in favour of the [defendant] inferred from the [plaintiff's] conduct and representation to the [defendant] that the [defendant] would acquire a beneficial interest in the property and/or the proceeds of sale.

6 According to the plaintiff's first affidavit and exhibits therein contained, the Property (as well as the Other Property) was purchased by him in his sole name on or about 4 March 1996. It was initially subject to a mortgage in favour of the Oversea-Chinese Banking Corporation ("OCBC") registered on 19 March 2002 as well as to a charge of the Central Provident Fund Board.

7 As a consequence of the economic downturn, the plaintiff obtained on or about 19 September 2003 fresh financing from another financial institution, *viz* the Standard Chartered Bank ("SCB"). As a consequence, a fresh mortgage was created in favour of SCB on 24 December 2003 to replace OCBC's mortgage.

8 In addition to the mortgage financing, the plaintiff obtained an additional loan facility of \$25,000 (the additional facility) from SCB. A pre-condition of this additional facility was that the plaintiff was required to provide SCB with a clean title to the Property. The plaintiff could not do so because of the defendant's lodgment of the Caveat.

9 The plaintiff deposed that his solicitors, on or about 24 February 2004, had required the defendant to remove the Caveat, which he contended had been filed vexatiously, wrongfully and without reasonable cause. The defendant had refused to comply with his request despite a reminder from his solicitors on 27 February 2004. As a result of the defendant's action, the plaintiff deposed he was unable to draw down on the additional facility, which he needed to service the outstanding principal and interest on the mortgage loan, of which he had received a reminder from SCB on 16 February 2004. The consequence of non-payment also put the Property at the risk of a mortgagee sale. He added that the Caveat may have deterred potential buyers of the property, causing him to suffer loss and damage.

10 In response to the plaintiff's affidavit, the defendant filed an affidavit for the present OS. She referred therein to her affidavit filed in the first OS. In her affidavit filed for the present OS, the defendant deposed that:

- (a) Her interest in the Property was not disputed by the plaintiff. At the hearing of the ancillary issues, the plaintiff had accepted that the Property was the parties' matrimonial home. She believed it gave her a caveatable right or interest in the Property as her rights in the Property had crystallised upon the granting of the *decree nisi*;
- (b) The family court judge had stated that the children of the marriage and the defendant had the right of residence in the Property and had ordered that the Property should not be sold,

pending her decision on the ancillary issues.

11 The defendant then referred to the affidavit she had filed in the first OS, in particular to paras 5 and 6 therein. In those two paragraphs, the defendant pointed out that at the hearing of the ancillary issues, the plaintiff himself had informed or submitted to the family court that the Other Property was to be sold in the open market and the net sale proceeds were to be divided between the parties in a fair and equitable manner. The defendant claimed an agreement had been reached between the parties' solicitors on the sale of the Other Property and that removal of the caveat lodged thereon was subject to certain conditions. She added that the plaintiff had breached the terms of the agreement. Consequently, the plaintiff was not entitled to the removal of the caveat she had lodged on the Other Property.

12 In his second affidavit filed in reply to the defendant's, the plaintiff confirmed that the family court judge had made an interim order that the Property was not to be sold and that the parties as well as the children of the marriage could continue to reside there, pending her decision. However, he denied the existence of the agreement alleged by the defendant and that he had breached the same.

13 The plaintiff confirmed the defendant's understanding that the Other Property was to be sold and that the net sale proceeds were to be divided fairly and equitably between the parties. Even so, he could not see how that justified the defendant's filing of the Caveat.

The first OS

14 It would be necessary for me to refer to the first OS and the orders I made therein before I give my reasons for my decision in the present OS. In the first OS, the plaintiff had deposed (in his supporting affidavit) that he had granted an Option to Purchase dated 12 February 2004 ("the Option") of the Other Property (also solely owned by him). The Option had been exercised by the purchasers on 25 February 2004. Completion of the sale was scheduled to take place on 15 May 2004. The plaintiff said his solicitors had asked the defendant on 24 February 2004 to remove the caveat she had lodged on the Other Property but she had failed to do so, notwithstanding two reminders dated 27 February 2004 and 2 March 2004 from his solicitors to her solicitors. On 2 March 2004, the purchasers' solicitors had requested for a copy of the withdrawal of the defendant's caveat. Unless the defendant's caveat was removed, the plaintiff would not be able to complete his sale of the Other Property.

15 There was an urgency for the defendant to withdraw the caveat she had filed in the first OS against the Other Property because of its sale and imminent completion, which should have taken place two days before the hearing before me, but had been postponed. Hence my orders requiring her to remove forthwith the caveat she had filed, awarding costs against her and ordering her to pay the interest charged to the plaintiff for late completion, commencing from 16 May 2004 until the date of actual completion. To safeguard the wife's interests, I further ordered that the plaintiff's solicitors hold the sale proceeds of the Other Property as stakeholders pending the decision of the family court on the ancillary issues. The defendant has not appealed against those orders.

The submissions

16 Counsel for the plaintiff relied on S Rajendran J's decision in *Lim Kaling v Hangchi Valerie* [2003] 2 SLR 377 ("*Lim Kaling*") for his argument that the defendant had no legal basis to lodge the Caveat while counsel for the defendant cited Lee Seiu Kin JC's (unreported) decision in *Chai Mei Leng v Cheng William (No 2)* [1998] SGHC 381 ("*Chai Mei Leng*") for the contrary argument.

17 It would be appropriate at this juncture therefore to look at the two opposing decisions. Rajendran J had held in *Lim Kaling* that the defendant wife had no caveatable interest in two properties (a house and an apartment) purchased by the husband before their marriage.

18 The facts in *Lim Kaling* showed that the parties married on 27 June 2000, did not live together (save for six weeks in October 2001 at the husband's apartment) and were separated by December 2001. In June 2002, the husband entered into a contract to sell the apartment. On the date of completion, he discovered that the wife had lodged a caveat against the property a day earlier, her ground of claim being that the apartment was a matrimonial asset and home of the couple. He ascertained subsequently that she had also lodged a caveat against the house, her ground of claim being identical to the caveat filed against the apartment. The husband immediately applied to court under s 127(1) of the Act for the removal of both caveats. The court made an interim order on 7 August 2002 to enable the husband's sale of the apartment to be completed, with the sale proceeds being held by stakeholders, until the husband's application was dealt with.

19 On 17 September 2002, the wife commenced proceedings against the husband for a judicial separation, alleging unreasonable behaviour, which proceedings the husband contested. The plaintiff could not have instituted divorce proceedings without leave of court as the parties had been married for less than three years.

20 In granting the husband's application at a later date, Rajendran J held, *inter alia*, that:

(a) Until a court exercised its powers under s 112 of the Women's Charter (Cap 353, 1997 Rev Ed) to order a division of the matrimonial assets, a spouse who had made no contribution to the purchase price of a property, would only have an inchoate expectation in regards to that property; and

(b) Without a court order for the actual division of matrimonial property, the interest claimed by the wife under the caveats was based on the hope that such a future division of matrimonial property would occur. This could not fall within the scope of an interest in land as defined by s 4(1) of the Act.

21 Rajendran J declined to follow Lee JC's decision in *Chai Mei Leng*. Instead, he followed the Australian position in *Ioppolo v Ioppolo* (1978) 5 Fam LN No 27 and *Hayes v O'Sullivan* (2001) 27 Fam LR 462. In *Ioppolo v Ioppolo*, it was held that a divorced wife who had lodged caveats against properties held in her former husband's sole name, did not have a caveatable interest. The Supreme Court of Western Australia unanimously held that the wife's claim for division was not an interest in land within the meaning of s 137 of the Transfer of Land Act 1893 (Western Australia). The same view was adopted in *Hayes v O'Sullivan*.

22 I turn next to *Chai Mei Leng* ([16] *supra*). In that case, the defendant husband had lodged caveats against the plaintiff wife's two properties (a house and a flat) which were registered in her sole name. The caveats were lodged after the *decree nisi* had been granted, against which the plaintiff had filed a notice of appeal. The husband's common ground of claim in the caveats was a constructive trust in his favour as the properties had been acquired using moneys which originated from him and were matrimonial assets.

23 Although Lee JC found that the plaintiff did not hold the properties on a constructive trust for the benefit of the defendant, nevertheless he held that by virtue of the *decree nisi* and pending the hearing relating to division and other ancillary issues, the defendant had an interest in both properties. However, as Lee JC felt that one caveat was sufficient to protect the defendant's

interests, he ordered the removal of the caveat lodged against the house. Subsequent events, however, prompted Lee JC to rescind his order. The plaintiff succeeded in her appeal against the grant of the *decree nisi* and the decree was quashed. Although the defendant filed his notice of appeal against the rescission, Lee JC held that until the defendant's appeal was allowed, the *decree nisi* remained quashed, there being no automatic stay pending the defendant's appeal. Consequently, with the quashing of the *decree nisi*, the defendant no longer had any interest in the plaintiff's properties. The defendant's caveat on the flat was ordered to be removed.

24 It can be seen from [18] to [23] above that the decisions in *Lim Kaling* and *Chai Mei Leng* were peculiar to their facts. Consequently, the decisions cannot be applied blindly without regard to the particular facts of the present OS.

The decision

25 It is clear that under s 127 of the Act, the burden is on the caveator when challenged (as was the defendant in this case), to prove that the caveat had not been lodged frivolously or vexatiously or not in good faith. I was of the view that the defendant had sufficiently discharged the onus of proof in this regard.

26 The facts in the present OS were far different from those in the first OS. There, the defendant had no basis to maintain the caveat she had lodged as the plaintiff had sold the Other Property and her rights if any to the sale proceeds, had to be balanced against the rights of the *bona fide* purchaser for value without notice. In any case, in ordering the removal of the defendant's caveat in the first OS, I had made adequate provision to protect her claim that it was a matrimonial asset.

27 Unlike the Other Property, the Property was and is the matrimonial home of the parties and the children of the marriage. This was not only not disputed, but was admitted, by the plaintiff. Secondly, there was an interim order made by the family court judge that the Property should not be sold, pending her decision on the ancillary issues she had heard in March and April 2004. Again, this fact was not disputed by the plaintiff. As he could not sell the Property until the outcome of the hearing on ancillary issues was known, there was neither a need nor any urgency to remove the Caveat. If, on the other hand, the plaintiff did intend to dispose of the Property, he was breaching the order of the family court. There was then all the more reason for the Caveat to remain, so that the defendant's rights and interests were protected and she could be alerted early to the plaintiff's intentions. The plaintiff's inability to draw down on SCB's additional facility was only temporary and would cease once the family court judge gave her decision on the ancillary issues. If need be, the parties could reach an agreement to allow the plaintiff to make payment to SCB of the outstanding principal and interest on the mortgage loan from his share of the sale proceeds of the Other Property.

28 Counsel for the plaintiff had suggested, taking the cue from Rajendran J's decision in *Lim Kaling*, that the defendant should have filed an application under s 132 of the Women's Charter for injunctive relief if she was apprehensive that the plaintiff would dispose of the Property. An injunction thus obtained would constitute a "caveatable" interest, pursuant to s 115(3)(b) of the Act which states:

For the purposes of this Part, and without limiting its generality, a reference to a person claiming an interest in land shall include a reference to any of the following persons:

- (b) a person who has obtained an injunction in respect of an estate or interest in land.

My short response to that argument is: Why is there a need for the defendant to apply for injunctive relief when there is already an interim order of court to protect her interest in the matrimonial home?

29 For the foregoing reasons, I declined to order the removal of the Caveat.

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