

The Personal Representatives of the Estate of Tan Cheong Leong (Malaysian Inquiry Committee No 3672139) (Deceased) v Lim Chun Chuan alias Lim Choon Hua (The Executrix of the Estate of Tan Kim Hai alias Chan Chi Hai) (Deceased) and Others
[2001] SGHC 278

Case Number : OS 1728/1999
Decision Date : 24 September 2001
Tribunal/Court : High Court
Coram : Lee Seiu Kin JC
Counsel Name(s) : Oon Thian Seng and Katherine Teo Siew Lin (Joseph Tan Jude Benny) for the plaintiffs; Davinder Singh SC, Harpreet Singh Nehal and Gerald Kuppusamy (Drew & Napier LLC) for the 1st defendant, 13th defendant and 14th defendant; Davinder Singh SC, (Drew & Napier) LLC David Wee and Maurice Cheong (Donaldson & Burkinshaw) for the 2nd defendant; Malcolm Lim (Tan & Lim) for the 3rd defendant and the 7th defendant; Chiah Kok Khun and Chan Pui Yee (Wee Swee Teow & Co) for the 4th defendant; Davinder Singh SC, (Drew & Napier LLC) and Chua Sui Tong (Shook Lin & Bok) for the 5th defendant; K Gopalan (Straits Law Practice LLC) for the 6th defendant, 10th defendant, 11th defendant and the 12 defendant; Alvin Yeo SC, Joy Tan and Nandakumar Ponniah (Wong Partnership) for the 15th defendant, 16th defendant and the 17th defendant; P Balagopal (Palakrishnan & Partners) for the 18th defendant
Parties : The Personal Representatives of the Estate of Tan Cheong Leong (Malaysian Inquiry Committee No 3672139) (Deceased) — Lim Chun Chuan alias Lim Choon Hua (The Executrix of the Estate of Tan Kim Hai alias Chan Chi Hai) (Deceased); Tan Kim San; Tan Kim Choo alias Tan Kim Choong; Tan Kim Leng; Tan Kim Seng; The Personal Representatives of the Estate of Tan Kim Kiat (Deceased); Tan Kim Chuan; Ooi Thiam Huat; The Personal Representatives of the Estate of Yap Ka (Deceased); Tan Kim Toong; Tan Kim Kow; Tan Boon Chin (The Personal Representative of the Estate of Tan Kim Bok) (Deceased); Tan Poh Swan; Tan Toh Chin; Hiap Lee (Cheong Leong & Sons) Brickmakers Sdn Bhd; Hiap Lee Construction Company Sdn Bhd; Hiap Lee Housing Developing Sdn Bhd; The Personal Representatives of the Estate of Tan Kim Hong (Deceased)

Judgment:

GROUND OF DECISION

1 The parties in this action lay claim in various proportions to a number of bank accounts in United Overseas Bank Ltd ("the Bank") with assets in cash (in local and foreign currencies) and securities totalling about \$45 million. These accounts are with the branches of the Bank in Singapore, Hong Kong and London. The principal claimants are as follows:

- (i) the Plaintiffs, the Public Trustee of Malaysia, as the personal representatives of the estate of Tan Cheong Leong ("TCL");
- (ii) the 6 surviving sons of TCL (the 2nd, 3rd, 4th, 5th, 10th and 11th defendants);
- (iii) the personal representatives of the estates of the 4 deceased sons of TCL (the 1st, 6th, 12th and 18th defendants); and
- (iv) 3 companies (the 15th, 16th and 17 defendants) which are controlled by one of the sons of TCL, Tan Kim Leng (the 5th Defendant).

The minor claimants are:

(vi) the personal representative of the deceased wife of TCL (the 9th Defendant);

(vii) two grandchildren of TCL (the 13th and 14th defendants).

The 7th Defendant is the same person as the 3rd Defendant while the 8th Defendant makes no claim to the assets.

2 The bank accounts are in the joint names of various combinations of TCL and the defendants. There are several camps among the claimants and they are as follows:

(a) The Plaintiffs claim the assets on the basis that they were held by the account holders on trust for TCL;

(b) The 1st, 2nd, 5th, 13th and 14th defendants claim the assets on the basis that they are named in those accounts as joint account holders;

(c) the 3rd, 4th, 6th, 10th, 11th, 12th & 18th defendants claim the assets on the basis that these were held on trust for all 10 sons of TCL; and

(d) The 3 companies claim the assets on the basis that the money in these accounts came from them and were transferred out by TCL along with the 2nd Defendant who is his 2nd son Tan Kim San ("TKS") and his deceased 3rd son Tan Kim Hai ("TKH"), in breach of their duties as directors of those companies. Accordingly, the 3 companies are entitled to the assets on the basis of a resulting trust.

3 Such was the state of the pleadings when the trial began on 13 August 2001. I should add that this action was commenced by the Bank almost 2 years ago, on 5 November 1999, by way of an interpleader summons in view of the claims of the Plaintiffs and the 1st to 14th defendants. On 22 November 2000 the court ordered that the personal representatives of the estate of TCL be made the plaintiffs as a procedural formality and that all parties exchange affidavits evidence-in-chief by 30 April 2000. The court also ordered the matter to be fixed for a 3-week hearing commencing 15 May 2001. Subsequently orders were made for specific discovery. On 4 April 2001, the court ordered the parties to file and serve their respective statements of claim by 11 April and to file the usual affidavits in respect of discovery by 18 April. However on 4 May 2001 the three companies obtained leave to be joined as additional Defendants. The 18th Defendant was joined on 16 May 2001. As a result the trial date was vacated and the matter was re-fixed for hearing on 13- 30 August 2001.

4 On the morning of the first day of the trial, 13 August 2001, some of the parties made interlocutory applications. They do not concern me here except for one. Mr Yeo, counsel for the 3 companies (the 15th, 16th and 17th defendants), applied to amend their joint statement of claim. As it stood, the 3 companies had alleged in their statement of claim that TCL, TKS and TKH had carried out an elaborate scheme to divert funds from the companies by way of inflated invoices from sub-contractors which I shall term "the Diversion Scheme". The funds received from the Diversion Scheme were eventually

remitted to Singapore and placed in the disputed accounts in the Bank. The 3 companies alleged that the purpose of this scheme was to evade tax in Malaysia. Mr Yeo applied to amend this statement of claim to include an allegation that part of the money in the disputed accounts came from the 3 companies other than by way of the Diversion Scheme, i.e. via transactions that were not illegal. However at that stage he was not able to state the exact terms of his proposed amendment, which was an unusual manner of going about such an application. Be that as it may, the rest of the morning was spent dealing with the other interlocutory applications and Mr Yeo had the benefit of the lunch adjournment to consider the terms of his proposed amendment. He asked for an extended lunch break to do this. I granted his request.

5 When the hearing resumed in the afternoon, Mr Yeo tendered his proposed amendments. At this point he made a further application. This was to include an additional party as defendant, namely Tan Chong Leong & Sons Realty Sdn Bhd ("TCLS") which is the parent company of the 3 companies. The substantive paragraphs of the proposed amendments to the statement of claim are as follows:

"15A Further or alternatively, during the material period, the late Tan Cheong Leong, the late Tan Kim Hai and Tan Kim San, and in several instances, Tan Kim Seng, transferred, or procured the transfer of, monies belonging to the Hiap Lee Companies and/or the TCL Group into the Bank Accounts and/or the Disputed Assets held in the names of the Account-Holders for no consideration. The 15th to 17th and 19th Defendants will rely inter alia on the following admissions made in the affidavits and/or supplemental affidavits of evidence in chief filed in these proceedings by the 1st, 2nd and 5th Defendants ("affidavits"), and the presumption of resulting trust. The following are the best particulars that the 15th to 17th and 19th Defendants can furnish at this point in time.

Particulars

(1) Paragraph 25 of the 1st Defendant's affidavit and paragraph 6 of the 1st Defendant's supplemental affidavit (please see Annex A);

(2) Paragraphs 67 to 70, 82, 84, 85 and 86 of the 2nd Defendant's affidavit; see also paragraphs 25-27, 29-31, 33, 36, 38, 41-48, 51-56 (please see Annex B);

(3) Paragraphs 14, 21, 27, 29, 33, 34, 45-46 and 56-58 of the 5th Defendant's affidavit (please see Annex C).

20A Alternatively, by reason of the matters pleaded in paragraph 15A above, the Account-Holders have at all material times held the credit balances in the Bank Accounts and the Disputed Assets on resulting trust for the Hiap Lee Companies and/or the TCL Group.

20B Alternatively, the transfers of monies described at paragraph 15A above were a wrongful misapplication of the assets of the Hiap Lee Companies and/or the TCL Group and made in breach of fiduciary duty.

Particulars

(1) The transfers were effected without proper company resolutions or shareholder approval;

(2) The transfers were effected by the late Tan Cheong Leong, the late Tan Kim Hai and Tan Kim San, who were directors of TCLS at the material time, for the benefit of, inter alia, themselves personally;

(3) The transfers were effected without any corporate benefit to the Hiap Lee Companies and/or the TCL Group.

20C In the premises, the Hiap Lee Companies and/or TCLS are entitled to follow the funds so misapplied into the hands of the Account-Holders and to trace such monies into the credit balances in the Bank Accounts and into the Disputed Assets. Alternatively, the Account-Holders each knew that the monies in the Bank Accounts belonged to the TCL Group and had been misapplied. Accordingly, the Account-Holders have at all material times held the credit balances in the Bank Accounts and the Disputed Assets on constructive trust."

6 After Mr Yeo had given his reasons for the application, in view of the hour, the hearing was adjourned to enable counsel for the other parties an opportunity to consider the application.

7 On 14 August, the hearing of the application to amend continued. I observed that the proposed amendments did not allege that any of the money in the disputed accounts came from TCLS which was a holding company. To my inquiry as to the necessity for including TCLS as a new defendant, Mr Yeo was unable to come up with any reason that I considered to be cogent. Finally, Mr Yeo confirmed that should the amendments be allowed he would not require any additional witnesses nor adduce additional evidence. He said that the proof in respect of the amended pleadings would come from the affidavits evidence-in-chief of the 1st, 2nd and 5th defendants.

8 Mr Davinder Singh, counsel for the 1st, 2nd, 5th, 13th and 14th defendants, objected to the application. He submitted that if the amendments were allowed he would have to take instructions from his clients in respect of the transactions alleged as such matters were never in consideration. Additionally further discovery would be necessary. In view of this, he would have no choice but to apply to vacate the present trial date, otherwise his clients would be prejudiced.

9 In the event, I refused Mr Yeos application to include TCLS as a defendant in the action, and to amend the statement of claim of the 3 companies. As his clients have appealed on 13 September 2001 I now give my grounds of decision.

10 First of all, there are 18 parties in this action, ranging from the Public Trustee of Malaysia to each of the 10 sons of TCL (or their estates), to the estate of his deceased wife, to his 2 granddaughters and to the 3 companies. Although 3 of the defendants are inactive, there are 15 claimants and 9 sets of solicitors in this action. Although the number varied each day, I counted 12 counsel seated at the bar table and another 3 or 4 seated at the sides. I say this to emphasise the point that this is a very expensive trial for all concerned and one that is monstrously difficult to fix. There has already been one vacation of the trial date. To vacate this trial again would not only chalk up very high costs but would entail tremendous inconvenience to all parties and counsel in the action.

11 Secondly, it would be necessary to vacate the trial if leave were given to amend. As the other defendants deny the allegation of the 3 companies that part of the disputed assets came from those

companies or any other company, they would have to be given the opportunity to look into the records of the 3 companies as well as other unspecified companies in the "TCL Group" to prove their case. This was a matter that they were not hitherto concerned with. It would likely entail another round of discovery requiring tracing of documents going back a quarter century. Therefore not only would the trial have to be vacated a second time, because of the nature of the discovery required this time around, it might have to be adjourned for a substantial period.

12 Thirdly, Mr Yeo relies on evidence in the affidavits evidence-in-chief already filed by the 1st, 2nd and 5th defendants. This is set out in the particulars to the new paragraph 15A of the proposed amended Statement of Claim. However the relevant paragraphs of those affidavits do not, on the face of it, support the pleaded facts.

13 Fourthly, the proposed amendments pertain to a matter which was well within the power of the applicants to apply at an earlier stage. The affidavits evidence-in-chief were ordered to be exchanged on 18 July 2001, more than 3 weeks before the start of the trial. There is a certificate stating that they were exchanged by 25 July 2001, which is more than 2 weeks before the start of the trial. Had the 3 companies applied to amend their statement of claim shortly after that, it might not have entailed a vacation of the trial dates or at the very least not cause the trial to be substantially delayed.

14 Lastly as the proposed amendments concern a new cause of action, the applicants and the potential 19th Defendant would not have been precluded from bringing a new action in respect of their claim if the application were dismissed. Therefore shutting them out in the present proceedings would achieve the dual objectives of not preventing them from proceeding with their claim, albeit not in the present action but in a new one, and ensuring an expeditious resolution of the matters already in focus and in respect of which all 17 parties are poised to proceed. If there were any concern (although Mr Yeo did not raise it) that a fresh action could be too late because the horse, in the form of the disputed assets, might have bolted, it can easily be resolved in this manner. The applicants right to the disputed assets, if proven, is superior to those of the other claimants. As such, after filing the writ they can apply for a stay of execution of any judgment in the present action pending determination of their claim in the new action. I do not see that they would have any difficulty in obtaining such a stay provided they can present a more cogent cause of action than what was laid out before me by Mr Yeo, subject of course to the usual undertaking as to damages.

15 For the reasons given above, I dismissed application of the 15th, 16th and 17th defendants to amend their Statement of Claim and ordered costs to be paid by them to the other parties which are to be taxed if not agreed.

Sgd:

LEE SEIU KIN
JUDICIAL COMMISSIONER
SUPREME COURT