

Ng Sew Hoi v Chong Chwee Hin
[2000] SGHC 225

Case Number : Suit 108/2000/W
Decision Date : 07 November 2000
Tribunal/Court : High Court
Coram : Woo Bih Li JC
Counsel Name(s) : Wong Kin Meng (Wong Kin Meng & Co) for the plaintiff; Defendant in person
Parties : Ng Sew Hoi — Chong Chwee Hin

JUDGMENT:

Cur Adv Vult

1. In this action, MdmNg Sew Hoi ('MdmNg') is the plaintiff and Chong Chwee Hin ('Chong') is the defendant although Chong has counterclaims for various sums of money.
2. MdmNg is claiming \$632,688 being the aggregate of six loans she says she made to Chong between 1995 and 1997. Chong is counter-claiming (a) \$1.12 million being monies which he says he contributed to the purchase of a property known as 202A Lornie Road and (b) \$81,868 (not \$87,868) being the aggregate of three loans he says he made to MdmNg in 1993, 1999 and 2000.
3. I refer to my judgment in Suit 15 of 2000/G ('Suit 15') for the background facts as well as my findings of facts. The definitions used in Suit 15 will also apply in this judgment.

CHONG'S COUNTERCLAIM FOR \$1.12 MILLION

4. Chong claimed that he and MdmNg had agreed to buy a piece of land in Lornie Road on which a house was to be built. Its present address is 202A Lornie Road. Chong claimed that they both agreed to buy 202A Lornie Road after the sale of 107 Bukit Teresa Road and that the surplus from the sale of 107 Bukit Teresa Road, which was owned by both MdmNg and him, was used by MdmNg to pay part of the purchase price of 202A Lornie Road. He claimed that it was agreed that each of them would have a half share in 202A Lornie Road.
5. He also said that that is why he agreed to be a co-borrower of a loan initially from Tat Lee Bank Limited ('Tat Lee Bank') and subsequently from Oversea-Chinese Banking Corporation Limited ('OCBC') to fund the purchase of the land and the construction costs of the house.
6. He also claimed to have made substantial payments towards reducing the loans.
7. The purchase of 202A Lornie Road was presumably completed within a few months after 21 April 1993 as the contract between the original purchaser and MdmNg was dated 21 April 1993 (see AB 124). The transfer of 202A Lornie Road was registered in MdmNg's name only. Chong did not dispute that he had signed a mortgage to Tat Lee Bank (presumably after 21 April 1993) in which he is stated as a co-borrower but not as a co-mortgagor and likewise for a mortgage to OCBC which is dated 27 March 1995 (see AB 149). However his position was that he did not realise that the property was registered in MdmNg's name only.
8. He further said that it was only in 1995 or 1996 that he first learned from a lady solicitor at M/s Timothy Ong, Lim & Partners that 202A Lornie Road was purchased in MdmNg's name only (see his AEIC paragraph 13). However, he could not remember the name of the lady solicitor (NE 27F to 28A).

9. He said he was shocked at the discovery but he was advised by a friend not to report the matter to the police (see his AEIC paragraph 13).
10. In cross-examination, he said he had asked an auditor about the matter who told him not to pursue the matter any more since he and Mdm Ng were husband and wife and the children were growing up. He claimed that he did speak to Mdm Ng as to why his name was not included as a co-owner but she had kept quiet (NE 28B).
11. Mdm Ng denied that she had agreed with Chong to buy 202A Lornie Road together ie. she denied that each would have an equal share in the property.
12. She claimed that she had asked Chong to be a co-borrower to assist her to obtain the loan from Tat Lee Bank because she did not have a sufficient track record as all profits of KSGS were, until 1 July 1992, declared under Chong's name for tax purposes. Tat Lee Bank suggested to her that she should get a co-borrower to obtain the loan (see her AEIC paragraph 9).
13. Accordingly she spoke to Chong and informed him that she would be responsible for all payments for the property and Chong allegedly did not mind since he would not make any payment and the children would be staying in this property eventually (see her AEIC paragraph 10).
14. It was for this reason that Chong became the co-borrower of the loan from Tat Lee Bank and subsequently for the loan from OCBC.
15. Mdm Ng also denied that Chong's share of the surplus from the sale of 107 Bukit Teresa Road was used to partially pay the purchase price of 202A Lornie Road or that he had contributed towards reducing the loans from the banks for 202A Lornie Road.
16. Timothy Ong also gave evidence to the effect that he had explained to Chong the mortgage signed by Chong as co-borrower and not as co-mortgagor.
17. I will first have to determine whether Chong's share of the surplus from the sale of 107 Bukit Teresa Road was used to pay for 202A Lornie Road. Then I will have to determine whether Chong made any payment to reduce the loans from Tat Lee Bank or OCBC for 202A Lornie Road.
18. On 21 August 1990, Chong and Mdm Ng granted an option to someone else to purchase 107 Bukit Teresa Road for \$1.2 million. The sale was completed on 22 November 1990. Chong and Mdm Ng were represented by different solicitors for the sale.
19. Mdm Ng said that the surplus from the sale was \$395,000. On the other hand, Chong's position vacillated. He said in his AEIC for Suit 108 at paragraph 9 that the surplus was \$450,000. While he cross-examined Mdm Ng in Suit 15, he suggested that it was \$550,000 (NE 87E).
20. Then when Chong was cross-examined in Suit 108, he said that the surplus was about \$395,000 (NE 24A in Suit 108). When it was pointed out to him that this contradicted his AEIC paragraph 9 for Suit 108, he said that Mdm Ng had told him that certain sums had to be used from the surplus to pay maintenance leaving a balance of \$395,000 (NE 24A in Suit 108).
21. Mdm Ng referred to two fixed deposit receipts issued by Tat Lee Bank Limited ('Tat Lee Bank') in favour of both Chong and her. The first was No 241487 dated 23 November 1990 for \$280,000. The second was No 241491 dated 27 November 1990 for \$115,000. They added up to \$395,000. Her position was that this was the surplus from the sale of 107 Bukit Teresa Road.
22. The dates of these receipts are soon after the completion of sale on 22 November 1990.
23. Furthermore, I note from a letter dated 22 November 1990 from M/s Judy Loke & Co (Chong's solicitors), to M/s Lim & Lim (Tat Lee Bank's solicitors) that they had forwarded payment to Tat Lee Bank of \$1,080,218.40 to discharge the mortgage and

instructed that the balance of \$295,474.06 be paid into a fixed deposit account in the joint names of Chong and Ng.

24. The letter is found in AB 69 (in Suit 108). This must have been the source of the first fixed deposit of \$280,000 on 23 November 1990. The balance of \$14,474.06 was withdrawn by cheque also on 23 November 1990 (see the Statement of Account in AB 98 of Suit 108). There is no evidence before me as to who withdrew this sum and the purpose for it, but it may have been used to pay the housing agent's commission of \$12,000. Legal fees would also have to be paid.

25. I also note that there was an initial 10% payment of \$120,000 from the sale which was held by M/s Judy Loke & Co as stakeholders pending completion. This sum was apparently held on fixed deposit and its maturity date was 25 November 1990 (see AB 58 of Suit 108). It must then have been the source of the second fixed deposit of \$115,000 on 27 November 1990.

26. The difference of \$5,000 was held by M/s Judy Loke & Co to meet a possible property tax liability (see AB 48 and 49 in Suit 108). It is not known what happened to this \$5,000.

27. The surplus from the sale was therefore slightly more than \$395,000 but did not amount to \$450,000 or \$550,000 as Chong had contended. In any event, \$395,000 was the aggregate sum placed in the two fixed deposits which were held in the joint names of Chong and Mdm Ng.

28. Mdm Ng said that the fixed deposits were for one year and she maintained this even though the two receipts were for one month each. She said that the interest rate then for one month was higher than for one year and implied that that was the reason why the fixed deposits were of one month duration.

29. She said that eventually the monies were withdrawn by both Chong and her in cash and they shared it equally. As Chong needed cash then, she did not insist that his share be used to pay outstanding maintenance. She said that the fixed deposits could only be withdrawn by both of them and she could not have taken the monies unilaterally without Chong's knowledge.

30. Chong denied that he had received half of the \$395,000 (with interest). He said that Mdm Ng had taken all the surplus without his consent and used the monies to pay for 202A Lomie Road which was registered in her name.

31. In his Closing Statement (for Suit 108) Chong relied on two letters.

32. By a letter dated 20 April 1990, Mdm Ng's solicitors wrote to Chong's solicitors to state:

'Dear Sirs

RE: 107 BUKIT TERESA ROAD, SINGAPORE

We refer to the telephone conversation the writer had with you last week. As your client knows, there is a sum of about S\$725,000-00 due to the Tat Lee Bank by way of overdraft facilities to both your client and ours.

We understand that the interest on the said sum has not been paid for the past 4-6 months and there is every possibility that the bank may foreclose on the said property. Our client wants a house to live in together with her children. If your client agrees, our client (*sic*) propose that the above house be sold (there is presently a buyer for S\$1.15 million) and the balance of the sale proceeds after paying the Bank, be used to buy a smaller place.

Can you please take your client's instructions on an urgent basis.'

33. Chong's solicitors replied by letter dated 3 May 1990 stating:

'Dear Sirs

RE: 107 Bukit Teresa Road, S'pore

We refer to your letter dated 20th April 1990.

We are instructed by our client that he agrees to have the above property sold and that he is presently looking for a buyer.

We are further instructed by our client that the new premises will be in our respective clients joint names. Our client would also want to inspect the premises before it is purchased.'

34. However, these two letters were not the only correspondence between the solicitors. For example, there was another letter dated 21 August 1990 from Mdm Ng's solicitors to Chong's solicitors. It reads:

'Dear Sirs

RE: SALE OF 107 BUKIT TERESA ROAD, SINGAPORE

Our client instructs us that your client had last Thursday informed a mutual friend "Yeow Koon" that he would pay one-half of the balance of the proceeds of sale to our client and use his half share to purchase an apartment (in his name) for the residence of the children and our client (the latter for the duration of her life) and make up the shortfall should his share be insufficient to buy the apartment.

Our client is worried about not having a roof over her head and that of her children apologises for this delay.

Can you please confirm?'

35. Using Chong's approach, this letter would in turn suggest that when Chong subsequently bought a residential unit #16-02 in Beauty World Centre in his own name for the residence of Mdm Ng and the children, he had used his share of the surplus to help him make that purchase.

36. In any event, the three letters I have referred to must be considered in the context of the overall correspondence between the solicitors of Chong and of Mdm Ng prior to and during the sale and after the sale was completed ie. between July 1990 to 22 November 1990. The correspondence produced for the trial showed that Chong and Mdm Ng eventually wanted the surplus to be paid into a joint account, whether it be a fixed deposit or otherwise (see AB 1, 2, 3, 4, 10, 11, 21, 22 to 23, 24 to 25, 26, 27, 28, 34, 48, 49, 58, 69 and 70), so that neither could withdraw it unilaterally. That is how the surplus came to be deposited into fixed deposits in their joint names with Tat Lee Bank.

37. I also note that as regards what had happened to the surplus, Chong appeared to be taking a different position in his cross-examination of Mdm Ng (at NE 81F and 83A). He suggested to her that she had used some of the surplus to pay for rent in a property she was residing in.

38. There was no evidence before me that either Chong or Mdm Ng could withdraw the surplus unilaterally and indeed, as I have said, the evidence was to the contrary.

39. I find that the \$395,000 was withdrawn by and shared between Chong and Mdm Ng equally.

40. Accordingly, I find that Chong's share of the surplus from the sale of 107 Bukit Teresa Road was not used by Mdm Ng to buy 202A Lornie Road.
41. I also find Chong's evidence that he had made substantial payments towards reducing the loans for 202A Lornie Road to be unreliable.
42. In Chong's AEIC at paragraph 10, he said that he had paid another \$900,000 by 1995 to Tat Lee Bank and OCBC for 202A Lornie Road. In paragraph 13, he said that by 1995 or 1996 he had already paid \$1.12 million for the property. It was not clear whether this sum was in addition to the alleged use of his share of the surplus from the sale of 107 Bukit Teresa Road or not.
43. Then in cross-examination at NE 11C, he said he had paid \$432,000 as interest to OCBC.
44. At NE 25D he said that up till 1995 he had paid more than a million dollars to Tat Lee Bank and OCBC for the mortgages on 202A Lornie Road.
45. Then at NE 26B, he said that it was less than \$1 million as he had taken into account payments made for the loan to buy 107 Bukit Teresa Road. At NE 26D, he said that it was \$900,000.
46. However he was unable to say how much of the \$900,000 was paid by him to Tat Lee Bank and how much to OCBC for the loans regarding 202A Lornie Road.
47. He had also suggested that he was the only one who made payments to reduce the loans by the banks for 202A Lornie Road (see his AEIC paragraph 10). However in cross-examination, he said that both he and Mdm Ng had made payments (NE 33C).
48. As it turned out, the mortgage to OCBC was discharged in December 1998 by Mdm Ng and Chong did not even know about the discharge. He also accepted that he did not pay any monies to obtain the discharge (NE 32F to 33A).
49. It was submitted for Mdm Ng that if, as Chong alleged, the purpose of his withdrawing from KSGS in July 1992, was due to Mdm Ng's concern that his assets should be put out of reach of his creditors, then Mdm Ng would not have wanted to purchase 202A Lornie Road in their joint names, bearing in mind that the purchase was in April 1993, not long after Chong had 'agreed' to withdraw from KSGS in July 1992. I agree with this submission.
50. Furthermore, Chong had said that in 1995 or 1996 he had learned that he was not registered as a co-owner of 202A Lornie Road and he was shocked. He also said that later in 1996 he had learned that Mdm Ng had commenced divorce proceedings against him in which he did not engage solicitors to represent him (see his AEIC paragraphs 13 and 14).
51. He initially said that his reason for not engaging solicitors to represent him in the divorce proceedings was that he did not know that Mdm Ng would divorce him (see NE 29B). This was a nonsensical reason because she had initiated the divorce proceedings. He then said (at NE 29C) that he and Mdm Ng were still co-operating in the goldsmith business and he did not engage solicitors as he thought they could still be friends and he did not want others to know about the divorce. He said that in 1995 he had bought an apartment (presumably #16-02) in Beauty World Centre for Mdm Ng and the children to stay, although he did not elaborate whether this was before or after he had discovered that he was not registered as a co-owner of 202A Lornie Road.
52. I do not accept Chong's reasons. He should have engaged solicitors or at the least raised 202A Lornie Road as an issue in the divorce proceedings if he genuinely believed that he should have been registered as a co-owner of that property.
53. It was up to Chong to decide whether to claim a half share in 202A Lornie Road when he supposedly learnt about Mdm Ng's breach or when she commenced divorce proceedings against him. By his own admission, he chose not to do so.

54. The Division Order, made on 12 June 1996 in the divorce proceedings ie. Divorce Petition No 174 of 1996, which Chong consented to, provided for each party to transfer his/her interest in certain properties to the other. There was no mention of 202A Lornie Road.

55. Furthermore, paragraph 4 of the Division Order states that, 'Neither party shall have any claim against the other for any interest in any property of the other'.

56. I would refer to three other points.

57. First, I note that although Chong had alleged in his Defence and Counterclaim that he and Mdm Ng had agreed that each would have a half share in 202A Lornie Road and that pursuant to that agreement, he had contributed \$1.12 million towards payment for the property and the repayment of the loans from the two banks, he was not, in his pleading, claiming a half share of 202A Lornie Road but repayment of \$1.12 million. Hence, the relief sought was contrary to the basis for the counterclaim. Perhaps this was because Chong did not know that the loan from OCBC had been fully repaid.

58. Secondly, in OCBC's facility letter to both Mdm Ng and Chong dated 7 January 1995, paragraph 4 thereof states that the credit facility is to be secured against an all monies open mortgage on the property registered in the name of Mdm Ng and Chong. This letter was accepted by both Mdm Ng and Chong.

59. Chong sought to make something out of this in his AEIC at paragraph 8 but did not question Mdm Ng on this when she was on the witness stand.

60. I am of the view that the reference in OCBC's facility letter dated 7 January 1995 to the property being registered in both names was a mistake by OCBC. The property had already been registered sometime in 1993 in Mdm Ng's sole name when the initial loan from Tat Lee Bank was given. I also find that Mdm Ng must have accepted OCBC's facility letter without realising the mistake and so did Chong.

61. Thirdly, Chong referred to another facility letter from OCBC dated 24 November 1997 to Mdm Ng and Chong to increase the facility by \$900,000 (before the mortgage was discharged in December 1998). This was apparently accepted by Mdm Ng and Chong but Chong said that his signature thereon was forged. Mdm Ng denied she had forged his signature.

62. I do not think this allegation of forgery was material because it was not alleged by Chong that Mdm Ng had sought his help to pay the increased sum lent or that OCBC had actually looked to him to pay it. As I have already mentioned, the mortgage was eventually discharged by Mdm Ng.

63. At most, Chong was trying to use this point, if the forgery had been proved, to show that Mdm Ng was not an honest person.

64. It is not necessary for me to make a finding about the allegation of this forgery as I find that the evidence, viewed as a whole, falls far short of establishing Chong's counterclaim for the \$1.12 million

MDM NG'S CLAIM FOR \$632,688

65. The \$632,688 was allegedly lent by Mdm Ng in various sums on various dates for which Chong issued a cash cheque to Mdm Ng to repay each loan. For convenience, I have tabulated the alleged loans and the cheques issued by Chong:

Date of alleged loan by Mdm Ng	Alleged Amount	Chong's cheques for alleged repayment	Initially dated or not	Amount
On or about 21/08/95	\$162,000.00	Maybank No. 925275	Undated. Mdm Ng later inserted date of 13/06/2000	\$162,000.00
On or about 14/03/96	\$50,000.00	Maybank No. 370951	14/03/96	\$50,000.00
On or about 01/07/96	\$165,000.00	Maybank No. 464741	01/07/96	\$165,000.00
On or about 26/08/96	\$180,000.00	OCBC No. 194996	Undated. Mdm Ng later inserted the date of 13/06/2000	\$180,000.00
On or about 01/01/97	\$21,000.00	Maybank No. 464746	Undated and unsigned	\$21,000.00
On or about 07/06/97	\$54,688.00	Maybank No. 925251	07/06/97	\$54,688.00
Total	\$632,688.00		Total	\$632,688.00

66. All the six cheques were supposed to have been issued by Chong contemporaneously with the loan to him but only three were dated. The other three were not.

67. Chong attempted to assert that for the Maybank cheque No 925275, this could not have been issued by him on 21 August 1995 because, according to a letter from Maybank dated 24 August 2000 to his previous solicitors M/s Chui, Sim, Goh & Lim, the issuance date of this cheque was 7 January 1997, some one and a half years later. However I did not give any weight to this letter because when Chong first introduced it in Suit 15, he initially pointed out that based on that very letter, the issuance dates of some other cheques did not tally with the dates on the cheques which I saw. The letter was marked only for the purpose of identification. Therefore Chong had to and he said that he wanted to call Maybank to give evidence on it. However, he then changed his mind about calling them to give evidence on it when he learned that Maybank's letter was referring not to the dates when the cheques were issued by him but the dates when the cheque books (from which the cheques came) were issued to him.

68. This, however, still did not answer the question as to how cheque No 925275 for which the cheque book was purportedly issued on 7 January 1997 could have been issued by him on 21 August 1995. Although Chong did again refer to the Maybank letter in this suit, ie. Suit 108, he did not renew his request to call Maybank as a witness, having abandoned his earlier request in Suit 15.

69. In any event, it is not material to me whether the date of the first loan or for that matter, for the other two loans (for which Chong's undated cheques were purportedly issued to cover) were correct or not because Chong did not dispute that he had taken the \$632,688 and no question of a time-bar was raised by him.

70. The \$632,688 was withdrawn from the OCBC joint account which the parties had opened in view of the loan from OCBC to buy 202A Lornie Road. Apparently Mdm Ng was controlling the cheque books for that account (NE 5A) and had issued six cheques to Chong on six occasions in return for Chong's six cheques.

71. As an aside, and to avoid confusion, I should mention that Chong's OCBC cheque No 194996 for \$180,000 (see the table in paragraph 65 above) was not drawn on the joint account with OCBC ie. account No 536-031115-001 (see NE 44B) but on another account No 536-033145-001 (see Exhibit P1A) also with OCBC and also with the same branch ie. Upper Serangoon Road Branch. Presumably that was his own account.

72. Chong said that he was entitled to withdraw the \$632,688 as the monies were from the OCBC joint account. In paragraph 5 of his Defence and Counterclaim, he also alleged that it was agreed between Mdm Ng and him that the \$632,688 need not be repaid.

73. Chong also suggested that if he was not repaying the alleged loans from Mdm Ng then she would not have continued to grant him some more loans. Mdm Ng's response (at NE 6A to C) was:

'He kept begging me. He told me that he needed a lot of money for a plot of land in Malaysia to build a factory. If he could not make payment in time to pay for the land and to build a factory, then the Malaysian government would take back the land. I did tell him that I had set aside a sum of money to build my house at 202A Lornie Road. He said not to worry. He would be returning the money to me very soon. After he took the money, I had problems with construction of my house, so I took a loan from OCBC because he did not return me the money.'

74. Chong further suggested that if his cheques were given to repay the loans then Mdm Ng would have presented them for payment before they (or at least the three cheques which were dated) expired. Mdm Ng said that Chong had told her not to present any of the cheques for payment until he had sold one of his properties (NE 10B).

75. The point which Chong still had to address is why he issued the six cheques to Mdm Ng if they were not to pay her for loans from her. He could only say that he issued the six cheques to Mdm Ng as evidence that he had taken the monies (NE 9A and 30A) but not as repayment of the monies he had taken. He did not explain why, if he was entitled to withdraw the monies or if he was not obliged to return the monies, he had to provide evidence that he had taken such monies.

76. I do not accept Chong's position and I accept Mdm Ng's position as regards these loans.

77. The OCBC joint account was in joint names only because of the reason Mdm Ng had given and which I have already stated above ie. because she needed a co-borrower like Chong to obtain the loan. He did not put any monies into that account nor did he pay any monies to OCBC to reduce the loan from OCBC for 202A Lornie Road.

CHONG'S COUNTERCLAIM FOR \$81,868 COMPRISING \$40,000, \$25,331 AND \$16,537

78. Chong in turn alleged that he had lent Mdm Ng three sums totalling \$81,868 for which she had issued three cheques to him to cover, as follows:

Date of alleged loan by Chong	Alleged Amount	Mdm Ng's cheque for alleged repayment	Initially dated or not	Amount

In or about 1993	\$40,000	Chase Manhattan No. 763332 (this is actually drawn on KSGS's account)	Undated but later Chong inserted the date of 11/4/2000.	\$40,000
In or about December 1999	\$25,331	OUB No. 023830	Dated 26/4/99	\$25,331
1 June 2000	\$16,537	OUB No. 028817	Dated 6/1/2000	\$16,537
Total	\$81,868	-	Total	\$81,868

Alleged loan of \$40,000

79. As regards the alleged loan of \$40,000, Chong said that he had lent this sum in 1993 for which he received the Chase Manhattan cheque No 763332 from Mdm Ng. He did not present it for payment because Mdm Ng told him she had no money (NE 34A). When Mdm Ng chased him out of the goldsmith shop (in January or February 2000), he inserted the date (of 11 April 2000) in the cheque and presented it for payment (NE 35A). Upon presentation then, it was dishonoured for the reason that the account was closed since December 1993.

80. Chong also relied on a piece of paper on which some numbers were written by Mdm Ng:

$$\begin{array}{r}
 \$40,000 \\
 + 6,000 \\
 \hline
 \$46,000 \\
 \hline
 \end{array}
 ,$$

Chong said this was evidence that Mdm Ng was owing him \$46,000. Yet, he was not claiming \$46,000 but \$40,000.

81. Mdm Ng did not deny that she signed the cheque but claimed that it must have been stolen from her from among her files kept at her home in Beauty World Centre (bought by Chong). Chong had allegedly chased her out of the home.

82. The cheque was drawn on KSGS's account and not Mdm Ng's personal account. According to Mdm Ng, the account was opened with Chase Manhattan for the purpose of processing Visa cardslips signed by KSGS's customers and was closed in December 1993 because Chase Manhattan had sold its Visa card business to Overseas Union Bank Limited.

83. She also did not deny writing the figures I have mentioned on a piece of paper but could not recall what that was about.

84. I am of the view that no weight should be given to the piece of paper relied on by Chong. It was just a note of some figures and was meaningless.

85. I also find that Chong has not established his alleged loan of \$40,000 to Mdm Ng in 1993.

86. As I have mentioned, the cheque was not from Mdm Ng's account. It was a cheque drawn on KSGS's account. There was no evidence to show that KSGS had no money in 1993 or at all so as to cause Chong to defer presentation of this cheque for payment.

87. I am also of the view that Chong's evidence that the purported loan was in 1993 was not based on his recollection but based solely on the fact that the Return Check Notice in 2000 had mentioned that the account was closed in December 1993. Accordingly he had to say that his loan was in 1993 for which he received in return the KSGS cheque also in 1993.

88. Mdm Ng's Counsel also took the point that if there was a loan in 1993 and to be repaid in 1993, this claim is time-barred under s 6 of the Limitation Act (Ch 163) as Suit 108 was filed on 4 April 2000. However, this was not pleaded and I need say no more about it.

Alleged loan of \$25,331

89. Chong said he had lent \$25,331 to Mdm Ng in the beginning of December 1999 for which she had on the same day given him her OUB cheque No 023830 for the same sum to repay him.

90. However, the problem for Chong was that the cheque was dated 26 April 1999. It made no sense to me for Mdm Ng to give him a cheque in December 1999 but pre-dated to 26 April 1999, more than six months earlier, and that he would receive such a cheque without complaint.

91. As it turned out, when the cheque was presented for payment in December 1999 or much later, the bank manager contacted Mdm Ng as it was a stale cheque and she stopped payment thereon as she said she did not sign this cheque.

92. Another problem that Chong faced was that there was no other evidence that Mdm Ng was in financial difficulties in December 1999. She had, as I have found, lent him various sums of money around 1995/1996 to 1997. She had discharged the OCBC mortgage on 202A Lornie Road in December 1998.

93. On the contrary, Chong was having problems. Although he claimed to have bought an apartment ie. 144 Upper Bukit Timah Road #16-02 (in Beauty World Centre) in 1995 for Mdm Ng and her children to stay in, he was having financial difficulties in late 1998.

94. In August 1998 (or thereabouts), Malayan Banking Berhad ('MBB') had commenced action against him for his failure to repay monies he had borrowed from MBB and on 9 September 1998 they had obtained an order against him for whatever he owed and for possession and sale of 120 Jalan Jurong Kechil which was mortgaged to them.

95. At about the same time, he signed a power of attorney dated 19 August 1998 to authorise Mdm Ng to sell 120 Jalan Jurong Kechil for him. Mdm Ng said he did so because she was chasing him to repay her loans (AEIC paragraph 25) although her Counsel suggested it was to repay arrears of maintenance (NE 48E in Suit 15).

96. In his evidence in Suit 15, Chong said that MBB had asked him to pay interest but denied they had sued him in August or September 1998. His evidence on this point was clearly untrue in view of letters from MBB's solicitors to him, regarding MBB's action and an order obtained by MBB against him at that time.

97. He also denied in his evidence in Suit 15 that he had executed a power of attorney to enable Mdm Ng to sell 120 Jalan Jurong Kechil (NE 48F to 49E in Suit 15) but the power of attorney which he had signed contradicted him. Mdm Ng said that the power of attorney was the result of her repeated demands for repayment by him of her loans (AEIC paragraph 25).

98. I also note one other point that Chong attempted to make. In his Reply to Mdm Ng's Closing Statement (for Suit 108) he alleged, for the first time, that after MBB had sold Jalan Jurong Kechil, he received some surplus from MBB's sale and it was from that sale that he lent the \$25,331 to Mdm Ng. If this were true, it would have been a simple matter for him to produce documents from MBB or its solicitors showing a surplus on MBB's sale and for him to obtain evidence as to the source of this loan to Mdm Ng. He did not produce any of such evidence.

99. In the circumstances, I also find that Chong has not established the alleged loan of \$25,331.

Alleged loan of \$16,537

100. Chong said that he made the loan of \$16,537 to Mdm Ng on 1 June 2000 and he received Mdm Ng's cheque (OUB No 028817) for the same sum on 1 June 2000.

101. However, Mdm Ng's cheque is dated 6 January 2000 and again it was unlikely to me that she would give him a cheque pre-dated so far back.

102. In fairness to Chong, I did consider that he probably made a mistake on the date when the cheque was allegedly handed to him, ie. he had read the date on the cheque '6/1/2000' as 1 June 2000 and gave his evidence accordingly. However this would go to show that he was not basing his evidence on any recollection of events this year but was simply basing his evidence solely on the date of the cheque which he may or may not have received from Mdm Ng.

103. On the other hand, Mdm Ng said that she had realised that this cheque was missing from her possession. She claimed that on the same day, ie. 6 January 2000, she gave instructions to stop payment on the cheque and this was borne out by the documentary evidence (at AB 160). She again denied that the cheque was given to Chong to repay a loan from him.

104. I have also taken into account the same factors that I have mentioned in paragraphs 92 to 97 above.

105. Accordingly, I find that Chong has not established the alleged loan by him of \$16,537.

SUMMARY

106. I award judgment in favour of Mdm Ng against Chong for \$632,688 with interest thereon at 6% per annum from the date of the Writ to the day before judgment (as statutory interest runs from the date of judgment).

107. Chong's counterclaims for \$1.12 million and \$81,868 are dismissed.

108. Chong is to pay to Mdm Ng the costs of the claims and counterclaims.

Woo Bih Li

Judicial Commissioner

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