

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 57

Civil Appeal No 7 of 2019

Between

Griffin Real Estate Investment
Holdings Pte Ltd (in liquidation)

... Appellant

And

ERC Unicampus Pte Ltd

... Respondent

Civil Appeal No 8 of 2019

Between

ERC Unicampus Pte Ltd

... Appellant

And

Griffin Real Estate Investment
Holdings Pte Ltd (in liquidation)

... Respondent

In the matter of Originating Summons No 1004 of 2017

In the matter of Griffin Real Estate Investment Holdings Pte Ltd (in
liquidation)

Between

Griffin Real Estate Investment
Holdings Pte Ltd (in liquidation)

... Plaintiff

And

ERC Unicampus Pte Ltd

... *Defendant*

EX TEMPORE JUDGMENT

[Equity] — [Remedies] — [Account]

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Griffin Real Estate Investment Holdings Pte Ltd (in liquidation)

v

ERC Unicampus Pte Ltd and another appeal

[2019] SGCA 57

Court of Appeal — Civil Appeals Nos 7 and 8 of 2019

Tay Yong Kwang JA, Belinda Ang Saw Ean J and Quentin Loh J

24 October 2019

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Tay Yong Kwang JA (delivering the judgment of the court *ex tempore*):

1 We agree with the Judge on all his findings set out in his judgment in [2018] SGHC 273, except the formula for computing the share of profit for the plaintiff (“GREIH”) in the Originating Summons, arising from the sale of Big Hotel in September 2015. The said formula is set out at [99] of the judgment and is reproduced below. In the formula, the \$10m is the amount that the defendant (“ERCU”), received knowingly from GREIH and which was loaned from GREIH to ERCU in breach of fiduciary duties owed by Andy Ong and Ong Han Boon. The \$103m is the purchase price for Prime Centre (before it was re-developed into Big Hotel), the UOB-ERCU Loan refers to the bank loan of \$77.25m taken out by ERCU for the said purchase and the “Expenses” were sums incurred by ERCU in respect of the re-development of the property (explained further below). The \$203m refers to the sale price of Big Hotel.

2 The formula set out by the Judge was as follows:

$$\frac{\$10\text{m}}{\text{-----} [(\$103\text{m minus UOB-ERCU Loan), add Expenses]} \times (\$203\text{m minus Expenses)}$$

3 The Expenses incurred by ERCU (as set out at [64] of the judgment) comprised:

- (a) costs incurred in re-developing Prime Centre;
- (b) interest expenses incurred in 2014 and 2015 on loans obtained to finance the re-development of the said property; and
- (c) management fees incurred in 2014 and 2015 for the management of Big Hotel.

4 GREIH's appeal is that the Expenses should not feature in the first half of the equation and should rightly feature only in the second half of the equation in order to arrive at the net profit. We agree with GREIH that the Judge's formula results in double-counting of the Expenses in that the Expenses were used as part of ERCU's capital contribution to the acquisition costs for Prime Centre and then deducted from the sale price for Big Hotel to arrive at the net profit. However, we agree with the Judge that the Expenses which were incurred to earn the returns from the investment in re-developing Prime Centre into Big Hotel and eventually selling it at a profit must logically be taken into account in arriving at the net profit from the sale. If these expenses had not been incurred, there would have been no Big Hotel to sell and no case was put forward that the property would have fetched a resale price of \$203m even without re-development into Big Hotel.

5 One of the points in ERCU's appeal is that the UOB-ERCU Loan should not be deducted in the first half of the formula. We agree with ERCU on this issue. We do not share the Judge's view that the UOB-ERCU Loan of \$77.25m should not be attributed as ERCU's contribution to the acquisition of the property or as part of the total acquisition costs. While ERCU could not have made the entire initial down payment (a necessary condition before it could draw down on the UOB-ERCU Loan) without GREIH's \$10m, GREIH's \$10m would have been equally useless in the acquisition of the property without the said bank loan which was many times more in amount. Both amounts were needed to complete the purchase and the acquisition of Prime Centre for re-development.

6 This is not a case of ERCU, as a knowing recipient, using trust money as its contribution to the acquisition of the property. GREIH's \$10m was used only to supplement the bank loan already obtained but which could not be drawn down because the investors in Big Hotel had not paid up fully on their financial commitments at that time. ERCU's contribution was the bank loan amount for which it was liable to the bank although secured by the mortgage on the purchased property. Although both amounts were used for the purchase, they were still clearly separate and identifiable. The bank loan was therefore an untainted contribution, unlike cases where trust money was misused and then used as the wrongdoer's purported full or partial contribution towards some asset, which obviously could not be correct in principle as the wrongdoer would be using his own wrong to establish a legal right.

7 The result is that the formula should read as follows:

$$\frac{\$10\text{m}}{\$103\text{m}} \quad \times \quad (\$203\text{m} \text{ minus } \$103\text{m} \text{ minus Expenses})$$

8 We therefore allow GREIH's appeal in CA 7/2019 and hold that the Expenses item should not feature in the first half of the equation and that it should rightly be factored in only in the second half of the equation in the formula for computing the net profit. We allow partially ERCU's appeal in CA 8/2019 by not deducting the UOB-ERCU Loan in the first half of the equation. We think the net result accords with equity and is a fair outcome in the overall circumstances of this case.

9 On the issue of costs, the Judge's order of \$20,000 and disbursements in GREIH's favour is to stand. For the hearing in the Court of Appeal, in the light of our decision set out above, we think it would be fair to order the parties to bear their own costs for the cross-appeals. The parties have no objections. Each party is therefore to bear its own costs for the cross-appeals. The usual consequential orders are to apply.

Tay Yong Kwang
Judge of Appeal

Belinda Ang Saw Ean
Judge

Quentin Loh
Judge

Abraham Vergis, Nawaz Kamil and Kenny Lau Hui Ming
(Providence Law Asia LLC) for the appellant in CA 7/2019 and the
respondent in CA 8/2019;
Vikram Nair and Foo Xian Fong (Rajah & Tann Singapore LLP) for
the respondent in CA 7/2019 and the appellant in CA 8/2019.
