

Lim Ah Neu v Tan Tiow Jin
[2007] SGHC 99

Case Number : Suit 656/2006
Decision Date : 26 June 2007
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Vincent Yeoh (Vincent Yeoh & Co) for the plaintiff; Tan Kay Kheng and Melvin See (Wong Partnership) for the defendant
Parties : Lim Ah Neu — Tan Tiow Jin

26 June 2007

Judgment reserved.

Choo Han Teck J:

1 The plaintiff sued her son in this action for the return of 30,500 shares that she claimed were sold to him at his request for \$500,000 sometime in July 2004. The shares were in the family company known as Tan Gin Huat Holdings Pte Ltd. This was a holding company incorporated by the plaintiff's husband and which he had given its shares to his six children. The company has no assets of great value other than a piece of real property that might be sold en bloc.

2 The plaintiff testified that the defendant told her that he would deposit the purchase price into her savings account. He then brought her to see his accountant Low Tin Kee ("Low"). Low testified that he had asked to see the cheque that the defendant was issuing in payment of the shares and on 22 July 2004 was shown a Citibank cheque dated 22 July 2004 for \$500,000 in favour of the plaintiff. Low went to the plaintiff's home on 24 July 2004 to witness the execution of the transfer of shares.

3 Low then arranged for the transfer form to be stamped and he also prepared a directors' resolution approving the transfer. This was signed by the defendant but his brother, Tan Kim Seng ("Kim Seng") who was the other director refused to sign because he did not approve of the transaction, on a personal basis, namely, that he did not think there was any reason for the plaintiff to sell her shares. He thought that if she needed money for medical expenses, he would provide for it. The plaintiff had been living in Kim Seng's house but moved into the defendant's house some years before the alleged transaction. When the defendant did not pay, she moved back to her other son's house.

4 No money was deposited into the plaintiff's savings account and she maintained that no cheque was given to her either. In this action, the plaintiff alleged that the defendant was in breach of contract and by her solicitors' letter dated 5 September 2006, she had accepted the breach and terminated the sale agreement. She now demanded the return of her shares.

5 It was not disputed that the defendant tendered payment of the \$500,000 in three cashier's orders which he said were made at the request of the plaintiff by a letter written by her dated 12 September 2006. That letter read as follows:

Re: My undertaking to you

I refer to the Transfer of the 30,500 shares in Messrs Tan Gim Huat Holdings Pte Ltd which were

sold to me at the consideration sum of S\$500,000. I undertake to pay the consideration sum of S\$500,000 to you as full and final settlement by 8th September 2006.

This letter was written in English and the plaintiff affixed her thumbprint on it. She testified that she was shown the letter at the defendant's house on 30 August 2006, and her nephew Sutjianto Lim ("Sutjianto") explained to her that if she wanted the shares back she should agree to place her thumbprint on the document "and the matter is resolved". She said that Sutjianto then guided her hand to place the thumbprint on the letter.

6 The defendant did not challenge the sale transaction in July 2004 but averred that payment was made by way of cheque and that it was the plaintiff who did not present the cheque for payment and when the cheque expired after six months, he reminded her and asked how she wanted payment to be made. The defendant called Sutjianto to testify on his behalf. Sutjianto disputed the plaintiff's account of the events and supported the defendant's version.

7 The plaintiff called Low to testify. His evidence was largely neutral since the sale was not disputed and he had no knowledge of any private arrangement between the mother and son litigants as to how the cheque was to be handed over or deposited. The plaintiff also called her daughter Tan Ah Jee who testified that she brought the plaintiff to a solicitor after learning about the events from her in August 2006. Tan Ah Jee also testified that she sold her shares in the company to the defendant in October 1989 for \$135,405. She signed the transfer form but did not realise until November 2005 that she had not been paid. She asked for the return of her shares and the defendant returned them to her. In 1989, the younger brother Tan Ew Jin also sold his shares to the defendant for \$135,405. He died in April 1999 and when his estate found out in 2006 that he had not been paid, it demanded payment and was paid \$438,000 by the defendant instead of the original purchase price of \$135,405.

8 The defendant had not given notice to the Accounting and Corporate Regulatory Authority as to the alleged transfer. The plaintiff remains on record as the owner of the shares. The plaintiff's claim was based on a breach of contract and a total failure of consideration. Fraud was not pleaded. The defendant pleaded that he had performed his part of the contract by tendering a cheque in payment and that if the plaintiff did not deposit the cheque she could not hold him liable. In the alternative, the defendant pleaded that there was an agreement in writing, that is, the memorandum of 1 September 2006 set out above and that the defendant had also performed his part under that agreement by tendering three cashiers' orders in payment.

9 The defence did not fully address the issue of a total failure of consideration. Mr Tan, counsel for the defendant submitted at trial that the defendant was still willing to make payment. This ought to have been pleaded but, for reasons in this judgment, the omission had no relevance to my decision.

10 The incontrovertible fact was that the plaintiff was not paid for her shares. Unless there was evidence to absolve the buyer, the contract failed for want of consideration. The plaintiff's solicitors sent a letter of demand dated 28 August 2006 asking for the return of her shares. Instead of responding to the solicitors, the defendant brought the plaintiff to another lawyer, namely, Mr Teo Eng Leong ("Mr Teo") on 31 August 2006 and on 1 September 2006, the plaintiff appeared to execute a memorandum accepting payment by 8 September 2006 in three cashiers' orders.

11 Mr Teo, the solicitor who the defendant said advised the plaintiff did not testify in court. Sutjianto gave a credible account of his childhood in the plaintiff's household and his fondness for the plaintiff, but failed to persuade me in his account regarding the memorandum of 1 September 2006

and I do not accept the account of his role in explaining the content of the memorandum to the plaintiff. The defendant did not satisfactorily explain why he asked the nephew, Sujianto and the lawyer Mr Teo to explain the memorandum to the plaintiff when he ought to have responded to the plaintiff's solicitors. I do not accept that the plaintiff knew what the memorandum of 1 September 2006 was and that her rescission on 6 September 2006 of the contract was a valid rescission. The plaintiff's evidence was not perfect and there were moments in her testimony when she could not recall the events precisely or even consistently, but few witnesses who are as physically and mentally frail as the plaintiff appeared to me, could be expected to do so. The plaintiff was, however, not senile and was able to give an account of the important events. On the whole, I am inclined to accept her evidence. I am not inclined to accept the defendant's explanation and account of the history of the sale of the shares from July 2004 to 1 September 2006.

12 There will therefore be judgment for the plaintiff as prayed. Costs will be taxed if not agreed.

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