Tan Keaw Chong *v* Chua Tiong Guan and another
[2010] SGHC 19

Case Number : Suit No 80 of 2008

Decision Date : 15 January 2010

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Gabriel Peter, Kelvin David Tan Sia Khoon and Calista Peter (Gabriel Law Corporation) for the plaintiff; Tan Teng Muan and Bala Chandran s/o Kandiah (Mallal & Namazie) for the defendant.

Parties : Tan Keaw Chong — Chua Tiong Guan and another

Contract

Civil Procedure

15 January 2010

Choo Han Teck J:

1 The first defendant obtained an option (in his sole name) to purchase a property known as 6 Toh Tuck Road, #03-02 Rainbow Garden, Singapore 596680. The option was exercised on 6 March 1997. The purchase price was $980,000. The plaintiff and the first defendant were friends and the plaintiff was the non-executive chairman of a company known as Eco-IEE in which the first defendant was a director. The plaintiff's case was that the property was purchased by the first defendant as agent for himself and the plaintiff in equal shares. The first defendant died before the trial. The second defendant was the daughter of the first defendant. She was a party by reason of being the administrator for the estate of the first defendant. Though she testified as a witness, she was not a material witness.

2 The plaintiff's claim as co-owner to the property was based on an oral contract between him and the first defendant. He alleged that he advanced the sum of $225,800 (later amended to $205,800) to enable the first defendant to purchase the property. The balance of the purchase price came from money in the first defendant's Central Provident Fund ("CPF") account and from a bank loan taken by the first defendant. The defendants' case before me at trial was that the plaintiff failed to discharge the burden of proving that the first defendant purchased the property pursuant to a joint-venture agreement between the plaintiff and the first defendant. Secondly, Mr Tan Teng Muan, counsel for the defendants, submitted that the scheme, if true, amounted to a fraud on the CPF Board and thus the plaintiff cannot be given judicial assistance in recovering his money. Mr Tan submitted that the plaintiff's loss must lie where it falls, that is, in the coffers of the first defendant's estate.

3 I am not at all persuaded by the plaintiff's claim that the purchase of the property was a joint-venture in which he was the other partner. I disbelieved him and his witnesses insofar as they sought to corroborate his story. The first defendant had no burden to discharge in this respect. However, in the course of the trial it became incontrovertibly clear that the plaintiff had given a sum of money amounting to $196,000 to the first defendant to enable the first defendant to buy the property. Given the evidence, which I accept, that the plaintiff had given loans to the first defendant previously, I

was of the view that the first defendant obtained a loan of $196,000 from the plaintiff towards the first defendant's purchase of the property. There was no allegation that the plaintiff was engaged in the business of illegal money-lending and I do not think that there was any evidence of that. I am also of the view that the sum of $196,000 was not a gift by the plaintiff to the first defendant. The only reasonable finding of fact from the evidence was that the plaintiff lent the sum of $196,000 to the first defendant. There was no evidence regarding interest and so I would make no finding as to interest. The second defendant accepted that $196,000 was paid over to the first defendant and that it was in all probability used to buy the property. She also conceded that the money was not repaid to the plaintiff.

4 The plaintiff's claim in this action, so far as it was based on the oral join-venture agreement, failed utterly. The problem for the plaintiff was that he did not plead a loan. The question, therefore, was whether his claim ought to be dismissed outright or that an order that the estate of the first defendant repay the sum of $196,000 be made. Ordinarily, if the court wishes to make an order on a claim that was not pleaded, the parties would be required to amend the pleadings. However, I was of the view that given the unusual circumstances here in that the first defendant is dead and unable to give instructions on any amendment, and the amendment would be a formality by reason of the incontrovertible facts that I found, I did not require the pleadings to be amended. I dismissed the plaintiff's claim as pleaded but allowed him to recover the sum of $196,000.

5 I heard submissions on costs at a separate date. Mr Gabriel Peter submitted that costs be awarded to the plaintiff in the sum of $65,000. Mr Tan submitted that the award should be no more than $25,000. I was of the view that a sum of $35,000 with reasonable disbursements was fair and I so ordered.