

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 245

Originating Summons No 985 of 2019

In the Matter of Order 17 Rule 3 of the Rules of Court (Chapter 322, Rule 5)

And

In the Matter of an Interpleader Application by DBS Bank Ltd
for relief against the claims of Davis Colin Niel, Kim Ji Soo,
Chan Siew Lee, a bankrupt in Bankruptcy No. HC/B 2648 of 2018,
Tay May Yi Sabrina and The Comptroller of Income Tax

Between

DBS Bank Ltd

... Applicant

And

- (1) Davis Colin Niel
 - (2) Kim Ji Soo
 - (3) Official Assignee being Trustee in bankruptcy of
Jannie Chan Siew Lee, a bankrupt in Bankruptcy
No. HC/B 2648/2018
 - (4) Tay May Yi Sabrina
 - (5) The Comptroller of Income Tax
- ... Respondents*

JUDGMENT

[Land] — [Caveats] — [Remedies of caveatee]

[Land] — [Sale of land] — [Remedies under uncompleted contract]

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DBS Bank Ltd
v
Davis, Colin Niel and others

[2019] SGHC 245

High Court — Originating Summons No 985 of 2019
Choo Han Teck J
25–26 September 2019

15 October 2019

Judgment reserved.

Choo Han Teck J:

1 Jannie Chan Siew Lee (“Chan”) and her daughter, Tay May Yi Sabrina (“Tay”), owned an apartment unit at 33 Keppel Bay View (“the Property”) as tenants-in-common. DBS Bank Ltd (“DBS”) was the mortgagee of the Property. When Chan and Tay defaulted on mortgage payments, DBS obtained possession of the Property by a court order on 4 May 2018 and sold the Property on 13 May 2019 for \$3.85m. The balance sale proceeds was \$420,943.04 and DBS filed the present interpleader application to determine the respective claims of the respondents to the balance remaining.

2 In the ordinary course of events, the sale proceeds would be released to the owners, Chan and Tay, but on 17 September 2018, before the mortgagee sale, Chan and Tay had granted an Option to Purchase (“the Option”) to Davis Colin Niel and Kim Ji Soo (“the Purchasers”) to purchase the Property for \$3.755m. The Purchasers exercised the Option on 28 September 2018 and

lodged a caveat against the Property on 8 October 2018 as “purchaser”. Completion was scheduled for 23 November 2018.

3 On 2 November 2018, a bankruptcy application was filed by Chan’s other creditors against her. As a result, Chan and Tay failed to complete the sale, and on 15 January 2019, the Purchasers commenced legal proceedings against them for return of the deposit and damages for breach of the Option. They obtained default judgment against Tay on 11 March 2019 and against Chan on 27 March 2019. Chan and Tay were ordered to pay the Purchasers \$187,750 as a refund of the deposit, \$18,007.53 as damages for breach of the Option, and \$4,242.80 as costs. As of 27 March 2019, the total judgment debt including interest was \$212,163.66.

4 A further complication arose when Chan was declared bankrupt on 27 May 2019, two weeks after the mortgagee sale. Chan’s property then vested in the Official Assignee (“OA”) pursuant to s 76(1)(a) of the Bankruptcy Act (Cap 20, 2009 Rev Ed), who appears as Chan’s trustee in bankruptcy in the present proceedings.

5 Parties accepted that Tay is entitled to half of the sale proceeds, or \$210,471.52, as a co-owner of the Property and so I ordered the release of her share to the Purchasers in partial satisfaction of the judgment debt. Chan’s half share remains in dispute (“the Disputed Sum”).

6 The Comptroller of Income Tax (“the Comptroller”) initially submitted that it was entitled to part of the Disputed Sum as Chan owes \$141,946.88 in income tax. The Comptroller later stated that it would defer to the OA’s determination, and filed two proofs of debt with the OA.

7 The remaining issue is the competing claims of the OA and the Purchasers. The OA submits that the Disputed Sum forms part of Chan's estate in bankruptcy and should be paid to the OA for the benefit of all of Chan's creditors. It submits that the Purchasers' claim is a mere judgment debt that is provable in bankruptcy, and the Purchasers must file proofs of debt like all other creditors.

8 On the other hand, counsel for the Purchasers, Mr Thomas Ng, submits that they have an equitable lien over the balance sale proceeds and that their claim should be paid in priority to all other creditors. Their initial claim was for \$187,750 as the deposit for the Property, \$18,007.53 as damages for breach of the Option, \$4,242.80 as costs, \$2,163.33 as interest on the judgment debt, \$95,000 as the appreciation in the price of the Property, and continuing interest. After the release of Tay's half share, their remaining claim to the Disputed Sum is for \$96,692.14 and continuing interest.

9 Mr Ng relies on s 74(1) of the Land Titles Act (Cap 157, 2004 Rev Ed), which states:

The money received by a mortgagee who has exercised his power of sale, after discharge of prior encumbrances to which the sale is not made subject (if any), or after payment into court under the Conveyancing and Law of Property Act (Cap. 61) of a sum to meet any prior encumbrances, shall be held by him on trust to be applied —

- (a) firstly, in payment of all costs and expenses properly incurred as incidental to the sale or any attempted sale, or otherwise;
- (b) secondly, in discharge of the mortgage money, interest and costs, other money and liability (if any) secured by the mortgage; and
- (c) thirdly, in payment of subsequent mortgages and charges (if any) in the order of their priority,

and the residue of the money so received *shall be paid to the person who appears from the land-register to be entitled to the mortgaged property* or to be authorised to give receipts for the proceeds of the sale thereof.

[emphasis added]

10 Mr Ng also relies on the Court of Appeal decision in *Chip Thye Enterprises Pte Ltd v Development Bank of Singapore Ltd* [1994] 2 SLR(R) 68 (“*Chip Thye Enterprises*”). There, the appellant company entered into a sale and purchase agreement with Quah Hong Guan, the owner of the property, and lodged a caveat claiming an interest in the property as purchasers. Quah subsequently defaulted on mortgage payments and the respondent bank sold the property pursuant to a mortgagee sale. The company instituted proceedings against Quah and asked the bank’s solicitors to hold the sale proceeds pending the outcome of the suit, but the solicitors paid the sale proceeds to Quah. Before judgment could be obtained against Quah, he was declared bankrupt and the company discontinued its suit against him. Instead, it filed suit against the bank claiming that the bank was liable to account for the company’s losses.

11 The Court of Appeal held that the company had an equitable lien over the sale proceeds for the deposit it had paid. A purchaser who has paid money as deposit has a lien on the surplus proceeds of sale, irrespective of whether the sale agreement was specifically enforceable or not. A purchaser who had lodged a caveat claiming an interest in the mortgaged property will “appear from the land register to be entitled to the mortgaged property”, and the bank therefore should have paid the sale proceeds to the company and it was liable to account to the company.

12 Mr Ng submits that the Purchasers stand in the same position as the

company in *Chip Thye Enterprises*. They had entered into an agreement with the owners to purchase the property and lodged the necessary caveat, and so they were persons “who appear from the land register to be entitled to the mortgaged property”. They therefore have an equitable lien over the sale proceeds, and DBS should release part of the Disputed Sum to them in satisfaction of their claim.

13 The OA seeks to distinguish *Chip Thye Enterprises* in that neither the company nor the bank was bankrupt but this argument overlooks the fact that Quah himself was bankrupt. In fact, though the date of the bankruptcy application against Quah was not stated, the bank had paid the sale proceeds to him over a year before he was declared bankrupt but nonetheless the CA ordered the bank to account to the company. In the present case, the Purchasers obtained final judgment against Chan and Tay after the bankruptcy application against Chan was filed but before the bankruptcy order was made.

14 The OA submits that recognising an equitable lien over the sale proceeds would be inconsistent with s 77 of the Bankruptcy Act, which provides that any disposition of property by a bankrupt “during the period beginning with the day of the making of the bankruptcy application and ending with the making of the bankruptcy order shall be void” except with the consent or ratification of the court. Completion was scheduled to occur on 23 November 2018 in this “twilight period” after the bankruptcy application had been filed but before the bankruptcy order was made. Had completion occurred, the sale would nonetheless have been rendered void and the Property vested in the OA. The OA submits that it would be therefore be inconsistent with s 77 to grant the Purchasers an equitable lien.

15 The recognition of an equitable lien over the sale proceeds does not contradict s 77 because the lien is only over the money that was paid and not the entire Property. Had the sale been completed but subsequently rendered void, the Purchasers would not be able to obtain the Property; it would be unfair if they were also denied a refund of the money they paid for the Property. The lien allows them to retain an interest in the money without granting them an interest in the Property.

16 *Chip Thye Enterprises* is therefore clear that the Purchasers have an equitable lien for their deposit over the balance sale proceeds. However, the Purchasers do not merely seek a refund of the deposit of \$187,750. They also claim the remainder of the judgment debt of \$18,007.53 as damages and \$4,242.80 as costs, the \$95,000 increase in value of the Property, and interest.

17 Mr Ng relies on para [46] of *Chip Thye Enterprises*, which states:

In our judgment, for the reasons we have given, the appellants, at the time of the mortgagee sale were persons who appeared from the land register to be entitled to the property. In equity, they were the owners of the property subject to payment of the balance of the purchase price. As such owners, they would be entitled to any gain in the appreciation in the value of the property. The difference between the sale price under the sale agreement and the price at which it was sold by the respondents at the auction amounted to \$380,000. The appellants are entitled to this amount plus the deposit of \$83,000 paid to Quah, making a total of \$463,000. Theoretically, that represented their interest in the property at the time of the mortgagee sale.

18 In *Chip Thye Enterprises*, the company discontinued its suit against Quah and never obtained final judgment. The Court of Appeal held that in the circumstances, the company had not rescinded the sale agreement and the agreement remained capable of specific performance. The company therefore

remained the owner of the property in equity. In the present case, the Purchasers opted to pursue a remedy of damages for breach of the Option, and the court assessed damages at \$18,007.53. Having elected and obtained damages for the breach of the Option, they can no longer be regarded as the owners of the Property in equity and are therefore not entitled to the \$95,000 appreciation in the value of the Property.

19 The holding in *Chip Thye Enterprises* that the company was entitled to the gain in the appreciation in the value of the property may present some problems when viewed from another perspective. The property in that case was sold over a year before Quah (the bankrupt there) was declared bankrupt and prices may have moved in a different direction. Had the value of the property depreciated, how would the company as the owner of the property in equity have been affected? In any event, that question does not arise in the present case where the Purchasers are not the owners of the Property in equity.

20 As for the damages and costs awarded by the court and any interest accrued, they are a judgment debt due to the Purchasers. *Chip Thye Enterprises* does not go so far as to hold that such a debt can be the subject of an equitable lien over sale proceeds. These are debts provable in bankruptcy under s 87(1) of the Bankruptcy Act.

21 In conclusion, the Purchasers only have an equitable lien over the balance sale proceeds to the extent of their \$187,750 deposit. As Tay's half share of \$210,471.52 has been paid to them, the lien is extinguished and they have no security over the remainder of the Disputed Sum for their outstanding claim. Based on the Purchasers' claim of the judgment debt of \$212,163.66 as of 27 March 2019, that outstanding amount is \$1,692.14. If they wish to pursue

their claims against Chan, they must file proofs of debt with the OA as did the Comptroller.

22 I will hear parties on costs at a later date.

- Sgd -
Choo Han Teck
Judge

Sasha Koh Yeong Hung (Yeo-Leong & Peh LLC) for the applicant;
Thomas Ng Hoe Lun (Circular Law Chambers LLP) for first and
second respondents;
Zhong Zewei (Insolvency & Public Trustee's Office) for the third
respondent;
Perry Elizabeth Wong Zhan Yan (Tan Rajah & Cheah) for the fourth
respondent;
Zheng Sicong (Inland Revenue Authority of Singapore) for the fifth
respondent.
