IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 5

Civil Appeal No 115 of 2020

Between

Letchimy d/o Palanisamy Nadasan Majeed (alias Khadijah Nadasan)

… *Appellant*

And

Maha Devi d/o Palanisamy Nadasan (the administrator of the estate of Devi d/o N Gurusamy, deceased)

… *Respondent*

In the matter of Suit 1294 of 2018

Between

Letchimy d/o Palanisamy Nadasan Majeed (alias Khadijah Nadasan)

… *Plaintiff*

And

Maha Devi d/o Palanisamy Nadasan (the administrator of the estate of Devi d/o N Gurusamy, deceased)

… *Defendant*

EX TEMPORE JUDGMENT

[Equity] — [Estoppel] — [Proprietary estoppel]
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v
Maha Devi d/o Palanisamy Nadasan (administrator of the estate of Devi d/o Gurusamy, deceased)

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Court of Appeal — Civil Appeal No 115 of 2020
Steven Chong JCA, Woo Bih Li JAD and Quentin Loh JAD
27 January 2021

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Steven Chong JCA (delivering the judgment of the court *ex tempore*):

1 This appeal arises from a dispute over the ownership and distribution of a Housing and Development Board ("HDB") flat ("Property") owned by one Devi d/o N Gurusamy ("Mother") who passed away intestate on 17 October 2017. The appellant and respondent are two of the Mother's six surviving children.

Background to the appeal

2 In Suit No 1294 of 2018 ("Suit 1294"), the appellant brought a claim against the respondent (as the administrator of the Mother's estate) for the transfer of the Property to her sole name. Alternatively, she sought an order that the value of the Property or its sale proceeds be transferred into her sole name. This was on the basis that the Mother had represented to the appellant on various

occasions that she would inherit the Property upon the Mother's passing ("Representations").

3 The High Court judge ("Judge") dismissed the appellant's claim on the basis that she had failed to plead her sole cause of action in proprietary estoppel. The Judge went on to consider the merits of the case and held that the appellant would have failed to prove the requisite elements of proprietary estoppel in any event.

4 The appellant advances two main arguments. First, though she concedes that proprietary estoppel was not explicitly pleaded, she avers that she had nonetheless pleaded its requisite elements such that the respondent was not taken by surprise in any manner. Second, she submits that on the evidence she had proved that Representations were made to her by the Mother and that she had relied upon them to her detriment. Her case is that the Mother had made the Representations to her on three distinct occasions: (a) in 2006 when the appellant and her husband sold their own property ("HDB Flat") to fund her husband's medical treatment; (b) in 2013 after her husband passed away; and (c) on 2 April 2013 after the Mother returned from her visit to the HDB's Bedok Branch ("HDB Branch") to add the appellant's name to the Property.

Our decision

5 We deal first with the issue of pleadings. The law is clear that although there is no strict necessity for the appellant to specifically plead the words "proprietary estoppel" or "estoppel", the Statement of Claim must disclose the material facts necessary to support such a claim, so as to give the respondent fair notice of the substance of the appellant's claim (*V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o*

Vaithilingam and another [2015] 5 SLR 1422 at [43]). Although the appellant had pleaded that she had an unspecified "equitable claim" over the Property at para 22 of the Statement of Claim Amendment No 1 ("Amended SOC"), the elements necessary to support a claim in proprietary estoppel were not sufficiently pleaded.

6 A crucial tenet of the appellant's case was that she gave the Mother two gifts of $10,000 and $20,000 in reliance on the alleged Representations. These gifts were mentioned in passing at para 11 of the Amended SOC. However, nowhere in the Amended SOC did the appellant assert that the gifts constituted "detriment" or evinced her "reliance" on the alleged Representations. Instead, the appellant specifically listed the various forms of her "reliance" at paras 16 to 18 of the Amended SOC, without any reference to the two gifts.

7 It bears mention that the Judge had warned the appellant on several occasions during the trial of the need to plead the material facts to support her claim in proprietary estoppel. Although the appellant subsequently availed herself of the opportunity to amend her Statement of Claim, she elected not to plead the material facts to support her claim. We therefore agree with the Judge that the appellant's claim was not sufficiently particularised.

8 Apart from the defects in her pleadings, the appellant's claim fails on the merits as the evidence adduced at the trial does not bear out any such claim. A claim in proprietary estoppel is made out where there is a representation by the party against whom the estoppel is sought to be raised and detrimental reliance by the party seeking to raise the estoppel (*Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 ("*Hong Leong*") at [170]).

9 There is no dispute that no objective documentary evidence supports the appellant's claim that the Mother had represented to her that she would inherit the Property upon the Mother's demise. In fact, the objective evidence squarely contradicts this. On 3 April 2013, the Mother on her own accord went to the HDB Branch and included the appellant as an *occupier* of the Property. This was long after the appellant had sold her HDB Flat in 2006. The point is that if the Mother truly wanted the appellant to inherit the Property, or to reassure the appellant that she would have a place to stay after the death of her husband in 2013, there was no reason why the Mother would have taken the trouble to visit the HDB Branch only to list the appellant as an *occupier*. Further, there is simply no evidence to suggest that the Mother had mistakenly added the appellant as an occupier if she had instead intended to add her as a *co-owner.* In our view, this is a very damaging piece of objective evidence against the appellant.

10 Shortly after the Mother passed away, the appellant sought legal assistance from the Community Justice Centre on 4 January 2018 in relation to the Property. Tellingly, the case notes from her visit stated that the dispute as perceived by the appellant was over the appointment of the administrator and the timing of the sale of the Property. The appellant was concerned that the administrator could order her to pay rent for the use of the Property pending the sale. It is significant that the appellant made no mention whatsoever about the alleged Representations, or her ownership claim over the Property. This indicates to us that the appellant never saw herself as the owner of the Property at the material time.

11 In the lead up to Suit 1294, the appellant instructed three sets of lawyers to write to the respondent. The letters all concerned the dispute over the *appointment of the administrator of the Mother's estate.* This was entirely

consistent with the nature of the assistance that she had sought from the Community Justice Centre. Significantly, there was no mention of the alleged Representations or the appellant's entitlement to the Property in *any of those letters*. In our view, the conspicuous absence of any reference to the Representations or the appellant's purported entitlement to the Property on each of the above occasions prior to the commencement of Suit 1294 severely undermined the appellant's claim. If the appellant truly believed that she was meant to inherit the Property based on the Representations, it would have been the natural thing for her to have raised her claim on those occasions.

12 Finally, contrary to her ownership claim, the appellant conceded that she wished to delay the sale of the Property for at least five years so that she would be in a position to buy it over. Her own witness, Selvarajoo, testified that the appellant had told him a few times, *after* the death of the Mother, that she wanted to buy over the Property. In our view, this concession is fatal to her claim as it is inconsistent with her case that she believed that she was entitled to the Property after the Mother's passing.

13 On appeal, the appellant focuses her case in respect of the Representations on the evidence of her three witnesses and the alleged shortcomings of the respondent's evidence. In our view, her claim fails on the objective evidence as the burden of proof lies with her. We also agree with the Judge that there was neither reliance nor detriment on the evidence.

14 Although we agree with the Judge that the appellant's claim fails both as a matter of pleadings and on the evidence, we consider it necessary to correct two observations made by the Judge in relation to the nature of representations under the doctrine of proprietary estoppel that (a) the alleged Representations

were not intended to be acted upon by the appellant and thus could not constitute a valid representation; and (b) a representation amounting to an oral will, *even if made*, could not be relied on to constitute a valid representation for the purpose of proprietary estoppel.

15 In our view, both observations are strictly incorrect. There is no legal requirement for the Mother (*ie,* the alleged representor) to have *intended* for the alleged Representations to be acted upon. The idea of a "representation" is "fairly broad covering the range from an agreement to an expectation that was created or encouraged by the party being estopped" and the doctrine of proprietary estoppel can be invoked in cases where the owner of the property had simply permitted the claimant to believe that he has some right or interest in the property through the owner's conduct, including silence (*Hong Leong* at [175] and [194]). It was noted in *Halsbury's Laws of Singapore – Equity and Trusts* Vols 9(3) and 9(4) (LexisNexis, 2020) at para 110.981 that the classic example of proprietary estoppel is said to be based on "silence and inaction, rather than any statement of action". Even in cases where the owner had merely "acquiesced", all that needs to be shown is that the owner was *aware* that the innocent party was in fact doing something that the former had acquiesced in (*Hong Leong* at [197]). There is no separate requirement for "intention".

16 In our view, an oral representation akin to an oral will may still constitute a representation for the purpose of establishing proprietary estoppel. Our courts have recognised that claims in proprietary estoppel can be founded on purely oral promises which are meant to take effect only upon the representor's death. In *Low Heng Leon Andy v Low Kian Beng Lawrence (administrator of the estate of Tan Ah Kng, deceased)* [2018] 2 SLR 799, the deceased, had before her passing, frequently emphasised to the claimant, in the

presence of his relatives and their family doctor that her property was not to be sold in the event of her demise and that the claimant would be free to live there for as long as he wished. She also expressed her intention to leave everything in the property to him. The deceased died intestate and this court granted the claimant a sum of $140,000 as equitable compensation for the loss of his life-long licence to continue living in the property.

17 Observations to a similar effect were also made by the learned author of Ben McFarlane, *The Law of Proprietary Estoppel* (Oxford University Press, 2014) at para 6.137 as follows:

> Although the point has been assumed rather than expressly considered by the courts, it is clear that **this formality rule** [*ie,* the requirement that a will must be in writing] **does not prevent a proprietary estoppel's claim being based on A's oral promise to leave assets to B on A's death.** In such a case, B's claim is not based on a testamentary disposition (a disposition that takes effect after A's death and is ambulatory and revocable during A's life). B rather claims that, at or prior to the time of A's death, A was under a liability to B. This is why, for example, a proprietary estoppel claim based on a testamentary promise may be brought before the time of A's death.

18 Therefore, while an alleged oral representation might constitute an oral will – although it would ordinarily be invalid for failure to comply with the formality requirements under the Wills Act (Cap 352, 1996 Rev Ed), this does not preclude it from fulfilling the "representation" requirement under the doctrine of proprietary estoppel. They engage separate doctrines and should not be confused.

Conclusion

19 For the reasons mentioned, we dismiss the appeal with costs fixed at $23,000, inclusive of disbursements. There will be the usual consequential orders.

Steven Chong
Justice of the Court of Appeal

Woo Bih Li
Judge of the Appellate Division

Quentin Loh
Judge of the Appellate Division

Tan Wen Cheng Adrian and Low Zhi Yu Janus (August Law Corporation) for the appellant;
K Mathialahan (Guna & Associates) for the respondent.