

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 111

Originating Summons No 1190 of 2019

In the matter of Sections 16 and 18 and Schedule
1 of the Supreme Court of Judicature Act (Cap
322)

And

In the matter of Order 92, Rule 4 of the Rules of
Court

And

In the matter of Section 48 of the Conveyancing
and Law of Property Act (Cap 61)

And

In the matter of the eleven (11) Sale and
Purchase Agreements dated 27th May 2008,
dated 22nd July 2008, dated 31st July 2010,
dated 29th April 2011, dated 24th March 2012,
dated 29th July 2012, dated 24th May 2014,
dated 24th May 2014, dated 4th March 2009,
dated 22nd May 2009, dated 16th August 2009
entered into between TOK EE CHENG and

JARDIN SMITH INTERNATIONAL PTE LTD
(collectively “the Agreements”)

And

In the matter of the Powers of Attorney and
Irrevocable Powers of Attorney given by way of
security executed by TOK EE CHENG pursuant
to the Agreements (collectively “the
Corresponding Powers of Attorney”)

Between

TOK EE CHENG

... Plaintiff

And

JARDIN SMITH
INTERNATIONAL PTE LTD

... Defendant

GROUND OF DECISION

[Agency] — [construction of agent’s authority] — [Powers of
attorney]
[Administrative Law] — [Remedies] — [Declarations]

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Tok Ee Cheng
v
Jardin Smith International Pte Ltd

[2020] SGHC 111

High Court — Originating Summons No 1190 of 2019
Lee Seiu Kin J
17 March 2020, 20 March 2020

26 May 2020

Lee Seiu Kin J:

Introduction

1 In this originating summons, the plaintiff (“Tok”) applied for a declaration that certain powers of attorney that she purportedly executed were null, void and of no effect.¹ On 20 March 2020, after hearing counsel for the parties, I dismissed the application. On 6 April 2020, Tok appealed against my decision. I now give the grounds for my decision.

¹ Plaintiff’s Further Submissions (“PFS”) p 17 para 23(1)

Facts

The parties

2 Tok purchased 14 plots of land in the United Kingdom through 11 sale and purchase agreements over approximately six years.² These were purchased from Jardin Smith International Pte Ltd (“Jardin”) for investment purposes.

3 Jardin purchases land, sub-divides it into plots, and sells these plots as investments. A profit is made when the land is eventually developed or acquired for a higher price. To facilitate this, all buyers of the subdivided plots appoint Jardin as the managing agent of the entire property, tasking it with developing the land and increasing its value. The buyers delegate certain managerial powers to Jardin through powers of attorney. The powers of attorney signed by Tok (“the POAs”) were the subject of this dispute.

Background to the dispute

4 Each of the 11 sale and purchase agreements executed by Tok were accompanied by two POAs and one TP1 Form from land registry.³ The two POAs were for use in Singapore and the United Kingdom respectively while the TP1 Forms were administrative documents from the English Land Registry used in transferring registered titles.⁴ While the sale and purchase agreements were duly executed by both parties and witnessed by Jardin’s employees, the execution of the POAs and the TP1 Forms were not signed by anyone who had

² Defendant’s Bundle of Documents (“DBD”) p1 – p 231

³ Tok Ee Cheng’s 1st Affidavit dated 24th September 2019 (“TEC1”) p 8 paras 11 – 12; Richard Gerald Sheridan’s Affidavit dated 7th November 2019 (“RGS”) p 5 para 10

⁴ RGS p 5 para 10

been physically present when Tok signed them.⁵ However each POA contained a declaration signed by a person purporting to have witnessed it.⁶

5 Jardin’s explanation was that “as a matter of practice”,⁷ its employees would not sign off as witnesses on the POAs. Its understanding was that “attestations as witness should be signed off by a witness unrelated to and not under [its] employ”.⁸ Instead, Jardin would keep the POAs and the TP1 forms and have a third party sign them as a witness before sending them to the United Kingdom to facilitate the land transfers.⁹ This was explained to Tok who was given to understand that this was the “usual procedure”¹⁰ and “normal for all investors”.¹¹

6 There were no complaints from Tok initially. Then in January 2012, plans for a rail development in the UK were announced.¹² This involved the compulsory acquisition of four of Tok’s plots (along with plots belonging to other investors) to make way for the said railway. Tok began making various complaints ranging from fraud and mismanagement of her assets¹³ to “[un]satisfactory answers or updates”¹⁴ about her investments and consequent

⁵ TEC1 p 10 para 15(3); RGS p 6 para 11

⁶ TEC1 p 11 paras 20 – 21; RGS p 6 para 11

⁷ RGS p 6 para 11

⁸ RGS p 6 para 11

⁹ Raihainah Binte Ramlee’s Affidavit date 7th November 2019 (“RBR”) p 4 para 9

¹⁰ TEC1 p 11 para 17

¹¹ TEC1 p 11 para 16

¹² RGS p 7 para 15

¹³ RGS p 438, 22 Jan 2015 Email

¹⁴ TEC1 p 13 para 30

to that, uncertainty about Jardin’s “legal responsibility as a Managing Agent as far as [the compulsory acquisition was] concerned”.¹⁵ With regard to the POAs specifically, Tok alleged that there were material misrepresentations made by Jardin about the POAs at the time of execution,¹⁶ that she had never received confirmed copies of the POAs,¹⁷ and that she had never intended to confer authority on Jardin to negotiate on her behalf regarding the compulsory acquisition.¹⁸ There were also complaints of procedural irregularities in the execution of the POAs.¹⁹ These alleged procedural defects were the subject of the present application.²⁰

Issues to be determined

7 The application itself was narrowly framed. As noted by Tok herself, the only issue was a matter “of law (and not of facts)”.²¹ The question was whether there were any procedural irregularities that invalidated the POAs. Therefore, I did not consider matters such as Jardin’s supposed mismanagement of Tok’s assets, the *scope* of the powers conferred by the POAs and the alleged misrepresentations made by Jardin concerning the POAs.

8 The alleged procedural irregularities were that:

¹⁵ RGS p 450

¹⁶ TEC1 p 18 para 57(1)

¹⁷ TEC1 p 19 para 57 (5)

¹⁸ TEC1 p 20 para 61(2)

¹⁹ TEC1 p 18 para 57(2) – p 19 para 57(4)

²⁰ PWS pp 38 - 41

²¹ PWS p 20 para 41(3)(c)(i)

- (a) The execution of the POAs had not been attested by a Commissioner for Oaths or Notary Public.²²
- (b) The POAs had not been registered with the Supreme Court.²³
- (c) The execution of the POAs had not been properly witnessed.²⁴

9 However, this being an application for declaratory relief, the preliminary question was whether the requirements for declaratory relief had been satisfied. The key requirement and the focus of my decision was whether there was a practical purpose to granting the relief sought. I found that there was none. On that basis alone, I saw it fit to dismiss the application.

My decision

10 In exercising its discretion to grant declaratory relief, the courts look to whether there is any useful or practical purpose for doing so: *Scott Latham v Credit Suisse First Boston* [1999] SGHC 302 at [59], affirmed on appeal by *Latham Scott v Credit Suisse First Boston* [2000] 2 SLR(R) 30 at [77]. When queried as to what utility a declaration would achieve, Tok submitted three reasons.

11 Firstly, she suggested that the declaration would “[clarify] the effect of the deeds of power of attorney she [had] signed”.²⁵ I rejected this entirely. Declaratory relief must be directed to the determination of legal controversies

²² TEC1 p 18 para 57(2)

²³ TEC1 p 18 para 57(3)

²⁴ TEC1 p 19 para 57(4)

²⁵ PFS p 17 para 23(1)

and not to answering abstract or hypothetical questions: *Salijah bte Ab Latef v Mohd Irwan bin Abdullah Teo* [1996] 2 SLR(R) 80 at [58] citing *Ainsworth v Criminal Justice Commission* (1992) 66 ALJR 271 at [278]. Clarity, though a happy by-product of many judicial determinations, is not reason enough to justify declaratory relief.

12 Secondly, Tok claimed that the declaration was necessary to “[remedy] the defective instruments” and a failure to address these defects “[would] definitely prejudice her [i]nvestments”.²⁶ This was a bare assertion and no explanation was given of how the allegedly defective instruments would have prejudiced her investments. The truth was, her investments had dropped in value due to other factors and not on account of the validity or otherwise of the POAs. As noted by Jardin, the compulsory acquisition was “likely to mean that owners of the affected ... plots ... would not recover their full investment”.²⁷ The only question was who was entitled to the compensation that ordinarily accompanies such compulsory acquisitions and how much of it they were entitled to. The declaration that Tok sought would not have addressed that matter at all.

13 Third, Tok contended that she “[would] or may [be exposed] to potential litigation in the future over whether the Defendant [was] authorized”²⁸ to manage her properties in relation to the compulsory acquisition. Again, this was purely speculative. It was uncertain if such litigation would visit her and what form it would take if it did. Indeed, upon perusal of Tok’s communications with the High Speed Two (HS2) Ltd, the body overseeing the compulsory acquisition

²⁶ PFS p 17 para 23(2)

²⁷ DWS p 16 para 26

²⁸ PFS p 17 para 23(3)

(“HS2”), it was clear that the only disputes were those that existed between Tok and Jardin. HS2 had no quarrel with Tok. In HS2’s words, “[t]he compulsory purchase of the land will continue irrespective of the legal position regarding ownership”.²⁹ It was not hostile or seeking legal action. If anything, it offered “legal processes ... to ensure that the compensation [was] protected until there [was] certainty [about who was entitled to the land compensation]”.³⁰ Hence, I could not accept that there was even a possibility of litigation that required some sort of anticipatory declaration with regard to the validity or otherwise of the POAs.

14 It seemed to me that Tok’s real grievance was the fact that her investments would result in a loss. But that had nothing to do with the issue of whether the POAs were valid or otherwise. Furthermore, if the POAs had been invalid due to Jardin’s fault and this had caused any loss to Tok, she would have been entitled to recover such loss in contract, or possibly negligence. But that was not the case and Tok wanted, for reasons best known to her, a bare declaration that did not make any difference to her financial position.

²⁹ TEC1 p 481

³⁰ TEC1 p 481

Conclusion

15 For these reasons, I found that there was no purpose in granting the declaratory relief sought. Put another way, a declaration would not have granted any “relief” in a real sense: *Diora Ace Ltd and others v Management Corporation Strata Title Plan No 3661 and another* [2015] 3 SLR 620 at [45]. I therefore dismissed the application but ordered parties to bear their own costs.

Lee Siu Kin
Judge

Liew Tuck Yin David (David Liew Law Practice) for the plaintiff;
Choo Ching Yeow Collin and Goh Guan Hui Felix (Tan Peng Chin LLC) for the
defendant.
