IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 55

Civil Appeal No 179 of 2019

Between

Ng Kong Yeam @ Woo Kwang Yean

Suing by:
1) Ling Towi Sing @ Ling Chooi Seng;
2) Ng Chung San;
3) Lena Irene Cheng Leng Ng; and
4) Iris Ng Tse Min

… *Appellant*

And

Kay Swee Pin

… *Respondent*

In the matter of Suit No 894 of 2016

Between

Ng Kong Yeam @ Woo Kwang Yean

Suing by:
1) Ling Towi Sing @ Ling Chooi Seng;
2) Ng Chung San;
3) Lena Irene Cheng Leng Ng; and
4) Iris Ng Tse Min

… *Plaintiff*

And

(1) Kay Swee Pin
(2) Wu Yimei Eva Mae

… *Defendants*

EX TEMPORE JUDGMENT

[Gifts] — [Presumptions against] — [Resulting trusts]

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(suing by Ling Towi Sing (alias Ling Chooi Seng) and others)
v
Kay Swee Pin

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8 June 2020

8 June 2020

Andrew Phang Boon Leong JA (delivering the judgment of the court *ex tempore*):

Introduction and brief facts

1 The appellant, Mr Ng Kong Yeam, is an octogenarian who is a retired businessman and a lawyer by profession. On 6 December 2013, the appellant was declared by the High Court of Malaya to be of unsound mind. Consequently, his family in Malaysia, namely, his wife and their three children, were empowered to manage his assets and estate, and to act for him in legal proceedings (collectively, "the litigation representatives").

2 The appellant cohabited with the respondent, Mdm Kay Swee Pin, in Singapore for about thirty years. In July 2013, he relocated to Malaysia to live with the litigation representatives following a deterioration in his mental condition. Throughout the intervening thirty years or so, the appellant was

estranged from his wife whom he married in 1962 (see *Ng Kong Yeam (suing by Ling Towi Sing (alias Ling Chooi Seng) and others) v Kay Swee Pin and another* [2019] SGHC 219 ("the Judgment") at [2], [7] and [72]).

3 The appellant and respondent's daughter, Ms Wu Yimei Eva Mae ("Ms Wu"), was the second defendant at the trial below. We note that she is not named as a party to this appeal.

4 The subject matter of Civil Appeal No 179 of 2019 ("CA 179") concerns 799,999 shares in NatWest Holdings (Pte) Ltd ("NHPL") which were transferred from the appellant to the respondent. The share transfer form was executed on 1 November 2010 and lodged on 1 April 2011 (see the Judgment at [10]). For convenience, we refer to these shares as "the NHPL Shares". By way of background, at the time this action was commenced, NHPL's assets comprised:

(a) more than 27 million shares in Sino-America Tours Corporation Pte Ltd ("SA Tours"), which made NHPL the majority shareholder of SA Tours; and

(b) an apartment at Cairnhill Road ("the Cairnhill Apartment"), which served as the family home for the appellant, the respondent and Ms Wu since 1991 (see the Judgment at [8]).

5 The litigation representatives advanced two claims in respect of the NHPL Shares:

(a) First, they submitted that the respondent holds the NHPL Shares on a resulting trust for the appellant ("the resulting trust claim").

(b) Second, and in the alternative, the litigation representatives submitted that the respondent is in breach of contract as she failed to provide the $1m consideration stipulated on the share transfer form ("the contractual claim").

6 Both claims were dismissed by the High Court judge ("the Judge") in their entirety. In essence, the Judge found that the $1m consideration represented loans which the appellant had extended to the respondent, and household expenses which she had incurred over their many years of cohabitation. When these loans and payments were made, the respondent did not envisage that they would be applied towards the NHPL Shares. Thus, the $1m consideration was past consideration which does not amount to valid consideration in law (see the Judgment at [26]–[31]).

7 Since the respondent did not provide any consideration for the NHPL Shares, a presumption of resulting trust arose in favour of the appellant. However, this presumption was rebutted by the respondent. The Judge, having thoroughly considered the entirety of the evidence, found that the appellant *intended to benefit* the respondent in transferring the NHPL Shares. The appellant had transferred both the *legal and beneficial interest* in the NHPL Shares to the respondent (see the Judgment at [159]).

8 Turning to the contractual claim, since there was no consideration provided by the respondent, there was no contract formed between the parties. Thus, the respondent could not be in breach of contract (see the Judgment at [175]).

9 Having carefully considered the parties' arguments, we are amply satisfied that the Judge did not err in dismissing both the resulting trust claim

and the contractual claim. Accordingly, we dismiss the appeal. These are the brief grounds for our decision.

The issues to be determined

10 We state at the outset that the litigation representatives have not, in this appeal, challenged the following findings made by the Judge:

(a) The evidence from previous court proceedings pertaining to the respondent's character were irrelevant in assessing her testimony in the present case (see the Judgment at [44]).

(b) Although a letter dated 29 March 2011 ("the 29 March 2011 Letter") suggests that the appellant retained the beneficial interest in the NHPL Shares, this letter was "created under highly suspicious circumstances … the authenticity of the photograph of the letter [was] doubtful and produced solely for the purposes of the present proceedings" (see the Judgment at [115]).

(c) Similarly, while the appellant's will dated 6 February 2012 ("the 6 February 2012 Will") suggests that he retained the beneficial interest in the NHPL Shares (as he bequeathed his shares in SA Tours to Ms Wu and Mr Ng Chung San ("NCS") (the appellant's son), and bequeathed the Cairnhill Apartment to NCS), there were "clearly suspicious circumstances … that throw the reliability of the 6 February 2012 Will into grave doubt" (see the Judgment at [143]).

11 Since these findings have not been challenged, we place no weight on both the 29 March 2011 Letter and the 6 February 2012 Will for the purposes of this appeal. For the avoidance of doubt, the Judge's findings in this regard

would not have warranted appellate intervention. We also note that the litigation representatives have not challenged the findings made by the Judge at [144]–[158] of the Judgment.

12 In our view, there are broadly three issues in this appeal:

(a) first, whether the respondent was prevented from rebutting the presumption of resulting trust because of an alleged failure to elect whether the share transfer was a gift or a sale;

(b) second, whether the Judge erred in finding that the presumption of resulting trust was rebutted; and

(c) third, whether the Judge erred in dismissing the contractual claim.

Our decision

Issue 1: Whether the respondent was prevented from rebutting the presumption of resulting trust because of an alleged failure to elect whether the share transfer was a gift or sale

13 The litigation representatives described the first issue as the main issue in this appeal. They asserted that it was untenable for the respondent to take the position (both in her affidavit of evidence-in-chief and at trial) that there was valid consideration for the share transfer (*ie*, $1m), and yet also maintain that it was a gift. According to the litigation representatives, because of the respondent's alleged failure to elect whether the share transfer was a gift or sale, this prevented her from rebutting the presumption of resulting trust. Her credibility ought to have been impugned by the Judge for maintaining a lie on oath throughout the trial.

14 We do not accept these contentions for the following reasons.

15 In the first place, we do not see any inconsistency *in the factual position advanced by the respondent*. When asked directly in cross-examination about her position on the share transfer, her evidence was clear that the share transfer was a gift:

> MR MARTIN: … Now, what does this transfer form represent? Is it a sale? I want to know your position.
>
> A: This transfer form is his shares to be transferred to me. *Actually, it's not a sale as such. Actually, what he wanted all along was to give it to me. It's actually a gift to me.* But we had to do the formalities.
>
> Q: I know you are not a lawyer and this may appear to be an unfair question, because if you look at the form, you have the words "Signed, sealed and delivered by the above transferee". As a lawyer, I can tell you, you don't need any consideration, you can put a seal out of love and affection.
>
> A: Yes, I know. That's why we agreed. It was my idea, I told him, he said it's a gift, but of course on the transfer form you cannot put zero dollars. Right? Normally people would put $1. So I said no, please put $1 million. It was my idea.
>
> [emphasis added]

16 Further, the respondent also testified that the $1m consideration reflected loans which she had extended to the appellant in the past, and household expenses incurred over their many years of cohabitation. In the circumstances, the share transfer cannot be characterised as a sale with valid consideration due to the rule against past consideration, *which applies as a matter of law*. The only question is whether the appellant had transferred *both* the legal and beneficial interest in the NHPL Shares to the respondent, or only transferred the legal interest in the NHPL Shares while retaining the beneficial interest in the same. The mere *fact* that the respondent perceived the $1m

consideration to be valid consideration does not in any way alter the application of the *legal* rule against past consideration, which excludes the possibility of the share transfer being a sale.

17 Finally, we note that the litigation representatives' contention is internally inconsistent as the operation of the presumption of resulting trust *rests on the premise that there is a lack of consideration* (see the decision of this court in *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 at [35]). In other words, when invoking the presumption, it is assumed that the share transfer *was not a sale with valid consideration*; otherwise, the presumption would not arise in the first place. The question of having to "elect" whether the share transfer was a gift or sale is beside the point.

18 The litigation representatives relied on our decision in *Wibowo Boediono and another v Cristian Priwisata Yacob and another and other appeals* [2018] 2 SLR 481 ("*Wibowo*"). However, that case is clearly distinguishable. There, the plaintiffs took inconsistent positions by claiming that their signatures on certain documents were forgeries, and yet also claimed in the alternative that the signatures were in fact theirs but procured by fraud (see *Wibowo* at [138]). To the contrary, and as we have explained, *there is no inconsistency in the factual position advanced by the respondent in the present case*. It follows from this that the decision of *Brailsford v Tobie* (1888) 10 ALT 194 does not assist the litigation representatives either, because it cannot be said that the respondent relied on *alternative* statements of fact (where one or the other must, to her knowledge, be false).

19 For these reasons, we therefore see no merit in the contentions advanced by the litigation representatives in respect of the first issue.

Issue 2: Whether the Judge erred in finding that the presumption of resulting trust was rebutted

20 The litigation representatives asserted that the Judge, in considering whether the presumption of resulting trust was rebutted, failed to apply "full rigour" to his analysis of the evidence. In our judgment, this assertion is unwarranted and we see no reason to interfere with the Judge's decision. We say so for the following reasons.

21 First, NHPL represented the fruits of the parties' relationship. The two main assets of NHPL, SA Tours and the Cairnhill Apartment, were central to the parties' lives together. The appellant and the respondent were involved in the management of SA Tours, with the respondent playing an active role in its day-to-day running as the appellant had a law practice on the side. In addition, the Cairnhill Apartment served as their family home (see the Judgment at [8] and [47]). It would therefore be entirely conceivable, there being no breakdown in the parties' relationship, that the appellant intended to benefit the respondent by way of the share transfer, and thereby "save [the respondent] the trouble of having to go through a probate process" and to "prevent a contested and ugly fight over his estate during the probate process" (see the Judgment at [49], [54] and [72]).

22 Second, we are satisfied that the Judge did not err in his analysis of the documentary evidence. On 13 November 2008, the appellant wrote to the respondent in an e-mail that he had decided to will SA Tours to the respondent. On 24 June 2010, the appellant gave instructions to draft a will which contained a clause stating that the appellant's shares in NHPL (excluding the shares of Pahlawan Sdn Bhd) would be bequeathed to the respondent and Ms Wu in equal shares ("the June 2010 Draft Will"). Thereafter, the share transfer form was

executed on 1 November 2010 and lodged on 1 April 2011. *Significantly, on 17 August 2011, the appellant amended the June 2010 Draft Will and* ***there was no express provision for the NHPL Shares in this later will*** ("the August 2011 Will"). In our judgment, this strongly indicates that the appellant had intended to benefit the respondent by transferring the NHPL Shares to her, and that *both* the legal and beneficial interest in the NHPL Shares were transferred to the respondent. Otherwise, given that the appellant had a *specific clause* concerning the NHPL Shares in the June 2010 Draft Will, it would be *inconsistent* for there to be no provision relating to the NHPL Shares in the August 2011 Will, if, indeed, the appellant still retained the beneficial interest in the NHPL Shares (which we do not accept). It is, in our assessment, highly unlikely that the appellant would have intended for the NHPL Shares to be dealt with through the residual clause in the August 2011 Will, as the litigation representatives suggested.

23 Third, we are also satisfied that the Judge was entitled to give full weight to Ms Rita Khoo's ("Ms Khoo") evidence. The Judge found that she was a forthcoming and candid witness who was reliable and independent. Ms Khoo, the appellant's personal assistant at the material time of the share transfer, gave evidence that the appellant had told her that he would be transferring the NHPL Shares to the respondent to save her the trouble of having to go through the probate process (see the Judgment at [63]). While we accept that Ms Khoo's evidence constitutes hearsay evidence, there is no question that it was admissible pursuant to s 32(1)(*j*)(i) of the Evidence Act (Cap 97, 1997 Rev Ed) ("Evidence Act"), as the litigation representatives rightly recognised.

24 We note also the litigation representatives' contention that by virtue of the parol evidence rule, the respondent and Ms Khoo were prevented from contradicting the written *contract* of sale in the share transfer form by re-

characterising it as a gift. Section 94 of the Evidence Act embodies the parol evidence rule, and pursuant to that provision, evidence cannot be admitted for the purpose of contradicting, varying, adding to, or subtracting from the *terms* of the share transfer form. Here, the issue does not relate to the *terms* of the share transfer form. Rather, evidence extrinsic to the share transfer form can be relied on for two purposes – first, to determine if the $1m sum stipulated on the share transfer form was past consideration and second, to determine if the presumption of resulting trust was rebutted. The parol evidence rule does not apply in these circumstances.

25 Accordingly, we affirm the Judge's finding that the presumption of resulting trust was rebutted, and his dismissal of the resulting trust claim.

Issue 3: Whether the Judge erred in dismissing the contractual claim

26 In our judgment, the third issue can be disposed of fairly briefly. It cannot be seriously disputed that the $1m consideration represented past consideration and thus, the respondent could not be in breach of contract since there was no contract to begin with. There is no evidence to suggest that the parties intended for the share transfer to be a commercial transaction where the respondent was to pay $1m to the appellant. When one considers that the NHPL Shares were worth approximately $20m (Judgment at [60]) and the relationship between the parties, it is distinctly unlikely that the share transfer was a commercial transaction; rather, the $1m consideration was simply a nominal figure that reflected past consideration.

27 We observe that, strictly speaking, the respondent did not plead that the contractual claim ought to be dismissed because of a *lack of consideration*. Instead, the respondent's consistent position has been that there was *valid*

consideration which was fully paid. Nonetheless, we are of the view that this did not prevent the Judge from reaching the conclusion that there was no contract because of a lack of consideration, since it is well established that while "material facts must be pleaded … the legal conclusions to be drawn from them need not" (see the decisions of this court in *MK (Project Management) Ltd v Baker Marine Energy Pte Ltd* [1994] 3 SLR(R) 823 at [26] and *Toh Wee Ping Benjamin and another v Grande Corp Pte Ltd* [2020] SGCA 48 at [38]).

28 We therefore affirm the Judge's decision to dismiss the contractual claim.

Conclusion

29 For the above reasons, the appeal in CA 179 is dismissed. We note that the respondent has submitted that the litigation representatives should bear the costs of the appeal personally. We do not think that we should exercise our discretion in favour of the respondent based on the facts and circumstances before us.

30 Having regard to the parties' respective costs schedules, we award the respondent costs in the amount of $45,000 (all-in). There will be the usual consequential orders.

Andrew Phang Boon Leong	Chao Hick Tin	Quentin Loh
Judge of Appeal	Senior Judge	Judge

Martin Roderick Edward SC, Sharon Chong Chin Yee, Nandhu, Yap Yongzhi Gideon and Eugene Tan Song Jin (RHTLaw Asia LLP) for the appellant;
Suresh s/o Damodara, Ong Ziying Clement and Khoo Shufen Joni (Damodara Ong LLC) for the respondent.
