

Lum Kai Heng v Quek Peng Chai and Others
[2001] SGHC 61

Case Number : Suit 600228/2000, RA 600263/2000
Decision Date : 27 March 2001
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : K S Chung (Chung & Co) for the appellant/plaintiff; Tan Cheng Han (Tan Cheng Yew & Partners) for the first and the second defendants/respondents; Alan Wong Hoi Ping (William Lai & Alan Wong) for the third defendant/respondent; Kelvin Tan (Drew & Napier) for the fourth defendant/respondent
Parties : Lum Kai Heng — Quek Peng Chai; Quek Lee Tiam; Keppel Tat Lee Bank Limited; Saranya Sae-Ngow

JUDGMENT:

Grounds of Decision

1. This is a dispute over the ownership of funds in joint banking accounts after one account holder died. These accounts were in the names of the Plaintiff, a lady of 67, and her late husband Quek Cheok Boon (hereinafter referred to as "the deceased") who died on 18 February 1998. The grant of probate for the deceased's estate was made in favour of the First and Second Defendants, a son and a daughter of the Plaintiff and the deceased on 17 September 1999.

2. The deceased held four joint accounts with the Plaintiff -

(i) Account No. 028-19153-7 at the Post Office Savings Bank (now part of DBS Bank);

(ii) Account No. 116-127-140-9 at United Overseas Bank Ltd (UOB);

(iii) Time Deposit Account No. 16479002 with Keppel Tat Lee Bank Ltd (hereinafter referred to as "the Third Defendant"); and

(iv) Account No. 24-30089-4 with the Third Defendant.

3. Before the grant of probate to the First and Second Defendants, the Plaintiff had operated the POSB and UOB accounts. On 17 February 1998 she withdrew \$1,183,266.80 from POSB account No. 028-19153-7 and deposited it into account No. 125-05785-3 held in the names of the Plaintiff and Quek Li Kheng, another daughter of the Plaintiff and the deceased at the same bank. On 18 February 1998 she withdrew \$218,055.87 from UOB account No. 116-127-140-9 and deposited it into account No. 126/110/722/3 at the same bank. (On 24 February 1998 she withdrew the same sum from the latter account and deposited it into POSB account No. 125-05785-3.)

4. After the Second Defendant received the grant she obtained the passbooks for POSB account No. 028-19153-7 and UOB account No. 116-127-140-9 from the Plaintiff. She took the position that the monies in these joint accounts belonged to the deceased's estate and demanded that the Plaintiff return the \$1,183,266.80 and \$218,055.87 withdrawn from those two accounts.

5. The Plaintiff withdrew \$1,401,322.67 from POSB account No. 125-05785-3 in a cashier's order made payable to the First and Second Defendants and handed it to the Second Defendant, but she subsequently obtained legal advice, and now claims the monies as her property.

6. The Third Defendant became involved through a series of transactions commencing on 6 August 1998. The Plaintiff claimed

that on that day a Teng Cheong Guan (hereinafter referred to as Teng), an employee of the Third Defendant suggested to her that the sums standing to her credit in accounts No. 16479002 and No. 24-30089-4 with the Third Defendant could be transferred into other accounts with the Third Defendant to earn higher rates of interest. When she accepted the suggestion, Teng produced nine sheets of paper bearing the Third Defendant's letter-head and she attached her signature to them. The Plaintiff now claims Teng made fraudulent representations to get her to sign them, and she signed *non est factum*.

7. The Plaintiff also alleges that Teng used one of the signed sheets without her knowledge and consent to close account No. 16479002 which had a credit balance of \$1,024,063.54 and transferred \$524,063.54 to a new account No. 24-30156-4 in the sole name of the Plaintiff and placed the balance of \$500,000 into another time deposit account, and that Teng used another signed sheet to close account No. 24-30089-4 and transfer the balance of \$72,144.12 therein to account No. 24-30156-4.

8. On 4 September 1998, the Third Defendant transferred \$588,000 from account No. 24-30156-4 and paid it into account No. 24-72217-9 in the joint names of the First and Second Defendants. The Plaintiff alleged that this was done without her approval and that another of the signed sheets was used to enable this to be done.

9. On 7 September 1998 the Third Defendant transferred \$500,000 from account No. 86219001 to account No. 24-72217-9. The Plaintiff alleged that this transfer was done without her consent, and that another signed sheet was used for the purpose.

The action

10. The Plaintiff's action against the First, Second and Third Defendants was filed on 29 February 2000. The Plaintiff seeks declarations that the \$1,401,322.67, \$500,000 and \$588,000 belong absolutely and beneficially to her and do not form part of the deceased's estate, and she wants those sums to be repaid to her. The First and Second Defendants deny her claim and assert that the money is a part of the deceased's estate.

The proposed amendments

11. On 29 May 2000 an application was filed by the Plaintiff to add the Fourth Defendant as a party and to amend the Statement of Claim. The Fourth Defendant Saranya Sae-Ngow is the wife of Quek Peng Hock, another son of the Plaintiff and the deceased. She became involved because she was a holder with the First and Second Defendants of accounts No. 8-6084013 and No. 24-722179 at the Third Defendant into which \$1,401,322.67 was paid. (She has ceased to be a holder of these accounts.)

12. The proposed amendments are intended to add new claims against the Defendants based on fraud, malice and conspiracy. Allegations of fraud, malice and conspiracy are repeated throughout the proposed amendments. The main assertions are in

(i) a new paragraph 13 -

13. On or about the 24th February 1998 the 1st, 2nd and 4th Defendants wrongfully and maliciously conspired and combined amongst themselves to defraud and to injure the Plaintiff by obtaining from her the cashier's order for the said sum and fraudulently deposited the said cashier's order into 2 accounts with the 3rd Defendant in the joint names of the 1st, 2nd and 4th Defendants as hereinafter pleaded without the Plaintiff's knowledge consent or approval.

(ii) the proposed re-numbered paragraph 14 (with the proposed amendments in italics) -

14.

The 1st, 2nd and 4th Defendants have wrongfully claimed and continue to claim, that the said sum was beneficially solely owned by the Deceased and forms part of the Deceased's estate, and *treated the said sum as their joint asset which they deposited it in 2 accounts in their joint names with the 3rd Defendant on the 24th February 1998 without the knowledge consent or approval of the Plaintiff. Particulars of the 2 accounts are as follows:-*

(1) 24.2.98 Deposit of \$1,400,000 into Account No. 86084013 (hereinafter referred to as "Account D" - the deception account) with the 3rd Defendant fraudulently in the joint names of 1st, 2nd and 4th Defendants

(2) 24.2.98 Deposit of \$1,322.67 into Account No. 24-72217-9 (hereinafter referred to as "Account F" - the fraud account) with the 3rd Defendant also fraudulently in the joint names of 1st, 2nd and 4th Defendants

The Plaintiff will at the trial of this action refer to the statements of the above Accounts kept by the 3rd Defendant with the knowledge of the 1st, 2nd and 4th Defendants or alternatively in conspiracy with the 1st, 2nd and 4th Defendants.

(iii) the proposed re-numbered paragraph 19 -

19.

On 4th September 1998 the 3rd Defendant, without the knowledge, approval or consent of the Plaintiff, *fraudulently and maliciously conspired with the 1st, 2nd and 4th Defendants and* caused the sum of \$588,000 to be withdrawn from Account No. 24-30156-4 and paid into Account F in the joint names of the 1st and 2nd and 4th Defendants. The Plaintiff never authorised or ratified such withdrawal or transfer, which was made without her knowledge, approval or consent. The 3rd Defendant purports to rely upon a cash withdrawal authorization form, printed in English, and signed by the Plaintiff. The said cash withdrawal authorization form in one of the said nine sheets was signed by the Plaintiff in blank on 6th August 1998 in reliance on the oral representation of the 3rd Defendant's employee Teng Cheong Guan that her signature would be used to effectuate the transfer of funds in Time Deposit Account No. 16479002 and Account No. 24-30089-4 onto other accounts for the benefit of the Plaintiff with the 3rd Defendant.

(iv) the proposed re-numbered paragraph 20 -

20.

On 7th September 1998, the 3rd Defendant, without the knowledge, approval or consent of the Plaintiff, *fraudulently and maliciously conspired with the 1st, 2nd and 4th Defendants and* caused the sum of \$500,000 to be withdrawn from Account No. 86219001 and paid into Account F in the joint names of the 1st, 2nd and 4th Defendants. The Plaintiff never authorised or ratified such withdrawal or transfer, which was made without her knowledge, approval or consent. The Third Defendant purports to rely upon a general request form, printed in English on one of the said nine sheets and signed by the Plaintiff. The said general request form was signed by the Plaintiff in blank on 6th August 1998 in reliance on the oral representation of the 3rd Defendant's employee Teng Cheong Guan that her signature would be used to effectuate the transfer of funds in Time Deposit Account No. 16479002

and Account No. 24-30089-4 onto other accounts for the benefit of the Plaintiff with the 3rd Defendant.

(v) the proposed re-numbered paragraph 21 -

21.

The 1st, 2nd and 4th Defendants have wrongfully *and fraudulently* claimed and continue to claim, that the said sums of \$500,000 and \$588,000 were beneficially solely owned by the Deceased and form part of the Deceased's estate, and have claimed the total sum of \$1,088,000 *which the 1st, 2nd and 4th Defendants fraudulently and maliciously deposited into Account F as their joint account with the assistance of the 3rd Defendant as banker in their joint names as pleaded in paragraphs 19 and 20 hereof.*

and

(vi) the proposed re-numbered paragraph 25 -

25.

By reason of the fact that the transfers of the said sums of \$500,000 and \$588,000 out of accounts in the sole name of the Plaintiff into *Account F* in the names of the 1st, 2nd and 4th Defendants were *made in pursuance and in furtherance of the malicious conspiracy by all the Defendants fraudulently* without authority and unlawfully, the Plaintiff has suffered loss and damage in the sum of \$1,088,000.

13. In her affidavit in support of her application to amend, the Plaintiff deposed that

I am of the view that the 3 joint accountees have acted in concert to defraud me and the fraud was perpetuated in pursuance and in furtherance of a conspiracy which I am required to plead if I seek to rely on it.

and

(f)rom certain documents sent to my Solicitors by Executors' Solicitors containing various statements of accounts of the sum of \$1,401,322.67 taken from me and from the transfers of that sum from my account to the joint accounts of the 3 joint accountees, I have reason to believe that those 3 joint accountees with the help of the Bank were acting fraudulently and maliciously in concert against me and I am advised by my Solicitors and verily believe that the evidence of the said transfers of my monies ending in the accounts of the 3 joint accountees is evidence of conspiracy on the part of all the defendants to defraud me. Accordingly, I wish to plead conspiracy and I am advised by my Solicitors and verily believe that I am required to amend my Statement of Claim to include a claim for damages for conspiracy.

14. The application to join the Fourth Defendant was granted. The application to amend the Statement of Claim was resisted by all the Defendants, and was dismissed.

15. In his written submissions Mr Chung, counsel for the Plaintiff quoted from 20/8/10 of The Supreme Court Practice 1999 (hereinafter referred to as "the White Book") that

a plaintiff will be allowed to amend by adding a claim for special damage when proof of special damage is essential to the cause of action (*Weldon v. Neal* (1887) 19 Q.B.D. 394) or to add a new claim which is "so germane to, and so connected with, the original cause of action, that it would be a denial of justice" if leave to add it were refused. (*Att.-Gen. v. West Ham Corp.* (1910) 74 J.P. 196, CA). A plaintiff may add a new cause of action, the defendant a new defence.

and he submitted that

(t)he amendment is now made necessary because of the accounts received by the Plaintiff at a very late date i.e. on 15.5.00 which show clearly that there was a conspiracy to defraud the Plaintiff by not only the 2 Defendants but also another party, Saranya -the fraud being the opening of the various accounts said to be Estate accounts in the names of not only the Executors but of Saranya.

16. The main objections to the amendments relevant to this appeal were that no particulars of fraud were pleaded and that the Plaintiff would succeed if she can show that she is entitled to the money in the joint accounts with the deceased without having to establish undue influence, constructive trusteeship or fraud, and the proposed amendments would delay the trial of the action.

17. The Assistant Registrar who heard the application dismissed it, noting

The real issue in dispute between the parties is one of the beneficial ownership of the monies in the joint accounts. The further purported claims founded on conspiracy and fraud, apart from being poorly pleaded and particularised, also did not add anything further to the Plaintiff main claim. Indeed they will only eclipse the real dispute between the parties and unnecessarily delay the trial of the action. Consequently, I disallowed the application to amend the pleadings to add the pleas of fraud and conspiracy. However, I am of the view that the Plaintiff is entitled to pursue an action for amount and/or repayment from the 4th Defendant who managed the disputed accounts at some point. I therefore give the Plaintiff liberty to apply to amend the statement of claim to seek the reliefs presently sought against the 1st, 2nd and 3rd Defendants, subject to the above remarks.

The further amendments

18. The Plaintiff appealed against his decision. When the appeal came on for hearing on 31 October 2000 Mr Chung made further amendments to the proposed amendments so that-

(i) the former proposed re-numbered paragraph 19 be re-numbered paragraph 18 and be further amended to read (with the further amendments in italics)

18. On or about 4th September 1998 the 3rd Defendant, without the knowledge, approval or consent of the Plaintiff, *fraudulently and maliciously conspired with the 1st, 2nd and 4th Defendants* and caused the sum of \$588,000 to be withdrawn from Account No. 24-30156-4 and paid into Account F in the joint names of the 1st, 2nd and 4th Defendants.

PARTICULARS

The best particulars which the Plaintiff can give before discovery are that it was agreed on or before 4th September 1998 between the 3rd Defendant and the 1st, 2nd and 4th Defendants that Account F would continue to be maintained by the 3rd Defendant; and that the 3rd Defendant would transfer monies held in an account of the Plaintiff's into Account F. The said agreement was carried into effect as hereinafter appears by the transfer by the 3rd Defendant of funds out of accounts held in the Plaintiff's name into Account F as set out below.

The Plaintiff never authorised or ratified such withdrawal or transfer, which was made without her knowledge, approval or consent. The 3rd Defendant purports to rely upon a cash withdrawal authorization form, printed in English, and signed by the Plaintiff. The said cash withdrawal authorization form in one of the said nine sheets was signed by the Plaintiff in blank on 6th August 1998 in reliance on the oral representation of the 3rd Defendant's employee Teng Cheong Guan that her signature would be used to effectuate the transfer of funds in Time Deposit Account No. 16479002 and Account No. 24-30089-4 onto other accounts for the benefit of the Plaintiff with the 3rd Defendant.

(ii) the former re-numbered paragraph 20 be re-numbered paragraph 19 and be further amended to read

19. On or about 7th September 1998, the 3rd Defendant, without the knowledge, approval or consent of the Plaintiff, *fraudulently and maliciously conspired with the 1st, 2nd and 4th Defendants* and caused the sum of \$500,000 to be withdrawn from Account No. 86219001 and paid into Account F in the joint names of the 1st, 2nd and 4th Defendants.

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The best particulars which the Plaintiff can give before discovery are that it was agreed on or before 7th September 1998 between the 3rd Defendant and the 1st, 2nd and 4th Defendants that Account F would continue to be maintained by the 3rd Defendant; and that the 3rd Defendant would transfer monies held in an account of the Plaintiff's into Account F. The said agreement was carried into effect as hereinafter appears by the transfer by the 3rd Defendant of funds out of accounts held in the Plaintiff's name into Account F as set out below.

The Plaintiff never authorised or ratified such withdrawal or transfer, which was

made without her knowledge, approval or consent. The Third Defendant purports to rely upon a general request form, printed in English on one of the said nine sheets and signed by the Plaintiff. The said general request form was signed by the Plaintiff in blank on 6th August 1998 in reliance on the oral representation of the 3rd Defendant's employee Teng Cheong Guan that her signature would be used to effectuate the transfer of funds in Time Deposit Account No. 16479002 and Account No. 24-30089-4 onto other accounts for the benefit of the Plaintiff with the 3rd Defendant.

19. Mr Chung submitted that the amendments should be allowed because the object of the court in determining whether to grant leave to amend is to enable the pleadings to reflect the real issues in dispute, and parties should not be penalised for mistakes made in the conduct of their cases, if such errors can be corrected without doing injustice to the parties.

20. After hearing counsel, I dismissed the appeal on two grounds. Firstly, I agreed with the Assistant Registrar that the proposed amendments were defective for the absence of particulars of the fraud, malice and conspiracy alleged.

21. Order 18 rule 12(1)(a) and (b) of the Rules of Court prescribe that

12.- Subject to paragraph (2), every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing words

(a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies; and

(b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies.

22. The function of particulars is set out in the White Book at 18/12/2 thus -

The requirement to give particulars reflects the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly, without surprises and, as far as possible, so as to minimise costs (a view approved by Edmund-Davies L.J. in *Astrovlanis Compania Naviera SA v. Linard* [1972] 2 Q.B. 611; [1972] 2 All E.R. 647) The function of particulars is accordingly:

(1) to inform the other side of the nature of the case that they have to meet as distinguished from the mode in which that case is to be proved (*per* Lindley L.J. in *Duke v. Wisden* (1897) 77 L.T. 67 at 68, *per* Buckley L.J. in *Young & Co. v. Scottish Union Co.* (1907) 24 T.L.R. 73 at 74; *Aga Khan v. Times Publishing Co.* [1924] 1 K.B. 675 at 679);

(2) to prevent the other side from being taken by surprise at the trial (*per* Cotton L.J., in *Spedding v. Fitzpatrick* (1888) 38 Ch.D. 410 at 413; *Thomson v. Birkley* (1882) 31

W.R. 230);

(3) to enable the other side to know with what evidence they ought to be prepared and to prepare for trial (*per* Cotton L.J. *ibid.*; *per* Jessel M.R. in *Thorp v. Holdsworth* (1876) 3 Ch.D. 637 at 639; *Elkington v. London Association for the Protection of Trade* (1911) 27 T.L.R. 329 at 330);

(4) to limit the generality of the pleadings (*per* Thesiger L.J. *Saunders v. Jones* (1877) 7 Ch.D. 435) or of the claim or the evidence (*Milbank v. Milbank* [1900] 1 Ch. 376 at p.385);

(5) to limit and define the issues to be tried, and as to which discovery is required (*Yorkshire Provident Life Assurance Co. v. Gilbert* [1895] 2 Q.B. 148, *per* Vaughan Williams L.J. in *Milbank v. Milbank* [1900] 1 Ch. 376 at 385);

(6) to tie the hands of the party so that he cannot without leave go into any matters not included (*per* Brett L.J. in *Philipps v. Philipps* (1878) 4 Q.B.D. 127 at 133; *Woolley v. Broad* [1892] 2 Q.B. 317) see n. "All material facts" para. 18/7/11; and *Woolley v. Broad* [1892] 2 Q.B. 317). But if the opponent omits to ask for particulars, evidence may be given which supports any material allegation in the pleadings (*Dean of Chester v. Smelting Corp.* [1902] W.N. 5; *Hewson v. Cleve* [1904] 2 Ir.R. 536).

23. The Assistant Registrar was right in finding that the proposed amendments before him were poorly pleaded and particularised. The affidavit deposed by the Plaintiff in support of her application showed that there was very little that she can identify to substantiate the charges of fraud, malice and conspiracy.

24. No explanation was offered for making the further amendments in the course of the appeal. It was not stated whether the Plaintiff accepts the Assistant Registrar's finding and makes the further amendments on account of it, or she does not accept the ruling but is making the amendments nevertheless.

25. In any event, the particulars pleaded in the further amendments are not proper particulars. They refer to agreements between the Defendants on 4 September 1998 and 7 September 1998 - the dates on which monies were transferred from accounts in the Plaintiff's name with the Third Defendant to the joint account of the First and Second Defendants with the Third Defendant. No particulars were given of the Defendants' fraud and malice or the conspiracy they hatched.

26. The requirement for particulars to support a plea of fraud is well settled. In *Wallingford v Mutual Society* (1880) 5 App. Cas 685 Lord Selborne held at p 697

With regard to fraud, if there be any principle which is perfectly well settled, it is that general allegations, however strong may be the words in which they are stated, are insufficient even to amount to an averment of fraud of which any Court ought to take notice.

and Lord Watson concurred, adding at p 709

I cannot think that a mere statement that fraud had been committed, is any compliance with the words of that rule which require the Defendant to state facts entitling him to defend. The rule must require not only a general and vague allegation but some actual fact or circumstance or circumstances which taken together imply, or at least very strongly suggest, that a fraud must have been committed, those facts being assumed to be true.

27. The second ground for my decision is that the proposed amendments are not relevant to the real question of controversy between the parties. As the editors of the White Book note at para 20/8/6 -

It is a guiding principle of cardinal importance on the question of amendment that, generally speaking, all such amendments ought to be made "for the purpose of determining the real question in controversy between the parties to any proceedings or of correcting any defect or error in any proceedings" (see, per Jenkins L.J. in *G.L. Baker Ltd v. Medway Building & Supplies Ltd* [1958] 1 W.L.R. 1216 at 1231; [1958] 3 All E.R. 540 at 546).

28. The essential question in the Plaintiff's action is whether the monies in the joint accounts held by her and her late husband belonged to her or his estate upon his death. If they were hers, her action will succeed without any need to show fraud, malice and conspiracy on the part of the Defendants. If the money belonged to the estate, fraud, malice and conspiracy on the part of the Defendants would not make the money hers. Counsel for the First and Second Defendants accepted that if the Plaintiff is right on the issue of survivorship, his clients are liable without the claim being amended.

29. Applicants for amendments are apt to argue that an amendment should be allowed if it can be made without injustice to the other side and there is no injustice if the other side can be compensated by costs by relying on Brett M.R.'s pronouncement to that effect in *Clarapede v Commercial Union Association* (1883) 32 WR 262. But the test does not stop there. The usefulness of the proposed amendments should also be considered. The White Book states at 20/8/24

The Court will always look at the materiality of the proposed amendment (*Wood v. Earl of Durham* (1888) 21 Q.B.D. 501). An inconsistent or useless amendment will not be allowed (*Sinclair v. James* [1894] 3 Ch. 554 at 557; *Durham v. Robertson* [1898] 1 Q.B. 765 at 774; *Bevan v. Barnett* (1897) 13 T.L.R. 310; *C.H. Pearce and Sons Ltd v. Storechester Ltd* (1983) *The Times*, November 17, CA).

30. When Lord Griffiths examined the principles applicable to amendments of pleadings in *Ketteman v Hansel Properties Ltd* [1987] AC 189 he said at p 220 that "a judge must weigh in the balance the pressure on the courts caused by the great increase in litigation and the consequent necessity that, in the interests of the whole community, legal business should be conducted efficiently." That applies with equal force in Singapore.

31. The proposed amendments will enlarge the areas of dispute, lengthen the trial, and increase costs. They are useless or immaterial insofar as they do not assist in the determination of the real question in controversy, and are inimical with the efficient resolution of the dispute between the parties.

32. The appeal was dismissed for these reasons. However the Plaintiff does not accept the outcome, and is taking the matter on appeal again.

Kan Ting Chiu

Judge

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