

Chee Jok Heng Stephanie v Chang Yue Shoon
[2010] SGHC 153

Case Number : Suit No 827 of 2009
Decision Date : 20 May 2010
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Andrew J Hanam (Andrew & Co) for the plaintiff; S H Almenoar (R Ramason & Almenoar) for the defendant.
Parties : Chee Jok Heng Stephanie — Chang Yue Shoon

CONTRACT – Misrepresentation – Fraudulent

RESTITUTION – Money Had and Received

TRUSTS – Trustees – Duties

20 May 2010

Judgment reserved.

Woo Bih Li J:

Introduction

1 The plaintiff Chee Jok Heng Stephanie (“Dr Chee”) claims in this action the repayment of two sums of \$45,000 and \$682,000 respectively from the defendant Chang Yue Shoon (“Mr Chang”).

Dr Chee’s case

2 Dr Chee was introduced to Mr Chang sometime before March 2006 by his then business associate one Dr Mel Gill. According to Dr Chee, Mr Chang was described to her as a “lawyer specialising in criminal matters”.

3 In the second quarter of 2006, Dr Chee faced accusations of criminal conduct in connection with her role as a consultant with the charity Parkway Healthcare Foundation and its associated Senior Citizens' Health Care Centres.

4 In or about March 2006, Dr Chee contacted Mr Chang seeking legal advice concerning the accusations against her. She stated that at a meeting between them shortly after, Mr Chang represented to her that he was a criminal lawyer. Again, according to Dr Chee, he said he was a good friend and close collaborator with one Peter Low, a lawyer, and for a monthly fee of \$15,000 he offered to provide her with legal advice “together with Peter Low”. Dr Chee agreed to this arrangement.

5 In March 2006, Mr Chang corresponded with Dr Chee in connection with her sole proprietorship, Wilcare Consulting Group (“Wilcare”). While providing his *curriculum vitae* to Dr Chee in this context, he said that he “read law with the University of London” without mentioning that he did not graduate from this course.

6 Dr Chee attested that in several interactions with her and her daughters between March 2006 and September 2009, Mr Chang had consistently held himself out as a lawyer doing professional legal work with Peter Low for Dr Chee. Her second and youngest daughters, Marie Bernadette Paul and Sharon Lourdes Paul respectively, also testified that he had held himself out as a lawyer. According to Dr Chee's evidence he maintained this impression throughout the course of her criminal charges and eventual trial in late 2009.

7 In May, June and July 2006 respectively, Dr Chee made three payments of \$15,000 (a total of \$45,000) to Mr Chang. The first two were by personal cheques drawn on Dr Chee's account and the third was by a cheque drawn on Wilcare's account and described in an accompanying letter dated 13 July 2006 with Wilcare's letterhead as "payment for your consultancy services rendered to [Wilcare]". Dr Chee's evidence was that these three payments were for Mr Chang's legal services, with the third described otherwise on Mr Chang's own instructions. Through Mr Chang, Dr Chee formally engaged Peter Low as counsel in August 2006.

8 In August 2006 Dr Chee, allegedly following Mr Chang's instructions, closed Wilcare and continued its business in the same premises under Action Research Academy Pte Ltd ("ARA") with herself as director and Mr Chang as sole shareholder. Her evidence was that Mr Chang had received payments and reimbursement for expenses from ARA without performing work of a substantial nature for the company.

9 In mid-2007, Dr Chee sold a property at 985 Bukit Timah Road #05-11, Maplewoods, Singapore 589627 ("the Maplewoods property"). After completion of the sale, she collected the net proceeds of \$856,555.29 on 10 September 2007. According to Dr Chee, Mr Chang told her that she should not retain the proceeds in her bank account as they were liable to be seized by the Commercial Affairs Department ("CAD") in connection with criminal investigations against her. Dr Chee's evidence stated that Mr Chang then proposed to hold the proceeds on trust for her to be returned once her criminal case had been resolved. Dr Chee's account of events concluded that after deducting expenses for herself and her family, she agreed to have Mr Chang hold \$682,000 for her on trust as he suggested.

10 On 13 September 2007, Dr Chee gave a cheque for \$682,000 to Mr Chang. Dr Chee stated that on Mr Chang's suggestion, the cheque was photocopied and the following words were written by Dr Chee on the document containing the copy of the cheque, "Return of friendly loan – interest free." Mr Chang allegedly explained that this was a simple way to explain the payment. Both parties signed below these words. Mr Chang allegedly kept the original of this document while Dr Chee kept a copy.

11 As mentioned above at [\[1\]](#), Dr Chee is now claiming restitution of the sum of \$45,000 paid to Mr Chang from May to July 2006 and the sum of \$682,000 paid to Mr Chang on 13 September 2007. Her claim is essentially founded on fraud. In the case of the \$45,000, this seems more specifically to be a claim to rescind a contract for Mr Chang's services that she was induced to enter by his fraudulent misrepresentation that he was a criminal lawyer. In the case of the \$682,000, the claim seems to be for recovery of money paid to Mr Chang due to his fraudulent advice that the CAD might otherwise seize the money.

Mr Chang's case

12 Mr Chang's defence stated that he was never introduced to Dr Chee as any kind of lawyer, nor did he ever represent to Dr Chee that he was a lawyer. While he had previously undergone some legal education (though without obtaining a degree) and had some working experience as an articled clerk, he denied ever having told Dr Chee or her daughters either expressly or by implication that he was a lawyer or had any specialisation in criminal matters. His evidence was that Dr Chee formed her

impression that he was knowledgeable in criminal law entirely of her own accord, possibly through overhearing his conversations with friends on matters of legal procedure. He conceded that he did inform Dr Chee in an email that he had "read law with the University of London", but stated that the focus of that email was on his other business-related experience. While he agreed that he introduced Dr Chee to Peter Low, he stated that he only agreed to help Dr Chee with her legal matters to the extent of collating documents and other sundry tasks in exchange for a reduction of Peter Low's legal fees as Dr Chee was in financial difficulties. He testified that he did this for Dr Chee "as a friend".

13 Concerning the \$45,000 paid to him from May to July 2006, Mr Chang stated that these were monthly fees paid to him in his role as a business consultant for Wilcare which he took up in May 2006 after receiving an invitation to do so by Dr Chee in April 2006. He explained that she had intended to have him develop the business in anticipation of her eventual departure from the Parkway Healthcare Foundation. In this light, he denied that he instructed Dr Chee to describe Wilcare's payment of \$15,000 to him in July 2006 as a consultancy fee, stating that the letter covering that payment should be taken at face value.

14 Mr Chang also denied that he had instructed Dr Chee to discontinue Wilcare, carry on business under ARA or transfer the shareholding of ARA to himself. He stated that all this was done in August 2006 on the initiative of Dr Chee, who wanted him to be the sole shareholder for ARA as a mere nominee. Mr Chang stated that he worked for ARA as a business consultant and in this role he received reimbursement for expenses and was entitled to monthly consultancy fees of \$15,000 though these were not paid between August 2006 and August 2007. Instead he was paid by ARA on an *ad hoc* basis.

15 Mr Chang did not dispute that Dr Chee gave a cheque for \$682,000 to him on 13 September 2007 which was part of the proceeds of sale from the Maplewoods property. However, he denied ever telling Dr Chee that the CAD might seize her proceeds of sale or that he ever instructed her to write "Return of friendly loan – interest free" on the photocopy of the cheque. Indeed, he claimed that at the time he signed the photocopy there were no such words thereon. He did not produce any original or copy of this document. His evidence was that after having been unpaid for some time he gave notice of his resignation from ARA. To persuade him not to leave the company, Dr Chee decided to have him hold the sum of \$682,000, of which part would be used to settle his outstanding and future consultancy fees and part would be held on trust for her to be applied on her instructions. Mr Chang stated that between September 2007 and December 2008, the \$682,000 was fully accounted for in the following ways:

(a) Moneys paid to Dr Chee in cash	(i) 18 September 2007	\$80,000
	(ii) 28 September 2007	\$212,000
	(iii) 10 October 2007	\$60,000
(b) Money paid into the account of ARA on Dr Chee's instructions	18 September 2007	\$80,000
(c) Money paid to a Malaysian company PI Energy Water Treatment 2007 Sdn Bhd on Dr Chee's instructions		\$43,785
(d) Money paid to Mr Chang in settlement of outstanding consultancy fees due to him from August 2006 to August 2007		\$90,000

(e) Balance		\$116,215
-------------	--	-----------

16 Mr Chang concluded his account of events by stating that in December 2008, he had met with Dr Chee and they agreed that the balance from the \$682,000 (*ie*, \$116,215) should be kept by Mr Chang in settlement of his outstanding consultancy fees from September 2007 to December 2008.

17 However, Mr Chang clarified in his testimony that there was an error in that the two entries for the \$80,000 paid in (a)(i) and (b) referred to in [\[15\]](#) above were actually in respect of a single payment of \$80,000 into ARA's account.

The law on fraud

18 It is settled law that a contract can be rescinded if a contractor was induced to enter it by fraudulent misrepresentation: see, *eg*, *Jurong Town Corp v Wishing Star Ltd* [2005] 3 SLR(R) 283 and *Newbigging v Adam* (1887) 34 Ch D 582 at 592 per Bowen LJ. It is also established that where money is paid to a person wrongfully (as in a case of fraud or bribery) the sum can be recovered as money had and received: *Sumitomo Bank Ltd v Thahir Kartika Ratna and others and another matter* [1992] 3 SLR(R) 638.

19 Fraud is established when "a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false": *Derry v Peek* (1889) 14 App Cas 337 per Lord Herschell at 374, followed in *Blue Nile Co Ltd v Emery Customs Brokers (S) Pte Ltd* [1990] 1 SLR(R) 396 at [9] by Chan Sek Keong J.

Findings

20 I am convinced that Mr Chang knowingly made false representations to Dr Chee that he was a criminal lawyer. In an email to him on 23 March 2006, Dr Chee asked Mr Chang, "Do you have a short cv of yourself, eg. NRIC, age, and some lines on your working experience, qualification (*ie*, LLB) so that I can have it in my record for reference?" The fact that Dr Chee clearly expected Mr Chang to state an LLB qualification strongly suggests that Mr Chang had explicitly told her he was a lawyer before that date. When he replied to this email, he told her he had "read law with the University of London" without disclosing that he did not graduate with a degree. In so doing, he clearly suggested that he was a law graduate. To me, this was part of his overall deception notwithstanding that his email was sent in the context of his providing a curriculum vitae for his involvement in Wilcare's business.

21 I also find that he actively maintained his pretence over time. I accept the evidence that in 2008 he also told Dr Chee's daughters that he was a lawyer. While 2008 was some time after his first meetings with Dr Chee in 2006, I believe that his words then were a continuation of the false impression that he had created in 2006.

22 In addition, in a conversation with Dr Chee on 25 August 2009 which was tape-recorded by Dr Chee, the following exchange took place:

Dr Chee: Are you going to inform Peter Low that you are going to shred it? And not pass to him? *I am sure he regards you as his lawyer to assist you, to assist my case.*

Mr Chang: Not only that Stephanie, not only that OK. Not only just that. It is not, only that. *It's not only just that I am sitting on as his advisor OK.*

And later in the same conversation,

Mr Chang: *So if you don't want to take my legal advice, the onus goes back to you!*

Dr Chee: Peter Low is your friend and he also needs your help in this matter.

Mr Chang: *Peter Low is looking at me to look at you!*

[emphasis added]

In these exchanges, he held himself out as an "advisor" to Dr Chee's counsel Peter Low and a provider of "legal advice" to Dr Chee. In another recorded conversation the next day on 26 August 2009, the following exchange was recorded:

Sharon Why he [Peter Low] so "bo chap" one?

Lourdes

Paul:

Mr Chang: Because you give him nothing to "chap" what. When you give people peanuts, normally they associate you with monkey. *Peter is handling the matter because of Richard Chang.* So even the brother "bo chap" her [Stephanie Chee], you think as a lawyer...? *So it's my job to anchor the ship.*

[emphasis added]

Here, Mr Chang stated that his role was to "anchor the ship" in Dr Chee's criminal matter. I would add that Dr Chee explained that it was Mr Chang who had advised her that there was no need to obtain permission from another person before tape-recording a conversation.

23 Although the above conversations were recorded in 2009, I am also of the view that they were a continuation of the false impression that Mr Chang had created in 2006. In my view, Mr Chang's course of conduct from 2006 to 2009 was calculated to generate and sustain the false impression that he was a lawyer providing Dr Chee indispensable professional services in relation to accusations of a criminal nature against her. I do not accept Mr Chang's defence that he never said or implied any such thing. While there is still a gap in the account before the court as to how and when Dr Chee realised that Mr Chang had lied to her about being a lawyer, this does not preclude me from finding Mr Chang fraudulent in this respect.

24 I accept Dr Chee's evidence that she was desperate for legal advice relating to the criminal accusations against her at that time. The effect of Mr Chang's fraudulent representation of himself as a lawyer, especially a criminal lawyer, was to induce Dr Chee to contract with him for his legal advice in March 2006 for a fee of \$15,000 a month which she paid for three months from May to July 2006 for a total of \$45,000.

25 I am also satisfied that in September 2007, Mr Chang falsely told Dr Chee that her proceeds from the sale of the Maplewoods property were liable to be seized by the CAD. He made this statement to convince Dr Chee to have him hold all or part of the sale proceeds from the Maplewoods

property. I conclude that Dr Chee believed Mr Chang's fraudulent statement that the CAD might seize the proceeds of sale from the Maplewoods property just as she had trusted him on previous occasions. I also do not believe Mr Chang's evidence that the words "Return of friendly loan – interest free" on the photocopy of the cheque were not written at his suggestion. The words were calculated to give an investigator the false impression that he was entitled to the money. I find that Mr Chang instructed her to write those words as part of his overall deception concerning this money to give the impression that she was repaying a loan to him. I do not believe Mr Chang's defence that he never made any such representation, especially in the light of his reaction when confronted with his statement by Dr Chee in a tape-recorded conversation on 25 August 2009:

Dr Chee: Put it this way, after the sale of Maple Woods, you took my \$600,000 plus for legal fees! *That's what you told me because the CAD will seize it!*

Mr Chang: *Please take back that word now!*

Dr Chee: You can't say that! You really said it was for legal fees!

Mr Chang: *Please take back that word now! Now, is a chance to take back that word!*

Dr Chee: Why? I trusted you, that's why you took the money.

Mr Chang: *Please take back that word. You know why. Please take that word.*

...

Dr Chee: What! So you are dropping my case already lah?

Mr Chang: *Take back that word!*

Dr Chee: What word? You are dropping my case?

Mr Chang: *Take back your word! You do not want to take back your words? Look don't. Take back your words! Take back your words now! Take back your words now! Take back your words now! Take back your words now! Because I don't want to explain myself anymore to you or anybody. (Louder Voice) (Shouting)*

Dr Chee: Ok ok take back.

[emphasis added]

To me, this seemed not to be the reaction of an offended man falsely accused, but one with a guilty conscience who was afraid of the consequences of his action. Not once during the conversation did he suggest that Dr Chee had paid the money to him of her own volition. The fact that Dr Chee mentioned that she was prepared to take back her words does not suggest an untruth from her but was rather her response to a man who was getting more and more agitated, causing her to decide to back off thus.

26 I find that Dr Chee believed sincerely in Mr Chang's status as a lawyer and in his indispensable role in her legal advice and criminal defence (as seen above in [\[22\]](#)). This was due in large part to his false statements and conduct. In addition, she regarded him as a key business partner and personal guide, describing him in an email sent on 21 May 2007 as having "marketing and visionary capability and high emotional intelligence, to help complement me" in addition to being "my Saviour and best role model". Email between them from 12 July 2006 and 5 May 2007 shows that over this period Mr Chang assumed a dominant position in their relationship, with Dr Chee apologising profusely to him for perceived slights or wrongdoings with strongly self-deprecating language. Her testimony, which I

believe, is that she was afraid that he would cease his work on her criminal case with disastrous consequences for herself. He threatened to do as much in the recorded conversation on 25 August 2009:

Dr Chee: Previously you asked me to photocopy document to you, that to pass on to Mr Peter Low?

Mr Chang: *I hands off it already...*

Dr Chee: Sorry?

Mr Chang: *I hands off it already...*

...

Dr Chee: So that means you are not going to pass over to Peter Low basically lah.

Mr Chang: *I hands off totally...*

Dr Chee: What about the documents. You are not going to pass on to Peter Low?

Mr Chang: *I hands off totally, you understand? I will shred it.*

[emphasis added]

27 Considering the nature of their relationship, I find it believable that Dr Chee would seek and accept Mr Chang's instructions on a variety of issues, including what account to pay his fees from (as stated in her email of 12 July 2006), how to frame the nature of payments for him (as seen from the covering letter for Wilcare's \$15,000 payment to him in July 2006), and the shareholding arrangement of the company ARA.

28 I determine that Dr Chee's payment of \$682,000 to Mr Chang on 13 September 2007 was based on two motivations. The first was her mistaken belief that the proceeds from the sale were liable to be seized by the CAD. The second was her ongoing belief in Mr Chang's false representations that he was a lawyer and that he was therefore entitled to a monthly fee of \$15,000 for his legal services. Taking into account both these motivations, she paid him the money partly to be held on trust for her to prevent its seizure, and partly on account for his legal fees which had not been paid regularly since July 2006.

29 Mr Chang's defence includes an account for the sum of \$682,000 as set out above at [\[15\]](#).

30 I do not believe Mr Chang's unsupported assertion that Dr Chee had asked him to return large sums of money to her in cash just two weeks (\$212,000 on 28 September 2007) and four weeks (\$60,000 on 10 October 2007) after establishing the trust arrangement on 13 September 2007. While there was evidence that these two sums were withdrawn from Mr Chang's account, there was no evidence, beyond his own allegation, that Dr Chee had received the two sums.

31 Mr Chang has admitted that the 18 September 2007 payment of \$80,000 was not made to Dr Chee but to ARA. The burden was on him to establish that this was on her instructions or for her benefit. He has not discharged this burden. As for the \$43,785 paid to PI Energy Water Treatment 2007 Sdn Bhd, I do not accept Mr Chang's explanation that this was paid on Dr Chee's instructions as part of a business venture for ARA. In an email from Dr Chee to ARA's staff on 27 August 2008 and in a related handwritten note dated 1 September 2008 it is stated that the \$43,785 was to be regarded as a personal loan by Mr Chang to ARA. I find Dr Chee's testimony that this was part of Mr Chang's

personal business more believable. In any event, the burden was again on Mr Chang to establish that payment of this sum was made on her instructions and he failed to discharge the burden.

32 The remaining sums in Mr Chang's account are of \$90,000 supposedly in settlement of his consultancy fees from ARA up to August 2007 and a balance of \$116,215 which he asserts that Dr Chee agreed to let him keep in December 2008 in settlement of the remainder of his unpaid fees up to that time. While I accept that Mr Chang did perform some business-related work for ARA, he was paid by ARA for these services on an *ad hoc* basis. Mr Chang suggested that the \$90,000 was for payment for his consultancy fee (of \$15,000 a month) for a period of 12 months from September 2006 to August 2007 but that would have worked out to \$180,000 and not \$90,000. In any event, I do not accept that he was to be paid \$15,000 a month for consultancy work at ARA. The figure of \$15,000 a month was supposed to be for his legal advice. It is also telling that when Dr Chee asked for the return of her money in a conversation recorded on 7 September 2009, Mr Chang did not point to any payment of part of the money on her instructions or to their supposed settlement of the balance in December 2008. Instead, he responded as follows:

Dr Chee: Can you help me, pay me back the money?

Mr Chang: Look, Stephanie, extended... extended... I have in fact got any time...

Dr Chee: *I mean the money from the Maple Woods sale, cos I really need the money Richard.*

Mr Chang: *Stephanie, I don't have the money. If I had the money, I would have extended everything to... already.*

Dr Chee: Last time you told me is to protect me from my legal case.

Mr Chang: Look, Stephanie, it wasn't like that, it wasn't like that. So let's be more reasonable.

Dr Chee: Last time you told me the CAD would take it from me.

Mr Chang: No, it wasn't like that Stephanie (repeating). Let's be more reasonable than that lah... ok.... It wasn't like that... That's why I asked you to take back your words the other day.

Dr Chee: Please lah Richard I really need the money... I'm really so broker [*sic*] until I don't know how. Until car also cannot afford to pay.

Mr Chang: *Stephanie, do you know that in a month's time I'll be bankrupt. That's how I want to resolve this damn matter ok? I want to resolve this matter as soon as possible so that when they make me bankrupt, I won't be there, ok? In a month's time I'll be bankrupt ok?*

Dr Chee: I need the money Richard.

Mr Chang: *Look if I have... I would come forward.*

Dr Chee: My whole family is looking for me... my grandson also.

Mr Chang: *Look if I have, I would offer you. I have extended to a limit that I told you I have, I have extended to myself... I, look, banks everybody is chasing after me, I got zero. I have zero and negative. I am going to. I'm. Next month... bankrupt... but I want.*

Dr Chee: What do you mean "get me"? People were chasing you after the money ah?

Mr Chang: That's how I want to close this matter, as soon as possible. And I... I have, I have.

Dr Chee: *Is there any left behind after the Maple Woods?*

Mr Chang: *If I have! Stephanie, if I have, if I have...*

[emphasis added]

As such, I do not accept Mr Chang's evidence that part of the \$682,000 had been paid on Dr Chee's instructions and the balance settled by an agreement with her in December 2008.

33 There is also the point that there was an error in Mr Chang's statement of account. The first \$80,000 which was allegedly paid to Dr Chee was a duplication as elaborated above at [\[17\]](#). Although Mr Chang accepted the error, he was not prepared to return this sum. His explanation was that the overall settlement in December 2008 allowed him to retain whatever money was left even though his statement of account was in error. I have already mentioned that I do not accept his explanation that there was an overall settlement.

Illegality

34 In his submission for the defence, Mr Chang's counsel raised the issue of illegality. This issue arose because according to Dr Chee, she had transferred the sum of \$682,000 to Mr Chang to prevent the CAD from seizing it, a purpose which was illegal on its face although there was no evidence that the CAD was in fact interested in the sum. Unfortunately, Dr Chee's counsel did not address this issue in his reply submission and so I did not receive any assistance from him on it.

35 The general principle of illegality (also known as *ex turpi causa*) is based on a public policy that prevents the court from assisting a litigant whose cause of action is based on illegality: *Holman v Johnson* [1775] 1 Cowp 341 at 343 per Lord Mansfield as quoted in *Koon Seng Construction Pte Ltd v Chenab Contractor Pte Ltd and another* [2008] 1 SLR(R) 375 ("*Koon Seng Construction*") at [29] per Belinda Ang Saw Ean J. Although the principle originated in the context of illegal contracts, it has been confirmed to apply to other causes of action. As Ang J states in *Koon Seng Construction* at [28]:

... In fact, the *ex turpi* principle is not confined to any particular cause of action. Beldam LJ in *Clunis v Camden and Islington Health Authority* [1998] QB 978 observed that the *ex turpi* principle was not so limited to cases of tort. At 987, he said:

We do not consider that the public policy that the court will not lend its aid to a litigant who relies on his own criminal or immoral act is confined to particular causes of action.

36 It is further established that illegality need not be pleaded by either party to be an issue before the court. On this point, Ang J states in *Koon Seng Construction* at [31]-[32]:

31 ...

(d) Where the court is satisfied that all the relevant facts are before it and it can see clearly from them that the contract had an illegal object, it may not enforce the contract, whether the facts were pleaded or not.

32 The fourth proposition finds expression and is applied in the case of *Lewis & Queen v N M Ball Sons* 48 Cal 2d 141 (1957). The illegality there did not arise from the pleadings and the

defendants did not raise it in their defence, but the court raised the illegality of its own motion and dismissed the action on that ground. The plaintiffs there argued on appeal (and that too was Mr Quek's contention) that the trial court should not have raised the issue of illegality because it should have confined its findings to the issues raised by the pleadings. The court rejected the contention...

It therefore falls to me to address the issue of illegality notwithstanding that it was not pleaded by Mr Chang or raised during the trial. As mentioned, this issue was raised in respect of the \$682,000 and not the other sum of \$45,000 initially paid.

37 The first question I must answer is whether Dr Chee and Mr Chang were *in pari delicto*, or to put it another way, similarly implicated in the illegality of the agreement such that one cannot rely on the agreement against the other. This is a requirement for the doctrine of illegality to apply: *Holman v Johnson* ([35] supra) at 343. There is authority that establishes that fraud can render a plaintiff not *in pari delicto* vis-à-vis a defendant and therefore not susceptible to the illegality rule: *Hughes v Liverpool Victoria Friendly Society* [1916] 2 KB 482 ("Hughes"). However, as noted in *PP v Intra Group (Holdings) Co Inc* [1999] 1 SLR(R) 154 ("*Intra Group*") at [73] by Yong Pung How CJ, in the *Hughes* case, the plaintiff was actually misled by the defendant's agent into believing that the illegal insurance contracts she was taking out were in fact legal. This lack of knowledge of the illegality was critical to the English Court of Appeal's finding that the parties were not *in pari delicto*. I have already found that Dr Chee agreed to hand the sum of \$682,000 to Mr Chang based on his fraud. However, although his fraudulent statements led her to believe the money might be seized by the CAD, I do not think that she was deceived into thinking that the transaction was legal. Dr Chee therefore did not seem to be in the same position of innocence as the plaintiff in *Hughes*.

38 In *Intra Group*, the respondent raised an additional point in respect of the doctrine of *in pari delicto* where the transfer of property was induced by a breach of fiduciary duty. This exception was based on the judgement of the Federal Court of Australia in the case of *Weston v Beaufils* (1994) 122 ALR 240 ("*Weston*"). In that case the plaintiff, Weston, sought the assistance of a solicitor, Beaufils, in avoiding detection for his previous income tax evasion. Beaufils advised him to transfer his property to dummy companies set up by himself and another defendant. Weston followed this advice and the defendants misappropriated his property. Hill J granted Weston a declaration that the companies held the property on trust for him. He based this on an exception to the doctrine of illegality where the tainted transfer of property was induced by a breach of fiduciary duty by the defendant. The relevant parts of Hill J's reasoning are summarised by Yong CJ in *Intra Group* at [64] as follows:

... The basis of [Hill J's] reasoning is set out in two important passages. At 266, he stated:

The first, and a very relevant exception [to the doctrine of illegality] on the facts of the present case, is said to apply where, although the parties may be *in pari delicto* in relation to the transaction which brings about a transfer of property sought to be recovered, that transaction has been induced by fraud of one of the parties, or there has been a breach of fiduciary duty by one of the parties to the other. This is but another way of saying that the parties are not *in pari delicto* at all.

And then at 267:

In recommending, as a solicitor to Mr Weston, that moneys be paid to the Coolangatta Hotel company, in which Mr Beaufils had an interest, and that assets be transferred to companies under the control of Mr Beaufils, the latter stood in a fiduciary relationship to his client. That

relationship he breached by putting himself in a position where his duty and his interest conflicted. Mr Weston acted upon Mr Beaufils advice. It would be unconscionable now for Mr Beaufils to be in a position to defend the present proceedings and thus be enriched by his own breach of duty on the basis that there was an illegal arrangement to which both he and Mr Weston were parties and that accordingly the loss should remain where it lay (ie on Mr Weston, not Mr Beaufils). In truth, there was no equality in the illegal participation. Mr Weston and Mr Beaufils were not in *pari delicto*. For this reason I am of the view that the defence of Mr Beaufils should fail.

39 However, at [73], Yong CJ ultimately declined to apply the exception for breach of fiduciary duties in Singapore, distinguishing it from the English cases on fraud:

... Where the party seeking to recover is not innocent but aware of the illegality of the transaction, he cannot succeed: *Parkinson v College Of Ambulance Ltd* [1925] 2 KB 1, a decision of the Court of Appeal distinguishing *Hughes*. I am not certain that the same degree of "innocence" could be attributed to the plaintiff in *Weston*. Accordingly, I have my reservations as to whether it forms part of the same line of decisions as *Hughes* and [*Shelley v Paddock* [1980] 2 WLR 647]. I therefore think *Weston*, on its facts, extends those cases to a point not as yet accepted in England, or, for that matter, in Singapore.

40 I would be inclined to apply *Weston* on the facts before me. Dr Chee had relied on Mr Chang as a lawyer even though she was aware of the illegality. In such circumstances, I would be inclined to think that Dr Chee was not *in pari delicto* with Mr Chang.

41 In any event, Dr Chee would, in my view, be entitled to rely on another ground. The English case of *Tinsley v Milligan* [1994] 1 AC 340 ("*Tinsley*") is treated as the leading authority for claims based on property rights acquired through an illegal transaction. Lord Browne-Wilkinson's judgment represents the reasoning adopted by a majority of the House of Lords. After a review of the authorities on the enforcement of legal title obtained under illegal contracts, he summarises at 370:

From these authorities the following propositions emerge: (1) property in chattels and land can pass under a contract which is illegal and therefore would have been unenforceable as a contract; (2) a plaintiff can at law enforce property rights so acquired provided that he does not need to rely on the illegal contract for any purpose other than providing the basis of his claim to a property right; (3) it is irrelevant that the illegality of the underlying agreement was either pleaded or emerged in evidence: if the plaintiff has acquired legal title under the illegal contract that is enough.

And extending this reasoning from legal title to equitable title at 371, he concludes:

In my judgment to draw such distinctions between property rights enforceable at law and those which require the intervention of equity would be surprising. ... If the law is that a party is entitled to enforce a property right acquired under an illegal transaction, in my judgment the same rule ought to apply to any property right so acquired, whether such right is legal or equitable.

4 2 *Tinsley* was followed by the Singapore Court of Appeal in *Top Ten Entertainment Pte Ltd v Lucky Red Investments Ltd* [2004] 4 SLR(R) 559 at [34]. It does not prescribe a general rule that the doctrine of illegality can be circumvented where the illegality is not relied on by the plaintiff, but rather provides a special exception in the case of property rights. This is explained in *Stone & Rolls Ltd (In Liquidation) v Moore Stephens (A Firm)* [2009] 1 AC 1391 by Lord Philips of Worth Matravers

at 1452-1453:

The House in *Tinsley v Milligan* did not lay down a universal test of *ex turpi causa*. It was dealing with the effect of illegality on title to property. It established the general principle that, once title has passed, it cannot be attacked on the basis that it passed pursuant to an illegal transaction. If the title can be asserted without reliance on the illegality, the defendant cannot rely on the illegality to defeat the title. ... The House did not hold that illegality will never bar a claim if the claim can be advanced without reliance on it. On the contrary, the House made it plain that where the claim is to enforce a contract the claim will be defeated if the defendant shows that the contract was for an illegal purpose, even though the claimant does not assert the illegal purpose in making the claim: see *Alexander v Rayson* [1936] 1 KB 169, approved by Lord Browne-Wilkinson at p 370.

...

In *Tinsley v Milligan* the *ex turpi causa* defence failed because the respondent did not need to plead the illegal agreement in order to establish her equitable title.

43 The exception in *Tinsley* ([41] *supra*) to the doctrine of illegality is relevant to the present facts. Evidence of an illegal transaction has emerged both in the pleadings and in the evidence provided by Dr Chee. However, her claim is based on an equitable property right that she obtained (or rather retained) after settling the sum of \$682,000 with Mr Chang on an express trust for her benefit. Even if I hold that part of the money was not held on express trust for Dr Chee but was to be held on account for Mr Chang's legal fees, I have no difficulty finding that he held that part for her on constructive trust because he induced her to pay it to him through fraud (following *Ho Kon Kim v Lim Gek Kim Betsy and others and another appeal* [2001] 3 SLR(R) 220 which applied *Bahr v Nicolay (No 2)* (1988) 164 CLR 604; 78 ALR 1). Although she described the illegal purpose of hiding funds from the CAD as the motivation for this transaction, all she needed to prove her property right was that Mr Chang held the money on trust for her (a fact Mr Chang did not dispute) and that the money was not disbursed according to her instructions or for her benefit. She did not actually need to rely on any evidence of illegality to establish her property right.

44 Applying the judgment of Lord Browne-Wilkinson in *Tinsley* at 370, Dr Chee "does not need to rely on the illegal contract [in this case trust agreement] for any purpose other than providing the basis of [her] claim to a property right". As such, I find that her claim falls under an exception to the doctrine of illegality and as such, Mr Chang is not entitled to oppose it on this basis.

Conclusion

45 Mr Chang made fraudulent misrepresentations to Dr Chee. These had the effect of making her pay him under a contract for service the sum of \$45,000 and on trust and on account for fees the sum of \$682,000. I order restitution of both sums on the basis of rescission of contract and money had and received respectively.

46 I would like to make an additional point. Notwithstanding that Mr Chang was not a lawyer, the evidence of both parties suggests that he did perform considerable work in connection with Dr Chee's criminal matter. This included discussions with Dr Chee alone, with Dr Chee and her counsel Peter Low together, collation of documents, assistance in court during the trial and in one instance, working overnight on a statement of facts. However, as Mr Chang has not pleaded an alternative entitlement to a *quantum meruit* payment for his efforts, I will not consider this possibility further. Even if the issue had been formally raised, I would have hesitated to reward a person who provided services on

the basis of fraudulent representations about himself. That might encourage a fraudster to proceed with his fraud knowing that even if his fraud was discovered he would still be reimbursed on an alternative basis.

47 In any event, in view of the circumstances, I will not order payment of any interest by Mr Chang. However, he is to pay the costs of the action to Dr Chee to be agreed or taxed.

Copyright © Government of Singapore.