

Tan Kah Hock and Another v Chou Li Chen and Others
[2009] SGHC 263

Case Number : Suit 267/2007, SUM 3920/2009
Decision Date : 23 November 2009
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Lee Mun Hooi and Lee Shi Hui (Lee Mun Hooi & Co) for the plaintiffs; Kevin Kwek (Legal Solutions LLC) for the defendants
Parties : Tan Kah Hock; Tan Kah Hong — Chou Li Chen; Assobuild Construction Pte Ltd; Assobuild Private Limited

Civil Procedure

23 November 2009

Tan Lee Meng J:

1 The defendants in Suit No 267 of 2007, Mr Chou Li Chen ("Mr Chou"), Assobuild Construction Pte Ltd and Assobuild Pte Ltd applied for the recording of the satisfaction of the final judgment in the said suit dated 12 March 2009 ("the final judgment"). The plaintiffs in Suit No 267 of 2007, Mr Tan Kah Hock and Mr Tan Kah Hong, accepted that they had received the sum of A\$1,365,316.22 from the defendants, who had made it clear that the money was intended to satisfy the final judgment. However, they unilaterally decided that this sum would be held "on trust" for other claims that they might have against the defendants and insisted that the defendants pay them another A\$1.365 million plus interest to satisfy the final judgment. I allowed the defendants' application and now give the reasons for my decision.

Background

2 Under the terms of a consent order made on 5 March 2009 ("the consent order"), the defendants were required to pay A\$1.35m into the plaintiffs' nominated account in Australia within 7 days.

3 The defendants did not pay the plaintiffs within the period stipulated in the consent order. As such, the plaintiffs took out garnishee proceedings against the defendants. The garnishee proceedings yielded \$10,309.71 from Mr Chou and \$384.56 from the 2nd and 3rd defendants.

4 On 1 April 2009, the plaintiffs took out a Writ of Seizure and Sale of No 20 Leonie Hill #12-24 Singapore 239222 ("the Leonie Hill property"). This property, which was owned by the 3rd defendant and occupied by Mr Chou, was mortgaged to Citibank NA.

5 The Sheriff arranged for the Leonie Hill property to be put up for sale at a public auction on 26 June 2009. It was sold at the auction to Cap Investment Pte Ltd for \$3.45m. The completion of the sale and purchase of this property was scheduled for 18 September 2009.

6 The plaintiffs contended that there is more than meets the eye with respect to the sale of the property to Cap Investment Pte Ltd, a company incorporated only 10 days before the auction with a paid up capital of only one dollar. They alleged that this company was a front for Mr Chou.

7 What proved even more suspicious to the plaintiffs was that shortly after the auction, the defendants' solicitors wrote to the plaintiffs' solicitors on 4 July 2009 to say that their clients had obtained a loan for S\$1.55m and were now prepared to pay the sum due to the plaintiffs under the terms of the consent order provided the sale of the Leonie Hill property was annulled with the Sheriff's consent. The defendants' solicitors added in their letter of 4 July 2009 that they had the purchaser's consent to the annulment of the contract for the sale and purchase of the said property and that they will pay back to the purchaser its 10% deposit plus costs. The plaintiffs pointed out that there was no reason for a bona fide purchaser who had bought the said property after intense bidding at the auction to abandon the intended purchase and the only conclusion to be drawn from this turn of events is that the purchaser was the defendants' nominee, whose intention was to shut out genuine buyers to ensure that the defendants retained the Leonie Hill property.

8 On 8 July 2009, the plaintiffs' solicitors informed the defendants' solicitors that the proposals in the latter's letter of 4 July 2009 were unacceptable.

9 On 8 July 2009, the defendants' solicitors wrote to the plaintiffs' solicitors again to point out that upon full payment, the Writ of Seizure and Sale must be withdrawn. The plaintiffs' solicitors replied on the same day and pointed out that as the Leonie Hill property had been sold, the Writ of Seizure and Sale could not be withdrawn and that any remittance in purported payment of the sum due under the consent order to the plaintiffs would be at the defendants' own risk. Obviously, at this juncture, the plaintiffs were bent on getting their money from the proceeds of the sale of the Leonie Hill property.

10 On 15 July 2009, the defendants paid the sum of A\$1,365,316.22 into the Australian account nominated by the plaintiffs in accordance with the terms of the consent order. This sum included the judgment debt plus accrued interest.

11 The plaintiffs refused to acknowledge that the sum due under the consent order had been paid. Their absolutely untenable position was set out by their Australian lawyers, M/s Hotchkin Hanley, as follows in their letter dated 17 August 2009:

The correspondence attached to the Affidavit of Mr Chou sets out the circumstances pursuant to which, on 15 July 2009, your client paid the sum of \$1,365,316.22 ("**\$1.35 million**") into our client's bank account. We are instructed that our client now holds the \$1.35 million on trust pending the resolution of our client's claim against your client for costs and damages arising from your client's actions while in control of Awap SGT 26 Investment Ltd from the period December 2006 to January 2009....

Pursuant to our instructions, those claims include:

- 1 costs, on a party/party basis, in Federal Court proceedings WAD 180 of 2007 of approximately \$50,000.
- 2 damages payable to the tenant of 26 St Georges Terrace, Perth ("**International House**") in the amount of \$345,400 in relation to delay caused to the refurbishment works on the property;
- 3 monies paid by Awap to the Applicants in the SAT application commenced by the owners of strata lots in International House against Awap in the amount of \$204,000.

4 Legal costs expended by our clients and Awap in the SAT application of around \$130,000;

5 monies paid to Mecure Hotel in settlement of a claim regarding disconnection of a fire pump in the amount of \$60,000; and

6 loss rent due to the delay caused in the refurbishment works up to \$383,697.61 (plus interest from May 2007).

These (*sic*) total of the claims is in excess of \$1.1 million. Together with interest, the claims are likely to be equivalent to the whole of the \$1.35 million.

Our client will hold the \$1.35 million on trust and the funds shall not be disbursed except on orders of a Court or by agreement between the parties.

12 The plaintiffs have, to date, not informed the Sheriff that they no longer have an interest in the proceeds of the sale of the Leonie Hill property. As such, the defendants are unable to get the funds due to them after the completion of the sale of the said property. In view of this, the defendants instituted the present proceedings.

The decision of the court

13 In his written submissions, the plaintiffs' counsel stated at [53] (b) as follows:

The sum of A\$1,365,316.22 remitted to the Plaintiffs' account in Australia are (*sic*) remittance made at the Defendants' sole risk and would at the very best constitute monies received to the Defendants' credits (*sic*) of which sums will be held by the Plaintiffs to be set-off against any amounts claimed in their proceedings in Australia against the 1st Defendant....

14 The plaintiffs' argument cannot be countenanced. It is obvious that when a defendant pays a judgment sum to the plaintiff, the latter cannot unilaterally decide that the sum paid is for another account.

15 In *Lee v Dangar, Grant & Co* [1892] 2 QB 337, Lord Esher pointed out that a writ of seizure and sale ought to be withdrawn once the debt is satisfied, Undoubtedly, the plaintiffs have acted unreasonably in refusing to take steps to allow the Sheriff to release the proceeds of the sale of the Leonie Hill property to the defendants after having been paid the sum due to them under the consent order.

16 For the reasons stated, I allowed the defendants' application and ordered the plaintiffs to pay costs to the defendants.