IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 186

Suit No 141 of 2012

Between

1. L MANIMUTHU
2. L VENGATESAN
3. L SIVA SUBRAMANIAN
4. L MOHANASUNDRAM

… *Plaintiffs*

And

L SHANMUGANATHAN

… *Defendant*

GROUNDS OF DECISION

[Contract] — [Consideration]
[Contract] — [Illegality]
[Contract] — [Duress]

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L Manimuthu and others
v
L Shanmuganathan

[2016] SGHC 186

High Court — Suit No 141 of 2012
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16-18, 22-23 October 2013; 11-13, 17, 24-25 February 2015; 5, 8-9 October 2015 and 3,18-19, 20 November 2015

6 September 2016 Judgment reserved.

Edmund Leow JC:

Introduction

1 Suit 141 of 2012 ("S 141/2012") arose out of a family dispute between siblings in relation to their late father's assets in Singapore and India. The Defendant and the second Plaintiff were the siblings based in Singapore, while the first, third and fourth Plaintiffs were based overseas in India and Canada. The Plaintiffs commenced a claim for a total sum of S$1.05m owed by the Defendant to the Plaintiffs pursuant to a compromise agreement made in December 2010. The Plaintiffs also claimed that the Defendant was acting as trustee de son tort, and in the alternative, as a constructive trustee for their late father's estate in Singapore, and had breached fiduciary duties. They thus sought an account of the profits obtained or received by the Defendant as a result of his breaches. The Defendant counterclaimed for his share as a

beneficiary of both his late father and mother's estates from the Plaintiffs, who he alleged were acting as constructive trustees of the estates, as well as for properties in the Plaintiffs' names in India.[1] S 141/2012 had to be seen as part of a greater dispute involving the estates of the parties' parents, who both died intestate.

2 I allowed the Plaintiffs' claim and the Defendant's counterclaim in part and issued an oral judgment on 26 May 2016. Dissatisfied with my decision, the Defendant has since filed a notice of appeal (in Civil Appeal No 80 of 2016) against my decision, and I thus set out my fuller grounds of decision.

Factual background

3 The late KR Lakshmanan Pillai ("KRLP"), the father of the Plaintiffs and the Defendant, allegedly owned a one-ninth share of the property at 58A Upper Weld Road, Singapore ("the Property") and wholly owned a moneylending business that he had inherited from his late father in the 1980s[2] ("the Moneylending Business") that had operated from the Property. These two interests were the key items in dispute. It was common ground that the Moneylending Business was owned by KRLP, but the Defendant disputed that KRLP owned the one-ninth share of the Property.

4 M Shanmugam, KRLP's brother-in-law, managed the Moneylending Business from the 1980s till 1993; during this time the profits from the business were split 35-65 in KRLP's favour. KRLP's share of profits would mostly be ploughed back into the business, with some remitted back to India

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[1] [80]-[81] Defence and Counterclaim (Amendment No 1) ("Defence and Counterclaim")

[2] PBOD 12

for purchase of properties.[3] Thereafter the Defendant, being based in Singapore, took over the management of the Moneylending Business from M Shanmugam, with the same profit-sharing margin of 35-65 in KRLP's favour, until 2000 when it increased to a 40% share for the Defendant. The Defendant would report to KRLP regarding the monthly accounts, just as M Shanmugam had done, and he was also paid an additional $1200 annually. KRLP died intestate on 7 February 2000 in India.[4] The Defendant then continued reporting to his mother, L Vallimayil ("Valli"), regarding the Moneylending Business, until she died intestate on 17 January 2003.[5]

5 It was undisputed that Letters of Administration had not been extracted whether in Singapore or in India for either of KRLP's or Valli's estates. It was common ground that on 28 and 29 December 2010, the parties all met in their ancestral home in Southern India to agree on the valuation and distribution of their parents' assets, in the presence of a relative, Muthuvadivu ("Muthu"), who took on the role of a mediator-type figure. The parties entered into a compromise agreement on 29 December 2010[6] ("the Compromise Agreement"), the validity of which was disputed by the Defendant, where it was stated, *inter alia*, that:

(a) the Defendant would become the sole beneficial owner in the Moneylending Business in exchange for paying S$1.05m in total to the Plaintiffs, *ie*, $262,500 to each of the four Plaintiffs, in instalments

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[3] [31] Plaintiff's closing submissions

[4] [26] Defence and Counterclaim

[5] [26] Defence and Counterclaim

[6] 1AB 19-125 in Tamil; Defendant's English translation at 3AB 38-83; Plaintiff's English translation at 1AB 126-171

commencing on 1 January 2011, to be completed latest by December 2011;[7]

(b) the Property would be sold and the one-ninth share of proceeds less costs of sale would be divided equally among the parties.[8]

6 It was the Plaintiffs' position that the Compromise Agreement was a comprehensive division of KRLP's assets in both India and Singapore.[9] There was a division of assets including the land, jewellery and utensils, and the Defendant had taken possession of his share.[10] The Defendant admitted that he had gotten his share of the jewellery and utensils, but denied that an agreement was reached as to the other assets such as land, and thus counterclaimed for his remaining share of his parents' respective estates derived from the other assets.[11] The Plaintiff alleged that the Defendant failed to make the payment of S$1.05m to them, and also failed to give them their share of the one-ninth of sale proceeds of the Property after selling it. This was the basis upon which they had commenced S 141/2012.

7 The Defendant attempted to argue belatedly in his closing submissions that the court should decline to exercise jurisdiction over S 141/2012. The basis for doing so was three-fold. First, Indian intestacy laws (specifically, Hindu succession laws) should apply to the entire dispute as the Compromise Agreement also involved the settlement of properties in India and matters of

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[7] 1AB 161; 3AB 73

[8] [44] Statement of Claim ("SOC"); 3AB 48; 1AB 136

[9] [2] Plaintiff's closing submissions

[10] [39] SOC

[11] [57] Defence and Counterclaim

distribution of intestate assets. Second, based on the rule in *British South Africa Company v Companhia de Moçambique* [1893] AC 602 ("the Moçambique rule"), the Singapore court had no jurisdiction over issues of title to the foreign immovable properties.[12] Third, the Defendant also appeared to argue that the fact that there were on-going proceedings between the same parties in India regarding KRLP and Valli's estates indicated that Singapore was not the more appropriate forum for ventilating the dispute and so the court should decline to exercise jurisdiction.

8 I was unconvinced by these arguments. The Plaintiffs' claim in S 141/2012 did not relate to Indian properties, but rather, was specific to the late KRLP's interests in Singapore. It was the Defendant's counterclaim that brought in the issue of the distribution of both KRLP and Valli's properties in India. If the Defendant chose to bring the Indian properties into the consideration of S 141/2012 from the beginning, then it did not lie in his mouth to argue at the end of the hearing that the court should decline to exercise jurisdiction over the matter simply because it involved the Indian properties. The Defendant mentioned the nationality and domicile of the late KRLP and Valli in the closing submissions as support for his argument that Indian intestacy laws should apply to S 141/2012, but I was not persuaded as to how they were relevant connecting factors to decide what relevant law was applicable. Even if it were true that Indian intestacy laws applied to the entire dispute, it would not be an immediate bar to this court exercising jurisdiction over the dispute, as this court could apply Indian law in the resolution of S 141/2012. On a proper characterisation of the issues in S 141/2012, it appeared that the main issues in S 141/2012 were contractual in nature (relating to the

[12] [51]-[53] Defendant's closing submissions

validity, formation and interpretation of the Compromise Agreement), so the applicable test in determining the governing law for the dispute would be the three-stage test set out in *Overseas Union Insurance Ltd v Turegum Insurance Co* [2001] 2 SLR(R) 285 at [82], and affirmed by the Court of Appeal in *Pacific Recreation Pte Ltd v S Y Technology Inc and Another Appeal* [2008] 2 SLR 491 at [36]. However, the analysis as to the right choice of law for dealing with the Compromise Agreement as well as S 141/2012 was rendered moot as the Defendant had failed to plead that Indian law applied to S 141/2012, and had also failed to prove the content of Indian law in that respect. Absent such proof, the law of the forum, *ie*, Singapore law, should be applied by default unless to do so would be unjust and inconvenient (see *D'Oz International Pte Ltd v PSB Corp Pte Ltd and another appeal* [2010] 3 SLR 267 at [25] and *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 at [58]). In the present case, given that the Defendant only raised the applicability of Indian law belatedly in his closing submissions, I was of the view that Singapore law should apply to S 141/2012.

9 On the point regarding the Moçambique rule, I accepted that a Singapore court generally cannot make a judgment *in rem* against the Indian properties, *ie*, determining the rightful title to the Indian properties as against the whole world (see *Pattni v Ali* [2007] 2 AC 85 at [21] as cited in *Murakami Takako (executrix of the estate of Takashi Murakami Suroso, deceased) v Wiryadi Louise Maria and others* [2007] 4 SLR(R) 565 at [32]). However, this did not preclude the court from making judgment *in personam*, in declaring the relative interests of the parties to the properties under the Compromise Agreement. On the point regarding the appropriate forum for ventilating the dispute, the burden was on the Defendant not just to show that Singapore is

not the natural or appropriate forum but to establish that there is another available forum which is clearly or distinctly more appropriate than the Singapore forum, *ie*, India in this case. I was not satisfied that the Defendant had discharged this burden, given that he is himself resident in Singapore and suffers no hardship in litigating the dispute here.

Issues in dispute

10 The main purpose of S 141/2012 was not to deal with KRLP's estate. The main issues before me in the trial were narrow factual ones relating to KRLP's assets in Singapore:

(a) Whether the Compromise Agreement was valid and enforceable, and if so, whether there was a breach of the said agreement;

(b) Whether the Property was part of KRLP's estate and was rightly included in the Compromise Agreement;

(c) Whether the Defendant was acting as trustee de son tort or a constructive trustee of KRLP's estate in Singapore; and

(d) Whether the Defendant's counterclaims relating to the Compromise Agreement and the Plaintiff's personal assets in India should be allowed.

Was the compromise agreement valid and enforceable?

11 Disputes over the Singapore portion of KRLP's estate began around February 2010, when the second Plaintiff, concerned about his livelihood, asked the Defendant to allow him to jointly manage the Moneylending

Business. A family meeting was set up between the first, second, fourth Plaintiffs and the Defendant around the same time, where the Defendant apparently agreed to allow the second Plaintiff to manage the business should he lose his job. The Plaintiffs claimed that the Defendant changed his mind and during one visit to India reneged on his promise.[13] After this, he stopped reporting the monthly financial situation of the Moneylending Business to the Plaintiffs,[14] which the Plaintiffs alleged were in breach of his fiduciary duties arising out of his position as a trustee de son tort or a constructive trustee. The Plaintiffs claimed that the parties had decided to hold a family meeting in late December 2010 to divide all the assets in India and Singapore belonging to their parents' estate. It was also agreed that an asset list and valuation of the assets would be produced for the purpose of asset division. I noted the Defendant's admission during cross-examination that he had discarded all the OCBC bank documents belonging to the Moneylending Business.[15]

12 It was undisputed that the Compromise Agreement was indeed signed by the parties on 29 December 2010 as a conclusion to the family meeting. I was satisfied that the requirements of a compromise agreement were satisfied in the present case, applying the factors identified in *Gay Choon Ing v Loh Sze Ti Terence Peter and another appeal* [2009] 2 SLR(R) 332 by the Court of Appeal (at [45]–[72]):

(a) There was an actual dispute regarding the operation of the Moneylending Business, among others, and potential disputes over the

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[13] [24] SOC, [27] second Plaintiff's AEIC

[14] [25] SOC

[15] NEs Day 15 p 91

general distribution of KRLP's and Valli's assets in India and Singapore;

(b) There was an identifiable agreement produced that was complete and certain – the Compromise Agreement, the subject of the dispute, was signed by all the parties on every page;

(c) There was consideration given – both executed, in the form of the jewellery and utensils that the parties all divided equally, and executory, in the form of the Defendant's promise to pay S$1.05m to the Plaintiffs in instalments and to divide one-ninth of the sale proceeds of the Property among the parties equally, in exchange for the Defendant acquiring sole interest in the Moneylending Business; and

(d) There was intent to create legal relations, despite the domestic nature of the issues. The second Plaintiff and Defendant flew in from Singapore to India while the third Plaintiff flew in from Canada specifically for the purpose of this family meeting. The Defendant also stated in his affidavit of evidence-in-chief ("AEIC") that he had gone to the family meeting believing that there would be an amicable settlement.[16] He also claimed that he had conveyed his desire for both his parents' estates to be distributed in early 2010.[17] In that respect, I had no doubt that parties had intended to enter into a binding agreement regarding the distribution of their parents' estates, including the assets in Singapore that were at the heart of S 141/2012.

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[16] [61] Defendant's AEIC

[17] [33]-[34] Defence and Counterclaim

13 The very purpose and effect of a compromise agreement is to extinguish all prior disputes, functioning as a complete settlement of differences between parties; a party reneging on the mutual compromise would be in breach of contract. The issues between parties, having been resolved by a compromise agreement, cannot be litigated so as to ensure commercial certainty and efficacy of the administration of justice (see *Real Estate Consortium Pte Ltd v East Coast Properties Pte Ltd and another* [2011] 2 SLR 758 ("*Real Estate Consortium*") at [58]–[59]). A compromise agreement does not, however, function as a complete bar to reopening disputes, but it can only be impugned on limited grounds by which normal contracts are usually challenged, such as illegality, fraud, duress, and undue influence, etc. (see *Real Estate Consortium* at [61] and *Ling Yew Kong v Teo Vin Li Richard* [2014] 2 SLR 123 at [89]). Given that the Defendant had defended himself based on two of such grounds, namely duress and illegality, I move on to consider his defences in turn.

Defence of duress

14 The Defendant denied that he was indebted to the Plaintiffs for the sum of S$1.05m,[18] or that he was in breach of the Compromise Agreement, as he had been forced to sign it under duress. He claimed that Muthu was unilaterally appointed by the Plaintiffs as a mediator, without his consent, and he was surprised to see Muthu present at the meeting.[19] The Defendant claimed that his wife, who accompanied him to the meeting, was not allowed to attend the closed-door meeting on the upper floor of the ancestral home and was seated on the ground floor. At the meeting, Muthu dictated the information

[18] [2] Defence and Counterclaim

[19] [53] Defendant's AEIC

relating to the Moneylending Business to the Defendant and made him write it down, and Muthu drew up the Compromise Agreement in Tamil.[20] The Defendant claimed that the Plaintiffs and Muthu had ganged up on him and did not allow him to leave the meeting, threatening to beat him up unless he signed the Compromise Agreement.[21] The Defendant also claimed in his AEIC that after he had signed the Compromise Agreement and stood up, the fourth Plaintiff grabbed him from behind and held him tight, while the second Plaintiff slapped the Defendant on his face.[22] The Defendant shouted loudly for his wife who banged on the door, and the fourth Plaintiff released him. The Defendant claimed that he rushed out of the room with his wife, collected some jewellery and utensils and left the ancestral home.[23] The Defendant thus pleaded that the Compromise Agreement was unenforceable as he signed it out of fear for his wife's and his safety. The Defendant claimed that he suffered a relapse of anxiety and had to see his psychiatrist on 10 January 2011, for which he produced a medical report dated 28 July 2011.[24] I noted that the Defendant's AEIC gave the impression that the family meeting occurred only on one day, though during cross-examination he took the position that his description of the events of duress took place over two days.[25]

15 The Plaintiffs disputed the allegation of duress,[26] and the second and fourth Plaintiffs denied the specific allegations against them.[27] In this respect, I

[20] [54]-[55] Defendant's AEIC

[21] [57] Defendant's AEIC

[22] [58] Defendant's AEIC

[23] [58] Defendant's AEIC

[24] [60] Defendant's AEIC; D7

[25] NEs Day 17 p 42

[26] [49] second Plaintiff's AEIC

found Muthu's testimony helpful, as it was undisputed that he was present at the family meeting in December 2010. Muthu testified during the second and third tranches of the trial. The Defendant attempted to paint Muthu as a biased witness, because Muthu was related to the second Plaintiff. However, on cross-examination, the Defendant admitted that Muthu was a common relative to the parties. Muthu was related by marriage to the Defendant as their wives were cousins.[28] Muthu testified that he had known the parties since birth.[29] Despite the Defendant's attempts to show otherwise, I was of the view that Muthu was a credible independent witness. He was logical and rational, and did not embellish his evidence. Muthu's evidence was that the parties had attempted to distribute KRLP's assets on 27 December 2010 but did not succeed, and he was informed of this situation by the Defendant's mother-in-law.[30] The Defendant then personally called Muthu on 27 December 2010 to seek his assistance to preside over the asset division meeting on the following day.[31] Muthu's evidence was that his position as mediator to the family discussion was agreed by all parties.[32] This concurrence was corroborated by the Plaintiffs.[33] Muthu's evidence was that the valuation of the Moneylending Business was based on the accounts produced by the Defendant.[34] Muthu was also able to provide a detailed account of how the distribution took place peacefully over two days, and testified that the Defendant and his wife were

[27] NEs Day 11 p 27

[28] [1] Muthu's AEIC

[29] NEs Day 11 pp 11-12

[30] [10] Muthu's AEIC; NEs Day 11 p 75

[31] [6] Muthu's AEIC; day 11 pp 61, 77-78

[32] [9] Muthu's AEIC; NEs Day 11 pp 83, 90

[33] NEs Day 11 p 2

[34] [14] Muthu's AEIC

jubilant and even thanked him at the end of the family meeting.[35] There was no basis to conclude that Muthu was biased in the Plaintiffs' favour, since he did not stand to gain anything from the distribution of the family's assets.

16 On the evidence before me, I did not accept that the defence of duress was made out. The Defendant admitted in cross-examination that he had gone to the ancestral home once on 27 December 2010, and then for the family meeting that took place over 28 and 29 December 2010. If indeed there was coercive behaviour on the part of the Plaintiffs, I found it difficult to believe that the Defendant and his wife would continue to return to the ancestral home for discussions. His claim in his AEIC that he was restrained and slapped by the second and fourth Plaintiffs *after* he signed the Compromise Agreement contradicted his Defence, where it was stated that these actions occurred *before* his signing of the Compromise Agreement.[36] When he was confronted with this inconsistency, the Defendant affirmed the account of events in his AEIC.[37] I found this explanation rather unbelievable because it made no sense for the Plaintiffs to abuse the Defendant when he had already signed the Compromise Agreement. The Defendant's reliance on these acts as acts of duress made no sense at all if this purported duress had occurred after the signing of the Compromise Agreement, the very act he claimed he was coerced into. Further, I found it difficult to believe that Muthu would have made up the numbers regarding the Moneylending Business. He had no knowledge of the Moneylending Business to begin with and was merely an outsider brought in to divide the assets based on information provided by the

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[35] NEs Day 11 p 58 lines 7-12

[36] [51] Defence and Counterclaim

[37] NEs Day 17 p 47

parties. The information in the Compromise Agreement regarding the Moneylending Business was unlikely to have been included without the Defendant's input, and I found it difficult to believe that he was forced by Muthu to concoct those accounts. In fact, he admitted on cross-examination that he would send the accounting books of the Moneylending Business back to India regularly, though he had the books for 2010, and eventually brought them to the family meeting on 28 December 2010 where he handed them to the Plaintiffs.[38] As for the medical report by the psychiatrist, I noted that it was not proffered to prove a causative relationship between the Defendant's anxiety and the duress. I was of the view that the period of around ten days between the family meeting and the appointment with the psychiatrist was sufficient for the Defendant to have changed his mind regarding the Compromise Agreement, resulting in a different account of events to the psychiatrist.

Defence of illegality

17 With regard to the allegations of illegal moneylending, I found myself bound to report a potential offence of illegal moneylending as evidence was being led on that point, so the first tranche of the trial in 2013 was stood down pending the Attorney General's Chambers' investigations into the Moneylending Business. No action was taken against the second Plaintiff, while the Defendant was issued a warning from the police.[39] It was important to bear this outcome in mind when analysing the Defendant's defence of illegality.

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[38] NEs Day 16 p 11

[39] 4AB 48

18 The Defendant in his Defence and Counterclaim (Amendment No 1) took the position that the Compromise Agreement was unenforceable as it concerned the disposal of an interest in an unlicensed Moneylending Business that was in contravention of the Moneylenders' Act (Cap 188, 2010 Rev Ed). In his closing submissions, his position appeared to change to arguing that the Compromise Agreement was unenforceable having regard to the object it was devised to achieve, *ie* to circumvent prevailing laws.[40] It was not quite apparent whether he was arguing that the Compromise Agreement should be voided for statutory illegality or common law illegality.

19 In any case, the preliminary issue that had to be resolved in relation to the defence was whether the Defendant really had a licensed moneylending business separate from KRLP's unlicensed Moneylending Business. The fact that the Defendant had a license for moneylending was not in dispute. The Defendant's case was that he had started a separate moneylending business of his own[41] at 25A Norris Road called "Shanmugan Moneylender", though the registered address was in Sim Lim Square, in July 2003. He was running KRLP's Moneylending Business at the Property concurrently. Shanmugan Moneylender had a license while the Moneylending Business, which was the subject of S 141/2012, did not. The Defendant's evidence was that the police had discovered that the Moneylending Business was unlicensed, so he informed the Plaintiffs that he was going to obtain a licence for the Moneylending Business, but the Plaintiffs refused. He claimed that he had started to run a business in his own name for his own safety,[42] which was made

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[40] [114] Defendant's closing submissions

[41] 1AB 17-18

[42] NEs Day 16 p 49

possible as the two businesses were located near each other. He testified that the books for the two businesses were kept separate. He admitted that his separate business was subsequently moved to the Property due to threats from the Plaintiffs in 2006.[43]

20 The Plaintiffs' position was that they had always assumed that the Defendant's license was the one for KRLP's Moneylending Business. The Plaintiffs claimed that they would not have gone to the Registrar of Moneylenders to enquire whether the license could be transferred from the Defendant's to the second Plaintiff's name, if they knew that the Moneylending Business was illegal. It would have been illogical and in fact dangerous for them to go to the authorities for enquiries if they knew that the Moneylending Business was illegal. The Defendant admitted that he had gone to the Registrar of Moneylenders with the first, second and fourth Plaintiffs regarding the transfer of the license, and could proffer no plausible explanation as to why the Plaintiffs would have gone to the Registrar of Moneylenders to enquire about a transfer of license from the Defendant's purported separate business to KRLP's Moneylending business.[44]

21 In my view, the Defendant's claim that he ran a separate licensed moneylending business was a convenient one that held no water. The Defendant's story was contradicted by the accounts of the Moneylending Business; he could proffer no credible explanation for why items such as business registration and income tax filing expenses, notebooks for license account, as well as rental for 25A Norris Road were listed on the accounts of

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[43] NEs Day 16 p 48

[44] NEs Day 7 pp 32-33

the Moneylending Business, when such expenses would likely be incurred *via* his purported separate licensed business.[45] This also contradicted his testimony that the books for the two businesses were kept separately. Even the Defendant's wife admitted on cross-examination that she was always under the impression that the Defendant was only managing the Moneylending Business belonging to KRLP.[46] It made no sense either for KRLP's Moneylending Business to bear the expenses of the Defendant's separate moneylending business as some form of incentive to the Defendant when the Defendant was running a business that was in direct competition with the family's. I also found it unconvincing that the Defendant could manage two separate sets of clients with different interest rates for loans when he eventually operated out of the same location. He claimed that he had charged the lower interest of 18% under the licensed business and the higher and illegal interest rate of 36% under KRLP's Moneylending Business, and these were entirely separate sets of clients who did not know the existence of the other concurrent business.[47] Given the business model that he operated on, *ie* one that had relied on word of mouth and introductions by his father, I found it unlikely that he had his own separate set of customers, and also unlikely that such customers would not know of his legal business with a lower interest rate, if there really was one.

22 The only plausible inference I could draw from the evidence was that at very least from July 2003 onwards, the Moneylending Business was a licensed and thus legal one. The Defendant had no separate moneylending

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[45] NEs Day 16 p 54; 2AB 90, 94, 98, 99, 100

[46] NEs Day 18 p 6

[47] NEs Day 16 pp 60-61

business of his own – his purported business and the Moneylending Business were one and the same. Thus, the Compromise Agreement did not relate to the transfer of an illegal interest, as the Defendant sought to argue. The Defendant's defence of illegality failed as there was no illegality disclosed. Given that the threshold of illegality was not met, there was no further need to consider arguments regarding statutory illegality or common law illegality.

23 Having found that both of the Defendant's arguments regarding duress and illegality were unsuccessful, the Compromise Agreement was thus valid and enforceable.

One-ninth share of the Property

24 Next, I noted that there was a dispute regarding the beneficial ownership of the Property. The Plaintiffs' position in its closing submissions was that the Moneylending Business beneficially owned a one-ninth share of the Property,[48] though it was legally held in the name of one KR Ramalingam Pillai ("KRRP"), the late KRLP's brother, as conceded by the second Plaintiff.[49] The one-ninth share of the Property was reflected as worth $7071[50] based on the accounts for the Moneylending Business prepared by the Defendant. The Plaintiffs thus argued that the accounts clearly showed that the Property belonged to the Moneylending Business, which was in turn owned by KRLP, and thus formed part of KRLP's assets to be distributed. The Defendant's position was that KRRP was the legal and beneficial owner of the one-ninth share of the property and had willed it to the Defendant in his will dated 17

[48] [22] Plaintiff's closing submissions

[49] NEs Day 6 p 83

[50] 2AB 1, 2AB 190

June 1996; he passed away in 2011.[51] The Defendant was the lawful executor who had obtained the grant of probate in respect of KRRP's estate,[52] and had sold the Property with the consent of the other owners of the Property. The Defendant denied that KRLP had any beneficial interest in the Property, and so the Property should not be included in the Compromise Agreement.

25 I noted that the transfer form dated 13 November 1973[53] and the statutory declaration dated 17 June 1996 made by KRRP[54] was *prima facie* evidence that while KRRP was the legal owner of one-ninth share of the Property, KRLP had beneficial ownership of that share since 1980. Since the statutory declaration indicated KRRP's intent to transfer the legal ownership of the one-ninth share to the Defendant pursuant to KRLP's instructions, it appears to be *prima facie* evidence that the Defendant had beneficial ownership of the one-ninth share since 17 June 1996.

26 However, the dispute over beneficial ownership of the Property was moot given my finding above that the Compromise Agreement was valid and enforceable. As mentioned above, the Compromise Agreement settled all pre-existing disputes between parties. Given that the Compromise Agreement dealt with this issue, *ie,* the Defendant would divide the sale proceeds from the Property between the parties equally, it superseded any dispute over whether it formed part of KRLP's estate. Muthu also corroborated that the parties had agreed that the Property would be sold off with the proceeds to be divided equally, after some monies were set aside for their children.[55] This dispute

[51] [16] Defence and Counterclaim

[52] DBD 10-31, specifically at 12

[53] DBD 17-20

[54] DBD 21-22

over beneficial ownership of the Property was a substantive dispute that fell outside of the limited grounds on which a Compromise Agreement could be impinged.

27 Having dealt with the issues above, and given that it was undisputed that the Defendant had made no payments towards the Plaintiffs to date, there was undoubtedly a breach of the Compromise Agreement by the Defendant when he failed to make both the payment of S$1.05m to the Plaintiffs and the payment for the Plaintiffs' share of sale proceeds of one-ninth of the Property. The Defendant was liable to repay the aforementioned sums to the Plaintiffs.

Breach of duty as trustee de son tort or constructive trustee of the estate of the late KRLP

28 As for the Plaintiffs' allegations of the Defendant's breach of duty in his actions as trustee de son tort of KRLP's estate, and in the alternative, as a constructive trustee of the same, I found that they were again, moot, given my finding above regarding the validity of the Compromise Agreement. The breaches of duties alleged by the Plaintiffs related to the Defendant's failure to provide the Moneylending Business's accounts shortly after March 2010. The Plaintiffs also alleged that he failed to distribute KRLP's assets including the share of the Property and the Moneylending Business[56] and misappropriated the profits due to KRLP's estate.[57] These were issues that had arisen before the family meeting of December 2010, and were dealt with by virtue of the Compromise Agreement, where the Defendant essentially had to pay the

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[55] NEs Day 14 p 70

[56] [57] SOC

[57] [58] SOC

Plaintiffs S$1.05m in total in exchange for sole ownership of the Moneylending Business. In the course of the proceedings, the Plaintiffs did not take issue with the accuracy of the accounts that the Defendant was keeping for the Moneylending Business. Their attitude had always been to take the Defendant's accounts as true and accurate,[58] and they also acknowledged the Defendant's diligence.[59] In fact, the second Plaintiff admitted candidly during cross-examination that the Plaintiffs did not have any complaints about how the Defendant had run the Moneylending Business after KRLP's death, and accepted the Defendant's accounts wholeheartedly; their only issue was that the Defendant did not give them the monies promised under the Compromise Agreement.[60] The Plaintiffs' position indicated to me that the Compromise Agreement resolved these allegations of breach of trust by the Defendant as well. There was thus no need to make a finding on these issues, nor would it be right given the existence of the Compromise Agreement, which I found to be valid and enforceable. The Plaintiffs' claims in this respect should thus be dismissed.

Counterclaim

29 The Defendant counterclaimed for his share of his parents' estates due to him under the Compromise Agreement, less the jewellery and utensils which he had already taken. The Plaintiffs did not dispute that the Defendant had a right to the other assets such as property in India, as divided under the Compromise Agreement.[61] It was admitted by the fourth Plaintiff that he had

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[58] [8] first Plaintiff's AEIC

[59] NEs Day 8 p 42

[60] NEs Day 7 pp 72, 78

[61] NEs Day 6 pp 62-64, Day 9 p 74

sold a property in Vilankuruchi, Coimbatore District, Tamil Nadu that was allocated to the Defendant under the Compromise Agreement.[62] The Plaintiffs acknowledged their liability to the Defendant in respect of the entire sale proceeds of that property and undertook to hold it on trust for the Defendant until S 141/2012 was over.[63] Flowing from the Plaintiffs' admission, the Defendant's counterclaim for his share of assets under the Compromise Agreement succeeded. I was conscious that this court had no jurisdiction to make *in rem* orders against immovable property in India. My order was thus *in personam* against the Plaintiffs to transfer to the Defendant the outstanding assets owing to the Defendant pursuant to the Compromise Agreement.

30 As for the Defendant's separate counterclaim for properties in the Plaintiffs' names or their nominees in India, I saw no legal basis for doing so, given the granting of the counterclaim relating to the Defendant's share of assets under the Compromise Agreement.

Conclusion

31 I allowed the Plaintiffs' claim and the Defendant's counterclaim in part. I made the following orders:

(a) The Defendant was to pay to each of the individual Plaintiffs a sum of $262,500 plus interest;

(b) The Defendant was to produce all documents relating to the sale of the Property, including the transfer documentation, within fourteen days of this order;

[62] [12] fourth Plaintiff's AEIC; 2BA 348; 1AB 163

[63] [14] fourth Plaintiff's AEIC

(c) Less the costs incurred for selling the Property, the Defendant was to pay the Plaintiffs 80% of the remainder of one-ninth of the sale proceeds of the Property;

(d) The fourth Plaintiff was to produce all documents relating to the sale of the Vilankuruchi, Coimbatore District, Tamil Nadu, including the title deed and transfer documentation, within fourteen days of this order; and

(e) The Plaintiffs were to transfer to the Defendant the outstanding assets owing to the Defendant pursuant to the Compromise Agreement, as well as the entire sale proceeds of the property in Coimbatore District, Tamil Nadu.

32 Since the Plaintiffs had essentially succeeded on their case, the Defendant was to pay costs to the Plaintiffs, to be taxed if not agreed.

Edmund Leow
Judicial Commissioner

Palaniappan S and Ramesh Bharani Nagaratham (Straits Law Practice LLC) for the plaintiffs;
A Rajandran (A Rajandran) and Mohan Das Naidu (Mohan Das Naidu & Partners) for the defendant.
