

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 65

HC/Suit No 341 of 2017

Between

Ong Lu Ling

... Plaintiff

And

Tan Ho Seng

... Defendant

JUDGMENT

[Restitution] — [Unjust enrichment]

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Ong Lu Ling

v

Tan Ho Seng

[2018] SGHC 65

High Court — Suit No 341 of 2017
Choo Han Teck J
20–22 February, 19 March 2018

20 March 2018

Judgment reserved.

Choo Han Teck J:

1 Sometime in October 2012, ELR Property Pte Ltd (“ELR”) contracted to buy two commercial properties known as 9A and 11 Kaki Bukit Road 3, respectively (“the Properties”), from Jerry Investments Pte Ltd. ELR needed \$600,000 to pay the initial deposit but did not have the money.

2 The plaintiff, Ong Lu Ling, who runs a hotel in Geylang, said that one Ah Kee asked her to lend the money to Tan Ho Seng (the defendant) and his relatives. Tan Ho Seng’s brother and sister-in-law were the directors of ELR. Ong Lu Ling was reluctant to lend money to Tan Ho Seng and his relatives because she did not know him, but Ah Kee “pestered” her to lend the money. On 22 December she reluctantly lent the \$600,000 to Tan Ho Seng and his relatives, “just to get [Ah Kee] out of my office”. The loan was by way of a cash cheque.

3 Ong Lu Ling initially sued Tan Ho Seng in this action not for the repayment of a loan, but for “money had and received” which is probably remembered now only as a cause of action without a cause. Realising the inadequacy of her claim, Ong Lu Ling’s counsel, Mr Gong Chin Nam, applied on the first day of trial to amend his cause of action to one of “unjust enrichment”. Mr Allister Lim, counsel for Tan Ho Seng did not oppose the application. No further particulars were pleaded.

4 It transpired at trial that there were two previous suits which appear to be connected with the present suit; Suit 1052/2012 and Suit 552/2013. The two suits were eventually consolidated. In Suit 552/2013 ELR sued Jerry Investments Pte Ltd for specific performance in respect of the sale of the Properties. In Suit 1052/2012, Jerry Investment Pte Ltd and Tan Lye Soon sued Ah Kee and ELR on a claim based on an alleged breach of s 160 of the Companies Act (Cap 50). On 2 March 2016, two years ago, Judicial Commissioner Aedit Abdullah (as he then was) dismissed ELR’s prayer for specific performance but directed Jerry Investments to return the deposit of \$600,000 to ELR. The court also dismissed Suit 1052/2012

5 It transpired in this trial before me that the present claim was for the same \$600,000 arising from the same dubious transactions in which neither the truthful nor complete story was told to Abdullah JC.

6 Now that ELR has been refunded the \$600,000 pursuant to the order of Abdullah JC, Ong Lu Ling hopes to reclaim it from them in this action. But what is the connection? Before we can consider that, we must bear in mind the other peculiar relationships and transactions that came to light in this trial.

7 It will be recalled that ELR belonged to Tan Ho Seng’s brother and

sister-in-law, and that ELR sought to buy the Properties from Jerry Investments Pte Ltd. From whom did Jerry Investments Pte Ltd originally purchased the Properties? It purchased them from MLC Barging Pte Ltd; and who were the directors of MLC Barging Pte Ltd? It was none other than Tan Ho Seng and his wife. The sales were for a total of \$1.76m, or \$880,000 for each of the Properties. Mr Gong says that Ong Lu Ling is not aware of all these facts, even though she was a director of Jerry Investments Pte Ltd, because she was just a nominee of Ah Kee. There seems to be more evidence that may be discovered from the previous suit but the lawyers in this suit seemed to be oblivious to their significance. They were not the lawyers in the previous action.

8 The narrative now turns to this “Ah Kee”. He was called as Ong Lu Ling’s witness but clearly has more answers than the plaintiff herself, thus satisfying me that the solitary truth from Ong Lu Ling, albeit through her counsel Mr Gong, is that she was Ah Kee’s nominee. Ah Kee testified that he is in the business of money lending, and has been made a bankrupt. He said that he had helped Tan Ho Seng find a buyer for one of Tan Ho Seng’s residential properties in 2010.

9 From Tan Ho Seng’s evidence-in-chief the court was told that Ah Kee also had a money remittance business in which Tan Ho Seng and his wife invested in for a return of 2% a month. It was also averred that Tan Ho Seng’s son, Tan Pei Wei, now 33 years old, worked for Ah Kee. Ah Kee acknowledged that he owed money to Tan Ho Seng, but says that the debt was assigned to Tan Pei Wei around 2011.

10 Given the bizarre relationships, the plaintiff has at least the burden of explaining how the defendant has enriched himself at her expense. Then she has to explain why she sued without disclosing from the outset that she is the

nominee of Ah Kee. More importantly, she has not explained why there was no resistance when Abdullah JC made his orders in the previous suit. No reason was given as to why the plaintiff or Ah Kee had not told Abdullah JC that the \$600,000 belonged to the plaintiff, and how it came to be a loan in both of those suits and this.

11 Unjust enrichment is an equitable relief, and equity is a fastidious and exacting companion of law; she demands that all supplicants before her arrive in court with clean hands. In this case, the plaintiff — and possibly everyone else who testified before me — was covered with dirt from head to toe. Ong Lu Ling's prayer for a refund of the \$600,000 will not be granted. The loss will have to lie where it falls, even if at undeserving feet. For the reasons above this action is dismissed and each party is to pay his own costs.

12 At the close of the case I directed counsel to file and exchange closing submissions by 8 March 2018. Only Mr Gong filed submissions on behalf of the plaintiff. I had further directed that reply submissions were to be filed by 15 March 2018 and that the case be adjourned to 19 March for decision or directions. Mr Gong did not file any reply submissions because Mr Lim did not file his closing submission. When counsel appeared before me on 19 March 2018 Mr Lim said that he was away and had thereafter taken ill and thus could not file his submissions in time. He said that he had a draft ready to be filed.

13 I refused leave for counsel to file his closing submissions out of time. Fortunately for him, his failure to meet the deadline imposed by the court did not cause prejudice to his client or he might have to answer elsewhere for the consequences caused by his omission. Lawyers must comply with all court orders. There is no exception. If any order cannot be complied with, the lawyer is duty-bound to apply at once for leave to extend or vary the orders.

14 In spite of my order refusing leave to file his submission, Mr Lim went ahead in the afternoon to file his submissions. Shortly thereafter, Mr Lim filed a summons-in-chambers on 19 March 2018 for an extension of time to file the submissions that he had hitherto not filed as directed, and then filed when not directed. I will not hear Mr Lim's summons of 19 March 2018.

- Sgd -
Choo Han Teck
Judge

Gong Chin Nam and Andrew Hill (Hin Tat Augustine & Partners) for
the plaintiff;
Allister Lim Wee Sing (Allister Lim & Thrumurgan) for the
defendant.
