

Seng Swee Leng v Wong Chong Weng
[2010] SGHC 343

Case Number : Suit No 949 of 2009
Decision Date : 19 November 2010
Tribunal/Court : High Court
Coram : Philip Pillai J
Counsel Name(s) : Jiang Ke Yue and Sharon Chong Chin Yee (Lee & Lee) for the plaintiff; Liaw Jin Poh (Tan Lee & Choo) for the defendant.
Parties : Seng Swee Leng — Wong Chong Weng

Contract

19 November 2010

Judgment reserved.

Philip Pillai J:

Background

1 The plaintiff, Mr Seng Swee Leng, brings this action for specific performance of a sale and purchase agreement arising from an option to purchase dated 30 May 2009 ("Option"). The defendant, Mr Wong Chong Weng, is the registered owner of 52 Yio Chu Kang Road, Singapore 545561 ("the Property"), which is the subject-matter of the Option. The defendant's counterclaim seeks the removal of the plaintiff's caveat IB/378953R ("the Caveat"), lodged by reason of the Option against the Property.

The evidence

2 The evidence presented in court revealed diametrically opposed versions of the facts and events surrounding the issue of the Option and the delivery of the Option fee cheque. Accordingly, the outcome of the claim and counterclaim turn entirely on my findings and inferences of facts.

3 The plaintiff's case is that he paid the Option fee to Jeffrey Yong Siew Tat ("Yong"), a property agent, in exchange for the Option to purchase the Property at S\$1.1 million. The plaintiff thereafter exercised the Option by delivering his acceptance and enclosing the Option exercise fee to the solicitors whose name was handwritten in the Option.

4 The plaintiff's evidence is as follows. The plaintiff's friend, Mr Foo Kah Kim ("Foo"), saw an advertisement in the Straits Times newspaper on Saturday 30 May 2009, inserted by Yong and containing Yong's telephone number, that the Property was for sale at \$1.28 million. Foo then called Yong to arrange for the plaintiff to view the Property that same day. The plaintiff and Foo arrived at the Property at about 11.00 am and met Yong. The defendant, they say, arrived about half an hour later. The plaintiff, Foo, the defendant and Yong thereafter proceeded to a nearby coffee shop to negotiate the sale price. The plaintiff claims that the defendant's asking price was \$1.1 million, whereas the plaintiff first offered to purchase the Property for \$1.03 million. No agreement was reached and the plaintiff, Foo and Yong left the coffee shop by car. In the car, Yong told the plaintiff that the deal could be sealed if he agreed to a price of \$1.1 million. The plaintiff agreed and they proceeded to the plaintiff's house where the plaintiff wrote an \$11,000 cheque for the Option fee (1%

of the purchase price) and handed it to Yong. There appears to have been an error in the payee's name leading to the plaintiff cancelling the first cheque and writing a second cheque for the same amount, which also contained an error in the payee's name. Yong delivered the cheque to the defendant who spotted the error. Yong called the plaintiff to inform him of the error and the plaintiff wrote a third cheque for the same amount and the correct payee, which Foo handed to Yong. Yong was a witness under subpoena and he gave evidence that he had gone to the 38 Yio Chu Kang Road premises near the Property to deliver the cheque and not finding the defendant there, that he had left the cheque at the shop.

5 The plaintiff says that that same afternoon, the plaintiff, Foo and another Indra, visited the Property to discuss renovation plans. Foo and Indra visited the Property whilst the plaintiff stayed by his car smoking a cigarette. Foo and Indra returned and told the plaintiff that they had met the defendant at the Property, and the defendant told them that he did not want to sell the Property. The defendant tried to return the cheque, but Foo told him to sort this out with the plaintiff, whereupon the defendant tore up the cheque and threw it away before walking away. Indra was not called as a witness.

6 The plaintiff claimed that he did not hear from the defendant thereafter, and so he proceeded to exercise the Option on 10 June 2009 through his solicitors. His solicitors also lodged the Caveat over the Property. His solicitors delivered the acceptance together with the Option exercise sum of \$44,000 (being 5% of the sale price less the option fee) to the defendant's solicitors as written in the Option. The named solicitors replied the same day to say that they had no instructions to act for the defendant in the sale and purchase of the Property and that their name had been inserted in the option without their knowledge and consent. The plaintiff's solicitors then wrote to both the named solicitors and the defendant on 19 June 2009 at an address of 769 Geylang Road, Singapore 389665, to "update" the defendant on the plaintiff's exercise of the Option and the lodgement of the Caveat. Since the defendant did not respond, the plaintiff assumed that he had validly exercised the Option. On 9 October 2009, the plaintiff's solicitors served a 21 day notice to complete to the defendant at the same 769 Geylang Road address and at 315 Joo Chiat Road, Singapore 427566 (which address the plaintiff had discovered was the defendant's last known address). Both addresses are not the current address of the defendant.

7 The defendant's evidence is straightforward. Sometime in or around May 2009, he had displayed an "On-Sale" sign at the Property. On Friday 29 May 2009, Yong approached him offering to find a buyer for the Property. The defendant was regularly to be found at his wife's shop at 38 Yio Chu Kang Road nearby the Property. Yong had then requested him to initial the bottom of each page of a printed option which was blank of material particulars including, the purchase price, the identity of the buyer and seller, the amount of deposit required for exercise of the Option, the number of weeks required for completion and the option grantor's solicitors. The defendant avers that he initialled the option document at Yong's request but did not sign it. He explained that he would sign the Option only if Yong was able to obtain the price he wanted. He explained that his initialling the "blank" option document was done at Yong's request and that his initials only signified that he was comfortable with the printed terms as being standard terms. As it was blank of material particulars including the price, he did not intend and Yong was aware that he did not intend to sign and issue any option until Yong was able to revert to him with an offer price of no less than S\$1.3 million. Crucially, the defendant gave clear and unequivocal evidence that he never then nor thereafter at any time signed the Option. It is his evidence that he did not sign the Option and that the signature that appears on the Option is not his signature. He says further that he did not know who wrote in the blank fields and/or who forged his signature as appears in the Option. The defendant also avers that he did not insert or write any of the material particulars in the Option.

8 It is the defendant's evidence that he has never met the plaintiff or Foo whether at the Property or the coffee shop on 30 May 2009. He confirms only that he dealt with Yong. He was prepared to sell the Property but for no less than \$1.3million and that he had no intention of selling the Property for \$1.1 million or any lower sum. With respect to the plaintiff's averment of the meeting at the nearby coffee shop on Saturday 30 May 2009 morning, the defendant denies meeting the plaintiff and Foo. He admits only that he had then seen Yong at the coffee shop with some others who he could not identify and that he had spoken only to Yong outside the coffee shop. The defendant testified that he would ordinarily leave 38 Yio Chu Kang in the afternoon to return to his residence in Johor Bahru. It is his evidence that he could not possibly have been present at the Property in the late afternoon of Saturday 30 May 2009 where he is alleged by Foo to have torn up the Option fee cheque. Similarly, not having been present at his wife's shop in the afternoon, he was not aware whether or not Yong left any Option fee cheque at 38 Yio Chu Kang. He denies having seen or received any such cheque when he next returned to the premises.

9 The plaintiff relies on his own and Foo's testimony that on 30 May 2009, Yong had told them in the car that he had a signed Option. The plaintiff also relies on the testimony of Yong that the Option was given at around 2.30 pm on Friday 29 May 2009, and that Yong's signature appears in the Option as attesting the defendant's signature.

10 Yong testified that he had written the details of the name of the Property, the price of \$1.1 million and the name of the vendors' solicitors with the agreement of the defendant. [\[note: 1\]](#) However, Yong also testified that the defendant had on the very same day told him that he wanted to sell the property for a price between \$1.3 million to \$1.4 million. [\[note: 2\]](#) This being Yong's own evidence, there was no reason why the defendant would have, on the same day, agreed to lower his asking price to \$1.1 million, in the light of Yong seeking an opportunity from him to find buyers at a price acceptable to the defendant.

11 I am also unable to accept Yong's testimony on critical facts surrounding the grant of the Option on 30 May 2009 because of his contradictory and changing testimony. He was neither the plaintiff's nor the defendant's witness but had to be subpoenaed by the plaintiff. He appeared to me to be extremely anxious and unreliable as a witness. Yong testified that on the morning of Saturday 30 May 2009, Foo arranged with him for the viewing of the Property. Initially, Yong's testimony was that at the viewing of the Property, the plaintiff, Foo and himself were present and that the defendant only joined them subsequently at the nearby coffee shop to discuss the price. [\[note: 3\]](#) Under cross-examination, he changed his story to coincide with the plaintiff's version of events, viz, that the defendant had joined the plaintiff, Foo and Yong slightly later to unlock the Property for viewing. [\[note: 4\]](#) When probed further by the court, Yong changed his story back to the first version, ie, that only the plaintiff, Foo and him had viewed the Property and the defendant only joined them subsequently at the coffee shop. [\[note: 5\]](#) His account of what happened after the parties could not reach any agreement at the coffee shop was similarly unsatisfactory. Yong first said that he left in the plaintiff's car for the plaintiff's house where they spent about an hour discussing the price. Subsequently he said that he drove his own car, which he parked outside the plaintiff's house. When the court probed further, he switched back to the previous version, viz, that he went in the plaintiff's car to the plaintiff's house. [\[note: 6\]](#)

12 I turn next to Yong's account that a cheque for \$11,000 representing the Option fee was delivered to the defendant. Yong testified that he collected a cheque ("the first cheque") from the plaintiff at the plaintiff's house and that he had delivered it to the defendant at 38 Yio Chu Kang Road. *En route*, Yong claimed that he went to Serangoon Shopping Centre to photocopy the Option

but he did not photocopy the first cheque. He only realised that there was a spelling error in the payee name when the defendant pointed that out. The defendant, however, averred that he rejected the cheque for two reasons – the payee name was wrong and the amount was for S\$1.1 million and not S\$1.3 million. Yong testified that he then called the plaintiff to tell him about the error. The plaintiff arranged to meet him at 2.30 pm at Serangoon Shopping Centre to exchange the first cheque for a fresh cheque for S\$1.1 million with the corrected payee name. Yong claimed that he went to Serangoon Shopping Centre to make a photocopy of the second cheque before going to deliver it to the defendant. When questioned, Yong explained that the reason he made a photocopy of the cheque was to provide this to his employer to secure his commission entitlement. However, he was unable to explain why, being anxious to secure his commission entitlement from his employer, he had not made a photocopy of the first cheque. His explanation was that he was “in a rush”. I find it difficult to accept Yong’s explanation given that he had sought the defendant out for this opportunity to find a buyer and his obvious anxiety to earn his commission.

13 In short, I find Yong’s evidence not to be credible.

14 Unlike Yong’s evidence which was prevaricating and unsafe for me to accept, the defendant’s testimony was simple, clear, without equivocation or prevarication. I find him to be a credible witness. I accept the defendant’s testimony, which was confirmed by Yong, that on Friday 29 May 2009, Yong had approached him to seek an opportunity to find a buyer for the Property and that he had expressly told Yong then that he would only sell the Property for \$1.3 million or more. Yong then asked him to initial the first four pages of the blank option and the defendant acceded to this request having perused the terms and was careful not to sign it. The Option he initialled did not contain any material details (see [\[7\]](#) above). It is the defendant’s evidence that Yong offered him a reduced commission from 2% to 1% of the purchase price. The defendant would only sign the Option when Yong returned with a buyer at a satisfactory price. [\[note: 7\]](#)

15 The defendant did not dispute that Yong did visit him at 38 Yio Chu Kang Road with a cheque on Saturday 30 May 2009. I accept the defendant’s evidence that he had rejected the cheque because it was not for the right amount and also because the payee name was wrongly spelt. I also accept that the defendant did not know that Yong had advertised for the sale of the Property at \$1.28 million, or why he had done so at a price below the asking price. I also accept his testimony that he did not see or hear from Yong again later that day because he had gone back to his residence in Johor Bahru that afternoon. [\[note: 8\]](#) Consequently, I accept the defendant’s evidence that he did not receive the second cheque, his denial of the “cheque-tearing incident” later in the afternoon and his evidence that he had no knowledge of and that he did not receive the cheque which Yong alleges he placed at 38 Yio Chu Kang Road in the defendant’s absence. [\[note: 9\]](#)

16 The evidence of the defendant, which I accept, is that the signature on the Option is not his signature and is a forgery. A contract containing a signature which is not the signature of the purported contracting party does not have contractual effect such as to bind the purported contracting party. Rather, it is a nullity and has no legal effect on the purported contracting party whose signature had been forged: see *Painter v Abel*, (1863) 159 ER 47; *Pubs (London) Limited, Mr Ian Bryant v Melson Limited, Mr Tucker, Mrs Tucker, Mr Grimes* [2009] EWHC 3515 at [63].

17 Where a contracting party sues another on the basis of the other’s purported signed document, and the other’s pleaded defence is a bare denial that the purported signature is his, the plaintiff bears the legal burden to prove the authenticity of the document: see *A/S Dan Bunkering Limited v F G Hawkes (Western) Limited, Alani Shipping Co (UK) Limited, David John Orrells* [2009] EWHC 3141 (“*Alani Shipping*”). If the plaintiff has adduced sufficient evidence to prove that the document was

signed by the defendant or with his authority. the evidential burden will shift to the defendant to adduce evidence of forgery: *ibid*. Thus, for example, in *Alani Shipping* at [41], the English High Court held that as the plaintiff had adduced evidence of several documents which evidenced the defendant's practice of allowing agents to sign documents on its behalf, the evidential burden shifted to the defendant to prove that the guarantee contract in question was forged, and not signed on its behalf pursuant to actual authority, as per the defendant's usual practice. As the defendant was there unable to adduce sufficient evidence to discharge this evidential burden, the plaintiff obtained judgment in its favour.

18 In the light of my findings above (at [9] – [14]), the plaintiff has not proven on a balance of probabilities that the Option was signed by the defendant. The defendant's pleaded defence that the signature on the Option is not his signature displaces any procedural question as to the effect of placing the Option in the Agreed Bundle as being a waiver of the authenticity of the Option. As the Option was not signed by the defendant, the necessary inference is that the signature on it is a forgery rendering the Option null and void

19 The next question is whether, notwithstanding that the signature on the Option is not that of the defendant but is a forgery, would the defendant be bound by such Option by reason of his having made any representations. In determining the question of whether a legally binding contract has arisen by the defendant's act of initialling the Option, it is essential to examine whether the objective intentions of the parties was to create a legally binding contract by authenticating the terms of the purported contract: *Harold Anthony Newell v Stuart Stanley Tarrant, Felicity Mary Wise (formerly Ross)* [2004] EWHC 772 at [47], *Ove Arup & Partners International Ltd & Another v Mirant Asia-Pacific Construction (Hong Kong) Limited & Another* [2003] EWCA Civ 1729. I find that the defendant's initialling of the Option was not indicative of his intention to authenticate his agreement to the Option terms as subsequently inserted without his knowledge or agreement and this was known and conveyed to Yong.

20 The final issue is whether the defendant is bound by his having handed the Option to the agent who has knowledge that he is not authorised to sign or conclude the Option on the defendant's behalf. I am unable to see how the act of initialling at the bottom of each page of the blank Option on 29 May 2009 amounts to a holding out that Yong has authority to make a decision on the defendant's behalf. Further, I find upon the evidence before me that the coffee shop conversation between the defendant and Yong does not itself or in combination with the initialled but unsigned Option, constitute any representation by the defendant as would bind the defendant to the Option with the forged signature.

Conclusion

21 Given my findings and inferences of facts, it is unnecessary to consider the other issues relating to whether the Option was duly exercised.

22 The plaintiff's claim is dismissed with costs to be taxed awarded to the defendant. Judgment is awarded to the defendant on his counterclaim for the removal of the Caveat.

[\[note: 1\]](#) Transcript, Day 1, pg 71

[\[note: 2\]](#) Transcript, Day 1, pg 69

[\[note: 3\]](#) Transcript, Day 1, pg 72 - 73

[\[note: 4\]](#) Transcript Day 2, pg 11

[\[note: 5\]](#) Transcript Day 2, pg 13

[\[note: 6\]](#) Transcript Day 2, pg 14 – 17.

[\[note: 7\]](#) Transcript, Day 2, pg 91

[\[note: 8\]](#) Transcript, Day 3, pg 71

[\[note: 9\]](#) Transcript, Day 3, pg 77.

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