

Thomson Development Co (Pte) Ltd v Ng Kah Jin
[2009] SGHC 8

Case Number : Suit 563/2007

Decision Date : 09 January 2009

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : Christabel Leow and Rosina Lau Man Sai (The L.A. Law Chambers LLC) for the plaintiff; Foo Jong Han Rey (K S Chia Gurdeep & Param) for the defendant

Parties : Thomson Development Co (Pte) Ltd — Ng Kah Jin

Trusts – Express trusts – Constitution

Trusts – Resulting trusts – Automatic resulting trusts

9 January 2009

Kan Ting Chiu J:

1 The plaintiff company, Thomson Development Co (Pte) Ltd claimed that the defendant, Ng Kah Jin, a former shareholder and director of the company and the registered owner of six properties at Cavan Road, Singapore ("the properties"), held the properties on trust for the plaintiff. The plaintiff alleged that there was an express agreement that the defendant would hold the properties on trust for the plaintiff, or alternatively that there was a resulting trust in favour of the plaintiff.[\[note: 1\]](#) The reliance on a resulting trust appeared to be an afterthought. When the plaintiff filed a caveat on the properties on 26 June 2007 to claim beneficial ownership of the properties, the claim was based on an alleged agreement between itself and the defendant, with no reference to any resulting trust.[\[note: 2\]](#)

2 The dispute is as much a family matter as it is a company matter. The family involved is the Lin (also spelt as Ling and Lim) family. The dominant member of the company is Lin Kok Cheng ("LKC"), acknowledged to be the driving force and controlling mind of the company.[\[note: 3\]](#)

3 The defendant is the widow of LKC's brother, Ling Kok Ka or Vincent Ling ("VLKK"). VLKK was the company secretary and manager of the plaintiff company up to the time of his death. There is a third brother, Lim Kok Kiong ("LKK"), a director and shareholder of the plaintiff. He admitted that he became a director and shareholder of the plaintiff as a nominee of LKC, and that he did not play an active role in the affairs of the plaintiff.

4 LKC was the plaintiff's principal witness. His evidence was that the company was run as a family business and was operated on the basis of mutual trust and confidence,[\[note: 4\]](#) and he nominated members of the family, including his wife, his daughter, his brothers and sister-in-law to be shareholders and directors of the plaintiff while he maintained control over the shares and the company.

Purchase of the properties

5 In 1982, the plaintiff company exercised an option to purchase the properties from the owner. The purchases were completed in the names of the defendant and a co-investor, Low Hock Heng ("LHH") because the plaintiff did not have the funds to purchase the properties on its own. The

directors of the plaintiff passed a resolution for the properties to be transferred to the defendant and LHH upon completion. In 1984, LHH sold his half interest in the properties which was transferred to the defendant, who then became the sole registered owner of the property.

6 The plaintiff's case was that there was an express agreement between the plaintiff and the defendant that the defendant would hold the properties on trust for the plaintiff, or alternatively, that there is a resulting trust in favour of the plaintiff.[\[note: 5\]](#) The defendant denied that there was any express agreement. She acknowledged that she had not contributed to the purchase price of the properties and accepted that her husband also did not contribute towards that.[\[note: 6\]](#)

The defence

7 While the defendant denied that she hold the properties as trustee for the plaintiff, she did not claim full beneficial ownership over the properties. In her defence, she pleaded that she held the properties in trust:

- a. 40% for Lin Kok Cheng;
- b. 10% for Ling Kok Cheng's son, Lin Shin Chuan;
- c. 10% for Lim Kok Kiong;
- d. 20% for the Defendant;
- e. 10% for the Defendant's son, Gerald Ling Sin Wee; and
- f. 10% for the Defendant's daughter, Geneve Ling Sin Chin.[\[note: 7\]](#)

The evidence

8 It was common ground that the plaintiff company was run as a family business and that LKC was the controlling mind of the company.[\[note: 8\]](#) LKC was the eldest of three brothers, and was a successful architect with interests in and outside Singapore. VLKK, the second brother, was a bankrupt for a major part of his working life, and LKK was a draughtsman, whose health problems restricted his capacity for work.

9 LKC's evidence was that he was too busy with his commitments as an architect and consultant in property developments to attend to the affairs of the plaintiff, and he left them to VLKK. He had also nominated, at different times, the defendant, his late wife Jenny Kang, LKK, his daughter Ling Lin Yun as shareholders and directors of the plaintiff.

10 In keeping with the familial and informal approach to the matters, there was little documentation on the purchase of the properties. Counsel for the plaintiff confirmed that the plaintiff's books and accounts do not record that it had any beneficial interest in the properties[\[note: 9\]](#) or any acknowledgment by the defendant that she was holding the properties in trust for the plaintiff.

11 Although the plaintiff's primary case was that there was an express agreement that the defendant was to hold the properties on trust for the plaintiff, no particulars of this agreement were disclosed. LKC did not refer to any such agreement. It is particularly significant that in the plaintiff's solicitors' letter to the defendant dated 14 August 2007 to demand that she execute a declaration of trust in favour of the plaintiff,[\[note: 10\]](#) reference was made to payments the plaintiff made for the

acquisition of the properties, but there was no mention of any express agreement between the parties. This was an unexplained departure from the position taken in the caveat filed on 26 June 2007, less than two months previously.

Trust deeds and management agent agreement

12 There were three trust deeds and a management agreement relating to the properties which expressly referred to the beneficial ownership of the properties, which have a significant impact on my decision in the case.

(i) The first trust deed

13 The first trust deed was prepared in 2003. The background to the preparation of this trust deed was that LKC was diagnosed with prostrate cancer and myasthenia gravis, and was warded in hospital in November 2002. While he was in hospital, he was approached by his son-in-law for a \$50,000 loan. When he raised this with VLKK, he was informed that the plaintiff did not have the funds to make the loan. This came as a surprise to him as he had believed that the plaintiff had substantial cash reserves.[\[note: 11\]](#) He was concerned that the defendant and VLKK would dissipate the assets of the plaintiff after he died.[\[note: 12\]](#) He decided to have a trust deed drawn up for the properties. Dr G Raman, a solicitor, went to the hospital to take his instructions and prepared the trust deed.[\[note: 13\]](#) It is interesting that by the account of LKK, who gave evidence for the plaintiff:

... the concern *amongst the family* is that should [LKC] pass on the Defendant and [VLKK] might claim those assets as their own ...[\[note: 14\]](#)

[Emphasis added]

which indicated that LKC was not the only person who was concerned, and that the members of the family also gave thought to the intended trust.

14 The trust deed was to be executed by the defendant as trustee. The recitals of the deed read:

1. I am the registered owner of a property known as No 9/A/B, 11/A/B, 15/A/B, 17/A/B Cavan Road Singapore 209850 (the property).
2. I confirm that at the time of purchase of the property, the following parties have contributed sums of money indicated in percentage terms to meet the total purchase price of approximately \$400,000.00:
 - a) Lin Kok Cheng 40%
 - b) Lin Shin Chuan 10%
 - c) Lim Kok Kiong 10%
 - d) Ling Kok Ka 40%

Total: 100%

then it went on to state:

1. I hereby declare that I hold the property in trust for the abovenamed persons to the effect that 15 years from the date of this Trust Deed or sooner with the consent of the four (4) persons or at my sole discretion I shall sell the said property and the proceeds of such sale shall be distributed in the following manner:

- | | | |
|----|----------------|------------|
| a) | Lin Kok Cheng | 40% |
| b) | Lin Shin Chuan | 10% |
| c) | Lim Kok Kiong | 10% |
| d) | Ling Kok Ka | <u>40%</u> |

Total: 100%

15 LKC confirmed during the trial that the deed reflected his intention on the division of the beneficial interest in the properties.[\[note: 15\]](#) This deed was executed by the defendant and three of the named beneficiaries. VLKK had kidney cancer and he died on 4 March 2004 without executing the deed.

16 According to LKC, the intention was that the deed was to be stamped and would take effect after the approval of the plaintiff's directors and shareholders is obtained,[\[note: 16\]](#) but he did not anticipate any problems in obtaining the approval because all the shareholders and directors were family members.[\[note: 17\]](#)

(ii) The second trust deed

17 LKC's evidence was that this deed was prepared after VLKK's death to "reflect the change in the Properties with [VLKK's] demise",[\[note: 18\]](#) and was executed by the parties in late 2004 or early 2005.[\[note: 19\]](#)

18 The change was that the beneficiaries to the properties were changed to:

- | | | |
|----|---------------------|-----|
| a) | Lin Kok Cheng | 40% |
| b) | Lin Shin Chuan | 10% |
| c) | Lim Kok Kiong | 10% |
| d) | Ng Kah Jin | 20% |
| e) | Gerald Ling Sim Wee | 10% |

f) Geneve Ling Sim Chin 10%

100%

Total:

19 This deed was executed by all the parties. According to LKC, Gerald Ling Sim Wee (GL) was to have arranged to have the deed stamped, but he did not attend to it.[\[note: 20\]](#)

20 In respect of this deed, LKC did not mention the necessity to obtain the approval of the directors and shareholders of the plaintiff before having the deed stamped. This is probably because all the shareholders and directors of the plaintiff were signatories to the deed.[\[note: 21\]](#)

(iii) The third trust deed and the managing agent agreement

21 Both these documents were executed on 29 July 2005 at a meeting in the plaintiff's office where the management of the properties was discussed.[\[note: 22\]](#)

22 LKC explained that after the execution of the second trust deed, he discovered that the defendant had authorised a company managed by her son to enter into leases of the properties on the defendant's behalf. These documents were intended to ensure that the defendant would not let out the properties without the consent of the beneficiaries.[\[note: 23\]](#) That purpose was reflected by the addition of a new clause in the third trust deed that:

3. I hereby further declare that I shall not let out the property without the prior approval of the other beneficiaries of the property and any of the beneficiaries who wishes to let out the property shall also likewise do so by obtaining the consent of myself and the other beneficiaries.

The allotment of beneficial interests remained unchanged. As in the case of the second trust deed, there was no requirement for the prior approval of the directors and shareholders of the plaintiff. The executed deed which was in the possession of the defendant was not stamped.

23 It should be mentioned that the references in the three trust deeds to the contributions made by the parties named were not correct. There was no explanation given for these misstatements, which appeared to have escaped the notice of all the signatories.

24 The managing agent agreement is interesting because it does not refer to the plaintiff or the defendant as the owner of the properties. The first paragraph and the first recital of the agreement read:

This Agreement is made this 29th day of July 2005 (hereafter known "this Agreement") between Mdm. Ng Kah Jin [NRIC No.: S0013037J] Ms. Ling Sin Chin Geneve [NRIC No.: S7835236A] Mr. Ling Sin Wee Gerald [NRIC No.: S7940929D] Mr Lin Kok Cheng [NRIC No.: S2061520F] Mr Lin Sin Chuan [NRIC No.: S7218448C] Mr Lim Kok Kiong [NRIC No.: S2017225H] (hereafter known as "the Landlords") on one part and Guardway Company Pte Ltd (Company Registration No.: 197301477D) of 15B Cavan Road Singapore 209849 (hereafter known as "the Managing Agent") on the other part.

Whereas:

1. The *Landlords [sic]* is the owner of the property known as No 9/A/B, 11/A/B, 15/A/B,

17/A/B Cavan Road Singapore 209850 (hereafter referred to as "the Property");

[Emphasis added]

25 It is to be noted that the beneficiaries named in the trust deed were described as the landlords and owners of the properties. During the trial, LKC confirmed that he understood the legal implications of the use of these terms,[\[note: 24\]](#) but he maintained without explanation that these persons ceased to be the owners of the properties at the end of 2005,[\[note: 25\]](#) with the implication that they were the owners before the end of 2005.

Evaluation of the claim

Express agreement

26 Against the background of these trust deeds and the management agent agreement, even if there was an express agreement (of which there was no evidence), it would have been novated.

Payment for the purchase of the properties

27 The plaintiff's pleaded case is that the defendant is holding the properties on a resulting trust for its benefit because it paid for the purchase of the property. However, when pleadings and the evidence were examined, it was clear that a significant portion of the pleaded facts were wrong.

28 In para 5 of the Statement of Claim, the plaintiff asserted that it paid \$35,000 towards the payment of the deposit for the purchase of the properties. In fact, that payment was not made by the plaintiff. LKC's own evidence was that the payment came from Akitek Utopia Group ("AUG"), the architectural practice of which he was the sole proprietor.[\[note: 26\]](#)

29 Paragraph 9 of the Statement of Claim stated that the plaintiff obtained a loan of \$150,000 from the Overseas Union Finance Ltd ("OUF") to complete the purchase in 1982. This was also incorrect for two reasons. Firstly, LKC claimed that he obtained the loan[\[note: 27\]](#). Secondly, the plaintiff was not a party to the loan which was given to the defendant and LHH, with LKC as the guarantor for the loan.[\[note: 28\]](#)

30 Paragraph 10 of the Statement of Claim stated that when the purchase of the properties was completed in 1982, the properties were registered in the names of LHH and the defendant holding in trust for the plaintiff. The purchase was completed in the names of LHH and the defendant without any trust being mentioned.

31 In para 11 of the Statement of Claim, the plaintiff asserted that when LHH's share in the properties was bought over by the defendant, the plaintiff obtained a loan from Sing Investments & Finance Ltd ("SIF") to refinance the purchase. This was contradicted by the records of the transaction which showed that the loan was made to defendant, with LKC standing as guarantor.[\[note: 29\]](#) The billing advices from SIF were issued to the defendant, with the receipts recorded that the payments were from the plaintiff for the account of the defendant.[\[note: 30\]](#) The plaintiff did not produce any of its records to show how the payments to SIF were characterised. Counsel could only say that they were recorded in the plaintiff's general ledger under two accounts, one for the defendant and another for the properties.[\[note: 31\]](#)

32 In addition to the pleaded assertions which were wrong, the statement of claim also failed to disclose that AUG had provided about \$90,000 for the purchase of LHH's share in the properties.[\[note: 32\]](#)

33 The evidence showed up material mistakes and omissions in the plaintiff's pleaded case, and that the plaintiff's own records did not show that the plaintiff had made full payment for the purchase of the properties. The evidence that AUG had provided \$35,000 towards the initial deposit and approximately \$90,000 to pay for LHH's share in the properties clearly contradicted the plaintiff's claim that it had paid the full purchase price for the properties.

The conduct of the plaintiff company

34 There was nothing in the plaintiff's records that indicated that it regarded itself to have a beneficial interest in the properties. It could have obtained an acknowledgment of the defendant that she held the properties as its trustee. This could have been done in 1982 when the half-share of the properties was acquired, or in 1984, when the full interest was obtained. There were no resolutions to reflect the beneficial interest of the company. The plaintiff's accounts did not include any beneficial interest in the properties amongst its assets. This was despite LKC's claim in his affidavit of evidence-in-chief that:

40. In or about April 1991, Thomson (as the beneficial owner of the Properties) discharged all the outstanding loans with Sing Investments and freed the Properties from encumbrances. The Properties were then registered under the sole name of the Defendant to hold the same in trust for Thomson.

41. Although the Properties were registered in the Defendant's sole name, at all material times, the understanding was that the Defendant would hold all the Properties on trust for Thomson. This trust arrangement was not documented in writing at that time as parties' relationship was based on mutual trust and confidence. Moreover, the Defendant, being a director of Thomson at that material time, had a fiduciary duty to protect the interests of the Properties, one of the company's assets.

If that was true, then the property would have been listed amongst the company's assets in accordance with the understanding. The failure to list the properties contradicted LKC's claim.

35 Although the plaintiff was a family business operated on the goodwill and trust of the family members, the plaintiff's beneficial interest in the properties should have been included in its accounts, especially if there was an express agreement as the plaintiff claimed. Counsel for the plaintiff stated that there was no record of it in the plaintiff's records. Absent an express agreement, if it was recorded that payments were made for the acquisition of the properties for the benefit of the plaintiff, the interest acquired would be reflected in the plaintiff's accounts, but it was not reflected.

The conduct of the plaintiff's shareholders and directors

36 The plaintiff's case is that LKC was the driving force behind the plaintiff and LKC's evidence was that he decided on the allocation of the plaintiff's shares and the appointment of the plaintiff's directors.

37 Against that background, the preparation and execution of the trust deeds and the managing agent agreement were inconsistent and incompatible with any intention by LKC and the shareholders and directors that beneficial interests in the properties should belong to the plaintiff.

38 Another discordant note to the plaintiff's case was sounded by LKK, LKC's surviving brother and

a shareholder and director of the plaintiff, who was the plaintiff's witness. He testified during cross-examination that he was not the owner of 10% of the properties, but was holding it on trust for LKC because "Kok Cheng is still the owner, and everything belongs to him" [\[note: 33\]](#) (and not the plaintiff).

Conclusion

39 The plaintiff seeks a declaration that it is the beneficial owner of the properties. It put forth two reasons for its claim: firstly, that there was an express agreement that the defendant would hold the properties on trust for it, and secondly, that there was a resulting trust in favour of the plaintiff because the plaintiff paid for the acquisition of the properties.

40 On the first ground, there was no serious effort by the plaintiff to prove its case. The express agreement alluded to was not identified in the pleadings, and LKC, the plaintiff's controlling mind and principal witness, made no mention of any express agreement. It is telling that in the closing submissions, counsel for the plaintiff was similarly silent. There was no evidence of any express agreement at all.

41 The claim that the plaintiff is the beneficiary under a resulting trust was made long after the properties were purchased. Even when the plaintiff filed its caveat to give notice of its claim to beneficial interest on 26 April 2007, it based its claim on an alleged agreement between the plaintiff and the defendant, not on any resulting trust.

42 A resulting trust can arise when A pays for property that is purchased in the name of B. In such a situation, there is a rebuttable presumption that B will hold the property in trust for A.

43 Was the claim nevertheless made out? There were substantial factors which went counter to the plaintiff's claim. Firstly, the evidence was that the plaintiff did not pay the full purchase price for the properties. The plaintiff's own evidence was that LKC's architectural practice, AUG, provided \$35,000 towards the deposit and a further sum of about \$90,000 for buying out LHH's share in the properties. Considering that the initial purchase price for the properties was \$400,000, the \$125,000 contribution from AUG was a significant flaw in the plaintiff's case.

44 There was another question – whether in the circumstances, it can be said that the plaintiff paid any part of the purchase price. The purchase price was raised from loans from OUF and SIF. The circumstances for the taking and repayment of the two loans differ. The first loan was taken in the names of the defendant and LHH, and the second loan was taken in the name of the defendant alone. The plaintiff's case was that it repaid these loans.

45 As far as the first loan was concerned, that was inconsistent with its own case that LHH was the legal and beneficial owner of his share of the properties. There was no reason for the plaintiff to repay his portion of the loan.

46 The second loan was taken by the defendant alone. Is the repayment of the second loan similar to the provision of the purchase money? That would depend on the circumstances. If A repays B's loan because B becomes unable to repay the loan after taking it on its own account, A cannot be regarded as having paid the purchase price. But if B was only the borrower in name, and the effective borrower and the repaying party was intended to be A, then A can be regarded as having paid the purchase price as it assumed responsibility for it from the outset.

47 In this case, there was evidence that the loan was taken on the initiative of the plaintiff,

and the repayments were made by plaintiff. The repayments made can be treated as payments made by the plaintiff towards the purchase price.

48 Secondly, there was no evidence that the plaintiff intended to acquire any interest in the properties. It never listed any interest in the properties in its records and accounts.

49 Thirdly, all the persons connected with the plaintiff, its controlling mind LKC, shareholders and directors signed the trust deeds and the management agent agreement. If the trust deeds were executed by the defendant alone, they would be of limited value because the defendant cannot create any trust if she was not the beneficial owner. However, the execution of these documents by the various parties gave significance to the documents because that showed that they did not look upon the plaintiff as having any beneficial interest in the properties, and they were persons who were aware of and were interested in the affairs of the plaintiff.

50 There was no resulting trust in favour of the plaintiff. The presumption for that was amply rebutted by the fact that on its best case, the plaintiff did not pay the whole purchase price for the properties, and that there was clear and uncontroversial evidence that it was not intended to have any beneficial interest in the properties.

Conclusion

51 The plaintiff's case on the basis of express agreement and on resulting trust was dismissed with costs.

[\[note: 1\]](#)Plaintiff's Opening Statement para 18

[\[note: 2\]](#)PB328-9

[\[note: 3\]](#)Reply to defence (Amendment No.1) para 10(b) and Plaintiffs' Opening Statement para 30

[\[note: 4\]](#)Affidavit of evidence-in-chief of Lin Kok Cheng para 11

[\[note: 5\]](#)Plaintiff's Opening Statement para 38

[\[note: 6\]](#)Notes of Evidence 9 July 2008, page 84 lines 14-20, page 96 lines 14-19

[\[note: 7\]](#)Defence (Amendment No. 1) para 6

[\[note: 8\]](#)Notes of Evidence 7 July 2008 page 79 lines 20-24

[\[note: 9\]](#)Notes of Evidence 9 July 2008 pages 1 and 6

[\[note: 10\]](#)Referred to in Statement of Claim para 17

[\[note: 11\]](#)Affidavit of evidence-in-chief of Lin Kok Cheng para 60

[\[note: 12\]](#)Affidavit of evidence-in-chief of Lin Kok Cheng para 72

[\[note: 13\]](#)Notes of Evidence 9 July 2008 page 23

[\[note: 14\]](#) Affidavit of evidence-in-chief of Lin Kok Kiong para 26

[\[note: 15\]](#) Notes of Evidence 7 July 2008 pages 110-111

[\[note: 16\]](#) Affidavit of evidence-in-chief of Lin Kok Cheng para 75

[\[note: 17\]](#) Notes of Evidence 7 July 2008 page 107 line 8 to page 108 line 4

[\[note: 18\]](#) Affidavit of evidence-in-chief of Lin Kok Cheng para 76

[\[note: 19\]](#) Affidavit of evidence-in-chief of Lin Kok Cheng para 76

[\[note: 20\]](#) Affidavit of evidence-in-chief of Lin Kok Cheng para 76

[\[note: 21\]](#) Notes of Evidence 8 July 2008 pages 2-3

[\[note: 22\]](#) Notes of Evidence 8 July 2008 pages 13-14

[\[note: 23\]](#) Affidavit of evidence-in-chief of Lin Kok Cheng para 77

[\[note: 24\]](#) Notes of Evidence 8 July 2008 page 98

[\[note: 25\]](#) Notes of Evidence 8 July 2008 page 50 lines 22-25

[\[note: 26\]](#) Affidavit of evidence-in-chief of Lin Kok Cheng para 27

[\[note: 27\]](#) Affidavit of evidence-in-chief of Lin Kok Cheng para 32

[\[note: 28\]](#) Affidavit of evidence-in-chief of Lin Kok Cheng para 32

[\[note: 29\]](#) Affidavit of evidence-in-chief of Lin Kok Cheng para 36 read with exh "LKC-14"

[\[note: 30\]](#) AB41 - 155

[\[note: 31\]](#) Notes of Evidence 9 July 2008 pages 2 - 4

[\[note: 32\]](#) Affidavit of evidence-in-chief of Lin Kok Cheng, para 37

[\[note: 33\]](#) Notes of Evidence 8 July 2008 page 117 lines 6-16

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