

Terence Yeo Guan Chye and Another v Lau Siew Kim
[2006] SGHC 227

Case Number : Suit 855/2005
Decision Date : 08 December 2006
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Lim Chor Pee (Chor Pee & Partners) for the plaintiffs; Chew Swee Leng (as counsel) with Sng Kheng Huat (Sng & Co) for the defendant
Parties : Terence Yeo Guan Chye; Theodore Yeo Guan Huat @ Yeo Guan Huat — Lau Siew Kim

*Civil Procedure – Pleadings – Further amendments to statement of claim on last day of trial
– Whether prejudicial to defendants – Whether prejudice could be compensated by costs*

8 December 2006

Lai Siu Chiu J

1 These grounds of decision relate to an application by the plaintiffs to further amend their statement of claim on the last day of trial. The defendant opposed the application and has now appealed against my decision (in Civil Appeal No. 113 of 2006) in granting the application.

2 The plaintiffs are two brothers Terence and Theodore Yeo. The defendant Lau Siew Kim is the widow and was the third wife, of the plaintiffs' late father Tommy Yeo Hock Seng ("the deceased") who died on 23 November 2004 after suffering a heart attack.

3 The plaintiffs' mother Iris Chong ("Iris") married the deceased in 1959 ("the first marriage"); the plaintiffs are the children of that first marriage. The first marriage ended in an acrimonious divorce which was granted in August 1988, on the deceased's divorce petition filed in September 1987; Iris obtained custody of the first and second plaintiffs who were then aged 13 and 17 respectively. Iris brought up the plaintiffs who did not have much contact with the deceased in their growing years and who (according to the plaintiffs) did not contribute financially towards their upbringing. It was the defendant's case that the deceased was estranged from the plaintiffs after the first marriage ended in divorce.

4 The deceased's education at St Andrew's School was only up to a school certificate. After he left school, the deceased took up an accounting course by self-study and obtained a certificate from the Association of Certified Accountants that qualified him to be an auditor. The deceased however did not have regular employment during his lifetime. He preferred to do business to which intent and purpose, he started a business called TY Batik in 1970 which eventually folded up, due to the 1986 recession.

5 In 1981, the deceased met Ng Ah Mui ("Ng"), a Malaysian employed by TY Batik and eventually married her in 1989 ("the second marriage"). The couple had no children and the second marriage also ended in an acrimonious divorce in or about 1996, based again on a divorce petition filed by the deceased.

6 The deceased was however luckier in his property investments than in his marriages. He was

the youngest amongst his siblings (which included his older brother Donald Yeo, a former lawyer) and his late mother left to him solely her property at No. 26 Thrift Drive ("the Thrift Drive property") without any encumbrances.

7 The deceased sold the Thrift Drive property for \$330,000 in 1987 and used the sale proceeds to acquire a bigger house at No. 9 Sennett Lane ("the Sennett Lane property") at the price of \$317,000. The Sennett Lane property was valued at \$450,000 by United Malayan Banking Corporation ("UMBC") and this enabled the deceased to obtain banking facilities to pay for the operations of TY Batik.

8 In 1989 the deceased sold the Sennett Lane property for \$845,000 with planning approval for two semi-detached houses.

9 After selling the Sennett Lane property, the deceased bought in 1990, for \$470,000, No.33 Fowlie Road ("the Fowlie Road property") which was then a dilapidated bungalow. After its purchase, the deceased rented out the Fowlie Road property and lived on the rental income. He resided at a Housing & Development Board flat situated at Block 202, Marsiling Drive #06-134, Singapore 730202 ("the Marsiling flat"). He was ordered by the courts to transfer the Marsiling flat to Ng in their divorce proceedings in 1996.

10 According to the defendant's own testimony, she first met the deceased in December 1993 through an introduction. He was then 49 years of age while she was 35 years old and by her own admission, a spinster. The defendant moved in with the deceased in or about 1995 and lived with him at the Marsiling flat before the deceased's divorce from Ng was finalised.

11 On 20 May 1996, the deceased made a new Will ("the second Will") to replace a previous Will dated 28 January 1992 in which the first plaintiff was named as his sole beneficiary. The second Will appointed the defendant as the sole executor and named her the sole beneficiary, of the deceased's estate.

12 The defendant went to England in September 1998 to continue on a fulltime basis, her studies in accounting, which course she had started on a part-time basis in Singapore, while she was working at various jobs sometimes simultaneously (which jobs the plaintiffs described as 'lowly'). The deceased supported her and paid for the defendant's studies while she was in England. The defendant returned to Singapore in July 1998 after graduating with a bachelor's degree in accounting.

13 The deceased and the defendant were married on 18 December 2000. Prior thereto, in April 2000, the couple purchased jointly an executive flat from the Housing and Urban Development Corporation ("the HUDC") situated at No. 149, Hougang Street 11 #10-136, Minton Rise, Singapore ("the Minton Rise property") for \$495,000, using a loan of \$396,000 from Standard Chartered Bank ("the SCB loan") and withdrawals from the defendant's CPF savings. In December 2000, the defendant for the first time found employment as an accountant. The Minton Rise property was the couple's matrimonial home until the demise of the deceased. The defendant still resides there. According to the defendant, she is servicing the monthly mortgage instalments of \$2,100 on the SCB loan, partly through her CPF contributions and partly by cash; she also pays the monthly conservancy charges. The HUDC estate in which the Minton Rise property is located has since been privatised and there is a possibility of the entire estate being sold *en bloc*.

14 In June 2000, the deceased had mortgaged the Fowlie Road property to SCB, for a loan of \$1.2m ("the SCB loan") repayable over 25 years. The deceased and the defendant were joint borrowers. The SCB loan was used to discharge the existing mortgage of United Overseas Bank

("UOB") on the Fowlie Road property, which was security for a loan that the deceased had previously obtained from UOB. Rental from the Fowlie Road property serviced the mortgage instalments of SCB.

15 The deceased decided to and did, redevelop the Fowlie Road property into two semi-detached houses, using a fresh construction loan and overdraft facilities (jointly the "the UOB loan") totalling \$2.218m from UOB. Both he and the defendant were joint borrowers of the UOB loan.

16 After completion in August 2003, the two semi-detached houses were numbered 33 and 35 Fowlie Road. No. 33 Fowlie Road was sold in February 2004 for \$1.828m and the sale proceeds were used to discharge the UOB loan. No. 35 Fowlie Road remains unsold although it was completed in 2003. The defendant explained it was because she and the deceased intended to reside there. However, after its completion, the couple discovered that the 3½ storey house was too big for their needs. Both houses were owned by the deceased.

17 In March 2004, the deceased purchased another property at No. 18 Jalan Tari Payong ("the Tari Payong property") for \$1.1m as joint tenants with the defendant; an old single storey bungalow was on the site. The couple borrowed \$770,000 from UOB repayable over 17 years, to part-finance the purchase.

18 As with the Fowlie Road property, the deceased demolished the existing house on the Tari Payong property and constructed two semi-detached houses on the site, which became known as Nos. 18 and 18A Jalan Tari Payong respectively. Construction of the two houses started in June 2004 and was scheduled to be completed by end 2005. As at the date of demise of the deceased, the two houses were not completed. They were eventually completed in 2005 and were sold thereafter. The defendant was the sole registered owner of both houses. She testified in court that as she had learnt the ropes from the deceased when he developed the two semi-detached houses at Nos. 33 and 35 Fowlie Road, the deceased left her to take charge of and oversee the construction of Nos. 18 and 18A Jalan Tari Payong.

19 In August 2005, the defendant received notice from the Singapore Land Authority ("SLA") advising that the plaintiffs had lodged a caveat on the Tari Payong property ("the caveat") on 20 August 2005. Upon inspection of the caveat by her solicitors, the defendant discovered that the plaintiffs claimed to have an interest as beneficiaries of the estate of the deceased.

20 The defendant's solicitors wrote to the plaintiffs' solicitors to request for the withdrawal of the caveat. The request was not acceded to. As a result, the defendant applied by Originating Summons No. 1258 of 2005 ("the first OS") for the removal of the caveat.

21 The defendant was further notified by the SLA that on 23 August 2005 the plaintiffs had lodged another caveat against the Minton Rise property ("the second caveat"). A search on the second caveat by the defendant's solicitors revealed that the plaintiffs also claimed an interest in the Minton Rise property as beneficiaries of the deceased.

22 On 27 August 2005, the defendant's solicitors again wrote to the plaintiffs solicitors to request that the second caveat be removed. When the request was not acceded to, the defendant's solicitors applied by Originating Summons No. 1259 of 2005 ("the second OS") for the removal of the second caveat.

23 On 4 October 2005, the plaintiffs filed caveats ("the third and fourth caveats") against Nos. 18 and 18A Jalan Tari Payong respectively.

24 The first and second OS came up for hearing before Tay Yong Kwang J on 25 January 2006. In the first OS, the judge ordered the removal of the third and fourth caveats against Nos. 18 and 18A Jalan Tari Payong within seven days provided *inter alia* that their net sale proceeds (less mortgage loan and incidentals) be held in a stakeholder's account by the defendant's solicitors.

25 The judge made a similar order for the second OS in the event the Minton Rise property was sold. The judge then ordered both OSs to be fixed for mention immediately after the trial of this suit.

26 The plaintiffs on their part filed Suit No. 32 of 2005 ("the Suit") on 17 January 2005 against the defendant seeking *inter alia* to set aside the second Will [11] on the basis that the deceased's subsequent marriage to the defendant revoked the same. The plaintiffs also applied for letters of administration to the deceased's estate to be granted to them. On 5 July 2005, the court granted the plaintiffs' application and the second Will was revoked. On her appeal, the defendant's appeal was dismissed. The judge ordered the plaintiffs to withdraw the caveats they had lodged against probate which they had filed in both the subordinate courts and the high court, without prejudice to the plaintiffs' rights to apply for letters of administration to the estate of the deceased.

These proceedings

27 The plaintiffs commenced these proceedings on 20 November 2005. After narrating the facts as largely set out earlier, the plaintiffs alleged that as all the funding for the purchase of the Minton Rise property and the Tari Payong property came from the deceased, the defendant held the Minton Rise property and Nos. 18 and 18A Jalan Tari Payong on trust for the estate of the deceased.

28 There was a previous application in Summons No. 4284 of 2006 for amendment of the statement of claim (amendment No. 1) by the plaintiffs. Amendment No 1 was granted (with the defendant's consent) on the first day of trial, essentially to amend the incorrect address of the Minton Rise property and to add a prayer that, the administrators of the estate of the deceased were to sell the Minton Rise property and Nos. 18 and 18A Jalan Tari Payong within six months of their appointment as administrators and distribute the net proceeds to the beneficiaries of the estate, within one week of receipt thereof.

29 On the last day of trial, counsel for the plaintiffs applied to further amend the statement of claim ('amendment No. 2') by way of Summons No. 4407 of 2006 ("the application"). By then (25 September 2006) the plaintiffs had testified together with their uncle Donald Yeo and had closed their case. The defendant and her three witnesses had also testified. Before being released as a witness, the defendant was directed by the court to produce her bank statements that morning to substantiate her oral testimony (under cross-examination) that she had her own lines of credit from banks, over and above the lines of credit granted to the deceased and to her, secured by the properties referred to earlier in [12], [15] and [16]; she was also directed to produce her income tax returns.

30 The application was vigorously opposed by instructed counsel (Mr Chew) for the defendant, as evidenced in the notes of arguments that were recorded.

31 It would be appropriate at this juncture to look at the changes effected to the statement of claim by the application (the amendments made pursuant to amendment No.1 are disregarded). Amendment No. 2 appear in the following paragraphs of the statement of claim:

~~8 The Plaintiffs contend that in respect of those properties which are registered in the name of the Defendant solely or jointly with Tommy Yeo, the titles are held by the Defendant in~~

~~trust for the estate of Tommy Yeo on the ground that the purchase monies were provided by Tommy Yeo.~~

8 The defendant now claims the joint tenancy properties [defined in para 6 to mean Fowlie Road, Minton Rise and Tari Payong properties] belong to her absolutely and not to the Estate. The plaintiffs dispute this claim.

19 In February 2000, Tommy Yeo bought the Minton Rise property as joint tenants with the defendant for \$495,000 and lived with her in this apartment. This purchased (sic) was financed by a loan from Standard Chartered Bank ~~and CPF monies.~~ The initial down payment was paid by Tommy Yeo.

21 Thereafter Tommy Yeo ~~was able to~~ redeveloped No. 33 Fowlie Road into new 2 separate semi-detached houses which became known as No. 33 Fowlie Road and No. 35 Fowlie Road with the assistance of banking construction loan and overdraft secured by a mortgage of this property.

22 The construction costs of No. 33 Fowlie Road and No. 35, Fowlie Road was financed by a new loan from United Overseas Bank ("UOB") on a mortgage of the Fowlie Road property belonging to Tommy Yeo.

23 He sold off No. 33 Fowlie Road in February 2004 for \$1,825,000 for a profit and No. 35 Fowlie Road remains in his sole name until his death. Some of the sale proceeds were utilized to pay the bank's construction loan.

25 No. 18 Jalan Tari Payong was later demolished and ~~replaced~~ the land was redeveloped into with 2 separate properties new semi-detached houses (which became known as No. 18 Jalan Tari Payong and No. 18A Jalan Tari Payong). Construction work started in June 2004 and ~~is~~ was scheduled to end in 2005. Unfortunately Tommy Yeo passed away in November 2004 before the two buildings were completed.

26 Construction of No. 18 Jalan Tari Payong is now completed ~~and one of the properties has been put up for sale by the plaintiff.~~ No. 18A Tari Payong Singapore has been sold by the defendant in 2006 leaving No. 18 Jalan Tari Payong Singapore now registered in the sole name of the defendant after the death of Tommy Yeo.

27 As all the funding for the purchase of the properties came from Tommy Yeo, the Joint Tenancy properties are held on resulting trust by the defendant for the Estate ~~of Tommy Yeo.~~

28 Since the death of Tommy Yeo on 23 November 2004, the defendant has considered herself as sole owner of both the Minton Rise and Jalan Tari Payong properties and have (sic) refused to produce bank statements to the plaintiffs in respect of all the joint banking accounts of the defendant and Tommy Yeo.

29 Accordingly, the plaintiffs contend that the defendant as a beneficiary of the estate of Tommy Yeo is accountable to his Estate for any moneys drawn by her from the said joint banking accounts secured by the said properties for purposes unconnected with the Estate and for the share of the Estate's profits arising from the Jalan Tari Payong project.

And the plaintiffs claim:

~~(1) — A declaration that the properties known as~~

~~(a) No. 149 Hougang Street 11, #10-136 Minton Rise, Singapore;~~

~~(b) — No. 18 Jalan Tari Payong, Singapore; and~~

~~(c) — No. 18A Jalan Tari Payong Singapore~~

~~are held in trust by the defendant for the Estate of Yeo Hock Seng.~~

(1) A declaration that the property (now registered in the sole name of the defendant) and known as 149, Hougang Street 11, #10-136, Minton Rise, Singapore ("Minton Rise property") and No. 18 Jalan Tari Payong, Singapore ("the Jalan Tari Payong property") are held by the defendant in trust for the Estate of Yeo Hock Seng, deceased;

(2) In the alternative, a declaration that the property (now registered in the sole name of the defendant) and known as No. 18 Jalan Tari Payong, Singapore ("the Tari Payong property") is held in trust by the defendant as to half share thereof for the Estate of Yeo Hock Seng deceased;

(3) An order that the 2nd plaintiff and the defendant apply for Grant of Letters of Administration to the Estate of Yeo Hock Seng as Joint Administrators within fourteen (14) days of this Order;

(4) An order that the 2nd plaintiff and the defendant within fourteen (14) days of this Order instruct Mr Giam Chin Toon and Mr TPB Menon of M/s Wee Swee Teow & Co (and if they decline the brief, such law firm nominated by them) to apply for Grant of Letters of Administration of the Estate of Yeo Hock Seng to the 2nd plaintiff and the defendant jointly and to act as their solicitors ("the said Estate's Solicitors") for purposes of administration of the said Estate, including the retention of sale proceeds of properties belonging to the Estate and to distribute the net profits (after deducting expenses) according to the law of intestacy;

(5) An order that upon the Grant of Letters of Administration of the Estate of Yeo Hock Seng deceased to the 2nd plaintiff and the defendant pursuant to this Order the defendant shall sell by public tender both the Minton Rise property and the Tari Payong property with the Solicitors for the Estate acting as Solicitors for the defendant and the net proceeds of sale shall be retained by the said Solicitors pending finalisation of the accounts of the Estate of Yeo Hock Seng under paragraph (4) of this Order herein before distribution to the defendant of her entitlement to the net balance of the proceeds in the said properties after deducting or crediting any moneys due to and from the defendant to the Estate of Yeo Hock Seng;

(6) An order that the 2nd plaintiff and the defendant as administrators of the Estate shall jointly instruct the said Estate's solicitors to appoint a certified public accountant of their choice to prepare an account of the Estate from 23rd November 2004 to date for the purpose of the administration of the Estate after taking into account any moneys drawn by the defendant from the joint banking accounts unconnected with the Estate;

(5)(7) An order restraining the defendant from executing any further mortgages in respect

of the [Minton Rise] and the [Tari Payong] properties pending the sale thereof;

(8) An order restraining the defendant from withdrawing any moneys from any banking accounts secured by mortgages of the abovementioned properties (whether these accounts are in the sole name or joint accounts of the defendant or otherwise);

(9) The parties to be at liberty to apply;

~~(5)(6)~~(10) Costs; and

~~(6)(7)~~(11) Such further relief or order as this Honourable Court may deem just and expedient.

32 Counsel for the defendant had argued that with amendment No. 2, the tenor of the plaintiffs' claim had radically changed and was not the case he had come to court to meet. Moreover, the plaintiffs applied for amendment No. 2 after the plaintiffs' case had closed and when the defendant was also about to close her case. Mr Chew contended that no amount of costs offered by the plaintiffs through their counsel could compensate for the irreversible prejudice the defendant would suffer, if the amendment No.2 was allowed. The oft quoted case of *Hong Leong Finance Ltd v Famco (S) Pte Ltd* [1992] 2 SLR 1108 (at 1111-1112) was cited in support of the defendant's objections. The House of Lords decision in *Ketteman v Hansel Properties* [1987] AC 189 was also relied upon.

33 I was of the view that amendment No. 2 related mainly to the reliefs claimed. As such, no prejudice would be suffered by the defendant if the proposed amendments were granted. Any prejudice suffered by the defendant as a result of the amendment was compensatable in costs which I fixed and awarded to the defendant in any event.

34 However, I disallowed the plaintiffs' attempt in the application to introduce an amendment which alleged that the deceased and the defendant had entered into a joint business venture in developing the Tari Payong property. This would be contrary to the plaintiffs' case and the evidence adduced in court – that the defendant held the disputed properties on a resulting trust for the estate of the deceased, due to the fact that the deceased paid the purchase moneys for the various properties, alternatively, that the deceased arranged for the bank loans utilised in the construction of the Fowlie Road and Tari Payong properties. Even if, as the plaintiffs' counsel argued, the plaintiffs were unaware of the Tari Payong property before commencement of the writ, they could and should have found out from the defendant more about that property and on the construction of Nos. 18 and 18A Jalan Tari Payong, by way of interlocutory applications including the processes of Discovery and/or Interrogatories.

35 The amended prayer (2) in the reliefs claimed was in fact a concession to and an advantage to the defendant. Whereas it was the plaintiffs' case initially that the defendant held the Minton Rise property in trust for the estate of the deceased, they now pleaded that the defendant held a half share in that property in trust for the estate, impliedly accepting thereby that the defendant owned the other half share. There was no prejudice to the defendant at all

36 The amended reliefs in paras (3),(4),(5),(6)(7) and (9) in amendment No. 2 had no or little impact on the defendant's case. I had informed counsel for the plaintiffs that those reliefs were contingent on the outcome of this case (which he accepted) and there was a likelihood even if the plaintiffs succeeded, that I may order the plaintiffs to take out a summons or start separate proceedings *vis a vis* the defendant's refusal or reluctance to apply for grant of letters of administration to the estate.

37 As for (8) claimed in the reliefs, the objection from the defendant's counsel was that the prayer for an injunction was a new relief altogether. That may be so but counsel for the plaintiffs had time and again in open court requested that the defendant be directed not to drawdown further on the bank overdraft facilities secured by the mortgage on Nos. 18 and 18A Jalan Tari Payong; therefore this relief should not have come as a surprise to the defendant or her counsel. The evidence on the construction of No 18 and 18A Jalan Tari Payong was already before the court and there was no new or additional evidence to be adduced in relation to this relief. Consequently, the defendant's objections had no merit.

38 As such, I granted amendment No. 2 on the basis that the amendments proposed to the statement of claim would not and could not possibly prejudice the defendant in any manner. Whether the plaintiffs would or would not succeed in obtaining the additional reliefs they claimed in amendment No. 2 (because they had not discharged the burden of proof) was irrelevant to my discretion to grant the same.

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