

Ang Meng Lee v Ng Siam Khui and another
[2011] SGHC 260

Case Number : Suit No 563 of 2005 (Registrar's Appeal No 294 of 2011)
Decision Date : 06 December 2011
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Alvin Chang Jit Hua (M & A Law Corporation) for the plaintiff/appellant; Chiah Kok Khun and Hui Choon Wai (Wee Swee Teow & Co) for the defendants/respondents.
Parties : Ang Meng Lee — Ng Siam Khui and another

Land

6 December 2011

Woo Bih Li J:

Introduction

1 Registrar's Appeal 294 of 2011 ("the Present Appeal") is the continuation of a dispute between two sisters-in-law in respect of a property known as 20B Nassim Road ("the Property"). The Present Appeal involves an inquiry in respect of rent received from the Property. I ruled against the plaintiff in the Present Appeal. She has filed an appeal to the Court of Appeal.

Background

2 The plaintiff is Ang Meng Lee ("ML"). The first defendant is Ng Siam Khui ("SK"). They are sisters-in-law. ML's husband is See Chi Kang @ Edison Jonathan @ Usman Siman. He is the brother of SK's husband See Tji Kiong @ Zaina Siman, who is the second defendant.

3 In the main action, ML claimed full ownership of the Property which was held in both the names of ML and SK as tenants in common in equal shares. In SK's Defence and Counterclaim, SK claimed, *inter alia*, an account by ML of rent received from the Property which was eventually sold by a mortgagee, Citibank N.A., on 22 February 2005.

4 On 19 May 2009, the Court of Appeal made various orders. For the purpose of the Present Appeal, only paras 4 and 7 of that order were relevant. They state:

4. [ML] and [SK] shall each be entitled to one-half of the rent received in respect of 20B Nassim Road. [ML] shall account to [SK] in respect of the rent received from 20B Nassim Road, less the sums paid by [ML] to service the loans. In the event that the net amount of rent so determined is more than \$3,306,496.22, half of this excess shall be paid by [ML] to [SK]. However, in the event that the net amount of rent is less than \$3,306,496.22, [SK] shall repay half the deficit to [ML].

...

7. An inquiry shall be held by the Registrar to ascertain the amounts due to each of the parties under paragraphs (2), (4), (5) and (6) hereof.

5 The inquiry was held before Assistant Registrar Jason Chan ("AR Chan"). On 31 May 2010, AR Chan gave his decision. Only para 2 of his order was relevant. It states:

2 [SK] shall pay [ML] the sum of \$1,067,209.05 under paragraph 4 of the Order of the Court of Appeal dated 19 May 2009.

6 Two appeals were filed in respect of para 2 of AR Chan's order. Registrar's Appeal 237 of 2010 ("RA 237/2010") and Registrar's Appeal 238 of 2010 ("RA 238/2010").

7 Both appeals were first heard by me on 5 July 2010. As a question arose during the hearing about the scope of para 4 of the order by the Court of Appeal, I directed the parties to seek clarification from the Court of Appeal thereon.

8 After that clarification was given, the two appeals came up for hearing before me on 21 September 2010. At that hearing, SK's counsel accepted that RA 237/2010 should be allowed.

9 The remaining appeal was RA 238/2010. This was SK's appeal against AR Chan's finding that SK was to pay ML \$1,067,209.05 under para 4 of the order by the Court of Appeal.

10 ML had claimed that various amounts totalling \$820,861.00 ("the Sum") had been paid by her using cheques issued on a bank account of a company known as Biru & Sons Pte Ltd ("Biru & Sons Singapore"). This company was owned and controlled by ML and her husband. The payments were to service a previous loan from Tat Lee Finance Limited ("TLF"). That loan had been secured by the Property. Consequently, the Sum should be deducted from the rent received by her from the Property and in turn, this affected the amount which either SK was to pay ML or vice versa.

11 SK's position was that ML had not proved that the Sum had come from a bank account of Biru & Sons Singapore. Secondly, even if it had come from such an account, ML had not proved that Biru & Sons Singapore was entitled to the Sum. It was SK's position that from time to time an Indonesian company PT Biru & Sons Pte Ltd ("PT Biru") had sent money to Biru & Sons Singapore. PT Biru was the company of their husbands' family, *ie*, it was a Siman family company. The money sent by PT Biru was therefore not meant to benefit ML alone.

12 At the hearing of RA 238/2010 before me on 21 September 2010, SK's counsel referred to some documents which appeared to support her contention that PT Biru had from time to time sent money to Biru & Sons Singapore

13 The arguments before me focussed on the burden of proof. Counsel for ML submitted that if the money to pay TLF came from a bank account of Biru & Sons Singapore, it was for SK to prove that the money in that bank account had come from PT Biru. On the other hand, counsel for SK submitted that it was for ML to prove that she paid the amounts totalling the Sum to TLF. It was not sufficient for ML to prove that the money came from a bank account of Biru & Sons Singapore. She had to go further to prove where the money in that account came from in the light of the documentary evidence which SK was relying on.

14 It seemed that AR Chan had accepted ML's position on the burden of proof. Consequently he found that ML had proved that she had paid the Sum. I was of the view that SK's position on the burden of proof was correct. It was for ML to prove that she paid the Sum. It was not sufficient to

prove that the money came from a bank account of Biru & Sons Singapore. That was the first step and was not enough to discharge her burden of proof.

15 Consequently, ML's counsel said that if I was not with him on the burden of proof, ML should be given a chance to prove that the money to pay the Sum came from her. SK's counsel objected saying that ML should not be given a second chance to prove her allegations.

16 The general rule is that each contesting party should adduce her best evidence. If she adduces less than the best and/or makes a mistake as to the adequacy of her evidence and/or makes a mistake on the burden of proof, then she has to bear the consequences. Nevertheless, there was some suggestion that there was confusion in the course of the inquiry before AR Chan about the burden of proof.

17 In the interest of justice and as an exception to the general rule, I decided to give ML another chance to prove that the money to pay the Sum came from her. In view of the arguments raised before me, I made the following order on 21 September 2010:

On RA 238/2010, I will set aside the finding of the court below with a direction that there be a further hearing before a Registrar for [ML] to adduce documentary evidence that (a) the cheques came from a specific account of Biru & Sons Pte Ltd and (b) the source of the money and to be cross-examined on the same. [ML] to file a summons for directions for this.

18 The second inquiry was heard before Assistant Registrar Tan Sze Yao ("AR Tan") on 21 July 2011. AR Tan found that the documentary evidence from ML established that the money to pay the Sum did come from bank accounts of Biru & Sons Singapore. However, he found that ML had failed to establish the source of that money.

19 ML then filed the Present Appeal. Counsel for SK accepted that the money came from bank accounts of Biru & Sons Singapore. Accordingly, the only issue left was the source of that money.

20 Counsel for ML accepted that ML did not adduce documentary evidence to establish the source of the money in the bank accounts. He said that she could not do so in view of the lapse of time. He sought to argue that she did not have to establish the source under my order of 21 September 2010.

21 I reminded ML's counsel that the substantive part of my order required ML to adduce documentary evidence to establish two points. The first was that the money came from a bank account of Biru & Sons Singapore. The second was the source of that money to show that ML was entitled to the money. AR Tan had correctly construed my order to mean that it was not sufficient for ML to prove that the money came from bank accounts of Biru & Sons Singapore. That was only the first limb of my order.

22 ML's counsel also sought to argue again that the burden was not on her to prove the source of that money. I reminded him that I had already decided otherwise. If ML did not accept my decision on 21 September 2010 then she should have appealed against that decision. She did not. Instead, she proceeded with the second inquiry although she ought to have known that she did not have the documentary evidence to establish the second limb of my order. She ought to have known it was a futile exercise.

23 In the circumstances, I dismissed the Present Appeal with costs.

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