

Mak Seng Fook v Lin Kao Chi and Another
[2000] SGHC 42

Case Number : Suit 1110/1999, Suit 691/1999
Decision Date : 17 March 2000
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Linus B Pereira (L Pereira & Netto) for the plaintiffs; Doris Lee and Gary Choo (Hee Theng Fong & Co) for the defendants
Parties : Mak Seng Fook — Lin Kao Chi; Nam Shing Mechanical Moulds Factory (Private) Limited

JUDGMENT:

GROUND OF DECISION

1 This is an appeal by the first and second defendants against the decision of the learned Assistant Registrar Wan Wai Yee who granted summary judgment to the plaintiff Mak Seng Fook (Mak) under O 14 r 3 of the Rules of the Court, for monies owed by the defendants to Mak under an oral agreement made between the parties. After hearing the arguments from counsel for both parties, I dismissed the appeal. The defendants have appealed against my decision (in Civil Appeal No. 191 of 1999).

The background

2 The first defendant was a director of the second defendants. He was introduced to Mak and one Tan Dib Jin (who is the plaintiff in Suit No. 691 of 1999) by Wee Hup Choon (Wee). At that time, Wee was an employee of the first defendant. Shortly thereafter, sometime in 1993, the parties entered into an oral agreement (the oral agreement) for the sale and purchase of a 16,000 sq. m. factory building to be built in Tong An, People's Republic of China. This agreement was made between Mak, Tan Dib Jin (Tan) and Wee of the one part as the purchasers (hereinafter they will be referred to collectively as the purchasers), and the first defendant of the other part as the vendor. Whether the first defendant was acting as a principal or agent in entering into the contract was a matter disputed by the parties and I will deal with this question in greater detail later. The following are the undisputed facts.

3. Under the oral agreement, the purchase price of the factory was fixed at Chinese renminbi (RMB) 19.2m (equivalent to S\$3,456,000). It was agreed that 20% of the purchase price was to be paid upon commitment as deposit. Pursuant to the oral agreement, the purchasers paid a total of around 30% of the purchase price to the second defendants, on the first defendant's instructions. Subsequently, Mak was paid (over a few occasions) the total sum of S\$244,150 by the second defendants.

4. In brief, Mak's case was that the oral agreement was made subject to all the parties executing a written agreement, which the first defendant was supposed to prepare. The written agreement was to incorporate all the terms and conditions of the oral agreement as well as the building plans and specifications of the proposed factory. Mak claimed that the first defendant failed to prepare the said written agreement despite repeated requests and demands by the purchasers to do so. Some time later, the first defendant expressed his intention to rescind the oral agreement. Thus, a second oral agreement (the second agreement) was entered into between the same four parties, whereby it was

agreed that the earlier oral agreement would be rescinded and that the first defendant would refund all the monies paid by the purchasers under the oral agreement together with interest thereon at 10% per annum. It was pursuant to this second agreement that the sum of S\$244,150, as mentioned earlier, was paid to Mak by the second defendants. However, no monies were paid to Tan and Wee by the first or second defendants. Mak then brought the present suit against the defendants to claim for the refund of the balance of the monies paid by him under the first oral agreement together with interest at 10% per annum.

5. In response, it was contended by the first defendant that he and the second defendants were not the right parties for Mak to sue as he had entered into the oral agreement only as an agent. The principal for whom the first defendant was allegedly acting for was a company in China called Xiamen Tonggi Development Co Ltd (Tonggi). The first defendant denied that he was supposed to prepare a written agreement as was claimed by Mak and the other two. The first defendant also denied that he or Tonggi, sought to terminate the oral agreement. It was alleged that the purchasers were the ones who were in breach of the oral agreement by failing to pay the balance of the purchase price due. On the sum of \$244,150 paid to Mak by the second defendants, the explanation given was that it was a loan extended to Mak who was experiencing financial difficulties at the relevant time.

The proceedings

6. Mak was not the only one who commenced proceedings against the first and second defendants. As stated earlier, proceedings in Suit No. 691 of 1999 (Suit 691) were initiated by Tan against the same two defendants with respect to the same facts and circumstances, claiming the sum that he had paid to the second defendants pursuant to the oral agreement. In both the present suit and Suit 691, summary judgment was sought by the plaintiffs. The Order 14 application for Suit No. 1110 of 1999 was heard by Assistant Registrar Wan Wai Yee whilst that for Suit 691 was heard by the Deputy Registrar, Ng Peng Hong. In the two separate hearings, the same decision was reached whereby summary judgment was granted in favour of both plaintiffs.

7. The defendants, being dissatisfied with the decisions in both the Order 14 proceedings, proceeded to appeal against the decisions. As the claims in both suits arose out of the same facts, the defendants' counsel requested and it was arranged, for both the appeals to be heard at the same time by the same Court. The appeals (RA 424/99 and RA 425/99) came up for hearing before me. At the commencement of the hearing of RA 424/99 (which relates to Suit No. 1110 of 1999) I informed counsel that its determination would apply to RA 425/99 in Suit 691; no objections were raised to my ruling. However, I should point out that in hearing the appeal, reference was made to the pleadings filed in Suit 691 in particular the Defence, as no equivalent pleading was filed by the defendants for Suit No. 1110 of 1999.

The plaintiffs' case

8. Sometime around April 1993, Mak and Tan were first informed by Wee that his employer, the first defendant, was developing a project in China and he asked if they were interested in participating in it. After Mak and Tan expressed their interest in the said project, Wee arranged for them to meet the first defendant at the latter's office at the second defendants' premises at No. 121 Kallang Way, Singapore. At this meeting, the first defendant informed them that he had many businesses in Taiwan, China and Singapore and that he had acquired large parcels of land in Tong An, a province near

Xiamen, China. The first defendant was interested in developing his land into a commercial area and he mooted to Mak and Tan his idea of building a factory to their specifications and selling the factory to them and then leasing back the completed factory building from them at a guaranteed minimum rental. No specific proposal was, however, discussed during this first meeting.

9. A few days after that initial meeting, the first defendant sent Wee to inform Mak and Tan of the specific proposal that he had in mind; Mak and Tan were very interested. After several discussions and subsequent meetings with Wee, who was acting as the agent of the first defendant, Mak and Tan decided to meet the first defendant in person to finalise the terms and conditions of their proposed investment. As most of the earlier discussions with Wee were done orally, Mak and Tan decided to reduce into writing the terms which they had already previously discussed with Wee. A written document (see Mak's first affidavit exhibit MSF-1) was therefore prepared by Mak and Tan which incorporated the terms and conditions which Tan had made in his specific proposal as well as those which the former two wanted to be included in the final agreement to be made.

10. The purchasers subsequently met with the first defendant again, at around April 1993, to discuss and confirm the terms and conditions of the specific proposal. As Mak and Tan were only able to take up 80% share in the proposed factory building, Wee was invited to join in the investment and take up the remaining 20% share. An oral agreement was thus made between the first defendant of the one part and the purchasers jointly of the other part. Under the oral agreement, it was agreed that the first defendant would build a four-storey factory building in Tong An, China, with a total floor area of 16,000 square metre and sell it to the purchasers at the price of RMB 19.2m, i.e. at RMB 1,200 per sq. m. The first defendant would then lease back the completed factory building from the purchasers at a guaranteed minimum rental of RMB 200 per sq. m. a year. With regard to the payment terms, it was agreed that the purchasers would pay 20% of the purchase price as deposit upon their commitment to the project and a further 10% one year later at the first defendant's request. The balance 70% of the purchase price was to be paid by a bank loan to be procured by the first defendant using the factory building as a collateral.

11. According to Mak, whose account was substantiated by Tan and Wee, the oral agreement was made subject to the first defendant preparing a written agreement incorporating all the terms and conditions of the oral agreement as well as all the building plans and specifications of the proposed factory building. The written agreement was to be executed by the first defendant and the purchasers. The first defendant promised to prepare the written agreement for their execution as soon as possible but as the building and site plans would take quite a while before they could be finalised, he suggested that the purchasers make the 20% deposit payment first on a 'subject to contract' basis. The purchasers agreed to pay the 20% deposit subject to the written agreement being executed by them.

12. Subsequently, Mak was asked by Wee to take over half (') of his 20% share as he was short of funds and Wee offered to buy them back once he had sufficient funds. Mak agreed, thereby increasing his own share from 50% to 60%. Tan and the first defendant were both aware of the arrangement between Wee and Mak and did not raise any objections.

13. Pursuant to the oral agreement, the purchasers made payments for the deposit amounting to 20% of the purchase price. The payments were, on the instructions of the first defendant, made to the second defendants. Thereafter, the purchasers repeatedly pressed the first defendant for the written agreement but he would always give the excuse that the agreement was still not ready due to certain technicalities. The first defendant assured the purchasers that the written agreement would be ready shortly and reminded them to make payment of another 10% of the purchase price as agreed under the oral agreement. As the purchasers still trusted the first defendant, they agreed to make the

payments. Thus, more payments were made by the purchasers to the second defendants. Altogether, the purchasers paid to the second defendants about 30% of the purchase price of the factory. A breakdown of the respective payments made by each of the purchasers is as follows:

Mak Seng Fook :

<u>Date</u>	<u>Amount paid (in Singapore Dollars)</u>
12/05/1993	\$172,800
10/06/1993	\$ 40,000
10/06/1993	\$132,800
23/06/1993	\$ 69,000
30/11/1994	\$164,863
30/11/1994	\$ 32,973
Total:	\$612,436

Tan Dib Jin:

<u>Date</u>	<u>Amount paid (in Singapore Dollars)</u>
13/05/1993	\$103,680
10/06/1993	\$103,680
30/11/1994	\$ 98,918
Total:	\$306,278

Wee Hup Choon :

<u>Date</u>	<u>Amount paid</u>
May 1993	RMB 384,000
May 1995	S\$ 12,972

14. Sometime in 1995, the purchasers became concerned as the first defendant still could not produce the written agreement for execution. In early 1996, Mak and Tan confronted the first defendant and threatened to take legal action against him if he continued to delay in getting the written agreement ready. Sometime near the end of 1996, Wee informed Mak that the first defendant wished to terminate the oral agreement and that he was prepared to refund the purchasers all the monies that had been paid by them together with interest. After discussing the matter, the purchasers met with the first defendant in February 1997 and a second oral agreement (the second agreement) was made between all of them. Under this second agreement, it was agreed that the first oral agreement would be rescinded and that the first defendant would refund to the purchasers all the monies paid by them pursuant to the earlier oral agreement together with interest thereon at the rate of 10% per annum.

15. The first defendant delayed in making the refunds as promised and it was only after repeated demands that Mak finally received the following amounts from the first defendant:

Date

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