Ng Kiam Bee *v* Ng Bee Eng
[2013] SGHC 31

Case Number : Suit No 873 of 2009 (Summons No 3849 of 2012 and Summons No 4094 of 2012)
Decision Date : 06 February 2013
Tribunal/Court : High Court
Coram : Belinda Ang Saw Ean J
Counsel Name(s) : Keh Kee Guan (Pacific Law Corporation) for the plaintiff; Luke Lee (Luke Lee & Co) for the defendant.
Parties : Ng Kiam Bee — Ng Bee Eng

Civil Procedure – Consent Judgment

6 February 2013 Judgment reserved.

Belinda Ang Saw Ean J:

Introduction

1 By Summons No 3849 of 2012 ("SUM 3849/2012"), the plaintiff, Ng Kiam Bee ("the Plaintiff"), applied to amend a consent judgment entered in Suit No 873 of 2009 ("the Action") on 13 September 2010 ("the Consent Judgment"). In response, the defendant, Ng Bee Eng ("the Defendant"), who is the Plaintiff's sister, filed Summons No 4094 of 2012 ("SUM 4094/2012").

Background facts

2 The brief background facts are as follows. In December 2009, the Plaintiff sued the Defendant to recover a half-share of a 5-room public housing flat located at Canberra Road, Block 419, #10-401, Singapore 750419 ("the Flat"). The Plaintiff's contention in the Action was that the Defendant held the half-share of the Flat that was registered in her name as a trustee and on trust for him as the beneficial owner. He therefore sought a declaration of trust and an order that the half-share in the Defendant's name be transferred to him and/or his nominee. The Defendant disputed the allegation of trust and instead counterclaimed for a half-share of the value of the Flat and a half-share of the rental proceeds received by the Plaintiff over a period of time from September 2002 onwards.

3 The Action came on for trial on 13 September 2010. At that time, the Plaintiff was represented by Mr Leonard Loo ("Mr Loo") and the Defendant was represented by Mr Luke Lee ("Mr Lee"). The Plaintiff is now represented by Mr Keh Kee Guan ("Mr Keh"), while the Defendant remains represented by Mr Lee. It is worth mentioning that the Plaintiff is a driver by occupation and the Defendant is a housewife. On the first day of the trial, before the trial started, I saw counsel for both sides in chambers to alert them of the trust provisions in the Housing and Development Act (Cap 129, 2004 Rev Ed) ("the HDB Act"), and informed them that they would be required to deal with the provisions in the course of the trial. The matter was stood down for counsel to look into the trust provisions in the HDB Act. Later, counsel saw me in chambers to announce that an amicable settlement had been reached, and that they had instructions to record the terms of the settlement as a consent order. That was done. The Consent Judgment extracted by Mr Loo provided as follows:

1. The 5-room Housing and Development Board ("HDB") flat situated at Block 419 Canberra

Road #10-401, Singapore 750419 ("HDB Flat") to be sold in the open market at the sale price to be mutually agreed between both parties;

2. The Plaintiff to have conduct of the sale of the HDB Flat. The sale of the HDB Flat is to be undertaken within 3 months from the date hereof;

3. The gross sale proceeds of the HDB Flat to be utilised in the following manner:

(i) To repay the HDB outstanding loan;

(ii) To repay the Plaintiff's CPF principal sum exclusive of interest to the Plaintiff's CPF account;

(iii) To repay the Defendant's CPF principal sum inclusive of interest to the Defendant's CPF account; and

(iv) To repay the expenses relating to the sale of the Flat.

4. The net balance sale proceeds to be shared equally between the Plaintiff and the Defendant;

5. Liberty to apply; and

6. No order as to costs of this action.

The provision in (3)(ii) above will hereafter be referred to as "the interest provision".

4 Although the Consent Judgment was obtained in September 2010, the Flat was sold much later. The sale of the Flat was finally completed on 29 June 2012 at a price of $452,000.

5 SUM 3849/2012 was filed on 27 July 2012 to amend the interest provision on the grounds that it did not reflect the true intention of the parties ("the interest argument"). In response, the Defendant maintained that the Consent Judgment correctly recorded the parties' agreement. The Defendant filed SUM 4094/2012 on 13 August 2012 wherein she sought, *inter alia*, an order for the Consent Judgment to stand and an order that the Plaintiff be made responsible for late completion interest, if any, in relation to the sale of the Flat. I pause here in my narration to refer to Mr Keh's unchallenged submission that the purchasers of the Flat did not claim late completion interest. I also note that the Defendant's prayer in SUM 4094/2012 for an order that the Consent Judgment is to stand is totally unnecessary since the consequence of a dismissal of SUM 3849/2012 will be to leave the Consent Judgment intact.

6 The Defendant's affidavit of 13 August 2012 filed in support of SUM 4094/2012 was treated as her reply to the Plaintiff's 1st Affidavit filed on 27 July 2012 in SUM 3849/2012 ("the Plaintiff's 1st Affidavit"). The Plaintiff filed his 2nd Affidavit in SUM 3849/2012 on 30 August 2012. Written submissions were also tendered on behalf of the Plaintiff and the Defendant.

7 SUM 3849/2012 was filed more than 21 months after the Consent Judgment. The lateness of the application was explained in the Plaintiff's 1st Affidavit. In brief, the Plaintiff explained that he had received a copy of the Consent Judgment either in late September 2010 or early October 2010. The Plaintiff said that he could not read the Consent Judgment as he could only read simple English. He could not turn to his previous lawyer, Mr Loo, for assistance as he had yet to pay Mr Loo's legal fees.

He then asked a friend, one Goh Bak Choon, to explain the Consent Judgment to him. At that time, his friend did not explain to him the meaning of "exclusive of" interest as opposed to "inclusive of" interest. He said that he became aware of the significance of the interest provision only in June 2012. On this last statement, there appears to be some discrepancy. From the correspondence exhibited in the Plaintiff's 1st Affidavit, I notice that the lawyers from M/s Rajah & Tann (who acted for the Plaintiff on a *pro bono* basis in a related summons filed by the Defendant to vary the Consent Judgment) had raised the Plaintiff's entitlement to a refund of accrued interest to his Central Provident Fund ("CPF") account from the gross sale proceeds of the Flat as early as October 2011.

Decision

8 The Plaintiff's application for an amendment of the Consent Judgment is made under O 20 r 11 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed), which states:

> **Amendment of judgment and orders (O. 20, r .11)**
>
> 11. Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court by summons without an appeal.

9 I should mention that the typed out copy of the consent order recorded in the court's minute book for the Action on 13 September 2010 has a typographical error. Paragraph (c)(ii) of the typed copy of the minutes reads:

> To repay the Plaintiff's CPF account the principal sum and interest withdrawn from the Plaintiff's CPF account.

This typographical error was pointed out to counsel at the hearing of SUM 3849/2012. I read out to counsel what I had written down by hand in my minute book. My handwritten minutes confirmed that the refund to the Plaintiff's CPF account from the gross sale proceeds of the Flat would *not* include any interest on the principal sum withdrawn to purchase the Flat.

10 It was clear from Mr Keh's oral submissions that the interest argument was evidentially independent of the typed copy of the minutes; it was based on more fundamental points. I must make clear at the outset that the Plaintiff's position – *viz*, that the settlement reached between the parties included a refund to the parties' respective CPF accounts of the principal sums withdrawn *inclusive* of all interest – must be understood in the context of the matters set out at [11]–[13] below.

11 Mr Keh first pointed out that it is a standard requirement of the CPF Board that when a HDB flat is sold, any principal sum withdrawn from the seller's CPF account to purchase the flat and the accrued interest thereon would have to be refunded to the seller's CPF account, and it was a sign of a glaring mistake in the Consent Judgment if the Plaintiff was not getting the principal sum with accrued interest from the gross sale proceeds of the Flat. The second point is the Plaintiff's recollection of his conversations with his then lawyer, Mr Loo. The Plaintiff recalled that Mr Loo had explained to him that the proceeds of sale of the Flat would be used to repay the outstanding HDB housing loan, refund the parties' respective CPF accounts inclusive of all interest, with the remaining net balance of the sale proceeds to be shared equally between the Plaintiff and the Defendant. Mr Loo had done some calculations and had come up with some figures, which the Plaintiff had agreed to. Mr Keh submitted that it was in these circumstances that the Plaintiff had agreed to the figures mentioned to him, and he had therefore agreed to "the basis as calculated", that is to say, the basis for calculating the parties' respective shares of the sale proceeds (see para 19 of the Plaintiff's 1st Affidavit). Mr Keh also explained that he had tried to contact Mr Loo to help shed light on the events

leading to the Consent Judgment, but had been unsuccessful in his endeavours.

12 Mr Lee referred to the Defendant's affidavit of 13 August 2012 for a narration of his brief exchange with Mr Loo. As the information was limited, I sought further details from Mr Lee, who clarified that based on the estimated value of the Flat at the time of the trial, if accrued interest was refunded to the Plaintiff's CPF account, there would be no net sale proceeds left for division. That was why the Defendant was not agreeable to a refund of the accrued interest to the Plaintiff's CPF account, even though the Plaintiff had financed the bulk of the purchase. As at August 2010, the estimated amount to be refunded to the Plaintiff's CPF account was $230,162.84, of which the principal amount withdrawn was $182,599.47 and the accrued interest was $47,563.37, whereas the Defendant's contribution towards the purchase had been her CPF withdrawal of $224.08 and the accrued interest was $62.28 (estimated figure as at the time of the trial). To have yielded net sale proceeds of $54,000 (as alleged in para 19 of the Plaintiff's 1st Affidavit), Mr Loo's calculations (using the Flat's valuation of $371,000 at the time of the trial) would have excluded a refund of accrued interest to the Plaintiff's CPF account. Net sale proceeds of $54,000 meant that the Plaintiff and the Defendant would each receive about $27,000.

13 My summation of the interest argument, which is to be understood in the circumstances described at [11]–[12] above, indicates that the Plaintiff agreed to the term that there would be no refund of accrued interest to his CPF account *subject* to the Defendant receiving about $27,000 under that term. As things turned out, the Flat was sold not within 3 months from the date of the Consent Judgment as set out in para 2 of the judgment, but in 2012 and at a significantly higher price. The Defendant is now insisting on receiving a larger sum than the sum which the Plaintiff was told she would get. It is this latter scenario which sets the context in which the interest argument and the alleged mistake in the Consent Judgment are to be understood.

14 Mr Lee argued that there was no mistake in the Consent Judgment. He submitted that the Defendant would not have settled the Action if there was to be a refund of accrued interest to the Plaintiff's CPF account. Moreover, if the settlement had been based on Mr Loo's wrong advice, that was not a ground to amend the Consent Judgment.

15 It is trite law that a consent order can be set aside if there is fraud or other vitiating factors. It is quite clear that the court does not have the power to amend a consent judgment unless both parties mutually agree to vary the consent judgment: *Halsbury's Laws of Singapore* vol 4 (Butterworths Asia, 2002) at para 50.510; *Visia Finance v Expert Credit & Leasing Sdn Bhd* [1998] 2 MLJ 705.

16 Mr Lee rightly pointed out that a party cannot challenge a consent order on the basis that he was wrongly advised by his lawyer (see *Dr Kok Chee Min v Kan Choy Yoong* & *Others* [1994] 3 MLJ 210). The rationale for this is that it does not matter that the party acted under a mistaken view of the settlement; that is not a reason in itself to disapply the natural consequence of the choice which the party made, albeit under negligent advice.

17 It is obvious that the interest argument goes beyond a simple matter of amending an error on the face of the Consent Judgment by way of an application under O 20 r 11 of the Rules of Court. Despite the apparent inconsistencies in the Plaintiff's affidavit evidence, which suffered from the absence of Mr Loo to shed light on what exactly had transpired at the negotiations that led to the terms of the settlement between the parties, the Plaintiff is now denying that the Consent Judgment reflected the true state of affairs between him and the Defendant, with the consequence that if the Consent Judgment is not set aside, the Defendant would receive an unmerited windfall. As to this, the short answer is that if the Plaintiff wishes to set aside the Consent Judgment, he would have to start

a new action. I am not suggesting that it necessarily follows from my short answer that evidence of vitiating factors needed to set aside a consent order is available. The Plaintiff must prove that there are vitiating factors to warrant the setting aside of the Consent Judgment. There will have to be a hearing of oral evidence to refresh the memories of the witnesses concerned. There will have to be cross-examination of the Plaintiff and his former lawyer, Mr Loo, on the vitiating factor(s) advanced in the new action. The Plaintiff must dispel any perception that his challenge is due to regret over an earlier calculated decision. It goes without saying that the Defendant and Mr Lee will also have to be cross-examined.

18 As an aside, given the relatively small amount of money at stake, mediation is likely to assist the parties to resolve this matter in the most time and cost efficient manner, as opposed to engaging in expensive litigation.

Conclusion

19 For these reasons, SUM 3849/2012 is dismissed. I make no order on SUM 4094/2012, which I have shown to be a superfluous application. As for the costs of these two Summonses, I order each party to bear his/her own legal costs.