

Soh Lai Chan (mw) and Another v Kuah Peng Hock and Another
[2003] SGHC 144

Case Number : OS 600242/2001
Decision Date : 04 July 2003
Tribunal/Court : High Court
Coram : S Rajendran J
Counsel Name(s) : Mrs Chua Swee Keng (Chua Swee Keng & Co); 2nd plaintiff (Official Assignee) ' not present; 1st defendant (Kuah Peng Hock, in person) ' not present; Yang Ing Loong, Christopher Tan and Vincent Teh
Parties : Soh Lai Chan (mw); Official Assignee — Kuah Peng Hock; Kuah Peng Siong

Evidence – Admissibility of evidence – Whether comments made and notes recorded by a judge in other proceedings between different parties can have direct bearing on present proceedings.

Family Law – Matrimonial assets – Whether transfer of shares was effected with intent to deprive wife of interest in matrimonial property.

Insolvency Law – Bankruptcy – Whether transfer of shares was effected with intent to defraud creditors contrary to s 73B Conveyancing and Law of Property Act (Cap 61)

1 The 1st plaintiff, Soh Lai Chan ("Soh"), and the 1st defendant, Kuah Peng Hock ("Peng Hock") were married in 1980 and have three children. On 3 August 2000, Soh instituted divorce proceedings against Peng Hock on the grounds of unreasonable behaviour and obtained a decree nisi on 19 December 2000. Ancillary matters, including maintenance and division of matrimonial assets, were adjourned to be dealt with in chambers.

2 On 22 February 2001, Soh took out OS 600242/2001 in the High Court under s 73B of the Conveyancing and Law of Property Act, Cap 61, seeking a declaration against Peng Hock and against the 2nd defendant, Kuah Peng Siong ("Peng Siong"), a brother of Peng Hock, that the transfer of Peng Hock's shares in a company known as Bok Soon Hardware & Engineering Pte Ltd ("BSH&EPL") to Peng Siong on 16 November 1998 was void as against Soh.

3 Section 73B(1) of the Conveyancing and Law of Property Act, Cap 61, provides as follows:

Except as provided in this section, every conveyance of property, made ... with intent to defraud creditors, shall be voidable, at the instance of any person thereby prejudiced.

Pending the determination of OS 600242/2001, the proceedings before the Family Court relating to the division of matrimonial assets were stayed.

4 On 12 March 2002, on the application of Soh, OS 600242/2001 was converted to a writ action. In the Statement of Claim filed pursuant to this conversion, Soh, in addition to the declaration relating to BSH&EPL shares, also sought a declaration that the transfer by Peng Hock of the shares he held in another company – Bok Soon Holdings Pte Ltd ("BSHPL") – was also void. That transfer was not to Peng Siong but to another brother Kuah Peng Ann ("Peng Ann") who was not a party to these proceedings.

5 Soh's claim, as formulated in paragraph 12 of the Statement of Claim was as follows:

The said transfer of the 1st Defendant's shares in BSH&EPL and BSHPL was a sham and made with

(a) the intention of defrauding creditors who had given loans and/or banking facilities to the 1st Defendant, either solely or jointly with the Plaintiff, or for which the 1st Defendant was a guarantor in respect of the loans or banking facilities referred to in Schedule 1, (b) and/or to deny the Plaintiff any interest in these shares. The Plaintiff will rely on section 73B of the Conveyancing and Law of Property Act (Cap 61).

Peng Siong, in his defence, admitted that BSH&EPL shares were transferred to him by Peng Hock but denied the other allegations in para 12 of the Statement of Claim.

6 It was Peng Siong's case that the transfer of the BSH&EPL shares to him by Peng Hock was part of an exercise in which his father, Kuah Chwee Seng ("Kuah"), in late 1997/early 1998, in consultation with his professional advisors and with the consent of all the family members, distributed the family assets that he had built up over the years to his many children. Peng Siong denied that this distribution – under which he received the shares in BSH&EPL registered in the names of Peng Siong and Soh – was carried out to defraud creditors or to deprive Soh of any interest Soh may have in any matrimonial property.

7 Mrs Chua Swee Keng, counsel for Soh, in her Opening Statement highlighted only the transfer of the BSH&EPL shares from Peng Hock to Peng Siong as the issue for determination under s 73B of the Conveyancing and Law of Property Act by this court. She made no reference to the BSHPL shares. However, in her closing submissions, Mrs Chua urged the court to declare that the transfer to Peng Ann of the BSHPL shares was also void. It would appear from the evidence adduced that that transfer of BSHPL shares by Peng Hock to Peng Ann was made at about the same time as the transfer of the BSH&EPL shares to Peng Siong and as part of the same exercise undertaken by Kuah to distribute his assets.

8 Peng Hock did not appear in these proceedings. He had, on 23 February 2001, been adjudicated a bankrupt at the instance of the Hongkong & Shanghai Banking Corp'n ("HSBC") for various sums of money due to the HSBC from Peng Hock. Arising from these same debts Soh too was, on 6 April 2001, declared a bankrupt. It was because of that bankruptcy order against Soh that the Official Assignee was made a plaintiff to this action.

9 The burden of proving that the transfer of the BSH&EPL shares to Peng Siong was effected with intent to defraud the creditors of Peng Hock was upon Soh. Soh, in order to establish that intent, made numerous allegations of fraudulent conduct against Peng Hock, Peng Hock's siblings and Kuah. It is trite law that when a party alleges fraud it is necessary that the fraud be pleaded and particularised. A considerable part of the allegations raised by Soh in her testimony was not pleaded and particularised.

10 Soh also sought to rely on certain statements allegedly made orally by Kuah Siew Geok, a sister of Peng Hock to the judge-in-chambers adjudicating on the division of the matrimonial assets of another sibling Kuah Peng Ah and on certain comments made by that judge. I agree with Mr Yang that comments made and notes recorded by a judge in other proceedings between different parties can have no direct bearing to the present proceedings except in so far as they may be of assistance in assessing the credibility of any witness.

11 Kuah was clearly the patriarch who, through his various business enterprises, had built up much of the Kuah family assets. Kuah testified that in early 1998 he decided to distribute his assets amongst his children. He told the court that he decided to do so because he was getting on in age, was not in good health and wished to accommodate the wishes of some of his children that the distribution of the assets should take place sooner rather than later. He testified that some of his

assets (such as No 12 Wimborne Road and shares in his companies) were in the names of some of his children and that they were holding the assets in trust for him.

12 Before effecting the distribution Kuah had, in June and July 1998, held two family meetings to discuss the distribution. It was not in dispute that the distribution that took place was one that all his children (ultimately) had consented to. Kuah had also caused some of the family properties to be valued and had engaged the services of a public accountant – Joseph Wong Phui Lun (“Wong”) – to assist in the proposed distribution. Wong was called as a witness by Peng Siong. His evidence substantiated in large measure what Kuah had to say.

13 Kuah told the court that he decided that Peng Hock would get the entire beneficial interest in No 12 Wimborne Road and would (together with Soh) also get the entire share capital of the business known as Stellite (S) Pte Ltd (“Stellite”) which at that time was being managed by Peng Hock and Soh. In connection with this exercise and at the request of Peng Hock, certain debts that Peng Hock owed to Stellite and certain debts that Stellite owed to BSH&EPL were transferred to Kuah. As part of the exercise Peng Hock and Soh were to transfer the shares in BSH&EPL registered in their names to Peng Siong. Peng Hock and Soh did so in November 1998.

14 Kuah told the court that the land at No 12 Wimborne Road – although registered in the name of Peng Hock – and the house that was subsequently built thereon were paid for by him (Kuah). The house at No 12 Wimborne Road had from the time it was built been the family home of Kuah. In October 1998, as a result of the distribution exercise, Kuah vacated No 12 Wimborne Road and handed possession thereof to Peng Hock.

15 As noted earlier Soh petitioned for divorce in August 2000: this was about 2 years after the distribution exercise was completed. Soh testified that for some years prior to her filing her petition for divorce, she had been having disagreements with Peng Hock. The thrust of her case was that Kuah arranged for the re-distribution of the assets held by Peng Hock in order to minimise her entitlement to matrimonial assets in the event she and Peng Hock were divorced. It was also her case that Kuah and Peng Hock wanted to minimise the amounts that creditors of Peng Hock (such as the banks to whom Peng Hock had given personal guarantees) would be able to recover from Peng Hock.

16 It may well be that Peng Hock and Soh were having various disagreements at the time of the distribution of the family assets; but these disagreements did not appear to me, from the evidence I heard, to be of such a nature that divorce proceedings were under contemplation. The question of divorce appears to have arisen much later. The fact that Soh too transferred her shares in BSH&EPL under the asset distribution exercise in 1998 suggested that she was aware of that exercise and was, at that time, content to participate therein.

17 I accepted the testimony of Kuah summarised above. I was satisfied that the distribution of the family assets amongst the members of the Kuah family that took place in 1998 was an exercise that Kuah had embarked upon in good faith to distribute his assets amongst his children in a timely way. I accepted Kuah’s evidence that there was no intention on his part to defraud any creditors of his children or to deprive Soh of any rights she may have in respect of matrimonial assets.

18 I found Soh to be a practical and worldly-wise person who was herself a willing participant in the distribution exercise. She also participated actively in the activities of Stellite. Her allegation that the distribution was in order to deny her her share of matrimonial assets and defraud the creditors of Peng Hock was, in my view, no more than ex post facto conjecture on her part.

19 Having heard the evidence of all the witnesses in this case, I was not satisfied that the transfers of the BSH&EPL and BSHPL shares by Peng Hock were made with intent to defeat Soh's interest (matrimonial or otherwise) in those shares. In respect of the BSHPL shares, there was the added consideration that the transferee (Peng Ann) was not a party to these proceedings and it would, in his absence, be inappropriate to make any order prejudicial to him.

20 I therefore dismiss the claims of the 1st and 2nd plaintiffs in these proceedings. As 1st plaintiff (Soh) was legally aided, I make no order as to costs against her. The 2nd plaintiff (the Official Assignee) – who did not appear during this hearing – is holding a sum of \$28,000 as security for costs. I order that the Official Assignee pay that \$28,000 to the 2nd defendant as costs.

Plaintiffs' claims dismissed.

Copyright © Government of Singapore.