

Chang Ham Chwee v Chan Siew Khim and Others
[2008] SGHC 4

Case Number : Suit 609/2006
Decision Date : 09 January 2008
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Cavinder Bull and Chua Ying-Hong (Drew & Napier LLC) for the plaintiff; Anthony Lee Hwee Khiam and Pua Lee Siang (Bih Li & Lee) for the first, second and fifth defendants; Alvin Cheng (Chris Chong & C T Ho) for the third defendant; Wong Siew Hong (Infinitus Law Corporation) for the fourth defendant
Parties : Chang Ham Chwee — Chan Siew Khim; Chan Meow Khin; Chan Hung Hor; Chang Lee Siang; Chan Siew Khim and Chan Meow Khin as the Representatives of the Estate of Tan Soo Keow, deceased

Succession and Wills

Trusts

9 January 2008

Choo Han Teck J:

1 Madam Tan Soo Keow ("Madam Tan") died on 5 July 2006 at the age of 91. She was the widow of Chan Meng Tong, a lighterage operator who was killed when his boat exploded on 8 September 1950. At that time, Madam Tan was 35 years old. She was left to look after their four children, namely Chan Siew Khim ("the first defendant"), their eldest child, now 70 years old; a son, Chang Ham Chwee ("the plaintiff"), now 69 years old; another son, Chan Hung Hor ("the third defendant"), now 67 years old; and a daughter, Chan Meow Khin ("the second defendant"), now 61 years old. The fourth defendant, Chang Lee Siang, is the plaintiff's daughter. The first and second defendants are also the representatives of the estate of Madam Tan, which is the fifth defendant in this case. Mr Cavinder Bull ("Mr Bull") represented the plaintiff, Mr Anthony Lee ("Mr Lee") represented the first, second, and fifth defendants, Mr Alvin Cheng ("Mr Cheng") represented the third defendant and Mr Wong Siew Hong ("Mr Wong") represented the fourth defendant.

2 When Madam Tan died, the family discovered, when a will made by her and dated 24 April 2002 was read to the family on 14 July 2002 by Madam Tan's solicitors, that a semi-detached house known as 40D Paya Lebar Crescent was bequeathed to the plaintiff. Another house, known as 40E Paya Lebar Crescent was bequeathed to the fourth defendant who is the plaintiff's daughter. The plaintiff has five children, two daughters and three sons. The other daughter was not involved in the present litigation in any way. The three sons all testified on the plaintiff's behalf. The house which Madam Tan lived in, namely 40G Paya Lebar Crescent, which was about the size of 40D and 40E combined, was left in equal shares to the first, second, and third defendants, as well as a charity of the first and second defendants' choice. Madam Tan's two daughters were appointed executrices and administratrices under the will.

3 On 18 September 2006 the plaintiff commenced this action against his three siblings and his daughter who was the fourth defendant. In the statement of claim he alleged that the three houses, namely 40D, 40E, and 40G, were built with money earned from his lighterage business on land bought

also with money from the business. It appeared that Madam Tan had purchased various parcels of land on 21 August 1951 on which houses known as 40B, 40C, 40D, and 40E were built. Another plot of land was purchased in 1953 and on that plot a house known as 40G was built sometime in 1962 or 1963. The houses at 40B and 40C were subsequently sold. The only issues arising from the sales were whether they were sold to pay the third defendant's commercial debts, and whether the surplus money belonged to the plaintiff on account of his claim that the purchase price for the land and money for the construction of the houses came from his lighterage business. He alleged that he had taken over the lighterage business when his father died on 8 September 1950 and had given all the money earned from the business to his mother to hold on trust for him. On 8 September 1950 the plaintiff was only 12 years old and was still in school. The newly widowed Madam Tan, was 35. The issue before me was whether the money that was used to purchase the land and build the houses in question belonged to the plaintiff.

4 The plaintiff's evidence was as follows. He took over his father's lighterage business consisting of about 15 vessels with a total market value of \$11,200 as soon as his father died. He did so because he was the male heir and his mother was only a housewife. Furthermore, the lighterage business was too rough for a woman. The plaintiff, his witnesses, and counsel as well, emphasized repeatedly that the lighterage business and life around the Boat Quay area was not something that a woman in those days would or could get involved in. In his evidence-in-chief the plaintiff stated that *"as a woman, my mother could not run the lighterage business. The environment at the pier was a very rough one and unsuitable for women. In fact, I do not recall any owner of a lighterage business being a woman and none of the members of the Singapore Lighter Owners' Association were women."* He further explained that the quayside was a rough area in which fights often took place between workers at the quay. This point was also emphasized by his witnesses.

5 The plaintiff testified that when he took over his father's business, he had to pay off his father's creditors and continue to negotiate with his father's customers to sustain the business. He said that his father was investing in a trading venture in Indonesia at or about the time he died and had incurred debts as a result. The plaintiff said that he negotiated with the creditors to pay them by instalments, and eventually, all the debts were fully paid up. Through his hard work, the plaintiff testified that he amassed a considerable sum of money which he handed over to his mother for safe keeping. The plaintiff said that he *"approached each of the creditors separately, explaining the sudden circumstances in which my father had died. I told them that I would take full responsibility for the sums owed by my father and asked to be allowed to repay the debts in instalments over a period of 18 months. I was not afraid to approach the creditors alone because I knew them well, having been introduced to them by my father at an early age. In any case, I had little option. My family's livelihood and survival was at stake and I had to speak to them."* He also said that his mother did not accompany him when he went to talk to the creditors because she *"was in a state of shock and grief"*. It was through his persuasion that the creditors finally allowed him to keep his father's boats so that he could continue the lighterage business. He stated that the creditors *"even promised to engage my lighterage business"*. He stated, however, that the *"understanding which I reached with each of the creditors was based on trust and was never put in writing."* He said that the creditors *"simply recorded the amounts which I had paid and the amounts outstanding in their own books, and I signed against each entry."* In addition to meeting the creditors, the plaintiff also approached his father's customers, the main parties being Chan Tong company, Yong Mong Heng company, and See Hoy Chan company to get their continued support. He also went to the smaller companies such as Zhua Zhu and Tay Heng Siang Medical Hall and offered lighterage services to them.

6 The plaintiff added that in order to help him run the business he hired three men, namely, Ah Wei, who had worked for his father for several years, Seah Cheok Kin ("Seah"), an experienced man in

the lighterage business who had also been working for his father for several years and was well liked and trusted (by his father), and lastly, Tan Soo Puan ("Tan"), who was Madam Tan's brother, then aged about 32, and had been employed by the plaintiff's father as a lighter operator. The plaintiff said that he paid them about \$200 to \$300 each per month. He said that he placed Seah in charge of the accounts, and assigned Ah Wei to assist Seah. Tan was responsible for collecting payment from customers as well as going out to sea to check on the goods that were being shipped. These three men were hired to take on a supervisory role, and in addition to them, he had hired many lighterage workers. The plaintiff said that the creditors deducted \$100 to \$200 a month from the lighterage charges payable by them. From the income after those deductions, the plaintiff kept \$200 to \$300 for his personal use and gave the rest "to my mother for safekeeping". He stated that those moneys *"were not intended as gifts to my mother and were held by my mother for me. My mother often told me that she was merely helping me to keep my earnings and that my earnings still belonged to me. In fact, I specifically recall my mother encouraging me to use my earnings to continue my schooling after I had successfully negotiated with the creditors for my father's debts to be paid in instalments."* He said that his mother assured him that *"she would get my permission if she wanted to purchase anything with my earnings."* According to him she said that she would arrange to have his income tax paid, and in fact did so. He said that he trusted his mother.

7 The plaintiff's father had his office on the ground floor in 8 North Boat Quay and housed his family on the second floor in 4 North Boat Quay. The widow Madam Tan and her four children lived in 4 North Boat Quay until 1963 when, with the exception of the plaintiff, they moved to 40G Paya Lebar Crescent. The plaintiff said that he continued to live in 4 North Boat Quay because he was running the business. He testified that although his mother visited 4 North Boat Quay regularly even after moving out, she never went to the office at 8 North Boat Quay. The plaintiff called several witnesses who had been working at the quayside since the 1950's and 1960's and who testified that they did not see Madam Tan at the office. They also supported the plaintiff's evidence that no woman had worked in the lighterage business because it was not a job for women.

8 In respect of the main subject matter of this trial, namely, the properties known as 40D, 40E, these were a pair of semi-detached houses (each of about 4,500 square feet in size) and 40G, which was a bungalow (about 9,000 square feet in size), the plaintiff's case was that the land was purchased with money from the lighterage business, and the houses were also constructed with money from the business which he was running. The money which was expended by Madam Tan for the purchase and construction of land and houses was held by her on trust for the plaintiff. On that account the plaintiff claimed that he was entitled solely to the three properties as well as the surplus funds from the sale of the two properties that had been sold (40B and 40C). The plaintiff stated that Madam Tan bought the land on his instructions. He said that it was his granduncle who knew that the land was available for sale in 1951 (and 1953 for the land on which 40G was built) and told his mother about it. The plaintiff said that his mother "conveyed his [the granduncle's] suggestion to me and I agreed that these pieces of land should be purchased." He later instructed her to construct the houses. In 1957 Madam Tan purchased another property known as 57 Emerald Hill Road, and in 1969 she bought 56 Paya Lebar Crescent. Both properties were subsequently sold for good profit.

9 Initially the plaintiff had also pleaded that Madam Tan's will of 24 April 2002 was invalid on the ground that Madam Tan was *non compos mentis* when she made it. The plaintiff thus prayed for an order declaring the will to be invalid. However, the statement of claim was subsequently amended so as to withdraw the said allegation and prayer. Hence, the plaintiff's case rested strictly on the ground that the properties were purchased with his money and thereby a resulting trust arose in respect of those properties (and the surplus money from the sales) in his favour. The burden fell on the plaintiff, therefore, to prove first, that the money used to purchase the properties came from the lighterage business that his father used to operate; secondly, that the plaintiff took over the business after his

father's death on 8 September 1950 and ran it single-handedly; and thirdly, that he entrusted the money earned from the business to his mother Madam Tan to hold on trust for him. Indeed, on the case thus far stated, the plaintiff would have to prove that Madam Tan bought the properties in breach of trust, but the plaintiff pleaded that she bought them with his knowledge and consent. Hence, the only other major burden to be discharged by the plaintiff would be to provide a credible explanation why Madam Tan did not seem to regard herself as a trustee of his money, and, instead, conducted herself in regard to the properties and the money as if they were her own.

10 The plaintiff said that *"I registered my lighterage business as Chan Kain Thye Lighterage Company ("Chan Kain Thye") in or about December 1966."* He was then 28 years old. He stated that he had to *"formally register my lighterage business because I had to pay tax on the income generated from my business as well as start my own bank account for the purposes of my business. Since my mother's account with Ban Hin Lee Bank was already closed, I created a new account with Si Hai Tong Bank for Chan Kain Thye."* He also testified that in or around 1967 Madam Tan told him that she could no longer hold his earnings from his lighterage business for him. The official record showed in fact that Madam Tan was a partner in Chan Kain Thye from January 1967 to May 1988. The third defendant also had a one-third share in that company even though he was not actively engaged in the business.

11 In 1968 the plaintiff "invested" \$150,000 in a moneylending business called "Golden Valley", and from his investment, he received 150,000 shares in the company. He gave 50,000 of those shares to the third defendant. He claimed that the third defendant could not get along with the partner in Golden Valley and thus the plaintiff *"was forced to sell [his] 75% stake in Golden Valley sometime in 1971."* In the same year, he invested \$30,000 in the first defendant's company called Powen & Company, but eventually he surrendered his stake to the first defendant and he claimed that he never got his money back. The plaintiff stated that after that, he started a new company called Thye Guan Enterprise Pte Ltd ("Thye Guan") which was also a moneylending business. He stated that he mortgaged 40B, 40C, 40D, and 40E to raise funds for Thye Guan's business. However, on the third defendant's suggestions, he decided to incorporate a separate company called Thye Guan Realty Pte Ltd ("TGR") in August 1972 to hold the properties *"so that the properties would not be held by [his] mother personally."* The two shares in TGR were initially held one each by him and Madam Tan. The plaintiff claimed that Madam Tan held one share as his nominee. In November 1972, more shares were issued so that the plaintiff and the third defendant held 200,000 shares each and Madam Tan held 100,000 shares. None of them paid for the shares (even though the annual returns of TGR showed that the shares were all fully paid up). The plaintiff claimed that the third defendant and Madam Tan held their shares on trust for him. He claimed that TGR was merely his vehicle for holding the properties and TGR had, otherwise, no real property or income (other than from rent of the properties).

12 The plaintiff then asserted that the mortgages (Madam Tan was the mortgagor) were discharged and the properties, 40B, 40C, 40D, and 40E and 40G were transferred to TGR ostensibly for \$500,000 but the plaintiff claimed that no payment was actually made. Thereafter, he gave instructions to have the properties mortgaged to the Chung Khiaw Bank to secure an overdraft facility of up to \$300,000 in favour of Thye Guan. Thye Guan then purchased two more properties in 1973 but had to sell them because the company incurred huge losses in the stock market when the third defendant traded using the company's money. The plaintiff thus asserted that there was no true consideration for the transfer of the properties to TGR. Mr Bull submitted that none of the defendants had any personal knowledge to challenge this claim. I shall revert to this point about the evidence shortly. I need now only briefly mention that there was also a company called Florence David & Co Pte Ltd ("Florence David") in which the plaintiff and the third defendant were the majority shareholders and directors. Banking facilities were extended to Florence David by the Bank of China

and secured by a mortgage of the properties.

13 In March 1988 the law firm of R C H Lim & Co wrote to the Bank of China on instructions of TGR with a proposal for the discharge of the mortgages. The Bank of China agreed to the proposal. The proposal was part of the scheme of things set out in the letter of R C H Lim & Co:

We act for Thye Guan Realty Co Pte Ltd., the owners of the above mentioned properties which are at present mortgaged to your Bank under a Mortgage dated 5th April 1982 and registered in the Registry of Titles as Instrument No I/07267C to secure banking facilities granted by your Bank to Florence David & Co Pte Ltd up to the limit of \$1,300,000.00.

Our clients, Thye Guan Realty Co Pte Ltd, now wish to wind up voluntarily and vest the abovementioned properties in Mdm Tan Soo Keow by way of specie. Before this can be done, it will be necessary for your Bank to totally discharge the abovementioned Mortgage. As a security for this Total Discharge of Mortgage in favour of our clients, Thye Guan Realty Co Pte Ltd., Mdm Tan Soo Keow will execute a Mortgage of the said properties in favour of your Bank which properties would then have been transferred by our clients, Thye Guan Realty Co Pte Ltd., to her. The Total Discharge of Mortgage in favour of Thye Guan Realty Co Pte Ltd., the Transfer of properties in favour of Mdm Tan Soo Keow by Thye Guan Realty Co Pte Ltd and the Mortgage of the said properties in favour of your Bank by Mdm Tan Soo Keow would be completed simultaneously and registered with the Registry of Titles accordingly.

We are further instructed to inform you that Mdm Tan Soo Keow will take immediate steps to arrange for the sale of 40 G Paya Lebar Crescent, Singapore, once this property is vested in her, to pay off Florence David & Co Pte Ltd.'s indebtedness to your Bank.

R C H Lim & Co then wrote to the accountants regarding the proposal and the bank's acceptance, and instructed them to proceed to execute the scheme of winding up TGR and the documentation required for the transfer of the properties. All that was done by September 1988. In November 1989 Madam Tan had all the debts of Florence David transferred to her account and in 1990 she sold 40B and discharged Florence David's debt to the Bank of China. By a letter of 8 June 1990 R C H Lim & Co enclosed payment in redemption of all outstanding mortgages. The interest in the related insurance policy was also vested in Madam Tan as owner on 11 June 1990.

14 From that time till she died in 2006 no claim as made in this action was ever made against Madam Tan by the plaintiff. His only explanation was that he was a filial son and thus it did not seem proper for him to do so. The main and primary issue of fact that I had to determine in this action was whether the plaintiff took over his father's lighterage business when the latter was killed in the barge explosion on 8 September 1950. The cases advanced by both plaintiff and defendants were cohesively bound together, on their respective accounts, on this one fact. It is possible that the subsequent building of the houses on the land, the subsequent mortgage, redemption, and sale of the properties, and the creation of Thye Guan and TGR had no relation to this first critical fact but, on the cases pleaded as well as the evidence adduced before me that was most unlikely. The person who took over the lighterage business in September 1950 was highly likely to be the one who also purchased the land, built the houses and had the main say in the creation of the Thye Guan and TGR and how the properties and the companies were to be dealt with.

15 It was obvious from the start that Madam Tan would have been the key witness to challenge the plaintiff in respect of the critical fact and the events with which she was directly concerned, and thus Mr Bull urged me to bear in mind that the plaintiff was presently the only witness in respect of the claim that he took over his father's lighterage business in 1950. The crux of the plaintiff's evidence that he took over his father's lighterage business when he was only 12 years old must be

examined at three levels. First, the inherent plausibility of the assertion; secondly, the evidence that supported it; and thirdly, whether the witness should be believed. I should also mention that these distinct levels overlap and one must take this into account. The way to do that is to consider the overall story in its entirety, matching the story and the storyteller.

16 The very idea that a 12-year-old boy assumes his father's mantle in what he has himself described as a very rough trade was implausible. The plaintiff repeatedly suggested that the trade was too rough for a woman and thus his mother could not and did not take over the business. In my view, a 35-year-old widow (as Madam Tan was at that time), assisted by her husband's experienced foreman and her own adult brother, would have been far more capable of taking over the business than a 12-year-old child, who, on his own admission, was sent to boarding school by his mother for disciplinary purposes. He claimed, however, that he had sneaked out once a week on Wednesday afternoons so that he could pay his boatmen their wages. The plaintiff also testified that all the income that he collected personally from the trade was handed over to his mother for safekeeping because, as he said, he was only 12. I am unable to believe all this when, again on his admission, he was given his weekly pocket money by his mother. The only way one can accept this story from the plaintiff is to be persuaded by him on account of his sincerity and performance as a witness, that is to say, one accepts an incredible tale on account of a solid storyteller. But the plaintiff inspired no such confidence. His evidence in court only fortified my view that his story cannot be believed. It may be true that he had grown up at the quayside and learned the trade gradually from a very young age until he was old enough to start his own career as a boatman, but that was not the same as taking over the father's business from the day he died. Much of the stories about the life of a boatman and the daily business of the trade were probably true in the way the plaintiff recounted them, but in my view, these were most probably stories gleaned from his own observation of life at the quayside and many of those stories may have been taken from a different period in his life and planted into his evidence to make it appear that he recalled them because he took over the business in 1950. Although Madam Tan had died, her side of the story was not completely blanked out. The documentary evidence as well as admissions by the plaintiff showed that it was Madam Tan who submitted the accounts of the lighterage business and she was the one who engaged the accountants, not the plaintiff, who was oblivious as to how she went about it. I am thus led to conclude that that was because he was not involved. I disbelieve his assertion that he did not care because he had given instructions to his mother to take care of those matters. Mr Bull submitted that Mr Lee's clients ought to have called the accountants since there was no evidence that the accountants were dead. The point, however, is that the accounts were themselves not crucial to the case. The accounts were found in the possession of Madam Tan and formed secondary and corroborative evidence in support of the first, second, fourth and fifth defendants' case. The plaintiff, on the other hand, had not a scrap of such evidence to support his claim, and he is the live party. The accounts were not admitted to show that they were accurate, but that some evidence existed to show that Madam Tan had documents consistent with her role as the owner of her dead husband's business. Similarly, when it came to the purchase of the land, and subsequently, the construction of the houses on those plots of land it was the plaintiff's mother who engaged the architect and employed the contractor. All legal documentation was done by his mother's lawyers. There was clearly no dispute that Tan & Co and later, R C H Lim & Co, were the law firms engaged by Madam Tan and she, not the plaintiff, was regarded as the firms' client, and it was Madam Tan, not the plaintiff, that dealt with the lawyers concerned. Mr Neoh Thean Hup, the solicitor from R C H Lim & Co, testified that the will made by Madam Tan in 2002 before him was the last known will of the plaintiff's mother. The claims of the plaintiff and his three sons that there was a contrary will made in 1993 were thus utterly irrelevant, quite apart from the fact that no one had a copy of that alleged will. It is also important to note that this state of affairs, ie that Madam Tan ruled the roost after her husband's death, was not challenged in her lifetime.

17 The plaintiff gained a small measure of assistance to his cause when his younger brother, the third defendant, changed his mind at the start of the trial and decided not to challenge the plaintiff's claims in this action. In so doing, he had contradicted his instructions to Mr Lee, who initially represented him and drafted his defence. His explanation in court was that he did not understand Mr Lee and was not involved in the meetings with Mr Lee because he was treated by his sisters as if he did not exist. When he attended the meetings at Mr Lee's office, he stated that he merely "looked out of the window" while his sisters were actively discussing the case with Mr Lee. His daughter, Chan Wee Boon, however, gave evidence in support of the other defendants. She was born in 1964 and would not therefore have direct knowledge of the critical issues. Miss Chan, the Director of Finance and Administration in Spring Singapore, however provided an important piece of evidence. She testified that she had lived with Madam Tan and was very close to her. Although she was too young to know of Madam Tan's involvement in the lighterage business, she was able to recall the winding down period, and that Madam Tan only retired from the business in the late 1980s or early 1990. Miss Chan impressed me as a fair and honest witness and her evidence contrasted with that of the plaintiff sharply when he said that Madam Tan not only was not the owner of the business but that she was totally uninvolved. Miss Chan's evidence thus provided another piece of evidence, though small in itself, which fit into the big picture and resulted in something very different from what the plaintiff sought to show.

18 The plaintiff called a number of people in the lighterage business to testify that they had known him, some from a very young age, and that they had seen him, but not Madam Tan, working the boats. Reviewing their evidence, I found none relevant to prove that the plaintiff took over his father's business in 1950. These witnesses were friends in the trade that the plaintiff made subsequently, and I did not think that their evidence sufficiently supported the plaintiff's case. The evidence of these witnesses as well as that of the first, second and third defendants were helpful in determining the root question whether the plaintiff took over his father's business when he was 12 years old; they were garnishing in the quarrel between the plaintiff and his sisters. The first defendant was an angry and feisty woman and if her mother Madam Tan was like her, she would have little difficulty in dealing with the boatmen. The second defendant was much gentler and more articulate than any of the other Chan siblings. She was a management consultant and her testimony very largely corroborated Miss Chan's testimony in describing the sort of person Madam Tan was. I only needed to know that Madam Tan was not the sort of person who was too physically and mentally weak to be involved in the lighterage business. Their impressions of Madam Tan were the foil against the description given by the plaintiff. The third defendant, however, impressed me as a bitter and angry witness who changed his allegiance for personal reasons and not for truth. Ultimately, the question central to this action, namely, whether the plaintiff took over and owned the lighterage business after his father died in 1950, depended on whether I believe the plaintiff. I do not.

19 For the reasons above, the plaintiff's claim is dismissed. I shall hear submissions on costs at a later date if parties are unable to agree on costs.

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