

Yeoh Poh San and Another v Won Siok Wan
[2003] SGHC 218

Case Number : Suit 12/2002
Decision Date : 24 September 2003
Tribunal/Court : High Court
Coram : Lai Kew Chai J
Counsel Name(s) : L Kuppanchetti and Koh Chia Ling (Alban Tay Mahtani & De Silva) for the plaintiffs; Andre Arul (Arul Chew & Partners) for the defendant
Parties : Yeoh Poh San; Choo Lee Chin — Won Siok Wan

Gifts – Inter vivos – Intention to give – Whether there was an intention to make gift of moneys in bank accounts

The plaintiff ("Mr Yeoh") is a lawyer practising in Kuala Lumpur, Malaysia. He is 58 year old. He took a break from the law and held the office of Parliamentary Secretary, Ministry of Health, Government of Malaysia for about 3 years in mid-1980s. The second plaintiff ("Mrs Yeoh") and the defendant ("Madam Won"), until the events hereinafter recited, are, amongst others, the two women in his life. Mdm Won and Mrs Yeoh have known each other since childhood. They were in their early years neighbours at Pasir Puteh, Kelantan, Malaysia. They attended the same primary and secondary schools in Pasir Puteh. The parties to these proceedings are all Malaysians and they reside in Kuala Lumpur. Mr Yeoh married Mrs Yeoh on 8 August 2001, some two months after Mdm Won had fallen out with him. This action involves a dispute over the beneficial ownership of the moneys in three bank accounts maintained in a bank in Singapore.

2 On 11 June 2002 Mdm Won withdrew from 3 accounts the sums of SGD1,036,000.00, SGD810,596.41 and USD372,122.49 (collectively referred to as "the moneys"). The 3 accounts were a Current Account, a Fixed Deposit Account and a Foreign Currency Account and they were all in the joint names of Mdm Won and Mrs Yeoh, each of whom could independently operate and withdraw moneys from the accounts. Those accounts were maintained at the United Overseas Bank Ltd, Main Branch, Singapore. Mr Yeoh claims that the moneys belonged to him and that Mdm Won was holding the moneys upon trust for him. He asserts that she has misappropriated the moneys. He asks for a declaration of trust, an enquiry to facilitate tracing of the moneys and their equivalents, repayment of all moneys by Mdm Won and an injunction restraining Mdm Won from disposing the moneys and traceable proceeds or property otherwise than by delivery up or transfer to him. Mrs Yeoh does not make any claim on the moneys.

3 On the other hand, Mdm Won claims that Mr Yeoh had "set aside financial settlements to her" and had made gifts of the moneys in the 3 accounts for her to own beneficially and absolutely.

Pre-trial Application

4 On the first day of the trial, counsel for Mdm Won applied to vacate the trial. She had filed an appeal to the Court of Appeal to reverse a decision of the High Court denying her a defence of illegality and that both plaintiffs did not come to court with clean hands. Essentially, Mdm Won was alleging that the moneys were part of illegal commissions which Mr Yeoh had received by virtue of the deals in Malaysia which he could put together with the help of a former Minister of the Malaysian Government. Mdm Won also intended to appeal against the decision of the High Court refusing her application to take depositions in Malaysia.

5 It was clear from the pleadings and the affidavit evidence filed by the parties that the

moneys in contention legally belonged to Mr Yeoh at the point in time just before they were deposited into the bank accounts. The issue is whether he had made a gift of them to Mdm Won or do Mdm Won and Mrs Yeoh, in whose names the bank accounts were maintained, hold those moneys upon trust for Mr Yeoh. In the absence of any other party making a claim to the moneys, such as a principal whose bad fiduciary had taken the moneys as a bribe, I was of the view that the source and origin of the moneys, and whether tainted or not, were irrelevant so far as these proceedings were concerned. Upon their deposit in the bank accounts, the questions whether they gifted to Mdm Won (as she asserts) or whether they are held upon trust for Mr Yeoh by the two bank accountees (as he asserts) are essentially the dispute of ownership of the moneys which I have to decide. I was told that the intention of Mdm Won was to establish the fact that Mr Yeoh had received substantial illegal commissions through those depositions to be obtained in Malaysia through the legal system in that country. It was implicit in this approach that the suggestion is that Mr Yeoh, flushed with funds, was more disposed to make a gift.

6 I also felt that the probative value of such evidence as could be gleaned from depositions was potentially very limited in scope, if at all. These difficulties are due to the fact that this action should have been litigated in Kuala Lumpur where all the evidence, which are compellable for production in court, are available. Those against whom such serious allegations were made would not appear before me; nor could they be compelled to appear. Neither could documents be ordered to be produced in relation, for instance, to Mdm Won's allegations that Mr Yeoh was using his account, as a client, with his own firm as a warehouse to dispose of his funds.

Proceedings in Malaysia

7 I was told that Mdm Won had commenced legal proceedings against Mr Yeoh in the High Court in Kuala Lumpur. I would merely mention that she will be seeking a declaration that she is Mr Yeoh's lawful wife and will also ask for an injunction to restrain Mr Yeoh from disposing and/or charging their 'matrimonial home' in Pesiaran Bukit Tunku, Kuala Lumpur, Malaysia. Mr Yeoh has also sued one Mr Ng Siong Toke, the brother-in-law of Mdm Won, for the sum of RM900,000 which Mr Yeoh alleges was held upon trust for him. Mr Yeoh said that there were pending Criminal Breach of Trust police investigation in relation to this sum.

The Facts

8 Mdm Won was Mr Yeoh's 'female companion' (as Mr Yeoh described her) from June 1981 to 11 June 2001. She was 24 year old when Mr Yeoh lived with her as man and wife. She became his companion after his second wife left him. She lived with him at a house in a good class bungalow area in Pesiaran Bukit Tunku, Kuala Lumpur for substantially the same period of time. Mr Yeoh's marriage to his 2nd wife was dissolved in September 1987.

9 Sometime in 1985, Mrs Yeoh entered into their lives, having met Mr Yeoh in 1979. She became his other 'female companion'. Having living together under the same roof for just over a year, Mrs Yeoh moved to her own home at Jalan Senohong, Taman Cantik, Kuala Lumpur. Later, in 1998 she moved to Sri Tunku Condominium, Jalan Bukit Tunku, Kuala Lumpur. Mrs Yeoh, however, continued to stay overnight with Mr Yeoh in his home at Pesiaran Bukit Tunku.

10 According to Mrs Yeoh, the tripartite relationship was 'fine'. They 'hardly quarrelled' and 'treated each other with respect.' From the evidence of Mdm Won, it appeared that Mr Yeoh was a dominating presence in their midst; he did not countenance any disagreement or dissension. In return, he treated them as equally as humanly possible. In May 1991, just before his first medical procedure, he made a Will, giving everything he owned to Mdm Won and Mrs Yeoh in equal shares. Without any

doubt, he treated them well in emotional and financial terms, certainly at a level of comfort which kept both the ladies rather satisfied. He gave them many gifts, including cash, cars, properties, shares and jewellery.

11 For more than 12 years from 1991, Mr Yeoh has been suffering from heart-related problems. He underwent angioplasty and stenting in June, 1991, July, 1992, and in early November, 1999. On the last occasion he underwent both stenting and angioplasty.

12 Mr Yeoh disclosed that after his relapse in late 1996, he took steps to organise business and take steps to meet his personal obligations. His property development known as the Mersing Hills Golf & Country Club Berhad was about to be completed. He had "other projects", particulars of which were not mentioned. It should be noted that Mr Yeoh was expecting "substantial payments" within a year or two from 1996, that is to say in 1997 or 1998.

13 Mr Yeoh gave examples of how he took steps to settle his personal matters and get in his money. In February, 1997 he opened a joint account with Mdm Won at Hong Leong Bank, Jalan Raja Laut Branch, Kuala Lumpur. The living expenses of Mdm Won were paid for from this account. He deposited his money into that account. In March 1997, Mr Yeoh also opened a joint banking account with Mrs Yeoh at a branch of the former Phileo Allied Bank (now merged with Malayan Banking Berhad). Mrs Yeoh's expenses were paid out of that account.

14 In February 1999, at Mdm Won's request, the joint account with Hong Leong Bank Bhd was closed. She did not want a joint account but instead she wanted the money in it to be placed in her own bank account. She was afraid that Mrs Yeoh might claim a share of the moneys in that joint account in the event of his death.

15 In 1999 Mr Yeoh's heart condition deteriorated and became very serious. He could not even do walking exercises. Fortunately, as Mr Yeoh admitted, he had by then received 'most of the moneys that were due to (him)'. Mr Yeoh at the trial did not give me evidence of a good probative kind as to the approximate amount of the moneys he had got in. He did, as ordered, disclose his assets. Having considered all the evidence, I am unable to say that Mr Yeoh has disclosed all his assets. If Mr Yeoh had been more forthcoming, he could have produced banking, or solicitor and client statements of accounts, to show how much money he had during the period before the moneys in dispute were deposited into the three bank accounts in Singapore. However, Mrs Yeoh, who worked as the manager of Mr Yeoh's law firm, told the court that in 1997 the sum of RM8 million from the Mersing project was paid into the client's account which Mr Yeoh maintained with his law firm. In 1998 the sum was RM700,000 and it came from a firm known as Muhibbah. Mrs Yeoh further told the court that in 1999 the sum of RM3 million was paid into the client's account, for the account of Mr Yeoh. There was no payment in during the year 2000 but in 2001 there was a payment in of RM2.5 million.

Mr Yeoh's Version

16 According to Mr Yeoh, just after his hospitalisation for his third heart operation, which was from 1st to 4th November, 1999, he spoke to Mdm Won and Mrs Yeoh about setting aside moneys to be placed in a bank in Singapore. In speaking to Mdm Won, he spoke in Hokkien with English thrown in. Mdm Won speaks English. He told Mdm Won and Mrs Yeoh that the money he would be putting in a bank in Singapore would be kept for his old age, for the medical expenses he might need to incur, and for him to maintain both Mdm Won and Mrs Yeoh.

17 Mr Yeoh told the court that in the course of announcing his intentions, he joked with them that when he died, they could have his money. He meant it as a joke. As a further joke, he also said:

'don't worry about the Thai girls any more".

18 I need to explain the reference to Thai girls. Mr Yeoh had earlier drawn a cheque for RM500,000 which was withdrawn by the brother of Mdm Won. It is noteworthy that Mr Yeoh said that this sum was meant for his 'Thai girl friend' and for his business in Thailand. The proportion the sum was to be distributed was neither mentioned nor elaborated upon. It seems to me that Mr Yeoh had a lot of money to splurge on his Thai girls.

19 Returning to Mr Yeoh's evidence on the moneys deposited in the three accounts, Mr Yeoh said that the best place to keep his money was Singapore, which was 'politically and economically stable and not too far away.' He also ventured that the deposit of the money in the names of the two ladies 'would act as a safety valve against (his) spending unnecessarily.' He eventually set up the three accounts. Mr Yeoh said he told Mdm Won and Mrs Yeoh that they were to hold his money on his behalf for his use during his old age and neither of them could make any withdrawal without his consent. He said that Mdm Won understood and she agreed.

20 In a discussion amongst the three of them on 4 December 1999, Mr Yeoh repeated his instructions about the moneys being kept for his old age and medical expenses. He ventured that he did tell them that 'upon my death they were to share equally what was left.' Mr Yeoh alleges that there were several discussions among the three about the moneys in the 3 bank accounts in Singapore during which his intentions, as earlier stated, were repeated.

21 Mr Yeoh explained that he had thought about opening the accounts in his sole name. He decided against it as the accounts might be frozen and the ladies would not get at them immediately following his death. It was convenient to have their names, with each of them able to withdraw from each of the accounts.

22 Mr Yeoh also referred to Mdm Won's wrongful withdrawals of a Bangkok Bank fixed deposit account and a bank savings account in Thailand. She withdrew nearly SGD780,000 worth of Thai Baht in the bank accounts. Both Mdm Won and her brother were charged and convicted in Thailand for theft and for receiving stolen money. Both of them pleaded guilty to the charges and were each sentenced to one year suspended jail sentence and fined the equivalent of SGD500. However, Mr Yeoh and Mdm Won had settled their disputes over the moneys in Thailand. Mr Yeoh gave and paid Mdm Won bahts equivalent to RM360,000 to RM400,000 under the compromise.

23 Mr Yeoh further said in evidence that whatever he had intended to give to Mdm Won had already been given separately in the past. From 1997 to 1999, he gave her cash gifts totalling RM2 million, telling her that she was free to use the money as she pleased. He gave an equal amount to Mrs Yeoh. He also purchased 2 condominium units in Kuala Lumpur for her, each at the cost of RM340,000. He also bought her a Toyota Corolla car at the cost of RM110,000. When Mdm Won complained that she was not given enough, he instructed Mrs Yeoh to pay her RM400,000 out of the RM2 million which he had given to Mrs Yeoh. He also gave Mdm Won 500,000 shares in Muhibbah Engineering (M) Berhad in April, 1999 and shares in Gaya Rancak Sdn Bhd (equally with Mrs Yeoh) which Mdm Won sold in January 2003 for about RM800,000.

24 Mrs Yeoh confirmed the evidence given by Mr Yeoh.

25 Mr Yeoh disclosed in an affidavit under oath that he has assets worth RM10.055 million. Mrs Yeoh also disclosed in an affidavit under oath that she has net assets worth RM4.26 million. It is not necessary to and I should not disclose in this judgment the particulars of the assets.

Mdm Won's Version

26 According to Mdm Won, Mr Yeoh expected to receive a lot of money in December 1999 from various sources and projects. He told her that he would be giving her some of the moneys, which should not be deposited in Malaysia for fear of tracing by the tax authorities. Mr Yeoh made it very clear that it was his intention that the moneys in the Singapore bank accounts were to be wholly hers to use as she saw fit without any restrictions and without his approval. Steps were then taken to establish the three accounts. Mr Yeoh from time to time deposited the moneys, as recorded in the accounts spelt out in her affidavit evidence in chief.

27 Mdm Won reiterated that Mr Yeoh had always intended to give the moneys in the 3 bank accounts in the Singapore bank to her solely, and not to be shared with Mrs Yeoh. As I said neither Mr Yeoh nor Mrs Yeoh is asserting that Mrs Yeoh has a share in the moneys. Mdm Won said that the naming of Mrs Yeoh as a joint account holder was for convenience, 'so that the monies in the Singapore Bank Accounts could be withdrawn by the 2nd plaintiff (Mrs Yeoh) if I were to die suddenly without having to go through the trouble of having to take out the necessary legal proceedings for probate and so on.'

28 Mdm Won told me, in cross examination, that in the records of the Kuala Lumpur tax authorities she was recorded as the wife of Mr Yeoh. So he told her that she could not keep any large sum in Malaysia. She repeatedly said that Mr Yeoh had told her that she would give her money to be deposited in a Singapore bank for her old age. All along, Mr Yeoh used to disclose to her the moneys he was to receive in Kuala Lumpur. In 1999 he received RM\$16 million from a listed company, known as IJM. Mr Yeoh told her that out of this sum he would keep a part of it in the Singapore bank for her old age. She said he had declared his intention to make a gift of the moneys in the Singapore bank accounts to her on a number of occasions and she said she could not remember the date and place.

29 In relation to the RM2 million which Mr Yeoh gave her, Mdm Won told the court that about RM500,000 was spent on renovation of the 'matrimonial home', the upkeep of the cars and household expenses. She said the sum was given to her in several tranches. In 1997 she was given RM1 million to buy stocks and shares. Those shares were still with her, but he prices had fallen. Mdm Won swore an affidavit evidence which disclosed (1) the gifts made by Mr Yeoh to her as set out in Schedule 1; (2) the list of assets owned by Mr Yeoh which are set out in Schedule 2 and (3) the list of assets owned by Mrs Yeoh as set out in Schedule 4; and (4) a list of her assets as set out in schedule 4. The four schedules are annexed to this judgment. These schedules are attached to this judgment.

Findings

30 The evidence from both sides have to be viewed with caution; each version is obviously self-serving and Mr Yeoh and Mdm Won stand to gain by a version which may not conform to the true state of affairs.

31 Having considered all the evidence and the demeanour of the witnesses, I am of the view that more probably than not Mr Yeoh intended and did make a gift of the moneys. Mr Yeoh had come into substantial sums of money and he was in a position to provide for Mdm Won. His purpose of keeping almost 'the net balance of his savings' in bank accounts in Singapore did not sound credible to me. All his life, he has worked and lived in Malaysia in general and in Kuala Lumpur in particular. He has in his name, I believe, much more than what he has disclosed. He has not come forward with the kind of documentary evidence to disclose his assets as are ordinarily available, if there is a willingness to tell all. It is also odd to keep money in Singapore to meet medical expenses in Malaysia.

32 The truth, it seems to me, is that the gifts to Mdm Won for her old age was agreed to be kept in Singapore so that they are out of the glare of the tax authorities in Malaysia.

33 She decided to uplift all her moneys in Singapore because she was asked to choose between Mr Yeoh and her brother. It appeared that her brother had threatened to kill Mr Yeoh and Mr Yeoh was intending to respond. She was forced by Mr Yeoh to take sides. She decided to break away from her unhappy triangular tangled web. It was time for her to live a life, independent of Mr Yeoh. Although she was not coherent and systemic in her thought processes, she was telling the truth. I believe her version of what had transpired.

34 The plaintiffs' claims are accordingly dismissed with costs.

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