

Subramaniam s/o Kalimuthu and Another v Ng Hwee Cheng Doreen practicing under the
name and style of Ng & Co
[2000] SGHC 223

Case Number : Suit 904/1999
Decision Date : 31 October 2000
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : P Balagopal with M P Kanisan and Percy Mendis (Palakrishnan & Partners) for the plaintiffs; Tan Kok Quan SC with Audrey Thng (Tan Kok Quan Partnership) for the defendant
Parties : Subramaniam s/o Kalimuthu; Kandasamy Ambualagan — Ng Hwee Cheng Doreen practicing under the name and style of Ng & Co

JUDGMENT:

Cur Adv Vult

1. The Plaintiffs sued the Defendant for losses they claimed they incurred through her negligence when she acted for them in connection with a house known as 70 Hythe Road ("the property").
2. The Plaintiffs are brothers, and are the registered owners of the property. The Defendant, an advocate and solicitor of long standing, practises under the name of Ng & Co. The Plaintiffs' brother Balakrishnan s/o Kandasamy @ Mohd Feroz bin Abdullah, who is referred to as "Bala" or "Captain Bala" was very much involved in the dealings between the Plaintiffs and the Defendant.
3. The Plaintiffs were the registered owners of the property since 1990 when they bought it with a \$451,000 loan from the Citibank N.A. ("Citibank") and by withdrawing parts of their earnings from their Central Provident Fund ("CPF") accounts. The solicitors who acted for the Plaintiffs in these transactions were Rajah & Tann.
4. In June 1992 the Citibank loan was paid off and the property was mortgaged to UMBC Finance Ltd to secure a \$475,000 loan. Another law firm Gurdaib Cheong & Narmal acted for the Plaintiffs at this time.
5. In December 1992, there was another change of mortgagee. The UMBC Finance mortgage was discharged and replaced by a mortgage to OCBC Finance Singapore Ltd ("OCBC Finance") to secure a loan of \$485,000. Simultaneously the Plaintiffs executed a collateral mortgage of the property as sureties for a loan of \$2,880,000 from OCBC Finance to a company Seawell Shipping Management & Agencies Pte Ltd ("Seawell") for the purchase of the vessel "Seawell Success". The directors and shareholders of the company were Bala and Yeo Chong Lin. The Defendant acted for the Plaintiffs and OCBC Finance in these transactions.
6. On 27 August 1993, the Plaintiffs executed a second collateral mortgage of the property in favour of OCBC Finance. The Plaintiffs executed this mortgage to secure a further loan from OCBC Finance to Seawell for \$2,500,000 for the purchase of another vessel, the "Seawell Sapphire". The Defendant also acted for the Plaintiffs and OCBC Finance in this mortgage, which was perfected on 26 October 1994 after OCBC Finance paid out the loan in full.
7. The Plaintiffs and Seawell did not keep up with the scheduled repayments of the loans, and OCBC Finance pressed the Plaintiffs for payment. The Plaintiffs were advised that they should sell the property to repay the loans, or the mortgagees would sell it. On 2 May 1996 the Plaintiffs issued an option to Yeo Holdings Pte Ltd ("Yeo Holdings") a company controlled by Yeo Chong Lin, to purchase the property at \$2.5 million. The option was exercised on 10 June 1996. The sale was completed on 18 June 1996 simultaneously with the discharge of the mortgage and collateral mortgages. The Defendant acted for the Plaintiffs, OCBC Finance and Yeo Holdings in these transactions.

8. The Plaintiffs did not receive any part of the sale proceeds beyond the repayment to their CPF accounts the sums they withdrew to purchase the property with accrued interest because the payment was effected in accordance to a letter of authority they executed dated 18 June 1996.

9. They pleaded that

In breach of her contractual duty and/or negligence, the Defendant failed to exercise all proper skill and care, diligence and competence in and about the sale and/or conveyance of the said property.

Particulars of Negligence

(a) Failed to advise and take instructions on the Option and the Letter of Authority prepared by the Defendant.

(b) Failed to keep the Plaintiffs informed at all times on the progress of the sale of the said property and obtain instructions.

(c) Inducing the Plaintiffs to sign the Transfer in favour of the Purchasers without disclosing the balance amount due to them.

(d) Failed to render a completion account for the approval of the Plaintiffs before the completion of the sale of the property.

(e) Failed to obtain instructions of the Plaintiffs on the unlawful or unauthorised deduction from the sale price of the property.

(f) Failed to advise on the mortgages.

(g) Failed to ensure that no conflict of interest would arise in her duties as Solicitors for the Plaintiffs and the Purchasers and Mortgagees.

(h) Failed to ensure that the Plaintiffs' interest in the purported redevelopment of the property was properly protected.

(i) In all circumstances, failing to carry out her work with due skill and care.

10. They quantified their claim at \$1,740,294.85 "being the balance of the sale price of \$2.5 million less payment to CPF Board in the sum of \$228,698.34, payment to OCBC Finance \$530,800.81 being the Housing Loan, and \$206.00 being the legal costs paid to CPF Solicitors."

The Plaintiffs' case

11. The Plaintiffs' case is that they wanted to buy a property for their home. They were looking for a house of about \$400,000, which was what they could afford. Their brother Bala learnt that the property was available and persuaded them to buy it although the price was \$630,000. Bala promised to help them get a housing loan, and also to assist them with the mortgage repayments.

12. Bala played an active role in the purchase. He made the arrangements with Citibank, and appointed the solicitors who acted in the purchase.

13. The Plaintiffs were obliged to make monthly repayments to Citibank. They intended to do that by making withdrawals from their CPF accounts, by monthly \$800 cash payments they handed to Bala, then Bala would help to top up the shortfall. The payments Bala made were to be considered as loans which had to be repaid.

14. Bala did not sustain his assistance with the mortgage payments and the Plaintiffs fell behind in the payments. Bala found a solution for the Plaintiffs. He arranged for them to repay Citibank with a loan from UMBC Finance. Bala made the arrangements and appointed the solicitors for these transactions.

15. The relief was short-lived and soon the Plaintiffs were having difficulties in servicing the UMBC Finance loan. Bala arranged another change of lenders, this time to OCBC Finance. This was accomplished on 23 December 1992 when the UMBC Finance mortgage was discharged with the help of a \$485,000 loan from OCBC Finance secured on the property. On this occasion Bala also requested the Plaintiffs to help him obtain a loan for Seawell by offering the property as security.

16. The First Plaintiff alleged that the Defendant did not explain to him and the Second Plaintiff the terms of the mortgage documents they executed or advise them on their liability and obligations thereunder. The same complaint was made in respect of the second collateral mortgage they executed subsequently.

17. The First Plaintiff referred to an occasion in February 1996 when the Defendant and Sharon Lee-Tay, Assistant General Manager of OCBC Finance came to the property. They told him that the shipping loans were not paid, and that OCBC Finance may sell that property to recover the loans. He told them that he and the Second Plaintiff could not repay the shipping loans and suggested that OCBC Finance look to Bala and his associates for payment.

18. He told Bala about the visit and Bala promised to do something. In May or June 1996 Bala brought an option for him and the Second Plaintiff to sign. Bala told them the option was prepared by the Defendant and was for the sale of the property for \$2.5 million to Yeo Holdings. They signed the option and handed it back to Bala. A few days before the completion Bala saw them again with a letter of authority. He told them that the letter was needed to allow repayments to be made to OCBC Finance and the CPF, and they signed the letter. The First Plaintiff deposed that Bala also told them that after buying the property,

... the Purchasers were going to redevelop the property soon after the completion of the purchase, and the Purchasers would sell one unit in the redevelopment to us.

They signed the letter of authority on the strength of the assurance.

19. The letter is an important document in these proceedings. It reads

Letter of Authority

To: Yeo Holdings Private Limited
9 Pandan Road
Singapore 609257

re: 70 Hythe Road Singapore

We, the undersigned Subramaniam s/o Kalimuthu and Kandasamy Ambualagan, the registered proprietors and vendors of the above referred property on behalf of ourselves and the beneficial owners of the property hereby irrevocably request and authorise you to pay the full proceeds of sale of Dollars Two Million and Five Hundred Thousand (\$2,500,000.00) for the said property in full and final discharge of your liability thereunder as follows:

1. Yeo Holdings Private Limited \$760,000.00 (being moneys advanced and paid by you to OCBC Finance Singapore Limited on behalf of Balakrishnan s/o Kandasamy @ Mohd Feroz Bin Abdullah for

his share in the outstanding loan account on the mortgages of "Seawell Sapphire" and "Seawell Success").

2. Yeo Holdings Private Limited \$28,531.25 + **\$781.95** = **29,313.20** (being reimbursement of interest (up to 15.6.96) on the sum of \$760,000.00 paid to OCBC Finance Singapore Limited).

3. Central Provident Fund Board **\$228,698.34** (refund of CPF withdrawal and accrued interest on our two CPF accounts).

4. Yeo Holdings Pte Ltd \$ (full balance of the proceeds of sale herein to be held by Yeo Holdings Private Limited to account of Balakrishnan s/o Kandasamy @ Mohd Feroz bin Abdullah's contributions towards the 50% of the full costs for the joint venture).

Dated this **18th** day of **June** 1996.

5. OCBC Finance
\$538,473.62

(signed)
Subramaniam s/o Kalimuthu

(signed)
Kandasamy Ambualagan

(The words and figures in bold appear in handwriting)

20. It is the evidence of the First Plaintiff that the handwritten words and figures were not inserted when the letter of authority was produced for him and his brother to sign.

21. Their next dealing with the property was in 18 June when Bala took them to the Defendant's office. After they arrived at her office they were taken to another office to execute a statutory declaration before they were brought back to the Defendant's office to execute the transfer instrument.

22. The First Plaintiff deposed that

I asked the Defendant about the balance of the purchase price. The Defendant then replied that after paying the mortgage loan of OCBC Finance and the outstanding of CPF Board, the balance of the purchase price would be kept by her in order to pay on our behalf for the semi-detached house to be built on the redevelopment of the property by the Purchasers. The Defendant told us that Balakrishnan would have told us about the redevelopment and we confirmed. The Defendant told the 2nd Plaintiff and me that the Purchasers were going to build two semi-detached houses by redeveloping the property, and one semi-detached house would be sold to us. We accepted what the Defendant had told. The Defendant did not provide any advice on the need to have some agreement in writing in order to protect our interest in the alleged redevelopment of property.

23. They did not hear about the transfer again until they received the Defendant's letter of 4 July 1996. The letter reads –

4th July 1996

Mr. Subramaniam s/o Kalimuthu
70 Hythe Road

Singapore 557551

Mr. Kandasamy Ambualagan
70 Hythe Road
Singapore 557551

Mr. Balakrishnan s/o Kandasamy
@ Mohd Feroz bin Abdullah
70 Hythe Road
Singapore 557551

Yeo Holdings Private Limited
9 Pandan Road
Singapore 609257

Dear Sirs,

re: 70 Hythe Road Singapore

According to your instructions the redemption and sale and purchase of the above referred property has been completed (in accordance with the Option dated 2nd May 1996 exercised by the purchaser on 10th June 1996) on 18th June 1996, as scheduled.

The Discharge of CPF Charge, Total Discharge of Mortgage and the Transfer thereof have been dated 18th June 1996 and provisionally registered at the Registry of Titles on 20th June 1996 as Instruments Nos. I/65401K, I/65402K and I/65403K respectively.

The registered proprietor of the property as from 20th June 1996 is Yeo Holdings Private Limited.

As authorised by Subramaniam s/o Kalimuthu and Kandasamy Ambualagan, the vendors and Balakrishnan s/o Kandasamy @ Mohd Feroz bin Abdullah the full proceeds of sale (purchase price) less the option money of \$1.00 has been paid as follows:

Sale price	\$2,500,000.00
<u>Less</u> Option money	\$1.00
Paid to Yeo Holdings Private Limited (being moneys advanced and paid by Yeo Holdings Private Limited to OCBC Finance on behalf of Balakrishnan s/o Kandasamy @ Mohd Feroz bin Abdullah for his share in the outstanding loan a/c on the mortgages of "SEAWELL SAPPHIRE" and "SEAWELL SUCCESS	\$760,000.00
Paid to Yeo Holdings Private Limited being reimbursement of interest up to 15.6.96 on the sum of \$760,000.00 paid to OCBC Finance	\$29,313.20
Redemption moneys to CPF Board	\$228,698.34
Redemption moneys to OCBC Finance	\$530,800.81
M/s Cooma Lau & Loh's bill for acting for CPF Board in the Discharge of Charge of the property	\$206.00
M/s Ng & Co's bill No. 74/96 for the redemption and sale of the property	\$2,388.75

Paid to Yeo Holdings Private Limited to account of \$948,591.90 \$2,500,000.00
Balakrishnan s/o Kandasamy @ Mohd Feroz bin
Abdullah's 50% share (\$1,250,000.00) of the
purchase price of the property

\$ 0.00

thereby fully discharged the purchasers' liability for payment of the purchase price under the said option agreement.

According to the terms of the sale and purchase the property is sold with vacant possession to be delivered by the vendors to the purchasers on the date of completion i.e. on 18th June 1996. We are, however, instructed that the purchasers have agreed with the vendors and Mr. Balakrishnan s/o Kandasamy @ Mohd Feroz bin Abdullah that vacant possession of the property is to be delivered by the vendors to the purchasers upon granting of planning approval to build on the property a pair of semi-detached house or earlier at the option of the purchasers. Vendors shall pay property tax and other outgoings in respect of the property until vacant possession is given to the Purchasers.

We are further instructed that as Mr. Balakrishnan s/o Kandasamy @ Mohd Feroz bin Abdullah's 50% share in the purchase price of the property is \$1,250,000.00, Mr. Balakrishnan s/o Kandasamy @ Mohd Feroz bin Abdullah may either pay up forthwith the difference between \$1,250,000.00 and \$948,591.90 i.e. \$301,408.10 or reimburse Yeo Holdings Private Limited the said sum of \$301,408.10 together with interests at OCBC Finance's prevailing lending rate for Yeo Holdings Private Limited's loan account on sale of the property either as it is or on rebuild or at any time hereafter.

We are also instructed that all outgoings i.e. construction costs, development charges, stamp fees, interests, legal fees and any other moneys payable in respect of costs and expenses in building, rebuilding and sale and etc. of the property shall be shared contributed and paid equally 50% each by the purchaser and Mr. Balakrishnan s/o Kandasamy @ Mohd Feroz bin Abdullah and Mr. Balakrishnan s/o Kandasamy @ Mohd Feroz bin Abdullah shall reimburse Yeo Holdings Private Limited interest @ OCBC Finance's lending rate of any money advanced by Yeo Holdings Private Limited for and on behalf and for the account of Mr. Balakrishnan s/o Kandasamy @ Mohd Feroz bin Abdullah.

Yeo Chong Lin confirmed that the matters set out in the letter were correct and that Bala had eventually received \$929,800 from the sale.

24. The Plaintiffs said they glanced through the letter but did not understand it. They vacated the property in March 1997 without protest.

25. In March 1998, they went to see the Defendant to enquire about the redevelopment of the property. The Defendant told them that Bala had received \$929,800 of the sale proceeds.

26. They were unhappy with the situation and consulted their current lawyers, Palakrishnan & Partners in April 1998. Palakrishnan & Partners wrote to the Defendant on 16 November 1998, informing her

We act for Mr Subramaniam s/o Kalimuthu and Mr Kandasamy Ambualagan, ...

We are further instructed by our clients, to categorically and unequivocally, deny paragraph 4 of your letter of 4 July 1996, addressed to our clients (copy enclosed).

We have been informed, that no instructions whatsoever, were ever given by our clients to you, as

their Solicitors, authorising you to deduct in particular the sum of \$948,591.50 mentioned in your said letter.

We are instructed that you have unlawfully, transferred the said sum of \$948,591.50 to Yeo Holdings Pte Ltd, without any authority whatsoever from our clients.

It is our considered opinion, that this sum of monies should have been paid to our clients, as the Vendors of the property, at the completion of their sale. Our clients, have lost the benefits of receiving this sum of money, thereby causing great hardship and financial loss to them.

We hereby do and demand from you, payment of the sum of \$948,591.50 with interest from date of completion of sale to date of payment within seven (7) days from the date hereof.

27. That remained as the Plaintiffs' claim till they filed these proceedings and enlarged the claim.

The Defendant's case

28. The Defendant's case is that Bala informed her that although the property was registered in the name of the Plaintiffs, it belonged to him and she accepted and acted on this representation.

29. She did not seek confirmation of that in writing from Bala or the Plaintiffs. She explained that

When the Plaintiffs attended before me to execute the Mortgage and Collateral Mortgage of the Property in favour of OCBC Finance, they confirmed that I was to act for them and that the Property was beneficially owned by Captain Bala. They said that the Property belonged to Captain Bala and that they would act in accordance with his instructions. Further, all correspondence pertaining to the Property was to be sent to Captain Bala. In any event, before they signed the Mortgage and Collateral Mortgage, I explained the contents and implications to them.

30. With regard to the sale of the property, the Defendant deposed that

Sometime before 2 May 1996, Captain Bala told me that he intended to sell the Property to settle the debt owing to OCBC Finance and Yeo. He asked me to prepare an Option to Purchase the Property and gave instructions to me for the preparation of a letter of authority as regards the distribution of the sales proceeds. On or before 2 May 1996, I gave him a copy of the Option and letter of authority which I had prepared on his instructions.

31. On 10 June when Yeo Holdings exercised the option, she received the Plaintiffs' letter of authority which was signed but undated. She sent it back to the Plaintiffs with a request for them to date it. At the same time, she also informed them that she had requested OCBC Finance for a rebate on the redemption amount. The next day she wrote to them again with a revised letter with a correction of the figure in item 2 of the letter.

32. She saw the Plaintiffs again on 18 June when the sale was completed. They brought back to her the letter of authority in its original form. She inserted the words in handwriting and added in the date. She explained to them the transfer and statutory declaration that they executed that day. The sale was completed that day, with payment made in accordance with the terms of the letter of authority, and on 4 July she wrote to the Plaintiff, Bala and Yeo Holdings to report on the completion.

33. Nothing happened till March 1998 when the Plaintiffs went to her office and asked her for Bala's whereabouts and told her that he had absconded, and had not fulfilled his promise to give them a share of the sale proceeds. She contacted Yeo Chong Lin and obtained from him Bala's last-known telephone number and a copy of his accounts with Bala and gave them to the

Plaintiffs. They returned a few days later because they were unable to contact Bala and said that they will engage a lawyer to sue Bala. She next heard from them through Palakrishnan & Partner's letter.

The issues to be determined

34. At the end of the hearing, I found that the issues to be determined are

- (i) Was the Defendant negligent in acting on Bala's instructions?
- (ii) Was Bala the beneficial owner of the property?
- (iii) Did the Defendant explain the mortgages to the Plaintiffs? and
- (iv) Had the Defendant handled the sale of the property properly?

Was the Defendant negligent in acting on Bala's instructions?

35. The Defendant was careless in accepting Bala as the beneficial owner of the property. Bala's claim that he was the beneficial owner of the property was self-serving. The certificate of title did not support his claim as the Plaintiffs were registered as the proprietors, and there was no caveat lodged to give notice of his interest. Bala did not support his claim with any deed of trust in his favour. The Defendant should not act on Bala's assertion without getting written instructions from him and the Plaintiffs, and to ensure that the proper documentation is done.

36. Her knowledge that the Plaintiffs had used their CPF funds to pay for the property should have raised doubts whether they were bare legal owners; she should be aware that the CPF Board would not release CPF monies for the acquisition of the legal title in a property when the beneficial interest is vested in another party. Although she did not act for the CPF Board she should consider these matters when they came to her attention.

37. In any event, she acted for the OCBC Finance in the mortgage and the two collateral mortgages. In each of these, the Plaintiffs mortgaged to OCBC Finance "all the Mortgagor's registered estate or interest" in the property. The Plaintiffs were registered as the tenants in common and equal shares in the certificate of title. That was clearly inconsistent with Bala's claim that he was the beneficial owner, yet the Defendant did not bring this to OCBC Finance's attention. If Bala's claim was true, she may have put OCBC Finance at risk when they made the loans on the assurance of the security offered.

38. Even if Bala was the sole beneficial owner of the property, the Defendant should nevertheless take instructions from the Plaintiffs because they were the legal owners. Bala's claimed beneficial interest did not entitle him or her to ignore their legal interests.

39. There is further basis for criticism. The letter of authority she prepared on Bala's instruction referred to "the beneficial owners of the property" in plural. Her evidence was that she was informed that the beneficial owners were Bala and his wife. If that was right, it would be another reason for her not to act on instructions issued by Bala alone.

Was Bala the beneficial owner of the property?

40. This issue is relevant because Bala's claim may be true even if the Defendant did not verify it. The Plaintiffs were not Bala's nominees. They had invested their CPF monies in the property which became their home. In all the previous dealings with the

property, there was no suggestion that they were not the beneficial owners.

41. Having said that, it does not follow that Bala did not have any interest in the property. Bala was involved with the property from the start. He persuaded the Plaintiffs to buy it instead of keeping to their budget of \$400,000 and promised to pay for the shortfall from the Plaintiffs' CPF and personal contributions. He found the property, negotiated the price, arranged for the housing loan and engaged the lawyers. He arranged for it to be used as security for the two shipping loans, and was very much involved in its eventual sale.

42. I found the Plaintiffs' evidence that Bala's payments or promised payments were loans difficult to accept. They did not know how much he had paid or was to pay or how and when they were to repay him. They allowed the property to be used as security for the shipping loans taken by his company without any knowledge as to how these loans were going to be repaid.

43. In addition to that, their account of their payment for the property was unsatisfactory. They claimed that they made payments by withdrawing from their CPF accounts, by making cash payments of \$800 a month and by relying on Bala's assurance. However in reply to the Defendant's interrogatory on how they had financed the purchase, their answer was "The Plaintiffs borrowed money from their Central Provident Fund Account, Citibank N.A. and from Captain Bala", with no reference to any cash payments from them.

44. I find on the evidence that Bala may have had some beneficial interest in the property together with the Plaintiffs.

Did the Defendant explain the mortgage to the Plaintiffs?

45. The Plaintiffs admit that they knew the mortgages were executed to secure the housing loan and the shipping loans. They also knew that a mortgagee may take possession of the property and sell it if its loans are not repaid.

46. They complained that the Defendant had not explained the mortgage terms to them. The Defendant on the other hand maintained that she had explained the documents to them.

47. I considered the evidence. The Plaintiffs' first complaint in the letter of Palakrishnan & Partners of 16 November 1998 was significant. This letter referred to the Defendant's letter of 4 July 1996. In her letter the Defendant had referred to a payment to Yeo Holdings for advances made in the repayment to OCBC Finance of loans in respect of the "Seawell Sapphire" and "Seawell Success" and with the redemption monies paid to OCBC Finance.

48. Palakrishnan & Partners stated specifically that the Plaintiffs had not instructed her to deduct the \$948,591.50 of the sale proceeds, and demanded payment of that sum. The letter is significant for what it did not state. It did not state that the Defendant had not explained the terms of the mortgages to the Plaintiffs or that the other deductions were unauthorised or improper.

49. After receiving their instructions and the reading of the Defendant's letter, Palakrishnan & Partners' considered opinion was that the balance sum of \$948,591.50 should have been paid over to the Plaintiffs.

50. It must be remembered that the sale was completed on 18 June 1996. The Plaintiffs were unhappy about not receiving any part of the proceeds when they went to see the Defendant at her office in March 1998, more than a year and a half later. They went to consult Palakrishnan & Partners in the following month, when they had lost faith in the Defendant.

51. They must have recounted their dealings with the Defendant and showed her letter of 4 July to their new lawyers. Their lawyers must have explained the letter to them to get their instructions on the deductions made.

52. Nevertheless, Palakrishnan & Partners only demanded for the \$948,591.50 and did not allege that the mortgages were not

explained to the Plaintiffs. That was the Plaintiffs' position until the writ was filed on 17 June 1999 with the enlarged claim. In the interim period the letter of 16 November was not withdrawn or supplemented.

53. If the Defendant had not explained the mortgages which led to the deductions, they would have brought that up with their lawyers, and their lawyers would have raised that in their letter to the Defendant.

54. I find on the evidence on a balance of probabilities that the Defendant had explained the terms of the mortgages to the Plaintiffs.

Had the Defendant handled the sale of the property properly?

55. The property was sold to Yeo Holdings through the issuance of the option on 2 May which was exercised on 10 June, leading to the completion on 18 June. The Plaintiffs complained that they were not advised about the \$1 fee paid for the option. The consideration for an option is a commercial decision. It can be \$1, \$5,000, \$10,000 or any sum that may be agreed upon. The Defendant had no duty to advise the Plaintiffs on it, especially when her advice was not sought.

56. Was she right to comply with the letter of authority? As I have pointed out earlier, when Palakrishnan & Partners wrote to the Defendant they informed her "(w)e have been informed, that no instructions whatsoever, were given by our clients to you, as their solicitors, authorising you to deduct in particular the sum of \$948,591.50 mentioned in your said letter" and they demanded payment of the \$948,591.50.

57. The Plaintiffs signed the letter of authority, and in the letter of 16 November they accepted the accounts rendered in the letter of 4 July except for the final balance of \$948,591.50 after it was explained to them. They subsequently enlarged the claim when they instituted this action to \$1,740,294.85, as particularised in paragraph 10. It is difficult to understand the revision. They had not objected before to the \$760,000 paid by Yeo Holdings on Bala's behalf to discharge the collateral mortgages and the interest accruing thereon were spelt out in the letter of authority and also referred to in the Defendant's letter of 4 July. They also did not explain their claim that the Defendant refunds the costs for acting for them in the transactions. Whether the Defendant had acted properly or not they cannot have the proceeds from the sale without paying legal costs.

58. I find on the facts that the Plaintiffs' real complaint was that they did not receive any part of the final balance of the sale proceeds. The Plaintiffs claim that they were content not to receive payment when the property was sold because the Defendant represented to them that she was holding the money for it to be used to pay for one of the houses to be developed on the property and sold to them. The Defendant maintained that she had complied with the letter of authority and had reported on the sale in her letter of 4 July.

59. The weight of evidence is against the Plaintiffs' account. They knew very little of the house they claimed they were buying. The First Plaintiff did not know how large the house would be, or how many rooms it would have. The Second Plaintiff only knew that it would be of two storeys, with 4-plus-1 rooms. Neither knew the price they were to pay for the house because the price was to be fixed after the house is constructed. Both Plaintiffs acknowledged that there was no commitment to buy, and both said they would not buy if they could not afford the price. That was consonant with Yeo Chong Lin's undisputed evidence that "Bala and I had never discussed that one of the semi-detached houses was to be sold to the Plaintiffs".

60. It was improbable that the Defendant would have told the Plaintiffs that she was holding money for them for the payment of the house when there was no agreement to buy and no money was received or held by her except the legal costs. The Defendant would be quite irrational to make that representation on 18 June, then contradict herself with the letter three weeks later.

61. I find that the Defendant had completed the sale properly in accordance to the Plaintiffs' letter of authority of 18 June as reported in her letter of 4 July.

Conclusion

62. Although I find that the Defendant was wrong to act on Bala's instructions without verification, and that Bala was not the sole beneficial owner of the property that she accepted him to be, she had explained the mortgages to the Plaintiffs, acted in accordance with the letter of authority and accounted for the proceeds of the sale.

63. In the circumstances, I dismiss the Plaintiffs' claim. On the question of costs, I feel that the Defendant should not be awarded the full costs of the action because her conduct in the transactions relating to the property was certainly not beyond criticism. She did not discharge her duties properly in accepting Bala's assertion without verification and in failing to report to OCBC Finance Bala's instructions and her belief that the Plaintiffs were the bare legal owners of the property. She should receive half the costs of the action instead.

Kan Ting Chiu

Judge

Copyright © Government of Singapore.