

Zheng Song Bo v Tien Chee Tee and Others
[2001] SGHC 287

Case Number : Suit 363/2001/W
Decision Date : 28 September 2001
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Jeffrey Beh Eng Siew and Bernard Sahagar (Lee Bon Leong & Co) for the plaintiff; Winston Low (Winston Low & Partners) for the first defendant; A Rajandran (A Rajandran, Joseph & Nayar) for the second and third defendants
Parties : Zheng Song Bo — Tien Chee Tee; Thia Ah Min; Teh Siew Hoong

Judgment:

1. In this case, the plaintiff, Mr Zheng Song Bo, who is also known as Teh Soon Poh, claimed that the executors of the estate of his adopted father, the late Mr Teh Ting Kwee, did not adhere to the terms of his adopted fathers will and denied him his half share of the sale proceeds of No 62 Desker Road, Singapore (hereinafter referred to as the "Desker property"). He sought, inter alia, an order that the Desker property be sold in the open market pursuant to the provisions of the will and that he be paid what he is entitled to from the sale proceeds. The defendants contended that the Desker property was sold in accordance with the terms of the said will and that Mr Zheng has received his share of the sale proceeds.

A. BACKGROUND

2. Mr Zheng, who is 65 years old and resides in Fujian Province, China, is the adopted son of the testator and his first wife. The first defendant, Mr Tien Chee Tee, is the younger brother of the testators first wife and the joint executor of Mr Zhengs adopted fathers will. The second defendant, Mr Thia Ah Min, is Mr Tiens son while the third defendant, Madam Teh Siew Hoong, who is Mr Tiens daughter, was adopted by the testator and his second wife, Madam Lim Leng Hie.

3. The testator died on 3 January 1968. In his will, he appointed Mr Tien and his second wife, Madam Lim, as his executors. The relevant part of the testators will, namely clause 4, is as follows:

I give devise and bequeath the land and house No 62 Desker Road, Singapore unto my Trustee UPON TRUST to receive the rents and profits thereof and after payment thereout of all rates, taxes, charges, assessments, expenses of repairs, insurance against fire and outgoings to utilise the net income thereof for the maintenance education and upkeep of my daughter TEH SIEW HOONG until she shall attain the age of 21 years when I direct my Trustees to sell and dispose the said land and house and to divide the proceeds of sale between my daughter TEH SIEW HOONG and my son TEH SOON POH of Foochow, China in equal shares.

4. The Desker property is a two-storey shophouse. On the first floor is a coffeshop, which was run by the testator until his death, and subsequently by Madam Lim. The second floor was the matrimonial home of the testator and Madam Lim and she continued to live there until her death in October last year.

5. Ms Teh reached the age of 21 in 1978. On 29 November 1978, the trustees conveyed the Desker property to Mr Thia for a stated sum of \$22,000. On the very same day, the property was transferred by Mr Thia to Ms Teh for a similar sum of money.

6. Mr Zheng asserted that after his adopted fathers death in 1968, neither Mr Tien nor Madam Lim informed him that his adopted father had left a will or that he had an inheritance. Furthermore, he had not been informed of the transfer of the Desker property in 1978 and no one had sought his consent for the sale. He said that he first came to know about his inheritance in 1986 when his brother-in-law, Mr Tan Suan Poon, Ms Tehs then husband, visited China and gave him a copy of his adopted fathers will.

7. Advised by his lawyers in China that he had to seek the advice of Singapore lawyers, Mr Zheng could not do anything as he was stuck in China. In 1992, Madam Lim arranged for him to come to Singapore for the first time. According to Mr Zheng, he did not know at that time that the property had been transferred to Mr Thia and subsequently to Ms Teh. In para 21 of his affidavit of evidence-in-chief, he said as follows:

In 1992, I visited Singapore the first time and I stayed with my adopted mother for about a month in Singapore at 62 Desker Road. I knew that that was the property referred to in the will of my adopted father which he bequeathed half of it to me. I was somewhat relieved and felt that half of the said property will be transferred to me when my adopted mother passed on.

8. Mr Zheng testified that in 1994, he received a letter from his brother-in-law, Mr Tan Suan Poon, alerting him to the fact that the Desker property had been registered in the sole name of Ms Teh. He said that he did not trust Mr Tan, who was Madam Lims lover although he was married to Ms Teh.

9. In 1998, Mr Zheng came to Singapore again. During this trip, he retained a firm of solicitors recommended to him by a friend to look into the matter. His solicitors confirmed that the Desker property had indeed been transferred, first to Mr Thia, and then to Madam Teh.

10. Mr Zheng claimed that he confronted Madam Lim but she rebuffed him. He then instructed his lawyers to safeguard his interest and to lodge a caveat on the Desker property. On 12 August 1999, Mr Zhengs present solicitors, Lee Bon Leong & Co, wrote to both the trustees, asking them to let him know how they proposed to compensate him for his loss.

11. In 2000, Mr Zheng came to Singapore in September. By then, Madam Lim was very ill and she died in early October. Mr Zheng then instituted the present proceedings to get his share of his adopted fathers estate.

12. In their pleadings, the defendants asserted that Mr Zhengs claim was barred by the provisions of the Limitation Act. However, during the trial, they decided to abandon this defence. As such, this defence need not be considered any further. As for Mr Zheng, his counsel confirmed that although he had sought a number of remedies, all that he wanted was a finding that he is entitled to half of the sale proceeds of the Desker property. This is because the parties had agreed on the mode of settling the dispute if Mr Zheng succeeded in his claim for a share of the sale proceeds of the Desker property.

B. DID THE TRUSTEES COMPLY WITH THE TERMS OF THE WILL?

13. In order to determine whether or not the testators wishes have been respected, three questions will be considered. First, was Mr Zheng informed that his adopted father had left a will and that he was a beneficiary? Secondly, was the transfer of the Desker property to Mr Thia for \$22,000

in 1978 done in accordance with the testators intentions? Thirdly, if the 1978 transfer to Mr Thia was a genuine transaction, has Mr Zheng been given his share of the sale proceeds?

Whether Mr Zheng was informed about the will

14. The defendants asserted that Mr Zheng was aware of the existence of the will at "all material times". However, Mr Zheng contended that although his adopted father died in 1968, he was unaware of the existence of his will until his brother-in-law spilled the beans in 1986.

15. Mr Tien, the co-trustee, admitted that although he had met Mr Zheng a number of times after the testators death, he did not inform the latter about the will. When cross-examined, he conceded that he did not know whether or not Mr Zheng had been informed about the will. He said as follows:

Q. At no time did you inform the beneficiaries of their rights under the will?

A. I left it to their mother to inform them.

Q. You do not know whether she informed the beneficiaries?

A. I do not know.

Q. In your pleadings, you alleged that the plaintiff knew of the contents of the will at all material times?

A. I do not know whether he knew or not.

16. As for Ms Teh, who also claimed that Mr Zheng was aware of the existence of the will at all material times, her evidence on this matter is absolutely unreliable. Initially, she asserted that Mr Zheng must have known about the will much earlier than 1986. She testified that when she and Madam Lim visited Mr Zheng in China in 1979, Madam Lim told him about the will and the transfer of the Desker property in the previous year. However, she subsequently admitted that this was untrue and that she had fabricated this evidence. She then accepted that Mr Zheng first knew about the will in 1986.

17. I hold that the trustees did not carry out their duties to inform Mr Zheng about his adopted fathers will and that he was deliberately kept in the dark about his rights under the will for almost two decades.

The transfer of the Desker property in 1978

18. The defendants contended that the trustees performed their obligations under the will by selling the Desker property to Mr Thia Ah Min in 1978 and that Mr Zhengs share of the proceeds of the sale of the property to Mr Thia had been handed over to him.

19. The transfer of the Desker property to Mr Thia in 1978 must be viewed in the context of Mr Zhengs ignorance of his rights under his adopted fathers will at that time. In para 12 of his affidavit of evidence-in-chief, Mr Tien, the co-executor of the will, claimed that the transfer of the Desker property was done after discussions with Madam Lim. However, when cross-examined, he contradicted himself and admitted that he had left everything in the hands of Madam Lim. He said as follows:

Q. When Siew Hoong reached the age of 21 years, did you discuss the disposal of No 62 Desker Road with Madam Lim?

A. No. I left this to Madam Lim

Q. If Madam Lim did not carry out her duty as trustee, you would equally be liable for breach of your duty as trustee?

A. I am ignorant.

20. That Mr Tien left everything to Madam Lim is evident as he knew very little about the transfer of the property to his son and then to Ms Teh. When cross-examined, he said:

Q. Was 62 Desker Road sold?

A. I do not know.

Q. How much was the property sold?

A. I dont know.

Q. Was a valuation of the property done before the transfer?

A I do not know.

21. The defendants case is that the transfer of the Desker Road property was at the insistence of Madam Lim, who wanted to keep the property within the family. Mr Tien stated in paras 11 and 15 of his affidavit of evidence-in-chief as follows:

11. As regards No 62 Desker Road, it was to have been sold when the 3rd Defendant turned 21 years. At the material time, Mdm Lim Leng Hie was concerned about selling the property for it was her home for many years, and she was sentimental to the memory of her late husband. Moreover, Mdm Lim Leng Hie was operating a coffeeshop at the premises, and this provided a source of income for the family, and she did not desire to have the home sold to third parties.

15.. As for the initial transfer to my son, it was made in accordance with the decision of Mdm Lim Leng Hie .

22. When cross-examined, Mr Thia revealed the true nature of the transaction when he said as follows:

Q. In truth, you did not purchase 62 Desker Road?

A. I only know that I signed papers. I did not purchase the house.

23. In fact, Mr Thia did not really understand the ramifications of the two transfers of the Desker property on 29 November 1978. When cross-examined, he said as follows:

Q. Did you know that you sold it on the same day?

A. My father said that this property will go eventually to my sister. I signed many documents.

Q. Do you know that what your father did was to deprive the plaintiff of his share of the proceeds of sale of the property?

A. I did not know then. Now I have to say that it was wrong.

24. Another indication that the transfer of the property to Mr Thia was a sham transaction is that no money changed hands and Madam Lim paid all the legal expenses and costs relating to the two transfers. More important is the fact that the stated consideration for the transfer, namely \$22,000, was way below the market value of the property. According to Mr Yoong Wah Pin, a real estate valuer and licensed appraiser, the property was worth around \$77,000 in November 1978. When it was pointed out to him that No 66 Desker Road was sold for \$12,000 at around that time, Mr Yoong rightly pointed out that that sale was not an appropriate comparison because it involved the sale of rent-controlled premises. No 62 Desker Road was owner-occupied and would thus have fetched a much higher price than \$22,000. As for the fact that the estate duty valuation of No 62 Desker Road was only \$12,000, Mr Yoong pointed out that the Estate Duty Department probably did not realise that the property was not rent-controlled. No evidence was submitted to challenge Mr Yoongs views.

25. Madam Lim clearly acted in her own interest when she arranged for the transfer of the Desker property to Mr Thia and for him to transfer the property to Ms Teh on the very same day. In truth, Madam Lim was the real purchaser of the Desker property. It is trite law that, unless authorised, a trustee is not entitled to purchase trust property in the manner that she did. In *Tito v Waddel (No 2)* 1977 1 Ch 106, 225, Megarry VC pointed out that "if a trustee purchases trust property from himself, any beneficiary may have the sale set aside *ex debito justitiae*, however fair the transaction". Purchasing a property in the name of a nominee in circumstances such as the present case does not alter the position that Madam Lim acted improperly with respect to the transfer of the Desker property.

26. That Madam Lim was the real buyer of the Desker property was admitted by her co-trustee, Mr Tien, who said as follows during cross-examination:

Q. How did No 62 Desker Road become Ms Teh Siew Hoongs property?

A. It was first sold to my son. Madam Lim then bought the property from him and put it in her daughters name.

(emphasis added)

27. Ms Teh corroborated Mr Tiens evidence. When cross-examined she said:

Q. It was Madam Lim who wanted to buy the property for herself except that she put it in your name.

A. Yes.

Q. Do you accept that it was wrong for the trustees to allow Madam Lim to buy the property for herself?

A. Yes.

Q. It was this desire of Madam Lim who wanted to stay in the property and

continue to run her business here which prompted her to buy the property.

A. Yes.

Q. You accept that Madam Lim was the real owner of the property?

A. Yes.

28. Subsequently, Ms Teh confirmed that Madam Lim was the real purchaser of the property in 1978. When questioned by Mr Beh, she said as follows:

Q. Did the co-trustee Madam Lim buy No 62 Desker Road for herself?

A. Yes.

29. The fact that nothing changed even though the property was supposedly owned by Ms Teh shows that the transfers were the result of Madam Lim's machinations. In paragraphs 47, 55 and 56 of her affidavit of evidence-in-chief, Ms Teh stated:

47. Mdm Lim Leng Hie continued to administer the property, namely, No 62 Desker Road, and she remained in charge of the same, even after the conveyance of the property to me. I was after all still her daughter, and the formal conveyance of the property to me did not change in any manner whatsoever the nature of our relationship. Mdm Lim Leng Hie continued to handle the affairs in relation to the property.

55. . [Madam Lim] continued to receive the [rental proceeds from those portions of the premises which have been sub-let to stallholders] even after the property was conveyed to me in 1978 for she was still my mother and she still continued to administer the property.

56. . No rent was paid to me by Mdm Lim Leng Hie in respect of her occupation of the premises for the purpose of her coffeeshop business, and neither did I, as her daughter, demand payment of rent from her.

30. Taking all circumstances into account, I hold that the transfer of the Desker property to Mr Thia in 1978 was not a genuine transaction. By transferring the property to Mr Thia, the trustees did not act in accordance with the terms of the will. By purchasing the property for herself, Madam Lim did what a trustee is not supposed to do. In short, the trustees breached their obligations to Mr Zheng by arranging for the transfer of the Desker property to Mr Thia.

Whether the proceeds of the sale were duly divided

31. As the transfer of the Desker property to Mr Thia for \$22,000 in 1978 was a sham transaction and no money changed hands, no question of the division of the \$22,000 between Mr Zheng and Ms Teh arises. All the same, it is pertinent to note that even if the sale of the Desker property to Mr Thia had been a genuine sale, it was not established that Mr Zheng was paid his share of the \$22,000. Mr Tien, the co-trustee, made no attempt to ensure that Mr Zheng received his share of the sale proceeds. When cross-examined, he said:

Q. Did you do your duty as a trustee with respect to the distribution of the half share of the sale proceeds of No 62 Desker Road to the plaintiff?

A. I did.

Q. How did you do that?

A. I left it to his mother.

32. Ms Teh claimed that Mr Zheng had received the \$11,000 due to him as a result of the transfer of the Desker property to Mr Thia. She said that Mr Zheng was paid \$3,000 in 1979 when she and Madam Lim visited him in China in 1979 and that the remaining \$8,000 was remitted to him later on. However, she subsequently admitted during cross-examination that she had fabricated this evidence.

**C. WHETHER OR NOT MR ZHENG'S CLAIM
WAS SETTLED BY MADAM LIM**

33. Whether or not the sale to Mr Thia in 1978 was a sham, it is the defendants case that Mr Zheng is not entitled to maintain his claim because Madam Lim had settled his claim to the Desker property in various ways.

34. The defendants asserted that Madam Lim had settled Mr Zheng's claim for the following reasons:

(a) Money was remitted to him in China over a period of time.

(b) He was given Madam Lim's properties in China.

(c) His second son, Mr Zheng Yun, received more than \$330,000 on his behalf from Madam Lim in February 2000 in settlement of his claim to the Desker property.

Remittance of money to settle Mr Zheng's claim

35. The defendants' assertion that Madam Lim had remitted enough money over the years to Mr Zheng to satisfy his claim with respect to the said property will first be considered. The co-trustee, Mr Tien, stated in para 16 of his affidavit of evidence-in-chief:

Subsequent to the conveyance of the property, I left it to Mdm Lim Leng Hie to effect the transfer of the share of the estate. In this regard, I am aware that from time to time, Mdm Lim remits money to the Plaintiff in China, and that she had given him money when she went to visit her relatives in China. I am also aware that as regards her assets in China, she had given the same to the Plaintiff for his use. I am conscious of my responsibilities as Trustee and in this regard, I made sure that my duties were properly discharged.

36. Madam Lim cared for her adopted son enough to remit money to him over a long period of time. However, as Mr Zheng was unaware of the existence of the will until 1986, remittances before 1986 cannot be part of any settlement of his claim with respect to the Desker property. In para 34 of his affidavit of evidence-in-chief, Mr Zheng said:

The defendants have alleged that Madam Lim Leng Hie had from time to time

remitted monies to me . in discharge of her obligation to me as a trustee of the said will. I deny the said allegation as she had all along given me money as well as allowing me to occupy her properties from China even before my adopted fathers death and she could never have discharged her obligation as trustee of the will of my adopted father as she had never informed me of the existence of the said will.

37. As for the money remitted to Mr Zheng after he became aware of the will, Ms Teh claimed to have written letters on Madam Lims behalf whenever the latter remitted money to Mr Zheng. However, she conceded that Mr Zheng was not told that any part of the money sent to him was to settle his claim. When cross-examined, she said:

Q. You did not tell him in your letters what amount was for maintenance and what was for his share of the Desker property?

A. That is correct.

Q. You also did not tell him what he was to receive as his share of the property.

A. Yes, I did not.

38. Ms Teh also conceded that she did not know the amount offered by Madam Lim to Mr Zheng to settle his claim or how much money was finally remitted by Madam Lim to Mr Zheng. In view of this, Ms Teh is in no position to prove that Mr Zheng's claim has been extinguished by money remitted to him in China by Madam Lim.

39. I thus hold that it was not established that sums remitted by Madam Lim to Mr Zheng were intended as instalment payments for the settlement of his claim with respect to the sale proceeds of the Desker property.

Whether Madam Lims properties in China were given to Mr Zheng to settle his claim

40. The third defendant also alleged that Mr Zheng has no cause of action because Madam Lims properties in China had been given to him to settle his claim with respect to the Desker property. In para 61 of her affidavit of evidence-in-chief, she said:

Furthermore, as I am also aware, Mdm Lim Leng Hie had transferred her beneficial interest in the following properties, namely No 5 Erpai Lane, Jiuweichang in Fuzhou and No 3-4 Huai Lane in Fuzhou City to the Plaintiff to account for his share of the beneficial interest in respect of the property at No 62 Desker Road Singapore.

41. Once again, Madam Teh's assertion was without any foundation. While Madam Lim owned Nos 3 and 4 Huai, Fuzhou City, No 5 Erpai Lane belonged to her husband. As far as Madam Lims husband's property is concerned, Ms Teh claimed during cross-examination that it was transferred to Mr Zheng's name without Madam Lims consent. It was rightly pointed out to her that if this is true, Madam Lim could not have given Mr Zheng this house as part of the settlement of his claim to half of the sale proceeds of the Desker property.

42. As for Nos 3 and 4 Huai Lane, Fuzhou City, Ms Teh contradicted her assertion in her affidavit of evidence-in-chief that the properties had been transferred to Mr Zheng as part of the settlement of

his claim. When cross-examined, she said:

Q. Are Nos 3 and 4 Huai Lane still in your adopted mothers name?

A. I do not know.

Q. If you do not know this, you cannot allege that it has been transferred to the plaintiff.

A. Yes.

Q. Do you know who is presently the registered owner of Nos 3 and 4 Huai Lane?

A. I do not know.

43. Ms Teh finally conceded that her assertion in her affidavit of evidence-in-chief that Madam Lims properties in China had been transferred to Mr Zheng was wrong. It was thus not established that Madam Lims properties in China were transferred to Mr Zheng to settle his claim to half the sale proceeds of the Desker property.

The withdrawal of \$330,000 by Mr Zheng Yun

44. Ms Teh next asserted that in early 2000, Madam Lim handed over \$330,000 to Mr Zhengs second son, Mr Zheng Yun, to settle his fathers claim with respect to the Desker property. Mr Zheng denied that he authorised his second son to collect any money on his behalf and insisted that the receipt of the money in question was strictly a matter between grandmother and grandson.

45. There is more to the handing over by Madam Lim of the \$330,000 to Mr Zheng Yun than meets the eye. Madam Lim had more than \$700,000 in a joint account with Ms Teh at the OCBC Bank. In early November 1999, almost the entire amount was withdrawn and placed into an account in the joint names of Madam Lim and Mr Zheng Yun. In February 2000, \$330,000 was withdrawn from this account by Mr Zheng Yun and remitted to China. Subsequently, Ms Teh and Madam Lim arranged for the balance in this joint account to be transferred to a savings account in their joint names.

46. Ms Tehs evidence on the withdrawal of \$700,000 from her joint account and on Mr Zheng Yuns withdrawal of \$330,000 from his joint account with Madam Lim is very unsatisfactory. She said that she first realised that something was amiss in March 2000 when she checked on her joint account at the bank. Shocked that \$700,000 had been withdrawn from her joint account, she questioned Madam Lim. When cross-examined, she said:

Q. What did Madam Lim say when you found out about the withdrawal?

A. She claimed that the amount was still in our account.

Q. What did you do?

A. I brought her to the bank to confirm that the money was no longer in our joint account.

Q. What did you establish at the bank?

A. The money was in the bank but it was not in the joint names of my mother

and me but in the joint names of Mr Zheng Yun and my mother.

47. Ms Teh said that when she asked Madam Lim about the withdrawal of the \$330,000 by Mr Zheng Yun, the latter refused to discuss it. When cross-examined, she said as follows:

Q. Did you ask her why Zheng Yun withdrew the \$330,000?

A. I did but she refused to tell me.

Q. Did she say that "This is my money and I can do what I want with it"?

A. Yes, she did.

48. Ms Teh said that as she could not get an answer from her adopted mother, her husband wrote a letter to Mr Zheng on her behalf on 3 April 2000. In it, her position was put as follows:

This is in respect of a large sum of cash being taken away from mother by Zheng Yun. A total of more than three hundred thousand Singapore dollars had been withdrawn from the bank. The money was brought back to China. It was an unauthorised withdrawal without mothers approval. Subsequently, I went to check my account and realised that the money was from the joint account of mother and I. In November 1999, the account was changed to the names of Zheng Yun and mother. Monies were withdrawn and deposited by him/her in February 2000. I have now photostated this copy of paper for your perusal.

(emphasis added)

49. As Ms Teh testified that Madam Lim had not explained why her grandson had withdrawn the money in question when her husbands letter was sent to Mr Zheng, she had no basis for saying that money had been withdrawn without Madam Lims approval. More importantly, Ms Tehs assertion that this letter was written because Madam Lim refused to reveal why the money had been withdrawn contradicted paras 6 and 7 of her supplementary affidavit of evidence-in-chief, where she stated that the letter must be read in the context that her mother had told her that the money had been given to Mr Zheng Yun to avoid litigation with respect to Mr Zhengs claim regarding the Desker property.

50. One might well ask why Madam Lim, who was then 80 years old, would open a joint account with her adopted grandson and put such a large sum of money into this account. One might also ask why Mr Zheng Yun did not withdraw any money from this account when he was in Singapore in November 1999 and why, if he was out to cheat his grandmother or grab money on behalf of his father, he merely withdrew a little less than half the amount in the account in February 2000 and not the entire amount. The answers regarding the transactions in question lie buried with Madam Lim. On the evidence presented, one cannot conclude that Madam Lim gave Mr Zheng Yun the \$330,000 for the purpose of settling his fathers claim to the Desker property.

D. CONCLUSION

51. For reasons already stated, I hold that Mr Zheng has not been given his share of the sale proceeds of the Desker property in accordance with the provisions of his adopted fathers will. He is entitled to costs.

Sgd:

TAN LEE MENG
JUDGE

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