

Lim Choo Eng v Koh Siew Eng
[2019] SGHC 192

Case Number : Suit No 192 of 2018
Decision Date : 23 August 2019
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Renganathan Shankar and Anthia Tan Rou Zhuang (Gabriel Law Corporation) for the plaintiff; Tang Jin Sheng, Tan Qin Lei and Joshua Tan Ming-En (LVM Law Chambers) for the defendant.
Parties : Lim Choo Eng — Koh Siew Eng

Contract – Misrepresentation Act

Restitution – Unjust enrichment

23 August 2019

Judgment reserved.

Choo Han Teck J:

1 Mr Cheng Teck Hock, a taxi driver, died in a road traffic accident in 2012 when a Ferrari crashed into his taxi at the junction of Rochor Road and Victoria Street. His widow, Lim Choo Eng ("Lim"), inherited some money from his estate and she hoped to invest it for the sake of their children. Lim met the defendant, Koh Siew Eng ("Koh"), through their sons, who were friends. According to Lim, Koh made a series of misrepresentations to induce her into paying \$280,000 to invest in land in China. She now seeks the return of her money.

2 Lim alleges that Koh represented to her that she (Koh) was a successful investor who owned a chicken farm in China, and offered the opportunity for a joint investment. As partners, they would acquire land in China to be redeveloped and sold for profit. Koh also represented that they would go to China together to inspect the land. Lim then transferred \$50,000 to Koh within four days of their first meeting as a deposit to secure the land.

3 Between March and August 2014, Lim transferred a total of \$281,941.40 to Koh and Koh's sister, being \$280,000 for the land and \$1,941.40 for travel expenses. On 23 August 2014, they flew to China where they met Lu Jinlin ("Lu"), Koh's acquaintance, who would lease the land from the village committee. Although Lim had paid the full sum, Lim informed her that no lease had been signed as the village committee had not been elected. Lu and Koh assured Lim that she would acquire an interest in the land thereafter. Lu was granted a 70-year lease of the land on 15 December 2014. Nothing much is known about Lu through the documents or from cross-examination.

4 On 15 March 2015, Lu flew to Singapore and signed a document granting Lim a 70-year sublease over part of the land. Lim, Lim's son, Koh and Lu were present at the meeting, and Koh signed the sublease as a witness. Thereafter, Lim did not receive any further information from Koh or Lu. She claims that it was only in 2017 that she realised that Koh had not invested in the land herself, and, believing she had been tricked, she initiated this suit.

5 Koh says that Lim was always aware that she was only an agent or "mouthpiece" for Lu. She

claims she merely facilitated the transaction and did not make any representations about a joint investment. While she received money from Lim, she transferred it to Lu and his family members between April 2014 and October 2016, and Lu granted Lim an interest in the land.

6 Mr Renganathan Shankar, counsel for Lim, submits that Koh was aware of Lim's finances due to the publicity around her husband's death and orchestrated the entire scheme. He submits that Lim is entitled to rescission or damages under s 2 of the Misrepresentation Act (Cap 390, 1994 Rev Ed) ("the Act"). He did not plead fraudulent or negligent misrepresentation.

7 A claim under the Act is an action in contract (*Trans-World (Aluminium) Ltd v Cornelder China (Singapore)* [2003] 3 SLR(R) 501 at [124]). The sublease was a written contract between Lim and Lu, and Koh was not a party to that contract. The existence of an oral contract between Lim and Koh was not pleaded or raised at trial, but only in closing submissions. Lim's claim under the Act must therefore fail although I believe Lim's testimony more than I do Koh's. I find Koh's evidence to be less credible than Lim's and the manner in which the two women testified persuaded me that Lim was the honest one, but her case is tied to what she had pleaded, and no attempt was made to amend it appropriately even when asked at the end of the trial on 30 May 2019. All that Mr Shankar did was to make irrelevant changes to show that "Lu" was the "third party" mentioned at trial. This inconsequential amendment was made on 2 July 2019.

8 The written contract between Lim and Lu is highly suspect. At the time of Lim's visit to China, Lu declined to show her the land because of bad weather. Unfortunately, not only did Mr Shankar not challenge the authenticity of the lease or sublease, Lim did not assert her rights over the land and did not check with the owners as to whether her sub-lease was recognised, and so the legal effect of the documents remains uncertain. The sublease itself is vague as it does not identify the consideration for the land or its location within Lu's plot. It prohibits Lim from subletting, transferring, or mortgaging the land and gives Lu the right to operate and manage her share. A comparison with the lease also reveals that Lu is making a tidy profit; for 1,200 acres, he pays the village committee RMB2,045,000 over 70 years but receives RMB1,350,000 upfront from Lim for 500 acres. In other words, Lim has a leasehold over 42% of the land but paid 66% of the rent, and she paid upfront as well. Lu admitted that Lim asked him about this discrepancy but he told her that it did not concern her. Lu is not sued in this action even though it is clear that he was recommended to Lim by Koh under questionable circumstances. Lim had no intention of doing business with a man she did not know.

9 As for the joint investment promise, in a conversation recorded in mid-2017, Koh admitted that at the time of Lim's first payment of \$50,000, she had initially offered a "joint venture" and did not mention Lu's involvement. Koh admitted under cross-examination that she had introduced the investment to Lim:

Q I put it to you that you told [Lim] that if she paid \$50,000, she can *chope* the land.

A You can put it that way.

Q Yes. I put it to you that you told her that if she paid \$200,000, she will receive the legal titles and ownership of the land for 25 to 30 years. ...

A I believe I did.

10 The fund transfers reinforced Koh's central role. Lim transferred the full sum to Koh by August 2014 and the sublease was signed on 15 March 2015, but Koh only transferred the full sum to Lu by

October 2016. If in fact Koh was just a mouthpiece, there would be no reason for Lu to grant Lim the sublease when Koh still held on to at least \$68,500. Of this sum, \$60,000 was transferred to Lu's father in May 2015, but Koh held on to at least \$8,500 for more than a year after the sublease had been signed. Lu's explanation is that there are annual limits on the remittance of foreign currency to China, but there was no evidence on this and the amount remitted did not appear to meet the limit. Further, there is no evidence that Koh's transfers were even related to the land as the remittance slips stated they were for "household purposes", although Koh claims she wrote that on the advice of the bank clerk. There was also no objective evidence of the final transfer of \$16,500 that Koh claims she passed to Lu in cash.

11 Lim testified that when the sublease was placed before her, she felt pressured to sign it as she had already transferred the money to Koh but had nothing in "black and white" to show for her investment. All this suggests that the written contract between Lim and Lu was not the true contract. Unfortunately, none of this was pleaded. Considering all the evidence, oral and documentary, and the manner in which Lim told her story, I have no difficulty believing her.

12 In Lim's statement of claim, it was pleaded that by July 2014 Lim was aware that the land would first be acquired by "an unknown third party" who would transfer it to her. This was before she transferred \$231,941.40 to Koh. A claim for misrepresentation under the Act must fail if the alleged misrepresentation was not made pursuant to a contract between the plaintiff and the defendant. Although it seems to me that Lim appeared to have acted in reliance on Koh's representation, and might even have come to an agreement with her, none of that was pleaded and the court cannot write their contract for them.

13 Mr Shankar submits, alternatively, that Lim should be entitled to restitution on the basis of money had and received or a total failure of consideration. Money had and received is not a cause of action but is subsumed within unjust enrichment (*Benzline Auto Pte Ltd v Supercars Lorinser Pte Ltd* [2018] 1 SLR 239 ("*Benzline Auto*") at [16]). To succeed on an unjust enrichment claim, the plaintiff must show that the defendant received a benefit or enrichment (*Wee Chiaw Sek Anna v Ng Li-Ann Genevieve* [2013] 3 SLR 801 at [98]). Mr Shankar submits that there was monetary enrichment as Lim transferred the money to Koh. However, Koh alleges that she transferred the money to Lu. Although I am sceptical of Koh's evidence, there is no evidence to contradict her claim. Lim has not proved that Koh actually received any financial benefit even though we do not know what Lu did with the money thereafter, assuming that he did receive them.

14 Total failure of consideration is also not a freestanding claim but a factor that renders benefit or enrichment unjust (*Benzline Auto* at [45] and [46]). Mr Shankar submits that there was a total failure as Lim only obtained a sublease and not title to the land, which remains undeveloped to date, and Koh was not a joint investor. As the label suggests, total failure of consideration requires total, not partial, failure (*Benzline Auto* at [53]). Lim's interest under the sublease is consistent with the basis of the transaction.

15 In summary, Lim transferred her money to Koh under the impression that she would be investing in a property development venture in China. Although Koh produced some evidence suggesting that Lu granted Lim a sublease of a piece of land for 70 years, the circumstances of the lease were suspiciously not legitimate, but in the absence of challenge, worse, in seemingly accepting that the transfer was legitimate, no court can rule otherwise than that Lim had obtained a lease from Lu. No contract, oral or written, was pleaded against Koh, and likewise, no court could thus order Koh to refund the money to Lim. Accordingly, I dismiss the plaintiff's claim. I will hear arguments on costs at a later date, but I do not think that the plaintiff should have to bear any costs, including solicitor and client costs, in this action, and I would like to hear from her counsel and the defendant's counsel why

I should not order that the costs of this action be borne by the plaintiff's counsel, or his firm, and the defendant.

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