

Krishna's India Pte Ltd v Arulmozhi D/O Krishnan and Another
[2001] SGHC 157

Case Number : Suit 843/2000/R
Decision Date : 29 June 2001
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Oommen Mathew and Tan Keng Joo (Tan Peng Chin & Partners) for the plaintiffs;
Indranee Rajah, Wilson Ang and Celeste Ang (Drew & Napier) for the defendants
Parties : Krishna's India Pte Ltd — Arulmozhi D/O Krishnan; Vadivelu Chandran

JUDGMENT:

Cur Adv Vult

1. The plaintiffs, Krishna's India Pte Ltd (hereinafter referred to as "KIP"), alleged that the first defendant, their former director, Ms Arulmozhi d/o Krishnan, breached her fiduciary duties by arranging for the sale of their properties at a low price to her husband, the second defendant, Mr Vadivelu Chandran. KIP also asserted that questions which arose in relation to the said sale included fraudulent misrepresentation and the exertion of undue influence.

A. BACKGROUND

2. KIP's main assets were four properties, namely No 37 Kerbau Road, No 41 Kerbau Road, No 43 Kerbau Road and No 672 Chander Road (hereinafter referred to as "the Serangoon properties"). The rental income from these conservation properties was KIP's main source of income.

3. KIP's main shareholder was the late Mr C Krishnan (hereinafter referred to as "the deceased"), who was murdered in India in March 1997. His son, Mr Thiruvoimozhi, his brother-in-law and a number of other persons were arrested by the Indian police in connection with the murder.

4. The deceased died intestate and the beneficiaries of his estate were his wife, Madam Krishnan Narumalar, his daughter, Ms Arulmozhi, and his three sons, Mr Thiruvoimozhi, Mr Aravindan and Mr Anandan. At the time of his death, his family also owned a supermarket in Taman Jurong and a coffee shop in Tanjong Pagar.

5. After the deceased's death, the main shareholder of KIP was his estate. Ms Arulmozhi was the sole executrix of the estate at the material time. As the eldest child, Ms Arulmozhi played a prominent role, with the assistance of her husband, Mr Chandran, in the management of KIP, the supermarket and the coffee shop. Her eldest brother, Mr Thiruvoimozhi, was then away in India, awaiting trial on the charge of murdering their father. Her youngest brother, Mr Anandan, was then an undergraduate in the National University of Singapore and her remaining sibling, Mr Aravindan, had just interrupted his studies in the United States following their father's death.

6. As his wife found it difficult to manage KIP, the supermarket and the coffee shop, Mr Chandran enlisted the help of a firm of business consultants, Business People (S) Pte Ltd (hereinafter referred to as "BP") in July 1997. On BP's advice, the supermarket was sold as it was running at a loss. BP then proposed that the family invest \$1m in the conservation properties to turn them into tourist attractions in order to achieve better returns. However, the family coffers were empty.

7. In November 1997, Mr Thiruvoimozhi met with an accident in India and was hospitalised. He required money for his medical expenses and to mount his defence on the charge of murdering his father. According to Ms Arulmozhi, the family decided to sell the Serangoon properties to raise funds for him and to pay KIP's debts.

8. BP's attempt to find a buyer for the properties failed. Ms Arulmozhi said that her family then decided that her husband, Mr

Chandran, would buy the properties from KIP for \$4m. This was denied by her mother and her brothers, Mr Thiruvoimozhi and Mr Anandan.

9. In March 1998, Ms Arulmozhi procured a valuation report from Steven Loh Brooke Hiller Parker (hereinafter referred to as "SLB"), which indicated that the market value of the Serangoon properties was \$4.1m. However, Chesterton International Property Consultants Pte Ltd (hereinafter referred to as "Chesterton"), who valued the properties for Overseas Union Trust (hereinafter referred to as "OUT"), from whom Mr Chandran had sought a loan of \$3m to finance his purchase of the said properties, stated in their report that the open market value of the said properties was \$8m. Both Ms Arulmozhi and Mr Chandran claimed that they had no knowledge of Chesterton's valuation at the material time.

10. On 28 March 1998, the Serangoon properties were sold to Mr Chandran for \$4m. In August 1998, Mr Thiruvoimozhi was acquitted after a trial in India. According to Ms Arulmozhi, problems surfaced with his return to Singapore and her family started to question the propriety of the sale of KIP's properties to Mr Chandran. Her two brothers, Mr Thiruvoimozhi and Mr Anandan, and her mother, Madam Narumalar, who claimed that they did not know that the properties had been sold to Mr Chandran until 1999, wanted the said properties to be returned to KIP.

11. KIP filed a caveat against the properties and in OS No 1378 of 1999, KIP sought an interim injunction against Ms Arulmozhi and Mr Chandran to prevent them from disposing, selling or parting with possession of the Serangoon properties pending the final outcome of litigation with respect to the ownership of the said properties. The injunction was not granted. All the same, Mr Chandran found it difficult to sell the Serangoon properties in the face of KIP's caveat. With the assistance of BP, Mr Chandran finally found a buyer who was willing to give him some time to sort out the problems associated with KIP's claim to the said properties.

12. As a result of the family squabble, Ms Arulmozhi resigned as a director of KIP in February 2000.

13. In this action against Ms Arulmozhi and Mr Chandran, KIP sought the following:

- (a) the rescission of their contract with Mr Chandran for the purchase of the Serangoon properties at the price of \$4m;
- (b) an order that Mr Chandran re-convey the properties to them;
- (c) damages;
- (d) a declaration that Ms Arulmozhi and Mr Chandran are constructive trustees;
- (e) a declaration that Ms Arulmozhi was in breach of her fiduciary duties;
- (f) an account of all monies and profits obtained by Ms Arulmozhi and Mr Chandran; and
- (g) interest.

B. WHETHER MS ARULMOZHI'S SIBLINGS AND MOTHER KNEW ABOUT THE SALE

14. Ms Arulmozhi's siblings, Mr Anandan and Mr Thiruvoimozhi, and her mother, Madam Narumalar, claimed that they did not know that KIP had sold the Serangoon properties to Mr Chandran until very much later. Mr Anandan summed up his position in paras 12 and 13 of his affidavit of evidence-in-chief as follows:

12. I was unaware of the properties being sold to [Chandran] till much later... I

only discovered this around the period May to June 1999....

13. It was at this point in time when my mother, Thiru and I approached Mr Gourdeep Singh, a solicitor, to assist us.... When we informed him about the properties, he did a title search and informed us that the properties had been sold to [Chandran].... The news of the sale of the properties came as a surprise to the three of us.

15. If Mr Anandan is right, there was a massive fraud relating to the sale by KIP of the properties to Mr Chandran.

16. Ms Arulmozhi pointed out that an extraordinary general meeting of KIP was called on 23 March 1998 to deal with the question of the proposed sale of the properties to Mr Chandran. She declared her interest in the sale of the properties to Mr Chandran in a letter to the company. She also ensured that there was a company resolution noting her declaration of interest.

17. Mr Anandan denied having attended the extraordinary general meeting of KIP on 23 March 1998. He admitted that he signed the attendance sheet for the meeting and the resolution noting Ms Arulmozhi's declaration of interest in the sale of the properties to Mr Chandran but said that these were not signed at the meeting. Finally, he said that he signed the directors' resolution calling for an EGM of the company but was sure that paragraphs 2(a)-(f) of the notice, which concerned the reasons for the meeting, were not there when he signed the resolution. He contended that all these documents were handed to him in late March or early April 1998 in bulk and were signed in haste while he was about to leave for the university campus for an important lecture. He said that he had been told by his sister that his signature was required for the purposes of an AGM which had to be held in order to file the annual returns of KIP, to change KIP's name in order to avoid the claims of creditors and to get extra loans to pay off the company's debts.

18. Mr Anandan's testimony on this issue cannot be relied upon. By the time he signed the documents in question, the annual returns had already been lodged. As for the purported change in the company's name, Mr Anandan admitted during cross-examination that there were no documents relating to this matter in the stack of documents which he signed. In any case, it is not likely that he believed that a change in the company's name would result in the elimination of the company's responsibility for debts already incurred. Finally, he accepted that there were no documents relating to loans in the stack of documents signed by him.

19. Mr James Tan, a public accountant, who prepared the necessary resolutions for the sale for the properties to Mr Chandran, said that Mr Anandan was present at the meeting of 23 March 1998. In his affidavit of evidence-in-chief, he said as follows:

21. Arul and Anandan attended the EGM at my office on 23 March 1998. Arul came on time at about 3.00 pm. Anandan arrived shortly after....

22. I asked both of them to read the Minutes of the EGM which have been prepared beforehand, and to sign the Attendance Sheet, and the Minutes if they agreed with what was written there. I also marked crosses on the documents where Anandan had to sign.

23. Anandan said he knew about the sale and understood what was written in the Minutes of the EGM.

26. Anandan also signed the Director's Resolution approving the Declaration of Interest by Arul in the sale of the Properties.

20. Mr Aravindan, Mr Anandan's brother, testified that his mother and brothers knew of the sale of the properties to Mr Chandran. In paras 48 and 49 of his affidavit of evidence-in-chief, he said:

48. [W]hen Arul told me about the sale of the properties, my mother was there with Arul. Arul said that I was the last one to know and that everyone else knew. My mother did not contradict her. However, later on, my mother changed the story.

49. Sometime in May 1999, my mother started saying she did not know about the sale. I was totally surprised. I said to her: "Ma, but you knew. Everybody knew."

21. I find that Mr Anandan, Mr Thiruvoimozhi and Madam Narumalar knew about the sale and reject their evidence that Ms Arulmozhi transferred the Serangoon properties to her husband without their knowledge.

C. WHETHER OR NOT MS ARULMOZHI BREACHED HER FIDUCIARY DUTIES

22. Whether or not Ms Arulmozhi breached her fiduciary duties to KIP will next be considered. The rationale for requiring directors to take their fiduciary duties seriously was explained in *Bray v Ford* [1896] AC 44, 51 by Lord Herschell in the following terms:

It is an inflexible rule of a Court of Equity that a person in a fiduciary position ... is not, unless otherwise expressly provided, entitled to make a profit; he is not allowed to put himself in a position where his interest and duty conflict. It does not appear to me that this rule is, as has been said, founded upon principles of morality. I regard it rather as based on the consideration that, human nature being what it is, there is danger, in such circumstances, of the person holding a fiduciary position being swayed by interest rather than by duty, and thus prejudicing those whom he was bound to protect. It has, therefore, been deemed expedient to lay down this positive rule.

23. When the Serangoon properties were sold by KIP to Mr Chandran, Ms Arulmozhi was controlling KIP's affairs. The only other director of the company at that time was her youngest brother, Mr Anandan, who was then an undergraduate in the National University of Singapore. In *Re Smith and Fawcett Ltd* [1942] 1 Ch 304, 306, Lord Green MR pointed out that directors "must exercise their discretion bona fide in what they consider – not what a court may consider – is in the interests of the company and not for any other collateral purpose". In essence, the relevant issue in this case is whether or not Ms Arulmozhi sacrificed the company's interest for a collateral purpose of her own, namely that the properties be sold to her husband at a much reduced price and on terms which were not favourable to KIP.

24. The proper test in this case would be whether an intelligent and honest person in the position of a director of KIP could, in the light of all the circumstances, have reasonably believed that the sale of the properties to Mr Chandran for \$4m and on the terms offered to him was for the benefit of the company. (See *Intraco Ltd v Multi-Pak Singapore Pte Ltd* [1995] 1 SLR 313.)

25. Being in a position of conflict of interest, Ms Arulmozhi should have treaded carefully. Her mother and her siblings relied on her to protect KIP's interest in the sale of the said properties to her husband. I am satisfied that she did not give her mother and her siblings a complete picture when she arranged for the sale of the said properties to her husband and reject her evidence that it was her mother who proposed that the said properties be sold to her husband for \$4m. There is certainly enough evidence to show that she did not act in the interest of KIP when she arranged for the properties to be sold to her husband for merely \$4m.

More should have been done to market the properties

26. Ms Arulmozhi, who said that the Serangoon properties were sold to her husband because there were no offers to purchase them at a reasonable price, claimed that she wanted to get the best possible price for the properties.

27. For a start, more should have been done to market the Serangoon properties before they were sold to Mr Chandran. Ms Arulmozhi, who said that she left the sale of the Serangoon properties to BP's Patrick Teo, accepted that the most common way of selling properties is to advertise the sale in the newspapers. BP advertised the sale only once in the Straits Times. When cross-examined, Ms Arulmozhi revealed how little she did to advertise the sale of the properties. She said as follows:

Q. Did you attempt to advertise?`

A. I asked BP to do it.

Q. Did you see the advertisement?

A. No.

Q. How many times did BP advertise?

A. I did not ask.

Q. Did BP say how many times they advertised?

A. No, now I know they advertised once....

Q. In early February 1998, did you not ask BP to advertise again?

A. No, I left it to them...

Q. Did you tell them to try another round of advertising or go to property agents?

A. I only told them to go and get a buyer.

28. BP's Mr Teo said that very little had been done to advertise the sale of the property because his instructions were that there was to be no publicity about the proposed sale because the company was then being sued. However, Ms Arulmozhi did not mention this when she was taken to task during cross-examination for not having done enough to advertise the sale of the properties in order to obtain the best possible price for KIP.

29. It should not be overlooked that Mr Teo's housing agency dealt mainly with the sale of HDB flats. As such, other real estate agents with more expertise in the sale of commercial units should have been offered an opportunity to market the properties. I thus find that Ms Arulmozhi's conduct was not consistent with that of a director who was anxious to sell the company's properties at the best possible price and that insufficient steps had been taken to market the Serangoon properties before they were sold to Mr Chandran.

The SLB valuation report was fundamentally flawed

30. Ms Arulmozhi claimed that her husband helped the family by purchasing the properties for \$4m. As for whether this price was reasonable or not, she relied on a valuation report by SLB dated 16 March 1998, which stated that the properties were worth only \$4.1m. She said that she was advised by KIP's lawyer, Mr Edwin Tay, that it would be in order for the properties to be sold to Mr Chandran for \$4m in view of SLB's valuation report.

31. SLB valuation figure of \$4.1m was very low because it was fundamentally flawed. In fact, SLB's valuation of the Serangoon properties would have been much higher than \$5m if it had not been drastically reduced on the ground of the "efficiency" of one of the properties, namely No 672 Chander Road. Neither Mr Oh Wan Keong, the trainee valuer who prepared SLB's report, nor

Ms Liow Pick Yuen, who signed the said report, were able to explain why SLB's valuation of the Serangoon properties was drastically reduced on the ground of efficiency. When cross-examined, Mr Oh, who could not explain what the principle of "efficiency" entailed, merely said as follows:

Q. The "efficiency" principle utilised in the SLB report is not found in any other valuation report. What is this principle?

A. It is in the standard computer worksheet in SLB. I can't explain this principle.

32. Ms Stella Seow of Colliers pointed out that "efficiency" refers to the layout of the available space and that it is not relevant to KIP's conservation shophouses because there are restrictions on the redevelopment of such conservation properties.

33. The SLB report was also grossly inaccurate because it was based on an assumption that the monthly rental income for Nos 41 and 43 Kerbau Road was \$13,000 when it was \$17,000. Ms Liow, who signed the SLB report, testified that if the market rental for the properties at the material time was \$17,000, she would have increased the valuation of the Serangoon properties by \$464,000. SLB's Mr Oh testified that the erroneous rental figure had been given to him by either Ms Arulmozhi, Mr Chandran or their lawyer, Mr Edwin Tay. In view of this, KIP's counsel suggested that the erroneous figure had been given to SLB in order to cause a reduction in the valuation amount.

Whether Ms Arulmozhi knew that the properties were worth more

34. I find that both Ms Arulmozhi and Mr Chandran knew that the market value of KIP's properties was more than SLB's valuation of \$4.1m. To begin with, KIP's business consultants, BP, stated in an advertisement in the Straits Times on 16 January 1998 that the properties were "valued" at \$7m. Furthermore, Ms Arulmozhi admitted that BP's Mr Patrick Teo had told her to expect a price of \$5m.

35. Ms Arulmozhi knew that Colliers & Jardine (Singapore) Pte Ltd (hereinafter referred to as "Colliers") had valued the Serangoon properties at \$6.5m in June 1996. This valuation report must have been on her mind when plans were afoot to sell these properties to Mr Chandran in early 1998. When cross-examined, Ms Arulmozhi claimed to have forgotten about the Colliers' 1996 valuation report. She said as follows:

Q. In mid-1997, you gave the Colliers' report which valued the properties at \$6.5m to BP?

A. Yes....

Q. It was in KIP's interest to get the best possible price?

A. Yes.

Q. Having got a valuation of \$6.5m in June 1996, were you not alerted to get another valuation after receiving SLB's valuation of \$4.1m.

A. I did not remember the 1996 valuation.

(emphasis added)

36. Ms Arulmozhi and Mr Chandran could not have forgotten about the Colliers' 1996 valuation report. After all, this report was furnished to OUT when Mr Chandran applied for a loan to finance his purchase of the said properties in early 1998. Furthermore, for the purpose of this trial, Ms Arulmozhi and Mr Chandran asked Colliers for a report on the value of the said properties at the time of the sale. As for why this was done, Mr Chandran said as follows when cross-examined:

Q. When you needed a valuation for this trial, did you tell BP that you wanted a valuation from Colliers?

A. I do not recall specifying any valuer. I may have said that Colliers were probably suitable because they had valued the properties previously.

(emphasis added)

37. In short, both Ms Arulmozhi and her husband were fully aware of the existence of the Colliers' 1996 valuation report. Had she taken the simple step of checking SLB's valuation with Colliers or with other valuers, the sale of the properties to Mr Chandran for \$4m would have been unthinkable.

38. As has been mentioned, Chesterton, who furnished their valuation report dated 22 April 1998 to OUT, to whom Mr Chandran had applied for a loan to finance his purchase of the Serangoon properties, placed the open market value of the properties at \$8m. Both Ms Arulmozhi and her husband knew that OUT had instructed Chesterton to value the properties for the purpose of granting the loan in question. Chesterton's Ms Teh Siew Lye, who inspected the properties, testified that she had been instructed to speak to Mr Chandran to fix the appointment for the inspection. Ms Lim Geok Lan, the OUT officer who handled Mr Chandran's application for a loan, testified that the photographs taken by Chesterton's valuer during the inspection of the premises showed that both Ms Arulmozhi and her husband were present during the inspection. More importantly, Ms Arulmozhi and her husband knew that the OUT loan could only be finalised after Chesterton had valued the properties. I do not accept that they did not know about Chesterton's valuation amount at the material time. In any case, even if Ms Arulmozhi's claim that she did not know about Chesterton's valuation amount at the material time is to be believed, she should not have proceeded to complete the sale of the said properties to her husband without bothering to enquire about Chesterton's valuation. After all, she accepted that KIP should get the best price for the Serangoon properties. Her "Nelsonian" blindness in not wanting to know about the Chesterton valuation can only be explained on the basis that she was too preoccupied with having KIP's properties transferred to her husband at a very low price. As such, whether or not she knew that Chesterton had valued the Serangoon properties at \$8m, there was a serious failure on her part to fulfil her fiduciary duties to KIP.

39. For the purposes of the trial, two other reports were procured. KIP commissioned Jones Lang LaSalle (hereinafter referred to as "JLS") to value the Serangoon properties as at the time of the sale to Mr Chandran. JLS reported that in April 1998, the said properties were valued at \$7m. On the other hand, Ms Arulmozhi and Mr Chandran furnished another valuation by Colliers, which placed the value of the said properties in April 1998 at around \$4.5m.

40. Even the lowest of the non-SLB valuations, namely that by Colliers, was much higher than SLB's valuation of \$4.1m. In fact, the Colliers valuation figure would have been much higher than \$4.5m if Colliers had been given adequate information on rental income. In this case, the actual monthly rental income for No 672 Chander Road and the adjoining beer garden was \$13,850. However, for the purpose of valuing the properties, Ms Stella Seow of Colliers assumed that the monthly rental figure was \$10,000. This assumption was made because BP's Mr Patrick Teo, who commissioned the report on behalf of Ms Arulmozhi and Mr Chandran, failed to respond to her request for tenancy agreements to be furnished. Ms Seow said that had the said agreements been furnished, the valuation for the properties would have increased from \$4.5m to \$4.81m. She also accepted that if she had access to the comparable rental figures in Little India, as Jones Lang LaSalle did, her valuation of the Serangoon properties for April 1998 would have been around \$5.25m.

41. From the aforesaid, it is evident that there was no basis for the SLB valuation of \$4.1m. Ms Arulmozhi and Mr Chandran must have known that something was amiss when they received the SLB report. By not making enquiries with respect to Chesterton's valuation of \$8m and by not commissioning another valuation report before arranging for the sale of the said properties to her husband for \$4m, Ms Arulmozhi undoubtedly breached her fiduciary duties to KIP.

Arrangements for the sale of the properties

42. The arrangements for the sale of the Serangoon properties to Mr Chandran and the terms of payment of the \$4m for the

said properties also showed that Ms Arulmozhi was too preoccupied with benefiting her husband to be in a position to look after KIP's interest in the sale.

43. Although the purchase price was \$4m, this sum did not reach KIP's coffers. To begin with, around \$2.3m was required to pay DBS Bank, the mortgagees of the properties. Secondly, although it was Mr Chandran who required a loan from OUT to finance his purchase of the Serangoon properties, KIP had to pay for the services of one Mr Rocky Selvarajoo to assist him in getting the said loan from OUT. Mr Selvarajoo's bill for this service was a whopping \$150,000. Thirdly, Mr Chandran deducted from the purchase price the sum of \$513,704.31, which he and his wife agreed was the sum he had lent to KIP. Finally, he deducted from the purchase price the sum of \$486,259.69 by agreeing to assume liability for KIP's debts of an equivalent amount.

Mr Selvarajoo's commission

44. Why Ms Arulmozhi agreed that KIP should pay Mr Selvarajoo \$150,000 for introducing her husband to OUT for a loan for his own benefit cannot be fathomed. Both she and her husband knew that no middleman was needed to obtain the required loan from OUT. Mr Chandran is literate and he had arranged for several overdraft accounts with a number of banks. In fact, after taking over KIP's properties, he arranged for additional financing from another financial institution. When cross-examined, Mr Chandran explained why he relied on Mr Selvarajoo to get a loan for him from OUT in the following terms:

Q. You relied on Rocky's assistance to get you a loan and that was the only way you could a loan?

A. It was not me who relied on him. The decision had already been made by the family to rely on him. I did not get a chance to do my own shopping for the loan....

Q. Why did you not look for other banks to give you a loan?

A. By the time mother-in-law approached me, I had the impression that she had already spoken to Rocky and things were under way for a loan.

45. Mr Chandran's oral testimony contradicted what he had stated in an affidavit filed in relation to OS 1378 of 1999. In paragraph 11 of that affidavit, he had stated as follows:

I then tried to find a bank to finance my purchase of the Serangoon properties. It was not easy because at the time Singapore was entering a recession. Further, banks were very wary of financing properties in Little India. Eventually the Overseas Union Bank Limited agreed to finance the transaction.

46. When questioned about the inconsistency, Mr Chandran said that the whole of paragraph 11 in his earlier affidavit was a "mistake". When pressed to explain, Mr Chandran could not do so satisfactorily. He merely said that he was rushed for time and that his current version was true.

47. It must not be overlooked that at the material time, both Mr Chandran and his wife were being advised by KIP's business consultant, Mr Patrick Teo of BP. Surely, Mr Teo, who constantly accompanied Ms Arulmozhi and Mr Chandran to banks and to her lawyer's office, could have helped Mr Chandran obtain a loan for much less than the \$150,000 charged by Mr Selvarajoo. Mr Teo said that he did not know that Mr Chandran was purchasing the properties. It is most unlikely that this was the case.

48. Why Ms Arulmozhi utilised Mr Selvarajoo's services for \$150,000 is thus one of the unsolved mysteries in this case, and especially so since it was Mr Selvarajoo who showed the Chesterton valuation report to Ms Arulmozhi's siblings after he had differences with Mr Chandran. Ms Arulmozhi said that Mr Selvarajoo was introduced to her by her mother, who agreed that KIP

should pay the \$150,000 commission for helping Mr Chandran obtain a bank loan. This was denied by Madam Narumalar. Neither party called Mr Selvarajoo to testify. All the same, Ms Arulmozhi's willingness to utilise \$150,000 of KIP's money to pay for the procuring of a loan from OUT for her husband to buy the Serangoon properties showed that she neglected her duties to KIP in the sale of the said properties to her husband.

Deduction of loans

49. The loans given by Mr Chandra to KIP will next be considered. Admittedly, he had helped the family quite generously in the past. However, there is no evidence that he lent KIP more than half a million dollars or that he had such a large amount of money to lend to KIP. As such, Ms Arulmozhi should not have agreed that KIP owed him \$513,704.31 and that this sum be deducted from the purchase price for the Serangoon properties.

50. Mr Chandran said in his affidavit of evidence-in-chief that he had more than \$140,000 in savings when his father-in-law died. However, when cross-examined, he conceded that this was not borne out by his evidence. In any case, he accepted that he did not use all his savings for the family business. Mr Chandran next contended that he had overdraft accounts with a number of banks but even if all the overdraft accounts were utilised, the total amount was only around \$50,000. As for his assertion that he took loans from his parents and a friend, no credible evidence of any such loans being large enough to support his claim that he lent KIP more than half a million dollars was furnished. As for the proceeds of the sale of his HDB flat in 1994, he accepted that only about \$100,000 of this sum had been lent to KIP.

51. Ms Arulmozhi contended that her family had agreed that the money lent by her husband to KIP could be deducted from the purchase price. She referred to a directors' resolution authorising the deduction of Mr Chandran's loans from the amount payable to KIP for the properties. Even if this resolution is taken into account, it merely authorised a deduction of \$400,000 from the purchase price. Ms Arulmozhi was not authorised to allow her husband to deduct \$513,704.31 from the purchase price.

52. The deduction of \$486,295.69 from the purchase price of \$4m on the basis that Mr Chandran would take over specified KIP's debts of an equivalent amount was also not in KIP's interest. Not all the debts in question were paid by Mr Chandran immediately. In fact, a debt to BP, totalling \$108,197.90 was paid more than one and a half years after the purchase of the Serangoon properties. Mr Chandran should have paid the \$486,295.69 directly to KIP.

53. More importantly, a question arises as to whether some of the debts which Mr Chandran agreed to settle on KIP's behalf were genuine debts. As has been mentioned, part of the debts assumed by Mr Chandran included BP's bills. When the date for Mr Chandran to purchase the Serangoon properties drew near, BP sent KIP a number of bills for nearly \$300,000. On 1 March 1998, BP submitted a bill for \$40,000 for research and preparation of plan for the enhancement of No 37 Kerbau Road. Three days later, on 4 March 1998, BP sent KIP another bill for \$79,500 for "consultancy services on property matters relating to No 37, Kerbau Road". On 21 April 1998, BP sent KIP a third bill for \$33,000 for "execution of the plan for No 37 Kerbau Road and for co-ordination with others with respect to the matter". In short, KIP was expected to pay BP the sum of \$152,000 for services rendered in relation to No 37 Kerbau Road alone.

54. When Mr Chandran was asked why such a large bill was rendered for one property alone, namely No 37 Kerbau Road, he merely replied that BP's services were "worth it". On the other hand, BP's Mr Patrick Teo said that the bill for No 37 Kerbau Road was a bill for turning *all* the Serangoon properties into tourist attractions. Why this was not stated in the bills was not satisfactorily explained. What is evident is that Mr Chandran did not appear to know that the bill for No 37 Kerbau Road was for work done in relation to all the four properties.

55. A question arises as to why BP charged such large sums for their plan to upgrade the Serangoon properties when it was evident to Ms Arulmozhi, Mr Chandran and Mr Patrick Teo of BP that the plan was doomed from the very start because the family coffers were empty. Mr Patrick Teo, who testified that \$1m was required to upgrade the four properties, admitted that by September 1997, he knew that KIP was in no position to raise any money for this purpose after DBS Bank turned down Ms Arulmozhi's application for a loan. He also said that by October 1997, Mr Chandran had borrowed \$45,000 from him and had given him three or four post-dated cheques. In any case, Mr Chandran said that by January 1998, he had already been asked to

buy these properties for \$4m. In these circumstances, there was no basis whatsoever for BP to continue to look into plans to upgrade the Serangoon properties and for KIP to incur costs with respect to this wasteful exercise.

56. Other bills submitted by BP are also startling. On 4 March 1998, BP billed KIP for \$32,000 for consultancy services in relation to the family's coffeeshop at Tanjong Pagar Plaza and \$35,000 for litigation. Mr Chandran, who worked rather closely with BP, could not explain why BP billed KIP \$35,000 for litigation matters. When cross-examined, he merely said as follows:

Q. Litigation for \$35,000. What was this for?

A. *They were explaining what is an "affidavit", how to prepare for court, compiling evidence. If we went to a lawyer, it would cost ten times more.*

(emphasis added)

57. Mr Chandran's answer shows that there was no basis for the bill for \$35,000 for litigation matters. There is no reason for KIP to pay BP this amount when KIP's own lawyers could have explained to Mr Chandran and his wife what an affidavit is and how they ought to prepare for the trial.

58. As a director of KIP, Ms Arulmozhi should have questioned BP with respect to their bills. She should not have allowed all these bills to be deducted from the purchase price payable by her husband to KIP for the said properties. Her deafening silence in the face of BP's bills clearly showed that she paid little attention to KIP's rights.

Whether management decisions were bona fide

59. Counsel for Ms Arulmozhi pointed out that it would be wrong for the court to substitute its opinion for that of the management, or to question the correctness of bona fide management decisions. In this context, it is pertinent to note that in *Howard Smith Ltd v Ampol Petroleum Ltd* [1974] AC 821, 832, Lord Wilberforce said as follows:

[W]hen a dispute arises whether directors of a company made a particular decision for one purpose or for another, or whether, there being more than one purpose, one or another purpose was the substantial or primary purpose, the court, in their Lordships' opinion, is entitled to look at the situation objectively in order to estimate how critical or pressing, or substantial or, per contra, insubstantial an alleged requirement may have been. If it finds that a particular requirement though real, was not urgent, or critical, at the relevant time, it may have reason to doubt, or discount, the assertions of individuals that they acted solely in order to deal with it, particularly when the action they took was unusual or even extreme.

60. For reasons already stated, the actions taken by Ms Arulmozhi in relation to the sale of the Serangoon properties to her husband were, to use Lord Wilberforce's words, "unusual and even extreme". As Ms Arulmozhi did not act in KIP's interest when she arranged for the sale of the said properties to her husband, she breached her fiduciary duties to KIP.

D. MR CHANDRAN'S POSITION

61. Although Mr Chandran was not a director of KIP, this does not mean that he does not have to account to KIP for his actions in relation to his purchase of the Serangoon properties in April 1998. In *Barnes v Addy* (1874) LR 9 Ch App 244, 251-252, Lord Selborne LC explained the position as follows:

That responsibility [i.e of a trustee] may no doubt be extended in equity to others who are not properly trustees, if they are found either making themselves trustees *de son tort*, or actually participating in any fraudulent conduct of the

trustee to the injury of the *cestui que trust*. But, on the other hand, strangers are not to be made constructive trustees merely because they act as the agents of trustees in transactions within their legal powers, transactions, perhaps of which a court of equity may disapprove, unless those agents receive and become chargeable with some part of the trust property, or unless they assist with knowledge in a dishonest and fraudulent design on the part of the trustees.

62. Mr Chandran contended that he had done nothing wrong by buying the Serangoon properties from KIP for \$4m as he was trying to help his wife's family by buying the said properties. In para 14 of his affidavit in OS 1378 of 1999, he said as follows:

14. I am now the reluctant owner of the Serangoon properties. I bear the onerous burden of servicing the loan repayments – this in itself is giving me endless anxiety.

63. It must be noted that when Mr Chandran purchased the Serangoon properties, his nett monthly salary was not much more than \$4,000. He could afford to buy \$4m worth of properties because he had done his calculations carefully. As the rental income from the said properties outstripped the monthly instalment on the \$3m loan from OUT, the properties were affordable, and especially so if the remaining \$1m of the purchase price was not paid immediately because of, among other things, a deduction for "loans" given by him to KIP. Rather than a burden, as Mr Chandran described them, the Serangoon properties were a windfall, which resulted from his wife's breach of her fiduciary duties to KIP.

64. Mr Chandran also said that he would not make a profit if he sold the Serangoon properties. In fact, he claimed that a sale would be an attempt to "cut losses". In para 15 of his affidavit in OS 1378 of 1999, he stated as follows:

15. The logical thing for me to do would be to sell off the Serangoon properties, not to make a profit but simply to cut losses incurred by me personally....

65. When cross-examined, Mr Chandran, who reiterated that he would not make a profit if he sold the Serangoon properties, said as follows:

Q. In your affidavit of 21 October 1999 in OS 1378 of 1999, your position was that you had no intention to profit from the Serangoon properties?

A. Yes.

Q. In August 1999, you had signed an option form and agreed to sell the properties to Mr Rocky Selvarajoo's wife for \$5m.

A. Yes.

Q. You did not mention this option in your affidavit in OS 1378 of 1999.

A. Yes, it was not mentioned.

Q. You were less than truthful?

A. *No, the \$1m profit was to offset the costs of maintaining the property.*

(emphasis added)

66. When it was pointed out to Mr Chandran that the rental income was much more than the monthly payments to the bank for his loan, he finally accepted that he would profit from the sale of the properties.

67. For reasons already stated in the earlier part of this judgment, Mr Chandran was fully aware of the fact that his wife did not act in KIP's interest when she sold the company's properties to him in April 1998. This puts him in a different position from third parties who are unaware that they were dealing with a director who has breached his or her fiduciary duties to the company. As such, Mr Chandran has to answer to KIP for the fruits of his wife's breach.

E. THE PLAINTIFFS' OTHER CONTENTIONS

68. In view of my finding that Ms Arulmozhi breached her fiduciary duties to the company, I need not discuss the allegations against her with respect to misrepresentation or undue influence.

69. In his written submissions, KIP's counsel also asserted that the sale of the Serangoon properties to Mr Chandran was null and void because the consent of the Urban Renewal Authority had not been obtained for the transfer of the properties. Such consent is required under KIP's lease agreement with the Urban Renewal Authority. It was also asserted in the written submissions that there was no proper authorisation by KIP for the sale of the properties to Mr Chandran. Neither of these assertions were pleaded and they were not adequately dealt with during the trial. As such, they need not be considered.

F. CONCLUSION

70. This is a sordid family dispute and innumerable allegations of impropriety, many of which were not proven, were made by family members against one another. After having had the benefit of listening to the witnesses and evaluating the evidence, I have no doubt that Ms Arulmozhi did not act in the best interest of KIP when she sold the company's properties to her husband for \$4m in 1998. I also have no doubt whatsoever that Mr Chandran knew the whole picture when he agreed with his wife to take over KIP's properties. In the circumstances, the plaintiffs succeed in their claim for damages for the loss suffered as a result of the sale of the Serangoon properties to Mr Chandran for \$4m. The damages payable to KIP will be assessed by the Registrar.

71. The plaintiffs are entitled to interest at the rate of 6% as from the date of the writ. As for costs, the plaintiffs are, in the circumstances of the case, only entitled to two-thirds of the costs.

Sgd:

Tan Lee Meng
Judge