Rahmatullah s/o Oli Mohamed v Rohayaton binte Rohani and Others
[2002] SGHC 222

Case Number : Suit 600/2001V

Decision Date : 20 September 2002

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Tito Shane Issac (Tito Isaac & Co) for the plaintiff; Sadari bin Musari and Suhara binte Mohd Said (Sadari Musari & Partners) for first, third & fourth defendants

Parties : Rahmatullah s/o Oli Mohamed — Rohayaton binte Rohani; Ismail Yacoob Angullia; Norminah binte Dahlan; Rohaiyati binte Rohani

Judgment

GROUNDS OF DECISION

1. At the conclusion of the trial, I dismissed the plaintiff's claim against the first, third and fourth defendants. As the plaintiff has appealed against my judgment (in Civil Appeal No. 58 of 2002), I shall now set out the reasons for my decision.

The facts

2. The plaintiff is the managing-director of a jewellery business known as K M Oli Mohamed (KMO). The first defendant is a senior media producer who is married to the second defendant. The third defendant is the mother of the first and fourth defendants, the latter being the older sister. The fourth defendant is a school teacher and is married to one Malik bin Jasman (Malik), who is also a school teacher. All four (4) defendants are tenants-in-common of a private flat situated at Block 26 Simei Street 1 #06-15, Melville Park (the property) which purchase was funded entirely by the first defendant but who, out of natural love and affection for her husband, mother and sister, gave 3% share each, to the second, third and fourth defendants respectively.

3. At the material time, the second defendant was the managing-director of a travel agency known as Syakira Travel & Tours Pte Ltd (Syakira) which company also organised religious events and other functions. Between 1997-99, Syakira organised events in which KMO participated; these included two (2) religious seminars, a trade fair and even a pop concert in Johore Baru. Consequently, the plaintiff and the second defendant became acquainted and, the plaintiff was introduced by the second to the first, defendant. The plaintiff was also acquainted with Malik as they had met at religious classes some six (6) years earlier; the plaintiff addressed Malik as 'Chegu' (which means 'teacher' in the Malay language).

4. In 1999-2000, the first defendant encountered difficulties in servicing the mortgage instalments for the bank loan ($200,000) she had taken out on the property. The property was rented out but the income therefrom was insufficient to service the mortgage payments. Consequently, the first defendant decided to sell the property; she informed the other defendants of her decision. Towards that intent and purpose, the first defendant appointed several housing agents to look for prospective buyers but they were unsuccessful.

5. Sometime in April-May 2000, the second defendant invited the plaintiff to become a shareholder in Syakira; the second defendant and his brother Adam Angullia (Adam) wanted to inject further capital ($2m) into the business. After considering the business plan proposed by the second defendant/Adam, the plaintiff decided not to invest in the company as he thought the projected

profits and growth were too high.

6. When he informed the second defendant of his decision, the plaintiff was told that the second defendant's family had two (2) flats available for sale, one being the property and the other in Jurong (Parc Vista). Coincidentally, the plaintiff was then looking for a property to purchase after selling his Laguna Park flat in April 2000. His son was engaged to be married and he/his wife thought of investing the sale proceeds of the Laguna Park flat in another property, which was intended for their son's occupation after his marriage.

7. The plaintiff/his wife were consequently interested in the property and, attended by the second defendant and Adam, they viewed the same twice, once in late May and again in early June, 2000; the plaintiff's wife (Jameela Begum) testified she liked the property. According to the plaintiff, the second defendant then visited him at KMO's office to negotiate the sale on behalf of all the defendants. Apparently, the second defendant showed a (recent) valuation report of the property to the plaintiff, which valued it at $505,000 and told the plaintiff that the property had appreciated substantially since the valuation was done (which date the plaintiff could not recall). The plaintiff was also told that the property was tenanted out at $1,400 per month. After bargaining (during which the second defendant asked for $530,000) the plaintiff offered $500,000 for the property. The second defendant said he would convey the offer to the other defendants and revert to the plaintiff.

8. In mid-June 2000, the second defendant informed the plaintiff that his offer of $500,000 would be accepted only if the plaintiff made a large down-payment ($200,000) for the property. The plaintiff did not object to the down-payment requested but in exchange thereof, he required a longer period for completion; the second defendant agreed.

9. The plaintiff told the second defendant to instruct the defendants' solicitors to liaise with M/s Tito Isaac & Co (the plaintiff's solicitors) whom he had appointed to act for him in the conveyance.

10. Subsequently, the plaintiff's solicitors received from M/s A Rohim & Partners (A Rohim) purportedly acting for the defendants, a draft option to purchase. It contained therein a clause that the plaintiff could only exercise the option at the expiry of 13 months for a consideration of $1.00; this was unacceptable to the plaintiff. Eventually, after negotiations, A Rohim agreed (by their letter dated 19 June 2000 in 1AB13 to the plaintiff's solicitors) *that the usual clause on the exercise of the option would be applicable*. The letter added:

> As to the mode of payment, we are instructed that your client has agreed to issue a cheque for S$150,000 on Wednesday 21 June 2000 and the balance S$50,000 on Friday 23 June 2000.
>
> Kindly issue the cheques in favour of 'Rohayaton Binte Rohani or/and Ismail Yacoob Angullia'.

11. The revised draft option (see 1AB17-22) contained the following unusual wording (as highlighted):

> In consideration of the sum of Singapore dollars two hundred thousand ($200,000) (hereinafter called 'the option money') received by:
>
> Rohayaton binte Rohani (NRIC no. [xxx]), Ismail Yaacob Angullia (NRIC no. [xxx]), Norminah binte Dahlan (NRIC no.

> [xxx]) and Rohaiyati binte Rohani (NRIC n o . [xxx]) (hereinafter called the 'vendor') from the Purchaser this day by way of option money, the Vendor hereby grants the Purchaser this Option to purchase the above described property (hereinafter called 'the property') upon the terms set out below. **This Option shall expire at 4.00pm on 15 July 2001** (hereinafter called 'the expiry date') and will be null and void if not exercised in the manner and on or before the expiry date stipulated herein. This Option shall be exercised by the Purchaser by signing at the portion of this Option marked 'ACCEPTANCE COPY' and delivering the same duly signed, together with a **cheque for Singapore Dollar One only (S$1.00) being the consideration for the exercise of the option**, to the vendor's solicitors..

This is the first time I have come across an option where the option fee comprises 40% of the purchase price instead of the usual 1% and, the exercise price of the option is a mere $1.00 instead of the standard 10% (less option fee paid) of the purchase price.

12. On or about 21 June 2000 (according to the plaintiff), the second defendant contacted him to say that M/s Surian & Partners (S&P) had been appointed in place of A Rohim to act for the defendants. The second defendant requested the plaintiff to disburse $200,000 (the option money) to S&P without delay, hinting that the defendants were thinking of increasing the sale price.

13. On 21 June 2000, S&P by fax and post, informed the plaintiff's solicitors they acted for the second defendant; their letter added:

> We are instructed that a draft Option has been given to your client and we are also instructed by ours that your client are to give 2 cheques in our firm's favour for the sum of $150,000 dated today's date (21st June 2000) and a further sum of $50,000 dated 1st July 2000.

14. In response, the plaintiff's solicitors on 22 June 2000 (1AB24) hand-delivered two (2) cheques for $100,000 each to S&P and requested sight of the option before the monies were released; the first cheque was dated 21 June while the second was dated 1 July 2000. The second defendant informed S&P that he wanted the amount under the first cheque to be released to him. A partner of S&P who attended to him Uthayasurian Sidambaram (Surian) said he needed authority from the other defendants. The second defendant faxed to Surian on 23 June 2000 a handwritten note (see 1AB24A) which purportedly authorised S&P to pay all proceeds of the property to the first defendant. Surian informed the second defendant the document would not suffice and prepared a letter of authority for signature by the other three (3) defendants. The second defendant collected the letter of authority from S&P the same day.

15. According to Surian, all four defendants had attended at his office on the morning of Saturday 24 June 2000 to instruct his firm to act. At that meeting, the second defendant handed to Surian a pre-signed Option (the Option) [see 1AB26-31] which four (4) signatures of the defendants appeared to have been duly witnessed by a housing agent K Saadiah binte Mohamed (Saadiah). Surian was also handed the letter of authority (see exhibit **P1**) which appeared to be duly signed by the first, third and fourth defendants, again witnessed by Saadiah, authorising S&P to release $100,000 of the $200,000 option money to the second defendant.

16. As the first cheque was not cleared by 24 June 2000, Surian was unable to issue his firm's cheque to the second defendant that day. The amount of $100,000 was only paid to the second defendant on Monday 26 June 2000. At the second defendant's request, a cash cheque (uncrossed) was issued to him (see 1AB24B) which receipt the second defendant duly acknowledged. When the second cheque dated 1 July 2000 was cleared, the second defendant again collected the sum (on 3 July 2000) from S&P's office. Payment to him was again by a cash cheque which the second defendant wanted 'marked'. Surian's secretary Wai Bei Leng attended to the second defendant in the absence of Surian from the office. The second defendant was allowed to collect the money even though there was no express authorisation from the other (3) three defendants to pay the balance of $100,000 to him. When Surian testified, his excuse for this obvious omission was, that his secretary 'forgot' to take another letter of authority from the second defendant while he himself 'believed' the second defendant had authority to receive the money (N/E 8), an impression he had gained from his earlier encounter with the other defendants (presumably that on 24 June 2000).

17. On 27 June 2000, S&P forwarded the signed Option (dated 24 June 2000) to the plaintiff's solicitors together with a receipt (presumably for the first cheque). The plaintiff's solicitors followed up by lodging a purchaser's caveat numbered W/80892H (the Caveat) on 3 July 2000 on their client's behalf, with the Land Titles Registry.

18. On 16 September 2000 (see 1AB38), the plaintiff exercised the Option and (through his solicitors) delivered a cheque for $1.00 to S&P (which sum was to be held as stakeholders pending completion) together with a request for the standard conveyancing documents. The plaintiff's solicitors scheduled completion to take place on 9 December 2000. This letter was followed by another letter dated 20 September 2000 to S&P from the plaintiff's solicitors forwarding the draft Transfer for approval. By then, the plaintiff had secured a loan facility (for $250,000) from OCBC Bank (the Bank), as well as approval from the Central Fund Provident (CPF) Board for use of his CPF contributions, to fund his purchase. For purposes of the Bank's loan, the plaintiff said the second defendant arranged for access to the property to be made available to the Bank's valuers.

19. On 25 September 2000, S&P wrote to the plaintiff's solicitors to say the firm could not contact 'their client' (presumably the second defendant). On 30 September 2000, the plaintiff's solicitors informed S&P that a Bankruptcy Petition No. 2319/2000 (the Petition) had been presented against the second defendant and repeated their request for the documents listed in their earlier letter of 16 September 2000. In a subsequent letter (dated 11 November 2000) from the plaintiff's solicitors to the Bank, it would appear that the Petition was withdrawn, with liberty to restore at a later date. The Petition was subsequently restored, when the second defendant defaulted in the instalment payment plan he had agreed with the petitioning creditor.

20. After another reminder from the plaintiff's solicitors, S&P replied on 9 October 2000 to say they had discharged themselves from acting for the defendants in the matter. On the same day, S&P wrote one common letter addressed to all four (4) defendants at the property's address to say the firm was discharging itself from further acting for them. The result was, the plaintiff's solicitors wrote to all four (4) defendants on 16 October 2000 addressed to them at Block 305, Jurong East Street 32 #12-144 (the Jurong address), reminding them completion was scheduled for 9 December 2000, and requested the documents previously requested of S&P for the purpose. Meanwhile, the Bank had instructed the plaintiff's solicitors to act for them in the mortgage documentation, while the CPF Board had appointed other solicitors to act for them in respect of the CPF charge to be lodged against the property. In anticipation of completion, the plaintiff's solicitors conducted searches and forwarded the usual requisitions to government departments/authorities.

21. On 2 December 2000, by an AR Registered letter (1AB115), the plaintiff's solicitors wrote to the defendants at the Jurong address setting out the completion account as at 9 December 2000 and, requested documents (which included the executed Transfer) in exchange for the completion sum of $300,190.60.

22. Completion did not take place on 9 December 2000 or at all. Instead, the plaintiff's solicitors received a letter dated 13 December 2000 from AL Hussien & Co (acting for the third and fourth defendants) stating that their clients did not recall executing any form of agreement or option to sell the property and asking for copies of the agreement/Option. This was followed by a separate letter dated 15 December 2000 from Hameed & Co to the plaintiff's solicitors, written on behalf of all four (4) defendants, asking for time to reply to the plaintiff's solicitors' letter of 2 December 2000.

23. Puzzled, the plaintiff's solicitors sought clarification from AL Hussien & Co and Hameed & Co as for whom the two firms acted. The reply from AL Hussien & Co dated 23 December 2000 stated *'our clients confirmed they have never appointed M/s Sahul Hameed & Co to act for them'*; this was followed by confirmation on 27 January 2001 that they only acted for the third and fourth defendants.

24. The above response prompted the plaintiff's solicitors to write to the first defendant on 15 February 2001 (at 1AB175) requesting the completion documents listed in their earlier letter dated 2 December 2000; notice was also given that interest for late completion would be charged from 10 December 2000 until the date of actual completion. On the same day, the plaintiff's solicitors forwarded a copy of the Option to AL Hussien & Co. Further, they wrote to the Official Assignee to request his consent to the sale and for confirmation that the former would execute the Transfer on behalf of the second defendant as, he had been made a bankrupt on 6 October 2000 in Bankruptcy No. 2071 of 2000.

25. AL Hussien & Co wrote to the plaintiff's solicitors on 15 February 2001 to say that their clients had no knowledge of the sale transaction; this was followed by a second letter dated 24 February 2001 which stated that the fourth defendant had never executed *any option in respect of the property*; neither did she receive the Option or payment of the $1.00 option fee forwarded under cover of S&P's letter dated 9 October 2000 (1AB70A) to the propertys address.

26. The plaintiff's solicitors wrote to all four (4) defendants on 10 March 2001 giving 21 days' notice of completion under the Law Society's Conditions of Sale 1999 (expiring on 31 March 2001). Needless to say, no completion took place on 31 March 2001 or at any other time. Consequently, the plaintiff commenced this action in May 2001 after leave had been granted by the Official Assignee on 15 May 2001, to proceed against the second defendant. I should mention that by the time of the trial, the first defendant was also made a bankrupt (on 3 August 2001) under Bankruptcy No. 602028 of 2001, apparently for acting as a guarantor for the second defendant. The Official Assignee notified the defendants' current solicitors in February 2002 he had no objections to the plaintiff pursuing this claim against the first defendant, provided her costs were borne by the fourth defendant. This issue was eventually resolved in the plaintiff's favour on the court's direction (N/E 47); the fourth defendant was ordered to bear the first defendant's costs without any qualifications, let alone those she imposed.

27. I should also point out that by the time this trial came on, it was established from tests conducted by the Health Sciences Authority and later, from the testimony of Lee Gek Kwee (Lee), their consultant forensic scientist, that the signatures of the first, third and fourth defendants on the Option were forged. Subsequent tests conducted by Lee (PW5) on the court's direction, also confirmed that their signatures on the letter of authority (**P1**) dated 23 June 2000 were forged.

The pleadings

28. In his statement of claim, the plaintiff alleged that the defendants had repudiated the Option by failing to complete by 31 March 2001, which repudiation he did not accept. Accordingly, he claimed specific performance as well as damages consequent on late completion.

29. The first, third and fourth defendants filed a common defence wherein they:-

a. denied granting any option to the plaintiff for the property;

b. denied they had signed the Option dated 24 June 2000 and averred their alleged signatures therein were forged;

c. denied receiving the plaintiff's payment of $200,000 or the option fee of $1.00;

d. denied they had appointed S&P to act for them in the sale of the property.

e. pleaded they did not know who the second defendant's solicitors were and that they did not engage any solicitors for the sale of the property;

f. pleaded they were not even aware of the second defendant's bankruptcy on 6 October 2000 let alone that leave was granted to the plaintiff to proceed against him in this claim;

g. denied receiving a letter from the plaintiff's solicitors advising that completion was scheduled to take place on 9 December 2000;

h. admitted they received the Transfer which they refused to execute because they had not granted the Option, did not enter into any agreement to sell the property to the plaintiff and had not received any monies from him. As such they did not repudiate any agreement.

30. The third and fourth defendants denied having any knowledge of the Caveat lodged by the plaintiff. The first defendant admitted receiving notice of the Caveat from the Land Titles Registry whereupon she inquired of and was told by, the second defendant that the property was used as security for a loan, which the plaintiff had extended to the second defendant. She averred that the second defendant assured her the Caveat would be lifted as soon as the loan was repaid. The first defendant also admitted receiving a letter from the plaintiff's solicitors in December 2000 upon which she, the third and fourth defendants sought legal advice for the first time.

31. The second defendant had appointed his own solicitors but, after they had filed his defence, his solicitors applied to court (on 20 July 2001) to discharge themselves from further acting for him, on account of non-payment of their fees (a cheque for $2,000 given to them in payment of their retainer fees was dishonoured) and lack of instruction from him; thereafter, the second defendant acted in person. On 15 February 2002, the Registrar directed the second defendant inter alia, to file his list of documents failing which his defence would be struck out. The second defendant did not comply with the Registrar's directions and consequently, on 3 March 2002, judgment was entered against him in favour of the plaintiff. The second defendant did not appear at the trial at all, which is not surprising, in view of the forged signatures of the other defendants on the Option and letter of authority, for which there is little doubt he is responsible. According to the first defendant, the second defendant had not even been home in the two (2) weeks preceding this trial.

The plaintiff's case

32. The facts set out above are largely the plaintiff's version of events. Hence, I shall focus on the evidence which was adduced from him under cross-examination.

33. Cross-examined, the plaintiff said he did not know either the third or fourth defendants but claimed to have met the first defendant 3-5 times (which the first defendant disputed). He revealed he had advanced $50,000 to the second defendant (whom he described and trusted *'as a close friend'* [see N/E 29]) to meet the expenses of a show the latter had organised; this was some 3-4 months before his purchase of the property and the loan was subsequently repaid. When the second defendant offered to sell him the property, the plaintiff was not told that the former only had 3% interest in the same. However, he continued to deal exclusively with the second defendant even after he found out subsequently (from searches conducted by his solicitors), that the first defendant held 91% share in the property. He chose to deal with one person/the second defendant because the plaintiff was led to believe by the second defendant that *'he represented the rest'* (N/E 31) as otherwise there would be '*chaos*' (N/E 38).

34. The plaintiff testified he continued to deal with the second defendant exclusively even when Surian failed to contact the latter for further instructions (after his exercise of the Option), the reason being the plaintiff did not know the other defendants. Moreover, there was one occasion when the plaintiff was in a car with both defendants and the first defendant heard him discussing the property with the second defendant. There was also another occasion (at the wedding of the plaintiff's son in November 2000) where, the first defendant was present when the plaintiff inquired about completion of the sale of the property; she would have heard the second defendant giving the assurance it would be 'very soon'. As the first defendant was a part-owner of the property, the plaintiff assumed she agreed with what the second defendant said/did. Together with her receipt of notice of his Caveat, the plaintiff asserted that the first defendant must have known about the sale of the property.

35. As for the unusually long period (12 months) given to him to exercise the Option, the plaintiff explained that it was to enable him to pay slowly by cash and save him paying interest on a bank loan. It was a *quid pro quo* for his willingness to pay $200,000 as option money. He did not instruct the plaintiff's solicitors to have the $200,000 retained by the defendants' solicitors as stakeholders '*because this was a special contract I made with all the defendants'.* (N/E 32), 'special' because the defendants needed his $200,000 for their business while he/his son needed a house and, his wife liked the property. The plaintiff denied that the Option was actually an agreement to evidence a loan of $200,000 he had made to the second defendant repayable over a year, not a deposit for the property. However, he conceded he had no idea whether the first, third and fourth defendants received any part of his $200,000 payment nor whether the third and fourth defendants were aware of his discussions with the second defendant. Even so, it was 'impossible' that the fourth defendant was not aware of his Caveat or that, (other than the second defendant) the defendants did not know about the completion account as, his lawyers must have written to them. The plaintiff claimed to have met Malik on 8 May 2001 (on a public bus) when the latter told the plaintiff that his wife (the fourth defendant) had executed the Option at her school. This portion of the plaintiff's testimony however was denied by Malik who testified to the contrary, which evidence was corroborated by Saadiah (DW5), the person who visited the fourth defendant's school at the second defendant's behest, to procure the fourth defendant's signature on the Option.

36. Both Surian (PW1) and his secretary Wai Bei Ling (Wai) were the plaintiff's witnesses. Surian testified that the Option handed to him on 24 June 2000 sufficed as his instruction to act for the defendants; it was also not his firm's practice (before this incident) to have conveyancing clients execute warrants to act. Surain claimed that at the (very short) meeting on 24 June 2000 (at which Saadiah was present), he had inquired of all the defendants and they had confirmed (by nodding their

heads save for the third defendant who said nothing), that they knew they were selling the property. He 'believed' he spoke to the fourth defendant and had greeted the third defendant in Malay. Wai had then made photocopies of the defendants' identity cards save for that of the fourth defendant who did not have it with her; the second defendant however undertook to produce a copy of her identity card later (which he never did); Wai also photocopied Saadiah's identity card.

37. Surian explained there was no need for him to witness either document as the Option and letter of authority were handed to him duly signed and witnessed; he accepted the Option prepared by A Rohim without question. Neither did he ask the defendants why they needed the Option money to be released to them instead of being held by him as stakeholders pending completion since, that had been agreed between the plaintiff and the second defendant and also by the letter of authority,. While he was aware that the second defendant was in debt, Surain said he was not told the second defendant needed the $200,000 urgently. He had acted previously for the first and second but never for the third or fourth, defendants. Asked by the court, Surian (and Wai) identified the first and third defendants but, Surian failed to recognise the fourth defendant.

38. Surian 'believed' he was not aware that the fourth defendant resided at an address (at Sims Avenue) different from the other three (3) defendants; hence he forwarded all letters to the defendants at either the property's or the Jurong, address.

39. Wai (PW2) essentially repeated Surian's testimony; she came across as highly nervous for reasons which I will explain later. Cross-examined, she disagreed with counsel's suggestion that she did not make photocopies of their identity cards and that it was the second defendant who handed to her copies of the identity cards of, the first and third defendants. She also disagreed that the first, third and fourth defendants did not attend at her office on 24 June 2000.

40. I should point out that Surian was subsequently recalled to the witness stand to rebut the written testimony of Saadiah who had deposed that she was never at Surian's office on 24 June 2000 alone or with any of the defendants and, she did not know Mr Sidambaram whom she had not met even once. To contradict her statement, Surian testified that his firm had acted for Saadiah previously he produced a warrant to act (exhibit **P3**) which she had signed before his partner Rashidah Saheer (Rashidah) in that regard.

41. Surian's evidence was corroborated by Rashidah (PW7) who testified that after Saadiah had signed the warrant to act (**P3**), she felt (in consultation with Surian) that S&P could not act for her due to a conflict of interest. Consequently, the firm requested another law firm (Kamdar & Partners) to take over the matter which the latter did. Rashidah's testimony was supported in turn by Haresh Kamdar (PW6) the sole-proprietor of Kamdar & Associates who added that Saadiah was accompanied by the second defendant, when she visited his office on one occasion, to instruct him on the matter referred to him by S&P.

The defendants' case

42. I turn now to the testimony presented for the defendants, starting with that of Saadiah. She deposed on affidavit that she had not visited the offices of S&P on 24 June 2000, with or without the defendants. She was certain of the date as that was the morning she had visited the school where the fourth defendant is a teacher.

43. Saadiah explained that she had met the first and second defendants at a mosque on Friday 23 June 2000 and that same night, the second defendant brought her to the Jurong address and introduced her to his wife and the third defendant. As she was then a housing agent (with Top

Masters Housing Agency), he asked her to sell the property. She had then witnessed the signatures of the first, second and third defendants on a foolscap sheet which she clarified (under cross-examination [N/E 133]) only contained the columns for signatures and witnesses for vendors and purchasers, without any terms and conditions of sale or date. Saadiah was unsure whether she had witnessed the three (3) defendants' signatures after they signed or, she had signed the foolscap sheet first without any signatures. Similarly, she had signed the letter of authority (**P1**) as a witness without the signatures of the three defendants. At the time she signed the document, the words *letter of authority* and *Option to purchase* were missing. To her recollection, the contents merely stated that the first, third and fourth defendants agreed to sell the property.

44. Saadiah admitted in answer to the court's question (N/E 141) that what she had done was 'very wrong'. Although not a mitigating factor, Saadiah's explanation for her wrongful act was, she did it to help the second defendant as a friend and she gained no benefit therefrom. She was certain she did not witness the defendants' signatures to any sale and purchase agreement.

45. At the behest of the second defendant, Saadiah had visited the fourth defendant's school (Eunos Primary School [the School]) the day after her visit to the Jurong address, to procure the fourth defendant's signature on the foolscap sheet. She approached someone she thought was the school clerk at the general office. She did not know the person was the fourth defendant, neither did the fourth defendant reveal her identity so Saadiah left. Later, Saadiah returned the foolscap sheet to the second defendant saying she did not meet the fourth defendant. It was only in court (when the fourth defendant introduced herself) that Saadiah realised it was the fourth defendant she had seen at the general office of the School.

46. Cross-examined, Saadiah admitted that by an agreement (drafted by S&P) dated 22 January 2000 (see **P2**), she had agreed to invest $100,000 in Syakira secured by 40,000 shares in the company, which she had the option to purchase by a stipulated date. Her investment was guaranteed under a separate agreement also dated 22 January 2000 (the second agreement), by Adam and one William Geoffrey Porter (Porter). Later she had instructed S&P to sue Porter on the second agreement, on which the firm declined to act and passed on to Kamdar & Associates.

47. Counsel for the plaintiff made much of the fact that Saadiah lied in her affidavit where she stated she did not know Surian. The explanation was quite simple in answer to the court's question (N/E 145), Saadiah clarified that when she was introduced by the second defendant to Surain (to draft the two (2) agreements for her investment in Syakira), he was introduced to her as Surian not Uthayasurian Sidambaram, which name was stated in his affidavit.

48. I turn next to the evidence of the first defendant (DW1). Her financial difficulties sprang from her decision to acquire a second property (Parc Vista) after purchasing the property. She had changed banks when the property's first mortgagor would not give her a bigger loan amount. She ended up paying $2,500 every month to the second bank for both mortgage and re-mortgage sums. The rental income was insufficient to cover the mortgage sums requiring her to top up the shortfall. As she had to pay the outgoing of the property and she (not the second defendant) supported her family (3 children, parents and a niece), she could not cope. Hence, as early as 1999, she decided to sell the property.

49. The first defendant testified she had met the plaintiff twice, once at a religious event at the Indoor Stadium (where they were introduced but did not converse) and the second occasion, at his son's wedding. She denied that at the wedding, she/the second defendant had confirmed to the plaintiff they were proceeding with the sale of the property. She acknowledged that the plaintiff had informed her he intended to purchase the property for his son as his wife liked it. She denied being in

a car with the plaintiff on another occasion.

50. The first defendant said the second defendant had introduced her to Saadiah on 23 June 2000; Saadiah told the first defendant she had found a ready buyer in one Kamil bin Mohamed (Kamil) to whom an option was later issued by Saadiah (on or about 14 September 2000). However, the sale to Kamil (whom she was told was an engineer and a bachelor) was subsequently aborted (after he had exercised the option) because, he did not have enough funds in his CPF account and his cheque to her for the option money ($5,650/-) was dishonoured. Apparently, when she and the third defendant signed the option meant for Kamil, the third defendant made the mistake of signing in the column designated for the witness. The first defendant pointed out the mistake to Saadiah who said she would produce a fresh sheet for their signatures later. On 23 June 2000, Saaidah had taken her identity card as well as the third defendant's, to photocopy; the identity cards were returned a week later. Cross-examined, the first defendant denied her/third defendant's identity cards were photocopied by Wai at the office of S&P.

51. The first defendant testified she attempted (without success) to contact her sister by telephone to inform her about the option/proposed sale to Kamil. Subsequently, she learnt from the fourth defendant that Saadiah wanted the latter to sign an option but the fourth defendant refused.

52. A few days later, the second defendant gave her another option to sign, enclosing a fresh sheet for the signatures. She, the second and the third defendants signed the option. It was not done in Saadiah's presence but, the second defendant told her he would hand the option to Saadiah who would arrange for the fourth defendant to sign the document. The first defendant said she only had a photocopy of and not the original, option; she had no idea what happened to the original. Altogether, she and the third defendant signed options twice, within an interval of a week.

53. The first defendant was unaware that two (2) days after she had granted an option to Kamil, the plaintiff had exercised the Option. She had no knowledge of the sale to the plaintiff as it was arranged between the second defendant, Adam and the plaintiff. She had no contact with the plaintiff and did not sign any sale agreement with him; throughout, she thought the purchaser was Kamil. Further, she had never appointed S&P to act for her in the sale of the property; hence, she neither contacted Surian nor visited his office. The first time she saw Surian was on the first day of this trial.

54. When she received notice of the plaintiff's caveat, the first defendant said she confronted the second defendant who told her the property was used as security for a loan he had taken from the plaintiff; once the loan was repaid, the caveat would be withdrawn. She understood from the second defendant (N/E 87) that although the loan was for $200,000, he had to first credit the plaintiff's DBS Bank account with $50,000. Since the Option was valid for one (1) year, she decided to give the second defendant time to resolve the problem as he told her he was trying to raise money to repay the plaintiff's loan. For that reason, she did not inform either the third or fourth defendants about the plaintiff's caveat. She could not recall receiving notice of the plaintiff's (first) Caveat (after he had paid the option money of $200,000) but she did receive notice of a caveat sometime in September 2000 (after the plaintiff had exercised the Option) and also notice of yet another caveat filed by the Bank sometime in October 2000. Puzzled why the Bank would file a caveat against the property when the earlier caveat was in the plaintiff's name, the first defendant visited the Land Titles Registry and ascertained therefrom that the caveats of the plaintiff and the Bank related to a similar transaction.

55. Thereafter, she consulted her conveyancing lawyers (Hoh & Partners) but, the firm declined to act as the second defendant was also their client. Eventually, she instructed AL Hussien & Co. She requested the third and fourth defendants to take charge of the matter when she went into hospital

on 30 November 2000 to deliver her third child.

56. While she did receive the plaintiff's solicitors' letter dated 16 October 2000 sent under registered cover (para 20 *supra*), the first defendant said she ignored the demands stated therein (just as she ignored the letters of S&P) and did not inform the third/fourth defendants because she *didn't care* and *didn't agree to the contents* (N/E 79); she considered the whole thing illegal. Instead, she went straight to Hoh & Partners in early November 2000.

57. When she saw a copy of the Option forwarded to AL Hussien & Co by the plaintiff's solicitors, the first defendant said she knew immediately that the third and fourth defendants' signatures were forged her mother only knows a little Jawi whilst the signature of the fourth defendant was totally different. Had the plaintiff not sent the signatures for analysis, she would have done so herself. Cross-examined, the first defendant denied she was aware the second defendant had presented an option with forged signatures to S&P.

58. I do not need to dwell on the testimony of the 70 year old third defendant (DW2) save to say that I have no doubt she spoke the truth when she testified that:-

(i) she had never met Surian or his secretary Wai before the trial. She had never visited Chinatown, let alone Chinatown Point building (where the offices of S&P are located) either on 24 June 2000 at all;

(ii) Saadiah visited the Jurong flat on 23 June 2000 and she gave her version of what then transpired;

(iii) she signed options twice due to her mistake on 23 June 2000 in signing at the column meant for the witness;

(iv) she had given her identity card to Saadiah and the second defendant when they told her they wanted to borrow it (no reasons given); 3-4 days later, the second defendant returned her identity card to the first defendant.

(v) she did not sign the letter of authority.

59. Finally, there is the testimony of the fourth defendant (DW3). It would suffice to refer only to the material portions of her testimony which prompted me to conclude that Surian and Wai were untruthful in their evidence.

60. The fourth defendant was emphatic that Saadiah visited her school's general office on Saturday 24 June 2000. Consequently, she could not have been at the offices of S&P as Surian/Wai claimed in their testimony. She did not meet either of them until the trial. She recalled that Saadiah had introduced herself as a housing agent, told her the first defendant intended to sell the property and had asked the fourth defendant to sign a piece of paper. The fourth defendant testified she had refused as she verily believed such signing should be done at a lawyer's office. In any case, she was in a hurry that morning to attend a seminar cum workshop entitled 'Thinking School Learning Nation' (TSLN) which was compulsory for all staff at her school. Questioned by the court how she could be so certain of the date, the fourth defendant produced (signed by the vice-principal of her school), a certified copy (see **D1**) of the list of courses she had attended in year 2000 showing two (2) entries of TSLN for 24 June 2000.

61. Questioned (N/E 113) why the list **D1** did not reflect (in the **end date** column) when she completed the course she attended that day, the fourth defendant's ready explanation was, that

sometimes when the course is only a day long affair, the end date is not inserted as it was understood that it ended on the day itself. On 24 June 2000, the course she attended (conducted by Ministry of Education trainers) at the School's library started at 8am and ended at 1.30pm.

62. When the document was shown to her in court, the fourth defendant professed it was the first time she was seeing the letter of authority (**P1**) and confirmed she had not signed the same; neither did she sign the Option. The fourth defendant had no notice of the plaintiff's caveats because the same were never sent to her at her residence at Sims Avenue. For the same reason, she did not receive the letters sent to her by S&P and or by the plaintiff's solicitors. She had not appointed S&P or Hameed & Co to act for her or any of the other defendants.

63. When she found out (in the first week of December 2000 through AL Hussien & Co) that her signature on the Option was forged, the fourth defendant and her husband (Malik) visited the office of KMO at Peninsula Plaza as her husband thought the plaintiff's signature on one of the forms looked familiar. She waited for her husband outside while he went into the plaintiff's office to speak to the plaintiff. Later, Malik reported to her that (according to the plaintiff), she had signed a document for the sale of the property; the plaintiff referred them to his solicitors for the document. Curious, the fourth defendant and Malik attempted to obtain the document from the plaintiff's solicitors but their request was rejected; the plaintiff's solicitors required them to go through proper procedures. Hence, she appointed AL Hussien & Co to write to the plaintiff's solicitors for the Option/agreement for sale. Later, she appointed Sadari Musari & Partners to defend this claim. She lodged a police report (2AB2) on 18 April 2001, after she had received a copy of the Option from AL Hussien & Co. Although she did not so state in her police report, the fourth defendant suspected the second defendant was responsible for the forged signatures.

64. I should add that the fourth defendant's testimony on what transpired at KMO's office was corroborated by Malik (DW4). Malik denied the plaintiff's claim that he had told the plaintiff in May 2001 when they met (at a bus-stop) that his wife had signed a document in a hurry but did not know what she had signed. On the contrary, he had then told the plaintiff that the fourth defendant had refused to sign a document presented to her at the School by a housing agent. The plaintiff had nevertheless insisted that the sale of the property should continue as all the owners had signed the Option.

The findings

65. On the evidence before me, I had no difficulty in finding for the defendants. I dismissed the plaintiff's claim because the defendants spoke the truth as compared with the plaintiff and his two (2) key witnesses, namely Surian and Wai. I could tell from Wai's nervous demeanour what a poor liar she was.

66. I had to decide whether there was a meeting at the office on Saturday 24 June 2000 attended by all four (4) defendants (and Saadiah) as Surian and his secretary Wai claimed; I found no such meeting took place. The alleged meeting was fabricated by Surian because he had to find some justification for his release to the second defendant, of the balance $100,000 paid under the second cheque of the plaintiff. Surian had relied on the letter of authority (**P1**) for the release of the plaintiff's first payment of $100,000 to the second defendant. Granted, he did not know or realise, that the signatures of the first, third and fourth defendants in that document were forged. Therefore he could not be faulted for relying on the document to release the first $100,000 payment to the second defendant. However, that letter of authority <u>did not authorise the release of $200,000 or the second $100,000</u> as can be seen from its clear wording (drafted by Surian himself):

Letter of Authority

Dated: 23rd June 2000

Re: Option to Purchase:- No. 26 Simei St 1 Melville Park #06-15, S (529947)

We, Rohayaton binte Rohani (NRIC No. [xxx]), Norminah binte Dahlan (NRIC No. [xxx]) hereby authorise M/s Surian & Partners to release $100,000 being part of the Option money of $200,000 relating to the above property to Ismail Yacoob Angullia (NRIC No. [xxx]).

67. Earlier (para 16 *supra*), I had alluded to Surian's testimony and his excuse that his secretary had forgotten to obtain a letter of authority from the second defendant for the second payment. He had added that in any case, he had gained the impression from the meeting on 24 June 2000 that the second defendant was equally authorised by the other defendants to receive the second payment. I believe the omission on Surian's part to obtain express authority from the three (3) other defendants to release the second $100,000 to the second defendant was what prompted him to concoct a meeting between his 'clients' (whom undoubtedly he never met save for the second defendant) and himself, with his secretary, on 24 June 2000. I found it strange that a lawyer who had supposedly met all the defendants on the same day could only recognise two (2) out of the three (3) present in court.

68. What Surian did not reckon with was, that the fourth defendant would be otherwise engaged on 24 June 2000 and would be able to prove it that she was attending a school seminar that took up the entire morning and part of that same afternoon. I had no doubt that the fourth defendant spoke the truth she gave her evidence in a forthright manner and was impressively fearless. She came to court fully prepared to substantiate her testimony, with a certificate from the School. I cannot imagine that she would concoct evidence that she had attended a seminar on 24 June 2000 unless it was true, knowing full well her statements could easily be verified with the Schools records.

69. Earlier, I had given my observations on the testimony of the third defendant. Like her daughter, she was a truthful witness. The same can also be said of Malik; indeed he had no reason to lie and I believed he did not lie, notwithstanding that one of the defendants was/is his wife. I was also certain the first defendant spoke the truth despite her poor keeping of documents, hazy recollection of events and uncertainty as to what she received in the post and when. I can appreciate her predicament; she had financial troubles which her husband not only did not help to alleviate but in fact made worse by his conduct, not to mention that he was not even the breadwinner for the family.

70. As for the plaintiff, I could not help but form the distinct impression that he went out of his way to deal with the second defendant exclusively, even after finding out that the second defendant only held 3% share in the property. I disbelieved his claim (denied by the first defendant in any case) that he had discussed his purchase of the property in her presence, once at his son's wedding and on another occasion in a car. The Option as I had pointed out earlier (para 11 *supra*), was highly unusual in its terms; indeed there was a strong suspicion that the document was a guise for a moneylending transaction (which was the defence raised by the second defendant in his pleadings).

The law

71. The plaintiff's claim was for the equitable remedy of specific performance. It was all very well for his counsel to cite the law on specific performance as set out in *Snell's Principles of Equity* (28 ed) and to rely on the case (so did the defendants) of *Banque Nationale de Paris v Tan Nancy* [2002] 1 SLR 29 but, he overlooked something far more important. A fundamental principle of the law

of equity so well known that it requires no elaboration is, that he who comes to equity must come with clean hands. It was my finding that the plaintiff was not only an untruthful witness but that he came to court without clean hands. He only had himself to blame for being cheated of $200,000 as, he deliberately chose to deal with the second defendant solely. Moreover, the Option smacked of an illegal moneylending transaction.

72. Far more important, the plaintiff failed to discharge his burden of proof that the conduct of the first, third and fourth defendants caused him to suffer his loss, that they had made representations to him which caused him to enter into the Option and, it would be inequitable to allow them to renege/repudiate on the agreement.

73. It is trite law that for a misrepresentation to be actionable, the following conditions must be satisfied:-

(i) a representation was made by one party;

(ii) the representation was acted on by an innocent party;

(iii) the innocent party suffered detriment as a result.

None of the above ingredients were present in this case. The representations were made to the plaintiff by the second defendant. The signatures of the first, third and fourth defendants were forged on the Option and letter of authority without their knowledge. Even if it can be said that the first defendant (and not the other two defendants) was remiss in that she did nothing when she first received notice (in September 2000) of the plaintiff's caveat, nothing she did or could have done then or later would have helped the plaintiff as, by then, S&P had released his $200,000 payment to the second defendant, who had forged both documents much earlier on.

Conclusion

74. This claim was completely unmeritorious. Consequently, I held that the loss should lie where it fell and dismissed the plaintiff's claim with costs to the first, third and fourth defendants.

Sgd:

LAI SIU CHIU

JUDGE