

Lee Theng Wee v Tay Chor Teng
[2003] SGHC 173

Case Number : Suit 600040/2000, RA 600021/2003
Decision Date : 30 July 2003
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Ismail Atan (Gabriel Law Corporation) for the plaintiff; Leonard Loo (Leonard Loo & Co) for the defendant
Parties : Lee Theng Wee — Tay Chor Teng

Introduction

1 This was an appeal by the Defendant Tay Chor Teng ("Tay") against the decision of an Assistant Registrar dismissing Tay's application to set aside a judgment obtained by the Plaintiff Lee Theng Wee ("Lee") more than three years ago on 29 January 2000. After hearing arguments, I dismissed Tay's appeal. He has appealed to the Court of Appeal.

Background

2 On 12 January 2000, Lee filed the present Writ of Summons for payment of \$300,000 being the balance allegedly due and owing to him by Tay under an Instalment Agreement dated 5 February 1998 signed by Tay.

3 The Writ was served personally on Tay in Singapore on 19 January 2000. On 29 January 2000, Lee obtained judgment in default of appearance for the principal sum of \$300,000, interest and costs. A copy of the judgment was then sent with a cover letter dated 2 February 2000 by Lee's solicitors to Tay. The letter required payment within seven days ie by 9 February 2000. A cheque of \$10,000 was received by or on behalf of Lee on 29 February 2000 as part payment.

4 About three months later on 26 May 2000, Lee's solicitors issued a statutory demand for the remainder against Tay. This was served personally on Tay on 7 June 2000. Lee then filed a bankruptcy petition against Tay on 12 July 2000. This was in Bankruptcy No 2192 of 2000 ("the first bankruptcy petition").

5 According to Lee, Tay then sought indulgence from him and offered a guarantee from his sister. Subsequently a guarantee dated 13 October 2000 was signed by one Tay Geok Hong. One week before that ie on 6 October 2000, Lee received part payment of \$5,000. Subsequently, between 1 November 2000 to 4 April 2001, Lee received four payments of \$2,000 each. Lee did not proceed with the first bankruptcy petition.

6 Subsequently, another statutory demand dated 11 September 2001 was issued and served on Tay for the remainder then due and owing by him. Then Lee filed a second bankruptcy petition in Bankruptcy Petition No 603537 of 2001 on 10 November 2001. According to Lee, Tay again sought indulgence from him and apparently, Lee again did not proceed with the bankruptcy petition.

7 However, on 31 March 2003, a third statutory demand was issued against Tay. On 16 May 2003, Tay applied to set aside the judgment.

Tay's reasons and submissions

8 In Tay's first affidavit to support his application, he said that he did not apply to set aside the judgment earlier as he was in financial difficulties since 1998 with DBS Bank Limited and the United Overseas Bank Limited. He did not have money to engage a lawyer to challenge Lee's claim and he had also thought that he might be made a bankrupt by either one of these two banks. Hence, Lee's false claims did not bother him.

9 However, there was no evidence to substantiate his allegation of his financial difficulties with the two banks. Besides, as Lee pointed out in his reply affidavit, Tay had procured a guarantee from his sister in favour of Lee. Moreover Tay had made various payments, as set out above, to fend Lee off. Interestingly, Tay denied in his second affidavit that the guarantor Tay Geok Hong was his sister but he did not deny the partial payments he had made after judgment had been obtained against him.

10 Even if I were to consider the question whether Tay Geok Hong is Tay's sister arguable, it was clear to me that Tay's assertion that Lee's claims did not bother him prior to his present application was untrue in the light of his part payments.

11 Tay also argued that Lee was in truth a money-lender and hence the loans to him were illegal as Lee did not have a licence to lend money. He alleged that Lee had charged interest of 5% per month and required him to take up a life policy and assign the same in Lee's favour as security. Tay also asserted that he had borrowed only \$70,000 from Lee and not \$352,000. He and his counsel Mr Leonard Loo stressed that there was no evidence from Lee contemporaneous with the time Lee's loans were advanced to establish the amount Lee had allegedly lent Tay. As for the Instalment Agreement which Tay admittedly signed, Tay said he signed it due to Lee's oral promise not to enforce it. Tay claimed he was forced to sign it because he had introduced a friend Dr Roland Tan to Lee and Dr Tan had borrowed \$100,000 from Lee and had a high outstanding interest. Lee had insisted that Tay sign the Instalment Agreement in case Lee could not recover the debt from Dr Tan. Lee had also threatened to make Tay a bankrupt if he did not sign the Instalment Agreement. Tay asserted that that was why Lee did not enforce the judgment until 31 March 2003 (when the third statutory demand was issued).

12 While it was true that Lee had no contemporaneous evidence of the amount or amounts he had lent Tay, Lee had had the benefit of the Instalment Agreement in which it was recited that Tay was indebted to Lee for \$352,000 for an interest-free friendly loan. The \$300,000 claimed in the Writ was the then balance due and owing out of the \$352,000.

13 Secondly, Tay's explanation as to how he came to be compelled to sign the Instalment Agreement for \$352,000 when the loan to him was allegedly \$70,000 only and the loan to Dr Tan was allegedly \$100,000 only, did not make sense as Tay did not elaborate as to how much interest Dr Tan was allegedly owing to Lee. Therefore, there was no reason for Lee to insist that Tay admit to \$352,000. Equally significant was the fact that there was a fax dated 26 January 1999 to Lee from Lee's solicitors which mentioned that Tay had attended at Lee's solicitors' office on 26 January 1999 but Tay was not prepared to execute the Instalment Agreement until he had sought independent legal advice thereon. Accordingly, Tay had taken a copy thereof back with him. Subsequently, Lee's solicitors were instructed that Tay wanted a grace period of 14 days to make payments as provided in the Instalment Agreement. The Instalment Agreement was amended and sent to Tay on 30 January 1999. As mentioned above, Tay did sign the Instalment Agreement which was dated 5 February 1999. Tay did not deny in his reply affidavit that he had in fact consulted his solicitors before signing the Instalment Agreement. It was his counsel Mr Leonard Loo who said he was instructed that Tay did not in fact consult his solicitors. Even if I were to accept this assertion from the bar, which I was not minded to, the fact remained that Tay had had time to reflect on the

Instalment Agreement and even required it to be amended to include a 14 day grace period should he default in any payment. He had not been unduly pressured into signing it contrary to the impression he had created.

14 As regards Tay's assertion that Lee had not taken steps to enforce his judgment until May 2003, it was clear to me that Tay was in fact asserting that Lee had not taken any step in reliance on the judgment until then. Indeed, Mr Loo did not attempt to suggest that Tay was referring to enforcement proceedings only, excluding bankruptcy proceedings. As it turned out, Lee had taken two bankruptcy proceedings against Tay contrary to Tay's assertion.

15 There was one other point. Tay had initially also asserted that Lee had failed to take into account some other payments but as Mr Loo did not pursue this during submission, I need say no more about it.

16 Mr Loo relied on the case of *Ang Kim Soon v Sunray Marine Pte Ltd* [1997] 3 SLR 619 to support Tay's application. However, that case did not assist Tay. There, Choo Han Teck JC (as he then was) referred to the judgment of Sir Ormrod in *Alphine Bulk Transport Co Inc v Saudi Shipping Co Inc* [1986] 2 Lloyd's Rep 221 and said that he should not consider only the question whether the defendant had a real prospect of success if the judgment was set aside. The conduct of the defendant also had to be considered. Once liability was disputed, the defendant was bound to set aside the default judgment at the earliest opportunity. On a balance of equities, the defendant in the case of *Ang Kim Soon* had, on the facts before the judge, failed to satisfy him that the judgment should be set aside.

17 So here, in Tay's case, it may be that he would have had some prospect of success in his allegation about money-lending. His prospect of succeeding in his allegation that Lee had lent him \$70,000 only was weaker. On the other hand, I also took into account the following:

(a) The very long delay by Tay in applying to set aside the judgment, which delay Mr Loo had to acknowledge.

(b) That there was no valid reason for the very long delay. Indeed, Tay had made part payments after judgment had been entered against him to persuade Lee not to proceed with the first bankruptcy proceeding and his present application was made only because the third statutory demand had been issued against him.

(c) Tay had not been truthful in his supporting affidavit on various aspects.

18 In the circumstances, I was of the view that the equities or the justice of the case were clearly not in Tay's favour. Accordingly, I dismissed his appeal.

Defendant's appeal dismissed.