

Gan Cheng Chan v Gan Meng Hui
[2005] SGHC 55

Case Number : Suit 405/2004
Decision Date : 18 March 2005
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Jason Lim (Michael Khoo and Partners) for the plaintiff; Irving Choh and Janice Sim (Rajah and Tann) for the defendant
Parties : Gan Cheng Chan — Gan Meng Hui

Contract – Intention to enter into legal relations – Whether daughter's contention that agreement disadvantageous to her constituted acceptance that there was an agreement in force – Whether there was intention to enter into legal relations

Contract – Undue influence – Daughter signing agreement providing for loan to father – Whether agreement manifestly disadvantageous to daughter – Whether presumed undue influence exercised by father over daughter

18 March 2005

Lai Siu Chiu J:

The background

1 Gan Cheng Chan (the plaintiff) is the father of Gan Meng Hui (the defendant). The plaintiff sued the defendant for specific performance of an agreement dated 7 November 2003 (“the Agreement”), alternatively, for damages.

2 The defendant filed a Defence and Counterclaim to the Statement of Claim. After he had filed a Reply and Defence to the Counterclaim, the plaintiff applied for summary judgment (“the application”) against the defendant. The application was heard by the assistant registrar, who ordered that the defendant be granted unconditional leave to defend the action.

3 The plaintiff appealed against the decision of the assistant registrar in Registrar’s Appeal No 302 of 2004 (“the appeal”). I heard the appeal and varied the order of the assistant registrar by granting conditional leave to the defendant to defend the plaintiff’s claim, provided she furnished security in the sum of \$187,500 for the claim by 3 December 2004, failing which the Defence and Counterclaim she filed would be set aside and the plaintiff would be at liberty to enter final judgment against her with costs.

4 Being dissatisfied with the orders I made, the defendant has filed a Notice of Appeal (in Civil Appeal No 121 of 2004) against my decision.

The facts

5 The facts leading to the filing of this suit are to be found in the affidavits filed for the application. It would be necessary for me to first set out the history behind the Agreement, before I deal with the affidavits of the parties.

6 Ang Suan Hong (“Ang”), the defendant’s mother, was divorced from the plaintiff in June 2002. The couple has five children of whom the defendant is the eldest daughter, being 25 years of

age at the material time. The couple were the co-founders of a family business in textiles and apparel manufacturing known as Ghim Li Holdings Co Pte Ltd ("the Company"). It is reputed to be the largest garment manufacturer in Singapore.

7 Prior to the execution of the Agreement and two other deeds, the plaintiff was the executive chairman and a director of the Company. He was also a director of the following affiliated or subsidiary companies:

- (a) Ghim Li Global Pte Ltd;
- (b) Ghim Land Property Investments Pte Ltd;
- (c) Maxim Textile Technology (Pte) Ltd;
- (d) Jopatch Apparel Pte Ltd;
- (e) Jati Freedom Textile Sdn Bhd.

The Company, together with the above companies, shall hereinafter be referred to collectively as "the Ghim Li group of companies".

8 Despite their divorce, the couple continued their working relationship of managing the company until an incident in 2002 where the plaintiff borrowed money from the Company to buy its shares. As a result, the plaintiff was obliged to apply to court under s 391 of the Companies Act (Cap 50, 1994 Rev Ed) to rectify his breach. As the Company was then intending to apply for a public listing, the plaintiff knew he would have to resign from the management of the Company so as not to jeopardise its floatation.

9 However (according to the defendant), the plaintiff refused to vacate his office at the Company and demanded huge sums of money by way of compensation. This led to quarrels between the couple and Ang sought to remove the plaintiff as a director, by calling for an extraordinary general meeting of the Company to be held on 30 September 2003, after he refused to step down as chairman and director at her request, by his letter dated 4 September 2003. Further arguments ensued between the couple. Eventually, as a compromise, the plaintiff and Ang signed a deed of settlement ("the Settlement Deed"). Separately, the defendant and the plaintiff signed the Agreement while Ang and the defendant signed a deed of undertaking ("the Undertaking"). Like the Agreement, the Settlement Deed and the Undertaking were signed contemporaneously and were also dated 7 November 2003. Recital C in the Agreement stated that the Agreement and the Undertaking were supplemental to the Settlement Deed.

10 Although the defendant admitted she signed the Agreement, she claimed she was not legally advised whereas the Company and Ang had separate legal representation. The defendant claimed the plaintiff approached her and coaxed her to sign the Agreement after he had executed the Settlement Deed with Ang; it was to ensure he would receive some money after the Company was listed. The defendant was in a dilemma. She had just joined the Company in 2002 (at 22 years of age) after graduating from her studies in the United States. She did not want to make her father unhappy by refusing his request. At the same time, she knew (and so did the plaintiff) that she did not have the means to perform the Agreement, one of which terms included lending the plaintiff \$750,000. Despite her misgivings, however, the defendant signed the Agreement on the plaintiff's persuasion. On hindsight, the defendant realised the Agreement was actually a ploy on the part of the plaintiff to procure Ang to pay him \$750,000.

11 The Settlement Deed was a global settlement between the couple covering the plaintiff's interests, shareholdings, office and remuneration in the Ghim Li group of companies as well as the matrimonial home at 5 Oak Avenue ("the property"). The Agreement also covered the same subject matters as the Settlement Deed and certain trust shares beneficially owned by the plaintiff. The Undertaking was in respect of shares in the Company that the defendant held on trust for Ang. In the three agreements, Ang was referred to as "Estina", the plaintiff was referred to as "Jefre" while the defendant was referred to as "Surina".

12 As all three agreements have a bearing on the appeal, I shall consider them in turn. I turn first to the Settlement Deed. The clauses relevant to this suit and the appeal are the following:

(a) Clause 2.2.1: Ang would take steps to sell the property and upon completion of its sale, she would cease to have any interest in the same.

(b) Clause 2.2.2: The plaintiff would pay Ang \$322,554.87 upon the execution of the Settlement Deed which payment would release the plaintiff's siblings from any liability to repay her the sum.

(c) Clause 2.2.3: Upon execution of the Settlement Deed, Ang would have no further claims of any nature whatsoever and howsoever against the plaintiff in respect of all the subject matters covered by the document.

(d) Clause 2.3.1: The plaintiff would vacate the property either by 31 January 2004 or within seven days prior to the date of completion in the event Ang procured a sale, whichever was the earlier.

(e) Clause 2.3.3: The plaintiff would pay, by 31 March 2006, a total sum of \$370,662.16 to the couple's five children, including the defendant, in varying proportions.

(f) Clause 2.3.4: The plaintiff would pay another sum of \$332,554.87 to the couple's two youngest children.

(g) Clause 2.3.6: The plaintiff would not have any authority with effect from 1 September 2003 to transact any business in any capacity on behalf of the Ghim Li group of companies.

(h) Clause 2.3.7: The plaintiff would not have any ownership and/or management interest in any entity or assets of the Ghim Li group of companies other than his 10% shareholding in the Company or in the Company after it has listed.

13 Clause 3 of the Settlement Deed contained Ang's representations, warranties and undertakings to the plaintiff whilst cl 4 contained the plaintiff's similar representations, warranties and undertakings to Ang.

14 I turn next to the Agreement. The following are the relevant clauses:

(a) Clause 2.1: The plaintiff would sell to the defendant all his shares ("the settlement shares") in the following companies:

	Name	Shares
(i)	Ghim Li Apparel (Fiji) Limited	800,000

(ii)	Ghim Li Global Corporation Limited	500,000
(iii)	JES Fashion Co Pte Ltd	958,226
(iv)	Jopath Apparel Pte Ltd	1
(v)	Ghim Land Property Investments Pte Ltd	1

(b) Clause 2.2: The legal and/or beneficial interests over the settlement shares would be deemed to be transferred to the defendant as from the date of the Agreement.

(c) Clause 3.1: Completion of transfer of the settlement shares would take place seven days from the date of the Agreement.

(d) Clause 3.2.2: The plaintiff would tender his resignation as director from six entities in the Ghim Li group of companies from the date of the Agreement.

(e) Clause 4.2.6: The plaintiff would not, from the date of his resignation, have any authority to transact any business on behalf of the Company or any entity in the Ghim Li group of companies in any capacity whatsoever.

(f) Clause 4.2.7: The plaintiff would not, upon entering into the Agreement, have any ownership and/or management interest howsoever arising, in any entity in the Ghim Li group of companies other than his shareholdings in the Company.

15 As the plaintiff's Statement of Claim specifically alleged that the defendant had breached cl 6.1.3 of the Agreement in relation to his claim for the sum of \$187,500, I shall now set out the full text of cl 6 of the Agreement, which was headed "Consideration":

6.1 In consideration of Clause 2.2 and the representations, warranties and undertakings given by [the plaintiff] herein, [the defendant] represents, warrants and undertakes to [the plaintiff] as follows:

6.1.1 she shall, on and from the [date of the Agreement], assume the liability to repay the JG Debts [JG Debts was defined in cl 1 as a sum up to \$5.75m allegedly owing by the plaintiff to the Ghim Li group of companies of which the plaintiff made no admission];

6.1.2 she shall, as soon as practicable after the [date of the Agreement], procure the release of all personal guarantees given by [the plaintiff] in respect of loans and other financing given by financial institutions to entities in the Ghim Li [group of companies] and shall otherwise indemnify and hold him harmless against any claims, actions or other liabilities arising from those guarantees;

6.1.3 she shall make an interest-free loan to [the plaintiff] of a sum of S\$750,000 payable in twelve (12) equal instalments at the end of each calendar year in the year 2004 ...; and

6.1.4 she shall procure that, on the [date of the Agreement], the plaintiff is paid a sum of S\$200,000 representing his salary and bonus as an employee of the Ghim Li [group of companies] for the period from 1 September 2003 to 31 December 2003 less (i) a sum of S\$15,200 being the employer's Central Provident Fund contribution in respect of the aforesaid salary and bonus which is paid directly into [the plaintiff's] Central Provident Fund

account, (ii) a sum of S\$4.00 representing his contribution to the Chinese Development Assistance Council; (iii) a sum of S\$4,000 representing his contribution to the welfare fund adopted by the Ghim Li [group of companies]; and (iv) a sum of S\$24,799 being his salary for the month of September 2003 and which has already been paid to him plaintiff prior to the entry into of this Deed, thus representing a resultant sum of S\$155,997.

16 The plaintiff was also the beneficiary of a trust known as the G Trust, established in Australia and constituted under an undated trust deed but which was stamped in Australia on 17 October 1996. The principal object of the G Trust was to hold shares in a company established to own and develop a hotel in Australia. Under cl 4.2.2 of the Agreement, the plaintiff also agreed to transfer his beneficial interest under the G Trust to the defendant.

17 Other terms in the Agreement mirrored those in the Settlement Deed and similarly contained representations, warranties and undertakings from the plaintiff to the defendant and *vice versa*.

18 According to the Undertaking, the defendant held 2,933,843 shares ("the trust shares") in the Company in trust for Ang. The trust shares represented 18% of the issued and paid-up share capital of the Company. If the Company or any other company in the Ghim Li group of companies failed to launch its initial public offer ("IPO") and failed to gain admission to the official list of the Stock Exchange of Singapore Ltd ("SGX") by 30 September 2004, Ang agreed to release the defendant as trustee with effect from 1 October 2004. Ang further agreed to transfer her beneficial interest in the trust shares to the defendant and the defendant's four siblings.

19 In the event the shares of the Company or any other company in the Ghim Li group of companies were listed on the SGX by 30 September 2004 or where the said shares were not listed by 30 September 2004 but a preliminary prospectus had by then been lodged with the Monetary Authority of Singapore or any other regulatory authority, Ang was not required to release the defendant as trustee. However, if the shares were not publicly listed as of 30 November 2004, Ang agreed to release the defendant as trustee with effect from 1 December 2004 and transfer the shares to her five children.

20 Ang gave certain representations, warranties and undertakings to the defendant in the Undertaking and in return, the defendant gave similar representations, warranties and undertakings to Ang.

21 I should add that prior to the execution of the Agreement, Ang had tendered a letter of comfort addressed to the defendant. However, the terms were unacceptable to the plaintiff and it was never signed. This was probably because of the last sentence. The letter of comfort reads as follows:

Dear Surina

I am aware that you are entering into a Deed of Agreement with your father, Gan Cheng Chan, in respect of interests, shareholdings, office, remuneration in and affairs of the Ghim Li group of companies and will endeavour to support you in the performance of your obligations thereunder in such manner as you and I will agree to at the relevant point in time. Such support may include loans to you or a transfer to you of shares in any company within the Ghim Li group.

For the avoidance of doubt, this letter does not create any contractual or legal obligations on my part in any way.

The pleadings

22 In the Statement of Claim, the plaintiff alleged that he had discharged his obligations under the Agreement by delivering the settlement shares to the defendant on or about 7 November 2003 which sale and purchase was completed on or about 14 November 2003. He had resigned from his directorships and other positions in the Ghim Li group of companies with effect from 1 September 2003.

23 The plaintiff alleged that the defendant had breached cl 6.1.3 of the Agreement as she had failed to give him the balance of the interest-free loan of \$750,000, after paying him \$62,500 on 18 March 2004. As at the date of the writ (14 May 2004), the plaintiff alleged the defendant owed him four instalments totalling \$187,500 on the said loan:

(a)	$\$750,000 \div 12 = \$62,500$ per month	
(b)	January to April 2004 = $\$62,500 \times 4 =$	\$250,000
(c)	Less	<u>(\$62,500)</u>
		\$187,500

24 In addition to his claim for specific performance, the plaintiff prayed for a declaration that he was entitled to a lien on the settlement shares in respect of the sum due and payable under cl 6.1.3 of the Agreement (inclusive of interest at 6% per annum) and in default of the defendant's payment, that he was entitled to enforce the lien. Finally, the plaintiff applied for an injunction to restrain the defendant from transferring or otherwise dealing with the settlement shares.

25 In the Defence and Counterclaim which she filed, the defendant alleged that the plaintiff had breached the representations, undertakings and warranties in the Agreement set out in cl 4 of the Agreement. In particular, the defendant alleged that the plaintiff had breached cll 4.2.2, 4.2.6 and 4.2.7.

26 The defendant alleged she had relied on the plaintiff's representations and had been induced by them to enter into the Agreement. Subsequently, she realised that the representations were untrue and by a letter dated 5 March 2004 from her solicitors to the plaintiff's solicitors, she had given notice of her intention to rescind the Agreement ("the notice of rescission").

27 The defendant counterclaimed from the plaintiff the sum of \$62,500 she had paid him, alleging that the consideration for the payment of \$250,000 had failed. She prayed for rescission of the Agreement, alternatively for damages to be assessed.

28 In his Reply and Defence to the Counterclaim, the plaintiff denied he had made false representations to the defendant. He contended that the notice of rescission was wrongful and baseless. The plaintiff averred that on 16 March 2004, the defendant agreed (by her solicitors' letter) to comply with the terms of the Agreement. This was followed two days later by the defendant's payment of \$62,500 in accordance with cl 6.1.3. The plaintiff referred to his solicitors' letters to the defendant and/or to her solicitors' letters dated 16 February, 5 March and 8 June 2004. He denied the defendant's counterclaim.

The affidavits

29 I turn now to the affidavits filed by the defendant to resist the application. In addition to what has been stated in [9] and [10] above, the defendant in her first affidavit deposed that notwithstanding the signing of the Agreement, her efforts at mediation between her parents worked partially as the plaintiff withdrew the first Writ of Summons that he filed on 5 March 2004.

30 The defendant deposed she had borrowed from Ang the first instalment of \$62,500 that was paid to the plaintiff on 18 March 2004. Trouble started when Ang could not afford the subsequent instalment payments due to the plaintiff. On 24 June 2004, she had even visited France with the plaintiff and was unaware of the problems between her parents until she was served with the Writ herein.

31 Surprisingly, the defendant added that the Agreement was manifestly disadvantageous to the plaintiff as he received no or no valuable consideration in return for the loan of \$750,000. This was an obvious drafting error and I assumed the defendant meant herself, not the plaintiff as the party who suffered the disadvantage. The defendant then went on to allege (according to what was told to her by the staff of the Company) that the plaintiff was in persistent breach of the representations, warranties and undertakings. He had, in breach of cl 4.2.6 of the Agreement (see [14] above), submitted a vexatious and frivolous complaint to the management of KBC Bank resulting not only in its general manager, Yong Min Yong, being dismissed but also in KBC Bank ceasing to act as lead manager of the proposed public listing of the Company.

32 The defendant further alleged that the plaintiff had breached cl 4.2.7 (see [14] above) of the Agreement by entering the Company's premises in late January 2004 without authorisation and persistently calling the staff and officers of the Company and making unreasonable demands of them. The plaintiff had also breached cl 4.2.2 of the Agreement (see [16] above) in that he had failed to transfer his beneficial interest in the G Trust to the defendant.

33 It would not be necessary to refer to the plaintiff's first affidavit filed pursuant to O 14 r 2(1) of the Rules of Court (Cap 322, R 5, 2004 Rev Ed) in support of the application. I turn instead to the plaintiff's second affidavit. The plaintiff rebutted the defendant's claim that she did not have independent legal advice when she signed the Agreement. He pointed out that all three documents were drafted by the law firm, M/s Chang See Hiang & Partners, on the instructions of Ang and the defendant, as directors of the Company. He had by then resigned as a director.

34 As proof of his assertion, the plaintiff exhibited correspondence for the period 1 September to 10 November 2003 between the parties. It was also clear from the correspondence that he did not coax the defendant into signing the Agreement. The allegation was a sham as the defendant had not given particulars when or how he could have coaxed her into signing the document. The plaintiff pointed out that the defendant raised the allegation for the first time in her affidavit; she had never made the complaint previously, not even in the notice of rescission.

35 The plaintiff deposed he had fully complied with his obligations under the Agreement – he had sold and transferred his shares, resigned as chairman and director from the Ghim Li group of companies and vacated the property. He asserted the defendant's other allegations against him were without merit and denied he had entered the Company's premises without permission and had caused a disturbance. Further, he had always been willing and able to transfer the G Trust shares as stated in his solicitors' letters dated 16 February 2004 and 8 June 2004 to the defendant's solicitors.

36 In her second affidavit, the defendant revealed that the plaintiff's shares in the Ghim Li group of companies were transferred back to him on 21 April 2004 (which he denied). She reiterated that she signed the Agreement to ensure that the Company's IPO would go smoothly and to pacify the

plaintiff who was constantly quarrelling with Ang. Because of the plaintiff's complaint to KBC Bank, the Company had to change its lead underwriters, resulting in the Company having to incur additional expense and delay. As a further result of the plaintiff's complaint and this suit, the IPO was still pending.

37 The defendant pointed out that she was only earning \$5,999 a month at the material time and the plaintiff well knew she did not have the means to advance him the loan of \$750,000. The defendant maintained she was not legally represented, pointing out that the exchange of correspondence exhibited in the plaintiff's second affidavit was between the solicitors for the Company and Ang. She added that the Agreement was to the plaintiff's benefit as he received maximum advantage from his 10% shareholdings in the Company.

38 Finally, the defendant complained that notwithstanding that he had expressed his willingness to do so in his solicitors' letters, the plaintiff had not transferred the G Trust shares to her, even after being reminded by the Company's officers. This resulted in the Company instituting Suit No 731 of 2004 against him. I should point out that this statement was incorrect. Suit No 731 of 2004 was brought by JES Fashion Co Pte Ltd against the plaintiff to recover loans totalling \$5,155,136.76 extended to the plaintiff between the years 2000 to 2003; it had nothing to do with the G Trust shares. Indeed, this suit was a direct result of the defendant's failure to comply with cl 6.1.1 of the Agreement set out in [15] above.

The submissions

39 In the court below, counsel for the defendant argued that his client had signed the Agreement (which was part of a family arrangement) under presumed undue influence, due to the parent-child relationship. He cited *Peh Nam Kee v Peh Lam Kong* [1996] 1 SLR 75, *Rajabali Jumabhoy v Ameerli R Jumabhoy* [1997] 3 SLR 802, *Credit Lyonnais Bank Nederland NV v Burch* [1997] 1 All ER 144 and other cases to support his argument. Counsel's alternative submission for the defendant (which directly contradicted his first) was that there was no intention on her part to enter into legal relations. Counsel pointed out that the defendant was wholly dependent on her parents, worked in a family organisation and had no independent legal advice nor was she told to seek such advice. The defendant had assumed huge liabilities (a loan of \$750,000 to the plaintiff and his debts of \$5.75m) under the Agreement which she could ill afford on her then monthly salary of \$5,999; she received no corresponding benefit in return.

40 Counsel for the plaintiff, on the other, hand submitted there could not have been any undue influence for the following reasons:

- (a) the defendant had never raised this defence prior to these proceedings bearing in mind she had been sued by the plaintiff previously in Suit No 175 of 2004 ("the first Suit");
- (b) in exchange for the discontinuance of the first Suit, the defendant paid the plaintiff the first instalment of \$62,500 on 18 March 2004;
- (c) the first instalment was paid after the defendant's purported notice of rescission dated 5 March 2004;
- (d) the defendant attempted to give a second notice of rescission on 7 June 2004, claiming the plaintiff had breached his undertakings in the Agreement.

Counsel argued that even if there was parental influence in the family arrangement or settlement, it

would not *per se* render the transaction voidable. One needed to look at all the facts and adopt a robust approach.

The decision

Undue influence

41 Granted, the defendant was only 22 years of age when she signed the Agreement and she signed it for altruistic reasons, *viz* to try and help her squabbling parents resolve their differences which, understandably, would have adversely affected her and her four siblings. However, that did not mean there was presumed undue influence on the part of the plaintiff in making her sign the Agreement, which was part of a family arrangement.

42 *Halsbury's Laws of England* vol 18 (Butterworths, 4th Ed, 1977) (at para 301) defines a family arrangement as:

an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour.

Halsbury's goes on to say (at para 304):

Family arrangements are governed by principles which are not applicable to dealings between strangers. When deciding the rights of parties under a family arrangement or a claim to upset such an arrangement, the court considers what in the broadest view of the matter is most in the interest of the family, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account. Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements. ...

Although usually and necessarily present where a family arrangement is made, parental influence will not by itself render the transaction voidable, but where, at a time when he is not fully emancipated from his parent's influence, a child enters into a family arrangement under which the parent benefits to the total exclusion of the child or benefits to an extent out of all proportion to the benefit accruing to the child, there is a presumption of undue influence. The presumption will be rebutted if it appears that, when the arrangement was entered into, the child was able to form a free and unfettered judgment independent of any sort of control.

43 In *Peh Nam Kee v Peh Lam Kong*, Judith Prakash J said (at 102, [107]):

A court faced with the issue of whether a particular family arrangement should be upheld or set aside has to be aware that family arrangements are very special creatures which have to be treated rather differently from the commercial transactions with which it is more often concerned.

The judge added (at 102–103, [108]–[109]):

... Adequacy of consideration is not usually an issue since in the nature of such an arrangement founded on sentiment rather than commerce, only part of the consideration is value, the other part being love and affection. ...

It is also not fatal to a family arrangement that a party to it is ignorant of the true state of his rights or is ignorant of the true nature of the arrangement as long as the transaction has been effected in good faith and the ignorant party has not been misled by anyone else and, in fact, has an intention which is not widely different from that expressed by the arrangement. It is also not essential to a family arrangement that the parties to it receive independent legal advice, though of course this is desirable in the interests of deflecting later challenges to the arrangement.

44 Bearing the above legal principles in mind and looking at the three deeds in their proper perspective, the family arrangement was beyond criticism. Indeed, if there was any undue influence exercised on the defendant (presumed or actual), it came from Ang, not the plaintiff. This can be seen from the alleged letter of comfort Ang wanted to give to the defendant before the Agreement was executed but which the plaintiff rejected. The wording of the letter (see [21] above) would have offered little comfort to either the defendant or the plaintiff as it was non-binding, as evidenced by the last sentence. The plaintiff probably thought, however, that having the defendant sign the Agreement was the next best thing to securing Ang's signature to the same. All three signatories to the three deeds must have understood that Ang was actually the party who was expected to honour the defendant's obligations under the Agreement *vis-à-vis* the loan to the plaintiff and the responsibility for his debts. Indeed, the defendant said as much in her first affidavit, where she deposed (in paras 10 and 11) that she borrowed the first instalment of \$62,500 from her mother and advanced it to the plaintiff and all was well until May 2004, when her mother could no longer afford the payments.

45 The defendant would not be in her present predicament had Ang continued to pay the instalments for the plaintiff's loan and had the Company been successfully floated by September/November 2004. The plaintiff's 10% shareholding in the Company would then have had a real commercial value.

46 The correspondence exhibited in the affidavits referred to earlier showed there could not have been any undue influence, actual or presumed. First, it was noteworthy that the defendant, through her solicitors, actually affirmed the Agreement by making payment of the first instalment due to the plaintiff on 18 March 2004. Second, whilst the defendant was not legally represented, she could have had access to legal advice. The exhibits to the affidavits included an e-mail from a solicitor in Chang See Hiang & Partners, solicitors for the Company, to the plaintiff's solicitors, stating that the defendant had spoken to the former and he was forwarding to the plaintiff's solicitors the amended Settlement Agreement and a draft of the Undertaking. The e-mail of 6 October 2003 was addressed to Alice Chong who was the Company's financial controller. The e-mail requested that the two documents be forwarded to Ang's solicitors and para 2 therein stated:

Please note that the documents have been amended/drafted solely in accordance with what has been told to me and, as we do not act for any of the parties named therein, the relevant parties are to seek advice from their respective counsel in relation thereto.

47 It was plain from the above e-mail that (a) the three parties were told to seek legal advice and (b) that the defendant had given instructions to the Company's lawyers on the Undertaking and the Settlement Deed. The defendant must surely have been aware of the implications of the documents and could have sought legal advice if she had wanted to. In truth, she did not because she was content to rely on and expected Ang, her mother, to perform the obligations under the Agreement on her behalf, on which Ang let her down.

48 The requirement at law is not that a party must seek legal advice before entering into a

transaction which he seeks to disavow but rather, that an opportunity was afforded to the party to seek independent legal advice. It is clear from their e-mail dated 6 October 2003 that the Company's solicitors specifically informed the defendant to consult her own legal counsel. It is no answer to the plaintiff's claim for the defendant to say that she did not heed the advice of the Company's counsel and failed to consult solicitors.

49 Counsel for the defendant acknowledged that there was no actual undue influence in this case. Certainly, the defendant had not furnished any facts or particulars to support such a defence. The defendant based her case entirely on presumed undue influence for which her own counsel acknowledged that the following conditions must be present:

- (a) the existence of a special relationship which enabled one party to it to influence the decision of the other; and
- (b) the resulting transaction was manifestly disadvantageous to the person subject to the influence.

50 The first condition was undoubtedly fulfilled due to the parent-daughter relationship between the plaintiff and the defendant. I was of the view, however, that the defendant had failed to satisfy the second condition. The Agreement could not be said to be manifestly disadvantageous to the defendant for reasons which are set out below.

51 It was incorrect for her counsel to submit that the defendant received no consideration in exchange for the onerous obligations she assumed under the Agreement. I should point out that the plaintiff transferred to her all his shares in five companies (see [14] above) in the Ghim Li group of companies. The plaintiff further paid the defendant and her siblings \$370,662.16 under the Settlement Deed. Both the Agreement and the Undertaking were stated in the Agreement to be supplemental to the Settlement Deed. The plaintiff's solicitors had also given notice that the plaintiff was willing to transfer to the defendant his beneficial interest in the G Trust shares (see [16] above). The plaintiff had, for all intents and purposes, therefore performed his part of the bargain and he expected the defendant to perform her part by paying him the instalments already due. It is not the function of the court, nor is it a requirement at law, to look into the adequacy of the consideration, if indeed the consideration was inadequate in the defendant's case. Coupled with the fact that the Agreement was part of a family arrangement, it could not be said that the terms therein were manifestly disadvantageous to the defendant.

52 Had the Company been listed, all would have been well. The defendant, like the plaintiff and Ang, would have benefited as a result. Under the terms of the Undertaking, she would continue to hold as trustee for Ang the 2,933,843 shares in the Company. The defendant benefited personally as she held the shares on trust for herself as well as for her siblings.

Intention to enter into legal relations

53 The alternative argument of counsel for the defendant was a non-starter. If the defendant contended (which she did) that the Agreement was wholly disadvantageous to her, it meant that she accepted that there was an agreement in force. She could not blow hot and cold at one and the same time and assert that she did not intend to enter into legal relations by the Agreement.

54 Her counsel had rightly conceded that the defendant's payment of the first instalment to the plaintiff of the loan of \$750,000 was an act affirming the Agreement. Therefore, she could no longer rely on the plaintiff's alleged antecedent breaches of the Agreement as a defence to his claim.

Consequently, it was unnecessary to consider whether the plaintiff was precluded by his breaches from enforcing his claim under the Agreement.

55 For the reasons given earlier, I was of the view that the defendant had not raised any genuine triable issues to warrant granting her unconditional leave to defend the plaintiff's claim. Even so, I gave her the benefit of the doubt and granted her conditional leave to defend the action, provided she furnished security equivalent to the plaintiff's claim.

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