Loh Sioh Hon (administratrix of the estate of Chiam Heok Yong, deceased) *v* Loh Siok Moey [2012] SGCA 14

Case Number	: Civil Appeal No 113 of 2011
Decision Date	: 14 February 2012
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; Andrew Phang Boon Leong JA
Counsel Name(s)	: Molly Lim SC, Hwa Loong Luan and Ang Hou Fu (Wong Tan & Molly Lim LLC) for the appellant; Lee Eng Beng SC, Wilson Zhu (Rajah & Tann LLP) and Basil Ong Kah Liang (PK Wong & Associates LLC) for the respondent.
Parties	: Loh Sioh Hon (administratrix of the estate of Chiam Heok Yong, deceased) — Loh Siok Moey

Contract – Interpretation

[LawNet Editorial Note: This was an appeal from the decision of the High Court in Registrar's Appeal No 166 of 2011.]

14 February 2012

Andrew Phang Boon Leong JA (delivering the grounds of decision of the court):

Introduction

1 This was an appeal against the decision of the trial judge ("the Judge") in Registrar's Appeal No 166 of 2011. [note: 1] At the conclusion of the hearing of the appeal, we allowed the appeal in part. We now provide the detailed grounds for our decision.

The background

2 At its core, this was an unfortunate family dispute. It concerned the distribution of proceeds arising out of the sale of 44/44A Siglap Drive ("the Property"), which was held by the late Chiam Heok Yeong ("the Deceased") and Loh Siok Moey ("the Respondent") as tenants-in-common. [note: 2]

The parties

3 The Respondent is a 72 year old retiree who previously worked as a hawker operating two stalls selling dry goods and provisions at Whampoa Market. She speaks only Mandarin and Teochew and is not conversant in English. She did not receive formal education and can neither read nor write. [note: 3] The Respondent is the aunt of the Deceased, and treated him like her own son. [note: 4]

4 The Deceased lived with the Respondent almost from birth. [note: 5] He was an accountant by training and ran his own business consultancy. [note: 6]

5 The Appellant is the mother of the Deceased [note: 7] and the sister of the Respondent. [note: 8] She is 78 years old. [note: 9] As the Deceased died intestate and a bachelor, the Appellant became

the administratrix and sole beneficiary of his estate. [note: 10]

The relevant events

6 In early 2002, the Respondent, through several cheques and cashier's orders, handed over a total of $370,000 to the Deceased. [note: 11] The *nature* and the *quantum* of this sum were heavily disputed, and were issues that had to be dealt with in this appeal (see below at [18]–[20]).

7 On 15 April 2005, the Respondent entered into a sale and purchase agreement with the Deceased ("the Sale and Purchase Agreement"), and paid $150,000 for a 40% share in the Property. [note: 12] The Sale and Purchase Agreement was signed by both the Deceased and the Respondent, and was witnessed by a solicitor.

8 On 18 April 2005, the Property was used to secure the grant of new banking facilities from OCBC Bank ("OCBC"). [note: 13] The facilities extended were as follows:

(a) Term Loan 1 for $240,000;

(b) Term Loan 2 for $10,000; and

(c) Overdraft facility of $150,000.

9 On 21 June 2006, the Deceased died.

10 In May 2011, there was a three day Inquiry hearing before the Assistant Registrar ("the AR"), who issued his grounds of decision on 18 May 2011. Parenthetically, just prior to the hearing, on 18 April 2011, the Respondent found a note which was signed by the Deceased ("the Note"). [note: 14] In the Note, the Deceased appeared to have set out arrangements pertaining to the sale of part of the Property to the Respondent. These arrangements covered payment price, as well as ancillary issues such as the handling of rental proceeds and payments toward the bank loans taken out for the Property. [note: 15] The full import of the Note will become clear when we discuss the decision below as well as our decision in the appeal (see below at [15] and [23]–[25]).

11 Over two days in July and August 2011, there were arguments and further arguments made before the Judge in chambers, who substantially overturned the AR's decision.

Decision below

12 In the Registrar's Appeal, the Judge held that: [note: 16]

(a) The Appellant was liable to account to the Respondent for $400,000, being the loan advanced by the Respondent to the Deceased in 2002. [note: 17] The AR, in contrast, had found that $370,000 was extended by the Respondent to the Deceased, which, along with the $150,000 paid later in 2005 by the Respondent, went towards the purchase of the 40% share in the Property; [note: 18]

(b) The Appellant was liable to account to the Respondent for payments made toward Term Loan 1 and the Overdraft facility; [note: 19]

(c) The Respondent was liable to account to the Appellant for payments made towards Term Loan 2; [note: 20]

(d) The Appellant was liable to account to the Respondent for 60% of the expenses paid by the Respondent in respect of the Property; [note: 21]

(e) The Respondent was entitled to retain 40% of the rentals she had collected but was liable to account to the Appellant for the remaining 60%. [note: 22]

13 In so far as items (b) to (e) set out in the preceding paragraph were concerned, the AR held that the Appellant and the Respondent were entitled to a global 60%-40% split in the rental income, expenses and liabilities on the bank facilities. [note: 23] The AR, in arriving at his decision, relied on his assessment of the Respondent's oral evidence during the Inquiry. [note: 24]

14 The Judge, in coming to his decision, took a contrary approach and made clear in his Notes of Evidence that: [note: 25]

> It is not safe to determine whether and what were the agreed arrangements between the [Respondent] and the Deceased, based only on [Respondent's] accounts based on her memory. Safer approach is to look at the documents and what they reveal to establish their legal relationship and rights and obligations once this is established, the legal incidents should be applied consistently across the board for title rights to rental and obligations for expenses.

15 In addition, he also expressly stated that the Note, a document which the AR had taken to be of "great evidentiary importance", [note: 26] was a document that reflected the unilateral intentions of the Deceased at the time, and which was of "no material bearing". [note: 27] He stated that the Note was "contradicted by the Sales & Purchase Agreement 2005 which sets out payment for the 40% tenancy in common". [note: 28] We pause to observe, more generally, that it would have been more helpful to this court if the Judge had set out the reasons for his decision in fuller detail. The crucial importance of the duty of the trial court to give reasons for its decision was emphasised by this court in *Thong Ah Fat v PP* [2011] SGCA 65; in particular, it was observed (at [22]) that:

> **...** the duty to give reasons ensures that the appellate court has the proper material to understand, and do justice to, the decisions taken at first instance: see *Coleman at 4*03. The appellate court should not "be left to speculate from collateral observations as to the reasoning upon which a critical decision is made, when the trial judge can and ought directly to reveal it": see *Wright v Australian Broadcasting Commission and Another* [1977] 1 NSWLR 697 at 701.

Fortunately, there was (albeit just barely) sufficient detail in the Judge's brief reasons to enable this court to assess his decision in light of the arguments presented by the respective parties in the context of the present appeal.

Our decision

16 We did not disturb the Judge's decision (at [12(b)] and [12(c)] above) to the effect that the loan facilities extended by OCBC to the Respondent and Deceased were to be borne by the Respondent and the Deceased's Estate in the following manner: the Appellant was to bear payments relating to Term Loan 1 and the Overdraft facility, and the Respondent was to bear payments relating to Term Loan 2. This arrangement was clearly demonstrated in the documents setting out the bank

facilities.

17 However, we allowed the appeal with regard to three specific areas and it is to these areas that our attention now turns.

The loan

18 From January to March 2002, the Deceased received cheques and cashier's orders totalling $370,000 (see also above at [6]). The Respondent contended that, in addition to this sum, there was cash totalling a sum of $30,000 given to the Deceased at about the same time. [note: 29] The Respondent argued that this $400,000 was a loan advanced by the Respondent to the Deceased. [note: 30] The Judge accepted the argument and decided that the Appellant was liable to account to the Respondent for $400,000 for the loan advanced by the Respondent to the Deceased in 2002. [note: 31]

19 We agreed with the Judge that the *nature* of the sums extended in 2002 was that of a loan. Although the Appellant sought to rely on the Note in order to argue that these sums were paid towards the purchase of the 40% share in the Property instead, the Note was (contrary to the view of the AR (see also above at [15])) ambiguous at best in so far as proof of the *nature* of the sums extended in 2002 was concerned.

20 However, we were also urged by the Appellant that, in any event, there was *no cash* sum of $30,000 that was provided by the Respondent to the Deceased. [note: 32] Having had sight of the available evidence, we allowed the appeal against the Judge's decision regarding *quantum*. In our view, the objective evidence (*viz*, the cheques and cashier's orders) demonstrated that the Respondent had extended $370,000 to the Deceased. We also observed that the Note also referred to the payment by the Respondent to the Deceased of this precise amount as well. Further, there was no objective evidence that proved that the Respondent had in fact extended $30,000 in *cash* to the Deceased.

The set off

21 Clause 1 of the Sale and Purchase Agreement states as follows: [note: 33]

> The Vendor shall sell all that 40% share of his rights, title, estate and interest of and in the Property at the price of Singapore Dollars Three Hundred and Forty Thousand only (S$340,000.00) whereof a sum amounting to Singapore Dollars One Hundred and Ninety Thousand Only (S$190,000.00) (hereinafter called "the Deposit") has been paid by the Purchaser to the Vendor on or before the signing of this Agreement as the Vendor acknowledges.

22 This would – in and of itself – have been an unproblematic clause. However, the peculiar facts in this case made the interpretation of the clause less straightforward than would have been thought at first blush. The Respondent, by her own admission, never paid the $190,000 deposit. [note: 34] This evidence clearly contradicted the contents of Clause 1 itself.

23 We took the view that the Sale and Purchase Agreement and the Respondent's evidence could, in fact, be reconciled in the following manner. We noted that Clause 1 of the preamble of the Note states: [note: 35]

> Ms Loh Siok Moey, NRIC No [xxx], had paid S$370,000 towards the purchase of a property

at 44/44A Siglap Drive, Singapore 456312 and will settle another S$150,000 towards repayment of the bank loan from OCBC Bank.

24 From this, we were of the view that the Deceased, in 2004 (when the note was written), had *unilaterally intended* that the $370,000 loan become part of the payment for the Respondent's share of the Property. The Note, we emphasise, was taken by us to be proof of the Deceased's *intention* regarding the $370,000 in 2004. It is important to note that this is not contrary to our finding that the Note was ambiguous in so far as proof of the *nature* of the sums extended in 2002 was concerned (*viz*, whether the sum was a loan or a part payment (see [19] above)). In other words, while the Note was not particularly helpful with regard to shedding light as to whether the $370,000 was a loan or a part payment when it was extended in 2002, it remained useful in revealing the particular *intention* of the Deceased in 2004 to convert the nature of the $370,000 from loan to part payment.

25 With that in mind, we note that, subsequently, in 2005, the Deceased entered into the Sale and Purchase Agreement with the Respondent on terms that were slightly different from the terms that the Deceased intended in 2004. By this time, the part payment that the Deceased required from the Respondent had become $190,000 instead of $370,000. In light of all the transactions that took place between 2002 and 2005, as well as having considered the documentary evidence comprising the Sale and Purchase Agreement and the Note, we were of the view that the Deceased had set off the $190,000 deposit from the $370,000 loan advanced to him by the Respondent. He therefore considered the deposit as having been paid by the Respondent and reflected this in Clause 1 of the Sale and Purchase Agreement (reproduced above at [21]). On the Respondent's part, while it was true that she never physically paid over the $190,000 deposit, she essentially did so by agreeing to the terms in the Sale and Purchase Agreement. The arrangement in the Sale and Purchase Agreement, of course, was that she *had* paid the deposit from the $370,000 loan and only had to pay a further $150,000 for the 40% share of the Property. This was how the Sale and Purchase Agreement and the Respondent's evidence could be reconciled. Accordingly, we allowed the appeal to the extent that the Estate was liable to account to the Respondent for the amount of $180,000, which represented the remainder of the loan advanced by the Respondent to the Deceased in 2002 (*viz*, $370,000 less $190,000).

The rentals collected

26 The Appellant contended before us that it was the Respondent's case before the Judge that rentals were to be collected by the Deceased. [note: 36] The Respondent did not dispute that it was her case before the Judge that she had an agreement with the Deceased to allow him to retain all the rentals. [note: 37]

27 Accordingly, we ordered the Respondent to account to the Appellant for all the rentals collected in respect of the premises since the Deceased passed away, subject to such deduction for expenses incurred by the Respondent to maintain the premises.

Costs

28 In the circumstances, we ordered each party to bear their own costs for the proceedings before the Assistant Registrar and before the Judge. In relation to this appeal, the Respondent was ordered to bear one-third of the Appellant's costs. The usual consequential orders were also to apply.

[note: 1] Appellant's Core Bundle vol 1 ("1ACB") at p 10.

[note: 2] Appellant's Case ("AC") at para 3.

[note: 3] Respondent's Case ("RC") at para 2.

[note: 4] *Ibid* at para 6.

[note: 5] *Ibid* at para 5.

[note: 6] *Ibid* at para 6.

[note: 7] *Ibid* at para 4.

[note: 8] *Ibid* at para 1.

[note: 9] *Ibid* at para 4.

[note: 10] *Ibid* at para 7.

[note: 11] AC at para 19(b), (d) and (e).

[note: 12] *Ibid* at para 26.

[note: 13] RC at para 38.

[note: 14] Appellant's Record of Appeal ("ROA") vol 3E at p 76, line 29.

[note: 15] Appellant's Core Bundle vol 2 ("2ACB") at p 85.

[note: 16] 1ACB at p 11.

[note: 17] *Ibid* at p 11 (see Order 1).

[note: 18] 2ACB at p 31, line 7.

[note: 19] 1ACB at p 11 (see Order 2).

[note: 20] *Ibid* at pp 11–12 (see Order 4).

[note: 21] *Ibid* at p 11 (see Order 3).

[note: 22] *Ibid* at p 12 (see Order 5).

[note: 23] RC at para 54.

[note: 24] 2ACB at p 29.

[note: 25] 2ACB at p 17.

[note: 26] 2ACB at p 30.

[note: 27] *Ibid* at p 9.

[note: 28] *Ibid*.

[note: 29] RC at para 20(e).

[note: 30] *Ibid* at paras 77–95.

[note: 31] ROA vol 1 at p 11 (see Order 1).

[note: 32] AC at paras 59–70.

[note: 33] 2ACB at p 92.

[note: 34] ROA vol 3E at pp 110–111.

[note: 35] 2ACB at p 85.

[note: 36] AC at p 57.

[note: 37] RC at para 110.