

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 89

HC/Originating Summons No 113 of 2019

In the matter of Order 15, Rule 16 of the Rules of Court
(Cap 322, 2014 Rev Ed)

And

In the matter of Order 17, Rule 1 of the Rules of Court
(Cap 322, 2014 Rev Ed)

And

In the matter of Sections 37, 132 & 134 of the Land Titles Act
(Cap 157, 2004 Rev Ed)

Between

Peter Low & Choo LLC

...Applicant

And

1. Singapore Air Charter Pte Ltd
2. Malayan Banking Berhad

...Respondents

JUDGMENT

[Land] — [Writ of Seizure and Sale] — [Priorities]
[Land] — [Land Titles Act]

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Peter Low & Choo LLC
v
Singapore Air Charter Pte Ltd and another

[2019] SGHC 89

High Court — HC/Oriinating Summons No 113 of 2019
Choo Han Teck J
28 February 2019

2 April 2019

Judgment reserved

Choo Han Teck J:

1 The applicant is a law firm and a judgment creditor of Danial Patrick Higgins (“DP”). DP owes the applicant \$420,072.37 on a judgment dated 16 March 2018. The first respondent is another judgment creditor of DP. DP owes the first respondent \$533,540.90 on a judgment dated 26 September 2016.

2 The second respondent was a secured creditor of DP and sold the property mortgaged to it (“the Property”). The sale was completed on 13 December 2018. The second respondent then notified the applicant and the first respondent that the surplus sale proceeds of \$745,471.64 (“the Surplus Proceeds”) had been handed to the Sheriff since the Property is in the joint names of DP and his wife.

3 The applicant and the first respondent have competing claims under their respective writs of seizure and sale (“WSS”). The chronology of events is as follows:

(a) The first respondent registered its order of court for attachment and execution of the Property (“A&E Order”) on 19 April 2017 and the first respondent’s WSS 21/2017 (“WSS 21”) was filed on the same date;

(b) On 9 April 2018, the first respondent obtained an order of court to extend WSS 21 for a further 12 months to 17 April 2019 (“the Extension Order”). The first respondent applied to the Registrar of Titles (“the Registrar”) to register the Extension Order, but it was rejected by the Registrar on 10 April 2018;

(c) On 11 April 2018, the applicant registered its A&E Order and was issued WSS 18/2018 (“WSS 18”). The applicant attempted to register WSS 18 on 24 April 2018, but the Registrar rejected this application on the basis that registration was unnecessary since the applicant had already registered its A&E Order. On this same date, the first respondent applied for a second time to register the Extension Order;

(d) On 30 July 2018, the Registrar rejected the registration of the Extension Order. The first respondent then applied for a third time to register the Extension Order on 31 July 2018;

(e) The Property was sold on 13 December 2018;

(f) On 19 December 2018, the first respondent’s Extension Order was registered and WSS 21 was extended from 18 April 2018 to 17 April 2019; and

(g) On 4 January 2019, the Registrar cancelled WSS 21.

4 The Sheriff informed the applicant on 11 January 2019 that in the light of the competing claims, the Surplus Proceeds will only be paid out pursuant to an order of court. The applicant then applied under this Originating Summons on 23 January 2019 for a declaration that it is entitled to DP’s interest in the Surplus Proceeds in priority over the first respondent.

5 The relevant provisions under the Land Titles Act (Cap 157, 2004 Rev Ed) (“LTA”) and O 47 r 4(1)(a) of the Rules of Court (Cap 322, 2014 Rev Ed) (“ROC”) are as follows:

Land Titles Act (Cap 157, 2004 Rev Ed):

Registration and priority of instruments

37(5) When instruments affecting the same estate or interest in any land have been registered, they shall, notwithstanding any express, implied or constructive notice, be entitled to priority according to the order in which they are registered and not according to the date of the respective instruments.

...

Priority determined by order of registration

48(1) Except as provided in subsection (2) and section 27(6), interests appearing in the land-register shall have priority according to the order of their registration or notification, irrespective of the dates of the instruments by which those interests were created or are evidenced.

...

Writs and orders not binding unless registered

132(1) A writ of execution, or an order of court directing, appointing or empowering some person other than the proprietor to sell or otherwise to deal with or dispose of registered land, shall not bind or affect such land until particulars of the writ or order have been entered in the land-register.

...

Lapsing of writs

134(1) Registration of a writ shall lapse, and the power of the Sheriff to execute registrable instruments pursuant thereto shall be extinguished, at the expiration of one year from the date of the registration of the writ, and the land thereupon shall cease to be bound thereby.

...

Withdrawal and satisfaction of writs and orders

136(1) A writ or order of court may be withdrawn by the judgment creditor or other person for whose benefit it was issued, and the Registrar shall, upon receipt of an application made in the approved form, cancel the registration of that writ or order of court.

Rules of Court (Cap 322, 2014 Rev Ed):

Immovable property (O. 47, r. 4)

4(1)(a) ... seizure shall be effected by registering under any written law relating to the immovable property an order of Court in Form 96 ... attaching the interest of the judgment debtor in the immovable property described therein and, upon registration, such interest shall be deemed to be seized by the Sheriff[.]

6 Counsel for the applicant, Mr Choo Zheng Xi, submitted that priority of third parties' interest in the Surplus Proceeds should be determined on 13 December 2018, the date the Property was sold in accordance with the order of registration pursuant to ss 37(5) and 48(1) of the LTA. Mr Choo submitted that as the first respondent's WSS 21 expired on 18 April 2018, the only registered instrument binding the Property at 13 December 2018, was the applicant's WSS 18, and therefore, the applicant is entitled to the Surplus Proceeds in priority over the first respondent. Further, Mr Choo argued that the registration of the Extension Order did not affect the applicant's entitlement to the Surplus Proceeds since it was registered only after the Property was sold.

7 It cannot be disputed that the second respondent, having sold the Property was obliged to pay out the Surplus Proceeds and this obligation arose on 13 December 2018 on the completion of the sale. The question then was, what was the first respondent’s basis to challenge the applicant’s rights?

8 Counsel for the first respondent, Mr Salem Ibrahim, submitted that an A&E Order and a WSS are distinct under the LTA. Mr Ibrahim argued that an A&E Order, once registered, will never expire until the judgment creditor effects withdrawal pursuant to s 136(1) of the LTA, since a reference to “writ” under s 134(1) of the LTA does not include an A&E Order. Mr Ibrahim submitted that the first respondent’s earlier registration of its A&E Order on 19 April 2017 gave it priority over the applicant’s registration of its A&E Order on 11 April 2018.

9 It is incontrovertible that an A&E Order and a WSS are two distinct and separate documents. Order 47 r 4 of the ROC makes it clear that a WSS (in Form 83) is to be filed after an A&E Order (in Form 96) is registered with the Registrar (see *Peter Low LLC v Higgins, Danial Patrick* [2018] SGHC 59 (“*Peter Low*”) at [58]). However, contrary to Mr Ibrahim’s submission, an A&E Order falls within the definition of “writ” under Part XIII of the LTA, and will expire one year from its date of registration.

10 First, s 131 of the LTA defines a “writ” to mean “a writ of execution issued out of any court having jurisdiction to levy execution against land...”. An A&E Order is a “writ of execution” since the seizure of the judgment debtor’s interest occurs once an A&E Order is registered pursuant to O 47 r 4(1)(a) of the ROC and s 132(1) of the LTA (see *Peter Low* at [62]). This registration is an essential prerequisite to bind or affect the Property (see *United Overseas Bank Ltd v Chia Kin Tuck* [2006] 3 SLR(R) 322 at [12]). The

subsequent issuance and filing of a WSS by the parties merely directs the Sheriff to serve the WSS together with the A&E Order on the judgment debtor, and if necessary, directs the Sheriff to sell the interest of the judgment debtor to satisfy the judgment debt. Therefore, once the first respondent and the applicant registered their A&E Order on 19 April 2017 and 11 April 2018 respectively, DP's interest in the Property would have been seized by the respective parties. This will be, and is reflected in the land-register.

11 Secondly, the High Court in *Chan Shwe Ching v Leong Lai Yee* [2015] 5 SLR 295 at [26] held that an A&E Order pursuant to O 47 r 4(1)(a) of the ROC is the same document as the “writ of seizure and sale” referred to in s 105(2)(c) of the Bankruptcy Act (Cap 20, 2009 Rev Ed), since the crucial point in time, is the time in which the seizure of the judgment debtor's interest occurred. Similarly, since DP's interest in the Property was seized on the date of the registration of an A&E Order, an A&E Order is a “writ of execution” and falls within the definition of a “writ” under Part XIII of the LTA. Consequently, pursuant to s 134(1) of the LTA, an A&E Order will expire one year from its date of registration, and a WSS issued pursuant to the registration of the A&E Order will expire on this same date.

12 Priority of third parties' interest in relation to the Surplus Proceeds should be determined with reference to the date at which the Property was sold. The first respondent and the applicant registered their A&E Orders on 19 April 2017 and 11 April 2018, and was issued WSS 21 and WSS 18 respectively. The first respondent's WSS 21 lapsed on 18 April 2018. The first respondent made three attempts to extend the validity of WSS 21, but only managed to so on 19 December 2018, six days after the Property was sold. When the Property was sold on 13 December 2018, the only registered instrument binding the Property was the applicant's WSS 18. Therefore, pursuant to ss 37(5) and 48(1) of the

LTA, the applicant is entitled to DP's interest in the Surplus Proceeds in priority over the first respondent.

13 If the first respondent believed that the Singapore Land Authority ("SLA") should have registered the Extension Order much sooner to preserve its priority to the Surplus Proceeds, the SLA should have been joined as a party to these proceedings. Mr Ibrahim attempted to do so only after the hearing and by way of letter dated 28 February 2019. That application was made too late for me to grant this request. I therefore make no pronouncements as to the rights if any that the first respondent may have as against the SLA.

14 For the reasons above, I declare that the applicant is entitled to DP's interest in the Surplus Proceeds from the sale of the Property in priority over the first respondent. I will hear arguments on costs at a later date.

- Sgd -
Choo Han Teck
Judge

Choo Zheng Xi, Elaine Low Ying Ning and Wong Thai Yong (Peter Low & Choo LLC) for the applicant;
Salem Bin Mohamed Ibrahim and Kulvinder Kaur (Salem Ibrahim LLC) for the first respondent;
Ng Yeow Khoon and Claudia Marianne Frankie Khoo (Shook Lin & Bok LLP) for the second respondent.
