

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 175

Suit No 258 of 2018

(Registrar's Appeal No 174 of 2018 and Summons No 3201 of 2018)

Between

Ong Keh Choo

... Plaintiff

And

(1) Paul Huntington Bernardo

(2) Tran Hong Hanh

... Defendants

AND

Between

(1) Paul Huntington Bernardo

(2) Tran Hong Hanh

...Plaintiffs-in-Counterclaim

And

Ong Keh Choo

...Defendant-in-Counterclaim

GROUND OF DECISION

[Civil Procedure] — [Summary judgment]

[Bills of Exchange And Other Negotiable Instruments] — [Legal proceedings]

— [Summary judgment]

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Ong Keh Choo
v
Paul Huntington Bernardo and another

[2018] SGHC 175

High Court — Suit No 258 of 2018 (Registrar's Appeal No 174 of 2018 and Summons No 3201 of 2018)

Choo Han Teck J

30 July 2018

31 July 2018.

Choo Han Teck J:

1 The plaintiff Ong Keh Choo (“Ong”) is a real estate agent. Paul Huntington Bernardo (“Bernardo”) and Tran Hong Hanh (“Tran”), the defendants, are husband and wife.

2 On 6 October 2017 Tran contacted Ong regarding an advertisement for the sale of a flat at 8 Balmoral Road, and they arranged to see the flat the next day at 11.30am. Nothing transpired at that meeting which lasted 20 minutes.

3 A few hours later, at 2pm, Ong met Tran at Tran's home and asked Tran to write out a cheque for \$3.16m just so that Ong could show it to the owner indicating that Tran was a serious buyer. This was done and when the cheque was handed over to Ong, no option-to-purchase was given in exchange. At that time, Ong had not told the defendants that she was, in fact, the owner.

4 At 7pm, Ong and one Judi Lee handed the option to Tran. Tran filled in the parts that required her particulars. She was also asked to sign on a mistake on the option to acknowledge that the mistake had been made and corrected.

5 After Ong and Judi Lee left, Tran consulted a lawyer who advised Tran that it was not typical for a vendor to ask for 10% of the sale price as the option fee. The practice is for the payment of 1% of the sale price in exchange for the option. Tran was also advised that another term in this option was unusual, namely, that the full purchase price was to be paid directly to the vendor upon the exercise of the option.

6 Tran transmitted her lawyer's advice to Ong and asked for an explanation. Ong replied blaming the term on Judi Lee and said that "the consideration [will be] another 10% when [you] exercise [the] option".

7 Tran and Bernardo only found out that Ong was the owner on the next day when they made searches on the property. Tran called Ong and said that she was not happy with Ong's non-disclosure and that she would not want to buy the flat. She asked for the cheque to be returned, and at the same time, she countermanded the cheque.

8 Thereafter, series of communication by WhatsApp and SMS ensued between Tran and Ong. Mr Sreenivasan SC, counsel for the defendants, said that the transcript will show that there was no contract between the parties, and if there was, it was induced by Ong's fraud. Mr Lee, counsel for the plaintiff, argued that the same transcript will show that the parties had concluded a contract and that there was no defence to Ong's suit against the defendants for a dishonoured cheque.

9 Ordinarily a person who signs a cheque is bound to honour it as a bill of exchange. There are a few exceptions in which she might legitimately countermand the cheque. One is fraud and another is the failure of consideration for the cheque.

10 There is a fine but appreciable difference between the right to sue on the cheque and the right to obtain summary judgment on it. Ong had to persuade the court that the two defences were so palpably weak that they cannot withstand scrutiny at the summary judgment proceedings, which requires that the defendants show a plausible defence that entitles them to run it through the rigours of the trial. The defendants may fail at trial, but here, at the summary judgment proceedings, the court need only be satisfied that there is a plausible and coherent defence. The undisputed facts and the documents indicate a need for further inquiry.

11 Even pleading fraud is not enough to stave off a summary judgment if the claim of fraud seems on its face and in the circumstances too dubious. In those circumstances, the court may still allow judgment in full or order conditional leave to defend.

12 In the present case, Mr Sreenivasan SC drew my attention to the peculiar conduct of Ong and Judi Lee. It may be that, in the end, no fraud could be linked to those complaints, but what is more obvious is that a full inquiry at trial is needed to determine whether the cheque was given in consideration of the option. It is not disputed that there was no exchange taking place at the same time, but Mr Lee submitted that the option that was given subsequently that evening stated that it was given in consideration of the cheque. Perhaps that would be sufficient; perhaps not.

13 Both Mr Sreenivasan SC and Mr Lee made lengthy submissions as to whether the conduct of the parties shows that the cheque was given to Ong in fact and in law, and I was invited to peruse the exchange of communication by WhatsApp and SMS. I had done so but as this is not the trial, I will not express my views on them save that on the whole, the defendants ought to have the opportunity to take the case to trial. Under these circumstances, the appeal is allowed and the defendants are given unconditional leave to defend.

14 Costs here and below to be costs in the cause. Summons No 3201 of 2018 is dismissed with costs reserved to trial judge.

- Sgd -
Choo Han Teck
Judge

Edwin Lee Peng Khoon and Rachael Chong Rae-Hua (Eldan Law
LLP) for the plaintiff;
Narayanan Sreenivasan SC, Claire Tan Kai Ning and Partheban s/o
Pandiyani (Straits Law Practice LLC) for the defendants.
