IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1992] SGHC 268

Suit No 1487 of 1987

Between

Peng Ann Realty Pte Ltd

… *Plaintiff*

And

Liu Cho Chit
Tan Geok Tee
Yip Ho Meng
Lee Tat Development Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Version No 1: 11 Sep 2026 (01:05 hrs)

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Peng Ann Realty Pte Ltd v Liu Cho Chit and Others

[1992] SGHC 268

Suit No 1487 of 1987
Goh Joon Seng J
14 October 1992

1 **Judgment:**

2 Coram: The Honourable Justice GOH JOON SENG

3 **GROUNDS OF DECISION**

4 The plaintiffs were incorporated in Singapore on 14 June 1972. The first defendant was one of the original directors. He was also the Managing Director at all material times. It is alleged by the plaintiffs that while acting as Managing Director the first defendant was `the controlling mind' of the plaintiffs.

5 A company formerly known as Collin Investment Pte Ltd (`CIP') now known as Lee Kai Investment Pte Ltd was incorporated on 14 August 1972 with the second defendant's wife one Ching Mun Fong and his daughter Collin Tan as directors. Although the second defendant only became a director of CIP in or about August 1973, it is alleged by the plaintiffs that at all material times the second defendant was `the controlling mind' of CIP.

6 The third defendant was one of the original directors of the plaintiffs.

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7 The fourth defendants formerly known as Collin Development Pte Ltd was incorporated on 1 February 1973. The second defendant was a director of the fourth defendants and allegedly in effective control of the fourth defendants.

8 In or about October 1972 the plaintiffs purchased from the estate of Tan Chwee Boon deceased Lots 4-4, 4-7, 21-26, 120, 121, 122, 123 and 221 of Mukim 28 for $1,090,000.

9 On 23 January 1973 the plaintiffs entered into an agreement with CIP for the sale of Lots 4-7 (19A-1R-6P), 21-26 (156A- 2R-20P) and 123 (2A-3R-11P) of Mukim 28 for $2,050,000. On the sameday CIP entered into an agreement with one Lim Siam Soi and Collin Tan for the sale to them of part of Lot 21-26 with an approximate area of 5 acres at the price of $50,000 (`the sub-sale agreement'). Lim Siam Soi is the wife of the first defendant. The second defendant signed the sub-sale agreement on behalf of CIP and also on behalf of Collin Tan. The first defendant signed on behalf of his wife.

10 As no subdivisional approval for the excision of the 5 acres had been obtained, on completion of the sale and purchase by the plaintiffs to CIP of Lots 4-7, 21-26 and 123, these parcels of land on the direction of CIP were conveyed to the fourth defendants. The 5 acres with a strip of land of about 4,000 sq ft subsequently became and the same is now comprised in Lot 1606 of Mukim 28 following a title survey.

11 It transpired that all the three parcels of land except for the land that became Lot 1606 were compulsorily acquired by the Government in or about July 1976. The amount of compensation for the acquisition was $2,500,000.

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12 The plaintiffs said that they became aware of the sub-sale agreement after the first and second defendants fell out with each other and Lim Siam Soi commenced proceedings in Suit 4149 of 1984 against the second and fourth defendants, Lee Kai Investment Pte Ltd and Collin Tan. In that suit, the sub-sale agreement was disclosed. It was alleged therein by Lim Siam Soi that by an oral agreement in April 1981 entered into by the second defendant either on his own or on behalf of the fourth defendants, the second defendant agreed to buy over her one half share in Lot 1606 for $3,800,000.

13 It is the plaintiffs' case that at all material times the first and second defendants were aware that the 5 acres that became Lot 1606 would not be compulsorily acquired. With such knowledge the first defendant, with the knowledge of the third defendant and on behalf of the plaintiffs conspired to sell and the second defendant on behalf of CIP conspired to purchase the 3 parcels with a total area of approximately 178 acres at an inordinately low price of $2,050,000.

14 Accordingly, the plaintiffs commenced these proceedings against the defendants on 25 May 1987 claiming damages for conspiracy, breach of trust and breach of fiduciary duty and for an order that Lot 1606 be reconveyed to the plaintiffs.

15 By further notice under summons for direction filed on 3 March 1990 the first and third defendants applied for security for costs. The application came up for hearing before the learned assistant registrar on 12 March 1992. The plaintiffs were ordered to provide security for costs in the sum of $50,000 in favour of the first and third defendants and a similar amount in favour of the second and fourth defendants.

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16 The plaintiffs appealed. The appeal came before me. I allowed the appeal with costs reserved to the trial judge. The second and fourth defendants then appealed against my order. I now give my reasons.

17 The application for security for costs was made under s 388 of the Companies Act (Cap 50). S 388 reads:

18 (1) Where a corporation is plaintiff in any action or legal proceeding the Court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs and stay all proceedings until the security is given.

19 (2) ... .

20 Counsel for the plaintiffs conceded that the plaintiffs are `strapped for cash'. But counsel contended that the plaintiffs' financial position is due to the fraud or breach of fiduciary duty on the part of the first and third defendants as directors of the plaintiffs. For instance the audited accounts of the plaintiffs for the year ended 30 June 1978 show debts totalling $965,549.14 due from several debtors. The debts were loans made in 1973 by the plaintiffs to the several debtors during the directorship of the first and third defendants for their own benefit. They resigned as directors of the plaintiffs on 3 March 1978. Included in these debts is the loan of $757,258.14 to Hoe Huat Realty Pte Ltd in 1973 with interest at 1% per month. The first and third defendants were the shareholders and directors of Hoe Huat Realty Pte Ltd at the material time. The interest was then waived. There was another interest free loan for $18,500 to Sunshine Realty Pte Ltd. The first and third defendants were directors and shareholders of Sunshine Realty Pte Ltd. There was yet another interest free

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loan of $180,000 according to a Board resolution to one Peng Gin Kwei. But the vouchers stated that the payment was for commission. All the loans have not been repaid and are now statute barred. It is also contended that in further breach of fiduciary duty by the first and third defendants in conspiracy with the second defendant and his daughter, Collin Tan, the 3 parcels of land were sold at an inordinately low price with the first defendant through his wife Lim Siam Soi and the second defendant through his daughter Collin Tan retaining by the secret sub-sale agreement the 5 acres knowing that these 5 acres would not be compulsorily acquired.

21 S 388(1) is in pari materia with s 726(1) of the (English) Companies Act, 1985. Under it, the court has discretion to order security for costs. The principles on which this discretion ought to be exercised is set out in Supreme Court Practice 1993 Vol 1 page 426 para 23/1-3/14 which states:

22 The Court has a discretion under s 726(1) of the Companies Act 1985, just as under r 1, whether to order security for costs having regard to all the circumstances of the case (Sir Lindsay Parkinson & Co Ltd v Triplan Ltd < 1973 > Q.B. 609 < 1973>2 All E.R. 273 C.A.). Among the circumstances which the Court might take into account are the following (1) whether the plaintiff's claim is bona fide and not a sham; (2) whether the plaintiff has a reasonably good prospect of success; (3) whether there is an admission by the defendants on the pleadings or elsewhere that money is due; (4) whether there is a substantial payment into Court or an `open offer' of a substantial amount; (5) whether the application for security was being used oppressively, e.g. so as to stifle a genuine claim; (6) whether the plaintiff's want of means has been brought about by any conduct by the defendants, such as delay in payment or in doing their part of the work; (7) whether the application for security is made at a late stage of the proceedings (ibid per Lord Denning M.R.). ... ... and while the Court must

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not allow s 726(1) to be used as an instrument of oppression, it must equally not allow an impecunious company to put unfair pressure on a prosperous company (Pearson v Naydler < 1977 > 1 W.L.R. 899; < 1977 >3 All E.R. 531). Where an order for security for costs against a plaintiff company might result in oppression in that the plaintiff company would be forced to abandon a claim which has a reasonable prospect of success, the Court is entitled to refuse to make that order, notwithstanding that the plaintiff company, if unsuccessful, will be unable to pay the defendant's costs (Aquila Design (GRB) Products Ltd v Cornhill Insurance plc < 1988 > BCLC 134 C.A.). In this respect it is sufficient for the plaintiff to show that there is a probability that it will be unable to pursue the action if the order is granted; it need not show with certainty that it will be unable to do so (Trident International Freight Services Ltd v Manchester Ship Canal Co < 1990 > BCLC 263 C.A.).

23 I am satisfied that the plaintiffs' claim is bona fide and not a sham. I am also satisfied that the application for security for costs is being used oppressively to stifle a bona fide claim which is not without reasonable prospects of success. If security is ordered, the plaintiffs will be unable to pursue the action. The plaintiffs' financial position is also allegedly due to the conduct of the defendants complained of. Accordingly I allowed the appeal.

Goh Joon Seng J

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H E Cashin (with R Karuppan Chettiar) for the plaintiffs
Woo Tchi Chu for the First and Third defendants
Jimmy Yap for the Second and Fourth defendants

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