Chee Jok Heng Stephanie *v* Tan Kian Meng William
[2010] SGHC 208

Case Number : Suit No 595 of 2009

Decision Date : 23 July 2010

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Andrew J Hanam (Andrew LLC) for plaintiff; Jimmy Yim Wing Kuen, S.C., Darrell Low Kim Boon and Teo Kai Xiang (Drew & Napier LLC) for defendant.

Parties : Chee Jok Heng Stephanie — Tan Kian Meng William

Restitution – money had and received

Trusts – resulting trust

23 July 2010 Judgment reserved.

Tay Yong Kwang J:

Introduction

1 At the conclusion of the trial of this action, counsel for both parties requested time for written submissions to be exchanged after the notes of evidence from the Digital Transcription System were ready. The written submissions from both parties have since been exchanged. The last set of submissions (the plaintiff's reply) was received by the court on 14 June 2010.

2 This case involves essentially two issues:

(a) The first issue is an action for the recovery of money paid over a period of 6 years. Ms Stephanie Chee ("the plaintiff"), claims that she lent more than $259,000 to the defendant, Mr William Tan ("the defendant"), out of goodwill, on the understanding that the money would be repaid once he finished his studies. The defendant, on the other hand, claims that the money was given to him as "love gifts" during the course of their relationship and there was never any expectation that they were to be repaid.

(b) The second issue is in relation to two properties purchased by the plaintiff in her name but financed partly by contributions from the defendant. The two properties were sold before the commencement of this action. There is a dispute between the parties as to how the profits and losses from these two properties are to be apportioned between them. In particular, the plaintiff is claiming an indemnity from the defendant in respect of one property that resulted in a net loss, while the defendant, apart from resisting that claim, has put forth a counterclaim in respect of profits earned from the sale of the other property. The resolution of this dispute depends entirely on the terms in the investment agreement between the parties. Unfortunately, there is little documentary evidence relating to this agreement and much turns on the credibility of the parties, who advanced contradictory stories of how they had originally agreed to apportion the losses and profits from these two properties.

Facts

3 The plaintiff and the defendant were introduced to each other in 1999. At that time, the plaintiff, a single mother of three daughters, was holding the position of General Manager of Parkway Healthcare Foundation ("Parkway"). Parkway is a registered charity in Singapore.

4 The defendant is a wheelchair-bound paralympian who has taken part in various marathons and races. He was involved in a number of charity projects and is rather well known in Singapore. At the material time, the defendant was a neuroscientist and a third year medical student at the University of Newcastle in Australia.

5 The plaintiff and the defendant had originally met up in order to discuss the circumstances under which the defendant could contribute to Parkway's fund raising projects. However, they soon became close personal friends as well. Throughout the course of their relationship, the plaintiff made certain payments on behalf of the defendant in respect of various expenses which the defendant had incurred. These included the defendant's car insurance, road tax as well as premiums on his life insurance. Apart from paying the defendant's expenses on his behalf, the plaintiff also made direct payments to the defendant. This was done by way of monthly bank transfers from the plaintiff to the defendant's bank account, as well as through a supplementary credit card which the plaintiff had given to the defendant.

6 The payments from the plaintiff to the defendant (as well as payments made on his behalf) continued all the way until the end of 2005. On 22 January 2008, the plaintiff instructed her lawyers, Colin Ng and Partners, to send a letter of demand to the defendant for repayment of a sum of $433,383.18. The defendant's reply to this letter was to the effect that he did not know the basis upon which the plaintiff was making this demand. No repayment was ever made by the defendant to the plaintiff.

First issue: Recovery of money paid to or on behalf of the defendant

Money paid by the plaintiff to the defendant

7 The plaintiff claims that she disbursed the following amounts by way of loans to the defendant over a period of 6 years from 2000 to 2005. The details regarding these payments are set out below:

Insurance for defendant's modified car

Year	Amount
2000	$544.52
2001	$1,031.93
2002	$701.51
2003	$757.66
2004	$865.98
2005	$782.88
Total	**$4,684.48**

Citibank credit card supplementary account

Year	Amount
2000	$5,435.88
2001	$19,725.24
2002	$23,638.50
2003	$22,096.29
2004	$33,821.70
2005	$282.25
Total	**$104,999.86**

Payments for the defendant’s expenses in Singapore

Year	Amount
2000	$12,677.70
2001	$13,440.80
2002	$20,394.40
2003	$20,753.30
2004	$500.00
2005	$3,459.00
Total	**$71,725.20**

Defendant’s life insurance premiums

Year	Amount
2000	$2,307.22
2001	$2,707.22
2002	$2,707.22
2003	$2,707.62
2004	$2,707.22
Total	**$13,136.90**

Defendant’s road tax renewals

Year	Amount
2001	$2,267
2002	$1,015
2003	$693
Total	**$3,975**

Harvard School of Public Health expenses

Year	Amount
2000	$6,051
2001	$917.50
Total	**$6,968.50**

8 These direct payments from the plaintiff to or on behalf of the defendant amounted to $205,489.94. The defendant does not dispute that he received these amounts from the plaintiff.

9 According to the plaintiff, she made the direct payments to or on behalf of the defendant on the understanding that the defendant would return the money once he completed his medical studies at the University of Newcastle. She was willing to do this because of the close friendship which they shared and also because she believed that the defendant would definitely pay her back. The defendant graduated from the University of Newcastle in December 2004 and the date for repayment of the loans therefore started from then.

10 The defendant, on the other hand, claims that the plaintiff gave him the various amounts of money as "love gifts" because they were in an intimate relationship. In the alternative, the defendant claims that the plaintiff waived any claim to repayment she might have when she declined his offers to repay her on numerous occasions.

11 On the totality of the evidence adduced, I am unable to accept the defendant's contention that the money which plaintiff gave him were gifts. First, the evidence shows that the plaintiff did not initiate any of the payments to the defendant. Rather, the defendant was always the one who expressly requested the plaintiff to assist him financially. For example, the supplementary credit card which the plaintiff gave to the defendant was a result of a specific request by the defendant via email on 12 October 2000 (page 262 of the plaintiff's affidavit of evidence in chief) ("AEIC"). The email reads as follows:

> [I] need to have a visa card from Singapore but I do not qualify. [I]s there any chance if you apply and put me as supplementary card holder and [I] leave my cheque book with you signed beforehand to pay off my monthly expenses. [I[know you have a lot of commitments now and soon and [I] will not impose further more as you are already HELPING ME SO MUCH SO MUCH.

12 In respect of the $1000 which the plaintiff transferred to the defendant's bank account every month, this was done in response to a specific request by the defendant, as show by an email from the defendant to the plaintiff on 6 August 2000. The email reads as follows:

> [I] am writing to you if there is a possibility if you could kindly consider and lend me further with $1000 each month. I am so sorry for bringing this up at all and have been thinking about it whether to mention or not at all. [H]onestly [I] am so happy for your promotion and felt u [*sic*] deserve it. [A]nd [I] know the extra money should be for sustaining your own commitments.

13 Apart from these emails, the plaintiff also produced evidence of numerous other instances where the defendant requested the plaintiff to make payment on his behalf or to transfer money to him directly. The defendant has not challenged the authenticity of any of these emails.

14 Second, every request made by the defendant to the plaintiff was couched in the form of a request for a loan. The defendant also made multiple representations that he would pay back whatever money the plaintiff gave him upon the completion of his medical studies. This is amply illustrated by the two emails cited above as well as a sampling of the emails from the defendant to the plaintiff:

(a) Email dated 12 December 1999

> [I] will return you what [I] have borrowed when I finished my medical studies.

(b) Email dated 6 January 2000

> [I] am also very grateful to you again that you are able to lend me and putting some money in the bank

(c) Email dated 14 January 2000

> Many thanks for banking money for me, [I] am so very grateful. I will repay you one day.

15 The evidence shows that the defendant expressly requested loans from the plaintiff on various occasions. The plaintiff acceded to his requests but there is no evidence suggesting that she gave him the money as gifts instead of loans. In all likelihood, the plaintiff, being good friends with the defendant at the material time and aware of his financial situation, simply agreed to lend the defendant money whenever he asked on the understanding that he would pay her back once he completed his medical studies.

16 Faced with the formidable array of evidence adduced by the plaintiff, the defendant chose to focus on his alternative case theory that even if the money had not been originally given to him as gifts, the plaintiff had waived all her rights to repayment by rejecting all his attempts to repay her. The problem with this alternative line of defence is that the defendant was unable to adduce any evidence to show that the plaintiff had unequivocally rejected any attempt by the defendant to repay her. The defendant tried to bridge the evidential gap by:

(a) Alleging that the plaintiff had deliberately concealed all evidence of her emails to the defendant showing that she had rejected payment from him;

(b) Alleging that the plaintiff had an intimate relationship with the defendant and that it was only natural for her to have orally waived repayment of the loans; and

(c) Showing that the plaintiff had not made any demand for the repayment of the money before she sent him the letter of demand on 22 January 2008.

17 In my view, the defendant's first allegation about the plaintiff deliberately concealing all evidence of her emails to the defendant in order to cover up the fact that she had rejected attempts by the defendant to pay her has not been sufficiently proved. The point about possible concealment of evidence was first put to the plaintiff on the first day of cross examination (Notes of Evidence, day 1, page 11) and the plaintiff's reply was that she was using an email software that did not save any outgoing emails. The plaintiff made reference to her affidavit filed on 21 December 2009 where she explained that:

> I confirm that I do not have any further emails or other correspondence between myself and the Defendant that has not already been disclosed in my List of Documents and Supplementary List of Documents. I did not keep the emails that my daughters and I sent to the Defendant between 1999 and 2001. At that time, I was using an email software called Eudore and the function that I used to send emails did not automatically save the emails that my daughters or I had sent. As such, none of my outgoing emails were saved and I am not able to provide copies of these emails.
>
> As explained in paragraph 3 of my affidavit in chief, between 1999 and 2001, I had stored the Defendant's emails that were sent to me on a 3 inch floppy disk with the emails downloaded from my computer at my office in Parkway Healthcare Foundation. I subsequently transferred the data to a thumb drive and finally to an external disk. From June 2001, due to a lack of time, I stopped the practice and only printed out hard copies of the more important documents.

18 In response, counsel for the defendant suggested to the plaintiff that in an ordinary email correspondence, the latest email is usually accompanied by a continuous trail of all the previous emails in the same thread. He produced seven emails from the defendant to the plaintiff in the period 4 November 1999 to 16 November 1999 that were disclosed by the plaintiff in her first List of Documents. These emails were accompanied by a continuous trail of the preceding emails that were sent in the same thread, including emails sent by the plaintiff to the defendant. The point made by counsel for the defendant was that this showed that, contrary to the plaintiff's assertion, the email software that she used was capable of capturing not just an individual email but also the entire email thread. The implication was that the plaintiff had selectively disclosed only emails from the defendant to her but had deliberately omitted all the emails she sent to him.

19 The plaintiff's response to counsel's question was not entirely clear. However, I gathered from her answer that what she meant was that the emails produced by her in the period 4 November 1999 to 16 November 1999 were not email threads but were simply emails that she had manually copied and pasted onto a word document (Notes of evidence, day 1, page 14)

> Your honour, when I first received his first email, page number 1, 4th November 1999, under the defendant's bundle of documents, right down on the 8th of November, there is a dotted line which this email was exactly appeared and then, on the 8th of November when I replied, it is on another day. So it's not what we call train. It is being printed out on hard copy, and because it was saved in a floppy, and if we go down to the page number 2, there is this line drawn, which is

during the manual copying, it was drawn. So it is not what we call a "train". And if you would also realize, that when I write, my SingNet has a very broad spectrum which is from margin to margin, whereas the defendant's email to me is – is on a very big margin on the right-hand side, and it is consistently with big margin on the right-hand side…

20 In my judgment, the points raised by counsel for the defendant are insufficient to show that the plaintiff deliberately concealed emails from her to the defendant. If the defendant truly wanted to discredit the plaintiff on this point, he should have produced some evidence relating to the email program "Eudore" (which the plaintiff claims she used) to show that it was actually capable of saving both outgoing and incoming emails. As it is, the mere fact that the plaintiff saved some of her initial emails to the defendant cannot raise any inference that she continued this practice. Neither am I persuaded that the plaintiff deliberately concealed evidence of her later emails to the defendant.

21 A large part of the defendant's AEIC dealt with the intimate relationship which he alleged he had with the plaintiff. In a similar vein, counsel for the defendant spent a lot of time during the trial and in his submissions trying to show that the plaintiff and the defendant had an intimate relationship. This is important of course for setting the context which would explain why the plaintiff was allegedly willing to make gifts of money to the defendant.

22 In any case, viewing the evidence in totality, I would hesitate to find that the plaintiff and the defendant actually had a romantic relationship. Undoubtedly, the plaintiff used words of endearment such as "dearest" and "darling" whenever she addressed the defendant in their correspondence in the initial period of their relationship. The defendant was also treated as a very close friend of the family, as seen in the way he was invited for the plaintiff's family outings and his close interaction with the plaintiff's children. In the early days of their relationship, the plaintiff even encouraged her daughters to treat the defendant as "daddy" by sending him a Father's Day card. I am therefore prepared to find that the plaintiff originally harboured the hope of having a romantic relationship with the defendant. However, the defendant was not receptive to the idea of having more than a platonic relationship with the plaintiff and any romantic affection which the plaintiff had for the defendant soon fizzled out after the plaintiff realized that the defendant was not interested in being more than friends. This can be seen from the emails sent by the defendant to the plaintiff. For example, in an email sent by him to the plaintiff on 10 December 1999, he stated that:

> U [*sic*] did ask me if I have intention to settle down…
>
> I am very touched by you but i am so sorry that i am still nursing the wounds and am trying to get over the trauma. i am so sorry if i sound disappointing to you. in fact, after going through this relationship, i felt so disillusioned already.
>
> i felt friendship is better than BGR (boy-girl relationship). i would like our friendship to last forever. i can still care for you and your kids and grandkids – perhaps even better as friends.

23 On 20 July 2000, the defendant sent an email to the plaintiff's daughters explaining to them that he and the plaintiff were merely friends. The email read as follows:

> [B]ecause I am still hurt and sad, and also because of my studies i am not wanting to have any relationship and i m not wanting to think about marriage [*sic*]. i know you are worried that i will marry your mummy. I know Marie will [feel] uncomfortable about it. From my above explanation i hope you all are clear in your mind ok. You all are my wonderful adopted daughters and princesses and angels. Your mummy and myself are very good friends and we do not want anything to spoil this friendship.

24 On 15 November 2000, the defendant sent an email to the plaintiff regarding a conference that they were scheduled to attend in Indiana, USA. In that email, the defendant insisted on having separate rooms for both parties. He stated:

> [B]y the way, may i suggest to you that if this pall company is sponsoring the ticket for one person with accommodation, then i suggest that we have separate rooms because the rest of the delegates will start to have all the ideas and gossips and it will jeopardise our reputation and future career.

25 Even in 2006, there was no indication that the defendant was in a romantic relationship with the plaintiff. On 17 January 2006, the plaintiff wrote an email to the defendant offering him the use of the broadband in her bedroom. Importantly, she indicated that she would move out of the bedroom while the defendant was using it.

> I have spoken to Suzie and she mentioned that you called her earlier and that you have been informed that the broadband has been terminated. So sorry for that. Please feel free to use our home broadband when you are back. Or, if you wish, you can stay with us to use the broad band. I can always use marie and sharon's room if you need to use my bedroom when you are home. We are one big family. We care for you and you have always been part of our family

26 Further, in the defendant's many emails to the plaintiff, no words of endearment were used by him. The objective evidence therefore contradicts the defendant's assertion that he had an intimate relationship with the plaintiff. Indeed, given the fact that both the plaintiff and the defendant were not married at the material time, it would have been unnecessary for the defendant to take measures to ensure that people did not mistake them to be a couple. In any event, the existence of a romantic relationship between the parties would not be sufficient in itself to prove that the money handed over by the plaintiff to the defendant was meant as love gifts or that the plaintiff has waived her right to repayment.

27 The fact that the plaintiff did not make any previous demand for repayment from the defendant immediately after his graduation would not affect her right to make such a demand in 2008. Counsel for the defendant did not seek to argue that the plaintiff's failure to make a timeous demand for repayment amounted to a waiver of her right to repayment. Of course, the period of inaction on the plaintiff's part would be a factor to take into consideration when deciding whether or not the money from the plaintiff to the defendant was meant to be gifts or loans.

28 Finally, there was also a dispute about whether the defendant had indeed left a signed chequebook with the plaintiff to allow her to reimburse herself for the expenses incurred by the defendant through the supplementary credit card provided to him by the plaintiff. The defendant had, through an email to the plaintiff on 12 October 2000, indicated to the plaintiff that he would leave a signed chequebook with her if she was willing to apply for a supplementary credit card for him. Four months later, on 15 March 2001, the defendant again made reference to the signed chequebook when he requested the plaintiff to purchase a bank draft for him. The defendant's position is that these two emails showed that he had left the chequebook with the plaintiff and the plaintiff chose not to reimburse herself with his signed cheques.

29 On the other hand, the plaintiff claims that the defendant had not left any chequebook with her as he had promised. She pointed to two emails sent to her by the defendant on 5 May 2001 and 2 June 2001 respectively, where the defendant requested financial favours from the plaintiff and promised to pay her back. The plaintiff's point is that if the defendant had indeed left the signed chequebook with her, he would simply have asked her to reimburse herself from the chequebook.

There would be no need for him to make a separate promise to pay her back.

30 Even if the defendant had left a pre-signed chequebook with the plaintiff, the plaintiff's failure to reimburse herself from those cheques would not necessarily amount to an unequivocal waiver of her right to claim repayment for the expenses incurred by the defendant under the supplementary credit card. On a balance of probabilities, it appears more likely than not that the defendant did not leave any signed cheque book with the plaintiff. Indeed, if the defendant did leave a signed chequebook with the plaintiff for her to reimburse herself, that would strongly suggest that the plaintiff did not intend to make any "love gifts" (at least where the expenses incurred by the defendant through the supplementary credit card were concerned) to the defendant.

31 In conclusion, I find that the various amounts of money totalling $205,489.94 which the plaintiff paid to or on behalf of the defendant from 2000 to 2005 were loans from the plaintiff to the defendant, payable upon the defendant's conclusion of his medical studies at the University of Newcastle. There is no issue of any limitation period barring the plaintiff's claim because she commenced action less than six years after the defendant graduated in December 2004.

Payments made on behalf of companies related to the defendant

32 In addition, the plaintiff claims that she made payments to third parties on behalf of certain companies/organisations ("the companies") that were related to the defendant between 2003 and 2007. According to the plaintiff, she made these payments at the request of the defendant and is therefore entitled to be reimbursed for these expenses. The details of these payments are set out below:

	2003	2004	2005	2007	Total
Brain and Spinal Cord Injury Foundation ("BSCIF")	$800	$,1210	Nil	Nil	$2010
Academy for the Advancement of Science Ltd ("AAS")	Nil	Nil	Nil	$6,473	$6473
Foundation for the Needy Elderly ("FNE")	$507	Nil	$315	Nil	$822
Global Leadership Institute ("GLI")	$1,800	$25	Nil	Nil	$1825
Wilcare School of Health Science Pte Ltd("Wilcare")	$43,198.84	Nil	Nil	Nil	$43,198.84
Grand total					**$54,328.84**

33 The defendant asserts that these amounts were owed by the companies in question and not by him. In my opinion, the plaintiff is similarly entitled to be reimbursed for the payments she made to third parties on behalf of the companies. Although the above payments were made by the plaintiff on behalf of the companies, they were made at the defendant's behest and the defendant was effectively the *alter ego* of the companies. The accounts for Wilcare as at 31 May 2004 reflected a debt of $43,198.84 owing from the company to the plaintiff. However, this is an internal accounting

matter within the control of the defendant as director and shareholder. The plaintiff would not have made the payments on behalf of the companies as there was no reason for her to. She had no interest in the companies. She made the payments only because the defendant requested her to and the defendant could hardly be said to have made the requests in his capacity as an officer of the companies concerned. He approached her in the same way and in the same capacity as all the other loans – as her erstwhile good friend and confidant.

34 Although there may not have been specific evidence that the defendant promised the plaintiff that he would reimburse her for all the payments she made on behalf of these companies, this must be seen in the context of the dealings at the material times between the parties. The defendant was constantly asking the plaintiff for financial favours in all kinds of matters and the plaintiff was actively obliging and helping him in his financial matters, whether personal or corporate and whether the defendant was in Singapore or abroad. To assert now that the payments made on behalf of the companies were a distinct financial arrangement completely different from the personal loans taken over the years would be, in my view, quite dishonourable.

35 Accordingly, the plaintiff is also entitled to claim the amount of $54,328.84 from the defendant.

Second issue: The investment agreement between the parties

36 The second issue in this case concerns the purchase of two properties in the plaintiff's name with some financial contribution from the defendant.

37 The first property was a condominium unit at 985 Bukit Timah Road, #05-11 Maplewoods Condominium, Bohemia Block, Singapore 589627 ("Maplewoods"). It was purchased by the plaintiff for $1,225,000 in September 2001. There is no dispute that the defendant contributed $279,917.80 towards the purchase.

38 The second property was a unit at 1A One Tree Hill, #04-08 One Tree Hill Lodge Singapore 248669 ("One Tree Hill"). It was purchased by the plaintiff for $1,200,000 in May 2002. There is no dispute that the defendant contributed $274,959.21 towards the purchase.

39 Both properties have since been sold by the plaintiff but with different financial consequences. The sale of One Tree Hill was done through an *en bloc* sale. It resulted in a net loss, after taking into account the rental proceeds as well as expenses incurred in its maintenance. On the other hand, a handsome profit was made from the sale of Maplewoods by private treaty.

40 The plaintiff's claim against the defendant is for an indemnity to cover the losses she suffered from the purchase of One Tree Hill. Essentially, her story is that the defendant persuaded her to purchase One Tree Hill to be held on trust for him. The defendant promised to reimburse her for any losses she might suffer from this purchase. On 3 January 2006, the plaintiff returned to the defendant the sum of $274,959.21, which was the amount he had given to her for the purchase of One Tree Hill, in the belief that he would keep his word and reimburse her for the losses she had suffered. Such reimbursement did not come and she was left with no alternative but to sue for it.

41 The defendant steadfastly denied the plaintiff's claim for an indemnity in respect of One Tree Hill. According to him, there was an investment agreement between the plaintiff and him where he was supposed to obtain loans from his friends to aid her purchase of One Tree Hill. Under this agreement, the defendant's role in the entire transaction was akin to that of a lender who was entitled to the return of the amount he contributed regardless of how the investment fared. In addition, half the profit from the sale of the property (if any) was to be given to the defendant's

friends in lieu of the interest on the loans.

42 The defendant's counterclaim against the plaintiff is in relation to the profit made by the plaintiff in the sale of Maplewoods. He claims that there was an investment agreement on substantially the same terms as the one with regard to One Tree Hill, where the defendant would procure loans to help the plaintiff with the purchase, while any profits would be divided equally between the plaintiff and the defendant's friends. Since Maplewoods has already been sold, the defendant submits that the plaintiff should abide by the agreement and return him both the principal sum of the loan and half the amount of the profit.

43 The plaintiff's response to the defendant's counterclaim is that under the investment agreement, the defendant is not entitled to the return of the $279,917.80 that he contributed to the purchase of Maplewoods. In addition, the defendant is entitled to only 25% of the net profits when Maplewoods is sold.

The evidence

44 The most problematic aspect of this case is that there was hardly any documentary evidence relating to the terms of the investment agreement between the parties. There were only two documents adduced before me. The first document is a letter dated 3 January 2006 from the plaintiff to the defendant which reads as follows:

> Dear William
>
> Total Amount Payable to Australian Money Lender: Sing$274, 959.21
>
> Enclosed two cheques from Dr Chee Jok Heng Stephanie (OCBC No. 817351 of sum Sing$265,261.21, and POSB No. 300806 of sum Sing$9,698) are the total sum of Sing$274,959.21 to be returned to the Australian person from whom money was borrowed in April 2002 and May 2002 for the purchase of 1A One Tree Hill, #04-08, One Tree Lodge, Singapore.
>
> Thank you.

This letter is of minimal significance because it is not disputed that the plaintiff has already returned the amount of $274,959.21 to the defendant (apparently for his onward transmission to the source of the funds, whose identity the defendant said in court he had promised to keep confidential).

45 The second document is a note produced by the plaintiff which is entitled "Loan Agreement for Purchase of Condominium". The document reads as follows:

> 1. I, Stephanie Chee Jok Heng, NRIC: S1322571J of Block 618, Ang Mo Kio Ave 4, #04-1057, Singapore 560618, hereby acknowledge in writing that I have loaned from William Tan Kian Meng: S1235050C of Block 654, Jalan Tenaga, #12-12-68, Singapore 410654.
>
> 2. I acknowledged the receipt of a total sum of money Singapore Dollars two hundred, sixty-seven thousands and six hundred sixty seven, and Cents eighty only (S$267,667.80) from William Tan Kian Meng.
>
> 3. Two cheques received were : DBS cheque number: dated 702014 7 July 2001 of S$110,250.00, and another DBS cheque number: 702016 dated 12 September 2001 of S$157, 417.80.

4. The loan was used towards the purchase of 985 Bukit Timah Road, #05-11, Maplewoods Condominium, Bohemia Block, Singapore 589627.

5. I agreed with the request that upon the selling the Maplewoods Property, 25% of the profits will be transmitted through Dr William Tan Kian Meng to the various parties who has loaned the above sum of money.

Dated: 7 October 2001 (Court's note: handwritten)

Signed:

(Dr Stephanie Chee Jok Heng, Passport No./NRIC No. S1322571J)

46 According to the plaintiff, this second document was produced by her with the defendant dictating its contents. She asked the defendant to sign as well but he did not. The defendant asked her to sign it to show the "Aussie friend" that she did receive the two cheques. However, the defendant denies all knowledge of this document and claims that it was backdated and generated by the plaintiff specifically for the trial.

47 In my judgment, no weight should be given to the second document adduced by the plaintiff. The defendant has made it clear that he contests the authenticity of the second document and the plaintiff has not led any cogent evidence to prove its authenticity. In any event, this document was not signed by the defendant and therefore cannot be used to prove the terms of the investment agreement between the parties.

48 With the second document produced by the plaintiff having no evidential value, we are left only with the respective testimonies of the parties. Unfortunately, I find the parties' respective versions of the investment agreement perplexing. The plaintiff's story about how the parties agreed that the defendant would only be entitled to 25% of the net profit in relation to the sale of Maplewoods, while not being allowed to recoup his principal, would militate against commonsense as the principal involved is no mean sum. The defendant's version of events, which is essentially about how he is entitled to 50% of any profits from the sale of both properties, while being insulated from all possible losses, equally does not make much commercial sense for the plaintiff. She was practically goaded by the defendant to purchase the properties in her sole name. She would have to undertake 100% of the risks of any downside but have to share 50% of any profits in exchange for a capital contribution of less than 25% of the purchase price.

49 The defendant and his financier (he claimed the source of the funds was someone who trusts him and whose identity he had promised to keep confidential) did not seem at all concerned that the cash injection of more than a quarter million dollars was not protected or when any returns would come. They also appeared not to be interested in the rental income from the properties. In fact, the defendant said that he did not even know that Maplewoods had been sold until after the plaintiff initiated legal proceedings.

50 The plaintiff's and the defendant's versions of events share a common characteristic - they both have the effect of forcing the counterparty to bear all losses on the money-losing One Tree Hill while garnering as large as possible a share of the profit from Maplewoods for themselves.

51 Both parties agreed that the defendant was primarily responsible for sourcing for the two properties and for suggesting that the plaintiff purchase them. The plaintiff stated in her AEIC:

51. Following from the Defendant's email dated 5 April 2001 in which he suggested buying a condominium for investment purposes, the Defendant decided on a unit at Maplewoods Condominium in Bukit Timah.

…

One Tree Hill

56. In early 2002, the Defendant was looking for a private property that would go for an enbloc sale and wanted to invest in it using my name as a proxy owner. He approached me and explained to me about it.

52 Apart from the active role which the defendant played in sourcing for the two properties, he was also primarily responsible for coming up with the 20% cash payment for the purchase price of both properties. Taking into consideration the amount of effort put in by the defendant in bringing about the investments, it is reasonable to believe that the parties intended to share equally in whatever profits the investments may bring. The plaintiff's part was to be the legal owner on record and would be responsible for all matters pertaining to the properties. I find it highly unlikely that the plaintiff would agree to an investment agreement whereby the defendant would be entitled to half the potential profits while being insulated from all potential losses. The probability is that the parties agreed to share the profits and losses from the purchase of the two properties in equal proportions. I reject the plaintiff's claim that the defendant is not entitled to the return of the capital he put up for the purchase of Maplewoods. That could only happen if the value of Maplewoods somehow dropped to zero.

53 Accordingly, I find that the terms of the investment agreement between the parties are in all probability as follow:

(a) Each party is entitled to the return of the amount of money he/she has contributed towards the purchase and maintenance of the two properties; and

(b) All profits and losses resulting from the purchase and maintenance of the two properties are to be divided between the parties equally.

Calculation of money owed to the plaintiff in respect of One Tree Hill

54 The defendant contributed $274,959.21 towards the purchase of One Tree Hill and this amount has since been returned to him by the plaintiff. The only question left is the extent of the losses suffered by the parties in respect of this investment.

55 The plaintiff claims that the loss from One Tree Hill amounted to $138,928.11. She reached this amount based on the following calculation.

Sale proceeds	$265,261.97
Balance 10% of sales proceeds minus audit fee	$53,248.68
Rental income	$69,000

Less: expenses	$252,279.55
Less: payment to defendant	$274,959.21
Net Loss	**$138,928**

56 On the other hand, the defendant claims that the loss amounted to only $64,873.46 based upon the following calculation.

Sale proceeds	$265,261.97
Balance 10% of sales proceeds minus audit fee	$127,303.33 ($127,333.33 -$30)
Rental income	$69,000
Less: expenses	$252,279.55
Less: payment to defendant	$274,959.21
Net Loss	**$64,873.46**

As can be seen, the defendant does not challenge the figures stated by the plaintiff save for the audit fee which the plaintiff claimed she had incurred.

57 In her AEIC, the plaintiff produced a written tabulation of the costs she had incurred in relation to One Tree Hill. Part C of her tabulation includes a section entitled "Balance 10% of sale price minus audit fee from Phang & Co in Jan 06 (*ie*, $127,333.33 – X)". At page 2 of her tabulation, the plaintiff then stated that the "Balance 10% of sale price minus audit fee etc from Phang & Co eventually was $53,101.81". This means that the audit fee from Phang & Co, as claimed by the plaintiff, amounted to $74, 231.52.

58 Counsel for the defendant correctly pointed out that the plaintiff could not provide any evidence that she had indeed paid $74,231.52 in audit fees to Phang & Co. The completion accounts for the *en bloc* sale of One Tree Hill showed clearly that the auditing and accounting fees amounted to only $900. If this $900 fee is divided equally among the owners of the 30 units in One Tree Hill, this would work out to only $30 per unit.

59 The plaintiff was unable to respond to the defendant's point that her claim of $74, 231.52 for the payment of the audit fee was widely off the fee of $30 per unit owner as stated in the completion accounts. Accordingly, I find that the total loss suffered by the parties for One Tree Hill was $64,873.46. Since the investment agreement between the defendant and the plaintiff required the defendant to bear half the losses suffered for One Tree Hill, the defendant is obliged to pay the plaintiff $32,436.73 ($64,873.46 x 50%).

Calculation of money owed to the defendant in respect of Maplewoods

60 It is common ground that the defendant contributed $279,917.80 towards the purchase of Maplewoods and that the sale of Maplewoods by the plaintiff resulted in a net profit of $377,061.98. The defendant is entitled to half of this profit, which amounts to $188,530.99 ($377,061.98 x 50%).

61 Since the defendant is also entitled to the return of his capital, the total amount due to the defendant from the sale of Maplewoods is $468,448.79 ($188,530.99 + $279,917.80).

Conclusion

62 The plaintiff succeeds in her claim and is entitled to be repaid the amounts of $205,489.94 and $54,328.84 which she loaned to the defendant. She is further entitled to be paid $32,436.73 as the defendant's contribution for the loss suffered from the sale of One Tree Hill. These three amounts add up to $292,255.51.

63 The defendant succeeds in his counterclaim and is entitled to the return of his capital and his share of the profit in respect of Maplewoods which (as shown at [61] above) works out to $468,448.79.

64 After setting off the respective amounts, the defendant is entitled to a net payment of $176,193.28 ($468,448.79 - $292,255.51).

65 Considering the issues at stake and as the parties took about the same amount of time for their respective cases, I think a fair order is that they bear their own costs for the claim and the counterclaim respectively.