# Tan Huat Soon *v* Lee Mee Leng
# [2012] SGHC 21

**Case Number** : OS 831 of 2011

**Decision Date** : 31 January 2012

**Tribunal/Court** : High Court

**Coram** : Tay Yong Kwang J

**Counsel Name(s)** : Molly Lim SC and Sunanda Koh (Wong Tan & Molly Lim LLC) for the plaintiff; Helen Chia and Tan Hwee Ching (Inca Law LLC) for the defendant.

**Parties** : Tan Huat Soon — Lee Mee Leng

*Caveats*

*Equity*

31 January 2012

**Tay Yong Kwang J:**

**Introduction**

1 The plaintiff was the defendant's husband. They were married in Johor, Malaysia, on 16 November 1980. They have three children – a son aged 25, a daughter aged 21 and another son aged 19.

2 As a result of the breakdown of their relationship, the plaintiff moved out of the matrimonial home in June 2005 and they lived separately thereafter. In July 2005, the defendant filed for judicial separation in D 3063 of 2005. A decree nisi for judicial separation was granted on 7 March 2006.

3 On 11 July 2007, the defendant lodged caveats against two immovable properties registered in the husband's sole name. The two properties are 47 Hume Avenue #06-02 Parc Palais, Singapore ("the Hume Property") and 24 Fernwood Terrace #16-02, Singapore ("the Fernwood Property"). In each caveat, the defendant claimed "an estate or interest in the land as beneficiary" by virtue of the properties being matrimonial assets and "a constructive trust in favour of the Caveator inferred from the Registered Proprietor's conduct and representation to the Caveator that the Caveator would acquire a beneficial share in the said property and/or the proceeds of the sale thereof".

4 On 14 November 2008, the defendant commenced divorce proceedings in D 5652 of 2008. Interim judgment was granted on 10 July 2009.

5 The defendant and the parties' three children are currently living in Canada. They have obtained permanent resident status there. The eldest child is working, the second is completing her studies this year and the youngest is also studying in a university.

**The originating summons**

6 In this originating summons, the plaintiff asked that he be allowed to mortgage each of the two properties for a sum not exceeding 50% of their respective market values in order to secure credit

facilities from DBS Bank. He also sought consequential orders for the defendant to remove her caveats against the properties and costs.

**The plaintiff's case**

7 The plaintiff wished to obtain additional trade facilities for his company, Vandashima Hi-Tech Materials (S) Pte Ltd ("Vandashima"), from DBS Bank. His company was incorporated in Singapore with a paid-up capital of US$1m, with the plaintiff holding about 98% of its shares. The company is in the business of import and export of chemicals and high-tech materials. Its trade is in US dollar and it requires letters of credit to be issued by the said bank to finance its purchase of materials for export to third parties. The bank's various credit facilities to the company are S$115,000 by way of overdraft, US$900,000 for import line financing, letters of credit, etc ("the trade limits") and S$100,000 for foreign exchange lines. The facilities are secured by, among other things, a first charge on the company's assets and by the husband's fixed deposit of US$539,925.32.

8 Due to the depreciating US dollar, the company exceeded the trade limits of the bank on various occasions. To resolve this problem, the company requested the bank to increase the trade limits but the bank was willing to do so only if security was furnished for the increased trade limits. However, the company does not own any other assets which could be put up as security.

9 The only assets available are the Hume Property and the Fernwood Property. The bank was prepared to consider an increase in the trade limits of up to 50% of the current valuation of the two properties to be secured by a mortgage on the said properties. However, the bank wanted the defendant's caveats to be lifted first.

10 According to the plaintiff, the current value of the Hume Property is about $1.1m and that of the Fernwood Property is about $1.5m. His company would therefore be able to increase the trade limits by about S$1.3m (50% of the combined values of the two properties).

11 The Hume Property was purchased by the plaintiff in 1997 as his alternative home because of the marital problems the parties were having. He is presently residing there. The defendant has never resided there and has not contributed financially at all towards this property.

12 The Fernwood Property was also paid for solely by the plaintiff. The family resided there between 1997 and 2005. After the plaintiff moved out of this matrimonial home, the defendant and the children continued residing there until they re-located to Canada in 2008. The property is now rented out.

13 The plaintiff disputed the defendant's claims to a share in the two properties. On 20 May 2008, he filed originating summons 683 of 2008 to remove the caveat lodged against the Hume Property. On 10 July 2009, he commenced originating summons 795 of 2009 to remove the caveat on the Fernwood Property.

14 On 14 August 2009, Choo Han Teck J dismissed the plaintiff's originating summons in respect of the Hume Property on the ground that "the spouse who is not a registered co-owner will thus, by virtue of her entitlement to claim a share, have an equitable interest in the property" (see *Tan Huat Soon v Lee Mee Leng* [2009] SGHC 199 at [5]). The plaintiff did not appeal the decision as he was then not in need of funds for his business and therefore did not need to mortgage the property. Further, he had no intention of selling the two properties and had expected the ancillary matters in the divorce proceedings to be concluded expeditiously. As a consequence of the dismissal of the originating summons pertaining to the Hume Property, the plaintiff withdrew his application in respect

of the Fernwood Property.

15 However, there was delay in the divorce proceedings caused by the defendant's refusal to give full and frank disclosure and by the contested applications pertaining to custody and maintenance. In the meantime, the plaintiff's financial situation has deteriorated and he is now in need of additional trade facilities for Vandashima, his main source of income. The company's business would be adversely affected, jeopardizing the livelihood of some 40 employees. The plaintiff has also spent over $1m to maintain the children and their overseas education and a similar amount in legal fees for this matrimonial dispute.

16 The plaintiff argued that since Choo Han Teck J's decision was to protect the defendant's share (if any) in the two properties, allowing him to take up financing of up to 50% of their combined values would not prejudice the defendant in any way. In any case, it was unlikely in the circumstances of the marriage that the defendant would receive a 50% share (the percentage claimed by the defendant) in the matrimonial assets. The defendant was well-off, having declared her assets at $2.33m as at 2006, although, the plaintiff submitted, the evidence uncovered showed her assets to be in excess of $6m. She is living with the children in a bungalow in Vancouver, Canada, which was bought by her. His assets as at 2006 amounted to $8.45m. The total assets available for division would therefore be around $14.45m. Should the defendant be awarded 50% of the total matrimonial assets, her share would be about $7.22m and that meant that only $1.2m would come out of the plaintiff's assets. The balance of 50% of the combined values of the two properties would therefore be sufficient to take care of this eventuality. He has not defaulted in his maintenance obligations for his family for the past six years.

17 As the defendant did not respond to the plaintiff's request for her consent to lift the caveats, he had no choice but to make this application to court. The defendant was well out of time when she filed her affidavit to oppose this application. The plaintiff did not wish to delay matters further by having to respond to her affidavit and asked that the court disregard her late affidavit which contained untruths and also did not seek to explain the delay in filing. He argued that Choo Han Teck J's decision in the earlier originating summons did not prejudice this application in view of the change in his financial situation and the fact that he was no longer arguing that the defendant had no interest upon which to lodge a caveat. In any event, the judge appeared to have changed his mind about whether a claim made by a wife in such circumstances could support a caveat (see *Lee Chi Lena v Chien Chuen Chi Jeffrey* [2011] SGHC 91).

18 As an alternative, the plaintiff asked that he be allowed to mortgage the entire Hume Property, leaving the Fernwood Property intact to await the decision on division of assets by the court.

**The defendant's case**

19 The defendant argued that the plaintiff has not shown any documentation to support his alleged need to use the two properties as collateral for his company's trade facilities. No company statements or bank documents (such as a letter of offer of facilities) have been produced to support his contention.

20 The plaintiff has also not shown the current value of the properties nor has he indicated the value needed as collateral for the alleged facilities. The valuations provided by the plaintiff were informal ones.

21 The defendant alleged that this application was the plaintiff's fresh attempt to dilute and dissipate the matrimonial assets after having failed in one of the earlier originating summonses and

having withdrawn the other. No reason was given by him for wanting the caveats lifted then.

22 The parties' applications for discovery of documents are still pending before the court. Both parties' forensic accountants' reports are ready. Just as the plaintiff disputes the defendant's forensic accountant's report, the defendant also disputes the plaintiff's forensic accountant's report on the defendant's assets.

23 The defendant's counsel had no instructions on whether the bungalow in Canada was indeed bought by the defendant. They communicate by email and are hampered by the time difference between Canada and Singapore, While the defendant and the children are Canadian permanent residents, the defendant does return to Singapore to visit her family.

24 Citing Lai Siu Chiu J's decision in *Eu Yee Kai Alexander Junior v Hanson Ingrid Christina* [2004] 4 SLR(R) 586, the defendant submitted that the application for the caveats to be removed should be dismissed as there is "reason for the caveat to remain, so that the defendant's rights and interests were protected" (at [27] of the judgment). The defendant added that in the same case, another application to remove the caveat was allowed solely because the property was being sold and the purchasers had exercised the option. However, the court ordered that the sale proceeds be held by the solicitors as stakeholders pending the outcome on the division of matrimonial assets.

25 The defendant argued that the purpose of the application, even if it were true, held a risk to the defendant as the ancillary matters are long outstanding in the Family Court. She asked that her rights be preserved pending the conclusion of all the proceedings.

**The decision of the court**

26 As acknowledged by the parties, this application does not involve the question whether the defendant has an interest in the properties which could be the subject of the caveats. Instead, it concerns an application by the plaintiff for relief from the harshness of having both his immovable properties rendered commercially useless save for rental.

27 The plaintiff has shown a good reason why he needs to use one or both of the properties as collateral security. He has to keep his flagship business operating at optimum strength in the midst of an adverse financial environment. This business provides the bulk of his income by which he maintains himself and his family. It is also the lifeline of several dozen employees.

28 There is no evidence that the plaintiff has neglected his financial obligations to his family over the last six years of the matrimonial proceedings or that he was given to hiding or dissipating assets. The long drawn out ancillary proceedings, possibly due to the acrimony of both parties, should not be allowed to put his life on hold or to destroy his commercial enterprise.

29 The defendant certainly does not appear to be a helpless lady in dire financial straits. On the contrary, she appears to be a confident and capable person, well able to manage her finances and get on with her life. She does not need any of the two properties in issue to maintain a roof over her head. Even if one of the properties should be lost as a result of a mortgagee's sale, the other property and assets of the plaintiff should be more than enough to make up for its loss. This is on the assumption that the defendant will succeed in her claim for up to 50% of the matrimonial assets.

30 The three children appear to be doing well in their education and financially. The plaintiff has not neglected them during the course of his troubles with their mother.

31 Allowing one of the properties to be used as collateral security for the plaintiff's business will not harm the defendant's interests, especially if the one of lower value is used. Indeed, it should benefit the parties and the children if Vandashima's viability is thereby secured. That will help preserve or even enhance the plaintiff's assets rather than dissipate them.

32 On the facts here, I decided that the plaintiff should be permitted the use of only the Hume Property, for up to 100% of its value, for his company's commercial needs. This will be a lot neater than having both properties mortgaged for up to 50% of their values as suggested by the plaintiff in his application. It will ensure that the Fernwood Property, which is of higher value, remains available to be given to the defendant if the situation calls for such a move and if the court so decides. The plaintiff's immediate needs will be taken care of and the defendant's future interests preserved.

33 Accordingly, I ordered the defendant to lift the caveat on the Hume Property while allowing that for the Fernwood Property to remain on the records. The plaintiff would be allowed to mortgage the Hume Property for its entire value. The Registrar of the Supreme Court would have the power to lift the caveat on the Hume Property on the defendant's behalf should she refuse or neglect to comply within one week of the order. I further ordered the costs of this originating summons to be costs in the cause in the hearing on the matrimonial assets.

34 The defendant has appealed against the orders relating to the Hume Property.