IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 110

Suit No 481 of 2016

Between

Lee Boon Teow

… Plaintiff

And

Shi Guojun @ Lai Meau Shin
(Lai MiaoXin)

… Defendant

GROUNDS OF DECISION

[Contract] — [Contractual terms] — [Implied terms]
[Trusts] — [Constructive trusts]

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v
Shi Guojun alias Lai Meau Shin

[2018] SGHC 110

High Court — Suit No 481 of 2016
Woo Bih Li J
27–30 November 2017; 12 January, 19 March 2018

2 May 2018

Woo Bih Li J:

Introduction

1 This case involved certain sums of moneys which were given by the Plaintiff to the Defendant, who is a Buddhist monk, and which the Plaintiff claimed to be intended for the sole purpose of funding the Defendant's education. In filing this action, the Plaintiff sought repayment of those sums on the basis that their intended purpose was not fulfilled. After hearing the evidence of both parties, I dismissed the Plaintiff's action on 19 March 2018. I now give the detailed grounds of my decision.

Background facts

2 The Defendant was Abbot of Mahabodhi Monastery ("MBM") from 2008 to about February 2017 and is President of the MBM Management Committee.

3 The Plaintiff is a Singapore businessman and a member of MBM. He was also First Vice President of the MBM Management Committee from 2011 to March 2016, and Property Trustee of MBM at the time of the hearing.

4 The Plaintiff's claim was in respect of AUD$240,000 ("the Sum") comprising various sums which were handed or sent to the Defendant in 2010, allegedly at the Defendant's request for his pursuit of a doctoral degree with an Australian university ("the Purpose").

5 The Defendant admitted receiving about AUD$200,000 by telegraphic transfer in or about April 2010 from the Plaintiff. In his pleaded defence, he denied receiving the balance sum of AUD$40,000 which was allegedly handed to him in cash over various occasions in 2010.

6 While the Defendant admitted that he had informed the Plaintiff about his intention to pursue a doctoral degree in Australia, the Defendant alleged that he did not ask for money to pay for the pursuit of the doctoral degree. He alleged that whatever money he had received from the Plaintiff was a gift, in the form of a Dana, without any condition. The gift was in appreciation of the Defendant's prayers for the Plaintiff's business and the Defendant's advice in respect of issues in the Plaintiff's marriage.

The Plaintiff's pleaded causes of action

7 In his pleadings, the Plaintiff relied on two causes of action.

8 It was not clear whether the first cause of action, as pleaded, was based on contract or tort. Paragraph 15 of the Statement of Claim ("SOC") referred to the Defendant having acted contrary to the terms (of some alleged agreement). However, the same paragraph also alleged that the Defendant had converted the money for his own purposes, which is a tort.

9 The Plaintiff stated in his opening statement (at para 101) that the first cause of action was straightforward, being "simply a pleading of a contractual study grant".

10 The Plaintiff's closing submissions asserted (at para 70) that the first cause of action was "for a debt due – money had and received pursuant to a contract of study grant". It also asserted that the study grant was repayable if not used pursuant to agreed terms.

11 In my view, the Plaintiff's first pleaded cause of action was based on contract, and not on money had and received or unjust enrichment, even though the Plaintiff's closing submissions raised arguments on unjust enrichment. The Plaintiff also pleaded that it was an implied term or a collateral term of the agreement that if the Defendant did not use the money for the Purpose, then it was repayable by the Defendant to the Plaintiff (see para 9 of the SOC).

12 The second pleaded cause of action was based on the alleged existence of a constructive trust, on the basis of which the Plaintiff sought tracing and an accounting. In the Plaintiff's closing submissions, he claimed not only for the return of the money under this cause of action but also a share of profit as the

Defendant had apparently used the money to partially pay for the purchase of properties (a unit and a car park lot) in Sydney, Australia, and sold them at a profit.

Issues to be determined

13 The issues for determination were:

(a) How much the Defendant received from the Plaintiff in 2010.

(b) Whether the Sum received by the Defendant from the Plaintiff in 2010 was for the Purpose.

(c) Whether the Defendant was under an obligation to repay the Sum if he did not use it for the Purpose, which in turn depended on:

(i) whether there was an express term for him to repay the Sum if it was not used for the Purpose;

(ii) whether there was an implied term for him to repay the Sum in such circumstances; or

(iii) whether the Defendant held the Sum received on a constructive trust for the Plaintiff.

14 I shall now discuss each issue in turn.

Issue 1: How much the Defendant received from the Plaintiff in 2010?

The two sums of AUD$240,000

15 The Plaintiff alleged that sometime towards the end of 2006 or early 2007, the Defendant had approached him to pay for the Defendant's pursuit of a Master's degree in Buddhist Studies at the University of Sydney, Australia.

The Plaintiff agreed and eventually handed over sums of moneys amounting to AUD$240,000 either personally or through the Plaintiff's wife, over four instalments. The Plaintiff agreed that he knew the Defendant well by May 2008 when the Defendant became Abbot of MBM. If the Plaintiff's allegation about this first sum of AUD$240,000 was to be accepted, it may be that the Plaintiff also knew the Defendant quite well even before May 2008 since he was first allegedly approached by the Defendant to fund the Defendant's studies towards the end of 2006 or early 2007.

16 According to the Plaintiff, in or about April 2010, the Defendant again asked the Plaintiff to pay for the Defendant's studies, this time to pursue a doctoral degree with an Australian university. The Defendant allegedly asked for a second sum of AUD$240,000 which the Plaintiff agreed to.

17 At this point, I would highlight that the Plaintiff was therefore alleging that he had given the Defendant two aggregate sums each totalling AUD$240,000. The first aggregate sum was to pursue a Master's degree and the second aggregate sum was to pursue a doctoral degree, both in Australia. For the purpose of the present action, the Plaintiff was claiming only the second aggregate sum which I have referred to as "the Sum".

Did the Plaintiff give the Defendant AUD$240,000 in 2010?

18 It was undisputed that on or about 21 April 2010, the Plaintiff remitted AUD$200,000 to the Defendant's bank account in Sydney. After deduction for some small bank charges, the net amount the Defendant received was slightly less, but for this action, I have proceeded on the basis that he received AUD$200,000 from that remittance.

19 The first issue was whether the Defendant also received another AUD$40,000 in or about 2010 from the Plaintiff. The Plaintiff's position was that this sum was handed to the Defendant in cash over various occasions in 2010. The Defendant denied this.

20 The Plaintiff relied on the minutes of a Management Committee meeting of MBM on 3 November 2015. The minutes reflected that the Plaintiff told the committee about the following:

(a) that the Plaintiff had given the Defendant the first and second aggregate sums of AUD$240,000 each in 2006 and 2010 respectively;

(b) that the purpose of the Sum was for the Defendant's Masters and doctoral studies;

(c) that the Defendant did not explain what he did with the Sum even though he did not pursue the doctoral degree; and

(d) that the Plaintiff learned that the Defendant had bought the Australian properties instead.

21 The minutes recorded the following response from the Defendant:

(a) the Defendant explained how he came to buy the properties in question;

(b) the Defendant's position was that the money given in 2006 and 2010 was for services rendered by him to help the Plaintiff's family and business problems, and that he did not ask for the two aggregate sums nor did he request funding for his studies.

However, there was no record of the Defendant disputing the quantum of the second aggregate sum which the Plaintiff said he had given to the Defendant in 2010.

22 Furthermore, after the Plaintiff's solicitors sent a letter of demand dated 5 May 2016 to the Defendant for the Sum, the Defendant's solicitors replied on 12 May 2016 to say that the Sum was a gift which was not for the Purpose. That letter implicitly admitted that the Defendant did receive the Sum.

23 It was therefore too late for the Defendant to deny in his defence that he received the AUD$40,000 in addition to the AUD$200,000.

24 Indeed, in oral evidence, the Defendant eventually accepted that he did receive the Sum from the Plaintiff in 2010.[1]

25 I therefore found that the Defendant did receive the Sum in 2010 from the Plaintiff.

Issue 2: Whether the Sum received by the Defendant from the Plaintiff in 2010 was for the Purpose

The Defendant's case

26 The Defendant's position was that he did not ask for the Sum for the Purpose and in fact did not ask for the Sum at all. As stated above, his position was that the Sum was given to him as a Dana in appreciation of his prayers for the Plaintiff's business and for his advice in respect of the Plaintiff's marital issues.

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1 Notes of Evidence ("NE") 29/11/17 p 43

27 The Defendant further claimed that whilst he did initially have the intention to pursue a doctoral degree in Australia, he changed his mind in order to oversee the MBM rebuilding project in Singapore. In addition, the Defendant pointed out that since he was an Australian Permanent Resident, he was considered to be a domestic student and hence eligible for funding that would have covered the cost of any doctorate studies, and that in any case he had sufficient savings to cover his own expenses.

The Plaintiff's case

28 Apart from asserting that the purpose of the Sum was for the Defendant to pursue his doctoral degree, the Plaintiff also denied having received any marital counselling from the Defendant, and stated that his business did not face any financial difficulties.

My findings

29 It was to my mind significant that the Sum given was of a large quantum. While the Defendant alleged that the Plaintiff had in the past handed cash in various currencies to the Defendant, there was no evidence that the Plaintiff had given a large amount of AUD$200,000, or its equivalent, at one go. This was the amount which the Plaintiff had remitted to the Defendant on or about 21 April 2010.

30 As regards the first aggregate sum of AUD$240,000 given in 2006, the Plaintiff said this was given in cash of AUD$60,000 on four separate occasions, the first tranche having been handed by the Plaintiff's wife to the Defendant and the rest by the Plaintiff himself to the Defendant. In any event, on the Plaintiff's case, the first aggregate sum was also for the Defendant's studies.

31 Secondly, I was of the view that if the AUD$200,000 (which formed part of the Sum) was just another example of money which the Plaintiff had in the past given to the Defendant as Dana, the Plaintiff would not have remitted the amount to the Defendant's bank account in Australia. This mode of payment suggested that it was for the Defendant's use in Australia.

32 Thirdly, the currency of payment also suggested that it was for a specific purpose of the Defendant in Australia. Although the Defendant suggested that in the past the Plaintiff had given him cash in various currencies as Dana, the Plaintiff did not agree. The Plaintiff testified that the Defendant had requested specifically for the Sum to be given in Australian dollars and that he would have given the Sum in Singapore dollars if it was not for the Purpose.[2] It seemed logical to me that the currency of any money given would correspond to the country of its intended use.

33 Accordingly, I found that the Sum was given to the Defendant for the Purpose and not because of his prayers or advice.

Issue 3: Was the Defendant under an obligation to repay the Sum if he did not use it for the Purpose?

Was there an express term for repayment?

34 The SOC alleged a collateral agreement that the Defendant was to repay the Sum to the Plaintiff if the Defendant did not use the Sum for the Purpose. However, the Plaintiff's closing submissions appeared to suggest (at para 23) that the Defendant's express agreement to repay the Sum was part of the oral agreement in which the Plaintiff agreed to give the Sum for the Purpose, and not part of a collateral agreement.

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2 NE 28/11/17 p 33

35 In any event, the Plaintiff's affidavit of evidence-in-chief ("AEIC") was devoid of any evidence about any such express agreement by the Defendant, whether or not it was contained in a collateral agreement or under the same agreement in which the Plaintiff agreed to the Defendant's request for the Sum. Likewise, the Plaintiff's oral evidence was lacking in evidence about any such express agreement.

36 In my view, there was no express agreement by the Defendant to repay the Sum. The question of repayment was simply never discussed. This was not surprising as the parties were on close terms then and the Plaintiff did intend to give the Sum to the Defendant, although it was meant for the Purpose.

Was there an implied term for repayment?

37 The issue of an implied term was not elaborated in the Plaintiff's SOC or his AEIC. The Plaintiff's closing submissions simply mentioned (at para 23) that it was also "a term" that the Sum was to be repaid if not used for the Purpose. There was no mention of an implied term in that paragraph and no elaboration as to how the implied term came about.

38 In the circumstances, I found that there was no implied term as alleged by the Plaintiff.

39 I was also of the view that bearing in mind the close relationship and the nature of the relationship between the parties in 2010, there was no intention to create any legal relationship between the two. Both would have been horrified if it had been suggested then that they were thinking of a binding legal agreement between them in respect of the Sum.

Did the Defendant hold the Sum on constructive trust for the Plaintiff?

40 As for the Plaintiff's claim for a constructive trust, the main question was whether parties had intended the Defendant to be free to use the Sum as he wished even though it was handed or sent to the Defendant for the Purpose.

41 It was the Plaintiff's case that the Defendant had informed him in 2010 that the Sum was required for the doctoral degree to be undertaken over four years. Yet, it was common ground that the Defendant was requested to and did come back to Singapore in 2011 to assist in MBM's fund-raising efforts. The Plaintiff was one of the persons who made the request.[3]

42 While the Defendant did travel occasionally out of Singapore thereafter, the Plaintiff must have known in 2011, when the Defendant came back to Singapore to assist in MBM's fund-raising efforts, that the Defendant was not pursuing his doctoral degree in Australia. The Plaintiff said that it did not cross his mind to ask the Defendant about the doctoral degree as he was busy with the fund-raising efforts of MBM.[4] I doubt that this was the case.

43 I was of the view that the real reason why the Plaintiff did not ask the Defendant about his pursuit of the intended doctoral degree was that the Plaintiff already knew that the Defendant had decided not to pursue it as the Defendant had returned to Singapore. At that time, they still maintained a close relationship.

44 The relationship between the parties only deteriorated in the later part of 2014 for reasons which I need not elaborate on. On 5 May 2015, the Plaintiff

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3 NE 28/11/17 p 50

4 NE 27/11/17 p 28

commenced an action against the Defendant in HC/Suit No 436 of 2015 for defamation ("the 2015 defamation action").

45 The Plaintiff also said in oral evidence that in 2015, some members of MBM had informed him that the Defendant had used the Sum to purchase properties in Australia.[5] In his AEIC, he said (at para 21) that in June 2015, a member of MBM told him that the Defendant had bought properties in Sydney, Australia. He also alleged that on 17 June 2015, he made a search at the Land Registry in New South Wales, Australia and obtained details of the properties which the Defendant had bought. In oral evidence, he clarified that the search was done by someone else for him.

46 Therefore, according to the Plaintiff's own evidence, he knew or believed by June 2015, at the latest, that the Defendant did not use the Sum to pursue his doctoral degree as he was told that the Defendant had used the Sum instead to purchase properties in Sydney, Australia, and he verified the fact of the purchases through a search. Yet, the Plaintiff did not ask the Defendant to return the Sum to him at that point in time.

47 The question of the use of the Sum appears to have been raised by the Plaintiff for the first time at a Management Committee meeting of MBM on 3 November 2015. As mentioned above, the relationship between the Plaintiff and the Defendant had deteriorated by late 2014 for other reasons, to the point that the Plaintiff had commenced the 2015 defamation action on 5 May 2015.

48 By the date of that meeting, the Defendant had been back in Singapore for around four years to assist in MBM's fund-raising efforts. According to the minutes of that meeting, the Plaintiff complained that the Defendant did not

5 NE 27/11/17 p 33

explain where the Sum had gone to and neither did he pursue his doctoral degree. Crucially, the Plaintiff was recorded to have complained that the Defendant did not donate the Sum to MBM's rebuilding fund even though MBM was in need of money. This was telling as it suggested that it was for the Defendant to decide whether to donate the Sum to the fund and not that he was obliged to return it to the Plaintiff. When confronted with this during his oral testimony, the Plaintiff said that he did not vet the minutes, but that he did in fact demand the return of the Sum to himself at that meeting.[6] That assertion was not put to the Defendant in cross-examination. Furthermore, the Plaintiff relied on the accuracy of the meeting minutes to show that the Defendant did not contest the quantum of the Sum at the meeting. It did not behove him to assert the accuracy of the minutes when it suited him, and then question the accuracy of the same minutes when they suggested that the Defendant had the discretion to decide whether to donate the Sum to the rebuilding fund.

49 Furthermore, in an AEIC which the Plaintiff affirmed on 22 February 2016 for the 2015 defamation action, he said at para 18 that, "the Defendant not only deemed it fit not to account to me for the unused monies but also did not re-direct it to the MBM Re-Construction Fund". While the former statement about accounting to the Plaintiff suggested that the Sum still belonged to the Plaintiff, if not used for the Purpose, the latter statement suggested that it was for the Defendant to decide whether to use the money for MBM's rebuilding fund. This ambiguity suggested that it was still not clear, even in the Plaintiff's own mind at the time he affirmed that AEIC, that the Sum was to be returned to him if it was not used for the Purpose.

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6 NE 28/11/17 p 7

50 I add that the Plaintiff gave inconsistent evidence as to when he first learned that the Defendant was not pursuing the doctoral degree. As mentioned above, there was evidence from him that he knew this at the latest by June 2015. Yet, during cross-examination, he said that he did not know this even at the Management Committee meeting of 3 November 2015.[7]

51 In his re-examination, the Plaintiff said that he could not re-call when he first realised that the Defendant was not pursuing the doctoral degree.[8]

52 It seemed to me that if the Sum was to be repaid to the Plaintiff if not used for the Purpose, the Plaintiff would have been more consistent in his evidence as to when he first learned that the Plaintiff had not pursued the doctoral degree. His inconsistent or vague evidence about this point was not due to a lapse of memory but because the Defendant was free to use the Sum as he wished, and there was no expectation on the Plaintiff's part for it to be returned to him. While one might say that the Plaintiff had expected the Defendant to use the Sum for the Purpose, this still did not address the point that he knew for some time that the Defendant was not pursuing the doctoral degree, and yet did not ask for the return of the Sum until later.

53 There was no demand by the Plaintiff for the return of the Sum until the letter of demand from the Plaintiff's lawyers dated 5 May 2016, about another six months later after the first time he mentioned it at the meeting of 3 November 2015.

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7 NE 28/11/17 pp 21–22

8 NE 28/11/17 p 57

54 In the circumstances, as the Sum was at the free disposal of the Defendant, there was no constructive trust and the Plaintiff's claim for breach of trust also fails.

55 The Plaintiff did not plead fraud, misrepresentation or unjust enrichment.

Conclusion

56 In the circumstances, I dismissed the Plaintiff's action. Having regard to the fact that the Defendant did receive the Sum and also made a profit from the use of the Sum to purchase properties, I ordered the Plaintiff to pay only the disbursements of the action to the Defendant.

Woo Bih Li
Judge

Dr William Koh Hai Keong (Koh & Partners) for the plaintiff;
Joseph Liow Wang Wu, Charlene Cheam and Celine Liow Wan Ting
(Straits Law Practice LLC) for the defendant.