

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 120

HC/Originating Summons No 1342 of 2017

In the Matter of Section 18(2) read with paragraph 2 of the First Schedule to
the Supreme Court Judicature Act (Cap 322, 2007 Rev Ed)

Between

Jarret Pereira

... Plaintiff

And

- (1) Mascreeenos Bridjet w/o Moses
- (2) Susan Pereira d/o Moses

... Defendants

GROUND OF DECISION

[Land] — [interest in land]

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Jarret Pereira
v
Mascreenos Bridjet w/o Moses and another

[2018] SGHC 120

High Court — HC/Ori­ginating Summons No 1342 of 2017
Choo Han Teck J
11, 30 April, 7 May 2018

15 May 2018

Choo Han Teck J:

1 The 1st and 2nd defendants purchased a Housing Development Board flat (the “property”) as joint tenants. The 1st defendant is the 2nd defendant’s mother. The property was financed by a loan in the 1st and 2nd defendants’ joint names. In 2006, the 2nd defendant transferred her interest in the property to the plaintiff who is her brother, in order to purchase another flat with her then-husband. In exchange, the plaintiff paid the 2nd defendant an amount equivalent to her Central Provident Fund (“CPF”) contributions towards the property, with accrued interest. The plaintiff and 1st defendant were then registered as joint tenants. They jointly obtained a fresh mortgage, repayments of which have solely been paid by the plaintiff. The plaintiff also paid the utility and conservancy fees, and property tax for the property.

2 The relationship between the parties soured, prompting the plaintiff to apply for the property to be sold and for the parties’ respective interests in the

property to be severed. On 7 May 2018 I ordered that:

- (a) In full and final settlement, the property shall be sold in the open market within six months from the date of this order. There shall be joint conduct of sale of the property, with liberty to apply if counsel are unable to come to an agreement.
- (b) Property tax, utilities and conservancy fees incurred in relation to the property from the date of this order to the date of sale are to be borne equally by the plaintiff and 1st defendant.
- (c) The net sale proceeds, after repayment of the outstanding mortgage and interest, shall be divided equally between the plaintiff and 1st defendant.
- (d) From their share of the sale proceeds, both parties shall refund to their respective CPF accounts all monies utilized for the property together with accrued interest. Any deficiency is to be made up by the respective party.
- (e) In addition, the plaintiff is entitled to \$69,726.50 by way of equitable accounting. This is to be paid to the plaintiff by the 1st defendant, and need not come from the 1st defendant's share of the sale proceeds.
- (f) Each party is to bear his own costs.

On 8 May 2017, counsel for the defendants, Mr Chiok, made further submissions. I directed that no further submissions were required on 10 May. I now furnish the grounds of my decision, explaining why Mr Chiok's further submissions are misguided.

3 Counsel for the plaintiff, Mr Koh, submitted that the plaintiff's interest in the property ought to be 70–73.36%, taking into account the plaintiff's repayment of the mortgage. Mr Koh provided a range, instead of a specific figure, as the parties did not have certain information relating to the initial purchase of the property, such as the purchase price and the loan amount. The plaintiff's exact interest was thus contingent on the assumptions adopted. In the alternative, Mr Koh submitted that if the plaintiff's mortgage repayments cannot be taken into account in calculating his interest in the property, the plaintiff should be reimbursed for mortgage repayments made in excess of his share, by way of equitable accounting. Mr Koh further sought equitable accounting for utility and conservancy fees, property tax, and renovation expenses incurred by the plaintiff, and rental income received by the 1st defendant.

4 Counsel for the defendants, Mr Chiok, submitted that the beneficial interest in the property ought to be 42:58 in favour of the 1st defendant. In response to the plaintiff's claim for equitable accounting, Mr Chiok submitted as follows:

- (a) equitable accounting in relation to the mortgage repayments would result in double recovery;
- (b) there should not be equitable accounting in relation to the plaintiff's renovation expenses as they included items such as television sets, a gate, and an air-conditioning unit, which did not enhance the value of the property, and the benefit of which was enjoyed by the plaintiff;
- (c) there should not be equitable accounting in relation to the utility and conservancy fees, and property tax as the plaintiff would have expended the sums in any event; and

- (d) there should not be equitable accounting in relation to the rental income as there is no evidence of the amount of rental income collected.

5 I did not accept either counsel's arguments as to the proportion of beneficial interests in the property. Both counsel proceeded on the basis that there was a resulting trust; they calculated the parties' shares in the property based on their contributions towards the property. However, a resulting trust could not have arisen in the circumstances. The plaintiff purchased his share in the property from the 2nd defendant, and thus could not have obtained more than what the 2nd defendant had to sell. The question then was — what was the 2nd defendant's share in the property? As mentioned earlier at [3], the parties did not furnish information relating to the initial purchase of the property even though I had asked if they could. Without such information, it was not possible to determine the 2nd defendant's exact beneficial interest in the property. Equity thus presumes that, as a joint tenant, the 2nd defendant's – and hence the plaintiff's – beneficial interest in the property was 50%.

6 As the plaintiff's beneficial interest in the property was 50%, he is entitled to equitable accounting for the mortgage repayments, utility and conservancy fees, and property tax paid by him in excess of his share. This added up to \$69,726.50 (\$46,912.50 for mortgage repayments, and \$22,814 for utility and conservancy fees and property tax). I rejected Mr Chiok's arguments in relation to the mortgage repayments, for reasons I will elaborate below. I further rejected his argument in relation to the utility and conservancy fees, and property tax. The mere fact that the expenses would have been incurred by the plaintiff in any event does not mean that the 1st defendant need not account for her share of the expenses. I declined to include the claim for renovation expenses as the purported renovations did not enhance the value of the property.

In fact, the bulk of the renovation expenses related to chattels such as television sets. I further declined to include the claim for rental income as the amount claimed was speculative – the plaintiff merely asserted that the 1st defendant received a regular rental income of \$500-\$800 per month.

7 I now turn to Mr Chiok’s further submissions. Mr Chiok submitted that my orders would result in double recovery for the plaintiff as –

[t]he CPF that had been advanced by the Plaintiff will be refunded to his CPF account from his 50% share of the net sale proceeds ... and yet he receives another 50% equal to his CPF monies used from the first Defendant

He further submitted that my orders would result in “an imbalance in the distribution of the sale proceeds” as the plaintiff would gain \$42,846.52 from the sale, whereas the 1st defendant would only gain \$3,511.32. In the alternative, he sought equitable accounting for the 1st defendant’s CPF monies used for the acquisition of the property.

8 I do not understand Mr Chiok’s argument that my orders result in double recovery for the plaintiff. The 1st defendant, as the owner of 50% of the beneficial interest in the property, is liable for 50% of the mortgage. Since she did not make any of the mortgage repayments, she is liable to account to the 1st defendant for her share of the mortgage. The fact that the plaintiff’s CPF account will be refunded using his share of the sale proceeds, is completely irrelevant. The money used to refund his CPF account is effectively coming out of his own pocket; as the owner of 50% of the beneficial interest in the property, he is entitled to 50% of the net sale proceeds. If equitable accounting was not granted, the plaintiff would effectively receive less than 50% of the net sale proceeds, as he suffered a “loss” in paying for the mortgage.

9 Mr Chiok’s argument as to the imbalance in the distribution of the sale proceeds also has no merit. It is true that the 1st defendant is receiving “less” from the sale proceeds. But this is only because she was receiving “more” throughout the years, by not contributing towards the mortgage repayments, utility and conservancy fees, and property tax.

10 I further reject Mr Chiok’s alternative argument for equitable accounting for the 1st defendant’s CPF monies. First, the claim is belated; it was only brought up in further submissions. Second, the 1st defendant’s CPF monies were only utilised during the initial acquisition of the property. That is to say, before the plaintiff entered into the picture. Equitable accounting for any imbalance between the contributions of the 1st defendant and the other joint tenant at the time – the 2nd defendant – should have been brought against the latter.

11 For the above reasons, I made the orders detailed at [2].

- Sgd -
Choo Han Teck
Judge

Jeffrey Koh and Patrick Tan Tse Chia (Fortis Law Corporation) for
the plaintiff;
Andy Chiok (Michael Khoo & Partners) for the first and second
defendants.