IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 204

Suit No 258 of 2018

Between

Ong Keh Choo

… *Plaintiff*

And

(1) Paul Huntington Bernardo
(2) Tran Hong Hanh

… *Defendants*

JUDGMENT

[Contract] — [Formation] — [Acceptance]

Version No 1: 27 Oct 2020 (22:41 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Ong Keh Choo
v
Paul Huntington Bernardo and another

[2019] SGHC 204

High Court — Suit No 258 of 2018
Choo Han Teck J
9, 11–12 July 2019; 16 August 2019

3 September 2019 Judgment reserved.

Choo Han Teck J:

1 The plaintiff, Ong Keh Choo ("Ong"), is a property agent with 35 years' experience and was also the owner of an apartment at 8 Balmoral Road ("the Property"). The defendants are a married couple, Paul Huntington Bernardo ("Bernardo") and Tran Hong Hanh ("Tran"). Bernardo, an American, is a research scientist and Tran, a Vietnamese, is a medical concierge. They are Singapore permanent residents. Ong advertised the Property for sale and showed the flat to the defendants on 7 October 2017. The defendants handed her a cheque for $316,000 which Ong claims was in exchange for an option to purchase ("the Option"), but the defendants later cancelled the cheque. Ong now sues on this cheque. The defendants allege that Ong misled them into giving that cheque.

2 Mr Edwin Lee, counsel for Ong, submits that this is a simple case of buyer's remorse. He submits that the defendants knowingly entered into the

Option and are now trying to avoid the contract. He says that on her part, Ong had honoured the terms of the Option. According to Ong, the defendants were so eager to purchase the Property that they initially issued a cheque for $3,160,000, the full purchase price, and she advised them to reduce it to 10%. It is not disputed that Ong has since sold the Property to a third-party buyer for a higher price, $3,820,000, but Mr Lee submits that this is irrelevant to the present claim.

3 On the other hand, the defendants claim that Ong told them to issue a cheque to demonstrate their interest, but assured them that it was "for show" only and she would not hand it to the owner. She did not disclose the fact that she was the owner. Later that same day, Ong met Tran alone and told her to sign a document to acknowledge the cancellation of some words. At that time Tran did not know that that document was the Option.

4 Tran showed that document to a lawyer on the same day and she was told that it was an option to purchase with highly unusual terms. First, the option fee was 10% of the purchase price – the value of the "for show" cheque – when the usual market practice for an option fee was 1%. Second, the defendants had to pay the remaining 90% of the purchase price upon exercise of the Option, and not at completion. That was unheard of. Third, the full sum was to be paid immediately to the owner rather than held by stakeholders.

5 Alarmed, Tran asked Ong to destroy the cheque but Ong tried to assure her that nothing was unusual. It was only when Bernardo filed a complaint with the Council of Estate Agents ("CEA") on 8 October 2017, the very next day, that the defendants realised that Ong was the owner of the Property. The

Version No 1: 27 Oct 2020 (22:41 hrs)

defendants countermanded the cheque before Ong could encash it.

6 Mr N Sreenivasan, SC, counsel for the defendants, submitted that no agreement had been reached because there was no offer or acceptance. Alternatively, he submitted that any agreement had been procured by fraudulent misrepresentation, or had been validly rescinded, or the Option was unenforceable as illegal or against public policy, or would lead to Ong being unjustly enriched, or that Ong suffered no loss. He also submitted that Bernardo is entitled to rely on ss 29 and 30 of the Bills of Exchange Act (Cap 23, 2004 Rev Ed).

7 I found Tran to be a credible and forthright witness. I had no difficulty accepting her version of events, namely that Ong had assured her and Bernardo that the cheque was "for show" and procured her signature on the Option without informing her of its nature. Tran appeared to be a simple and guileless individual. I also accept that she was not familiar with the procedure for purchasing a property as she was buying property in Singapore for the first time. Although it would have added to Tran's case had she called the lawyer she consulted, given the overall evidence, I am satisfied that this was not a fabricated story on Tran's part even without corroboration from the lawyer. Although Bernardo had a lesser part to play in this case, his evidence was direct and unwavering. I accept it as corroborative of Tran's evidence, and not a result of false collusion with her.

8 Ong's general demeanour throughout the trial impressed me as an untrustworthy person. Ong's failure to disclose that she was the owner of the Property was contrary to the CEA's Professional Service Manual, which serves

Version No 1: 27 Oct 2020 (22:41 hrs)

as guidelines for ethical conduct and provides that a property agent shall "as soon as possible disclose upfront that he is an interested party in the transaction". Ong's excuse was that Tran did not ask if she was the owner. The evidence shows that this was not just an omission but active deception. Ong referred to the owner as a third party in messages to Tran where she implied that she had handed the cheque to the owner:

> [12.02am] You Don't have to sign anything now I cannot advise you as chq and option given to seller rightfully this is legal bound but I think if you are Worried I shall help you to resolve this matter
>
> …
>
> [12.19am] I am most willing to help but this is legal bound and if you are so worried I feel bad too I have no authority to cancel the chq

9 Later that day, Tran told Ong to ask the owner to return the cheque to her, but Ong did not reply until two hours later, and even then she did not correct Tran's wrong impression. The next day, when confronted with proof that she was the owner, Ong replied:

> [A]fter careful consideration of what had happened life is too short to argue over money and for your information I reserved my rights not to review my assets and my personal wealth to anyone

10 Ong's persistent refusal to acknowledge that the terms of the Option were unusual also detracted from her credibility. She insisted that there was no "normal" option fee and refused to admit that paying the full purchase price upon exercise of an option to purchase is clearly disadvantageous to the buyer. Her repeated refrain was that the transaction was unusual because Tran wanted it to be so. All this created the impression of an opportunistic owner taking advantage of an unsuspecting and ignorant buyer.

Version No 1: 27 Oct 2020 (22:41 hrs)

11 Judi Lee, another property agent who witnessed the signing of the Option, was called as a witness for Ong. Her evidence appeared rehearsed to corroborate Ong's evidence. She refused to acknowledge the unusual terms of the Option and insisted that there was no usual practice for option money. In fact, she repeated Ong's refrain that anything goes as long as there was a "willing buyer, willing seller". This significantly affected her credibility.

12 There is no dispute that it is Tran's signature on the Option, but I do not find that it can be taken as an acknowledgement or acceptance of the entire Option. Ong admitted that she told Tran to sign the document merely to countersign the cancellation of certain words in the document:

> Q Now, the 2nd defendant says – and I will put her version to you, you can agree or disagree – that you passed her a document that Judi had filled out and you asked her to countersign on the mistake on the document to acknowledge the cancellation of certain words that were not applicable. So what you did was you showed her the cancellation, you told her these words were not applicable and you asked her to countersign against the cancellation. Agree or disagree?
>
> A Agree.

This was corroborated by the contemporaneous text messages, including one sent by Ong to Tran on the same day:

> Dear you did not sign anything it is only acknowledged that you initial on the cancellation of certain words that are not applicable.

13 On the two copies of the Option tendered before this court, Tran's signature only appears next to the cancellation of non-applicable words or amendments. There is no indication that her signature was intended to be an

Version No 1: 27 Oct 2020 (22:41 hrs)

acknowledgement or acceptance of the use of the cheque as an option fee or that it was an acknowledgement, endorsement, or acceptance of a binding contract.

14 Mr Lee submits that there was valid acceptance because at the meeting where the Option was signed, Tran had engaged in extensive discussions about its terms. I do not accept Ong's evidence that Tran and her had conducted extensive negotiations about the terms of the Option. Her story was not consistent with the objective evidence available, including the unusual nature of the terms. Furthermore, after receiving a concerned message from Tran about the 90% payment, Ong replied:

> Ok it was written by Judi by mistakes the consideration.is another 10% when u exercise option will amend tks Ok?

15 To commit a "mistake" on something as fundamental as the amount due upon exercise of the Option – the very item that Tran appended her signature to – suggests that there was no agreement on the terms. It was an indication that Ong was trying to land a quick sale before her unsuspecting client got wise to it. As such, I am of the view that there was no binding agreement between Ong and the defendants. The option document was inchoate for want of proper endorsement.

16 I not only find that there was no contract between the owner and the defendants, on the evidence, I am of the view that Tran was induced to give the cheque to Ong by reason of Ong's false and misleading representations. Ong had fraudulently misled Tran into thinking that she and her husband were complying with a normal process for the sale and purchase of a property in which the cheque was only "for show".

Version No 1: 27 Oct 2020 (22:41 hrs)

17 Accordingly, I dismiss the plaintiff's claim and I order her to pay the costs of the defendants to be taxed if not agreed.

- Sgd -
Choo Han Teck
Judge

Edwin Lee Peng Khoon and Ng Wei Ying (Eldan Law LLP)
for the plaintiff;
N Sreenivasan SC, Claire Tan Kai Ning and Partheban s/o Pandiyan
(K&L Gates Straits Law Practice) for the defendants.

Version No 1: 27 Oct 2020 (22:41 hrs)