IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1994] SGHC 156

Suit 1487/1987

Between

Peng Ann Realty Pte Ltd

… *Plaintiff*

And

Liu Cho Chit

… *Defendant*

GROUNDS OF DECISION

Companies — Directors — Duties; Limitation of Actions — Effect of time having run; Tort — Conspiracy

Version No 1: 29 Oct 2026 (23:45 hrs)

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Peng Ann Realty Pte Ltd v Liu Cho Chit and Others

[1994] SGHC 156

Suit 1487/1987
Goh Joon Seng J
02 June 1994

1 Cur Adv Vult

2 The plaintiffs are a company incorporated in Singapore on 14 June 1972. The first defendant was the managing director from the date of incorporation to 3 March 1978. The other directors at the material time were the third defendant and one Koh Chee Chong. The third defendant was the nominee of one Lok Bok Sim (LBS) who was at all material times in effective control of the plaintiffs.

3 The first defendant through his company, Hoe Huat Construction & Engineering (Pte) Ltd (Hoe Huat), was at all material times a contractor of the Housing & Development Board (HDB). He had known the late Mr Teh Cheang Wan since 1966 when the latter was the Chief Architect of HDB. LBS was at all material times the managing director of Singapore Finance Ltd. In or about 1970, the first defendant came to know LBS and thereafter they became business associates. Through his company, Hoe Huat, the first defendant assisted LBS in the latter`s housing development at Mandalay Road from around 1971 to 1973.

4 In 1972, through Mr Koh Chee Chong, LBS came to know that the piece of land at Kampong Chai Chee with an area of 186.7 acres comprised in lots 21-26, 4-4, 4-7, 120, 121, 122 and 123 and 221 of mukim 28 was available for sale. Having agreed on the price at $1.09m with the owners, the estate of Tan Chwee Boon, deceased, the plaintiff company was incorporated for the purchase of the land. The contract for the purchase was entered into in or about June 1972. Completion took place on 27 October 1972. Pending completion, on 20 July 1972 two of the lots, namely, 221 and 4-4 with a total area of 5.8 acres were acquired by the government. Some neighbouring lands were also acquired. The compensation paid was $228,000 or $0.89 per square foot.

5 On 23 January 1973, following negotiations between the first defendant on behalf of the plaintiffs and the second defendant on behalf of Collin Investment Pte Ltd (CIP), now known as Lee Kai Investment Pte Ltd, an agreement (the main agreement) was entered into by which the plaintiffs agreed to sell three of the lots (the three lots), namely, lots 21-26 (156 acres, 2 roods and 20 poles), 4-7 (19 acres, 1 rood and 6 poles), 123 (2 acres, 3 roods and 11 poles) to CIP for $2.05m. This worked out at about $0.25 per square foot irrespective of the zoning. The three lots were within four zones under the master plan, that is, about 50.13% were zoned `water catchment`, 20.02% `rural`, 7.84% `permanent residential` and 22.01% `temporary residential`. The main agreement was signed by the first defendant on behalf of the plaintiffs and by the second defendant on behalf of CIP.

6 Along side the main agreement, four side agreements (the side agreements) were entered into on the same day or some days later but backdated to 23 January 1973. They were:

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> (i) An agreement (the sub-sale agreement) between CIP as vendor and Mdm SS Lim (Lim Siam Soi), the wife of the first defendant, and Miss Collin Tan (Collin Tan), daughter of the second defendant, as purchasers. The second defendant signed the sub-sale agreement on behalf of CIP and Collin Tan. The first defendant signed on behalf of Lim Siam Soi. By the sub-sale agreement, part of lot 21-26 zoned residential described in the schedule as `approximate area of 5 acres` and stated in the annexed plan as `[plusmn]5 acres` (the [plusmn]5 acres) was sold by CIP to Lim Siam Soi and Collin Tan at the price of $50,000 or about $0.25 per square foot.
>
> (ii) An agreement (the Collden agreement) between Lim Siam Soi and Collin Tan as vendors and Collden Realty Pte Ltd (Collden) as purchasers, by which the [plusmn]5 acres were agreed to be conveyed to Collden in consideration of which Collden would allot 22,500 shares of $1 each to Lim Siam Soi and 27,500 shares of $1 each to Collin Tan, the shares to be credited as fully paid in the books of Collden. This would give a shareholding of 45% to Lim Siam Soi and 55% to Collin Tan in Collden. The first defendant signed the Collden agreement on behalf of Lim Siam Soi. The second defendant signed on behalf of Collin Tan. No one signed on behalf of Collden presumably because it had not been incorporated at that time.
>
> (iii) An agreement (the pre-incorporation agreement) between Collin Tan and Lim Siam Soi, by which it was agreed that notwithstanding their respective proportion of shareholdings, that is, 55% and 45% respectively, Collin Tan would bear 80% whilst Lim Siam Soi would only bear 20% of the development costs of the [plusmn]5 acres. It was also agreed that should Lim Siam Soi fail to contribute her share of 20% of the development costs Collin Tan was to advance same with interest at 10.8% pa. The first defendant again signed on behalf of Lim Siam Soi and the second defendant similarly signed on behalf of Collin Tan.
>
> (iv) An agreement (the fall-back agreement) between CIP of the one part and Lim Siam Soi and Collin Tan of the other part, by which it was agreed that if CIP failed under any circumstances to purchase the land under the main agreement from the plaintiffs, the sub-sale agreement would absolutely determine and become null and void and the sum of $50,000 paid under the sub-sale agreement would be `forfeited` and each party would have no claim against the other.

7 It transpired that Collin Tan was not aware of these transactions and neither had she authorized the second defendant to act on her behalf.

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8 As there was no subdivisional approval for the excision of the [plusmn]5 acres, the three lots were conveyed on the instruction of CIP to Collin Development Pte Ltd on completion on 14 March 1973. Collin Development Pte Ltd is now known as Lee Tat Development Pte Ltd, that is, the fourth defendants. Both CIP and the fourth defendants were at all material times under the effective control of the second defendant.

9 On 23 July 1976, the three lots, except for 4.2 acres of the [plusmn]5 acres, were acquired by the government for public housing and infrastructure purposes. The compensation awarded was $2.5m or $0.33 per square foot. Following a title survey, the [plusmn]5 acres with an area of 4.2 acres or thereabouts is now comprised in lot 1606. Previously landlocked, it now enjoys access to the Pan Island Expressway and other public roads and is a resurveyed lot with development potential.

10 Due to disputes arising out of the side agreements relating to the sub-sale, Lim Siam Soi on 23 June 1984 commenced action in Suit 4149 of 1984 against Tan Geok Tee and Lee Tat Development Pte Ltd, being the second and fourth defendants herein, and Lee Kai Investment Pte Ltd (CIP). In that suit, Lim Siam Soi alleged that Tan Geok Tee orally agreed as principal or on behalf of Lee Tat Development Pte Ltd to purchase her share in the [plusmn]5 acres for $3.8m net of tax, of which she had received part payment of $1,368,420.90. The oral agreement was allegedly concluded on or about 22 April 1981 in Hong Kong following negotiations in Singapore and the part payment was received on 23 April 1981. Accordingly, she claimed specific performance of the oral agreement and the balance of the sale price upon completion. Lim Siam Soi also claimed a declaration that Lee Tat Development Pte Ltd holds the 4.2 acres on trust for her and Collin Tan in equal shares.

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11 The plaintiffs, under the control of the nominees of LBS since the removal of the first and third defendants as directors on 3 March 1978, alleged that they became aware of the sub-sale agreement as a result of the proceedings in Suit No 4149 of 1984. Accordingly, they commenced the present proceedings on 25 May 1987. Paragraphs 6 to 8 alleging conspiracy to defraud on the part of the first, second and third defendants read:

> (6) By a conspiracy to defraud the plaintiffs which conspiracy was hatched between the first and the second defendants and of which conspiracy the third defendant was at all material times aware, the first defendant as the managing director or director of and on behalf of the plaintiffs conspired to sell and the second defendant on behalf of CIP conspired to purchase and to further this purpose entered into an agreement on or about 23 January 1973 for the sale of the lots 21-26, 4-7 and 123 comprising about 176 acres for an inordinately low price of $2.05m in spite of the large area involved. Subsequently, the sale was registered in the name of the fourth defendants.
>
> (7) In pursuance of the said conspiracy and on the same day, ie 23 January 1973, CIP in turn entered into an agreement with the said Madam Lim Siam Soi (wife of the first defendant), and the said Collin Tan (daughter of the second defendant) both of whom were at all material times directors of CIP for the sale or sub-sale of part of the said lot 21-26 which was later subdivided and is now known as lot no 1606 and comprising approximately 5 acres for the sum of $50,000 only, which is also the subject matter of Suit No 4149 of 1984 and the plaintiffs herein will make references to the affidavits and other records in that suit at the hearing of this suit.
>
> (8) The first, second and third defendants knew or must have known by reason of the fact that the said lot 1606 (of about 5 acres) would not be acquired by the government and, therefore, was without tenants of [sic] squatters, and was worth or would be worth several million dollars and hence the plaintiffs have been defrauded by the first, and second and third defendants or any one or more of them.

12 **Particulars of fraud of the first, second and third defendants or any one or more of them**

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> (a) The first and third defendants agreed to sell the said lots 21-26, 4-7 and 123 of mukim XXVIII totalling approximately 176 acres for $2.05m only, and the second defendant agreed to buy on behalf of CIP when the first, second and third defendants well knew or must have known that the price was inordinately low by reason of the fact that they were equipped with the knowledge that the said 5 acres would not be acquired by the government.
>
> (b) Having entered into the said agreement for sale and purchase referred to in sub-para (a) above, all or some of the defendants were a party to CIP selling on the same day the said lot 1606 to Lim Siam Soi (wife of the first defendant) and the said Collin Tan (daughter of the second defendant) when all or some of the defendants had an interest in and/or were connected with CIP.
>
> (c) Entered into the said agreement in para 7 above at a price of only $50,000 when all or some of the defendants and the said Lim Siam Soi and Collin Tan knew or must have known that the said lot 1606 was not likely to be acquired by reason of the fact that the first and second defendants signed the agreements for and on behalf of their nominees and from the documents it would appear that the first and second defendants wanted to retain the beneficial interest for themselves. Evidence will be adduced to show that the unacquired property was worth well over $1m.
>
> (d) Conspired with each other and their nominees, namely, the said Lim Siam Soi and Collin Tan to sell through their said nominees one-half share of the said lot 1606 in or about the month of April 1981 to the second defendant at a price of $3.8m.
>
> (e) Causing the plaintiffs wrongful loss and giving themselves or making wrongful gain or unjust enrichment by the said sales and purchases.
>
> ...

13 Paragraph 9 alleged breach by the first and third defendants in conspiracy with the second defendant of their duties as directors under s 157(1) of the Companies Act (Cap 50) and their fiduciary duty relating to the alleged secret sub-sale under the sub-sale agreement.

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14 Paragraph 9 read:

> *For the reasons aforesaid, the first defendant and third defendants are additionally also in breach of their duties imposed on them as directors under s 157(1) of the Companies Act (Cap 50) and are also in breach of their fiduciary duty owed to the plaintiffs and are liable to the plaintiffs for the losses suffered by it the plaintiffs under s 157(3) thereof. The first and/or third defendants are also in breach of their duty to act bona fide in the interests of the plaintiff company and for breach of trust as trustees of the plaintiff company and the particulars are as follows:*

15 **Particulars**

> (i) Having acquired the knowledge (through the first defendant) that the said 5 acres will not be acquired by the government failing to give the benefit thereof to the plaintiff company.
>
> (ii) Setting aside the said 5 acres for development by the first defendant or his nominees in conspiracy with the second defendant and or his nominee.
>
> (iii) Failure by the first defendant to disclose that he had on the 23 January 1973 entered into an agreement with the second defendant for the benefit of himself and/or his nominee relating to the sale of the said 5 acres.
>
> ...

16 Section 157(1) and (3) of the Companies Act (Cap 50) read:

> (1) A director shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office.
>
> (3) An officer or agent who commits a breach of any of the provisions of this section shall be -
>
> (a) liable to the company for any profit made by him or for any damage suffered by the company as a result of the breach of any of those provisions; and
>
> (b) guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding one year.

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17 The allegation of breach of duty as directors related also to dissipation of assets by the first and third defendants but these allegations were eventually not pursued.

18 Arising out of the pleadings, by an order of court, it was ordered that the issue whether the price of $2.05m at which the three lots were sold under the main agreement was inordinately low be tried before the trial of the other issues. This preliminary point came up for hearing before me. I found that:

> *Bearing in mind that neighbouring lands had been acquired, and hence the strong likelihood of this land being acquired too, the sale price of $2.05m in January 1973 though low was not inordinately low between a willing buyer and a willing seller if both had no knowledge that part of lot 21-26 measuring 4.2 acres would not be acquired. However, for someone who is alleged to have known that these 4.2 acres part of lot 21-26, now lot 1606, would not be acquired and more so that after acquisition of the rest of the land, lot 1606 would have access to an expressway and other public roads, the price of $2.05m for the three lots was inordinately low.*

19 It had in fact been deposed on behalf of the fourth defendants that the fourth defendants in July 1988 received an offer from one `Lay Kok Weng to buy lot 1606, mukim 28, for $14.25m.

20 The question therefore is whether the first and/or third defendant knew at the material time that the [plusmn]5 acres would not in due course be acquired or could be left out of acquisition and if the second defendant was privy to this knowledge when the main agreement and the side agreements were entered into.

21 According to the first defendant, some time in December 1972, a broker by the name of Koh Choon How brought the second defendant to his office at Macpherson Road and introduced the second defendant to him. Following the introduction, the first defendant showed the second defendant the site plan.

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After the second defendant had seen the site plan he asked the first defendant if the latter would like to go into joint venture with him. The first defendant then disclosed that the land belonged to the plaintiffs and he would consult the board. The matter was then discussed among LBS and the three directors, namely, the first and third defendants and Mr Koh Chee Chong. A sale of the land was decided on instead of a joint venture. But LBS and the other two directors allegedly said that if the first defendant was interested in a joint venture with the second defendant he could do so. The first defendant was then authorized to negotiate the sale at a minimum price of $0.25 per square foot. The first defendant then carried out the negotiations, shuttling back and forth between the second defendant`s office at ICB Building, Shenton Way, and LBS` office nearby at Robinson Road. Eventually the price was agreed at $2.05m for the three lots. During these negotiations the joint venture between the first and second defendants on the [plusmn]5 acres was also discussed and agreed to. The first defendant kept LBS informed and obtained his agreement to the price of $2.05m. He said LBS did not object to his proposed joint venture with the second defendant. Mr Low Siew Joon, a solicitor, was then instructed to act for the plaintiffs in the sale whilst the second defendant was represented by M/s Lee & Lee in his purchase.

22 This evidence is not consistent with the letter from the second defendant to M/s Lee & Lee dated 8 January 1973 which suggested that the terms were agreed to between the first and second defendants in Hong Kong if not whilst the second defendant was in Hong Kong. The letter read:

> *Recently in Hong Kong I have conferred the matter with the owner, Mr Liu, eventually we reached to [sic] an agreement, as Mr Liu accepted verbally to sell the above property to me and he is now instructing his solicitors to draft out the agreement, therefore, please let me know by telephone on collect call, as soon as Liu`s solicitors approaching [sic] you.*

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23 On the four side agreements, it is to be noted that both parties were represented by another solicitor, Mr Ng Kong Yeam. Although the joint venture had been discussed and agreed to at the same time that the terms of the main agreement were discussed and agreed to, yet Mr Low Siew Joon was not instructed to prepare the side agreements as well and to do so for signature at the same time that the main agreement was to be signed. Be that as it may, this is the evidence of the first defendant:

> *A: After the sale and purchase agreement for the land was signed Mr Tan telephoned me and asked me to sign the agreement for the joint venture as soon as possible.*
>
> *Q: I see. To finalize the joint venture, is it?*
>
> *A: The joint venture to develop the small plot of land.*
>
> *Q: Hence, what did you do?*
>
> *A: I then asked Lok Bok Sim which lawyer I should go to. Mr Lok then recommended Ng Kong Yeam as the most appropriate lawyer because he could speak Mandarin.*
>
> *Q: And both you and Mr Tan communicated in Mandarin?*
>
> *A: Yes.*
>
> *Q: And when did Mr Tan call you after the agreement was signed?*
>
> *...*
>
> *A: One or two days after the agreement was signed.*
>
> *...*
>
> *Q: So he would have contacted you sometime on 24, and no later than 25 January?*
>
> *A: Approximately that time.*
>
> *Q: And you say further that Mr Lok suggested Mr Ng Kong Yeam as the solicitor?*
>
> *A: Yes.*
>
> *Q: And so what did you do?*
>
> *A: I then made an appointment with Tan Geok Tee to meet Mr Ng Kong Yeam.*

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Q: At his office?

A: Yes, at Mr Ng`s office, to finalize the agreement.

Q: I see. So can you turn to p 98, please? Same bundle.

...

Q: Now, are you looking at p 98?

A: Yes.

Q: Page 98. This is the agreement between Collin Investment and Madam SS Lim and Miss Collin Tan. Collin Investment are the vendors and Madam SS Lim and Miss Collin Tan are the purchasers. Can you confirm for his Honour that Madam SS Lim is your wife and Miss Collin Tan is the daughter of Mr Tan?

A: Yes.

Q: And the agreement was made where Collin Tan would sell 5 acres. Collin Investment would sell approximately 5 acres to your wife and Miss Tan for the sum of $50,000?

A: Yes.

Q: And it was an attempt to delineate these 5 acres and you see it at p 102 at the left hand corner somewhere near the bottom?

A: Yes.

Q: And I see the sign `[plusmn]5 acres`, you see it?

A: Yes.

Q: Can you explain to his Honour why plus and minus?

A: Because this was only an approximate area of 5 acres.

Q: Now, this agreement was signed by Mr Tan on behalf of Collin Investment?

A: Yes.

Q: And it was signed by you on behalf of Madam SS Lim?

A: Yes.

Wu: I`m told, your Honour, the right page to refer is p 115 where Mr Tan signed on behalf of Collin Investment and also on behalf of his daughter Miss Collin Tan.

Q: ... and you signed on behalf of your wife?

A: Yes.

Q: Now, that wasn`t the only agreement signed on that day. You`ll see another agreement on p 118. Now, this is an agreement between Madam Lim and Miss Collin Tan. This time, they are described as the vendors and they are selling it to a company called Collden Realty Pte Ltd?

A: Yes.

Q: This agreement tried to set out the respective shareholdings between you and Mr Tan?

A: Yes.

Q: In other words you or your wife will take 45% and Miss Tan will take the other 55%?

A: Yes.

His Honour: `I or my wife`, isn`t it?

Woo: The wife is his nominee just as Miss Tan was Mr Tan`s nominee.

Q: Now, at p 121 is another agreement between Miss Collin Tan and Mdm Lim. This provides for the incorporation of the company called Collden Realty which was to have an authorized share capital of $2m and at para 8, the last paragraph at p 123, it says: [reads] `Notwithstanding the proportion of the share held by the parties hereto, 80% of the development costs of the property shall be borne by Mr Tan and 20% thereof by Mdm Lim. Provided that [if] she, Mdm Lim, fails to contribute her share of 20%, Miss Tan shall advance the same and shall charge Mdm Lim interest at the rate of 10.8% pa, for the advance made.`

A: Yes.

Q: [Reads] `Provided that Miss Tan shall not be required to contribute development costs exceeding the sum of $1.5m.` And again this agreement was signed by Mr Tan on behalf of his daughter and you on behalf of your wife?

A: Yes.

Q: Now, I notice that these agreements were dated 23 January 1973. Were they in fact signed by the two of you on that day?

A: No, they were signed at a later date.

Q: But it was backdated to the 23 January?

A: Yes.

Q: Well before I ask you why, now I would like you to turn to p 104, same bundle. Now, this is what you would call the fall-back

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agreement. It`s between Collin Investment as Vendor and Mdm Lim and Miss Tan.

...

Q: It is a very short agreement, so I`ll read it. It says in the recital: [reads] `Whereas this agreement is supplemental to the agreement dated the 23 January 1973 entered into between the parties hereto. Now it is hereby agreed as follows: In the event that the vendor in the said agreement fails under any circumstances to purchase the property described in the second schedule thereto from Peng Ann Realty Pte Ltd, a copy of an agreement between Peng Ann and the vendor is also annexed hereto and marked A.` And that`s why you will find A at p 91, the alphabet A at p 91: [reads] ` The said agreement marked B shall absolutely determine ....` This is the sale of the property to your wife and Miss Tan for $50,000: [reads] `shall absolutely determine and become null and void and the sum of $50,000 paid thereunder shall be deemed to be forfeited and each party shall have no claim against the other.`

A: Yes.

Q: Yes?

...

A: Yes.

Q: Now, this agreement is also dated 23 January 1973, was that in fact signed on that day?

A: It was also backdated. It was not signed on that day, it was backdated.

Q: Yes. When were these agreements signed?

A: This agreement was signed even later than the ....

Q: ... the other three agreements.

A: ... the earlier agreements.

Q: Yes. When were the other three agreements signed?

A: After the main agreement was signed then there was this joint venture agreement.

...

Q: You see, the main agreement was signed on the 23 January then there were the other three supplemental agreements, sorry, there were the other three agreements which were prepared by Ng Kong Yeam, when were these three agreements signed?

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> *A: A few days after the main agreement was signed, I went with Tan Geok Tee to Ng Kong Yeam`s office to sign the agreements.*
>
> *Q: A few days, would you say two days, three days?*
>
> *A: Can`t recall the number of days.*
>
> *Q: All right. Were these three agreements signed on the same day? I haven`t come to this agreement on p 104, the fall-back agreement, I refer to the other three agreements, were they signed on the same day?*
>
> *...*
>
> *A: Yes, signed on the same day.*
>
> *...*
>
> *Q: Yes, what about the fall-back agreement at p 104? Was it signed on the same day as the other three agreements?*
>
> *A: You are talking about the fifth agreement?*
>
> *Q: Yes, 104, at p 104.*
>
> *A: This was left out the last time.*
>
> *Q: It was left out the last time?*
>
> *A: It was prepared the following day.*

24 It is the first defendant`s case that LBS, the man in effective control of the plaintiffs, was duly informed by the first defendant of his proposed joint venture with the second defendant. The first defendant is supported by the third defendant who confirmed that he, as the nominee of LBS, was aware of the proposed joint venture and so was LBS.

25 The issue however is not whether LBS was aware of the joint venture between the first and second defendants by themselves or their nominees. The issue is whether the first defendant knew that the [plusmn]5 acres would not be acquired or could be left out of acquisition and if the second defendant was privy to this knowledge.

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26 The second defendant died before the hearing. But in his affidavit affirmed on 1 February 1989 and filed in Suit No 4149 of 1984, he stated in para 5:

> *Sometime before the first agreement [the main agreement] was signed, Liu proposed to me that part of lot 21-26 of mukim 28 be set aside for joint development. Tempted by Liu`s claim that he had good connections with the relevant officers in the building authorities and that he could obtain favourable planning conditions not available to others, I accepted his proposal and accordingly, set aside an area of approximately 5 acres of lot 21-26, mukim 28 for the proposed joint development.*

27 The first defendant in para 4 of his affidavit affirmed on 10 March 1989 and filed in Suit No 4149 of 1984 replied:

> *I disagree with para 5 of Tan`s affidavit. Shortly after the first agreement was signed, Tan approached me and suggested that I entered into a joint development with him of the 5 acres or so referred to in para 5 of his affidavit ....*

28 We discussed the question of finance and Tan said he would provide 80% of the development costs whereas I was to provide 20%. He insisted that he would maintain control of the company which it was contemplated would develop the land and it was eventually agreed that he would have 55% and I would have 45%.

29 This is not consistent with the first defendant`s evidence before me which was to the effect that the joint venture was brought up at the first meeting between him and the second defendant and the terms discussed before the signing of the main agreement.

30 In his said affidavit filed in Suit No 4149 of 1984 the second defendant also contended that under the sub-sale agreement it was a condition precedent that Lim Siam Soi and Collin Tan would apply for subdivision of the [plusmn]5

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acres. As this was not done, Lim Siam Soi had no interest in the [plusmn]5 acres. In answer to this contention, the first defendant stated in his said affidavit:

> *... subdivision was not applied for in 1973/4 because of the agreement to which I have referred above. Thereafter it was likely (as in the event happened) that the land other than lot 1606 would be compulsorily acquired. When it was so acquired, approval for subdivision was automatically provided by reason of the fact that, firstly, everything except lot 1606 was compulsorily acquired and, therefore, de facto divided off, and secondly, the land was resurveyed and renumbered. I draw attention to the fact that what was carried out by the chief surveyor was a title survey. Everything has been done to enable LTD [the fourth defendants in present proceedings] to receive a fresh title to lot 1606 ... .*

31 In the present proceedings the first defendant testified under cross-examination as follows:

> *Q: But you then said to Tan Geok Tee sale be conditional upon a joint development, why?*
>
> *A: If I did not go into joint development with him on the smaller plot of land [the [plusmn]5 acres] it would show I had no confidence because I had already told him the land would not be acquired; because Tan Geok Tee`s condition for the purchase is that the land would not be acquired.*
>
> *...*
>
> *A: Tan Geok Tee wanted to see whether I had the confidence that the land would not be acquired.*
>
> *Q: So Tan Geok Tee placed more reliance on your assurance that the land would not be acquired than on Lee & Lee`s letter of 12 February 1973 PB(1)42 and PB(4)14 warning of likely acquisition?*
>
> *A: I disagree. I did not guarantee that the land would not be acquired. I only told him the land would not be acquired. When he suggested going into a joint venture with me on the 5 acres he was testing me.*

32 The letter dated 12 February 1973 from M/s Lee & Lee to CIP read as follows:

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> *Our preliminary search at the Registry of Deeds shows that there is registered against lot 21-26 (the largest lot) a notice: `Part approximate area 112 acres likely to be needed for Food Production vide Government Notification No 1954 dated 9 August 1952`. We are trying to obtain a copy of this government gazette notification and will let you know if we can get any further information on this.*

33 Since the plaintiffs` claim is based on conspiracy to defraud on the part of the first, second and third defendants and breach of the Companies Act (Cap 50) s 157(1) and breach of fiduciary duty on the part of the first and third defendants, the case of ***Sumitomo Bank Ltd v Kartika Ratna Thahir*** . In that case, Pertamina, an Indonesian state enterprise whose principal business was the exploration, processing and marketing of oil and natural gas in 1970 undertook, at the behest of the Indonesian government, a project for the construction of infrastructure facilities for the steel works called Krakatau Steel at Cilegon, West Java. In furtherance thereof, another state enterprise, `PTKS` was incorporated. However, Pertamina remained financially responsible for the project and in or about June 1973, took over effective management and control of it.

34 General Thahir was general assistant to the president director of Pertamina from 14 October 1968 until his death on 23 July 1976. During that period, General Thahir also held various other influential offices in Pertamina. From sometime in 1972, he was authorized to sign vouchers and cash demands for all contracts signed by the president director. At no time did General Thahir`s salary from the plaintiffs exceed Rupiahs 3,782,500 per annum, the equivalent of S$22,250, or US$9,000 per annum.

35 In 1973 and 1974, Pertamina and PTKS entered into several contracts for the construction of the facilities. Two of the contractors were Klockner Industrie Analagen GMBH (Klockner) and Siemens AG (Siemens). Pertamina

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alleged that the two German contractors paid General Thahir bribes to ensure better contractual terms than they would have obtained if they had to tender for the work and preferential treatment where payments were concerned, in view of the reducing resources of Pertamina in 1974 and 1975. It was also alleged that General Thahir deposited the proceeds into 19 ACU accounts at the Sumitomo Bank (Sumitomo) in Singapore in the name of `Mr HA Thahir and/or Mrs KR Thahir`. DM53,972,374.12 was held in 17 accounts; the remaining two accounts were denominated in US dollars in the sums of US$593,249.31 and US$608,959.42.

36 Following the death of General Thahir, three different parties claimed to be entitled to the proceeds of the 19 ACU deposits and Sumitomo applied for interpleader relief under O 17 r 1(1)(a) of the Rules of Supreme Court 1970. The first party was Mrs Kartika Thahir (Mrs KR Thahir), who claimed to be the lawful widow of General Thahir and beneficially entitled to the 19 ACU deposit accounts; the second was the estate of the deceased which was represented by sons of an earlier marriage; and the third was Pertamina, who claimed the deposits on the ground that the moneys were bribes received by General Thahir whilst in their employ from contractors of or who were paid by Pertamina for projects of which Pertamina were in charge.

37 In allowing a substantial part of Pertamina`s claim, Lai Kew Chai J said at p 776:

> *The legal and evidential burden of proof that Pertamina paid Siemens and Klockner rests on Pertamina, as Pertamina accept. However, the question whether Pertamina have discharged both the legal and evidential burden in respect of each of Pertamina`s alleged payments to Siemens and Klockner are very much in controversy. It is submitted on behalf of Mrs Kartika that a part of Pertamina`s allegations involve allegations of a fraudulent or criminal nature and that as a matter of the law of evidence it is necessary for Pertamina to prove their case to a high standard,*

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> *which is higher than the standard in a non-fraud case: see* ***Hornal v Neuberger Products*** *[1957] 1 QBD 247, [1956] 3 All ER 970, [1956] 3 WLR 1034;* ***Nederlandsche Handel-Maatschappij NV (Nederlands Trading Society) v Koh Kim Guan*** *[1959] MLJ 173 , where Rose CJ said at p 175: `Whatever the precise formula adopted and whatever the theoretical position may be, it has long been the practice in countries where the English system of law operates for the courts, in civil cases, to require a high standard of proof in cases where fraud is alleged;` and* ***Tan Chye Chew & Anor v Eastern Mining and Metals Co Ltd*** *[1965] 1 MLJ 201 . However it should be noted that it is not the law of evidence that every step in the allegation of fraud has to be proved by calling live and admissible evidence nor is it the law that fraud cannot be inferred in the appropriate case. In* ***Tan Chye Chew****, for instance, the court was not dealing with the standard of proof and it seems to me clear from a reading of that case that it is no authority for the proposition, which appears to be suggested on behalf of Mrs Kartika Thahir, that fraud cannot be inferred. This is not to say that inferences of this serious nature should be lightly made. The circumstantial evidence must be so compelling and convincing that, bearing in mind the high standard of proof, one is nevertheless satisfied that an inference of fraud is justified. It will therefore be necessary to consider the evidence, if any.*

38 On the evidence adduced, I am unable to find any evidence from which inference may be drawn of conspiracy to defraud or breach of duty on the part of the third defendant. Accordingly, the plaintiffs` claim against him is dismissed with costs.

39 As against the first and second defendants, if the four side agreements were as open as they were contended to be, there was no reason for these agreements to be in the names of their wife and daughter as their nominees respectively when the same were to be signed on their behalf by the first and second defendants. In the case of Collin Tan she did not even know of these side transactions.

40 The subject matter of the sub-sale agreement described as `approximate area of 5 acres` in the schedule and as `[plusmn]5 acres` in the annexed plan

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had no legal access. In such case, it had no prospect of being a subdivided lot and therefore could not be conveyed. Nevertheless, the first defendant, although he was a purchaser under the sub-sale agreement undertook to obtain subdivision, an obligation normally undertaken by the vendor. But he did not submit any application for excision of the [plusmn]5 acres. He just waited and it was eventually left unacquired whilst the surrounding land was compulsorily acquired, leaving it with an area of 4.2 acres. This is close enough to the description of [plusmn]5 acres. It seems obvious that the area of the sub-sold land was not described more precisely because the exact area of that part of lot 21-26 to be acquired was not known at the time. But the impending acquisition must have been known to the first defendant and, through him, the second defendant, and did in fact factor in their minds otherwise the exact area to be sold would have been demarcated and ascertained by a private survey followed by an application for subdivision.

41 The fall-back agreement provided that if CIP failed under any circumstances to purchase the three lots under the main agreement, the sub-sale agreement would determine and become null and void and the sum of $50,000 paid by Lim Siam Soi and Collin Tan would be forfeited. It is to be noted that the event aborting the sub-sale is the failure on the part of CIP to purchase the three lots under the main agreement. But, instead of a refund, the $50,000 was to be forfeited. This suggests that no payment of the purported consideration was intended. As it transpired, it was alleged in Suit 4149 of 1984 that Lim Siam Soi and Collin Tan ` ***did not pay the price of $50,000 or any other price*** ` for the sub-sold land. The first defendant disputed this. He said he paid up his share in cash. Before me, he said:

> *Q: Did you tell your wife anything about the sub-purchase?*
>
> *A: I told her about it.*

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Q: Why did you pay $25,000 in cash?

A: I could not get a bank draft.

Q: With the cash you get a bank draft very fast.

A: No. It would take a long time.

42 This explanation is difficult to accept. The first defendant could have paid by his own cheque.

43 Further, under the pre-incorporation agreement, the first defendant through his wife was to contribute only 20% of the development costs. But his share would be 45%. The first defendant was thus entitled to 25% of the development without payment. In addition, if need be the second defendant through Collin Tan was to finance the first defendant in respect of his contribution of the development costs.

44 There is also the admission by the first defendant that he had assured the second defendant that the [plusmn]5 acres would not be acquired. His explanation for his failure to apply for subdivision shows that he knew the surrounding land would be acquired or had procured the leaving out from acquisition of the [plusmn]5 acres: `Everything has been done to enable LTD to receive a fresh title to Lot 1606`.

45 On these facts, notwithstanding the high standard of proof required, the inference is sufficiently compelling for me to hold that the first defendant knew that the [plusmn]5 acres would not be acquired or could be left out of the acquisition of the surrounding land. Due to this, the value of the three lots sold to CIP was considerably more than the purchase price of $2.05m. The second defendant was privy to this knowledge and for this reason the second defendant agreed to the first defendant`s 45% share in the proposed development of the

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[plusmn]5 acres when his contribution was to be 20% only, plus financial assistance to pay for the 20% contribution.

46 The defendants, besides denying the allegation of conspiracy to defraud, also raised the issue of limitation. They relied on a note of discussion of 6 May 1980 on possible settlement between Lai Ying Hon, who was said to be representing LBS, and the first defendant. Lai Ying Hon was the secretary to LBS when LBS was the managing director of Singapore Finance Ltd. Paragraph 1 of this note made reference to the sub-sale transaction. It read:

> *On Collin`s land Liu will agree to paying L`s [LBS`] side as shareholders of Hoe Huat [Hoe Huat Realty Pte Ltd, in which LBS had a two-third interest] two-thirds x 45% [first defendant`s share under the pre-incorporation agreement] x market price of Collin`s land ... .*

47 The note went on to give the value of Collin`s land at $800,000.

48 It is said that from this note, at the latest by 6 May 1980 if not earlier, LBS who controlled the plaintiff company would have known of the sub-sale. The claim is therefore statute barred as more than six years had elapsed from the date of this note before this action was commenced. The defendants relied on s 22(2) of the Limitation Act (Cap 163) which reads:

> *Subject as aforesaid, an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of 6 years from the date on which the right of action accrued:*

49 Provided that the right of action shall not be deemed to have accrued to any beneficiary entitled to a future interest in the trust property, until the interest fell into possession.

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50 LBS denied having received a copy of this note. In any case s 22(2) is subject to s 22(1) which reads:

> *No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action -*
>
> (a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or
>
> (b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.

51 The plaintiffs` claim is that of a beneficiary against the first defendant as trustee and is for conspiracy to defraud. The claim is not based on the sub-sale of the [plusmn]5 acres of which the third defendant as the nominee of LBS was aware but on the knowledge on the part of the first defendant that the [plusmn]5 acres would not be acquired or could be left out of acquisition. Therefore the first defendant, as a director, and the second defendant, who was privy to such knowledge, should not profit thereby. This knowledge surfaced only in Suit No 4149 of 1984. Therefore, the claim is not statute barred.

52 Accordingly, I allow the plaintiffs` claim. The fourth defendants are directed to reconvey to the plaintiffs the land comprised in lot 1606, the plaintiffs are to refund to the fourth defendants the purchase price paid in respect thereof plus costs incurred in obtaining vacant possession and other improvements, if any, such costs to be ascertained by the registrar. I also award plaintiffs costs of this action against the first, second and fourth defendants.

53 ***Plaintiffs` claim allowed.***

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Goh Joon Seng J

HE Cashin and Lalita Seenivasan (Murphy & Dunbar) for the plaintiffs
Woo Tchi Chu and Pee Hwee Leng (Robert WH Wang & Woo) for the first defendant
CS Wu and Jimmy Yap (Donaldson & Burkinshaw) for the second defendant
Harpal Singh (Harpal Wong & M Seow) for the third defendant

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