

Mohan Singh s/o Bhola Singh v Shran Jeet Singh
[2004] SGHC 277

Case Number : Suit 1225/2003

Decision Date : 10 December 2004

Tribunal/Court : High Court

Coram : Lai Kew Chai J

Counsel Name(s) : Yap Teong Liang (T L Yap and Associates) for plaintiff; Tito Shane Issac and P Padman (Tito Issac and Co) for defendant

Parties : Mohan Singh s/o Bhola Singh — Shran Jeet Singh

Debt and Recovery – Money used to purchase shares – Whether money was loan given by plaintiff to defendant or joint investment in shares by plaintiff and defendant

10 December 2004

Judgment reserved.

Lai Kew Chai J:

1 The plaintiff, a retired wealthy businessman, aged 86, claims against the defendant the sum of \$459,550.00 which he had allegedly lent to the defendant to enable the defendant to purchase 200,000 shares in Singapore Airport Terminal Services Ltd and 200,000 shares in SIA Engineering Company (collectively "the shares"). At that time, the defendant was the son-in-law of the plaintiff.

2 The defendant denies the loan. He alleges that the plaintiff intended to invest in the shares but could not do so, and therefore agreed to allow his investment to be bought in the name of a company controlled by the defendant and managed by the brokers, Merrill Lynch.

3 The issue is therefore whether, as the plaintiff asserts, he had lent the said sum to the defendant, or whether, as the defendant asserts, the plaintiff had invested in the shares jointly with the defendant.

The facts

4 When the transaction was entered into, the plaintiff was the father-in-law of the defendant, whom he had known for more than 20 years since the defendant's marriage to the plaintiff's daughter. The plaintiff's daughter and the defendant are now divorced. The decree *nisi* was granted on 28 February 2003 and became absolute on 1 April 2003.

5 On or about 9 May 2000, the defendant called the plaintiff at his residence at Block 120A Kim Tian Place, #25-56, Singapore and asked for a loan as he (the defendant) was about to purchase the shares. The amount sought was \$459,550.00, which was half the total cost of the purchase price of the shares. The defendant asked the plaintiff to issue a cheque for that amount. It was agreed that the defendant would repay the loan within a reasonable time after the plaintiff asked for it. The plaintiff agreed to lend him the amount requested.

6 On 12 May 2000, the defendant visited the plaintiff at the latter's home. He handed to the plaintiff a letter which confirmed that the defendant had purchased the shares on 5 May 2000 and the total cost was \$919,100.00. The letter also requested payment of \$459,550.00 by cheque in favour of Merrill Lynch Inc A/c No 932-18YTP. The plaintiff wrote a note on the letter that he had

delivered his cheque for the amount. He dated the note 12 May 2000 and signed it.

7 The shares were bought in the name of the defendant's company, Glamsons Holdings Ltd ("Glamsons"). Mr Tay Chee Tiew ("Mr Tay"), who was the defendant's broker at Merrill Lynch at the material time, said that he knew of the plaintiff's equitable interest in half the shares, since he was privy to the private arrangements between the plaintiff and the defendant. I found Mr Tay's evidence rather difficult to believe. He was, in fact, not permitted to buy any shares as a broker of Merrill Lynch for any party who or which was not an account holder with Merrill Lynch. He had left Merrill Lynch by the time he gave evidence.

8 Mr Tay said that he was asked by the defendant initially to procure half the shares which were later doubled to comprise the shares. This evidence was an attempt on the part of the defendant to corroborate his own evidence that the plaintiff had asked him to procure the allocation of half of the shares as the plaintiff allegedly could not obtain the allocation from the plaintiff's own brokers at the placement price. Mr Tay said that on 12 May 2000, he collected the cheque from the plaintiff at the plaintiff's residence near Tew Chew Street. The collection allegedly followed the arrangements made by the defendant.

9 I am satisfied that Mr Tay fabricated his evidence about his collection of the cheque at the plaintiff's residence near Tew Chew Street. The plaintiff's residence near Tew Chew Street had been acquired by the Government. The building was to be demolished to construct the North-East MRT Line. The plaintiff had, six months earlier on 11 November 1999, surrendered vacant possession of his property to the Housing and Development Board ("HDB") and had returned the title deeds and the keys of the property to HDB. The plaintiff had moved to Kim Tian Place in 2000 and had officially registered with the authorities his change of address on 25 March 2000.

10 I accept the evidence of the plaintiff that he did not know Mr Tay at all. He denied having had any conversation with him. I believe the plaintiff when he said he had never met Mr Tay.

11 Subsequently, the marriage between the defendant and the daughter of the plaintiff reached breaking point. The plaintiff and his wife visited the couple in Brunei to see if the marriage could be salvaged. The attempt at reconciliation failed. At the Brunei airport before he flew back to Singapore, the plaintiff asked the defendant to repay the loan. The defendant told the plaintiff that he would repay the loan but he asked for two months to do so. But he failed to repay the loan.

12 The defendant in his defence alleged that he and the plaintiff had jointly invested in the shares. The plaintiff had heard of the allotment of half the shares to the defendant and had asked the defendant to arrange for an equal allotment. The defendant did so by requesting Mr Tay to procure the allotment. No documentary proof of such second allotment was produced from the records of Merrill Lynch, nor was any contemporaneous document from Merrill Lynch produced to show the two transactions resulting in the ultimate purchase of the shares.

13 On the other hand, the plaintiff produced substantial records of his own share dealings with three leading stockbrokers. At the material time, he was a man of wealth. He could easily have obtained the allotment of half of the shares from his own brokers if he had wanted to.

14 What happened after the plaintiff had issued the cheque for the said sum was, in my view, more consistent with a loan to a member of the family (as the relationship was at the material time) than with a joint investment. From the time of the listing of the shares to 11 September 2001, the shares did not perform well generally. After the terrorist attack on 11 September 2001, all aviation-linked counters worldwide lost substantial value.

15 On 20 September 2001, Merrill Lynch sold the shares in Glamsons' account. The total loss of the shares was \$524,505.56. The curious feature of the entire episode was that the plaintiff, as he had told the court, knew nothing about it. The defendant alleged that he had told the plaintiff. He further said that he had told the plaintiff that the residue of the investment had been ploughed back into Glamsons' account and new purchases had been made.

16 According to the defendant, he expressly offered to refund to the plaintiff the proceeds from the sale of the plaintiff's portion of the shares. The plaintiff reportedly declined the offer and instructed the defendant to leave the money in the account to allow Merrill Lynch an opportunity to recoup the losses by further share trades. I do not accept the defendant's evidence on these aspects of the case.

17 Other features of the case which militate against the defendant's version are as follows. The defendant pledged the shares as collateral to Merrill Lynch, thereby obtaining a benefit for his own purpose. What is also noteworthy is that the defendant did not pay any dividends to the plaintiff. On top of that, when the shares were sold on 20 September 2001, the proceeds of sale were utilised to purchase US dollars. Later, they were used to reduce the defendant's liability on his call advance of US\$212,766.25. All these transactions were done without the knowledge of the plaintiff. The defendant admitted in evidence that he did not send to the plaintiff the monthly statements he had received from Merrill Lynch.

18 The liabilities of the defendant as at September 2001 were US\$259,834.00. There was a call loan decrease of US\$212,766.25 and a debit balance of US\$34,596.00. The sale proceeds of the shares were equivalent to US\$228,478.51. The defendant admitted at para 33 of his affidavit of evidence-in-chief that he had made drawings from the Glamsons' account between October 2001 to January 2002 after the shares were sold. The defendant's actions were plainly the unilateral acts of a sole investor, not the conduct of a joint-investor.

Judgment

19 Having regard to all the circumstances of this case, some material aspects of which are recited above, I am satisfied that the plaintiff had lent the defendant the said sum which the latter is bound to repay. The claims of the plaintiff are allowed with interest at 6% per annum on the said sum from the expiry of two months from the date the demand for repayment was made, which was 16 April 2001 at the Brunei airport.

Plaintiff's claim allowed with costs.

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