Wang Wang Pawnshop Pte Ltd and Others v K J Tiffany and Others [2004] SGHC 50

Case Number : Cr Rev 1/2004

Decision Date : 04 March 2004

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Christopher Anand Daniel and Ganga Avadiar (Allen and Gledhill) for petitioners; Axel Chan and Terence Seah (Kenneth Tan Partnership) for first and second respondents; Chee Yew Chung (Tan Seck Sam and Partners) for third respondent; Tan Kay Bin (Tan Kay Bin and Co) for fourth respondent; Colin Phan Siang Loong (Donaldson and Burkinshaw) for fifth and sixth respondents; Eugene Lee Yee Leng (Deputy Public Prosecutor) for public prosecutor

Parties : Wang Wang Pawnshop Pte Ltd; Thai Shin Pawnshop Pte Ltd; Thai Hong Pawnshop Pte Ltd — K J Tiffany; Lee Gems & BFine Jewellery Pte Ltd; Kwek Chio Liang; Queens Jewellers Pte Ltd; Fook Hin Pawnshop Pte Ltd; Ban Sun Pawnshop Pte Ltd; Ban Soon Pawnshop Pte Ltd; Min Tai Pawnshop Pte Ltd; Dai Li Pawnshop Pte Ltd; Thye Lian Pawnshop Pte Ltd; Ho Khiam Seng

Criminal Procedure and Sentencing – Disposal of property – Whether criminal revision appropriate course of action in most cases involving unlawful pawning

Criminal Procedure and Sentencing – Disposal of property – Whether judge in disposal inquiry obliged to restore items to last in lawful possession – Section 31 Pawnbrokers Act (Cap 222, 1994 Rev Ed)

4 March 2004

Yong Pung How CJ:

1 The petitioners are a group of pawnshops incorporated in Singapore who were seeking a discharge or variation of the order made by the district judge in Disposal Inquiry No 22 of 2003. The inquiry was held to determine who would take possession of 177 items of jewellery that had been seized in connection with a police investigation leading up to the prosecution and conviction of one Kalimahton bte Md Samuri ("Kalimahton") for criminal breach of trust under s 406 of the Penal Code (Cap 224, 1985 Rev Ed). The petitioners were three of the 15 claimants for the seized items. They contended that the judge had made fundamental errors of law, which occasioned a clear failure of justice, by failing to award some of the items to them. I was not persuaded by their arguments and dismissed the petition. I now give my reasons.

Background

2 Both the petitioners and the respondents in this case were victims of Kalimahton, a trickster of the highest calibre, who earned herself the nickname of "Pawnshop Princess" with her exploits. Between 1997 and 1998, she posed as a member of the Brunei royal family and managed to convince So Sock Wah ("So"), a jewellery merchant (trading as the first respondent, K J Tiffany), and Ho Khiam Seng ("Ho"), a director of a pawnshop, into releasing a large quantity of items to her. The verbal agreement between So and Kalimahton was that Kalimahton could hold the items while she considered whether she wished to purchase them. She would pay the purchase price to So for items she wished to keep, and return the items that she had no intention of purchasing. Ho, on the other hand, had entrusted items on loan to Kalimahton on a personal basis.

3 Unbeknownst to both of them, Kalimahton took the items and pawned them with the petitioners over a period of time. Further, on 28 October 1998, Kalimahton managed to deceive Lim

Wing Kee, who was then the managing director of the petitioners, into releasing some of the items without proper redemption. Kalimahton then took these items and re-pledged them with other pawnshops. She used the moneys to finance her extravagant lifestyle.

4 On 4 November 1999, So reported to the police that Kalimahton had misappropriated some $6m worth of jewellery which had been entrusted to her. In the course of investigations, the police seized items from the petitioners as well as from several other pawnshops that Kalimahton had dealt with.

5 Kalimahton subsequently pleaded guilty to eight counts of criminal breach of trust under s 406 of the Penal Code. A disposal inquiry was then held to determine who should take possession of the seized items. There were three categories of claimants:

(a) M/s K J Tiffany, Lee Gems & Fine Jewellery Pte Ltd, Queens Jewellers Pte Ltd and Ho Khiam Seng, who were persons or businesses who had entrusted items to Kalimahton and were claiming as original owners of the items (hereafter referred to collectively as "the original owners");

(b) the petitioners, who were the pawnshops where Kalimahton had initially pledged the items; and

(c) Kwek Chio Liang, Ban Sun Pawnshop Pte Ltd, Ban Soon Pawnshop Pte Ltd, Fook Hin Pawnshop Pte Ltd, Min Tai Pawnshop Pte Ltd, Da Li Pawnshop Pte Ltd and Thye Lian Pawnshop Pte Ltd, who were persons or pawnshops who had taken the items after Kalimahton had wrongfully redeemed them from the petitioners.

6 After hearing submissions from the various claimants, the judge issued an order returning 101 of the items to the original owners, 56 items to the petitioners and 20 items to Kwek Chio Liang. Being dissatisfied with the order, the petitioners prayed for this court to exercise its revisionary jurisdiction, either to discharge the order or vary the order to award possession of all items to them.

Grounds for revision

7 The petitioners contended that the judge had made two fundamental errors of law in failing to award possession of all the items to them.

8 First, they argued that the primary function of a judge presiding over a disposal inquiry was to restore the seized items to the last person in lawful possession of the items. As such, since the petitioners took the items from Kalimahton in good faith, they were therefore entitled to have the items restored to them. Second, the petitioners submitted that not only were they in lawful possession but they were also entitled to the items because they had acquired good title by virtue of the fact that they were *bona fide* purchasers for value without notice.

Duty of a judge in a disposal inquiry

9 The petitioners' first argument was premised on a misconception that a judge presiding over a disposal inquiry is obliged to simply restore the items to the person last in lawful possession. I found this to be an overly simplistic delineation of a judge's duty at a disposal inquiry. While that may have been the view of Desai J in *Purshottam Das Banarsidas v State* (1952) 53 Cr LJ 856, I had previously expressed a different opinion in *Sim Cheng Ho v Lee Eng Soon* [1998] 1 SLR 346 where I noted the following at [8]–[9]:

> [T]he mere inability to *decide* questions as to title does not and cannot lead to an inability to *have regard* to the party who holds title. Title and possession are related concepts. In many cases, the right to possession arises from the fact of having title. …
>
> [The court] must look to the facts of each case to ascertain the party who is entitled to possession.
>
> [emphasis in original]

10 I saw no reason to depart from my earlier decision. Thus, a judge is not limited in his discretion to simply restoring the items to the last person in lawful possession. This is especially true where the disposal inquiry relates to items that have been pledged with a pawnshop. In these cases, the judge's discretion to dispose of the items under the Criminal Procedure Code (Cap 68, 1985 Rev Ed) is also governed by s 31 of the Pawnbrokers Act (Cap 222, 1994 Rev Ed), which reads:

Delivery to owner of property unlawfully pawned

> 31.—(1) In each of the following cases:
>
> > (a) if any person is convicted under this Act before a Magistrate's Court of knowingly and designedly pawning with a pawnbroker anything being the property of another person, the pawner not being employed or authorised by the owner thereof to pawn the property;
> >
> > (b) if any person is convicted in any court of any offence against property which offence is defined or dealt with by any of the provisions of sections 378 to 420, both inclusive, of the Penal Code, and it appears to the Magistrate's Court or other court that the property has been pawned with a pawnbroker; or
> >
> > (c) if in any proceedings before a Magistrate's Court or other court it appears to the court that any goods and chattels brought before the court have been unlawfully pawned with a pawnbroker,
>
> the court, on proof of the ownership of the goods and chattels, may, if it thinks fit, order the delivery thereof to the owner, either on payment to the pawnbroker of the amount of the loan or any part thereof, or without payment thereof or of any part thereof, as to the court, according to the conduct of the owner and the other circumstances of the case, seems just and fitting.

11 In *Thai Chong Pawnshop Pte Ltd v Vankrisappan* [1994] 2 SLR 414 at 416, [5], I considered the application of s 31 thus:

> Where the items in question are articles falling within the categories defined by s 31(1)(a), (b) or (c) of the Act, the procedure is modified by s 31(1) of the Act, which highlights two issues: ownership of the pawned item, and payment to the pawnbroker. The Act, however, still entrusts a wide measure of discretion to the judicial officer. If ownership is proved, the court possesses the discretion to award the item to its owner if it thinks fit. At the same time, the statute gives the court absolute discretion to decide whether to order payment at all to the pawnbroker, and, if any is ordered, the amount of that payment.

It is apparent that a judge is under no obligation to restore the items to the person last in lawful possession and is, in fact, duty-bound under s 31 to examine the issue of ownership.

Whether the petitioners have obtained "good title"

12 The petitioners contended that they were the rightful owners of the items, as they had managed to obtain "good title". By "good title", the petitioners were, of course, referring to a pawnshop's right to sell the pledged items when a pledgor does not redeem the items. I would clarify that a pawnshop does not acquire good title in an item by virtue of it being pawned. Instead, due to the unique nature of a pledge, a pawnshop is often said to have obtained "special property" in an item. Be that as it may, I shall apply the terminology used by the petitioners. Hence, where I refer to the petitioners obtaining "good title", I should be taken to mean that they have obtained "special property" in the items.

13 In any situation where we deal with the transference of title by non-owners, we are bound by the rule encapsulated in the Latin phrase *nemo dat quod non habet*. In short, the petitioners would only have received as good a title as Kalimahton was able to give.

14 Given the above, it was clear that the petitioners needed to show that Kalimahton had the authority to pledge the items. Otherwise, the petitioners would not be able to claim any interest in the items at all, no matter how careless the original owners may have been, in placing the items in Kalimahton's possession.

15 In respect of Kalimahton's authority to pledge, the petitioners contended that Kalimahton clearly had the authority to deal with the items because she had obtained the items on a "consignment" basis. The petitioners then went on to describe a consignment contract as one where a consignor (usually a distributor) gives a consignee (usually a retailer) the authority to sell and pledge the items to third parties, and then to return to the consignor the items which the consignee is unable to sell. Because a right to sell must encompass a right to pledge, the petitioners contended that Kalimahton must therefore have had the right to pawn the items with the petitioners, if she was regarded as a consignee.

16 In support of this, the petitioners cited three cases – *Kirkham v Attenborough* [1897] 1 QB 201, *London Jewellers, Limited v Attenborough* [1934] 2 KB 206 and *Yoon Choon Pawnshop v R* [1939] SSLR 242. All three cases had broadly the same facts – each involved a victim who had handed over jewellery to a conman with the authority to sell to third parties, and to return the items which he was unable to sell. The conman pawned the items and absconded. In each case, the court eventually held that all the pawnshops were able to get good title, since consent had been given to sell the items, and it was irrelevant that the consent had been obtained by fraud.

17 I agreed that the petitioners would have obtained good title to the items if Kalimahton had indeed received the items on the terms which they described. As such, the issue of ownership turned on the precise nature of the agreement between the original owners and Kalimahton.

18 In this regard, the petitioners submitted that there could not be a different interpretation of the terms on which Kalimahton had received the items because all parties had agreed that Kalimahton had received the items "on consignment". This was because the summary of investigations drafted by the Commercial Crime Division, which was tendered at the disposal inquiry, had stated that Kalimahton was given the items "on consignment", and this summary had been agreed to by all parties. As such, the petitioners submitted that all parties were now bound by this term.

19 I found that the parties, whilst acceding to the use of the term "consignment" in the summary of investigations, had not agreed on the petitioners' description of what constituted a consignment contract. In my view, many of the problems in this case stemmed from the parties' loose

use of the term "consignment".

20 The petitioners were not wrong to describe a consignment contract as one where a consignee is given the authority to resell items to third parties. This is a technical definition of the term "consignment" which is used in a number of legal texts: for one example, see *Stroud's Judicial Dictionary of Words and Phrases* (6th Ed, 2000) at 497. However, while the petitioners were correct to point out that all parties had agreed to the use of the term "consignment" to describe the agreement between Kalimahton and the original owners, it was clear that the original owners had proceeded on the basis that "consignment" meant something else altogether.

21 Even though I found that the original owners had accepted the use of the term "consignment" in the summary of investigations, I was of the view that this did not mean that they had agreed with the petitioners' interpretation of the terms. After all, the persons in the Commercial Crime Division drafting the summary of investigations and the original owners may not have been privy to the technical use of the term. As such, I did not think that the original owners should be penalised for their use, albeit casual, of the term "consignment", and be held to the petitioners' definition of the term, when it was clearly something the original owners never meant to agree to.

22 The original owners had submitted that the arrangement between them and Kalimahton was one of "purchase or return". That is, Kalimahton was allowed to keep the items while she considered which ones she wished to buy. She would then pay the purchase price to the original owners for those she wanted to buy and return those she had no intention of purchasing. There was no authority given to resell the items, nor was there any intention that Kalimahton would be acting as a consignee in the manner the petitioners had described. In fact, the original owners submitted that they had expressly prohibited her from dealing with the items.

23 Based on the version given by the original owners, Kalimahton was neither a buyer of the items nor a person who had agreed to buy the items, since she was not bound to purchase the items she was in possession of. This was not, as the petitioners submitted, a conditional sale. Rather, it appeared that Kalimahton was holding on to the items with a mere *option* to purchase and should be considered as a bailee who had no authority to deal with the items: *Helby v Matthews* [1895] AC 471.

24 In the absence of other evidence to the contrary, I found the original owners' version to be a realistic rendition of the terms between themselves and Kalimahton. Kalimahton had approached the original owners, not as a person involved in the jewellery business, but as a member of Brunei royalty. Given her position, it was conceivable that the original owners viewed her as a potential customer who could buy their items, rather than as a mercantile agent who could help them onsell the items to third parties. As such, it was likely that the agreement between the original owners and Kalimahton was on the terms detailed by the original owners, rather than on the terms described by the petitioners.

25 The petitioners then contended that even if one were to accept the version given by the original owners, the petitioners would still have obtained good title by virtue of s 18 r 4 of the Sale of Goods Act (Cap 393, 1999 Rev Ed). The relevant provision reads as follows:

Rules for ascertaining intention

> 18. Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer:
>
> …

Rule 4.—When goods are delivered to the buyer on approval or on sale or return or other similar terms, the property in the goods passes to the buyer —

(a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction; …

The petitioners contended that Kalimahton would have been regarded as a buyer who had received the goods "on approval or on sale or return or other similar terms". When she pledged the items to the petitioners, this was an act which adopted the transaction. As such, the petitioners contended that on an application of s 18 r 4, property in the items would have passed to Kalimahton at that point, and the petitioners would have obtained good title.

26 I agreed that the petitioners would have obtained good title if the rule in question applied. However, s 18 r 4 is merely a rule for ascertaining intention, and parties are free to contract in a manner which excludes its application. In that regard, I accepted the submission by the original owners that they had expressly stated that Kalimahton was not to deal with the items and that property would not pass to her unless she had paid the purchase price. A judge in subsequent civil proceedings might reach a different conclusion once he had the opportunity to listen to the cross-examination of the relevant witnesses on the agreement reached. Notwithstanding that, on the available evidence, I was prepared to accept the version tendered by the original owners.

27 The petitioners then contended that the original owners should be estopped from asserting their title by virtue of their conduct – for it was surely careless of them to have passed such valuable items to Kalimahton without any form of security. I agreed that the original owners had been less than prudent in their actions. That, however, was insufficient to give rise to an estoppel in common law. True owners are not estopped by merely placing items in the possession of a crook, however careless. Something more is required, usually in the form of an active representation to the innocent purchaser for value: *Jerome v Bentley & Co* [1952] 2 All ER 114. Here, there was no evidence that such a representation was made by the original owners to the petitioners.

28 Given the above, I was of the view that the available evidence before the judge tended towards the conclusion that the petitioners did not, in fact, manage to obtain good title to the items *vis-à-vis* the original owners. As such, I was unable to agree with the petitioners that the judge had committed fundamental errors of law giving rise to a failure of justice when he awarded the items to the original owners.

29 Given my finding that the petitioners did not obtain good title to the items, that would effectively dispose of their claim in relation to those items which had been wrongfully redeemed from the petitioners and eventually seized from other pawnshops. In any case, I found that, even if the petitioners were regarded as having obtained good title, they would not have been able to claim those items that had been wrongfully redeemed.

30 In relation to those items wrongfully redeemed from the petitioners and seized from other pawnshops, the petitioners contended that they were entitled to these items because they were in the position of unpaid sellers who retained a lien over the items. In my view, the petitioners would have had at most a pledgee's lien over the items. They would have lost this lien once they consented to giving up possession, albeit a consent obtained by fraud: *London Jewellers* ([16], *supra*).

31 On the evidence, the petitioners had released the items to Kalimahton in return for a cheque. Kalimahton subsequently took the items and re-pledged the items with other pawnshops. The cheque was later dishonoured, and the redemption rendered void. In my view, the petitioners were in the

same position as the original owners were when Kalimahton first took the items and pawned them with the petitioners. It would follow from the petitioners' earlier submissions that the later pawnshops would therefore have taken the items free of the petitioners' rights since they too were *bona fide* purchasers for value. I found it incongruous that the petitioners could argue that they had better rights to the items *vis-à-vis* the original owners, and yet turn their argument on its head when it came to their rights *vis-à-vis* the later pawnshops.

32 In any case, I found this point to be moot since I had already established that property in the items remained with the original owners at all material times. Since no property passed to the petitioners, they had no claim to those items wrongfully redeemed.

33 In the event, I found that the record did not show any fundamental errors of law giving rise to a clear failure of justice which required an exercise of this court's revisionary power, and dismissed the petition accordingly. However, in dismissing this petition, I thought it useful to render my opinion on the appropriateness of a petition for criminal revision in cases involving the distribution of items unlawfully pledged with pawnshops.

Whether a criminal revision was the appropriate course of action

34 Section 386 of the Criminal Procedure Code envisages the disposal inquiry as a fairly informal hearing where the judge is given a wide measure of discretion to "make such order as [the court] thinks fit". That is in keeping with the function of disposal inquiries as a speedy and convenient method of distributing items produced at trial or found in the course of investigations, which are no longer needed: *Thai Chong Pawnshop* ([11], *supra*).

35 Because the judge presiding over a disposal inquiry is often handicapped by the fact that there is a lack of procedure for the proper discovery or inspection of documents, he must often do justice between parties in a "rough and ready" fashion. In light of these limitations, aggrieved parties should be slow to pursue their claims *via* a criminal revision where there are complex matters of fact and law to be determined. It would subvert the function of disposal inquiries as an expeditious means of distributing items if petitioners were allowed to re-canvass the same issues before a revisionary court, on the basis of scarce evidence. Since orders made in the disposal inquiry are not binding in a civil court, a rightful legal owner can and should assert his rights by commencing a civil suit: *Hoh Chee Khim v PP* [1970] 2 MLJ 105 and *Sim Cheng Ho* ([9], *supra*).

36 In this case, the judge made an order dividing 177 items among 15 claimants. In some cases, the item had passed through the hands of at least three different parties, who were all claiming ownership. Much depended on the terms of the agreement between the original owners and Kalimahton. Yet, the judge presiding over the disposal inquiry had scant evidence to work on. The only evidence before him was the summary of investigations, the statement of facts which Kalimahton had admitted to, and the submissions of counsel. No witnesses were called at the disposal inquiry. Given these restraints, I was of the view that the judge performed ably in the circumstances.

37 In my opinion, the petitioners would have been better served by commencing civil proceedings, rather than proceeding *via* a petition for criminal revision. It is trite law that a revisionary court will only exercise its powers if it is shown that there are fundamental errors of law which have occasioned a clear failure of justice: *Magnum Finance Bhd v PP* [1996] 2 SLR 523. This is a high threshold to fulfil. Given the wide measure of discretion residing with a judge presiding over a disposal inquiry, most cases involving unlawful pawning would, in the ordinary course of things, never reach this threshold of injustice. After all, it cannot be the function of a revisionary court to examine the history of every ring, pendant or necklace disposed off at an inquiry. In my view, it would take an

exceptional case involving gross errors of law before a petition for criminal revision relating to such cases can succeed.

Petition dismissed.

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