Teo Song Kwang (alias Richard) v Gnau Lye Chan and Another
[2006] SGHC 2

Case Number : Suit 116/2005

Decision Date : 12 January 2006

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : N Sreenivasan (Straits Law Practice LLC) and Edwin Seah (Edwin Seah and K S Teo) for the plaintiff; Tan Teng Muan and Loh Li Qin (Mallal and Namazie) for the defendants

Parties : Teo Song Kwang (alias Richard) — Gnau Lye Chan; Teo Phui Heng sued as adminstratrix of estate of Jean Su Feng Shun deceased

Civil Procedure – Pleadings – Striking out – Application to strike out statement of claim and reply – Whether paragraphs to be struck out scandalous and designed to embarrass – Order 18 Rules of Court (Cap 322, R 5, 2004 Rev Ed)

Probate and Administration – Grant of letters of administration – Whether assignment of beneficial interest valid – Whether Section 7(2) of the Civil Law Act had been complied with – Whether renunciation in accordance with ss 3, 4 of the Probate and Administration Act (Cap 251, 2000 Rev Ed) -Section 7(2) Civil Law Act (Cap 43, 1999 Rev Ed)

12 January 2006

Lai Siu Chiu J:

The background

1 Richard Teo Song Kwang ("the plaintiff") is a businessman. Gnau Lye Chan ("the first defendant") and Teo Phui Heng ("the second defendant") are the mother and stepsister respectively, of Jean Su Feng Shun ("the deceased") who passed away sometime between 23 and 30 January 2003. The first defendant granted a power of attorney dated 30 July 2003 to the second defendant who on 12 January 2004 obtained letters of administration and was appointed the administratrix of the estate of the deceased. On 13 January 2005, the grant of letters of administration was issued to the second defendant. The deceased's estate was valued for estate duty purposes at $1,123,709.58. On 19 August 2003, the plaintiff filed (in the Subordinate Courts) a caveat against the issuance of a grant for the estate.

2 On 29 July 2005, the first and second defendants applied by Summons in Chambers No 3884 of 2005 ("the application") to strike out paras 50 to 64 and 70 to 71 of the plaintiff's Amended Statement of Claim pursuant to O 18 r 19 of the Rules of Court (Cap 322, R 5, 2004 Rev Ed) ("the Rules") on the grounds that they:

(a) (i) disclosed no reasonable cause of action;

(ii) were scandalous, frivolous or vexatious;

(iii) might prejudice, embarrass or delay the fair trial of the action; and/or

(iv) were an abuse of the process of the Court.

(b) alternatively, be struck out under the inherent jurisdiction of the court.

3 The assistant registrar allowed the application and struck out paras 54, 55, 57, 59, 60, 70 and 71B of the Amended Statement of Claim together with para 7 of the Reply. The first defendant was also struck out as a party to the action so that the second defendant remained the sole defendant to this action.

4 The plaintiff appealed against the assistant registrar's decision in Registrar's Appeal No 241 of 2005 ("the plaintiff's appeal") while the defendants filed a cross-appeal in Registrar's Appeal No 243 of 2005 ("the defendants' appeal") requesting the court to strike out paras 50 to 53, 56 and 58 of the plaintiff's Amended Statement of Claim and para 6 of the Reply.

5 Both appeals came up for hearing before me. I dismissed the plaintiff's appeal but allowed the defendants' appeal with costs. The plaintiff has now appealed against my decision (in Civil Appeal No 108 of 2005).

The pleadings

6 The plaintiff's Amended Statement of Claim, contained in 21 pages and 71 paragraphs, was prolix to the extreme. He dwelt at length on how he had met the deceased in 1977 and how the deceased became his mistress in 1979 while the plaintiff was still married to his (then) wife whom he only divorced in 1992.

7 The plaintiff averred that the deceased and he cohabited together until 1999. While they cohabited, the plaintiff paid for all the living expenses of the deceased and the purchase price of the properties (as well as all the outgoings) where the couple lived over the years. These properties, *inter alia*, were:

(a) 25 Leonie Hill Road #02-06 Grangeford Apartments;

(b) 14 Cairnhill Road #09-02;

(c) 61 Grange Road #15-01, Beverly Hill ("the Beverly Hill property").

The couple also cohabited at rented properties located at Sherwood Towers #19-02 and Cairnhill Rise #08-02.

8 At one time, the plaintiff held a controlling stake in a Malaysian company called Seng Hup Corporation Berhad ("Seng Hup") that was listed on the Malaysian stock exchange in 1992. He was also the managing director of Seng Hup Electric (S) Pte Ltd ("the Company") a wholly-owned subsidiary of Seng Hup. Between 1992 and 1997, the plaintiff caused the Company to pay a salary plus allowances totalling $330,350 to the deceased and also to service the mortgage instalments for the Beverly Hill property. The plaintiff had purchased the Beverly Hill property for $1,510,000 in August 1991 in the joint names of himself and the deceased. He had paid a deposit of $75,000 towards the purchase price and the balance was paid by a loan from Oversea-Chinese Banking Corporation ("OCBC Bank").

9 In 1999, the new owners of the Company brought an action against the plaintiff in Suit No 1674 of 1999 ("the Suit") claiming, *inter alia*, reimbursement of the sum of $330,350 paid to the deceased from January 1989 to September 1997. The plaintiff consented to judgment in the Suit on 8 August 2000 in the sum of $3.3m (which included the sum of $330,350 paid to the deceased).

10 In or about 2001, the plaintiff decided to refinance the Beverly Hill property as he was having

financial difficulties due to a downturn in his businesses. The deceased agreed to transfer her half share in the Beverly Hill property to the plaintiff to enable him to obtain refinancing. In consideration thereof, the plaintiff agreed to allow the deceased to retain $500,000 ("the gift") from the refinancing proceeds plus a further $100,000 payable by the plaintiff in 50 monthly instalments of $2,000 each, for the deceased's maintenance. The plaintiff also agreed to give a further $100,000 to the deceased in the event the Beverly Hill property was sold at more than 10% of its then value (estimated at $3.3m).

11 The plaintiff alleged that the gift was evidenced in his two handwritten notes addressed to the deceased dated 28 March 2001 and 10 September 2001 respectively.

12 The plaintiff obtained refinancing in the sum of $1.5m from Citibank ("the Citibank loan") on or about 22 August 2001 secured by a mortgage on the Beverly Hill property. On 14 February 2002 the deceased transferred her half share in the Beverly Hill property to the plaintiff. After repaying the outstanding loan on the OCBC mortgage, there was a surplus of $1,012,227.35 from the Citibank loan which sum the plaintiff paid to the deceased of which $512,227.35 ("the Sum") was the plaintiff's own moneys. As at the date of her demise, the plaintiff alleged he had not received the Sum.

13 It was further alleged in the plaintiff's Amended Statement of Claim that during her lifetime, the deceased had in her custody his personal effects consisting of:

(a) a Rolex gold diamond men's watch valued at $60,000;

(b) a Patek Philippe gold men's watch valued at $15,000;

(c) an Ebel gold men's watch valued at $6,000;

(d) a Breguet men's watch valued at $65,000;

(e) a Jaeger-LeCoultre men's watch valued at $15,000; and

(f) a jade diamond ring valued at $3,000.

As at the date of her demise, the plaintiff alleged, the above personal effects had not been returned by the deceased, of which at all material times he remained the legal and beneficial owner.

14 The lengthy Statement of Claim concluded with the plaintiff's claim for the return of the Sum and his personal effects from the defendants, on the basis that the deceased held them on a resulting trust for him.

15 The paragraphs in the Amended Statement of Claim which were struck out by the assistant registrar were the following:

> 54. Further, by way of telephone conversation between the Plaintiff and the 1st Defendant sometime in end-February 2003 or the first week of March 2003, the 1st Defendant represented to the Plaintiff that she relinquished all her rights to the deceased's estate and she also agreed that the Plaintiff was entitled to all of the deceased's assets since any and all assets that the deceased had in her possession were from the Plaintiff anyway. The Defendants further informed the Plaintiff that the 1st Defendant agreed to the deceased's assets being transferred to the Plaintiff and that the 1st Defendant's only request was that the Plaintiff makes donation to

charity in the deceased's name.

55. The 2nd Defendant also communicated the Defendants' refusal to participate in the funeral arrangements, their agreement to the Plaintiff settling the funeral arrangements and their agreement to the assets of the deceased being transferred to the Plaintiff to one police officer, Cpl Heng Ping Kai.

57. The Plaintiff avers that there was an oral agreement between the 1st Defendant and the Plaintiff wherein the 1st Defendant agreed to waive all claims to a beneficial interest in the deceased's estate and further agreed to the transfer of all the deceased's assets to the Plaintiff (hereinafter referred to as the "waiver agreement").

59. The Plaintiff vide his solicitors' letter dated 6 June 2003 to the 1st Defendant, confirmed that the Defendants had relinquished their rights to petition for the letters of administration. By the said letter, the Plaintiff also confirmed that the 1st Defendant had waived her right to any beneficial interest in the deceased's estate.

60. After discovering that there were substantial assets in the deceased's estate, by her solicitors' letter dated 3 July 2003, the 1st Defendant denied that she or the 2nd Defendant had relinquished their rights to petition for Grant of Letters of Administration as the deceased's next-of-kin. The 1st Defendant also denied that she had relinquished her right as beneficiary to the deceased's estate.

70. In the alternative to the Plaintiff's claims under heading A. B. and C. above, the Plaintiff refers to the facts pleaded at paragraphs 50 to 60 above, and avers that the 1st Defendant is in breach of the waiver agreement by petitioning for the Grant of Letters of Administration through her attorney, the 2nd Defendant, and by refusing to relinquish her rights to the assets of the deceased and transfer the assets of the deceased to the Plaintiff.

71. As a result of the 1st Defendant's breach of the waiver agreement, the Plaintiff has suffered loss.

And the plaintiff claims

…

B. As against the 1st Defendant:

(1) An order for specific performance of the waiver agreement by the 1st Defendant …

16 Paragraph 7 of the Reply which was struck out read as follows:

In respect of paragraph 30 of the Amended Defence, insofar as the Defendants are relying on Section 7(2) of the Civil Law Act to aver that the ... agreement by the 1st Defendant to dispose of her rights to the estate of the deceased ["the Waiver Agreement"] is not enforceable, the Plaintiff avers that there was part performance of the [Waiver Agreement] by the plaintiff, which is sufficient for the [Waiver Agreement] to be enforceable without the necessity of the [Waiver Agreement] being in writing.

17 The above paragraph was a response to para 30 of the Amended Defence that said:

> The Defendants will also aver that any agreement by the 1st Defendant to dispose her rights to the estate of the deceased must be in writing as required under section 7(2) of the Civil Law Act. The 1st Defendant has never at anytime made any such disposition of her rights in writing

18 On my part, I struck out the following paragraphs in the Amended Statement of Claim when I allowed the defendants' appeal:

> 50. The deceased was estranged from her family after the 1st Defendant became the mistress of a business tycoon, referred to as "TSC". The 1st Defendant had a son and two daughters with TSC. TSC's wife eventually accepted the 1st Defendant and the children she had with TSC as official members of TSC's family, on the condition that the deceased was not accepted because the deceased was not TSC's daughter. The 1st Defendant severed her ties with the deceased. The deceased's stepfamily including the 2nd Defendant had little or no contact with the deceased during her cohabitation with the Plaintiff. The deceased felt all alone in the world and to the Plaintiff's knowledge and belief, the deceased was very disturbed by the cutting of ties by her blood family.
>
> 51. At all material times the deceased did not receive any financial aid from the 1st Defendant or her stepfamily. The Plaintiff provided for all of the deceased's emotional and financial needs.
>
> 52. In or about end-February 2003, the Plaintiff received a call from the Singapore Police informing him of the deceased's death. Upon being notified of the deceased's demise, the Plaintiff approached the 1st and 2nd Defendants to participate in the funeral arrangements and burial ceremony.
>
> 53. The Defendants categorically refused to participate in the funeral arrangements and burial ceremony of the deceased. In order to induce the Plaintiff to undertake the funeral arrangements and to avoid any embarrassment to the stepfamily by association, the 1st and 2nd Defendants represented that they do not wish to have anything to do with the deceased as they have not had contact with the deceased for over 20 years and requested that the Plaintiff undertake all matters concerning the deceased's funeral and to do all the necessary legal work with respect to the deceased's estate. The 1st and 2nd Defendant[s] refused to allow their names or the family name to be published in the obituary for the deceased.
>
> 56. The Plaintiff acting on the faith of the representations and inducement thereby arranged for the identification of the deceased's body at the mortuary, for collection of the deceased's personal effects from her apartment to place inside the casket, for the issuance of the death certificate, attendance at police inquiry and for the funeral and customary rights. The Plaintiff also incurred expenses in relation to the aforesaid.
>
> 58. The Defendants did not attend the funeral of the deceased or participate in the customary rights.

As an aside, I noted from para 3 of the second defendant's Petition for Grant of Letters of Administration (in Probate No DCP 602837) that the deceased was born out of wedlock to the first

defendant.

19 Paragraph 6 of the Reply that I struck out read as follows:

> In respect of paragraph 24 of the Amended Defence, the Plaintiff admits that he was reimbursed a sum of S$4,940 in respect of the funeral and related expenses, but avers that the reimbursement was made after the Defendants had reneged on their agreement referred to at paragraph 54 of the Amended Statement of Claim and after the Plaintiff had sought to enforce the said agreement.

Paragraph 54 of the Amended Statement of Claim reads as follows:

> Further, by way of telephone conversation between the Plaintiff and the 1st Defendant sometime in end-February 2003 or the first week of March 2003, the 1st Defendant represented to the Plaintiff that she relinquished all her rights to the deceased's estate and she also agreed that the Plaintiff was entitled to all of the deceased's assets since any and all assets that the deceased had in her possession were from the Plaintiff anyway. The Defendants further informed the Plaintiff that the 1st Defendant agreed to the deceased's assets being transferred to the Plaintiff and that the 1st Defendant's only request was that the Plaintiff makes some donation to charity in the deceased's name.

The arguments

20 In the court below and before me, counsel (Mr Tan) for the defendants submitted that the paragraphs struck out by the court below were irrelevant to the plaintiff's claim based on a resulting trust and on an alleged waiver agreement. The allegations contained in those offending paragraphs were scandalous (in particular para 50) and were aimed at embarrassing the first defendant. He submitted that the additional paragraphs which he applied to strike out from the plaintiff's pleadings (in the defendants' appeal) were equally scandalous and irrelevant to the plaintiff's claim.

21 Mr Tan pointed out that in the plaintiff's Further and Better Particulars filed on 20 May 2005, the plaintiff had admitted in his Answer [to question 16(a)], that the waiver agreement was made on 8 March 2003 (the day of the funeral) and the consideration furnished by the plaintiff was his agreement to carry out and pay for the funeral arrangements and customary rites. Whatever consideration the plaintiff gave was past consideration. In any event, the funeral expenses of the deceased were paid from her estate. Hence, the defendants appealed to strike out para 6 of the Reply. There was also an inconsistency in the plaintiff's case. In para 54 of his Statement of Claim (see [19] above), the plaintiff alleged that he spoke to the first defendant. However, in his affidavit filed on 11 August 2005, (after noting that the first defendant denied speaking to him at all in her affidavit[note: 1] filed on 29 July 2005 in support of the defendants' application) the plaintiff claimed that he actually spoke to the second defendant who represented the first defendant.

22 The defendants also submitted that the alleged waiver agreement was unenforceable at law as, being an assignment of (at best) an equitable interest, it was not in writing as required under s 7(2) of the Civil Law Act (Cap 43, 1999 Rev Ed) ("the CLA"). It was an equitable assignment because at law, the first defendant, as the sole beneficiary under an intestacy, had no interest or property in the personal estate of the deceased until administration of the deceased's estate was completed and distribution was made according to such law. The deceased's estate was still under administration. A beneficiary of an unadministered estate or of an estate still under administration merely has an equity in the estate to compel the proper administration of the estate by the

administrator or executor as the case may be, nothing more.

23 Further, the alleged oral renunciation by the defendants of their rights to a grant of administration to the deceased's estate in favour of the plaintiff did not fall within the mode prescribed under ss 3(2) and 4 of the Probate and Administration Act (Cap 251, 2000 Rev Ed). Therefore the renunciations did not take effect.

24 Although counsel for the plaintiff (Mr Sreenivasan) conceded that part of para 50 was irrelevant, he contended that the purpose of the paragraphs which were struck out was to set out the background of the relationship between the plaintiff and the deceased. The plaintiff had pleaded an oral agreement with the first defendant and the state of mind of the plaintiff between 1979 until the date of demise of the deceased was relevant.

25 Mr Sreenivasan did not disagree with the principle that a beneficiary of an unadministered estate has no interest in any particular asset comprised in that estate until the same has been fully administered and distribution has been made according to law. However, he argued that the first defendant had a chose in action which she had assigned to the plaintiff in equity. Further, it was an equitable assignment because the requirement of a proper assignment under s 4(8) of the CLA had not been met as the assignment was not in writing and no notice of it had been given to the trustee. Counsel asserted that the requirements of an equitable assignment were met. He argued that the law did not require an equitable assignment to be in any particular form for it to be valid.

26 Counsel added that the court should be slow to strike out a pleading under O 18 r 19 of the Rules. It should only strike out in plain and obvious cases. Here, there was a real issue to be determined on the facts, *viz* whether the first defendant had agreed to waive her rights to the deceased's estate. It would therefore be inappropriate to summarily strike out the plaintiff's claim without the benefit of full evidence.

The decision

27 I start with the provisions in the CLA relied on by counsel. Counsel for the plaintiff referred to s 4(8) of the CLA which states:

> Any absolute assignment by writing under the hand of the assignor, not purporting to be by way of charge only, of any debt or other legal chose in action of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be and be deemed to have been effectual in law, subject to all equities which would have been entitled to priority over the right of the assignee under the law as it existed before 23rd July 1909, to pass and transfer the legal right to such debt or chose in action, from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor.

28 The defendants' counsel, on the other hand, relied on s 7(2) of the CLA. It states:

> A disposition of an equitable interest or trust subsisting at the time of the disposition must be in writing signed by the person disposing of the same or by his agent lawfully authorised in writing or by will.

29 The defendants' counsel also relied on ss 3 and 4 of the Probate and Administration Act for his argument that the alleged renunciation by the first defendant fell foul of those sections. Section 3

of the said Act states:

> **3.**—(1) Any person who is or may become entitled to any probate or letters of administration may expressly renounce his right to such grant.
>
> (2) Such renunciation may be made —
>
> (*a*) orally by the person renouncing or by his advocate and solicitor, on the hearing of any petition or probate action; or
>
> (*b*) in writing signed by the person so renouncing and attested either by an advocate and solicitor or by any person before whom an affidavit may be sworn.

Section 4 of the Act states:

> **4.**—(1) Any person having or claiming any interest in the estate of a deceased person, or any creditor of a deceased person, may, without applying for probate or letters of administration, cause to be issued a citation directed to the executor or executors appointed by the deceased's will, or to any person appearing to have a prior right to probate or letters of administration, calling upon the person cited to accept or renounce that right.
>
> (2) Any person so cited may enter an appearance to the citation, but if he makes default in appearance thereto, he shall be deemed to have renounced his right.

30 Mr Sreenivasan had submitted that the plaintiff's chose in action was not in a property and therefore it was not caught by s 7(2) of the CLA. He relied heavily on the Malaysian case of *Khaw Poh Chhuan v Ng Gaik Peng* [1996] 1 MLJ 761 ("*Khaw*'s case") for his arguments. Counsel's arguments are misconceived for reasons I shall now set out.

31 It was conceded by Mr Sreenivasan that the first defendant as the (sole) beneficiary of the deceased's (intestate) estate, has no interest or property in the personal estate of the deceased, until administration of the estate is complete and distribution is made according to intestacy laws (see *Halsbury's Laws of Singapore* (Butterworths Asia, 2001) vol 15 at para 190.283). A beneficiary as such has only an "equity" to compel the proper administration of the estate. This principle of law was affirmed by our Court of Appeal in *Wong Moy v Soo Ah Choy* [1996] 3 SLR 398.

32 As the first defendant only had an equitable interest in the estate of the deceased, her purported assignment of that interest must be in writing, as stipulated by s 7(2) of the CLA (see [28] above). As there was no written assignment, the plaintiff cannot enforce the same.

33 It was clear from para 57 of the Amended Statement of Claim (see [15] above) that the plaintiff's pleaded case alleged there had been a waiver by the first defendant of the first defendant's "equity" in the estate of the deceased. The court below held, quite correctly, that the doctrine of *nemo dat non quod habet* applied to the first defendant's "equity" and that the waiver agreement at best effected a transfer to the plaintiff of the first defendant's "equity" as beneficiary to compel proper administration of the estate. However, the waiver agreement would still fail as the assignment of that equity by a beneficiary was not in writing, as required under s 7(2) of the CLA.

3 4 *Khaw*'s case did not assist the plaintiff. Indeed, the decision of the Federal Court supported the defendants' submissions as can be seen from the following facts:

(a) The deceased in that case died in 1943 leaving two widows and their children as his beneficiaries. The deceased's estate comprised, *inter alia*, of four pieces of land. Upon the death of one of the widows ("the assignor's mother") who was the administratrix of the deceased's estate, one of the children ("the assignor") was appointed the administratrix *de bonis non*. The assignor was entitled to shares in the estates of both the deceased and the assignor's mother.

(b) Pursuant to the terms of two agreements made in 1964 and 1965 ("the agreements"), the assignor assigned all her beneficial interests in the two estates to the appellant. The appellant then lodged, as purchaser and assignee, a caveat against the four pieces of land. In 1973, an administration action was commenced against the assignor and her co-administrator for failing to administer and distribute the property. The two administrators exhibited a family settlement agreement to show their willingness to distribute the assets of the estate. Neither the appellant nor his interest was mentioned in the settlement agreement. A consent order was subsequently granted in terms of the consent agreement pursuant to which one of the pieces of land ("the fourth piece of land") was sold.

(c) The appellant commenced action for a declaration that the consent order and the settlement agreement were void and for various reliefs including a claim to his share of the sale proceeds of the sale of the fourth piece of land.

(d) The trial judge dismissed the appellant's action on the grounds, *inter alia*, that:

(i) the assignment was void because it was non-absolute or conditional and s 4(3) of the Civil Law Act 1956 was not complied with; and

(ii) the appellant had no cause of action against the respondents.

35 In allowing the appeal, the Federal Court held, *inter alia*, that the beneficial interests of the assignor in the estates of both the deceased and the assignor's mother were transferred unconditionally to the assignee. The assignment was absolute and unconditional. Since it was absolute and also in writing and notice of the assignment had been given, s 4(3) of the (Malaysian) Civil Law Act 1956 had been complied with.

36 Mr Sreenivasan relied on the following extract (at 775) from the judgment of Peh Swee Chin FCJ:

> In any event, compliance with s 4(3) is not a pre-requisite to the validity of an assignment, which is to be determined in the usual ways. Even without complying with s 4(3), eg even without notice of the assignment to such debtors, for the sake of argument, the assignment would have been valid in equity in any event against the assignor.

for his argument that an equitable assignment need not be in writing.

37 Counsel, however, had overlooked the qualifications made by the learned judge (at 775) where he said:

> If an assignment is valid in law or legal (ie legally binding on the assignor), then it is valid or legal and compliance with s 4(3) is not essential to make it valid or legal as stated. Section 4(3) has not made any alteration in the law of assignment; it has merely made it easier for the assignee in one aspect in that the assignee can sue in his own name without sometimes having to borrow the name of the assignor or if the assignor is uncooperative, to join the assignor as a co-defendant.

38 It was therefore a quantum leap in logic for counsel to rely on *Khaw*'s case to say that the alleged oral assignment by the first defendant in favour of the plaintiff was enforceable notwithstanding that no notice of the assignment was given to the second defendant as the administrator of the deceased's estate. The two assignments in *Khaw*'s case were in writing and notice thereof had properly been given. Secondly, they were legal, not equitable, assignments. Further, the estates of the deceased as well as of the assignor's mother must have been fully administered, as otherwise, the fourth piece of land could not have been sold.

39 Questioned by the court on the nature of the assignment by the first defendant to his client, Mr Sreenivasan was hard put to identify the same. Eventually he said it was a chose in action which was not in property. The plaintiff's interest could therefore by definition only be an equitable chose in action.

40 At this juncture, it would be appropriate to look at what constitutes a chose in action at law. *Snell's Equity* (Sweet & Maxwell, 31st Ed, 2004) at para 3-01 states:

> "'Choses in action' is an expression used to describe all personal rights of property which can only be claimed or enforced by action, and not by taking physical possession." A chose may be legal (*i.e.* formerly enforceable in a court of law), such as a debt, bill of exchange, policy of insurance, sweepstake ticket or share in a company; or it may be equitable (*i.e.* formerly enforceable only by a suit in equity) such as a legacy, a legatee's rights in an unadministered estate, a share in a trust fund, surplus proceeds of sale in the hands of a mortgagee, or a right to relief against forfeiture of a lease for non-payment of rent

41 As the plaintiff had an equitable chose in action which assignment was not in writing, it was most certainly caught by s 7(2) of the CLA and is unenforceable. Consequently, paras 54, 55, 57, 59, 70 and 71 of the Amended Statement of Claim in para 7 of the Reply were rightly struck out by the assistant registrar; the plaintiff's claim based on the waiver agreement was clearly unsustainable.

42 Mr Sreenivasan did not address the issue of past consideration raised by Mr Tan. If, as the plaintiff's pleaded case stated (see [21] above), the waiver agreement was made on or about 8 March 2003, the consideration furnished by the plaintiff to carry out and pay for the funeral rites and expenses was in any case past consideration and could not found a claim. There was also an element of dishonesty on the plaintiff's part as he had omitted to disclose (until he filed his Reply on 16 June 2005), that the deceased's estate reimbursed him $4,940 for the funeral and related expenses. His admission was only made after the Defence[note: 2] filed by the defendants pleaded that the Plaintiff had been reimbursed for such expenses.

43 The alleged waiver agreement would not have assisted the plaintiff in any case to make an enforceable claim on the estate of the deceased. As the (sole) beneficiary of the deceased's estate, the first defendant would have had to make a proper renunciation in compliance with s 3 of the Probate and Administration Act (see [29] above) before her rights were effectively extinguished. She made no such renunciation.

44 I had struck out paras 50 to 56 and para 58 of the Amended Statement of Claim (see [18] above) because those paragraphs were clearly scandalous and designed to embarrass the first defendant. Why or how was the first defendant's relationship with a man called TSC and the deceased's alleged estrangement from the first defendant relevant to the plaintiff's claim? Striking out the offending paragraphs did not in any way prejudice the plaintiff's claim but only pared his pleadings and confined his case to relevant facts.

45 Mr Sreenivasan had argued that those paragraphs were necessary to show the plaintiff's state of mind from 1979 up to the demise of the deceased. Even if I accepted that argument (which I did not), the plaintiff's state of mind is a matter of evidence which can be dealt with at length, if necessary, in his affidavit of evidence-in-chief to be filed nearer to the trial. I should point out that O 18 r 7(1) of the Rules expressly provides that facts, and not evidence, should be pleaded. The plaintiff's prolix pleadings (in the paragraphs set out in [15] above) not only alleged facts, but also the evidence by which those facts were to be proved.

46 It was for all the above reasons that I dismissed the plaintiff's appeal but allowed the defendants' appeal.

[note: 1]Paragraph 4.

[note: 2]Paragraph 24.