Anwar Patrick Adrian and another *v* Ng Chong & Hue LLC and another [2014] SGHC 234

Case Number	: Suit No 455 of 2012
Decision Date	: 14 November 2014
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Tan Cheng Han SC (instructed), Balachandran s/o Ponnampalam and Luo Ling Hui (Robert Wang & Woo LLP) for the plaintiffs; Michael Khoo SC, Andy Chiok and Kelvin Ho (Michael Khoo & Partners) for the defendants.
Parties	: Patrick Adrian Anwar — Andrew Francis Anwar — Ng Chong & Hue LLC — Ng Soon Kai

Damages – Quantum

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 194 of 2014 was allowed by the Court of Appeal on 30 September 2015. See [2015] SGCA 49.]

14 November 2014 Judgment reserved.

Choo Han Teck J:

1 The facts of this case have been set out in my judgment in [2013] SGHC 202 and also in the Court of Appeal ("CA") judgment in the same case in [2014] 3 SLR 761. For the purposes of following this judgment, the story, briefly, is as follows. Agus Anwar ("Anwar"), a businessman purchased several properties in Devonshire Road and Scotts Road. Some of those properties were purchased in the names of the plaintiffs who are his two young sons, one of whom was still a student in America at the time, and the other had just started work. On 16 October 2008, Society Generale Bank & Trust (referred to as "SGBT" by the CA) demanded payment of about US$17m due by Anwar to it.

2 Anwar began negotiating with SGBT through the second defendant, Ng Soon Kai. The second defendant is a lawyer practising under the name of the 1st defendant, Ng Chong & Hue LLC. Allen & Gledhill LLP ("A & G") acted for SGBT and negotiations took place with Anwar taking an active part, sometimes contacting A & G directly, and sometimes with SGBT directly. Anwar informed SGBT that one of the Devonshire Road properties was being held by him in trust for a third party. Anwar, however, agreed to mortgage the remaining properties as further security to stay SGBT's hand. In addition to the properties, SGBT also asked for personal guarantees to be executed in its favour by the plaintiffs. Anwar secured SGBT's consent to waive the requirement for the plaintiffs' personal guarantees. Anwar declared to SGBT that "the guarantees from the two young boys are not going to be worth anything".

3 In the event, Anwar was unable to pay his debt to SGBT and in exercise of its rights, SGBT realised the security in the form of the properties. However, under the security (mortgage) documents the plaintiffs as owners were obliged to give their personal guarantees. They were thus called upon under their guarantees to pay the balance due. The second defendant continued acting as the solicitor for Anwar and the plaintiffs. SGBT then sued Anwar, his companies, and Anwar's two sons (who are the second and third plaintiffs in Suit No 365 of 2009). In the end, SGBT agreed to settle the suit against the plaintiffs if they paid US$1m by a certain date. This was done. The

plaintiffs then commenced this suit against the defendants claiming that the second defendant was in breach of his duty of care as the solicitor acting for them in the mortgage transaction in that he failed to advise them that the personal guarantee waived by SGBT is now reinstated in the mortgage documents. In this suit the plaintiffs claimed payment of the US$1m they paid under the settlement with SGBT, and legal costs amounting to $325,287.71.

4 I found that the defendants did not owe the plaintiffs a duty of care on the ground that the second defendant was acting for Anwar only, and that the two sons were only nominees of Anwar. I found that the second defendant was acting as the lawyer for Anwar only. On appeal, the CA held that the absence of any contractual connection between the plaintiffs and the defendants did not prevent a duty of care in tort from arising in respect of the defendants to the plaintiffs, if the second defendant knew that the plaintiffs would rely on his advice.

5 What was this advice? The plaintiffs ought to have been advised that if the loans were not repaid, the properties in their names would be forfeited by SGBT because the personal guarantee clause was part of the terms of conditions in the mortgage documents executed by the plaintiffs. Was this advice necessary? At the trial I found that this advice was not necessary because it was evident from that Anwar was an experienced businessman and must know that this would be the case. I disbelieved him when he testified that he could not remember if he had sent SGBT's demands to his sons, the plaintiffs.

6 No one at the time thought it necessary to discuss the security arrangements (and advice relating to it) was necessary because everyone – SGBT, Anwar, the plaintiffs and the defendants assumed that Anwar alone had the authority to deal with the properties. More importantly, the plaintiffs' testimonies under cross-examination showed that they would have signed the documents without question.

7 The CA, however, held that the second defendant owed the plaintiffs a duty to advise them that if they were to sign the security document and Anwar failed to pay, their properties in their names would be forfeited. The rationale appears to be that the plaintiffs will in law become liable for the document they signed. However, the CA doubted whether that meant that the plaintiffs were thus entitled to recover the US$1m and costs from the defendants. The case was remitted to me to determine "the question of the reasonableness of the settlement entered into between the [plaintiffs] and SGBT".

8 Mr Tan Cheng Han, SC and Mr Michael Khoo, SC who acted for the plaintiffs and defendants at trial continued to represent their respective clients. They are of the view that no further evidence needs to be adduced. They then submitted written arguments in their clients' favour. The plaintiffs' case is summed up in Mr Tan's submission that "when the Court of Appeal in the present case said that the settlement sum of US$1 million would seem to be a commercially sensible decision in light of the Plaintiffs' obligations as guarantors, the Court of Appeal was expressing the view that it was a logical basis for the sum to be arrived at and the Plaintiffs were acting reasonably given their potential liabilities to SGBT".

9 On the contrary, my understanding of the CA judgment is that it might have been sensible for the plaintiffs to settle as they did but that did not mean that the settlement was a reasonable one. The question of reasonableness of the settlement has more than a single perspective. The first concerns reasonableness as between the plaintiffs and SGBT. SGBT is not a party here nor was it a party at trial. It has not complained that the settlement was unreasonable – and the defendants initially did not say that the settlement was unreasonable although they argued that the plaintiffs did not pay the money themselves and thus suffered no damage. More importantly, the settlement was a

contractual arrangement reached between two contracting parties (both represented by lawyers). The sanctity of contract may be vulnerable to public policy and illegality, but otherwise, the commercial world expects the contracts to be respected. If a man wishes to sell his property way below market value, his decision must be respected. No officious bystander, including the court, should tell him that his contract will not be enforced because it was unreasonable to sell at that price. For the above reasons, I am of the view that the reasonableness of the settlement as between SGBT and the plaintiffs is not the aspect I should inquire into.

10 The other aspect of the reasonableness of settlement concerns its effect on the plaintiffs and the defendants. That aspect can only concern the reasonableness of allowing the plaintiffs to claim the settled sum (and costs connected with that settlement) from the defendants. Ordinarily, from the facts and circumstances narrated above, it must follow that the plaintiffs must be able to recover the amount they paid SGBT in settlement as damages due to them from the defendants if the defendants are found liable in negligence leading to the plaintiffs' payment to SGBT. However, a defendant in the defendants' position is entitled to challenge the nature and extent of damage in order that the quantum of damages payable can be determined.

11 Before me now counsel for the defendants submitted that only the plaintiffs are in a position to adduce evidence to show that the settlement was reasonable and in the absence of which no one is able "to consider if there were any possibility of a discount being applied to the original claimed sum by SGBT". Alternatively, whether there was any possibility that "the original outstanding sum might have been set off against the collateral held by SGBT". We do not have any evidence how the settlement was concluded, and so far as reasonableness in the conduct of the parties (plaintiffs and SGBT) is concerned, there is no evidence for me to consider.

12 I do, however, have the evidence at trial in which the plaintiffs claimed that at least some $300,000 came from a loan by their father's unnamed friend and that that loan need not be repaid. It was unclear whether that $300,000 was in US or Singapore currency because the plaintiffs did not know. Indeed, we have no evidence exactly as to how the US$1m was paid to SGBT. I found as a fact and have no reason to believe otherwise, even now, that the plaintiffs did not make any payment to SGBT. The matter might have been settled, but the settlement was made effective by Anwar alone.

13 There is one more crucial point. The plaintiffs fought all the way to the CA in Suit 365 of 2009 to maintain that they had a strong defence against SGBT's claim. That defence did not include their reliance on the defendants' negligent advice. The plaintiffs had declared that they settled with SGBT because paying US$1m was clearly preferable to the prospect of a judgment for US$17m. But as counsel for the defendants points out, the actual amount owing was not US$17m but a lower sum. The plaintiffs did not act reasonably, counsel argues, in failing to ascertain the true amount of debt and thus failed to consider whether it was a reasonable quantification of the damage suffered by the plaintiffs. I accept that argument.

14 It seems to me that the plaintiffs did not take steps to ascertain whether the settlement was a reasonable one – how could they since it was Anwar who managed the entire case? The burden of proof is on the plaintiffs to show that the settlement was a reasonable one in that the payment also constitutes the right and fair quantification of damage that the defendants must now pay to them. That brings me to the point that if the plaintiffs had any defence in the SGBT suit, the one defence would be that they signed the documents under pressure from their father. That might be true but they were never close to saying it. I am therefore of the view that although it might have been sensible for the plaintiffs to settle with SGBT, I have no reason to believe that the settlement was a reasonable one – certainly not from the perspective of the regarding the settlement payment as a

reasonable quantum of damage payable by defendants to the plaintiffs. The question remains, in the light of my finding, what damages are the plaintiffs entitled? The lack of evidence showing that the plaintiffs had personally paid any money themselves to SGBT compels me to make an award for a $1,000 nominal damages only and I so order. The issue of costs will be heard by the CA as it had so ordered.