

Eka Tjipta Widjaja v Fifi
[2002] SGHC 38

Case Number : Suit 1028/2000
Decision Date : 27 February 2002
Tribunal/Court : High Court
Coram : Tay Yong Kwang JC
Counsel Name(s) : Cyrus J Patel (Dave, Shaun, Patel Partnership) for the plaintiff; George Pereira (Pereira & Tan) for the defendant
Parties : Eka Tjipta Widjaja — Fifi

Judgment

GROUNDS OF DECISION

1. The Plaintiff averred that the Defendant borrowed \$700,000 from him pursuant to an agreement dated 7 Oct 1998 and that despite demands made by him for repayment, the Defendant failed and refused to repay the said loan.
2. The writ of summons was served on the Defendant by way of substituted service towards the end of Dec 2000. On 10 Jan 2001, judgment in default of appearance was entered against the Defendant for the amount of \$700,000, interest and costs.
3. On 26 Apr 2001, the Defendant applied to set aside the default judgment and for leave to enter an appearance and to defend the action. The Defendant, an Indonesian citizen, stated in her affidavit that she was not in Singapore between 28 Nov 2000 and 15 Jan 2001 and was not residing in the flat (54 Toh Tuck Road #02-09 Signature Park, Singapore 596745) at which substituted service of the writ of summons had been effected and that the Plaintiff was aware of these facts. She also sought to defend the action on the merits. On 25 May 2001, the Deputy Registrar of the Supreme Court set aside the default judgment on the ground that it had not been regularly obtained. This was without prejudice to the Plaintiff's right to proceed under Order 14 of the Rules of Court.
4. The Defence and Counterclaim was then filed. On 21 Sep 2001, the Plaintiff filed his Reply and Defence to Counterclaim and, at the same time, applied for summary judgment pursuant to Order 14 of the Rules of Court. The Assistant Registrar granted the Defendant unconditional leave to defend. The Plaintiff appealed.

The Plaintiff's affidavit of 21 Sep 2001

5. The Plaintiff claimed that the \$700,000 in question was the amount paid by him on the Defendant's behalf to acquire the said Signature Park property and that the Defendant had acknowledged the debt in a document dated 7 Oct 1998 prepared by her solicitor who had also explained its contents to her. This document was in the following terms :

"To : Mr Eka Tjipta Widjaja
Indonesian Passport No. E 841170

ACKNOWLEDGMENT OF DEBT OF \$700,000.00
FOR PURCHASE OF NO. 54 TOH TUCK ROAD,
#02-09 SIGNATURE PARK, SINGAPORE 596745

I, Fifi, holder of Indonesian Passport No. G 547545 confirm that I have borrowed from you, Mr Eka Tjipta Widjaja holder of Indonesian Passport No. E841170 a sum of Singapore Dollars Seven Hundred Thousand (S\$700,000.00) to purchase the property known as No. 54 Toh Tuck Road #02-09, Signature Park, Singapore 596745.

I confirm that the property is held by me in trust for you as security for the loan of \$700,000.00. You shall for such purposes be entitled to have the power to sell the said property and do not need my consent for such purposes in future to do so. This document shall be sufficient to enable you to exercise your said power of sale.

You have confirmed that in the event of your demise, no moneys shall be due and owing to you and/or your estate and the property shall be mine absolutely.

Dated the 7th day of October 1998.

(Signed)

Fifi

In
the
presence
:
-
(
Signed
)

B.
GANESHAMOORTHY
Advocate
&
Solicitor
Singapore

I, Eka Tjipta Widjaja, confirm the contents of the above letter.

Dated the day of 1998.

(
Signed
)

Eka Tjipta Widjaja "

6. The Plaintiff explained that the Defendant was his "companion" (ie mistress) in Indonesia. When the riots began in Indonesia in May 1998 and Indonesians of Chinese descent were targeted, he wanted to ensure the Defendant's safety and therefore brought her to stay in Singapore temporarily. To enable the Defendant to remain in Singapore for a longer period, he asked her to apply for a study visa and to enrol in some educational courses until the situation calmed down back home. He provided her the necessary funds to do this.

7. Initially, the Defendant stayed in a hotel here and the Plaintiff would visit her there. Being a prominent businessman both in Indonesia and in Singapore, meeting her frequently in the hotel was not the best thing to do. He wanted a place where they could meet more discreetly and therefore instructed the Defendant to look for an apartment to buy. Further, the property market here was in the doldrums and it was a good time to buy for investment purposes.

8. Although the Plaintiff had a home in Cluny Park, Singapore, he was frequently in Indonesia. When the Defendant selected the Signature Park property, the Plaintiff approved the purchase and the price as it was suitably private and unlikely to draw much attention to the 2 of them.

9. The Defendant liaised with the estate agent and the sellers and the option to purchase the property was taken out in her name. The Plaintiff was not happy with this but decided, on further reflection, that it would be better not to have his name on record. However, to protect his interest in the property, he wanted a document prepared that would secure the recovery of his money when the property was sold. That was why the Defendant instructed her solicitor to prepare the Acknowledgement of Debt document dated 7 October 1998. That was signed around 14 October 1998, the date of completion of the purchase. It was unclear why it was back-dated although the Plaintiff explained in his second affidavit that it was intended to have legal effect from the day the Defendant took possession of the property.

10. There was no dispute that the funds for the said purchase were entirely furnished by the Plaintiff and that the Defendant could not have afforded to buy the property on her own. However, the property was never intended as a gift by the Plaintiff to the Defendant.

11. The Plaintiff claimed that the Defendant made some handwritten amendments in the Indonesian language to the draft of the Acknowledgement of Debt which he agreed to. He said the amendments pertained to the last paragraph on the forgiveness of debt but corrected this in his subsequent affidavit as the amendments actually concerned his discretionary power of sale.

12. The Plaintiff exhibited a letter dated 21 May 2001 from his solicitors to the law firm (M/s Ganesha & Partners) which dealt with the conveyancing and the Acknowledgement of Debt. In that letter, his solicitors asked certain questions relating to the Acknowledgement of Debt. M/s Ganesha & Partners' reply, contained in their letter of 22 May 2001, stated that they received instructions to draft the

said document from the Defendant on or about 7 October 1998. The solicitors also stated that they understood from the Defendant that the handwritten amendments to the draft were proposed by the Plaintiff. The letter also stated that Mr Ganesha explained to the Defendant the nature and the contents of the document and told her at the same time that the Plaintiff had informed them that the purpose of the document was to enable the Defendant to explain to the Singapore Government or authorities how she was able to acquire the said property in case inquiries were made. Her solicitors were satisfied that the said document would satisfy the purpose of showing the source of funds.

The Defendant's affidavit of 18 October 2001

13. The Defendant was born in Surabaya, Indonesia, on 13 April 1975. The Plaintiff is about 80 years old. She first met the Plaintiff, one of the richest men in Indonesia, in Jakarta in March 1992 when she was about 17 years old. She had gone to Jakarta, after completing High School, with an aunt to visit her cousin who was then also a "companion" of the Plaintiff and being maintained by him in a house bought by him for her. The aunt was the mother of the said cousin.

14. Initially, the Plaintiff did not know the Defendant was staying in the cousin's house as she would stay out of sight upstairs. In May or June 1992, his body guards informed him of her presence. She was then introduced to the Plaintiff who invited her to lunch but she declined. One or two weeks later, she returned to Surabaya.

15. She passed her High School examinations and wanted to study economics at tertiary level but could not afford to do so.

16. In February 1993, she met the Plaintiff again when he went to Surabaya with the cousin during Chinese New Year. The Plaintiff told the Defendant that if she needed a job after graduation from university, she could approach him for help.

17. In 1994, the Defendant went to work in a factory in Taiwan for about half a year. In 1995, she decided to study Economic Management in Universitas Putra Bangsa. She worked during the day and attended lectures in the evening.

18. In December 1996, she gave up her studies and moved to Semarang to live with her brother. She worked as a bank teller from February to June 1997.

19. When she became jobless and had no one to turn to for support, she decided to contact the Plaintiff. He invited her to Jakarta and she went there with a very close friend, Magdalena Kurniawati Limanto, in August 1997. She regarded Magdalena as her sister. They stayed in a hotel arranged by the Plaintiff. The costs of the trip by air and the hotel charges were borne by the Plaintiff.

20. The Plaintiff visited them and told the Defendant that he had separated from her cousin. She was to learn from him subsequently that he had wanted to sell the house which was in her cousin's name but she was unwilling to do so. Subsequently, her cousin sold the house without the Plaintiff's knowledge, kept the proceeds of sale and moved back to Surabaya.

21. The Plaintiff then informed the Defendant that he had feelings for her since their first meeting in 1992. He told her that he would take care of her and her family if she would "marry" him. He would buy her a house and take care of all her material needs for the rest of her life.

22. On 7 September 1997, they "married" in a hotel in Jakarta. The Defendant stayed in hotels and

the Plaintiff visited her from time to time. He told her he was looking for a suitable house to buy for her. About 2 months later, the Plaintiff arranged for her to move into a house owned by his company and provided a company car for her use. He forbade her from working, saying he wanted her to concentrate on looking after him.

23. When the riots broke out in Jakarta in May 1998, the Plaintiff was out of Indonesia. He did not return home but came to Singapore instead. He arranged for the Defendant to move to Surabaya for a few days and then to Singapore where she stayed in the Apollo Hotel. The Plaintiff stayed with his family in the Cluny Road bungalow. He would visit her and spent time with her in the hotel room from time to time.

24. After a couple of weeks, the Defendant returned to Jakarta as instructed by the Plaintiff who remained in Singapore.

25. In June or July 1998, the Plaintiff told her that as the situation in Jakarta was volatile, it was best for her if he bought a property for her in Singapore where she would live in comfort and safety. He asked her to look for a freehold property in Districts 9, 10 or 11.

26. The Defendant, her sister and her brother then came to Singapore for this purpose. They stayed in the Apollo Hotel and were introduced by the duty manager to an estate agent (who is the wife of Mr Ganesh and who introduced the Defendant to his law firm). After viewing several properties, they were brought to Signature Park where 2 units were for sale. After negotiations, she agreed to purchase the unit in issue for \$700,000/-. The Plaintiff was informed by telephone. The property was purchased in the Defendant's name as requested by the Plaintiff who paid the purchase price.

27. At the Plaintiff's request, the Defendant returned to Jakarta on 10 September 1998 and proceeded to buy furniture and other accessories for the Signature Park property. These were then shipped to Singapore in a container. She also purchased other items in Singapore for the property. All these were given to her by the Plaintiff for her use.

28. In October 1998, the Defendant and her "sister", Magdalena, moved into the said property. The Plaintiff would visit and spend time with the Defendant from time to time. He told her that he wanted her to execute a document to explain how she came to own the property and that such a document was necessary for her protection because the Singapore Government might want to investigate how she was able to make the purchase. Having no knowledge of Singapore law and having absolute trust in the Plaintiff, with whom she was having a very good relationship, she agreed to execute such a document.

29. The contents of the document were dictated by the Plaintiff to Magdalena in the Indonesian language. He then instructed Magdalena to bring the draft to Mr Ganesh and to instruct him to prepare the document in English. When that had been done, the Plaintiff dictated some amendments thereto to Magdalena who wrote them out in the Indonesian language on the draft. The amended draft was then faxed by the Defendant to the lawyer on 14 October 1998.

30. The Defendant, accompanied by Magdalena, then went to the lawyers's office to sign the document. Mr Ganesh explained the contents to her but also said at the same time that the Plaintiff had informed him that the purpose for the preparation of the document was to enable the Defendant to explain to the Singapore Government or authorities how she was able to acquire the property in case inquiries were made. Since this was the same reason mentioned by the Plaintiff, the Defendant signed the document. The document was signed by the Plaintiff in the Signature Park property after it was interpreted to him by Magdalena.

31. The Defendant resumed her studies while in Singapore. She took an English course at Inlingua for about 3 months and also studied English at the British Council for about 1 month. Magdalena also took up courses here. All the expenses of the Defendant were paid for by the Plaintiff who also bought her a new BMW 520i.

32. Around March 1999, the Plaintiff told the Defendant he wished to acquire some more properties in Singapore. He wanted to buy another property for her so that she could live in one and earn rental income from the other and thus would have no financial worries for the rest of her life. They were very much in love then and the Defendant cried because she was deeply moved by the Plaintiff's feelings and concern for her. The Plaintiff then bought for her a property at 28 Scotts Road #03-04 ("Scotts 28") again funding the entire purchase.

33. Shortly thereafter, the Plaintiff told the Defendant that he would like her to sign the same kind of document for Scotts 28 that she did for the Signature Park property, repeating the reason for the need to do that. Similarly, ignorant of the law here and trusting the Plaintiff completely, the Defendant was prepared to sign the document requested by the Plaintiff.

34. Soon thereafter, the Plaintiff stunned the Defendant one day by confessing to her that he had developed feelings for her "sister", Magdalena, and wanted her to be another of his "wives". The Defendant was deeply hurt but said nothing to him. The Plaintiff pestered her to persuade Magdalena to be his "wife". The Defendant told Magdalena about this and she was shocked. She declined the proposal and told the Plaintiff so.

35. Thereafter, the Plaintiff's attitude and feelings towards the Defendant changed. He became very insistent that the Defendant sign the aforesaid document in respect of Scotts 28 and the Defendant began to be suspicious about his true intentions towards her. She therefore kept delaying the execution of the document with excuses. That led to quarrels. The Defendant kept reminding the Plaintiff of his earlier assurances to her that both the properties were hers.

36. Around May 2000, the Plaintiff told the Defendant that they should move back to Jakarta where he had prepared a house owned by one of his companies for her. He therefore wanted her to execute a power of attorney for him to sell the 2 properties in Singapore, claiming that he had lost the document of 7 October 1998. By this time, she was sure that the Plaintiff was trying to get rid of her and she refused to execute any such document, leading to frequent quarrels. During the quarrels, he also said he wanted to sell the 2 properties as he was in financial difficulties. It became obvious to the Defendant that the Plaintiff was angry that Magdalena had rejected his advances and wanted to vent his anger on the Defendant because she kept refusing to persuade Magdalena to be his "wife".

37. In order to escape the frequent quarrels, the Defendant and Magdalena left Singapore on 28 November 2000 and had no further contact with the Plaintiff.

38. The Defendant maintained that there was never any loan given by the Plaintiff to her as she was clearly in no position to repay any loan of such a substantial amount. She maintained that the Signature Park property was a gift to her. The title deeds were in her possession all this time.

39. The Defendant claimed she had been misled about the contents and the effects of the Acknowledgement of Debt document of 7 October 1998 which was never intended to be a binding loan document. This was further buttressed by the fact that the Plaintiff had requested her to execute a power of attorney in his favour in November 2000 to enable him to sell the Signature Park property. There would be no need for a power of attorney if the document of 7 October 1998 was intended to be valid and enforceable. She also had a counterclaim against the Plaintiff for damages

for conversion as he had removed all her movable properties in the Signature Park property.

Magdalena's affidavit of 18 October 2001

40. Magdalena stated that she met the Defendant in High School in 1989 and became so close to her that each regarded the other as a sister. She went with the Defendant to meet the Plaintiff in August 1997 as she also intended to seek his help in getting a job. On the second day of their stay in Jakarta, the Plaintiff gave her some money and asked her to go shopping as he had something to discuss in private with the Defendant. When she returned to the hotel, she was told by them that they were getting "married".

41. She confirmed that the Plaintiff had told the Defendant that he was looking for a house in Jakarta to purchase for her. When they moved into the house owned by the Plaintiff's company, the Plaintiff forbade the Defendant to work and told Magdalena not to work as well so that she could keep the Defendant company. Both of them had to massage the Plaintiff daily. The Plaintiff gave Magdalena some money monthly for her expenses.

42. In Singapore, Magdalena was with the Defendant at all material times save for the moments of intimacy between the Plaintiff and the Defendant in their bedroom. She was therefore able to confirm what the Defendant said in her affidavit.

43. As for the Plaintiff's proposal to her, she was shocked as she had always regarded him as her brother-in-law. She did not give him an answer immediately as she wanted to figure out a way of telling him without hurting his feelings. The Plaintiff subsequently asked her in front of the Defendant whether she would "marry" him, offering her a condominium unit in Gardenville at 10 Walshe Road. She requested the Defendant to leave them alone and then told the Plaintiff that she could not "marry" him. He became very angry, telling her that he had never been rejected by anyone. He also became angry with the Defendant because he felt the Defendant should have persuaded Magdalena to "marry" him. His attitude towards them changed and he started pestering the Defendant to sell the Scotts 28 property.

44. They had no hint at all that the Plaintiff was contemplating legal action against the Defendant. Magdalena tried her best to patch things up between the couple but failed as the Plaintiff was adamant about selling both properties and was insistent about the Defendant having to sign certain documents that he had instructed Mr Ganesh to prepare. The Defendant had no knowledge what those documents were although the Plaintiff did tell her that one of them was a power of attorney. She knew that the Defendant was not prepared to sign anything. She had no doubt that the 2 properties were gifts by the Plaintiff to the Defendant as they had a very loving relationship at the material time until Magdalena's rejection of his proposal.

Plaintiff's affidavit of 23 November 2001

45. The Plaintiff in response stated that he acceded to the Defendant's request to let Magdalena live with her as they were very close to each other and the Defendant was afraid to live alone.

46. Although he paid for the two properties and the furnishings, he never told the Defendant that they were gifts to her. There was no reason to buy them as gifts as he had already purchased a house for the Defendant in her hometown of Surabaya in January 1998. In early 2000, he arranged for the property to be completely rebuilt for her as a permanent home and the house was ready in

October 2000.

47. He had always intended to set up home for the Defendant in Indonesia. She is an Indonesian Citizen. He spent much of his time in Indonesia and it would be convenient for him to visit her there. Her study visa was temporary. The purchase of the two properties in Singapore during the downturn was for his investment purposes and, at the same time, would provide the Defendant with accommodation here. It was ludicrous that he would give the Defendant the two properties worth more than S\$3million when she was unable to live in Singapore permanently to enjoy them. It would make far better sense if he were to give her cash instead.

48. The Scotts 28 property is the subject of a separate legal action. At the time it was being purchased in 1999, the Plaintiff had serious health problems and was hospitalized on many occasions. The Defendant sought to take advantage of his poor health and advanced years and tried to take away the Scotts 28 property from him. That was the cause for the unhappiness in the middle of 2000 when he found out and not any alleged spurning by Magdalena in whom he had no romantic interest and who was married to the Defendant's brother.

49. The Defendant had failed to arrange the documentation instructed by the Plaintiff in respect of Scotts 28. Further, when the Plaintiff wanted to sell it, she told him that it was tenanted, she had taken 2 years of rent in advance which was placed in fixed deposit and she wanted to use the interest as additional living expenses especially during the periods of his prolonged absence. Scotts 28 was never rented out. She had sold the BMW 520i within a year without telling him. She lied that the courses she had enrolled in were for much longer periods and took money from him to pay for them.

50. The Defendant was now more interested in enriching herself at the Plaintiff's expense and that was why she and Magdalena were making the allegations contained in their affidavits.

The Decision of the Court

51. The Defendant contended that Mr Ganesh had said that the "sole purpose" of the Acknowledgement of Debt document of 7 October 1998 was to show the source of the Defendant's funds. Since that was the "sole purpose" for the Defendant to sign the document, it did not matter anymore what other words were in the document although those other words were explained by the lawyer. It was further argued that if the Plaintiff had an unexpressed purpose in mind, then he had deceived the lawyer.

52. The Defendant relied on the decision of the Privy Council in *Tyagaraja Mudaliar & Another v. Vedathanni* [1936] MLJ Rep. 62, an appeal from India. There, a document only intended to create evidence of the undivided status of a Hindu family included an agreement that the widow signing the document relinquish her claims for maintenance. When the widow sought to recover arrears of maintenance, it was held that oral evidence in disproof of the alleged agreement, that the document was never intended to operate as a agreement but was brought into existence solely for the purpose of creating evidence of some other matter, stood exactly on the same footing as evidence that a signature was forged. Such oral evidence could therefore be adduced.

53. The Defendant submitted that it was a question of fact what exactly the document of 7 October 1998 was meant to be. The Plaintiff had not denied the purpose was as indicated by the lawyer. His solicitors had asked Mr Ganesh whether that was one of the purposes but Mr Ganesh replied otherwise. The Defendant was not told that the other provisions in that document were to make it an enforceable loan agreement.

54. It should be noted that the widow in that case had refused to sign the document when it was presented to her 3 days after her husband's death. She was induced to do so 2 days later by representations that it would not be acted on and that its only purpose was to provide evidence of the undivided status of the family. The Defendant in our case was under no pressure of any sort, emotional or otherwise. Indeed, she said that the relationship between her and the Plaintiff then was a very loving one. There was not even any evidence that the document had to be signed in a great hurry.

55. There was no doubt that Mr Ganesh did tell her what the Plaintiff said the purpose of the document was. The lawyer certainly did not tell her that that was the sole or only purpose or that the other clauses were thrown in as decoys and were not meant to be acted upon. The stated purpose was true in any event and was achieved – the document did show that the money came from the Plaintiff as a loan and not as a gift and the other provisions reinforced that fact rather than detracted from it to any extent.

56. What was so sinister about this purchase anyway? It was not as if the Plaintiff was not entitled under Singapore law to make the purchase and was using the Defendant as a front to fool the authorities here. Their relationship was very good and the money was his to do as he pleased. What need was there for him to trick the Defendant in any way? If it was meant to be a gift from lavish "husband" to beloved "wife", why not just say so?

57. The evidence showed that Mr Ganesh faithfully and accurately explained everything to the Defendant who raised no protest or query about the terms, obviously because that was the understanding she had with her "husband", her provider of all material things. The amendments pertaining to the power of sale must have come from the Plaintiff rather than the Defendant, contrary to the Plaintiff's assertions, but that did not change anything of substance here. Indeed, it would be further evidence of the Plaintiff wanting to be doubly sure there was no doubt who owned the property, which would be the Defendant's only if the Plaintiff should pass away without having dealt with the property.

58. Clearly, the Defendant had no defence to the Plaintiff's claim and had raised nothing that would merit a trial. I therefore allowed the Plaintiff's appeal and gave judgment as claimed. I awarded the Plaintiff \$5000/- costs for the entire action.

Sgd:

TAY YONG KWANG
JUDICIAL COMMISSIONER

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