

YONG TECK FOO

....Appellant

AND

PG DATIN NORALAM BTE PG HJ MAHMOOD

....Respondent

**(Court of Appeal of Brunei Darussalam)
(Civil Appeal No. 10 of 2019)
(Civil Appeal No 1 of 2019)**

Before: Burrell P, Seagroatt and Lunn JJ A.

24th April 2019

Lt. Col (R) Hj Harif bin Hj Ibrahim (Messrs. Lt Col (Rtd) Harif Ibrahim Advocates and Solicitors) for Appellant

Mr. Lim Chin Wah (Messrs. Ahmad Zakaria & Associates) for Respondents

Seagroatt, JA.:

The appellant seeks to overturn the judgment of Judicial Commissioner James Findlay, dated 16 August 2018, whereby the judge dismissed the appellant's claim for \$900,000 being the price which the appellant alleges he paid for three properties which he believed to be in the exclusive possession and ownership of the defendant. It is clear that the appellant's claim was fundamentally misconceived and this appeal and the ancillary application to obtain the admission of Singaporean Counsel as the only available expert in the law under the Moneylender's Act and Legislation, as it applies to Brunei Darussalam and Singapore is equally untenable.

A short statement of the personalities involved aids a view of the barebones and factual matrix of this pointless litigation.

The plaintiff does not disclose his real occupation as a businessman but it is clear in the context of this case that he lends money, even if that is only part of his remunerative occupation. He seemed, in the course of his evidence, to want to avoid the use of the terms 'loans', merely asserting that he was allowing people to borrow money from him. Whether he is simply naïve, or seeking a euphemism or some such expression to deny his activity, or even to cloak his financing procedure, is not entirely clear, but we do not need to decide this.

The defendant is the wife of the man Chong to whom the plaintiff loaned money. She was held out by Chong to hold the title to the three properties concerned. She played no direct part in the transaction other than to sign some documents put to her by her husband Chong. She did so under duress.

Chong is the borrower of the monies from the plaintiff. He claimed the properties were owned by his wife and could be used for sale. They had in fact already been sold in 1996 to a company known as Amedeo.

The Plaintiff's alleged case

It was apparent to the judge at an early stage of the evidence from the plaintiff that his oral evidence varied significantly from his case pleaded in the Statement of Claim and contained in his affidavit. The judge had little difficulty in concluding that, at best, the plaintiff was inconsistent and at worst that he was hiding the true nature of his transactions. Accordingly he could not rely upon him as a witness of truth.

The judge also had reservations about the veracity and reliability of Mr. Chong. He had no doubt that the purported transactions in relation to the three properties were a sham to hide loan transactions the full extent of which was unclear but a matter to be decided between the plaintiff and Mr. Chong.

The purported transactions were simply created as a screen for loans to Mr. Chong and the defendant had been used in that scheme.

The defendant had some years ago held title to the properties on trust for her husband, Mr. Chong and they were later sold (in or about 1996) to pay off the business debts of her husband's developments. Under duress from her husband she signed the Sales and Purchase Agreements which contained express buy-back provisions enabling Mr Chong in effect to repurchase the properties at the sale price plus a percentage profit or as the plaintiff described "a goodwill" sum, whatever that may mean. Given the period within which the option was to be exercised, the extra amount was a handsome gain for the plaintiff. This of course was a nonsense since the properties had ceased to be in the defendant's ownership for over 20 years. But the plaintiff had been completely silent about the buyback provisions – they were not pleaded in his formal documents.

Against this background the judge found that, by reason of the "sham" arrangement, there was no liability on the defendant whatever the limitations on her evidence in other respects.

The plaintiff's own evidence was that he had made various loans to Chong and that when Chong could not repay, the latter offered the plaintiff the properties with payment to be made to him. The plaintiff agreed that he had no dealings with the defendant and that all payments (or any payment) had been made and/or would be made to Chong.

The judge's finding that the transactions were a sham, and that they hid and were intended to hide transactions of a different nature, past, present or future loans, was a straightforward finding of fact.

Although he referred to fundamental aspects of the Moneylenders Act (Cap 62) no doubt because it had been included in the pleaded Defence as part of the defendant's case, he made no finding on this as a matter of law. He did not need to do so. His

findings of fact clearly rejected the plaintiff's case. Those findings on the evidence before him are clearly incontrovertible.

He rejected the plaintiff's evidence. It is not necessary to traverse the judge's findings in detail. They were amply supported by other evidence, especially the documentary evidence, and the inability or deliberate omission on the plaintiff's part to plead his case accurately and be consistent with his oral evidence in which he tried to put an entirely different complexion on his dealings and transactions with Chong.

The judge found, as a natural consequence of his other findings, and the plaintiffs own evidence – including the documentary evidence – that his action lay against Chong. Whether or not he would succeed against Chong was not within his purview. Matters concerning the money lending legislation were not relevant to this action and concerned Chong and the plaintiff.

It is a matter of surprise to this court that Chong was not a party to the action against his wife, the defendant in this action. The appellant/plaintiffs submissions, all of 72 pages and far too prolix, are wholly misconceived. They ignore the need to crystallise the issues before this court. More importantly it fails to deal with the simple limited issues in this case. It also ignores the fact that the action brought by the plaintiff was against the signatory to the sale and purchase agreements, whom the plaintiff had never met, and who in fact had no legal title to the properties in question which the purported sale and purchase agreements purported to sell. They had been sold to a company called Amedeo in 1996. The key figures in these arrangements and the payments or loans, was the plaintiff as the lender, obvious from his own evidence and the documents, and Mr. Chong, the borrower who had already been the recipient of loans, months before the sale and purchase agreements with the "buy-back" provisions. These two personalities were well-known to each other being long-standing friends as well as business colleagues. There is no basis for this appeal. It is dismissed with costs to the respondent to be taxed with a certificate for two counsel.

It follows as a matter of logic that there was no justification for the application for the admission of Singaporean Counsel on the basis of his expertise in money lending legislation. The application or otherwise of such legislation was not a feature of the trial or judgment as we, and the trial judge, made clear.

As for the appeal against the judgment of Judge Lugar-Mawson refusing the application for admission of the Singaporean Counsel which we have dismissed, it suffices to say that we agree with the judge's decision and the reason for it, and there is no need for repetition. The appellant is to pay the cost of the respondent and the Law Society of that appeal.

Burrell, P.

Seagroatt, J.A.

Lunn, J.A