



**CHAI YEN CHONG & ORS v. SHENCOURT PROPERTIES SDN
BHD & ORS**

COURT OF APPEAL, PUTRAJAYA

ZAINUN ALI JCA

RAMLY ALI JCA

BALIA YUSOF WAHI JCA

[CIVIL APPEALS NO: W-01-308-2009 & W-01-311-2009]

23 JULY 2012

COMPANY LAW: Winding up - Disposition of property - Validity - Company transferring property after commencement of winding up proceedings against it - Whether disposition within meaning of s. 223 Companies Act 1965 - Whether void

Held:

Dismissing appeal; affirming decision of High Court voiding the transfer.

Annotation:

- (1) There was no error on the part of learned trial judge in finding that Form 14A for the transfer of the 17 pieces of land was only signed after the winding up proceeding against Shencourt had commenced. As it were, Shencourt was ordered to be wound up on 19 April 2002, whilst Form 14A was only presented to the land office on 26 April 2002. It was therefore clear, as found by the learned judge, that the transfer of the 17 pieces of land by Shencourt, which was registered on 2 May 2002 to LPSB, the appellant's nominee company, substitutes a disposition of the property of Shencourt within the meaning of s. 223 of the Companies Act 1965, thereby making it a void transfer.
- (2) On the facts, there was also no fault with the learned trial judges further ruling that Shencourt as the registered proprietor of the property was not a trustee for the appellants Chai family.



Legislation referred to:

Companies Act 1965, ss. 223, 233

For the appellants - Bastian Vendargon (Philip Chai & Anne Vendargon with him)

For the 1st respondent - Malik Imtiaz (Lee Min Choon with him)

For the 2nd & 3rd respondent - David Mathews

For the 5th & 8th respondent - HH Tay

For the 9th respondent - Masitah Alias

For the 12th respondent - Mohd Al Saifi Hashim

*[Appeal from High Court, Kuala Lumpur; Companies (Winding-up)
No: D4-28-44-2002]*

JUDGMENT

Balia Yusof Wahi JCA:

[1] This is an appeal against the decision of the learned High Court Judge in respect of two encls. 65 and 81. Enclosure 65 is in respect of appeal No: W-01-311-2009 while encl. 81 is for appeal No: W-01-308-2009.

[2] By encl. 65, the liquidator of the company, Shencourt Properties Sdn Bhd (Shencourt) is seeking *inter alia*, for declaratory orders and other consequential reliefs that the transfer of the 18 pieces of properties to the nominee company of the Chai family, Liberty Pillar Sdn Bhd (LPSB) be declared null and void and the said properties be transferred back to the company.

[3] By encl. 81, the Chai family and LPSB is seeking *inter alia* for declaratory orders and other reliefs that the company, Shencourt



Properties Sdn Bhd (in-liquidation) holds the 18 pieces of properties as bare trustee or alternatively as constructive trustee for the Chai family and therefore the said properties do not form the assets of Shencourt for distribution to the general creditors, and that the transfer of the 17 pieces of the properties to LPSB was a valid transfer. Further, the Chai family is also seeking for an order declaring that the Chai family is entitled to forfeit all sums which have been paid by the company to the Chai family up to the date of termination of the sale and purchase agreement between Shencourt and the Chai family.

[4] These two appeals against the orders made in encls. 65 and 81 arose from one action in company winding-up No: D4-28-44-2002 and were heard together by this panel.

[5] The background facts of the case narrated by the learned trial judge as evinced from the records of appeal are as follows:

- (i) On 29 March 1995, Shencourt entered into a sale and purchase agreement for the purchase of 18 pieces of land from the registered owners, Chai Yen Chong, Chai King Chong, Chai Fook Chong, Chai Fah Chong, Chai Tai (f) and Chai Keng Chong (who are collectively referred to as the “Chai family” in the course of these proceedings). The pieces of land were to be developed together into a commercial cum residential development to be known as Galaxy Station Petaling;
- (ii) The purchase price under the SPA was RM25,060,090. A sum of RM7,028,882 was paid to the Chai family;
- (iii) By a supplementary agreement dated 30 April 1995, the Chai family agreed to extend the period for payment of the balance of the purchase price;
- (iv) With the agreement of both parties, all 18 pieces of land were transferred to and registered in the name of Shencourt



pursuant to a deed of arrangement entered into between Shencourt and its shareholders with Chai King Chong, as attorney for himself and the other vendors under the SPA, on 12 October 1995;

- (v) Shencourt then sold various parcels in the proposed development to the public. The second to the 11th respondents are among the purchasers of some of the parcels;
- (vi) A second supplementary agreement was entered into between Shencourt and the Chai family on 30 August 1998 by which the date for payment of the balance of the purchase price was further extended. This agreement contains a clause which states that should the payment not be made within the extended period, the property shall revert to the vendor or its nominee free of encumbrance;
- (vii) On 1 June 2000, the Chai family terminated the SPA as they claimed that Shencourt had failed to perform its obligations to pay the balance of the purchase price within the extended period;
- (viii) The board of directors of Shencourt then passed a resolution on or about 25 October 2000 approving the transfer of all 18 pieces of land to Liberty Pillar Sdn Bhd (LPSB), a company which is a nominee of the Chai's family;
- (ix) An agreement, called "agreement to reverse transfer of properties" was purportedly entered into by Shencourt with LPSB and members of the Chai family on 13 November 2000;
- (x) On 17 December 2001, the requisite Form 14A for the transfer of the 18 pieces of land was filed in the land office. However, the said document (Form 14A) was withdrawn due to problems with regard to several caveats



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which had not been removed in respect of the land. In particular, a private caveat had been entered by a person who is not the registered proprietor in respect of Lot 30989, pursuant to a court order;



- (xi) Form 14A signed on 22 March 2002 for the transfer of 17 of the 18 pieces of land was subsequently presented to the land office on 26 April 2002;
- (xii) The transfer of the 17 pieces of land to LPSB was registered on 2 May 2002;
- (xiii) Meanwhile, on 15 January 2002, a petition for the winding of Shencourt was presented in the High Court at Kuala Lumpur, and on 19 April 2002 Shencourt was ordered to be wound up.

[6] The learned trial judge allowed the prayers in encl. 65. Form 14A for the transfer of the 17 pieces of land was only signed after the winding-up proceedings had commenced and was only presented after Shencourt had been wound up. The disposal of the properties by Shencourt is void under s. 223 of the Companies Act 1965 (CA).

[7] As the transfer to LPSB is void, the learned trial judge also held that the prayer for a declaration that the transfer to LPSB to be effective, valid and recognisable as contained in prayer 1(c) of encl. 81 is also not allowed.

[8] On the issue of whether Shencourt is a trustee, (either a bare trustee or a constructive trustee) for the Chai family, the learned trial judge held that all the 18 pieces of land were *prima facie* properly held by Shencourt as a registered proprietor and not as a bare or constructive trustee for the Chai family. Further, the learned trial judge allowed prayer 1(d) of encl. 81 in that the Chai family is entitled to forfeit all sums which have been paid by Shencourt to the Chai family up to the date of termination of the sale and purchase agreement between Shencourt and the Chai family dated 29 March 1995.

The Appeal



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[9] Before us, learned counsel for the appellant contended that the 18 lots of land are not the properties of Shencourt and therefore the



liquidator is not entitled to claim the same under s. 233 of the CA. The transfer of the properties are not caught by the provision of s. 223 of the same. Shencourt merely holds the properties as bare trustees for the Chai family as the purpose of registering it in the name of Shencourt even before the full payment of the purchase price was to enable Shencourt to apply for a development licence.

[10] We found this argument to be untenable. We see no error on the part of the learned trial judge in finding that Form 14A for the transfer of the 17 pieces of land was only signed after the winding-up proceeding against Shencourt had commenced and was subsequently presented on 26 April 2002 to the land office. Shencourt was ordered to be wound up by the Kuala Lumpur High Court on 19 April 2002.

[11] We further agree with the findings that the transfer of the 17 pieces of land by Shencourt which was registered on 2 May 2002 to LPSB constitutes a disposition of the property of Shencourt within the meaning of s. 223 of the CA. The said provision declares such disposition to be void. Further, there has been no evidence proffered to show that the proviso “unless the court otherwise orders” applies.

[12] Section 223 of the CA provides:

Any disposition of the property of the company including things in action and any transfer of shares or alteration in the status of the members of the company made after the commencement of the winding up by the Court shall unless the Court otherwise orders be void.

[13] The commencement of the winding-up of Shencourt was on 15 January 2002 ie, when the winding-up petition was presented and the order of winding-up by the Kuala Lumpur High Court was made on 19 April 2002. On the factual matrix of the case, the transfer by Shencourt of the 17 pieces of properties is caught by the said provision.



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[14] The learned trial judge further concluded that Shencourt as the registered proprietor of the properties was not a trustee for the Chai



family. In coming to such conclusion, the learned trial judge has considered the deed of arrangement entered into between Shencourt and its shareholders with Chai King Chong, as attorney for himself and the other vendors under the SPA on 12 October 1995. The terms of the deed of arrangement stipulate that Shencourt and its shareholders and the Chai family had agreed that upon failure of payment of the balance purchase price, the properties would not revert to the vendors (the Chai family). Instead, the vendors would have the option of having the shares of the company transferred to them.

[15] By a second supplementary agreement entered into between Shencourt and the Chai family on 30 August 1998, the date for payment of the balance purchase price was further extended. The same also contains a clause which stipulates that should payment not be made within the stipulated extended period, the properties shall revert to the vendor or its nominee free from any encumbrances. This second supplementary agreement makes no mention whatsoever about the deed of arrangement referred to earlier. An agreement called agreement to reverse transfer of properties was entered into between the Chai family, Shencourt and LPSB dated 13 November 2000. Likewise, this agreement too makes no reference to the said deed of arrangement thus, in the learned trial judge's view, posing a serious doubt that the board of directors of Shencourt had the capacity to authorise the reverse transfer of the properties to the Chai family.

[16] We find no fault with the learned trial judge's finding on this issue and we unanimously agree with her findings. In the upshot, we dismissed both appeals and affirmed the decision of the learned trial judge. Cost of RM25,000 to each of the liquidators in both appeals and RM5,000 to respondents number 2, 3, 8, 9 and 12 in both appeals. Deposit to be paid to the respondents on account of the fixed cost.