

SUPREME COURT OF SINGAPORE

5 February 2020

Case summary

Lew, Solomon v Kaikhushru Shiavax Nargolwala and others [2020] SGHC(I) 02
Suit No 2 of 2019

Decision of the Singapore International Commercial Court:

Outcome: SICC dismisses the plaintiff's claims against the defendants, finding that there was no binding oral contract entered into between the plaintiff and the first and second defendants.

Background

1 This is an action about a dispute over the ownership of a luxury villa, Villa 29, at the Andara Resort in Phuket, Thailand. In 2007, the 1st and 2nd Defendants, Mr Kai Nargolwala and Mrs Aparna Nargolwala, purchased Villa 29. They did this using a company incorporated in the British Virgins Island, Querencia Ltd ("Querencia"), the 5th Defendant.

2 In September 2017, the Plaintiff, Mr Solomon Lew, decided that he wished to purchase Villa 29. He contends that on 11 October 2017, a binding oral contract of sale was reached between him and Mr Daniel Meury, the General Manager of the Andara Resort, who he alleges was acting as the authorised agent of the Nargolwalas. The Nargolwalas dispute both that Mr Meury was acting as their agent and that, even if he was, any such binding agreement was reached.

3 In late October 2017, the 4th Defendant, Mr Christian Larpin, was informed that Villa 29 was available for sale. Following negotiations with the Nargolwalas, a Share Purchase Agreement ("SPA") was executed on 14 November 2017 for the transfer of the shares in Querencia to Quo Vadis Investment Ltd ("Quo Vadis"), the 3rd Defendant. Quo Vadis is a company controlled by Mr Larpin. Completion took place on 16 November 2017 and the Nargolwalas resigned as directors of Querencia on that day.

The dispute

4 Mr Lew asserts that in entering the SPA and in completing the deal, the Nargolwalas acted in breach of the alleged oral agreement of 11 October 2017 and consequently acted in breach of their fiduciary duty to Mr Lew and in breach of trust in transferring the shares to Quo Vadis. He further contends that Mr Larpin (and hence Quo Vadis) had knowledge of the alleged oral agreement such that they were liable for inducing the breach and that Querencia acted dishonestly in assisting the Nargolwalas in their breach of fiduciary duty and breach of trust. In addition, while Mr Lew contends that the proper law of the alleged oral agreement is Singapore law, the Nargolwalas' position is that Thai law governs the agreement instead.

The decision

5 The Court found that Singapore law applied to the alleged oral agreement. The Nargolwalas had insisted that Singapore lawyers be instructed at the time that the alleged contract was made. While Mr Lew had initially misunderstood that the Nargolwalas wanted Thai lawyers to be instructed, once the preference for Singapore lawyers was drawn to his attention, he readily agreed to the change. Thus, it could be implied from the intentions of the

parties that they intended the governing law of the alleged oral contract to be Singapore law (at **[165]–[166]**).

6 The Court held that Mr Meury was an agent of the Nargolwalas. He had implied actual authority to receive and convey messages on behalf of the Nargolwalas in seeking to facilitate a deal with Mr Lew. However, his authority did not extend any further than the authority conferred on a properly appointed real estate agent who would only have authority to take matters forward to the stage where it was appropriate to pass the matter into the hands of lawyers. He did not have actual authority to bind the Nargolwalas by way of an oral contract (at **[194]–[196]**).

7 Mr Lew had made an offer of US\$5.25m for Villa 29 on 11 October 2017 on a “walk, in walk out basis” with “settlement within 14 days”. This was communicated to Mr Meury who in turn informed Mrs Nargolwala of the offer. The Court found that Mrs Nargolwala had informed Mr Meury that she needed an “offer letter in writing” with “details” so that the Nargolwalas could discuss the proposal. However, on the same day, 11 October 2017, Mr Meury told Mr and Mrs Lew that the Nargolwalas had agreed to Mr Lew’s offer (at **[44], [52] and [72]**).

8 The question which arose was whether the objective understanding between Mr Meury and the Lews constituted a binding oral contract or whether it was merely the precursor to completion of the deal at a later date following the necessary due diligence and the drafting of legal documents. The Court held that it was the latter on the basis of the contemporaneous documents. There was no binding oral contract entered into on 11 October 2017. Neither did Mr Meury have ostensible authority to enter any such contract. Both subjectively and objectively, the correct conclusion was that the statements at the meeting on 11 October 2017 between the Lews and Mr Meury had only amounted at best to an *agreement subject to contract* (at **[209]–[226]**).

9 Since there was no binding oral agreement concluded between Mr Lew and the Nargolwalas on 11 October 2017, the Nargolwalas did not act in breach of that agreement in concluding the contract of sale with Mr Larpin. The arguments on ratification and estoppel also failed. Accordingly, the action against the Nargolwalas was dismissed (at **[246]**).

10 Mr Lew’s claims against Quo Vadis and Mr Larpin were dismissed as they required a finding that a binding oral contract was concluded on 11 October 2017 (at **[280]**). In any event, even if there was a binding oral contract, neither Mr Larpin nor Quo Vadis had actual or constructive knowledge of that agreement (at **[283]–[295]**).

11 Mr Lew’s claim against Querencia was also dismissed on the ground that there was no binding oral agreement reached on 11 October 2017 (at **[296]–[298]**).

This summary is provided to assist in the understanding of the Court’s judgment. It is not intended to be a substitute for the reasons of the Court. All numbers in bold font and square brackets refer to the corresponding paragraph numbers in the Court’s judgment.