

Lim Teng Huan (suing as Administrator of
the estate of Lim Lian Ching)

Appellant

v.

Ang Swee Chuan

Respondent

FROM

THE COURT OF APPEAL OF BRUNEI DARUSSALAM

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE
25TH NOVEMBER 1991

Present at the hearing:-

LORD BRIDGE OF HARWICH
LORD OLIVER OF AYLERTON
LORD BROWNE-WILKINSON
MR. JUSTICE TELFORD GEORGES
SIR MAURICE CASEY

[Delivered by Lord Browne-Wilkinson]

This is an appeal by Lim Teng Huan ("Mr. Lim") from an order of the Court of Appeal of Brunei Darussalam dated 20th December 1990 which allowed an appeal by the other party, Mr. Ang Swee Chuan ("Mr. Ang") from a judgment of Mr. Commissioner Mayo dated 19th June 1990.

The appeal relates to a parcel of land of approximately two acres described as Lot 14513 EDR 13464 at Kampong Subok. That land belonged beneficially to Mr. Lim and Mr. Ang in equal shares. Mr. Ang, at his own great expense, built a house on the land. The Court of Appeal held that, under the doctrine of proprietary estoppel, Mr. Ang had become solely entitled to an absolute interest in the house and land conditionally upon paying to Mr. Lim the sum of \$217,500 by way of compensation for the loss of his half share in the land. The Court of Appeal did not order Mr. Lim to transfer his half share in the property to Mr. Ang: Mr. Ang cross-appeals seeking such an order.

Mr. Ang and Mr. Lim are cousins who were formerly close friends. In 1975 they purchased the land at a price of \$75,000 which they provided equally. Although both are resident in Brunei, they are not citizens of

permitting the representee to assume that he could act as he did: it is enough if, in all the circumstances, it is unconscionable for the representor to go back on the assumption which he permitted the representee to make. The Court of Appeal therefore held that, upon payment of compensation, Mr. Ang was entitled to a declaration of ownership of Mr. Lim's share and to the injunction which he sought on the counterclaim.

Before the Court of Appeal Mr. Ang accepted throughout that he was bound to compensate Mr. Lim for the value of the one half share in the land. The only evidence of the value of the land before the Court of Appeal was an agreed valuation of the land alone at \$760,000 and of the building (being the house) at \$1.54 million, making a total for the whole of \$2.4 million. The land element in this valuation had been valued on the basis that the preparatory works carried out in 1982 had been carried out at Mr. Ang's sole expense. On the basis of evidence given by Mr. Ang that those preparatory works had cost between \$300,000 and \$350,000, the Court of Appeal took the median figure of \$325,000 and deducted this from the agreed valuation of the land at \$760,000, giving an unimproved value for the whole of the land (ignoring the preparatory works) of \$435,000 one half of which is \$217,500. They therefore made the declaration that Mr. Ang owned Mr. Lim's share and granted the injunction sought by the counterclaim but also ordered that such declaration and order were conditional upon Mr. Ang paying to Mr. Lim the sum of \$217,500. Although Mr. Chan (for Mr. Ang) asked the court to direct that Mr. Lim transfer his interest in the land to Mr. Ang, no such direction was included in the Court of Appeal order.

Before their Lordships' Board, two main points were in issue. First, were the Court of Appeal right in holding that Mr. Lim was perpetually estopped from claiming title to his one half share of the land? Second, were the Court of Appeal justified in assessing the compensation payable by Mr. Ang in the way that they did?

As to the first question, their Lordships have no hesitation in agreeing with the conclusions and reasoning of the Court of Appeal. Sir Michael Ogden (for Mr. Lim) accepted that the Court of Appeal were right in applying the law as laid down in *Taylor's Fashions* and that recitals (3) and (4) to the Agreement could provide evidence as to the parties' intentions, even if the Agreement was legally unenforceable for uncertainty. However, he submitted that there was no evidence that Mr. Ang had relied on the Agreement or the recitals in it when he proceeded with the construction of the house. As a result one of the necessary ingredients for an estoppel was missing. Their Lordships reject this submission. Although Mr.

Ang did not give direct evidence of such reliance, the sole purpose of the Agreement was to regularise the position so that Mr. Ang's house would be built on land to which he was solely entitled: the inference that thereafter Mr. Ang proceeded in reliance on that agreed arrangement is inevitable and was the inference rightly drawn by the trial judge in the passage to which their Lordships have referred.

Next Sir Michael Ogden submitted that in any event the right way to give effect to the estoppel was not to vest the whole of the land in Mr. Ang absolutely but to confer on him a status of irremovability i.e. Mr. Ang should be entitled to live free in the house so long as he wished but if the house and land were sold in the future Mr. Lim should be entitled to his half share. Sir Michael Ogden was not able to elucidate how long this status of irremovability was to endure: for example, on Mr. Ang's death would those succeeding his estate also be irremovable? Moreover such an estoppel would not give effect to the manifest common intention of the parties viz. that the land should belong outright to Mr. Ang and that Mr. Lim should be entitled to compensation for giving up his half share. Their Lordships agree with the decision of the Court of Appeal.

As to the second point there is no disagreement on the general principle: Mr. Lim should receive, by way of compensation, the value of the land as a site excluding such part of its value as is attributable to the preparatory works carried out in 1982. Whilst their Lordships are sympathetic to the desire of the Court of Appeal to produce finality in the matter, they are unable to accept that there was sufficient evidence to justify the Court of Appeal in assessing such value in the way that they did. Quite apart from there being serious doubts whether the cost of the preparatory works exactly represents the increase in the value of the land attributable to such works, the evidence as to the amount of such cost was inadequate. At the trial, the valuation was agreed. At a late stage, Mr. Chan (for Mr. Ang) sought to call a contractor to prove the actual cost of preparatory works. For some reason, the judge did not permit this, but he did permit Mr. Ang to be recalled to deal with the point. Mr. Ang was asked approximately how much he had spent in 1982 to prepare the site: the note of his reply is "Need to check records. Between 300 to 350,000".

In their Lordships' view in the absence of acceptance by the parties that the court should act on such vague evidence, it was not legitimate for the Court of Appeal to determine the unimproved value of the land on such evidence, which on its face is merely an unverified approximation on a matter capable of exact computation and proof.

There was some discussion before the Board as to whether the parties had agreed to the Court of Appeal taking the course that they did. That involved an investigation of what exactly had transpired before the Court of Appeal, the suggestion being that the parties had agreed to the Court of Appeal taking the course which they did. The skeleton argument submitted by Mr. Chan to the Court of Appeal included a submission that there was sufficient evidence to decide the value of the land: alternatively it submitted that there should be an inquiry before the Registrar. It is common ground that Mr. Angking (counsel for Mr. Lim before the Court of Appeal) did not invite the court to make an order for an inquiry. In their Lordships' view this falls short of an agreement by Mr. Lim to accept a rough and ready assessment of the amount of compensation by the Court of Appeal. An inquiry must therefore now be directed.

It was agreed by the parties before the Board that, if an inquiry was necessary, the appropriate direction should be that the Registrar should determine the unimproved value of the land i.e. the value of the land as at the date of the inquiry on the assumption that none of the works carried out on the land since 1981 had in fact been carried out.

As to the cross-appeal, Sir Michael Ogden accepted that, if the main point argued by him on the appeal failed, it would be right to order Mr. Lim to transfer his share to Mr. Ang, provided that the requirements of section 23 of the Land Code (which renders void any transfer which has not received prior written approval from His Majesty the Sultan in Council) are not infringed.

Their Lordships are therefore of the opinion that the order of the Court of Appeal should be varied so as to provide as follows:-

- (1) An immediate declaration that Mr. Ang is the beneficial owner of the share of the land formerly belonging to Mr. Lim, conditional upon payment of the compensation mentioned at paragraph 4 below;
- (2) An immediate injunction restraining Mr. Lim from entering upon or dealing with the land or any interest therein;
- (3) An order for an inquiry as to the present value of the land on the footing that no works have been carried out thereon since 1981;
- (4) An order that on payment by Mr. Ang to Mr. Lim of a sum equal to one half of that found by the inquiry, Mr. Lim transfer his one half share of the land to Mr. Ang or any person nominated by him and approved by His Majesty in Council under section 23 of the Land Code.

The order as to costs in the Court of Appeal will stand but Mr. Lim must pay nine tenths of Mr. Ang's costs before their Lordships' Board.

Their Lordships will advise His Majesty the Sultan and Yang de-Pertuan that the order of the Court of Appeal should be varied accordingly.