

# [Chu Chai Yin & Anor v Lim Mee Wan \[2024\] MLJU 1244](#)

Malayan Law Journal Unreported

HIGH COURT (KUALA LUMPUR)

ROZ MAWAR ROZAIN JC

ORIGINATING SUMMON NO WA-24NCvC-5640-12 OF 2023

10 June 2024

*Edward Kuruvilla (with Soh Lip Shan) (Kuruvilla, Yeoh & Benjamin) for the plaintiffs.*

*David Gurupatham (with Mirdulekha Muralidharan and Vinothani Rajagopal) (David Gurupatham & Koay) for the defendant.*

## Roz Mawar Rozain JC:

### DECISION

#### The Application

[1] It is not uncommon for co-proprietors to find themselves at odds, their once harmonious union disintegrated by the winds of discord. Such is the case that stands before this Court. The Plaintiffs, seek to extricate themselves from the bonds of co-proprietorship with the Defendant, their former partner in Contract Solutions I PLT (CSI), in respect of a property that has become the subject matter of contention in this suit. The Plaintiffs armed with the provisions of s145 National Land Code 1965 (NLC) and Order 31 Rules of Court 2012 (RoC), implored this Court to order for a termination of their co-proprietorship and the sale or transfer of the embattled property to CSI.

[2] The Plaintiffs sought for an order that the Co-Proprietorship Agreement dated 1.10.2019 that cemented their co-proprietorship of the property be terminated. They also sought for an order that the property be transferred to CSI for RM750,000 and consequential orders thereto.

[3] Yet, the Defendant stands firm, a bulwark against what she perceives as an inequitable assault upon her rights as a registered proprietor. Before this Court proceed to assess the application and the legal arguments, the facts of this case must be iterated with clarity.

#### Factual Matrix

[4] On 27.02.2015, all the three parties in this suit, as the only partners of CSI at the time, entered into a supplemental agreement to their partnership agreement dated 3.5.2013. The supplemental agreement was to purchase an office unit identified as Parcel No. B-07-01, Gateway Kiaramas, No. 1 Jalan Desa Kiara, Mont Kiara, 50480 Kuala Lumpur (the Property) to be used by CSI. The supplemental agreement governed the co-proprietorship of the Property, with each party holding an equal 1/3 undivided share. The Property was to be held under the names of the First Plaintiff and the Defendant.

[5] To finance the purchase, the First Plaintiff and the Defendant took out a loan of RM572,326 from CIMB Bank Berhad on 27.01.2015 (the Loan Agreement). As security, the Property was charged to the bank. CSI agreed to service the loan on behalf of the three co-proprietors. Monthly instalments of RM3,089 is paid by CSI to the bank.

[6] On 01.10.2019, as the number of CSI Partners had increased, the three parties in this suit entered into a new co-proprietorship agreement (the Co-Proprietorship Agreement) that superseded the 2015 supplementary agreement. The key terms confirmed the purpose of the purchase of the Property CSI's use of the Property, CSI servicing the loan, and the 1/3 ownership proportion between the parties here.

[7] The Defendant ceased to be a partner of CSI effective 30.9.2022. With the objective of having the Property belonging to the existing partners of CSI or CSI itself, efforts were made to contact the Defendant to negotiate the sale and transfer of her portion of the Property. To the date of arguments of this suit, CSI continues to operate its business on the Property. Between October 2022 to January 2023, the First Plaintiff, acting for herself and the

Second Defendant, made several attempts to procure the Defendant's agreement to sell the Property to CSI for RM750,000 based on a valuation report dated 24.12.2022. However, the Defendant did not respond.

**[8]** On 04.10.2023, the Plaintiffs' solicitors issued a notice to the Defendant seeking her response on the sale of the Property to CSI. The Defendant's solicitors replied on 13.10.2023 stating her agreement was contingent on CSI paying her RM1,000,000.

**[9]** On a separate note, an arbitration proceeding commenced by CSI against the Defendant is ongoing in relation to a partnership dispute pursuant to the Co-Partnership Agreement on other matters, not concerning the Property. The arbitration proceedings do not involve the Co-Proprietorship Agreement.

#### **Assessment by this Court**

**[10]** Based on the pleadings and submissions, the following are the issues for the adjudication of this Court:

- (a) Whether the Plaintiffs have satisfied the requirements under s145 NLC to terminate the co-proprietorship;
- (b) Whether the Plaintiffs have satisfied the requirements under Order 31 of the Rules of Court 2012 for the court to order a sale of the Immovable Property;
- (c) Whether the sale and/or transfer of the Immovable Property should be allowed when arbitration proceedings are ongoing in relation to the Partnership Agreement;
- (d) Whether the Plaintiffs' application is defective for failure to include necessary parties;
- (e) Whether the reliefs sought by the Plaintiffs are appropriate and sustainable.

**[11]** In summary, the key issues revolve around whether the Plaintiffs have met the legal requirements to terminate the Co-Proprietorship and compel a sale of the Property, the impact of the ongoing arbitration, potential defects in the Plaintiffs' application, and the appropriateness of the reliefs sought. Undoubtedly, this Court needs to consider these issues holistically in determining whether to allow the Plaintiffs' application.

#### **Whether the Plaintiffs have satisfied the requirements under s145 NLC to terminate the co-proprietorship**

**[12]** The particular provision of the law is reproduced here for easy reference:

*“(1) Where, in the case of any land vested in co-proprietors;*

- (a) *any of the co-proprietors will neither join in, nor consent to the making of, an application for partition under this Chapter, or*
- (b) *by reason of the operation of paragraph (f) of subsection (1) of s 136 (as applied by s1'41), partition of the land between all of the co-proprietors is incapable of being approved under this Chapter,*

*the Court, subject to and in accordance with the provision of any law for the time being in force relating to civil procedure, may, on the application of any of the co-proprietors, make such order as it may think just for the purpose of enabling the co-proprietorship to be terminated.*

*(2) Without prejudice to the generality of the power conferred by sub-section (1), the Court may on any application under that subsection order:*

- (a) *that, subject to the making between the co-proprietors of such payments as the Court may consider equitable having regard to the comparative values of the individual portions thereby proposed, any application for partition made by one or more of the co-proprietors in the terms specified in the order shall be deemed for the purposes of this Chapter to have been made by them all;*
- (b) *that the undivided share of any of the co-proprietors of such payments as the Court may consider equitable having regard to the comparative values of the individual portions thereby proposed, any application for partition made by one or more of the co-proprietors in the terms specified in the order shall be deemed for the purpose of this Chapter to have been made by them all;*
- (c) *that the land be sold.”*

**[13]** The situation here is that of s 145(1)(a) NLC. The law permits any of the co-proprietors in a jointly owned land like this Property who wants to terminate the co-proprietorship. As required by the Co-Proprietorship Agreement, the Plaintiffs tried to procure the Defendant's consent to sell and transfer the Property to CSI. There were e-mails

issued to the Defendant on 17.10.2022 and 20.10.2022 to which she did not acknowledge or respond. The Plaintiffs again issued an email on 5.1.2023 that enclosed a valuation report prepared by Messrs, Cheston International (KL) Sdn Bhd dated 24.12.2022. The Defendant remained unresponsive. As the deadlock seemed to be crystallised, the Plaintiffs issued a formal notice of intention to sell the Property through their solicitors on 4.10.2023 that extended the opportunity to the Defendant to forward or proposed a valuation of the Property in the event she did not agree to the RM750,000 valuation.

[14] Finally, a year later from the time the Plaintiffs first reached out to her, the Defendant through her solicitors responded on 13.10.2023 that her agreement was contingent being paid RM1,000,000. The Plaintiffs' solicitors replied on 18.10.2023 that rebutted the Defendant's allegation that the proposed sale of the Property formed part of the on-going arbitration. The deadlock is undeniable. This Court is therefore empowered to resolve such an impasse by ordering a sale of the Property, as held by the Court of Appeal in *Ong Chin Hai & Anor v Ong Hoo See & Ors* [2022] 6 MLRA 515; ; [\[2022\] 5 ML J 690](#); ; [2022] 7 CLJ 852. It was additionally held that even if the requirements under s 145(1) NLC were not met, this Court still has the power to direct a sale instead of a partition under [s 25 Courts of Judicature Act 1964 \(CJA\)](#) and para 3 of the Schedule to the CJA where this Court considers it necessary and expedient to do so.

**Whether the Plaintiffs have satisfied the requirements under O 31 RoC for this Court to order a sale of the Property**

[15] This Court is equally satisfied that the Plaintiffs have fulfilled the requirements under O 31 RoC. The Plaintiffs' application is unquestionably related to a cause or matter pertaining to the Property, specifically the application to terminate the Co-Proprietorship Agreement and the sale and/or transfer of the property to CSI. The Court of Appeal in *Ong Chin Hai & Ors* (supra) decided at para 36 of its judgment:

*"In our view, by virtue of the broad definition of the term 'cause' or 'matter' to mean any action, suit or other original proceedings between a plaintiff and defendant, and any criminal proceeding, including every proceeding in court not in a case, which in our view, includes the plaintiffs' application in the present case. Under the law, there is no express requirement that there must be an existing or separate cause of matter before the court can exercise its power to order for the land to be sold. Based on the facts in the present case, we agree with the position taken by the Court in Tan Kok Chiang rather than in Rubyna Kaur."*

[16] Bound by the Court of Appeal's decision, the deadlock between the parties as co-proprietors accords this Court the power to adjudicate a resolution to the impasse, whether it is both necessary and expedient for the Property to be sold. There is no issue of the Plaintiffs not fulfilling the requirements under O 31 RoC in this instant.

**Whether the sale and/or transfer of the Property should be allowed when arbitration proceedings are ongoing in relation to the Partnership Agreement**

[17] This Court does not find the Defendant's argument that the sale cannot be allowed due to the ongoing arbitration proceedings in relation to the Partnership Agreement dated 01.10.2019 to be compelling. The evidence before this Court establishes that the Partnership Agreement and the Co-Proprietorship Agreement 2019 are separate and distinct agreements. Crucially, there is no arbitration clause in the Co-Proprietorship Agreement 2019 nor is the arbitration clause in the Partnership Agreement incorporated therein. Consequently, any issues arising from the Co-Proprietorship Agreement 2019, particularly on the sale and/or transfer of the Property to CSI, are not relevant to the ongoing arbitration proceedings and vice versa.

[18] Furthermore, there is no evidence that the adjudication of the Plaintiff's application to resolve the Co-Proprietorship Agreements would stifle the arbitration proceedings. Thus, this contention has no place in the arguments of the Plaintiffs' application.

**Whether the Plaintiffs' application is defective for failure to include necessary parties**

[19] As for the Defendant's contention that the Plaintiffs' action is defective for failure to include CIMB Bank Berhad as a party, this Court notes that the Plaintiffs have acknowledged the bank's interest as chargee from the outset and have kept the bank informed of their intention to sell and/or transfer the Property to CSI. Significantly, the Bank has not objected to the same. The Plaintiffs' proposed relief in prayer (3)(a) of Enclosure 1 adequately protects the bank's interest by providing that the sale proceeds are to be first applied towards payment of the sums due to the bank to redeem the Property. Therefore, in the event that this Court allows the termination of the Co-Proprietorship Agreement and orders for a sale of the Property, the bank's interests will not be prejudiced. This approach aligns with the approach adopted by the High Court in *KK Kumaran v TS Sambanthamurthi* [\[1996\] 3 ML J 309](#); ; [1996] 1 MLRH 786, where a similar order was granted in the absence of the chargee being impleaded as a party.

[20] Regarding the Defendant's challenge to the Second Plaintiffs locus standi, I am guided by the Court of Appeal's decisions in *Looi Li Fong v Sew Hup Hoe* [2019] MLRHU 776 and *KK Kumaran* (supra), which recognised the right of beneficial owners to pursue applications for the sale of properties. It is not disputed that the Second Plaintiff is the beneficial owner of the Property although the names stated were only the First Plaintiff and the Defendant. Applying those authorities to the present case, this Court finds that the Second Plaintiff as a beneficial owner, have the standing to bring the present application jointly with the First Plaintiff.

**Whether the reliefs sought by the Plaintiffs are appropriate and sustainable**

[21] Having carefully considered the evidence and submissions of all parties, this Court is persuaded that the Plaintiffs' application ought to be allowed. The Plaintiffs have demonstrated through cogent evidence that they have met the requirements under s 145 NLC to terminate the Co-Proprietorship Agreement. The Defendant's insistence that her agreement to sell is contingent upon CSI paying her RM1,000,000.00 pursuant to the ongoing arbitration proceedings is unreasonable and has resulted in a deadlock between the parties as co-proprietors. The deadlock between the co-proprietors makes it both necessary and expedient for the Property to be sold to resolve the impasse, consistent with the principles enunciated in *Yong Hin Seong & Anor v Yong Teik Seong* [2003] 6 MLJ 38; [2003] 5 MLRH 345. Furthermore, the evidence establishes that the Partnership Agreement and the Co-Proprietorship Agreement 2019 are separate and distinct agreements, with no arbitration clause in the latter. Consequently, the ongoing arbitration proceedings in relation to the Partnership Agreement do not preclude the sale of the Property under the Co-Proprietorship Agreement 2019.

[22] This Court considered the evidence of the purpose of the purchase of the Property which was meant to be the office of CSI and that CSI is still currently occupying and utilizing the Property as per the Co-Proprietorship Agreement. Moreover, the sale of the Property by the parties to CSI would indeed give them financial benefit.

[23] Additionally, this Court noted that the Plaintiffs' proposed reliefs adequately address the concerns raised by the Defendant. The Plaintiffs have acknowledged the bank's interest as charge and have proposed a relief that safeguards the bank's interest by ensuring that the sale proceeds are first applied towards the redemption of the Property.

[24] To ensure equitable components are embedded in the orders by this Court, a court appointed valuer shall be made to value the Property. If the amount is higher than RM750,000 which was the value tagged by Messrs Cheston International (KL) Sdn Bhd, then that will be the amount of the sale of the Property to CSI. This will ensure that the Defendant is not prejudiced in any way. The proposed reliefs honour the terms of the Co-Proprietorship Agreement 2019 as the distribution of the sale proceeds to the parties as co-proprietors will be in accordance with their respective shares.

[25] In conclusion, having carefully weighed the evidence and submissions of both parties, this Court allow the Plaintiffs' Originating Summons with costs. The orders sought in prayers (1) to (4) of Enclosure 1 are granted. The Plaintiffs shall have liberty to apply for such further directions and/or orders as may be necessary to give effect to this decision.

**Conclusion**

[26] This Court orders as follows:

1. The co-proprietorship over the Property held under Strata Title Geran Mukim 8971/M1-A/8/110, No. Bangunan M1-A, No. Tingkat 8, No. Petak 110, Lot 66957, Mukim Batu, Negeri Wilayah Persekutuan Kuala Lumpur bearing postal address Unit No. B-07-01, Gateway Corporate Suites, Gateway Kiaramas, No. 1, Jalan Desa Kiara, Mont Kiara, 50480 Kuala Lumpur, which is governed by the Co-Proprietorship Agreement dated 01.10.2019, is hereby terminated with immediate effect.
2. A court appointed valuer is to be appointed within seven days to value the Property, costs of which is to be borne by all the parties as co-proprietors equally, and the valuation is to be finalised within thirty days of this order.
3. The Property shall be sold and transferred to CSI at either the price to be determined by a Court appointed valuer or RM750,000 concluded by Messrs. Cheston International (KL) Sdn Bhd, whichever is higher.
4. All parties are to give their fullest co-operation to execute all necessary for the sale and transfer of the Property to CSI.

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5. The sale proceeds of the Property are first to be utilised to pay off the sum due to the bank to redeem the Property and to obtain therefrom the original copy of the issued document of title, discharge documents and all other relevant documents. Then, to pay off all costs, charges and expenses incurred including legal fee, valuer's fee and other cost and expenses in respect of the sale and transfer of the Property.
6. The remains of the sale proceeds to be distributed one-third to each party respectively.
7. Costs of RM20,000.

**[27]** The Plaintiffs shall have liberty to apply for such further directions and/or orders as may be necessary to give effect to this decision, including but not limited to the appointment of solicitors to handle the sale and transfer of the Property to CSI, the redemption of the Property from the bank, and the distribution of the sale proceeds among the parties as co-proprietors in the share of one-third respectively.

**[28]** The solemn duty of this Court to untangle the Gordian knot of conflicting interests, to balance the scales of equity, and to ensure that the rights of all parties are given their due regard, is met with the above orders.

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