Lee Eng Teh v. *Teh Thiang Seong* [1]

When a person promises another a gift of land but fails to fulfil that promise the donee is without any redress as Equity will not perfect an imperfect gift.[2] Is the law any different if subsequent to the promise the donee, with the knowledge and approval of the donor, incurs an expenditure of money upon the faith of the promise? If the law would come to the aid of the donee in this instance, what is the quality and quantum of the donee's right in the land? What is the basis for allowing the donee rights over the land? These were the questions posed before the High Court in Kuala Lumpur in the case of *Lee Eng Teh* v. *Teh Thiang Seong*.

The facts of this case can be stated briefly. In 1954, a few residents of Klang

35. [1965] A.C. 720.

36. See Koh, "*Attorney-General* v. *Reid* — the Malayan Experience" (1966) M.L.R. 88.

1. [1967] 1 M.L.J. 42.

2. *Milroy* v. *Lord* (1862) 4 De G. P. & J. 264.

constituted themselves into a committee, with the first defendant as chairman, for the purpose of collecting funds for a new Chinese school in Klang. Land was required for this purpose and the first defendant made an offer to sell the land, the subject matter of the suit. Subsequent to this offer of sale, one Ng Chee Gian offered to donate thirty acres of land for the school. This offer was rejected by the building committee as being unsuitable for the purpose. Whereupon the first defendant made another offer, this time, to donate the land which he had previously offered for sale. This second offer of the first defendant was accepted. At the time of the promise to donate the land, the first defendant was not the registered proprietor of such property. But he was the largest shareholder of a firm which had already entered into a binding contract to purchase a piece of land out of which thirty acres was to be made available for the school. Subsequently, the firm was incorporated and was registered as the registered proprietor of the land. This company was the second defendant. The first defendant was the managing director. He continued to act in his capacity as the chairman of the building committee and he even signed building plans as the managing director of the defendant company. The building was completed and occupied approximately five acres of land. This land and the remaining land offered to the building committee remained under the registered proprietorship of the defendant company. The plaintiffs as trustees of the school sought a declaration that the school was entitled to the thirty acres of the company's land and for an order that the company transfer the thirty acres to the plaintiffs as trustees of the school.

Procedural difficulties in regard to the plaintiffs' capacity to sue on behalf of the school were solved by joining the Attorney General as co-plaintiff. The case against the first defendant was dismissed by the learned judge, there being no contract and no declaration of trust. Insofar as this part of the judgment is concerned, the matter is straightforward and is free from any legal complexities.

It is in regard to the claim against the defendant company that this case becomes of interest. The plaintiffs based their claim on the cases *Dillwyn* v. *Llewelyn*,[3] *Ramsden* v. *Dyson*,[4] *Plimmer* v. *Wellington Corporation*[5] and *Inwards* v. Bafeer.[6]

The learned judge held that the principle as enunciated in *Inwards* v. *Baker* applied, but the plaintiffs were not entitled to the claim. The judge said: [7]

> Applying the above principle [referring to *Inwards* v. *Baker*] to the present case, it is clear that the second defendants, having allowing the school to be built on their land, must be deemed to hold such land subject to the equity that they shall allow the school building to remain there indefinitely. This equity would be an effective answer to any attempt on their part to get back that part of their land on which they allowed the school to be built, but it is not the sort of equity on the basis of which, in the absence of an unequivocal promise by the second defendants to make a charitable gift, the plaintiffs are entitled to the declaration they are asking for. In the circumstances, the claim as framed against the second defendants must also fail ... I also make an order that the caveat lodged by the first three plaintiffs against the land be removed. ... I would express the hope that the second defendants would do something to regularise the position of the school in relation to their land by some sort of subdivision of such part of their land as they are prepared to set aside for the purposes of the school and have it vested in themselves as trustees for that purpose or vest it in some other persons as trustees. . . .

It is not clear from this passage what is the nature and extent of the rights of the plaintiffs in regard to the land. It would appear that the learned judge's statement gives rise to two possible interpretations. They are viz. (i) the plaintiffs are not entitled to any claim to title or interest in the thirty acres of land but they have an irrevocable licence to occupy indefinitely the five acres on which the

3. (1862) 4 De G. F. & J. 517.

4. (1866) L.R. 1 H.L. 129.

5. (1884) 9 App. Cas. 699.

6. [1966] 2 W.L.R. 212.

7. [1967] 1 M.L.J. 42 at p. 45.

buildings stand, (ii) the plaintiffs are not entitled to any claim to title or interest in the thirty acres of land, but they do have such a claim or interest in regard to the five acres on which the buildings have been erected. This second possible interpretation is to a certain extent supported by the statement of the learned judge that the second defendant should "regularize the position of the school by some sort of subdivision."[8] However, it must be noted that this pronouncement is preceded by the words ". . . . I would express the hope . . ."[9] thereby implying that the statement which followed has no legal implications, that although in law the plaintiffs have no claim to title or an interest in the thirty acres, but because they do have an irrevocable licence in regard to the five acres, the defendant company should, in a moral sense, subdivide and transfer the land in question.

It is a matter of regret that the learned judge has left open to speculation a very important factor, the quality or type of rights to which the plaintiffs are entitled. It is submitted with due respect that if he had decided that the plaintiffs were entitled to a mere irrevocable licence in the five acres he was wrong in regard to both the nature and extent of their rights. If he had decided that the plaintiffs had a claim to the title of five acres, then he was wrong as regards the extent of their rights.

In *Dillwyn* v. *Llewelyn*,[10] a father desirous of having his son reside near him requested his son to build himself a house on a portion of the father's land. The son did so and spent £14,000 on the house with the knowledge and approval of the father. The father died and left a will in which the son was entitled to a mere life interest in the land. The question then arose as to whether the son could claim a fee simple interest in the land. Judgment was given in the son's favour, but it is a matter of doubt as to whether the decision was based on contract,[11] or whether it was based on the equity which arose out of the subsequent acts of the donor coupled with the expenditure incurred by the son.[12] The other two nineteenth century authorities on which the plaintiffs in the instant case rested their claim seem to indicate that the emphasis is on the equity arising out of the subsequent acts of the donor and donee.[13] Since then, these cases have been lost in oblivion until 1956 when the New Zealand case of *Thomas* v. *Thomas*[14] brought them to light once again. The most recent application of these cases was in *Inwards* v. *Baker*,[15] decided by the Court of Appeal in England in 1965. The proposition which emerges from this line of authorities seems to be as follows: If a man under some expectation, created or encouraged by the owner of land, that he shall have a certain interest,[16] takes possession of the land, and upon the faith of such expectation or promise, with the knowledge of the owner, lays out money on the land, he is entitled in equity to compel the owner of the land to carry out the expectation or promise. It is to be noted that the actual result of each of these cases is different in the sense that whereas the son in *Dillwyn* v. *Llewelyn*[17] was entitled to have a fee simple, the son in *Inwards* v. *Baker* was entitled to only an irrevocable licence for life.[18] This is but a manifestation of the point that the court in each case was merely doing what was fair and equitable having regard to the surrounding circumstances and the intention of the parties.

In the instant case, the reason which the learned judge gave for not granting the declaration was that the company did not make an unequivocal promise of the thirty acres. It is submitted that although the promise to donate the land was

8. [1967] 1 M.L.J. 42 at p. 45.
9. *Ibid.*
10. (1862) 4 De G. F. & J. 517.
11. (1862) 4 De G. F. & J. 617 at p. 520.
12. *Ibid.*
13. See *Plimmer* v. *Wellington Corporation* (1884) 9 App. Cas. 699 at pp. 713-4.
14. [1956] N.Z.L.R. 786.
15. [1965] 2 W.L.R. 212.
16. In this context 'interest' is used in its widest sense.
17. (1862) 4 De G. F. & J. 517.
18. [1965] 2 W.L.R. 212.

made by the first defendant before the company was incorporated, yet since after its incorporation the first defendant as managing director of the company actively encouraged the building of the school, this conduct and the intention underlying it must be imputed to the company. The effect of this imputation can be summed up thus: the school building committee erected the buildings in the belief that they were entitled to thirty acres of the company's land. The company through the first defendant, its managing director approved of and encouraged such expenditure of money. It follows therefore that justice and equity can only be satisfied if the plaintiffs were allowed to claim a title to the thirty acres.

It may be said, however, that as the defendant company's memorandum of association did not permit the company to make gifts of land to charity, the plaintiffs have no claim to a transfer of title of the land, for such a transfer would be void as being *ultra vires* the company. It is submitted that this does not necessarily follow. If the company had promised to donate the land and did transfer the title to the land to the trustees of school, this transfer would be void as being *ultra vires* the company's powers. If the defendant company had promised to give the land and subsequently failed to fulfil this promise, the building committee of the school cannot apply to court for its assistance, for Equity will not perfect an imperfect gift. However, when the court lends its aid to the donee as in the instant case, it is acting because the donee has in some way altered its position for the worse and therefore the donor should be prevented from indulging in unconscionable behaviour.[19] It must be noticed that in this context, the court is not perfecting an imperfect gift, but is preventing the donor from profiting from his own misconduct. The basis of the court's aid is not the words of gift, but the subsequent conduct of both the donor and donee. Although the actual effect of the operation of this principle may in certain situations as the present, be the enforcement of a gift, yet this should not obscure the fact that its *raison d'etre* is the detriment suffered by the donee and the prevention of inequitable conduct on the part of the donor. Whether this be common law estoppel[20] or a type of equitable estoppel [21] is not within the scope of this note.

Thus, in this case, it is submitted that the application of the proposition laid down in *Dillwyn* v. *Llewelyn* should result in the plaintiffs being granted the ownership of the thirty acres of lands. This would not be contrary to the memorandum of association of the defendant company, as the court would not be enforcing the promise as such, the transfer of the land pursuant to the court's decision would not, therefore be a gift. This, however, may in turn give rise to the question of whether such circumvention of the memorandum of association of a company is desirable.

S. Y. TAN.

19. *Ramsden* v. *Dyson* (1866) L.R. 1 H.L. 129 at pp. 140-141.

20. See Spencer Bower and Turner *Equity by Representation* (2nd Ed. 1966) p. 261 *et seq*.

21. See Snell's *Principles of Equity* (26th Ed. 1966) p. 629 *et seq*.