

IN THE MATTER OF THE ESTATE OF SUNNY WUN SAN TONG
(DECEASED INTESTATE)

HIGH COURT OF SOLOMON ISLANDS

(Palmer J.)

Civil Case No: 32 OF 1991

Hearing : 30/3/95

Judgment: 31/3/95

K. Milte for Mrs. M. Tong

T. Kama for Co-Administrators

PALMER J: By order of this Court dated 26 January, 1994, it was ordered inter alia, that the Administrators be allowed to sell the property in fixed-term estate parcel number 191-034-120 in consultation with Madalene Tong. On the 2nd of June 1994, Madalene Tong lodged an appeal against that order, after obtaining leave to file an appeal out of time. In its judgment delivered on the 29th of June, 1994, the Court of Appeal dismissed that appeal.

The question before this Court therefore, as correctly pointed out by Mr Sullivan, is not to determine whether the Administrators could sell that property, but the propriety of the sale price fetched in the open markets by the Administrators.

Ample evidence has been adduced before this Court as to the manner in which the sale price had been obtained. There is however, no scintilla of evidence to show that the manner in which that sale price had been obtained in the open market, was done with impropriety.

All that has been sought to be adduced before this Court as per the evidence of Silva Dunge, a qualified valuer, from the Ministry of Lands and Housing, is that the value of that property as done per an inspection of the property on the 1st and 2nd of March, 1995, and using the Direct Comparison Method, was assessed at \$450,000.00.

His assessments are set out in some detail in his Valuation Report/Certificate submitted to the Court, and the evidence given under oath, in examination in chief, and evidence adduced under extensive and poignant cross-examination by Mr Sullivan.

Mr Jeff Moore, a certified valuer for Stamp Duty purposes, and one of the few recognised experienced persons who's experience in land and property valuations had been relied on extensively by the community within Honiara, despite conceding that no formal academic qualifications had been acquired, had also given evidence as to the reasons given, and his opinions expressed, in a letter dated 29/3/95 in support of his certificate of valuation over the same property, in which he stated that the sale price of \$320,000.00 was a fair open market value for that property.

Without seeking to analyse in detail the evidences adduced before this Court under oath, of Silva Dunge, his answer to the last question under cross-examination by Mr Sullivan, in my view is crucial, and reveals the key issue in this hearing. Silva Dunge was asked taking all the relevant factors that had been assessed in his report, plus the matters put to him under cross-examination by Mr Sullivan, whether in the context of an open market sale, where the property had been put out for sale and advertised extensively for two periods of time covering approximately three months, and bearing in mind that the highest offer that could be negotiated in the open market over that period of time was the sale price now placed before this Court for Approval, it was a fair price. His answer was a very clear yes.

Under re-examination, this witness was asked what is a fair price for the sale of that property?

I think it needs to be distinguished clearly that the price that one fetches in the open market may not necessarily always correspond with the Valuers quantification, and this is conceded by S. Dunge, though he did say that the deference would be quite small.

I have listened and assessed carefully the valuation given by Mr Dunge and compared that with Mr Moore's report, and despite the difference in formal academic qualifications, I have not been convinced that the opinion expressed by Mr Moore that the sale price of \$320,000.00 in the open market for that period of time in which that property was advertised for sale was not proper. Having heard the evidence, I have my doubts that the valuation of that property would be more than the Talise House, (191-034-78) which had been sold in September of 1994 for \$400,000.00. It is important to bear in mind that no comparable valuation certificate as in September of 1994 had been filed for comparison purposes. All that has been submitted is that the sale price was \$400,000.00. The real value therefore may have been more or less. There has been no assertion, however, that the sale prices fetched in the open market are not comparable.

From the evidence adduced, the comparison in my view would be about right. The \$400,000.00 price fetched in the open market in September 1994, and the \$320,000.00

fetched in the open market for the East Kola Ridge property is just about the right ratio when all the relevant factors adduced in evidence are taken into account.

I am not satisfied accordingly that it has been established to the required standard that the price fetched for the East Kola Ridge Property is not a fair price.

I do sympathise with the wishes of the widow, but there are pressing needs that must be met now, not only in the interest of the Estate but for the protection of what it currently has and may possibly gain in the pending litigation or settlement of that matter with Hashimoto.

The contact with Choiseul Bay Association Incorporation for the sale of the said property is accordingly sanctioned. Also the contract for sale of the fixed-term estate interest in Parcel no. 191-034-47 with Kenneth Charles Ferris is sanctioned.

It is **ORDERED** herewith that the caveat imposed in the fixed-term estate in parcel 191-034-120 by Madalene Mae Fun Tong be removed forthwith, on the grounds that the substantive issues on which the validity or invalidity of the claim of the Caveator (Madalene Mae Fun Tong) had already been determined by this Court in or about the 26th of January, 1994 and upheld by the Court of Appeal in its judgment of the 29th June, 1994.

Further, it is ordered that Sharon Tong's tertiary fees of AUD\$2,370.00 be paid from the Estate's funds with immediate effect.

The administration of the Estate to continue as normal.

Mrs. Tong to bear her own costs in this application.

ALBERT R. PALMER

A.R. PALMER

PUISNE JUDGE