

Singapore River Cruises & Leisure Pte Ltd v Phun Teow Kie and Another
[2000] SGHC 2

Case Number : Suit 279/1998
Decision Date : 06 January 2000
Tribunal/Court : High Court
Coram : Lee Seiu Kin JC
Counsel Name(s) : Toh Kok Seng and Raphael Lee (Lee & Lee) for the plaintiffs.; Jeffrey Sim (Chui Sim Goh & Lim) for the defendants.
Parties : Singapore River Cruises & Leisure Pte Ltd — Phun Teow Kie; Another

Employment Law – Employees' duties – Employee's fiduciary duty to employer – Family member helping family company but securing contract for his own company – Whether family member owed fiduciary or contractual duties to family company – Whether family member breached fiduciary or contractual duties in securing contract

Equity – Fiduciary relationships – Duties – Employee's fiduciary duty to employer – Family member helping family company but securing contract for his own company – Whether family member owed fiduciary duties to family company – Whether family member breached fiduciary duties in securing contract

: The plaintiffs are a company in the business of providing river cruises and similar services along the Singapore River. In this action, the plaintiffs seek damages from the first defendant, Phun Teow Kie (`Phun`), arising from breaches of contractual or fiduciary duties as an employee in securing a contract from Clarke Quay Pte Ltd (`CQ`) for the second defendants that he ought to have secured for the plaintiffs. The plaintiffs' claim against the second defendants is an account for profits obtained by them under the contract with CQ as a constructive trustee.

On 20 September 1999, after the trial of the matter and hearing submissions from counsel, I dismissed the plaintiffs' claims against both defendants with costs. On 11 October 1999 the plaintiffs appealed against my decision and I now give my grounds.

Background

The plaintiffs were originally known as Lian Hup Choon Marine Private Limited. The company was incorporated by Png Yiow Beng (`Png`) and his younger brother, Phun Yeow Cheng (`Yeow Cheng`) on 25 October 1983. Prior to this, their father operated a boating business along the Singapore River and harbour. Png and Yeow Cheng had helped him with it and learnt the ropes in this business. On 25 October 1990, the plaintiffs' name was changed to the present one.

Initially the plaintiffs' business was the conveyance of seamen and workers from Clifford Pier to ships anchored at port. The 1987 Miss Universe Pageant was held in Singapore from 28 April to 27 May. The plaintiffs supplied boats for ferrying the contestants along the Singapore River. The event was a success and the Singapore Tourist Promotion Board (`STPB`) presented the plaintiffs with a certificate of appreciation for their efforts. In July 1987, STPB awarded the plaintiffs a contract to operate boating activities on the river for the purpose of leisure or conveyance of passengers. For this purpose the plaintiffs were assigned a landing point at North Boat Quay, which is located behind Parliament House.

With this STPB contract, the plaintiffs embarked on an expansion plan. Four new shareholders were brought in. One of them was Phun, who is the youngest brother of Png and Yeow Cheng. He invested

\$25,000 which comprised 10% of the share capital. Another investor was their maternal uncle, Ong Say Hock (‘Ong’), who also invested \$25,000.

Sometime in mid-1988, Phun joined the plaintiffs as an employee. He was given the title of Marketing Manager with an initial monthly salary of about \$1,600. There was no written contract of employment. Five years later, in a letter to STPB dated 2 December 1993, Png writing as the plaintiffs’ managing director, informed them that the plaintiffs had decided to ‘dismiss’ Phun, that is to say, terminate his employment. However there was no written letter of termination, nor was there any other form of communication to Phun to this effect. I now turn to the evidence of the events during Phun’s employment that led to the dispute in this sorry family saga.

Plaintiffs’ version of events

Png was the principal witness for the plaintiffs and his evidence was as follows. Sometime in mid-1988 Phun approached him and asked to be employed by the plaintiffs as he was unhappy with his job as a sales executive with Sigma Co (Pte) Ltd. Png agreed and the first defendant was given the post of Marketing Manager. Notwithstanding this title, the first defendant’s job was to assist Png in all aspects of the plaintiffs’ business. Png gave him all information relating to the plaintiffs’ business and paid him an initial salary of about \$1,600. The first defendant’s duties included promoting and marketing the plaintiffs’ services, exploring and developing business opportunities for the plaintiffs, and representing and acting for the plaintiffs in dealings with third parties. Png said that by virtue of his employment, the first defendant had a duty to serve the plaintiffs faithfully and at all times act honestly in their interests and in good faith.

Png said that his English was not good and he got Phun to assist him by attending meetings, although most of the important decisions would be made by him. Phun was entrusted with the day-to-day management of the business but he was to keep Png informed of all aspects of it. Phun would also handle correspondence with STPB and other companies. Sometime in late 1991 or early 1992 Png saw an article in the Chinese newspaper which reported that DBS Land was awarded a contract to develop Clarke Quay. Seeing this as an opportunity for the plaintiffs, he discussed this with Phun and asked him to look into it. Shortly after that, Phun reported to him that DBS Land would be using CQ as their vehicle for the development. Phun later told Png that he was in contact with CQ and that their chances of securing a contract with them for provision of river cruises and river taxi services were good. Png asked Phun to follow up with further negotiations with CQ. They had a further discussion on this on 5 February 1993. However after that, Phun did not report anything substantial to Png and when the latter asked, he would give non-committal answers, eg that negotiations were still in progress. Finally in mid-1993 Png told Phun that he had to confirm and finalise the contract with CQ as the plaintiffs needed time to build more boats and employ staff. Shortly after that, Phun informed him that CQ had decided to operate the river taxi services at Clarke Quay themselves. This came as a shock to Png who had thought all along that negotiations had gone on smoothly and the written contract was only a formality. Nevertheless he told Phun to continue relations with CQ as there may be other opportunities in future.

On 22 November 1993, Png was asked to attend a meeting with the STPB Senior Director of Development, one Mrs Lee. The meeting commenced at 2.30pm. Png said that at first Mrs Lee discussed ‘mundane matters’ with him. After a while, she asked one of her colleagues, Mr Chong, why Phun was not there yet. This was when Png discovered that Phun was also invited to the meeting. Mr Chong informed Mrs Lee that Phun had come to the office but as he approached her room, he turned around and left. Png noticed that the door to Mrs Lee’s room was ajar and Phun would have been able to see him from the outside. Mrs Lee decided to proceed with the meeting. She

asked if the plaintiffs had any problems internally. This question came as a shock to Png and he answered in the negative. Mrs Lee then told him that Phun had informed her that the plaintiffs were experiencing problems and Phun therefore wanted to go off on his own to set up the second defendant company to operate river cruises and river taxi services from the Clarke Quay landing area. On hearing this, Png was at a loss because it was totally at odds with the impression that Phun had been giving him.

Immediately after the meeting Png tried to contact Phun. He paged him many times but there was no response. He also tried to locate Phun but was unsuccessful. Png began to suspect that Phun was avoiding him. He then checked at the plaintiffs' office and discovered some account books, including those for the years 1991 and 1992, missing. On 30 November 1993, he terminated the first defendant's employment.

Sometime in 1995 Png instructed the plaintiffs' present solicitors, M/s Lee & Lee ('LL'), on this matter. LL took out an originating summons to obtain correspondence between CQ and the second defendants. From those documents Png discovered various dealings between Phun, acting on behalf of the second defendants, and CQ at the time when Phun was still employed by the plaintiffs. He also discovered that the second defendants were a company in which the two directors and shareholders were the first defendant's fiancée, Lee Nam Hong ('Nam Hong') and her sister, Lee Swee Hong. Further, Png discovered that Phun had been using the plaintiffs' property and information in procuring the contract with CQ. On 26 February 1998 the plaintiffs filed the writ in this action.

Defendants' version of events

Phun gave a very different version of events. He said that the plaintiffs were a family company and he was brought in solely for the purpose of helping them out during a difficult patch. Even before joining the plaintiffs, he had helped them out in preparing proposals to STPB. The plaintiffs had been doing badly when Png asked him to help market the river cruises. Phun pointed out that he took a severe pay cut when he left Sigma Co (Pte) Ltd. He did not have a significant role beyond marketing. He was certainly not a director of the company. After joining the plaintiffs in September 1988, Phun had helped to steer the plaintiffs towards a profitable performance.

It turns out that Png and Phun were at the material time involved not just in the plaintiffs. In 1990 and 1991, the two brothers formed at least three companies, namely, Far East Maritime (S) Pte Ltd, United Far East Corporation (S) Pte Ltd and Coslink (Singapore) Pte Ltd. They were both directors and shareholders in them. However by late 1991 their relationship became strained. This was because Phun accused Png of misappropriating various funds, as follows:

- (i) the takings of the plaintiffs during the 1990 and 1991 Hong Bao festivals;
- (ii) the funds and assets of Far East Maritime (S) Pte Ltd;
- (iii) money belonging to a company called GPI Maritime (Singapore) Pte Ltd ('GPI');

Phun said that there was also another incident which strained their relationship. Png had diverted a stevedoring contract from GPI to his own company AG Management (S) Pte Ltd. This was discovered and the contract was revoked and taken over by a company called Dick Tai Corporation Pte Ltd in which Phun was a shareholder.

Because of these incidents, by 1992 the brothers were virtually openly quarrelling with each other.

Phun said that two incidents evidence the nature of their relationship at the time. The first one relates to his engagement ceremony. Their father was diagnosed with cancer and Phun learnt in December 1991 that the doctors had given him only six months to live. He and Nam Hong decided to hold the engagement `tea ceremony` on 14 March 1992. They invited all their family members and close relatives, including Png and his wife and children. However, notwithstanding that he was the eldest son in the family, neither he nor his wife and children turned up. He informed the other family members that they went to watch a movie.

The second incident occurred in late 1992. By this time, both brothers had gone their separate ways in the corporate world. Each had set up, with other business partners, a string of companies. However they both operated from the same premises, namely, at TPI Building along Cecil Street. These premises were shared by the plaintiffs, the three companies incorporated by them jointly, ie Far East Maritime (S) Pte Ltd, United Far East Corporation (S) Pte Ltd and Coslink (Singapore) Pte Ltd, and the companies that each of them had separately incorporated. These included a company called Singapore Explorer Pte Ltd (`SE`) and the second defendants. There were about 25 employees of the various companies based at TPI Building. Png, Phun and Nam Hong had rooms in the premises. On a day sometime in October 1992 Png went to the office with two of his employees. One of them carried an axe. Phun was not at the office at the time but Nam Hong was. She was at Phun`s room sorting some documents. Png went in and demanded some documents from her. He raised his voice and uttered obscenities at her. She became frightened and managed to close the door and lock herself in the room. Png tried to force open the door. When he failed to open it, he and his men went to her room and smashed the drawer and table. The police were called in. But they left after questioning Png.

Phun said that as a result of their estrangement, each had gone their separate ways in the business world. Both spent their time mostly on their respective companies. In particular, Phun developed business opportunities in SE and secured a contract to provide trolley buses for a shuttle service between Raffles Hotel and Clarke Quay. Phun said that Png was aware of his activities in these companies, including the second defendants, because they all shared the same premises at TPI Building. As for his involvement in the plaintiffs, Phun said that because his relationship with Png was strained from late 1991, they hardly spoke to each other from that time. They communicated through the plaintiffs` employees and not directly. He said that at no time did Png instruct him to explore business opportunities on behalf of the plaintiffs, and it could not have happened as Png described it because they were not on speaking terms. He developed the river taxi business with CQ because he already had a relationship with them in the trolley bus contract. Phun further said that his involvement in the plaintiffs was merely to help them out as a family company and he did not owe them the duties that they claim in this action. He had told Png that he intended to resign from the plaintiffs and did so around the middle of 1993.

Evaluation of the evidence

Although the plaintiffs denied and sought to disprove the truth of the first defendant`s allegations that Png had committed the misappropriations, they did not seriously deny that Phun had made those allegations. Indeed Yeow Cheng corroborated this. He also gave evidence of their quarrels in the office on many occasions. This evidence is further corroborated by a receptionist employed by one of the companies at the TPI premises, Long Seet Yan. The fact that the brothers had fallen out also comes out quite clearly from the evidence of the events generally. It is also clear that this was caused, at least substantially, by Phun`s accusations against Png. The depth of the emotions involved is evidenced by the fact that Png did not attend Phun`s engagement ceremony. Png denied that he and Phun had a falling out. He gave this reason for his absence at the engagement. Although

their father was ill, he did not know that he was dying of cancer. Phun and Nam Hong had been together for many years by then and to hold the engagement at that stage would cause their father to suspect that he had cancer. Png said that he could not bear to see his father come to this realisation should the ceremony be held. So he gave the excuse that he had something to attend to. He said that he went to watch a movie with his wife and children. Png also said that he did not discuss this with Phun.

I find Png's explanation quite incredible. The ceremony was attended by about 50 family members and relatives. Png is the oldest son of the family and Phun the youngest. Surely their father would suspect that there was something wrong between his two sons if Png did not attend. Png said that his father had told him to attend to the matter if it was necessary to do so. Even then, surely the absence of his wife and children would be a glaring omission. And if Png was not at odds with Phun, surely he would have discussed this with him, and as the eldest brother advised Phun to defer the engagement. I find Png's evidence on this aspect to be totally devoid of any ring of truth. Added to this is the fact that Yeow Cheng gave evidence that Png's absence from the ceremony was because of their falling out. That is further corroborated by the axe incident in the office premises in October 1992. Phun had also brought out other evidence of the bad blood between them.

In response, Png brought evidence that Phun had approached him for financial help in September or October 1993 and therefore they could not have been estranged. Phun admitted doing this but explained that he was in dire straits at the time and had no one to turn to. The sum was a substantial one, \$600,000. He had first asked Yeow Cheng. But the latter was not able to help him and suggested that he approached Png who had just sold a house and could have the kind of money he sought. This is corroborated by Yeow Cheng. I accept Phun's explanation that he had no choice but to turn to Png.

Their maternal uncle, one Ong Say Hock ('Ong') gave evidence on behalf of the plaintiffs. He was a shareholder and a director of the plaintiffs. He gave evidence that Png had informed him in early 1992 that he had directed Phun to negotiate for a contract to provide boating activities at Clarke Quay. This would corroborate Png's evidence on this aspect. However I do not find Ong's evidence to be reliable. He changed his testimony slightly in cross-examination when asked about the details in his recollection of what Png had told him and I find his general demeanour to be somewhat unsatisfactory.

Png said that he had a discussion with Phun on 5 February 1993 at the office on the operating hours and cost of the proposed river taxis at Clarke Quay. He exhibited a note in his 1993 diary which was a contemporary entry he made after the discussion. He said that he recorded those entries as he spoke to Phun and that this discussion lasted 20 to 30 minutes. When asked what time of day this discussion took place, he said that he could not remember. When Phun's turn came to be cross-examined, he denied any such discussion. Furthermore, by then he was not on talking terms with Png. He also said that no discussion could have taken place between them on 5 February 1993 because he flew off from Singapore on that day for Indonesia. He tendered his passport to show this. He had taken the 8.30am flight to Jakarta on that day and would have left home at about 7am and it would not be possible for him to have met Png at the office. At this, counsel consulted Png and then asked the following question:

Q: Instructed that before you went on your flight you had a meeting with Png Yiow Beng, either that day or the day before, in which you informed Png Yiow Beng of Clarke Quay's proposed operating hours of river taxi service.

I find this change of position quite startling in view of Png's insistence before this that the entry was written contemporaneously and was accurate. He also instructed counsel, and this came out in subsequent questions, that the space in the diary for 4 February 1993 was full and therefore he could have written the note in the space for 5 February. To this, Phun responded that there were lines in the space for 4 February that were available to make that entry. It is clear to me that Png had made this up to support his case against the defendants .

I find the totality of the evidence to be against the plaintiffs' position. First of all, the plaintiffs were clearly operated on a family basis. Png said that it was Phun who had sought the job because the latter was unhappy with his job at Sigma Co (Pte) Ltd. Phun on the other hand said that it was Png who had requested him to help out and that he had given up a good job with much higher salary for this. Even if Png's version is the correct one, it is clear that the company was run on an informal basis because anyone in the family could get a job in it if he needed one. There was also evidence that other family members, helped out or were employed by the plaintiffs. There was even a dispute between Png and Yeow Cheng as to who was the managing director of the plaintiffs. And in relation to Phun's employment, there was no written contract of employment, no letter of resignation and no letter of dismissal.

Secondly, by 1992 Phun had been spending most of his time with his own companies. Png admitted knowledge that Phun was involved in his other companies but he denied any knowledge of the second defendants. I note that Phun's companies, as did Png's companies, operated from the premises at TPI Building. The office-based employees of all these companies were also based there. They mixed about and must have interacted and talked to one another. Even if Png did not know specifically about the second defendants, he knew about the other companies. He knew that Phun spent most of his time tending to his other companies. In the circumstances, I prefer the evidence of Phun who said that his role in the plaintiffs was minimal and that Png knew about it.

Thirdly, the evidence of the quarrel between Png and Phun is overwhelming. Phun had given further evidence of a number of corporate battles in the companies that the brothers were both involved in. At the very least, it showed a young upstart brother trying to upset the apple cart. Png's absence at Phun's engagement ceremony and the axe incident sadly confirms that the two brothers had fallen out.

The final point that I would like to deal with is the meeting with the STPB's Mrs Lee on 22 November 1993. Png painted the picture as one of blissful ignorance on his part of the manoeuvres of Phun until that fateful day. He said that Png was also summoned to the meeting but upon seeing him in the room with Mrs Lee, had veered off. This is what he said in his affidavit:

40 On 22 November 1993 at about 2. 30pm, I attended the said meeting. At first [Mrs Lee] asked one of her colleagues, [Mr Chong], why [Phun] had not come yet. Before that time, I was unaware that [Phun] was supposed to attend the meeting as [Mrs Lee] had asked to meet me personally and had not asked me to ask [Phun] to attend.

41 [Mr Chong] then informed [Mrs Lee] that [Phun] did come a short time ago. However, as he approached [Mrs Lee's] room, he turned around and left. I noticed that the door to [Mrs Lee's] room was ajar and the [Phun] would have been able to see us in the room before entering the room.

42 [Mrs Lee] decided to continue with the meeting without [Phun]. She asked

me if the plaintiffs had any internal problems. ...

Phun denied knowledge of such a meeting. Png exhibited a letter he wrote to STPB following the meeting, on 2 December, and their reply dated 21 December. However there is nothing in these letters to suggest that Phun was supposed to attend the meeting. Png did not call anyone else, in particular Mrs Lee or Mr Chong, to give evidence in support of this. Quite apart from the question of burden of proof on this matter, it seems to me that if Png's version is correct, then the actors in that scene behaved rather oddly. If Mr Chong had seen Phun veer off, why would he be content to let Mrs Lee make small talk with Png and inform her of Phun's disappearing act only when she asked about him. I find this rather bizarre, especially in the context of a senior officer in a busy organisation dealing with one of their contractors. In view of this, alongside the rest of the evidence, I find that Phun was not there at the STPB premises and that Png had made this up to buttress his evidence that he had no knowledge of Phun's activities in his other companies.

I do not find the authorities cited by counsel for the plaintiffs to be helpful in establishing that Phun owed the duties alleged in this case. **Robb v Green** [1895] 2 QB 315 and **Wessex Dairies Ltd v Smith** [1935] 2 KB 80 both involve existing customers of the plaintiffs. They do not relate to new business opportunities. In **Industrial Development Consultants Ltd v Cooley** [1972] 2 All ER 162 the defendant was not a mere employee but the managing director of the plaintiffs. There is no doubt that the nature of the duty in each case must be judged on its facts. In the present case, Phun was not a director. His title was marketing manager. The company was run as a family company. Phun did not spend all his time on that job but was also running other companies and Png was aware of that.

In view of the circumstances, I concluded that Phun did not breach any contractual or fiduciary duty as an employee when he secured the contract from CQ for the second defendants .

Even if there was such a duty, the evidence shows that Phun had informed Yeow Cheng about his intention. This is what Yeow Cheng said in his affidavit evidence-in-chief:

33 [Png] and I were at that time the only two directors of the plaintiff. As a director ... I did not object to [Singapore Explorer Pte Ltd and the second defendants] negotiating with Clarke Quay for the contract to operate the shuttle service. Clarke Quay was looking for an operator to run both a trolley bus shuttle service and a shuttle service along the Singapore River. The plaintiff would not be able to provide the bus trolley shuttle service. Also, the plaintiff's business was in the operation of river cruises only and not shuttle service along the river. I had spoken to [Png] around that time on a few occasions about [Phun's] negotiations with Clarke Quay on behalf of [Singapore Explorer Pte Ltd and the second defendants] but he did not seem interested. He certainly did not object to it.

Although the plaintiffs put to Yeow Cheng that this did not take place, in view of Png's unreliability in the other aspects of his evidence, and the fact that Yeow Cheng did not have any interest in the proceedings apart from being a brother to both protagonists, I find that it did. This knowledge and the lack of any objection would, I find, have relieved Phun of whatever duty he had.

It follows that the second defendants are not liable to the plaintiffs in any manner whatsoever. I

accordingly dismissed all of the plaintiffs` claims in this action against both defendants.

Outcome:

Plaintiffs` claim dismissed.

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