Taka Jewellery Pte Ltd *v* Tan Choon Sim
[2012] SGHC 167

Case Number : Suit No 907 of 2010

Decision Date : 14 August 2012

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Han Wah Teng (Nanyang Law LLC) for the plaintiff; Lee Mun Hooi and Lee Shihui (Lee Mun Hooi & Co) for the defendant.

Parties : Taka Jewellery Pte Ltd — Tan Choon Sim

Commercial Transactions – Sale of Goods, Equity – Fraud, Civil Procedure – Pleadings

14 August 2012 Judgment reserved.

Choo Han Teck J:

1 The trial of this matter originally commenced on 8 March 2012 before another court but was adjourned for the plaintiff to amend its statement of claim. The plaintiff is a company carrying on the business of a retail jewellery shop with branches across the country. The statement of claim filed on 2 December 2010 pleaded that the defendant was a customer and the cause of action was encapsulated in the paragraph stating:

> Sometime on or about 3rd November 2010, the Defendant drew and delivered a cheque No. 735078 dated 1st November 2010 on the United Overseas Bank for the sum of S$300,000 payable to the Plaintiff for goods sold and delivered the cheque to the plaintiffs [*sic*].

The cheque for $300,000 was presented for payment on 2 November 2010 but was dishonoured and marked "Refer to Drawer" on 3 November 2010.

2 On 7 February 2011 the plaintiff amended its statement of claim by pleading an alternative claim as follows:

> 7. Further and/or in the alternative, the Defendant draw [*sic*] up and deliver the cheque with no intention that it was to be paid and this was given to one Tammy Wong Siew Teng, an employee of the Plaintiff to assist her to defraud the plaintiff or such other third parties.

The defendant requested for particulars of this allegation and on 13 May 2011 the plaintiff provided the following particulars. It alleged that "[t]he Defendant drew up the cheque for the sum of $300,000 in the name of the Plaintiff and [gave it] to Tammy Wong". It was alleged that the cheque was given "for a colourable purpose" and "given to Tammy Wong as security to assist her to receive cash from her customer rather than to pay the Plaintiff". It asserted that "[t]here was no intention to pay the Plaintiff at all times". It went on to say that the defendant ought to know that the cheque was not meant to be used as security but "to deceive the Plaintiff since there was no reason for the Defendant to give a cheque as security". The plaintiff then pleaded that:

> If the cheque was indeed meant to be used as security to receive cash from the Plaintiff's

customer, it would operate as an inducement on the alleged customer to deliver cash and is thus fraudulent since the cheque was not meant to be banked in to the benefit of the Plaintiff and cannot amount to any form of legitimate security.

It was difficult to make sense of the particulars set out above and there should be little wonder the plaintiff felt compelled (or was compelled) to again amend its claim to one that could make sense. The result was the amendment to the statement of claim filed on 20 March 2012.

3 Paragraph 7 was amended to carry the thrust of the plaintiff's case as follows:

Further and/or in the alternative, the Defendant draw [*sic*] up and deliver the cheque with no intention that it was to be paid and this was given to one Tammy Wong Siew Teng, an employee of the Plaintiffs to assist her to defraud and conceal her wrongdoings committed against the Plaintiffs or such other third parties.

Particulars

a. Tammy Wong was at all material times in a position of trust and was a senior staff of the Plaintiff.

b. Tammy Wong had misappropriated the Plaintiff's property.

c. The Defendant did issue a cheque for the sum of $300,000.00 in favour of the Plaintiff with no intention that it was to be paid.

d. The Defendant acted dishonestly in assisting Tammy Wong by giving her the $300,000.00 cheque. The Defendant's conduct is not honest by the ordinary standards of reasonable and honest people.

e. This may be inferred by the fact that even by the Defendant's own account if true, the cheque was given to a third party to induce him or her to part with monies and/or property which he or she would otherwise not have so parted. [*sic*]

f. At the material times, the Defendant was aware or ought to have been aware that the cheque was meant to be used to deceive either the Plaintiff or such third parties and/or conceal Tammy Wong's wrongdoings.

g. Alternatively, the Defendant ought to have been put on inquiry as to Tammy Wong's conduct in asking for such a cheque.

h. Tammy Wong was able to dispose of property stolen from the Plaintiff and dissipate monies from the sales of such stolen property. The Plaintiff has recovered some of this property from various pawnshops by paying them for a sum of $176,571.25 based on the percentage of the pawn value of the items. [*sic*]

The plaintiff thus claimed payment of the sum of $300,000 and damages to be assessed.

4 The only witness called by the plaintiff was Julia Tan Sim Hui, their general manager. She had no personal knowledge of what had transpired between the defendant and Tammy Wong and was only able to produce the records as they were found in the plaintiff's possession. The substance of her affidavit of evidence-in-chief was that the plaintiff received two cheques from the defendant — one for $300,000 and the other for $10,000. Crucially, she said:

> Tammy had informed us that the cheque of $300,000 was meant to be used to pay for the items on the invoices initially but she called on or about 2nd November 2011 and informed us not to bank in the cheque. She claimed that the client is [*sic*] coming to the shop to pay by cash but this was not true. I asked her to make sure that the monies reach us by 3 November 2010. However, on 3 November 2010, Tammy came to my office to confess that she had misappropriated the company's jewellery and asked for our forgiveness claiming that she will [ask] her parents to sell [their] property to pay for the stolen jewellery. The Defendant's cheque was banked in on 2 November 2010 and was returned to us a few days [*sic*] with the remarks "Refer to Drawer".

5 The defendant testified that she did not know what Tammy Wong was doing and was only told that she had problems with her customers. To that end Tammy Wong asked if the defendant would help by drawing up a cheque for $300,000 for her (Tammy Wong) to show her customer and that she would return the cheque to the defendant after that. The defendant testified that she had specifically told Tammy Wong not to present the cheque for payment. Tammy Wong, who was still serving a prison sentence at the time of the trial, was called to testify on behalf of the defence. She corroborated the defendant's story. Without extrinsic evidence and having failed to break either testimony, Mr Han Wah Teng, counsel for the plaintiff, was unable to persuade me that the defendant was involved in a fraud against the plaintiff. Indeed, in spite of the amendments, the pleadings did not set out how the fraud was perpetuated. The evidence from both the plaintiff and defendant showed that it was a straightforward case of theft by an employee, namely, Tammy Wong. Whatever purpose the defendant's cheque of $300,000 was for, it seemed to me that it was not be part of a fraud carried out by the defendant with Tammy Wong against the plaintiff. Neither was it a purported payment for a sale of jewellery. This brings up the curious way the plaintiff pleaded its case in its statement of claim.

6 It is not uncommon for plaintiffs to sue in the alternative, but that is usually viable only if the alternatives as well as the evidence are not incompatible. In this case, the court was asked to find that the evidence showed that the conduct of the defendant was fraudulent. And that was the thrust of the plaintiff's case. However, when no viable case of fraud had been made out against the defendant but instead showed fraud on the part of the plaintiff's servant, how could the plaintiff then maintain that the transaction between that agent and the defendant was a commercial sale and purchase transaction? It was clear that the plaintiff did not know that a cheque for $300,000 was given to Tammy Wong until they confronted her with the loss of jewellery from the store where she worked. The plaintiff did not and still do not know why the cheque was given by the defendant to Tammy Wong. It was also critical that the evidence showed that there was no sale of jewellery relating to the cheque for $300,000. The original cause of action based on a sale and purchase was all but abandoned at trial. For the reasons above, the plaintiff failed to prove its case as claimed and its action is hereby dismissed.

7 The defendant claimed that she left two diamond broaches with Tammy Wong for "setting" and that the diamonds had not been set and neither had they been returned to her. Tammy Wong admitted taking the diamonds from the defendant, but she could not recall if they were part of the items she had stolen from the plaintiff's shop. The defendant's counterclaim did not allege that the diamonds were handed to Tammy Wong as servant or agent of the plaintiff. The claim was based on a sale and purchase which the evidence did not support. What those diamonds were and where they are now will probably remain a mystery since Tammy Wong could not recall what happened to them and neither does the plaintiff nor the defendant. In the circumstances, the counterclaim also fails and is dismissed.

8 Costs of the claim and counterclaim are to follow the event and to be taxed if not agreed.