

Wang Sheng v Chen Guangfeng
[2015] SGHC 51

Case Number : Suit 463 of 2013, (Registrar's Appeal Nos 24 and 119 of 2014)
Decision Date : 18 February 2015
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Tan Chau Yee, Hong Yeow Hsien Eugene and Koh Fang Ling Andrea (Harry Elias Partnership LLP) for the plaintiff; Lam Wei Yaw, Raman Thea Sonya and Koh En Da Matthew (Rajah & Tann Singapore LLP) for the defendant.
Parties : Wang Sheng — Chen Guangfeng

Civil Procedure – Summary Judgment

Civil Procedure – Striking Out

18 February 2015

Choo Han Teck J:

1 On 10 October 2009, the plaintiff, Wang Sheng, entered into a Partnership Agreement with the defendant, Chen Guangfeng, and Zhang Yuwei ("Zhang") to establish Lioncity Construction Co Pte Ltd ("the Company"). Clause 3(a) of the Partnership Agreement provided that the plaintiff was to invest \$1m in the Company. The plaintiff, defendant and Zhang were the directors of the Company and owned 51%, 30% and 19% of the Company's ordinary paid-up share capital respectively.

2 Around September 2011, the plaintiff decided to withdraw his investment by selling his shares to the defendant. The plaintiff, defendant and Zhang, therefore entered into a share transfer agreement dated 16 May 2012. Clause 1 of the share transfer agreement states that the plaintiff agreed to transfer his 51% share to the defendant in consideration of \$1m payable by the defendant to the plaintiff before 1 May 2013 (of which, an amount not less than \$500,000 shall be paid before 31 December 2012, and the remaining amount of \$500,000 shall be paid before 1 May 2013). On 16 May 2012, the defendant signed an IOU to the same effect. On 17 May 2012, the plaintiff and the defendant executed an Instrument of Transfer. The instrument states that the share transfer will take place "with immediate effect".

3 On 16 April 2013, the defendant eventually registered the share transfer. On 3 May 2013, the plaintiff's solicitors, Harry Elias Partnership LLP sent a letter of demand to the defendant for the \$1m. The defendant replied on 10 May 2013, saying that he disputed the plaintiff's entitlement to \$1m. He stated that the plaintiff had "requested not to proceed with the transfer of shares shortly after the signing of the agreement...and [he] agreed out of goodwill." The defendant alleged that the value of shares had depreciated by this time. The defendant has yet to pay the \$1m.

4 The plaintiff commenced Suit No 463 of 2013 on 22 May 2013 for the \$1m owed. The defendant entered appearance and also counterclaimed for damages. The plaintiff then applied for summary judgment by filing Summons No 5171 of 2013 ("SUM 5171/2013"). SUM 5171/2013 was heard by an Assistant Registrar ("AR") on 10 January 2014. The AR granted the plaintiff's summary judgment application and ordered the defendant to pay the plaintiff:

- (a) The sum of \$1m;
- (b) Interest at the rate of 5.33% per annum on the said \$1m from the date of the writ (22 May 2013) to the date of judgment; and
- (c) Costs for the summary judgment application and the plaintiff's action (excluding the defendant's counterclaim) fixed at \$8,500 (including disbursements).

5 The defendant then filed Summons No 370 of 2013 ("SUM 370/2013") for an order that the summary judgment granted be stayed pending the outcome or final determination of the defendant's counterclaim, or otherwise pending the outcome of any appeal, including any further appeal, against or arising from the summary judgment. SUM 370/2013 was heard by another AR. The AR dismissed the application for stay of execution, and ordered that the defendant's counterclaim be struck out and that the defendant pay the plaintiff's costs in the application fixed at \$5,800 (all in) and costs of the action to be taxed (if not agreed).

6 Dissatisfied, the defendant appealed the decisions of the ARs in both SUM 5171/2013 and SUM 370/2013. Registrar's Appeal No 24 of 2014 ("RA 24/2014") is an appeal against the AR's decision in SUM 5171/2013, whereas Registrar's Appeal No 119 of 2014 ("RA 119/2014") is an appeal against the AR's decision in SUM 370/2013. I dismissed both RA 24/2014 and RA 119/2014 and awarded costs of \$6,000 (including disbursements) on 18 September 2014 against the defendants. I now give reasons for my decision.

7 I start with RA 24/2014. Mr Lam Wei Yaw, counsel for the defendant, argues:

- (a) Firstly, that there are issues in dispute which ought to be tried, and which the defendant should be granted unconditional leave to defend.
- (b) Secondly, that the defendant is entitled to an equitable set-off to set the plaintiff's claim off against the counterclaim for breach of contract.

8 Mr Tan Chau Yee, counsel for the plaintiff, argues:

- (a) Firstly, that summary judgment should be upheld as there are no triable issues of fact or law and/or no *bona fide* defence has been raised by the defendant.
- (b) Secondly, in the event that the counterclaim is reinstated, the defence of set-off is not available to the defendant as he does not have a *bona fide* counterclaim.

9 Turning to the first argument, I find no issue which can be disputed and no reason why there should be a trial. The issues in dispute which ought to be tried, the defendant claims, include "when the plaintiff's entitlement to payment of \$1m arises under the agreement...and who was to effect transfer of the shares". But it is unclear how this affects the final determination of the issue. The plaintiff has a case that is bound to succeed on the undisputed facts: the shares in the Company have been transferred to the defendant on 16 April 2013, and he does not deny that the purchase price is by now, due to the plaintiff. It is futile to raise issues which are not material to the dispute; and summary judgment should be upheld.

10 For completeness, I will consider when the plaintiff's entitlement to payment of \$1m arises under the agreement. In my view, the defendant's obligation to pay the plaintiff \$1m has arisen by 17 May 2012, the date of execution of the Instrument of Transfer. There is no term in the share

transfer agreement or the Instrument of Transfer which stipulates that payment of the sum of \$1m is subject to registration of the transfer of the plaintiff's shares to the defendant. By that date, the parties had agreed to the transfer of shares in consideration of the sum of \$1m, and had executed an Instrument of Transfer with immediate effect. This is sufficient to transfer beneficial ownership of the shares from the transferor to the transferee. From that point on, it falls within his purview and capacity as transferee to register the beneficial ownership of his shares and perfect his legal title, "having been equipped by the transferor with all that is necessary to enable him to do so" (*Pennington and another v Waine and others* [2002] 1 WLR 2075 at 2083).

11 In fact, the defendant's subsequent conduct on and after 17 May 2012 supports the proposition that beneficial ownership of the shares had already been transferred to him. The defendant convened an Extraordinary General Meeting on the same day and made certain decisions which required the passing of special resolutions, without the plaintiff's involvement. The votes of the defendant and Zhang, prior to the transfer of shares from the plaintiff, would not have been sufficient to pass these resolutions. These included decisions relating to the transfer of shares in the Company's subsidiary and the cessation and termination of the plaintiff as shareholder and director of the Company. It is reasonable in the circumstances of the case to conclude that beneficial ownership in the shares had passed to the defendant on 17 May 2012, thereby triggering the defendant's obligation to pay.

12 For the second issue, I find that the defendant should not be entitled to the relief of equitable set-off. It is unclear how the defendant's counterclaim constitutes a valid defence. Even when I take the defendant's case at the highest and accept that the plaintiff had requested for a delay of registration of shares, the actual delay cannot be attributed to the plaintiff. The defendant was in a position to register the transfer of shares before April 2013 without any further action on the part of the plaintiff. Further, there is nothing in the agreement which provides for a variation of the sum to be paid in light of delayed registration or depreciation in share value. The defendant has merely argued that such a term is obvious, but has not proved that such a term is "necessary in the business sense to give efficacy to the contract" (*Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193 at [90]).

13 For completeness, the plaintiff's counsel raises an objection to the defendants adducing new evidence in this appeal based on the conditions laid out in *Ladd v Marshall* [1954] 1 WLR 1489 ("*Ladd v Marshall*"). I am of the opinion that with regard to interlocutory appeals in which a comprehensive evaluation of the evidence has not been undertaken, my discretion to hear evidence is not fettered by the decision of the registrar and I may admit fresh evidence which do not meet the *Ladd v Marshall* conditions (*Lian Soon Construction Pte Ltd v Guan Qian Realty Pte Ltd* [1999] 1 SLR(R) 1053 at [38]). However, I find that for the reasons outlined above, the further evidence, even if admitted, do not advance the defendant's case.

14 I now deal with RA 119/2014. Mr Lam argues the AR erred in striking out the counterclaim as it was neither legally nor factually unsustainable. He argues that the claim is legally sustainable as from his client's perspective, it was clear that there was either an express or implied term of the agreement that the shares would be transferred with "immediate effect upon the execution of the Agreement". The plaintiff was thus under an obligation pursuant to the agreement and the company's articles of association not to prevent the transfer of the legal title in the shares from proceeding immediately. The plaintiff breached this obligation when he requested that the defendant withhold registration of the share transfer.

15 Mr Tan argues that the order was rightly made because the defendant's counterclaim is frivolous or vexatious. In any event, Mr Tan argues that the order was rightly made because the

defendant's counterclaim is an abuse of the process of the court.

16 An action may be struck out under O 18 r 19 (Cap 322, R 5, 2014 Rev Ed) as "frivolous or vexatious" when it is clearly and manifestly so on a plain reading, or that it discloses no cause of action, or, where the claim is legally or factually unsustainable. Striking out is an invaluable way to get rid of a claim with no merit swiftly. I find that the defendant's counterclaim is legally unsustainable and should be struck out. It is legally unsustainable as even if the defendant were to succeed eventually in proving all the facts, he would not be entitled to the remedy sought (see *The "Bunga Melati 5"* [2012] 4 SLR 546 at [39]). Even if it was proved that the plaintiff had made a request for delayed registration after signing the share transfer form, it is difficult to see how that would amount to a breach of the share transfer agreement. It was always open to the defendant to refuse to accede to the plaintiff's alleged request and effect registration immediately. The mere fact that the company's articles of association leave it ambiguous as to who should register the transfer does not circumscribe the defendant's powers and obligation to register the share transfer. This power was and always lay within his purview. The defendant, after voluntarily acceding to the plaintiff's request, should not be allowed to now rely on his action, however misguided he now feels it was, to allege that the plaintiff has breached the contract and caused him loss.

17 For the reasons set out above, I dismissed both of the appeals before me and awarded costs of \$6,000 (including disbursements) on 18 September 2014 against the defendants.

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