

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 128

Suit No 1072 of 1992, Suit No 1073 of 1992, Suit No 1074 of 1992

Between

Teck Seng Beng Pte Ltd (In
Liquidation)

... Plaintiff

And

Teo Yong Seng

... Defendant

GROUND OF DECISION

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Teck Seng Beng Pte Ltd (In Liquidation) v Teo Yong Seng

[1997] SGHC 128

Suit No 1072 of 1992, Suit No 1073 of 1992, Suit No 1074 of 1992
C R Rajah JC
16 May 1997

1

Judgment:

2 1. The Plaintiffs were incorporated in 1982. Their principal business was
to supply

building materials to the construction industry. The original subscribers were
Teo Yong

Seng ("the 1st Defendant"), Lim Hui Beng ("the 2nd Defendant"), Chia

Puay Teck ("the 3rd Defendant"), Tan Hock Keng ("Mr. Tan"), Lim Bweng Tuck

("Mr. Lim"), Perpetual Contractors Pte. Ltd. ("Perpetual"), and

Pyramid Construction Engineering Pte. Ltd. ("Pyramid"). Perpetual and

Pyramid

were at all material times represented by Allen Cheok and Ang Lye Heng respectively. The 3

Defendant shareholders are hereinafter collectively referred to as "the Defendants" and the 4 other shareholders as "the other Shareholders". Each shareholder held 50,000 shares in the Plaintiffs in which 350,000 shares had been issued.

At all material times prior to 23/11/87, the Plaintiffs had only 3 directors, namely, the

Defendants. By 28/5/88, if not earlier, the Defendants had ceased to be the directors of

the Plaintiffs.

3 2. The Plaintiffs claim against each Defendant is for \$588,500.73 being the balance of

an interest free loan the Plaintiffs claim they gave to each Defendant at each Defendant's

request on or about 29/6/1987 or, alternatively, as money had and received by each

Defendant for the use of the Plaintiffs. These claims were made in 3 separate actions

commenced on the same day against each Defendant. The 3 actions were later consolidated.

The Defendants deny any liability on these claims saying that any monies due from _____ them _____ to

the Plaintiffs have been fully repaid or restituted.

4 3. In the course of their management of the Plaintiffs, the Defendants had _____ committed

criminal breach of trust of the Plaintiffs' monies. The Defendants admitted to this _____ breach

of trust, they themselves reporting their fraud to the police on 10/7/87 albeit after

being found out on or about 25/6/87 by the other Shareholders. They were jointly _____ charged

in Court on 30/6/93 on 6 charges of criminal breach of trust for a total amount of

\$743,971.59 and convicted on 2 charges following pleas of guilt with the other

4

being

taken into consideration. One of the 4 charges taken into consideration was the
6th Charge

where the Defendants were charged with having committed criminal breach of
trust of

\$300,000/- belonging to the Plaintiffs on 29/6/87. Prior to their being convicted,
the

Defendants repaid a sum of \$155,470.86 to the Plaintiffs through the liquidator.
Each

Defendant was sentenced to 30 months imprisonment. They have all now served
their

sentences. The Plaintiffs claim for \$588,500.73 against each Defendant
represents the

difference between the \$743,971.59 misappropriated and the \$155,470.86
restituted.

5 4. The Defendants say that when the other Shareholders discovered the
fraud on or about

25/6/87, they sought to recoup the loss they had suffered by reason of the
Defendants'

fraud on the Plaintiffs. They did so by compelling the Defendants to agree to purchase

their 200,000 shares in the Plaintiffs for \$1,272,000/- i.e. at \$6.36 per share with the

threat that they would report the Defendants' fraud to the police if the Defendants did

not agree. This price of \$6.36 per share greatly exceeded the actual value of the shares

at that time. The Defendants adduced the unchallenged evidence of an expert who valued the

shares in the Plaintiffs at that time as \$1.36 per share.

6 5. Not wanting their fraud to be exposed to the police the Defendants said they

complied with the other Shareholders' demands and collectively entered into separate but

identical sale and purchase agreements with each of the other Shareholders agreeing to

purchase each of their respective shareholdings of 50,000 shares for \$318,000/-

. These
agreements were all dated 29/6/87. Under the terms of these agreements the
Defendants had
to pay on signing (i.e. on 29/6/87) \$150,000/- to each of the other Shareholders
and the
balance \$168,000/- in 12 equal monthly instalments of \$14,000/- each
commencing a month
later on 29/7/87.

7 6. The Defendants therefore needed \$600,000/- to meet the 4 initial
payments of
\$150,000/- alone. They said they did not have the money. They could only raise
\$220,000/-

from their own resources. The other Shareholders therefore agreed that the
Defendants use

the Plaintiffs' funds to make these payments. The Plaintiffs had \$300,000/- in
available

funds and it was arranged that the Defendants each take \$100,000/- by way of
loan or

otherwise from the Plaintiffs and use this money to pay the other Shareholders.

The other

Shareholders knew that such a scheme was not lawful. The Defendants said this whole scheme

and the preparation of the sale and purchase agreements was arranged on behalf of the

other Shareholders by the Plaintiffs' auditor and also the Plaintiffs' company secretary.

8 7. The \$300,000/- taken by the Defendants from the Plaintiffs, whether as loans or

otherwise, was taken on 29/6/87. On the same day the Defendants paid this \$300,000/- to

the other Shareholders with Mr. Tan receiving \$30,000/-, Mr. Lim \$10,000/-, Perpetual

\$130,000/- and Pyramid \$130,000/-. All these payments were made by cheques copies of which

were exhibited at the hearing. This \$300,000/- taken by the Defendants from the Plaintiffs

was the subject matter of the 6th Charge against the Defendants. It was

obviously not

considered by the presecution to be a loan and as the Defendants pleaded guilty to the

charge, they too must be taken to have accepted that it was not a loan. From the

\$220,000/- raised by the Defendants on their own, \$100,000/- was paid to Mr. Tan by way of

7 cashier's orders totalling \$95,100/- and \$4,900/- in cash and \$120,000/- to Mr. Lim by

way of a single cheque. Copies of the aforesaid cashier's orders and cheques were also

exhibited at the hearing. All the payments of this \$220,000/- were also made on 29/6/87.

The Defendants were still \$80,000/- short for the initial payment of \$600,000/- . As each

of the other Shareholders had received \$130,000/- the Defendants gave them each another

cheque for \$20,000/- to cover this short-fall and asked that these 4 cheques not be

presented for payment immediately and some time be given to them to raise the necessary

funds.

9 8. The other Shareholders were not prepared to give much time and the Defendants were

unable to raise the remaining \$80,000/- quickly. Eventually, the Defendants stopped

payment on the 4 cheques for \$20,000/- each and decided to make a clean breast of things

to the police. On 10/7/87 they reported to the police both their own fraud and the threat

by the other Shareholders to report them to the police unless they agreed to buy the other

Shareholders' shareholdings at an exorbitant price. The insistence of the other

Shareholders for quick payment of the balance \$80,000/- is confirmed by the telephone

conversation of 11/7/87 between the 2nd Defendant and the Plaintiffs' auditor who was

representing the other Shareholders. This telephone conversation was taped and a

transcript of the conversation produced at the hearing. The conversation as set out in the

transcript is consistent with and supports the Defendants' case in this action. The police

eventually charged the Defendants for their fraud on or about 30/6/93, some 5 years after

the Defendants' report. The Defendants pleaded guilty and were convicted and sentenced. No

criminal proceedings were brought against the other Shareholders.

10 9. The Plaintiffs were wound up by the Court on 16/5/88 on the Defendants' petition

that it was just and equitable to do so. On 4/6/92 the Liquidator commenced these

proceedings against the 3 Defendants. At that time he only claimed \$100,000/- from each of

the Defendants in respect of the \$300,000/- transaction. On 12/10/96 he obtained leave of

the Court to amend the Statement of Claim to claim \$588,500.73 against each of the

Defendants. At the hearing of this action the Liquidator agreed that the Plaintiffs claim

should be reduced by \$68,500.75 by way of set-off of an amount due to the Defendants from

the Plaintiffs. This left the Plaintiffs with a net claim of \$520,000/- against the Defendants.

11 10. The Statement of Affairs made by a director of the Plaintiffs Mr. Yap Pow Fook on

11/8/88 following the Plaintiffs' winding-up confirmed that the Plaintiffs were not

insolvent and that the cash in bank and realisable assets as set out in the Statement of

Affairs were sufficient to meet all the claims of creditors. Although the Statement of

Affairs included a claim for \$520,000/- against the Defendants, this was categorised as a

contingent asset. The claims of creditors could be met even without this
contingent asset

being realised. The Plaintiffs accepted that even without any monies being
realised from

this action, all the Plaintiffs' creditors either had already been or would be paid
off in

full. Any monies recovered in this action would therefore be solely for the
benefit of the

contributories i.e. the Defendants and the other Shareholders.

12 11. The Liquidator in his testimony to the Court confirmed that he was
the choice of

the other Shareholders to be the Plaintiffs' Liquidator. He further confirmed that
the

Defendants were very co-operative in his dealings with them as Liquidator. He
confirmed

that the Defendants also told him from the outset about the payments of the
\$300,000/- and

the \$220,000/- to the other Shareholders and the circumstances and details

relating to

those payments. What the Defendants told him then was similar to and consistent with their

case in this action. Curiously, the Liquidator did not ask the other Shareholders if the

Defendants' allegations were true. He said he did not think it was necessary to do so. The

mitigation plea made by the Defendants' counsel on their behalf following their conviction

was also consistent with the Defendants' case in this action particularly with regard to

the 2 payments of \$300,000/- and \$220,000/-.

13 12. In this action the Liquidator is seeking to recover on behalf of the Plaintiffs the

sum of \$520,000/- from the Defendants. The Liquidator claims this money was either lent to

the Defendants or was had and received by them for the use of the Plaintiffs. In essence

he is seeking to recover from the Defendants the amount of the monies
misappropriated by

the Defendants from the Plaintiffs less any amounts which the Defendants had
repaid or

could properly be set-off. After taking into account such repayment and set-off
the

Liquidator has a net claim of \$520,000/- against the Defendants. The Liquidator
did not

take into account the \$300,000/- and \$220,000/- payments the Defendants claim
to have made

to the other Shareholders in arriving at the Plaintiffs' net claim of \$520,000/-.
The

Liquidator says he does not know if what the Defendants say in relation to these
2

payments is true or not but even if true, he says the Plaintiffs are still entitled to
be

repaid the \$520,000/- by the Defendants. The Defendants' case is that what they
say is

true and that the Plaintiffs are therefore not entitled to the \$520,000/- or any

sum at

all from them.

14 13. The Plaintiffs called no evidence to refute the Defendants' case on the \$300,000/-

and \$220,000/- payments. If the Plaintiffs disputed the Defendants' case, they could have

called any of or all the other Shareholders to testify. They did not. It is difficult to

imagine that the other Shareholders were unaware of this consolidated action and the

nature of the allegations made by the Defendants in relation to the payments of \$300,000/-

and \$220,000/- in their defence to the Plaintiffs' claims. There is nevertheless no

indication that any of the other Shareholders wished to come forth to deny these

allegations. The Liquidator himself had no personal knowledge whether the Defendants'

allegations are true or not and was not concerned whether they were true or not.

15 14. I observed each Defendant when he testified during examination-in-chief and

cross-examination. I believed them to be truthful witnesses. What documents there were

supported their case in relation to these 2 payments as did their prior dealings with the

Liquidator and their written mitigation plea. Their evidence was uncontroverted. I

therefore find that the Defendants did pay the other Shareholders the \$300,000/- taken by

the Defendants from the Plaintiffs on 29/6/87 (this \$300,000/- was the subject matter of

the 6th Charge) and a further \$220,000/- from monies raised from their own resources. I

also find that each of the other Shareholders received \$130,000/- from the total

\$520,000/- so paid. I further find that the 4 sale and purchase agreements were not bona

fide agreements for the sale and purchase of each of the other Shareholders 50,000 shares

in the Plaintiffs but part of a scheme to which both the Defendants and the other Shareholders were privy. The object of the scheme was at best to compensate the other Shareholders for the loss they had suffered as shareholders of the Plaintiffs by reason of the Defendants' fraud and at worst to extort money from the Defendants using the threat of reporting their fraud to the police. I also find that the \$300,000/- was not loaned by the Plaintiffs to the Defendants but taken by the Defendants from the Plaintiffs with the full knowledge of the other Shareholders and paid to the other Shareholders pursuant to the scheme.

16 15. The Plaintiffs claim that there was a loan of \$588,500.73 to each of the Defendants which after setting off the \$68,500.73 due to the Defendants left a balance of \$520,000/-

owing from each Defendant therefore fails. If the \$588,500.73 was a loan then none of the

Defendants should have been charged much less convicted of criminal breach of trust on any

of the 6 charges. Even if the \$588,500.73 was a loan, which it is not, it would represent

the total amount lent to the Defendants and not a separate amount owing by each of them to

the Plaintiffs as has been pleaded by the Plaintiffs. The same applies to the Plaintiffs'

alternative claim for monies had and received. Although the Plaintiffs' pleadings claim a

separate amount of \$588,500.73 from each Defendant, this clearly cannot be. All the

Plaintiffs can claim under this head is that the Defendants are jointly and severally

liable for \$520,000/- i.e. \$588,500.73 less the set-off.

[illegible]

Defendants had unjustly enriched themselves at the expense of the Plaintiffs to the tune

of \$520,000/- and this sum should therefore be restituted to the Plaintiffs. But the facts

in this case show that of this \$520,000/-, \$300,000/- was taken not for the Defendants'

benefit but for that of the other Shareholders and paid to the other Shareholders on

29/6/87. As for the balance \$220,000/-, though the Defendants did enjoy the benefit of

this misappropriation they have paid back this \$220,000/- also on 29/6/87. This repayment,

however, was not made to the Plaintiffs but to the other Shareholders. The other

Shareholders have therefore more than recovered the amount of any interest they had in the

monies misappropriated by the Defendants. If the Defendants had not taken the \$300,000/-

to give to the other Shareholders and repaid the \$220,000/- to the Plaintiffs
instead of

the other Shareholders, the Plaintiffs would have no claim now against the
Defendants for

the \$520,000/-. The Plaintiffs would also have an additional \$520,000/- to
distribute

amongst its shareholders upon its liquidation. In the distribution of this
\$520,000/- the

Defendants would be entitled to three-sevenths thereof and the other
Shareholders

four-sevenths i.e. \$222,857.14 and \$297,142.86 respectively. As it happened,
the other

Shareholders received the benefit of the whole \$520,000/- i.e. \$222,857.14 more
than they

should have. The Plaintiffs argue, however, that as the \$300,000/- and
\$220,000/- were

received by the other Shareholders rather than the Plaintiffs, the Plaintiffs are
entitled

to judgment for \$520,000/- on the monies had and received claim as the other Shareholders

are quite separate and distinct from the Plaintiffs.

18 17. But are the other Shareholders quite separate and distinct from the
Plaintiffs? The

Plaintiffs are a company in liquidation which has sufficient assets to pay off all its

creditors even without taking into account the amount claimed in this action.

For such a

company, the question "Who is the company?" merits the answer "The company

is its contributories". In the Plaintiffs' case, this means the Defendants and the

other Shareholders. No one else has any interest in the Plaintiffs or in the outcome of

this action. As this action is against the Defendants, the only persons who would benefit

from the Plaintiffs' succeeding in this action are the other Shareholders. The real

plaintiffs in this action are therefore the other Shareholders. As far as the claim in

this case is concerned, the Plaintiffs are therefore not separate and distinct from the

other Shareholders. The Court therefore can and must take into account any payments or

restitution made by the Defendants to the other Shareholders. The \$300,000/- and

\$220,000/- may in the present case be treated as payment and restitution made to the

Plaintiffs. The Plaintiffs can therefore be taken to have been repaid in full.

19 18. The other Shareholders' interest in the \$520,000/- claimed is four-sevenths thereof

i.e. \$297,142.86. But they have actually received \$520,000/- which is \$222,857.14 more

than their interest is worth. If the Plaintiffs were to succeed in their claim, the other

Shareholders would stand to receive another \$297,142.86 when this \$520,000/- is

distributed on the Plaintiffs' liquidation. This would be clearly inequitable as the

other

Shareholders have already received at the expense of the Defendants
\$222,857.14 more than

they should have and the Defendants have repaid all monies misappropriated by
them. The

Plaintiffs' alternative claim against the Defendants for monies had and received
in the

sum of \$520,000/- therefore also fails and is dismissed. The Defendants no
longer remain

unjustly enriched as they have made more than sufficient restitution of the
monies they

had wrongfully had and received to the use of the Plaintiffs.

20 19. The Defendants supplemented their case with the defences of accord
and satisfaction

and limitation. On the accord and satisfaction defence they claimed that the
\$155,470/-

they paid to the liquidator was paid in full and final settlement of all the
Plaintiffs'

claims against the Defendants. I am not persuaded from the evidence in this case that

there was any such settlement. As for the defence of limitation, the Defendants failed to

establish that this defence was available to them on the facts of this case.

20. The Plaintiffs shall pay the Defendants' costs of this action and I
order _____ that _____ no

part of such costs shall be charged to or deducted from the share due to any of the

Defendants in the assets of the Plaintiffs upon its liquidation.

22 C.R. RAJAH,

23 JUDICIAL COMMISSIONER

C R Rajah JC

Sheela Lopez with Andrew Chua (Peter Chua & Partners) for the
plaintiffs
Spencer Gwee (Spencer Gwee & Co) for the defendants
