

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 109

OS No 311 of 1995

Between

Gold Roast Food Industry Pte
Ltd

... Plaintiff

And

Khiu Seng Yee

... Defendant

GROUND OF DECISION

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Gold Roast Food Industry Pte Ltd v Khiu Seng Yee

[1998] SGHC 109

OS No 311 of 1995
Christopher Lau JC
14 April 1998

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Judgment:

2 Cur Adv Vult

a) the plaintiffs' claim for a declaration that the defendant holds a Mercedes Benz motor car SBU 22C in trust for the plaintiffs absolutely pursuant to a declaration of trust executed on or about 25th August 1993 by the defendant in favour of the plaintiffs;b) the defendant's counterclaim for compensation or remuneration which the defendant says the plaintiffs had agreed, as evidenced by the plaintiff company's directors' resolution dated 15th June 1994, that they would pay to the defendant on the defendant's resignation as the plaintiffs' managing director in mid June 1994.

3 2. The defendant did not

dispute that he did execute the declaration of trust but he says that in or about June

1994, the plaintiffs had orally agreed to sell the car to him at its prevailing market

value and that such market value was to be in part payment of the compensation or

remuneration the plaintiffs had agreed by the directors' resolution of 15th June 1994

to pay to him.

4 3. The plaintiffs, on the

other hand, did not deny that they had orally agreed with the defendant to sell the car to

him but they say the terms of such sale were not as the defendant alleged. The agreed

terms they say were simply that the defendant was to pay to them the sum of \$180,000.00

less the future loan instalments payable to the finance company, and that the

defendant

had breached this agreement by failing to pay the price as agreed. Accordingly, they say

they are no longer bound by this verbal agreement.

5 4. As for the counterclaim,

the plaintiffs said they were no longer bound by the directors' resolution of 15th

June 1994. Their reasons were:

(a) that there was no
 consideration for such an agreement;(b) the claimed
 compensation
 was no more than an intended gift, that such gift had to be in
 the interest of the company
 and that as it was not, the alleged compensation agreement
 was ultra vires and
 unenforceable.

6 5. I turn briefly to the

facts. In about 1988, the defendant and Chng Khoon Peng ("Khoon Peng") got

together to start a business dealing with the import and export of whole food
beverages,

dairy products and cereal. By all accounts the business, which was managed by

the

defendant, was a success from inception. In 1990, the parties incorporated the plaintiff

with the plaintiff company assuming and continuing the business. As with the business

before its incorporation Khoon Peng remained the majority shareholder and until about June

1994, the defendant its managing director. It's (before and after its incorporation)

banking facilities were secured by the usual personal guarantees of amongst others, Khoon

Peng and the defendant and by the mortgage of the defendant's house at 89 Pheng Geck

Avenue, Singapore. In April 1992, the plaintiffs acquired the Mercedes Benz motor car on

hire purchase. It had been bought for the defendant's use and solely for convenience,

was registered in the defendant's name although it was the plaintiffs that paid the

down payment, the hire-purchase instalments, road tax, insurance premiums and all the car's outgoings.

7 6. In acknowledgment of the plaintiffs' beneficial ownership, the defendant a year later on 25 August 1993 executed a declaration of trust in which he undertook, inter alia, to sign and execute all deeds documents and do such acts as are required to effect the transfer of the car when called upon by the plaintiffs to do so.

8 7. Either at about that time or soon after, the apparent harmony that had prevailed in the plaintiff company began to dissipate. That coincided with the admission of Khoon Peng's son Chng Beng Beng ("Beng Beng") into the plaintiff company and in or about June 1994, the defendant decided to resign from the plaintiff company's Board of Directors

and as

its managing director. He however remained a shareholder of the company.

9 8. A resolution was then

passed by the Board of Directors resolving that:

- (i) the defendant's resignation as managing director be approved and accepted;(ii) the plaintiff company arrange for the defendant and his wife to be released from the personal guarantees they had given to the plaintiff company's bank and for the discharge of the bank's mortgage over the defendant's property;(iii) the defendant be paid remuneration as a director's fee, the amount of such remuneration to be determined by the interest due on the banking facilities actually used by the plaintiff company for the period of six years ending 15th June 1994.

10 9. What happened thereafter

is a matter of some contention between the parties, with each offering quite different

account of events.

11 10. Rather than recite each

party's account of these subsequent events, I set out the evidence I am prepared to

accept. I do this having had the benefit of observing each witness when he gave his

evidence and particularly when that evidence was tested in cross-examination against the

relevant documentary evidence. Whatever each witness may have alleged in his evidence when

cross-examined, the case ultimately turned on the documentary evidence - principally

letters written between the parties as well as between their respective solicitors. These

documents dispelled in my view any ambiguity as to the true state of affairs.

12 11. Firstly, I accept the

evidence of Khoon Peng and his son Beng Beng as to what the purpose of the declaration of

trust was, which for the record, the defendant did not dispute. It was an acknowledgment

by the defendant of the plaintiffs' beneficial ownership of the car and of their right to designate the transferee of the car. I also accept their evidence on the oral

agreement that had been concluded between the plaintiffs and the defendant which is that

the defendant if he wished to buy the car was to pay the sum of \$180,000 less future

instalments "as soon as possible" or "forthwith" but at any rate by no

later than 22 August 1994 and that the defendant had not complied with this payment term.

13 12. I do not accept the

defendant's evidence that in the oral agreement, the plaintiffs had instead agreed

that the cost of the car was to be set-off against the amount of the remuneration to be

paid to him pursuant to the 15th June 1994 resolution. The letters that passed between

Khoon Peng and the defendant simply did not support the defendant's allegations. I

refer to a letter dated 22 August 1994 written by the defendant to Khoon Peng.

In _____ that

letter the defendant made no allegation of an agreement that the price of the car
was _____ to

be set off against the compensation payable to him. Instead he made a request.
Similarly

his solicitors never alleged such an agreement. This is hardly consistent with the
conduct

of a party alleging such an agreement. If there is an agreement, one would allege
it _____ at

the earliest opportunity. The defendant is no business novice - he is an
experienced

businessman and would be sufficiently experienced to have asked not only that
the _____ alleged

set off be recorded in the 15th June 1994 resolution (which was what he did
with _____ the

compensation in the 15th June 1994 resolution) but also alleged it in his
correspondence

14 13. It does not however

plaintiffs purportedly held a shareholders' meeting (a meeting which the defendant

who still held 27% of the company's issued share capital was never told of or given

the opportunity to attend) and passed a shareholders' resolution purporting to annul

the 15th June 1994 resolution on the basis that the defendant had in or about
July 1994

admitted wrongful conversion of the plaintiffs' goods, had breached an agreement to

supervise the installation of the plaintiffs' new automated packing equipment and _____ had

wrongfully refused to transfer the car contrary to the plaintiffs' direction under the declaration of trust.

15 14. The flaw in this

argument is firstly that the 15th June 1994 resolution was only evidence of the agreement

reached between the parties for the payment of the compensation to the defendant (an

agreement the plaintiffs did not deny) not that the 15th June resolution authorised such

payment.

16 15. Secondly, in none of the

correspondence exchanged between the plaintiffs and the defendant or indeed their

respective solicitors was there a reference or even an allusion made by the plaintiffs to

any of these grounds as a basis for repudiating the agreement to pay compensation to the

defendant, even though the plaintiffs were well aware of the three alleged

incidents at

the time the correspondence was written. On the contrary, the plaintiffs at all material

times after the 15th June resolution confirmed not once but on several occasions as Khoon Peng said in his letter of 22 August 1994 to the defendant:-

17 This statement of intent was

further confirmed by a letter on 14 October 1994 from the plaintiffs' solicitors to

the defendant's solicitors stating that the plaintiffs were:

18 16. Thirdly, I see no basis

for the plaintiffs' further argument that no directors' fees could be paid since

such payment could be of no benefit to the plaintiff company; such payment in the

circumstances being prohibited by Article 80 of the plaintiff company's memorandum

and articles of association. There was simply no evidence to support such argument. Beng

Beng in his own evidence in cross-examination (pages 16A-C and 178C of Notes of Evidence)

admitted it was for convenience that the compensation was reflected as director's

fees.

19 17. Finally, I see no basis

for the plaintiffs' argument that this agreement to compensate is unenforceable as it

is not supported by consideration. No evidence was adduced by the plaintiffs on this. It

was never put to the defendant that it was past consideration. In any event, the period of

6 years was only to serve as a guideline for determining the compensation's quantum;

the evidence is clear that the defendant had indeed mortgaged his house to also secure the

company's banking facilities and I accept his evidence that Khoon Peng had

effectively agreed on behalf of the company that the defendant would be duly

in doing so. It was not a goodwill payment.

the orders which I make. There will firstly be an order in terms of paragraphs 1 and 2 of

the plaintiffs' Statement of Claim. Secondly, there will be an order in terms of paragraphs (i) and (ii) of the defendant's counterclaim re-dated 12 October 1996.

Finally, there will be a reference to the Registrar to take such accounts and for the

determination of any interest payable upon the taking of such accounts.

this action, the order I make on costs is that each party bears his own costs.

day of April 1998

23 Christopher Lau

24 JUDICIAL COMMISSIONER

Christopher Lau JC

Vangatharaman Ramayah for the plaintiffs
Lee Mun Hooi for the defendant
