IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 305

Suit 1455/1996

Between

KKS Industrial and Marketing Pte Ltd

… Plaintiff

And

Kaki Bukit Industrial Park Pte Ltd
Chng Heng Tiu

… Defendant

GROUNDS OF DECISION

Version No 1: 20 Nov 2026 (00:35 hrs)

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KKS Industrial and Marketing Pte Ltd v Kaki Bukit Industrial Park Pte Ltd and Another

[1998] SGHC 305

Suit 1455/1996
Choo Han Teck JC
11 September 1998

Judgment :

1. Like Mr Yim SC, I too would like to begin with a profile of the plaintiff company. It is an insipid entity that owes its presence in these proceedings only to the fact that Mr Ho Kok Cheong is incapable at law to have a commercial entity of his own to participate in the kind of transactions that he would like to indulge himself. Mr Ho is indeed a remarkable man who had carved a niche in this country's commercial history with his development of the People's Park Complex; a success story that made him a millionaire at the age of 27. To chronicle the rest of his commercial record is unnecessary, save to say that in one of the lower moments of his career he was made a bankrupt. The bankruptcy order that was made against him in November 1987 remains undischarged to this day, but Mr Ho Kok Cheong is somewhat like a Halley's comet. Every 30 years or so he would flash a brilliance for all to admire. In spite of his bankrupt status he continued to track the Urban Renewal Authority's ("URA") tenders for land sales. He also kept track of the bids that were placed and the results of the tenders.

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2. He was thus alerted to the URA's opening of a tender for a parcel of industrial land in early 1994, and was quick to envisage the opportunity therein for making money from a successful tender of that land. He conceived the idea of building on that land terraced, condominium type factories for sale. Mr Ho did not have the financial resources to proceed by himself. He therefore encouraged two of his old friends, Mr Chwee Meng Cheong and Mr Chng Heng Tiu to invest with him. Initially, Mr Ho was optimistic enough to ask for a 60% stake in the venture leaving Mr Chng and Mr Chwee to share the remaining 40% between them. However, Mr Chng wanted a 50% share, or, more likely, he did not wish to let Mr Ho have more than 50%. It was eventually agreed that Mr Ho and Mr Chng would lead their own faction each having an equal share. The original investors, were therefore, Mr Ho Mun Fei and Mr Ho Mun Sang representing their father Mr Ho Kok Cheong's faction, and Mr Chwee Meng Cheong and Mr Chng Heng Tiu forming Mr Chng Heng Tiu's faction. It was in these four names that a bid of $92,042,000 was made for the land on 21 July 1994. This was the highest bid received by the URA for the land in question.

3. The banks were prepared to finance the development project provided that the joint venture company's (1st defendant) paid up capital was 25% of the total project cost consisting of the $92,042,000 land cost and $70,000,000 construction cost. To raise the money it was agreed by the investors that the paid up capital be raised from $30,000,000 to $43,000,000. In the Extra-ordinary General Meeting of the company on 22 December 1994 the shareholders agreed to raise the shares in two allotments of 23.7 million and 19.3 million respectively. The first allotment had already been taken up by the Ho and Chng factions in equal proportions. The second allotment was also to be similarly taken up by 6 January 1995. However, it was resolved at the EGM that if any party was unable to take up any of his shares those shares might be taken up by

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third parties. This provision was to accommodate the Ho faction because they appeared to have some difficulty raising the funds to pay for their shares. Mr Ho Kok Cheong also managed to persuade the investors that at that stage the shares were worth a premium. Some of the shares designated to the Ho faction were consequently taken up by one Mdm Hsiung Ro Ying when the former were unable to raise enough money by 6 January 1995. Mr Ho Kok Cheong, however, managed to purchase some of those shares back from Mdm Hsiung (through his nominees) within the deadline given in the Buy-back Agreement between Mdm Hsiung and the nominees of the Ho faction. The balance held by Mdm Hsiung were eventually transferred to Mr Chng Heng Tiu. Thus, the result was that the Ho faction held about 36% of the total share-holding with the balance being held by Mr Chng Heng Tiu, Mr Chwee Meng Cheong and Mr Yeo Siew Hang. The story thus far was rather bland, revealing the hope of the investors, the vision of Mr Ho Kok Cheong, and the realisation of their communal dream. The only hiccup was the inability of the Ho faction to raise their share of investment funds. The joint-venture could have been scuttled on that score, but it did not because of the agreement to let third parties take up the loose shares.

4. The trial before me arose from a side storm between Mr Ho Kok Cheong and Mr Chng Heng Tiu. Each has his version of the story. I begin with that of Mr Ho’s as he was the principal witness for the plaintiffs. His evidence was that sometime in May 1994 at the first meeting between Mr Chwee Meng Cheong, Mr Chng Heng Tiu and himself at the Pinetree Town and Country Club when the proposal of the joint-venture was made to Mr Chng Heng Tiu, he briefed Mr Chng Heng Tiu about the viability of the project and suggested that "if the bid was successful the plaintiffs should be paid 10% of the annual profits before tax for having organised and put together the successful bid." He added that the plaintiffs would be responsible for the construction of the project and the liaison

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with the architects and other consultants of the project so that the construction would be carried out properly and on time. This would be done by the plaintiffs through Mr Ho Kok Cheong. His evidence was that Mr Chng Heng Tiu and Mr Chwee Meng Cheong knew that he was a bankrupt and "were not surprised" when they were told that he was acting on behalf of the plaintiffs. He stated that Mr Chng agreed to this proposal and asked him to confirm that if the bid was not successful the plaintiffs would bear all the expenses incurred. That was the kernel of the plaintiffs' claim in this suit. They claimed that when the joint venture company was subsequently asked to ratify this agreement ('the said agreement") reached between Mr Ho Kok Cheong on behalf of the plaintiffs and Mr Chng and Mr Chwee, Mr Chng Heng Tiu's faction refused to ratify it, thereby breaching the said agreement. Mr Ho Kok Cheong gave the following evidence to add flesh to the plaintiffs' claim. He stated that about a month later in mid June 1994, another meeting took place at the Pinetree Club. This time his two sons Mr Ho Mun Sang and Mr Ho Mun Fei accompanied him to meet Mr Chng Heng Tiu and Mr Chwee Meng Cheong. The said agreement was reaffirmed by Mr Ho Kok Cheong and Mr Chng Heng Tiu at that meeting.

5. The 1st defendant was duly incorporated on 24 November 1994. After the successful tender and work on the project began in earnest. On 27 December Mr Chng Heng Tiu called for a directors' meeting of the 1st defendant to be held on 5 January 1995. Mr Ho Kok Cheong told Mr Ho Mun Sang to write a letter (dated 3 January 1995) to the company requesting that the said agreement be ratified at the board meeting on 5 January 1995. At the meeting, when this issue was raised Mr Chng Heng Tiu said that it was too early to ratify the agreement as no profits had yet been made. The minutes of the meeting recorded this item for discussion at a future meeting.

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6. By June 1996, it was apparent that the project was successful because with only one phase completed the sale proceeds was about $175,000,000. Hence, Mr Ho Kok Cheong asked his son to call for a board meeting by letter dated 14 June 1996 to ratify the said agreement. The meeting was convened on 28 June 1996 and Mr Ho Kok Cheong, though not a director, attended as he did in previous meetings until a quarrel ensued between him and Mr Chng Heng Tiu and Mr Ho Kok Cheong was asked to leave. The issue in question was deferred to an Extra-ordinary General Meeting at Mr Chng Heng Tiu's suggestion. This EGM was held on 30 July 1996. The proposal for ratification was rejected when Mr Chng, as chairman, exercised his casting vote to defeat the proposal. Prior to the proposal by Mr Ho's sons, Mr Chwee Meng Cheong and Mr Chng Heng Tiu took turns to have a similar proposal made in each of their favour. Those proposals were rejected by a majority vote with Mr Chwee Meng Cheong and Mr Chng Heng Tiu themselves having abstained from voting.

7. The plaintiffs called Mr Chan Hui Sim the architect for the project, and Mr Ho Mun Fei to give evidence on its behalf. Mr Chan's evidence was essentially to confirm that the work done by Mr Ho Kok Cheong for the project was the kind of work normally carried out by a project manager. Mr Ho Mun Fei's evidence was to reinforce his father's evidence that at the second meeting at the Pinetree Club, Mr Chng Heng Tiu had affirmed the said agreement and that the latter deferred the ratification of the said agreement during the 5 January 1995 Board meeting because the 1st defendant had not yet made profits.

8. I now come to Mr Chng Heng Tiu's version of the story. He denied that the 10% commission forming the crux of the said agreement, was discussed prior to the incorporation of the 1st defendant on 24 November 1994 as alleged by Mr Ho Kok Cheong in his evidence. Mr Chng Heng Tiu recalled that only once,

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in late July 1994, did Mr Ho ask if Mr Chng would let him have 10% of the estimated profits personally for introducing the project to him. Mr Chng rejected that request outright. He said that he learned about the said agreement only after reading Mr Ho Mun Sang's letter of 3 January 1995. The drift of Mr Chng Heng Tiu's evidence was as follows. A directors' meeting was called on 2 December 1994 to increase the paid up capital of the 1st defendants to $43,000,000. This was necessary because the company had to pay the URA 75% of the tender price by 9 January 1995. They hoped to do this from bank loans, but the bank's condition was that the paid up capital must be at least 25% of the development cost (that is, the land price plus estimated construction costs). This requirement came to $43,000,000. The two factions had to take up 50% each. They had already taken up the initial allotment of about 23,000,000 shares. The balance of about 19,300,000 were to be taken up by 6 January 1995. However, the Ho faction was unable to take up its quota of the shares and so, it was resolved at the EGM of 22 December that the shares be issued in two tranches, the first of which had been taken up. The balance may be taken up by third parties if any of the investors was unable to take up his share. Mr Ho Kok Cheong was unhappy with the resolution so drafted because he felt that any third party taking up the loose shares ought to pay a premium as the value of the shares had gone up by that time. It was agreed, therefore that a premium of 25 cents a share had to be paid if a third party were to take up any share. This led to the purchase of the 7,575,000 shares by Mdm Hsiung. The Ho faction managed to repurchase some of them back from her, but the rest were eventually transferred to Mr Chng Heng Tiu.

9. It was Mr Chng Heng Tiu's case that Mr Ho Kok Cheong having his 50% share in the venture reduced, decided to resuscitate his early idea of getting a 10% pre-tax profit on account of his introducing Mr Chng Heng Tiu to the

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venture. The idea was now modified so that instead of a plain commission for introducing Mr Chng Heng Tiu to the venture, it became a pre-incorporation agreement between the promoters to give the plaintiffs a 10% pre-tax profit in consideration of Mr Ho Kok Cheong putting through a successful tender for the land. I should add that counsel for Mr Chng submitted that this was later expanded to include a management agreement. Mr Chng Heng Tiu had flatly rejected the Ho faction's request to have the Board of directors ratify the said agreement, but out of generosity, he agreed to let the plaintiffs have the sole marketing rights to the project. This was resolved at the directors' meeting of 5 January 1995 even though it was not an item on the agenda. Mr Chng Heng Tiu's account was that after he rejected Mr Ho's claim for a ratification of the said agreement the latter threatened to scuttle the project by voting against the resolution to increase the share capital. In response Mr Chng Heng Tiu threatened to evict Mr Ho Kok Cheong from the meeting. Mr Ho then changed his tone and asked Mr Chng Heng Tiu to consider giving him the 10% as a consultant's fee because he was in financial difficulty and this was his last opportunity to make it. Mr Chng Heng Tiu was pacified but refused to accede to the request. Nonetheless, he assured Mr Ho that his sons would be taken care of and each would be paid $10,000 as monthly directors' fees even though they did virtually no work. It was at that point that Mr Ho Kok Cheong asked and was given the sole marketing rights to be given to the plaintiffs. Mr Chng Heng Tiu said that he thought that they would have to engage a property agent such as Jones Lang Wootton to market the project anyway, and so they might as well give that job to the plaintiffs as Mr Ho wished.

10. Each of these two stories seem entirely plausible, but I have to decide which is the more plausible of the two. The main evidence in support of Mr Ho Kok Cheong's story is that the minutes of the directors' meeting of 5 January 1995

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recorded that the proposal to ratify the said agreement be "discussed at a future directors' meeting". This enabled Mr Chelva Rajah SC to argue on behalf of the plaintiffs that if Mr Chng had dismissed Mr Ho's claim as absurd and had told him so, then his thoughts and deed were contradicted by the board of directors' decision to discuss the issue at a later meeting. It was indeed a strong argument. Indeed, why should the board of directors take time to consider something which was supposed to be a non-issue? He argued that this supported Mr Ho Kok Cheong's evidence that the board decided to defer the ratification because Mr Chng Heng Tiu said that it was too early since the joint venture company had not yet realised any profit.

11. There was more to Mr Chelva Rajah's submission. He referred to another board meeting in June 1996 in which the subject of the ratification of the said agreement was again put on the agenda. This time, over a year and a half had passed since the board meeting in January 1995. The venture was clearly profitable. Sale receipts was about $175,000,000. So, on 14 June 1996 Mr Ho Mun Sang wrote to the secretary of the 1st defendants requesting that the board ratify the said agreement at a board meeting. A meeting was convened for 28 June 1996, and it started badly with Mr Ho Kok Cheong being told to leave and that the agenda be taken off for discussion before an Extra-ordinary General Meeting. Mr Ho Kok Cheong appeared to be expecting this. Mr Ho Mun Fei, who attended the meeting, promptly read a prepared statement reciting the basis for the ratification of the said agreement and proposed that the resolution be passed accordingly. His brother Mr Ho Mun Sang seconded the resolution, but it was Mr Chng Heng Tiu's proposal that the matter be discussed at an EGM that was adopted. The EGM was held on 30 July 1996.

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12. The meeting began with Mr Chng Heng Tiu and Mr Chwee Meng Cheong each taking turns to propose a payment of 10% pre-tax profit to the other. These proposals were rejected at the vote because the Mr Chng Heng Tiu and Mr Chwee Meng Cheong abstained from voting. After that, a vote was taken on the proposal to ratify the said agreement. That proposal was rejected. Mr Chelva Rajah SC suggested that Mr Chng Heng Tiu and Mr Chwee Meng Cheong took the opportunity to try and get a 10% pre-tax profit for themselves and when their attempt failed they rejected the Ho faction's proposal. The evidence from James Ong, a former accountant who become Mr Chng Heng Tiu's Man-Friday, testified that it was his idea that Mr Chng Heng Tiu and Mr Chwee Meng Cheong should also ask for a 10% payment to themselves to show Mr Ho Kok Cheong how ridiculous the claim was. Mr Yeo Siew Hang, a minority shareholder in Mr Chng Heng Tiu's camp, also testified that it was his idea that Mr Chng Heng Tiu and Mr Chwee Meng Cheong ask for the 10% payment. What was the more probable reason for Mr Chng and Mr Chwee to precipitate Mr Ho's claim with their own respective claims? Mr Chng's faction could have carried their proposals by the vote, but did not. If they thought that their proposals could be challenged in court, then why go through the exercise? It seems to me that this little exercise merely illustrates the point that grown men have their moments of childishness.

13. Mr Chng Heng Tiu explained that the minutes of the board meeting of 5 December 1995 was drafted the way it did because he was afraid that if he did not do so Mr Ho might jeopardise the venture by refusing to approve the minutes and that would result in stalling the bank loan and without which the URA would rescind the land sale. Mr Chelva Rajah SC pointed out that this explanation did not make sense since Mr Chng had already made it clear to Mr Ho Kok Cheong that his request was rejected. Therefore, Mr Ho knew what the

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position was and if he was then minded to scuttle the project he could or would have done so.

14. Mr Yim SC submitted that Mr Ho Kok Cheong had legal advice at hand in the form of the plaintiffs' legal officer Miss Mary Wong, and Mr Ho's son-in-law Mr C.M. Sum, an advocate and solicitor. Mr Ho admitted that he did receive advice from Miss Wong to wait until the 1st defendant was incorporated before asking for a ratification of the said agreement. It is axiomatic that no ratification by a company is possible before its incorporation, but Mr Ho seemed to have missed the thrust of the point under cross-examination. The point was that he could have asked Miss Wong to draw up the said agreement for the promoters to sign. The case thus whirled around the two key points of the parties respectively. On the plaintiffs' side, they had the minutes of the board meetings of 5 January 1995 and 28 June 1996 which appear to acknowledge the existence of the said agreement and contradict the case that the said agreement had been flatly rejected by Mr Chng. In Mr Chng's favour is the absence of any documentary evidence of the said agreement until the directors' meeting was recorded in January 1995. Each side had its explanation. Each side had its version very ably presented by their respective counsel.

15. In considering the two stories and the submissions of Mr Chelva Rajah SC and Mr Yim SC, I also took into account some of the relative weaknesses in the evidence of the witnesses of both sides. Mr Ho Mun Fei appears to be a genial young man, fresh out of his Scout uniform, always dutiful to his father, but not yet ready to handle the commercial deals of the sort that his father and Mr Chng do. Consequently, he had virtually no idea of how the project was being structured or developed. His key evidence lay in his presence at the meeting in which the said agreement was reaffirmed. In the case of Mr Yeo Siew Hang's

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evidence, I think that he was a trifle too anxious to shield Mr Chng Heng Tiu that he readily claimed credit for the proposal that Mr Chng and Mr Chwee ask for a 10% payment each to themselves. I think that in all likelihood the idea for that proposal came from Mr James Ong. It was an idea that I can readily associate with Mr Ong. It was Mr Ong's drafting of the minutes of the directors' meetings that created the most vexing conundrum of the case. The question pertinently raised by Mr Chelva Rajah SC was, if Mr Chng had rejected the proposal to ratify the said agreement, why was it necessary to record that the issue be discussed at future meetings? If the answers given by Mr Chng and Mr Ong were implausible as Mr Chelva Rajah so eloquently suggested, especially when Mr Chng could virtually sweep it off with his casting vote and bury it swiftly and permanently, why were the minutes recorded the way they were? To truly answer that question one has to unlock the mind of Mr James Ong. That might prove to be a fearsome task. Neither of the battling counsel got very far on that score, and I shall not attempt. In any event, how the minutes were recorded and why they were so recorded are secondary questions which fade in importance if the answer to the primary question can be confidently found. What then is the primary question? Three men were present when the said agreement was made. Only these three men can tell the court what happened at that meeting and what was said or left unsaid. These three men gave evidence before me. The primary question is, which of them spoke the truth?

16. Mr Ho Kok Cheong and Mr Chng Heng Tiu tumbled their way through their respective cross-examination although not in the same way, and one needs to go further than their evidence to find comfort. However, I find that I need go no further than to Mr Chwee Meng Cheong. He might have been a participant to the lark at the EGM of 30 July 1996, but I find him to be a forthright witness whose evidence I can comfortably accept as truthful. He was at the said meeting

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at the Pinetree Club when Mr Chng and Mr Ho concluded the alleged said agreement, but he testified that that subject matter was not discussed at all. Even though Mr Chelva Rajah SC wisely steered from dwelling on the crucial meeting with this witness, Mr Chwee nonetheless persuaded me that his testimony carries the truth. Thus the only voice that came across more powerfully than the speech of Mr Chelva Rajah, was that of Mr Chwee.

17. For the foregoing reasons, the plaintiffs' claim against the 2nd defendant is dismissed. Mr Cashin, on behalf of the 1st defendants maintained a neutral position throughout the trial and will be quite happy whichever way the story ends. The plaintiffs' claim was based on a pre-incorporation contract that was not ratified. In the circumstances, as it's claim against the 2nd defendant failed it follows that its claim against the 1st defendant must also be dismissed.

- Sgd -

Choo Han Teck

Judicial Commissioner

Choo Han Teck JC

Chelva Retnam Rajah SC and Chew Kei-Jin [Tan Rajah & Cheah] for the plaintiffs
Howard Edmund Cashin [Lim Hua Yong & Co] for the 1st defendants

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Jimmy Yim Wing Kuen SC, Eugene Quah [Drew & Napier] and Arthur Quay Kok Boon [JYP Chia & Co] for the 2nd defendant

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