IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1999] SGHC 152

OS 332/1999

Between

Haco Far East Pte Ltd

… Plaintiff

And

Ong Heh Lai Francis

… Defendant

GROUNDS OF DECISION

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

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Haco Far East Pte Ltd v Ong Heh Lai Francis

[1999] SGHC 152

OS 332/1999
Choo Han Teck JC
01 June 1999

Judgment:

GROUNDS OF DECISION

1. This is a summons taken out by Haco Far East Pte Ltd ("Haco") seeking the following declarations. First, "that the defendant ("Ong") had acted dishonestly whilst an employee of [Haco], and secondly, 'that accordingly, [Ong's] shares in [Haco] are to be transferred to the other shareholder [Haco N.V.]". Haco was incorporated in 1984 with two directors, one of whom was Ong who shortly thereafter, was employed as its managing director under a contract of employment exhibited in the supporting affidavit of Roger Havegeer to this summons as "RH-1". The contract begins with the following recital: "We are pleased to confirm your employment with us as Managing Director from 1984 May 1 or earlier if available on the following terms and conditions". Clause 13 states as follows: "If any dishonesty appears from one of the shareholder his share will automatically be transferred to the other shareholders". Thus the object of this summons seems straightforward and simple.

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

2. However, in 1994 Haco successfully sued Ong in Suit 403 of 1994 for breach of his duties as director of Haco. The trial judge Judith Prakash J. found Ong to be dishonest and in breach of his duties. In her Grounds of Decision dated 23 March 1998 the learned judge reiterated the allegations in Haco's Statement of Claim. The foremost being, "as managing director of [Haco], [Ong] owed it duties to act honestly in the interest of [Haco]; not to place himself in a position where his duty to [Haco] and his personal interest might conflict". The learned judge recited the reliefs claimed by [Haco] as follows:

> "(1) for damages to be assessed as a result of [Ong's] breaches of duty;
>
> (2) an account of the profit made by [Ong] through Amerfab System and Amerfab Pl in the sale of drum plants, Blue Valley flanges, Strippit machines and plate rolls; and
>
> (3) payment of all sums found due to [Haco] on the taking of the above account".

3. No claim was made in that suit or trial by Haco for the transfer of the shares held by Ong to the other shareholders in Haco. After finding against Ong and awarding judgment to Haco Judith Prakash J. ordered damages to be assessed. Haco now seeks to enforce clause 13 of the employment contract which I referred to above through an order of court. The inherent problem with this application is that Haco is asking this court to declare what has already been declared by another court. At page 40 of her Grounds of Decision Judith Prakash J. held that "[Ong] had clearly acted in breach of his fiduciary duty and dishonestly". This declaration was readily acknowledged by Haco. Their solicitors wrote to Ong's solicitors on 23 December 1998. That letter was exhibited by Haco's director Roger Havegeer in his affidavit of 11 February 1999 as exhibit "RH-5". The material paragraph of the said letter reads:

> "Pursuant to Clause 13 of the Contract, your client's shares in the Haco F.E. are to be automatically transferred to Haco N.V. in the event of dishonesty on your client's part. It has been

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

> confirmed in suit No 403 of 1994 that your client has acted dishonestly."

4. Haco's solicitors enclosed transfer forms for Ong's execution which the latter refused to do. The point here is whether this court ought to grant the declarations sought by Haco. Ong's employment contract was admitted as an agreed document in Suit 403 of 1994 as "AB 43". It seems to me that this application before me was misconceived and must fail because the main prayer is *res judicata*. Mr Wong appearing on behalf of Haco before me submitted that this summons is based on a different cause of action. He submitted that the cause of action in Suit 403 was in the breach of fiduciary duty, whereas the cause of action here is based on the breach of contract. Thus, he argued that the doctrine of *res judicata* does not apply. *Res judicata* in plain English means that the subject matter has been adjudicated and settled by the judgment of a court. I do not think that the test is based solely on whether the cause of action is different, but whether the parties or the subject matter is different. The same party cannot re-litigate the same subject matter applying the same story by merely changing the title. The crux of Haco's claim in Suit 403 and here is that Ong had acted dishonestly as its managing director. As the learned trial judge pointed out in her Grounds of Decision (at page 7), Ong's "response was basically a denial of all accusations. He contended that he had never breached any of the duties of a managing director as imposed or required of him". Mr Wong referred me to *Lawlor v Gray [1984] 3 All ER 345* in support of his proposition that *res judicata* does not apply where the cause of action is different. As a statement of principle in itself this submission is correct, but for reasons as I shall set out below, the matter in the summons before me as pleaded is *res judicata* by reason of issue estoppel not cause of action estoppel.

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

5. In *Lawlor*'s case the plaintiff Lawlor entered into an agreement to sell his shares in various companies to Gray. Subsequently, they realised that Lawlor might have to pay capital gains tax on the consideration under their agreement. Thus, they signed a separate agreement under seal which provided that Gray would pay any such tax as Lawlor might be asked to pay by the tax authorities. When it became evident that Gray did not consider the second agreement as a valid agreement, Lawlor sued for a declaration that it was, and subsequently, through several actions by writ, forced Gray to pay the taxes levied. It was only after the taxes had been paid that the authorities charged Lawlor for interest payments. Gray refused to pay the interest and Lawlor consequently sued for damages for breach. Gray demurred citing estoppel and *res judicata*. On a preliminary issue Gibson J held that Lawlor was not estopped. He took the view that the cause of action was different from that which Lawlor pursued against Gray previously. His quest for a declaration that the second agreement was a valid agreement was necessitated by Gray's impending repudiation. At that time, there was no breach and no action for damages would lie. Similarly, the writs claiming payment of assessments of tax as they fell due were claims to enforce a debt as it fell due. There was no action for breach of contract in the previous action.

6. It can thus be seen that the facts as set out by Gibson J in Lawlor's case are clearly distinguishable. When Haco commenced Suit 403 it was relying on various allegations of dishonesty by Ong in his capacity as managing director of Haco. Those allegations have been proved and judgment pronounced. In my view, Haco is estopped in respect of prayer 1 because the very declaration it seeks is an issue which has been determined by a court of competent jurisdiction in previous litigation between the same parties.

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

7. Mr Wong saw a distinction between the present action and the previous suit in that Ong was sued in his capacity as a director in Suit 403 whereas the declaration sought here stems from the contract of employment of Ong as the managing director. For the reasons that I have set out above, I do not think that such a distinction can usefully be drawn. Furthermore, I do not think that a party ought to be permitted to obtain multiple declarations that a person was dishonest when the grounds for making that finding arise from the same set of facts or evidence. Otherwise, people who are not *au fait* with the facts may mistakenly believe that that person was found by various judges to be dishonest on different and separate cases. Such impressions would indeed be unfair to the man. The declaration sought in prayer 1 of the summons is an abuse of the process of the court as it is a duplicitous application. The declaration sought in prayer 2 as pleaded cannot stand on its own.

8. The affidavits filed by Ong in this summons indicate that he is still disputing the allegation of dishonesty. The correct procedure, therefore, for Haco is to commence an action by writ and plead the contract of employment with Ong; the judgment and findings in Suit 403; the demand made pursuant to that judgment for the transfer of shares; Ong's failure to comply; and a prayer that Ong be compelled to transfer the said shares. Haco may then proceed by way of summary judgment.

9. When this summons was first heard by Goh Joon Seng J on 30 April 1999 the learned judge adjourned the hearing for Haco to consider whether the procedure taken was correct and whether to continue with it. Haco stood by the procedure notwithstanding the indications given by the learned judge. Another major clue to them appears from the judgment of Gibson J in *Lawlor*'s case. While the question of whether Ong was dishonest is estopped by reason of issue estoppel, but a claim under clause 13 of the employment contract might not be.

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

Counsel failed to make the fundamental changes needed to found Haco's action. The matters pleaded in this summons are far too bald, utterly inadequate and wrong. The supporting affidavits are of no assistance as they do not constitute pleadings.

10. In the circumstances, this summons must be dismissed.

- Sgd -

Choo Han Teck

Judicial Commissioner

Choo Han Teck JC

Christopher Wong [Harry Elias Partnership] for the plaintiffs
P Suppiah and Elengovan Krishnan [P Suppiah & Co] for the defendant

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