Panatron Pte Ltd and Another v Lee Cheow Lee and Another
[2001] SGCA 49

Case Number : CA 147/2000

Decision Date : 04 July 2001

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ

Counsel Name(s) : Anand K Thiagarajan and Ramesh Appoo (Anand T & Co) for the appellants; Gan Kam Yuin (Bih Li & Lee) for the respondents

Parties : Panatron Pte Ltd; Another — Lee Cheow Lee; Another

Tort – Misrepresentation – Fraud and deceit – Elements of tort – Whether failure to act cautiously and to take steps to verify truth of representations a defence

JUDGMENT:

Cur Adv Vult

The facts

1. The first appellant, Panatron Pte Ltd ('Panatron'), is a company engaged, inter alia, in the business of dealing in automatic condensor cleaning system for air conditioning chillers. The second appellant, Phua Mong Seng ('Phua') was its founder and is the president or managing director of the company.

2. The first respondent, Lee Cheow Lee ('Lee'), is a certified public accountant by profession. Prior to the events that gave rise to the present dispute, he worked as a consultant in a company called Enterprise Promotion Centre Pte Ltd, which helped clients in their businesses. In May or June 1996, discussions took place between Phua and Lee, and arising from these discussions, Lee joined Panatron on 30 January 1997 and was employed as the senior vice president in charge of corporate affairs and also carrying out the duties as a financial controller. He also agreed to subscribe for 200,000 shares in Panatron at a total price of $200,000. Some eight months later, on 20 August 1997, he resigned from Panatron and left the employment immediately. As of that date, he had paid Panatron only $189,000 for the shares.

3. The second respondent, Yin Chin Wah Peter ('Yin'), was in the employ of Panatron for about two years. He joined the company on 31 May 1995 as the vice president on international marketing and was also the general manager of one of Panatron's subsidiaries, BTE Asia Pte Ltd, which dealt with the supply of a system, known as the Ball Technic system, which is involved in the heat exchange tube cleaning process in the air conditioning industry. He was also a shareholder of Panatron. On or soon after he joined the company, he agreed to subscribe for 300,000 shares of $1 each in Panatron. He had fully paid for all the shares he agreed to subscribe.

4. Prior to his joining Panatron, Yin had known Phua for sometime. They had both worked in a subsidiary of the Singapore Technologies group, where Yin was Phua's subordinate. Later, Yin left the company, and worked for Shell Asia Pacific Pte Ltd in Singapore, which distributed in the region, amongst other things, products manufactured by a firm, Chemtour of Queensland, Australia. Chemtour is owned by an Australian company, in which one Eral Dettrick ('Dettrick') and his wife hold all the shares. Effectively, Chemtour is run and managed by Dettrick.

5. While he was working in Shell Asia Pacific Pte Ltd, Yin came to be acquainted with Dettrick and developed a good business rapport with him. Later, after he had joined Panatron, Yin introduced Dettrick to Phua, and was instrumental in the negotiations between Phua and Dettrick for a licence to manufacture Chemtour's product in Singapore. Following the negotiations, a licence agreement was made on 22 September 1995 between Chemtour and Panatron, whereby Chemtour granted to Panatron the exclusive licence to use a technology to manufacture and sell, within the prescribed territories, certain waterproofing membranes and protective coatings in paints. After the execution of the licence agreement, Panatron purchased the necessary equipment

and renovated its factory and started production in January 1996.

6. Panatron's business relationship with Chemtour was shortlived. Panatron repeatedly fell into arrears with the royalty payments under the licence agreement and various problems seemed to emerge in the company. On 22 July 1997, Chemtour gave a formal notice to Panatron pointing out the breaches of the agreement and stating its intention to terminate the agreement. This was followed by the letter of 11 August 1997 from Chemtour's solicitor stating that the licence agreement would terminate on 23 August 1997, unless in the meanwhile Panatron paid up all the arrears of royalties. No payment, however, was made by Panatron, and the agreement was accordingly terminated on 23 August 1997.

7. Prior to that, on 20 August 1997, Lee gave notice of resignation from Panatron, and left the company immediately. Two days later, Yin gave notice of resignation and served out his notice and left the company on 22 September 1997.

8. Soon after the termination of the licence agreement, Dettrick formed a company in Singapore called Chemind Construction Products Pte Ltd, to take over the supply of the products, which were previously supplied by Panatron, to the various customers in Singapore, and both Lee and Yin had some involvement in that company. Presumably, because of these activities on the part of Dettrick, Lee and Yin, Panatron commenced an action against Lee, Chemind Construction Products Pte Ltd, Yin and Dettrick claiming damages for conspiracy on their part to injure Panatron and also claiming against Lee and Yin damages for breach of contract and breach of fiduciary duties. The claims were resisted. In the same action, both Lee and Yin in turn counterclaimed against Panatron and Phua for damages for fraudulent representations made to them inducing them to invest in Panatron and also for the balance of the unpaid remunerations due to them respectively.

9. The action was tried before Lai Kew Chai J. He dismissed the claim of Panatron for conspiracy and allowed the counterclaims of Lee and Yin for damages for fraudulent representations. Against his decision two appeals were brought. The first appeal, Civil Appeal No 146 of 2000, was brought by Panatron alone, and it was an appeal against that part of the decision of Lai J dismissing Panatron's claim for damages for conspiracy on the part of Lee, Yin and Dettrick. We heard the appeal, and at the conclusion we dismissed it with costs. The second appeal is the one now under consideration and is an appeal by Panatron and Phua against that part of Lai J's decision allowing Lee's and Yin's counterclaims for damages for fraudulent representations said to have been made to them inducing them to subscribe for the shares in Panatron.

The representations

10. We turn first to the representations said to have been made by Phua to Lee and Yin respectively. Lee alleged that the following representations had been made to him by Phua which induced him to subscribe for shares in Panatron:

> a. That Panatron and its subsidiaries were more profitable than they actually were.
>
> b. That the other directors and shareholders might object to Lee paying for the shares at a premium of only 35%, unless he accepted the offer immediately.
>
> c. That one Ivan Koo had already invested $200,000 in Panatron, bringing Panatron's issued capital to $2,000,000.
>
> d. That Phua himself had invested more than $500,000 in the capital of Panatron.

11. Lee said that all these representations were false. Panatron and the subsidiaries were not actually profitable; they were in fact making losses. The net returns on Panatron's investments in Chemind Pte Ltd (one of Panatron's subsidiaries) were negative. There was no basis for Phua's assertion that the other directors would object to Lee subscribing for shares at a premium of 35%, when in fact all the other shareholders were subscribing for shares at the same price. In particular, Ivan Koo was subscribing for shares in Panatron at that price, and Ivan Koo did not actually subscribe for any shares in Panatron until

after Lee had subscribed for the shares. It was also completely untrue that Phua had invested $500,000 in Panatron. He had invested only a sum of $270,000.

12. Yin said that Phua had made the following representations to him and induced him to subscribe shares in Panatron:

> a. That Panatron and its subsidiaries were more profitable than they actually were.
>
> b. That Panatron already had 120 customers and orders for more than 400 Ball Technic Systems.
>
> c. That Panatron had purchased over 60% of the shares in Sinnet Resources Pte Ltd.
>
> d. That the Ball Technic business was more productive and profitable than it actually was.
>
> e. That Phua himself had invested more than $400,000 in the capital of Panatron.

Similarly, Yin said that all these representations were false. He discovered that Panatron and its subsidiaries were not profitable; they were making losses. Panatron did not have 120 customers for the Ball Technic Systems; it had only 3 customers. As regards Sinnet Resources Pte Ltd, Panatron had no shares in that company. The Ball Technic business was in fact a slow business with hardly any major sales made in 1994 and 1995. Lastly, Phua did not have an investment of $400,000 in Panatron; his investments in Panatron was much less.

The law

13. The law as regards fraudulent representation is clear. Since the case of *Pasley v Freeman* (1789) 3 TR 51, it has been settled that a person can be held liable in tort to another, if he knowingly or recklessly makes a false statement to that other with the intent that it would be acted upon, and that other does act upon it and suffers damage. This came to be known as the tort of deceit. In *Derry v Peek* (1889) 14 AC 337 the tort was further developed. It was held that in an action of deceit the plaintiff must prove actual fraud. This fraud is proved only when it is shown that a false representation has been made knowingly, or without belief in its truth, or recklessly, without caring whether it be true or false.

14. The essentials of this tort have been set out by Lord Maugham in *Bradford Building Society v Borders* [1941] 2 All ER 205. Basically there are the following essential elements. First, there must be a representation of fact made by words or conduct. Second, the representation must be made with the intention that it should be acted upon by the plaintiff, or by a class of persons which includes the plaintiff. Third, it must be proved that the plaintiff had acted upon the false statement. Fourth, it must be proved that the plaintiff suffered damage by so doing. Fifth, the representation must be made with knowledge that it is false; it must be wilfully false, or at least made in the absence of any genuine belief that it is true.

Findings by the judge

15. The judge bore these principles in mind in considering the issue of the misrepresentations said to have been made by Phua to Lee and Yin respectively. He said at 101 and 102:

> 101 I turn to the claim for damages for fraudulent misrepresentation. The elements constituting a misrepresentation in the law of civil wrong requires it to be a statement of fact; this is the element with which this case is concerned in respect of all the allegations. There is no allegation which is a statement of opinion as such. The question in both counterclaims, in respect of every

> allegation that a misrepresentation has been made by Phua, is a question of fact. In other words, I have to decide if Phua had in fact and in truth told Lee and Yin the misrepresentations of facts as they had respectively alleged ....
>
> 102 Lee and Yin must allege and prove that they relied on the misrepresentations of Phua, as Phua had intended, and that as a result they had agreed to invest in Panatron and the group. As they allege that Phua had made fraudulent misrepresentations, and are suing for damages for deceit, they further have to allege and prove that Phua knew what he represented to be false or was reckless, without caring as to whether it was true or not. They must also prove that they suffered damages as a result of the misrepresentations: see *Derry v Peek* (1889) 14 App Cas 337 at 379.

16. Having set out the law, the judge turned to consider the evidence of Lee, Yin and Phua in some detail. He came to the conclusion that Phua did make the representations alleged to have been made to Lee and Yin respectively, and that Phua knew that these representations were false. In coming to this conclusion, he was, no doubt, affected by the credibility of these witnesses' testimonies. At one point he said: 'Phua was being disingenuous and dishonest in this part of his cross examination'.

With regard to the representations alleged to have been made to Lee, the judge said at 112:

> 112 ... In my judgment, Phua did make all the representations to Lee as Lee alleges. He knew, rather deceitfully, that they were all false. There is one misrepresentation of fact over which I have some reservations. I am not prepared to say that he was dishonest when he told Lee that Lee would play an important role in Panatron and that he would be its financial controller. What could possibly have passed through his mind was the eternal hope that Lee could come in, clean up the mess that Panatron was in and start afresh as from 1 May 1997. But he was being too optimistic. Since it is not deceitful to be overly optimistic, I am not prepared to find that he was dishonest when he made the representation about Lee's future role.

17. With respect to the representations made to Yin, the judge said at 117:

> 117 Considering the evidence as a whole, I am satisfied that Phua did make the fraudulent misrepresentations to Yin as Yin alleges, intending them to be acted upon and Yin did act on those deceitful misrepresentations and invested in Panatron.

18. It should be noted that the judge did not make a specific finding that Lee acted on the false representations made by Phua. However, it seems to us that this is implicit in his judgment. In the concluding paragraph, 120, the judge held that Panatron and Phua were liable to Lee and Yin in damages for the fraudulent misrepresentations made which they intended Lee and Yin to act on them and which in fact induced them to subscribe for the shares in Panatron.

The appeal

19. These are findings of fact made by the judge and in all points the judge's findings, in our view, satisfy the essential requirements of the law on fraudulent representations. Before us, it was not shown that the judge's findings were plainly wrong or were not supported by evidence or were against the weight of the evidence. In particular, it was not seriously challenged that Phua had made the representations that were said to have been made and that those representations were false. The main argument mounted on behalf of the appellants was that having regard to the respective positions of Lee and Yin and their

dealings with Phua, Lee and Yin could not have acted on any of the representations made by Phua. It is argued that experienced and knowledgeable business men like Lee and Yin could not have relied on the representations that were made. Lee was a certified public accountant and before his employment with Panatron was working as a business consultant with a company called Enterprise Promotion Centre Pte Ltd. His job then was to help and advise clients in their businesses, in particular in the restructuring of their businesses. He joined Panatron as the senior vice president. As for Yin, he has been working for some time. He first worked with a subsidiary of the Singapore Technologies group and was under Phua there. Later, he worked for Shell Asia Pacific Pte Ltd and then he accepted an appointment to Panatron's board as the vice-president of international marketing. Hence, neither Lee nor Yin was nave or a novice in business affairs. Both men had taken up employment with Panatron at the highest levels of management. It is therefore contended on behalf of the appellants that it is inconceivable that such experienced men would have relied substantially or at all on Phua's statements.

20. Admittedly, both Lee and Yin are experienced businessmen, and undoubtedly they must have made their own evaluation of the prospects of investing in Panatron. In this respect, by reason of the exposure and experience they had had, they must have relied, inter alia, on their own expertise and knowledge in deciding whether or not to invest in Panatron. However, it does not follow that they could not have been induced by the representations made by Phua. In this regard, the judge found as a fact that Phua had made the representations to them, which they said were made, and that these representations were false. These findings were not seriously challenged or shown to be plainly in error. The judge also found that both Lee and Yin acted on these representations and they made substantial investments in Panatron. With these findings, the most that can be said on behalf of the appellants was that both Lee and Yin relied partly on their own knowledge and expertise and partly on the representations made by Phua in deciding to invest in Panatron. In this event, the claims of Lee and Yin would still succeed.

21. In *Edgington v Fitzmaurice* (1885) 29 Ch D 459, certain material misstatements were made in a prospectus. The plaintiff was induced partly by his own mistake and partly by those statements to make an investment in the company, and subsequently suffered a loss. He took proceedings against the defendant for deceit. It was held that where the plaintiff was induced partly by his own mistake and partly by fraudulent misrepresentations made by the defendant, the latter would still be liable in an action for deceit. Cotton LJ said at p 481:

> It is not necessary to show that the misstatement was the sole cause of his acting as he did. If he acted on that misstatement, though he was also influenced by an erroneous supposition, the Defendants will be still liable. Did he act upon that misstatement? He states distinctly in his evidence that he did rely on the Defendants' statements, and the learned Judge found, as a fact, that he did, and it would be wrong for this Court, without seeing or hearing the witness, to reverse that finding of the Judge. We must therefore come to the conclusion that the statements in the prospectus as to the objects of the issue of the debentures were false in fact, and were relied upon by the Plaintiff.

22. On the same point, we find that the decision of the Court of Appeal in England in the case of *JEB Fasteners Ltd v Marks Bloom & Co (a firm)* [1983] 1 All ER 583 is instructive. That case concerned the tort of negligent misstatement which contains a similar requirement of reliance. This requirement was said to be simply another way of stating the issue of causation. Stephenson LJ in the Court of Appeal clarified the matter at pp 588 – 589:

> In such a case, the cause of action is the same as in all claims for damages for misrepresentation. The representation must be false, and it must induce the plaintiff to act on it to his detriment. If it does, he relies on it; if it does not, he does not. He may, of course, rely on other things as well. What operates on his mind, or motivates him, or influences him to act as he does, may be a number of things, some operating more or less strongly, one perhaps predominating, as the judge found here was the fact that the plaintiffs 'thought that Mr Godridge and Mr Wigg, in the form of BG Fasteners Ltd, would be the ideal vehicle to complement their existing business (see [1981] 3 All ER 289 at 301); another,

> not 'of critical importance' as the judge found (at 301), was the false accounts in this case. But, as long as a misrepresentation plays a real and substantial part, though not by itself a decisive part, in inducing a plaintiff to act, it is a cause of his loss and he relies on it, no matter how strong or how many are the other matters which play their part in inducing him to act. …
>
> …. if the plaintiffs' directors were motivated or influenced by the accounts to any substantial extent, there would be the necessary reliance on the misrepresentation they contained to make a case of the kind which the law takes into account, and sometimes describes in Latin as a causa causans, and the judge should have found for the plaintiffs. … If however, and only if, the false accounts had no real or substantial effect in inducing the plaintiffs' directors to take over the company would the misrepresentation they contained not be that sort of cause, but what the law puts out of account as a mere causa sine qua non, and it would be wrong, in my judgment, to regard the plaintiffs' directors as relying on it and acting as they did.

23. Reverting to the case at hand, as found by the judge, the misrepresentations had been made by Phua, and Lee and Yin respectively had been induced by the misrepresentations to invest in Panatron. The misrepresentations need not be the sole inducement to them, so long as they had played a real and substantial part and operated in their minds, no matter how strong or how many were the other matters which played their part in inducing them to act and invest in Panatron. If inducements in this sense are proved and the other essential elements of the tort are also made out, as is the case here, then liability will follow.

24. This is enough to dispose of the appeal. However, something should be said about the appellants' argument concerning the exercise by Lee and Yin of reasonable diligence in making their respective investments. It is argued on behalf of the appellants that Lee and Yin should nevertheless be denied success, because they failed to exercise reasonable diligence to discover the falsity of the statements, something they should have done, being knowledgeable and experienced businessmen. However, the law is clear. All that is required is reliance in the sense that the victims were induced by the representations. Once this is proved, it is no defence that they acted incautiously and failed to take those steps to verify the truth of the representations which a prudent man would have taken: *Central Railway of Venezuela v Kisch* (1867) LR 2 HL 99.

Conclusion

25. In the result, we dismiss this appeal with costs; but only one set of costs is allowed to Lee and Yin. There will be the usual consequential order for payment to them or their solicitors of the deposit in court as security for costs, with interest, if any.

Sgd:

Yong Pung How
Chief Justice

Sgd:

L P Thean
Judge of Appeal

Sgd:

Chao Hick Tin

Judge of Appeal

Copyright © Government of Singapore.