Primerock Limited v Wuu Khek Chiang George and Another and Another Suit [2003] SGHC 184

Case Number : Suit 1543/2001

Decision Date : 25 August 2003

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : K. Sathinathan and S.K. Murthi (S.K. Kumar & Associates) for the Second & Fourth Defendants (by counterclaim)

Parties : Primerock Limited — Wuu Khek Chiang George; East Coast Recreation Centre Pte Ltd

Contract – Fraud – Plaintiffs alleged that payments were made in return for financing to be provided by the second plaintiff – Whether fraud made out on the facts.

1 George Wuu is a director and majority shareholder of the East Coast Recreation Centre ("ECRC"). They were sued in this action by Primerock Limited, a Hong Kong company for failure to repay a loan of US$375,000 granted by Primerock to ECRC with George Wuu standing as guarantor. The loan was given in consideration of payment by ECRC of a sum of US$75,000 described in the contract as 'an establishment fee'. The loan was made on 16 May 2001. George Wuu and ECRC denied liability and pleaded illegal moneylending, conspiracy and fraud in their defence and counterclaim. Three parties were added as defendants in the counterclaim. They were Timothy Lim Soo Bin, Edwin Foo and Aseana Trade & Finance Limited ("Aseana"), a 'shell company purportedly registered in the British Virgin Islands. Timothy Lim was a director and shareholder of Aseana. Edwin Foo claimed only to be a shareholder. There was another director who did not feature much in these proceedings, namely Dalvinder Singh. The trial before me concerned only the counterclaim because Primerock had obtained summary judgment against George Wuu and ECRC and counsel informed me that they had since settled the matter. The counterclaim against Primerock was therefore withdrawn. The counterclaim against Edwin Foo was also withdrawn. The present contest was therefore between George Wuu and ECRC as plaintiffs in the counterclaim and Timothy Lim and Aseana as defendants in the counterclaim.

2 The principal witness for the two plaintiffs was George Wuu himself. He testified that in 2001 he was looking for funds in order to redevelop the East Coast Recreation Centre. Commerzbank Singapore was prepared to lend him or ECRC US$10,000,000 provided that they furnish a banker's guarantee for the equivalent sum. George Wuu testified that he was introduced to Edwin Foo by one of the tenants of ECRC and subsequently introduced to Timothy Lim by Edwin Foo. He told them about his search for funds and he was told that that could be arranged. Shortly thereafter, ECRC signed a contract dated 10 April 2001. By this agreement, signed between Aseana and ECRC, with George Wuu as 'Duly Appointed Agent', Aseana agreed to supply 'an Advice Note issued by a bank to a bank in the sum of United States Dollars Ten Million only (US$10,000,000.00) in the form set out in Schedule A attached but only upon receipt by the bank issuing the advice note of an acceptable guarantee from the client [ECRC] for repayment assured ninety (90) days before the expiry of the Bank Guarantee.' The consideration was stipulated to be US$375,000. Furthermore, in a previous letter of offer dated 9 April 2001, Aseana requested a non-refundable sum of US$25,000 being the 'administrative service fee' to be paid 'upfront' to Groupe Trinity. It transpired at trial that Groupe Trinity was under the sole proprietorship of Timothy Lim. That sum was paid as requested. The evidence from George Wuu showed that he and ECRC paid US$415,000 instead of the US$375,000 and US$75,000 under the 10 April contract. The details of the payments were as follows:

1. US$25,000 paid in Singapore dollars by cash cheque to Timothy Lim on 10 April 2001;

2. US$15,000 paid by telegraphic transfer from ECRC to one lord Philippe Sinclair on 23 April 2001;

3. US$15,000 in the form of £7,500 by telegraphic transfer from ECRC to Barrington London Capital Ltd on 12 May 2001;

4. US$100,000 from ECRC by telegraphic transfer to Lord Philippe Sinclair on 18 May 2001;

5. US$185,000 from ECRC by telegraphic transfer to Lord Philippe Sinclair on 18 May 2001;

6. US$50,000 by cash cheque and paid to Timothy Lim on 18 May 2001;

7. US$25,000 by cash cheque paid to Aseana and received by Edwin Foo on 28 May 2001.

3 Lord Philippe Sinclair was the alleged contact of Timothy Lim. George Wuu said that he had met Lord Sinclair in Paris and had also spoken with over the telephone. Lord Sinclair was one of the key persons involved in the history of the transactions now in dispute, but he was not called to testify by either party. Barrington London Capital Ltd claiming an address at 72 New Bond Street, London which it shared with Aseana's office in London was a company belonging to Timothy Lim. Aseana was purchased by Timothy Lim in early 2001. He said he did not register it in Singapore because he was not certain whether he would prefer to set it up as a branch or a subsidiary company. In the meantime, it operated in Singapore without any registration for business, and was sharing the office of ZDT Web.com Pte Ltd ('ZDT'). Timothy Lim testified that because he had not made up his mind whether to register Aseana as a branch or subsidiary in Singapore he decided not to have a bank account here in Aseana's name. Thus all Aseana transactions were dealt with in cash, or otherwise, utilised with bank accounts of ZDT or Groupe Trinity.

4 At about 10pm on the evening of 25 April 2001 Timothy Lim received a telefax from Lord Sinclair. It was a letter on the letterhead of the Standard Chartered Bank, Singapore, dated 25 April 2001 and addressed to the manager of Commerzbank AG, Singapore. It was purportedly signed by Lai Bee Lian, described in the letter as 'Senior Business Manager'. The letter was written to the attention of Mr Yak Yew Chee, who was an officer of the Commerzbank at that time. This telefax that Timothy Lim received stated as follows:

> 'We are pleased to advise you that we have agreed in principle to issue our bank guarantee for an amount of US$10,000,000 (United States Dollars Ten Million only) in favour of your client Mr George Wuu Khek Chiang. The bank guarantee will be issued within next 15 days subject to the completion of the terms and conditions as per agreement drawn between our clients and Mr Chiang.
>
> We request you to kindly advise Mr Chiang accordingly, without any responsibility or engagement on your part.'

Timothy Lim immediately re-transmitted this letter to George Wuu by fax. George Wuu gave it to Mr Yak of Commerzbank, who in turn, called Miss Lai Bee Lian of Standard Chartered Bank. Mr Yak and Miss Lai were subpoenaed only after trial had started to testify on behalf of the plaintiffs. Miss Lai said that the letter was a forgery because she did not sign it, and that at that time, her designation was not 'Senior Business Manager'. She reported the matter to the compliance department of Standard Chartered Bank and subsequently, also made a police report. In her police report she said that on 26 April 2001, after she had told Mr Yak that the letter did not come from Standard Chartered Bank, she received a telephone call from George Wuu who apologised to her and said that the matter was a 'misunderstanding'. He told her that 'someone from Standard Chartered Bank London would

contact [her] to clear up the misunderstanding'. Miss Lai pointed out that the letter could not have emanated from Standard Chartered Bank London because it was on the Standard Chartered Bank, Singapore letterhead. She also mentioned that on 25 April 2001, which must be before the alleged Standard Chartered Bank letter was faxed to Timothy Lim at 10pm, George Wuu tried to contact her but she was out of the office. He was attended to by her colleague.

5 George Wuu then told Timothy Lim that the Standard Chartered Bank letter was rejected by Standard Chartered Bank as having been issued by that bank. Timothy Lim told him that he would get in touch with Lord Sinclair who was the person making arrangements for these collateral letters. Several days later, Timothy Lim told George Wuu that Lord Sinclair had made arrangements with a German bank called Volksbank, Greven. Lord Sinclair, he said, had increased the amount to be guaranteed from US$10,000,000 to US$20,000,000. On 14 May 2001 Timothy Lim forwarded a copy, purportedly from the Volksbank, to George Wuu. The letter was similarly addressed to Mr Yak of Commerzbank, Singapore. It carried two signatures with Germanic names. The letter was dated 14 May 2001 and its contents were similar to the Standard Chartered Bank letter except that the guarantee was in respect of US$20,000,000 instead of US$10,000,000. George Wuu brought this letter to Mr Yak. Mr Yak testified that after the bad experience with George Wuu concerning the Standard Chartered Bank letter he would not wish to have business dealings with George Wuu. Hence, he told George Wuu politely that as the Greven bank was a small bank their letter of offer could not be accepted. George Wuu then went back to Timothy Lim.

6 Timothy Lim then told George Wuu that he would be arranging for a fresh letter of intent, through Lord Sinclair, from another bank. On 29 May 2001, George Wuu received a letter from Timothy Lim's secretary, Linda Ng, telling him to bring the Volksbank (copy) letter and 'whatever you have about East Coast Recreation Centre and the New Zealand Hotel' and 'any documents or information that will interest the banks in Istanbul'. He was informed, by this letter, that he would be meeting one Dr Harrison and a Mr Choban who was the 'former chairman of a large Turkish bank'. In the meantime, George Wuu had been making payments amounting to US$415,000 in respect of the agreement dated 10 April 2001. Furthermore, on 16 May 2001 he borrowed US$375,000 from Primerock. On the same day, George Wuu granted a general power of attorney to Timothy Lim to act for him in Europe, including Turkey. George Wuu testified that after receiving Linda Ng's letter of 29 May, he went to Istanbul.

7 There he met a person who introduced himself as 'Les Harrison' and another Mr Choban Hussein. They told him that for the projects he had in mind, US$20,000,000 would be inadequate and offered to help him obtain a loan of US$60,000,000. He accepted that offer and went with the two men to the Toprak Bank in Istanbul where he opened an account. He had been told that the 'commitment fee' that he had to pay Harrison and Choban for their assistance was 1% of US$60,000,000. George Wuu then arranged for his then solicitors Edwin Tay and Partners to transfer US$450,000 into his Toprak Bank account – he was unable to raise the full US$600,000. A few days later, Choban handed George Wuu a letter dated 14 June 2001 purportedly from IS Bank, Istanbul. This letter was addressed to George Wuu and stated that 'upon review of the collateral and documentation provided by our client, we are pleased to inform you that [our] institution has approved your request for funding in the amount of US$60 million.' George Wuu testified that when this letter was given to him, he was asked to transfer the US$450,000 in his account to Choban's account with the same Toprak Bank. He was further told that he (George Wuu) would be able to draw down the US$60,000,000 after Choban, Timothy Lim and Harrison made contact with Lord Sinclair. George Wuu then wrote on a piece of paper authorising the Toprak Bank to transfer all his money in the bank to Choban Hussein.

8 George Wuu never saw a cent of the US$60,000,000. He testified that when he was not

able to draw down, he went to check with Volksbank at Greven and was told that the letter purportedly given by the Volksbank was, like the Standard Chartered Bank letter, a forgery. He never saw Choban and company again; he never saw any record of the transfer of his US$450,000 to Choban's account; he never heard from either IS Bank or the Toprak Bank; and so he sued Timothy Lim and Aseana for the return of US$415,000 and US$450,000 respectively.

9 George Wuu and ECRC expended a great many paragraphs in their defence against the Primerock claim, citing that they were misled by Timothy Lim and Edwin Foo. The basic ground was that Timothy Lim and Edwin Foo, together with others, conspired to defraud George Wuu and ECRC. This first part of their defence and counterclaim floundered and sank after Primerock obtained summary judgment. The counterclaim continued with the earlier allegations as well as the allegation of misrepresentation by Timothy Lim and Aseana that they were able to get an unconditional banker's guarantee for US$10,000,000 from the ABN-AMRO Bank in Holland. This did not materialise, and eventually, what George Wuu was given was the fake letter from Standard Chartered Bank. George Wuu went on to plead that based on the representations by Timothy Lim he was induced into making all the payments that he, and ECRC, made.

10 Although the defence and counterclaim had a mixture of fraud and non-fraud elements, the case as presented was essentially grounded on fraud because there was virtually no evidence to substantiate a breach of contract. That was largely because the precise contract was not clearly and specifically pleaded, nor were the breaches of that contract set out with any precision. Insofar as the allegation of misrepresentation concerning the letter of guarantee from the ABN-AMRO Bank was concerned, it cannot succeed because George Wuu had clearly accepted, without qualification, the Standard Chartered Bank letter in replacement, and thereafter, the Volksbank letter in further replacement. The principal evidence of both plaintiffs came from the first plaintiff, namely George Wuu himself. As a witness, George Wuu was pleasant and charming. He knew his lines well, and answered confidently, and often persuasively, but he was not tested on some key points. A witness like George Wuu would have little difficulty persuading a court to accept his evidence in many a case. However, in this case, the nature and circumstances that led to his, and ECRC's, financial predicament were so bizarre and incredible that only a person who is completely and utterly naive or, completely and utterly greedy, would have believed Timothy Lim, Lord Sinclair, Dr Harrison and Choban Hussein, and poured money in large sums virtually for them to scoop. Herein, is George Wuu's problem. I do not think him so utterly naive at all. On the contrary, he appears most intelligent and by all counts, a successful businessman and an able manager of the huge enterprise known as the East Coast Park Recreation Centre. He might have been greedy, even very greedy, but I do not believe that he was so blinded by greed that he cast away every gram of caution in his dealings with Timothy Lim and company in the manner narrated by him. He had not given any explanation to account for his gullibility. How did he expect to receive a bank guarantee for US$10,000,000 by putting up only US$375,000? This was later increased to US$20,000,000 with the am US$375,000. And finally, US$60,000,000 for a mere US$600,000? If he would only read the letters purportedly from Standard Chartered Bank and Volksbank, he would have realised that the letters, fake as they might have been, only stipulated that the bank would provide the guarantee only when they are satisfied that security was in place. There was no mention of the security amount, but it does not require much to assume that it cannot be 1% - not when the capital loan was US$60,000,000. Unlike Miss Lai Bee Lian who went straight to the police, George Wuu produced no evidence (save some vague reference by his counsel of going to the Commercial Affairs Department) that he had reported the alleged fraud to the police.

11 Lord Sinclair was someone he hardly knew; and Harrison and Choban were people he was meeting for the first time. He claimed to have become friends with Timothy Lim, but even so, the friendship, by his account was a nascent one. Most importantly, his claim for the return of

US$450,000 which was transferred to Choban was not proved. Even if this was not a case founded in fraud, the least that he must do is to prove the payment to Choban. He could not even prove that he had opened a bank account in Toprak Bank. Although he said that his Turkish lawyer tried to obtain his personal banking documents and information they were not successful. But his lawyers did not come to verify that. Without more, I am unable to accept George Wuu's evidence that he had written his instructions to the Toprak Bank manager to transfer his money into Choban's account. No plausible explanation was given as to why he was persuaded to pay US$450,000 when his earlier payment of US$415,000 bore no fruit but a basketful of suspicious circumstances.

12 After the blatant attempt at deception with the bogus Standard Chartered Bank letter, George Wuu ought to have distanced himself from Timothy Lim the way Mr Yak distanced himself (and Commerzbank) from him. Instead, George Wuu leapt to accept the next promise – an increase of the loan guarantee from US$10,000,000 to US$20,000,000. He did not stop to ask why would Timothy Lim or Lord Sinclair be willing to offer security for US$20,000,000 for the same price? And so I am left to wonder why George Wuu did not ask himself that question. He was promised ABN-AMRO Bank, then Standard Chartered Bank, then Volksbank. Why would IS Bank be any different? Even if hope flickered long in his heart, he ought to have taken at least some precaution before parting with any more money. There were simply too many obvious questions that had not been addressed, let alone answered. For these reasons alone, the claims by George Wuu and ECRC would be dismissed.

13 It is appropriate to focus on the defence at this moment. The defendants had only one witness, Timothy Lim himself. His evidence centred on the strict terms of the 10 April 2001 contract. Timothy Lim maintained throughout the trial that that was the only agreement he or Aseana had with George Wuu and ECRC. He said that so far as Aseana's obligations under that contract was concerned, they had been discharged. If he reads the 10 April contract carefully he will appreciate that on the evidence, that contract was not acted upon by either side (other than the payment of US$415,000 by George Wuu). There was no evidence that ECRC having given any guarantee to the bank issuing the advice note as stipulated in the contract. In any event, the plaintiffs' case had floated away from this contract into the arrangement to back a financing of US$20,000,000 and even further away by the US$60,000,000 deal.

14 There was as much mystery in the conduct of Timothy Lim and Aseana as there were in that of George Wuu and ECRC. Photocopies of Aseana's incorporation in the British Virgin Islands were produced, but other than that Aseana, with no real office other than that it says it has in New Bond Street, and the shared premises of ZDT Web.com Pte Ltd, was a virtual corporate ghost. On the evidence of this case I will not accept photocopies of documents as reliable record. It had no bank accounts, nor any corporate records of any kind. It appeared to have existed to manage the affairs of three clients, George Wuu, one Mr Chang from Taiwan, and one Harry He.

15 Aseana had Edwin Foo as its shareholder but he came to court as George Wuu's witness. He appeared to be another intelligent man. Yet he, too had an incredible story to narrate. He said that he was only a shareholder but not director of Aseana. He paid $6,000 for his one share in Aseana. He had no share certificate issued to him and no record on this investment. Timothy Lim were to explain later on that Edwin Foo did invest $6,000 but that was only a 'contribution' to Aseana's capital. Edwin Foo sought to give the impression that his presence with Timothy Lim was merely in the role as Timothy Lim's 'driver'.

16 Timothy Lim's secretary, Linda Ng, also testified for George Wuu. She said that Timothy Lim had borrowed money from her and she was suing him and Aseana for it. The comic irony is that Timothy Lim and Aseana purported to be the arrangers of multi-million loans had to borrow money from their clerical secretary. Wading through all the evidence in these proceedings is like wading

through a swamp - dirty and nothing solid. I, therefore, had no hesitation in dismissing the plaintiffs' case. The only aspect of this case that troubled me a little concerned the question as to costs. In view of my finding that Aseana was not adequately proved to be a legal entity, no costs would be awarded to it. Costs to Timothy Lim will follow the event only because, in my view, the incredibility and unreliability of his evidence was surpassed by that of George Wuu.

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