Samwoh Resources Pte Ltd v Lee Ah Poh
[2003] SGHC 69

Case Number : Suit 829/2002

Decision Date : 31 March 2003

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Ronald Choo (Rajah & Tann) for the plaintiffs; S Thulasidas (Ling Das & Partners) for the defendant

Parties : Samwoh Resources Pte Ltd — Lee Ah Poh

1. The plaintiffs, Samwoh Resources Pte Ltd ("Samwoh") sued the defendant, Madam Lee Ah Poh ("Rosalind"), to recover losses suffered by them as a result of her alleged fraudulent or negligent misrepresentation of facts in relation to machines that had been used by her companies. They claimed that they were induced by her to purchase machines and equipment that could not be accounted for. Samwoh also claimed damages from Rosalind with respect to allegedly defamatory remarks in letters that were addressed to some of their business associates. Rosalind denied having caused any loss to Samwoh and counter-claimed for $12,045.79, which she alleged was due to her from Samwoh.

2. At the commencement of the trial, Rosalind withdrew her counter-claim against Samwoh. On the second day of the trial, Samwoh agreed to abandon their claim for damages with respect to defamation after she agreed to, among other things, write to those who had received the allegedly defamatory letters to withdraw the offending words in those letters. With these developments, the trial concerned only one issue, namely whether or not Rosalind had caused loss to Samwoh by misrepresentation and/or fraud.

Background

3. In early 2001, the Ministry of Defence ("MINDEF") called for tenders for a project involving quarry shaping work and disposal of rocks at Mandai (the "quarry project"). On 31 January 2001, Samwoh and Ng Huat Foundations Pte Ltd ("NHF") entered into a pre-bid agreement to co-operate on the quarry project. NHF was part of the Ng Huat group of companies, which included Ng Huat Engineering Pte Ltd and Ng Huat Heavy Equipment Pte Ltd. Rosalind was a director and majority shareholder of NHF. She was also the company secretary of a number of companies in the Ng Huat group while her husband, Tony Ng, was a director of several companies in the said group.

4. NHF did not have the requisite Building and Construction Authority grading to be in a position to tender for the quarry project and Samwoh submitted a tender in their own name. In February 2001, the results of the tender were known. Samwoh's bid was the best priced and they were awarded the quarry project contract in June 2001.

5. Prior to the awarding of the quarry project contract to Samwoh, the parties had decided that a new company, Gali Batu Resources Pte Ltd ("Gali Batu"), which was incorporated on 27 March 2001, would be the joint venture company to handle the quarry project. Half of the issued share capital in this new company was held by Samwoh's managing director, Mr Elvin Koh ("Elvin"), while the remaining half was held by Rosalind. Samwoh said that Elvin's Gali Batu shares were held by him on their behalf while Rosalind held her shares on behalf of NHF. Rosalind contended that she did not hold her Gali Batu shares on behalf of NHF.

6. Throughout 2001, Samwoh and NHF discussed but failed to conclude a joint venture agreement

which, according to the former, was intended to set out, among other things, the financing for Gali Batu, decision-making procedures, operation of bank accounts, provision of bank guarantees, and the sharing of profits and liabilities. During this period, the Ng Huat group faced financial difficulties. Ng Huat Engineering Pte Ltd applied to be placed under judicial management while creditors petitioned to wind-up Ng Huat Heavy Equipment Pte Ltd and to have Rosalind's husband, Tony, declared a bankrupt.

7. Apart from failing to agree on the terms of the joint venture agreement, the parties clashed over the operation of Gali Batu. In due course, the relationship between Samwoh and Rosalind deteriorated to such an extent that the former decided to take over the quarry project from Gali Batu. Samwoh alleged that Rosalind defamed them when she informed a number of third parties that Samwoh were illegally disposing of Gali Batu's rocks. Eventually, the dispute between the parties regarding the quarry project was referred to arbitration and Elvin petitioned for the winding-up of Gali Batu. On 12 August 2002, an order was made for the winding-up of Gali Batu.

8. The parties filed voluminous material in this action to show that the other party breached their obligations in relation to the quarry project. Most of these documents shed no light on the single issue before the court, namely whether or not Rosalind is responsible for the loss suffered by Samwoh when they paid for equipment that could not be accounted for. For a better picture of the dispute relating to the missing equipment, it ought to be noted that prior to January 2001, the Ng Huat group had been engaged in quarry work for the Housing and Development Board in Mandai. The machines had been put to work on the same site where MINDEF required contractors for its own quarry project. Much of the Ng Huat group's equipment had been left behind on the project site and it was thought that Gali Batu should acquire some of these machines for use in MINDEF's quarry project.

9. The equipment in question had been acquired by the Ng Huat group under hire purchase arrangements. Tokyo Leasing (Singapore) Pte Ltd ("Tokyo Leasing"), the finance company which financed the purchase of the equipment (the "Tokyo Leasing equipment"), insisted that the said equipment be purchased from them and not from the Ng Huat group. It was agreed that Samwoh would purchase the said equipment from Tokyo Leasing and that the equipment would subsequently be transferred to Gali Batu as Samwoh's contribution towards the financing of that company.

10. After paying Tokyo Leasing, Samwoh wanted Gali Batu's accounts to be updated to record their contribution of the Tokyo Leasing equipment to that company. However, Gali Batu's assistant accountant, Ms Joanna Soo ("Joanna"), a former employee of the Ng Huat group, informed Samwoh that some of the Tokyo Leasing equipment could not be accounted for. In fact, some of the said equipment had, to her knowledge, already been sold by the Ng Huat group quite some time ago.

11. Subsequently, Price Waterhouse Coopers conducted a stock take of Gali Batu's assets and confirmed that a number of the Tokyo Leasing equipment, including welding machines, Kobelco excavators and Airman generators, could not be located. The liquidator of Ng Huat Heavy Equipment and the judicial manager of Ng Huat Engineering denied any knowledge of the whereabouts of the missing equipment.

12. Samwoh were placed in an unenviable position as Gali Batu could not pay them for the missing Tokyo Leasing equipment and Tokyo Leasing were not liable to compensate them because they had signed an acknowledgement that all the goods had been received "as per the terms and conditions of the … agreement". As a result, Samwoh, which contended that they would not have purchased the missing equipment from Tokyo Leasing had Rosalind not misrepresented to them that the missing equipment formed part of the inventory of the Ng Huat group, instituted this action against her to recover their loss.

Elements of the tort of deceit

13. The law on fraudulent misrepresentation and the tort of deceit was considered at length by the Court of Appeal in *Panatron Pte Ltd v Lee Cheow Lee* [2001] 3 SLR 405. LP Thean JA, who delivered the judgment of the Court, said as follows at p 409:

> The law as regards fraudulent representation is clear. … [I]t 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*, … 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.
>
> 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 …. 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.

14. It is clear that the standard of proof for an allegation of fraud is higher than the ordinary standard in civil cases. Even so, I was satisfied that there is sufficient evidence that Rosalind had much more to do with the sale and purchase of the missing equipment than she cared to admit and that all the five elements of the tort of deceit referred to in the preceding paragraph are present in this case.

(a) Whether there was a false representation

15. Samwoh's managing director, Elvin, testified that Rosalind told him in February 2001 that two companies in the Ng Huat group of companies had in their inventory equipment that were suitable for the quarry project and assured him that the equipment in question could be immediately mobilised for the project. He understood this to mean that the equipment and machines were at the Mandai quarry. Trusting her, he allowed her to handle some of the paper work in relation to this purchase and did not conduct a physical inspection of the equipment. He proceeded to negotiate the purchase of the machines from Tokyo Leasing on the basis of the list and value of the equipment that was furnished by her.

16. Rosalind did not deny that she and her husband had suggested to Elvin that the equipment in question could be purchased for use on the quarry project. However, she disagreed with Elvin about the extent of her involvement in Samwoh's purchase of the Tokyo Leasing equipment and contended that she gave no assurance that the said equipment could be accounted for or could be immediately mobilized.

17. In the circumstances of this case, there can be no doubt that Rosalind owed Samwoh and Elvin a duty of care. I accept Elvin's evidence that Rosalind informed Samwoh that the Ng Huat group had on their hands equipment that could be acquired for the Gali Batu project and that she falsely represented to them that everything regarding the purchase of the Tokyo Leasing equipment was in

order. It must not be overlooked that the negotiations for the purchase of the equipment from Tokyo Leasing took several months and it was not until January 2002 that the deal was sewn up. Rosalind, who had planted the idea of transferring the Ng Huat equipment to Gali Batu almost a year earlier, was clearly interested in the purchase by Samwoh of the equipment from Tokyo Leasing. Such a purchase would ease to some extent the financial woes of the Ng Huat group, which owed Tokyo Leasing a huge sum of money, and forestall any winding-up action by Tokyo Leasing. Her deafening silence throughout the period when she took an active part in helping Samwoh conclude the deal with Tokyo Leasing reinforced the representation that the Ng Huat group had all the Tokyo Leasing equipment in their hands when this was not the case.

(b) Whether or not the representation was intended to be acted upon

18. Rosalind's false representation, whether by words or conduct, was made with the intention that it would be relied upon by Samwoh. She and Elvin were the only shareholders of Gali Batu and she must have known that Samwoh wanted Gali Batu to have sufficient equipment to ensure that their own obligations to MINDEF in the quarry project were fulfilled. After all, Samwoh, and not Gali Batu, were responsible to MINDEF for the quarry project. She knew that Samwoh relied on her for the purchase of the Tokyo Leasing equipment as Elvin left some of the paper work relating to the purchase to her and signed letters drafted by her on Samwoh's letterhead.

(c) Inducement

19. As for the third ingredient of the tort of deceit, namely inducement, Samwoh were clearly induced by her representation as they paid for the Tokyo Leasing equipment without checking the condition and whereabouts of the said equipment. Whether or not Samwoh had other reasons to purchase the Tokyo Leasing equipment is not relevant so long as Rosalind's false representation played a part in inducing them to pay for the Tokyo Leasing equipment.

(d) Whether Samwoh suffered damage

20. Samwoh suffered damage as a result of Rosalind's misrepresentation as they paid for equipment which could not be accounted for. As a result, they were unable to get Gali Batu to pay for the missing equipment.

(e) Whether Rosalind knew that the representation was false

21. I have no doubt that Rosalind knew that her representation was false. She must be taken to task for initially denying that any of the equipment purchased by Samwoh from Tokyo Leasing was missing. In para 12 of her affidavit filed in the proceedings to wind-up Gali Batu, she declared that non-existent equipment only existed "in the figment of [Elvin's] imagination". In para 19 of her affidavit of evidence-in-chief, Rosalind again denied that money had been paid for missing equipment as she stated as follows:

> The Plaintiffs must have inspected all the hire purchase equipment before making their sale to Gali Batu. They must have known what they were purchasing from Tokyo Leasing…. I therefore believe that the Plaintiffs received all the hire purchase equipment but are making false accusations against me because they have a grudge against me arising out of the Gali Batu/Mandai Project/Ng Huat Foundation dispute with the Plaintiffs.

22. I do not, for one moment, believe that Rosalind, who holds a Masters of Business Administration degree from Brunel University and played an important role in both the Ng Huat group and Gali Batu, was unaware of the whereabouts of the Tokyo Leasing equipment when she was helping Samwoh to purchase the Tokyo Leasing equipment. She did not deny that she had signed a number of invoices relating to the sale of some of the Tokyo Leasing equipment long before Samwoh paid for them. Furthermore, she updated an assets list, which showed the status of equipment utilised by the Ng Huat group and provided information on equipment that had already been sold by the group. In any case, she admitted that she knew that the Ng Huat group had been selling equipment, in respect of which the finance companies had not been paid in full. When cross-examined, she said as follows:

> Q. You knew that Ng Huat had a practice of selling equipment that was on hire purchase?
>
> A. Yes, they were sold to redeem….
>
> Q. I put it to you that Ng Huat has a practice of selling equipment on hire purchase.
>
> A. If project ends and we have no use for the equipment, we sell.

23. What must also not be overlooked is that for unexplained reasons, Rosalind signed an invoice for the sale by Gali Batu of two of the Tokyo Leasing equipment long before Samwoh purchased these two machines from Tokyo Leasing. Although she was very much a key player in Gali Batu, she shed no light on why Gali Batu sold machines which were in Ng Huat's inventory without the knowledge and consent of Tokyo Leasing and why she did not mention this sale to Elvin. It is also worth noting that when she drafted a letter for Samwoh to send to the judicial managers of Ng Huat Engineering Pte Ltd with respect to the purchase of the Tokyo Leasing equipment, she added a sentence to confirm that the equipment was being purchased on the basis of "whether the items were identified or not". It was suggested that she added this sentence because she knew that some of the Tokyo Leasing equipment had already been sold. Rosalind could not explain satisfactorily why the said sentence was inserted and when it was put to her during cross-examination that the judicial managers had requested these words to be inserted in the letter from Samwoh because they could not find some of the said equipment, she conceded that she did not know if this was the case.

Contributory negligence

24. I now turn to Rosalind's assertion that Elvin should have checked the position for himself before paying for the Tokyo Leasing equipment. I agree with her but it does not lie in the mouth of a person who is guilty of fraudulent misrepresentation to complain about the representee's contributory negligence. In *Panatron Pte Ltd v Lee Cheow Lee* [2001] 3 SLR 405, 412, LP Thean JA, who delivered the judgment of the Court of Appeal, said as follows:

> [T]he 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 representations which a prudent man would have taken: *Central Rly Co of Venezuela v Kisch* (1867) LR 2 HL 99.

Conclusion

25. Towards the end of the trial, Rosalind said that it was possible that some of the missing Tokyo Leasing equipment could be at another construction site. She added that neither she nor the Ng Huat group could gain access to that site. Such a revelation so late in the day showed how she clutched at straws to salvage her hopeless position. After all, even if the missing equipment could be located at that site, she could not say that NHF was in a position to hand over the said equipment to Gali Batu..

26. After having carefully considered all the available evidence and the demeanour of the witnesses, I hold that Samwoh have discharged the burden of proving that Rosalind was guilty of the tort of deceit. As such, they are entitled to damages, which will be assessed by the Registrar. Samwoh are also entitled to costs.

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