Worldwide Convention Planners Pte Ltd v Lee Khiam Long and Others
[2008] SGHC 152

Case Number : Suit 578/2007

Decision Date : 15 September 2008

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Tan Bar Tien and Quek Seng Soon Winston (B T Tan & Co) for the plaintiff; Tan Kah Hin (Choo Hin & Partners) for the first defendant; N Sreenivasan, Shankar s/o Angammah Sevasamy (Straits Law Practice LLC) for the second, third and fourth defendants

Parties : Worldwide Convention Planners Pte Ltd — Lee Khiam Long; Poh Lye Yee Alan; Poh Jian Xiong Christopher; Chris Lyn Investment Pte Ltd

Companies – Directors – Duties

15 September 2008 Judgment reserved.

Choo Han Teck J:

1 The plaintiff was incorporated in 1995 (with 300,000 shares) to carry on the business of organising conventions and events. The first defendant held 246,000 shares of which 180,000 were in trust for the second defendant. The first defendant was then the managing director of the plaintiff. One Madam Tan Siew Hua (wife of Mr Gilbert Goh) held 54,000 shares in trust for Mr Gilbert Goh. Mr Gilbert Goh was a consultant of the plaintiff, whose business was generated largely from the contacts of the second defendant. The shareholding was thus as follows:

1. First defendant - 66,000
2. Gilbert Goh - 54,000
3. Second defendant - 180,000

2 In December 2000, the plaintiff purchased the property known as 51A/B Neil Road ("the property") for $2,400,000. The plaintiff carried on its business from the third floor of the property. When the second defendant decided to give up his shares in the plaintiff he told Mr Gilbert Goh and the first defendant. At about the same time Mr Gilbert Goh asked the second defendant for financial assistance. The second defendant than told Mr Gilbert Goh that he would sell his 180,000 shares and let Mr Gilbert Goh keeps the proceeds. Mr Gilbert Goh testified in court that in addition to that, the second defendant had also promised him further sums of money. This the second defendant denied. The first and second defendants and Mr Gilbert Goh subsequently decided to sell the property. A valuation report dated 3 April 2006 valued the property at $2,050,000. It was sold to the second defendant and his son (the third defendant) who bought it through the fourth defendant for tax purposes. The completion of the sale took place on 29 January 2007.

3 On 30 August 2006, the first defendant, and Mr Gilbert Goh met the plaintiff's company secretary, Miss Pamela Neo ("Miss Neo") at her office and there discussed and resolved that the property be sold to the second and third defendants; the payment of $42,000 to the first defendant

as director's fees; payment of $58,200 to the company called "Your Holiday Planners Pte Ltd" ("YHP") which was owned by Mr Gilbert Goh; and the payment of $510,000 divided to the shareholders. The plaintiff disputed that the resolutions were passed, and if they did, were back-dated. After considering the documents and the oral testimonies of Mr Gilbert Goh, the first defendant, and Miss Neo, I am of the view that the resolutions were validly passed.

4 The next important event occurred on 8 September 2006 when Mr Gilbert Goh contracted to sell his 54,000 shares together with the second defendant's 180,000 shares to Air Sino Euro Associates Travel Pte Ltd ("ASA") for $150,000 with an additional $30,000 if profit forecasts were met. The parties acknowledged that the contract was made with the knowledge that the property had been sold to the second and third defendants. The sale of the 234,000 shares was a transaction between Mr Gilbert Goh and Mr Albert See ("Mr See"), the owner of ASA. The shares were fully transferred to ASA by 30 January 2007.

5 The plaintiff's claim in this action against the first defendant was based on allegations of breaches of fiduciary duties as director. The specific allegations were that, first, he had conspired and assisted the second defendant to sell the property "without the consent or approval of the board of directors or shareholders in a general meeting." Secondly, that the first defendant ought to have acted against the second and third defendant when the latter were in breach of the terms of the option for the sale of the property. Thirdly, he declared $510,000 as dividends on 30 August 2006 in order to siphon the plaintiff's funds for the second defendant's benefit. Fourthly, falsifying and manipulating the accounts of the plaintiff by recording the payment of $40,000 as dividends from Madam Tan Siew Hua's account to the first defendant's account as "costs of sales". Fifthly, paying $58,200 to YHP when there was no basis for that payment. Finally, in backdating the four resolutions to 30 August 2006 when they were in fact passed in October 2006.

6 I am of the opinion that the plaintiff's claims in this action to be unmeritorious and lacking in proof. Mr See who, as the owner of ASA, was the real plaintiff. The plaintiff sought to corroborate its claim with the evidence of Mr Gilbert Goh, a witness whose evidence I did not find to be reliable. He was constantly in debt, constantly seeking the benevolence of the second defendant, and when he ran out of goodwill from the second defendant, turned to Mr See instead. It was Mr Gilbert Goh who negotiated the sale of the shares with Mr See directly. Nobody else was involved. Whatever representations that might have been made about the plaintiff to Mr See would all have been made by Mr Gilbert Goh. Mr Gilbert Goh tried to create the impression in court that there was no discussion among the shareholders and Miss Neo that the property would be sold to the second defendant. If that were so, it was most improbable that he could have inserted cl 2 in the sale of shares agreement with ASA on 8 September 2006 that reads as follows –

> For the avoidance of doubt, the [plaintiff's] property known as Nos. 51/51A/51B Neil Road, Singapore 088829 with a net book value of S$2,485,894 as at 31 December 2005 was sold on 27 July 2006 at Singapore Dollars Two Million Fifty Thousand Only (S$2,050,000.00).

More crucially, the sale was ratified by all three shareholders, including Mr Gilbert Goh. Even if I had accepted that as the resolution of the shareholders, or that it was a directors' resolution, the incontrovertible fact remained that Mr Gilbert Goh knew and acquiesced to the sale before ASA contracted to buy its shares.

7 ASA clearly bought and paid for the shares of the plaintiff without the property. Otherwise the value of the shares would have been much higher. I do not accept Mr See's allegation that he was misled by the company's accounting records. I did not think that his claim was made in good faith in the sense that he had a genuine grievance; but I shall not speculate as to what his motives were for

instituting this action. No expert accountant evidence was adduced to show what was wrong with the way the accounts had been kept. Miss Neo might not be an expert accountant, but there was no evidence to establish that she had been negligent in her duties and I accept her evidence as reliable. And even so, the action as pleaded would have to be amended. There was no accounting evidence to support the plaintiff's counsel, Mr Tan Bar Tien's ("Mr B.T. Tan") submission that the payment of the $510,000 as dividends was wrongful. Even if it was, I agree with Mr Sreenivasan, counsel for the second, third, and fourth defendants, that all that the second defendant would be liable for was the sum of $306,000; but it would also mean that the plaintiff had to amend its pleadings. This it had not done, the plaintiff elected to stand by the case and argument put forward by Mr B.T. Tan on its behalf.

8 Mr B.T. Tan also submitted that the plaintiff had the right to enforce its rights against its directors. That may be so, but the wrongs that his client had alleged against the first and second defendants could only succeed if it was proved that the accounts of the plaintiff were falsely recorded (and if so, what loss accrued to the plaintiff), or that the plaintiff's property was sold to the disadvantage or prejudice of the plaintiff. Neither of these basic claims had been proved. Mr Justine Wee, the solicitor who acted in the sale and purchase of the property testified on the defendants' behalf that the transaction was validly and properly completed. There was no basis to say that there was bad faith just because the vendor and purchaser agree to a longer time to complete.

9 For the reasons above, the plaintiff's claim is dismissed. The first defendant's counterclaim for $111,122.25 was not challenged since no officer from the plaintiff gave any evidence to challenge the evidence of the first defendant. Mr See was not a director of the plaintiff. None of its directors testified at trial. I accept the evidence of the first defendant on each of his claims. The documentary supports adduced by him were not challenged. In the premises, I grant judgment on the counterclaim by the first defendant. The fourth defendant alleged that the plaintiff did not execute the tenancy agreement offered to it and was thus a trespasser on the property from February to August 2007. However, the failure to execute the tenancy agreement alone is not sufficient evidence of trespass. Since this was not clearly pleaded and proved, the fourth defendant's counterclaim for trespass is dismissed. I will, however, allow its claim for the wrongful caveat lodged on 26 September 2006 and order that damages, if any, to be assessed.

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