Chiang Sing Jeong and another *v* Treasure Resort Pte Ltd and others [2010] SGHC 65

Case Number : Suit No 568 of 2007 (Registrar's Appeal Nos 26 and 27 of 2010)

Decision Date : 01 March 2010

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Chopra Sarbjit Singh (Lim & Lim) for the plaintiffs; Tan Teng Muan (Mallal & Namazie) for plaintiff in Suit 581 of 2007; Kronenburg Edmund Jerome and Lye Hui Xian (Braddell Brothers) for the first defendant; Harpreet Singh Nehal SC and Vanathi S (Drew & Napier LLC) for the second, fourth and fifth defendants; Alvin Tan (Wong, Thomas & Leong) for the seventh defendant.

Parties : Chiang Sing Jeong and another — Treasure Resort Pte Ltd and others

Civil Procedure – Discovery of documents

1 March 2010

Woo Bih Li J:

Introduction

1 In Summons No 5521 of 2009, an assistant registrar ordered the first defendant Treasure Resort Pte Ltd ("Treasure") to make discovery to the plaintiffs Chiang Sing Jeong ("Chiang") and Cafe Aquarium Pte Ltd ("Cafe Aquarium") of various documents. The second defendant Maxz Universal Development Group Pte Ltd ("MUDG"), the fourth defendant Tan Boon Kian ("Rodney") and fifth defendant Poh Ban Leng ("Poh") were dissatisfied with the order for Treasure to make discovery of one set of documents, *ie*, Treasure's general ledger for Account Nos 4651/001 and 4650/000 for a four-year period from December 2005 to December 2009. Hence, they appealed. I will refer to them as "D2, D4 and D5" collectively. After hearing arguments, I allowed their appeal. The plaintiffs have intimated that they will be appealing against my decision.

Background

2 Treasure is a company incorporated to take over a property, No 23 Beach View Sentosa, over which a hotel stands. The hotel was operated by Sijori Resort Pte Ltd ("SRPL"). Treasure was to assume the obligations of SRPL to Sentosa Development Corporation under a binding agreement, which required the renovation of the existing hotel at the property and the construction of a wing on an additional piece of land.

3 Chiang is a registered holder of one share in Treasure and is also a director of Treasure. Cafe Aquarium is his corporate vehicle.

4 The third defendant Seeto Keong ("Seeto") was the original party with whom Chiang had a joint venture agreement to incorporate Treasure for the purpose stated above. MUDG was Seeto's corporate vehicle.

5 The current registered shareholders of Treasure are as follows:

		No of shares	Percentage
(a)	MUDG	5,895,199	94.32%
(b)	Shen Yixuan	289,200	4.63%
(c)	Tan Eck Hong ("the seventh defendant")	65,600	1.05%
(d)	Chiang	1	-

6 At present, Roscent Group Ltd ("Roscent") holds a majority stake in MUDG. Roscent is the corporate vehicle of Rodney who is a director of Treasure. Poh is the wife of Rodney and is also a director of Treasure.

7 There are, broadly speaking, two claims (with numerous allegations) by the plaintiffs.

8 The first is a claim by the plaintiffs for various shares in Treasure. The second is a claim by Chiang for oppression and/or unfair discrimination.

9 In Summons No 5521 of 2009, the plaintiffs sought discovery of many classes of documents against:

(a) Treasure

(b) D2, D4 and D5

(c) Seeto

10 Eventually, the plaintiffs proceeded with their discovery application against Treasure only. As mentioned above, an assistant registrar ordered Treasure to disclose various documents. D2, D4 and D5 were dissatisfied that Treasure was to make discovery of the general ledger pertaining to the two accounts in question.

11 Although the discovery order was made against Treasure and not D2, D4 and D5, the latter were objecting primarily because they contested the relevance of the documents sought. In their view, the plaintiffs were fishing for evidence.

12 At the outset of the appeal before me, the plaintiffs had a preliminary objection. They objected to the appeal of D2, D4 and D5 on the basis that these litigants had no *locus standi* to appeal because they were not the subject of the discovery order.

13 D2, D4 and D5 had presented objections to the disclosure of part of the general ledger at the hearing below. Although they were not the ones required to make discovery, I was of the view that as primary litigants, they were entitled to participate in any application of the plaintiffs which might affect their interests in the litigation. As I mentioned, they had taken the view that the plaintiffs were fishing for evidence. They were also concerned about further delay in the trial of the claims.

Accordingly, I ruled against the preliminary objection.

14 I should mention that Treasure had also filed an appeal against that part of the discovery order in question although it was a nominal defendant only. It explained that it did not want to take sides. However, it decided to file an appeal to avoid the very objection which the plaintiffs took because it wanted to avoid any allegation that it was favouring the plaintiffs by not lodging an appeal.

15 It seemed to me that as Treasure had lodged an appeal, the other argument could be made, *ie*, that it was favouring D2, D4 and D5 in attempting to avoid any preliminary objection from the plaintiff. Also, if I had decided that D2, D4 and D5 had no *locus standi* to present an appeal, how would Treasure's appeal proceed? Was it going then to present arguments against the plaintiffs while at the same time maintaining its neutral stance? In any event, this unsatisfactory situation was avoided by my ruling.

16 As for the main appeal, counsel for D2, D4 and D5, Mr Harpreet Singh SC ("HS"), submitted that that part of the general ledger was sought in respect of the claim for oppression and unfair discrimination only. He helpfully presented a summary of the numerous allegations in the Statement of Claim ("SOC") (Amendment No 4) which I repeat below with some minor amendments and elaboration:

S/No	**Para ref in SOC (Amendment No 4)**	**Assertion**
1	31(A) & (B)	Seeto showed Chiang a copy of a letter written by Rodney to MUDG indicating that he will be putting in $20 million.
2	31(C)	The conduct of one Sebastian Wong ("Sebastian") with the authority of directors gives rise to serious concerns. Sebastian misled Butterfly Park (a company in which Chiang has interests) into thinking that he would obtain finance facilities for it. Instead, through misrepresentation, he obtained the facilities for MUDG, which MUDG then used for Treasure.
3	31(D)	Chiang, as director of Treasure, was not given notice of a directors' resolution.
4	31(E)	Chiang, as director of Treasure, was denied access to the accounts of Treasure.
5	31(F)	The other directors of Treasure convened an extraordinary general meeting ("EGM") without notice to Chiang.
6	31(F)(iii)	Chiang raised issues at the EGM but no satisfactory answers were given.
7	31(F)(iii) to (v)	Despite promises made at the EGM, Chiang was still denied access to the accounts.
8	31(G)(i)	Gary Koh ("Gary"), the former chief executive officer of Treasure, was a bankrupt.

9	31(G)(iii)	Sebastian, the chief financial officer of Treasure, was also a bankrupt.
10	31(G)(iv)	An allotment of four million shares in October 2006 was in breach of s 76 of the Companies Act (financial assistance).
11	31(G)(v)	The signature of a former director of MUDG was forged on two documents.
12	31(G)(vi)	Seeto allegedly told Azzura Pte Ltd, a potential investor, of his plan to take $14-$18 million cash out of Treasure.
13	31(G)(vii)	Gary, Sebastian and Seeto owned shares in Roscent.
14	31(H)(i)	Gary was asked by Seeto and Sebastian to raise fictitious invoices to be sent to MUDG but Chiang is unaware whether the invoices were raised.
15	31(H)(ii)	Rodney asked Gary to appoint his wife's company for a contract without alternative quotes.
16	31(I)	Rodney entered into a related party transaction. He arranged for his company, Cairnhill Group Holdings Pte Ltd, to provide management services to Treasure on unfavourable terms.
17	31(J)	MUDG, the majority shareholder, arranged to transfer Treasure's assets to MUDG's related company for no known consideration.
18	32	There were ten specified instances of moneys withdrawn from Treasure for reasons unknown to Chiang. The amounts ranged from $5,000 to $300,034.
19	33	Chiang did not sign the cheques making the above payments, in breach of an earlier agreement by parties. The payments were also not justifiably made.
20	37 to 41	Chiang faced continued difficulty in obtaining access to accounts and information relating to the company.
21	42 and 48	An EGM was convened to remove Chiang as director, amend the articles of Treasure, and convert an alleged debt of $2.4 million due to MUDG into equity in Treasure.
22	43	Treasure allotted four million shares to MUDG in October 2006 in breach of s 76 of the Companies Act (financial assistance).
23	46 to 47	Another 1,429,999 shares in Treasure were allotted to MUDG by off-setting amounts owed by Treasure to MUDG.

17 HS submitted that the part of the general ledger which the plaintiffs wanted discovery of did not relate to any of the above allegations. He also submitted that there was considerable delay

before the parties reached the trial stage and was concerned about further delay.

18 Mr Sarbjit Singh, counsel for the plaintiffs, submitted that not much effort was required for Treasure to produce the documents in question. He mentioned some alleged unsatisfactory conduct of Rodney. He stressed that Chiang had not been given access to accounts of Treasure.

19 Mr Alvin Tan, counsel for the seventh defendant, who is also a shareholder of Treasure, supported the plaintiffs' application for discovery. He suggested that the discovery in question was with regards to the allotment or attempted allotment of shares against a debt owing by Treasure (for which please see paras 42 and 48 and 46 and 47 of the SOC (Amendment No 4)). The intention was to see how the debts were created. He also submitted that D2, D4 and D5 had not raised a chronology of delay before the assistant registrar and that the filing of a defence was also overdue.

20 I noted that the plaintiffs were not challenging the validity of each debt that was used or intended to be used for the allotment of shares in Treasure to MUDG. The complaint was that the allotment or intended allotment was not for cash consideration but was done or was intended to be done by way of off-setting a debt. The allegation was meaningless to me but that was how it stood.

21 The supporting affidavit for the application for discovery was vague and again there was no allegation that the underlying debt was disputed.

22 It seemed to me that Mr Tan's submission about wanting to see how each debt was created was a last-ditch attempt to give some reason for the discovery in question.

23 I was also of the view that Chiang's inability to gain access to accounts was a separate matter. Apparently, he had filed an application for an order to grant him access but did not pursue that application as a result of some agreement reached between the respective solicitors.

24 Accordingly, I was of the view that the discovery sought was a fishing expedition. I allowed the appeal of D2, D4 and D5 with costs. I made no order on Treasure's appeal.

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