Mona Computer Systems (S) Pte Ltd *v* Chandran Meenakumari and another [2012] SGHC 230

Case Number	: Suit No 265 of 2009/G (Registrar's Appeals Nos 188 of 2012/T and 189 of 2012/Y)
Decision Date	: 16 November 2012
Tribunal/Court	: High Court
Coram	: Woo Bih Li J
Counsel Name(s)	: R Kalamohan and K S Elavarasi (Kalamohan & Co) for the plaintiff; Cheong Yuen Hwee and Cheong Aik Chye (A C Cheong & Co) for the second defendant.
Parties	: Mona Computer Systems (S) Pte Ltd — Chandran Meenakumari and another

Companies

16 November 2012

Woo Bih Li J :

Background

1 The plaintiff Mona Computer Systems (S) Pte Ltd ("Mona Computer") commenced this action against a couple: the first defendant Chandran Meenakumari ("CM") and the second defendant Singaravelu Murugan ("Murugan"). The claims were for breach of various duties said to be owed by them to Mona Computer.

2 After a trial, Justice Belinda Ang ("Ang J") dismissed the claim against the first defendant. However, the claim against Murugan for breach of fiduciary duty committed whilst in the employment of Mona Computer was successful. Murugan breached his fiduciary duty by diverting some business opportunities to a rival company MN Computer Systems (S) Pte Ltd ("MN").

3 Mona Computer was incorporated by one Chandran Dharani ("Dharani") who passed away on 10 November 2006. He was at all material times its majority shareholder and the managing director. Its directors are Dharani's family members. Dharani's wife Isaac Rathi ("Rathi") was made a director on 18 December 2001 soon after her marriage to him.

4 CM is the sister of Dharani. She was appointed a director of Mona Computer on 6 October 2003. Murugan is CM's husband. Therefore he was Dharani's brother-in-law.

5 Murugan was employed by Dharani as Mona Computer's Systems Manager on 2 September 2000. He was its sole full-time employee and soon became Dharani's right hand man.

6 The principal activity of Mona Computer was to provide software engineers to its clients, who pay Mona Computer for the personnel provided.

7 After Dharani passed away on 10 November 2006, his widow Rathi became the major shareholder of Mona Computer through his estate and took over as the managing director.

8 CM and Murugan were also directors and shareholders of MN, a rival company. At the time of

MN's incorporation on 22 November 2007, CM was still a director of Mona Computer and Murugan was still an employee of Mona Computer. Murugan resigned as Systems Manager of Mona Computer on 20 February 2009. He admitted that while he was employed by Mona Computer, he secured contracts for MN to provide IT personnel to clients.

9 As mentioned above, the claim against Murugan was successful. Ang J ordered the taking of all such profits received by or due to Murugan and the making of all necessary inquiries before the Registrar in respect of seven contracts identified by her. I will refer to this order as the order for the taking of accounts.

10 There was also a counterclaim by Murugan for his commissions from Mona Computer. This was allowed up to March 2006.

11 The taking of accounts was done before an Assistant Registrar ("the AR"). On 8 May 2012, the AR decided that Murugan was liable to account to Mona Computer in the sum of $166,309.15 + $316,065.37 = $482,374.52.

12 In her decision, the AR also allowed Murugan to retain the salary and director's fees paid by MN to him and declined to allow Mona Computer to claim future amounts from Murugan in respect of some contracts.

13 Murugan filed Registrar's Appeal No 188 of 2012 on 21 May 2012. The appeal was, firstly, to seek a reduction of the sum of $166,309.15 (which was his share of net profits earned by MN) to $144,944.79 and, secondly, to reverse the AR's decision that $316,065.37, which was the commission he had earned from MN on the contracts in question, was profit which he had to account to Mona Computer.

14 Mona Computer also filed an appeal on 21 May 2012. This was Registrar's Appeal No 189 of 2012. Its appeal was to be allowed to claim future amounts in respect of some contracts, *ie*, for the Housing and Development Board ("HDB") and for the Central Provident Fund ("CPF") contracts.

15 Both appeals were heard by me on 3 August 2012. The first part of Murugan's appeal to reduce the figure of $166,309.15 to $144,944.79 was allowed by consent. I dismissed the second part of Murugan's appeal as regards his accounting for the commission of $316,065.37.

16 As for Mona Computer's appeal, I allowed it to seek a further accounting of profits from Murugan for the provision by MN to HDB of further personnel up to and including 30 August 2012. As for the CPF contracts, I ordered that the accounting of profits be reassessed by the AR and gave some directions for the same and I allowed Mona Computer to seek a further accounting of profits up to the expiry of MN's master contract with CPF.

17 Subsequently, Murugan's solicitors wrote on 7 August 2012 to seek a hearing for further arguments on the commission issue. I granted this request.

18 The hearing of further arguments was on 8 October 2012. I decided to vary my earlier decision so that Murugan need not account to or pay to Mona Computer the commission of $316,065.37 but he is to account to and pay to Mona Computer $48,125, being the director's fees he earned from MN.

19 Mona Computer has filed an appeal to the Court of Appeal in respect of my latest decision on the commission issue.

The court's reasons

20 First, I should mention that when Murugan's counsel argued the commission issue before me at the first hearing on 3 August 2012, he had raised a different argument from the one he subsequently raised in his request for further arguments.

21 I need not elaborate on his earlier argument which he no longer pursued. As for his subsequent argument, his point was that Murugan should not have to account for the commission because he was likewise earning commission from Mona Computer when he was employed by it. As for the rate of commission, Murugan had given unchallenged evidence at the inquiry before the AR that the rate of commission he had earned from MN was the same rate he had earned from Mona Computer. Accordingly the quantum of the commission, should he be allowed to retain it, should not be in issue. There was no need for further evidence on the quantum of the commission.

22 Counsel for Mona Computer submitted that the AR had already allowed Murugan to retain his salary and director's fees. He also submitted that Rathi would not have continued Dharani's agreement on Murugan's commission after Dharani's death.

23 There was no evidence that Rathi would not have continued the agreement on Murugan's commission if he was instrumental in securing and/or servicing contracts for MN. It seemed to me that if Murugan was to account to Mona Computer for benefits of contracts he had wrongly diverted to MN, this should in turn take into account the commissions which Mona Computer would have had to pay him in respect of those contracts had they not been diverted. Otherwise Mona Computer would be getting a windfall.

24 However, since Murugan was receiving director's fees from MN which he did not receive from Mona Computer, I was of the view that he should then account for the director's fees (of $48,125) even though the director's fees were not the subject of any party's appeal. Mona Computer may have been willing to allow Murugan to retain such fees only because he was going to account for the commissions. The initial argument by Murugan's counsel on the commissions, which he no longer pursued, might also have distracted both counsel somewhat.

25 I inferred that Murugan was receiving director's fees because MN was doing well as a consequence of the wrongful diversion of contracts to it. There is no appeal by Murugan on my order for him to account for the director's fees.

26 I did not make any order in respect of the salary he had earned from MN as it appeared that he was also earning a salary from Mona Computer and, furthermore, there was no further discussion about his salary.

27 I would like to mention one other point for completeness. As mentioned above, Murugan had counterclaimed for commission. At [40] of her judgment, Ang J said that he was not entitled to commissions coming after he resigned from Mona Computer as he would only be entitled to the commissions if he continued to service such contracts. The commissions which Ang J referred to were from contracts which Mona Computer landed and not from contracts diverted to MN. I understand why Murugan was not entitled to the former after he left Mona Computer. As regards the latter, I inferred that if the contracts had not been diverted to MN, he would not have resigned from Mona Computer and would continue to service them. It also seemed to me that he was earning the commissions both for securing the contracts and for servicing them.

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