Mona Computer Systems (S) Pte Ltd *v* Singaravelu Murugan
[2014] SGHC 49

Case Number : Suit No 265 of 2009 (Registrar's Appeals No 12 and 13 of 2013)

Decision Date : 20 March 2014

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : R Kalamohan and Shanti Elavarasi d/o R Kalamohan (Kalamohan & Co) for the plaintiff; Cheong Yuen Hee and Cheong Aik Chye (A C Cheong & Co) for the defendant.

Parties : Mona Computer Systems (S) Pte Ltd — Singaravelu Murugan

Companies – Breach of fiduciary duties

Damages – Assessment – Account of profits

20 March 2014 Judgment Reserved.

Choo Han Teck J:

1 The matter in dispute between the parties concerned a breach of fiduciary duty. The plaintiff was incorporated in Singapore on 13 May 1997, and was in the business of software and Information Technology ("IT") consultancy and development. The defendant was the sole full time employee of the plaintiff, charged with the day-to-day business operations. His role was that of "Systems Manager". There was no written employment contract between the defendant and the plaintiff.

2 On 22 November 2007, the defendant formed a new company, MN Computer Systems (S) Pte Ltd ("MN Computer"). The defendant was a 50% shareholder, and director, of MN Computer. The principal business of MN Computer was the same as the plaintiff's. While still under the plaintiff's employment, the defendant secured certain contracts for MN Computer. The defendant resigned from the plaintiff on 20 February 2009. Subsequently, the plaintiff commenced Suit No 265 of 2009 against the defendant essentially for breach of his duties in relation to diverting business away from the plaintiff to MN Computer. The defendant counterclaimed in respect of commission from the plaintiff allegedly due to him up to his resignation.

3 Between 2009 and 2014, this case had been heard in several proceedings on different issues. The parties appeared before two high court judges, two assistant registrars, and the Court of Appeal in *Mona Computer Systems (S) Pte Ltd v Singaravelu Murugan* [2014] 1 SLR 847 ("CA decision"). For convenience, I set out their legal history in chronological order:

(a) trial before Belinda Ang J in 2010;

(b) assessment of damages before assistant registrar Elaine Chew ("AR Chew") in 2011;

(c) registrar's appeal hearing before Woo Bih Li J in 2012;

(d) appeal to the Court of Appeal in 2013; and

(e) assessment of damages before assistant registrar Ruth Yeo ("AR Yeo") in 2013.

4 During the first assessment, AR Chew ordered the defendant to account to the plaintiff in the sum of S$482,374.52. This figure was made up of two parts. First, half of the net profits earned by MN Computer from seven contracts that it had entered into with various entities, which comprise the Housing Development Board ("HDB") and Central Provident Fund ("CPF") Board, which amounted to S$166,309.15. Second, the commissions received by the defendant pursuant to these contracts, amounting to S$316,065.37. Although AR Chew held that, in principle, the plaintiff may have been entitled to profits arising from the contract between MN Computer and the CPF Board, she made no award for them because she found that the plaintiff failed to discharge its burden of proof in respect of quantum. After appealing against the decision of AR Chew and subsequently proceeding to the Court of Appeal, the parties appeared before AR Yeo seeking a further assessment regarding director's fees received by the defendant from MN Computer and further profits from the CPF and HDB contracts.

5 AR Yeo ordered the defendant to account to the plaintiff in the sum of S$241,338.19, and costs fixed at S$20,000, similarly payable by the defendant to the plaintiff. The sum of S$241,338.19 was based on net profits. For ease of reference, I will describe briefly how AR Yeo arrived at her figures. First, she calculated the gross profit earned by MN Computer on each of the two contracts. This amounted to S$318,441.71. Next, she discounted overheads and expenses, including CPF contributions by MN Computer to its employees ("CPF Employer's Contributions) and advertising. Of crucial relevance to this appeal, she held that MN Computer had paid CPF Employer's Contributions out of employees' salary, rather than out of profits. She also held that the defendant had failed to provide documentation to show that the advertising amounts he claimed were attributable to the contracts under assessment. As such, she declined to hold that the alleged CPF Employer's Contributions (which amounted to S$160,666) and advertising expenses (which amounted to S$2,600) were expenses. Through her calculations, she arrived at a total net profit after tax of S$174,705.10. The amount the defendant had to account for was half of this, as he held half the shares in MN Computer, which amounted to S$87,352.55. Further, AR Yeo calculated the commissions received by the defendant to be S$153,985.64. By adding these two sums, she arrived at her final figure of S$241,338.19.

6 The case came before me as an appeal from the assessment of damages by AR Yeo. Both parties have appealed, and the issues before me were:

(a) whether the defendant is liable to pay his director's fees, from MN Computer, to the plaintiff;

(b) whether the defendant is liable to pay interest on the whole sum that he has been ordered to pay to the plaintiff; and

(c) whether the account of profits should include the commissions the defendant earned on the HDB and CPF Board contracts with MN Computer, as well as the S$2,600 in alleged advertisement costs.

7 The first issue was from the appeal by the plaintiff. AR Yeo disallowed the plaintiff's claim for director's fees. The plaintiff argued before this court that AR Yeo was wrong, and that the defendant should be ordered to pay to the plaintiff a sum of S$69,062.50 as director's fees. I dismiss the plaintiff's appeal on this point. The plaintiff argued that, based on the CA decision, it should be entitled to the defendant's director's fees. It accorded a strained interpretation to selective portions of the CA decision. In dealing with the plaintiff's contention, I will refer to the first paragraph of the

CA decision, in which the Court of Appeal stated, clearly, that it "permitted [the defendant] to retain the director's fees from MN [Computer]". The Court of Appeal further explained, that while the defendant may ordinarily have been required to account for his director's fees, as they were also "tainted by the [defendant's] breach of his duties as a fiduciary" (at [30] of the CA decision), he was entitled to retain the fees in that case as the plaintiff seemed to accept, and did not appeal against, the order pertaining to director's fees by AR Chew, [note: 1] namely, that the defendant retains S$48,125 as director's fees (at [31] of the CA decision). The plaintiff now appears before this court arguing that its submission, that it is entitled to a portion of the defendant's director's fees, "is in line with the decision of the Court of Appeal". This cannot be right. The plaintiff should have raised this issue before the Court of Appeal, but it did not. It is now too late for the plaintiff to now seek the defendant's director's fees, and it is also unmeritorious for the plaintiff to rely on the CA decision as basis for its claim because that was not part of the orders of the Court of Appeal.

8 The second issue was also from the appeal brought by the plaintiff. AR Yeo was silent on the matter of interest. The plaintiff argued it should be entitled to the "usual interest" on the whole sum the defendant has been ordered to pay to the plaintiff, from 1 January 2009 to the date on which full payment is made. The defendant, in reply, argued that as the plaintiff had made no claim for interest, it must be presumed to have been satisfied with the default position under Order 42 of the Rules of Court (Cap 322, 2006 Rev Ed). It is assumed that the defendant was referring to O 42 r 12, which deals with interest on judgment debts, and establishes a default interest rate of 6% per annum, there being no other relevant provision. I allow the plaintiff's appeal in part, because the plaintiff is entitled to the default interest on the judgment debt in this case, *per* O 42 r 12. I should point out that the plaintiff's appeal concerned two different types of interest: interest before the judgment debt had been obtained and interest after the judgment debt had been obtained. The former is governed by paragraph 6 of the "First Schedule: Additional Powers of the High Court" in the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") and s 12 of the Civil Law Act (Cap 43, 1999 Rev Ed) ("CLA"). Paragraph 6 of the first schedule to the SCJA empowers the court to "direct interest to be paid on damages, or debts… or judgment debts". Section 12(1) of the CLA states:

> … the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit… for the whole or any part of the period between the date when the cause of action arose and the date of the judgment

While I accept that it is within the court's discretion to award interest of this nature, the plaintiff has raised no argument in its favour, beyond pointing out that AR Chew ordered that "[t]he usual interest runs from the date of writ until the date of judgment". [note: 2] By the plaintiff's own characterisation, this appeal had arisen from a second – and separate – round of assessment of damages before AR Yeo. The relevance of AR Chew's order on interest is hence unclear. AR Yeo made no order as to interest and neither did she record submissions by either party on whether interest should be awarded. I do not see any reason to invoke the court's discretion to award interest of the first sort. The latter form of interest, as noted by the defendant, is covered by O 42 r 12 barring any agreement to the contrary between parties, as is the case at present. My order on interest is hence as follows:

(a) before judgment debt (from 22 November 2007 to date of judgment): No interest; and

(b) after judgment debt (date of judgment to date of satisfaction of judgment debt): 6% per annum.

9 The third issue was from the appeal brought by the defendant. AR Yeo awarded the plaintiff the defendant's commissions earned, as director of MN Computer, on the HDB and CPF contracts which amounted to S$153,985.64. The thrust of the defendant's appeal was that he should not be

made to pay to the plaintiff:

(a) the sum which amounted to his commissions earned, as director of MN Computer, on the HDB and CPF contracts;

(b) MN Computer's CPF contribution for the commissions awarded, in the sum of S$23,759.85; and

(c) the advertising costs in the sum of S$2,600.

I have dismissed all three aspects of the defendant's appeal. The defendant's arguments regarding commissions, couched in [9(a)] and [9(b)] are unclear for two reasons. First, in [9(a)], it is unclear if the defendant was arguing that he should not have to account for his commissions earned on the HDB and CPF contracts as they were not commissions received by him, or if he was arguing that the commissions, though commissions received by him, should not have been included on the basis of equitable allowance. Second, in [9(b)], this was the first time, across his appearances before the two high court judges, two assistant registrars, and court of appeal, that the defendant raised such an argument. The argument in [9(b)] was presumably raised as an alternative to [9(a)], that is, in the event this court decides not to disturb AR Yeo's findings on whether the defendant should pay his commissions on the HDB and CPF contracts to the plaintiff. Dealing with the argument in [9(b)] in this manner, it remains unclear if the CPF contributions paid by MN Computer came from the profits or the employees' salary. On the evidence before AR Yeo, she found that the CPF contributions were in fact paid out of the employees' salary. She also found that the defendant had failed to provide documentation to substantiate its claim of having incurred S$2,600 in advertising costs, couched in [9(c)]. I should note that the defendant has not applied to adduce any new evidence before me to convince me otherwise on any of these issues.

10 I thus hold that:

(a) the defendant is not liable to pay his director's fees, from MN Computer, to the plaintiff;

(b) the defendant is liable to pay interest on the judgment debt at a rate of 6% per annum from the date of judgment until the judgment is satisfied; and

(c) the account of profits should include the commissions the defendant earned on the HDB and CPF Board contracts with MN Computer, and there should be no subtraction of the S$2,600 in alleged advertisement costs.

The defendant's appeal is therefore dismissed with costs to be taxed if not agreed.

[note: 1] AR Chew's Grounds of Decision at [42].

[note: 2] AR Chew's Grounds of Decision at [53].

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