IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 146

Suit No 331 of 2013
(Assessment of Damages No 23 of 2018)

Between

(1) Grande Corporation Pte Ltd

… *Plaintiff*

And

(1) Cubix Group Pte Ltd
(2) Toh Wee Ping Benjamin
(3) Goh Bee Heong
(4) Cubix and Kosmic Pte Ltd
(5) AXXIS Group Pte Ltd
(6) AXXIS International Pte Ltd
(7) AXXIS Pte Ltd

… *Defendants*

JUDGMENT

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Grande Corp Pte Ltd
v
Cubix Group Pte Ltd and others

[2019] SGHC 146

High Court — Suit No 331 of 2013
(Assessment of Damages No 23 of 2018)
Lee Seiu Kin J
19, 20 March; 23 May 2019

7 June 2019 Judgment reserved.

Lee Seiu Kin J:

1 The present judgment concerns only the assessment of damages following my earlier judgment in *Grande Corporation Pte Ltd v Cubix International Pte Ltd and others* [2018] SGHC 13 ("the striking out judgment"). I adopt the same terms used in the striking out judgment. The striking out judgment sets out extensively the relationship between the parties, the relevant procedural history and the reasons for the underlying dispute. I do not reproduce them here.

Background

2 In the striking out judgment, I held that Ben and Bee had committed intentional, contumelious and inexcusable breaches of the Unless Order which warranted a striking out of their Defence (see at [100] – [111]). I also held that their Defence should be struck out on the basis that Ben and Bee had

demonstrated conduct which gave me no confidence that they would defend the plaintiff's claim in an honest and fair manner. However, I declined to strike out the Defence of the AXXIS Companies in the striking out judgment (see at [115] and [116]). I then granted interlocutory judgment for the plaintiff against Ben and Bee, with damages to be assessed.

3 After the striking out judgment, on 14 May 2018, the plaintiff applied for the Defences of Cubix Group and the AXXIS Companies to be struck out. The application was allowed by senior assistant registrar Christopher Tan Pheng Wee on 16 May 2018.[1]

4 In a subsequent application before me in summons no 1840 of 2018 on 24 July 2018, I granted interlocutory judgment in favour of the plaintiff against Cubix Group and the AXXIS Companies with damages to be assessed.[2]

5 Although I have already set out the plaintiff's various claims in the striking out judgment (see at [8]), it is necessary to reproduce them here. The plaintiff pleaded the following causes of action, *inter alia*, against the various defendants:

> (a) Cubix Group owed fiduciary duties and duties of good faith and fidelity to the plaintiff. These included the obligation to use funds that were extended by the plaintiff to C&K for their intended purpose, a duty to act in the best interests of the plaintiff, and a duty not to defeat the intention and purpose of the joint venture. Cubix Group breached these duties by using and transferring funding, business, clientele, projects and

[1] Minute dated 16 May 2018.

[2] Minute dated 24 July 2018.

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staff that were intended for C&K to the AXXIS Companies. Cubix Group also breached its non-competition obligations under the JV Agreement.[3]

(b) Ben and Bee personally breached their fiduciary duties and duties of good faith and fidelity which they owed to the plaintiff "as joint venture partners". They breached those duties by using and diverting the funding, business, clientele, projects and staff that were intended for C&K towards the AXXIS Companies. Ben and Bee are also liable to account to the plaintiff for any profits derived from such breaches. The plaintiff also claims that Ben and Bee breached s 340 of the Companies Act (Cap 50, 2006 Rev Ed) by conducting the business of C&K with the intention to defraud the plaintiff as its "sole or main creditor". The plaintiff also claimed against Ben and Bee in dishonest assistance.

(c) Leading up to the entering of the JV Agreement, Cubix Group, Ben and Bee fraudulently or recklessly made representations to the plaintiff, including misrepresentations that Cubix Group would match any funding contributions that the plaintiff made to C&K, that any funding which the plaintiff contributed to C&K would be used for the business and expenses of C&K only, and that these contributions (which the plaintiff describes as "loans") would be repayable by C&K on the plaintiff's demand.

(d) The AXXIS Companies are in knowing receipt of any profits or benefits derived from the wrongful use of C&K's funding, and the transfer of any business, clientele, and/or staff of C&K. Further, the

[3] Statement of Claim (Amendment No.1) at para 19.

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corporate veil of AXXIS Companies should be lifted and Ben and Bee should be made jointly and severally liable for all claims by the plaintiff.

(e) The AXXIS Companies, Cubix Group, Ben and Bee are liable in conspiracy because they conspired together to defraud the plaintiff by causing the plaintiff to enter into the JV Agreement and to transfer the funding to C&K.

6 As interlocutory judgment has been entered into against Ben, Bee, Cubix Group and the AXXIS Companies, liability has been established for the causes of action set out above at [5]. The only issue which remains is the assessment of damages.

My decision

7 The assessment of damages hearing ("the AD Hearing") was heard on 19 and 20 March 2019. Only Ben and Bee were represented. Cubix Group and the AXXIS Group Companies did not attend the AD Hearing. The remaining defendant, C&K, has been struck off from the ACRA register.

8 The plaintiff called on Mr Nemamkurral Vijaykumar Krishna as its sole witness while the defendants, Ben and Bee, were their own factual witnesses, together with Mr Chong Guan Choi, who was an expert witness.

9 Relying on the cases of *Malcolmson v Mehta* [2001] 3 SLR(R) 379 and *Quality Assurance Management Asia Pte Ltd v Zhang Qing and others* [2013] 3 SLR 631, counsel for the plaintiff argued that the defendants must be taken to have admitted to all matters pleaded by the plaintiff in the statement of claim, as their defences had been struck out and interlocutory judgment entered against

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them.[4]

10 Counsel for Ben and Bee, Mr Mark Goh ("Mr Goh"), also agreed that the facts pleaded in the plaintiff's statement of claim must be taken as proven,[5] and that they would not cross-examine the plaintiff's witness for the purpose of establishing that the pleadings are not true.[6]

11 I agree with the plaintiff and defendants' commonly accepted position that the defendants must be taken to have admitted to all the matters pleaded by the plaintiff in the statement of claim given that the defences of Ben, Bee, Cubix Group, and the AXXISS Companies had been struck out.

12 As there was some confusion during the closing oral submissions as to the effect of this, I will briefly elaborate on this. Generally, pleadings are deemed admitted unless traversed, whether specifically or generally. A traverse may be made by way of a denial or by a statement of non-admission in the defence or reply. As the defence in this case was entirely struck out, the defendants must be taken to have admitted to all matters pleaded in the plaintiff's statement of claim. This includes pleadings of fact in relation to the heads of loss suffered by the plaintiff.

13 During the hearing on 19 and 20 March 2019, Mr Goh made the following submissions in relation to the quantum of damages owed to the plaintiff:

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[4] Plaintiffs' Submissions on Assessment of Damages at para 15 – 18.

[5] NE, 19 March 2019, 7:18 – 7:19.

[6] NE, 19 March 2019, 8:3 – 8:4.

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(a) The plaintiff provided no evidence that Ben and Bee beneficially received the loans and/or sums received (defined below at [15]).

(b) Not all the loans and sums received were made after the pleaded misrepresentations had been completely made to the plaintiff. Ben and Bee cannot be made liable for all of the loans and sums received under this cause of action.

(c) The plaintiff has not provided evidence of its other heads of losses.

14 On the day of the closing oral submissions, Mr Goh also tendered a further set of submissions in relation to Ben and Bee. He contended that the plaintiff could not rely on the striking out judgment to overcome "gaps" in its pleadings and evidence, and the pleadings were insufficient to satisfy the plaintiff's burden of proof in respect of the various heads of loss. I do not agree.

15 In this case, the plaintiff had already pleaded in its statement of claim the sums of money that were the subject of its various claims against the defendants. As these pleaded sums were taken to be admitted by the defendants, I reiterate that they could not be challenged at the AD Hearing. It was not necessary for the plaintiff to provide fresh evidence at the AD Hearing that Ben and Bee beneficially received the loans and/or sums received if this was pleaded in the statement of claim (these figures are defined below at [16]).

16 In its statement of claim, the plaintiff pleaded as follows:

> 16. Pursuant to or in anticipation of entering into the JV Agreement, [the plaintiff] transferred the following sums of money to C&K, being contributions to the operations and business of C&K and/or as loans for the operating expenses of C&K, repayable on demand, from 25 April 2007 to 28 January 2008:-

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(1) 25 April 2007	S$50,000
(2) 3 May 2007	S$37,950.00 (converted from US$25,000)
(3) 3 May 2007	US$25,000
(4) 1 June 2007	S$104,448.00 (converted from US$68,0000)
(5) 1 July 2007	S$68,850.00 (converted from US$45,000)
(6) 12 July 2007	S$30,040.00 (converted from US$20,000)
(7) 1 August 2007	US$68,000
(8) 3 September 2007	US$45,000
(9) 6 September 2007	US$50,000
(10) 26 September 2007	US$50,000
(11) 18 October 2007	US$50,000
(12) 24 October 2007	US$50,000
(13) 30 October 2007	US$50,000
(14) 16 January 2008	US$50,000
(15) 28 January 2008	US$20,000

Total **S$291,288.00** and **US$458,000** …

…

19C. Further or alternatively, as a result of the matters set out in paragraphs 19A and 19B above, Benjamin Toh and/or Bee are liable to account to Grande for any and all profits and/or other benefits derived from or traceable to:- (i) the wrongful use or use of the Loans; and/or (ii) the transfer of the business, clientele and/or management staff and employees of C&K, and such profits and/or other benefits which include but are not limited to **the sums of US$270,000 received by the AXXIS Companies,** Benjamin Toh and/or Bee in the year of 2009 evidenced by an email dated 8 May 2010 from Benjamin Toh to the CAD's Damian Low and/or **US$600,000 – US$700,000 received by the AXXIS Companies**, Benjamin Toh and/or Bee evidenced by an email dated 7 May 2010 from Joshua Pang to the CAD's Damian Low (collectively, the "**Sums Received**"). Further or alternatively, Benjamin Toh and/or Bee have been

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> unjustly enriched at the expense of Grande, and are liable to account to Grande for the same.
>
> [emphasis added]

17 I refer to the figures of S$291,288.00 and US$458,000 as the "Loan Sum" and the figures of US$270,000 and/or US$600,000 – US$700,000 as the "Sums Received".

18 It is necessary to set out the causes of action to which both sums relate.

19 As regards the Loan Sum, the plaintiff had pleaded in its statement of claim that Cubix Group, Ben and Bee had, *inter alia*, committed breach of contract and/or a breach of fiduciary duties through the wrongful use of the Loan Sum and the wrongful transfer of the Loan Sum to the AXXIS Companies.[7] Accordingly, Ben, Bee, and the Cubix Group are jointly and severally liable to the plaintiff in the sum of S$291,288.00 and US$458,000 for breach of contract and/or breach of fiduciary duties.

20 The plaintiff also pleaded that the Loan Sum was transferred by the plaintiff to C&K because of a fraudulent misrepresentation made by Cubix Group and/or Ben and/or Bee in their personal capacity. Although the defendants argued that some of the Loan Sum was made after the pleaded misrepresentations had been completely made to the plaintiff, it did not raise sufficient evidence of this at the AD Hearing. I therefore hold Ben, Bee, and the Cubix Group jointly and severally liable to the plaintiff in the sum of S$291,288.00 and US$458,000.

21 To eliminate the risk of double recovery, I make it clear that the three

[7] Statement of Claim (Amendment No.2) at para 19.

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heads of liability – breach of contract, breach of fiduciary duties, and fraudulent misrepresentation – are in respect of the same loss, which is represented by the Loan Sum. The collective amount recoverable by the plaintiff for these three heads of liability is therefore limited to the Loan Sum.

22 The Sums Received represent, *inter alia*, the profits made by Ben and Bee through their breach of fiduciary duties, as well as the sum retained by the AXXIS Companies in knowing receipt. Accordingly, Ben, Bee, and the AXXIS Companies are jointly and severally liable to the plaintiff in the sum of US$270,000 and US$600,000, taking the lower end of the pleaded sums.

23 For completeness, I also state that I do not see any merit to Mr Goh's submission (see above at [14]) that there were "gaps" in the plaintiff's statement of claim. The plaintiff's statement of claim makes clear the sums of money which were the subject of its claims. These sums must be taken to be admitted by the defendants.

24 I order the defendants to pay costs to the plaintiff on the standard basis, to be taxed unless agreed. The defendant is also ordered to pay interest at the rate of 5.33% per annum from 15 April 2013 to the date of this judgment.

Lee Seiu Kin
Judge

Dominic Chan Wai Kit and Daniel Ng Yi Ming (Characterist LLC) for the plaintiff;
Mark Goh and Ng Boon Gan (Vanilla Law LLC) for the third and

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fourth defendants;
The second, sixth, seventh and eight defendants absent and unrepresented.

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