

Stone Forest Consulting Pte Ltd v Wee Poh Holdings Ltd
[2004] SGHC 134

Case Number : Suit 1067/2003, RA 64/2004
Decision Date : 19 June 2004
Tribunal/Court : High Court
Coram : MPH Rubin J
Counsel Name(s) : Sarbjit Singh (Lim and Lim) for plaintiff; Leslie Phua (Phua Wai Partnership) for defendant
Parties : Stone Forest Consulting Pte Ltd — Wee Poh Holdings Ltd

Civil Procedure – Summary judgment – Defendant failing to pay plaintiff's invoices – Plaintiff relying on defendant's board of directors' resolution agreeing to pay as evidence of liability in summary judgment proceedings – Whether defendant raised any triable issues for court to grant leave to defend

19 June 2004

MPH Rubin J:

Background facts

1 In this registrar's appeal, the defendant, Wee Poh Holdings Limited ("Wee Poh"), appealed against the decision of the Senior Assistant Registrar Toh Han Li awarding summary judgment in favour of the plaintiff, Stone Forest Consulting Pte Ltd ("Stone Forest"), for the sum of \$348,715.73, interest and costs, for services rendered by Stone Forest to Wee Poh.

2 Wee Poh is listed on the Stock Exchange of Singapore. The principal activities of Wee Poh and its subsidiaries (collectively called "the Group") include the design and construction of infrastructure works, bored piling and foundation works, and the sale of ready-mix concrete, granite, sand and cement. It would appear from the facts presented that for the financial year ending 30 June 2001, the Group incurred a loss after tax of about \$7m. The auditors of the Group were concerned and expressed their views that the Group's viability was in peril unless it was able to raise additional funding to meet its anticipated cash requirements for the year ending 30 June 2002. The Group also owed its suppliers and sub-contractors some \$23m. Several legal actions had been filed against the Group and a number of the Group's creditors had already obtained judgment against it. The upshot was that the Group had a funding shortfall of approximately \$6.5m.

3 In this milieu, Wee Poh approached Stone Forest, which specialises in financial consultancy services, for its assistance and eventually engaged it with the following key objectives in mind:

- (a) to review together with the management the Group's projected revenue and cash inflow stream;
- (b) to review together with the management an immediate action plan to reduce costs, improve revenue, speed up collections, maximise capacity and divest surplus assets;
- (c) to assess the funding requirements for the Group for the next 24 months; and
- (d) to assist in working out a restructuring plan with all banks and other creditors.

4 The terms of Stone Forest's engagement are spelt out in Stone Forest's letter dated

10 December 2001 ("the first letter of engagement") which was duly accepted in writing by Wee Poh on 11 December 2001.

5 In so far as is material, cll 2 and 3 of the first letter of engagement provide as follows:

2. Our Scope of Services

The scope of our services shall encompass the following:

Phase 1: Diagnostic Review

We shall carry out a diagnostic review of the Group and evaluate the following:

(I) Existing Business and Projects

- (a) Review and assess the current revenue and cash streams;
- (b) Review and assess the current cost structure and establish the amount of net cash flow available to service its existing financial obligations; and
- (c) Identify possible ways to improve or conserve operating cash flow so that more cash released to meet its financial obligations.

(II) New Projects

- (a) Review and assess the profit and cash flow viability of management's business development plan;
- (b) Assess the funding requirements to carry out the new projects; and
- (c) Establish the net operating cash flows that can be generated to service the Group's financial obligations.

Phase 2: Formulate a proposed restructuring plan

During this phase, we shall assist management to:-

- (a) Fine-tune its business so as to generate as much operating cash as possible to repay the banks and creditors;
- (b) Recommend various options/scenarios to restructure the Group's bank loans and amounts owing to creditors; and
- (c) Compile an Information Memorandum, including financial projections for the next 24 months, and spelling out the measures taken and to be taken by the Group to generate cash to repay the banks and creditors.

Phase 3: Negotiate the loan restructuring

Upon acceptance of this engagement letter, we will immediately assist you to notify the banks of our involvement as an independent financial consultant and request the banks for a 2-month period to work out a restructuring plan to service the Group's financial obligations to

the banks.

After we have completed Phases 1 & 2, we will work closely with management to negotiate with all your banks to restructure the existing lines so that management has sufficient time to nurse the Group back to profitability and generate sustainable cash flows to service the monthly interest and principal payments.

We will also work closely with management to negotiate with the Group's creditors to restructure the amounts owed to them.

In the event that the proposed restructuring plan is not accepted by the banks and/or creditors, we will work with management to explore other available options.

3. Deliverables

Based on the areas that we have covered under Phases 1 to 2, we shall submit an Information Memorandum to management at the end of Phase 2.

In addition, we will invest time and resources under Phase 3 to assist you to negotiate and complete the restructuring of the Group's financial obligations and, if needed, secure new facilities.

4. Our Fees

Our fees are based on the skills, knowledge and time required to carry out the above scope of services. Our present charge out rates are as follows:-

Rates per hour

Director \$480

Manager \$300

Consultant \$150

Based on the above scope of work, our fees are estimated at \$150,000.

Our fee shall be payable according to the following milestones:-

Upon acceptance of this engagement letter: \$ 30,000

Upon completion of Information Memorandum: \$ 45,000

Upon the successful completion of restructuring: \$ 75,000

\$150,000

Our fees are based on the actual time spent. Hence, it would be mutually beneficial if you could organize the information required by us in a timely and organized manner. Should we incur fewer hours than our estimate above, we shall bill you accordingly. As a gesture of goodwill, we shall cap our fees at the above estimate. If due to unforeseen [*sic*] circumstances, should we require incurring substantially more time than our estimate, we shall seek your prior approval before we

proceed.

The above estimated fee excludes the cost of other professionals who may be engaged for the restructuring exercise, out of pocket expenses (such as local or overseas travelling) and the goods and services tax (GST). The Company shall reimburse us such expenses incurred for the assignment.

6 Following its engagement, Stone Forest rendered services and submitted its invoices to Wee Poh in due course. Stone Forest also rendered some additional services between 1 February 2002 and 31 May 2002. Stone Forest's charges in respect of these services amounted to \$233,103.32. The invoices rendered by Stone Forest and part payments made by Wee Poh on the said invoices are particularised under para 1 of the statement of claim as follows:

Particulars

Date	Invoice	Amount
20/12/2001	SFC/01/12/1723	S\$30,900.00
31/01/2001	SFC/02/01/1738	S\$47,035.47
04/03/2002	SFC/02/03/1755	S\$77,676.94
29/06/2002	SFC/02/06/1800	S\$233,103.32
Less		
20/12/2001	OUB Cheque No 311962	(S\$30,000.00)
29/04/2002	DBS Cheque No 899100	<u>(S\$10,000.00)</u>
Total		<u>S\$348,715.73</u>

7 For some reason, Wee Poh did not make any further payments to Stone Forest after 29 April 2002 and as a result, Stone Forest commenced this action for the remaining balance of \$348,715.73.

8 The defence filed was unusually skimpy and on the face of it appeared contradictory. In the first paragraph of the defence, Wee Poh denied paras 1 and 2 of Stone Forest's claim that the latter rendered services and tendered its invoices to Wee Poh. However in para 3 of the defence, Wee Poh averred that Stone Forest's fees should only be "billable" [sic] upon successful completion of certain transactions. In so far as is material, paras 3, 4 and 5 of the defence read:

3. The Defendants contend and will contend that the parties have agreed, inter alia, that the Plaintiffs' fees shall only be billable upon the successful conclusion of the transaction whereby:

(a) A strategic investor had acquired a controlling interest in the Defendants' Company;
or

(b) A strategic investor injects their assets and/or businesses in the Defendants' company in return for the acquisition of a controlling interest. (hereinafter referred to as the "Proposed Transaction").

4. The Plaintiffs were to assist, *inter alia*, in marketing and negotiating with the would be strategic investor to conclude the Proposed Transaction.

5. The Plaintiffs were not able to obtain the successful conclusion of the "Proposed Transaction" and therefore were not entitled to any fees.

9 Stone Forest, in the event, applied for summary judgment. In the first affidavit of Mr Tay Woon Teck, a director of Stone Forest filed on 8 December 2003, Mr Tay drew the court's attention to a board resolution of Wee Poh dated 8 November 2002 which reads as follows:

The Chairman, Mr Chew, informed the Board that Stone Forest Consulting Pte Ltd has been engaged as the Company's Financial Consultant since 11 December 2001. Stone Forest Consulting Pte Ltd ("SFC") has issued a letter dated 6 July 2002 to the Board of Directors on their service fee and their continuing involvement.

The Board recognises the time, efforts and goodwill that SFC has provided to the Company and agree to provide a written confirmation that SFC fees will be paid.

RESOLVED THAT

The Board has unanimously agreed to the followings [sic]:

(a) *agreed to pay SFC the full amount of \$233,103.32 under invoice SFC/02/06/1800 from the new monies raised by the Company.*

(b) *agreed to pay SFC the remaining amount outstanding of \$110,000 under invoice SFC/02/03/1755 in 10 equal instalments of \$11,000 each, commencing October 2002, or the full payment of any balance outstanding upon the successful injection of new monies into the Company.*

(c) continue to retain SFC's services and the scope of SFC services shall be as follows:-

(i) to continue to advise the Board and to assist the Board to communicate with the creditor banks and provide the creditor banks regular and factual updates on the ongoing developments on the fund raising activities and the financial affairs of the Group; and

(ii) to assist the Board in reviewing the various fund raising options

The Board agrees to pay SFC time cost on Part © at the composite hourly rate of \$200 per hour. The Board agrees to a cash deposit of \$15,000 to be placed with SFC.

[emphasis added]

10 Wee Poh, in its first affidavit filed on 19 January 2004, implied that the Board resolution was obtained by Stone Forest under pressure. Mr Chew Yin What, a director of Wee Poh who affirmed the affidavit averred:

20. The Plaintiffs were fully aware of the Defendants' position and therefore took this opportunity to increased [sic] the pressure by insisting that the Defendants pass a Board

Resolution approving payment of their fees and also to further retain them to continue negotiating with the Banks to maintain existing banking facilities and update them on the strategic investor issue. In short, to keep the Banks at bay. Naturally, their proposed fees now will be time base and the lengthy the process, the higher their fees!

21. The Defendants, under such circumstances, passed a Board Resolution on the 8th of November 2002 (refer to Tay's affidavit page 134) resolving that the Plaintiffs invoices will be paid SUBJECT to the provisos that payment will only be made from the new monies raised by the Company in respect of the alleged sum of \$233,103.32 and upon the successful injection of new monies into the Company in respect of the sum of \$110,000.00. The crux of the Plaintiffs' purported fees issue was that it is not payable unless new monies were raised/injected into the Company as a direct result of the Plaintiffs' services provided to the Defendants. No new monies were raised/injected to the Company through the direct effort of the Plaintiffs.

[emphasis in original]

11 In view of such a clear and unambiguous resolution from the board of a public company admitting that services were rendered to it by Stone Forest, and further, recording an unmistakable agreement to pay Stone Forest the sums of \$233,103.32 and \$110,000, the senior assistant registrar entered judgment for the plaintiffs. Wee Poh appealed against the order of the senior assistant registrar and the appeal was heard by me on 21 April 2004.

12 Segments of the arguments presented by the solicitors for Wee Poh on appeal require reproduction and they read thus:

5. The Plaintiffs' 1st Letter of Engagement concerns the provision of financial advisory services to the Company and the Group and their fees are to be capped at the maximum sum of \$150,000.00.

6. There are 3 invoices issued by the Plaintiffs with reference to the 1st Letter of Engagement (See Plaintiffs' A7 to A9) of which \$40,000.00 has been paid by the Defendants.

7. The Plaintiffs' 2nd Letter of Engagement concerns the provision of services as head advisor of the Company to secure investments for the Company (See Plaintiffs A121). The fees shall only be billable if the Plaintiffs were successful in obtaining the required investments.

8. The Plaintiffs issued their 4th invoice (See Plaintiffs' A10) which they alleged was for purported work done between 1/2/2002 to 31/5/2002 and billable as agreed to by the Defendants (which is denied). No breakdown was provided at the date of the invoice on the 29th of June 2002 and this invoice does not relate to work done with respect to the 2nd Letter of Engagement.

9. The Defendants contentions are that:

(a) with respect to the 1st Letter of Engagement and the first 3 invoices, the Plaintiffs failed to complete their scope of works i.e. to obtain an executed "standstill agreement" with the Banks and to securing new Banking facilities to successfully complete the restructuring of the Group financial obligations.

(b) The 4th invoice was for purported further various services rendered for 3 months amounting to the sum of \$233,193.32. The Defendants did not agree to the payment of their said invoice.

(c) A purported breakdown for the 4th invoice was only provided in July 2002 (See Plaintiffs' A130 to A132). Further, at paras 6 and 7, their invoiced services ought to be within the scope of the 2nd Letter of Engagement.

10. The Plaintiffs main thrust for their Order 14 application is the "Director Resolution" dated the 8th of November 2002 (See Plaintiffs' A134). They claimed that the Defendants had admitted to payment by virtue of the said resolution.

11. The Defendants' contentions with regard to the Director's Resolution are as follows:-

(a) Agreed to pay the invoices only from new monies raised by/injected into the Company with the Plaintiffs' assistant. (*sic*)

(b) The interpretation of the same is supported by one of the Defendants' independent director, Tay Ah Kong who was present at the meetings with the Plaintiffs (See Tay's affidavit para 8 page 2 and Chew's 1st affidavit para 21 page 5).

(c) Further, as stated by Tay Ah Kong (See Tay's affidavit para 9 page 2), payment is still subject to verification by the New Board of Directors;

(d) The director resolution is an "internal memo" to be applicable within the Company and not to be taken as an admission for the benefit of 3rd parties; and

(e) The Resolution provides that a written confirmation is to be given to the Plaintiffs. No written confirmation was given to the Plaintiffs.

13 I found the foregoing arguments to be entirely unmeritorious as they tended to ignore and gloss over the very admission and the undertaking as to payment contained in the said board resolution, duly passed and signed by six directors of Wee Poh, a public listed company.

14 Counsel for Wee Poh tried in vain to circumvent the resolution by claiming that the resolution was an internal document. I found this argument also to be disingenuous for two reasons. First, a copy of the resolution was admittedly handed over to Stone Forest by Wee Poh and second, a listed entity, having acknowledged that services had indeed been rendered to it in a formal document, could not be heard to resile from that statement on nebulous grounds.

15 The next contention raised by counsel for Wee Poh was that the parties had entered into a second letter of engagement on 22 February 2002 under which Stone Forest undertook to assist Wee Poh in marketing and negotiating with some strategic investors. It is not necessary to refer to the second letter of engagement at any length at this stage except to point out that the second letter of engagement concerned a fresh matter and that fees payable for services under the second letter did not straddle services rendered under the first letter of engagement. At any rate, the board resolution under reference was passed on 8 November 2002 ("the resolution"), some eight months after the second letter of engagement. The resolution did not, in any manner or form, dispute services rendered by Stone Forest under the first letter of engagement.

16 Counsel for Wee Poh further argued that under the resolution Wee Poh agreed to pay Stone Forest only from new moneys raised by Wee Poh. He contended that "new monies" in the resolution meant those moneys raised with the plaintiffs' assistance. According to him, the "new monies" which came into Wee Poh were not through the assistance of Stone Forest. I must say presently that the attempted introduction of the phrase "with the plaintiffs' assistance" after the words "new words raised by the company" in sub-para (a) of the resolution, owed more to expediency than to reason or logic.

17 In my view, the arguments based on the second letter of engagement were totally irrelevant to the issues at hand. There was a very clear acknowledgement of the services rendered by Stone Forest to Wee Poh and an equally express undertaking to make payments to Stone Forest under the first letter of engagement. Wee Poh's present attempt to delay payment to Stone Forest reeked of disingenuity and, in my determination, was wholly unjustified.

18 Having regard to all the evidence placed before the court, I was satisfied that the arguments raised by Wee Poh were neither *bona fide* nor appeared to possess a semblance of a valid defence to warrant the court to grant it even conditional leave. As observed by Jessel MR in *Anglo-Italian Bank v Wells* (1878) 38 LT 197 at 201, "when the Judge is satisfied not only that there is no defence but no fairly arguable point to be argued on behalf of the defendant it is his duty to give judgment for the plaintiff".

19 After reviewing all the arguments, my conclusion was that there were no triable issues raised by Wee Poh to merit the issues going forward for trial. In the premises, I dismissed Wee Poh's appeal with costs.