

Low Hian Chor v Steel Forming & Rolling Specialists Pte Ltd and another
[2012] SGHC 10

Case Number : Originating Summons No 591 of 2011
Decision Date : 13 January 2012
Tribunal/Court : High Court
Coram : Chan Seng Onn J
Counsel Name(s) : Foo Soon Yien (Bernard & Rada Law Corporation) for the plaintiff; Tan Yew Cheng (Leong Partnership) for Ang Thiam Swee.
Parties : Low Hian Chor — Steel Forming & Rolling Specialists Pte Ltd and another

Companies

[LawNet Editorial Note: Civil Appeal No 123 of 2011, Summons No 1423 of 2012 and Summons No 2120 of 2012 were allowed by the Court of Appeal on 31 January 2013. See [\[2013\] SGCA 11.](#)]

13 January 2012

Chan Seng Onn J:

Introduction

1 This was an application made pursuant to section 216A of the Companies Act (Cap. 50, 2006 Rev Ed) (“the Act”) by Low Hian Chor (“the Plaintiff”), for leave to bring an action in the name and on behalf of Steel Forming & Rolling Specialists Pte Ltd (“the Defendant”), against a former director of the Defendant, Ang Thiam Swee (“Ang”), for breaches of director’s duties owed to the Defendant. I allowed the application, and now give my reasons.

Facts

2 The Defendant is a private limited company incorporated in Singapore in 1984 that carries on the business of, *inter alia*, fabrication of steel structures, pressure vessels and steel plate cutting. The Defendant’s shareholding structure is as follows:

- (a) Gan Oh Boon (“Gan”), a bankrupt shareholder whose 80% shareholding in the Defendant is currently held by the Official Assignee;
- (b) The Plaintiff, who holds 10% of the shares; and
- (c) Ang, who holds 10% of the shares

3 Gan was a director of the Defendant from the time of its incorporation in 1984 to 27 October 2009, when he was made a bankrupt and statutorily disqualified from directorship under s 154 of the Act. On 27 October 2009, Gan was convicted of 2 charges under s 96(1)(b) and 3 charges under s 95(2) of the Income Tax Act (Cap. 134, 2001 Rev Ed) for making fraudulent tax claims on alleged expenses of \$1,620,000 purportedly made by the Defendant, and sentenced to two weeks’ imprisonment. Due to Gan’s use of the Defendant to make the fraudulent tax claims, the Defendant was also charged under the Income Tax Act and penalized to pay \$988,933.58 in monthly instalments

of \$65,928.90.

4 The Defendant subsequently engaged forensic accountants Stone Forest Corporate Advisory Pte Ltd to investigate the Defendant's accounts and Gan's mismanagement of the Defendant. These investigations revealed that Ang had together with Gan committed various breaches of their duties as directors to the Defendant. During the time of Gan's directorship, Gan and Ang were co-signatories of the Defendant's DBS bank account. It transpired from the investigations that Ang had signed cheques together with Gan and misappropriated the Defendant's funds by (a) making payment without basis from the Defendant's account to Ang;(b) transferring money without basis from the Defendant's account to a personal DBS bank account jointly held by Ang and Gan's son; and (c) paying secret commissions.

5 The Plaintiff then instructed his solicitors to write to Ang's solicitors in a letter dated 6 January 2011, requesting that Ang return these misappropriated sums to the Defendant. In a letter from Ang's solicitors dated 20 January 2011, Ang denied that he had misappropriated the Defendant's funds. The Plaintiff subsequently took out this application for leave to bring an action in the name and on behalf of the Defendant against Ang for breach of his director's duties to the Defendant.

Whether the Plaintiff should be granted leave to bring an action against Ang in the name and on behalf of the Defendant

6 S 216A of the Companies Act provides thus:

(2) Subject to subsection (3), a complainant may apply to the Court for leave to bring an action in the name and on behalf of the company or intervene in an action to which the company is a party for the purpose of prosecuting, defending or discontinuing the action on behalf of the company.

(3) No action may be brought and no intervention in an action may be made under subsection (2) unless the Court is satisfied that —

(a) the complainant has given 14 days' notice to the directors of the company of his intention to apply to the Court under subsection (2) if the directors of the company do not bring, diligently prosecute or defend or discontinue the action;

(b) the complainant is acting in good faith; and

(c) it appears to be *prima facie* in the interests of the company that the action be brought, prosecuted, defended or discontinued.

7 Here, I found that the Plaintiff had satisfied the three limbs under s 216A(3). First, the Plaintiff had given the requisite 14 days' notice to the directors of the Defendant to apply to the Court under s 216A(2) if the directors did not bring an action against Ang, and the directors of the Defendant had not taken any action to pass a resolution for the Defendant to commence an action against Ang. Second, I found that the Plaintiff was acting in good faith in seeking to bring this action on behalf of the Defendant. Third, I found that it appeared to be *prima facie* in the interests of the Defendant that the action be brought against Ang to recover the monies misappropriated from the Defendant's bank account. It appeared *prima facie* that there was a significant amount of monies that had been misappropriated from the Defendant, and that Ang had committed multiple serious breaches of his duties as a director.

8 I thus granted the Plaintiff leave to proceed with the following claims:

(a) Claims for \$386,915.21, being alleged company expenses that were fictitious and unsupported by any goods received or services rendered to the Defendant;

(b) Claim for \$41,544.35, being allowances paid to Ang's brother made without CPF, and without any additional service being performed by the latter to the Defendant;

(c) Claim for \$102,703.76, being the balance of monies paid into a personal bank account held jointly between Ang and Gan's son without justification, after deducting the sum of \$20,000 repaid by Ang pursuant to the Plaintiff's demand; and

(d) Claim for \$34,200, being secret commissions paid to one Michael Choo, an employee of the Defendant's customer, to procure the business of the said customer.

These claims were supported by receipts and documentary evidence annexed to the Plaintiff's affidavit in support of this application.

9 However, I did not grant the Plaintiff leave to proceed with the alleged company expenses pertaining to items dated 23/6/97, 31/12/97, 21/10/02 and 5/1/07. The items dated 23/6/97 and 31/12/97 were paid as salaries, and do not appear to be unsupported. The item dated 21/10/02 was for the initial payments made towards the purchase of a Toyota Camry. When first questioned, it was initially denied that the directors of the Defendant were entitled to a car as part of their contract of service with the Defendant. On further questioning however, it came to light that the Defendant had subsequently been paying for the instalments on the car. As such, it appears to me that the directors were entitled to a car as part of their contract of service with the Defendant, such that these payments were legitimate and leave should not be granted to pursue them. The item dated 5/10/07 comprised \$30,000 in director's fees paid to Ang. As this same amount was also paid to all the other directors of the company, it appears to be a legitimate payment of directors' fees.

10 I also did not grant the Plaintiff leave to proceed on the claim for \$1,719,200.40, being payments to suppliers of the Defendant for which invoices had been duly issued. While the Plaintiff claimed that these payments were unsubstantiated and unjustified as no goods or services were received by the Defendant for such payment, *prima facie* it did not appear to me likely to be the case as these were third party suppliers, unconnected with Ang or Gan. No evidence was adduced to show that goods and services had not been provided by these third party suppliers in return for the payments made to them by the Defendant for which invoices had been rendered.

Conclusion

11 I thus made an order in terms of prayers 1 and 2 of SUM 3733 of 2011, *viz* that Ang be added as a defendant to the proceedings, and that the costs of this application be costs in the cause. The orders granting leave at [8] above were made without prejudice to a fresh application for leave to proceed with more claims should there be fresh evidence discovered.