

Cleantech Partners Hangzhou Pte Ltd and another v Han Cheng Fong and others
[2013] SGHC 52

Case Number : Suit No 266 of 2011
Decision Date : 27 February 2013
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Chan Kia Pheng, Harpal Singh, Tan Wei Ming and Favian Kang (KhattarWong LLP) for the plaintiffs; Anthony Lee Hwee Khiam and Pua Lee Siang (Bih Li & Lee) for the defendants.
Parties : Cleantech Partners Hangzhou Pte Ltd and another — Han Cheng Fong and others

Companies – Directors – Duties

Tort – Conspiracy

27 February 2013

Judgment reserved.

Tan Lee Meng J:

1 The first plaintiff, Cleantech Partners Hangzhou Pte Ltd (“CTPHZ”), is a wholly-owned subsidiary of the second plaintiff, Cleantech Partners Pte Ltd (“CTP”). The first defendant, Dr Han Cheng Fong (“Han”), is a former chairman and former director of CTPHZ. The second defendant, Mr Low Soo Chee (“Robin”), and the third defendant, Ms Liew Sok Kuan (“Christine”), are former directors of CTPHZ and CTP. Han, Robin and Christine, who will collectively be referred to as “the defendants” for convenience, are presently the directors of the fourth defendant, International Eco-City Pte Ltd (“IEC”).

2 This case concerns CTPHZ’s participation a low-carbon eco-park project in Hangzhou, China, known as the “Hangzhou Singapore Eco-Park development project” (“the Hangzhou project”). The plaintiffs asserted that the defendants breached their statutory and fiduciary duties as their directors and that the defendants conspired to use unlawful means to divert the Hangzhou project from them to IEC. The defendants denied these charges.

Background

3 The founder directors of CTP, a Singapore company, are Mr Teo Chong Nghee Patrick (“Patrick”), Mr Lim Shih Hsi (“Richard”), Mr Michael Heng Swee Hai (“Michael”) and Robin.

4 In late 2009, CTP collaborated with a Chinese company, Hangzhou Vanwarm Holdings Group Ltd (“Vanwarm”), to develop the Hangzhou project. This project, which is managed by the Hangzhou Qianjiang Economic Development Area Management Committee (“HQEDA”), is intended to showcase clean and environmentally friendly technological innovations.

5 CTP’s founder directors invited Han to participate in the Hangzhou project because of his expertise in the property market in Singapore and China. Han was a former Chief Executive Officer of Fraser & Neave Ltd and a former Deputy Chairman of DBS Land. Han arranged for Christine, a former real estate sales executive from Frasers Centrepoint Limited, to be involved with the Hangzhou

project.

The 1 March 2010 Meeting

6 Han wanted to have the terms of his participation in the Hangzhou project recorded in a shareholders' agreement. In early March 2010, CTP's founder directors, Han, Christine and Cleantech Ventures Asia Pte Ltd ("CTVA"), a company controlled by Patrick and Richard, signed a document ("the 1 March document"). Han asserted that the 1 March document was a shareholders' agreement but Patrick, Richard and Michael insisted that it was not.

7 Apart from giving shares and offering directorships in CTP to Han and Christine, the 1 March document provided, *inter alia*, that Han would become the chairman and a director of a new subsidiary of CTP, subsequently named CTPHZ, which was to be set up to roll out the Hangzhou project. The 1 March document also stipulated that profits from the Hangzhou project would be shared between CTP and CTPHZ in the proportion of 33% and 67% respectively. Of the 67% intended for CTPHZ, 33% would be shared by its directors while the remaining 67% would be distributed to CTPHZ's management, headed by Han, at his sole discretion. The 1 March document further provided that any "change to the above Resolutions shall require unanimous decision of the board of directors of CTP".

Tripartite agreement between HQEDA, CTP and Vanwarm

8 On 23 March 2010, CTP entered into a tripartite agreement with HQEDA and Vanwarm ("the Tripartite Agreement") to collaborate on the preparation of a master plan for and the development and promotion of the Hangzhou project.

Han declines to take part in fund-raising for CTP

9 Shortly after agreeing to helm CTPHZ, Han disagreed with Patrick, Richard and Michael over CTP's fund raising efforts for its business. On 24 March 2010, the Business Times reported that CTP was "dipping its toes into potential deals, including a coal gasification project in Indonesia, a wind farm project in Vietnam and a solar panel installation business in China" ("the BT Report"). Han thought that the BT Report, which was published after Patrick, Richard and Michael had been interviewed, portrayed CTP as a substantial company when it merely had one project, namely the Hangzhou project. Concerned that such misstatements in the course of CTP's fund raising efforts for its business might tarnish his reputation, Han informed CTP's directors on 7 April 2010 that he would focus his attention on CTPHZ and not sit on CTP's board "so as not to stand in the way of [CTP's] fund raising efforts". The directors of CTP accepted his stand.

Setting up of CTPHZ and appointment of Han as its chairman

10 On 1 April 2010, CTPHZ was incorporated. Han became its chairman. The other directors were Robin, Patrick, Richard and Christine. Although the 1 March document provided that Michael was to be on CTPHZ's board, he was not appointed as a director of CTPHZ.

Collaboration agreement with Vanwarm

11 On 31 May 2010, Han signed a collaboration agreement with Vanwarm on CTPHZ's behalf ("the Collaboration Agreement"). Under the Collaboration Agreement, a joint venture company named "Hangzhou Vanwarm Cleantech Co Ltd" ("HVC") was to be set up and CTPHZ was guaranteed a profit of RMB130 million from the Hangzhou project by Vanwarm. Furthermore, Vanwarm undertook to

arrange for Hong Kong Hong Jia Investments Co Ltd ("Hong Jia") to lend CTPHZ USD6 million to pay for CTPHZ's 40% share of HVC's registered capital of USD15 million ("the Loan Agreement").

12 To be enforceable in China, the Collaboration Agreement had to be registered with the appropriate governmental department there. However, this was not done as Vanwarm wanted the said agreement to be confidential. As such, whether CTPHZ would eventually receive the promised guaranteed profit of RMB130 million from the Hangzhou project depended entirely on Vanwarm's generosity.

13 On 17 June 2010, HVC was incorporated in China. CTPHZ appointed Han and Robin to HVC's board. HVC's other directors were Vanwarm's chairman, Mr Liu Hai ("Liu Hai"), Vanwarm's general manager, Mr Chen Yang, and a Mr Zeng Jimin.

Deterioration of Han's relationship with Patrick, Richard and Michael

14 In the meantime, Han's relationship with Patrick, Richard and Michael rapidly deteriorated. While Patrick, Richard and Michael contended that Han was egotistical and overly protective of Christine, Han said that by August 2010, he had discovered that Patrick and Richard were planning to deprive him and Christine of their rights under the 1 March document and to remove him from his posts in CTPHZ. Without the knowledge of Patrick and Richard, the emails sent by them to each other and to Robin about sidelining or getting rid of Han were handed over by Robin to Han and Christine at the material time.

15 Han also discovered by August 2010 that Patrick and Richard were trying to sell their CTP shares to a Malaysian company, Bintan Kindenko Corporation Berhad. This was contrary to the understanding with HQEDA and Vanwarm that the Hangzhou project was to be a China-Singapore project. Between June and August 2010, emails were exchanged between Patrick, Richard and others which showed that Patrick and Richard were hoping by the sale of their CTP shares to, in their own words, "get rid of [Han] and [Christine]". It was also made clear in the said emails that "[they were] going to be ruthless" when dealing with Han. The proposed sale of CTP's shares did not materialise. According to Patrick, the sale did not materialise because Han and Christine were not interested in the deal and he was informed that "the regulators in the Kuala Lumpur Stock Exchange were unfriendly to Chinese projects".

16 Han thought that his interests would be better protected if he was appointed to the CTP board, as had been envisaged in the 1 March document. He emailed CTP's company secretary, Mr Ng Chee Tiong ("Ng"), to arrange for his appointment as the deputy chairman and a director of CTP but no action was taken on his request.

17 On 25 August 2010, Han instructed Ng to ask all CTPHZ directors to disclose their directorships. In an email dated 5 September 2010, Patrick informed the other CTPHZ directors that he would address the issues raised by Han with Ng in a "memo to CTP members" at a later date.

18 On 18 September 2010, Christine and Robin formed a new company, Green Solutions @ ARB Pte Ltd, which changed its name to IEC on 20 January 2011.

CTPHZ board meeting on 29 September 2010 and Patrick's response

19 On 24 September 2010, Han arranged for a meeting of CTPHZ's board to be held on 29 September 2010. After receiving the notice for the said meeting, Patrick emailed Richard and Robin on 27 September 2010 as follows:

I ask both of you for your support not to attend the meeting... if any of us do, it is the break up of CTP... pls believe me.

Every time we attend a Board meeting, we risk making a mistake and [Han] has already ... [planned] to catch us wrong footed.

20 Robin attended CTP's board meeting on 29 September 2010 together with Han and Christine. At this meeting, the board replaced the company secretary, Ng, with Ms Sally Phuar ("Sally") and changed the company's registered address to the new company secretary's address. The board also confirmed that CTPHZ had five directors, namely, Patrick, Richard, Han, Robin and Christine and that one seat on the board was left vacant. The plaintiffs claimed that Han tried to seize control of CTPHZ on 29 September 2010.

21 On 1 October 2010, Patrick instructed Ng to retain CTPHZ's records until further notice because the majority of CTP's board did not agree to the change of CTPHZ's company secretary.

22 On 5 October 2010, Han sent an email to Patrick, part of which is read as follows:

I now regret very much being involved with the likes of you and Richard, but having committed to this project especially to our Chinese partners, I now have no choice but to see this project to the end. This is my commitment to Mr Liu Hai and Vanwarm and I will fulfil it. But I will do all I can to ensure that the two of you stay within the law, observe good governance and meet our obligations to our Chinese partners. I have enough documentary proof of what you have been up to in the last few months and I have communicated these to Mr Liu Hai and his people in Vanwarm. [emphasis added]

23 On 6 October 2010, Patrick emailed Han and said that he had neither the time nor the passion to spar with the latter. He also reserved his comments on Han's views on corporate governance.

Sacking of Han on 12 October 2010

24 On 12 October 2010, Patrick caused an Extraordinary General Meeting of CTPHZ to be held to remove Han and Christine as directors of CTPHZ with immediate effect. At the said meeting, Michael was appointed a director of CTPHZ. On the same day, Patrick, Richard and Michael caused CTPHZ's board to approve a resolution removing Han as the company's corporate representative on HVC and to replace him with Patrick. No notice was given to Han of these meetings on 12 October 2010. On 21 October 2010, Ng emailed to Han the resolutions that dismissed the latter from his positions in CTPHZ. No reasons were given for the dismissal.

25 On 28 October 2010, Patrick and Michael went to Hangzhou to discuss matters with Vanwarm's Liu Hai. According to Patrick, Liu Hai requested and he agreed that Han and Robin be retained as HVC's directors because HVC was then bidding for land in the Hangzhou project and Chinese officials frowned on dealing with companies beset with internal problems. As such, Han and Robin remained as HVC's directors for the time being.

Liu Hai's attempt to mediate

26 Vanwarm's chairman, Liu Hai, came to Singapore on 30 November 2010 to mediate. Patrick, Richard and Michael claimed that they agreed on 2 December 2010 to reinstate Han and Christine to CTPHZ's board in accordance with the terms of the 1 March document. However, Han did not trust the trio and wanted them to agree that he would not be dismissed again until after the completion of

the Hangzhou project. There being no agreement on this new matter, Han served his writ in a related suit, namely, Suit No 908 of 2010 ("Suit 908"), which concerns, *inter alia*, his claim for wrongful dismissal from his positions in CTPHZ on 3 December 2010.

27 Some two months after Han served his writ, HQEDA informed CTP and Vanwarm in a "Letter of Notice" dated 31 January 2011 that HVC's registered capital was not in place by the agreed deadline of 31 December 2010 and that construction work in the Hangzhou project had not started even though this should have been done by the end of 2010. HQEDA extended the deadlines but warned that if the new deadlines were not met, the Tripartite Agreement would be terminated.

28 On 2 February 2011, Vanwarm terminated the Collaboration Agreement on the ground of "internal problems at CTP". Vanwarm had no right to do this but CTPHZ did not challenge Vanwarm on this.

29 CTP and CTPHZ failed to inject their share of the requisite registered capital of HVC by the extended deadline of 10 March 2011. On the very next day, HQEDA informed CTP and Vanwarm that the Tripartite Agreement had been terminated.

30 On 31 March 2011, Vanwarm terminated the Collaboration Agreement on a new ground, namely, that there was no basis for the Collaboration Agreement since HQEDA had terminated the Tripartite Agreement. On 3 April 2011, Hong Jia terminated the Loan Agreement.

The dispute spawns two suits

31 The dispute between the parties spawned two suits. After Han instituted Suit 908 and claimed, *inter alia*, damages for wrongful dismissal, CTP and CTPHZ commenced the present suit against the defendants for, among other things, breach of fiduciary duties and conspiring to divert their interest in the Hangzhou project to the fourth defendant, IEC. It was ordered that Suit 908 and the present suit be heard together.

My findings in Suit 908

32 My findings in Suit 908 that are relevant to the present suit may be summarised as follows:

- (a) Patrick, Richard, Michael, Robin, Han, Christine and CTVA entered into a shareholders' agreement on 1 March 2010 ("the shareholders' agreement"), under which it was agreed, *inter alia*, that Han would be the chairman and a director of CTPHZ;
- (b) on the basis of the shareholders' agreement and of his legitimate expectations upon joining CTPHZ, Han was entitled, without more, to remain as the chairman and a director of CTPHZ;
- (c) Patrick and Richard conspired to have Han removed as the chairman and a director of CTPHZ; and
- (d) Patrick, Richard and Michael breached the shareholders' agreement or thwarted the shareholders' understanding that created Han's legitimate expectation by wrongfully removing Han as chairman and director of CTPHZ on 12 October 2010.

Defendants' duties of care, skill and diligence

33 The plaintiffs asserted that the defendants breached their duties of care, skill and diligence by deliberately failing to meet crucial deadlines, which led to the Letter of Notice from HQEDA on 31

January 2011. They also alleged that the defendants failed to perform reasonable management tasks.

34 The plaintiffs' assertion that the defendants deliberately failed to meet deadlines was completely undermined by Patrick's concessions at the trial. It may be recalled that in the Letter of Notice, HQEDA complained that Vanwarm and CTP had failed to meet the end December 2010 deadline for injecting capital into HVC and for commencing construction work in the Hangzhou project. Patrick agreed that as Han was dismissed on 12 October 2010, he could not have taken measures to meet the original deadline of 31 December 2010 for the injection of HVC's capital. He testified as follows:

Q: And this registered capital had to be injected, or the first phase of this capital injection had to be in place by December 31st 2010?

A: Correct...

Q: Dr Han was kicked out of [CTPHZ] on 12th October 2010.

A: Correct.

Q: So how can Dr Han be responsible for the non-fulfilment of CTP with regard to these two requirements?

A: I accept that argument.

35 As for the commencement of construction work by the end of 2010, HVC managed to acquire land in the Hangzhou project only in mid-December 2010, *after* Han had been already been dismissed from CTPHZ. There was no suggestion that the defendants were responsible for the delayed acquisition of the said land. In any case, it was the responsibility of HVC and not CTPHZ to arrange for the commencement of construction work.

36 Patrick agreed that after Han had been dismissed on 12 October 2010, it was CTP's responsibility to ensure that Vanwarm meet HQEDA's extended deadlines. Although Richard wrote to Vanwarm about this matter on 26 February 2011, the extended deadline for the injection of HVC's capital was not met.

37 Notably, after the extended deadline for the injection of capital had expired, CTP's Chinese solicitors informed HQEDA in a letter dated 11 May 2011 that CTP had decided to delay the injection of funds for the registered capital of HVC and requested a meeting with HQEDA to explain why it had decided to do so. When cross-examined, Patrick conceded as follows:

Q: So CTP was in the wrong. CTP deliberately chose not to comply with the deadline imposed by HQEDA in their warning letter. Am I not right?

A: This is just a very simple explanation of this last paragraph.

...

Q: ... I'm just looking at that paragraph and it clearly says that you all informed HQEDA that you all deliberately decided -- not to transfer the capital into HVC.

A: *It was a convenient explanation to HQEDA at that time.*

[emphasis added]

38 In short, the failure to comply with HQEDA's original or extended deadlines had nothing to do with the defendants, and the plaintiffs' allegation that lack of skill on the part of the defendants led to HQEDA's Letter of Notice and the eventual eviction of CTPHZ from the Hangzhou project did not get off the ground.

39 As for reasonable management tasks, I found in Suit 908 that it was not proven that Han failed to carry out reasonable management tasks required of him. Robin and Christine acted under Han's direction and it was also not established that they failed to carry out reasonable management tasks in relation to CTPHZ.

40 As the defendants were not responsible for CTPHZ's failure to meet the deadlines established by HQEDA and did not fail to perform reasonable management tasks, the plaintiffs' allegation that they breached their duties to act with diligence, care and skill as CTPHZ's directors was not substantiated.

Whether the defendants breached their fiduciary duties

41 The plaintiffs alleged that the defendants breached their fiduciary duties in a number of ways. First, they alleged that the defendants conspired against them to divert the Hangzhou project to IEC. Secondly, they claimed that the defendants poached their Japanese clients for IEC.

42 Unlike Robin and Christine, Han was not appointed as a director of CTP. Despite this, the plaintiffs claimed that he owed fiduciary duties to CTP as he was its shadow director. Section 4(1) of the Companies Act (Cap 50, 2006 Rev Ed) provides that a director includes "any person occupying the position of director of a corporation by whatever name called and *includes a person in accordance with whose directions or instructions the directors of a corporation are accustomed to act* and an alternate or substitute director" (emphasis added). The plaintiffs contended that Christine acted in accordance with Han's wishes because she was effectively his mouthpiece. Whether or not that is true, Patrick testified that the majority of CTP's board, namely himself, Richard and Michael, did not act in accordance with Han's directions. In view of this, Han is not CTP's shadow director.

The alleged conspiracy

43 It is not easy to prove the existence of a conspiracy. In *R v Siracusa* (1990) 90 Cr App R 340, the English Court of Appeal observed (at 349) that "the origins of all conspiracies are concealed and it is usually quite impossible to establish when or where the initial agreement was made, or when or where other conspirators were recruited". In *Asian Corporate Services (SEA) Pte Ltd v Eastwest Management Ltd (Singapore Branch)* [2006] 1 SLR(R) 901, Chao Hick Tin JA pointed out (at [19]) that it is not often that the victim of a conspiracy has direct evidence to prove the allegation and that proof of conspiracy is normally inferred from other objective facts.

44 In essence, the plaintiffs' claim against the defendants for conspiracy was that Han escalated the internal dispute within CTPHZ and instituted Suit 908 with the support of Christine and Robin to give Vanwarm a reason to divert the Hangzhou project from CTPHZ to IEC.

Whether HQEDA and Vanwarm were involved in the alleged conspiracy

45 The plaintiffs asserted that HQEDA and Vanwarm were involved in the alleged conspiracy but they had no evidence of this.

46 HQEDA did not terminate the Tripartite Agreement because of Han's suit or CTPHZ's internal problems. In fact, on 31 January 2011, some two months *after* Han had already commenced Suit 908, HQEDA extended the deadlines for the injection of HVC's registered capital. As mentioned, HQEDA terminated the Tripartite Agreement on the ground that the requisite capital for HVC had not been injected before the expiry of the extended deadline. As such, the allegation that HQEDA was involved in the alleged conspiracy was not substantiated.

47 As for Vanwarm, Liu Hai would not have asked Han on 17 November 2010 to postpone the taking of legal action for wrongful dismissal if he had wanted to harm CTP or CTPHZ. Liu Hai had asked for the said postponement to give himself time to persuade the factions in CTPHZ to work together. Furthermore, Liu Hai would not have come to Singapore in late 2010 to mediate if his company was involved in the alleged conspiracy to oust CTPHZ from the Hangzhou project. Admittedly, Vanwarm terminated the Collaboration Agreement on 2 February 2011 on the ground of CTPHZ's internal disputes. However, it did not have the right to do so and the plaintiffs could have challenged Vanwarm's termination on this ground. However, they did not. Vanwarm subsequently relied on HQEDA's termination of the Tripartite Agreement to terminate the Collaboration Agreement on 31 March 2011. The plaintiffs claimed that it was Han who advised Vanwarm to issue another termination notice but this was merely a bald assertion.

48 When considering why the plaintiffs' relationship with Vanwarm deteriorated, it should not be overlooked that on 7 December 2010, Michael threatened Liu Hai that CTP would terminate its relationship with Vanwarm. He stated as follows in his email:

Firstly, I am very unhappy about your visit to Singapore this time to interfere in the internal corporate management of CTP. Big Brother Liu, *this is a kind of disrespect towards me! In fact, it is contempt! ...*

In my opinion, your insistence that Mr Han should be re-appointed as director of CTPHZ may be due to the fear that he will disclose the partnership between us. *This is cowardly and selfish behaviour....*

I would like you to retract the demands that you have made on us. Mr Han will not be resuming his position without my consent...

Big Brother Liu, please forgive me for my tone in this e-mail. *I am unable to hold back my anger against such disrespectful behaviour.* I hope to have your understanding. We will not be able to maintain a long-term partnership if there is no mutual respect and trust between us.

Please be prepared for our impending withdrawal of CTP. Thank you!

[emphasis added]

49 Michael sent another abrasive email to Liu Hai on 10 December 2010. Part of the email read as follows:

Now, you even went so far as to ask your subordinate Chen Yang to speak on your behalf regarding the personal email I sent? What's more, it was through CTP! That was indeed utter disrespect to me! *Please contact me directly if you are a man!* There is no need to involve CTP in the personal matters between us!

You are now aware that Dr Han has commenced action against CTP. Your appearance has

emboldened him....

Dr Han's accusation and the outcome of the project were brought about by you singlehandedly. I will hold you responsible!

[emphasis added]

50 In yet another offensive email to Liu Hai on 15 December 2010, Michael continued to take a rather aggressive tone.

51 Patrick testified that the above-mentioned emails that Michael sent to Liu Hai were "offensive", "annoying" and "disturbing". The defendants pointed out that Michael's three letters to Liu Hai on 7, 10 and 15 December 2010 would have destroyed whatever goodwill Vanwarm, the paymasters for the Hangzhou project, had for CTP and CTPHZ. Whether or not that is correct, the plaintiffs have themselves to blame for the deterioration in their relationship with Vanwarm. I find that it was not proven that the defendants involved Vanwarm in the alleged conspiracy.

Whether the defendants conspired against the plaintiffs

52 As for the plaintiffs' assertion that Han conspired with Robin and Christine to file Suit 908 in order to evict CTPHZ from the Hangzhou project, Patrick accepted that this was his own theory, which was not based on facts. He testified as follows:

Q: You ... [asserted] that when Dr Han issued the writ in [Suit] 908, it was for an ulterior motive, and that was to cause Vanwarm and HQEDA to terminate the participation of CTP and CTP Hangzhou in the [Hangzhou project]... [S]how us where is that evidence to support this allegation? ...

A: I don't have documentary evidence but, to me, --- there is circumstantial evidence and inference.

...

Q: *Yes, based on a theory, agree?*

A: *Well, you can call it a theory, yes.*

...

Q: *Okay, if it's a theory, it is a theory that is based on conjecture, assumptions; it's not anything that is based on fact. That's your answer. Yes or no?*

A: *Yes.*

[emphasis added]

53 Michael's evidence also did not advance the plaintiffs' case on conspiracy as he testified as follows:

Q: Where is your evidence to support the sweeping allegation ... that [Han] did it purposely so that Vanwarm and HQEDA will terminate the agreements?

A: He did it purposely.

...

Q: Where is the evidence?

...

A: *Okay? I mean ... you ask me ... how his neuron operates, I --- don't know.*

Q: *So, it's a conclusion made by you --*

A: Yes.

[emphasis added]

54 As for whether Robin and Christine supported or approved of Han's decision to institute Suit 908, the plaintiffs admitted in their own pleadings that they did not have personal knowledge of this matter. Patrick testified as follows:

Q: ... You went further and say that the launching of [Suit 908] was with the consent and/or support of Robin and Dr Han ... and [Christine]. Any evidence to support that?

A: The evidence is again by inference because they ... are part of a clandestine group, a partnership... I don't have any document ...

Q: No documentary evidence, right?

A: No, I don't.

55 Both Robin and Christine denied that they supported or consented to the institution of Suit 908. Their evidence was not effectively challenged. I thus find that the allegation that they supported or approved of Han's decision to institute Suit 908 was not proven.

56 Han was clearly entitled to seek redress against the plaintiffs for the wrongful dismissal. It did not follow that by asserting his own rights, Han had caused or induced Vanwarm to terminate the Collaboration Agreement. In the absence of adequate evidence, the allegations that Han instituted Suit 908 to facilitate the diversion of the Hangzhou project from CTPHZ to IEC and that he did this with the support and encouragement of Robin and Christine were not proven.

The meetings on the master plan and the ground-breaking ceremony

57 The plaintiffs also relied on the attendance by the defendants at meetings on the master plan for the Hangzhou project on 18 and 19 November 2010 ("the master plan meetings") and at the ground-breaking ceremony for the Hangzhou project on 28 June 2011 as evidence of a conspiracy against them. According to the plaintiffs, the defendants should not have attended the master plan meetings and ground-breaking ceremony as none of them were CTPHZ's directors at the material times.

58 After Han and Robin had been dismissed from their positions in CTPHZ, Patrick acceded to Liu Hai's request that they remain as HVC's directors so as not to rock the boat while HVC was bidding for

land in the Hangzhou project. Han and Robin asserted that so long as they remained as HVC's directors, they had a duty to attend that company's meetings and assist HVC in the presentation of its master plan to HQEDA. On the other hand, Patrick said that he had agreed that Han and Robin remain as directors of HVC in name only. He testified as follows:

Q: And despite the fact that [you] had agreed with Liu Hai that [Han and Robin remain] on the board of HVC and no action is taken by Liu Hai to remove them, ... and *they continued with their role as directors of HVC. So therefore they are in breach of their fiduciary duties to [CTPHZ]. That's in fact what you are saying, isn't it? Right?*

A: *Correct.*

...

Q: Did you ... tell Dr Han and Robin, "Hey, you have been removed but ... at the request of Liu Hai, we are agreeing that the two of you remain on the board of HVC?"

A: No. We did not tell them.

...

Q: ...[Y]ou say that -, "Yes, we agree that they remained on Board but they are just puppets. They are not supposed to do anything... They should not get themselves involved in the [Hangzhou project]"

A: This is my stand, yes.

[emphasis added]

59 Patrick's position on the limited role of Han and Robin in HVC is untenable. Han rightly complained as follows:

I owe an obligation to attend the HVC meeting. For some strange reason at that point of time, we found that the Chinese still retained us on the board, and we didn't know until I discovered in Patrick's own affidavit, that he actually agreed with Liu Hai to keep us on the board. And now [the plaintiffs] are trying to twist the whole thing round as though we are in some kind of conspiracy, in some kind of plot.

60 Han explained why he was in Hangzhou for the master plan meetings in his affidavit of evidence-in-chief ("AEIC") (at para 180) as follows:

On 18 November 2010, I, Robin, Christine and [Vanwarm's] representatives (Liu Hai) had a meeting with Architect Bu Zhidong of Shenzhen Institute of Building Research and his Assistant to discuss the master plan of the Hangzhou Project, which would be submitted to HQEDA for approval. *Robin and I were still members of the Board of HVC.* Notwithstanding my oral request to Liu Hai [Vanwarm's chairman] on or about 26 October 2010, Liu Hai ... insisted on retaining Robin and me as Board Members of HVC and did not take any action to replace us. Christine was and is a director of GreenTech, a 20% shareholder of HVC. We had a duty to attend the meeting. I, Robin and Christine have never concealed this meeting from CTP and CTPHZ ... as alleged. [emphasis added]

61 It is noteworthy that after attending the meetings on the master plan, Han and Robin signed a

HVC board resolution on 23 November 2010 that authorised the company's representative to bid for land put up for tender. This paved the way for HVC to be allocated land for the Hangzhou project in December 2010. Patrick conceded that the meetings on the master plan attended by Han and Robin benefited HVC, of which CTPHZ is a 40% shareholder. He testified as follows:

Q: [A]re you saying that the meetings of 18th and 19th November 2010 did not result in the land being allocated to HVC in December of 2010?

A: I'm not saying that the meetings did not have a good result ...

Q: So did the meetings have a good result?

A: *The meeting had a good result, yes.*

Q: Yes. *And it led to the allocation of the ... land to HVC, you accept that?*

A: *That's ... the conclusion, yes.*

[emphasis added]

62 Patrick's admission that HVC benefited from the master plan meetings attended by the defendants put paid to the plaintiffs' case that the defendants went to Hangzhou on 18 and 19 November 2010 for their personal interests.

63 As for the ground-breaking ceremony for the Hangzhou project on 28 June 2011, Han explained that he attended the ceremony in his personal capacity as an invited guest of Vanwarm. He stressed that he was not working for HQEDA or Vanwarm but was "helping" them not for monetary gain but to get good testimonials while doing business in China. In his own words, helping HQEDA and Vanwarm was "beneficial for building relationships in China".

64 Robin also attended the ground breaking ceremony as Vanwarm's guest. He produced a copy of Vanwarm's invitation card to attend the said ceremony. Similarly, Christine, who was invited by Vanwarm to attend the ceremony, also produced a copy of the invitation card for the court's inspection.

65 I find that the defendants' presence at the ground-breaking ceremony on 28 June 2011 is insufficient evidence to prove that they were involved in a conspiracy against the plaintiffs.

Whether the Hangzhou project was diverted to IEC

66 Although the plaintiffs alleged that the defendants breached their statutory and fiduciary duties by diverting the Hangzhou project from CTPHZ to IEC, the truth was that even a week before he was dismissed from CTPHZ, Han was still counting on CTPHZ receiving its share of the guaranteed profit of RMB130 million promised by Vanwarm. Significantly, in an email to Patrick on 5 October 2010, Han stated as follows:

Wise up, Patrick Teo. *Be contented with what we have agreed with Mr Liu Hai and Vanwarm and wait patiently for the benefits from this joint venture to roll in.* We only need to assist Vanwarm in realizing the goals of this project. That is the most logical approach and not the crazy antics that you keep spewing out. [emphasis added]

67 Han testified as follows that the Hangzhou project had not been diverted to IEC:

Q: Did you benefit personally during this time from the [Hangzhou project]?

A: No, not at all.

Q: Or through IEC?

A: ... *IEC has absolutely no connection with this project.*

Q: From 12 October [2010] right up to today, does IEC have an interest in the Hangzhou project?

A: *IEC had never any interest in the Hangzhou project.*

[emphasis added]

68 Robin explained that IEC was involved in activities that did not compete with the Hangzhou project. For instance, on 30 September 2010, Calframe (Singapore) Pte Ltd appointed IEC as its authorised distributor for its waterless urinal maintenance system as well as its bio-enzymatic cleaning and washroom hygiene products. Furthermore, in March 2011, Dove Paint (Shanghai) Ltd authorised IEC to market its products. Robin reiterated that IEC had not participated in the Hangzhou project and that the defendants had not attempted to divert the said project to IEC.

69 Patrick admitted that he had no evidence to prove that the Hangzhou project had been diverted to IEC. The relevant part of the proceedings is as follows:

Q: [I]s your case that they only attempted or ... that they have completed a diversion ... of this maturing business?

A: I have *no evidence to say they have completed the diversion of this business* because ... [they] would be so secretive, it'd be put in a safe deposit box.

Q: I'm glad that you admitted you have no evidence...

A: But *the only evidence*, which [you] will say --- *is hearsay* ...

[emphasis added]

70 Richard's evidence on the alleged diversion of the Hangzhou project to IEC was equally unhelpful to the plaintiffs' case as he testified as follows:

Q: HVC has not been snatched away by my client, right? Right? Yes?

A: Er, yes, okay. Yah.

...

Q: Is IEC a new partner of Vanwarm in [the Hangzhou project]? ...

A: Yes.

Q: Where is the evidence?

A: Well, on – on this – evidence here, of course. We cannot prove then.

[emphasis added]

71 Official records in China showed that as at July 2011, CTPHZ was still a 40% shareholder of HVC. Neither CTP nor CTPHZ have taken any steps in China to assert their rights as a shareholder of HVC, which owns land in the Hangzhou project. When confronted with this fact, Patrick claimed that one could conclude that Han had hijacked the Hangzhou project for IEC on the basis of what he called “commercial creativity”. He testified as follows:

Q: [This document] confirms that [CTPHZ] is still a 40% shareholder of HVC. Do you agree with me?

A: Yes, based on this...

Q: Then how could Dr Han, Robin and Christine divert or usurp or hijack the [Hangzhou project] from [CTPHZ]? Please tell the Court.

A: Okay. Will you not tell me that I have a fertile imagination if I tell the Court?

Q: Oh, so you gonna ... [speculate]?

A: No, it's not speculation, *it's commercial ... creativity...*

[emphasis added]

72 When explaining as follows what he meant by “commercial creativity”, Patrick spoke of a mere possibility, which was insufficient to prove his allegations:

Here, HVC is shown to have US\$15 million in capital ... and CTPHZ is shown to have a 40% stake as at 8th July 2011, okay. Now, so CTPHZ presumably still looks like it's got its project and investment in the HVC. But hijacking can take many forms...

The Chinese have a way of using a Singapore brand to get the piece of land. They *probably* got the land on their own, and they then will profit share under the [Collaboration Agreement] into [HVC]. *And that's a possibility*. So if they don't wish to put the profit share into this company, there's no way we can force the Chinese to meet their obligations. And if you don't have a relationship with them, the profit share *can* be diverted elsewhere, and that's the point I am making.

[emphasis added]

73 Richard, who agreed that CTP continues to hold 40% of the shares in HVC, offered the following unhelpful testimony regarding his unproven suspicion that IEC stole the Hangzhou project from the plaintiffs:

Q: Is IEC a new partner of Vanwarm in the [Hangzhou project]?

...

A: Yes...

Q: Where is the evidence?

A: Well, *on the evidence here, of course, we cannot prove then.*

...

Q ... *You suspect, you think, you believe ... but you can't prove?*

A *Yah.*

[emphasis added]

74 I thus find that it was not established that the defendants breached their fiduciary duties by diverting the Hangzhou project to IEC.

Whether fiduciary duties were breached in other ways

75 The plaintiffs alleged that the defendants breached their fiduciary duties by making improper use of information and opportunities derived from or obtained in their capacity as directors. Patrick testified that this allegation concerned the poaching of their Japanese investors. However, it was not the plaintiffs' pleaded case that any particular Japanese investor had become their client and the court was left in the dark as to which Japanese investor had been poached by IEC.

76 The background to this allegation regarding Japanese investors is as follows. On 4 March 2010, CTP held a seminar in Singapore on the Hangzhou project. Mr Takeshi Fujimoto ("Fujimoto"), an executive director of the Japan Export Trade Organisation ("JETRO"), whose mission is to assist Japanese companies to expand their international trade, attended the seminar. On 10 May 2010, Fujimoto emailed Richard and Patrick that the Japanese Ministry of Trade and Industry ("METI") and some Japanese companies were interested in the Hangzhou project. On 28 July 2010, Robin, who was then a director of CTP and CTPHZ, went to Tokyo for a presentation on the Hangzhou project to METI and potential Japanese investors. According to the plaintiffs, a maturing business opportunity was presented to them to bring Japanese businesses to the Hangzhou project.

77 Shortly after Han and Robin had been removed as directors of CTPHZ, Robin, Christine, Fujimoto and a team of Japanese company representatives visited Hangzhou on 11 November 2010. Furthermore, on 17 to 19 February 2011, the defendants went to Tokyo with representatives of Vanwarm and HQEDA to meet representatives from JETRO, METI and Japanese companies regarding investment opportunities in the *entire* Qianjiang Economic Development Area, of which the Hangzhou project was only a rather small part. This investment trip ("the Tokyo trip") was organised by Robin and Fujimoto at the request of Vanwarm's chairman, Liu Hai. According to the plaintiffs, the Tokyo trip evidenced the hijacking by IEC of their commercial opportunity with the Japanese investors.

78 The defendants explained that the Tokyo trip was organised by HQEDA, which wanted to promote the *entire* Hangzhou Qianjiang Economic Development Area of about 25.6 square kilometres. The Hangzhou project occupies less than half a square kilometre. Their visit to Japan was at the request of HQEDA's representative, Mr Cai Yuchi, and Vanwarm's chairman, Liu Hai, who wanted the defendants' assistance in making connections with Japanese companies working through JETRO. At that time, Han and Robin were still directors of HVC and they felt obliged to assist Vanwarm and HQEDA in their investment promotion mission. However, Robin made it clear to HQEDA and Vanwarm

that the defendants were attending the Tokyo meeting as directors of IEC under Vanwarm's banner.

79 To buttress their allegation that IEC was trying to poach their Japanese clients, the plaintiffs relied on emails from one Mr Hitoshi Ikuma ("Ikuma") to Patrick before the Tokyo trip. However, Ikuma was not called by the plaintiffs as a witness and the truth of the contents of his emails could not be tested by cross-examination. In any case, the plaintiffs plainly misinterpreted Ikuma's emails. The relevant part of Ikuma's email of 10 February 2011 read as follows:

.... Fujimoto san told me that [Hangzhou] mission will come to Japan on 17th and 18th, February. Mission includes nine (9) persons, three from Hangzhou development corporation, three from Vanwarm, *three from International Eco City (used to be CTP)*. I would like to confirm following points.

Who will be dispatched from CTP?

Did CTP change its name to International Eco City?

Fujimoto san asked me if we hoped to have meeting with mission or not. I answered "yes". Is there any problem?

[emphasis added]

80 Michael claimed in his AEIC (at para 73) that it was "evidently clear" from Ikuma's above-mentioned email that the defendants had "misrepresented IEC as CTP or as the replacement of CTP (as Vanwarm's Singapore partner in the [Hangzhou project])". However, all that could be deciphered from Ikuma's said email was that he had the impression that IEC used to be CTP and that he had asked whether CTP had changed its name to IEC.

81 The plaintiffs also claimed that the defendants announced at the Tokyo meeting that IEC was CTPHZ's successor in the Hangzhou project and that IEC was Vanwarm's investment partner. However, the plaintiffs' own witness, Fujimoto, testified that the defendants introduced themselves as IEC's representatives and it was not mentioned at the meeting that IEC was the Singapore partner of the Chinese parties. Fujimoto also testified that to date, no Japanese company has invested in the Hangzhou project or in the Qianjiang Economic Development Area.

82 The plaintiffs went so far as to allege that IEC made a powerpoint presentation at the Tokyo meeting and they produced a "PowerPoint Presentation by [IEC] on [the Hangzhou project] dated 17 February 2011". However, the defendants testified that the presentation in question had not been prepared by IEC. Richard admitted that the plaintiffs had no proof that the alleged presentation had been prepared by IEC but he nonetheless testified as follows:

Q: Can you point out that these slides ... show that these were produced by IEC and not anybody else?...

A: ... I don't want to challenge you on this because no point. It'll waste Court's time... It's obviously done by IEC.

Q: *You can't do it but ... you are ... asserting that it was IEC who prepared these slides?*

A: Yes.

[emphasis added]

83 In the circumstances, the question of the poaching of the plaintiffs' unnamed Japanese clients need not be considered further.

Non-disclosure of the incorporation of IEC

84 The plaintiffs also complained that the defendants breached their fiduciary duties by failing to disclose that they had incorporated a competitor, IEC, on 18 September 2010.

85 Han cannot be blamed for this alleged non-disclosure for the simple reason that he did not join IEC until two months after he had been dismissed from his posts in CTPHZ on 12 October 2010. As for the allegation that Han was involved in the incorporation of IEC in September 2010, there was no proof of this. Michael did not advance the plaintiffs' case as he testified as follows:

Q: Do you have any evidence in your AEIC to prove that Dr Han was involved in the incorporation of IEC....

A: No, he didn't sign the form.

...

Q: So ... he's not involved then how do you allege that he, together with Christine and Robin Low had incorporated or cause to be ... incorporated IEC?

A: Because it is logical to reasonably assume. Why? *Since his girlfriend is involved with Robin in the incorporation, he must knowingly be involved... This is a reasonable assumption.*

[emphasis added]

86 In relation to the alleged non-disclosure by Robin and Christine of the incorporation of IEC, the plaintiffs relied on *Bristol and West Building Society v Mothew* [1998] Ch 1. However, there was no proof that IEC had conflicting interests with the plaintiffs. It had become very clear before IEC was incorporated that under Han's chairmanship, CTPHZ was going to be concerned with only one project in China, namely, the Hangzhou project because he distrusted Patrick, Richard and Michael. In any case, China is a very large country and the evidence was that IEC was involved in projects that had nothing to do with the Hangzhou project.

87 The plaintiffs submitted that there remained unanswered questions as to why Vanwarm is still involved with the Hangzhou project if the Tripartite Agreement with CTP and Vanwarm had been terminated by HQEDA. No evidence was furnished on what actually transpired in China between Vanwarm and HQEDA after the termination of the Tripartite Agreement and the court is in no position to speculate on this matter. What is relevant is that I accept Han's evidence that IEC has not replaced CTPHZ in the Hangzhou project.

88 Finally, it may be noted that whether or not the defendants breached their fiduciary duties in not disclosing their interest in IEC, no loss was caused to the plaintiffs, who lost the benefit of the Tripartite Agreement with HQEDA because they and Vanwarm did not comply with the extended deadlines laid down in HQEDA's Letter of Notice on 31 January 2011 for injecting capital into HVC and for commencing construction work.

Conclusion

~~Conclusion~~

89 For the reasons stated, the plaintiffs' claims against Han, Robin, Christine and IEC are dismissed with costs.

Copyright © Government of Singapore.