

Leow Chin Hua v Ng Poh Buan
[2005] SGHC 39

Case Number : Suit 359/2004
Decision Date : 25 February 2005
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Leong Wai Nam and Leonard Loo (Wong M Seow and JYP Chia) for the plaintiff;
M Mahendran, S Sidambaram and Harvindarjit Singh (Surian and Partners) for the defendant
Parties : Leow Chin Hua — Ng Poh Buan

Contract – Misrepresentation – Fraudulent misrepresentation – Whether defendant made false representations of fact to plaintiff – Whether party that had opportunity to inspect documents but did not do so was deprived of right to assert that he was deceived by false representation

Contract – Misrepresentation – Inducement – Whether plaintiff induced by defendant's representations to part with money – Whether false statement had effect on party that conducted its own investigation and did not rely on misrepresentation

Contract – Misrepresentation – Statements of intention – Whether defendant's statements of intention constituted statements of fact – Whether fact allegedly misrepresented constituted defendant's state of mind

25 February 2005

Judgment reserved.

Tan Lee Meng J:

1 The plaintiff, Mr Leow Chin Hua (“Leow”), who claimed to have lost a large sum of money that he had invested in Shen Poh Ceramics Pte Ltd (“SPC”), sought to recover his loss from the defendant, Mr Ng Poh Buan (“Ng”), on the ground that he was induced to invest the said money in SPC by the latter’s fraudulent misrepresentation of facts. Ng denied Leow’s allegation of misrepresentation.

Background

2 Leow, a businessman, is the sole proprietor of Singa Furniture and Renovation Contractor. Ng was the sole proprietor of Shen Poh Ceramics Enterprise (“Enterprise”), which was in the business of supplying ceramic tiles to building contractors. His main customers were contractors who were involved in the Housing and Development Board’s upgrading projects. Other customers included Leow, who occasionally purchased ceramic tiles from Ng for his own renovation projects.

3 As Ng’s ceramic tile business improved, he had cash-flow problems. In mid-2002, he approached Leow for financial assistance. Leow, who gave him \$20,000 for the purpose of purchasing tiles for one of Enterprise’s on-going projects, insisted on having a share of the profit for this project. Upon completion of this project, Ng paid Leow \$24,000, a sum that included the latter’s share of the profit.

4 In early 2003, Ng was again short of money. On this occasion, he needed money to purchase tiles for, *inter alia*, a building project in Jalan Ahmad Ibrahim. He turned to Leow, who agreed to provide him with \$30,000 for this project. According to Ng, this money was given to him on the basis

that Leow was to have a share of the profit. Leow had regarded the \$30,000 as an investment, as can be seen from his Statement of Claim and his affidavit of evidence-in-chief. However, during the trial, he changed his mind and said that this sum of money had been loaned to Ng.

5 After having worked together on two projects, Leow and Ng had discussions about working together in the ceramic tiles trade. Leow said that he noticed that Ng was a good salesman and he found Ng trustworthy. He added that Ng had painted a very rosy picture of Enterprise's business and had told him in January 200 that, in the previous year, Enterprise's turnover was at least \$800,000 and its profit was \$200,000. Leow claimed that Ng refused to show him Enterprise's accounts although he repeatedly asked to see them. On the other hand, Ng said that he gave Leow a copy of Enterprise's accounts and that the latter, knowing the real state of affairs, decided that it was worth his while to take a stake in Enterprise's business. Whichever version of events is more likely to be true will be discussed later on. What needs to be noted now is that in July 2003, a limited company, namely SPC, was formed to take over Enterprise's business. Both Leow and Ng were shareholders and directors of SPC, with each having an equal stake in the new company.

6 The same problems of shortage of cash that plagued Enterprise haunted SPC. Leow claimed to have made a series of investments with respect to SPC and procured credit facilities for the company. He also claimed that he allowed SPC to be largely run by Ng in the first few months but by the end of December 2003, he sensed that something was amiss with SPC's business. He ousted Ng and took over complete control of the company. In para 15 of his affidavit of evidence-in-chief, he unashamedly stated that he "threw" Ng out of the office and prevented him from having access to the same. He said that it was then that he discovered that Ng had lied to him about the state of Enterprise's business prospects and financial position. Leow claimed that by then, SPC was in such a bad shape that he could do nothing to save it. On the other hand, Ng, who pointed out that SPC was making a profit for the first few months of 2003 until he was barred from its premises, said that SPC's financial position would have been very different today if Leow, who did not have much experience in the ceramic tile business, had not taken control of the company.

7 In May 2004, Leow instituted the present proceedings against Ng. In his Statement of Claim, he asserted that he had been induced to invest in SPC by a number of fraudulent representations that were allegedly made by Ng in March 2003. The false representations, which were listed in para 3 of the Statement of Claim, are as follows:

- (a) [Enterprise] was making an annual turnover of \$800,000.00 for the year 2002;
- (b) [Enterprise], after deducting expenses and costs from its income, was making a profit of \$200,000.00 per annum;
- (c) [Ng] would transfer all businesses and revenue of [Enterprise to SPC]; and
- (d) [Enterprise] would then cease to do business by 18 June 2003 and cease to exist.

Whether there was any misrepresentation

8 To succeed in his claim, Leow has to prove that the alleged false representations of fact were made by Ng to him in March 2003 and that he was induced by the said representations to part with his money.

The two statements of intention

9 To begin with, two of the alleged false representations by Ng, namely that he would transfer all the businesses and revenue of Enterprise to SPC and that Enterprise would cease to do business by 18 June 2003, were supposed to have been made in March 2003, several months before SPC was formed. As such, these two statements as to what would be done in the future are statements of intention. It is trite law that a statement of intention is not a statement of fact unless there is proof that at the time the statement of intention was made, the person who made it had no intention to do what he said he would do, in which case the fact that has been misrepresented is actually the state of that person's mind. While the state of a man's mind is as much a fact as the state of his digestion, Bowen LJ rightly pointed out in *Edgington v Fitzmaurice* (1885) 29 Ch D 459 at 483, that it is very difficult to prove what the state of a man's mind is at a particular time. In the present case, no attempt was made by Leow or any of his witnesses to show what Ng's state of mind was when he allegedly made these statements of intention in March 2003. That being the case, nothing more need be said about these two alleged statements of intention.

The statement regarding Enterprise's turnover

10 As for the third representation allegedly made by Ng, namely that Enterprise's turnover in 2002 was \$800,000, evidence was tendered that its turnover in 2002 was not less than this figure. In view of this, the question of misrepresentation does not arise in relation to Enterprise's annual turnover in 2002.

The statement regarding Enterprise's net profit

11 Leow's final complaint is that Ng orally misrepresented to him that Enterprise's profit in 2002 was \$200,000. He claimed to have asked repeatedly for Enterprise's accounts and that Ng never showed him the accounts for 2002, which showed that Enterprise made a gross profit of \$191,037.56 but suffered a net loss of \$38,731.86.

12 Ng denied having said to Leow that Enterprise's net profit was \$200,000 after expenses and costs were deducted. He asserted that what he had told Leow about Enterprise's profit in 2002 was that its gross profit was \$200,000, which he said was not far from the actual figure of \$191,037.56. More importantly, he also asserted that he had furnished Leow with the relevant accounts of Enterprise before the latter agreed to take a stake in SPC. As such, Leow knew the actual position with respect to Enterprise's gross profit and net profit for 2002. He testified that Leow had been concerned that overhead costs, which ate into the gross profits of Enterprise, were very high and had said that ways must be found to have these costs trimmed down.

13 Where, as in the present case, a plaintiff alleges that an oral misrepresentation has been made, much turns on whether the court believes the plaintiff or the defendant. At the outset, it ought to be noted that Leow is not an inexperienced businessman as he has been a businessman for more than 17 years. He knew that he had to inspect Enterprise's accounts to know the true position, as can be seen from the demands he made on numerous occasions to see Enterprise's accounts before and after the formation of SPC. If, as he claimed, Ng failed to produce the accounts for inspection, this would have alerted him to the fact that something was amiss, and especially so since he knew from his dealings with Ng that Enterprise had been desperately short of money in the past and he had had to inject money into Enterprise's projects on a couple of occasions to keep it afloat. Leow would not have been easily put off by Ng's excuses whenever he asked for the accounts. After all, he is not a meek person, as evidenced by the bold steps he took against Ng when, in his own words, he "threw" the latter out of SPC and kept him out of the office. It is thus most unlikely that he would pump hundreds of thousands of dollars into SPC on the basis of the alleged representation that Enterprise's annual net profit in 2002 was \$200,000 without verifying from its accounts whether this

was really the case. Admittedly, a party who has had the opportunity to inspect documents but does not do so is not necessarily deprived of the right to assert that he was deceived by a false representation: see *Redgrave v Hurd* (1881) 20 Ch D 1. However, it is quite clear that if a party conducts his own investigation and does not rely on the misrepresentation, it can no longer be said that the false statement had an effect on him: see *Attwood v Small* (1838) 6 Cl & Fin 232; 7 ER 684. In the present case, I have no doubt that Leow inspected Enterprise's accounts before agreeing to join forces with Ng in the ceramic trade, and that after having done so, he found it worth his while to set up SPC with Ng to take over Enterprise's business.

14 The evidence offered by Leow and his witnesses was far too unsatisfactory to convince me that his version of events ought to be preferred. Leow's credibility as a witness was severely dented by his vacillation on several occasions and by his contradiction both of his own affidavit of evidence-in-chief and the Statement of Claim on innumerable occasions. Two illustrations of the totally unsatisfactory evidence that severely damaged Leow's credibility may be given. The first concerns the \$30,000 that he handed over to Ng in March 2003, before SPC was formed. In his Statement of Claim and in para 9 of his affidavit of evidence-in-chief, Leow stated that this sum of money was an investment and that he had been induced to part with it as a result of Ng's misrepresentation of Enterprise's financial position. However, when cross-examined, he contradicted himself and completely undermined his case for recovering this sum on the ground of misrepresentation when he said as follows:

Q. When you gave the loan of \$30,000, had any misrepresentation been made.

A. No.

15 As Leow conceded that no false representation had been made when he parted with the \$30,000, he had no basis whatsoever for saying that he had been induced by a false representation to part with this sum. Apart from this, he also showed how unreliable a witness he was when he vacillated between regarding the \$30,000 as an investment and as a loan. He explained that if the sum was an investment, he and Ng would have shared the profit and loss in the project. On the other hand, if the \$30,000 was a loan, he was entitled to have it back together with interest regardless of whether Ng made a profit on the project. After a while, Leow finally decided that para 9 of his affidavit of evidence-in-chief was wrong and that the \$30,000 sum was indeed a loan. While he might have thought that this volte-face helped his case, it did not for the simple reason that the written agreement executed by both parties on 3 March 2003 made it very clear that the \$30,000 was his investment in Ng's building project at, *inter alia*, 322 Jalan Ahmad Ibrahim. It provided as follows:

The *investor*, **Mr Steven Leow Chin Hua**, has agreed to *invest* an amount of S\$30,000.00 as working capital partnership with **SHEN POH CERAMICS ENTERPRISE** for the above-mentioned project, **PCI AT 322 JALAN [AHMAD] IBRAHIM & CHURCH/INSTITUTIONAL DEVELOPMENT**, and understand that *both parties will share the cost and net profit* in the end of project. ...

The final net profit will be tabulated by **SHEN POH CERAMICS ENTERPRISE**

[emphasis in italics added]

16 As he was named as an investor in the said agreement and he was to share the cost and net profit of the project in question with Ng, how Leow could now say that he had given Ng a loan of \$30,000 cannot be fathomed.

17 The second illustration of how Leow scuttled his own case with his inconsistent evidence relates to the issue of inducement. He asserted in his Statement of Claim that he had been induced by Ng's false representations to arrange for a letter of credit for \$194,000 for SPC. However, he admitted during cross-examination that matters other than the alleged false representations occupied his mind at the material time. The relevant questions and his answers are as follows:

Q Since you were coming out with \$194,000 for the letter of credit, were you not concerned about the profit margin for the project in question?

A Yes. [Ng] told me there would be a 20–30% profit.

Q When you decided to open the letter of credit, this profit margin was operating in your mind?

A Yes.

Q That was the *only* thing operating on your mind when you opened the letter of credit?

A Yes.

Q *Nothing else operated on your mind?*

A *No other reason.*

Q. You were concerned with the 20–30% profit margin *and nothing else?*

A Yes.

[emphasis added]

18 Leow's unsatisfactory evidence on the issue of inducement was also evident when he was cross-examined about the \$30,000 that he had handed over to Ng in March 2003. Apart from admitting that at the material time, no misrepresentation had yet been made, Leow agreed that he could not have been induced by any false representation by Ng about Enterprise's net profit in 2002 because during cross-examination he said as follows:

Q Is it true that when you gave the loan of \$30,000, you were not concerned with whether or not the company was then making a profit?

A Yes. ...

19 The above-mentioned examples are merely a small sample of Leow's contradictory evidence. Apart from his unsatisfactory evidence during cross-examination, Leow should also be taken to task for furnishing to the court a totally unacceptable report on the findings of the auditors whom he had hired to conduct an investigative audit of SPC, because the makers of the said report testified that documents that they had requested for were not furnished to them and that had these documents been furnished to them, their conclusions might have been very different. Evidently, Leow had given his auditors only a limited number of documents and the fact that other relevant documents were available was not disclosed by him.

Conclusion

20 To sum up, after having had the opportunity to evaluate the evidence of Leow and Ng and to observe their demeanour, I hold that Ng did not make the alleged representation regarding the net profit of Enterprise and that he furnished Leow with the relevant accounts before Leow started investing in SPC. I thus find that Leow was fully aware of Enterprise's financial position when he and Ng decided to form SPC to take over Enterprise's business. That being the case, he did not prove his assertion that there had been a fraudulent misrepresentation by Ng that induced him to invest in SPC. Leow's claim against Ng is thus dismissed with costs.

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