VisionHealthOne Corp Pte Ltd *v* HD Holdings Pte Ltd and others (Chan Wai Chuen and another, third parties)
[2012] SGHC 150

Case Number : Suit No 678 of 2009

Decision Date : 24 July 2012

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Dinesh Dhillon and Lim Dao Kai (Allen & Gledhill LLP) for the plaintiff; Tan Chee Meng SC, Josephine Choo, Emily Su, Quek Kian Teck and Roger Neo Li-Yang (WongPartnership LLP) for the first and third defendants; Gooi Chi Duan, Tin Keng Seng, Kang Yixian and Jessica Soo (Donaldson & Burkinshaw) for the second defendant; Lee Yih Gia (Veritas Law Corporation) for the third parties.

Parties : VisionHealthOne Corp Pte Ltd — HD Holdings Pte Ltd and others (Chan Wai Chuen and another, third parties)

Contract – Breach, Tort – Misrepresentation – Fraud and deceit, Tort – Conspiracy

24 July 2012 Judgment reserved.

Choo Han Teck J:

1 The plaintiff was described as a "medical-and-IT investment company" by its director Roy Chan Siang Khing ("RC"). RC and its other director Chan Wai Chuen ("CWC") are the Third Parties. The plaintiff's claim in this action was against various defendants for a sum of $2.125m and consequential orders as well as general damages for conspiracy and fraudulent misrepresentation. The central defendant was Liu Chunlin ("LCL"), the third defendant. He was the CEO and main shareholder of the first defendant HD Holdings Pte Ltd ("HDH"), and also the CEO of the second defendant Xing Rong Pte Ltd (formerly known as Huadi Projects Pte Ltd) ("HPPL"). There was no dispute that the plaintiff had paid S$2.125m to HPPL. The issue was whether it was paid for a purpose that was not fulfilled and the money ought thus to be repaid to the plaintiff, or whether, as the defendants said, the money was paid for a purpose that had been accomplished and thus there was no question of returning the money to the plaintiff.

2 The plaintiff's version of the events was as follows. In mid-2003 one Lim Chee Yong, known as Jonathan Lim, ("LCY") asked RC and CWC to start a venture with the Fudan Hospital Group in China, and to that end, introduced LCL to them. The four visited Fuzhou, China to explore opportunities for business in the healthcare industry. There, LCL introduced various persons to RC and CWC. These included Yang Yiquan, a "key figure" in the Huadi Group; and Yu Yuzhang the group's financial controller. RC and CWC then agreed to invest their money in the venture by paying into the account of HPPL, a Singapore company. An agreement known as "the Co-operation Agreement" ("the Agreement") was executed by CWC on behalf of the plaintiff and LCL on behalf of HPPL. This Agreement was dated 18 October 2003. Thereafter, there were various correspondence between LCL and CWC and a joint venture company, the fourth defendant Vision Corporation Holdings Pte Ltd ("VCH"), was incorporated to be used for the investments in China. The directors of VCH were RC, CWC, LCL and LCL's sister Liu Yun. LCL held 40% of the shares in VCH through HPPL. These were subsequently transferred from HPPL to HDH in February 2005.

3 The parties then decided on about 9 December 2003 to transfer RMB 11m to Xi'an, China for investment under the Agreement. This was to be transferred through HPPL's account. This was reflected in an unsigned draft Transfer Agreement. It was still unsigned as at 15 December 2003. RMB 11m, the equivalent of the sum of S$2.125m, was eventually transferred in three tranches from 5 November 2003 to 10 January 2004. The money was transferred by the plaintiff to VCH and then from VCH to HPPL. The money was eventually withdrawn from HPPL's account. However, the plaintiff averred that three corresponding receipts were issued by LCL's company Fuzhou Huadi Hebang Construction Engineering Co Ltd ("FHH") in China. These receipts reflected receipt of the RMB 11m. The receipts were given to CWC.

4 The plaintiff averred that it was at the time exploring business not only in Xi'an, but also in Fuzhou. Thus it was agreed that the investors (the plaintiff and HPPL) set up a company called Fuzhou Vision Huadi Consultancy Co Ltd ("FVH"). FVH was a wholly-owned subsidiary of VCH and had a paid up capital of US$70,000. LCY left the joint venture after 28 August 2004 and thereafter had no involvement with the business. The plaintiff made reports for three possible projects in Fuzhou and correspondence between LCL and CWC ensued sometime from late October 2004. RC's evidence-in-chief also sets out the details of the incorporation of the plaintiff and VCH and the subsequent change in shareholdings. Nothing much turned on these details. Their primary purpose was to show that discussions between the third parties and LCL on the joint investment in China started as early as the last quarter of 2003. Regardless of the plaintiff's and VCH's history up to January 2004, the thrust and gravamen of the plaintiff's case was that the money transferred to HPPL was for the joint investment.

5 The defence of the principal defendants HPPL and LCL was that the entire transaction was the third parties' endeavour to bring money into China. The simple plan was to pay the money (the $2.125m) to HPPL in Singapore. HPPL would, upon receipt, pay the equivalent in Chinese currency to the third parties or their nominee in China through HPPL or LCL's personal company in China. It was referred to as the "Currency Exchange Transaction" by Miss Gooi Chi Duan, counsel for HPPL and Mr Tan Chee Meng SC ("Mr Tan"), counsel for HDH and LCL. The defendants' case was that this exercise had been carried out successfully and they had thus discharged their part of the bargain. They were not responsible if the third parties lost the money after that. The first defendant was only a holding company and the evidence showed that it played no significant part in the case. Mr Tan submitted that the Currency Exchange Transaction was different from the Agreement. As the case progressed through trial, Mr Tan eventually submitted that the transfer of the $2.125m from the plaintiff to HPPL was in fact evidence of a "corporate raid" by RC and CWC.

6 Those were the competing versions of events concerning the missing $2.125m. Was the money taken by the third parties or by someone else, or was the money still with HPPL and under the control of LCL? That was the crux of the case before me. Much of the plaintiff's case was founded on the connections HPPL, FHH, and various persons (such as Liu Shi) had with LCL. Mr Dinesh Dhillon ("Mr Dhillon"), counsel for the plaintiff also emphasized the lack of evidence on the part of the defendants to show that the money was transferred as part of the alleged Currency Exchange Transaction. He also relied strongly on the fact that there was no doubt that the money was received by FHH, and that there was no evidence to show that the notices of payment evinced any intention supporting the Currency Exchange Transaction. Mr Dhillon submitted that the $2.125m was part of the $2.13m share capital of VCH and thus it was an implied term of the Agreement that HPPL was under an obligation "to safeguard [the plaintiff's] equity in VCH". Finally, the plaintiff's case was based on the incontrovertible fact that $2.125m was paid to HPPL's Bank of China account in Singapore and that the money was withdrawn by LCL for his personal purposes.

7 I had great difficulty fitting the evidence into the competing stories of the plaintiff and the

defendants. Something about the case smells rotten. Neither story seemed at all plausible to me. Mr Tan did his best but did not explain adequately why there was no other way to send money to China for a joint venture. However, the incontrovertible evidence showed that the $2.125m was in fact transferred from HPPL to FHH. The evidence and the correspondence thereafter were not helpful in determining what was to be done about that deposit in FHH and who was keeping track of it. In the meantime, up to August 2009 when this suit was filed, discord arose between the third parties (RC and CWC) and LCL and the companies in which he had an interest. Discord also arose between RC and CWC. Neither the plaintiff, nor RC or CWC seemed concerned about the $2.125m from 2004 to 2007 despite not having any report as to whether the money was still where it should be, especially when the ostensible reason for raising the money (investing in medical business in China) seemed obviously to have been stymied with no activity for so many years. Even in 2009 when the liquidators asked RC and CWC about the $2.125m they were not forthcoming with their accounts. RC and CWC were at all material times the directing mind of the plaintiff.

8 Furthermore, at the material times in January and November 2004, RC and CWC signed notices and receipts of payments (on VCH's letter head) indicating payments by HPPL to FHH. That they did so without enquiry or scrutiny seemed to me remarkable in the context of their claim. It might, of course, be possible, as Mr Tan submitted, that RC and CWC had mounted a "corporate raid" on the plaintiff, and that the mysterious movement of the $2.125m was part of the scheme of fraud. However, an allegation such as this requires clear and convincing proof. We had none of that. At the same time, the plaintiff's claim that the money was paid for the purpose of a joint venture in China was as weak as the defendants' story. Just as Mr Tan's submission of a "corporate raid" was not proved, Mr Dhillon's account of the plaintiff's case amounted to an allegation of fraud by LCL. The evidence was insufficient to prove or justify such a claim. The plaintiff's claim as pleaded (that the money was entrusted to HPPL) and the evidence and submission by counsel that followed rendered a weak story even more nebulous. If, as pleaded (and alluded) the money was entrusted to HPPL for investment in China via FHH, the incontrovertible evidence was that the money did go to FHH.

9 I find that there was an agreement by the parties to invest in medical facilities in China but I do not find sufficient evidence to persuade me that it was a venture proposed by LCL or thaxt it came about from representations made by him. I also find that the role played by LCY to be nebulous and his account to be unconvincing. LCY was keen to show that he did not play a dominant role in the entire story. Although his participation eventually ended, I am of the view that he was closer to RC and CWC than he appeared to portray himself but I could not be sure what his true role was at the material time and I had to consider his evidence with circumspection. I also find that the money was transferred to China initially for that purpose (even though the evidence in this respect was also not very strong). However, along the way, from 2004 to at least 2007 the intention of the parties changed and what became of the money was not clear. I could not accept that RC and CWC had no idea that the money was eventually paid out by FHH and for purposes which they did not know. Given their experience and the circumstances, it would be gross negligence if they did not know until 2007 that the money was gone. I am of the view that both sides did not disclose the full story at trial. On the evidence the plaintiff had not proven its case as pleaded notwithstanding that the defendants' alternative explanation was similarly unconvincing. There were no misrepresentations (or any of the sort claimed) by LCL that led to the joint venture. The $2.125m was proven to have been transferred to FHH. Fraud was alleged by the plaintiff against LCL, and reciprocally, LCL through counsel alleged fraud against RC and CWC. But, in spite of the strange nature of the case, with gaps in the story from both sides, fraud was not proven. I am of the view that the plaintiff cannot succeed and its claim is hereby dismissed. That being the case, the third party claims against RC and CWC must also be dismissed. I will hear submissions on costs at a later date if parties are unable to agree costs.