Wan Hoe Keet and another *v* LVM Law Chambers LLC
[2019] SGHC 103

Case Number : HC/Originating Summons No 13 of 2019

Decision Date : 23 April 2019

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Wong Soon Peng Adrian, Ng Tee Tze, Allen and Ang Leong Hao (Rajah & Tann Singapore LLP) for the plaintiffs; Lok Vi Ming SC, Lee Sien Liang Joseph, Tang Jin Sheng and Tan Qin Lei (LVM Law Chambers LLC) for the defendant.

Parties : Wan Hoe Keet (Wen Haojie) — Ho Sally — LVM Law Chambers LLC

Civil Procedure – Injunctions

23 April 2019 Judgment reserved.

Choo Han Teck J:

1 In Suit No 315 of 2016 ("Suit 315"), the plaintiff, Lee Hwee Yeow ("LHY") sued Wan Hoe Keet ("Wan") and Ho Sally ("Ho") for losses from multilevel marketing ventures. LHY was represented by Mr Lok Vi Ming SC of LVM Law Chambers LLC ("LVM"). Wan and Ho are the applicants ("the Applicants") in the present application before me. In Suit 315, LHY claimed that the applicants misrepresented an investment product under a scheme known as "SureWin4U" when it was in fact a pyramid scheme which sold a bogus product. The Applicants settled Suit 315 with LHY through negotiations on 20 October 2017 ("the LHY Settlement").

2 In the present action in Suit No 806 of 2018 ("Suit 806"), the plaintiff is one Chan Pik Sun ("CPS"). The Applicants are the defendants in Suit 806. CPS is also represented by LVM. The Applicants applied by this originating summons to enjoin LVM from acting for CPS, the plaintiff in Suit 806. Mr Adrian Wong appeared on behalf of the Applicants, and Mr Lok SC, appeared on behalf of LVM.

3 The Applicants are aggrieved that LVM is acting for CPS when it has confidential information obtained from the settlement of Suit 315. Suit 315 and Suit 806 are similar in that Wan and Ho are the defendants in both actions. They were sued (by different plaintiffs) for misrepresenting a multilevel marketing scheme that ensnared the respective plaintiffs to participate as investors. The plaintiffs in both suits refer to the scheme as a "Ponzi" scheme. The only relevant fact for present purposes is that CPS also alleged that Wan and Ho were the masterminds behind the scheme named "SureWin4U".

4 The merits of the claims in Suit 806 are not relevant and are for the trial judge to determine. The only questions before me are, first, is there a conflict of interests on the part of LVM in acting for the plaintiffs in both suits, and secondly, if so, have the Applicants shown that there is a threat of misuse sufficient to justify an injunction order against LVM from acting for CPS?

5 Mr Wong relies on the decisions in *Worth Recycling Pty Ltd v Waste Recycling and Processing Pty Ltd* [2009] NSWCA 354 ("*Worth*") and *Carter Holt Harvey Forests Ltd v Sunnex Logging Ltd* [2001] 3 NZLR 343 ("*Carter*"). *Worth*'s case is very much similar in fact to the Applicants' case here.

Mr Lok SC referred me to four other cases in which in similar applications, the applications for an injunction against the solicitors were dismissed.

6 *Worth* was a case in which a company, "Veolia", sued another company "WSN", but the dispute was settled after mediation where Mr Maxwell and Mr Webb, acted for Veolia as its solicitors. "Worth", represented by the same Mr Maxwell and Mr Webb, then sued WSN in a similar action and WSN applied to the court to enjoin Mr Maxwell and Mr Webb from acting for Worth. All three companies, Veolia, WSN and Worth were in the business of waste recycling, and were thus competitors to each other. The settlement agreement between Veolia and WSN provided a confidentiality clause in which the parties pledged not to disclose the terms of the settlement. There was also a mediation agreement and a Deed of Release, both of which contained a similar confidentiality clause.

7 Once the court in *Worth* had determined that the content of the settlement had the qualities of confidentiality, it carefully avoided details, the disclosure of which would have resulted in a breach itself. In the present case, Mr Wong submitted that the negotiation positions taken, even the body language of the parties, and crucially, the settled amount are confidential. I agree that the amount and the terms of a settlement are important confidential terms, and further agree that the nature and process in which that settlement sum was reached are also important and confidential.

8 Mr Lok SC submitted that *Worth* could be distinguished on the fact that in *Worth*, Veolia and WSN entered into formalised mediation which contained a mediation agreement that explicitly imposed an obligation of confidence on Mr Maxwell and Mr Webb. Mr Lok SC submitted that in this case, the settlement negotiations between LHY and the Applicants took place in an informal setting and consequently, no obligation of confidence should be imposed on him or LVM.

9 The obligation of confidence owed by the solicitors of one party to the counterparty in mediation or settlement negotiations need not strictly arise out of an explicit contractual duty, but may arise in equity "by applying principles of good faith and conscience" even in the absence of any contract between the parties (see *Invenpro (M) Sdn Bhd v JCS Automation Pte Ltd and another* [2014] 2 SLR 1045 ("*Invenpro*") at [131] and [196]). An equitable duty of confidence would be imposed if the circumstances are such that a reasonable solicitor in Mr Lok SC's position should have known that the information was given in confidence (see *Invenpro* at [129]). Clause 6 of the LHY Settlement provides that:

> The circumstances of the Claims, all materials prepared in respect of [Suit 315] … and/or disclosed in [Suit 315], and any settlement between parties (including the terms of settlement) shall be kept strictly confidential between parties, unless disclosure is (1) required by law, (2) by written consent between parties, (3) sanctioned by the High Court of Singapore, and (4) for enforcement of this Settlement Agreement.

Although cl 6 did not explicitly impose a contractual duty of confidence on Mr Lok SC or LVM, it is clear that Mr Lok SC knew that his client, LHY promised the Applicants that he would not use or disclose any of these confidential information except where contractually provided. Mr Lok SC negotiated for LHY on this understanding and this imposed an equitable duty of confidence on Mr Lok SC to not divulge or use the confidential information obtained from the negotiations except in accordance with the LHY Settlement. The fact that parties negotiated instead of mediated made no difference to this finding. The private and confidential nature of the negotiations create the same nature and degree of fidelity and Mr Lok SC, as solicitor, is bound to the confidential agreement that his client LHY signed with the Applicants just as Mr Maxwell and Mr Webb's client signed one with its opposing litigant.

10 The question that follows is, whether there is a threat of misuse sufficient to justify an injunction. Mr Lok SC told this court that he will not be thinking about the settlement sum or divulge it to CPS. I must say at once, that although I do not doubt that Mr Lok SC would not disclose the terms of the LHY settlement to CPS, or to be considered a threat in that sense, that was not what worried the court in *Worth*. And although Mr Lok SC also said that he was not even thinking about the LHY settlement, that is not the fear. There are many things that Mr Lok SC may not be thinking about — including what he is thinking about. I am referring, of course, to the subconscious currents in our minds and that was what the judges in the *Worth* and *Carter* cases meant when they referred to the possibility of "a future breach occurring accidentally or unconsciously" (see *Worth* at [41]). Hodgson JA in *Worth* summed it precisely when he held at [44]:

> … Misuse would be almost inevitable if Mr Maxwell should take part in any settlement negotiations; and as pointed out by the New Zealand Court of Appeal in *Carter Holt*, it is very difficult indeed to keep the settlement negotiations quarantined from the conduct of the proceedings generally.

11 The prior similar action was settled by negotiation and there is a likelihood that the action by CPS may also involve negotiation, and whether the negotiation succeeds or not, the Applicants will be disadvantaged from the knowledge Mr Lok SC possesses from his participation in the LHY negotiations just as CPS will gain an advantage of inside knowledge he would otherwise not have. He will know at which point the applicants became malleable and at points they are at their strongest.

12 On 9 April 2019, six days after I reserved judgment, LVM wrote to the court and made further submissions. Many solicitors seem to have forgotten that when the court has reserved judgment, no further submissions should be made without the leave of court. I have therefore disregarded LVM's letter for further arguments dated 9 April 2019 in its entirety. I should also point out that although the remedy sought by the Applicants was proper and correct, such applications should have named the litigant, and not his lawyer, as the defendant — as was done in the *Worth* case. Lawyers are representatives of their clients. Ultimately, the client makes the decision whether he wants to retain the lawyer concerned, and if so, he should be the one enjoined, not the representative, whatever advice that representative might have given.

13 For these reasons, I allow the application and grant the injunction sought. I will hear the issue of costs at a later date.