IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 115

Suit No 415 of 2021

Between

Anpex Pte Ltd

… *Plaintiff*

And

1. Cheng Yong Sun
2. Lee Chai Yun, Winnie

… *Defendants*

JUDGMENT

[Tort – Conspiracy – Unlawful Conspiracy to Injure]

Anpex Pte Ltd
v
Cheng Yong Sun and another

[2022] SGHC 115

General Division of the High Court — Suit No 415 of 2021
Choo Han Teck J
5 April, 11 May 2022

20 May 2022. Judgment reserved

Choo Han Teck J:

1 The plaintiff is a company incorporated in Singapore, and carrying on the business of providing delivery, logistics and transport services to customers. Ms Leow Bee Lian ("Ms Leow") is the director and shareholder of the plaintiff. Ms Leow is also the shareholder and director of two other companies, Auto 51 Pte Ltd ("Auto") and Auto 51 Leasing Pte Ltd ("Auto-Leasing"), which are Singapore-incorporated companies in the business of the sale and leasing of motor vehicles. Auto and Auto-Leasing operate closely with the plaintiff in its daily operations.

2 The first defendant, Cheng Yong Sun, was employed by Auto on 2 October 2019 as an associate manager whose job includes planning delivery schedules and managing the day-to-day operations of Auto and affiliate companies. The first defendant was authorised to pay the drivers hired by the plaintiff. He also looks for clients for the plaintiff's delivery services. Finally,

his job also includes sourcing for other delivery companies that may require additional support in delivery services from the plaintiff.

3 The second defendant ("Winnie") is a close friend of the first defendant and was introduced by the first defendant to Ms Leow sometime in April 2020 when Auto had a shortage of staff. Winnie was then employed by Auto on 15 August 2020 as an administrative executive. Her job included assisting Auto and affiliate companies in their administrative work, such as registering and managing a Grab account for the plaintiff so that the plaintiff could provide courier delivery services to Grab.

4 Sometime around December 2020, Ms Leow discovered that there were suspicious payments out of the plaintiff's account from 24 December 2019 to 29 January 2021, which were purportedly made to the plaintiff's drivers and sub-contractors. On further investigation, these payments were actually made to bank accounts belonging to the first and second defendants and other unknown persons. Ms Leow also discovered that the plaintiff's subcontractors, Gogovan Pte Ltd ("GGV") and FattyDaddyFattyMummy Pte Ltd ("FDFM"), were transferring monies directly to the second defendant's bank account from 2 March 2020 to 17 February 2021 for delivery services rendered by the plaintiff.

5 The plaintiff therefore brought the present action against the first and second defendants. The plaintiff says that the first and second defendants misappropriated and wrongfully took a total sum of $578,347.30 from the plaintiff's bank account by making unauthorized and fraudulent transactions, and by deceiving the plaintiff's sub-contractors to transfer monies directly to the second defendant's bank accounts. The plaintiff has obtained judgment in default of appearance against the first defendant for the sum of $578,347.30 on

8 June 2021.

6 In its case against the second defendant, the plaintiff says that the second defendant unlawfully conspired with the first defendant to injure the plaintiff. The plaintiff further says that the second defendant had unjustly enriched herself at its expense in the sum of $161,322.50, being the total sum transferred to the second defendant's bank account. The plaintiff also says that the second defendant has breached her duties of honesty and loyalty to the plaintiff.

7 The second defendant says that she was unaware that the monies that were transferred into her account were misappropriated funds, and that as soon as she found out, she made partial restitution to the plaintiff:

(a) The second defendant says that in or around November 2019, the first defendant told her that he had trouble opening bank accounts. As his long-standing friend, she trusted him and allowed him to use her DBS Account No ending 9887 to deposit his paycheques. She also lent him her ATM card so that he could withdraw money from the account for his expenses.

(b) In respect of monies deposited into her DBS Account No ending 5195 and OCBC Account No ending 9001, the second defendant says that the first defendant would ask her to log into her internet banking account via her phone and allow him to execute the transfers. She says that the first defendant told her that the sums were commissions from sub-contractors, and deductions owed to him by the plaintiff.

(c) The second defendant says that around 18 February 2021, when she found out that the sums that were transferred into her account had

actually come from the plaintiff's bank account, she returned $5,433.28 and, and another $902.78 to the plaintiff by bank transfer.

8 In a claim based on conspiracy, the plaintiff must show that there was an agreement between the first and second defendants to cause harm to the plaintiff. I am of the view that this had been proved here. It is undisputed that the monies were transferred from the plaintiff's account directly into the second defendant's account. The second defendant is unable to account for the monies in her account. Her only explanation is that the first defendant lied to her about the nature of these transactions, and she was not aware that these were stolen money. The only person who could corroborate her story and exonerate her from liability is the first defendant. However, she declined to call the first defendant to testify at trial, despite remaining in contact with him. When asked by the court, her only reason was that "the court would not have believed him". Given the second defendant's failure to produce the only witness who could possibly exculpate her, I am inclined to disbelieve her version of events; a version that is hardly credible on its own, let alone floated without corroboration.

9 This finding is fortified by the second defendant's extravagant expenditure which does not commensurate with her monthly salary of $1,600.00. The defendant's bank account statements show that the second defendant has made purchases from Poh Heng Jewellery on 31 August 2020, 12 September 2020, 13 October 2020, 20 October 2020 and 31 October 2020, for the amounts of $1,020.00, $2,000.00, $540.00, $984.00, and $715.00 respectively. Moreover, during the same period, there were also several purchases for cosmetic products and beauty services, including the expenditure of:

(a) $300.00 at Nails Code on 13 August 2020;

(b) $158.00, $123.00, and $123.00 at BB Beauty on 5 September 2020, 13 October 2020, and 18 December 2020 respectively;

(c) $2,458.85, $243.95, and $639.85 at Curamed Medical Clinic on 22 September 2020, 15 October 2020, and 11 December 2020 respectively;

(d) $328.00 and $326.00 at NU Skin Enterprises on 2 October 2020 and 5 October 2020 respectively; and

(e) $550.00 at Imperial SPA on 13 October 2020.

10 Taking just the figures above (which do not include the second defendant's expenditure on retail platforms and food), the second defendant had spent more than $10,535.80 on jewellery, cosmetic products, and beauty services from August to December 2020. Such extravagance does not commensurate with her salary. The second defendant does not deny spending on such luxurious items but claims that she could afford them because the first defendant had struck the "4D lottery" several times. Once again, there was no evidence adduced to prove that the first defendant indeed struck the lotteries. As mentioned earlier, the first defendant was also not called as a witness to testify to his betting fortune. Consequently, I disbelieve the second defendant's account. It seems to me that the second defendant funded her extravagant lifestyle using the monies that were misappropriated from the plaintiff. I also find that the second defendant would have known that her extravagant expenditures could not have been funded solely by her monthly salary of $1,600.00, and I am satisfied that the second defendant was most probably aware that the funds came from the plaintiff.

11 For the reasons above, I find that the first and second defendants conspired to misappropriate funds from the plaintiff, and knowingly caused the

plaintiff to lose $578,347.30. The second defendant failed to account for the large sums of misappropriated monies credited directly into her bank accounts and failed to offer any satisfactory explanation for her extravagant expenditure during the timeframe in which the misappropriation occurred. The only witness who could prove her innocence was not called to testify, even though she remains in close contact with him. All these suggest that the second defendant was neither as blameless nor clueless as she claims to be. I, therefore, find that the first and second defendants were involved in a conspiracy to injure the plaintiff and should be jointly and severally liable to compensate the plaintiff for the sum of $578,347.30.

12 Given my findings on the issue of conspiracy, there is no need for me to address the plaintiff's alternative claims of unjust enrichment and breach of fiduciary duties, save to say that on the evidence before me, and the facts as I have found, the plaintiff would also have succeeded on those claims. I will hear the parties on costs at a later date if it is not agreed upon by the parties.

- Sgd -
Choo Han Teck
Judge of the High Court

Rakesh s/o Pokkan Vasu and Farhan Tyebally (Gomez & Vasu LLC)
for the plaintiffs;
Ng Boon Gan (VanillaLaw LLC) for the 2nd defendant.