

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

[2023] SGHC 84

Originating Application No 867 of 2022

In the matter of Section 199 of the Companies
Act 1967

And

In the matter of Soup Empire Holdings Pte Ltd

Between

Lim Cheng San

... Claimant

And

Soup Empire Holdings Pte Ltd

... Defendant

Originating Application No 51 of 2023

In the matter of Section 199 of the Companies
Act 1967

And

In the matter of Lao Huo Tang Restaurant Pte Ltd

Between

Lim Cheng San

... Claimant

And

Lao Huo Tang Restaurant Pte Ltd

... Defendant

Originating Application No 52 of 2023

In the matter of Section 199 of the Companies
Act 1967

And

In the matter of Lao Huo Tang Group Pte Ltd

Between

Lim Cheng San

... Claimant

And

Lao Huo Tang Group Pte Ltd

... Defendant

FOUNDATIONS OF DECISION

[Companies — Directors — Inspection of accounting records]
[Companies — Accounts]

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Lim Cheng San v Soup Empire Holdings Pte Ltd and other matters

[2023] SGHC 84

General Division of the High Court — Originating Application No 867 of 2022, Originating Applications Nos 51 and 52 of 2023

Goh Yihan JC

2 March 2023

5 April 2023

Goh Yihan JC:

1 These were three applications brought under ss 199(3) and 396A of the Companies Act 1967 (2020 Rev Ed) (“the Companies Act”) for an order that the claimant, Mr Lim Cheng San (“Edger”), a director of the companies involved, be permitted to inspect, and take copies of the specified documents (“the Documents”) kept by those companies. More specifically, Edger had brought (a) HC/OA 867/2022 (“OA 867”) against Soup Empire Holdings Pte Ltd (“SEH”), (b) HC/OA 51/2023 (“OA 51”) against Lao Huo Tang Restaurant Pte Ltd (“LHTR”), and (c) HC/OA 52/2023 (“OA 52”) against Lao Huo Tang Group Pte Ltd (“LHTG”). For convenience, I shall refer to SEH, LHTR, and LHTG as “the Companies” in the context of the present applications. After hearing the parties on 2 March 2023, I allowed the applications. The Companies have since appealed against my decision and I now provide the full grounds for my decision.

Background facts

2 The brief background facts leading to the present applications were these. Edger is the beneficial shareholder of 39.6% of the total issued share capital of SEH. Edger owns his shares in SEH through his wife, Ms Yeo Su Lan (“YSL”), who holds the shares on trust for him. LHTR and LHTG are in turn wholly-owned subsidiaries of SEH. SEH, LHTR and LHTG are companies within a group of companies known as the Lao Huo Tang Group (“the Group”). The operations and financial affairs of the various companies in the Group are centrally-managed by the management team in SEH.

3 On 24 May 2021, Edger, through YSL, commenced HC/S 465/2021 (“Suit 465”) for minority oppression against Mr Thomas Hong (“Thomas”) as the first defendant, Ms Tan Li Khim (Chen Liqin) (“TLK”) as the second defendant, and SEH as the third defendant. SEH was co-founded by Thomas and Edger. Thomas and Edger hold shares beneficially in SEH through a trust arrangement with TLK and YSL, who are the only two shareholders of SEH. TLK and YSL hold 60.4% and 39.6% of the shares in SEH on trust for Thomas and Edger, respectively.

4 Shortly after Suit 465 was commenced, Thomas terminated Edger’s employment within the Group on 21 June 2021. Thomas also sought to have Edger removed as director of SEH. Edger resisted this removal by applying for an interlocutory injunction in Suit 465. On 14 July 2021, the High Court granted this injunction. On 18 August 2021, the High Court upheld this injunction when Thomas applied to discharge it. In its notes of evidence, the court recorded its reasons for upholding the injunction as such:¹

¹ Notes of Evidence in HC/S 465/2021 (HC/SUM 3476/2021) dated 18 August 2021 at p 9.

What I do find is that the balance of convenience, based on the facts before me, points to the injunction being kept in place. As the complaint of the Plaintiff is essentially one of oppression, on the facts before me, it would serve the maintenance [of] the status quo for the injunction preventing removal to continue and for Mr Lim to at least have continued access to the information of the company.

Mr Lim should not of course interfere with the proper running of the company in question or of companies in the group but I do not see evidence of that nature here.

5 In addition, Thomas caused SEH to bring a counterclaim (“the Counterclaim”) against YSL and four other defendants. The Counterclaim alleged that the defendants conspired to use unlawful means to injure SEH’s business. In so far as the defendants in the Counterclaim are concerned, the second defendant is Edger, the third defendant is Ms Teo Li Lian (Zhang Lilian), who is the *de facto* owner of the fourth defendant, W Food Empire Pte Ltd, which in turn is a company that runs a food business allegedly in competition with SEH, and the fifth defendant is The Dim Sum Place (CCP) II Pte Ltd, which is a wholly owned subsidiary of the fourth defendant.

6 Over a period from April 2022 to the present, Edger received, in his continued capacity as director of SEH, LHTR and LHTG, numerous letters from the Inland Revenue Authority of Singapore (“IRAS”). He also received summonses to attend court to face charges as an officer of these companies in relation to the non-filing of tax returns and the non-payment of GST. For convenience, I shall term these as the “IRAS matter”. In December 2022, Edger took out the present applications when he could not resolve the IRAS matter with the Companies.

The parties' respective positions

7 Edger's position was that, contrary to the Companies' allegations, he did not commence the present applications frivolously or with ulterior motives in connection with Suit 465. In fact, Edger pointed out that there was a long lead-up period of more than eight months during which he tried to liaise with the Companies to resolve the IRAS matter. Indeed, Edger said that SEH had given him the impression that it was dealing with the tax issues when it could not in fact have done so, given the incompleteness of LHTG's and LHTR's accounts. Furthermore, SEH had given Edger the impression that it would accede to his request for inspection right until October 2022.

8 In any event, Edger's primary submission in respect of the present applications was that, pursuant to the Court of Appeal decision of *Mukherjee Amitava v DyStar Global Holdings (Singapore) Pte Ltd and others* [2018] 2 SLR 1054 ("*Mukherjee*"), he is entitled as of right to inspect the Documents as a director of the Companies. This remains so unless the Companies could show that such access should not be granted because there was some abuse of process that underlies the request. Indeed, Edger argued that because of the IRAS matter, he inferred that there was an anomaly in the Companies' financial affairs. It was therefore within the scope of his director's duties to understand the financial health of the Companies. Therefore, these reasons justify, without more, Edger's applications for inspection. In any event, Edger also argues that the Companies' objections do not pass muster.

9 In response, as I confirmed with the Companies' counsel, Mr Leslie Yeo, during the hearing, the Companies effectively mounted four objections against Edger's applications.

- (a) First, Edger is engaging in a fishing expedition in relation to the Documents to support his claim in Suit 465.
- (b) Second, Edger will share the Documents with his co-conspirators as set out in the Counterclaim. This will cause harm to the Companies. Indeed, the range of the Documents show that they are not meant to address only the IRAS matter.
- (c) Third, Edger is no longer with the Companies and is no longer involved in their operation and management. Indeed, even though the High Court maintained the injunction against his removal as director, that was not with a view that he should have unlimited access to all of the Companies' records.
- (d) Fourth, the IRAS matter can be resolved without the need for Edger to inspect the Documents. In fact, the Companies have already taken steps to resolve the IRAS matter.

My decision: an order should be made for Edger to inspect the Documents

10 I concluded that Edger should have the right to inspect the Documents sought for the following reasons.

Edger has a presumptive right to inspect the Documents as a director of the Companies

11 To begin with, I found that Edger has a presumptive right to inspect the Documents as a director of the Companies. In this regard, the relevant provisions of the Companies Act are s 199(3) and s 396A(1). Section 199(3) provides:

Accounting records and systems of control

...

(3) The records referred to in subsection (1) must be kept at the registered office of the company or at such other place as the directors think fit and must at all times be open to inspection by the directors.

And s 396A(1) provides:

Inspection of records

396A.—(1) Any company record which is by this Act required to be available for inspection must, subject to and in accordance with this Act, be available for inspection at the place where in accordance with this Act it is kept during the hours in which the registered office of the company is accessible to the public.

12 In *Mukherjee*, the appellant director sought to inspect documents which related to the respondent company's and its subsidiaries' accounts. The director had sought such inspection to investigate into several large, related party loans made by the company. This dovetailed with a minority oppression action that had been brought by the shareholder who nominated the director to the company's board. The related party loans also constituted the basis of the minority oppression action, and the documents sought to be inspected by the director overlapped with the documents sought in specific discovery by the minority shareholder in the minority oppression action.

13 The company rejected the director's request for inspection. This led the director to file an application to inspect pursuant to s 199 of the Companies Act. At first instance, the High Court dismissed his application on the basis that the application was intended to be a fishing expedition to gather information to be deployed in the ongoing minority oppression suit. On appeal, the Court of Appeal reversed the High Court's decision and allowed the director's

application to inspect. In doing so, the Court of Appeal laid down several important points of principle, which are as follows.

(a) First, a director has an almost presumptive right to inspect the documents of the company to the extent that these fell within the ambit of s 199 of the Companies Act. Indeed, the director did not have to demonstrate any particular ground for inspection. Instead, the burden was on the company, should it resist the application to inspect, to show that such access should not be granted because there was some abuse of process or privilege that underlies the request (see *Mukherjee* at [25]).

(b) Second, it is conceivably within the scope of a director's duties, such as his duties of reasonable care and diligence pursuant to s 157(1) of the Companies Act, to find out about perceived anomalies in the company's financial affairs and to understand the financial health of the company (see *Mukherjee* at [27]).

(c) Third, it is unsurprising, if not common and a commercial reality, for the reasons underlying the complaints of a minority shareholder in an oppression action and that of a director appointed by that shareholder to be aligned. The question in the end is whether the documents are relevant to the director to enable him to perform his duties as a director. The overlap between a request made by the minority shareholder in the minority oppression action and by the director in his application is insufficient in and of itself to establish an ulterior purpose (see *Mukherjee* at [28] and [29]).

(d) Fourth, the width of the scope of the request for inspection would not, by itself, lead to any inference as to the true purpose or intention of the director who made the request (see *Mukherjee* at [31]). However, the

proper scope of an inspection order to be made under s 199 will include records that “will sufficiently explain the transactions and financial position of the company and enable true and fair [financial statements] and any documents required to be attached thereto to be prepared from time to time”. Such documents would also include documents in the company’s possession even if those documents belong to its subsidiaries if and to the extent that these documents can be shown to be relevant and necessary to explain: (a) the transactions of the company; (b) the financial position of the company; or (c) to enable true and fair financial statements to be prepared (see *Mukherjee* at [41] and [42]).

14 Applying the principles in *Mukherjee*, I first agreed with Edger that, as a director of the Companies, he has an almost presumptive right to inspect the Documents to the extent that they fell within s 199 of the Companies Act. In this regard, the Companies did not dispute that the Documents fell within such ambit.

15 I was also satisfied that in order to deal with the IRAS matter, Edger had shown good reason why he needs access to the Documents set out in the Annexes to each of the three applications. In particular, while the Documents extended beyond tax documents (at Categories H and I), I was satisfied that Edger requires access to the other documents to ascertain if the filing of tax returns is being done properly. Accordingly, I found that Edger has demonstrated a presumptive right to inspect the Documents, subject to the Companies being able to raise objections to resist such inspection.

The Companies did not raise any viable objection to resist inspection

16 I found that the Companies did not raise any viable objection to resist inspection.

The present applications did not amount to a fishing expedition in aid of Suit 465

17 First, as to the allegation of the applications being a fishing expedition in aid of Suit 465, the facts of the present case were quite different from those in *Mukherjee*. In *Mukherjee*, there was in effect a dovetailing of the director's application to inspect accounting records and the minority shareholder's application for specific discovery of overlapping documents. That was the basis on which the High Court disallowed the application for inspection, but which was overturned by the Court of Appeal. In contrast, Edger has not made an application for specific discovery in Suit 465 in relation to the Documents which are the subject of the present applications. As such, there were no similar overlapping applications that raised the High Court's concerns in *Mukherjee* (which in any event was overturned by the Court of Appeal).

18 Above all, as the Court of Appeal indicated in *Mukherjee*, the primary question is whether, regardless of any parallel proceedings, the director requires access to the documents sought to discharge his duties as a director. This is because, even if there are parallel proceedings, it is not surprising that the reasons underlying the complaints of a minority shareholder in an oppression action and that of a director appointed by that shareholder would be aligned. Thus, the mere fact of the potential relevance of the Documents to Suit 465 cannot, by itself, prove the existence of an ulterior motive on which the applications should be dismissed. Taken in the round, I was satisfied that Edger did not have such an ulterior motive.

It could not be said that the Documents would be shared with alleged co-conspirators

19 Second, as to the allegation that the Documents would be shared with the alleged co-conspirators, it was important that there had been no finding of conspiracy at the point when I heard the parties. In this regard, the Companies had adduced video evidence that allegedly showed Edger working at one of the alleged competitor's outlets. In response, Edger has said that he was given a job there and is in no way involved in any conspiracy. On the basis of the affidavits alone, it would not be right for me to speculate, based on the incomplete slate of evidence at this point, whether or not there is a conspiracy according to the Counterclaim. Accordingly, it would not be right for me to dismiss the present applications on the basis that Edger would share the Documents with his alleged co-conspirators.

20 Furthermore, and in any case, the Companies did not adduce any evidence to show how, even if Edger were to share the Documents with the alleged co-conspirators, that would affect the interests of the Companies. Above all, it must be remembered that Edger remains a 39.6% shareholder of SEH. It therefore does not make sense for him to destroy SEH's business when the goal of his minority suppression action in Suit 465 is premised on a maximisation of SEH's value which would, in turn, maximise any remedies he will get out of that action should he succeed.

Edger still remains a director of the Companies

21 Third, as to the argument about Edger's limited role within the Companies, the fact remains that he is still a director and therefore owes duties, including those of a fiduciary nature, to them. While the Companies have highlighted that the High Court had emphasised that Edger's continued role as

a director should not lead to him interfering with the Companies' operations, it did not appear to me that allowing Edger access to the Documents would interfere with the Companies' operations. In this context, it must be remembered that the court had already expressed in August 2021 that "it would serve the maintenance [of] the status quo for the injunction preventing removal [of Edger as a director] to continue and for Mr Lim to at least have continued access to the information of the company" (at [4] above). In short, the court made the point that Edger's continued access to information flows from his continued role as a director, a proposition with which I agreed.

22 As such, it did not appear that the court intended in any way to restrict Edger's powers as a director, nor was it clear to me whether a court can do that at all. More broadly, the fact that Edger remains a director means that he continues to owe certain duties to the Companies and is exposed to liabilities for not fulfilling these duties. Also, the time period concerning the IRAS matter fell within a period when Edger was in fact active in the Companies' operations. As such, it was well within his rights *qua* director to seek inspection of the Documents concerned.

The IRAS matter still entitled Edger to inspect the Documents

23 Fourth, while the Companies had provided some explanation as to the supposed resolution of the IRAS matter, I found that Edger still retains the right to inspect the Documents. The fact remains that he has received the above-mentioned letters from IRAS. The matters referred to in those letters might lead to him facing charges over tax issues. In the circumstances, Edger has the right to inspect the Documents so as to satisfy himself as to whether the matters raised by IRAS have been resolved.

24 Finally, it is no answer, as the Companies sought to argue, that Edger got himself in the current situation because he insisted to remain as a director. In my view, this argument failed to address Edger's *right* to remain as a director, which he still possesses and has successfully enforced. Once Edger's right to remain as a director is put into place, it must follow that he has certain responsibilities to fulfil in that role. If so, it is certainly within Edger's right, in his capacity as director, to seek information so as to discharge his responsibilities in that role.

Conclusion

25 For all of these reasons, I found that the Companies had not raised any valid objection against Edger's presumptive right to inspect the Documents. I therefore grant an order-in-terms in respect of OA 867, OA 51, and OA 52.

26 For completeness, I specified that in relation to prayer one of all three applications, I am allowing disclosure to be made to Edger *and* public accountants acting on his behalf. In the event that disclosure is made to the public accountants, they shall give the required undertaking pursuant to s 199(5) of the Companies Act before disclosure is made.

27 Having heard parties as to costs after delivering my decision herein, I ordered costs of all three applications to be fixed at \$12,000 all-in to be paid by the Companies to Edger.

Goh Yihan
Judicial Commissioner

Lim Cheng Hock Lawrence and Eugene Quah Siew Ping
(Matthew Chiong Partnership) for the claimant;
Yeo Choon Hsien Leslie (Sterling Law Corporation)
for the defendants.
