

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

[2023] SGHC(A) 31

Appellate Division / Civil Appeal No 32 of 2023

Between

- (1) Soup Empire Holdings Pte Ltd
- (2) Lao Huo Tang Restaurant Pte
Ltd
- (3) Lao Huo Tang Group Pte Ltd

... Appellants

And

Lim Cheng San

... Respondent

Appellate Division / Summons No 32 of 2023

Between

Lim Cheng San

... Applicant

And

- (1) Soup Empire Holdings Pte Ltd
- (2) Lao Huo Tang Restaurant Pte
Ltd
- (3) Lao Huo Tang Group Pte Ltd

... Respondents

In the matter of 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

In the matter of 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

In the matter of 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

EX TEMPORE JUDGMENT

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

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Soup Empire Holdings Pte Ltd and others
v
Lim Cheng San and another matter

[2023] SGHC(A) 31

Appellate Division of the High Court — Civil Appeal No 32 of 2023 and
Summons No 32 of 2023

Woo Bih Li JAD, Debbie Ong Siew Ling JAD and Valerie Thean J
19 September 2023

19 September 2023

Woo Bih Li JAD (delivering the judgment of the court *ex tempore*):

Introduction

1 This is a dispute over whether a director, Lim Cheng San (also known as “Edger”), is to be granted inspection of accounting and other records of three companies pursuant to s 199(3) of the Companies Act 1967 (2020 Rev Ed) (the “Companies Act”). Edger had filed three applications in the High Court against the three companies:

- (a) Soup Empire Holdings Pte Ltd (“Soup Empire”);
- (b) Lao Huo Tang Restaurant Pte Ltd (“LHTR”); and
- (c) Lao Huo Tang Group Pte Ltd (“LHTG”).

(collectively referred to as the “Companies”)

LHTR and LHTG are wholly owned subsidiaries of Soup Empire.

2 The High Court judge (the “Judge”) granted Edger’s applications. The Companies have appealed. In gist, Edger claims to be entitled to inspect the documents, which have been listed in Annex A of each of the applications, with public accountants by virtue of his office as director of the Companies. He also wishes to inspect the documents because he has been receiving letters or summonses from IRAS for the late payment of taxes and/or the late or non-filing of GST returns by each of the Companies (the “IRAS Matters”).

3 The Companies argue that Edger was removed as an employee of Soup Empire. Soup Empire had also wanted to remove him as a director but an injunction was granted to prevent Soup Empire from proceeding with a general meeting to do so. Soup Empire alleges that Edger is in reality seeking the inspection of documents to fish for evidence to support an action, *ie*, HC/S 465/2021 (“S 465”), commenced by his wife Yeo Su Lan (Yang Shulan) for oppression in respect of the affairs of Soup Empire. Edger’s wife holds 39.6% of the shares in Soup Empire in trust for Edger. The other 60.4% of the shares are held in trust for Thomas Hong (“Thomas”) in the name of his female friend, Tan Li Khim (Chen Liqin).

4 The Companies also allege that the inspection of documents is for another ulterior motive, namely, that Edger has jumped ship to join a competitor and he is seeking to disclose the information in the documents to the competitor. There is some evidence that Edger brought some of the Companies’ bank statements to the office of a third party. There is a counterclaim against Edger and others in S 465 for conspiracy. There is also another action, *ie*, HC/S 877/2021 (“S 877”) filed by the Companies against two other persons for

conspiracy with the defendants in counterclaim in S 465. But S 877 does not appear material for present purposes except in so far as one Cheong Chee Wai (“James”) is a defendant there. James was Soup Empire’s Director of Operations whose employment was terminated on 21 June 2021. We were informed by counsel for the Companies that James would have been appointed to the board of directors of Soup Empire but for the fact that he was an undischarged bankrupt.

5 As for the IRAS Matters, the Companies argue that there is no misfeasance and suggest that the matters have been or can be easily resolved without inspection.

6 Relying on the case of *Mukherjee Amitava v DyStar Global Holdings (Singapore) Pte Ltd and others* [2018] 2 SLR 1054 (“*Mukherjee*”), the Judge was of the view that as a director, Edger has a presumptive right to inspect the documents. Secondly, Edger has shown good reasons why he needs access to the documents, *ie*, to deal with the IRAS Matters. However, the Judge also said that while Edger has a presumptive right to inspect, this is subject to the Companies being able to raise objections to resist inspection which they failed to do.

Background leading to Edger’s applications to inspect

7 Before continuing and before dealing with an application by Edger to admit fresh evidence, it is useful to bear in mind the background leading to Edger’s applications to inspect. This can be summarised as follows:

- (a) Suit 465 was commenced on 24 May 2021. As mentioned, it was filed by Edger’s wife. The three defendants are Thomas Hong, Tan Li Khim (Chen Liqin) and Soup Empire.
- (b) On 21 June 2021, Soup Empire terminated Edger’s employment as Chief Operating Officer. It also filed a defence and counterclaim against Edger, his wife and others on the same day.
- (c) It then sought to remove Edger as a director via an Extraordinary General Meeting to be held on 15 July 2021. On 14 July 2021, Edger obtained an injunction to restrain Soup Empire from proceeding to remove him as a director. On 23 July 2021, Thomas applied to discharge the injunction. On 18 August 2021, that application was dismissed.
- (d) Between April 2022 and December 2022, Edger received letters or summonses from IRAS.
- (e) When Edger received the first of the letters from IRAS in April 2022, his lawyers, Matthew Chiong Partnership (“MCP”), wrote a letter dated 18 April 2022 to Sterling Law Corporation (“SLC”) who was apparently acting for the Companies. In the letter, MCP stated that Edger had received a summons from IRAS in respect of LHTG’s failure to file its income tax returns and other financial documents for Y/A 2020. MCP sought confirmation that this would be done failing which Edger would attend court and pay a composition fine. On 19 April 2022, SLC said that Edger was “to liaise directly with the company on this issue”. Edger then contacted Liew Kiet Leong (“Liew”), the Chief Financial Officer of the Companies, to inquire about the matter. Liew said he would attend to the matter.

(f) By 23 August 2022, this, however, had not been done, *ie*, LHTG had not filed the financial documents for Y/A 2020. 23 August 2022 was the third court mentions that Edger had to attend for the relevant summons.

(g) On 25 August 2022, MCP wrote to SLC to ask if the financial documents would be filed and sought a reply by 1 September 2022. There was no response from SLC.

(h) On 9 September 2022, MCP wrote again to SLC mentioning another letter from IRAS dated 5 September 2022 stating that Soup Empire had not submitted its income tax returns for Y/A 2018 to 2021 (*ie*, for four years). The letter also stated that in the circumstances, Edger wanted to inspect the accounting and other records of Soup Empire and LHTG pursuant to s 199 of the Companies Act.

(i) On 12 September 2022, SLC replied to MCP to ask Edger to list the documents he wanted to inspect.

(j) On 21 September 2022, MCP wrote SLC to state that Edger had been fined \$5,000 for LHTG's failure to file the financial documents for Y/A 2020. He had also received more letters from IRAS in respect of LHTG and LHTR about overdue GST returns. MCP also attached a list of documents which Edger wished to inspect.

(k) SLC replied on 27 September 2022 to say that Edger would be reimbursed for the \$5,000 fine. SLC stated that one of the IRAS Matters concerning the GST payments of LHTR and LHTG have been settled and that LHTG and LHTR were in the process of filing their GST returns. Further, there was no necessity for Edger to be involved in these

issues as he was not in charge of day-to-day operations. As for Edger's list of documents, SLC said this was an audit schedule for a full audit exercise and was unnecessary. However, the Companies were still prepared to consider the request for inspection if specific documents were listed.

(l) On 11 October 2022, MCP wrote to SLC to say that: (a) Edger had been forcibly removed from his employment and involvement in the day-to-day operations based on an allegation that Edger had conspired to injure the business of the Companies even though he has a 39.6% stake; (b) Edger had obtained an injunction to prevent his removal as a director so that he could have access to the Companies' finances to safeguard their interests; (c) the recent notices from IRAS about tax returns not being filed and GST not being paid on time were symptomatic of possible misfeasance and Edger has personal liability as a director in respect of these omissions; and (d) despite the assurance that the IRAS Matters had been or were being resolved, Edger received another letter from IRAS dated 8 October 2022 that LHTR had not paid income tax of \$5,250.04. Edger repeated his request to inspect and provided a reduced list of documents for inspection. There was no reply from SLC.

(m) In December 2022 and January 2023, Edger filed the applications for inspection.

Our decisions

8 In AD/SUM 32/2023 ("SUM 32") filed on 16 August 2023, Edger applied to adduce three categories of fresh evidence. We allowed the three

categories. We elaborate later on SUM 32 as it will be easier to appreciate it after we address the main appeal.

9 It is not in dispute that it is for the Companies to show why Edger should be denied inspection.

10 In so far as the Companies say that the inspection was requested to aid the oppression action in S 465, it is important to bear in mind various things. First, S 465 was filed on 24 May 2021. The request to inspect was made only after Edger received letters or summonses from IRAS in April 2022 about 11 months later. Edger then waited about four months before MCP wrote again on 25 August 2022 to SLC, as mentioned above, to complain further and to seek a reply by 1 September 2022. Significantly, Edger still did not seek an inspection of the documents. There was no reply from SLC. Hence it was only on 9 September 2022 that MCP first informed SLC that Edger wanted to inspect the documents.

11 Thereafter, the replies from SLC show that the Companies did not object to the request in principle. They only wanted to know what Edger wanted to inspect. When MCP replied, SLC suggested that the request was too wide whereupon MCP then forwarded a reduced list for inspection. There was no reply by SLC. This led to the filing of the applications.

12 With this background in mind, the Companies have failed to show that the real reason for inspection was to aid S 465 and not because of the IRAS Matters. The Companies did not refute the request at the earliest opportunity on the ground that it was to aid S 465 or to assist competitors.

13 On the latter ground, Soup Empire had alleged a conspiracy by Edger and others when it filed its defence and counterclaim on 21 June 2021 after a thorough investigation. Yet when Edger was seeking inspection, Soup Empire did not allege at that time that he was seeking inspection to aid a competitor. This was in spite of the fact that Soup Empire or Thomas had instructed an investigator to trail Edger since at least 16 November 2021. From the evidence before the court, they had learned on 26 November 2021 or thereabouts that Edger had obtained the Companies' bank documents from OCBC bank on various occasions, starting from at least 26 November 2021, and he had brought the documents to an address of a company belonging to one of the alleged conspirators, Teo Li Lian. Yet no objection in principle was taken in September 2022 about Edger's request to inspect accounting and other records.

14 Furthermore, as Edger argues, the Companies have not shown how his access to the documents, *ie*, the accounting and other records will aid the competitor. The Companies only make a vague and general allegation that the documents enable the competitor to have knowledge of the workings and the finance of the Companies.

15 As regards the argument that the inspection of the documents will impede the Companies' preparation of the accounts and that Edger is not involved in that purpose, Edger has not said that he wants the documents to assist the Companies in its preparation of the accounts but to find out what is going on in the light of the various letters or summonses.

16 In so far as the Companies suggest that all the IRAS Matters have been or will be dealt with, Edger’s case is that it is not so simple, which brings us to his application in SUM 32 to adduce fresh evidence. This is to introduce three categories of evidence:

(a) a letter dated 6 April 2023 from MCP to IRAS containing representations on Edger’s behalf (the “IRAS Representations Letter”) and IRAS’ response;

(b) correspondence between lawyers about reimbursement of a total fine of \$2,000 which Edger had paid for various IRAS summonses in respect of the Companies (the “Reimbursement Correspondence”); and

(c) reminder letters from IRAS on overdue GST returns, overdue income tax returns and unpaid GST) (the “Further IRAS Reminders”).

Collectively, we refer to the three categories of evidence as the “Further Evidence”.

17 Edger relied on s 41(5) of the Supreme Court Judicature Act 1969 to adduce the Further Evidence which arose after the date of the decision below. Alternatively, as Edger did not initially rely on s 41(5), Edger said that the three limbs of *Ladd v Marshall* [1954] 1 WLR 1489 were satisfied. There was no issue that the evidence arose after the date of the decision. There was also no issue of credibility. The real issue was one of relevance or materiality, whether under s 41(5) of the SCJA or otherwise.

18 The first category of evidence (*ie*, the IRAS Representations Letter) showed that Edger did make representations to IRAS. However, he was not successful.

19 Indeed, the second category of evidence (*ie*, the Reimbursement Correspondence) showed that after the IRAS Representations Letter, Edger was fined \$2,000 although he was reimbursed the \$2,000 by the Companies.

20 The third category of evidence (*ie*, the Further IRAS Reminders) was important because it showed that Edger continued to be troubled by IRAS' letters notwithstanding the simplistic picture painted by the Companies that the IRAS Matters had been or would be dealt with. It was not a question of just paying the fines. These letters could eventually lead to summonses. As recognised by the Companies, Edger was the one who faced the IRAS summonses.

21 Hence, even though the Companies contended that SUM 32 should have been filed earlier, we granted SUM 32 in respect of the three categories of evidence and ordered that the costs of SUM 32 be reserved till the end of the appeal.

22 As regards the appeal, Edger is *prima facie* entitled to inspect the documents of the Companies. The Companies have only themselves to blame for the IRAS Matters. Even if Edger's inspection is useful to his case in S 465, this is not a ground that disentitles him to inspection. On balance, the Companies have not established that the Judge had erred in allowing the inspection.

23 In the circumstances, we dismiss the appeal. The Companies are to pay the costs of SUM 32 and the appeal to Edger fixed at \$40,000 (all in). Their liability for the costs is joint and several. The usual consequential orders apply.

Woo Bih Li
Judge of the Appellate Division

Debbie Ong Siew Ling
Judge of the Appellate Division

Valerie Thean
Judge of the High Court

Yeo Choon Hsien Leslie (Sterling Law Corporation) for the
appellants;
Eugene Quah Siew Ping (Matthew Chiong Partnership) for the
respondent.
