Quek Hong Yap v Quek Bee Leng and Others
[2005] SGHC 111

Case Number : OS 1814/2002

Decision Date : 23 June 2005

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : Ignatius Joseph (A Rajandran, Joseph and Nayar) for the plaintiff; Simon Jones and Diana Ho (Wee Swee Teow and Co) for the defendants

Parties : Quek Hong Yap — Quek Bee Leng; Quak Bee Hong; Quak Hong Tian

Companies – Oppression – Defendants refusing to purchase plaintiff's shares in company – Whether defendants' refusal to purchase plaintiff's shares constituting oppressive conduct – Section 216(1)(a) Companies Act (Cap 50, 1994 Rev Ed)

Companies – Oppression – Whether alleged oppression continuing up to date of proceedings – Whether plaintiff's claims within ambit of s 216(1)(a) Companies Act – Section 216(1)(a) Companies Act (Cap 50, 1994 Rev Ed)

23 June 2005

Belinda Ang Saw Ean J:

1 The plaintiff, Quek Hong Yap ("Hong Yap"), a shareholder of the company, Quek Teck Beng Canvas Pte Ltd, sued his younger siblings, Quek Bee Leng ("Bee Leng"), Quak Bee Hong ("Bee Hong") and Quak Hong Tian ("Hong Tian") for oppression of a minority shareholder. The principal relief sought by the plaintiff under s 216 of the Companies Act (Cap 50, 1994 Rev Ed) ("the Act") was for the defendants to purchase his shares in the company, failing which he wanted the company to be wound up.

2 Quek Teck Beng Canvas Pte Ltd was incorporated on 23 December 1987 to take over the business of the sole proprietorship registered as Chop Quek Teck Beng. The company is in the business of supplying canvas products for industrial, commercial and military use. Hong Yap worked with his father, Quak Soo Kee, well before the company was incorporated. He resigned from the company on 31 March 1999 after spending a good part of his working life in the family business. Hong Yap ceased to be a director of the company on 20 November 2000.

3 At the time these proceedings were commenced on 13 December 2002, Hong Yap held 13,645 (27.29%) shares in the company. Bee Leng's shareholding was 14,485 (28.97%), Bee Hong held 3,645 (7.29%) shares, Hong Tian's shareholding was 14,580 (29.16%) and another sibling, Quek Hong Wee ("Hong Wee"), held 3,645 (7.29%) shares in the company. Hong Wee is not involved in these proceedings. The present directors of the company are Bee Leng, Bee Hong and Hong Tian. Bee Leng was appointed a director on 2 August 1989. Quak Hong Tian and Quak Bee Hong were appointed directors on 20 November 1999 and 12 January 2002 respectively.

4 In para 17 of his Statement of Claim, the plaintiff pleaded that he had been oppressed by the defendants in the following manner:

(i) Not acting bona fide for the benefit of the Company;

(ii) Conducted the affairs of the Company and/or exercised [their] powers as director[s] in a manner that is oppressive to the Plaintiff and/or in disregard of the

Plaintiff's interest as a member of the Company and is continuing to do so; and

(iii) Acted and/or threatening to act in a manner which unfairly discriminates against or is otherwise prejudicial to the Plaintiff.

(iv) … [The defendants] acted unconscionably, disregarding the Plaintiff's rights and interests.

(v) The acts and conduct of the Defendant[s] serve only to advance their own interests in disregard of the Plaintiff's interests. The … conduct [of Bee Leng and Hong Tian] is the cause of the destruction of the mutual confidence in the personal relationship among the shareholders.

(vi) The acts and conduct of the Defendant[s] [are] a visible departure from the standards of fair dealing and a violation of fair play.

(vii) The acts and conduct of the Defendant[s] serve only to advance the Defendant[s'] own interests in disregard of the Plaintiff's and the said company['s] interests. They are the cause of the destruction of the mutual confidence in the personal relationship among the shareholders.

These averments were by and large repeated in the plaintiff's Closing Submissions and it would appear from the averments that the plaintiff in these proceedings is relying on both sub-ss(*a*) and (*b*) of s 216(1) of the Act. Needless to say, these general words of averments will remain abstractions unless they are tied to specifics. What then were the specifics relied upon by Hong Yap as grounds of oppression or injustice committed by Bee Leng and Hong Tian in the conduct of the affairs of the company? It was in this area that the plaintiff found himself in real difficulties with each complaint of oppression or injustice.

5 Hong Yap's first complaint was that the affairs of the company were being run in a manner which was detrimental to the company and ultimately detrimental to the members. I pause here to make one observation. If that was indeed the case, I fail to see how Hong Yap as shareholder has, strictly speaking, *locus standi* to complain. This is because his specific allegation is that Bee Leng and/or Hong Tian had diverted company's funds into Bee Leng's and/or Hong Tian's personal bank account(s) and had not accounted to the company for the money. Be that as it may, I shall return to this allegation later for it was the crux of the plaintiff's complaint.

6 Another instance of oppression and disregard of the plaintiff's rights and interests, I gather, is from Bee Leng's illegal moneylending activities involving company's funds. On this allegation, the plaintiff was not able to get off the ground, so to speak. The legal burden was on Hong Yap to prove this. Lord Wilberforce delivering the judgment of the Board in *Re Kong Thai Sawmill (Miri) Sdn Bhd* [1978] 2 MLJ 227 at 229 said that for the case to be brought within the section (s 181(1)(a) of the Malaysian Companies Act, which is our s 216(1)(*a*)) at all, the complainant must identify and prove "oppression" or "disregard". In my judgment, Hong Yap had based his allegation entirely on hearsay evidence. He said he came to know about the illegal moneylending activities from one Steve Lau of Chin Hong, a customer of the company. Glaringly missing was Steve Lau's attendance in court as a witness. In cross-examination, Hong Yap acknowledged that he had no evidence of any illegal moneylending activity involving company's funds save for the information supplied to him by Steve Lau who was also a friend of his. Hong Yap in his affidavit of evidence-in-chief had alleged that Bee Leng's moneylending was by means of an exchange of company's cheques for other post-dated cheques, presumably from Chin Hong, with a higher face value. In cross-examination, Hong Yap

changed his story and alleged that the moneylending was by exchange of cheques with the interest being paid by way of cash. I should mention that contemporaneous documentary evidence from the company showed that the company's cheques of equal value were exchanged with Steve Lau of Chin Hong and the exchange did not suggest any moneylending activity as alleged in Hong Yap's written testimony.

7 Strictly, I need not go into the accusations dating back to the time of their father's illness in 1989 on how Bee Leng initially acquired 10,000 shares and her directorship in the company. I was told by Hong Yap's counsel that this was simply background information. In any event, to put these accusations to rest, I shall briefly deal with them. Hong Yap's accusations were entirely speculative in the face of countervailing contemporaneous documented evidence on Bee Leng's appointment as a director and shareholder. Hong Yap had insinuated that Bee Leng had acquired the initial 10,000 shares by unduly influencing their father during his illness into giving them to her. However, the records of the company showed that some 10,000 shares were transferred to Bee Leng as early as 30 April 1988, well before their father's illness. Moreover, Bee Leng's evidence was corroborated by the company secretary, Phua Soon Lian. On Hong Yap's claim that Bee Leng's directorship also came about during the time of their father's illness, which led to his hospitalisaton, Hong Yap was not able to prove his allegation. In cross-examination, he admitted that he had no idea when Bee Leng was appointed a director. He was also unaware of the date that his father was admitted to hospital. The documents admitted in evidence showed that their father was first hospitalised on 4 October 1989. Hong Yap's evidence on what his father told him about Bee Leng holding the 10,000 shares for his elder brother, Hong Wee, is again hearsay.

8 There is again nothing much in his other complaint that his 50% shareholding was reduced after he was made to give up some of his shares to his siblings in early 1999. He claimed that it was part of Bee Leng's scheme to reduce his entire shareholding in the company and dilute his interests, and hence control, in the company, from 50% to 27.29%. I noticed that the plaintiff adduced no evidence on how he came to acquire the additional shares beyond the initial 10,000 shares allotted to him when his father was alive. In his Statement of Claim, Hong Yap said that he had paid for the extra shares but that turned out to be untrue. I also noted that Hong Yap was not making a claim for a return of those shares and that was quite telling. It is unbelievable that Hong Yap would have willingly given up shares on Bee Leng's say-so if indeed the shares were truly his. After all, on his own evidence, their father during his illness was duped into giving Bee Leng shares intended for Hong Wee and again duped into making her a director. The evidence before the court was that their parents owned shares in the company and on their death, their shares were held by Hong Yap and Bee Leng as trustees and those shares were later distributed to the various siblings as their legal entitlement. The documents in evidence disclosed that the share transfers to the siblings on 27 January 1999 were made pursuant to the intestacy of their father and under the terms of their mother's will. Before distribution to the beneficiaries, Hong Yap held, as trustee, 15,000 shares under the two deaths. Bee Leng, also as trustee, held the other 15,000 shares.

9 Hong Yap denied that he was involved in illegal 4-D bookmaking activities. As I told counsel for the plaintiff at the trial, if the plaintiff was sacked on account of the illegal 4-D bookmaking activities, I would have to make a finding of fact on this specific allegation and determine whether or not the alleged dismissal from the company on this ground was wrongful and in reality was part of a bigger scheme to deliberately exclude Hong Yap from management. But the fact of the matter was that the plaintiff resigned voluntarily after giving one month's notice to the company. Hong Yap left the company on 31 March 1999, but remained a director of the company for over a year until November 2000. Hong Yap testified that as he was not happy in the company, he decided to resign. In his Statement of Claim, he alluded to his dispute with Bee Leng over the non-payment of director's

fees and the refusal of his request to look at the accounting records that led to further hostility with Bee Leng. In the end, nothing turned on the reasons for his departure. The only material evidence is that he resigned voluntarily from the company. That is a far cry from the pleaded case that he was effectively removed as an active director on 31 March 1999.

10 I return to the crux of the plaintiff's complaint. And this has to do with a Chung Khiaw Bank ("CKB") savings account. Hong Yap acknowledged in the witness box that he was relying on a particular CKB passbook to support his pleaded case set out in paras 6(i) and (ii) of his Statement of Claim. He claimed that from May 1994 to 1998, over a period of four years, Bee Leng and Hong Tian cheated the company. They had transacted the company's business in cash without accounting for the same or depositing the cash in the company's bank account. Instead, they deposited the cash in their own accounts or that of their nominees. The CKB savings account was opened in 1994 in Hong Tian's name. Other accounts with POSBank in the names of Bee Leng's children were raised for the first time in cross-examination. That allegation fizzled out as soon as it was raised as Hong Yap was not in a position to substantiate his bare allegation. He admitted that he had no proof that the money in the children's accounts belonged to the company.

11 It was the defendants' case that the CKB savings account was the plaintiff's idea and that a substantial portion of the funds deposited into that account came from a partnership owned by the plaintiff and his brother-in-law. Although the CKB savings account was in Hong Tian's name, it was opened at the request of Hong Yap and the operator of the passbook was Hong Yap. Hong Tian testified that although the passbook was in his name, it was kept by Hong Yap. Hong Tian would make withdrawals at the request of Hong Yap. However, the plaintiff's version was that he discovered the existence of the CKB passbook by chance. I noted that his written and oral testimonies differ as to where he had found the CKB passbook. After he discovered the passbook, he confronted Bee Leng about it. In my view, what transpired thereafter is of little significance. More important is the closure of the CKB savings account and what happened to the account balance. I accepted the evidence of Bee Leng and Hong Tian that after the CKB savings account was closed in July 1998, the account balance from that account was used to open another account in Tat Lee Bank Limited ("Tat Lee") in the joint names of the plaintiff, Bee Leng and Hong Tian. The plaintiff was one of the cheque signatories and he admitted to counter-signing cheques drawn from this account before it was closed on 5 December 2000. All that evidence went against his very complaint that funds in the CKB savings account were diverted from the company to account or accounts belonging to Bee Leng and Hong Tian or their nominees. Hong Yap countersigned most of the cheques. Significantly, the plaintiff did not challenge Bee Leng and Hong Tian's testimony that the money in the Tat Lee bank account was used for the staff "*ang pows*" and towards what was described as "sale expenses". Neither did the plaintiff refute or attempt to explain the defendants' evidence that a sum of $30,000, which he had lent to the company and successfully sued the company for its repayment in 1999 in the District Court (DC Suit No 51263 of 1999), was money that had come from the CKB account and, on his instructions, transferred directly to the company. The transaction was recorded in the company's books as a "loan from director", which was the plaintiff himself.

12 The company had rented extra space and part of the rented premises was sub-let. The monthly rentals from the sublet premises were paid into the CKB account together with moneys from cash sales. According to Bee Leng, Hong Yap made use of moneys in the CKB savings account to pay commissions for orders he received. It seemed to me that the money in the CKB savings account was also by tacit understanding used to defray the needs of their mother and her household and miscellaneous expenses. Hong Tian was then living with his mother. Eventually, the closing balance of the CKB account was used to open an account with Tat Lee.

13 In *Gan Cheong Or v See Soon Lee* [1996] 2 SLR 9, the respondent and minority shareholder, See Soon Lee, presented a petition for relief under s 216 of the Act. His complaint was that a cash purchase of certain pewter alloy by the company from an Indonesian company was fictional and the majority shareholders had spirited away the money allegedly paid for the pewter alloy. The Court of Appeal found that the allegations made by See Soon Lee against the majority shareholders were serious in that the majority shareholders were being accused of dishonesty, if not theft. A higher standard of proof was needed to make good the serious allegations. The standard of proof required ought to commensurate with the seriousness of the allegations. See Soon Lee had not discharged this burden of proof and hence oppression or injustice had not been proved. Likewise, in the present case, Hong Yap had accused Bee Leng and Hong Tian of misappropriating the company's money and accordingly the same high standard of proof as explained by the appellate court were required of him. For the reasons given in [10] to [12] above, I found that Hong Yap had not discharged the burden of proof which was on him.

14 The plaintiff also claimed that he was oppressed on 20 November 2000 when he ceased to be a director of the company; or that he had been wrongfully excluded from participation in management and that constituted unfairly prejudicial conduct. He was rotated out of his directorship at an annual general meeting held on 20 November 2000. Crucially, the plaintiff had repeatedly said (and this is where his evidence had always been consistent) that when he left the company at the end of March 1999, his intention was to leave his siblings to continue with the business. He therefore did not take away samples or drawings but left them behind for his siblings to use, as they were to continue with the business. In his own words, he left the company empty-handed. His conduct thereafter was consistent with this decision to leave the family business to his siblings to manage and continue. He did not attend directors' meetings held between 12 December 1999 and 24 October 2000, preferring to ignore the other directors' requests in various letters to attend such meetings. He was even reminded during that period to carry out his responsibilities as a director. The plaintiff had simply wanted to sever his connections with the company. No permission of the other directors was sought for his absence at meetings. So on 20 November 2000, he formally ceased to be a director. I find that in not attending the company's 12th annual general meeting held on 20 November 2000 which he had had notice of and in not offering himself for re-election, his conduct thus far was still very much consistent with his earlier decision to leave the company to his siblings. I was not persuaded that the resolution passed on 20 November 2000, where Hong Yap ceased to be a director, evidenced conduct intended to oppress the plaintiff. There is nothing in the evidence to bear out his allegation that he was excluded from participation in the company's affairs or in its management.

15 Having cut his ties with the company at the end of March 1999, it was quite natural for Hong Yap to want to sell his shares. He played out his decision on 16 November 2002. But if nobody wanted to buy his shares willingly, there was not much he could have done short of trying to force the shareholders to do what he wanted. It was clear that he launched this oppression action to force his siblings to buy his shares under the threat of liquidation. The plaintiff admitted that he was peeved that Bee Leng and Hong Tian bought the shares of his other siblings when he was the first to announce his intention on 16 November 2002 to sell out. In my judgment, the non-compliance of Art 29 of the company's Articles of Association had no bearing on the outcome of this action. Article 29 applies to members who want to sell their shares and not to buyers like Bee Leng and Hong Tian.

16 Above all, it is trite law that to succeed under s 216(1)(*a*) of the Act, the oppression on the part of the defendants must continue up to the date of these proceedings: see Lord Wilberforce in *Re Kong Thai Sawmill (Miri) Sdn Bhd* ([6] *supra*) at 229. The plaintiff was not complaining that he had been oppressed by the way the defendants had run the company after he ceased to be a director on

20 November 2000. His complaints narrated and discussed earlier all related to the period up to 2000. They were no longer live issues and were clearly outside the language of s 216(1)(*a*). He was also not saying that since then Bee Leng and Hong Tian had caused the company to do something which was detrimental to Hong Yap's interests as a shareholder. It cannot be oppression because the defendants do not wish to buy the plaintiff's shares. Besides, their refusal to purchase Hong Yap's shares has nothing to do with the way the affairs of the company were conducted. The situation here is analogous to the case of *Lim Cheng Huat Raymond v Teoh Siang Teik* [1996] 3 SLR 605 where the Court of Appeal said, in *obiter*, that disregard of a minority shareholder's contractual right, even if established, could not found a case of oppression under s 216(1)(*a*) of the Act. It has nothing to do with the conduct of the affairs of the company. Neither can it be said that the refusal of the defendants to purchase Hong Yap's shares is the same as unfair conduct of the company's affairs which unfairly discriminates against or is otherwise prejudicial to Hong Yap under s 216(1)(*b*) of the Act. Lai Siu Chiu J in *Luk Yue Hong Yvonne v Lim Seng Leong* [2005] SGHC 89 cited and followed Peter Gibson J in *Re Ringtower Holdings plc* (1989) 5 BCC 82 who, at 90, said that the relevant conduct, whether it was a commission or omission (which was both prejudicial and unfair to the interest of the members as members), must relate to the affairs of the company of which the complainant was a member. Again the decision of Bee Leng and Hong Tian not to purchase Hong Yap's shares had nothing to do with, nor was it related to, the affairs of the company.

17 I agreed with counsel for the defendants that the plaintiff had not established on a balance of probabilities that at the commencement of proceedings he was being or had ever been oppressed either by the way in which the affairs of the company were conducted or because his interests have been disregarded by the defendants in the exercise of their powers as directors. Neither had the plaintiff met the requirements of s 216(1)(*b*) of the Act. After hearing the evidence for six days, I was satisfied that the plaintiff had brought a decidedly unmeritorious action. I therefore dismissed with costs the plaintiff's action for relief under s 216 of the Act.