Lim Leong Huat v Chip Hup Hup Kee Construction Pte Ltd [2009] SGHC 2

Case Number : Suit 779/2006, SIC 107/2008

Decision Date : 06 January 2009

Tribunal/Court : High Court

Coram : Andrew Ang J

Counsel Name(s) : Khoo Boo Teck Randolph, Keow Mei-Yen and Loo Teck Lee Johnson (Drew & Napier LLC) for the plaintiff/applicant in the original action; Ling Daw Hoang Philip and Hwa Hoong Luan (Wong Tan & Molly Lim LLC) for the defendant in the original action

Parties : Lim Leong Huat — Chip Hup Hup Kee Construction Pte Ltd

Tort – Conspiracy – Application to add director as co-conspirator with company – Director moving spirit and controlling mind of company – Whether company director could be liable in conspiracy with company of which he was moving spirit and controlling mind

6 January 2009

Andrew Ang J:

Introduction

1 This case considers the question whether, *in law*, a company director can be liable in conspiracy with the company of which he is the moving spirit and controlling mind.

2 The parties in the present proceedings are:

(a) Lim Leong Huat ("Lim") – the plaintiff (by original action) and the first defendant (by counterclaim);

(b) Tan Siew Lim ("TSL") – the second defendant (by counterclaim) who is also Lim's wife;

(c) Chip Hup Hup Kee Construction Pte Ltd ("CHHKC") – the defendant (by original action) and plaintiff (by counterclaim); and

(d) Neo Kok Eng ("Neo") – the managing director of CHHKC.

3 Lim was the former general manager and designated executive director/projects director of CHHKC, a company in the building and construction business.

4 According to Neo, CHHKC is a wholly-owned subsidiary of Chip Hup Holdings Pte Ltd ("CH Holdings"), a company in which he beneficially owns 100% of the issued share capital, 99.11% of which are registered in his name, the remaining 0.99% being held in trust for Neo by one Tan Yong San ("Tan"), the brother of Lim's wife. A separate action has been commenced by Neo against Tan in Suit No 241 of 2007 ("Suit 241") for the return of the 0.99% shares.

5 For these proceedings, the relevant point to note is that Neo and Tan were the two named directors of CHHKC and CH Holdings, and that Lim has applied under Summons in Chambers No 107 of 2008 for an order to add Neo as the second defendant in the original action, to maintain the following

allegations against Neo:

(a) that Neo had conspired with CHHKC, by lawful means or by unlawful means, to injure or cause loss and damage to Lim by depriving Lim of payment of moneys advanced by Lim to CHHKC; and

(b) that Neo had acted unlawfully and in bad faith to interfere with CHHKC's payment obligations to Lim by inducing, procuring and/or otherwise causing CHHKC to refuse to make the aforesaid payments.

Parties' submissions

The defendants' submissions

6 Counsel for CHHKC and Neo submitted that Lim's application to add Neo as the second defendant should be disallowed because there was no cause of action against Neo either for conspiracy or for inducing breach by CHHKC of its payment obligations. Counsel based his argument on the position taken by Tan, CHHKC's other director, in Suit 241, that Neo:

(a) was in charge of the accounts and funds of the companies in the Chip Hup Group;

(b) controlled all the signing of cheques and the movement of funds into and out of CH Holdings and its subsidiaries; and

(c) did not account for nor give full details to Tan regarding the amount of funds and/or the reason for the movement of the funds.

As such, counsel for CHHKC and Neo contended that since any decision(s) and/or action(s) taken by CHHKC not to make payment to Lim could only have originated from Neo alone and not Tan, no question of any conspiracy between CHHKC and Neo, nor inducement by Neo vis-à-vis CHHKC, arose. This was because, at all times, the actions of CHHKC were the decisions and actions of Neo, effectively the only director and controlling mind of CHHKC.

The plaintiff's submissions

7 Counsel for Lim relied on the decision of Judith Prakash J in *Nagase Singapore Pte Ltd v Ching Kai Huat* [2008] 1 SLR 80 ("*Nagase*") where it was held that, *in law*, there can be a conspiracy between a company and its controlling director to damage a third party by unlawful means even where the director is the company's moving spirit.

The decision of this court

8 After hearing submissions from counsel for the respective parties, I ordered that Neo be added as a defendant in the original action. I now set out the reasons for my decision.

The two forms of the tort of conspiracy

9 The Court of Appeal in *Quah Kay Tee v Ong & Co Pte Ltd* [1997] 1 SLR 390 ("*Quah Kay Tee*") noted (at [45]) that:

The tort of conspiracy comprises two types: conspiracy by unlawful means and conspiracy by lawful means. A conspiracy by unlawful means is constituted when two or more persons combine

to commit an unlawful act with the intention of injuring or damaging the plaintiff, and the act is carried out and the intention achieved. In a conspiracy by lawful means, there need not be an unlawful act committed by the conspirators. But there is the additional requirement of proving a 'predominant purpose' by all the conspirators to cause injury or damage to the plaintiff, and the act is carried out and the purpose achieved. [emphasis added]

10 In *Wu Yang Construction Group Ltd v Zhejiang Jinyi Group Co, Ltd* [2006] 4 SLR 451 ("*Wu Yang*"), Andrew Phang Boon Leong J summarised the nature and rationale underlying these two forms of conspiracy and their similarities and differences (at [75]–[79]):

> 75 It is apposite to note that the actual principles of law relating to the tort of conspiracy are none too clear. What *is* clear is that there are, traditionally, two separate and distinct aspects or ways of applying the tort of conspiracy. As might have been surmised, the legal principles with respect to each aspect are somewhat different.
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> 76 There is, first, the situation where unlawful means have been used (also known as "wrongful means conspiracy"). The relevant law in this context appears to be straightforward. In particular, there is no need for the plaintiff concerned to prove that there has been a predominant intention on the part of the defendants to injure it. It would appear that the very utilisation of unlawful means is, by its very nature, sufficient to render the defendants liable, regardless of their predominant intention. This would appear to be both logical as well as just and fair, especially if we bear in mind the fact that the central core, as it were, of the tort of conspiracy hinges on the proof that the conspiracy is somehow unlawful and that the plaintiff is entitled to succeed provided that it can prove that it has suffered damage.
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> 77 Secondly, there is the situation where lawful means have been used (also known as "simple conspiracy" or "conspiracy to injure"). Unlike the first category referred to briefly in the preceding paragraph, this second category requires that the plaintiff prove that there has been a predominant intention on the part of the defendants to injure it (see the leading House of Lords decision of *Lornho plc v Fayed* [1992] 1 AC 448 ("*Lornho*")). This additional element is required simply because, without it, the alleged conspiracy would be devoid of any element of unlawfulness. It is precisely because there is a predominant intention on the part of the defendants to injure the plaintiff that the plaintiff is entitled to succeed provided (again) that it (the plaintiff) can prove that it has suffered damage. It is this concerted predominant intention to injure that renders the conduct of the defendants, which would otherwise have been lawful, unlawful or illegitimate. As Lord Bridge of Harwich, who delivered the substantive judgment of the House in *Lornho* (with which the other law lords agreed), observed (at 465–466):
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> > Where conspirators act with the predominant purpose of injuring the plaintiff and in fact inflict damage on him, but do nothing which would have been actionable if done by an individual acting alone, it is in the fact of their concerted action *for that illegitimate purpose* that the law, however anomalous it may now seem, finds *a sufficient ground to condemn their action as illegal and tortious*. But when the conspirators intentionally injure the plaintiff and use unlawful means to do so, it is no defence for them to show that their primary purpose was to further or protect their own interests; it is sufficient to make their action tortious that the means used were unlawful. [emphasis added]
>
> …
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> 79 Returning to the tort of conspiracy, it is clear that the precise category of the tort pleaded is of the utmost importance simply because there will be the additional element of a predominant

purpose by the defendants to injure the plaintiff that will need to be proved if the alleged conspiracy is one by lawful means …

[emphasis in original]

11 In *Nagase* ([7] *supra*), Prakash J summarised the elements that must be satisfied to prove both forms of conspiracy at [23]:

> In order for the claim of conspiracy to succeed, the elements that have to be satisfied are the following:
>
> (a) a combination of two or more persons and an agreement between and amongst them to do certain acts;
>
> (b) if the conspiracy involves lawful acts, then the predominant purpose of the conspirators must be to cause damage or injury to the plaintiff, but if the conspiracy involves unlawful means, then such predominant intention is not required;
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> (c) the acts must actually be performed in furtherance of the agreement; and
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> (d) damage must be suffered by the plaintiff.

12 As evident from [9]–[11] above, while a conspiracy by lawful means does not involve an unlawful act committed by the conspirators, there is the additional requirement of a "predominant purpose or intention" by all the conspirators to cause injury or damage to the plaintiff. However, *both* forms of conspiracy require a combination of two or more persons and more will be said about this common ingredient later in this judgment (see [29] below), after first examining *Nagase*.

Nagase

1 3 *Nagase* was a second judgment arising from a dispute between the parties thereto. In the action resulting in the first judgment (see *Nagase Singapore Pte Ltd v Chin Kai Huat* [2007] 3 SLR 265) ("the first judgment"), the plaintiff, Nagase Singapore Pte Ltd, alleged a conspiracy between the following parties to overcharge the plaintiff for warehousing services:

(a) its employees, Clement Yip and Mary Ting, ("Yip and Ting");

(b) D Logistics, a warehousing and logistics services support company ("D Logistics"); and

(c) David Ching, the majority shareholder and director of D Logistics ("Ching").

14 The plaintiff, who had engaged D Logistics to provide warehousing services to it from 1999, claimed that Yip and Ting had conspired with Ching to enter into agreements for the provision of such services by D Logistics at inflated rates. Both forms of conspiracy were alleged by the plaintiff.

15 With respect to Yip and Ting, the court found in the first judgment that the evidence failed to support any claim that Yip and Ting had conspired with Ching and D Logistics to overcharge the plaintiff.

16 With respect to D Logistics and Ching however, the court found that D Logistics had indeed overcharged the plaintiff and that Ching must have known of this overcharging and was privy to it. Although the plaintiff had, in its statement of claim, pleaded in the alternative that all the defendants

(or any two or more together) had conspired to injure the plaintiff, the plaintiff did not, in its submissions, address specifically the issue whether Ching and D Logistics could, on their own, irrespective of any participation by Yip and Ting, be considered, *in law*, to be co-conspirators. Accordingly, the court asked for further submissions on this issue, identical to the one in these proceedings, and gave its second judgment subsequently in *Nagase*.

17 After hearing full submissions on this issue and following an extensive review of the authorities, the court in *Nagase* held (at [22]):

> Now that I have heard full submissions on the point, *I am satisfied that, in law, there can be a conspiracy between a company and its controlling director to damage a third party by unlawful means notwithstanding that the director may be the moving spirit of the company, as I have found that [Ching] was*. As I stated in the first judgment, since I had found that *[Ching] was responsible for the overcharging undertaken by D Logistics, it was unattractive to have to hold that only D Logistics could be legally liable for that wrongful act.* That was why I called for further submissions. [emphasis added]

18 In *Nagase*, Prakash J relied extensively on the Court of Appeal decision in *Chew Kong Huat v Ricwil (Singapore) Pte Ltd* [2000] 1 SLR 385 ("the *Ricwil* case") and the decision of the Irish Supreme Court in *Taylor v Smyth* [1991] 1 IR 142 ("*Taylor*").

The rationale for the court's holding in Nagase

19 In *Taylor* (a case pertaining to an allegation of conspiracy by unlawful means), where the exact same issue was expressly considered by the court, McCarthy J, delivering the judgment of the Irish Supreme Court stated that there was no reason in principle (at 166):

> … why the mere fact that one individual director controls the company of limited liability, should give immunity from suit to both that company and that individual in the case of an established arrangement for the benefit of both company and individual to the detriment of others …

20 The rationale underlying the Irish Supreme Court's position was stated by McCarthy J in the following terms (at 165):

> ***In principle, it would seem invidious*, for example, *that the assets of a limited company should not be liable to answer for conspiracy where its assets had been augmented as a result of the action alleged to constitute the conspiracy. Essentially, it would be permitting the company to lift its corporate veil as and when it suits*.** The matter is not devoid of authority. In *Belmont Finance (No. 1) v. Williams Furniture* [1979] Ch. 250, Williams Furniture owned City Industrial Finance which owned Belmont, whose majority directors were the seventh and eighth defendants. Four other defendants owned Maximum and wanted to purchase Belmont. They agreed to sell Maximum to Belmont for £500,000 and to purchase Belmont from City Industrial for £489,000. The Belmont directors resolved to implement this agreement and the transaction was completed. Belmont went into liquidation and its receiver sued alleging that the value of Maximum was only £60,000 but that the price of £500,000 for Maximum had been arrived at to enable those four defendants to purchase Belmont with money provided by Belmont, in contravention of the Companies Act. It was held that since Belmont was a victim of the alleged conspiracy and the essence of the agreement was to deprive it of a large part of its assets, the knowledge of its directors that the agreement was illegal was not to be imputed to Belmont merely because they were directors of Belmont. Therefore, Belmont was not a party to the conspiracy. The trial judge had held that the claim in conspiracy failed *in limine* on the ground

that one party to a conspiracy to do an unlawful act cannot sue a co-conspirator in relation to that act. In the course of his judgment, Buckley L.J. said at p. 260:-

> "I shall deal first with the conspiracy claim. The plaintiff company's argument is to the following effect: on the allegations in the statement of claim, the agreement was illegal, and they say that an agreement between two or more persons to effect any unlawful purpose, with knowledge of all the facts which are necessary ingredients of illegality, is a conspiracy; and we were referred to *Crofter Hand Woven Harris Tweed Co. Ltd. v. Veitch* [1942] A.C. 435 and *Reg. v. Churchill (No. 2)* [1967] 2 A.C. 224. The agreement was carried out, and damaged the plaintiff company.
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> In the course of the argument in this court counsel for the first and second defendants conceded that the plaintiff company is entitled in this appeal to succeed on the conspiracy point, unless it is debarred from doing so on the ground that it was a party to the conspiracy, which was the ground that was relied on by the judge.
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> The plaintiff company points out that the agreement was resolved on by a board of which the seventh and eighth defendants constituted the majority, and that they were the two directors who countersigned the plaintiff company's seal on the agreement, and that they are sued as two of the conspirators. It is conceded by Mr. Miller for the plaintiff company that a company may be held to be a participant in a criminal conspiracy, and that the illegality attending a conspiracy cannot relieve the company on the ground that such an agreement may be ultra vires; but he says that to establish a conspiracy to which the plaintiff was a party, having as its object the doing of an illegal act, it must be shown that the company must be treated as knowing all the facts relevant to the illegality; he relies on *Reg. v. Churchill (No. 2)* [1967] 2 A.C. 224.
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> The plaintiff in its reply denies being a party to the conspiracy and, says Mr. Miller, it would be for the defendants to allege the necessary knowledge on the part of the plaintiff company. But he further submits that even if the plaintiff company should be regarded as a party to the conspiracy, this would not debar it from relief; and he relies on *Oram v. Hutt* [1914] 1 Ch. 98."
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> ***The point now under consideration in this appeal did not expressly arise in Belmont Finance (No. 1) v. Williams Furniture [1979] Ch. 250, but it must underlie the entire of the argument and judgment in it. The basis of that case was that the separate legal entity of the company may, in law, conspire with those directors who, in effect, control it*.**
>
> (emphasis added in bold italics)

21 As can be seen from the foregoing paragraph, the Irish Supreme Court in *Taylor* had cited the case of *Belmont Finance (No 1) v Williams Furniture* [1979] Ch 250 ("*Belmont Finance (No 1)*") in support of its proposition that there can be a conspiracy between a company and its controlling director to damage a third party by unlawful means *even where* the director is the company's moving spirit.

22 While I respectfully agree with the decision reached in *Nagase*, I would like to add some further observations. *Belmont Finance (No 1)* makes it clear that an important threshold question is whether the company is a victim of the alleged conspiracy. As noted in *Walter Woon on Company Law* (Tan Cheng Han SC gen ed) (Sweet & Maxwell, 3rd Ed, 2005) ("*Walter Woon*") at p 121, [3.106]:

> … Where the person who represents the company's directing mind is acting in fraud of the company, his knowledge or intention will not be imputed to the company where the company is suing its officers in respect of breach of their duties. Thus, *where the directors of a company conspire to defraud the company, the company is not a party to the conspiracy, even if the directors in question are its 'brain'.* [emphasis added]

23 In other words, where the company is a *victim* of an alleged conspiracy of its directors and sues its directors for breach of duties, the company does not become a co-conspirator with its directors just because its directors are the conspirators: see also Clerk & Lindsell on *Torts* (Sweet & Maxwell, 19th Ed, 2006) ("*Clerk & Lindsell*") at [25–119]. The rationale underlying such an interpretation is that it prevents the company's errant directors from otherwise escaping liability by contending that, as co-conspirator, the plaintiff tortfeasor company cannot sue the errant tortfeasor directors for damages resulting from the directors' conspiracy.

24 However, the position is different where the company and its directors are in an established arrangement which benefits the company, to the detriment of third parties. In this case, the company is no longer a victim of an alleged conspiracy of its directors. Instead, the third party is the victim of the alleged conspiracy between the company and its directors. Taking a leaf from the reasoning of McCarthy J in *Taylor*, I can see no reason why the assets of a limited company and/or that of its errant director, even where such a director is the controlling mind of the company, should not be liable to answer for conspiracy where either or both of their assets have been augmented as a result of the action alleged to constitute the conspiracy.

25 In *Nagase*, Prakash J had (at [10]), noted that the Australian case of *O'Brien v Dawson* (1942) 66 CLR 18 had set out the traditional conceptual objection to treating a company and its directors as separate individuals for the purpose of a conspiracy:

> A company "cannot act in its own person for it has no person" (*Ferguson v. Wilson* [(1866) 2 Ch App 77, at 89]). So it must of necessity act by directors, managers or other agents. The company, if it were guilty of a breach of its contracts in this case, acted through its director the respondent Doyle, but it is neither "law nor sense" (*Lagunas Nitrate Co. v. Lagunas Syndicate* [[1899] 2 Ch 392, at 43]) to say that Doyle in the exercise of his functions as a director of the company combined with it to do any unlawful act or become a joint tortfeasor.

26 However, Prakash J did note (at [11]) that our Court of Appeal had "implicitly rejected the validity of this conceptual objection" in the *Ricwil* case ([18] *supra*). She went on to note further (at [21]):

> Although our Court of Appeal did not enunciate the principle expressly, it held, in the *Ricwil* case, that although Mr Chew was the managing director of Sintalow, he and Sintalow could be found liable for conspiracy by unlawful means to injure or damage Ricwil. Whatever the pleadings in the case might have been and whoever else might initially have been allegedly involved in the conspirator, *in the end, the co-conspirators were found to be Sintalow, the company and Mr Chew, the director*. [emphasis added]

27 I respectfully agree with Prakash J's reading of the *Ricwil* case. I am further of the opinion that the reply to this conceptual objection can be expressly found in *Catherine Lee v Lee's Air Farming Ltd* (1960) 3 WLR 758 ("*Lee's Air Farming*"), a decision of the Privy Council on appeal from the New Zealand Court of Appeal, which affirmed *Salomon v A. Salomon & Co Ltd* [1896] AC 22 ("*Salomon's* case"), the *locus classicus* establishing the separate legal personality of a company.

The case of Lee's Air Farming

28 In *Lee's Air Farming*, the appellant's husband, Lee, had formed the respondent company for the purpose of carrying on the business of aerial top dressing. He held 2,999 of the shares of the company. The remaining one share was held by a solicitor. Lee was appointed the governing director and had full control of the company. He was also employed as chief pilot on an annual salary. While piloting an aircraft in the course of his work, Lee was unfortunately killed in an accident. The issue before the court was whether Lee was an employee of the company for the purposes of compensation under the New Zealand Workers Compensation Act, 1922. Lee was the controlling shareholder and governing director of the company and in such capacity had the duty to give orders. The New Zealand Court of Appeal was of the view that Lee could not also be an employee, who had the duty to receive and obey orders as this would mean in effect that he was both employer and worker. In the view of the New Zealand court, the two offices were clearly incompatible as there could exist no power of control and therefore the relationship of master-servant was not created. The Privy Council disagreed. In affirming the doctrine of separate legal personality established in *Salomon's* case, the Privy Council said at 765:

> Their Lordships find it impossible to resist the conclusion that the active aerial operations were performed because the *deceased was in some contractual relationship with the company*. *That relationship came about because the deceased as one legal person was willing to work for and to make a contract with the company which was another legal entity*. A contractual relationship could only exist on the basis that there was consensus between two contracting parties. It was never suggested (nor in their Lordships' view could it reasonably have been suggested) that the company was a sham or a mere simulacrum. It is *well established that the mere fact that someone is a director of a company is no impediment to his entering into a contract to serve the company.* [emphasis added]

The Privy Council continued (at 767):

> The fact that so long as the deceased continued to be governing director, with amplitude of powers, it would be for him to act as the agent of the company to give the orders *does not alter the fact that the company and the deceased were two separate and distinct legal persons*. [emphasis added]

29 The conclusion derived from both *Salomon's* case and *Lee's Air Farming* is that even where a business is managed solely by one person, that one person and the company are, in law, nevertheless separate legal entities. This separation is an incident of the incorporation of the company, *even if* one person is the controlling mind of the company. If the company and its controlling mind could enter into a contract of service, as in *Lee's Air Farming*, there is no reason, on principle, why there cannot be a combination of the company and its controlling mind and an understanding or agreement between them to constitute a conspiracy.

30 I noted (at [12] above) that a combination of two or more persons is a common ingredient in both forms of conspiracy. Because a person and the company are, in law, separate legal entities, there is no barrier, in law, precluding a combination between the director and the company, *even where* that director is the controlling mind of the company. *Taylor* was cited by the learned editors of *Street on Torts* (Oxford University Press, 12th Ed, 2007) ("*Street on Torts*") at p 359 to support the proposition that directors and their company may conspire together since the company is a separate legal entity. One would have expected some comments from the learned editors of *Street on Torts* if there was indeed a conceptual objection precluding such a combination between the controlling director and the company.

The case of Chong Hon Kuan

31 At [10] of *Nagase*, Prakash J had distinguished Woo Bih Li's decision in *Chong Hon Kuan Ivan v Levy Maurice (No 2)* [2004] 4 SLR 801 ("*Chong Hon Kuan*") because:

> It would be noted that in the *Chong Hon Kuan* case, the alleged conspiracy was amongst the three directors of Publicis Singapore. Publicis Singapore [*ie*, the company] itself was not a party to the conspiracy. Therefore, the *case did not discuss the issue of whether a single director and the company which he directed could legally be considered co-conspirators*. [emphasis added]

32 I agree with Prakash J that *Chong Hon Kuan* did not *expressly* consider the issue at hand. But, I am of the opinion that *Chong Hon Kuan* is nevertheless *implicitly* relevant to the issue of whether a single director could be in conspiracy with the company he directed.

3 3 *Chong Hon Kuan* had applied the English case of *Said v Butt* [1920] 3 KB 497 ("*Said v Butt*"). Adopting the relevant portion of the headnotes from *Chong Hon Kuan*, it was held:

> (3) The *classicus locus* on the principle raised by Levy in his application to strike out paras 18 and 19 of the Statement of Claim was the case of *Said v Butt* [1920] 3 KB 497. It was held in that case that *if a servant acting bona fide within the scope of his authority procures or causes the breach of a contract between his employer and a third person, he does not thereby become liable to an action of tort at the suit of the person whose contract has thereby been broken. This principle ("the Principle") appears to have two conjunctive qualifications: first, the servant must be acting bona fide and secondly, he must be acting within the scope of his authority*: at [13] to [15] and [49]. [emphasis added]

34 As noted above (at [12]), while a conspiracy by lawful means does not involve an unlawful act committed by the conspirators, there is the additional requirement of a "predominant purpose or intention" by all the conspirators to cause injury or damage to the plaintiff. However, this does not mean that intention or purpose is not relevant to a conspiracy by unlawful means. As Nourse LJ stated in *Kuwait Oil Tanker Co SAK v Al Bader* [2000] 2 All ER (Comm) 271 (at [118]):

> [I]n order to establish an unlawful means conspiracy, it is necessary to establish *an intention* to injure the claimant but not *a predominant intention* or purpose to do so. [emphasis added]

35 Hence, intention or purpose, which relates to the parties' states of mind with regard to the injury, is relevant to *both* forms of conspiracy, though the *degree* of this "intention" or "purpose" is different in each form. Against this backdrop, *Chong Hon Kuan* can be said to have reduced the proposition in *Said v Butt* to the following – a claim of conspiracy against an individual director must fail where the director is acting *bona fide* and within the scope of his authority. Whether the director has acted in a *bona fide* manner within the scope of his authority must be relevant in evaluating whether such director had the requisite "intention" or "purpose" to injure the plaintiff. Where a director acts *bona fide* within the scope of his authority but nevertheless causes damage or injury to a plaintiff, it cannot easily be said (with a view to establishing a claim in conspiracy) that he had the requisite intention or purpose to injure or damage the plaintiff. Simply put, why should a director acting *bona fide* within his authority, and without more, be liable in conspiracy with the company? As Gene Kwek Jin Hee and Kumaralingam Amirthalingam opined in "*Tort Law*" (2007) 8 SAL Ann Rev 410 at p 415, [22.22]:

> [*Nagase*] would not be inconsistent with the principle in *Said v Butt* [1920] 3 KB 497 and *Chong Hon Kuan Ivan v Levy Maurice (No 2)* [2004] 4 SLR 801 (which applied *Said v Butt*). The *essence*

of that principle was that a servant of a company could not be held liable for the company's tort if he had acted bona fide within the scope of his duty in directing the action of the company. In such a case, the assumption would follow that he would not have acted by unlawful means so as to attract liability as a co-conspirator. [emphasis added]

36 There is one further point to note. Both parties are effectively relying on the separate legal personality doctrine ("the doctrine") to further their respective cases. Lim's position is that the applicability of the doctrine means that there can be a *combination* between the company and its controlling director, since they are two separate legal entities. Neo's position, in effect, is that the sanctity of the doctrine should be respected – because the company and the director are separate legal entities, the sins of the company should not be visited on the director. But, this latter argument presupposes that what the director did was purely *bona fide* within the scope of his authority. I can see no reason why the doctrine should apply to confer immunity on a controlling director from conspiracy with the company, if that director has failed to act *bona fide* within the scope of his authority but instead had an intention to injure in an arrangement benefiting both company and individual to the detriment of third parties.

37 I should add that I have made no finding that CHHKC and Neo are liable in conspiracy as this is a matter to be left to the trial judge. Rather, I have merely decided that, on principle, a cause of action in conspiracy against both CHHKC and Neo is available to Lim.

Conclusion

38 For the foregoing reasons, I allowed Lim's application to add Neo as a defendant to the original action.