

Yeo Boong Hua and others v Turf Club Auto Emporium Pte Ltd and others
[2010] SGHC 136

Case Number : Suit No 27 of 2009 (Registrar's Appeals No 454, 456 and 457 of 2009)
Decision Date : 03 May 2010
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Ramasamy s/o Karuppan Chettiar, Rajendran Kumaresan and Koh Sim Teck (Central Chambers Law Corporation) for the plaintiffs; Kelvin Poon and Melissa Kue (Rajah & Tann LLP) for the first, second, third, fourth and seventh defendants; Sim Chong (JLC Advisors LLP) for the fifth defendant; Khor Wee Siong (Khor Thiam Beng & Partners) for the eighth defendant.
Parties : Yeo Boong Hua and others — Turf Club Auto Emporium Pte Ltd and others

Civil Procedure

3 May 2010

Choo Han Teck J:

1 This suit was commenced after the plaintiffs in the consolidated suits in a previous action were dismissed. The facts from that background were not in dispute and have been set out in the judgment in Originating Summons No 1634 of 2002 and Suit No 703 of 2004 ("the consolidated actions"). Save for the fifth and eighth defendants the parties in this suit were parties in the consolidated actions.

2 The background, in brief, is as follows. The Singapore Land Office leased a piece of land to the second defendant, who, in turn, sub-let a portion to the fourth defendant to be used as a mall, and a portion to the first defendant to be used as a car market. The first and fourth defendants were incorporated by the third, fifth, sixth, seventh and eighth defendants.

3 In the previous action, the plaintiffs, who were minority shareholders, alleged oppression and sought various remedies. That action was settled when the parties consented to judgment and recorded a consent order dated 22 February 2006. The settlement required an independent valuer to provide a valuation of the first and fourth defendant with the view that the majority would buy out their shares. The accountant firm of KPMG was appointed as the valuer. The report was expected within 60 days from the consent order. However, the valuation report was not released until 10 August 2007. By that time the head lease had expired and the second defendant renewed it without renewing the sub-leases.

4 The plaintiff subsequently applied under the consolidated action to vary the terms of the consent order when they realised that the failure to renew the sub-leases rendered the shares of the first and fourth defendants virtually worthless. That application was dismissed.

5 The plaintiff then brought this present suit to set aside the consent order on grounds of repudiatory breach, frustration, and common mistake. The first defendant then applied to strike out the plaintiffs' claim for lack of a cause of action. The application was dismissed save for the claim based on frustration of contract. The fifth and eighth defendants applied to strike out the plaintiffs' claims against them on the ground that they were not parties to the consent order of 2006.

6 The plaintiffs appealed against the assistant registrar's orders striking out the plaintiffs' case against the defendant as cited above. I was of the view that the plaintiffs' claim that there was a repudiatory breach simply by reason that the defendants did not provide the necessary information to KPMG were rightly struck out. The consent order of 2006 created no specific duties on either side. Both parties were at liberty to inform and direct KPMG as they thought fit. The fact that they did not appreciate the consequences in the event that KPMG did not complete the valuation in time was not a ground for maintaining a claim of mistake such as to justify the setting aside of the contract.

7 I was also of the view that the fact that the second defendant did not renew the sub-leases was not a breach as there was no express obligation to do so even under the original agreement. In any event, there can be no implied term if the second defendant was not under any obligation even outside the consent order, to renew the subleases and the plaintiffs were themselves obliged to ensure that KPMG kept to its deadline.

8 The allegation of a breach of trust and fiduciary duty founded on partnership also floundered as nothing from the pleadings and the history in the previous actions supported the idea of a partnership among the parties. In fact, the incorporations of the first and fourth defendants indicated that a partnership was not envisaged.

9 The present action was to set aside the consent order of 2006 in which the fifth and eighth defendants were not parties to. That being the case, claims against them as pleaded were rightly dismissed.

10 For the reasons above, the plaintiffs' appeals were dismissed with costs.

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