IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 239

Suit No 376 of 2019
(Registrar's Appeal No 265 of 2019)

Between

(1) True Yoga Pte Ltd
(2) True Fitness (STC) Pte Ltd
(3) True Fitness Pte Ltd

… Plaintiffs

And

Wee Ewe Seng Patrick John

… Defendant

JUDGMENT

[Civil Procedure] — [Pleadings] — [Striking out]

True Yoga Pte Ltd and others
v
Wee Ewe Seng Patrick John

[2019] SGHC 239

High Court — Suit No 376 of 2019 (Registrar's Appeal No 265 of 2019)
Choo Han Teck J
2 October 2019

8 October 2019 Judgment reserved.

Choo Han Teck J:

1 This is an action by the three plaintiffs against the defendant for breach of contract and duty as a director. The plaintiffs hold themselves as private companies incorporated in Singapore that operate as part of a group of companies known as the "True Group". The statement of claim avers that the defendant was the Chief Executive Officer ("CEO") of the True Group entities in Singapore ("True Group Singapore") from 1 October 2004 to 9 May 2018.

2 Although the statement of claim pleaded that the defendant is a director of all three plaintiffs, it does not say whether he was the CEO of all three. The plaintiffs claim that the defendant was the CEO of True Group but it is not clear how many companies are in this group and what contract, if any, governs the parties' relationship. Nor is it clear from the statement of claim what reliefs are being sought by the three plaintiffs because the statement of claim only pleaded that the plaintiffs suffered damage as a result of the conduct of the defendant.

Strangely, the second and third plaintiffs only claim for equitable compensation — whatever that may be.

3 The issue before me was whether the assistant registrar below was justified in striking out the plaintiffs' action in Suit No 376 of 2019. The defendant had applied to strike out the action on the ground that the suit was commenced without the authority of the plaintiffs, relying broadly on O 18 r 19(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) and, alternatively, the inherent jurisdiction of the court. A lack of authority to sue in itself is not a ground for striking out an action without trial.

4 Mr V K Rai, counsel for the defendant, submitted that only two of the three directors had signed the warrant to act, and when this action was filed, the warrant had not been obtained. Counsel also submitted that no board resolutions had been passed authorising the directors to commence these proceedings. Mr Rai also submitted that the action had been commenced in breach of a shareholders' agreement.

5 Order 64 rule 7 provides that:

> (1) Every solicitor representing any party in any cause or matter shall obtain from such party or his duly authorised agent a warrant to act for such a party, either generally or in the said cause or matter.
>
> (2) The absence of such warrant shall, if the solicitor's authority to act is disputed, be prima facie evidence that he has not been authorised to represent such party.

On the strength of this provision, the assistant registrar below was not satisfied that the plaintiffs had discharged its burden of proving that their solicitors had been properly authorised to act for them. There is no rule that an infringement

of O 64 r 7 justifies an action to be struck out, and presumably, that was why the defendant's application did not identify which subsection in O 18 r 19(1) it relied on until the plaintiffs had successfully obtained an order permitting him to produce the Memorandum and Articles of Association of the plaintiff companies. It was on appeal before me, that the application was based on an abuse of process under O 18 r 19(1)(*d*).

6 Mr Rai also relied on *Polybuilding (S) Pte Ltd v Lim Heng Lee* [2001] 2 SLR(R) 12 ("*Polybuilding*") for the proposition that any resolution which was reached in exclusion of and without notice being given to the minority director would be struck down as being invalid, a submission that appeared to have persuaded the assistant registrar below, who found that in the event, no notice of any resolution had been given to the defendant.

7 Mr Benjamin Niroshan Bala, counsel for the plaintiffs, submitted before me that the allegation that this action was commenced in breach of the shareholders' agreement must fail, because the plaintiffs are not parties to that agreement and thus, not bound by it. Counsel produced before me the Memorandum and Articles of Association of the plaintiffs, documents that were not before the assistant registrar, that show that there is no internal requirement for the directors to obtain a board resolution before it may commence legal action or sign warrants to act on behalf of the plaintiffs.

8 Order 64 rule 7 is a requirement that is as much for the protection of the solicitor as it is for the client he purports to act for. A warrant to act puts paid to any claim that the solicitor acted without authority, whether the allegation comes from his own client or opposing parties. A failure to obtain a warrant to

act is not an error that is irredeemable. It can be rectified unless irreparable damage has already been done.

9 In the present case, there is no provision that the directors cannot, by a majority, instruct solicitors to sue a fellow director unless a board resolution is first passed. That being the case, the warrant to act is a valid one. *Polybuilding* does not apply where no resolutions are involved. Mr Bala produced before me the necessary resolutions, notice of which presumably had been given to the defendant, authorising the majority directors to sign the warrant to act on behalf of the plaintiffs.

10 Mr Rai objected to this on the ground that to allow the plaintiffs to rectify the omission at this stage is tantamount to an abuse of process. Counsel raised an example of what might be should omissions like this be allowed to be rectified. He argued that it is like a defendant paying the judgment debt and then applying to strike out the judgment on the ground that it had been paid. I would just have held that counsel raised an analogy too inappropriate to repeat, but I think that repeating it supports what I will now say about applications of this nature.

11 An application to strike out an action should neither be lightly made nor lightly granted. In the present case, the application was founded on the argument that if the plaintiffs are allowed to proceed when it was not authorised to sue, that would be tantamount to an abuse of process under O 18 r 19(1)(*d*). Before me, Mr Rai seemed, however, to argue that the abuse lay not so much in the fact that the plaintiffs were not authorised to sue, but on the ground that the

plaintiffs' claim had already been struck out and it would be an abuse of process to allow fresh evidence at this stage to continue its action.

12 A litigant who fails to show that it was properly authorised to commence proceedings, for example, a plaintiff company whose articles of association require it to have a board resolution before it can proceed, may have its claim dismissed at trial, but if its lack of authority is pointed out early as it was in this case, the irregularity of the lack of authority is one that can be rectified. As it turned out, the lack of a board resolution was not a basis for challenge here because a board resolution was not a prerequisite for commencing action.

13 The absence of a warrant to act may be an important issue in some situations, but not in the present case. The failure to produce a warrant to act is an irregularity that can be remedied by producing the warrant at a later stage if no prejudice has been caused to the opposing side. The warrant to act in this case was eventually produced and the application to strike out the plaintiffs' claim need not have been made if counsel had asked for a stay or an adjournment to produce it. The only relevant issues in the circumstances of the present case were whether the plaintiffs needed a board resolution to commence the suit, and if so, whether they had obtained the resolutions. The answer was that no board resolution was required but the plaintiffs had been slow in producing that evidence. If this evidence had been produced before the assistant registrar the action would not have been struck out. If questions of law cannot be resolved as to the standing of either counsel or his client, then they must be reserved to the judge at trial.

14 For the reasons above, the appeal is allowed with costs reserved to the trial judge.

- Sgd -
Choo Han Teck
Judge

Benjamin Niroshan Bala (TSMP Law Corporation) for the plaintiffs;
Rai Vijay Kumar (Engelin Teh Practice LLC) for the defendant.