Ang Ai Tin v Chua Keng Hwee
[2009] SGHC 85

Case Number : Suit 332/2008

Decision Date : 07 April 2009

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Eugene Thuraisingam and Jacqueline Lee Siew Hui (Allen & Gledhill LLP) for the plaintiff; Tang Khin Wai (Tang Khin Wai & Co) for the defendant

Parties : Ang Ai Tin — Chua Keng Hwee

Contract

7 April 2009 Judgment Reserved

Choo Han Teck J:

1 This was a dispute between a paediatrician, a car spare parts trader, and their aesthetic clinic. The plaintiff is a paediatrician at the Thomson Medical Centre. Her claim in this suit was based on the breach of two oral agreements ("1st Oral Agreement" and "2nd Oral Agreement" respectively), and alternatively on a settlement agreement with the defendant, a trader in motor vehicle spare parts. The plaintiff's case was that sometime in August 2007 one of her suppliers of medical cream introduced her to a person called Ah Kee who, in turn, introduced her to the defendant. The purpose of the meeting between the plaintiff and defendant was to discuss their plan to start a chain of aesthetic clinics and spas. A second meeting took place in the following month, September. After discussions at those two meetings, the plaintiff provided a total sum of $1,050,000.00 towards the capital of the company called Aesthetics d Orchard Pte Ltd ("The Company"), owned by Newway Development Pte Ltd ("Newway"), subsequently renamed Aesthetics Medical Group Pte Ltd ("AMG"). According to the plaintiff, it was agreed that she could purchase up to 40% of the 300,000 shares in the Company which was supposed to have a start-up capital of S$3,000,000.00. She first paid $600,000 in September 2007 and a sum of $450,000.00 in October 2007. The plaintiff also asserted that as part of the agreement reached in the two meetings, the defendant would pay $2,400,000.00 for the remaining 60% shares of the Company, and he would use the capital from the plaintiff and himself only for the purposes of that Company.

2 Eventually, a number of companies were set up to carry on the business of an aesthetic salon and spa. They were, Aesthetics D Adelphi Pte Ltd, Aesthetics D Shaw Pte Ltd, and Aesthetics D Senses Pte Ltd. The plaintiff adduced evidence to show that the defendant had also persuaded another doctor, Dr Nam Min Fern Alvina, to invest in one of the other clinics, namely, Aesthetics D Adelphi Pte Ltd. This fact might have been more relevant if the Statement of Claim was differently pleaded. As it stood I did not think this to be relevant. The plaintiff was a shareholder and director of the Company but was not a shareholder or director of the other "Aesthetic" companies. The defendant was not only the main shareholder and director of those companies, he was also the company secretary and 15% shareholder of United Auto Co Pte Ltd ("UAC") and a director and 50% shareholder of a company called Apricot Group Pte Ltd.

3 The pleadings and submissions in this case were not easy to follow. The plaintiff founded her claim on the two oral agreements. The first was concluded in mid August 2007. On the pleadings and the evidence it was not clear who the other contracting party was. The Statement of Claim averred

that at this meeting the plaintiff was introduced by Ah Kee to the defendant who was to be the main investor. The plaintiff's evidence-in-chief stated that Ah Kee led the discussion and the defendant merely nodded his head in agreement. It was also not clear what it was that the parties intended by the term "investment". This was not clarified even at trial. In respect of the 1st Oral Agreement, the plaintiff averred in paragraph 6 of the Statement of Claim that –

> On condition that the sum of S$600,000 from her would be used solely for the business of the Company and that the Defendant would be investing the remaining capital in the Company (i.e. S$2,400,000) the plaintiff paid a sum of S$600,000 for the business of the Company.

The Statement of Claim then averred that –

> Almost simultaneous with and collateral to the 1st Oral Agreement, the Plaintiff entered into a separate agreement with Newway on or about 10 September 2007 to transfer 60,000 shares in the Company from Newway to the Plaintiff for $600,000.

This was the "Sale and Purchase Agreement". She also executed a "Shareholders' Agreement" with Newway. The Shareholders Agreement set out the rights and obligations of the shareholders in respect of the Company. As to the alleged 2nd Oral Agreement, the plaintiff averred that Ah Kee asked her in October 2007 whether "she was interested in putting in more moneys for the business of the Company, which would also increase her shareholding in the Company." The plaintiff then paid S$450,000.00 to the Defendant on the same condition that the money would be used solely for the business of the Company.

4 The plaintiff executed the two written agreements on 10 September 2007 (the Sale and Purchase Agreement and the Shareholders' Agreement). Newway and the plaintiff were the only parties to the Sale and Purchase of Shares agreement. All that this agreement provided was that Newway "agrees to transfer the shares in Aesthetics d Orchard Pte Ltd" to the plaintiff. The rest of the agreement consisted of standard terms and conditions which are useful only as supporting terms after the principal rights and obligations have been set out. Further in the agreement it stated, almost with no connection to the transfer of shares, that [the plaintiff] shall pay [Newway] $600,000.00. It was not a well drafted agreement. The Shareholders' Agreement was just as problematic for the plaintiff. It was clear that the plaintiff obtained benefits from the joint venture and under the Shareholders Agreement. She was entitled to be appointed the Chief Executive Officer of the Company for four years, and also to sell her 60,000 shares back to Newway for $1,200,000.00 after four years. From the narrative, it seemed clear that the plaintiff was unsure how to conceptualize her claim. She must know that oral agreements are irrelevant when they lead to a subsequent written contract. The overall narrative indicated that this was so. The problem here was that although AMG (as Newway) was the contracting party and should have been the party to be sued for wrongfully using the plaintiff's money (if the plaintiff was right), but Newway was not sued. Instead, the plaintiff prayed for "a declaration that [she] entered into two oral agreements with the Defendant pursuant to which the Plaintiff paid the sum of S$1,050,000.00 on the condition that (a) The Defendant would invest the sum of S$1,950,000.00 in the Company; and (b) The sum of S$1,050,000.00 from the Plaintiff was to be used solely for the business of the Company." Although the Statement of Claim alleged that "between September 2007 [and] January 2008 and through Newway, the Defendant caused S$706,648.80 of the plaintiff's money to be used for the purposes other than the business of the Company", the defendant was not sued for breach of a director's duties. Furthermore, nowhere was it pleaded that setting up other branches was not part of the Company's business. If the plaintiff thought that she ought to or was entitled to have a share in those companies then her pleadings as they stood were inadequate.

5 In pleading the two oral agreements the plaintiff treated the two signed agreements as subordinate agreements. The plaintiff's case as it was pleaded cannot succeed against the defendant if it was based on the two oral agreements. A claim based on the "oral agreements" might be possible only if the defendant was sued for the representations made, but even then, any such action against him would be an action based on a collateral agreement. The main contract would still be between the plaintiff and Newway. A claim against the defendant for failing to fulfil his obligation of paying up for his shares in the Company is not the same as the claim that the joint venture company (the Company) used its funds for other purposes such as capitalising other companies which the plaintiff had no interest in. Alternatively, the plaintiff would have to plead fraud against the defendant and for the corporate veil to be lifted. All she pleaded in this regard was that "Newway and AMG were the alter egos of the defendant." That will not do. The Company was eventually wound up in December 2008 by its landlord for arrears in rent. The plaintiff's claim in this action was filed in May 2008. The defence was a denial of the oral agreements as alleged by the plaintiff. Mr Tang, counsel for the defendant, submitted that the $1,050,000.00 paid by the plaintiff was just a payment for her shares in Newway.

6 The plaintiff's alternative claim was based on a settlement agreement. This agreement was just as tardy as the agreements written and oral that preceded it. In respect of this "settlement agreement", the plaintiff alleged, first, that in consideration of her not commencing action against the defendant for the breach of the two oral agreements, the defendant agreed to pay her S$800,000.00 by 7 April 2008. In the same paragraph (19) of her Statement of Claim she also alleged that the defendant wrote to the plaintiff to say that AMG would purchase her 60,000 shares in the Company. Was this, therefore, a settlement agreement or an agreement to repurchase the shares? It will be useful to set out paragraph 19 of the Statement of Claim in full to appreciate the tardiness in this claim:

> 19 In light of the Defendant's breaches of the 1st and 2nd Oral Agreements, on or about 3 April 2008, the Defendant promised to pay the Plaintiff a sum of S$800,000 by 7 April 2008 by way of settlement ("Settlement Agreement").
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> (a) In an email from Mr Perry Ng Wei Koon to the Defendant (copied to the Plaintiff) dated 3 April 2008, Mr Perry Ng Wei Koon confirmed with the Defendant that, upon the Plaintiff receiving the sum of S$800,000 by 7 April 2008, the Plaintiff would then not proceed against the Defendant for his breaches of the 1st and 2nd Oral Agreements.
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> (b) The Defendant did not deny that he would pay to the Plaintiff S$800,000, upon receipt of which the Plaintiff would not proceed against the Defendant for his breaches of the 1st and 2nd Oral Agreements.
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> [c] Pursuant to the email dated 3 April 2008, the Defendant wrote to the Plaintiff on 4 April 2008, for and on behalf of AMG, to inform that AMG would purchase 60,000 shares in the Company from the Plaintiff.
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> [d] In a letter from the Defendant (for and on behalf of AMG) to the Plaintiff dated 7 April 2008, the Defendant enclosed a cheque for S$182,000 for 18,200 of the Plaintiff's shares in the Company.
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> [e] In a letter from the Defendant (for and on behalf of AMG) to the Plaintiff dated 28 April 2008, the Defendant enclosed another cheque for S$200,000 for 20,000 of the Plaintiff's shares in the Company.

[f] On 5 May 2008, the Defendant paid a further S$280,000 for 28,000 of the Plaintiff's shares in the Company. The cheque could not be cleared after it was banked in.

7 The evidence, however, as shown in the email of 3 April from Perry Ng to the defendant and the defendant's letter stating that AMG would repurchase the 60,000 shares from the plaintiff indicated that an agreement had been reached. The question remained as to whether that was a binding agreement in law. That, in my view, depended only on whether there was any consideration for the promise to pay. The ostensible consideration of a forbearance to sue was manifest and the only possible impediment seemed to be the fact that the suit that was eventually pursued in this action was a mess in its pleading, the fact remained that there was a claim. It was not a condition that the forbearance must be in respect of a successful claim, for there is no assurance of success until the court has handed down its verdict. The test is whether there was a reasonable cause of action. In this case, there was a reasonable cause of action concurrently and perhaps alternatively, against the Company, AMG, and the defendant.

8 For the reasons above, the plaintiff's claim in respect of the two oral agreements is dismissed, but her claim in respect of the settlement agreement for $668,000.00 is allowed. In my view, the plaintiff is only entitled to half costs.