

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2022] SGHC 212

District Court Appeal No 20 of 2022

Between

Youprint Productions Pte Ltd

... Appellant

And

Mak Sook Ling

... Respondent

GROUND OF DECISION

[Contract — Breach]

[Contract — Remedies — Damages — Nominal damages]

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Youprint Productions Pte Ltd

v

Mak Sook Ling

[2022] SGHC 212

General Division of the High Court — District Court Appeal No 20 of 2022

Chua Lee Ming J

18 August 2022

31 August 2022

Chua Lee Ming J:

1 This appeal against the decision of the District Court involves a short point. Where the plaintiff in a claim for breach of contract proves the breach but fails to prove loss or damage, should his claim be dismissed or should it be allowed with nominal damages awarded?

2 The full facts are set out in the District Judge's Grounds of Decision in *Youprint Productions Pte Ltd v Mak Sook Ling* [2022] SGDC 131 (the "GD"). Suffice it to say that the appellant sued the respondent (a former employee) in the District Court for breach of her employment contract. The District Judge found that the respondent had breached her employment contract, but the appellant had not proved loss. The District Judge also declined to make an order for an account of profits because it had not been pleaded and, in any event, ordinary compensatory damages were available as a remedy save that the appellant had not adduced sufficient evidence.

3 The District Judge did not award nominal damages to the appellant. Instead, he dismissed the appellant’s claim, relying on *LighthouseCarrwood Ltd v Luckett* [2007] EWHC 2866 (QB) (“*LighthouseCarrwood*”) (GD at [18]). In that case, the English High Court struck out a claim for breach of contract for the following reasons (at [84]):

... To win the case, the Claimant must prove liability and prove that he has sustained a computable loss. One without the other is no good. What is the merit in establishing liability if no provable loss can be shown to flow from the breach? I have to say that, even if the case were to go ahead on the issue of liability and the Claimant were to win on liability, the Claimant will be faced with the costs bill in any event, in all probability from this particular judge, having been unable to establish any part of its claim other than liability for no remedy. Accordingly, the sensible thing to do, and I do, is to make the final step which I am asked to make and strike out the whole of the claim. I only add this observation. In my judgment this is a strike out in name only. What I am really doing is ruling that the Claimant’s case fails because it cannot, on the evidence which it is allowed to place before the court, establish a crucial part of that case. Thus there has to be a judgment in favour of the Defendant.

4 The appellant argued that the District Judge was wrong in dismissing its claim outright and that he ought to have allowed the claim and awarded nominal damages instead. The respondent supported the District Judge’s decision, relying on *LighthouseCarrwood*. I agreed with the appellant. In my view, the District Judge’s decision was wrong as a matter of law.

5 The innocent party is always entitled to claim damages *as of right* for loss resulting from breach of contract: see *RDC Concrete Pte Ltd v Sato Kogyo (S) Pte Ltd and another appeal* [2007] 4 SLR(R) 413 at [40]; *Denka Advantech Pte Ltd and another v Seraya Energy Pte Ltd and another and other appeals* [2021] 1 SLR 631 at [60]. Breaches of contract are actionable without proof of damage, but recovery of substantial damages requires proof of such loss: *The Law of Contract in Singapore* vol 2 (Andrew Phang Boon Leong gen ed)

(Academy Publishing, 2022) at para 20.073. If the claimant fails to prove either the fact of damage or the quantum of its loss, only nominal damages may be awarded: *Biofuel Industries Pte Ltd v V8 Environmental Pte Ltd and another appeal* [2018] 2 SLR 199 (“*Biofuel*”) (at [44]).

6 The position is explained in *Butterworths Common Law Series: The Law of Damages* (Andrew Tettenborn gen ed) (LexisNexis, 2nd Ed, 2010) (“*The Law of Damages*”) as follows, at paras 2.05–2.07 and 2.09:

2.05 A fundamental fault-line runs through the English law of obligations. It divides wrongs into two categories: (1) those for which proof of loss is an essential ingredient, and (2) those which are actionable *per se*. In cases in the former category, which importantly includes the torts of negligence, nuisance, deceit and the economic torts, no cause of action at all arises unless and until some loss is suffered by the claimant. In the latter, any infringement is automatically wrongful, and damages are available as of right whether or not any loss is suffered. It follows from this that, if no other recoverable loss is proved, the claimant still has a right to nominal damages. ...

2.06 ... nominal damages are essentially symbolic. The giving of them is only appropriate where no actual recoverable loss is shown. ...

2.07 For the purpose of the award of nominal damages, wrongs actionable *per se* include all breaches of contract ...

...

2.09 ...where a claimant proves a breach but no recoverable loss, the court has effectively no choice but to award nominal damages. ...

7 The District Judge noted (GD at [18]) that *LighthouseCarrwood* was recently cited in *Phua Seng Hua and others v Kwee Seng Chio Peter and another* [2022] SGHC(A) 11 at [46]. However, in that case, the Appellate Division had cited *LighthouseCarrwood* for the principle that a claim for *Wrotham Park* damages has to be pleaded. The question as to whether a breach of contract is actionable as of right was not in issue in that case and nothing in

the Appellate Division’s grounds of decision can be said to have approved the statement in *LighthouseCarrwood* that was relied on by the District Judge. In my view, in so far as *LighthouseCarrwood* decided that a claim for breach of contract fails if loss cannot be proved, it was wrong and should not be followed.

8 The respondent also relied on *Robertson Quay Investment Pte Ltd v Steen Consultants Pte Ltd and another* [2008] 2 SLR(R) 623 (“*Robertson Quay*”) and *Biofuel*.

9 In *Biofuel*, the Court of Appeal referred to *Robertson Quay* and stated as follows (at [42]):

... In *Robertson Quay*, we recognised that there were two competing considerations that a court should take into account when assessing damages – while the claimant bears the burden of proving the fact and amount of loss, and therefore must adduce sufficient evidence to quantify the damage, in some cases, absolute certainty and precision as to the quantum of damage would be impossible to achieve (see [30]). ... The starting point remains that ‘a plaintiff cannot simply make a claim for damages without placing before the court sufficient evidence of the loss it has suffered even if it is otherwise entitled in principle to recover damages’ (*Robertson Quay* at [31]). It is only ‘where the [claimant] has attempted its level best to prove its loss *and* the evidence is cogent’ that the court will allow it to recover the damages claimed even if the quantum of loss cannot be determined with exact certainty (*Robertson Quay* at [31]) [emphasis in original].

10 The respondent submitted that the appellant was not entitled to nominal damages as it had not shown that it had attempted its level best to prove its loss and adduce cogent evidence. I disagreed with the respondent’s submission. The references to the claimant having attempted its level best to prove its loss were

made in the context of proof of substantial damages, not nominal damages: see *Robertson Quay* at [27] and *Biofuel* at [40].

11 I would add that where the trial is not bifurcated and the claimant succeeds in proving breach of contract but recovers only nominal damages because it fails to prove loss, generally, the claimant ought to be awarded costs. The quantum of costs may, of course, take into account the fact that the claimant has failed to prove loss. On the other hand, where the trial is bifurcated and the claimant fails to prove loss during the hearing for the assessment of damages, the claimant would generally either recover no costs or be ordered to pay the costs of the assessment. This is because at the assessment hearing, the only issue is the quantum of loss and a claimant who merely receives nominal damages has effectively lost: *The Law of Damages* at para 2.15.

12 In the present case, the appellant confirmed that it was not seeking costs of the trial below but submitted that it should be awarded costs of the appeal. The respondent pointed out that it had made an offer to settle before the hearing of this appeal. The terms of the offer to settle were more favourable to the appellant than my decision in this appeal. However, the respondent submitted that there should be no order as to costs in respect of this appeal. In the circumstances, I made no order as to costs in respect of this appeal.

13 In conclusion, I allowed the appeal, set aside the District Judge's order dismissing the appellant's claim and awarded the appellant nominal damages fixed at \$1,500. Finally, I made no order as to costs of this appeal.

Chua Lee Ming
Judge of the High Court

Roche Eng Keng Loon (R.E. Law LLC) for the appellant;
Wong Jieh (Circular Law Chambers LLP) for the respondent.
