

Trident Pharm Pte Ltd v Yong Pei Pei Tracey and another
[2014] SGHC 59

Case Number : Suit No 486 of 2013
Decision Date : 03 April 2014
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Michael Moey Chin Woon (Cheah Associates LLC) for the plaintiff; R Chandran (R Chandran & Co) for the defendants.
Parties : Trident Pharm Pte Ltd — Yong Pei Pei Tracey and another

Employment Law – Employees’ duties – Employee forming intention to leave and compete with employer and taking preparatory steps – Whether duty of good faith and fidelity breached

Tort – Inducement of breach of contract

Tort – Conspiracy

3 April 2014

Judgment Reserved.

Choo Han Teck J:

1 This case was brought by a company that used to run a pharmacy. It recently lost its premises, and now sues its former employee, whose husband’s business took over its spot. The plaintiff’s claim is in employment law (breach of duty of fidelity) and tort (conspiracy and inducing breach of contract).

2 The plaintiff’s predecessor, Trident Pharm, was a wholesaler of pharmaceutical, medical and dental products. In 1997, it obtained a lease to operate a retail pharmacy in the building of the National Dental Centre of Singapore (“NDC”). The premises were leased to Trident Pharm on various conditions, including a condition that it would not charge its customers more than the prices agreed and approved by the NDC. Trident Pharm’s lease commenced in 1997, and spanned a period of three years with an option to renew for a further two years.

3 Trident Pharm’s extended lease expired in 2002 and it succeeded in obtaining a fresh term by tender. In the same year, the plaintiff – Trident Pharm Pte Ltd – was incorporated, and it acquired Trident Pharm and took over the running of the pharmacy.

4 The first defendant was employed as the plaintiff’s pharmacist in the NDC premises from April 2004 to February 2007. She managed the pharmacy. The plaintiff’s lease from 2002 was due to expire in 2007, and so in September 2006 the NDC invited tenders for a fresh lease.

5 On 13 October 2006, the first defendant’s husband, who is the second defendant in these proceedings, registered a sole proprietorship (“The Dental Pharm”) in his own name. He, like the first defendant, is a registered pharmacist by vocation.

6 There were three tenders for the new lease in the 2006 NDC tender exercise. They were from the plaintiff, the second defendant, and a company called Pharmaforte Singapore Pte Ltd

("Pharmaforte") respectively. The important terms of the tender were:

- a. first, the tender must satisfy the minimum rent of \$1,000 a month; and
- b. second, the tender must incorporate a schedule of fixed prices for all the pharmaceutical products that were to be dispensed at the pharmacy.

7 Pharmaforte submitted a tender of \$1,000 plus \$300. The second defendant submitted a tender of \$1,000 plus \$800. The plaintiff submitted a tender of \$800 only. The NDC awarded the new lease on 8 November 2006 to the second defendant, which was to commence on 15 March 2007. The first defendant resigned from the plaintiff on 5 December 2006. Hence, the plaintiff sued the first defendant for breach of her duty of fidelity, as she was still an employee of the plaintiff when the second defendant had registered The Dental Pharm (13 October 2006). When the lease was scheduled to commence, the first defendant had already resigned from the plaintiff and there was no question of breaching any non-competition clause since there was no such clause in her contract with the plaintiff. As such, the main issue before me was whether the first defendant was in breach of her duty of fidelity as an employee.

8 Dr Kwa Chong Teck ("Dr Kwa"), NDC's executive director, was called on behalf of the plaintiff as a witness. He testified under cross-examination that the plaintiff's tender of \$800 was not acceptable. He added that, as between the plaintiff and Pharmaforte, the NDC would have awarded the lease to Pharmaforte if it had complied with all the other conditions. It was clear from Dr Kwa's evidence that the second defendant was awarded the lease on merit, and that the plaintiff's tender would not have succeeded even if the second defendant had not tendered.

9 There was no direct evidence before me that the first defendant had deliberately used confidential information belonging to the plaintiff to assist the second defendant in its successful tender. Counsel for the plaintiff, Mr Michael Moey ("Mr Moey"), urged me to infer that confidential information was used. He submitted that the prices which the plaintiff had agreed to charge the NDC patients were confidential information. He also submitted that the first defendant was privy to the plaintiff's confidential information relating to "the manner in which [the plaintiff submitted its] tenders, the dispensary's performance, the costs and sale price of the drugs sold by the plaintiff." In particular, the plaintiff claimed that the first defendant gained the confidential information because she helped to collate the prices of the drugs to be agreed and accepted by the NDC.

10 Mr Moey also implied that the first defendant's conduct was suspect because she acted surreptitiously in stating in the second defendant's tender that she (the first defendant) was an employee of the second defendant but submitted the NDC's address as her address. Mr Moey submitted that after the tender was awarded to the second defendant, the first defendant asked the manager of the NDC, Mr Arthur Teo ("Mr Teo"), not to disclose to the plaintiff that she had used the NDC address as hers. Further, that she did not disclose that she and the second defendant were also interested in the tender. Mr Moey submitted that the first defendant had a duty to act in the plaintiff's interest and this duty was borne out by the terms of her employment which declared that she held a position of trust. The plaintiff's claim against the second defendant was based on the tort of inducing a breach of contract – between the plaintiff and the second defendant.

11 The plaintiff had two witnesses, namely Mr Manoj Balakrishan, a director and the main shareholder of the plaintiff, and Dr Kwa. Mr Manoj is also a pharmacist by training. Dr Kwa's evidence was exact and neutral. He did not appear to take sides and testified strictly on facts in regard to just a few issues. I have no hesitation in accepting his evidence which was largely unchallenged. He testified that the tender was left largely to be reviewed by Mr Teo. However, the \$800 a month

tender by the plaintiff was unacceptable in any event. As to the use of the NDC address by the first defendant, he said that he would have asked her to use a different address. The clear impression I had from that evidence was that from the NDC's perspective, that was not a factor in determining whether the contract ought to be awarded to the second defendant. I shall discuss the plaintiff's perspective on this point shortly.

12 Although Dr Kwa had left it to Mr Teo to take charge of the conduct of the tender, the plaintiff declined to call Mr Teo to testify. He was initially listed as a plaintiff witness. Although both counsel submitted several authorities on the law, there was no dispute so far as the law itself was concerned. There are three points on the duty of fidelity that are relevant to this case:

- a. first, an employee's duty of fidelity to his employer is distinct from a director's fiduciary duty to his company,
- b. second, the duty of fidelity to an employee does not generally preclude him from taking preparatory steps to compete with a former employer; and
- c. third, the duty of fidelity to an employee does not require the employee to subjugate his own interests to those of his employer.

(see *Smile Inc Dental Surgeons Pte Ltd v Lui Andrew Stewart* [2012] 4 SLR 308 at [65] and *Scintronix Corp Ltd (formerly known as TTL Holdings Ltd) v Ho Kang Peng and another* [2013] 2 SLR 633 at [94]). The crux of the dispute lay in whether, on the facts, the first defendant was in breach of her duty of fidelity as an employee.

13 Although counsel for the plaintiff repeatedly alleged that the first defendant had used confidential information, I am of the view that the evidence was insufficient to prove that she was in breach of any duty of confidentiality – which is not the same thing as the use of confidential information. It is important in this case that the prices that the plaintiff submitted to the NDC were not confidential since every patient who purchased the plaintiff's products would have known what the prices were. The terms of the tender were set by the NDC so that nothing that the plaintiff provided was crucial. The plaintiff was not the only party tendering and the second defendant would not have known who else might have been competing with him.

14 As Dr Kwa testified, the plaintiff's tender did not meet the minimum requirement that would have required the NDC to give their tender any further consideration. The plaintiff would not have been awarded the tender in any event, and even if the defendants did not tender, the award would have gone to Pharmaforte. The plaintiff decided to offer the rent of \$800 without advice or encouragement by the first defendant. It was a decision taken solely by Mr Manoj. This meant that the plaintiff's failure to obtain the lease had nothing to do with the defendants' conduct, and its claims, whether in tort or employment, must accordingly be dismissed.

15 There remains the academic issue of whether the first defendant was in breach of her duty of fidelity as an employee. I say that this was academic because even if she was found to be in breach, the evidence showed that the plaintiff's loss was not caused by that breach. The argument against the first defendant was that she ought not to have competed with her employer by putting a tender in competition with her employer.

16 The terms of her contract did not contain a non-competition clause and she was free to compete so long as she was not employed by the plaintiff. She explained in her testimony that she was worried that the plaintiff might lose the lease and she might be out of a job. She hoped that by

getting the tender she and her husband could continue to run a pharmacy at the NDC. That was merely a preparatory step towards competing with the plaintiff. If the only evidence of infidelity was her joining a rival bid and failing to disclose that act to the plaintiff, I would find that that was not sufficient to constitute a breach of her duty of fidelity as an employee. In any event, even if it were so, again, no loss arose by reason of that conduct.

17 For the reasons above, the plaintiff's claims are dismissed with costs to be taxed if not agreed.

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