Soo Nam Yuen v Keim Mineral Paints Singapore Pte Ltd and Others
[2000] SGHC 235

Case Number : Suit 139/2000
Decision Date : 16 November 2000
Tribunal/Court : High Court
Coram : S Rajendran J
Counsel Name(s) : Koh Tien Hua (A Ang Seah & Hoe) for the plaintiff; Eu Hai Meng (Cooma Lau & Loh) for the defendants
Parties : Soo Nam Yuen — Keim Mineral Paints Singapore Pte Ltd; Peter Neri; Friedrich Rudolf Karle; Keimfarben Gmbh Co Kg

JUDGMENT:

1. The plaintiff in this case was the Managing Director of the 1st defendants. The 1st defendants were incorporated in September 1994 when the plaintiff sold him interests in a paint retail business in Singapore to the 4th defendants. The 4th defendants hold 90% of the shares of the 1st defendants whilst the plaintiff held the balance of 10%. The 2nd and 3rd defendants are directors of the 1st defendants as well as of the 4th defendants. In particular, the 2nd defendant is the Managing Director (Marketing and Sales) of the 4th defendants and was a director of the 1st defendants since its incorporation. The 3rd defendant was appointed a director of the 1st defendants and of the 4th defendants only in 1998.

2. The plaintiff worked as Managing Director of the 1st defendants under a contract of employment with the 1st defendants dated 30 November 1998 under which the plaintiff's initial employment with the 1st defendants for a period of 5 years with effect from September 1994 was extended for a further period of 5 years. Under his contract of employment, the services of the plaintiff could only be terminated on the happening of certain specified events spelt out in clause 14 of the said contract. It was also spelt out in the contract that the plaintiff was to report to the Board (Managing Director of Marketing and Sales) of the 4th defendants. The plaintiff testified that pursuant to this clause he had always been reporting to the 2nd defendant who was the Managing Director (Marketing and Sales) of the 4th defendants and never to the 3rd defendant.

3. On 17 January 2000, the plaintiff was informed by the 2nd and 3rd defendants that his services with the 1st defendants were being terminated forthwith. He was on that day handed a letter from the 1st defendants headed "Termination of Employment Contract", a fax headed "Termination Notice" and a letter from the 4th defendants on the 1st defendants' letterhead entitled "Reorganization of our Asian Business". Under the last of these, the plaintiff was informed that the 4th defendants had, as a result of re-organization plans, decided to wind up its subsidiaries in Singapore and China and therefore needed to terminate the services of all employees of the 1st defendants and offered to the plaintiff the distributorship of the 4th defendants' products in China.

4. It was the evidence of the 3rd defendant that the "Termination Notice" and the letter "Re-organization of our Asian Business" were handed to the plaintiff on the morning of 17 January 2000 but that, thereafter, the 2nd and 3rd defendants had learnt for the first time (from Susan Lee the Finance Manager of the 1st defendants) that the plaintiff had, contrary to the specific directions of the 4th defendants in their fax to the plaintiff of 24 and 25 August 1999, paid staff bonuses to the employees of the 1st defendants and of the 1st defendants' subsidiary in Sichuan, China. The amounts paid to the employees in Singapore as bonus totalled S$10,240 and the amount paid to the employees in China totalled Rmb 25,960 (about S$5,000).

5. The 3rd defendant testified that in paying this bonus, in direct contravention of the 4th defendants' instructions on 24 August 1999, the plaintiff had committed a serious breach of his duties. The plaintiff had also, on 5 November 1999, sent a fax to

the 4th defendants wherein the plaintiff had complained that he found the attitude of the 3rd defendant overbearing. The 3rd defendant considered that this fax destroyed the mutual working relationship between the plaintiff and the 4th defendants. He told the court that it was decided between the 2nd and 3rd defendants, after they discovered on 17 January 2000 that the staff bonus had been paid, that the services of the plaintiff should be terminated forthwith on both these grounds and the Termination Notice citing these as the reasons for the termination was handed to the plaintiff on the afternoon of 17 January 2000.

6. The plaintiff, by this action, claims that his dismissal was in breach of the terms of his contract of employment and seeks damages for wrongful dismissal. The plaintiff testified that he had paid the bonus to the staff pursuant to a discussion that he and members of the staff of the 1st defendants had had with the 2nd defendant, in which the 2nd defendant had agreed that if the profits of the 1st defendants for the year ended 1998 was in excess of $200,000, then the bonus would be paid. The plaintiff testified that as provided under his contract of employment he reported directly to the 2nd defendant. It was the plaintiff's evidence that at that meeting the 2nd defendant had clarified that the profits for the purposes of the bonus payment was to be the profits without deduction for depreciation or other write-offs. As Susan Lee had confirmed to him in August 1999 that the audited profits were in excess of S$200,000 he had authorised Susan Lee to make the bonus payments.

7. The plaintiff challenged the 3rd defendant's evidence that the bonus payments had been made by the plaintiff in wilful disregard of the 4th defendants' instructions to the contrary in their fax of 24 August 1999. The plaintiff stated that the 4th defendants' fax of 24 August 1999 was received by him only on 25 August 1999 after the bonus payment had been effected and that, in any event, that fax was sent to him by the 4th defendants after he, by his fax to the 4th defendants dated 24 August 1999, had informed the 4th defendants of the bonus payment. There could be no doubt that the plaintiff had on 24 August 1999 sent a fax to the 4th defendants regarding the bonus payment since in the 4th defendants' fax of 24 August 1999 there is reference to such a fax. The defendants, however, did not produce the fax (claiming that it had been misplaced).

8. I accept the plaintiff's testimony that the 4th defendants' fax of 24 August 1999 was received by him only after the bonus payment was made. It was unfortunate that neither 1st defendants nor the 4th defendants produced the plaintiff's fax to them of the same date. That fax would be critical in determining whether the plaintiff's assertion that he had on that day informed the 4th defendants that the bonus payment had been made was true or not. It would have been normal for the plaintiff to inform the 4th defendants of the bonus payment and, in the absence of the defendants producing that fax, I saw no reason not to accept the plaintiff's claim that he had done so by that fax. It follows that I reject the 3rd defendant's claim that the first time he and the 2nd defendant came to know that the bonus payments had been made was on 17 January 2000. I accept the evidence of the plaintiff that the 4th defendants were informed of the bonus payment before he received the 4th defendants fax of 24 August 1999. The payment of the bonus was therefore not a payment in wilful disobedience of the instructions of the 4th defendants.

9. The 2nd defendant did not testify in these proceedings either on his own behalf or on behalf of the 4th defendants. Neither was Susan Lee called as a witness. The plaintiff's evidence that he had paid the bonus to the staff pursuant to authorisation by the 2nd defendant given in the presence of the staff of the 1st defendants was therefore not rebutted. The 3rd defendant claimed that the profit of the 1st defendants was in fact below S$200,000 and therefore, even if the 2nd defendant had given his approval, the plaintiff was not authorised to make the payment since that profit figure had not been reached. In support, the 3rd defendant produced the audited statement of accounts for the year ended 31 December 1998. These accounts, however, as highlighted by the auditors in their notes to the account, did not include the profit of the Sichuan (China) subsidiary of the 1st defendants. It was not disputed that under the terms of the approval given by the 2nd defendant for the bonus payments, the profits of Sichuan subsidiary were to be taken into account. The accounts produced were therefore of no assistance in determining the issue.

10. It was the case for the defendants that the services of the plaintiff were lawfully terminated under clause 14(e) read with

clause 3(A) of the contract of employment. Clause 14(e) reads:

> "The Company without prejudice to any remedy which it may have against the Executive for the breach of non-performance of any of the provisions of this Agreement may by notice in writing to the Executive forthwith determine this Agreement if the Executive shall:
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> ...
>
> (e) be guilty of any serious misconduct any conduct tending to bring the Company or Associated Companies or the parent Company or himself into serious disrepute serious or persistent neglect of his duties hereunder or any material breach or non-observance of any of the conditions of this Agreement or shall to a material degree neglect fail or refuse to carry out duties properly assigned to him hereunder."

The circumstances under which the plaintiff paid the S$15,000 worth of bonuses to the staff did not, in my view, amount to misconduct, leave alone serious misconduct. Nor did it amount to a "material breach or non-observance of any of the conditions" of his contract of employment or a refusal by the plaintiff to carry out duties properly assigned to him.

11. The criticism of the conduct of the 3rd defendant made by the plaintiff in his fax to the 4th defendants also did not, in my view, amount to a breach of clause 14(e). Although the fax was worded in somewhat harsh and undiplomatic language, it was, in essence, no more than a complaint by a director about the conduct of a fellow director. In addition, there was no evidence before me that the 4th defendants (as opposed to the 3rd defendant) had found this complaint unfounded and that the plaintiff had persisted in his complaints after having been told by the 4th defendants to desist from such complaints.

12. In the circumstances, I accept the submissions of counsel for the plaintiff that the termination of the plaintiff as Managing Director of the 1st defendants was in breach of the terms of the contract of employment. Judgment with costs is, accordingly, granted to the plaintiff against the 1st defendants for the wrongful dismissal. The damages are to be assessed.

13. I now turn to consider the claims against the 2nd, 3rd and 4th defendants. The claims against the 2nd and 3rd defendants were that they procured the breach of contract by the 1st defendants. No authority, in support of the proposition that directors who participate in a decision by a corporation that results in a breach of contract by the corporation are themselves personally liable for the breach, was produced to me. In the absence of authority, I am not prepared to find the 2nd and 3rd defendants liable for the breach of contract by the 1st defendants. The claim against the 2nd and 3rd defendants is therefore dismissed with costs.

14. The claim against the 4th defendants was that the 4th defendants were also employers of the plaintiff and therefore also liable in damages for the wrongful termination of the plaintiff's contract. Whilst it is true, in this case, that it was the 4th defendants who were in effective control of the 1st defendants and whilst it is true that it was the 4th defendants who procured the employment of the plaintiff as Managing Director of the 1st defendants, those facts do not detract from the fact that the plaintiff's contract of employment was with the 1st defendants. If the plaintiff had wanted the 4th defendants to be his employers, he could have insisted that the 4th defendants enter into the contract of employment with him at the time he sold his business interests to the 4th defendants. In the event the contract of employment entered into was with the 1st defendants and it is only the 1st defendants who can be liable for the breach of that contract. I find the claim against the 4th defendants unsubstantiated and dismiss it with costs.

15. Besides the counterclaim, there is one other issue for my determination. It is whether the plaintiff should be ordered to pay the costs of the 1st defendants' application in Summon-in-Chambers No. 102 of 2000. The 1st defendants, in that application,

succeeded in getting orders against the plaintiff in relation to the company car in his possession and certain other matters consequential to the termination of his services. In the light of the findings I have made in this action that the 1st defendants were in breach of contract, I make no order on costs in respect of SIC No. 102 of 2000 although the 1st defendants were successful in that application.

16. Save for matters dealt with in SIC No. 102 of 2000, the counterclaims brought against the plaintiff by the 1st defendants (including a claim that the plaintiff pay to them a sum of $400,000 being 10% of losses allegedly suffered by the 1st defendants) are also without merit. The counterclaims are dismissed with costs.

S. Rajendran

Judge