IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 34

Civil Appeal No 75 of 2019

Between

(1) Yip Kin Lung
(2) Mega Auto Pte Ltd

… *Appellants*

And

(1) Ding Auto Pte Ltd
(2) Ding Tang Ling

… *Respondents*

In the matter of Suit No 1040 of 2017

Between

Ding Auto Pte Ltd

… *Plaintiff*

And

(1) Yip Kin Lung
(2) Mega Auto Pte Ltd
(3) Chiun Tser Peng Andy

… *Defendants*

And

Ding Tang Ling

… *Third Party*

EX TEMPORE JUDGMENT

[Agency] — [Duties of agent] — [Breach]

Yip Kin Lung and another
v
Ding Auto Pte Ltd and another

[2020] SGCA 34

Court of Appeal — Civil Appeal No 75 of 2019
Andrew Phang Boon Leong JA, Judith Prakash JA and Steven Chong JA
6 April 2020

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Andrew Phang Boon Leong JA (delivering the judgment of the court *ex tempore*):

1 The second respondent, Mr Ding Tang Ling ("Ding"), founded the first respondent, Ding Auto Pte Ltd ("Ding Auto"), as its sole shareholder and director. He had the help of the first appellant, Mr Yip Kin Lung ("Jason"), who was the sole director of the second appellant, Mega Auto Pte Ltd ("Mega Auto"). A quarrel broke out between Ding and Jason sometime in 2016, and they stopped working together.

2 Ding Auto subsequently brought the present claim against Jason, Mega Auto, and Jason's business associate, Andy Chiun Tser Peng ("Andy") to recover payments made out of Ding Auto. According to Ding Auto, Ding relied solely on Jason and his business associates to run Ding Auto's finances. However, over the years Jason misused his control over Ding Auto's finances to siphon monies away to Mega Auto and to make other improper payments.

3 Jason told a very different story. According to him, Ding Auto was set up with Ding as nominee director and shareholder, but with an oral agreement for Mega Auto to hold the entire beneficial interest. All the monies paid out of Ding Auto were legitimate reimbursements for business expenses. Jason and Mega Auto brought a counterclaim against Ding Auto and third party proceedings against Ding, seeking a declaration that Ding Auto belonged to Mega Auto, as well as the return of equipment and the repayment of further debts, amongst other things. We will refer to the counterclaim and the third party claim as "the counterclaims" for convenience.

4 The trial judge ("the Judge") found in favour of Ding's version of events on every count. The Judge found Jason liable for breach of fiduciary duty in respect of $350,372.80 of payments made improperly out of Ding Auto, and Mega Auto liable for knowing receipt in respect of $212,277.38 out of this sum which it had received directly. These were the entirety of the sums still maintained by Ding Auto in its claim at the end of the trial. The Judge awarded Jason and Mega Auto $48,677.81, solely in respect of those parts of their counterclaims which Ding Auto indicated that it was willing to pay. The claims against Andy and the third party claims against Ding were dismissed. The relevant facts as well as the Judge's reasons for her decision are set out in detail in [2019] SGHC 243 ("the GD").

5 Jason and Mega Auto appeal against the Judge's decision on the claim against them, as well as the dismissal of their counterclaims.

6 The appeal turns entirely on factual disputes. In short, these are:

(a) Whether Ding owns the beneficial interest in Ding Auto, or holds it on trust for Mega Auto;

(b) Whether Jason made improper payments out of Ding Auto; and

(c) Whether the counterclaims should be allowed.

7 Owing to the lack of clear documentary evidence, the key issue in these proceedings is the credibility of Ding's account against that of Jason's account. The Judge found that Jason was prepared to subvert documentation for his own purposes, and that he had downplayed his role in handling Ding Auto's finances until he was forced to admit his control over them in cross-examination (see the GD at [120], [140]). Conversely, the Judge accepted Ding's evidence, corroborated by other witnesses, that he had a very limited understanding of English and business practices, and that he was only all too glad to entrust Ding Auto's finances to Jason, whom he trusted (see the GD at [121]–[123]). In our judgment, the Judge had ample grounds on which to make these findings on the basis of the witnesses' credibility.

8 As such, we agree with the Judge's assessment of the significance of the letter of resignation as director and blank share transfer form which Ding had signed, the Joint Venture Agreement which Ding had not signed, and of Ding and Jason's respective conduct after they fell out (see the GD at [98]–[108]). The Judge was therefore justified in finding that Ding was the beneficial owner of Ding Auto.

9 We note that in reaching this finding, the Judge also placed some weight on Ding Auto's corporate documents. However, with respect, we do not think these documents have any significant probative value.

(a) First, the Judge relied on s 196A(6) of the Companies Act (Cap 50, 2006 Rev Ed), which provided that entries in a company's register of members maintained by ACRA would be *prima facie* evidence of the

truth of the matters reflected (see the GD at [94]). Since Ding was the only registered shareholder of Ding Auto, the Judge concluded that there was *prima facie* no other party with an interest in Ding Auto. We do not think s 196A(6) assists Ding. It casts the burden of proof of showing the separation of the beneficial and legal interests in Ding Auto upon Jason and Mega Auto, but this burden would have fallen on them in any event (see s 105 of the Evidence Act (Cap 97, 1997 Rev Ed)).

(b) Second, the Judge relied upon the annual returns of Ding Auto filed with ACRA which declared it to be an exempt private company within the meaning of s 4(1) of the Companies Act (see the GD at [95]). An exempt private company is one in which, *inter alia*, no corporation holds any beneficial interest. We do not think the fact that Jason had instructed the making of this declaration has the significance the Judge ascribed to it, since there was no evidence that he was aware of this definition at the time.

(c) Third, the Judge relied on clause 9 of Ding Auto's articles of association (see the GD at [97]), which provides that:

> Except as required by law, no person shall be recognized by the company as holding any share upon any trust, and the company shall not be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable … interest in any share … (except only as by these articles or by law otherwise provided) … except an absolute right to the entirety thereof in the registered holder.

We are unable to agree with the Judge that such a clause precludes Ding Auto's shares from being held on trust. In this regard, we agree with the reasons given in *Loh Sze Ti Terence Peter v Gay Choon Ing* [2008] SGHC 31 at [36] (this point was not in issue on appeal in *Gay Choon*

Ing v Loh Sze Ti Terence Peter and another appeal [2009] 2 SLR(R) 332) and *Forest Fibers Inc v K K Asia Environmental Pte Ltd and another and another suit* [2018] SGHC 195 at [126]. In short, this clause is about the company's obligations, and does not prevent a trust from arising.

10 Although we respectfully disagree with the Judge on the significance of Ding Auto's corporate documents, the essence of the Judge's finding that Ding was the beneficial owner of Ding Auto rested on the parties' credibility as witnesses. We therefore affirm this finding.

11 Following from this, the Judge found that Jason was an agent of Ding Auto, and owed it fiduciary duties in managing its finances. The parties do not contest this finding, and we see no reason to disturb it.

12 We turn next to the impugned payments out of Ding Auto.

(a) The Judge found the supporting documents for these payments to be less than satisfactory. In particular, in respect of the reimbursements of alleged staff salary payments, the documents which broke these reimbursements down by employee were created only after the commencement of the proceedings, and no explanation was provided to support the reliability of this information (see the GD at [155], [167]). We do not think the appellants have provided a sufficient basis to challenge the Judge's conclusions on the salary reimbursements.

(b) The appellants point to Table A of their closing submissions at the trial in support of the petty cash reimbursements given to Wong Seng Kee. Without going into whether the appellants can properly rely on Table A, we do not think this addresses the crux of the problem

identified by the Judge, which is the lack of evidence that these reimbursements were approved by Ding Auto with its informed consent, or that the purported supporting documents are reliable in the light of the Judge's findings on Jason's proclivities (see the GD at [180]–[185]).

(c) As for the payments for spray paint purchases prior to April 2014, and the "back-charges" in relation to #01-20 and #01-22, the common thread in these payments is the Judge's finding that the spray-painting booth at #01-22 was not in Ding Auto's possession (see the GD at [193]). We see no reason to disturb this finding.

13 The Judge found that Jason was liable to restore the amount of the improper payments to Ding Auto, and to account to it for any profits he made as a result of the improper payments. The Judge also found Mega Auto liable for knowing receipt of the improper payments it received directly. The parties likewise do not challenge this part of the Judge's reasoning, and we see no reason to depart from it.

14 We turn finally to the counterclaims. The appellants' counterclaims in relation to the expenses for #01-22 must be rejected by virtue of the finding that #01-22 was not in Ding Auto's possession. We likewise see no reason to disturb the Judge's findings that there was insufficient evidence to support the remaining counterclaims, other than those expenses which Ding Auto accepted that it should share. In particular, the appellants have not adduced sufficient evidence to convince us that Ding Auto's "Bench Rack 500 System Filter" can be traced to the invoice issued to Mega Auto on 23 August 2013, which did not specify which of Mega Auto's locations the equipment listed therein was intended for (see the GD at [239]). They have therefore not proven that Ding Auto had wrongfully retained this, or any other, piece of equipment.

15 We therefore dismiss the appellants' appeal in its entirety, and affirm the orders made by the Judge below. We will hear parties on costs.

Andrew Phang Boon Leong Judge of Appeal	Judith Prakash Judge of Appeal	Steven Chong Judge of Appeal

Khelvin Xu Cunhan, Andrew Tan and Lim Yuan Jing (Rajah & Tann Singapore LLP) for the appellants;
Sam Hui Min Lisa (Lisa Sam & Company) for the respondents.