Enholco Pte Ltd *v* Schonk, Antonius Martinus Mattheus and Another [2015] SGHC 108

Case Number : Suit No 212 of 2013

Decision Date : 28 April 2015

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Dr Lau Teik Soon and Karuppiah Chandra Sekaran (Lau Chandra & Rita LLP) for the plaintiff; See Chern Yang (Premier Law LLC) for the defendants.

Parties : Enholco Pte Ltd — Schonk Antonius Martinus Mattheus — International Oil and Gas Consultants Pte Ltd

Damages – Measure of damages – Contract

[LawNet Editorial Note: The appeals to this decision in Civil Appeal Nos 47 and 106 of 2015 was allowed in part by the Court of Appeal on 24 November 2015. See [2015] SGCA 65.]

28 April 2015 Judgment reserved.

Choo Han Teck J:

1 Enholco Pte Ltd ("the plaintiff") is mainly in the business of the sale of spare parts and providing consultancy services in the oil and gas industry. Haank Jan Gerhard ("Gerhard") is its managing director. Schonk Antonius Martinus Mattheus ("the first defendant") was an employee of the plaintiff from 1 September 1989 till 24 August 2012. He incorporated International Oil and Gas Consultants ("the second defendant") on 5 April 2012 and is its sole shareholder and director. Previously in *Enholco Pte Ltd v Schonk, Antonius Martinus Mattheus and Another* [2015] SGHC 20, I had allowed the plaintiff's claim and dismissed the defendants' counterclaims. This judgment deals with the assessment of damages in light of judgment for the plaintiff.

2 There are some differences between the quantum of damages and nature of relief claimed in the plaintiff's statement of claim and most recently in the plaintiff's submissions on damages. It is a fundamental principle of our adversarial system of litigation that each party should be bound by its pleaded case. The purpose behind this principle however, is to allow the other party to be put on notice and have the opportunity to respond to such claims sufficiently. As such, I assessed the damages to be awarded on the basis of the claims and nature of reliefs that have been adduced in evidence at trial and as set out in its statement of claim, but not what was only raised after the trial had concluded.

3 Following from the above, the plaintiff claims that the defendants are liable for the following heads of losses and damages that the plaintiff has suffered:

(a) loss of plaintiff's company car valued at $100,000;

(b) advances and personal loans taken out from the plaintiff and not returned, valued at $575,000;

(c) unauthorised personal and travel expenses, valued at $1,226,787.63;

(d) diversion of consultancy fees and commissions, valued at $118,560;

(e) diversion of business, valued at $55,670.83; and

(f) loss of future profits, estimated between $2.8m and $4.2m.

4 In relation to claims (b) and (c) the plaintiff alleges that monies were taken out from the plaintiff from 1994 to 2012 either on loans which have not been returned, or were taken out for personal expenses and travel expenses which were not authorised. But these travel and personal expenses of the first defendant had been captured in audited account statements which the plaintiff must have been aware of, and without raising any prior objections to them, had impliedly authorised such expenses. I am also not satisfied that the plaintiff has proven that the advances of $575,000 were loans, and intended to be repaid to the plaintiff. I thus dismiss the plaintiff's claims under these heads, and find that on the evidence, most of the withdrawals and advances had either been waived by the plaintiff or impliedly authorised, or have not been proven.

5 It seems to me that the plaintiff is re-classifying what was previously merely known as its "loss of future profits" claim into the present form, namely, as a claim for equitable compensation and/or a claim for an account of profits. The plaintiff has particularised this claim as the loss of the Hans Leffer contract, the loss of the Atlas Copco contract, and the deletion of records from the plaintiff's computers. But the plaintiff has failed to prove that the defendants' actions have caused it quantifiable loss. Even if we were to examine this on the basis of equitable compensation, the plaintiff has not discharged its evidential burden, to prove that but for the defendants' actions, the Hans Leffer and Atlas Copco contracts would have remained with the plaintiff after August 2012. I am not wholly convinced that these contracts would have remained with the plaintiff because the first defendant had been the person liaising with both companies on behalf of the plaintiff, and there is some evidence to show that both companies were only willing to contract with the first defendant alone. As to an account of profits, the plaintiff has clearly elected between common law damages and an account of profits in favour of common law damages, and it is not open to him to now claim for both.

6 As for the rest of the claims, I find that the defendant has not returned the plaintiff's car to this day, and the car is valued at $100,000. I also find that the first defendant had diverted consultancy fees and commissions from the plaintiff to the second defendant, valued at $118,560. Although I also find that the plaintiff had diverted business profits from LP Supplies and Putera Resources Pte Ltd to the second defendant, the plaintiff is unable to prove the higher sum previously claimed of $55,670.83, and is only able to prove its losses up to the sum of $44,894.92.

7 Finally, the plaintiff has not proven the exact figure of $1,226,787.63 it had claimed as the unauthorised personal expenses taken by the first defendant. The burden of proof was on him. However, the facts sufficiently indicated that the first defendant had taken doses of liberties when operating the financial accounts. The plaintiff has similarly not proven the exact figure between $2.8m and $4.2m as loss of future profits. However, I am satisfied that the first defendant's actions in deleting essential information from the plaintiff's computers including, but not limited to pending orders from the plaintiff's customers and information of promising projects, would have caused some loss and damage to the plaintiff. I thus fix general damages for the first defendant's breach of duty at $50,000. This is not in substitution of the specific damages claimed, but as an exercise of my discretion for fixing general damages for breach after taking into account the overall facts.

8 To conclude, I order that $313,454 be paid from the defendants to the plaintiff as damages for the first defendant's breaches of contract and fidelity, trust and confidence.

9 I will hear parties on costs at a later date.