

Relfo Ltd (in liquidation) v Bhimji Velji Jadva Varsani
[2008] SGHC 7

Case Number : Suit 612/2006, SUM 3916/2007
Decision Date : 15 January 2008
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Tan Mingfen and Sheryl Wei (Drew & Napier LLC) for the plaintiff; Leo Cheng Suan (Infinitus Law Corporation) for the defendant
Parties : Relfo Ltd (in liquidation) — Bhimji Velji Jadva Varsani

Injunctions

15 January 2008

Choo Han Teck J:

1 The plaintiff is a company in the business of property development. The defendant was a former shareholder in the plaintiff company. The plaintiff alleged that the defendant and other shareholders transferred their shares in the plaintiff to one Gorecia and his wife (Mrs Gorecia) for a nominal sum. The plaintiff further alleged that as shareholders and directors, Gorecia and his wife owed fiduciary duties to, inter alia, act in good faith and in the best interests of the company, and not to act in conflict of interests with it.

2 On 26 April 2004 the Inland Revenue Department ("IRD") in the United Kingdom issued a Notice of Warning of Legal Proceedings against the defendant in respect of a sum of £1,409,871.30 due to the IRD in unpaid tax. The notice demanded payment by 3 May 2004. On 4 May 2004, instead of making payment to the IRD, Gorecia instructed the plaintiff's bank to transfer £500,000 (US\$878,479.35 on conversion from Sterling Pound at prevailing rates on 4 May 2004) to one Mirren Ltd. However, the money appeared to have been subsequently transferred to the defendant's bank account in Citibank, Singapore on Gorecia's instructions. On 13 May 2004, £100,000 from this Citibank account was transferred to Gorecia and his wife. No consideration was provided by the defendant to Gorecia for the transfer of funds.

3 The plaintiff obtained an *ex parte mareva* order on 23 January 2007 and the defendant applied subsequently to discharge the order by an application dated 5 September 2007. The application to discharge was heard before me and dismissed on 25 October 2007.

4 The defendant's basis for discharge was based principally on the ground that the plaintiff's liquidator presented "facts in a skewed and slanted manner to mislead the court". However, comparing the affidavit of the liquidator and that in support of the defendant, I am of the view that the crucial question why the money that was transferred to the defendant's account in Citibank under dubious circumstances had not been satisfactorily answered. Even if the defendant could not prove his assertions on the merits, at this stage, that the payment was legitimate, he was at least required to provide a plausible explanation supported by reasonable evidence for the court to consider together with all other factors such as the balance of convenience.

5 The defendant alleged that the plaintiff relied on false documents in its application for the *mareva* injunction. I am not convinced that the plaintiff had used any such document. The two

documents which purportedly contained identical signatures, namely the letter of instructions that authorised the transfer of funds from Mirren Ltd and a contract known as "Corn Loan Agreement" were not documents fashioned by the liquidators at all. The Corn Loan Agreement was allegedly a contract of loan in which Gorecia would advance US\$3.6m to a company known as Corn Ltd, and Gorecia would in return be given a 50% share in Corn Ltd. The defendant's explanation as to why his bank account was credited with US\$878,479.35 did not make sense at all. His claim that this was part payment of the Corn Loan Agreement was difficult to follow, let alone accept as credible. The defendant claimed that Corn Ltd would repay the loan to Gorecia who would in turn pay over to the defendant whose family it was that provided the money loaned. On the defendant's own account, the defendant's family lent Corn Ltd US\$600,000 to be repaid in monthly instalments of US\$50,000. Inexplicably, the single sum of US\$878,479.35 was paid to the defendant instead. If any question were to be raised concerning the signatures in the documents mentioned, it appeared to me that Gorecia and the defendant should provide the answer rather than the liquidators. I found the defendant's story to be tenuous and vague, and until a better explanation is given, the defendant should be restrained from taking the money from his Citibank account. I thus dismissed the defendant's application to discharge the *mareva* orders.

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