Enholco Pte Ltd *v* Schonk, Antonius Martinus Mattheus and Another [2015] SGHC 20

Case Number	: Suit No 212 of 2013
Decision Date	: 04 February 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

Employment law – Employees' duties

[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.]

4 February 2015 Judgment reserved.

Choo Han Teck J:

1 The plaintiff is a company incorporated in 1988. Its business is mainly in the sale of spare parts and providing consultancy services in the oil and gas industry. Haank Jan Gerhard ("Gerhard") is its managing director.

2 Schonk Antonius Martinus Mattheus ("Mattheus") was an employee of the plaintiff from 1 September 1989 till 24 August 2012. He incorporated the second defendant company on 5 April 2012 and is its sole shareholder and director. This fact was not known to the plaintiff until 16 August 2012. The plaintiff's case against both defendants is that Mattheus was acting in conflict of interests and in breach of his fiduciary duties to his employer, the plaintiff. It alleges that Mattheus acted in detriment to the interests of the plaintiff. Thus, on 24 August 2012 Mattheus was sacked from the plaintiff company.

3 In this action, the plaintiff claims a sum of $1,676,547.56 as losses incurred by reason of Mattheus' breach of duty. It is also claiming damages for the loss of profit amounting to $2,800,000 to $4,200,000.

4 Mattheus claims that he was not in breach of his obligations and duties as an employee by incorporating the second defendant because the plaintiff had known about the second defendant's existence. Mattheus counterclaims against the plaintiff for wrongful termination and claims $150,000 being five months' salary in-lieu of notice plus $50,000 for reimbursement of expenses, car financing that the plaintiff ought to have paid for Mattheus but did not.

5 Although the critical event was the sacking of Mattheus on 24 August 2012, the opposing cases go back some years. Gerhard says that he was planning to retire and from 2009 had begun discussions with Mattheus with the view that Mattheus (who is 62 years old at the trial) would buy between 49% to 100% of Gerhard's shares in the plaintiff. Gerhard was 70 years old at the time of the trial. The negotiations failed. Gerhard says that instead of paying him for his shares in the

plaintiff, Mattheus went to incorporate the second defendant.

6 Mattheus claims that the second defendant was incorporated to take over the business of 'Unit 2'. 'Unit 2' is the name of a division of the plaintiff which dealt with certain customers and was, accounting-wise, dealt with separately in the plaintiff's accounts. At all material times Mattheus was in charge of Unit 2.

7 Mattheus now says that in July 2001 he and the plaintiff (through Gerhard) concluded an oral contract ("the Unit 2 Agreement") in which Mattheus was to take over the entire assets, business, and undertakings of Unit 2. In exchange, he will relieve the plaintiff of the costs of operating Unit 2.

8 Plaintiff denies the Unit 2 Agreement. Gerhard was the key person from the plaintiff who dealt with Mattheus. He testified that throughout the years from 2001, Mattheus had never once claimed that the plaintiff had ceded or sold or transferred Unit 2 to Mattheus. In the negotiations concerning the sale of Gerhard's shares in the plaintiff to Mattheus, the latter had not once mentioned that the valuation of the shares was wrong because Unit 2 ought to have been excluded as an asset or division of the plaintiff. Gerhard testified, and I believe his testimony, that Mattheus had never claimed to own Unit 2.

9 It seems to me that Mattheus' claim was a late idea against the plaintiff's claim for breach of duty. The most telling indication of this is the complete silence of this Unit 2 Agreement in the defence from September 2012 to August 2014 when Mattheus and the second defendant were represented by Rajah & Tann LLP. It was only on 27 June 2014 when the defence was amended to allege the Unit 2 Agreement.

10 Although Mattheus had been in charge of Unit 2, he kept Gerhard informed of the business and monthly expense reports were regularly sent to Gerhard. This is clearly contrary to the claim that Unit 2 belonged to Mattheus solely. There is no evidence that Unit 2 had been carved out of the plaintiff. I am unable to accept that Mattheus could claim this as his personal assets when he has not a shred of documentary evidence to support this claim.

11 The Unit 2 Agreement is crucial to Mattheus' defence. However one looks at his evidence, it is devoid of clear detail, and unsupported by the conduct of the parties over the years. But I begin with the most basic point. If Unit 2 is such a disaster that Gerhard wanted to get rid of without even receiving a cent from it, why would Gerhard permit the plaintiff to continue paying for Unit 2's operating costs? There is no clear evidence, but the testimony of Gerhard suggests that the operating costs of Unit 2 were maintained by the plaintiff. Mattheus claims that Unit 2 was entirely his but operated 'under the umbrella of [the plaintiff]' as his counsel submits. This is not borne out by any documentary evidence. The accounting records show that Unit 2 is part of the plaintiff. If required, as in this action, how would Mattheus prove that Unit 2 is his – other than his claim made orally?

12 The evidence shows that Mattheus had taken liberties with his responsibilities over Unit 2 by using its income to pay for his children's overseas education. Gerhard discovered this subsequently but chooses to take a benign view of this. The question is whether Gerhard's response was reasonable depends a great deal on whether Gerhard is a generous person. These are fringe benefits and I am of the view that it is not unreasonable for Gerhard to take a benign view of this expenditure from Unit 2's account.

13 More significantly, when Gerhard took back control of Unit 2 in March 2012, Mattheus did not resist or make any attempt to resist. If Unit 2 was his, Gerhard had no right to take back control of Unit 2.

14 Further, if Mattheus was right that he has been operating as the sole proprietor of Unit 2 since 2001 and no longer in the employ of plaintiff, his response to the termination of his employment was not one of surprise. His conduct was consistent with that of an employee. A reasonable person in the circumstances would have told the plaintiff that he had left the company 11 years ago.

15 Mattheus denies that he was in breach of his fiduciary duties as an employee of the plaintiff. However, the evidence adduced by Dr Lau Teik Soon, counsel for the plaintiff shows that the timing of incorporation of the second defendant by Mattheus fits his (Mattheus') general plans. Rather than paying Gerhard money to buy over his shares in the plaintiff, Mattheus need only incorporate his own company. That would be fine in the absence of any binding contract otherwise. In this case, Mattheus not only incorporated a rival entity, but had taken steps to lure away the business and customers of the plaintiff while Mattheus was still in its employ.

16 A perusal of Mattheus' evidence under cross-examination regarding the Hans Leffer shows that he had attempted to divert retainer fees from the plaintiff's client (Hans Leffer) to the second defendant. Furthermore, Mattheus' explanation in court regarding the documentary evidence which shows the second defendant attempting to divert the business from LP Supplies and Services Sdn Bhd as well as Chinyee Engineering and Machinery Pte Ltd, was, in my assessment, unconvincing.

17 I find that throughout the years of his employment and even from the time after his termination, Mattheus was the party whose conduct was surreptitious and not straightforward. I am also sceptical about his explanations as to why he deleted records from the company's computers. The incontrovertible fact was that he installed software to delete the company's data. He claims that he did that to remove only his private email. It was not so innocuous. The entire data was removed and reformatted. It was a deliberate act designed to comprehensively remove any trace of evidence against Mattheus. All these were done by only one person – Mattheus himself. This conduct is contrary to his case that he is the owner of Unit 2. He will have left the history of the computer record for the court's assessment. It seems to me that the conduct of Gerhard and Mattheus shows that Gerhard's evidence to be the more reliable one, namely, that until the negotiations to buy Gerhard's shares in the plaintiff broke down, Gerhard and Mattheus were friends. Consequently, Gerhard had given Mattheus much leeway.

18 The plaintiff's claim is allowed and therefore there will be judgment for the plaintiff with damages to be assessed before me at a later date. The defendants' counterclaims are dismissed.

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

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