

Chip Hup Hup Kee Construction Pte Ltd v Lim Lian Choon
[2010] SGHC 44

Case Number : Suit No 165 of 2007
Decision Date : 05 February 2010
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Philip Ling and Hwa Hoong Luan (Wong Tan & Molly Lim LLC) for the plaintiff;
Randolph Khoo and Johnson Loo (Drew & Napier LLC) for the defendant.
Parties : Chip Hup Hup Kee Construction Pte Ltd — Lim Lian Choon

Employment law – Employees’ duties

5 February 2010

Judgment reserved.

Kan Ting Chiu J:

1 The plaintiff Chip Hup Hup Kee Construction Pte Ltd is a company in the building and construction business. The defendant Lim Lian Choon (“LLC”) was an employee of the plaintiff. He was employed as a site foreman of the plaintiff in 1994 and was promoted to Plant and Machinery Manager in 1998, until his employment was terminated on 30 November 2006.

2 Following the termination of his employment, the plaintiff filed this action against him, under five heads of claims. The defendant disputed all the five heads of claims and made a counterclaim against the plaintiff arising from his termination. Each of the claims and the counterclaim is examined separately.

Claim 1

Misappropriation of seven cash cheques issued by the plaintiff for the total amount of \$145,000

3 The plaintiff pleaded in paras 4, 5 and 8 of its Statement of Claim (Amendment No 2) (“Statement of Claim”) that:

4. In the course of the Defendant’s employment by the [Plaintiff], the Defendant was handed 7 cash cheques drawn by the [Plaintiff] from [its] UOB bank (account no. 1013XXXXXX) which were intended for payment to the [Plaintiff’s] various sub-contractors.

5. Upon receipt of the said cheques, the Defendant had, on dates unknown to the [Plaintiff] and without the knowledge and/or consent of the [Plaintiff], unlawfully deposited the said 7 cheques into his personal bank accounts for his own use and benefit.

...

8. Further and in the alternative, by reason of the aforementioned, the Defendant has converted the said 7 cheques to his own use and benefit. By reason of such conversion, the [Plaintiff has] suffered loss and damage in the total value of the said 7 cheques, namely

\$145,000.00.

and claimed damages for the conversion of the cheques in the sum of \$145,000.

4 The seven cheques were issued by the plaintiff to pay a sub-contractor, Creative Engineering Pte Ltd ("Creative") for aluminium sunbreakers that Creative had supplied and installed at a construction project.

5 The seven cheques were not issued to Creative, but were cash cheques. After they were issued, the cheques were collected by the defendant and were paid into his bank account. The defendant had an explanation for this. He had made loans to Creative when Creative needed funds to construct the sunbreakers, and Creative had agreed to repay the loans from progressive payments they were to receive from the plaintiff.

6 Creative's director, Tan Kah Loo was a witness for the defendant, and he confirmed in his Affidavit of Evidence-in-Chief dated 27 February 2008 that:

13. Creative made payment to [the defendant] for his loans by letting him have the progress payments under the 7 cash cheques [the plaintiff] is suing on in this case totalling SGD 145,000, and through cash payments from progress payments.

...

16. I confirm that Creative did not make any complaint about not being paid SGD 145,000.00 under the 7 cheques above. This is because Creative knew that the money should properly be paid to [the defendant] for the loans he made to Creative.

Creative had also issued an open letter dated 28 April 2008 (Exhibit D3) which stated, *inter alia*:

(1) We do not have any further claims against Chip Hup Hup Kee Construction Pte Ltd in relation to the [sunbreakers] project.

(2) We are not part of any settlement agreement with Chip Hup Hup Kee Construction Pte Ltd for it to make any claim on our behalf for the sum of S\$145,000.00 (or any other sum) from [the defendant].

7 Creative and the plaintiff had settled the amounts for the project by a revised statement of accounts dated 23 January 2007. [\[note: 1\]](#) At the close of the case, the plaintiff revised its position on damages, and submitted that:

By retaining the Seven cheques ... the Defendant had clearly acted in breach of his duties of good faith and fidelity to the [Plaintiff], and it matters not that ultimately, *the [Plaintiff] did not lose any profit, nor suffered any damage.* [\[note: 2\]](#)

[emphasis added]

8 Although the plaintiff acknowledged that Creative had given it credit for the sum of \$145,000, they felt that they still had a case on the seven cheques. They did not accept the evidence of the defendant and Creative on the loan. Neo Kok Eng ("NKE"), the plaintiff's managing director and principal witness, believed that there had been some improper conduct or conspiracy between Lim Leong Huat ("LLH"), who is the defendant's brother and was the former executive director of the

plaintiff, and the defendant involving the seven cheques. [\[note: 31\]](#) However, the plaintiff had not pleaded that the defendant and LLH were jointly involved in any wrongdoing in relation to the seven cheques.

9 The plaintiff's case as pleaded in para 5 of the Statement of Claim was that the defendant "without the knowledge and/or consent of the [Plaintiff], unlawfully deposited the said 7 cheques into his personal bank accounts for his own use and benefit". The key elements here were the plaintiff's absence of knowledge and consent, and the unlawful depositing of the cheques.

10 The plaintiff did not show that there was a necessity for its knowledge and consent for the defendant to deposit the cheques into his bank account. As Creative admits that it had borrowed money from the defendant and repaid him with the seven cheques, *prima facie*, the defendant did not need to inform the plaintiff or seek its consent to bank in the cheques. It may be different if the defendant was prohibited by the terms of his employment from making the loan to Creative or accepting the seven cheques as repayment, but that was not the plaintiff's case.

11 The allegation of unlawful depositing of the cheques was also not made good. The plaintiff intended for the cheques for \$145,000.00 to be given to Creative. Creative had credited the plaintiff with the \$145,000.00 that was paid and had used the cheques to pay their own debt to the defendant, who deposited the cheques into his bank account. In these circumstances, the depositing of the cheques was not unlawful in any way.

12 On the alternative ground of conversion, the plaintiff's intention was for the seven cheques to be delivered to Creative for the latter's benefit. The evidence was that the defendant had collected the cheques from the plaintiff's accounts department after they were issued, kept them, and deposited them into his bank account with Creative's knowledge and consent. As the plaintiff's case was that the seven cheques were intended for Creative, they must accept that Creative was entitled to authorise the defendant to retain them after he had collected them. The defendant cannot be said to have converted those cheques when he deposited them into his bank account with Creative's knowledge and consent.

13 The plaintiff's case on these seven cheques fails.

Claim 2

An account for the plaintiff's plant and machinery entrusted to the defendant

14 The plaintiff pleaded in paras 9 and 10 of the Statement of Claim that:

9. In the course of the Defendant's employment as Site Foreman and Plant and Machinery Manager of the [Plaintiff], the Defendant was entrusted with the control, care and custody of the [Plaintiff's] plant and machinery.

10. In breach of his duties as employee and Site Foreman and Plant and Machinery Manager of the [Plaintiff], the Defendant failed to keep proper records and/or failed to take proper control, care and custody of all plant and machinery belonging to the [Plaintiff] which were entrusted to the Defendant, resulting in such plant and machinery, with a total value of \$285,779.00, being reported to be missing and/or stolen and/or otherwise unaccounted for.

and sought:

- (a) an account of all plant and machinery belonging to the plaintiff entrusted to the defendant which were missing and/or stolen and/or otherwise unaccounted for; and
- (b) an order for payment of the amount(s) found to be due from the defendant upon the taking of account.

15 The basis of this claim was that the defendant was entrusted with the control, care and custody of the plaintiff's plant and machinery and that he was liable to compensate the plaintiff for the lost plant and machinery.

16 The defendant's duties and responsibilities as Site Foreman and Plant and Machinery Manager were not spelt out in writing. The further and better particulars supplied by the plaintiff (dated 10 July 2007) ("the F&BP") stated at para 6 that the entrustment arose out of an oral agreement between the defendant and LLH, and was implied under the defendant's employment as Site Foreman (and not Plant Manager).

17 NKE asserted at para 36 of his Affidavit of Evidence-in-Chief that "the Defendant was entrusted with the control, care and custody of the [Plaintiff's] plant and machinery situated at the [Plaintiff's] warehouse at 1 Jalan Besut, Singapore 619554" (not all of the plaintiff's plant and machinery).

18 In its Reply and Defence to Counterclaim (Amendment No 2), the plaintiff went on to state at para 6 that:

The Plaintiff aver[s] that in the course of the Defendant's employment as Site Foreman and Plant and Machinery Manager of the [Plaintiff], he was required to maintain and regularly update the current status of the [Plaintiff's] plant/machinery/equipment in a document known as "Master List of Major Machinery" [sic], which he failed to do so [sic] in breach of his duties.

19 The plaintiff alleged that the Master Lists were to be submitted monthly, with details of the plant and machinery acquired, sold, disposed of, but the defendant only submitted the lists sporadically and did not maintain proper records of the plant and machinery. [\[note: 4\]](#)

20 The difficulty with the plaintiff's position was, firstly, that the defendant and LLH denied that there was an oral agreement as alleged, and the plaintiff did not produce any evidence of any such oral agreement. Secondly, no authority was produced to support the plaintiff's case that employment as site foreman *ipso facto* attached liability on that employee to compensate his employer for the loss of the employer's plant and machinery wherever and however the loss occurred.

21 When the defendant was promoted to the position of the plaintiff's Plant and Machinery Manager, he would have had some authority and responsibility over the plant and machinery. The defendant acknowledged that he was involved in the disposal of the plant and machinery, but he claimed that he only made decisions regarding such disposal after consulting NKE or LLH and obtaining their approval. [\[note: 5\]](#) LLH confirmed that the defendant would consult him or NKE and get a decision from them before he sold any equipment, [\[note: 6\]](#) and NKE, under cross-examination, agreed that he did not know if the defendant had the power or authority to make decisions on the sale or disposal of plant and machinery without LLH's prior permission. [\[note: 7\]](#) It was not put to the defendant that it was a term of his employment that he had to make good to the plaintiff any plant and machinery that was lost or unaccounted for.

22 The plaintiff has not proved the alleged entrustment and the defendant's liability to account for

lost plant and machinery. This claim is not proved.

Claim 3

The defendant's failure to account to the plaintiff for monies received for the disposal of the plaintiff's plant and machinery

23 The plaintiff pleaded in its Statement of Claim that:

13. In the course of the Defendant's employment as Site Foreman and Plant and Machinery Manager of the [Plaintiff], the Defendant was also placed in charge of all transactions relating to the [Plaintiff's] plant and machinery which were entrusted to the Defendant by the [Plaintiff].

14. On or around November 2006, the [Plaintiff] discovered that plant and machinery purchased by the [Plaintiff] at the total price of \$3,366,532.09 had been disposed of by the Defendant purportedly for the total sum of \$446,630.00, *which monies were eventually paid to the [Plaintiff]*.

15. The [Plaintiff avers] that despite having taken into account reasonable costs of depreciation in respect of the plant and machinery disposed of by the Defendant, the discrepancy in value amounting to \$2,919,902.09 between the purchase price of the said plant and machinery and the amounts realised upon their disposal cannot be accounted for and/or justified in the circumstances. Particulars of all plant and machinery purchased by the [Plaintiff] and disposed of by the Defendant are also set out at Schedule 1 annexed hereto.

[emphasis added]

and sought:

(a) "an account of all the plant and machinery ... disposed of by the Defendant" (which is taken to mean the "proper" price of the plant and machinery sold); and

(b) an order that the defendant pay to them "the amount(s) found to be due from the Defendant upon the taking of account".

24 In para 7 of the F&BP, the plaintiff elaborated that:

The Defendant is tasked with directing the purchasers of the [Plaintiff] to purchase, obtain quotations of the plant and machinery before the purchase and arrange for the delivery of the plant and machinery to the worksites requiring the plant and machinery. He will also personally [deal] with the renting, maintenance, repair/servicing and the sale and disposal of the [Plaintiff's] plant and machinery.

25 The plaintiff further submitted that:

(a) The defendant was placed in charge of all these transactions, and he had to account to the plaintiff for the same; [\[note: 8\]](#)

(b) The plaintiff also discovered that the defendant had disposed of some of the plaintiff's equipment, which had been purchased at the total price of \$3,366,532.09, for a total sum of only \$446,630, which represents a gross undervalue; [\[note: 9\]](#) and

(c) Even after taking into account the reasonable costs of depreciation in respect of the equipment which had been disposed of by the defendant, this huge discrepancy between the purchase price and the disposal value cannot be accounted for or otherwise explained or justified. [\[note: 10\]](#)

26 The plaintiff was complaining that the defendant had sold the plant and machinery at an undervalue and he had failed to perform his duties to obtain proper prices for them.

27 The defendant's defence was that: [\[note: 11\]](#)

Any decisions on disposal of plant and machinery of the [Plaintiff] were made by Mr Neo Kok Eng, the Plaintiff's Managing Director ("Neo") or Neo and Mr Lim Leong Huat, the Plaintiff's then Executive Director ("Lim"). If the Defendant was at all involved in any "disposal" of plant and equipment, it was to execute instructions of Neo or Neo/Lim on the same.

LLH corroborated this and confirmed that the defendant consulted him or NKE on the disposal of equipment and took their instructions on the prices for them. [\[note: 12\]](#) Counsel for the plaintiff put to the defendant as well as LLH that the defendant had never consulted NKE on the sale of plant and machinery, [\[note: 13\]](#) but he did not dispute LLH's evidence that LLC had consulted him on such matters.

28 A review of the evidence shows that the defendant was involved in the sale and disposal of the plaintiff's plant and machinery. The defendant said that he obtained the instructions of the plaintiff's managing director NKE or executive director LLH when he sold the plant and machinery. The plaintiff denied that NKE had authorised the sales but they did not dispute that LLH had authorised them.

29 Since it was not the plaintiff's case that the defendant could not sell the plant and machinery with the authority of LLH, there was nothing further for which he had to account to the plaintiff after the proceeds had been paid to the plaintiff. This claim therefore fails.

Claim 4

The defendant's failure to account for \$44,508.70 of the proceeds from the sale of scrap metal

30 The plaintiff pleaded in its Statement of Claim that:

18. Between the period from the year 2003 to 2004, the Defendant disposed of scrap metal belonging to the [Plaintiff] with the total value of \$86,069.00 to a sole proprietorship known as Wah & Hua Disposal Services ("Wah & Hua") and received from Wah & Hua the total sum of \$86,069.00 in consideration thereof.

19. To date, of the said sum of \$86,069.00 received by the Defendant, the Defendant has not accounted to the [Plaintiff] for the sum of \$44,508.70. By reason thereof, the [Plaintiff] has suffered loss and damage.

31 The plaintiff's case was set out in NKE's affidavit of evidence-in-chief as follows:

55. During the years 2003 and 2005, the Defendant disposed of scrap metal belonging to the [Plaintiff] to a sole proprietorship known as Wah & Hua Disposal Services ("Wah & Hua"), and received from Wah & Hua the sum of S\$86,069.00 being the total proceeds of such disposal.

These monies were paid by Wah & Hua to the Defendant ...

A copy each of the statements issued by Wah & Hua setting out and confirming each and every item of scrap metal disposed of by the [Plaintiff] to them, and the corresponding amount paid therefore, are [exhibited].

56. However, out of the total sum of S\$86,069 received by the Defendant from Wah & Hua, the Defendant has to date only paid over the sum of S\$41,560.30 to the [Plaintiff], and has failed to pay over or otherwise account for the remaining sum of S\$44,508.70 to the [Plaintiff].

32 Another witness for the plaintiff, Khoo Choon Yean ("KCY"), the plaintiff's accounts and administrative executive, deposed in her affidavit of evidence-in-chief that:

13. The investigation process also led us to discover that the Defendant had during the years of 2003 and 2004 disposed of scrap metal belonging to the [Plaintiff] to a sole proprietorship known as Wah & Hua Disposal Services ("Wah & Hua"), and received from Wah & Hua the sum of S\$86,069.00 being the total proceeds of such disposal. A copy each of the statements issued by Wah & Hua setting out and confirming each and every item of scrap metal disposed by the [Plaintiff] to them, and the corresponding amount paid therefore, are [exhibited].

14. However, we realised that out of the total sum of S\$86,069 received by the Defendant from Wah & Hua, the Defendant has to date only paid over the sum of S\$41,560.30 to the [Plaintiff], and has failed to pay over or otherwise account for the remaining sum of S\$44,508.70 to the [Plaintiff].

33 KCY's evidence also disclosed that the alleged sales took place in 2003 and 2004 and that the scrap metal sold was from a project referred to as Sengkang N2 C29 & 30 ("the Sengkang project").

34 The defence was stated in the following terms: [\[note: 14\]](#)

15. The Defendant was not responsible for disposing of the Plaintiff's scrap metal. The sale of scrap metal took place at the [Plaintiff's] work sites. The Defendant did not handle such matters at the [Plaintiff's] work sites.

35 The defendant adduced the evidence of Toh Chee Boon ("TCB"), the plaintiff's site manager for the Sengkang site from 2003 to 2005, who deposed in his affidavit of evidence-in-chief that:

19. In the [Sengkang] project, I remember that there was scrap metal to remove even at the start of [the Plaintiff's] involvement in the project in early 2003. This was because [a sub-contractor] had left behind a lot of such material after it left. Again, the site foremen and I were involved in selling the scrap metal and collecting cash. This time, the cash received was sent to [the Plaintiff's] main office. I recall that the scrap metal was bought by a man from Wah & Hua Disposal Services ("Wah & Hua").

20. Wah & Hua would collect scrap metal as and when I contacted them and upon the collection of the scrap metal. The *[sic]* contractor would issue me an acknowledgement slip for the scrap sold. The contact number was given by someone in the [Plaintiff's] main office contracts department. A few months into 2003, [the Plaintiff's] main office told me that there was no need to collect cash from Wah & Hua. I was informed that payment would be made directly to [the Plaintiff's] main office. I was still needed to sign the acknowledgement slips and hand over to [the Plaintiff's] accounts department. As far as I know, [the defendant] was not in

charge of sales of scrap metal and he did not collect any cash or payment from Wah & Hua directly.

36 When NKE was referred to TCB's evidence, his response was simply that TCB was lying because he was an engineer and was not in charge of scrap metal, [\[note: 15\]](#) although he admitted that he had no direct knowledge of the transactions. The plaintiff did not call anyone from the purchasers of the scrap metal to give evidence on how the sale and the payment were made, or anyone from the plaintiff's accounts department to state who had handed over the \$41,560.30 (see [\[31\]](#) and [\[32\]](#) above).

37 The plaintiff had not established that the defendant was involved in the sale of the scrap metal and the collection of payment, or that he had failed to account for the proceeds of the sale. This claim fails.

Claim 5

The defendant's failure to exercise reasonable care and diligence in the maintenance of the plaintiff's warehouse

38 The plaintiff alleged in its Statement of Claim that:

21. As the Site Foreman and Plant and Machinery Manager of the [Plaintiff], the Defendant was also required to maintain and keep in order the [Plaintiff's] warehouse at 1 Jalan Besut Singapore 619554.

22. Wrongfully and in breach of the Defendant's duty to exercise reasonable care and diligence in the maintenance of the [Plaintiff's] said warehouse, the Defendant left [it] in disarray.

23. Consequently, the [Plaintiff] had to employ other workers to clean up the warehouse and put the warehouse back in order. By reason thereof, the [Plaintiff has] suffered loss and damage.

and sought "an indemnity and/or damages to be assessed" in respect of the defendant's purported failure.

39 At para 14 of the F&BP, the plaintiff pleaded that the defendant's obligation arose by oral agreement between the defendant and LLH, and also by implication under the defendant's employment contract as site foreman.

40 In its closing submissions, however, the plaintiff's claim took the form of a claim for special damages: [\[note: 16\]](#)

| | Item | Amount |
|----|---|---------------|
| a. | Installation of new shelves to replace damaged shelves | S\$1,380 |
| b. | Purchase of new boxes to replace damaged boxes | S\$ 360 |
| c. | Wages of Bangladeshi workers (4 workers x \$23 per day x 15 days) | S\$1,380 |
| d. | Wages of local employees (4 employees x \$80 per day x 15 days) | S\$4,800 |

TOTAL:

S\$7,920

without amending their Statement of Claim to claim this specific sum.

41 At the close of its case the plaintiff submitted that: [\[note: 17\]](#)

[A]s Site Foreman and Plant and Machinery Manager of the [Plaintiff], and in the course of his employment, the Defendant was also tasked and required to maintain and keep in good order the Warehouse, and that he had neglected his duties in this regard and left the entire Warehouse in a state of disarray.

42 The defence was that the defendant was not in charge of maintaining the warehouse. [\[note: 18\]](#)

43 The oral agreement allegation was not followed up. The alleged oral agreement between the defendant and LLH was never raised with the defendant and LLH when they were cross-examined and the plaintiff adduced no evidence of such an oral agreement.

44 The implied term contention was similarly not developed. There was no evidence or reason put forward to show that by his appointment as Site Foreman and Plant and Machinery Manager, the defendant was liable for the maintenance of the warehouse. A site foreman's responsibilities, as the designation indicates, would reasonably relate to worksites, and not a warehouse. Likewise, the post of Plant and Machinery Manager cannot imply an obligation on the employee to be responsible for the maintenance of the employer's warehouse. For this reason, this claim fails.

45 As the plaintiff has failed to prove any of the five heads of claim, its action is dismissed with costs.

The defendant's counterclaim

46 In its Defence and Counterclaim (Amendment No 1) the defendant counterclaimed against the plaintiff that:

24. On 30 Nov 06, the [Plaintiff] purported to summarily terminate the Defendant's employment with the [Plaintiff], on the allegation that the Defendant had wrongfully attempted to remove documents from the warehouse "to assist" [LLH]. The said allegation is false and malicious.

47 The plaintiff's defence to the counterclaim was in the following terms: [\[note: 19\]](#)

10. [The Plaintiff was] fully entitled to and had summarily terminated the Defendant's employment with the [Plaintiff] on the grounds [sic] that the Defendant had wrongfully attempted to remove documents from the [Plaintiff's] warehouse.

11 The [Plaintiff avers] that [it was] fully entitled to and [was] justified in summarily terminating the Defendant's employment on 30 November 2006 on the following further grounds and for the following further reasons:-

a. The Defendant had, in the course of his employment, during the period from October 2006 to November 2006, removed the [Plaintiff's documents from [its] warehouse without [its] knowledge, authority, consent and/or permission;

b. The Defendant had during the period from February 2005 to May 2006 misappropriated the [Plaintiff's] cheques particularized at paragraph 6 of the [Plaintiff's] Statement of Claim in the circumstances set out in paragraphs 4 to 8 therein;

c. The Defendant had failed to account for and/or take proper control, care and/or custody of all plant and machinery belonging to the [Plaintiff] which were entrusted to him in the circumstances set out in paragraphs 9 to 12 of the [Plaintiff's] Statement of Claim;

d. The Defendant had failed to account to the [Plaintiff] for the monies received by the Defendant for the disposal of the [Plaintiff's] plant and machinery in the circumstances set out in paragraphs 13 to 16 of the [Plaintiff's] Statement of Claim;

e. The Defendant had failed to account to the [Plaintiff] for the sum of \$44,508.70 being the proceeds of scrap metal disposed of by the Defendant in the circumstances set out in paragraphs 17 to 20 of the [Plaintiff's] Statement of Claim; and

f. The Defendant had failed to exercise reasonable care and diligence in the maintenance of the [Plaintiff's] warehouse in the circumstances set out in paragraphs 21 to 23 of the [Plaintiff's] Statement of Claim.

48 Ground (a) in para 11 (see [\[47\]](#) above) was not a further ground, but rather, an expansion of the allegation in para 10. Grounds (b) to (f) were the five heads of the plaintiff's claims which have been dealt with.

49 In the course of the hearing, the plaintiff amended para 11 by adding a further ground, that:
[\[note: 20\]](#)

The Defendant had on or about 11 November 2006, without the knowledge, authority and/or consent of the [Plaintiff], wrongfully removed or caused or arranged to be removed from the [Plaintiff's] worksite at Toa Payoh RC30 2 units of Diesel Bar Benders and 1 unit of Bar Cutter, and disposed of the same or caused or arranged for the same to be disposed of as scrap at the total price of S\$2,000. The Defendant has to-date failed to pay and/or account to the [Plaintiff] for any of the proceeds of such disposal. By reason of the Defendant's wrongful and criminal acts, a police report (no. D20070605/2093) was filed on behalf of the [Plaintiff] against the Defendant, as a consequence of which the Defendant was charged with one count of theft as servant under Section 381 of the Penal Code (Chapter 224), which matter is still pending in the Subordinate Courts.

50 As I have ruled against the plaintiff's five claims, the plaintiff's defence on grounds (b) to (f) must fail, and only ground (a) remains to be considered.

Attempted removal of the plaintiff's documents from the warehouse

51 On this issue, the plaintiff called one witness, their driver Koh Thiam Yong ("KTY") who deposed in his affidavit of evidence-in-chief that:

5. Sometime in November 2006, I was instructed by the Defendant to pick up two Thai construction workers of the [Plaintiff] from one of the [Plaintiff's] worksites, and transport them to the [Plaintiff's] warehouse at Jalan Besut, Singapore. The Defendant also instructed me to collect some cloth tape from the warehouse. I did as I was instructed and picked up the two Thai workers. When we reached the warehouse premises, I was instructed by one of the staff of GKE

(the owner of the warehouse) who was stationed at GKE's foreman's office near the main gate, to report to him on the way out. Upon arrival at the warehouse, all three of us went inside. In my case, I collected the cloth tape and exited the warehouse. When I returned to my vehicle, I noticed that three boxes had been loaded onto the vehicle by the workers. I loaded the cloth tape onto the vehicle.

6. On the way out, I reported to GKE's foreman's office as instructed by the staff of GKE. The staff inspected the items which were loaded on the vehicle, and informed us that we were not permitted to bring the three boxes out of the warehouse. I therefore drove my vehicle back to the warehouse, where the two workers returned the three boxes to the warehouses [sic].

52 The two Thai workers were not called as witnesses. They were identified as Uthit Thongmoon and Thanaphon Nanthasing, and the plaintiff arranged for them to make statutory declarations. In their statutory declarations, which were admitted as agreed documents [\[note: 21\]](#) they stated that they were instructed by the defendant to go to the warehouse to remove carton boxes with the marking "AZ". They went to the warehouse with KTY and found three boxes with the marking but they were prevented by a security guard from taking them out of the warehouse.

53 The "AZ" markings were significant. NKE acknowledged that they referred to AZ Associates Pte Ltd ("AZ") which was LLH's company, and that AZ shared the warehouse with the plaintiff. [\[note: 22\]](#)

54 The evidence the plaintiff relied on did not substantiate their allegation. There was no evidence that the boxes contained the plaintiff's documents, or indeed any documents. As the boxes were likely to have been the property of AZ, there was no evidence that their removal from the warehouse was wrongful.

Wrongful removal and disposal of two bar benders and one bar cutter and failure to account for the proceeds

55 The defendant denied that he had disposed of the equipment or received the proceeds of sale.

56 The main witness for the plaintiff on this issue was Teng Kok Keng ("TKK"), a partner of Cheong Machinery Equipment ("CME"). CME dealt with machinery; the plaintiff, through the defendant, had rented machinery from CME and sent machinery to CME to be repaired.

57 TKK's evidence was that the defendant had agreed to sell to CME two bar benders and one bar cutter for \$2,000, and payment was made to the defendant in cash. TKK produced CME's payment voucher for the purchase dated 11 November 2006 [\[note: 23\]](#) and asserted that the defendant had signed on the voucher as the receiving party when he received the payment a few days after 11 November 2006.

58 TKK added that he collected the two bar benders from the plaintiff's worksite at Toa Payoh. His evidence was that he had bought the equipment from the defendant and that he informed the plaintiff's site foreman, Lee Peng Nguan ("LPN") that the defendant had instructed him to remove the bar benders because they had been sold to him. [\[note: 24\]](#)

59 The plaintiff's case was that they did not know about this transaction when it took place. In May 2007, the plaintiff was trying to locate the bar benders and bar cutters and learnt from LPN of the equipment that was taken by TKK. When they sought clarification from TKK, he told them that he had purchased them and sent them a copy of the purchase voucher as evidence of the sale.

60 When they received the payment voucher, the plaintiff's staff found that they did not have a copy in their records, and that the signature of the recipient on the payment voucher did not appear to be the defendant's signature. They sought further confirmation from TTK and received a letter from CME, signed by him, dated 4 June 2007 confirming that they had bought the two bar benders and the bar cutter on 11 November 2006 for \$2,000, and had paid the purchase price in cash to the defendant. [\[note: 25\]](#)

61 LPN was also called as a witness at the trial. His evidence was that TTK told him that the defendant had asked him to remove some equipment and he allowed TTK to remove one bar bender and one bar cutter, but he was not asked at the trial whether TTK had told him the reason for taking the equipment away.

62 The disposal of the equipment and the payment of the purchase price was the subject of criminal proceedings against the defendant in DAC 15743/2008 on the charge that he:

[O]n or about the 11th day of November 2006, in the vicinity of the "Lao Ah Di Rou Gu Cha" shop located at Blk 34 Whampoa West #01-67, Singapore, being a servant employed by Chip Hup Hup Kee Pte. Ltd. in the capacity of Plant and Machinery Manager, and being entrusted in such capacity with property, to wit, a cash sum of S\$2000 (two thousand Singapore dollars), committed criminal breach of trust by dishonestly misappropriating the said sum of cash, and [he] have thereby committed an offence under Section 408 of the Penal Code, Chapter 224.

63 LPN was a witness for the prosecution in that trial, and some of the court transcripts of the evidence were produced and tendered in evidence by the defendant. The parties had agreed that the transcripts were admissible in the current proceedings. [\[note: 26\]](#) The transcripts recorded that LPN testified that TTK told him that the equipment were taken away to be repaired. [\[note: 27\]](#)

64 The defendant was eventually acquitted on the charge, and his acquittal was admissible in evidence in the present proceedings under s 45A(1) of the Evidence Act (Cap 97, 1997 Rev Ed):

[T]he fact that a person has been convicted or acquitted of an offence by or before any court in Singapore shall be admissible in evidence for the purpose of proving, where relevant to any issue in the proceedings, that he committed (or, as the case may be, did not commit) that offence, whether or not he is a party to the proceedings; and where he was convicted, whether he was so convicted upon a plea of guilty or otherwise.

The fact that he did not commit criminal breach of trust was relevant to the issue of the disposal of the equipment and the accounting for the proceeds.

65 On a review of the evidence, taking into account that:

- (a) the defendant denied that he sold the equipment to CME or TTK or received \$2,000 from them;
- (b) the recipient's signature on CME's payment voucher did not appear to the plaintiff's staff to be the defendant's signature;

- (c) TKK's evidence that he collected two bar benders from the Toa Payoh site was contradicted by LPN's evidence that one bar bender and one bar cutter were collected;
- (d) TKK's evidence that he informed LPN that he had bought the equipment was contradicted by LPN's evidence that TKK told him that the equipment was taken away to be repaired; and
- (e) the defendant was acquitted on the criminal charge,

I find that there are questions over the reliability of TKK's evidence, and the plaintiff has not proved that the defendant had sold the equipment or retained the proceeds of sale.

66 In the result, the plaintiff has failed to prove any of the grounds it relied on to substantiate the summary termination of the defendant's employment. The defendant will have interlocutory judgment on the counterclaim with damages to be assessed by the Registrar, and the costs of the counterclaim. The costs of the assessment are to be determined by the Registrar who assesses the damages.

[\[note: 1\]](#) 3AB1073

[\[note: 2\]](#) Plaintiff's Closing Submissions para 59

[\[note: 3\]](#) Notes of Evidence, 29 April 2008, p 17 lines 9 to 20

[\[note: 4\]](#) See Neo Kok Eng's Affidavit of Evidence-in-Chief at paras 39 and 40 and Khoo Choon Yean's Affidavit of Evidence-in-Chief at paras 6-8

[\[note: 5\]](#) Lim Lian Choon's Affidavit of Evidence-in-Chief, para 34

[\[note: 6\]](#) Lim Leong Huat's Affidavit of Evidence-in-Chief, para 28

[\[note: 7\]](#) Notes of Evidence 30 April 2008 p 3 line 21, p 4 line 2

[\[note: 8\]](#) Plaintiff's Closing Submissions, para 97

[\[note: 9\]](#) Plaintiff's Closing Submissions, para 108

[\[note: 10\]](#) Plaintiff's Closing Submissions para 109

[\[note: 11\]](#) Defence & Counterclaim (Amendment No.1) para 12.3

[\[note: 12\]](#) Lim Leong Huat's Affidavit of Evidence-in-Chief, para 28

[\[note: 13\]](#) Notes of Evidence, 6 March 2009, p 53 line 23 to p 54 line 3

[\[note: 14\]](#) Defence & Counterclaim (Amendment No.1) para 15

[\[note: 15\]](#) Notes of Evidence 30 April 2008 p 15 lines 6–10

[\[note: 16\]](#) Plaintiff's Closing Submissions para 129

[\[note: 17\]](#) Plaintiff's Closing Submissions para 119

[\[note: 18\]](#) Defence and Counterclaim (Amendment No.1) para 17

[\[note: 19\]](#) Reply and Defence to Counterclaim (Amendment No.1) paras 10 and 11

[\[note: 20\]](#) Reply and Defence to Counterclaim (Amendment No.2) para 11(e)

[\[note: 21\]](#) 4AB1318–1321

[\[note: 22\]](#) Notes of Evidence, 30 April 2008, p 53 line 15 to p 54 line 1

[\[note: 23\]](#) 4AB1195

[\[note: 24\]](#) Notes of Evidence, 7 October 2008 p 96 lines 7–8

[\[note: 25\]](#) 4AB1196

[\[note: 26\]](#) Notes of Evidence, 6 October 2008 p 5 lines 5–15 and 2 March 2009 p 12 lines 5–10

[\[note: 27\]](#) DAC Notes of Evidence 31 October 2008 p 40 lines 18–24

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