

Yo Kian Peng (alias Yeo Kian Peng) v Ng Kim Hock
[2010] SGHC 369

Case Number : Suit No 565 of 2009
Decision Date : 22 December 2010
Tribunal/Court : High Court
Coram : Philip Pillai J
Counsel Name(s) : Sunita Sonya Parhar (S S Parhar & Co) for the plaintiff; S H Almendoar and Jeanne Wu (R Ramason & Almendoar) for the defendant.
Parties : Yo Kian Peng (alias Yeo Kian Peng) — Ng Kim Hock

Contract

Debt and Recovery

22 December 2010

Judgment reserved.

Philip Pillai J:

Introduction

1 In this action, the plaintiff, who is a successful businessman, is claiming the return of certain sums of money which he avers he lent to the defendant, who is the younger brother of the plaintiff's ex-wife.

2 The claim appears simple enough. However, there are no loan agreements or acknowledgement of these loans either by the defendant, the companies to which the plaintiff issued his cheques or the companies which received payments which the plaintiff asserts represented part repayment of the loans. The relevant companies are incorporated in Singapore, Hong Kong and Indonesia. These companies, the plaintiff's son, George Yeo Wee Siong ("George Yeo"), his daughter, Yeo Hui Cheng and the defendant were investigated by the Commercial Affairs Department ("CAD") of the Singapore Police Force. It appears that George Yeo, who had been engaged in these companies, remains out of the jurisdiction and cannot be traced. Arising out of these investigations, 271 charges were initially preferred against the defendant. Subsequently, all charges were dropped save for four charges regarding failures to retain financial records as required by s 199(2) of the Companies Act (Cap 50, 2006 Rev Ed), to which he pleaded guilty and paid fines. To compound matters, there looms in the background multiple legal actions between members of the extended family and companies, and an ongoing feud between the plaintiff and his ex-wife with regard to the ancillary matters in their divorce.

The parties and the relevant companies

3 The defendant is a director and the sole shareholder of Glenwood Enterprise Pte Ltd ("Glenwood") and YSLI Pacific (S) Pte Ltd ("YSLI"). It is not disputed that the plaintiff's son, Jack Yeo, "owns" Automobil Manufactur (S) Pte Ltd ("Automobil") and that the plaintiff's daughters, Yeo Yee Feng and Yeo Yee Lian "own" Chainford Investment Ltd ("Chainford"). Another of the plaintiff's daughters, Yeo Hui Cheng ("YHC") provides clerical assistance to these companies. Then there are Ideo Optical Disc Media Pte Ltd ("Ideo"), Memory Japan (HK) Limited ("Memory Japan"), MJC

Singapore Pte Ltd ("MJC") and PT Mega Plast Jayacitra ("Mega Plast"). These companies appear to have been previously managed by George Yeo.

4 The plaintiff gave evidence on his own behalf, and called his daughter, YHC, his nephew, Lim Su Han ("LSH") and one Ng Sian Tian ("NST"), who worked for MJC and Mega Plast. He also subpoenaed one Diamond Tan Suan Cheok, who is alleged to be in the employ of the defendant. The defendant gave evidence on his own behalf and called no witnesses.

The loans

5 The plaintiff revealed that the defendant had lived with the plaintiff and his wife from the age of 14 and had been financially supported by the plaintiff. This was confirmed by the defendant. He had on previous occasions lent money to the defendant at the defendant's request, and the defendant had duly repaid those loans. [\[note: 1\]](#) The plaintiff confirmed that the defendant did not previously borrow very large sums from him but that he loaned the defendant large sums in 2006. [\[note: 2\]](#)

6 The plaintiff's case is that he had lent the defendant various amounts between July and October 2006 totalling \$7m as follow:

Date	Cheque No	Amount (S\$)	Payor	Payee
31 Jul 2006	150909	200,000	Plaintiff	(Cash cheque; proceeds deposited in Mega Plast's bank account)
31 Jul 2006	150910	200,000	Plaintiff	(Cash cheque; proceeds deposited in Mega Plast's bank account)
22 Sep 2006	150918	1,600,000	Plaintiff	Glenwood
25 Oct 2006	150934	1,600,000	Plaintiff	Mega Plast
25 Oct 2006	150935	1,600,000	Plaintiff	Mega Plast
25 Oct 2006	150936	1,800,000	Plaintiff	Mega Plast
Total		7,000,000		

Copies of the cheques were tendered in evidence and it is not disputed that the cheques were issued by the plaintiff and cleared. What is disputed is that these were loans directly or indirectly to the defendant.

7 The crucial issue in this action is the nature of the transactions which underlie these cheques; in particular, whether these were in respect of loans made by the plaintiff to the defendant or for any other purpose or purposes.

8 It is the plaintiff's case that he made those loans to the defendant, and he relies primarily on his personal cheques as evidence of those loans. The plaintiff admits that there is no evidence of any

loan agreement or acknowledgment of the debt from the defendant. The defendant denies that there was any loan to him as averred by the plaintiff. At the outset, it is noteworthy that the plaintiff's personal cheques were not made out to the defendant but to Glenwood and Mega Plast. Whilst the defendant is sole shareholder of Glenwood, to whom \$1.6m was paid, the defendant explains that that transaction was an exchange of cheques. As for all the plaintiff's other cheques, these were all paid to Mega Plast. Mega Plast was 41% owned by Memory Japan, with the rest owned by an investment arm of the World Bank and some Indonesian parties. The plaintiff's son George Yeo was previously the managing director and substantial shareholder of Memory Japan. The plaintiff asserts that Mega Plast is controlled by the defendant. However, the precise ownership control or management relationship of the defendant to Mega Plast remains obscure, and in particular there was no evidence produced by the plaintiff to explain why the defendant would borrow from the plaintiff for Mega Plast's purposes.

9 Hence, there is only the plaintiff's own word that his personal cheques were loans that he made to the defendant. Apart from the exchange of the plaintiff's cheque against the Glenwood cheque, no other cogent or reliable evidence has been adduced in court to corroborate or confirm that these were loans made by the plaintiff to the defendant or that Mega Plast is connected with the defendant in a material way as would explain why this constitutes a loan to him.

The loan repayments

10 The plaintiff next relies on the following payments made by the following companies to the following recipients as evidence of the repayment of the loans he avers he made to the defendant:

Date	Payor	Payee	Amount (S\$)
26 Sep 2006	Glenwood	Chainford	1,600,000.00
2 Oct 2006	YSLI	Automobil	31,700.00
22 Nov 2006	YSLI	Automobil	343,282.00
4 Jan 2007	Memory Japan	Automobil	1,381,650.00
17 Jan 2007	Memory Japan	Automobil	906,000.00
2 Apr 2007	YSLI	Automobil	224,993.00
11 Apr 2007	Ideo Optical	Automobil	424,493.00
Total			4,912,118.00

On the basis of these payments, the plaintiff is claiming the net sum of \$2,087,882.00, being the difference between his loans and the payments received.

11 The starting point is that these payments are not payments made directly by the defendant. It is noteworthy, however, that while it was Mega Plast who received the alleged loans, it was not Mega Plast who made these payments. Admittedly, one of the payors is the defendant's company YSLI. However it made payment only to the extent of \$599,975 out of a total of \$3,312,118 allegedly owing by the defendant.

12 The bulk of the payments originate from Memory Japan and Ideo. It was not clearly established in evidence what exactly was the defendant's role and interest in these companies at the material time. For Memory Japan, the defendant appears to have been a director and shareholder there for

some time but had ceased to be both before the events related to this action. George Yeo was previously the managing director of Memory Japan. The plaintiff alleged that, notwithstanding this, the defendant continued to be involved with Memory Japan. The plaintiff, however, did not specify or substantiate this allegation. Under cross-examination, the plaintiff took varying positions. At first he said that the directors of Memory Japan, Lam Ah Chai and Tan Bee Jin, were nominees of the defendant, on the basis that they were the nominee directors of the defendant in YSLI. [\[note: 3\]](#) Then he said that the defendant was connected to Memory Japan, but was not sure of the nature of this connection. [\[note: 4\]](#) Later on, he added that the defendant controlled Memory Japan based on the CAD investigations, because of what he heard from the persons investigated by the CAD, and the money coming in from Memory Japan. [\[note: 5\]](#) During cross-examination of the defendant, it was also suggested to the defendant that Tan Bee Jin was his girlfriend and therefore his nominee director in Memory Japan. [\[note: 6\]](#) In reply, the defendant was not forthcoming about his relationship with Tan Bee Jin but denied that she was his nominee. In the circumstances, no reliable or credible evidence was produced by the plaintiff to explain the defendant's precise relationship with Memory Japan at the material time and to connect the defendant in a material way as would explain why this constitutes a loan to him.

13 As for Ideo, LSH deposed that he was a director there at the material time, but alleged he was the nominee of the defendant. He also alleged that Ideo was "not doing anything", and that the defendant told him to pre-sign and then hand over Ideo's cheques. [\[note: 7\]](#) He also identified a cheque dated 10 April 2007 for US\$283,000 in favour of Automobil as being an Ideo cheque signed by him. [\[note: 8\]](#) The cheque was said to be the equivalent of \$424,493 and a repayment by the defendant. The defendant, for his part, denied knowledge of this payment. [\[note: 9\]](#) There was also no supporting documentary evidence produced from the books and records of Ideo to substantiate the averred repayment. In the circumstances, no reliable or credible evidence was produced by the plaintiff to explain the defendant's precise relationship with Ideo at the material time with any and material interest as would explain why this constitutes a loan to him

14 The payees of all these payment cheques was Automobil, which is a company admitted to be "owned" by the plaintiff's son, Jack Yeo. The amounts of these payments do not correspond to the averred loan amounts.

15 In sum, the plaintiff's case is that he lent money and issued his cheques as requested by the defendant, and left it to the defendant to decide when, in what amounts and to whom he would from time to time repay the loans. Neither did he obtain any written acknowledgement of the debt from the defendant nor did he keep any record of the repayments. Apart from the plaintiff's own AEIC and evidence under cross-examination, no other reliable or credible supporting evidence was produced to support the plaintiff's case that these inter-company cheques reflected the defendant's loan repayments and not other purpose or purposes. In particular, there were no clear or unambiguous books, records or accounts produced from the payor or payee companies which reveal and consistently confirm the nature and purpose of the underlying inter-company cheques.

16 What little was produced were selective payment vouchers and ledger entries and cheques of Automobil unrelated to these averred loans and repayment to demonstrate that there were some records of other loans involving the defendant. In this regard, YHC was questioned about an Automobil payment voucher and a cheque, both dated 28 March 2007 and written and signed by her for an unrelated payment of S\$1,215,000 made to Mega Plast. The payment voucher written by her described the payment as "Company Loan". Mysteriously, however, there was in evidence another payment voucher which she confirmed was prepared and signed by her relating to the same cheque

but this time differently described as "Company Loan (Instruction from Ng Kim Hock to issue cheque to 'P.T. Megaplast Jayacita'". She was unable to satisfactorily explain the existence of both payment vouchers relating to the same cheque prepared and signed by her recording different descriptions.

17 I now consider the exchange of cheques. The plaintiff issued a cheque for S\$1.6m dated 22 September 2006 payable to Mega Plast. The defendant's company Glenwood issued a cheque of the same date and amount to Chainford. It was in evidence that the Chainford cheque was first cleared in Glenwood's bank account on 25 September 2006 and that Glenwood's cheque was cleared and credited into its bank account on 26 September 2006. The defendant explains that this was a simultaneous exchange of cheques agreed between the parties, which entailed the plaintiff making out a cheque to Glenwood on the one part, and Glenwood making out a cheque for an equivalent value to Chainford on the other part, and that the plaintiff would not bank in the Glenwood cheque until his personal cheque had first been cleared into Glenwood's bank account. The plaintiff's explanation, however, is that this exchange of cheques was a loan and repayment.

18 There are several difficulties with the plaintiff's explanation relating to the exchange of cheques. It was in evidence by the plaintiff that he did not know anything of this payment until June 2009 [\[note: 10\]](#) which was when the plaintiff's solicitors issued a statutory demand to Glenwood for \$1.6m. [\[note: 11\]](#) In reply, Glenwood's solicitors gave the "exchange of cheques" explanation. [\[note: 12\]](#) Under cross-examination, the plaintiff also rhetorically questioned why there was a need to exchange cheques, since he had ample funds which he could transfer to Chainford, his daughters' company, if needed. I find the plaintiff's explanation unconvincing. First, I find it difficult to accept that the banking in of \$1.6m by Chainford within a few days of the Glenwood same dated and same amount cheque went unnoticed until almost three years later. Next, it is curious why the plaintiff would have originally issued a statutory demand to Glenwood and not the defendant who he now alleges is the true debtor. In any event, the undisputed fact that Glenwood issued and exchanged a same day cheque to Chainford suggests that the exchange of cheques may equally have served other purposes.

19 The statements, allegations and suggestions and records tendered in court raise larger questions about the precise role of George Yeo and the plaintiff in the conduct of the businesses of these companies and the precise role of the defendant and the reliability of the relevant financial books and records, but these are not matters I need to dwell on in this judgment.

Conclusion

20 I give judgment for the defendant with costs awarded to the defendant which are to be agreed or taxed.

[\[note: 1\]](#) Yeo Kian Peng's AEIC, para 9.

[\[note: 2\]](#) Yeo Kian Peng's AEIC, para 15.

[\[note: 3\]](#) NE, Day 1, pp 24–25.

[\[note: 4\]](#) NE, Day 1, p 70.

[\[note: 5\]](#) NE, Day 2, pp 44–45.

[\[note: 6\]](#) NE, Day 4, pp 100–102.

[\[note: 7\]](#) NE, Day 4, pp 78–79.

[\[note: 8\]](#) NE, Day 4, pp 77–78.

[\[note: 9\]](#) Defendant’s AEIC, para 55.

[\[note: 10\]](#) Plaintiff’s AEIC, paras 35–36; YHC’s AEIC, paras 33–34.

[\[note: 11\]](#) Defendant’s Bundle of Documents (“DBD”) 6.

[\[note: 12\]](#) DBD 7.

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