National Scientific (S) Pte Ltd v Ho Wai Ming and Others
[2002] SGHC 69

Case Number : Suit 1535/2001, SIC 3110/2001

Decision Date : 11 April 2002

Tribunal/Court : High Court

Coram : Choo Han Teck JC

Counsel Name(s) : Foo Soon Yien and Benjamin Goh (Arthur Loke Bernard Rada & Partners) for the plaintiff; Tan Beng Swee (Netto Tan & S Magin) for the first defendant

Parties : National Scientific (S) Pte Ltd — Ho Wai Ming

Civil Procedure – Anton piller orders – Application to discharge or vary Anton Piller orders – Whether basis exists to set aside or vary orders – Whether material non-disclosure – Whether judge's exercise of discretion unreasonable – Likelihood of first defendant destroying material documentary evidence

Judgment

GROUNDS OF DECISION

1. This was an application by the first defendant to discharge or vary the Anton Pillar orders granted by JC Woo Bih Li on 6 December 2001. The plaintiff company was set up in 1995 and carry on the business as agents for the sale and distribution of scientific equipment. The first defendant was employed as its general manager. Prior to his joining them as their manager he had his own company called Synatech Enterprise. He transferred Synatech's business to the plaintiff when he joined them in 1995, and Synatech Enterprise became dormant. The plaintiff, now a wholly owned company of Pac Asia Pte Ltd, was then jointly owned by Pac Asia Pte Ltd ("Pac Asia") and Metrotown Corp Pte Ltd ("Metrotown"), a company in which the first defendant was a shareholder. Metrotown's shareholding in the plaintiff had since been sold and transferred to Pac Asia. The plaintiff company has a sister company in Malaysia called Farjar Sdn Bhd. Farjar Sdn Bhd is also wholly owned by Pac Asia. The second defendant was also a former employee of the plaintiff. She was an administrative officer who reported directly to the first defendant. The third defendant has a registered business known as Astic Scientific Technology ("Astic"). However, his calling card only describes him as a sales manager of Astic, whereas the first defendant also has an Astic calling card which describes him as the manager. The first defendant explained that he carried this card for convenience because Astic rented a desk from the plaintiff and sometimes he had to help Astic deal with its customers. I find this to be a most implausible explanation. I shall revert to Astic shortly. The first plaintiff had also incorporated two other companies in or about May 2000. They are Synatech Enterprise 2000, and Petroleum Recovery Technology Asia Pacific which purports to carry on the same kind of business as the plaintiff.

2. The first defendant's employ with the plaintiff was terminated on 6 December 2001, the day the Anton Pillar orders were served on him under a writ action against the defendants based on, among other claims, breach of fiduciary duties at common law and under contract, and breach of trust. The Anton Pillar orders granted by JC Woo had been partially executed in that the search order for a search to be conducted at the first and second defendants' homes had been carried out yielding virtually nothing of significance. The second defendant had not made any application to set aside JC Woo's orders. The only outstanding parts of those orders relate to the disclosure of documents set out in Schedule 2 of the orders. The first defendant now seeks to set aside JC Woo's orders and asked for an order for inquiry into damages.

3. The plaintiff came under a new management in September 2001. Suspicion over the high cost of

telephone bills incurred by the first defendant over a 12-month period prompted an unobtrusive investigation into his activities. The major event that led to the dismissal of the first and second plaintiff concerned a Malaysian company called Bumi Sains. In one of the weekly company meetings the first plaintiff reported that he was negotiating a deal with this Malaysian company. No contract or other documents were produced when he was subsequently asked for them. His present stand is that he was asked by Bumi Sains to procure two expensive equipment namely, a scanning electronic microscope and a gas chromatography mass spectrophotometer. The plaintiff did not have these items and had to purchase them from a supplier called JEOL Asia Pte Ltd ("JEOL"). It should be noted that it was somehow disclosed to the first defendant that the ultimate buyer (from Bumi Sains) was the Malaysian Institute Of Nuclear Technology ("MINT"). The first plaintiff's intention was to purchase the equipment from JEOL and mark up the requisite 20% in accordance with the plaintiff's sales policy, and re-sell it to Bumi Sains. However, the plaintiff found some correspondence between JEOL and the first defendant ostensibly on behalf of the plaintiff (using self-created letterhead without the plaintiff's logo) in which the "plaintiff" was entitled to appoint a Malaysian partner to quote directly to MINT. The upshot is that it appears that the plaintiff may be by-passed and a deal is struck between JEOL and either Bumi Sains or MINT directly with the assistance of the first defendant, and in dereliction of his duties to his employer, the plaintiff. Again, the first defendant produced a feeble explanation. This time, he said that he created his own letterhead of the plaintiff (without the company logo) because the company planned to design a new logo and until then it was not desirable to use the old one.

4. Miss Foo, appearing on behalf of the plaintiff, referred me to various other alleged misdemeanours of the first plaintiff including his inability to account for a couple of chiller machines. These need not detain us because the first defendant denied these allegations and the issue has to be settled at trial. However, there is one more matter that aroused a sufficiently strong suspicion for the invocation of the orders obtained by the plaintiff. This concerned the company that was mentioned briefly above called Astic. In addition to carrying Astic calling cards that describe him as their manager, there were also unexplained payment of expenses by the plaintiff for Astic's expenses. Furthermore, although the first defendant asserted that Astic was in the ink and paint business, the documentary record shows that there were sale transactions involving scientific equipment between the plaintiff and Astic suggesting that Astic was in fact in a similar line of business as the plaintiff.

5. The first defendant was asked to produce proof of his assertion that everything he did was openly recorded and in the interests of the company but he was unable to produce them save for a few pieces of dubious record. One of these was a letter to Bumi Sains dated 5 November 2001. I am in full agreement with Mr. Tan, counsel for the first defendant, that an Anton Pillar ought not be liberally issued. However, in this case, all that was argued before me appears to have been raised before JC Woo and so, in these circumstances, it was incumbent upon the first defendant to persuade me that it was unreasonable for the judge to have exercised his discretion in the plaintiff's favour or that there was a material non-disclosure that would have affected his decision. So far as the latter was concerned, the only point made by Mr. Tan was that counsel for the plaintiff failed to disclose that Astic rented a desk from the plaintiff at their premises. In my view, this was hardly a matter that would have substantially affected the court's decision. Reviewing the case afresh and with this additional fact in mind, I do not myself think that it mattered. What really and substantially matters is that the first defendant had no reason to be holding himself out to be the manager of Astic while working for the plaintiff. In my view, the plaintiff has made out a sufficiently reasonable case to justify the Anton Pillar order. Although there is no direct evidence that the first defendant would have destroyed material documentary evidence, the circumstances indicate a high likelihood that he would do so. I cannot imagine that he would willingly surrender the documents upon the plaintiff’s request to do so.

6. On the above facts and arguments, there is no basis to vary the exercise of JC Woo's discretion in granting the orders he made. However, as it remains a possibility that the plaintiff's case may still fail at trial, I made no order on the first defendant's application and order that costs of the application be costs in the cause.

Sgd:

Choo Han Teck
Judicial Commissioner

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