IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 24

Suit No 687 of 2020
(RA 341 and 343 of 2021)

Between

1. Yihua Lifestyle Technology Co, Ltd
2. Ideal Homes International Limited

… *Plaintiffs*

And

1. Phua Yong Tat
2. Phua Yong Pin
3. Chew Kwang Yong
4. Golden Hill Capital Pte Ltd

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure — Pleadings — Amendment]

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Yihua Lifestyle Technology Co, Ltd and another
v
Phua Yong Tat and others

[2022] SGHC 24

General Division of the High Court — Suit No 687 of 2020 (Registrar's Appeals Nos 341 and 343 of 2021)
Choo Han Teck J
21 January 2022

31 January 2022

Choo Han Teck J:

1 The first plaintiff is a company incorporated in China and the second plaintiff is its wholly-owned subsidiary. The first, second, and third defendants together with others, not concerned in this suit, were shareholders of a company called HTL International Holdings Ltd ("HTL"). They sold HTL to the first plaintiff, and remained, by a management contract (it is not clear whether the contract was with the first plaintiff or HTL) to continue to manage HTL.

2 The first plaintiff claims that it had left the management entirely to the three defendants without appointing any representative of its own as it was entitled to do so, because the three defendants, presenting a 'blueprint' plan, told the first plaintiff in June 2019 that they would achieve sales of up to US$710m by 2024. HTL failed to achieve that target and was placed under judicial management. That saga carries an altogether separate story and is not

relevant to this action except for some 'overlapping facts' as Mr Chan, counsel for the plaintiffs said. Briefly, HTL was sold under the judicial management scheme. The first plaintiff opposed the sale all the way to the Court of Appeal but was unable to prevent the sale. The Court of Appeal agreed with the High Court that approved the sale.

3 Hence, the first plaintiff, with the second plaintiff, commenced this present action against the first three defendants as well as the fourth defendant. In this action, the plaintiffs claim that HTL was valued at US$200m to US$230m but was sold to the fourth defendant for US$100m. In the lengthy Statement of Claim, the plaintiffs claim that the first, second, and third defendants misrepresented to the first plaintiff that they will manage HTL to reach a sales target of US$710m by 2024. They also claim that the defendants acted 'mischievously' and acquired HTL at an undervalue.

4 The causes of action pleaded in this action against the defendants are based on firstly, misrepresentation, secondly, breach of duty, and thirdly, fraud. In the main body of the claim, it is not clear whether the allegations based on misrepresentation were negligent misrepresentations or fraudulent ones. In the claim for breach of duties, it is not clear whether they mean tortious or contractual duties, or breach of directors' duties. From the relief sought, it appears that the basis of all three causes of action is fraud.

5 That brings us to the appeal before me. The plaintiffs applied to amend the statement of claim so as to introduce a new set of particulars in their claims, namely, the defendant's mismanagement of the Nansha and Shandong factories in China. The two factories are owned by the first plaintiff but since 2016, the first plaintiff has entrusted the first, second, and third defendants to gradually take over the operation and management of the factories. The new allegation

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asserts that the first three defendants acted in concert to mislead the plaintiffs into believing that the factories in Nansha and Shandong would be operational till 2024. The Assistant Registrar allowed the application and the defendants appealed.

6 Mr Jordan Tan led the arguments for the defendants. He does not deny that the issues concerning the Nansha and Shandong factories are matters in dispute, but he submits that those issues are not relevant to the action in this suit, the trial of which is fixed to commence in May 2022. If the amendments should be allowed, and the trial has to be delayed, so be it. That itself is no reason to allow or disallow an application for an amendment. Having heard the arguments, I am of the opinion that the amendments should not be allowed and I therefore allowed the defendants' appeal. My reasons are as follows.

7 The present claim is based entirely, it appears, on the alleged fraudulent conduct of the first, second, and third defendants. All the events took place before the order for the judicial management, made on 20 July 2020. Had the allegations been proven or had the plaintiffs satisfied the court that HTL was being sold under fraudulent circumstances, the sale was unlikely to have been approved by the court.

8 I am aware that since the sale was in fact approved, this entire action may be doomed from the outset, but I am not considering the evidence in full here. For the present purposes, I only need to consider the circumstances as a whole and determine whether the decision to allow the amendment was unduly generous and ought not to have been allowed. It is also relevant to take into account the undisputed fact that the plaintiffs are suing the first three defendants in China in respect of the matters raised here concerning the Nansha and

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Shandong factories. This was accepted by Mr Chan who could only argue that the facts overlap.

9 The facts may overlap, but if the same allegations are made here and in China, the plaintiffs have to explain why that claim was not added as part of this action in the first place. There is no explanation. Furthermore, if the basis for the misrepresentation claim is that the defendant deliberately mismanaged the factories so that HTL would not be able to satisfy the promised target sale figure of US$710m by 2024, the claim would be moot since the judicial management order in 2020 extinguished any hope of that target being reached. How could the defendants be obliged to fulfil such an academic point?

10 In claiming that the defendants deliberately mismanaged HTL, and therefore, rendered it to be far less profitable, the plaintiffs fail to see the irony of their conflicting claim in this suit, and in the judicial management case, that in spite of the mismanagement, HTL was sold at an undervalue. A further argument of Mr Chan is that the defendants or perhaps the judicial managers ought to have sold HTL to the party that had made a better offer. If the plaintiffs knew of the mismanagement by the time of the judicial management, it would have come ill from their mouths to suggest selling the underperforming HTL to someone else.

11 Ultimately, the matters proposed in the amendment are claims by only the first defendant (and not the second) against the first, second, and third defendants (and not the fourth) on a claim that the first plaintiff had already commenced in China. If the defendants' conduct involving the two factories concealed a fraud unknown to the judicial managers, then that ought to have been the foremost claim in this action, as it was in the action in China. The

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events of fraud now alleged took place between March and July 2020. The plaintiffs applied to set aside the sale of HTL on 14 September 2020.

12 The plaintiffs had already pleaded that all their woes relating to the sale of HTL stemmed from the false representation that the three defendants would achieve the US$710m target. More specifically, the plaintiffs' claim depends on their proving that had they known that the representations were false, they would have appointed their representative to the HTL board. That has already been pleaded. The proposed amendments is unrelated to the sale of HTL. Instead, it concerns the management of two factories in China which were not even owned by HTL but by the first plaintiff. Thus, the proposed amendments add little to the cause, and will likely lead to unnecessary prolongation of the action and prejudice the defendants.

13 Moreover, even if the proposed amendments are allowed, and the plaintiffs succeed, how would the court award damages without setting aside the sale of HTL? That order cannot be made in this action because it was not pleaded. It appears that not only is it too little too late for the plaintiffs, it is also a duplication of action across two countries.

14 For the above reasons, I am of the view that the application to amend should be dismissed. I therefore allowed the appeal with costs.

- Sgd -
Choo Han Teck
Judge of the High Court

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Nandhu (RHTLaw Asia LLP) and Chan Kia Pheng (LVM Law Chambers) for the plaintiffs;
Jordan Tan and Victor Leong (Audent Chambers LLC) (instructed) and Ho Zi Wei (Rajah & Tann Singapore LLP) for the 1st, 2nd and 4th defendants;
Chua Sui Tong (Rev Law LLC) for the 3rd defendant.

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