

Chainford Investment Ltd v Ng Kim Hock and another
[2011] SGHC 164

Case Number : Suit No 934 of 2009
Decision Date : 06 July 2011
Tribunal/Court : High Court
Coram : Lee Seiu Kin J
Counsel Name(s) : Gregory Vijayendran, Prakash Pillai and Wong Tjen Wee (Rajah & Tann LLP) for the plaintiff; S H Almenoar (R Ramason & Almenoar) for the defendant.
Parties : Chainford Investment Ltd — Ng Kim Hock and another

Companies – Director – Loan

6 July 2011

Judgment reserved.

Lee Seiu Kin J:

Introduction

1 The plaintiff, Chainford Investment Ltd, ("Chainford") is a company incorporated in the British Virgin Islands. Two of the three shares of the company are held by Yeo Yee Ferng ("Yee Ferng") and the third share is held by her mother Leong Mun Lui ("Leong"). The directors of Chainford are Yee Ferng and her younger sister Yeo Yee Lian ("Yee Lian"). Chainford was incorporated in 1990 on the initiative of their father Yo Kian Peng @ Yeo Kian Peng ("Yo"). It was incorporated for the benefit of Yee Ferng, Yee Lian and Leong, so that they could have a source of income for themselves. Yo had provided a total of some \$15m to the company and, after providing guidance in the initial years, had left it entirely to Yee Ferng and Yee Lian to manage. Yo had done the same for his children from his marriage to Ng Mui Mui ("Mui Mui"), placing sums from \$10m to \$30m in various companies and putting them under the control of his various children.

2 Yo is a larger than life character. From a young age, he assisted his father in the rubber trade and honed his entrepreneurial skills. While in his teens he helped his father trade in the stock market. By his late teens he was already undertaking his own businesses and doing well on the stock market. By all accounts, he had done well financially and is now comfortably retired. His personal life is equally colourful. At an early age, he got involved with two women, Mui Mui and Leong. He married Mui Mui but at the same time supported Leong and all the children borne to him by both women. But Yo supported more than two families. After marriage, Mui Mui's mother and her siblings lived with Yo and they were also supported by him. The first defendant, Ng Kim Hock ("Ng") is the younger brother of Mui Mui. He had lived with Yo from a young age. But not only was Ng fed, clothed and housed by Yo, his education up to university was also financed by Yo. This is acknowledged by Ng, who said that he appreciated all that Yo had done for him. He saw Yo as a father figure and a figure of authority.

3 With this background, I turn to the claim in this action. According to Chainford, it had advanced monies to Ng amounting to \$191,419.09 through two cheques dated 22 October 2004 and 29 October 2004 for the sums of \$91,419.09 and \$100,000 respectively. Chainford had also advanced to the second defendant ("Glenwood") the sum of \$104,023.34 by way of a cheque dated 1 February 2005. Yo said that sometime in October 2004, Ng asked him for a loan of the sum of \$91,419.09. At that time Yo's funds were tied up in an upcoming project with his son and he was not

able to lend Ng the money. However, to help Ng, Yo asked Yee Ferng if Chainford could provide the interest free loan which Ng agreed would be repayable on demand. Yee Ferng said that Chainford had the funds and issued a cheque for this sum. Yo said that Ng gave him this figure on a piece of paper which he handed to Yee Ferng for her to make out the cheque. Yo said that about a week later, Ng asked him for a further loan of \$100,000. Again he checked with Yee Ferng who said that Chainford had the funds and she made out the cheque accordingly. There is no dispute that Ng received the money. Yo said that sometime in January 2005, Ng again asked him for a loan of the sum of \$104,023.34. This time it was for his company, Glenwood. Yo was still short of funds and he asked Yee Ferng again. In the event, the cheque for this sum was issued by Chainford on the same terms and Glenwood eventually received this sum of money.

4 Yo said that he did not ask Ng what he needed the money for. Yo said that he had previously lent Ng various sums of money and they all had been repaid without any problem. These three requests were therefore nothing unusual. When asked why two of the three cheques were in such exact sums, which is quite unusual for a loan of this nature, Yo said that Ng had specifically asked for those sums and he did not question Ng about it. In 2007, Yo had a fallout with Ng. One of Yo's daughters from his marriage to Mui Mui was working for Ng and Ng had gotten her to sign certain documents that had resulted in her being investigated by the Commercial Affairs Department. Yo was upset that Ng had not only failed to protect his own niece, but had put her in harm's way. Yo advised his daughter to stay away from Ng and thereafter, he kept his distance from the younger man.

5 Ng's defence to the claim against him for \$191,419.09 is that it was not a loan, but a payment made to him by Yo arising from a promise the latter made in 1990. At that time Ng was a director in Swilynn International (Holdings) Ltd ("Swilynn"), a Hong Kong listed company. He had held some 11 million shares in Swilynn, out of a total of some 300 million shares. Yo held about 96 million shares in Swilynn. In 1990, after an initial surge in its price, Swilynn shares plunged rapidly and Yo was unloading his large holdings. In order to avoid a market run which would happen if the directors of Swilynn were seen to be disposing of their shares, Yo told Ng not to sell his shares and promised that he would make good any losses Ng made arising from this. In the event, Ng suffered a big loss when his shares, which had been pledged to two banks for financing, were force-sold by those banks. Ng said that Yo helped him to stave off bankruptcy by paying the HK\$600,000 demanded by the banks to settle the losses. But when viewed from the point of view of opportunity cost, Ng said that, as a conservative estimate, he had lost at least HK\$35m as he had not sold the shares when the prices were trading at HK\$3 to HK\$4. However, Ng said he did not ask Yo to make good on his promise, and only resorted to seeking Yo's assistance when he was really desperate, such as when he needed the HK\$600,000 to stave off bankruptcy. Ng said that immediately prior to October 2004, his financial situation had been tight and he had tried to raise the subject with Yo. Then one day, Yo passed him the first cheque for \$91,419.09 and a week later, the second cheque for \$100,000. Yo said that these were for the Swilynn episode. Ng did not question Yo about it and simply took the cheques. Asked why the exact sum of \$91,419.09 in the first cheque, Ng said he did not know but it could have been after conversion from a sum in Hong Kong dollars. Ng said that Yo was such an authority and father figure to him that he did not dare to question his judgment or decisions. Ng's sister, Ng Lee Lee ("Lee Lee"), a remisier, gave evidence on behalf of Ng. Lee Lee said that in 1989, she was Yo's nominee to hold the 96 million Swilynn shares. She said that at one point, when she was carrying out Yo's instructions to sell Swilynn shares, she had informed Ng about it and advised him to sell his shares as well. Lee Lee said that Ng had told her that Yo had requested him to hold on to his shares and that Yo would compensate him for any losses that arose. Lee Lee said that as the selling by Yo continued, she advised Ng at least three more times to sell his shares. However Ng repeated to her Yo's promise and on one occasion became annoyed and told her that Yo was their brother-in-law and they should not doubt him and think only of their own interest.

6 In relation to the sum of \$104,023.34 to Glenwood, Ng said that Yo had, one day, given him this cheque and told him that it was for the account of KLS Sdn Bhd ("KLS") a company controlled by one Kok Liew Sen ("Kok"). Ng said that Glenwood had been trading with KLS and there was a running account between them. Ng said that Yo had connections with Kok and disclosed documents showing a link between Kok and two of Yo's sons, Yeo Wee Siong and Yeo Wee Koon. Ng accepted this cheque and credited this payment in his general ledger in favour of KLS. Ng produced an extract from his 2004 ledger which showed that this sum went towards reducing the indebtedness of KLS to that extent.

7 Ng said that Yo is now making these claims because his sister, Mui Mui, had commenced divorce proceedings against Yo in the Family Court in Divorce No 3505 of 2009. Ng said Yo had sought his help to persuade his sister to transfer her property to Yo. When Ng was not able to persuade his sister on this, Yo's attitude towards him changed. Yo commenced a slew of lawsuits against Ng and his companies, as well as against his sisters, Mui Mui and Lee Lee and his nephew Chia Chua Cheong. Ng listed three suits in the High Court taken out by Yo, one against him and two against his estranged wife, Mui Mui. Ng also listed three suits in the Magistrate's Court taken out by Yo or his company against him, Lee Lee and Chia Chua Cheong.

8 There is no dispute that the sums of money claimed in this suit had passed from Chainford to Ng and Glenwood. But there is precious little documentation in support of the claim or the defence. The dealings were oral, as may be expected of erstwhile close family members. The circumstances are such that there are believable and incredible aspects from both sides. It is odd that Ng would ask Yo for loans which are in the very specific sums in the first and third cheques, instead of round numbers. Yo said this was what Ng had requested, but did not offer an explanation as to why anyone would request a general loan in such an exact sum. However it is also odd that Yo would compensate Ng for the Swilynn losses in such a specific sum in the first cheque, although Ng speculated that this could have arisen out of a Hong Kong currency transaction that Yo had converted to Singapore currency. In one key respect, however, Ng had documentation to show that the third cheque for \$104,023.34 had been credited to the account of KLS in Glenwood. This was a contemporary document, created years before this action was contemplated. This key aspect supports Ng's version of events. Although Chainford produced a company search document that indicated that KLS was dormant, I am of the view that this was not sufficient to prove that fact: it is technically hearsay and there is ample evidence in the ledger of Glenwood that there was active trading with KLS in 2004.

9 I now turn to the matter of demeanour of the parties. As far as Yee Ferng was concerned, her role in the matter was minimal; she only complied with her father's request to issue the three cheques. She had no knowledge of what transpired between him and Ng. Nothing significant turned on her evidence and at most it corroborated Yo's version insofar as he had told her that those were loans requested by Ng. Yo was larger than life not just in respect of his personal life; it was the same in the witness box. He came across as a dominating personality with a quick mind and exuded an intelligence that made it easy to understand why he was successful in business and with women. In contrast, Ng was a meek person and although he was articulate, it was clear that he was in awe of his brother-in-law. Ng also came across as a witness who was eager to tell his story. On the other hand I found Yo to be rather evasive and at times a little glib. For instance, he said at the outset that Swilynn was a speculative share and yet, when asked whether sale by directors would affect the share price, he said that the market looked at the fundamentals of the company in determining share price and not whether a director was selling his shares. I find that Glenwood's defence in relation to the \$104,023.34 is made out in view of the contemporary accounting records that support its case. Furthermore, this accords with Ng's position that Yo was upset with him, which is further corroborated by the fact of the other lawsuits that Yo had initiated. In view of that, and in view of my findings on the relative demeanour of Yo and Ng, I believe Ng's evidence that the two payments

totalling \$191,419.09 were procured by Yo for Ng in fulfilment of the older man's promise in relation to the losses incurred by Ng in relation to the Swilynn shares. They were not loans.

10 Chainford's claims against Ng and Glenwood are therefore dismissed. Unless there is any reason to make a different order (for which I will hear counsel), there will be an order for costs on the standard basis to be paid by the plaintiff to the defendants. As the defendants are jointly represented by counsel there shall only be one set of costs.

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