

Sincere Watch Limited v Bakery Mart Pte Ltd
[2003] SGHC 50

Case Number : Suit 1057/2002, RA 291 & 300/2002
Decision Date : 06 March 2003
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Philip Ling (Wong Tan & Molly Lim) for the Plaintiff; Peter Gabriel and Ismail Atan (Gabriel Peter & Partners) for the Defendant
Parties : Sincere Watch Limited — Bakery Mart Pte Ltd

Civil Procedure – Civil Procedure-Conditional leave to defend-Whether ought to have been given.

1 Both parties in this action appealed against an assistant registrar's decision giving the defendant conditional leave to defend the plaintiff's claim.

2 The plaintiff and the defendant are Singapore companies. The companies agreed to engage in business together by acquiring all the shares in a company known as Culina Pte Ltd in equal proportions.

3 The defendant did not have sufficient funds to purchase its part of the shares, and obtained funds from the plaintiff for that purpose. The parties entered into an option deed dated 26 November 1999 whereby the plaintiff was given an option to subscribe for 300,000 shares of the defendant at the price of \$500,000. The option was valid for a period of two years. The deed provided that upon the subscription of the shares the plaintiff shall make a loan of \$100,000 to the defendant. After acquiring the option the plaintiff did not subscribe for the shares, and allowed it to lapse.

4 The two companies also entered into discussions on a corporate restructuring exercise which involved the setting up of a holding company. These were serious discussions and solicitors were involved in putting up the agreement. There was on draft in which the plaintiff was to have a 70% interest in the holding company, and the defendant the other 30%, but no restructuring agreement was executed, and the holding company was not set up.

5 The relationship between the parties broke down over a proposal to sell the holding company to a public listed company. The defendant did not agree with the proposed sale because its interests in the holding company was changed to 15% from the 30% it wanted.

6 The plaintiff commenced this action against the defendant and applied for summary judgment for the sum of \$1,930,000 made up as follows:

- (i) \$500,000 pre-payment made under the option deed;
- (ii) \$100,000 loan made under the option deed;
- (iii) \$450,000 loan made on 30 November 1999;
- (iv) \$80,000 advance made on 8 March 2000; and
- (v) \$800,000 advance made on 12 December 2000.

7 The defendant acknowledged payments (i), (ii) and (iii). It asserted that payment (iv) was

made to Culina and payment (v) was the plaintiff's investment in premises known as 24 Senoko Way purchased for the use of the operations of the restructured companies.

8 It resisted the plaintiff's claim on the ground that all the payments had been taken into account as investments in the restructuring exercise which would lead to the 70:30 division of shares in the holding company, and were not repayable to the plaintiffs.[\[1\]](#)

9 There were records of the payments made. The pre-payment of \$500,000 and loan of \$100,000 were expressly stated to be repayable on demand if the purchase under the option deed did not take place, and this was confirmed by the defendant when the money was received.[\[2\]](#) The payment of \$80,000 was paid to and acknowledged by the defendant[\[3\]](#) and the \$800,000 payment as advance requested by the defendant for the purchase of the premises which was being made in its own name.[\[4\]](#)

10 The nub of the defence is that all the payments do not have to be repaid because they were taken into account in the 70:30 division of the shares in the holding company. This position is taken although the defendant accepts that the terms of the restructuring agreement have not been finalised and no restructuring agreement has been executed.[\[5\]](#) The plaintiff's position was that draft agreements were put up, there was no concluded agreement.

11 The parties' conduct indicated that they contemplated a formal written restructuring agreement would be entered into. It is common ground that the terms of the agreement were not been finalised and no holding company was incorporated.

12 The defendant nevertheless maintains that there is a binding restructuring agreement, and the payments are absorbed in the restructuring exercise.

13 The assistant registrar who heard the plaintiff's application for summary judgment gave the defendant leave to defend on the condition that it furnished security by a banker's guarantee for \$1,930,000.

14 Neither party convinced me that the order should be set aside or varied. This is not a case where judgment should be entered for the plaintiff without a trial. On the other hand the defendant which is relying on restructuring discussions which stopped short of agreed terms and an executed agreement should not have unconditional leave to defend.

15 The assistant registrar was right to give the defendant conditional leave to defend. I therefore dismissed both appeals. While the plaintiff accepts my decision, the defendant has filed a further appeal to the Court of Appeal.

[\[1\]](#) Defendants' Skeletal Written Submissions, paras 4, 5, 7, 9 and 10

[\[2\]](#) Affidavit of Soh Gim Teik of 13 September 2002, exh "SGT-2"

[\[3\]](#) Same affidavit, exh "SGT-5"

[\[4\]](#) Same affidavit, exh "SGT-6"

[\[5\]](#) Affidavit of Ng Yew Hong of 4 October 2002 para 28(b) and (j)

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