

Neoh Raymond Dennis v Liew Leong Wan and another
[2011] SGHC 179

Case Number : Originating Summons No 1238 of 2010/V
Decision Date : 29 July 2011
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Lai Yew Fei and Khelvin Xu Cunhan (Rajah & Tann LLP) for the plaintiff; Pereira Kenneth Jerald and Ganga d/o Avadiar (Advocatus Law LLP) for the defendants.
Parties : Neoh Raymond Dennis — Liew Leong Wan and another

Companies – shares – transfer

29 July 2011

Judgment reserved.

Kan Ting Chiu J:

1 This is a dispute over the registration of some shares in the second defendant, Alternative Content Distribution Network Pte Ltd ("ACDN"). The plaintiff, Raymond Dennis Neoh ("RDN") was instrumental in setting up and incorporating ACDN. [\[note: 1\]](#) The first defendant Liew Leong Wan ("LLW"), who is also known as Daniel Liew, was the Chief Technology Officer of ACDN from 1 July 2009, and a shareholder and director of ACDN from 24 July 2009.

2 In this action filed pursuant to s 194 of the Companies Act (Cap 50, 2006 Rev Ed), RDN seeks principally:

- (a) a declaration that LLW holds 97,650,000 shares in ACDN registered in his name ("the Shares") on trust for RDN,
- (b) an order that LLW transfer the Shares to RDN, and
- (c) an order that ACDN register the transfer of the Shares from LLW to RDN.

3 LLW became the registered owner of the Shares when they were transferred to him by Benjamin Ng Seng Ghee ("BN") a former employee of ACDN, on the instructions of RDN. BN had executed a trust document on 24 June 2008 in which he declared that he held 90,000,000 ACDN shares on trust for RDN, [\[note: 2\]](#) and BN also confirmed that he held another 7,650,000 shares on trust for RDN, and LLW accepts that BN held the Shares on trust for RDN. [\[note: 3\]](#) As the Shares were subject to a trust, they will be referred to as trust shares, in contrast against shares which are not subject to any trust, which will be referred to as clean shares.

4 The records of the transfer show that the trust shares that BN transferred to LLW were not converted to clean shares when they were transferred to LLW.

- (a) On 15 July 2009, BN sent an email to Lum Kit Cheng @ Vanessa Lum ("VL") who operates a company which offers corporate services to ACDN, with instructions on the transfer. BN instructed VL to prepare "the necessary papers for the transfer of all the shares I am holding on

behalf of (RDN) to (LLW)", as well as "the trust document between (LLW) and (RDN)." [\[note: 4\]](#)
This email was copied to LLW at his email address at ACDN ("the office email address".)

(b) On 16 July 2009, VL replied to BN with a copy to LLW at his office email address. VL forwarded several documents with this email, two of which are of particular relevance. The first document is a transfer form with BN as the transferor and LLW as the transferee whereby BN was to transfer to LLW shares of ACDN "subject to the several conditions on which the Transferor held the same immediately before the execution hereof". [\[note: 5\]](#) The second document is a declaration of trust intended to be executed by LLW to declare that he holds the ACDN shares on trust for RDN. [\[note: 6\]](#) (The trust document was not executed by LLW.)

(c) On 17 July 2009 BN replied to VL's email, with copy to LLW at his office email, a *Requisition Form for Transfer to/from Trustee* of the Inland Revenue Authority of Singapore ("IRAS") wherein BN certified that he had transferred 97,650,000 ACDN shares to LLW, describing the transfer as "Trustee to Trustee" with no change in beneficial interest, [\[note: 7\]](#) as well as the transfer form forwarded by VL on 15 July 2009 [\[note: 8\]](#) signed by BN and LLW.

(d) On 24 July 2009, VL sent an email to BN, with copy to LLW at his office email address, to inform BN that she had revised the share transfer form "to show that the shares are transferred from you [BN] to Mr Liew as trustee to trustee". [\[note: 9\]](#) The revision was the addition of a statement:

We hereby certify that the transaction on which the transfer is made, in respect of which stamp duty of up to \$10/- is payable, falls within the following description, namely, where the beneficial interest in the property does not pass, the transferee becoming the nominee of the transferor".

The revised transfer form was executed by BN and LLW. [\[note: 10\]](#)

(e) The revised transfer form was stamped. IRAS issued a Certificate of Stamp Duty dated 27 July 2009 which described the document that was stamped as a "Transfer To/From Trustee (Nominal)". [\[note: 11\]](#) The certificate was issued pursuant to an application form which stated that the transfer was from "Trustee to Trustee" and that the transfer did not result in any change in beneficial interest. [\[note: 12\]](#)

5 The documents referred to in (a) to (e) above are conclusive evidence that the shares transferred from BN to LLW were trust shares, and that the transfer did not result in any change of beneficial interest. On that basis, the beneficial interest in the shares remained with RDN even after the shares were registered in the name of LLW, and the latter held them as his trustee.

6 LLW's position on the transfer of the shares is interesting. In his affidavit filed in these proceedings on 18 January 2011 [\[note: 13\]](#), he deposed:

18. I would clarify that I never received the email sent by [BN] on 15 July 2009 to [VL] ...
Similarly, I did not receive the e-mail dated 16 July 2009.

19. This is because, although I had started working for the Company from 1 July 2009, *my e-mail system within the Company was not set up until or around 22 July 2009*. Until that date, I was using my personal e-mail (newocean.sea@gmail.com) for all my e-mails, including

personal and work e-mails, as I did not have access to the Company's e-mail system.

[emphasis added]

7 Paragraph 19 was shown to be incorrect. RDN in his second affidavit filed on 7 February 2011 exhibited copies of email that LLW had sent from his office email address from as early as 10 July 2009, and particularly on 15 July 2009. [\[note: 14\]](#)

8 In the face of the incontrovertible evidence LLW changed his position when he gave evidence in court. He admitted that his office email was in operation around 10 July, [\[note: 15\]](#) but he claimed he only received email at the office address intermittently, especially attachments. [\[note: 16\]](#)

9 There is a difference between an email system that is not set up and one that works intermittently, and a person with LLW's training (see para 15 *infra*) must know that. LLW's assertion in his affidavit that the system was not set up until or around 22 July 2009 was unequivocal and unqualified, and his revised account was incompatible and irreconcilable with that. As LLW had raised the email issues to explain his state of knowledge on the transfer of the Shares, serious questions arise over his credibility on the professed state of his knowledge and intention.

10 In any event, even if LLW did not read these email, the email and other documents produced, the existence and authenticity of which were not disputed by LLW, are of great significance. They are clear evidence of the intention that trust shares be transferred to LLW, and that trust shares were transferred pursuant to that intention. Furthermore, inasmuch as RDN is the beneficiary of the Shares registered in the name of BN, and BN had transferred the trust shares to LLW, there can be no question that LLW holds them on trust for RDN, unless the trust is illegal and unenforceable.

11 LLW's case is not that the Shares BN transferred to him were clean shares, but that he had not agreed to hold the Shares on trust for RDN. He deposed in his affidavit:

13. There was never an understanding or agreement between [RDN] and I that [BN's] shares in the Company were to be transferred to me to be held by me on behalf of the Plaintiff. I would never have agreed to such a condition.

but he did not produce any document which shows that he was to receive clean shares from BN.

12 His case is in essence that he and RDN had an agreement whereby he was to receive clean ACDN shares, but RDN arranged for him to receive trust shares instead. On that basis, LLW can take action to compel RDN to deliver 97,650,000 clean shares to him, but he cannot hold on to the Shares that were transferred to him and disregard the trust.

13 RDN is entitled to ask for the transfer of the Shares to him. He can do that under the rule in *Saunders v Vautier* (1841) 4 Beav.115, as explained in *Snell's Equity* 32nd edn (Sweet & Maxwell) p 843 para 29-026 to be that:

Although the beneficiaries cannot, in general, control the trustees while the trust remains in being, or commit them to a particular dealing with the trust property, they can, if *sui juris* and together entitled to the whole beneficial interest, put an end to the trust and direct the trustees to hand over the trust property as they direct; and this is so even if the trust deed contains express provisions for the determination of the trust.

RDN is entitled to the orders he seeks against LLW, as well as the order against ACDN, as ACDN (which was represented in these proceedings by the same solicitors as LLW) did not participate in the hearing and had therefore not put up any reasons why it should not register the transfer of the Shares to RDN if the proper transfer form is presented to it.

14 Counsel for LLW had not addressed the rights and obligations of RDN and LLW along those lines discussed above. He did not accept that the Shares are trust shares, and raised four issues for determination: [\[note: 17\]](#)

- Issue 1: Has RDN established that there had been an agreement between RDN and LLW that LLW would hold the Shares in ACDN on trust for RDN prior or to during the transfer of the Shares to LLW on or about 24 July 2009?
- Issue 2: Was RDN's conduct after 24 July 2009 (when the Shares were transferred from BN to LLW) consistent with LLW being his trustee for the Shares?
- Issue 3: Even if there is an oral trust, does the oral trust for the transfer of the beneficial interest offend Section 7 of the Civil Law Act, such that it is unenforceable?
- Issue 4: Even if LLW was holding the Shares on trust for RDN, was the trust rendered invalid because RDN intended to mislead SPRING Singapore and DBS Bank Ltd into believing that ACDN was at least 30% locally owned in order to obtain a loan from DBS Bank Ltd?

and I will address them in turn.

Issue 1

15 This issue can be dealt with quite simply. The contemporaneous records show that the Shares transferred to LLW were trust shares held by BN on trust for RDN. These shares were expressly transferred from BN to LLW on a trustee-to-trustee basis with no change of beneficial ownership. LLW is well-educated person and holds a Bachelor of Science and Physics degree, a Master of Science and Computer degree and a MBA degree in investment and finance. He would have understood the documents he executed when the Shares were transferred to him from BN. He accepted the Shares and he did not raise any queries or protests with BN, VL or RDN until after the working relationship with RDN had broken down and RDN instituted these proceedings to recover the Shares. The evidence showed that he knew when he received the Shares that he was to hold them on trust for RDN.

Issue 2

16 The conduct which LLW relies on is:

- (a) an agreement [\[note: 18\]](#) dated 19 January 2010 between LLW and Maggie Lau Fung Sim ("ML"), the wife of RDN whereby LLW agreed to assign all his shares in ACDN and another company, TQ Global Pte Ltd to a third company Trackstar Enterprises Ltd, referred to as Trackstar Ltd in the agreement ("Trackstar"). ML in turn agreed to transfer 6.5% of the shares of Trackstar to LLW. In his affidavit, LLW asked "If there had indeed been an arrangement between [RDN] and I that I was to hold the shares in [ACDN] on trust for [RDN], there would have been no need for [ML] and I to enter into the 2010 Agreement." [\[note: 19\]](#) I understand the argument to be that if RDN was already the beneficial owner of the Shares, there was no necessity for LLW to

transfer the Shares. The answer is that if the intention was to transfer the full interest in the ACDN shares to Trackstar, LLW's legal title needed to be included in the transfer exercise.

(b) an email RDN sent to LLW on 22 November 2010 to inform LLW that "the 90% shares in ACDN which are registered in your name are held on behalf of TQ-Global (HK), according to the agreement we made in 2009". [\[note: 20\]](#)

(c) email from RDN where he described LLW as the largest shareholder of ACDN:

(i) a series of email from RDN to LLW in which RDN described LLW as the largest shareholder of ACDN [\[note: 21\]](#)

(ii) an email from RDN to Thanakorn, Operation Manager of ACDN, dated 28 June 2010 where RDN stated "Daniel is the largest holder (90%) of ACDN" and "I personally has no shares in ... ACDN". [\[note: 22\]](#)

(iii) an email from RDN to Michael Heng dated 28 June 2010 in respect of unpaid invoices for services rendered to ACDN and TQ Global Pte Ltd where RDN informed Michael Heng "The companies that you handling is all belong to Daniel." [\[note: 23\]](#)

(iv) email from RDN to Clara Pei San Tan of DBS Bank dated 28 June 2010 regarding the redemption of ACDN loans with DBS where he stated "... Daniel own 90% of the company ..." [\[note: 24\]](#)

(d) an email from RDN to the Ministry of Manpower dated 6 September 2010 regarding the unpaid salaries and Central Provident Fund payments of ACDN's employees, RDN stated that "Mr Daniel Liew is 90% share holder" and that he (RDN) did not own any shares in the company. [\[note: 25\]](#)

The email referred to in (b) identified the beneficiary of the shares as TQ-Global (HK) rather than RDN, and the email referred to in (c) that stated that LLW was the largest shareholder of ACDN were inconsistent with RDN's position in the present proceedings that LLW holds 97,650,000 shares in ACDN on trust for him.

17 RDN referred to the email in his affidavit. His explanation for the email of 22 November 2010 to LLW was:

I had initially wanted Daniel Liew to hold ACDN shares on trust for TQ-HK. However, I subsequently changed my mind and had Daniel hold ACDN shares on trust for me instead. When I wrote the e-mail on 22 November 2010, I was confused as to whether Daniel Liew was holding onto ACDN shares on trust for TQ-HK or me". [\[note: 26\]](#)

and with regard to the other email, RDN stated that:

Nowhere in the e-mails did I say that I had no beneficial interest in ACDN shares. The e-mails did not in any way derogate from the fact that Daniel Liew held the beneficial interest in ACDN shares on trust for me. [\[note: 27\]](#)

18 The email showed RDN in an unfavourable light. He was unsure over the beneficiary of the

Shares, and he was being economical with the truth when he presented LLW as having a substantial interest in ACDN and did not disclose his own beneficial interest in the Shares and in ACDN when it suited his purpose. Nevertheless, the email did not diminish the force of the evidence in the contemporaneous records on the nature of the Shares which BN transferred to LLW.

Issue 3

19 The Written Submissions of LLW referred to s 7(2) of the Civil Law Act (Cap 43 1999 Rev Ed) which states that:

A disposition of an equitable interest or trust subsisting at the time of the disposition must be in writing signed by the person disposing of the same or by his agent lawfully authorised in writing or by will.

and stated that "It is crystal clear that the Plaintiff did not have the disposition in writing and neither was it signed by him or his agent." [\[note: 28\]](#)

20 Section 7(2) requires that a person who makes a disposition of an equitable interest or trust must do that in writing signed by him or his agent. On the facts, it was BN who vested the equitable/beneficial interest in the Shares in RDN when he declared that he held the Shares on trust for RDN. In respect of 90,000,000 of the 97,650,000 shares in question, BN had executed a trust document on 24 June 2008 in favour of RDN. [\[note: 29\]](#) As for the balance of 7,650,000 shares, RDN and BN had exchanged email on the trust document for these Shares. On 8 December 2010, RDN asked BN if he had the trust document for the 7,650,000 shares and BN replied that he did not have a copy of it, and that the document was kept in ACDN or with the company secretary. [\[note: 30\]](#) When BN gave evidence in court, he stated that he might have signed a trust document for the Shares [\[note: 31\]](#) but he was not sure about that. On the basis of the trust document and the evidence, LLW accepted that BN had agreed to, and did, hold the Shares in ACDN on trust for RDN. [\[note: 32\]](#) That being the case, there is no issue over s 7(2).

Issue 4

21 In para 23 of his affidavit, LLW deposed that:

By 2 letters dated 24 September 2009, the Company received a S\$300,000 LEFS Bridging Loan Programme ... and a S\$500,000 Non-Revolver Hire Purchase Line ... from DBS Bank Ltd. It was a pre-requisite that only companies in Singapore that are locally-owned, with at least 30% local equity, can apply for a loan under the LEFS.

LLW exhibited a letter of offer dated 24 September 2009 [\[note: 33\]](#) from DBS Bank to ACDN for the bridging loan on the condition that:

At all times, you shall have a minimum thirty per cent (30%) active participation and ownership, save in the event that SPRING Singapore's prior approval is obtained.

22 LLW submitted that:

Even if this Honourable Court finds that the 1st Defendant was holding the Shares on trust for the Plaintiff, such trust would be rendered invalid because the Plaintiff intended to cheat SPRING

Singapore and DBS Bank Ltd into believing that the 2nd Defendant was at least 30% locally owned in order to obtain a loan from DBS Bank Ltd. [\[note: 34\]](#)

without presenting any evidence from DBS Bank on whether the fact that the Shares were held on trust for RDN, who is not a Singapore national, disentitled ACDN from obtaining the bridging loan.

23 LLW also referred to the statement in para 11.109 of *Walter Woon on Company Law*, Revised Third Ed (Sweet & Maxwell) ("*Company Law*") that:

Where shares are registered in the name of a nominee for an illegal purpose or in order to defraud a public authority, the owner may be precluded from asserting his beneficial ownership of the shares"

and to the decisions of the High Court and the Court of Appeal in *Suntoso Jacob v Kong Miao Ming* [1983 – 1984] SLR(R) 458 and [1985 – 1986] SLR(R) 524 respectively ("*Suntoso Jacob*") as support for his contention that even if there was a trust, the Shares were not recoverable because it was an illegal trust set up to obtain the loan from DBS Bank.

24 RDN denied that the loan was improperly obtained. He deposed that [\[note: 35\]](#):

Daniel Liew claims that he applied for loans under LEFS because he believed that he owned shares in ACDN and that ACDN was considered "*locally-owned*" as a result. The truth of the matter was that Daniel Liew had told me that he was familiar with and had experience in applying for loans under LEFS. He also mentioned LEFS would not look beyond the nationality of the registered shareholders as shown by ACRA searches and it did not matter if he held ACDN shares on trust for me.

[emphasis in original]

LLW did not respond to RDN's averment, and his counsel did not cross-examine RDN on it.

25 In the examination of this issue, there was one critical omission – LLW did not call any witness or adduce any evidence from DBS Bank to attest that it would not have extended the bridging loan to ACDN if it had known that LLW was holding the Shares on trust for RDN. In *Suntoso Jacob*, the plaintiff, an Indonesia national, transferred shares in a company to a Singapore national to enable a tugboat owned by the company to be registered under the Singapore flag. An Assistant Registrar of Singapore Ships gave evidence that the Registrar of Singapore Ships had been deceived into allowing the tugboat to be registered in Singapore.

26 In the present case LLW should have adduced evidence that DBS Bank was deceived into making the loan. In the absence of such evidence and the absence of a response to RDN's assertion that the bank would only look at the nationality of the registered shareholders, LLW had not proved that there was an intention to deceive DBS Bank, or that DBS Bank was deceived. Furthermore, even if the non-disclosure of the trust deceived DBS Bank, that would not prevent RDN from asserting his beneficial ownership of the Shares under the rule stated in *Company Law* unless DBS Bank is a public authority, and while DBS Bank is a large and reputable commercial bank, it is not a public authority.

Conclusion

27 I find that the Shares were transferred to LLW to be held by him as trustee, and that the issues raised by LLW did not defeat RDN's right to have the Shares transferred to him.

28 Judgement is entered in favour of RDN, with costs against LLW to be taxed if there is no agreement thereon. There will be no order as to costs in respect of ACDN.

[\[note: 1\]](#) Defendant's Written Submissions , 5 May 2011, para 14

[\[note: 2\]](#) Affidavit of Raymond Dennis Neoh, 14 December 2010 page 15

[\[note: 3\]](#) Defendant's Written Submissions 5 May 2011, para 19

[\[note: 4\]](#) Affidavit of Raymond Dennis Neoh 14 December 2010 page 24

[\[note: 5\]](#) Affidavit of Raymond Dennis Neoh 14 December 2010 page 37

[\[note: 6\]](#) Affidavit of Raymond Dennis Neoh 14 December 2010 page 39

[\[note: 7\]](#) Affidavit of Raymond Dennis Neoh, 14 December 2010 pages 45 and 46

[\[note: 8\]](#) Affidavit of Raymond Dennis Neoh, 14 December 2010 page 47

[\[note: 9\]](#) Affidavit of Raymond Dennis Neoh, 14 December 2010 page 49

[\[note: 10\]](#) Affidavit of Raymond Dennis Neoh, 14 December 2010 page 53

[\[note: 11\]](#) Affidavit of Raymond Dennis Neoh, 14 December 2010 page 55

[\[note: 12\]](#) Affidavit of Raymond Dennis Neoh, 14 December 2010 pages 56 and 57

[\[note: 13\]](#) Affidavit of Liew Leong Wan, 18 January 2011 pages 30 and 31

[\[note: 14\]](#) Affidavit of Raymond Dennis Neoh, 7 February 2011 pages 13 o 22

[\[note: 15\]](#) Notes of Evidence 8 April 2011 page 5 lines 20 – 23

[\[note: 16\]](#) Notes of Evidence 8 April 2011 page 5 line 32 to page 6 line 3

[\[note: 17\]](#) Defendant's Written Submissions 5 May 2011 para 26

[\[note: 18\]](#) Affidavit of Liew Leong Wan, 18 January 2011 page 94

[\[note: 19\]](#) Affidavit of Liew Leong Wan, 18 January 2011 para 31

[\[note: 20\]](#) Affidavit of Liew Leong Wan, 18 January 2011 page 183

[\[note: 21\]](#) Affidavit of Liew Leong Wan, 18 January 2011 pages 185, 186

- [\[note: 22\]](#) Affidavit of Liew Leong Wan, 18 January 2011 page 186
- [\[note: 23\]](#) Affidavit of Liew Leong Wan, 18 January 2011 page 187
- [\[note: 24\]](#) Affidavit of Liew Leong Wan, 18 January 2011 page 188
- [\[note: 25\]](#) Affidavit of Liew Leong Wan, 18 January 2011 pages 193-194
- [\[note: 26\]](#) Affidavit of Raymond Dennis Neoh, 7 February 2011 para 19
- [\[note: 27\]](#) Affidavit of Raymond Dennis Neoh, 7 February 2011 para 22
- [\[note: 28\]](#) Defendant's Written Submissions, 5 May 2011 para 69
- [\[note: 29\]](#) Affidavit of Raymond Dennis Neoh, 14 December 2010 page 15
- [\[note: 30\]](#) Affidavit of Raymond Dennis Neoh, 7 February 2011 page 30
- [\[note: 31\]](#) Notes of Evidence, 7 April 2011 page 132 line 16 and page 131 line 19
- [\[note: 32\]](#) Defendant's Written Submissions, 5 May 2011 para 19.1
- [\[note: 33\]](#) Affidavit of Liew Leong Wan, 18 January 2011 pages 53 – 56
- [\[note: 34\]](#) Defendant's Written Submissions, 5 May 2011 page 32
- [\[note: 35\]](#) Affidavit of Raymond Dennis Neoh 7 February 2011 para 12

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