

Lee Chee Wei v Tan Hor Peow Victor and Others
[2008] SGHC 88

Case Number : Suit 488/2005, NA 8/2008
Decision Date : 09 June 2008
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Philip Fong, Evangeline Poh and Samantha Ong (Harry Elias Partnership) for the plaintiff; Ng Lip Chih (Ng Lip Chih & Co) for the first defendant; Second defendant absent; Third defendant in person
Parties : Lee Chee Wei — Tan Hor Peow Victor; Yip Hwai Chong; Damien Ang Tse Aun; Ong Ghim Choon

Damages – Assessment – Whether damages in lieu of specific performance should be assessed at date of breach or date of judgment

9 June 2008

Choo Han Teck J:

1 The facts of this case have been dealt with in the main judgment on the question of liability. This judgment concerns this court's decision on the issue of damages assessed as a result of the breach of contract by the first, third and fourth defendants in failing to purchase the plaintiff's stake, amounting to 2.5% in Distribution Management Solutions Pte Ltd. In the assessment proceedings the plaintiff and his expert witness Mr Vishal Sharma ("Mr Sharma") testified whereas the defendants called no evidence, and only the first defendant had filed a submission challenging the evidence of the plaintiff.

2 The first question concerns the date at which the value of the shares ought to be ascertained. Mr Fong, counsel for the plaintiff submitted that although the date of the breach would be the date normally taken for the purposes of assessment of damages, he asked, on the authority of *Ho Kian Siang & Anor v Ong Cheng Hoo & Ors* [2000] 4 SLR 376 ("*Ho Kian Siang*") that the date of the judgment, namely, 30 June 2006, be used in this case. I am of the view that *Ho Kian Siang* does not apply because *Ho Kian Siang* concerned the case where a plaintiff had abandoned his claim for specific performance and sought damages-*in-lieu*. The plaintiff in this case pursued his claim for specific performance all the way to the end of the trial. His claim for damages was an alternative claim, weakly pursued. I would therefore assess damages on the basis of the value of the shares as at the date of the breach, namely, 30 April 2005.

3 The contract price for the plaintiff's shares was \$4.5m, of which \$750,000 had been paid. Mr Sharma valued the shares as at 30 April 2005 to be \$180,000. Had the 30 June 2006 date been used as the operative date, the value of the shares would be \$220,000. He referred to three ways of valuation, including the Discounted Cash Flow ("DCF") approach favoured by Mr Ng, counsel for the first defendant. The other two methods were the "market approach" and the "net asset value" method. Mr Sharma decided that in this case because of the absence of any financial projection, the most reliable method was the net asset value method. Although Mr Ng performed admirably in testing Mr Sharma on the usefulness of the DCF method, I am of the view that Mr Sharma's disagreement was not unreasonable, and in the absence of any countervailing expert's view, I would accept Mr Sharma's evidence. The burden of proof on the first defendant to persuade me that the DCF

method ought to have been used was not discharged.

4 Accordingly, I would award damages at \$3.57m against the first, third and fourth defendants jointly with interest at 5% per annum from date of judgment. The interest shall be calculated from the date of judgment. Cost is to be taxed if not agreed.

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