Intergraph Systems South East Asia Pte Ltd v Zhang Yiguang (suing by the committee and estate of his person, Tong Wen Li)
[2004] SGCA 52

Case Number : CA 52/2004

Decision Date : 10 November 2004

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Woo Bih Li J; Yong Pung How CJ

Counsel Name(s) : Harish Kumar and Mark Yeo (Engelin Teh Practice LLC) for appellant; Doris Chia and Adeline Chong (Harry Elias Partnership) for respondent

Parties : Intergraph Systems South East Asia Pte Ltd — Zhang Yiguang (suing by the committee and estate of his person, Tong Wen Li)

Contract – Contractual terms – Implied terms – Whether employee of company contractually entitled to moneys paid under insurance policies taken out by company – Company's employee handbook mentioning employee's insurance benefits – Whether terms of company's employee handbook impliedly incorporated into employment contract – Whether evidence of intention of both parties to incorporate terms of company's employee handbook into employment contract existing

Trusts – Creation of trust – Company taking out insurance policies to benefit employees – Whether intention to confer benefits of insurance on employees to be equated with intention to create trust of insurance moneys for employees

10 November 2004

Woo Bih Li J (delivering the judgment of the court):

Introduction

1 The respondent, Zhang Yiguang ("Zhang"), is a Chinese national and a Singapore permanent resident. He was employed by the appellant, Intergraph Systems South East Asia Pte Ltd ("Intergraph"), as a GIS Application Specialist on 4 October 1999.

2 On 13 June 2002, whilst Zhang was on a business trip in Atlanta, United States of America ("USA"), he sustained a severe and permanent head injury in a motor accident. On being notified of Zhang's accident, Intergraph immediately contacted his wife Mdm Tong Wen Li ("Mdm Tong") and made arrangements to send her to Atlanta. Intergraph helped Mdm Tong obtain a visa to enter the USA and also took care of the initial expenses for her trip, which included business class return airfare, cash advances, accommodation, rental for furniture and other miscellaneous expenses. Intergraph also arranged for one of its junior employees, Ms Chua Hui Lyn ("Ms Chua"), to accompany Mdm Tong to Atlanta and assist with any administrative matters that might arise. Mdm Tong and Ms Chua left for Atlanta on 17 June 2002.

3 On 9 September 2002, Zhang was brought back to Singapore in a specially equipped carrier at a cost of $27,369.58. Intergraph bore the expenses incurred and subsequently received a partial indemnity of $5,000 under a travel insurance policy. Mdm Tong returned to Singapore at around the same time as her husband.

4 Prior to and during Zhang's period of employment, Intergraph had maintained the following three group insurance policies with Insurance Corporation of Singapore Ltd whose obligations were taken over by Aviva Ltd ("Aviva"):

(a) The Group Term Life Insurance Policy ("the Life Policy");

(b) The Group Personal Accident Insurance Policy ("the Accident Policy"); and

(c) The Group Hospital & Surgical Insurance Policy ("the Hospital Policy").

5 Intergraph paid for all the premiums due under the policies and was the named assured therein. Under the terms of the policies, Aviva became liable to pay Intergraph certain sums of money upon the occurrence of any of the prescribed events to any one of Intergraph's employees. In respect of Zhang's accident, Intergraph eventually received a total of $468,089.50 from Aviva. The breakdown of payments received under each policy is as follows:

(a) $186,912 under the Life Policy based on the last drawn salary of Zhang at $5,192 multiplied by 36 months;

(b) $280,368 under the Accident Policy based on 150% of the said sum of $186,912; and

(c) $809.50 under the Hospital Policy in respect of medical expenses incurred in Singapore.

6 In the meantime, Intergraph had kept Zhang on its payroll for 12 months from the date of the accident pending payment by Aviva which came later. Consequently, Intergraph paid $73,152.98 for Zhang's salary, contributions to the Central Provident Fund and transport allowance for this 12-month period.

7 After receiving payment from Aviva, Intergraph made an offer to Mdm Tong to pay her $373,824, which was 80% of the $467,280 it had received from Aviva. This offer was not accepted. Mdm Tong was appointed the committee of the person and estate of Zhang and, in that capacity, she commenced the present action for payment of the entire $467,280 as well as to claim the $5,000 which Intergraph had received under the travel insurance policy issued by another insurer.

8 Zhang's claim was on the basis that he was contractually entitled to the insurance moneys. Alternatively, Zhang's claim of entitlement was on the basis that a trust had been constituted in his favour and Intergraph held the insurance moneys as trustee for him. Intergraph disputed Zhang's claim on the basis that it was entitled to the insurance moneys as the party contracting with the insurers and it was entitled to decide what to do with the insurance money. Intergraph also made a counterclaim on the basis that if Zhang were entitled to the insurance money, Intergraph was entitled to set-off various expenses it had incurred on account of the accident and would be liable to pay only the balance thereof to Zhang. Intergraph's counterclaim was resisted by Zhang on the basis of estoppel as well as on the basis that the expenses for which a deduction was sought by Intergraph were unreasonable, unfair and unconscionable.

9 In the hearing before the High Court, Zhang was successful in his claim for the $467,280 but not for the $5,000 (see [2004] 3 SLR 360). Intergraph consequently appealed against the decision of the judge except for his decision on the $5,000. There was no appeal by Zhang. After hearing arguments, we allowed Intergraph's appeal on the main point in that Intergraph was entitled to the insurance money and could decide what to do with it. Consequently, Intergraph's appeal on its counterclaim became academic and we made no order on it.

10 We should, however, mention that although Intergraph's notice of appeal extended to the whole of the decision below save for the $5,000. Intergraph did not pursue its position in respect of

the $809.50 received under the Hospital Policy. Thus, although Intergraph's Case initially referred to the insurance moneys paid by Aviva on the three policies, para 6 of its Case stated that its appeal was in relation to Zhang's claim to the insurance money under the Life Policy and the Accident Policy, and Intergraph's counterclaim to be entitled to deduct various sums for expenses paid by Intergraph. Likewise, in the conclusion of Intergraph's Case at para 195, it was submitted, *inter alia,* that Zhang was not entitled "to the insurance proceeds of the Life Policy and Accident Policy". Consequently, para 1.1 of Zhang's Case in response noted that "[t]he subject matter of the Appellants' appeal is the insurance proceeds received by them from two (2) group insurance policies". Intergraph's subsequent Skeletal Arguments also mentioned the Life Policy and the Accident Policy as being the material ones, without mentioning the Hospital Policy. In oral submissions, there was also no mention about its position on the Hospital Policy specifically.

11 It seemed to us that Intergraph had intended to abandon its appeal in respect of the relatively small sum of $809.50 received under the Hospital Policy. If so, Intergraph should have stated this specifically to avoid any misunderstanding. In any event, Intergraph did not pursue its position in respect of the Hospital Policy in its Case or Skeletal Arguments, or in its oral submissions, and Zhang did not have an opportunity to respond thereto. Accordingly, even if Intergraph had not intended to abandon its appeal in respect of the Hospital Policy, it was deemed to have done so. Accordingly, our order in allowing Intergraph's appeal extends only to the insurance moneys received under the Life Policy and the Accident Policy. Consequently, Zhang is entitled to the $809.50 received under the Hospital Policy.

12 In the circumstances, it is not necessary for us to deal with the Hospital Policy in our reasons which are set out below.

The contractual entitlement argument

13 Zhang's contractual claim to the insurance moneys was premised on two documents:

(a) his Employment Contract dated 4 October 1999; and

(b) Intergraph's Employee Handbook ("the Handbook") which had been on Intergraph's website even before the date of Zhang's Employment Contract.

14 Clause 11 of the Employment Contract stated:

(11) Medical BenefitsAdmission for Employee to the Company's non-contributory medical, dental and hospital scheme. Dental benefits apply after 6 (six) months employment.

15 The foreword of the Handbook stated that the purpose of the handbook was, *inter alia*, to provide every employee a written statement of "their rights and obligations".

16 Clause 7.3 of the Handbook stated:

7.3 Insurance

All employees are *entitled* to the benefits of insurance protection under the following schemes at the Company's cost. Employees based in Singapore, Myanmar and Vietnam are covered by (the Insurance Corporation of Singapore). For employees based in Malaysia, Indonesia and Philippines, please contact your local office administrator for details of your insurance coverage.

7.3.1 Medical Insurance

A non-contributory medical scheme will be provided to employees starting from the commencement date of employment. The scheme covers clinical visit, hospitalization and surgical expenses.

Health care coverages extend to the end of the month in which an employee terminates.

7.3.2 Group Life Insurance

A sum of four (4) times the annual salary in the case of expatriate staff, or three (3) times annual salary in the case of local staff is granted to the member at the date of death.

7.3.3 Employees' Compensation Insurance

Employees who suffer injury by accident arising out of and in the course of the Company's employment will be entitled to compensation according to the provisions of the Employee Compensation Ordinance.

For full details of the insurance coverage for Singapore, Myanmar and Vietnam, please see Appendix 3.

[emphasis added]

17 It was common ground that Appendix 3 contained the Life Policy and the Accident Policy. It was also common ground that the Employment Contract did not expressly incorporate the terms of the Handbook. Although Zhang did rely on implied incorporation as well, the judge below concluded that the Handbook was not a part of the Employment Contract. Nevertheless, the judge below was of the view that as cl 11 of the Employment Contract provided Zhang with a right to claim medical benefits, Zhang was entitled to refer to the Handbook for details of such benefits. On that basis, the judge below concluded in favour of Zhang's contractual claim.

18 Before us, Ms Doris Chia, counsel for Zhang, pursued the argument that the terms of the Handbook had been impliedly incorporated into the Employment Contract. She placed some emphasis on the words "rights" and "obligations" in the foreword of the Handbook and on the word "entitled" in the first sentence of cl 7.3 to support her submission that the Handbook was intended to create a contractual right. However, Ms Chia had to establish first that the terms in the Handbook had been incorporated into the contract between Zhang and Intergraph. She emphasised that although no hard copy of the Handbook was published, it was on Intergraph's website with the intention that Intergraph's employees would refer to it. She relied on *Alexander v Standard Telephones & Cables Ltd (No 2)* [1991] IRLR 286 ("*Alexander*") where the relevant principles were stated, in the headnote to the case, to be as follows:

> The principles to be applied in determining whether a part of a collective agreement is incorporated into individual contracts of employment can be summarised as follows: the relevant contract is that between the individual employee and his employer; it is the contractual intention of those two parties which must be ascertained. In so far as that intention is to be found in a written document, that document must be construed on ordinary contractual principles. In so far as there is no such document or that document is not complete or conclusive, their contractual intention has to be ascertained by inference from the other available material including collective agreements. The fact that another document is not itself contractual does not prevent it from

being incorporated into the contract if that intention is shown as between the employer and the individual employee. Where a document is expressly incorporated by general words it is still necessary to consider, in conjunction with the words of incorporation, whether any particular part of that document is apt to be a term of the contract; if it is inapt, the correct construction may be that it is not a term of the contract. Where it is not a case of express incorporation, but a matter of inferring the contractual intent, the character of the document and the relevant part of it and whether it is apt to form part of the individual contract is central to the decision whether or not the inference should be drawn.

19 Based on the principles enunciated in *Alexander*, Ms Chia had to establish that it was the intention of both Intergraph and Zhang that the terms of the Handbook were to be part of the contractual documents. There was no evidence of Zhang's intention. Ms Chua, who had accompanied Mdm Tong to Atlanta, gave evidence that she herself had been unaware of the Handbook until 2004 when Intergraph's financial controller, Ms Khoo Poh Geok had informed her that an action had been instituted against Intergraph in reliance on the Handbook. Accordingly, like the judge below, we were of the view that the terms of the Handbook had not been incorporated into the Employment Contract.

20 As regards the reason given by the judge below for allowing Zhang's contractual claim, we were in agreement that the terms of the Handbook could be considered to elaborate on the schemes specified in cl 11 of the Employment Contract, but not to introduce a scheme which was not specified in cl 11. Clause 11 had mentioned medical, dental and hospital schemes only. There was no mention therein of a life insurance scheme or a personal accident insurance scheme. Accordingly, we were of the view that the judge below had erred when he decided that cl 11 should be construed to include the benefits due under the Life Policy and the Accident Policy found in Appendix 3 of the Handbook.

The trust argument

21 It was not disputed that the contracts of insurance were between the insurer and Intergraph, and that Zhang was not privy thereto. Intergraph had paid the premiums and renewed the policies annually. The insurance moneys were paid to Intergraph. There was no mention in any of the three policies that a trust was to be created in favour of Intergraph's employees.

22 Nevertheless, the judge below decided in favour of Zhang on the trust argument as well. The judge's reasoning was that except for key employees, an employer has no insurable interest in its employees. As Zhang was not said to be a key employee, Intergraph had no insurable interest in him. Hence, Intergraph's intention must have been to benefit its employees under the three policies. Accordingly, there was a trust in favour of Zhang. The judge was of the view that it was not necessary for him to deal with any of the authorities that were cited to him as they concerned very different situations.

23 However, Ms Chia did not assert that Intergraph had no insurable interest in Zhang. She submitted that this was never a key consideration in her argument on trust. Relying on the Employment Contract and the Handbook, Ms Chia submitted that Intergraph had intended to confer benefits of insurance on its employees and hence had intended to create a trust of the same for them. She did not argue that the terms of the policies created a trust. As for the two cases of *Green v Russell* [1959] 2 QB 226 ("*Green*") and *GR Nair v Eastern Mining & Metals Co Sdn Bhd* [1974] 1 MLJ 176 ("*Nair*") which Intergraph's counsel, Mr Harish Kumar, was relying on, Ms Chia submitted that these two cases were distinguishable on the facts. We will come back to these two cases later.

24 Mr Kumar cited *Turnbull v Scottish Provident Institution* (1896) 34 SLR 146 and *Simcock v*

Scottish Imperial Insurance Co (1902) 10 SLT 286 as authorities for the proposition that an employer does have an insurable interest in the life of his employee to the extent of the employee's future earnings under the contract of service for the period during which the employee is legally obliged to serve the employer. He also referred to various textbooks, which we need not mention, to point out that the valuation parameters of such an insurable interest had been criticised as being no longer realistic or reasonable. More significantly, Mr Kumar submitted that in any event, the question of insurable interest was only relevant as between the insurer and the assured and not as between two rival claimants to the insurance money.

25 In *Worthington v Curtis* (1875) 1 Ch D 419, a father effected a policy in the name and on the life of his son who died intestate. The father took out administration of the son's estate and the insurance money was paid to him. A creditor of the son made a claim for the insurance money as belonging to the estate of the son and not to the father. The creditor argued that if the father intended the policy for his own benefit, he had no insurable interest in the son's life. As the father had received the money as administrator, he had to prove his title to the money which he could not do as he was claiming through an illegal transaction. The creditor failed at first instance. The Court of Appeal dismissed the creditor's appeal. Mellish LJ said (at 424–425):

> In my opinion, therefore, there are two reasons for which the appeal must fail. First, because the statute is a defence for the insurance company only, if they choose to avail themselves of it. If they do not, the question who is entitled to the money must be determined as if the statute did not exist. The contract is only made void as between the company and the insurer. And, secondly, if that is not so, and if the effect of the statute is that the Court will give no relief to any party because of the illegality of the transaction, in that case the maxim, *melior est conditio possidentis*, must prevail, and the party who has the money must keep it. On both these grounds, but especially on the first, I think the conclusion of the Vice-Chancellor was right, and this appeal must be dismissed with costs.

26 We agreed that the question of insurable interest was irrelevant as between Intergraph and Zhang. In any event, it was not necessary to consider the question of insurable interest to demonstrate that Intergraph had taken out the policies to benefit its employees. Intergraph did not dispute that that was its intention. The question was whether a trust had been created in favour of its employees.

27 In *Green*, an employee had died in a fire which occurred on the employer's premises. The employee's mother brought an action under the Fatal Accidents (Damages) Act 1908, and liability was admitted and damages agreed at £1,300. A sum of £1,000 had been paid under a personal accident group insurance policy to the employee's solicitors. The issue was whether this was a benefit arising out of the death which should be taken into account and deducted from the agreed damages. Although the facts in *Green* were distinguishable from those before us to some extent and the issue there was certainly different too, the judgment of the court was of some relevance to the issue of trust before us.

28 After considering the terms of the policy, Romer LJ concluded that there was no trust thereunder. He said at 241:

> An intention to provide benefits for someone else, and to pay for them, does not in itself give rise to a trusteeship; and yet that is all that emerges from the recital. Nor does the judge's finding that the existence of the policy was known to the employees in such a manner as to create in them a reasonable expectation of benefit affect the matter. … [A]nd as Lord Greene M.R. said in *In re Schebsman* [[1944] Ch 83 at 89], to which the judge referred: "It is not legitimate to import

into the contract the idea of a trust when the parties have given no indication that such was their intention. To interpret this contract as creating a trust would, in my judgment, be to disregard the dividing line between the case of a trust and the simple case of a contract made between two persons for the benefit of a third."

29 In *Nair*, two employees had claimed benefits payable under a Group All Sickness Policy of insurance taken out by their employers. Their claim was based on the contention that a trust had been created by (a) the act of the employer in taking out the policy and (b) the employer's conduct and practice antecedent to the commencement of proceedings. The court held that the employer had chosen to insure itself and there was no express or constructive trust in favour of the plaintiffs. Ibrahim J said at 176:

> Even if a policy expressly states that it is taken out for the benefit of another (which is not the case here) this does not establish a trust. This is demonstrated by the classic case of *Cleaver v Mutual Reserve Fund Life Association* [[1892] 1 QB 147] which was a civil case arising out of the murder by Florence Maybrick of her husband who had effected a policy on his life for her behalf. The case is a leading authority on third party rights under a policy of insurance. It was held in that case that the policy money belonged to the deceased's executors and not to his wife. Lord Esher at page 151 said:
>
> > The contract is with the husband, and with nobody else. The wife is no party to it. Apart from the statute, the right to sue on such a contract would clearly pass to the legal personal representatives of the husband.

30 At 177, Ibrahim J added:

> It is true that the said policy had been taken out by the defendant company upon the lives and disabilities of its employees but that in itself does not give rise to a trust as is shown in *Green v Russel* [[23] *supra*] facts of which are quite similar to those in our case.

31 The facts in *Nair* were closer than the facts in *Green* to the present case. However, Ms Chia sought to distinguish *Nair* on the basis that in the present case, the Employment Contract and the Handbook gave rise to a right in an employee.

32 As stated above, Zhang had no contractual right to the insurance money. It was quite clear to us that what Ms Chia was doing was to equate an intention to benefit the employees with the creation of a trust. That was also what the judge below did. In our view, the two authorities of *Green* and *Nair* demonstrated that it was wrong to do so. Accordingly, Zhang's claim on trust also failed.

33 As we concluded that it was Intergraph, not Zhang, who was entitled to the insurance money from the two policies, the question from Intergraph's counterclaim as to whether Intergraph would nevertheless be entitled to deduct various expenses from the insurance money became academic.

34 In the circumstances, we allowed Intergraph's appeal with costs of the appeal and the trial below to be paid by Zhang to Intergraph. Intergraph's success in its appeal did not extend to the insurance money received under the Hospital Policy, as stated above. We made no order on Intergraph's counterclaim.

Appeal allowed with costs.