

Ho Seow Wan v Ho Poey Wee and others
[2015] SGHC 304

Case Number : Suit No 195 of 2012 (Summonses Nos 413 and 5518 of 2013)
Decision Date : 25 November 2015
Tribunal/Court : High Court
Coram : Chan Seng Onn J
Counsel Name(s) : Lynette Chew, Gadriel Tan, Leonard Chew and Grace Lu (Morgan Lewis Stamford LLC) for the plaintiff; Anna Oei and Twang Mei Shan (Tan, Oei & Oei LLC) for the first and second defendants; Ravi Chelliah and Alison Jayaram (Chelliah & Kiang) for the third defendant.
Parties : HO SEOW WAN — HO POEY WEE — HO SEOW BAN — GUAN HO CONSTRUCTION CO (PTE) LTD

Contempt of Court – civil contempt

Contempt of Court – sentencing

25 November 2015

Chan Seng Onn J:

Introduction

1 The plaintiff, Ho Seow Wan, applied *vide* Summons No 5518 of 2013 for an order of committal of the 1st defendant, Ho Poey Wee, and the 2nd defendant, Ho Seow Ban (collectively, “the defendants”) for contempt of court pursuant to O 52 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) (“ROC”), alleging a deliberate breach of an order of court dated 1 August 2012 (“the 1 August 2012 Order”). At that time, the plaintiff and the first two defendants were the only shareholders and directors of the 3rd defendant, Guan Ho Construction Co (Pte) Ltd (“Guan Ho”), which is engaged primarily in the business of building and construction.

2 On 7 September 2015, I found beyond a reasonable doubt that the defendants had deliberately disobeyed the 1 August 2012 Order by the following intentional acts:

- (a) the failure to pass a resolution to authorise the plaintiff to issue notices in relation to his reinstatement;
- (b) the instructions given in the 6 August 2012 Email;
- (c) the issuance of the 6 October 2012 Memorandum;
- (d) the instructions given by the 1st defendant in the 19 October 2012 Email;
- (e) the issuance of the 9 November 2012 Notice;
- (f) the Approval of the New Org Chart; and

(g) the failure to reimburse the plaintiff's repair expenses for his car.

3 As a consequence of my findings at [2] above, the plaintiff had established beyond a reasonable doubt that the defendants were guilty of contempt of court. My written judgment finding the defendants guilty of contempt of court can be found at *Ho Seow Wan v Ho Poey Wee and others* [2015] SGHC 235 ("the 7 September 2015 Judgment"). The defined terms used herein unless stated otherwise bear the same meaning as set out in the 7 September 2015 Judgment.

4 I then invited the parties to submit on the appropriate sentences for the 1st and 2nd defendants respectively.

5 On 22 September 2015, the parties submitted on the respective sentences that should be imposed on the 1st and 2nd defendants. After having heard the parties, I made the following orders:

(a) the 1st defendant be fined a sum of \$25,000 (and in default of the fine he shall serve 25 days' imprisonment);

(b) the 2nd defendant be fined a sum of \$20,000 (and in default of the fine he shall serve 20 days' imprisonment);

(c) the defendants pay 90 percent of the plaintiff's costs for these proceedings and the portion of Summons No 413 of 2013 ("Sum 413/2013") that relates to leave for committal; and

(d) the costs are to be taxed on a standard basis if not agreed

(together, "the 22 September 2015 Orders").

6 The defendants have since appealed in Civil Appeal No 187 of 2015 against my finding of contempt in the 7 September 2015 Judgment in relation to acts (b)–(f) listed at [2] above.

7 The defendants have also appealed in Civil Appeal No 188 of 2015 against the 22 September 2015 Orders. The plaintiff has not appealed any part of the 7 September 2015 Judgment or the 22 September 2015 Orders.

8 I set out the reasons for my decision in relation to the 22 September 2015 Orders.

A deterrent fine is appropriate instead of a custodial term

9 The plaintiff submitted that a custodial sentence should be imposed on the defendants in light of their unashamed and persistent breaches of the 1 August 2012 Order through the acts listed at [2] above. In this regard, the plaintiff relied on, *inter alia*, the decision of the High Court in *Sembcorp Marine Ltd v Aurol Anthony Sabastian* [2013] 1 SLR 245 ("*Sembcorp v Aurol*").

10 After reviewing the case law in Singapore, Quentin Loh J set out in *Sembcorp v Aurol* at [68] the factors that are relevant in the exercise of a court's sentencing discretion for contempt of court. The following factors are used as a guide to determine whether a fine or a custodial sentence should be imposed:

(a) the attitude behind the contemptuous behaviour;

(b) the motive for committing the contemptuous act;

- (c) whether a fine would have been an adequate deterrent;
- (d) the reversibility of the breach;
- (e) the standard of care expected of the individual;
- (f) nature of the contemptuous act;
- (g) whether the contemnor was remorseful; and
- (h) whether others were procured to commit the contemptuous act.

11 The above list of factors, while useful, is not exhaustive. The court would have to also determine which of the factors are relevant to the case at hand and the weight that should be assigned to each factor. I must nevertheless issue a salutary warning that a custodial sentence is not the starting point in committal. As stated in *Lee Shieh-Peen Clement v Ho Chin Nguang and others* [2010] 4 SLR 801 at [45], "committal to prison is normally a measure of last resort".

12 The present case had both aggravating and mitigating factors which had to be considered. On the one hand, it was clear that the defendants were aware of the ambit of the 1 August 2012 Order and committed the contemptuous acts deliberately. As directors of Guan Ho, they were also in a position of responsibility and influence and a higher standard of care was expected of them.

13 The instructions given in the 6 August 2012 Email and 19 October 2012 Email and the issuance of the 6 October 2012 Memorandum and the 9 November 2012 Notice were aimed at procuring the assistance of the employees of Guan Ho (or, perhaps even coercing them) to take steps to curtail the rights and powers of the plaintiff in Guan Ho. Taken together with the factors noted at [12] above, there were aggravating features in this case which pointed towards the imposition of a deterrent sentence on the defendants.

14 However, I balanced against these aggravating factors the fact that the defendants committed most of the contemptuous acts and issued the contemptuous instructions so as to ensure that the business operations of Guan Ho could continue expediently. In this regard, I also found that the plaintiff had been using the 1 August 2012 Order as a means to get back at the defendants for what they did to him and at some stage, he even went on to deliberately disrupt the operations of Guan Ho. In this regard, I highlight that because of the plaintiff's conduct, on 7 October 2013, I directed that the plaintiff go on garden leave with full salary and, on 24 February 2014, I discharged the 1 August 2012 Order.

15 I also noted that the defendants expressed their remorse through their counsel in the hearing before me and sought leniency as the 1st defendant was 71 years old while the 2nd defendant was 59 years old.

16 While the aggravating factors in this case were grave, there were also strong mitigating factors in favour of the defendants. Having balanced the aggravating and mitigating factors, I was of the view that a custodial sentence ought not to be imposed in the present case.

17 Nevertheless, a fine imposed in this case must be sufficient to have a strong deterrent effect on the defendants who had persistently breached the 1 August 2012 Order and taken matters into their own hands instead of applying to vary or discharge the said order. Since the 1st defendant had executed most of the contemptuous acts (on the face of the documents) and was the managing

director of Guan Ho, a higher fine had to be imposed on him to reflect the higher standard of care expected of him relative to the second defendant. Having considered these factors in the round, I held as follows:

- (a) the 1st defendant be fined a sum of \$25,000 (and in default of the fine he shall serve 25 days' imprisonment); and
- (b) the 2nd defendant be fined a sum of \$20,000 (and in default of the fine he shall serve 20 days' imprisonment).

The plaintiff should only be entitled to 90 percent of his costs

18 As noted in the 7 September 2015 Judgment at [2], on 5 May 2014, I directed the plaintiff to file a list of selected breaches to reduce the number of items that he would be proceeding on. I was of the view that the plaintiff should concentrate on the main and more serious of the alleged breaches instead of proceeding on all of them, which would prolong the hearing and incur unnecessary costs. The plaintiff filed a list of selected and prioritised breaches ("the List of Breaches") pursuant to my directions. The List of Breaches did not include all the breaches set out in the statement filed by the plaintiff pursuant to O 52 of the ROC ("O 52 Statement") but focused only on breaches of the 1 August 2012 Order by the defendants.

19 The List of Breaches was of utility to both the plaintiff and the defendants as they could save legal costs and time from having to deal with and lead evidence in relation to the other minor breaches in the O 52 Statement. The plaintiff relied on a total of ten acts in the List of Breaches (see [19] of the 7 September 2015 Judgment) and succeeded in establishing contempt beyond a reasonable doubt in relation to seven of those acts (see [2] above). The discount to the costs awarded to the plaintiff was in part to reflect the plaintiff's lack of success on three alleged breaches out of the ten in the List of Breaches.

20 In dealing with the List of Breaches in the 7 September 2015 Judgment, I classified seven of the alleged breaches into two categories *viz*, "Internal Communications" (four alleged breaches) and "External Communications" (three alleged breaches) (see the 7 September 2015 Judgment at [20]) and dealt with three other alleged breaches individually.

21 In exercising my discretion to award costs, I took into account the relative weight that should be accorded to the breaches the plaintiff succeeded on, and the relative extent of the work done and the time taken at the hearing to deal with them, in comparison with those breaches that the plaintiff did not succeed on to determine what percentage of discount should be applied to the costs to be awarded to the plaintiff.

22 To my mind, the "Internal Communications", the failure to pass a resolution to authorise the plaintiff to issue notices in relation to his reinstatement and the Approval of the New Org Chart were the most serious of the alleged breaches set out in the List of Breaches, as they went to the heart of what the 1 August 2012 Order sought to protect, *viz*, the plaintiff's powers in Guan Ho. On the other hand, I was of the view that the "External Communications" that the plaintiff did not succeed in establishing contempt was a relatively minor category, as it essentially dealt with the same or similar communications that seemed to focus on setting out the workflow of Guan Ho.

23 Having weighed the plaintiff's success on seven predominantly weighty breaches and failure on three relatively minor alleged breaches and the fact that it was not quite necessary to pursue the defendants for each and every one of the perceived remaining breaches as set out in the lengthy

O 52 Statement, I was of the view that a ten percent deduction would be a fair deduction to be made to the total costs otherwise awardable to the plaintiff in relation to the whole of these contempt proceedings. I therefore awarded the plaintiff 90 percent of his total costs in these proceedings to be taxed on a standard basis if not agreed.

24 As there were a number of matters dealt with in Sum 413/2013 that did not relate to leave for committal, I further awarded the plaintiff the costs for those portions of Sum 413/2013 that related to leave for committal also on the same percentage as noted at [23] above to be taxed on a standard basis if not agreed.

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