

CNPLAW LLP ACTED FOR ONG BEE DEE (EXECUTOR OF THE ESTATE OF ONG TUAN SENG, DECEASED): A CASE UPDATE

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Category: [Deals and cases](#)

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The Team Acting As Counsel: See Tow Soo Ling, Edwin Chia, and Michelle Chua.

See Tow Soo Ling, Deputy Head of the Dispute Resolution Practice Group, recently successfully acted for Mr Ong Bee Chew, Mdm Neo Guat Leng and Mr Ong Zhi Jie in both the High Court and the Court of Appeal in their defence against claims for, amongst others, breach of fiduciary duties and conspiracy by unlawful means.

See Tow Soo Ling was assisted by Chia Shengyou, Edwin, and Michelle Chan.
We have set out a summary of the case and the decision below.

Introduction

The late Mr Ong Tuan Seng (“**the Deceased**”) founded several family businesses in his lifetime, including Chen Hock Heng Machinery Pte Ltd (“**CHHMPL**”) and Ong Tuan Seng Development Pte Ltd (“**OTSDPL**”). Prior to the Deceased’s death, Ong Bee Chew (the 1st Defendant) and his wife (the 2nd Defendant) assisted the Deceased in managing CHHMPL and OTSDPL. The Deceased and the 1st Defendant were directors of CHHMPL. The Deceased passed away in 2013.

After his death, the Deceased’s Estate (ie the Plaintiff) commenced an action against the 1st and 2nd Defendants, and one of their sons (collectively, “**the Defendants**”). The dispute centred around events prior to the Deceased’s death, concerning the transfer of shares in CHHMPL from the Deceased to the 1st Defendant, and the issuance of new shares in CHHMPL to the 1st Defendant in late 2011 and early 2012 respectively.

The Plaintiff’s main contention was that the Defendants had misled the Deceased into signing documents for these transactions, even though he did not know the contents and effects of these documents. The core of the Defendants’ defence was that these transfers and issuance were all done pursuant to the Deceased’s express instructions.

The Plaintiff claimed that the various disputed transactions should either be set aside or remedied by an award of damages. The Plaintiff relied on several causes of actions, including misrepresentation, breach of fiduciary duties, breach of trust, resulting trust, constructive trust, non-est factum, undue influence, procedural improprieties affecting the validity of the resolutions to issue new CHHMPL shares, and conspiracy by unlawful means. In respect of CHHMPL, the Plaintiff further alleged that there was minority oppression under Section 216 of the Companies Act (Cap. 50).

Having considered the evidence, the High Court dismissed the Plaintiff’s claim against the Defendants in its entirety. At various junctures of the Judgment, the Judge noted that the Plaintiff’s case “flies against the face of the evidence” and “is wholly out of sync with the evidence”.

The Plaintiff’s appeal against the High Court decision was recently dismissed by the Court of Appeal.

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Summary of the key facts

The transfers in the mid-2000s

There were various transfers of shares amongst the Deceased's children in the mid-2000s. On his part, the Deceased also transferred the bulk of his shares in CHHMPL and OTSDPL to his sons and grandsons, and the Deceased became a minority shareholder in both companies.

At the material time, CHHMPL and OTSDPL each owned a hotel. The Deceased intended for his family to retain these two hotels for a substantial period of time after his death. To this, a large law firm was engaged to assist with the drafting of the shareholders' agreements to be signed by the shareholders of CHHMPL and OTSDPL. It was not disputed that the Deceased met with the lawyers of the large law firm. The shareholders' agreement for CHHMPL was prepared but was eventually not signed by the shareholders of CHHMPL.

The transfer and issuance of new shares in CHHMPL

In order to transfer some of his CHHMPL shares to the 1st Defendant in late 2011, the Deceased had signed several documents. These documents were signed before the meeting with the lawyers to draft the shareholders' agreement.

To effect the issuance of new shares, the Deceased had to sign various documents, including Directors' Resolutions.

As a result of the transfer and issuance of shares in CHHMPL, the 1st Defendant and his family became majority shareholdings in CHHMPL.

The Plaintiff contended that the Deceased did not know what he was signing, or was misled into signing these documents. On the other hand, the Defendants contended that the transfer and issuance of shares were done on the Deceased's instructions. In respect of the issuance of shares, the Defendants argued that the Deceased wanted the 1st Defendant and his family to have majority shareholder control of CHHMPL, as another way to ensure that the hotel owned by CHHMPL would not be sold for a substantial period of time.

The Decision at the High Court

The High Court held in favour of the Defendants and dismissed the Plaintiff's claim in its entirety. The High Court found that the Deceased was fully aware of the effect of the documents that he had signed to transfer his shares in CHHMPL to the 1st Defendant and that he intended for CHHMPL to issue new shares to the 1st Defendant to make the 1st Defendant and his son majority shareholders of CHHMPL.

The Judge's decisions in respect of the alleged breach of fiduciary duties by the 1st and 2nd Defendants and the validity of the transfers and issuance of shares are set out below.

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Fiduciary duties

The Plaintiff contended that the 1st and 2nd Defendants owed the Deceased fiduciary duties because, inter alia, the Deceased relied on them to prepare, translate and explain documents to him and that the Deceased reposed trust and confidence in them.

Alternatively, the Plaintiff contended that the 1st and 2nd Defendants owed fiduciary duties to the Deceased because they acted as the Deceased's agents in assisting to find and instruct lawyers to draft the shareholders' agreement. The Plaintiff contended that, even in such "incomplete agency" cases (where no power to affect legal relationships is conferred on the agent), the relationship still imports an undertaking by the agent to act in the interest of the principal rather than his own. Such an agent may not act for his own benefit without the informed consent of his principal.

The Judge did not agree that the 1st and 2nd Defendants were agents, as they did not have the legal power to affect the Deceased's legal position (as the principal) as against third parties. However, on the alternative argument based on the concept of "incomplete agency", the Judge accepted that the 1st and 2nd Defendants were acting as agents when giving instructions to the lawyers from the large law firm, and thus owed fiduciary duties to the Deceased. Therefore, it became necessary for the Judge to determine if the Plaintiff's assertion that the Deceased did not know what he had signed, could be supported by the evidence.

The validity of the disputed transactions

The Judge highlighted that many aspects of the evidence were inconsistent with the Plaintiff's case that the Deceased did not know about, or had not authorised, the disputed transactions.

For instance, the Judge noted that the changes in shareholding in CHHMPL brought about by the transfer of shares from the Deceased to the 1st Defendant in late 2011 were reflected in the draft shareholders' agreement which was discussed extensively at the meeting. Solicitors from the large law firm also gave evidence that the Deceased participated actively during the meeting and that they had gone through the updated shareholdings in CHHMPL which the Deceased confirmed.

In respect of the issuance of shares in early 2012, the Judge found that the Deceased, was "an extraordinary serial entrepreneur" who was "actively re-organising his affairs with a view to distribution of his wealth", and would not have signed the company documents without inquiry.

Given the Judge's finding that the Deceased knew what he was signing, the Judge found that the 1st and 2nd Defendant had acted with the informed consent of the Deceased. In other words, the Judge found that the 1st and 2nd Defendants did not breach the fiduciary duties owed to the Deceased. As a result, the transfers and issue of new shares were found to be valid.

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Conclusion

This case shows that fiduciary duties can be owed to a principal even though the agent was not an agent in the traditional sense, but had undertaken to carry certain tasks on behalf of the principal. It is important therefore that such undertakings should not be taken lightly and caution should be exercised in keeping the principal informed.

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