CASE UPDATE: QUALITY ASSURANCE MANAGEMENT ASIA PTE LTD V ZHANG QING AND OTHERS [2013] SGHC 96

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Category: CNPupdates

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Facts

The first defendant, Zhang Qing ("**Zhang**") was a highly valued senior employee of the Plaintiff, Quality Assurance Management ("**QAM**"). However, it transpired that Zhang had, while still in QAM's employment, diverted customers who had approached him in his capacity as a QAM employee to the third defendant, Pinnacle Microelectronic Pte Ltd ("**Pinnacle**") for his own benefit. Pinnacle was a company incorporated by Zhang and his wife, the second defendant. Thereafter, he had proceeded to deal with them from QAM's premises during office hours and also made use of QAM's equipment to conduct testing work and to generate quotations, test reports and invoices. Zhang had also wrongfully downloaded confidential information belonging to QAM into his thumb drive after he had resigned.

Thereafter, QAM commenced this action against Zhang for breach of contractual and fiduciary duties and against all three defendants for misuse of confidential information and conspiracy to defraud QAM. The defendants consented to interlocutory judgment.

QAM proceeded to have damages assessed. Dissatisfied with the outcome of the assessment, the defendants appealed. Save for one issue, the decision was upheld by the judge on appeal.

The employee as a fiduciary

As a preliminary matter, the judge noted that the employer/employee relationship is one which is capable of giving rise to a fiduciary relationship but cautioned that not every employee is a fiduciary for every employer in every aspect.

The scope of Zhang's responsibilities and the trust and confidence reposed in him by QAM were circumstances that placed him in a fiduciary position. It was also clear that Zhang's conduct was a betrayal of the trust and confidence and therefore a breach of his fiduciary duties.

Equitable compensation: A remedy for equitable wrongdoing

As a breach of fiduciary duty is an equitable wrong, common law damages are neither an available or appropriate remedy. Instead, the available remedies, such as the account of profits or equitable compensation, lie in equity. In his judgment, the judge took pains to explain the conceptual distinction between damages and equitable compensation.

The difference between damages and equitable compensation lies in the view that each branch of the law takes of innocent party and wrongdoer. While the common law places both innocent party and wrongdoer on equal footing and has regard for the rights and interests of both parties, equity takes into account the

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trust and confidence which the innocent party reposes in the wrongdoer and favours the innocent party when the wrongdoer has betrayed that trust by breaching his duties. This unequal footing on which equity places parties is reflected in the deterrent purpose of equitable compensation. Unlike common law damages, equitable compensation operates not only to vindicate the high duty owed to the plaintiff but also to deter the breaching fiduciary and other potentially errant fiduciaries.

In cases concerning a fiduciary in a well-established category of fiduciary relationships who commits a culpable breach of an obligation which is fundamental to the fiduciary relationship, equity takes a strict approach in assessing equitable compensation. All that is required to shift the evidential burden of causation to the breaching fiduciary is that the plaintiff must adduce some evidence to connect the breach to the loss. In order to escape liability, the fiduciary must be able to demonstrate that the loss would have happened even if there had been no breach. The common law rules of causation, foreseeability and remoteness and the principles of mitigation and comparative fault do not enter the inquiry.

The Decision

The judge noted that Zhang was a senior employee who had committed a deliberate and flagrant breach of his duty of loyalty to QAM which was fundamental to the fiduciary relationship between parties. He then went on to assess each of QAM's claims.

QAM was entitled to claim for loss of profits on contracts with three existing customers which Zhang had diverted to Pinnacle in breach of his fiduciary duties.

The judge also dealt with QAM's claim that it had lost a real and substantial chance to submit a competitive quote and earn a profit on a project in the Philippines with another customer. Zhang had not only failed to submit a quotation for a major part of the project on QAM's behalf, but had instead caused Pinnacle to submit a quotation. The Judge rejected the argument that QAM's claim should fail because there was no evidence that Pinnacle had secured the project. It was not necessary for QAM to show that Zhang had diverted the project to Pinnacle. All that was required was for QAM to show that if not for Zhang’s conduct, QAM would not have lost the project or a real and substantial chance to earn a profit on it.

Further, the Judge also allowed QAM's recovery for bonuses and a monetary award which were paid from QAM to Zhang during the period of employment under a causative mistake of fact i.e. that Zhang was not in breach of his fiduciary duties to QAM at the time Zhang was paid such bonuses and award.

Lastly, the judge found that the services of computer forensics experts were reasonably necessary to uncover Zhang's breaches of contractual and fiduciary obligations of confidence to QAM and the injunctions to deliver up QAM's confidential materials. In each of these cases, the loss or expense would not have been incurred but for Zhang's breaches.

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Conclusion

This case illustrates a company's claim for equitable compensation in the employment context. Loss of profits, salary and other monies paid to the errant employee are some of the heads of losses that can potentially be the subject of such a claim. There are some points from this judgment that employers can take note of. While the employer/employee relationship is one that is capable of giving rise to a fiduciary relationship, it should be borne in mind that whether or not an employee owes fiduciary duties to their employer depends on the circumstances of the case such as his scope of responsibilities in the company. Where an employee who owes fiduciary duties has committed a culpable breach of a duty fundamental to the fiduciary relationship, the employer need only show the connection between the breach and the loss before the evidential burden shifts to the errant employee.

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