IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Suit No 953 of 2020

Between

Inter-Pacific Petroleum Pte Ltd

… *Plaintiff*

And

Goh Jin Hian

… *Defendant*

BRIEF REMARKS

Inter-Pacific Petroleum Pte Ltd
v
Goh Jin Hian

General Division of the High Court — Suit No 953 of 2020
Aedit Abdullah J
3–4 April, 2–5, 8–11 May, 2 August 2023

24 January 2024 Judgment reserved.

Aedit Abdullah J:

1 I am satisfied having considered the evidence and submissions that the plaintiff's claim has been made out as to the liability of the defendant. These are my brief remarks conveying the main points underlying my decision in favour of the plaintiff, which I will add to in full grounds if need be.

2 The plaintiff's claim is for breach of directors' duty by the defendant, in not looking into various matters, which would have led him to realise that the company was being defrauded. The defence is briefly that there was no breach, no causation of loss, and that in any event that the plaintiff has qualified for relief from liability under the companies act.

3 The defendant as a director, had an obligation to oversee the affairs of the company. The director is not involved in the day-to-day operations of the company. But a directorship is not a sinecure, nor an honorary function. The obligation is to monitor the affairs of the corporation. This entails, among others, at least broad level supervision of the activities of the officers of the corporation, for the protection of the company, shareholders and creditors. In

general, a director is not an internal auditor, checking every singular detail, but he or she needs to supervise those conducting the business of the corporation,

4 Whether the defendant was styled as an executive or non-executive director is not conclusive. The precise content of the duty owed by a particular director is determined by the responsibilities or functions taken on as well as his or her own actions. I do not read *Prima Bulkship Pte Ltd (in creditors' voluntary liquidation) and anor v Lim Say Wan and anor* [2017] 3 SLR 839 as standing for any different proposition. As noted in *Ho Yew Kong v Sakae Holdings Ltd* [2018] 2 SLR 333:

> 137 Ultimately, all directors, whether engaged in an executive or non-executive capacity, are subject to a minimum objective standard of care which entails the *obligation* to take reasonable steps to place oneself in a position to guide and monitor the management of the company. [emphases in the original]

5 Here, the evidence showed that the defendant played an active role in the management of the company, and in that role, had assumed responsibilities and obtained knowledge and information. In any event, as argued for by the plaintiff, the Court of Appeal has noted in *Ho Yew Kong* that there is a minimum standard requiring reasonable steps to be taken to guide and monitor the management of the company. I accept the plaintiff's arguments that the evidence did not show that the defendant reduced his role to a purely non-executive one after July 2015, and in fact continued to play an active role instead, both internally and externally. Throughout all this, the defendant had a duty of due care, skill and diligence.

6 The defendant in his specific circumstances owed the duty to be fully apprised of the affairs of the company, especially those relating to its profitability or otherwise. That thus entailed a need for him to be aware of and to monitor all the activities, including the cargo trading business.

7 Not all details need be known by the director, but what was in issue here went beyond the level of day to day detail. The cargo trading business was a significant portion of the activity of the company. The evidence showed a lack of knowledge by the defendant of this activity. What was adduced by the plaintiff did sufficiently make out ignorance. One would not have expected the reaction of the defendant to be as relied upon otherwise. The arguments made by the defendant did not cohere and defeat the plaintiff's version on the balance of probabilities. The explanation proffered by the plaintiff, i.e. that the defendant was ignorant, ties in with the behaviour and actions of the defendant, the language of the emails. I also found that the interview with the liquidator was relevant. The interview process was not perfect, but there enough opportunity to explain and did not do so. The inference from the exchange was that he did not know. The defendant had also failed raise issue with banks and the CFO. The defendant's narrative did not hang together, and pointed to his ignorance of the matter, and did not rebut the plaintiff's assertions.

8 I accept that inquiry by the defendant was triggered by what was described as the three red flags, namely the audit confirmation request, the suspension of the bunker licence and the confirmations of indebtedness, should have triggered inquiry by the defendant into the financial position of the company. These three matters raised the issue of there being a large amount of money of about US$132 million owed to the company (the audit confirmation request to a supposed creditor); the threat to the profitability of the company by the suspension of the bunker licence; and the large sums totalling some US$15.6 million owed to Maybank while the bunker licence was suspended. The financial position of the company was suspect, and should have primed the defendant to look further and obtain a picture of the true state of the affairs of

the company and monitor what was happening within it. That was his duty as a director.

9 Loss was caused to the plaintiff through the transactions and drawdowns which should not have been carried out and would not have been had the defendant performed his duties.

10 The defendant pointed to information provided within the company as giving enough basis to be satisfied or not to probe further. These were not in my determination sufficient to assuage or answer the queries that should have been pursued by the defendant as a director, given both the magnitude and the circumstances of these financial issues. An honest and reasonably diligent director would have persisted and probed further. What is more, the likelihood of discovering the misfeasance is not measured on anything other than on a balance of probabilities standard. I do find that on the balance of probabilities, the fraud would have discovered had he inquired. The obstacles identified by the defendant would certainly have made it possible that the defendant would not have found out anything, but the accumulation of all these obstacles did not reduce the probability to below the required threshold. In particular, once he appreciated the large amount supposedly owed to the plaintiff by Mercuria, he would have uncovered things that would have triggered at least if not an immediate call to the authorities, at least one soon after, staunching any loss to the company. This was. as noted by the plaintiff, something that he discovered fairly promptly in reality when he eventually realised that there was cargo trading being undertaken.

11 As to the extent of the loss suffered, given my findings above, and the fact that the red flags should have triggered inquiry on his part, the full extent of the losses claimed by the company should be allowed, that is measuring the

breach from 7 February 2018, when the audit confirmation requests were signed, and he should have inquired further, and the losses would encompass the whole amount of the drawdowns during the period June to July 2019, which would be the sum of US$146,047.099.60 and the interest claimed in respect of the relevant facilities, as per the statement of claim.

12 The defendant argues that the banks breached their duties to the company. This is to my mind speculative on the evidence before me and I am also doubtful of its materiality in the circumstances here, as any such claim against the banks would be separate issue from the liability of the defendant.

13 I also accept that the defendant breached the fiduciary duty owed to the company to take into account the interests of the creditors. It is not necessary for the company to be actually insolvent; the duty arises when the company is in parlous state objectively. I do find that the company was in difficulties at the least by June 2019, as indicated by it being balance sheet insolvent then, and that it was in financial difficulties. However, in relation to the loss claimed, some $10,508,238.71, I find that this has not been made out. The plaintiff company has not sufficiently shown how this claim arose out of the breach in question, bringing the claim within the ambit of the cases governing recover for such breach.

14 Of the other explanations raised by the defendant, I will address specifically the round tripping argument. This was put forward by the defendant to raise the possibility that there was no actual loss to the company, as out of the funds taken out, some at least were essentially put back in. As argued for by the plaintiff, there was insufficient evidence that round tripping was in fact carried out. While there was fraud, there was little evidence of how each instance of fraud was carried out, and at a granular level what the inflows into

the company, as well as any intermediary payees, involved, and whether these were directed or controlled by persons involved in the fraud: all of these would have been the expected evidence of round tripping. In their absence, the positive assertions by the defendant about roundtripping were only wholly speculative and did not assist the defendant.

15 I also find that relief under s 391 Companies Act is not available. The provision requires that it appears to the court that the person had acted honestly and reasonably, and that the person out to fairly to be excused from negligence or breach. At the very least, the circumstances precluded the conclusion that the defendant had acted reasonably.

16 These are my conclusions. I will fix a further hearing date to give any necessary further directions, including for cost submissions, and to hear any applications arising from my decision.

Aedit Abdullah
Judge of the High Court

Lok Vi Ming SC, Chan Kia Pheng, Chan Junhao Justin, Yong Walter, Joshua Ho Jun Ling and Ivan Khoo Yi (LVM Law Chambers LLC) for the plaintiff;
Thio Shen Yi SC, Nanthini d/o Vijayakumar and Goh Enchi Jeanne (TSMP Law Corporation) for the defendant.