

The Government of the Republic of China (Taiwan) v Ching Chi Ju Charles and another
[2010] SGHC 147

Case Number : Suit No 280 of 2008/V
Decision Date : 10 May 2010
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Loo Choon Chiaw and Chia Foon Yeow (Loo & Partners LLP) for the plaintiff;
Lawrence Lee Mun Kong (Aptus Law Corporation) for the first defendant.
Parties : The Government of the Republic of China (Taiwan) — Ching Chi Ju Charles and
another

Agency

10 May 2010

Judgment reserved.

Tan Lee Meng J:

1 The plaintiff, the Government of the Republic of China (Taiwan), instituted the present proceedings to recover US\$29.8m that it paid into a bank account in Singapore that was jointly operated by the 1st defendant, Mr Ching Chi Ju Charles ("Mr Ching"), and the 2nd defendant, Mr Wu Shih-Tsai ("Mr Wu"). The plaintiff asserted that the money in question was to be utilised to fund projects in Papua New Guinea ("PNG") if the latter established full diplomatic relations with Taiwan. However, when the plaintiff asked the defendants to return the US\$29.8m after it became clear that diplomatic relations with PNG would not be established, the defendants did not return the said sum to the plaintiff. Hence, the plaintiff instituted the present proceedings against the defendants.

2 As judgment was entered on 17 October 2008 against Mr Wu, who did not enter an appearance in these proceedings, the trial was only concerned with the plaintiff's claim against Mr Ching, who contended that he did not have to return any money to the plaintiff because Mr Wu had withdrawn a little less than a third of the money in the account and the rest of the money in the account was intended to pay him for his services to Taiwan as a secret emissary to China and as an intermediary between the plaintiff and PNG.

Background

3 In 1996, the plaintiff attempted to but failed to establish diplomatic relations with PNG. In mid-2006, the plaintiff sought once again to establish full diplomatic relations with PNG (the "PNG project").

4 According to the plaintiff, its usual practice when trying to establish diplomatic relations with a country is to negotiate through intermediaries. It was not disputed that the plaintiff appointed Mr Ching and Mr Wu as its intermediaries in its discussions with PNG.

5 On 12 August 2006, the following persons attended a meeting (the "12 August 2006 meeting") with respect to the PNG project at the premises of the plaintiff's Ministry of Foreign Affairs ("MOFA"):

- (a) Mr Huang Chih-Fang ("Mr Huang"), the plaintiff's then foreign minister;
- (b) Mr Johnson Chang Chiang-Sheng ("Mr Chang"), a consular officer with the plaintiff's MOFA;
- (c) Mr Lee Chuan Tung ("Mr Lee"), the plaintiff's then Director-General of East Asian and South Pacific Affairs;
- (d) the 1st defendant, Mr Ching;
- (e) the 2nd defendant, Mr Wu; and
- (f) two representatives from PNG, Mr Timothy Bonga and Dr Florian Gubon.

6 The plaintiff's version of events is that at the 12 August 2006 meeting, the PNG representatives requested that US\$30m be deposited into a bank account in Singapore in the joint names of Mr Ching and Mr Wu pending the establishment of full diplomatic relations. The plaintiff asserted that it reached an agreement with its intermediaries, Mr Ching and Mr Wu, on the following:

- (a) Mr Ching and Mr Wu would open a joint account with the Oversea-Chinese Banking Corporation Limited (the "OCBC account") in Singapore;
- (b) The plaintiff would transfer US\$30m into the OCBC account for the purpose of rendering technical assistance to PNG in the first year following agreement on the terms and contents of its technical assistance plan;
- (c) Any withdrawal from the OCBC account would be subject to the plaintiff's approval; and
- (d) Mr Wu and Mr Ching would return the money in the OCBC account to the plaintiff when the latter requested this.

7 On 14 September 2006, the plaintiff transferred a sum of US\$29.8m into this account. The plaintiff explained that the amount transferred to the OCBC account was less than the US\$30m promised to PNG because US\$200,000 had already been expended on costs relating to negotiations between Taiwanese and PNG officials.

8 On 10 October 2006, a delegation from PNG visited Taipei and wanted Mr Huang to sign a joint communiqué on the establishment of diplomatic relations. The proposed joint communiqué was worded as follows:

Communique between the Government of the Republic of China (Taiwan) and the Government of the Independent State of Papua New Guinea Relating to the Establishment of Full Diplomatic Relationship between their two Countries .

Hon James CF Huang, Minister of Foreign Affairs of the Republic of China (Taiwan) held talks with the Hon Paul Tiensten, Minister for Trade & Industry and Acting Minister for Foreign Affairs of the Independent State of Papua New Guinea on matters of mutual interest to the governments and people of their countries on 20th September 2006 in Port Moresby.

In agreeing that both countries will mutually benefit from further strengthening of economic and diplomatic relations between the two countries the parties agreed as follows:

- 1 The Government of the Republic of China (Taiwan) will assist the Independent State of Papua New Guinea in social and economic development, including in areas such as agriculture, tourism and culture, urban development and planning, education and training, as well as the overall promotion of investment.
- 2 The two parties will negotiate and finalize the projects within one (1) month after the signing of this Communique.

This Communique is signed in Port Moresby on 20th September 2006.

Hon James CF Huang

Minister for Foreign Affairs

FOR THE GOVERNMENT OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA

(signed)

Hon Paul Tiensten LLM, MP

Minister for Trade and Industry

And Acting Minister for Foreign Affairs

9 Mr Huang refused to sign the proposed joint communiqué. He pointed out that although the words "establishment of full diplomatic relations" were used in the heading of the document, there was nothing therein which suggested that such ties were imminent. Instead, the focus of the communiqué was on economic ties between Taiwan and PNG. Mr Huang added that the fact that PNG's then foreign minister, Sir Michael Somare ("Sir Michael"), who was also PNG's prime minister at the material time, was not a part of the PNG delegation led him to doubt whether PNG had any intention to establish full diplomatic relations with Taiwan.

10 On 13 October 2006, Mr Huang met Sir Michael. He said that as he formed the view that Sir Michael seemed to be interested in receiving economic aid from Taiwan and not in the establishment of diplomatic ties, he decided to stop the PNG project.

11 The defendants were then asked to return the money in the OCBC account to the plaintiff. According to the plaintiff, in mid-October 2006, Mr Chang met Mr Ching, who told him that as the discussions on the PNG mission had not been completed, it was not time to return the money in the OCBC account to the plaintiff. Mr Chang said that when he reported Mr Ching's response to Mr Huang, he was told that the PNG project had been abandoned and that Mr Ching should return the money. Mr Chang said that he met Mr Ching again in Taipei on 24 December 2006 to discuss the money in the OCBC account and that the latter replied that he would arrange for the return of the said money to the plaintiff after he had visited his daughter in China. Mr Chang said that after Mr Ching did not return the money, he went to Los Angeles seven times to meet Mr Ching but he failed to meet the latter. Mr Ching admitted that he met Mr Chang on 24 December 2006 but he claimed that it was merely a social occasion that had nothing to do with the OCBC account. Remarkably, he did not shed much light on why he could not be contacted by the plaintiffs for such a long period of time.

12 On 18 April 2008, the plaintiff commenced the present proceedings against the defendants. On 25 April 2008, the High Court issued a Mareva injunction to prevent the defendants from disposing of their assets in Singapore up to the value of US\$29.8m.

Whether Mr Ching is entitled to any part of the money in the OCBC Account

13 It was common ground that the plaintiff paid US\$29.8m into the OCBC account. In his AEIC, Mr Ching stated as follows at [7(c)]:

On September 14, 2006, the Taiwan Foreign Ministry used a front company and wired US\$29.8 million to a bank account in Singapore in the joint names of Wu and me.

14 Mr Huang, who was the plaintiff's foreign minister between January 2006 to May 2008, said that the plaintiff had transferred US\$29.8m to the OCBC account for the sole purpose of establishing diplomatic ties with PNG and that as the attempt to establish the said ties failed, the money should be returned to the plaintiff.

15 In contrast, Mr Ching contended the plaintiff had put US\$29.8m into the OCBC account for a number of purposes. To begin with, he claimed that US\$10m in the OCBC account was intended to reward him for his work as Taiwan's secret emissary for the improvement of relations with China. As for the remaining US\$19.8m in the OCBC account, Mr Ching pleaded in his Defence at [3c] that, upon obtaining PNG's agreement to establish an "official government-to-government relationship" with the plaintiff, Mr Wu was to receive "such of the US\$19.8m that was spent in his efforts" while the rest of the money was to be given to him.

16 Whether the plaintiff can recover the money in the OCBC account thus depends on why the plaintiff transferred the US\$29.8m to the OCBC account.

Whether US\$10m was for Mr Ching's role as secret emissary

17 Mr Ching's contention that US\$10 million in the OCBC account belonged to him as it was intended to pay him for work done by him from 1995 to 2000 as Taiwan's secret emissary to China will first be considered. He explained his role as Taiwan's secret emissary to China in his AEIC at [5(a) to 5(b)]:

Commencing in or about 1995, I was asked by Mr Liu Tai-Ying (a high level confidante of Taiwan's then President, Lee Teng-Hui) to serve as the President's secret go-between with high officials of PRC and to avoid any misunderstandings that might increase tensions. I reported directly to Mr Liu until 2000. In 2000, a new President was elected – Mr Chen Shui-Bien I was asked by [Chiou I-Jen] (who was a personal confidante of the new president, and then assumed the post of the Secretary-General of the President's Office) and [Ker Chen-Keng] to continue my work as a secret emissary of the new president of Taiwan.

The reason for my being a *secret* emissary was because, until recently, the political atmosphere in Taiwan vis-à-vis the PRC was highly charged and extremely sensitive, and should it be known that if any government official had been in contact with officials of the PRC, it would be politically unacceptable and the end of that official's career. Another reason was that, recognizing the need for secrecy, I was specially affirmed by PRC's President and General Secretary of the Chinese Communist Party, Mr Hu Jintao, as the *sole* "window" to Taiwan in order to minimize the sources of new leaks. I was told this by Mr Zhang Huei, ... then the Vice Director of the Chinese Communist Party Central Committee's Taiwan Work Office

18 Mr Ching even claimed in his AEIC at [5(p)] that it was "not immodest" for him to say that "much conflict, perhaps even rising to the level of a military confrontation between Taiwan and China" had been averted because of his role as Taiwan's secret emissary to China.

19 The problem with Mr Ching's case is that he furnished no credible evidence to prove that he was Taiwan's secret emissary or that China's President Hu Jintao regarded him as the "sole window to Taiwan". Furthermore, regardless of whether he was a secret emissary to China, he did not prove that any part of the money transferred by the plaintiff to the OCBC account was intended to pay him for his role as an emissary.

20 The plaintiff submitted that Mr Ching's defence, which made numerous references to past and present political figures in Taiwan and China, is sensational and inconsistent with his surreptitious conduct in avoiding its officers since December 2006. It pointed out that even its foreign minister at the material time, Mr Huang, is unaware of Mr Ching's alleged role as Taiwan's secret emissary to China. When cross-examined as to whether he had any evidence that President Hu Jintao regarded him as the "sole window" to Taiwan, Mr Ching said that this information had been passed to him by a Chinese official, Mr Zhang Huei. When questioned further, he rambled on without focusing on the question before he finally conceded that he had no evidence. The relevant part of the proceedings [\[note: 1\]](#) is as follows:

Q Can you produce any evidence to back up your claim? If so, tell us which document?

A When the --- the former president Chen Shui-bian mentioned about the one country on each side, it has raised the tensions between the --- across the straits. And the atmosphere then was highly charged and it was very [tense]. And I was worried about the --- such remark will result in the plunge in the stock market which could lead to billions of dollars being lost within few days. So I asked or --- I approached Mr Chiu Yi-Jian and Mr Ko Cheng-Heng asking them for certain statements to placate the Chinese party, and that resulted in the statements of - -- of the foundations of goodwill which was subsequently handed to the Chinese party through Zhang Huei, and Mr Zhang Huei said that they will bring the documents back to study. And thereafter the --- it managed to calm down the situations and this --- I was concerned then that it might trigger very tense situations as with the proclamations of the so-called state-to-state by our former President Lee Teng-Hui.

....

Q Have you produced any evidence to support your claim as the "sole window" appointed by President Hu Jintao in dealing with Taiwan?

A *I have only Zhang Huei and no one else, nothing else.*

[emphasis added]

21 Despite Mr Ching's admission that he only had Mr Zhang Huei's word and nothing else to show that President Hu Jintao regarded him as the "sole window" to Taiwan, his counsel contended in his closing submissions that Mr Ching had furnished to the court evidence of notes of meetings with top Chinese and Taiwan officials. This assertion had no foundation for apart from Mr Ching's assertion that the documents are notes of the alleged top secret meetings, there was no other evidence that suggested that the documents in question are indeed the notes of Mr Ching's meetings with top Chinese and Taiwan officials. In fact, Mr Ching conceded as follows when he was re-examined [\[note: 2\]](#) by his counsel:

Q Mr Ching ... what I like to know is ... based on the contents of the documents starting at page 297, how do they support your role as a secret emissary? Please answer the question. Please do not talk generally.

A Well, because my role as a secret emissary does not allow any stamp to appear on the documents. Otherwise my cover will be blown. So there is nothing in – on paper with stamps.

22 Apart from the fact that it was not proven that Mr Ching was Taiwan's secret agent, it is noteworthy that Mr Ching's own statements in his two AEICs with respect to who told him that he was entitled to keep US\$10m for his role as secret agent for Taiwan did not advance his case.

23 Until January 2010, Mr Ching's position, as stated in his first AEIC filed on 18 November 2009, was that Mr Chang and Mr Lee had informed him that US\$10m in the OCBC account was to, in his own words, compensate him for "the past ten years of toiling as the Taiwan president's secret emissary" to China. He stated as follows in that AEIC at [7(c)]:

On September 14, 2006, the Taiwan Foreign ministry used a front company and wired US\$29.8 million to a bank account in Singapore in the joint names and me *CHANG and LEE told me that because of the sensitive nature of my secret PRC emissary work, the Taiwan government could not formally pay me anything to show its gratitude, and this PNG project came along and they used it as a way to get the \$10 million to me under its cover.* Even though I humbly demurred, saying I would have done all that and more for my home country, CHANG insisted, and said "what had already gone out must not be returned." I therefore accepted the offer.

[emphasis added]

24 Mr Chang testified that he was not even aware of Mr Ching's role as a secret emissary. In his AEIC at [13], Mr Chang stated as follows:

I understand that in this legal action, Mr Ching claims that out of the said sum of money, US\$10 million was intended as reward or compensation to him for his efforts as secret emissary of Taiwan to promote relations with the People's Republic of China (PRC). *I am not aware of Mr Ching's role, if any, as the secret emissary. I can confirm that during the meeting on*

12 August 2006, there was no mention of PRC or Mr Ching as the secret emissary.

[emphasis added]

25 Mr Chang was adamant that he did not tell Mr Ching that US\$10m was intended for his services as a secret emissary. When cross-examined, [\[note: 3\]](#) he stated as follows:

Q I put it to you that you told Mr Ching that because of the sensitive nature of the secret PRC emissary work, the Taiwan Government could not formally pay him anything to show its gratitude and this PNG project came along and they used it as a way to get the 10,000 [sic] million to me – to him under its cover....

A Absolutely not.

Q [Y]ou knew that Mr Ching was a secret emissary for Taiwan to improve relations with China - -- PRC, sorry.

A I disagree entirely.

Q [I] put it to you that you further told Mr Ching that what had already gone out must not be returned and Mr Ching accepted it --- accepted what you said.

A I never said so. I disagree completely.

26 Mr Lee also did not agree that any part of the US\$30m was intended for Mr Ching's alleged role as a secret emissary. He stated in his AEIC at [8] as follows:

I now understand that Mr Ching claims that part of the US\$30 million was intended to reward him for his work as secret emissary to mainland China. I can confirm that there was no such discussion during that meeting. The topic of mainland China was not even brought up that day. I am not aware of Mr Ching having been appointed as secret emissary to mainland China.

27 In his supplementary AEIC sworn on 7 January 2010, Mr Ching claimed for the first time that it was Mr Chiou I-Jen ("Mr Chiou"), the then Director of Taiwan's National Security Council, who told him that he was entitled to US\$10m for his work as Taiwan's secret emissary to China and that this was confirmed by one Mr Ker Chen-Keng ("Mr Ker"), the then deputy director of Taiwan's National Security Council and Vice-Minister of Defence. In his supplementary AEIC, he stated at 3(v) and (vi) as follows:

3(v) Within the next couple of days, at Chiou's residence, I reported to him of the results of our meetings with the PNG officials and that, of the US\$30 million which the Foreign Ministry had budgeted, there was a surplus of US\$30 million (after the US\$10 million for PNG and another US\$10 million as commission for Wu and me). *Chiou said: "You did many things for your country. This surplus is for you"....*

(vi) A couple of days later, I made the same report to KER at the Defense Ministry. *KER said: "You did many things for your country, and shuttled between the two shores for many years. You should get it."*

(vii) *A few days later, in a meeting room at the Foreign ministry, ... CHANG also told me that because of the sensitive nature of my secret PRC emissary work, the Taiwan government*

could not formally pay me anything to show its gratitude, and this PNG project came along and they used it as a way to get the US\$10 million to me under its cover. *Even though I humbly demurred, saying that I would have done all that and more for my home country, CHANG insisted, and said, "what had already gone out must not be returned. I therefore accepted the offer.*

[emphasis added]

28 The fresh revelations by Mr Ching in his supplementary AEIC are rather surprising. During the trial, his counsel, Mr Lawrence Lee, sought to portray Mr Chiou as a very powerful man with authority to pay Mr Ching US\$10m for his work as a secret emissary. If this was indeed the case, Mr Ching, who had referred to his dealings with Mr Chiou and Mr Ker in his first AEIC, ought to have stated in that AEIC that it was Mr Chiou who had agreed to pay him US\$10m for "the many things" that he did for the country. Instead, in that AEIC, Mr Ching had merely mentioned that Mr Chang and Mr Lee, whom he described as "underlings at the Foreign Ministry", had told him to keep US\$10m for himself.

29 Mr Ching admitted that he had no written evidence and no witnesses to prove that Mr Chiou had authorized the diversion of US\$10m, which was ostensibly intended for the PNG project, to Mr Ching's own pocket. In the absence of proper evidence, the court cannot find that Mr Chiou, who is not in court to defend himself, had authorized the said diversion of government funds to Mr Ching.

30 After taking all the circumstances into account, I hold that Mr Ching failed to prove that he is entitled to keep US\$10m out of the US\$29.8m in the OCBC account as a reward for his work as a secret emissary to China.

The remaining US\$19.8m

31 As for the remaining US\$19.8m in the OCBC account, Mr Ching asserted that there is nothing left in the said account to refund to the plaintiff because Mr Wu had spent US\$8m to US\$9m in furtherance of the project entrusted to him and the balance of the money was intended to compensate him for his work as an intermediary between Taiwan and PNG.

32 Mr Ching did not furnish a consistent account of what the US\$19.8m was intended for. In his AEIC, Mr Ching stated at [7c] that only US\$9.8m was intended for payments to PNG's representatives while US\$10m was intended to compensate him and Mr Wu for their work as intermediaries in the PNG matter. However, according to his Defence (Amendment No 3), Mr Ching claimed that it was agreed between him and Mr Wu as follows:

(a) Mr Wu was to receive such of the US\$19.8m that he spent on the PNG matter; and

(b) the balance of the money in the OCBC account would be disbursed to him.

33 There is no evidence before the court that Mr Wu had spent any money in furtherance of the project entrusted to him. When re-examined by his own counsel, Mr Lawrence Lee, Mr Ching claimed that his lawyers had compiled a list to show the movement of money from the OCBC account but the alleged list was not produced in court. I thus find that it was not proven that Mr Wu had legitimately spent the amount in question in furtherance of the plaintiff's aim to establish diplomatic ties with PNG or that any money in the OCBC account had been transferred to Mr Wu's account.

34 I now turn to Mr Ching's assertions that the task undertaken by him was to enhance the bilateral relationship between Taiwan and PNG and not to assist in establishing full diplomatic ties between Taiwan and PNG and that he had earned around US\$10m by fulfilling his task. He stated in his AEIC at [9]:

9(a) Taiwan could not have realistically harboured the hope that, this time, in 2006, it could "buy" PNG's diplomatic recognition for the relatively measly sum of only US\$30 million. Instead, the assignment was just to enhance the two countries' relationship. In fact, Plaintiff's Statement of Claim says this much, the defendants were engaged "to enhance the bilateral relationships between the Plaintiff and PNG".

(b) The defendants herein *did* accomplish what they were engaged to do, and vastly improved the bilateral relationship between PNG and Taiwan. PNG established an official trade office in Taipei, PNG appointed an official representative in Taiwan, it issued a joint communiqué proclaiming their improved cultural and trade relationship, and high-level ministers had frequent official visits to each other's capital, etc. This was a far cry from 1999 when the relationship was in the pits, and they were not even talking to each other.

35 The court is in no position to determine whether the sum of US\$30m is a realistic amount to persuade PNG to establish diplomatic ties with the plaintiff. What needs to be noted is that Mr Ching's assertion that his task was merely to enhance bilateral relations between Taiwan and PNG contradicts his own pleadings. For instance, in his Defence (Amendment No 3), he pleaded at [3b] that US\$19.8m was to establish "an official *government-to-government relationship* between PNG and the Plaintiff and for the Defendants' remuneration in acting as intermediaries" (emphasis added).

36 Whether Mr Ching's task was, as he claimed, to help the plaintiff establish official government-to-government relationship with PNG, or, as the plaintiff contends, to assist in the establishing of full diplomatic ties with PNG, I accept the plaintiff's evidence that the US\$29.8m in the OCBC account was part of the US\$30m intended to fund projects in PNG after full diplomatic ties had been established with PNG and that no part of the money was intended to compensate either Mr Ching or Mr Wu. Mr Huang's evidence on this point was corroborated by Mr Chang and Mr Lee.

Whether the Plaintiff is entitled to the US\$29.8m

37 My findings thus far may be summarized as follows:

- (a) Mr Ching agreed to assist the plaintiff in the PNG project;
- (b) Mr Ching had agreed with the plaintiff that the OCBC account would be opened for the purpose of receiving from the latter the sum of US\$29.8m, which was solely intended for the purpose of the PNG project;
- (c) Mr Ching failed to prove that the money in the OCBC account was intended to pay him for his services as a secret emissary to China and as an intermediary in the PNG project;
- (d) Mr Ching failed to prove that Mr Wu had legitimately spent any money in the OCBC account on the PNG project; and

- (e) The PNG project was called off by the plaintiff after it concluded that full diplomatic ties would not be established with PNG.

38 In the light of my findings, the plaintiff is entitled to the US\$29.8m that it deposited into the OCBC account. This right rests on principles of agency law. The plaintiff appointed Mr Ching and Mr Wu as its intermediaries for the PNG project. Mr Ching did not deny that he was the plaintiff's intermediary for the said project. What he contended was that he was entitled to be paid for his services. As I have found that he had agreed to act as an intermediary without any payment for his services, he was a gratuitous agent. In regard to the recovery by a principal of money handed over by him to his agent, *Bowstead and Reynolds on Agency*, 18th ed, Sweet & Maxwell, 2006, explained the position at para 6-097 as follows:

Article 51

COMMON LAW DUTY TO PAY OVER MONEY HELD FOR PRINCIPAL

[A]n agent who holds or receives money for his principal is bound to pay over or account for that money at the request of his principal, notwithstanding claims by third parties, even if the money has been received in respect of a void or illegal transaction.

39 In the present case, when the plaintiff called off the PNG project and asked for the return of the US\$29.8m, Mr Ching was obliged as a gratuitous agent to return the money. I thus hold that the plaintiff is entitled to judgment for the sum of US\$29.8m. The plaintiff is also entitled to the interest that has accrued in the OCBC account or would have accrued had the entire sum of US\$29.8m remained in the said account until the date of judgment.

Costs

40 The plaintiff is entitled to costs.

[\[note: 1\]](#) Notes of Evidence ("NE"), 4 February 2010, pp 10-11.

[\[note: 2\]](#) NE, 4 February 2010, pp 51-52.

[\[note: 3\]](#) NE, 3 February 2010, pp 48-49.

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