

Khoo Eng Hock Patrick and Another v Eastlink Shipbroking Pte Ltd and Another
[2009] SGHC 52

Case Number : Suit 368/2006, SUM 5329/2008
Decision Date : 04 March 2009
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Winston Kwek, Mark Cheng and Raelene Su Lin Pereira (Rajah & Tann LLP) for the plaintiffs; Ong Ying Ping and Susan Tay Ting Lan (Ong Tay & Partners) for the defendants
Parties : Khoo Eng Hock Patrick; Michael Kitara Tay Min Teck — Eastlink Shipbroking Pte Ltd; Loy Kok Toon

Civil Procedure

4 March 2009

Choo Han Teck J:

1 The plaintiffs commenced this action against the defendants for damages arising from a wrongful termination of employment and other wrongs such as assault, battery and false imprisonment, and also for an account of profits in a joint venture between the parties. The trial proceeded before Tan Lee Meng J for several days. The parties reached a settlement on the fifth day and recorded a consent judgment before the trial judge. The consent order dated 14 September 2007 recorded terms that included the award of a 25% share of the profits in the joint venture account to the first plaintiff and a 20% share to the second plaintiff. The accounts were to be prepared by a special accountant. Foo Kong Tan Grant Thornton was the accounting firm nominated by the defendants and subsequently appointed to prepare the accounts of the joint venture.

2 The parties also subsequently agreed the terms of reference in the appointment of the special accountant. The special accountant issued the final joint venture accounts on 7 October 2008. The defendants' previous solicitors wrote by letter dated 15 October 2008 to state that the defendants do not agree with the special accountant's final report on the accounts. The defendants engaged another accountant, Mr Chee Yoh Chuang of Stone Forest Corporate Advisory Pte Ltd, who advised them that the special accountant took into account irrelevant factors and failed to give weight to relevant ones. The defendants further alluded to bias on the part of the special accountant. One of the factors the defendants say was not taken into account consisted of various items of expenditure.

3 The terms of settlement recorded were brief and simple. The relevant portion merely stated that the plaintiffs' entitlement to joint venture profits "will be determined by an independent special accountant to be jointly appointed by the parties." Brevity and simplicity often have the virtue of presenting the big picture within a small frame; all the clearer for one to view. In that order of court, I see that the parties had resolved to let the plaintiffs have a share of the profits, and that the amount would be determined by an accountant jointly appointed by the parties. It seemed clear that the parties envisaged that payment of the profits so accounted would finally end the dispute commenced in Suit No 368 of 2006. There could be no other intention between the parties in the context of the settlement recorded. The defendants' present application to set aside the special accountant's report was based on their view that the special accountant had erred. In settlements of this nature, the parties in dispute could not have intended litigation to re-open should either party be

dissatisfied with the special accountant's report. The defendants certainly would not have thought so had it been the plaintiffs who are challenging the report.

4 The special accountant has a duty to both parties and is answerable to them should he breach any of his duties. Hence, if the defendants think that the special accountant had been in breach, their recourse lies against the special accountant. The evidence in affidavit before me, however, did not indicate any breach of duty by the special accountant. He had given both parties sufficient opportunity to present their case and claim for his consideration.

5 I therefore dismissed the defendants' application with costs on an indemnity basis to be taxed if not agreed.

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