
Shipping & International Trade

An Employee's Breach of Fiduciary Duties and the Liability of Third Parties for Dishonest Assistance

Introduction

When a company uncovers schemes perpetrated by one of its employees, a key question will be what recourse is available against the employee, and whether the company may also seek recourse against the employee's collaborators. This was the situation faced by the Singapore High Court in *Sumifru Singapore Pte Ltd v Felix Santos Ishizuka* [2022] SGHC 14.

The 1st Defendant in this case held the designation of "shipping director" in the Plaintiff company, although he was not on its board of directors. The Plaintiff brought a claim against the 1st Defendant for breach of his fiduciary duties in orchestrating various schemes against the Plaintiff. The Plaintiff also sought to impose liability on the 2nd and 3rd Defendants, being companies owned and controlled by the 1st Defendant, for their role in facilitating the schemes.

The Court found that the 1st Defendant, in his role as shipping director and given his scope of functions, owed fiduciary duties to the Plaintiff, and had breached these duties by perpetrating the schemes against the interests of the Plaintiff. The Court further found the 2nd and 3rd Defendants to be jointly and severally liable on the grounds of dishonest assistance. The 1st, 2nd and 3rd Defendants were ordered to pay the Plaintiff some US\$9 million, interest thereon and costs.

In reaching its decision, the Court considered the circumstances under which fiduciary duties would be imposed on an employee, even if the employee is not a member of the board of directors. The Court also considered the elements of dishonest assistance, particularly the element of dishonesty and when it can be attributed from an individual to a company.

The Plaintiff was successfully represented by Winston Kwek, Dedi Ahmad, Li Kun Hang and Dharini Ravi of Rajah & Tann Singapore LLP.

Brief Facts

The Plaintiff company was in the business of production and sale of fruit globally. At the material time, the 1st Defendant was an employee of the Plaintiff holding the title of "shipping director". His role was essentially that of an executive undertaking and managing the shipments of the Plaintiff's fruit cargo to

Shipping & International Trade

purchasers in markets all over the world. Unbeknownst to the Plaintiff, he had also set up and was also the owner and controller of two companies, Multiport Maritime Corporation ("**Multiport BVI**"), being the 2nd Defendant which was incorporated in the British Virgin Islands, and Multiport Maritime Pte Ltd ("**Multiport SG**"), being the 3rd Defendant which was incorporated in Singapore.

Following an innocent query from business associates, the Plaintiff conducted an internal audit and discovered that the 1st Defendant had profited at the Plaintiff's expense from various schemes in the course of his employment. The primary scheme was one in which the 1st Defendant, as the Plaintiff's shipping director, arranged for the Plaintiff to pay freight to Multiport BVI for fruit shipments on board vessels which Multiport BVI had "chartered" from various shipowners:

- (a) The freight paid by the Plaintiff to Multiport BVI was always higher than Multiport BVI's chartering costs, with Multiport BVI keeping the difference as its profits.
- (b) Moreover, despite the 1st Defendant claiming that Multiport BVI bore the risks of having chartered the relevant vessels, the underlying chartering arrangements between Multiport BVI and the shipowners were arranged at the Plaintiff's risk, because the 1st Defendant inserted the Plaintiff's name as the charterer in the charterparties with the shipowners or had otherwise issued, without the Plaintiff's knowledge, let alone consent, corporate guarantees to secure the performance of the charters by Multiport BVI.
- (c) Multiport SG assisted in perpetrating this scheme by arranging for or otherwise paying for bunkers supplied to these vessels.

The Plaintiff sought to claim against the 1st Defendant for breach of his fiduciary duties, as well as against Multiport BVI and Multiport SG for, among others, dishonest assistance.

Holding of the High Court

The Court ruled in favour of the Plaintiff, finding that the 1st Defendant was a fiduciary of the Plaintiff and had breached his fiduciary duties. Multiport BVI and Multiport SG were found to have dishonestly assisted the 1st Defendant in his breach of fiduciary duties.

Fiduciary duties

In the context of employee-employer relationships, the duties that the employee owes his employer is primarily a matter of contract, and the imposition of additional fiduciary obligations on the employee is the exception rather than the norm. Nonetheless, the Court set out general indicia on whether the imposition of fiduciary obligations would be appropriate:

- (a) Whether the fiduciary has scope for the exercise of some discretion or power;

Shipping & International Trade

- (b) Whether the fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiary's legal or practical interests; and
- (c) Whether the beneficiary is peculiarly vulnerable to or at the mercy of the fiduciary holding the discretion or power.

On the facts, the 1st Defendant was not on the Plaintiff's board of directors, nor was he given any authority to make major decisions in relation to the Plaintiff's business. While this would at first glance militate against the imposition of fiduciary obligations on the 1st Defendant, the Court scrutinised the circumstances of the case, bearing in mind the factors set out above.

The Court was of the view that the 1st Defendant was able to unilaterally exercise the discretion and power inherent in his role as the shipping director to the extent that it affected the Plaintiff's legal and practical interests, and that the Plaintiff was particularly vulnerable to the 1st Defendant's exercise of that discretion and power. The Court therefore found that there was a fiduciary relationship between the 1st Defendant and the Plaintiff.

The 1st Defendant was uniquely placed to source for shipping contracts for the Plaintiff's shipments of cargoes, and the Plaintiff was entirely reliant on his recommendations as to which shipowner to charter a ship from, as well as the all too important shipping rates. The 1st Defendant therefore owed a fiduciary obligation to the Plaintiff to act in its best interests. This was breached when the 1st Defendant took advantage of his position by interposing Multiport BVI, which he owned and controlled, as an intermediary between the Plaintiff and the shipowners in respect of the shipping arrangements, and retained in Multiport BVI the difference in shipping rates. Had the Plaintiff contracted directly with the shipowners, it would not have had to pay the higher shipping rates to Multiport BVI.

Dishonest assistance

The Court also found that both Multiport BVI and Multiport SG had dishonestly assisted the 1st Defendant's breach of fiduciary obligations to the Plaintiff, and were therefore liable jointly and severally for the same.

The elements of dishonest assistance are as follows:

- (a) The existence of a trust or fiduciary duty;
- (b) A breach of that trust or fiduciary duty;
- (c) Assistance rendered by the third party towards the breach; and
- (d) A finding that the assistance rendered by the third party was dishonest.

As the Court had found that the 1st Defendant had breached his fiduciary duties to the Plaintiff, it went on to consider the elements of assistance and dishonesty. On the facts, the Court found that Multiport

Shipping & International Trade

BVI and Multiport SG's assistance were essential to the 1st Defendant's breach of fiduciary obligations. It was Multiport BVI which was interposed into the transactions with a view to reaping profits at the Plaintiff's expense. Multiport SG had also rendered its assistance to the scheme by assisting Multiport BVI to arrange and pay for bunkers that the vessels required to perform the carriage of the cargo.

On the issue of dishonesty, the Court highlighted that the 1st Defendant controlled and owned both Multiport BVI and Multiport SG. Therefore, his knowledge was attributable to these companies. Consequently, these companies knew that any assistance rendered to the 1st Defendant in breach of his fiduciary obligations would have been a breach of the standards of honest conduct as viewed by ordinary honest people.

Concluding Words

A successful claim for breach of fiduciary duties allows a claimant to access a variety of remedies against the defendant. Where the defendant is an employee of the claimant, the existence of fiduciary duties depends on an assessment of the contractual and operational relationship between the parties. As this case demonstrates, the fact that the employee is not on the board of directors is not conclusive of the matter. In this decision, the Court demonstrated the comprehensive approach it would take in making such an assessment.

The decision also shows that companies which assist an employee to profit at his employer's expense cannot escape liability. The Court is well able to impose liability on such companies on various grounds, including dishonest assistance.

For further queries, please feel free to contact our team below.

Contacts



Winston Kwek
Partner, Shipping &
International Trade

T +65 6232 0513

winston.kwek@rajahtann.com



Dedi Affandi Ahmad
Partner, Shipping &
International Trade

T +65 6232 0706

dedi.affandi.ahmad@rajahtann.com

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

Rajah & Tann Singapore LLP Shanghai Representative Office

T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited

T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
www.cagatlaw.com

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

Hanoi Office

T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

Rajah & Tann Asia is a network of legal practices based in Asia.

Member firms are independently constituted and regulated in accordance with relevant local legal requirements. Services provided by a member firm are governed by the terms of engagement between the member firm and the client.

This update is solely intended to provide general information and does not provide any advice or create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on this update.

Our Regional Presence



Rajah & Tann Singapore LLP is one of the largest full-service law firms in Singapore, providing high quality advice to an impressive list of clients. We place strong emphasis on promptness, accessibility and reliability in dealing with clients. At the same time, the firm strives towards a practical yet creative approach in dealing with business and commercial problems. As the Singapore member firm of the Lex Mundi Network, we are able to offer access to excellent legal expertise in more than 100 countries.

Rajah & Tann Singapore LLP is part of Rajah & Tann Asia, a network of local law firms in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Our Asian network also includes regional desks focused on Brunei, Japan and South Asia.

The contents of this Update are owned by Rajah & Tann Singapore LLP and subject to copyright protection under the laws of Singapore and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Rajah & Tann Singapore LLP.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Rajah & Tann Singapore LLP or email Knowledge & Risk Management at eOASIS@rajahtann.com.