

Privy Council Appeal No. 48 of 1992

- (1) Noraini Bte Haji Mohd Taha
- (2) Mej (B) Karim Bin Sapar
- (3) Tanco Marine Technology SDN BHD and
- (4) Tan Kee Tai

Appellants

v.

- (1) Glenn Ang Gek Jin
- (2) John Mallory Bromage and
- (3) Tan Eng Hong

Respondents

FROM

THE COURT OF APPEAL OF BRUNEI

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE
15TH NOVEMBER 1993

Present at the hearing:-

LORD TEMPLEMAN
LORD MUSTILL
LORD WOOLF
LORD LLOYD OF BERWICK
SIR THOMAS EICHELBAUM

[Delivered by Sir Thomas Eichelbaum]

In 1988 John Bromage and Tan Eng Hong (two of the respondents) Tan Kee Tai and Tan Eng Hong's brother and mother entered into a partnership, the object of the partnership business being to provide labour and services for concerns contracting with Brunei Shell Petroleum Sdn. Bhd. ("BSP"). Tan Kee Tai alone of the persons named as appellants in the proceedings having pursued the appeal it will be convenient to refer to him as the appellant. From the beginning described above there emerged in 1989 the company called Tanco Marine Technology Sdn. Bhd. ("TMT") in which Bromage, Tan Eng Hong and the appellant were three of the interested parties. Since, pursuant to the policy prevailing in Brunei and supported by BSP, it was necessary to have Malay indigenous representation on the board of the company, Noraini Bte Haji Mohd Taha and Mej (B) Karim Bin Sapar ("Noraini" and "Karim") were invited to join the enterprise and take office as sole directors. By virtue of an agreement dated 13th January 1990 ("the first agreement") Bromage (as to 35%) and the appellant (30%) were entitled to the most

substantial shares of the profits. The authorised signatories on the company's bank account were to be either one of the directors with a co-signatory who could be either Bromage or the appellant. The legal effect of the arrangement, as the judge at first instance held, was to constitute a fresh partnership. Only two shares in the company's nominal capital were issued, one each to Noraini and Karim.

After the two businesses, that is the one carried on by the partnership, the other by the new company had been operated in tandem for a period, the affairs of the partnership were wound down and its assets and contracts transferred to TMT. The latter also acquired a major contract for the construction of pilot boats for BSP. By mid-1990 when three such vessels were under construction TMT had overdraft and loan facilities with its bankers amounting to some B\$4 million. These were secured by cash deposits provided by Tan Eng Hong, Bromage and the appellant, principally by the last named and his wife. Pursuant to the first agreement the five partners were allocated specific roles in TMT, Bromage being the operations manager, Tan Eng Hong the personnel manager, Karim the managing director and Noraini the company secretary. These four received salaries. The appellant was designated as the person responsible for finance and he alone was not entitled to a salary.

Initially while relations between the partners were good, the business prospered. However, differences developed between Bromage and the appellant with the result that in September 1990, but with effect from 15th December 1990, the latter tendered his resignation from "all positions with the company". The courts below were agreed that the appellant's letter constituted evidence of his resignation or retirement from the partnership arising under the first agreement. The company's auditors were requested to audit the accounts as at 15th December 1990 for the purpose of distributing profits in accordance with the agreement, and the appellant ceased to attend to the company's business.

By a document dated 1st January 1991 ("the second agreement") the remaining partners and one Glenn Ang Gek Jin ("Glenn Ang") regulated the basis of a new partnership. After reciting that the first agreement had been rescinded the agreement provided for the issue of a further 98 shares in TMT and how they were to be held. As Glenn Ang was to take the appellant's place as the principal financial backer the securities provided by the appellant were released and replaced with fresh ones in substitution. Bromage, Tan Eng Hong, Karim and Noraini were to hold the same salaried positions as previously.

No agreement was reached regarding the appellant's entitlement in respect of the share he held under the previous arrangements. Passing over intervening events for the moment, their Lordships turn to 10th July 1991 when at a directors' meeting Noraini and Karim passed a

resolution recording among other things that they had been misled by Bromage and that the appellant had not intended to sell his shares to Glenn Ang; and providing that the second agreement was null and void, that all documents signed by Glenn Ang based "on the mistaken belief" that he was or would be a 30% shareholder in the company may be cancelled and rescinded by Glenn Ang, and that shares purportedly allotted to Glenn Ang were to be withheld and withdrawn and instead allotted to the appellant.

The consequences of the resolution were dramatic. In particular the company's major contract was cancelled and the bank placed the company in receivership. Bromage was dismissed, ostensibly for unrelated reasons which do not now require elaboration. In the ensuing litigation commenced by Glenn Ang, Bromage and Tan Eng Hong against Noraini, Karim, TMT and the appellant in the High Court of Negara Brunei Darussalam, there were a number of causes of action while the appellant raised a counterclaim; but in the event only one cause of action remains alive and requires mention, namely that on which the plaintiffs obtained judgment against the appellant for damages in a sum to be assessed for wrongful interference with the plaintiffs' contractual rights, that is those arising under the second agreement. Such judgment having been affirmed by the Court of Appeal, with the leave of that court the appellant now appeals to His Majesty the Sultan and Yang Di-Pertuan.

The legal principles applicable to that cause of action are not in contention. For present purposes it suffices to say that the necessary ingredients will exist when a third party, with knowledge of the contract and the intent to procure its breach, directly persuades or procures or induces one of the parties to that contract to break it. As to the element of knowledge, before the Court of Appeal and again before their Lordships the appellant accepted there was evidence from which the trial judge could deduce that the appellant had knowledge of some contractual arrangement sufficient to satisfy this ingredient. Regarding the element of inducement it was accepted that it was sufficient if in accordance with normal tortious concepts, a causative link was shown, which their Lordships take as requiring proof that the cause was operative without going so far as to require it to be a primary or predominant cause.

Against the background stated, counsel for the appellant submitted to their Lordships that the primary findings of fact in the courts below were insufficient foundation for holding against the appellant concerning proof of the elements of inducement and intention. As the principal thrust of the argument was that the findings of primary fact were insufficient to justify drawing the inferences required to enable the plaintiffs to succeed their Lordships do not consider the case attracts application of the usual rule that the Board will decline to

review the evidence where there are concurrent judgments of two courts on a pure question of fact (*Srimati Bibhabati Devi v. Kumar Ramendra Narayan Roy and Others* [1946] A.C. 508).

Their Lordships' reasons for rejecting the appellant's submissions can be stated quite briefly. In doing so they must now refer to the events leading up to the 10th July resolution. In March, as the trial judge found, the appellant misrepresented to Noraini and Karim that Glenn Ang had promised to pay him B\$300,000 for his "share" but had neglected to do so. The trial judge was satisfied that in this way the appellant set in motion the whole series of events resulting in the split between the partners. Thereafter, the appellant met Noraini and Karim at the offices of his solicitors, leading to the solicitors writing to the company's solicitors on 8th July to advise that they were acting for Noraini and Karim as well. On 9th July there was a long meeting between Noraini, Karim, Bromage, Glenn Ang and Tan Eng Hong. The appellant was not present but Noraini and Karim expressed the wish to consult further with him and did so immediately afterwards. On 10th July the resolution already mentioned was passed, the first paragraph reading:-

"Both Directors have received and accept confirmation from [the appellant] on 9th July 1991 that although he has resigned from his position as Finance Manager, he has no intention to sell his shares of 30% in the Company. Further, [the appellant] has not agreed to rescind the Shareholders Agreement dated 13th January 1990 between the directors of the Company, Mr. John M. Bromage and Mr. Tan Eng Hong. The Directors accepts the fact that they have been misled by the Operation Manager that [the appellant] intends to sell his shares to Mr. Glenn Ang Gek Jin."

Counsel submitted that having regard particularly to the lapse of time, there was insufficient basis for concluding that the March misrepresentation was causatively linked with the 10th July resolution. When, however, the judgment is read as a whole it is clear that the trial judge did not rest his finding solely on the events of March. Their Lordships agree with the Court of Appeal that the trial judge's findings are properly to be construed as including that the appellant made further misrepresentations to Noraini and Karim shortly before the passing of the resolution. Indeed the appellant accepted that he gave the directors the information recited in the paragraph of the resolution just quoted.

In summary the view taken by the judges in the courts below was that the appellant, having first attracted Noraini's and Karim's sympathy by the misstatements made in March, heightened their concerns by other misrepresentations in July. Although different Karim, at least, regarded them as consistent with those made earlier. These acts constituted "influence of one kind or another

brought to bear on the mind of the contract breaker" (per Jenkins L.J. in *D.C. Thomson & Co. Limited v. Deakin and Others* [1952] Ch. 646, 693). The conclusion that there was a sufficient causative link between the appellant's conduct and the breaches of contract committed by Noraini and Karim, which necessarily had to rest on inference, was sufficiently grounded on findings of fact which in turn were well open on the evidence.

As to the submissions addressed to intention their Lordships are unable to agree that the trial judge merely applied post hoc propter hoc reasoning. He found that the appellant sought to force open a door which, by his resignation and subsequent conduct, he had firmly closed behind him, and that having sufficient knowledge of the new contractual arrangements he realised that his attempt to regain a position of authority in the company would have a drastic effect on the arrangements made after his earlier withdrawal. In agreement with the Court of Appeal, their Lordships consider the trial judge must have been satisfied that the appellant intended to procure a breach of the contractual arrangements. As the Court of Appeal points out his subsequent actions were consistent with and support that inference.

Their Lordships will therefore advise His Majesty the Sultan and Yang Di-Pertuan that the appeal should be dismissed. The appellant must pay the respondents' costs of the appeal.