

CASE UPDATE

26 June 2018

CLARIFYING THE SCOPE OF DIRECTORS' LIABILITIES FOR A COMPANY'S BREACH OF CONTRACT

PT Sandipala Arthaputra v STMicroelectronics Asia Pacific Pte Ltd
[2018] SGCA 17

The Court of Appeal recently clarified the extent of a director's liability for his company's breach of contract. The Court of Appeal held that a director is exempt from personal liability for his company's breaches of contract, if he acted in his capacity as a director of the company, without being in breach of duties owed to his company.

BACKGROUND

The first appellant ("**Sandipala**") produces personalised electronic identification cards. It entered an agreement with the second respondent ("**Oxel**") to purchase a quantity of microchips. These microchips were manufactured by the first respondent ("**ST-AP**") and encoded with Oxel's software.

Sandipala had purchased these chips to fulfil its obligations under a tender agreement with the Indonesian government to produce electronic identification cards ("**e-KTP cards**") for its citizens. As it turned out, Oxel's software encoded on the microchips was not compatible with the e-KTP system.

Thereafter, Sandipala rejected most of the microchips supplied by Oxel, and only paid for a portion of the microchips delivered. They commenced proceedings against the respondents

(including the third respondent, ST-AP's manager in Indonesia) for breaches of contract and fraudulent misrepresentations.

Oxel counterclaimed against Sandipala for breach of contract, and also against Sandipala and two of its directors ("**Tannoses**") for conspiracy.

The High Court dismissed all of Sandipala's claims, and allowed Oxel's counterclaim for breach of contract. The High Court further found Sandipala and the Tannoses liable for conspiracy by unlawful means to cause loss to Oxel.

THE COURT OF APPEAL'S DECISION

Sandipala appealed against the High Court's decision. The Court of Appeal dismissed almost the entirety of Sandipala's appeal, but allowed the appeal of Sandipala and the Tannoses on the claim of unlawful means conspiracy.

The Court of Appeal took the opportunity to demarcate the scope and extent of a director's liability for his company's breach of its contracts.

The Court of Appeal considered that a director may be held personally liable for the consequences of his company's breach of contract under three potential causes of action:

- (1) For procuring breach of contract, where the director induces or procures his company to breach the company's contract with a third party;
- (2) For unlawful means conspiracy between directors of the company, where they conspire to procure the company to breach its contract with a third party; and
- (3) For unlawful means conspiracy between the director and his company, where he conspires with his company to breach the company's contract with a third party.

The Court of Appeal noted that in all three situations, a director would be immune from personal liability if he falls within the principle in *Said v Butt* [1920] 3 KB 497, which provides that a director is immune from personal liability for procuring his company's breach of contract when he acts *bona fide* within the scope of his authority.

After reviewing various Commonwealth decisions, the Court of Appeal held that the principle set out in *Said v Butt*, exempts a director from personal liability for authorising or procuring his company's breach of contract in his capacity as a director, unless his decision is made in breach of any fiduciary or other personal legal duties owed to the company. The focus is therefore on the director's conduct and intention in relation to his duties to his company, and not towards the third party.

The Court of Appeal further noted that the principle in *Said v Butt* was a requirement of liability and not a defence, such that the plaintiff who alleges liability must prove that the defendant-director's acts were in breach of his personal legal duties to the company.

In the circumstances, where a director acts in the best interests of his company, and not in breach of his duties to the company, he remains entitled to protection under the *Said v Butt* principle even if he also had an intention to injure the third party or to induce a breach of contract as against the third party.

COMMENTS

The Court of Appeal's decision is a timely and useful clarification of the scope of a director's liability for breach of contract by his company. The judgment reassures directors that they can make commercial decisions in the best interests of their company, without fear of attracting personal liability.

In particular, a director may legitimately decide that it is in his company's best interests to renege from an agreement and instead pay damages for breach of contract.

However, this protection afforded to a director applies only in relation to his liability for procuring a breach of contract by his company or conspiring with other directors or his company to breach the contract. A director may still be personally liable for authorising or procuring his company to commit other torts against a third party, such as trespass to property or intellectual property infringement.

The Court of Appeal recognised the potential inconsistency between granting a director immunity for directing a company's breach of contract, but not for directing the commission of

other torts. As this issue was not directly material to the appeal, the Court of Appeal did not express a concluded view.

Given the current state of the law, even where a director has acted in the best interest of the company in authorising or procuring the company to do certain acts, this does not always exempt the director from personal liability to a third party who has suffered a loss as a result of the company's acts.

A director who is unsure about the scope of his legal obligations or the extent of his potential liability for company decisions, should seek legal advice.

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