

SUPREME COURT OF SINGAPORE

[28 May 2020]

Case summary

SIC/S 10/2018

Beyonics Asia Pacific Limited and others v Goh Chan Peng and another [2020] SGHC(I) 14

Decision of the Singapore International Commercial Court (delivered by Simon Thorley IJ):

Outcome: SICC disallows companies' claims against former CEO because they failed to bring the claims in a similar lawsuit filed in 2013

Background

- 1 The plaintiffs are subsidiary companies of the Beyonics Group. The first defendant, Goh Chan Peng ("Mr Goh"), was the Chief Executive Officer ("CEO") of the Beyonics Group until April 2013 and the second defendant is a company that is wholly owned by him.
- 2 In July 2013, Beyonics Technology Ltd ("BTL"), the parent company of the Beyonics Group, and another subsidiary company brought proceedings against Mr Goh, his wife and his companies in Suit No 672 of 2013 filed in the High Court ("the 672 Action"). BTL alleged that Mr Goh had breached various duties he owed to the Beyonics group by diverting the business of the group to a competitor, Nedec/Kodec, and causing the loss of a major customer, Seagate. Mr Goh denied that he was in breach of any duties and maintained that he had acted in the best interests of the Beyonics group at all times.
- 3 The trial judge found in favour of BTL in the 672 Action and Mr Goh filed an appeal. The Court of Appeal found in his favour and held that BTL was not entitled to recover most of the losses it claimed as those losses had not been suffered by BTL but by other subsidiary companies within the Beyonics group, who were not plaintiffs in the 672 Action.
- 4 Subsequently those subsidiary companies filed the present suit against Mr Goh and his company, claiming both the losses that had been disallowed in the 672 Action upon BTL's claim and additional alleged losses. Mr Goh argued that the claim of those companies was barred by the extended form of *res judicata* set out in *Henderson v Henderson* [1843] 3 Hare 999 ("*Henderson v Henderson*") as they had failed to bring those claims in the 672 Action.

The court's decision

- 5 Where the *Henderson v Henderson* issue is raised, the task facing the court is first, to consider whether the claims made in the second action could and, if so, should have been brought in the first action. If so, the court must then consider whether at the time the second action was started, it would be an abuse of process to allow the second action to proceed. There is a heavy burden on the defendants to demonstrate

that the plaintiffs are abusing the process of the court by bringing the second action (at [57]).

- 6 The plaintiffs' claims in the present action are substantially the same claims as those brought in the 672 Action, save for additional claims for the bonus and the salaries that had been paid to Mr Goh prior to the plaintiffs' realisation of the alleged breaches (at [65]–[70]). Those claims could and should have been brought in the 672 Action (at [71]–[95]). The plaintiffs' failure to do so caused the defendants to face the prospect of having to bear the burden of a second action which was manifestly unfair and amounted to an abuse of process (at [99]–[122]). The present action had to be struck out (at [123]–[125]).
- 7 The court went on to consider the defendants' liability, in the event that the action had not been struck out. It held that, with one exception, Mr Goh did not by his actions breach his duties as a director or employee of the plaintiffs through his interactions with Nedec/Kodec. The exception was his failure to disclose to Beyonics that he was, through the second defendant, receiving payment from Nedec/Kodec for consultancy services which should have been paid to Beyonics (at [493]–[532]). The plaintiffs failed to prove that this breach caused a diversion of business from Beyonics to Nedec/Kodec or the loss of Seagate's business [535]–[544]. However, the plaintiffs would have succeeded in their claims to recover the bonus and salaries paid to Mr Goh as, had they known of the breach, they would not have paid him those sums when he left the Beyonics Group (at [545]–[551]).

This summary is provided to assist in the understanding of the Court's grounds of decision. It is not intended to be a substitute for the reasons of the Court. All numbers in bold font and square brackets refer to the corresponding paragraph numbers in the Court's grounds of decision.