Privy Council Appeals Nos. 59, 60, 61 and 62 of 1984

Quek Leng Chye and Gan Khai Choon *Appellants*

v.

The Attorney General *Respondent*

FROM

THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 31ST JULY 1985

Present at the Hearing:

LORD SCARMAN
LORD DIPLOCK
LORD KEITH OF KINKEL
LORD BRIGHTMAN
SIR OWEN WOODHOUSE

*[Delivered by **Lord Diplock**]*

These appeals are brought in applications under section 130 of the Companies Act by each of the two appellants for leave to act as directors and promoters or to be otherwise directly or indirectly concerned or take part in the management of companies in Singapore. Each of the appellants had been convicted of an offence under section 39(4) of the Companies Act, the substance of the offence being the unlawful issue of letters of invitation to members of the public to subscribe for shares in a company.

The appellants are two of five active participants in an ingenious scheme to unload upon unsuspecting members of the public at a price of $30,000 per share, 2000 shares in a public company, C.C.C. (Holdings) Ltd (herein called "C.C.C.") which the participants had caused to be issued to themselves as nominees for companies which they or their respective families controlled. Those shares had been issued as bonus shares. In the case of the two appellants Gan and Quek, the private company was one that was wholly-owned by members of the Quek family. The Quek family also own three holding companies with "Hong

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Leong" in their names which in their turn control four listed public companies in Singapore including Hong Leong Finance Ltd. In the words of the Court of Appeal "the financial empire controlled by the three Hong Leong Holding companies is as vast as it is enormous". Hong Leong Finance Ltd itself was said by the Court of Appeal to rank among the biggest of financial institutions in Singapore, including banks.

The appellant Quek was described by the Court of Appeal as being himself a prominent business man. Prior to his conviction on 13th February 1983 of an offence under section 39(4) of the Companies Act, he had been director, managing director or governor of 41 companies in the group controlled by the Quek family which in the courts below were referred to as "the Hong Leong Group". These included all four listed public companies in the group. The appellant Gan was group manager of two of those listed public companies including Hong Leong Finance Ltd. He was also director of nine other companies in the Hong Leong Group. So neither appellant was an innocent abroad in a business world of which company prospectuses were a familiar feature.

The facts as to origin of the scheme which resulted in the convictions of the five participants, the history of its evolution and the final form in which a start was made to put it into effect are set out in lucid detail in the judgment of the Chief Justice. They were accepted by the Court of Appeal and thus amount to concurrent findings of fact with which it would be contrary to their Lordships' practice to interfere. Since reference to these judgments is readily available their Lordships do not find it necessary to do more than state in barest outline how the scheme was meant to work.

(1) The vehicle chosen by the participants for extracting a total of $60,000,000 from 2000 selected members of the public was C.C.C. Its intended business was to carry on a prestigious proprietary social club upon premises then in course of erection on a four-acre site in Singapore in which C.C.C. did not have a freehold interest but had been granted a ten year lease only by a private company in the Hong Leong Group. The purchase of the freehold of the site by that private company and the erection of the club premises on it had been financed by mortgaging it to Hong Leong Finance Ltd in an amount which was in excess of $15,000,000 by 2nd April 1984 when the appellants sent out to a number of their acquaintances letters of invitation to purchase shares in C.C.C. These letters of invitation formed the subject of the criminal charges brought against the appellants for contraventions of section 39 of the Companies Act.

(2) Shortly before the letters of invitation were sent out the authorised share capital of C.C.C. was raised from $5 million to $20 million consisting of 4000 shares of a nominal value of $5000 each. All 4000 shares were held by the five participants. 2000 were bonus shares. These 2000 bonus shares were allotted with a view to the participants offering them for sale to selected members of the public, either individuals or companies, at a total price of $30,000 per share i.e. at a premium of $25,000. Any such offer would attract the requirements of section 43 of the Companies Act which requires that such an offer should include all the detailed information about C.C.C. that needs to be included in a prospectus and is specified in the Fifth Schedule to the Act. Such information is designed to give an accurate picture of the financial position of the company, so that any person to whom the offer to sell newly issued shares in the company is made is in a position to come to an informed judgment about their value. It suffices for present purposes to say that the offer would have to disclose among other matters the tangible asset backing for the shares that the applicants were hoping to sell pursuant to the scheme (which amounted to $7,374 per $5000 share) and, what is of crucial importance in these appeals, it would also have to state the premium, *in casu* $25,000, at which each $5,000 share was being offered for sale.

(3) The letters of invitation sent out by the participants, the terms of which are reproduced in full in both judgments below, baited the trap by informing the recipient that he was known to the directors of C.C.C. to be of high repute and inviting him to join the exclusive City Country Club. The invitation could be accepted only by paying to C.C.C. what was described as an entrance fee of $2000 for an individual or $3000 for a firm or company. The so-called entrance fee, however, did not itself entitle the payor to become a member of the club but only made him a "qualified person". Once he was a "qualified person", in order to become a member of the club, he must within one month of the payment of the entrance fee purchase through a firm of stock-brokers named in the letter of invitation one $5000 share in C.C.C. in the case of an individual or two such shares in the case of a firm or company. No hint of what was to be the purchase price of the shares appeared in the letter of invitation, nor was the fact disclosed that all the shares offered for sale to "qualified persons" belonged to the participants in the scheme, to whom they had been issued without cost as bonus shares and who had supplied

them to the stockbrokers on trust to sell them at $30,000 per share and nothing less. Unless the "qualified person" purchased the share at that price within a month the $2000 or $3000 that he had already paid was forfeited.

By section 130 of the Companies Act the conviction of each appellant of an offence under section 39 carried with it an automatic disqualification for five years from being a director or promoter of or being in any way whether directly or indirectly concerned or taking part in the management of a company, except by leave of the court. It is well settled law in Singapore that the purpose of the section is not primarily punitive; it is the protection of the public share holders, creditors and others having dealings with limited liability companies. It is equally well-settled law that the onus lies upon the applicant for the lifting of the disqualification to satisfy the court that he is possessed of the high degree of commercial integrity with which those exercising influential managerial functions in limited liability companies should be endowed if the public is to be given adequate financial protection.

In a passage in the judgment of the Chief Justice which received the express assent of the Court of Appeal he gave the following summary of the considerations which the court should bear in mind in exercising its discretion whether or not to lift the disqualification and, if so, to what extent:-

" The court, in exercising its discretion whether to grant leave or not, ought to consider:-

(1) the nature of the offence of which the applicant has been convicted;

(2) the nature of the applicant's involvement;

(3) the applicant's general character;

(4) the structure and the nature of the business of each of the companies which the applicant seeks the leave of the court to become a director of or to take part in its management;

(5) the interests of the general public, the shareholders, creditors and employees of these companies and the risks to the public and to those persons should the applicant be permitted to be a director or to take part in management."

He determined that neither appellant ought to be allowed to be a director or promoter of any companies incorporated in Singapore but granted them leave to

be concerned in and take part in the management of all but two of the companies in the Hong Leong Group of which they had respectively been directors before their conviction. The two excepted companies were those that had been directly concerned in the setting up of the proposed country club.

The Chief Justice said of the scheme which led to the conviction of the participants that it was one of which all of them including the two appellants knew that:-

> "... if the projected 2000 invitees were persuaded to apply for membership and take a share each in the holding company, would result in enormous profits (some tens of millions) from these invitees. It was highly unlikely, to put it at its lowest, that all or a significant proportion of the 2000 shares which were available to invitees under the scheme would be taken up if a prosectus in compliance with the Act were issued to each invitee, thus resulting in a situation, possibly a financial disaster to the original shareholders, which they must have wanted to avoid at any cost."

This passage in the judgment of the Chief Justice was cited with approval by the Court of Appeal. So it contains concurrent findings of fact as to what would have been the likely effect of the letter of invitation upon members of the business community in Singapore if that letter had contained or been accompanied by the information which it is obligatory to include in a prospectus.

Appeals to the Court of Appeal against the judgment of the Chief Justice in so far as it refused them leave to act as directors or promoters of companies incorporated in Singapore were brought by four of the five participants, including appellants Gan and Quek who have proceeded with a further appeal to this Board. The Attorney-General too appealed to the Court of Appeal against the grant by the Chief Justice of leave to those two appellants to be concerned and take part in the management of the various specified companies in the Hong Leong Group. The only relevant respect in which the Court of Appeal disagreed with the judgment of the Chief Justice and the way in which he had exercised his discretion in the cases of all four participants who had appealed to the Court of Appeal was that they allowed the appeal of the Attorney-General and reversed that part of the Chief Justice's decision whereby despite his refusal to allow them to act as directors he granted leave to those appellants including Gan and Quek to be concerned with and take part in the management of various companies specified in his judgment.

In view of the concurrent findings of fact in the courts below, whose members are much more familiar than their Lordships could ever hope to be with business conditions, practices and attitudes in Singapore there are, in their Lordships' view in this appeal, only two points which justify being described as arguable before the Board.

The first is whether upon the material before it the Court of Appeal was entitled to interfere with the way in which the Chief Justice had exercised a discretion which by section 130 of the Companies Act was vested in the High Court or a judge therof? The Court of Appeal considered that they were justified in doing so for reasons set out succinctly in their judgment as follows:-

> " We uphold the grounds of appeal of the learned Attorney-General. More and more in the management of companies, employees in managerial positions are exercising as much power in the management of companies as are exercised by directors of companies. They, as with directors, are placed in a position where they are not without opportunity to manipulate the corporate structure to their own interest. It is essential, therefore, that managers of companies, like directors, are persons of integrity. In rapidly changing economic, financial and social circumstances in Singapore, directors of companies as well as managers have a particular social responsibility to act with the utmost candour in the management of companies. We are of the view that when the learned Chief Justice allowed the applicants leave to manage companies, he had not given due or sufficient regard to this aspect of the matter.

The appellants Gan and Quek were not the originators of the scheme which resulted in their convictions nor were they the ring leaders in carrying it out. The ring leader was Huang Shen Chang who was himself director of seventeen companies in which he and his family held shareholdings and was chairman of all but one of them. The Chief Justice nevertheless made in respect of Huang a similar order to that which he made in the cases of the appellants Gan and Quek. He refused Huang leave to act as director or promoter of any companies but made an order granting him leave to be concerned and take part in the management of companies in which he or his family were shareholders, with the exception of the two companies directly concerned with the proposed country club.

It would thus appear that the distinction for the purposes of section 130 that the Chief Justice in the orders that he made was drawing between taking part

in the management of companies as a director and doing so as someone employed in the hierarchy of management of a company, however high his grade, was based upon general considerations as to the difference in functions between directors and managers, and not upon circumstances peculiar to an individual applicant. The reasoning of the Court of Appeal, in the passage of their judgment that has been already cited, their Lordships find to be convincing and to provide sufficient justification for setting aside, to the extent that the Court of Appeal have done so, the way in which the Chief Justice had exercised the discretion that initially was his.

The second argument with which their Lordships find it necessary to deal is the submission that as the appellants had lodged affidavit evidence to the effect that they had regarded the question of whether the letter of invitation required to be accompanied by a prospectus as a technical question which was one of law alone and that they relied implicitly upon the advice which, after some vacillation, had been eventually provided by Winston Chen, a partner of a well known firm of advocates and solicitors, that a prospectus was not required by law, their application under section 130 for relief from the disqualification provided for by that section ought not to have been dismissed without accepting the offer which was made on their behalf (though not until the case had reached the Court of Appeal) to be cross-examined on those affidavits.

Their Lordships have given careful consideration to those affidavits because, if the Court of Appeal were going to accept as facts which justified refusal of their applications matters that were denied in their affidavit evidence, the appellants were entitled to be so informed and to be given an opportunity of answering them. The affidavits are confined to the appellants' state of knowledge of the need for a prospectus and their implicit reliance upon their lawyer's advice that there was no legal obligation to provide a prospectus with the letter of invitation. Their Lordships have emphasised the word "prospectus" for the need for a document bearing that description is all that the crucial parts of the affidavits deal with. The affidavit evidence of neither appellant contains any statement, or indeed suggestion, that he *bona fide* believed that the premium of $25,000 at which alone the addressee of the letter of invitation could buy the $5000 share, which he must do in order to become a member of the club and for which he would already have paid an unreturnable "entrance fee" of $2000, would be a matter which the addressee would not be interested to know and that disclosure of it to him might reduce the likelihood of his accepting the offer, and putting up the two thousand or three

thousand dollars. In view of the concurrent views of the Chief Justice and the Court of Appeal, which their Lordships have already cited, about the likely effect of such disclosure in business circles in Singapore it is not surprising that neither appellant, as an experienced business man, was ready to pledge his oath to a statement that the discouraging effect of disclosures in the letter of invitation itself of the huge amount of the premium had never crossed his mind.

The Chief Justice in his judgment let the facts speak for themselves. He used no dyslogistic adjectives to describe the appellants' conduct. The Court of Appeal was not so reticent. They said at one point in their judgment that they rejected the contention that the appellants had "acted honestly" but they made it plain that by that adverb they were not imputing criminal dishonesty to the appellants, but a falling short of those standards of commercial candour and integrity which ought to be observed in Singapore by those engaged in the management of companies.

Their Lordships see no reason for differing from the view as to the appellants' conduct that was taken by the courts below, or from the view of the Court of Appeal as to the appropriate consequences of that conduct in an application by the appellants for relief under section 130 of the Companies Act. The appeals must be dismissed with costs.