



## Liability of Directors for a Company's Breach of Contract

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### I. Introduction

The question of when a director may be held liable for directing a company's breach of contract has significant ramifications for companies and their directors. To hold that a director may be liable for directing a breach of contract, notwithstanding that he is acting in the company's best interests and is not himself a party to the contract, is not only unduly onerous on the director but also effectively penalizes the company when the director refrains from directing a breach of contract for fear of personal liability even though it may be in the best interests of the company to do so.

The limits to director's personal liability for a company's breach of contract must therefore be clearly demarcated, which the Court of Appeal has done in the recent decision of *PT Sandipala Arthatputra v STMicroelectronics Asia Pacific Pte Ltd and others [2018] SGCA 17 ("PT Sandipala v STM")*.

The salient facts of *PT Sandipala* are straightforward. The appellant, *PT Sandipala Arthatputra* ("Sandipala"), and the second respondent, *Oxel Systems Pte Ltd* ("Oxel"), entered into a contract for Oxel to supply 100 million microchips ("the Supply Contract") to Sandipala for use in an electronic identification card project in Indonesia ("Project").

The microchips turned out to be incompatible for use with the electronic identification cards to be used for the Project and Sandipala commenced an action against Oxel and others for, among other things, breach of express and implied terms of the Supply Contract.

In response, Oxel brought a counterclaim against Sandipala for breach of the Supply Contract in failing to take delivery of the microchips and for non-payment.

In addition, and that is the important point for present purposes, Oxel also claimed against Sandipala and its directors, Mr Paulus Tannos and Ms Catherine Tannos (collectively "the Tannoses") for conspiracy to cause Oxel loss in seeking to unlawfully extricate Sandipala from its contractual obligations under the Supply Contract without paying compensation.

### II. High Court's decision

The High Court Judge dismissed Sandipala's claims and allowed Oxel's claims against Sandipala for breach of the Supply Contract.

The Judge further found Sandipala and the Tannoses liable for the tort of conspiracy by unlawful means to cause Oxel economic loss. This was done through:

- (a) creating a paper trial falsely stating different terms of the Supply Contract to found a claim against Oxel;
- (b) bringing a false, trumped up claim in the suit below to apply pressure on Oxel; and
- (c) causing articles with false allegations about Oxel to be published.

On appeal, the appellants argued that the Judge erred in finding that unlawful means conspiracy was made out because the Tannoses, as directors of Sandipala, were acting in good faith within the scope of their authority in directing Sandipala's breach of contract, and should therefore not be held liable.

### III. The Court of Appeal's decision

The Court of Appeal allowed Sanipala and the Tannoses' appeal against Oxel's claim in unlawful means conspiracy.

The Court explained that directors may be held personally liable for the consequences of the company's breach of contract under three potential causes of action.

The first is the tort of procurement of breach of contract, where the director induces or procures his company to breach its contract with a third party.

The second is unlawful means conspiracy as between the directors, where directors conspire to procure their company to breach its contract. The underlying unlawful means would be the tort of inducement of breach of contract, which is the same as that of the first cause of action.

The third is unlawful means conspiracy as between a director and his company, where the director conspires with the company to cause the company to breach the contract.

However, in relation to all the above causes of action, the Courts have accepted that a director is immune from personal liability if he falls within the application of the principle in *Said v Butt* which provides that when a director acts *bona fide* within the scope of his authority, he is immune from tortious liability for procuring his company's breach of contract.

The Court further went on to state that the *Said v Butt* principle should be interpreted to exempt directors from personal liability for the contractual breaches of their company (whether through the tort of inducement of breach of contract or unlawful means conspiracy) if their acts, in their capacity as directors, are not in themselves in breach of any fiduciary or other personal legal duties owed to the company.

In this regard, the Court rejected an argument by Oxel's counsel to the effect that an intention to injure a third party would suffice to take the director outside the *Said v Butt* principle.

In the Court's view, if the director acted in the best interests of the company and not in breach of any of his other duties owed to the company, notwithstanding that he also possessed the intention to injure the third party

or to induce a breach of contract as against the third party (as the case may be), he would still be entitled to the protection of the *Said v Butt* principle.

On the facts of *PT Sandipala v STM*, the Court found that while the Tannoses authorised and directed Sanipala's breaches of the Supply Contract, there is no evidence that they had acted in breach of their personal legal duties to the company. In fact, the Court held that it was indeed in the best interests of the company to breach the contract with Oxel and attempt to re-negotiate its terms.

#### **IV. Conclusion**

The Court of Appeal's decision is to be welcome as providing certainty as to when directors will be held personally liable for directing their company's breach of contract.

It is now clear that unless the plaintiff can prove that the defendant-directors breached their personal legal duties to the company in directing or participating in the breach of contract, the defendant-directors would be entitled to immunity under the *Said v Butt* principle.

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