

Singapore Court of Appeal Clarifies Principles Relating to Accounts of Profits for Breach of Fiduciary Duty

The Court of Appeal has recently held that the profits sought to be disgorged from a fiduciary by way of an account of profits must be caused by the fiduciary's breach of duty: *UVJ v UVH* [2020] SGCA 49 ("*UVJ v UVH*").

Our Comments

UVJ v UVH is significant as it clarifies the principles relating to accounts of profits for breach of fiduciary duty. In particular, the Court of Appeal held that one of the requirements for the Court to order an account of profits is causation between the breach of fiduciary duty and the profits made by the fiduciary.

In doing so, the Court of Appeal has also provided clarification on how its decision in *Mona Computer Systems (S) Pte Ltd v Singaravelu Murugan* [2014] is to be read. In *Mona Computer Systems*, the Court of Appeal addressed the question of whether loss to the beneficiary is required. That case does not stand for the proposition that "but-for" causation is irrelevant in considering whether to order an account of profits.

While the Court of Appeal in *UVJ v UVH* did not opine on which party bears the burden of proof in showing the causation can be established where a claim is made for an account of profits, it would be prudent that beneficiaries seeking an account of profits by a fiduciary (such as the executor of an estate or a trustee) be prepared to establish causation between the fiduciary's breach of duty and the profits made by the fiduciary.

This update takes a look at the Court of Appeal's decision.

Background

The two plaintiff sisters ("**Sisters**") and three defendant brothers ("**Brothers**") were the children (collectively, "**Siblings**") of the patriarch of the family. Under the patriarch's will, the Brothers were appointed the executors of the patriarch's estate ("**Estate**"), and the Siblings, their mother and their half-siblings were beneficiaries. Subsequently, under the mother's will, the Brothers were appointed the executors of the mother's estate, and the Siblings were beneficiaries.

Before the High Court, the Sisters applied for and obtained an order for an account to be taken of the Estate on a wilful default basis. The Brothers provided an account pursuant to this order. Following this, the High Court made various orders, including the following:

- (a) That the Brothers pay the Estate the following:
 - (i) \$20,978,689.90, being directors' remuneration from three companies in which the Brothers and the Estate held shares;

- (ii) \$174,000 and \$360,000, being benefits-in-kind enjoyed by two of the Brothers from renting properties belonging to a company in which the Brothers and the Estate held shares, below annual value; and
 - (iii) \$5,500.65, being costs and legal fees charged to the Estate in previous legal proceedings commenced by the Sisters;
- (b) That the sum of \$1million stated as owing from the Estate to the mother's estate be falsified i.e., for the entry to be deleted; and
- (c) That the Brothers be removed as executors of the Estate.

(collectively referred to as the “**High Court Orders**”).

The Brothers appealed against the High Court Orders while the Sisters appealed against the High Court's decision to award them interest only from the date of their Writ of Summons.

The Court of Appeal's Decision

Procedural issue: Whether the Court can order an account of profits upon the taking of an account on the basis of wilful default

One of the issues on appeal was whether the High Court was entitled to order an account of profits following the taking of an account, without requiring a separate application for an account of profits or trial.

The Court of Appeal clarified that the taking of accounts is a process, while an account of profits is a remedy (at [29]). Therefore, the taking of accounts would be “*the first step*”; if the beneficiary objects to the accounts presented, he may then seek specific relief, such as an account of profits (at [29]).

The Court of Appeal also clarified that the taking of accounts on a wilful default basis differs from that on a common basis in at least two ways (at [25]):

- (a) The taking of an account on a wilful default basis is premised on the fiduciary's misconduct, and is not available to the beneficiary as of right. The beneficiary must allege and prove at least one act of wilful neglect or default; and
- (b) The scope of an account on a wilful default basis is wider than that of an account on a common basis. For example, in the former, the Court is entitled to look into all aspects of the fiduciary's management of the trust property and require the fiduciary to explain any suspect transaction, even if the beneficiary has not complained of that particular transaction (at [26]).

The Court of Appeal held that the High Court had gone beyond the scope of the order for the taking of an account in ordering an account of profits, because the order for the taking of an account did not include the remedy of an account of profits (at [37]-[40]).

However, the Court of Appeal recognised that, despite this, the High Court was entitled to consider and hear evidence on the Brothers' alleged profits and order an account of profits, for the following reasons:

- (a) The Court is granted a "*roving commission*" to inquire into all aspects of the fiduciary's management of the trust property when an account is taken on a wilful default basis (at [47]); and
- (b) The Brothers had been given sufficient notice, time and opportunity to make all relevant arguments on the issue (at [49]).

The Court of Appeal therefore held that the High Court was entitled to proceed as it did (at [53]).

Substantive issue: Whether causation between the profits made and the breach of fiduciary duty must be established, before the Court will order an account of profits

Another issue on appeal was whether causation between the breach of fiduciary duty and the profits made by the fiduciary must be established, before the Court will order an account of profits.

The Court of Appeal answered this question in the affirmative, holding that "*the profits sought to be disgorged via an account of profits must be caused by the breaches of fiduciary duty, whether this be that the trustee acted in conflict of interest or was guilty of some other breach*" (at [98]). Otherwise, any breach by a fiduciary could be used to recover a profit, however unconnected the two might be, and even if the profits would have been earned by the fiduciary in the absence of the breach (at [98]).

The Court of Appeal also clarified that while it had, in *Mona Computer Systems*, held that the order for an account of profits is unrelated to whether the fiduciary's conduct has caused loss to the principal, that case did not stand for the proposition that causation was irrelevant to the question of the fiduciary's profit i.e., that it did not matter if the breach does not cause the profit (at [80]). Instead, *Mona Computer Systems* must be read in its proper context, i.e., the Court of Appeal in *Mona Computer Systems* was addressing the question of whether any loss to the beneficiary is relevant. The Court of Appeal had held that loss to the beneficiary was irrelevant as the fiduciary should not be allowed to retain any of the profit derived from his breach of duty and an account for profits is a gains-based remedy, not a restitutionary remedy. *Mona Computer Systems* therefore did not make any finding on whether causation between the breach of fiduciary duty and profits made by the fiduciary is required.

However, the Court of Appeal left the issue of which party would bear the burden of proof in showing that causation can be established to be decided on another occasion (at [98]).

In respect of the alleged profit of \$20,978,689.90, being directors' remuneration received by the Brothers from three companies, the Court of Appeal held that causation was not established. Although the Brothers had breached their fiduciary duty by using the Estate's shares to vote in favour of resolutions to approve of their remuneration, the Estate held a very small minority interest in the three companies (at [106]). The resolutions would have been carried, regardless of whether the Estate's shares were used to vote in favour of or against the resolutions (at [106]). The use of the Estate's shares by the Brothers thus made no difference to the outcome (at [110]). The Sisters' claim for the Brothers to account for the directors' remuneration therefore failed (at [115]).

In respect of the alleged profit of \$174,000 and \$360,000, being benefits-in-kind enjoyed by two of the Brothers from renting properties below annual value, the Court of Appeal held that causation was not established. There was no evidence that the two brothers had used the Estate's shares in the company to fix the rent which they paid (at [117]). Further, issues such as rental of properties owned by a company would not, in most cases, be approved by the shareholders (at [118]). The Sisters' claim for the Brothers to account for the benefits-in-kind therefore failed (at [118]).

The Court of Appeal therefore allowed the Brothers' appeal in respect of the directors' remuneration and benefits-in-kind, and dismissed the Sisters' appeal.

If you would like information or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or any of the following Partners:

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