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Case Summary: Public Prosecutor v Jurong Country Club [2019] SGHC 150[1]

Overview

Jurong Country Club ("JCC") was convicted of four charges under s 7(1) read with s 58(b) of the Central Provident Fund Act (Cap 36, 2013 Rev Ed) ("CPFA")[2] for failing to contribute to the CPF of its employee. JCC appealed against its conviction. [3] One of the main issues was whether Mr Mohamed Yusoff Bin Hashim ("Yusoff") was an employee under the CPFA. The learned Justice See Kee Oon concluded that the District Judge erred in finding that Yusoff was an employee of JCC at the material times. JCC succeeded on appeal and was acquitted of the four charges.[4]

Background

On 1 February 1991, Yusoff was employed by JCCL as its gym instructor. He then worked under a series of contracts, which were negotiated on an annual or biennial basis, until the club ceased operations. Up till 31 October 1998, JCCL treated Yusoff as an employee and contributed to his CPF. On 1 November 1998, JCCL purportedly converted Yusoff's status to that of an independent contractor and he stopped receiving CPF contributions.[5]

Investigations started in 2016 after Yusoff approached the CPF Board to enquire whether he was entitled to CPF contributions from JCC as he found out that JCC would be closing down on 31 December 2016. The CPF Board found that he was so entitled, and this eventually led to JCC's prosecution. At first instance, the District Judge convicted JCC of the four charges, and imposed fines totalling $3,600 accordingly.[6]

One of the main issues to be addressed was whether Yusoff was an employee of JCC from 2003 to 2016 within the meaning of the CPFA such that CPF contributions were payable. Of the factors enumerated within the judgment at [11], the District Judge emphasised the degree of "permanency" in the relationship between JCC and Yusoff, and the presence of a "sufficient framework of control". The District Judge hence found that Yusoff had been "misclassified" as an independent contractor when he was in fact an employee for the purposes of the CPFA.[7]

Appeal

On appeal, the main issues included: the appropriate test for determining whether a person is an employee for the purposes of the CPFA, whether the District Judge erred in finding that Yusoff was an employee, and if s 58(b) CPFA is a strict liability offence.

Issue 1: whether Yusoff was an employee under the CPFA

1 The authors of this article would like to express their appreciation to Nicole Leong and Zane Tay, interns at Gateway Law Corporation, for their assistance and contribution to this article.
2 [2018] SGDC 314
3 [2019] SGHC 150, at [2].
4 Ibid, at [2].
5 Ibid, at [6].
6 Ibid, at [19].
7 Ibid, at [18].

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As noted by the learned judge, many of the factors the District Judge relied upon in coming to her conclusion should have been properly contextualized and considered neutral factors instead,[8] not inconsistent with either a finding that Yusoff was an independent contractor or that he was an employee. These "neutral factors" included the three key factors identified by the Prosecution of control, personal service, and mutuality of obligation, as these would often be present but within a spectrum.[9]

Instead, the learned judge was careful to avoid a fixed test, emphasising the need for "a qualitative balancing exercise that must be sensitive to the specific facts of the case".[10] One factor emphasised as relevant but non-conclusive was the parties' intentions, whether expressly stated or evinced through the terms of the engagement, particularly in the absence of bad faith,.[11]

Finally, the following four factors were highlighted[12] as potentially relevant considerations to the case at hand:

(1) Financial risk, earnings, and ownership of assets
The degree of financial risk assumed by the parties, and the degree of control independent of JCC that Yusoff had over his earnings. Ownership of assets was considered a potentially relevant factor, but as it was unreasonable to expect gym instructors to supply their own treadmills and other gym equipment by default, this was considered presently irrelevant.

(2) Renegotiation and renewal of the contracts
It was considered that the yearly basis upon which the contracts were renegotiated supported the existence of an independent contractual relationship. However, this was given reduced weight on the basis that the length of relationship and expectations of the parties were not strongly indicative of a specific type of relationship.

(3) Remuneration and commission
The fact that Yusof's pay was weighted towards commission was suggestive of an independent contractor relationship.

(4) Comparative working arrangements and benefits
Yusof's working arrangements were consistent with that of an independent contractor. These included limited access to the premises, absence of employee benefits, exclusion from mandatory employee events or documentation, and so on.

Having assessed the factors above, the learned judge concluded that the reality of the parties' working relationship showed consistency in conduct and indicated that both JCC and Yusoff did not consider the latter to be an employee. Accordingly, the court in the present appeal held that the District Judge erred in inferring the existence of an employment relationship, allowing JCC's appeal and acquitting JCC of all four charges.[13]

Issue 2: whether s 58(b) CPFA is a strict liability offence

8 Ibid, at [93].
9 Ibid, at [53].
10 Ibid, at [53].
11 Ibid, at [54].
12 Ibid, [61 to 89].
13 Ibid, at [95].

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The learned judge held that the s 58(b) CPFA offence is of strict liability, as the CPFA pertains to an issue of social concern. The imposition of strict liability would signal the necessity of reasonable care to employers. Per the CPFA, employers are responsible for making CPF contribution (s 7(1) CPFA), who are best placed to ensure that they comply with the law. Employers can do so by seeking legal advice and by utilizing sound guidelines in classifying its employees.[14]

Issue 3: whether a s 61B(1) CPFA order can be made in respect of periods not covered by the charges preferred

The Court held that s 61B(1) allows a court to order payment of arrears in CPF contributions in respect of periods not covered by the charges in any particular case.

As such, a court before which a s 61B(1) CPFA application is made should consider whether the offender has raised any real dispute of law or fact, which either requires evidence to be led, or a protracted hearing for its determination.[15]

Conclusion

The approach adopted by the court in distinguishing between an employer-employee relationship and the provision of services as an independent contractor depends upon a flexible and holistic approach, with regard to all relevant factors. Companies should ensure a clear divide between their employees and independent contractors that they have hired, so as to accurately reflect the scope of employees they will contribute CPF for.

Should you have any queries as to how this update may affect you or your organisation or require further information, please do not hesitate to email us.

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This article is intended to be a brief note on the Court of Appeal's decision in Public Prosecutor v Jurong Country Club [2019] SGHC 150, and is not intended to be comprehensive nor should it be construed as legal advice. It is updated as of July 2019.

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14 Ibid, at [101].
15 Ibid, at [133].