Luis Chang Soh v Comwealth Investments & Trading Pte Ltd
[2000] SGHC 16

Case Number : Suit 656/1999, RA 499/1999

Decision Date : 27 January 2000

Tribunal/Court : High Court

Coram : Tay Yong Kwang JC

Counsel Name(s) : Sheerin Ameen (Cheow Hin & Partners) for the defendants/appellants; Lim Seow Kang (Haridass Ho & Partners) for the plaintiff/respondent

Parties : Luis Chang Soh — Comwealth Investments & Trading Pte Ltd

JUDGMENT:

GROUNDS OF DECISION

SUMMONS-IN-CHAMBERS 6252 OF 1999

1 In Summons-in-Chambers 6252 of 1999, the Defendants applied for the following orders:

> "1. That the proceedings in this action be stayed until after the determination of the Defendants' action, General role number 98081572 in the Commercial Court of Paris between Comwealth Investments & Trading Pte Ltd, Madam Shih Shia Wah against Mr Luis Chang and Mrs Chang;
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> 2. (i) Alternatively that the Plaintiff do within twenty-one (21) days from the date of the order to be made hereon, furnish security for the Defendants' costs up to setting down in the sum of $50,000.00;
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> (ii) That in default thereof, the Plaintiff's claim herein be dismissed with costs;
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> (iii) That in the meantime all further proceedings be stayed;
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> 3. That the costs of this application be paid by the Plaintiff to the Defendants.
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> 4. Such further and/or other reliefs that the Court deems fit and proper."

2 The learned Assistant Registrar heard the application and ordered that prayer 1 be dismissed. She also ordered the Plaintiff to furnish security for costs for $35,000 by 10 December 1999 (i.e. within 21 days of the date of the order), made no order in respect of prayer 2 (ii) and granted the order sought in prayer 2 (iii). She further ordered costs for the application fixed at $300 to be paid by the Plaintiff to the Defendants and granted liberty to apply for further security.

REGISTRAR'S APPEAL 499 OF 1999

3 The Defendants appealed to a Judge in Chambers against the dismissal of prayer 1 of the above application. I allowed the appeal, granted an order in terms of the said prayer 1 and made no order on the other prayers. I also ordered costs fixed at $1,000 to be paid by the Plaintiff to the Defendants in respect of the appeal, leaving the order of costs made by the learned Assistant Registrar to stand. I further directed that should the French Court decline jurisdiction, the Plaintiff would have the liberty to restore this action here.

THE CLAIM

4 The Amended Statement of Claim pleaded as follows:

"**AMENDED STATEMENT OF CLAIM**

1. By a written agreement in the Chinese language dated 19th December 1997, the Plaintiff and the Defendants entered into the contract, the terms of which are set out below. The contract was entered into in Singapore.

2. Ms Shih Shia Wah (hereinafter referred to as "Ms Shih") as the Chairman of the Board of Directors of the Defendants, entered into the contract on behalf of the Defendants. The Defendants through Ms Shih acting as their agent, servant or employee, signed the agreement with the Plaintiff.

3. The Defendants had at the material time, invested in a joint venture project in China known as the Shenyang Wu Ai Cloths City (hereinafter referred to as "the investment"). There was a dispute involving the investment. Under the contract between the Defendants and the Plaintiff, the Plaintiff was engaged to resolve the dispute and to recover the investments for the Defendants.

4. It was, inter alia, agreed between the parties that the Defendants would pay the Plaintiff a total sum of US$1,000,000.00 for his services under the contract.

5. It was, inter alia, a term of the contract that the Plaintiff was authorised to represent the Defendants to take back the legal rights and interests that the Defendants were entitled to under the joint venture projects.

6. It was, inter alia, a term of the contract that Ms Shih would, on behalf of the Defendants, remit a sum of US$550,000.00 or its equivalent in Francs to the joint account of the Plaintiff and Sai-Kown Chu at Paris, France, by the end of December 1997.

7. It was, inter alia, an express term of the contract that after completion of the matter, Ms Shih shall, on behalf of the Defendants pay the balance of US$450,000.00 within two months.

8. It was agreed prior to the signing of the contract between the Defendants and the Plaintiff that the

Defendants would issue the Plaintiff with a Power of Attorney giving the Plaintiff full authority to conduct the work for which he was contracted to do.

9. It was, inter alia, an implied term of the contract that the Defendants would give the Plaintiff full assistance and cooperation to enable the Plaintiff to perform his duties under the contract.

10. Pursuant to the contract, the Defendants remitted the sum of US$550,000 into the account.

11. In performance of the contract, on behalf of the Defendants, the Plaintiff engaged another party, the Shenzhen China Wealth Investment and Development Co Ltd (hereinafter referred to as "China Wealth"), to settle the dispute and recover the Defendants' investment. The Plaintiff has so far, incurred expenses amounting to US$900,000 in performance of his duties under the contract.

12. In breach of the contract, the Defendants failed to give the Plaintiff full assistance and cooperation by reason of which the Plaintiff was impeded in the performance of the contract.

PARTICULARS

(a) The Defendants failed to provide full and accurate information concerning the dispute which the Plaintiff was to resolve, as follows:-

(i) The Defendants did not inform the Plaintiff that the Shenyang Wu Ai Cloths City project involved raising funds from members of the public.

(ii) The Defendants did not inform the Plaintiff that the funds raised were not used for the development and construction of

the project and that there were doubts as to their actual usage.

(b) The Defendant failed, neglected and/or refused to provide a Power of Attorney which the Plaintiff required in order to perform the contract.

13. By reason of the failure of the Defendants to provide full assistance and cooperation and the Power of Attorney as aforesaid, the Plaintiff could not proceed with the work for which he was engaged to do and has incurred expenses amounting to US$900,000.00 as sums paid to engage China Wealth.

AND the Plaintiff claims:

(a) that the Defendants pay the Plaintiff US$900,000.00.

(b) in the alternative, a declaration that the Defendants indemnify the Plaintiff for all losses suffered by the Plaintiff as a result of the Defendants' breach of contract.

(c) damages

(d) costs

(e) Such further and/or other orders as this Honourable Court thinks fit."

THE DEFENCE

5 The Defendants filed their Defence after having been served a 48-hour notice to do so. In response to the Plaintiff's Claim, the Defendants averred the following additional express terms of the contract dated 19 December 1997:

(1) if, within one year from the date of the contract, the Defendants were unable to get back their rights and interests, the Plaintiff was to return the US$550,000 (without interest) within three months; and

(2) both parties would abide by the written agreement which was to take effect upon signing.

6 It was further pleaded as an implied term that the Plaintiff would "make regular report to the Defendants of the progress and status of his work or otherwise as and when requested by the Defendants".

7 The Defendants claimed that the Plaintiff was in repudiatory breach by failing to comply with the above implied term. On or about 27 April 1998, the Defendants accepted the repudiatory breaches

and demanded the return of the US$550,000. The Defendants denied any discussion or agreement on the requirement of a Power of Attorney as alleged in the Claim.

8 The Plaintiff by his fax dated 14 May 1998 to the Defendants' lawyers in Paris admitted that he had not started any work. The Defendants then commenced legal proceedings against the Plaintiff in Paris for the return of the US$550,000.

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THE DEFENDANTS' CASE

9 Shih Shia Wah, a director and shareholder of the Defendants, stated that the action in Paris arose out of the same agreement as the one in the present action. The US$550,000 was converted to French Francs and remitted to the Plaintiff and his wife's joint-account in Paris. The Plaintiff did not intend to assist the Defendants and had used the said money instead to purchase a property in Paris.

10 On 30 September 1998, a writ was issued in the Paris Commercial Court for the return of the US$550,000. The Plaintiff's accounts at BNP and at Banque San Paolo in Paris were garnished. On 5 November 1998, the High Court in Paris granted a provisional mortgage against the Plaintiff's property in Paris and that was registered on 18 November 1998. I was told that such a mortgage amounted to a Mareva Injunction against the property.

11 The Plaintiff had until 29 September 1999 (an extended date) to file his Defence in the Paris action but did not do so. The case was therefore adjourned to 10 November 1999. The proceedings in Paris were close to conclusion.

12 The Plaintiff had actually commenced an earlier action here in Suit No. 2142 of 1998 on 24 November 1998. That also concerned the same agreement. It was commenced one day before the Plaintiff was to have filed his pleading in the Paris action and one week after the registration of the provisional mortgage. Judgment in default of appearance was entered by the Plaintiff against the Defendants in the earlier suit but that was subsequently set aside on 12 March 1999 because of defective service.

13 The Plaintiff was ordered to re-serve the writ but did not do so. A notice under O. 12 r 8(1) of the Rules of Court was taken out by the Defendants to require the Plaintiff to serve the writ within 14 days or discontinue the action. No action was taken and the Defendants accordingly applied to strike out the action.

14 On 7 April 1999, the Court here ordered the Plaintiff to re-serve the writ by 4 pm on 9 April 1999 failing which the action be dismissed. Costs of $350 were ordered against the Plaintiff. Due to the continued inaction on the part of the Plaintiff, Suit No. 2142 of 1998 was finally dismissed on 13 April 1999.

15 On 3 May 1999, the present action was commenced and, until the Statement of Claim was amended in September 1999, the claim was the same as that in the earlier Singapore action. The writ in the latter action was served on the Defendants only after a similar notice under O. 12 r 8(1) of the Rules of Court had been issued.

16 The Plaintiff had been avoiding the merits of the French action by abusing the procedure there to delay the action and by juxtaposing the two Singapore actions. He had also tried to sell the Paris property inspite of the provisional mortgage.

THE PLAINTIFF'S CASE

17 The Plaintiff, who stated his present address as being in Las Vegas, USA, but who affirmed his affidavit on 4 November 1999 before a Notary Public in China, said that he had instructed his lawyers in France to challenge the jurisdiction of the French Court on the ground that Singapore was the proper forum for the trial. The French Court has not decided this question. The Plaintiff's French lawyers have advised that the French Court did not have the jurisdiction to try this matter as it concerned an agreement signed in Singapore in the Chinese language for work to be performed in China.

18 The merits of the French action have also not been decided and that action has progressed no further than the present one here. The French lawyers have also advised that a Singapore judgment could, under certain conditions, be recognised and enforced in France.

19 Most of the relevant documents in this case were in the Chinese language. Under French law, the law of the contract was Singapore law. French law should not be applied as the contract was made in Singapore, the Defendants were Singaporean and the entire contract was to be performed in China. The contract was also in Chinese. When the contract was entered into, French law was not contemplated at all. Even if Chinese law was the proper law, the Singapore Court would be in a better position than the French Court to apply such law.

20 The Plaintiff resided presently in the USA while the Defendants were a Singapore company and Shih Shia Wah also resided here. Most, if not at all, of the witnesses would be from China and most of the evidence would relate to events there.

21 The money paid to the Plaintiff did not have to be applied for any particular purpose.

22 He was prepared to furnish security for $30,000 up to the stage of setting down and had made payment of all the costs ordered against him. He was serious about proceeding in Singapore.

THE DECISION OF THE COURT

23 Paragraph 9 of the First Schedule in the Supreme Court of Judicature Act confers on the High Court:

> "Power to dismiss or stay proceedings where the matter in question in res judicata between the parties, or where by reason of multiplicity of proceedings in any court or courts or by reason of a court in Singapore not being the appropriate forum the proceedings ought not to be continued."

24 In *The Hooghly Mills Co Ltd v Seltron Pte Ltd* [1995] 1 SLR 773, the Plaintiffs were a company incorporated in India and carrying on business in Calcutta while the Defendants were a company incorporated in Singapore. The Plaintiffs agreed to sell the Defendants two million hessian sugar bags with payment to be made by way of a bill of exchange drawn on the Defendants payable to the Vysya Bank Ltd. The bill was dishonoured by non-payment when presented. The Defendants contended that the goods delivered did not conform to specifications and were unmerchantable and commenced a suit in India in June 1993 against the Plaintiffs and Vysya Bank Ltd. The writ in that action was not served on the Plaintiffs until 10 January 1994. On 16 October 1993, the Plaintiffs commenced their action in Singapore. The Defendants did not file a

Defence to the Singapore action but applied instead to stay the action on the grounds that Indian law was the governing law of the transaction, that the transaction took place in India and the witnesses were there and that there was *lis alibi pendens*.

25 The Assistant Registrar there ordered a stay of the Singapore action with liberty to apply to lift the stay should the Indian action be discontinued or stayed. The Plaintiffs appealed. In allowing the appeal , Judith Prakash JC made the following observations at page 780 of the report:

"(3) Lis alibi pendens

> The approach which the court should take when one of the grounds supporting an application for stay is that there is a pending action involving the same parties and the same issues in a foreign forum was set out by Lord Goff in *de Dampierre v de Dampierre* at pp 107-108 in the following words:
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> "Under the principle of forum non conveniens now applicable in England as well as in Scotland, the court may exercise its discretion under its inherent jurisdiction to grant a stay where 'it is satisfied that there is some other tribunal, having competent jurisdiction, in which the case may be tried more suitably for the interests of the parties and for the ends of justice': see *Sim v Robinow* [1892] 19 R (Ct of Sess) 665, 668, per Lord Kinnear. The effect is that the court in this country looks first to see what factors there are which connect the case with another forum. If, on the basis of that inquiry, the court concludes that there is another available forum which, prima facie, is clearly more appropriate for the trial of the action, it will ordinarily grant a stay, unless there are circumstances by reason of which justice requires that a stay should nevertheless not be granted: see the *Spiliada* case [1987] AC 460, 475-478. The same principle is applicable whether or not there are other relevant proceedings already pending in the alternative forum: see *The Abidin Daver* [1984] AC 398, 411, per Lord Diplock. However, the existence of such proceedings may, depending on the circumstances, be relevant to the inquiry. Sometimes they may be of no relevance at all, for example, if one party has commenced the proceedings for the purpose of demonstrating the existence of a competent jurisdiction, or the proceedings had not passed beyond the stage of the initiating process. But if for example, genuine proceedings had been started and have not merely been started but have developed to the stage where they have had some impact upon the dispute between the parties, especially if such impact is likely to have a continuing effect, then this may be a relevant factor to be taken into account when the foreign jurisdiction provides the appropriate forum for the resolution of the dispute between the parties.""

26 On the facts, the learned Judge said (at page 781):

> "It was true that the plaintiffs themselves had not taken any further steps in the Indian proceedings in that they had not filed any defence to the action. It was argued that the Indian proceedings would not have been halted at the initial stage if the plaintiffs had taken active role in defending the claim. In my view, however, the plaintiffs were not to be penalised for having concentrated their efforts on removing the restraining order since their view of the matter was that the action should proceed in Singapore rather than in India.
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> ...

> When I considered all the circumstances relating to the Indian proceedings and the steps taken by the defendants therein, I agreed with the plaintiffs' submission that the Indian action was defensive in nature and that the course of events indicated that there was no true desire on the part of the defendants to litigate in India. In this regard, I noted that the Defendants' claim as formulated in the Indian courts substantially exceeds the plaintiffs' claim for the price on the goods. One would have expected a party with a claim for such a significant amount to have vehemently pursued it in the Indian court instead of sitting on the matter for so long. Further, while to say so might come perilously close to judicial chauvinism (to use Lord Diplock's phrase in *The Abidin Daver*), I found it difficult to believe that a Singaporean party would sincerely consider that its claim would be better dealt with in a foreign court even though the foreign party concerned was willing to litigate in Singapore. I had the clear impression that the defendants had ulterior motives in wanting to shift this litigation from Singapore.
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> Thus, whilst the court must always be concerned to try and avoid the complications that arise when there are concurrent proceedings in different jurisdictions involving the same parties and similar issues, in this particular case, I was not convinced that the existence of the Indian proceedings was a positive factor making the Indian court the more appropriate court to adjudicate the dispute."

27 The learned Judge therefore concluded that the Defendants there had not discharged the burden on them to show that the Indian Court was clearly and distinctly the appropriate court for resolving the dispute. The Defendants' subsequent appeal to the Court of Appeal was dismissed.

28 In a more recent decision, *Oriental Insurance Co Ltd v Bhavani Stores Pte Ltd* [1998] 1 SLR 253, the Court of Appeal pronounced on the principles governing an application to stay proceedings. This pronouncement appears compendiously in the headnotes as the first holding as follows:

> "The principles governing an application to stay proceedings were clear and established. If a court concluded that there was some other available forum which prima facie was clearly more appropriate for the trial of the action, it would ordinarily grant a stay unless there were circumstances by reason of which justice required that a stay should nevertheless not be granted. However, the mere fact that a plaintiff had such a legitimate advantage for proceeding in Singapore was not decisive and the interests of all the parties and the ends of justice had to be taken into consideration."

29 The contractual document in the present case was nothing more than a one-page handwritten note in the Chinese language (save for the names of the parties, the date and the currency) on paper provided by the Pan Pacific Hotel of Singapore. The terms therein appear sufficiently from the pleadings and they should pose little difficulty to any Court studying them. No choice of law or of jurisdiction was stated. The applicable law would either be Singapore law or Chinese law. If it is Singapore law, obviously it would be ideal that the matter be dealt with in this jurisdiction. If it is Chinese law, this issue becomes a neutral one in that it would not matter whether the action is tried in Singapore or in Paris. There is no ground whatsoever to presume that either jurisdiction would be better placed than the other to deal with Chinese law.

30 The Defendants are based in Singapore and so is the Defendants' principal witness, Shih Shia Wah. However, she has unequivocally elected to travel to Paris for the action to be tried there. The Plaintiff, holding a Honduran passport, with his constantly changing address, appears to be a globetrotter and

therefore the forum for trial would be quite immaterial to him. However, he has not denied that his family is still in Paris. His constant change of residence from one country to another appears suspicious and was probably done to remove a connecting factor with the French jurisdiction.

31 He also claimed that practically all his witnesses would come from China and there would be less difficulty and saving of costs if the action was tried here as Chinese is one of the official languages here and the witnesses would have to travel less and within the same time zone. I am not persuaded that Paris would not be able to provide the same interpretation facilities as are available in Singapore. The longer travel time and the different time zones are really relatively minor considerations.

32 The denominated currency in the contract did not swing the balance one way or the other. Indeed, the US dollar was converted into French Franc and remitted to the joint-account of the Plaintiff and his wife in Paris and it was not denied that the money was used to purchase the property in question.

33 The Plaintiff also claimed that he had a personal or juridical advantage in proceeding here in that he would be able to realize the fruits of his judgment here if successful. If the matter was litigated in Paris and the outcome was favourable to him, he would not be able to register the French judgment here in Singapore under our Reciprocal Enforcement of Foreign Judgments Act. This is where his sincerity in litigating in Singapore is seriously in question. He has not explained his strange, lackadaisical attitude in the first Singapore action. Within three weeks after that action was dismissed for non-prosecution, he commenced the present suit in which he had to be goaded again by the Defendants to serve the writ. While he had declared his readiness to provide security for costs and had been ordered by the Court to so provide, he had not done so.

34 On the other hand, the Defendants here have shown that they were entirely serious about proceeding in Paris. They have swiftly taken out applications to preserve the Plaintiff's assets and were unable to move significantly further towards final resolution because of the delays caused by the Plaintiff's procedural manoeuvres. Having delivered two punches by way of the garnishee and provisional mortgage applications, the match would have got underway if the Plaintiff would only step into the ring.

35 I have no doubt that the Plaintiff was less than serious about proceeding with his action here and was merely playing one jurisdiction against the other. This second Singapore action was nothing more than an instrument to persuade the French Court not to assume jurisdiction over the case and consequently to lift the provisional mortgage on his Paris property.

36 I was therefore of the view that the Paris action should proceed while the Singapore action should be stayed. If the French Court should decline jurisdiction subsequently, the Plaintiff would be at liberty to restore the present action and proceed to final resolution of the dispute on the merits.

TAY YONG KWANG

JUDICIAL COMMISSIONER