

Tan Chin Seng and Others v Raffles Town Club Pte Ltd
[2002] SGCA 35

Case Number : CA 51/2002
Decision Date : 16 July 2002
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA
Counsel Name(s) : Tong Beng Teck Roland and Wang Shao-Ing (Wong, Tan & Molly Lim) for the appellants; K Shanmugam SC and Boey Swee Siang (Allen & Gledhill) for the respondents
Parties : Tan Chin Seng — Raffles Town Club Pte Ltd

Civil Procedure – Discovery of documents – Criteria of relevancy – Relevancy dependent on issues pleaded – 'Train of inquiry' concept – Necessity of showing link between document sought and issues in the action

Civil Procedure – Pleadings – Allegation of fraud – Necessity of pleading expressly such allegation with particulars

Evidence – Admissibility of evidence – Evidence as to factual background of dispute – Whether admissibility of such evidence restricted to circumstances known to parties at or before time of contract

Judgment

GROUND OF DECISION

1 This was an appeal against the decision of the Judge in Chambers allowing the respondent's appeal against an order of the Assistant Registrar requiring the discovery of certain categories of specific documents. After hearing the parties, the appeal was allowed only in respect of one category of documents. The others were dismissed. We now give our reasons.

The facts

2 The appellants, ten individuals in all, are taking this action on behalf of themselves and 4,885 other persons, who are all members of the Raffles Town Club (the Club), a proprietary Club, seeking reliefs against the respondent-proprietors, Raffles Town Club Pte Ltd (RTC), on the grounds of misrepresentation and breach of contract.

3 The hearing of the action is now in progress. The action is based on a common law prospectus issued by RTC when inviting members of the public to join the Club. The prospectus comprised the following documents:-

- (i) a letter of invitation dated 9 November 1996;
- (ii) a brochure;
- (iii) a document giving general information in the
form of questions and answers.

4 The prospectus promised "lavish reception and facilities" and that the Club would be "without peer in terms of size, facilities and sheer opulence". It also gave, inter alia, the following specific indications as to

what members could expect –

- (i) there would be about 600 car parking lots for members;
- (ii) the exclusive and limited membership would be fully transferable;
- (iii) the total built-up area would be in excess of 400,000 square feet.

5 Potential subscribers were also told that there would be two classes of membership:-

- (i) a limited number of exclusive transferable founder members at the subscription price of \$28,000, on a first-come-first serve basis, provided the application was made before 30 November 1996. The selection process aimed at building up a network of like-minded professionals, executives and business people.
- (ii) Those not successful under (i), and those who applied after 30 November 1996, would have to pay \$40,000 and they would be "second class members."

6 From all the foregoing, the plaintiffs alleged that they were made to understand, and it was represented to them, that the total number of members at any given time would be limited so that the members and their spouses would not at any time be shut out from enjoying the facilities of the Club. The plaintiffs also said that these representations had become terms of the contract upon the plaintiffs' applications to becoming founder members being accepted. The plaintiffs said that these representations turned out to be false because –

- (i) Nineteen thousand people have become founder members. No invitation was issued to the public for the "second class members".
- (ii) The facilities of the Club were inadequate to cater to the needs of 19,000 members.

7 By reason of the representations which turned out to be untrue, the plaintiffs asked for a rescission of the contract and the return of the money paid to become members, or damages for breach of contract.

Discovery

8 By summons-in-chambers made on 2 April 2002, the plaintiffs applied for an order for the discovery of nine wide-ranging categories of documents. The Assistant Registrar, while granting an order for discovery, drastically narrowed its scope when compared with that prayed for by the plaintiffs. Discovery was ordered in respect of twelve specific categories of documents. However, as some of the discovered documents were no longer in contention we would only set out those which were the subject of the appeal:-

1. Any one document of a date before 6 November 1996 recording decision (whether of the Board of RTC ... its directors or its representatives) on the number of Raffles Town Club members to be taken in the first offering ending 30 November 1996 and for the fee of \$28,000.
2. Any one document of a date before 6 November 1996 recording decision (whether of the Board of RTC its directors or its representatives) on the number of Raffles Town Club

members to be taken in the second offering after 30 November 1996 and for the fee of \$40,000.

3. Any one document of a date after 30 November 1996 but before 31 March 1997 recording (whether by the Board of RTC ... its directors or its representatives) the number of applications received and determining the number of applications to be accepted from the applications made in the first offering ending 30 November 1996 and for the fee of \$28,000.

4. Any one document(s) dated after 1 January 1996 and before 31 September 1997 recording (whether by the Board of RTC ... its directors or its representatives) the criteria for approving applications in (i) the first offering ending 30 November 1996 and (ii) the second offering starting 1 December 1996, limited to documents where there is a material change in position from the previous document in time.

5. Any one document(s) dated after 1 January 1996 but before 31 September 2001 reflecting (whether by the Board of RTC ... its directors or its representatives or agents such as architects):- (a)(i) the final building plan/design submission to Building Control Authority; and (a)(ii) any material amendments to this final submission document thereafter; (b)(i) the decision shortly before June 2001 of using S\$100,000,000 for additional facilities; and (b)(ii) the implementation plan for the use of this additional S\$100,000,000.

6. Copies of correspondence (a) from members raising complaints; and, (b) the club management's replies in relation to the inadequacy, and over-crowding of the RTC coffee-house, Chinese restaurant, car-park and swimming pool for the period March 2000 to July 2001.

7. Any documents relating to the use of the presidential or executive suits of RTC by a non-member person or body corporate in relation in which period and for what fee, for the period March 2000 to March 2001.

9 Except in relation to items 6, 8 and 9(a), RTC appealed against the discovery order made by the Assistant Registrar. Rubin J substantially allowed the appeal except for item 7, where he required RTC to discover a document or furnish best particulars of –

(a) the number of members of the Club as at December 1996; and

(b) the number of members of the Club as at 31 March 1997.

Item 5 was not insisted by the plaintiffs as it was not a category of documents requested by the plaintiffs but was nevertheless ordered by the Assistant Registrar.

10 In coming to his decision, Rubin J was of the view that the plaintiffs had not shown the relevance of the requested documents to the plaintiffs' pleaded case. Relying on *Thorpe v Chief Constable of the Greater Manchester Police* [1989] 2 All ER 827 (*Thrope's case*) he also felt that discovery should not be ordered if the material was to be used only for the purpose of cross-examination to establish the credibility of witnesses.

11 Being dissatisfied with the order of Rubin J, the plaintiffs appealed to this Court seeking basically to substantially restore the discovery order made by the Assistant Registrar.

Documents in issue on appeal

12 Before us counsel for the plaintiffs pursued only seven items which Rubin J did not allow namely, items 1, 2, 3, 4, 9(b), 10 and 11 as listed in 8 above.

Law on discovery

13 We should mention that the rules governing discovery have undergone some important changes when they were reformed in 1996. Not only was the previous system of mutual discovery by parties after the close of pleadings replaced by a system of discovery by orders of court, the applicable test is also different. The previous test, to determine whether documents should be discovered, was governed by the words "relating to any matter in question between them in the action" found in the previous O 24 r 2(1). This test was elucidated in the often quoted judgment of Brett LJ in the celebrated case *Compagne Financiere Et Commerciale Du Pacifique v Peruvian Guano Co* (1882) 11 QBD 55 at 62-63:-

"... documents to be produced are not confined to those, which would be evidence either to prove or to disprove any matter in question in the action ... The doctrine seems to me to go farther than that and to go as far as the principle which I am about to lay down. It seems to me that every document relates to the matters in question in the action, which not only would be evidence upon any issue, but also which, it is reasonable to suppose, contains information which may – not which *must* – either directly or indirectly enable the party [requiring discovery] either to advance his own case or to damage the case of his adversary ...

A document can properly be said to contain information which may enable the party [requiring discovery] to advance his own case or to damage the case of his adversary; if it is a document which may fairly lead him to a train of inquiry, which may have either of these two consequences."

14 So documents which were indirectly relevant by reason of their potential to set-off "a train of inquiry" resulting in the discovery of evidence of direct relevance were discoverable. But this somewhat open-ended criteria often gave rise to difficulties in application to particular circumstances, abuses or fishing. It also gave rise to a trend of discovering huge volumes of insignificant documents.

15 The criteria adopted by the new Rules are more specific. They are set out in O 24 r 1(2):-

(2) The documents which a party to a cause or matter may be ordered to discover under paragraph (1) are as follows:

(a) the documents on which the party relies or will rely; and,

(b) the documents which could –

(i) adversely affect his own case;

- (ii) adversely affect another party's case; or
- (iii) support another party's case.

There is, in addition, an overriding principle prescribed in rule 7, which is, that the discovery must be "necessary either for disposing fairly of the cause or matter or for saving costs."

16 Documents which are now discoverable, other than these which a party relies or will rely [r 1(2)(a)], will be those which could (i) adversely affect the party's own case; (ii) adversely affect another party's case; or (iii) support another party's case. It should be noted that the word there is "could" not "would". So a document which has the "potential of affecting" the party from whom the document is requested, is obliged to discover the same.

17 Thus caution must be exercised when considering decisions which were made under the previous rules because, in the words of Jeffrey Pinsler on *Singapore Court Practice Order 24*, "a document is no longer discoverable merely because there is some connection (irrespective of the nature of the link) between it and the issue in the case." Documents which were required to be discovered under the concept of "train of inquiry" are no longer discoverable under the present O 24 r 1. However, this is not to say that the concept of "train of inquiry" has been removed from the Rules. It has reappeared in rule 5 which relates to discovery of specific documents.

18 However, it must not thereby be taken that cases decided under the previous rules are no longer pertinent. As was the position under the previous rules, one of the essential pre-conditions to be satisfied before discovery will be ordered is that of "relevance". Whether a document would affect that party's claim, or adversely affect another party's case, or support another party's case, must depend on the issues pleaded in the action. The cases that shed light on "relevancy" are just as useful today.

19 Some of the principles on "relevancy" established by the cases are the following. In *Thorpe* (referred to earlier) it was decided that a document was not discoverable if it was to be used only for the purpose of cross-examination to establish credibility of witnesses. A discovered document can also be blanked out in part if the blanked out portion is irrelevant to the issues of the action: *GE Capital Corporate Finance Group Ltd v Bankers Trust Co* [1995] 1 WLR 172. The discovery process should not be allowed to "fish" a cause of action: see *Wright Norman v Oversea-Chinese Banking Corporation* [1992] 2 SLR 710. Where an allegation is not pleaded, seeking discovery of a document to back up such an allegation constitutes fishing: *Marks & Spencer plc v Granade t/v & Anor* (unreported of 8 April 1997).

Items 1, 2 and 3

20 We now turn to examine the basis upon which the plaintiff sought to justify the discovery order made by the Assistant Registrar. On items 1, 2 and 3, the plaintiffs submitted that those documents were required to show whether the representations made by RTC, relating to membership being "exclusive" and "limited", were true or untrue at the time they were made and whether there was a breach of contract (assuming that the representations had become terms of the contract).

21 It is vitally important to bear in mind that the action is for the non-fulfilment of "representations" and/or for breach of contract. There is no allegation of fraud. Nor is it alleged that RTC made the representations knowing that they were false, or with no intention of fulfilling the same. Fraud must be expressly pleaded with particulars. Thus, what was RTC's decision on the number of people to accept as founder members under the fee of \$28,000 and as second class members under the fee of \$40,000 and what was the actual number of applications received by 30 November 1996 were wholly irrelevant to the issues in the action. It was not alleged that the information in any of these three categories of documents

were made known or conveyed to any of the plaintiffs. They knew nothing of these documents. The documents never formed the basis upon which RTC sought to attract the plaintiffs to join as members. Whatever representations made by RTC to the plaintiffs were exclusively in the three documents and nothing else. The information contained in the documents to be discovered under items 1, 2 and 3 played no part in the plaintiffs' appreciation of what RTC was trying to convey in the prospectus.

22 So what representations RTC did make to the plaintiffs must be gleaned from the prospectus and nothing else. And having established those representations, the plaintiffs must show, *inter alia*, that what RTC have in fact provided in the Club premises, applying objective standards, do not match the representations. The detailed drawings on the design of the Club's premises have already been furnished to the plaintiffs pursuant to the order of the Assistant Registrar. What was in the mind of the promoters behind RTC is not an issue in the action. We would reiterate that there is no allegation of fraud. The discovery sought was mere fishing. The documents are not necessary for disposing fairly of the action.

23 As for the alternative claim based on breach of contract, here again the plaintiffs must first establish what representations did RTC make in the prospectus. Second, plaintiffs must show that the representations had become terms of the contract. Third, the plaintiffs must establish a breach of those terms. Again for the same reasons above, the documents requested are wholly irrelevant.

24 The plaintiffs relied on the case *Chan Cheow Kiat v Tang Hoon Keng* (unreported decision of the High Court in Suit No. 234/91 dated 9 September 1996). But in that case, which involved the purchase of shares in a company, there were allegations of fraudulent and negligent misrepresentations and the alleged misrepresentations related to the existing state of affairs of the company. Another case relied upon by the plaintiffs was *Forum Development Pte Ltd v Global Accent Trading Pte Ltd* [1995] 1 SLR 474 which concerned a specific innocent misrepresentation made to induce a potential tenant to take up space in a shopping mall and where the court allowed the tenant to rescind the lease agreement on that account. In any event, in both these cases, the actual decisions did not really concern discovery principles.

25 Another argument put forward by the plaintiff was that the documents under items 1, 2 and 3 would show whether the representations made were fraudulent, negligent or innocent and, in any event, they formed the factual matrix, or surrounding circumstances, which the court could take into account in construing the representations. But evidence as to the factual background must be restricted to the circumstances "known to the parties at or before the date of the contract": see *Prenn v Simmonds* [1971] 3 All ER 237. The documents requested were not known to the plaintiffs before, or at the time, they applied to become members of the Club.

Item 4

26 Under this item, the documents sought to be discovered related to the criteria adopted by RTC in selecting applicants for membership. They averred that in the prospectus, RTC stated that there would be a selection or screening process to ensure that the members accepted were of like minded professionals, executives and business people; if there were no such criteria, then it would show that this representation was clearly untrue at the time it was made; alternatively there was a breach of contract.

27 It seemed to us that the plaintiffs, in making this submission, overlooked what is the substance of their grievance in the action, which is, that RTC admitted so many people as members so much so that the plaintiffs, who are members, could no longer enjoy the sort of facilities which RTC promised in their prospectus. The complaint in the action does not relate to the quality of the people who have been accepted as members, but the quantity. Thus the document asked for is wholly irrelevant to the issues in the action. In our view, this was just another fishing expedition.

Items 9 (b)

28 This document related to a decision of RTC to expend \$100,000,000 for additional facilities. The plaintiffs submitted that as RTC had represented to the plaintiffs that members would enjoy "unparalleled privileges and facilities", the decision of RTC to spend \$100 million in improving the Club facilities was highly pertinent to that question. This alleged decision to expend \$100 million to improving Club facilities was based on a report in the newspaper *The Business Times* of 7 June 2001, which stated that the shareholders of RTC were said "to be sitting on cash of over \$100 million and should have little difficulty funding any proposed purchase" for expansion.

29 A couple of observations should be made on this item. First, the assertion that RTC proposed to spend some \$100 million to upgrade the Club facilities is not pleaded in the Statement of Claim even though this report in the *Business Times* was published long before the action was commenced. So this allegation, which was based on the newspaper report, is not relied upon by the plaintiffs. Second, the alleged representations in the prospectus occurred in 1996. It is settled law that subsequent acts or conduct cannot be relied upon, or used, to construe any representations made in any instrument or the terms of a contract – see *Reardon-Smith Line Ltd v Yngver Hansen-Tangen* [1976] 3 All ER 571. Third, in a statement dated 7 June 2001, issued to all members by the newly appointed Chairman of RTC (which was already disclosed), he stated, inter alia, the following:-

.. we have reviewed the strengths, weaknesses and opportunities related to the Club and have drawn up a Club Development Plan. This blueprint of an action plan was accepted for implementation at the 1st Board Meeting on 29 May 2001.

The Plan will focus on three main areas:-

1. Acquiring an additional location to complement our present flagship at Plymouth Avenue.
2. Addressing all reasonable concerns about enhancement and usage of Club's ambience and facilities.
3. Leveraging on our membership strength to achieve the vibrancy and viability befitting a prestigious club.

The Board has proposed and the Proprietors have readily agreed to implement the plan for an additional location to complement the present one at Plymouth Ave. The Proprietors will provide the capital outlay for it. This means that the Club will be better able to cater to the diverse needs of members in terms of ambience, activity type and food and beverage preferences.

At the same time we will be taking steps to ascertain the optional usage of the service outlets. In this, we assure you that our aim is to try to meet all members' reasonable expectations regarding usage of facilities. As some of you who are members of other clubs are aware, clubs often have to cope with high patronage during weekends, public and school holidays. During weekdays, food outlets are under-patronized causing some clubs to allow walk-in members of the public. This blurs the distinction between members and walk-in members of the public. This is a situation we do not have and which we want to avoid.

30 Therefore, the documents under this item are not discoverable for two reasons. First, the allegation was not pleaded and was not relevant to the issues in hand. Second, subsequent acts or plans cannot be used to determine what were, in fact, the representations made, or interpret the terms of a contract. In any event, and for what it is worth, the information sought from those documents was already conveyed in

the general letter to members from the Chairman of RTC dated 7 June 2001.

Item 10

31 Under this item, the plaintiffs sought copies of members' complaints received by RTC during the period March 2000 to July 2001 relating to the inadequacy and overcrowding of the various facilities in the Club premises, e.g., coffee-house, Chinese restaurant, car-park and swimming pool, and the replies of RTC thereto. It is expressly pleaded that when the Club opened in March 2000, it was woefully inadequate and shockingly lacking in terms of facilities to cater for and accommodate the huge number of members and supplementary card holders.

32 RTC argued that such complaints were irrelevant as they constituted little more than hearsay evidence or only demonstrated what were the opinions of the complainants.

33 It seemed to us that these documents are clearly relevant to the issue in the action as to whether there is, in fact, any inadequacy or overcrowding of the facilities or inability of the Club to cope with the total number of members taken in. These documents would be germane to the question of the alleged breach of representations/terms of contract. Accordingly, we allowed the discovery of the documents under this item. We must, however, hasten to add that we have only addressed the question of relevancy. Other questions, such as admissibility and the weight to be accorded to each of the documents, do not arise at this stage.

Item 11

34 The documents requested for under this item relates to the use of the presidential or executive suites of the Club by non-members. The plaintiffs' argument was that these documents related to another facet of "exclusivity". Allowing non-members the use of the accommodation in the Club would be contrary to the promise of "exclusivity". But the fact of the matter is that the question of usage of the presidential and executive suites by non-members is not pleaded or relied on at all. Thus these documents are wholly irrelevant to the allegations of misrepresentations and/or breaches of contract.

Train of Inquiry

35 In relation to the discovery sought in the present appeal, the plaintiffs were relying upon r 5 of O 24. While the principle on "train of inquiry" is incorporated in r 5, it is nevertheless necessary for the applicant party to show in what way the requested document may lead to a relevant document. For example, in *Jones v Richards* (1885) 15 QBD 439 the court allowed interrogation of the defendant as to whether or not he was the writer of a letter (which was not in issue) in order to prove that he was the writer of a libellous letter which was the subject of the proceedings. The plaintiffs here did not attempt to show any such linkage other than stating baldly that there could be a train of inquiry. It was clear that the plaintiffs just wanted the specified documents (as ordered by the Assistant Registrar), and not that the discovery of those documents (which we ruled to be irrelevant) might lead to relevant documents. That was not their position. In modern litigation, discovery must be kept under proper control.

Judgment

36 In the result, the appeal was allowed only in respect of the documents under item 10. We affirmed the decision of the court below as regards the other six items of documents. We ordered that the costs of this appeal be in the cause. The security for costs, together with any accrued interest, would be refunded to the plaintiffs or their solicitors.

Sgd:

CHAO HICK TIN
JUDGE OF APPEAL

TAN LEE MENG
JUDGE

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