IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC 202

Originating Claim No 27 of 2024
(Registrar's Appeal No 119 of 2024)

Between

(1) Vasco Mattirolo
(2) Zhi Wei Ko

… *Appellants*

And

Doshi Sayyam Hiteshkumar

… *Respondent*

JUDGMENT

[Civil Procedure — Summary judgment]

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Mattirolo, Vasco and another
v
Doshi Sayyam Hiteshkumar

[2024] SGHC 202

General Division of the High Court — Originating Claim No 27 of 2024
(Registrar's Appeal No 119 of 2024)
Choo Han Teck J
5 August 2024

7 August 2024 Judgment reserved.

Choo Han Teck J:

1 This is an appeal against an order dismissing the application in HC/SUM 616/2024 ("SUM 616") for summary judgment. The appellants are the claimants in this action. In their amended Statement of Claim ("SOC A1"), they pleaded that on 3 August 2023, they entered into an agreement in writing (which they titled "Loan Agreement") with the respondent (defendant) "to resolve an outstanding debt of USD 2,500,000 owed to the [appellants] from various commercial transactions that … [the appellants] and [respondent] had entered into". I refer to this as the "Agreement". The Agreement also provided that if the respondent did not pay US$2.5m by 9 August 2023, he would have to pay an extra US$100,000 to the appellants "as a genuine pre-estimate loss [*sic*] incurred by the [appellants]".

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2 On this basis, the appellants are claiming for US$2.6m from the respondent. They commenced proceedings on 15 January 2024, and, on 6 March 2024, applied for summary judgment in SUM 616. The learned Assistant Registrar below ("the AR") dismissed this application. In his oral grounds, he found that the debt arose from a prior agreement ("the Prior Agreement") under which the appellants funded the respondent's business of reselling luxury watches. This Prior Agreement was either in the form of a joint venture agreement (according to the respondent) or a profit-sharing agreement (according to the appellants). The AR was of the view that the Agreement merely recognises an existing debt but does not give rise to a payment obligation in itself. The real obligation for payment arose from the Prior Agreement, and a breach of that Prior Agreement should have been pleaded instead of a breach of the Agreement. The AR also noted that in so far as the appellants were relying on the Agreement as a proven absolute acknowledgement of debt by the respondent, they should have pleaded that they were seeking an independent action based on a mere account stated. For these reasons, the AR was of the view that the appellants did not make out a *prima facie* case.

3 In this appeal, the appellants' counsel argues that the AR erred in taking the position that the appellants had pleaded a loan, when the Agreement did not in fact involve a loan. Counsel pointed out that although the Agreement was titled "Loan Agreement" (as the defendant drafted it without the help of lawyers), the appellants pleaded in SOC A1 that the Agreement was entered into "to resolve an outstanding debt".

4 In my view, this argument does not help the appellants. First, the SOC A1 does not contain a precise description of the nature of the Agreement. An agreement to "resolve an outstanding debt" could conceivably be, for instance, a loan agreement or one of the three types of account stated — see *Viet*

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Hai Petroleum Corporation v Ng Jun Quan and another and another matter [2016] 3 SLR 887 at [21(a)]. The appellants did not clarify which one (or more) of these they were referring to in the SOC A1. This is not merely a technical point, as the appellants' failure to plead with precision left the respondent unsure of the case he must meet. The fact that the appellants' counsel raised an action of an account stated in his written submissions for this appeal does not remedy the prejudice stemming from insufficient pleadings, as the submissions would likely have taken the respondent by surprise. Second and relatedly, the appellants pleaded a breach of contract based on the Agreement. But as the SOC A1 currently stands, the appellants fail to make out a *prima facie* case of breach of contract, since the Agreement does not appear to be supported by consideration. Since the Agreement is not a contract, there can be no breach of contract pursuant to the Agreement as pleaded. There may well be a breach of contract pursuant to the Prior Agreement, but this was not pleaded. I thus agree with the AR that the appellants have failed to establish a *prima facie* case.

5 Furthermore, the details of the Prior Agreement and how the debt arose therefrom are unclear. In the hearing before me, the appellant's counsel seemed to suggest that under the Prior Agreement, the respondent carried out his business of reselling luxury watches under a "joint venture" of some sort called "Team Mazal", and the parties were "partners" in this joint venture. These facts raise various questions: first, what form did the Team Mazal joint venture take — a company or partnership or something else? Second, under the Prior Agreement, who was obliged to pay the debt — the respondent, or the Team Mazal joint venture as a separate entity? Third, if the debt was indeed owed by the Team Mazal joint venture, then when the respondent signed the Agreement, did he intend to take on personal responsibility for the debt? The appellants' pleadings provide no clear answers to these questions.

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6 A claimant cannot succeed in an application for summary judgment if there is a triable issue. That much is clear and it is obvious from the preceding paragraphs that there are triable issues. An application for summary judgment will fail if, as in this case, the court is not satisfied that a claimant has a clear and unequivocal cause of action, supported by affidavit evidence that is incontrovertible.

7 Although the respondent was absent from the appeal hearing without explanation, he was present at the hearing below. His absence alone is no justification for allowing the appeal. The appellants must satisfy this court that the orders below are wrong, and this they failed to do.

8 The appeal is accordingly dismissed with costs in the cause.

Choo Han Teck
Judge of the High Court

Eoon Zizhen Benedict (Oon & Bazul LLP) for the appellants;
Respondent absent and unrepresented.