

Lai Swee Lin Linda v Attorney-General
[2009] SGHC 38

Case Number : Suit 995/2004
Decision Date : 17 February 2009
Tribunal/Court : High Court
Coram : Belinda Ang Saw Ean J
Counsel Name(s) : Linda Lai Swee Lin, Plaintiff in person; Mavis Chionh (Attorney-General's Chambers) for the Defendant
Parties : Lai Swee Lin Linda — Attorney-General

Civil Procedure

17 February 2009

Belinda Ang Saw Ean J

1 This was an application for reinstatement of the action brought by the plaintiff, Linda Lai Swee Lin. At the conclusion of the hearing, the action was ordered to be reinstated and the Amended Statement of Claim filed on 8 February 2007 was ordered to stand as the plaintiff's pleadings in these proceedings. The defendant, the Attorney General, has appealed against my decision.

2 The facts and events leading to the plaintiff's application for reinstatement of the action are as follows. By way of background facts, the plaintiff was appointed as a Senior Officer Grade III at the Land Office of the Ministry of Law in November 1996. On 17 December 1998, the Senior Personnel Board F terminated her services. She was paid one month's emoluments in lieu of notice. On 20 January 2000, the plaintiff commenced judicial review proceedings in Originating Summons No. 96 of 2000 to seek orders of certiorari and mandamus against the Public Service Commission ("PSC"). The High Court granted her leave to seek those orders, but the PSC appealed successfully to the Court of Appeal in Civil Appeal No. 69 of 2000 ("CA 69"). On 21 January 2001, the Court of Appeal set aside the High Court's order holding that the complaints against the PSC were not susceptible to judicial review. Her allegations were said to be in the nature of breaches of contract of employment for which remedy resided in private law.

3 The plaintiff filed Suit No. 995 of 2004 on 17 December 2004 for the alleged wrongful termination of her employment contract ("Suit 995"). On 10 January 2005, the defendant applied under O 18 r 19 of the Rules of Court (Cap 322, R 5, 2004 Rev Ed) ("ROC") to strike out parts of the plaintiff's Statement of Claim that traversed administrative law issues and relief despite the adverse decision of the Court of Appeal in CA 69 on the matter. The defendant succeeded before the Assistant Registrar ("AR"), Yeong Zee Kin on 23 February 2005. Certain paragraphs were ordered to be struck out and a number of other paragraphs were to be amended within three weeks, failing which they, too, would be struck out. The plaintiff appealed on 9 March 2005. Justice Tan Lee Meng affirmed AR Yeong's decision and dismissed the appeal on 5 April 2005.

4 On 11 April 2005, the defendant served a statutory demand on the plaintiff for payment of the taxed costs ordered in CA 69. The plaintiff filed Originating Summons Bankruptcy No 38 of 2005 ("OSB 38") to set aside or stay the bankruptcy proceedings. OSB 38 was heard and dismissed by AR Joyce Low on 1 June 2005. On 14 June 2005, the plaintiff appealed against the order refusing stay. The appeal was heard by Tan J who dismissed the appeal on 25 July 2005.

5 On 24 August 2005, the plaintiff filed Civil Appeal No. 87 of 2005 ("CA 87") to appeal against the two Orders of Tan J. The first appeal related to the Order to strike out parts of the Statement of Claim in Suit 995 ("the striking out appeal"). The second appeal related to the Order refusing stay of the bankruptcy proceedings ("the OSB appeal"). The defendant on 7 September 2005 filed Notice of Motion No. 81 of 2005 ("NM 81") to set aside the striking out appeal as the plaintiff was out of time for appealing against the Order of 5 April 2005 in two respects. She had not complied with s 34(1)(c) of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) ("SCJA") and O 57 r 4 of ROC. On 24 October 2005, the Court of Appeal heard the plaintiff's application in NM 81 and set aside the striking out appeal.

6 On 8 February 2007, the plaintiff filed her Amended Statement of Claim in Suit 995. On 1 March 2007, AR Kenneth Yap ruled that the Amended Statement of Claim was filed only after Suit 995 was deemed discontinued under O 21 r 2(6) of ROC. He, therefore, ordered the Amended Statement of Claim expunged from the court's record. On 9 March 2007, the plaintiff appealed against AR Yap's decision. Justice Tay Yong Kwang dismissed the plaintiff's appeal on 25 April 2007.

7 On 13 September 2007, the plaintiff filed Originating Summons No. 1369 of 2007 seeking leave from the Court of Appeal to appeal against Tay J's decision. The Court of Appeal granted the plaintiff leave to appeal out of time. On 6 November 2007, the plaintiff filed her appeal in Civil Appeal No. 134 of 2007 ("CA 134"). This appeal was deemed withdrawn under O 57 r 9(4) of ROC as the plaintiff did not file her Appellant's Case, the Record of Appeal and the Core Bundle by 1 April 2008.

8 The plaintiff filed the application for reinstatement of this action on 25 June 2008. The application was listed for hearing before me on 8 September 2008 and 17 September 2008.

9 The reinstatement application was brought under O 21 r 2(8) of ROC which provides as follows:

Where an action, a cause or a matter has been discontinued under paragraph (5) or (6), the Court may, on application reinstate the action, cause or matter, and allow it to proceed on such terms as it thinks just.

10 Judith Prakash J in *Moguntia-Est Epices SA v Sea-Hawk Freight Pte Ltd* [2004] 4 SLR 429 ("*Moguntia*") at [21] provided general guidance on the manner in which the court is to exercise its discretion under this rule. Ms Mavis Chionh for the Attorney General recited the guidelines in *Moguntia* submitting, at the same time, that a plaintiff who seeks reinstatement must discharge the burden of satisfying the court on all three limbs of the applicable test, namely:

(a) Was the plaintiff innocent of any significant failure to conduct the case with expedition prior to the "trigger date", that is, the date of the last step in the action;

(b) Was the plaintiff's failure to take any step in the action since the trigger date excusable;

(c) Does the balance of justice indicate that the action should be reinstated?

11 The focus of limbs (a) and (b) is on the plaintiff's conduct of the litigation in the context of why the proceedings got to the point of automatic discontinuance and was the failure to comply excusable. The focus of limb (c) is on a broader consideration of whether it would be just to reinstate the action and this must obviously be to assess the significance and weigh up all the relevant facts and circumstances of the particular case that one is dealing with. No one particular limb of the general guidelines is weightier than the next. Within the legal framework, weight is given to different factors in different cases and, in particular, the judge's assessment of the weight to be given to the

factors relied upon by the parties in the exercise of its discretion. In most situations, it is the effect of automatic discontinuation bringing litigation to an end irrespective of the justice of the case, as much as if not more than that of the failure to comply with the rules or orders of court that is likely to be of interest in an application for reinstatement.

The first and second limbs of the Moguntia guidelines

12 Ms Chionh made various criticisms of the conduct of the case by the plaintiff. The Amended Statement of Claim was not filed until 8 February 2007. The plaintiff's late attempt to include without leave the striking out appeal in CA 87 was used to demonstrate the existence of a pattern of conduct on the part of the plaintiff in not complying with the rules of court. The main point for the defendant was that there had been delays by the plaintiff before and after the trigger date for which there was little or no excuse.

13 The trigger date was 24 October 2005 being the date the Court of Appeal heard NM 81 and allowed the defendant's application to strike out the appeal in so far as it relates to Suit 995. No other step or proceedings took place after 24 October 2005 until the plaintiff filed the Amended Statement of Claim on 8 February 2007, a period of more than one year.

14 It did appear that the plaintiff was "active" during the period prior to 24 October 2005. CA 87 was filed on 24 August 2005. The defendant's NM 81 was filed on 7 September 2005. However, for a period after 24 October 2005, a disproportionate length of time had lapsed before the Amended Statement of Claim was filed on 8 February 2007. Why then did the plaintiff take more than one year from 24 October 2005 to amend and file her Amended Statement of Claim? The plaintiff's 5th affidavit filed on 13 September 2007 offered some explanation for the delay. Her explanation was that between 24 October 2005 and 31 March 2006 she was under the impression that the striking out appeal was still alive. This is what she said:

148. The "appeal" referred to in the numerous letters from the Registrar to me after the hearing of the NM [Notice of Motion No 81 of 2005] could only refer to the SIC appeal [the striking out appeal] as the Defendant had informed the Court at the hearing of the NM that the Defendant had no objection to the 2nd (sic) appeal i.e. stay of the Bankruptcy proceedings, also at paragraph 27 in the judgment of the NM.

149. Furthermore, the Defendant had not pursued the Bankruptcy proceedings and there was no need for me to file the Appellant's Case for the 2nd (sic) appeal, as it is a non-issue.

150. The "appeal" could only logically refer to the SIC appeal, as there was only 1 appeal then, the SIC appeal and legal and substantive issues of the SIC appeal had not been argued. I was not informed in all the letters that the SIC appeal was struck out until the computer print out which requires no signature dated 31.3.06.

15 Ms Chionh dismissed the plaintiff's excuse to justify the delay as unbelievable because the plaintiff was at the hearing before the Court of Appeal and was aware of the outcome.

16 The plaintiff came across as muddle-headed. I made reasonable allowance for the demeanour of the plaintiff to conclude, by giving her the benefit of the doubt, that the default was not intentional. She was muddle-headed in thinking that the striking out appeal was alive. The Registrar's letters of 10 November 2007 - notifying the plaintiff of the hearing date of CA 87 and reminder to file the Appellant's Case and Record of Appeal - were read by her against the backdrop of her perception that

the bankruptcy proceedings had been stayed. She came to realise that there was no longer a striking out appeal on 31 March 2006 upon receiving the Registrar's letter to that effect.

17 It is not disputed that after the trigger date, the plaintiff was engaged in correspondence with the Registrar. Notwithstanding, Tay J's decision that the communications were not of such a nature as to fall within the ambit of "step in proceedings", the communications were, nonetheless, relevant for the purposes of the *Moguntia* guidelines. They support her assertion that she was under the impression (albeit mistaken) that the striking out appeal was still alive. In her letter of 21 November 2005, she wanted the documents listed there to be treated as her Appellant's Case for CA 87 of 2005 and they included material from the striking out hearing before AR Yeong and Tan J. She sought the Registrar's agreement on the matter. Her purpose as stated in letters to the Registrar and the Honourable the Chief Justice was to secure a waiver of filing formal cause papers to spare the expense of filing fees and photocopy charges given her financial position. The requests reflected the plaintiff's belief that the striking out appeal was still alive when it was certainly not the case. The communications also indicated a recognition and intention on her part to progress the proceedings with the same material filed in relation to previous applications. Coincidentally, Tay J in passing made the same observation of the plaintiff at [9] of his Grounds of Decision. Tay J said:

It appeared from her arguments before me that *she believed that* her appeal against Tan J's decision in *the striking out appeal was still alive* when that appeal had clearly been set aside by the Court of Appeal.

[Emphasis added]

18 As for the period from 31 March 2006 until 8 February 2007, the plaintiff's explanation for the delay in filing the Amended Statement of Claim was that she could not recall Tan J's orders. Ms Chionh argued that the explanation was unacceptable. Whilst it is not a very good explanation, it was her explanation for the delay. The fact that the plaintiff was not being realistic in seeking to obtain the written grounds of decision is not the point. She did write in for them not realising that no written grounds would be issued as there was no pending appeal against Tan J's decision. Her first letter was written on 3 December 2005. She again made reference to her request in her letter of 24 March 2006. In reply, the Registrar wrote on 31 March 2006 to inform the plaintiff that as her appeal against Tan J's Order of 5 April 2005 was struck out by the Court of Appeal, "no grounds of decision will be issued at this point of time." In her letter of 30 October 2006, she asked a rhetorical question, "[A]t which point in time will the grounds be issued?".

19 On her other point that she was not aware that she could have written to the Registrar for the Notes of Arguments for the terms of the order, I attributed her state of mind to inexperience of the legal procedure and practice rather than any deliberate holding back as borne out by the following facts. She is a qualified lawyer but she has never been in private practice in Singapore (see the plaintiff's 5th affidavit at [109]). In practical terms, the plaintiff has been coping with this litigation on her own as she could no longer afford the assistance of counsel. In her own way (albeit rather late in the day), she indirectly asked for the terms of the order in her letter of 21 November 2006. After explaining that she could not recall the amendments to the Statement of Claim ordered by Tan J, she wrote: "As such, I would appreciate receiving the necessary amendments to be made." Her concern was faulty memory and if she should make a mistake in the amendments, the defendants would ask for pleadings to be struck out. As the plaintiff did not hear from the Registrar, she went ahead to make the amendments ordered from memory.

The third limb of the Moguntia guidelines

20 As to where the balance of justice lay, in my judgment the balance of justice indicated that the action should be reinstated. This was not a case where reinstatement would send the wrong message that the courts are “indulgent towards dilatory parties” (per Prakash J at [21]). I was satisfied that the year long delay in failing to file the Amended Statement of Claim until after the action was automatically discontinued did not stem from the fact that the plaintiff was maintaining the proceedings with no intention of carrying them forward to trial. In the present case, the delay came in an action commenced shortly before the end of the limitation period and not long after the early stages of the litigation. There was no intentional disregard of AR Yeong’s order or the rules of court. As stated, even during the delay in amending and filing the Amended Statement of Claim, the plaintiff did not act as if she was not interested in pursuing the litigation. On the contrary, the plaintiff’s perseverance and single-minded determination to seek redress for her alleged wrongful dismissal is real and pervasive. In the overall context, the weightier consideration is the effect the failure to comply had on each party.

21 In considering where the balance of justice lies, the court looks at the relative positions of the parties and the effect of what has happened on the administration of justice generally. The plaintiff faltered at the early stage of the proceedings and I did not think the failure to file and serve the Amended Statement of Claim has had very much effect on either party, in so far as their conduct of the action is concerned. Since my decision of 17 September 2008, Defence was filed on 8 October 2008. The plaintiff filed her Reply on 20 October 2008. It was not suggested that there was prejudice to the defendant from the delay except for the defence of limitation raised by Ms Chionh at the hearing. Limitation is a factor in the consideration of the effect which the grant of relief would have on each party. It is important to bear in mind that the action was not struck out based on limitation grounds. Limitation as a defence became available because of the automatic discontinuation bringing litigation to an end irrespective of the justice of the case. On the other hand, if I were to refuse the relief applied for, it would have a devastating effect on the plaintiff whose claim for breach of contract would be lost. Furthermore, the unusual circumstance of this particular plaintiff, who has not had her case adjudicated on the merits despite having been to the Court of Appeal more times than most litigants on procedural issues, is relevant to the consideration of prejudice. It seems to me that the balance of justice in this case favoured reinstatement.

Result

22 For these reasons stated I allowed the plaintiff’s application and ordered reinstatement of the action. The Amended Statement of Claim filed on 8 February 2007 was allowed to stand. The defendant was directed to file and serve its Defence by 8 October 2008. The defendant was ordered to pay the plaintiff’s disbursement fixed at \$600.

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