

Lee Shieh-Peen Clement and another v Ho Chin Nguang and others
[2010] SGHC 139

Case Number : Suit No 285 of 2009 (Registrar's Appeal No 137 of 2010)
Decision Date : 05 May 2010
Tribunal/Court : High Court
Coram : Philip Pillai JC
Counsel Name(s) : Rasanathan s/o Sothynathan and Luo Ling Ling (Colin Ng & Partners LLP) for the plaintiffs/appellants; Julia Yeo (Robert Wang & Woo LLC) for the defendants/respondents.
Parties : Lee Shieh-Peen Clement and another — Ho Chin Nguang and others

Civil Procedure

5 May 2010

Judgment reserved.

Philip Pillai JC:

Introduction

1 The plaintiffs filed an application in Summons No 1052 of 2010 for:

(a) the defendants to provide a further and better list of documents; and

(b) the defendants to provide certified English translations of every document not in the English language.

2 On 24 March 2010, the assistant registrar ("AR") dismissed the plaintiffs' application and awarded the defendants costs of \$600. The plaintiffs have appealed against the AR's decision.

Facts

3 The parties are in dispute over certain investments made in a China incorporated company called KingHope (Beijing) Investment ("KingHope"). Pursuant to an Order for Discovery made on 27 October 2009, the defendants provided a list of documents which they filed on 30 November 2010 ("the 30 November List"). In that document, the items at serial number 101–103 were listed as follows:

101.	July 2007	Accounts for the month of July 2007 (159 pages)	Original
102.	September-October 2007	Accounts for the month of September to October 2007 (191 pages)	Original

103.	November 2007	Accounts for the month of November 2007 (276 pages)	Original
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It is not disputed that the plaintiffs were given opportunity to inspect the originals of the documents listed. Having inspected these accounts, the plaintiffs made the application mentioned above at [\[1\]](#) on the ground that the individual documents in each account book were not specifically particularised. They further submitted that they could not properly inspect the documents given that many documents were not in English.

The AR's decision

4 The AR dismissed the application, holding that the defendants' obligation was merely to produce the documents for the plaintiffs to inspect and nothing more; if the plaintiffs sought to rely on those documents, it was instead for the plaintiffs themselves to make the translations. She further held that the defendants had provided the plaintiffs with the documents, bundled according to the accounts for the relevant months, and had given the plaintiffs the opportunity to inspect those documents.

The appeal

5 On appeal before me, a sample of the accounts was produced. The accounts for each relevant period are compiled in a loose-leaf manner and bound in a booklet. The contents for each relevant period relate to financial transactions including receipts, invoices and payment particulars partly in English and partly in Mandarin.

6 Order 24 r 9 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) requires a party who has served a list of documents to allow the other party to inspect the documents referred to in the list (other than any which he objects to produce) and to take copies. It is not in dispute that the defendant has complied with those requirements, and the plaintiffs admitted to having sighted "a handful of the Accounts". Even though they now complain that they "were forced to cease inspection, as the Accounts were incomprehensible", the fact of the matter is that the plaintiffs had been given discovery and they could have, if they wished, made copies.

Whether the defendants should provide a further and better list of documents

7 Order 24 r 3 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) provides:

3. —(1) A list of documents made in compliance with an order under Rule 1 must be in Form 37, and *must enumerate the documents in a convenient order and as shortly as possible but describing each of them or, in the case of bundles of documents of the same nature, each bundle, sufficiently to enable it to be identified.*

[emphasis added]

The provision for enumerating and describing bundles of documents is an exception – usually, documents must be listed individually. As explained in *Singapore Civil Procedure 2007* (ed-in-chief GP Selvam) (Sweet & Maxwell Asia, 2007) at para 24/3/5:

... The provisions in regard to bundles of documents only apply where there is a large number of documents of the same nature. In such a case, each of the documents must be numbered, as in other cases, but the bundle may be described as whole, eg. "letters (or copy letters) from A to

B, tied up in a bundle marked A and numbered from 1 to 50 and initialled by me.”

The documents must be of the same nature. Diverse documents though dealing with the same subject-matter or transaction and filed or bundled together do not come within the exception (*Sveriges Angfartygs Assurans Faening v The 1976 Eagle Insurance Co. S.A.* (March 28, 1990, Hobhouse J., Com.Ct unreported) [*sic*]).

8 In substance, the plaintiffs’ appeal on this point is that a further and better list of documents ought to be provided because the 30 November List does not comply with the requirements of O 24 r 3, *ie*, the bundles do not contain documents of the same nature and the description of the bundles is insufficient for the documents to be identified. The plaintiffs submit that the items listed at 101–103 have to be further elaborated with a list of each and every invoice and receipt in each period’s account book.

9 In relation to the above submissions, the issue I have to consider is whether the wording of items 101–103 in the 30 November List is sufficient disclosure of the bundles of documents contained in the accounts for each relevant period.

10 In *Singapore Civil Procedure 2007* at para 24/1/12, it is observed:

... A list of documents, verified by affidavit is normally conclusive ... subject to two qualifications, namely: (1) that an application may be made under r.5, for an affidavit in regard to specific documents or classes of documents, where the facts fall within that rule; and (2) that an application may be made for a further and better list of documents in the following conditions.

An order may be made for a further and better list of documents where it appears (1) from the list itself, or (2) from the documents referred to in it, or (3) from admissions made either in the pleadings of the party making discovery or otherwise, that the party making discovery has or has had other relevant documents in his possession, custody or power. ...

11 The relevant considerations behind the discovery process is to ensure the conduct of litigation in an efficient, economical and expeditious manner that is consistent with doing justice between the parties (see *Averiges Angfartygs Assurans Forening v The 1976 Eagle Insurance Company SA & Ors* 28 March 1990 Unreported (QBD Comm Ct)). My attention was also drawn by counsel to the following passages in the Australian case of *DCH Legal Group v Skevington & Anor* [2001] WADC 116 (“*DCH*”), per Muller DC at [8]:

Where reliance is placed on disclosure of a bundle of documents the description of documents in that bundle must be reasonably precise. Discovery in bundles is acceptable provided the description of each bundle accurately and adequately describes its contents and specifies the dates between which the correspondence was produced.

...

A balance must be struck between the duty to identify bundles of documents adequately to enable their ready identification by the other party to the litigation and the protection of the party making discovery upon being overborne or oppressed by the magnitude of the task.

In *DCH*, the list of documents produced was held to be unsatisfactory because the description of the bundles of documents did not enable the documents in each individual bundle to be readily identified as a class. In fact, the descriptions were found to be misleading and unhelpful on many occasions.

There were documents in the individual bundles that were found not to be documents of the same nature as those described by the general title of the bundle.

12 In the present case, the account books are originals of the accounts KingHope for the relevant periods. They contain, as would be expected, a compilation of all receipts and invoices that constitutes the accounts of such company in the possession of the defendants. By contrast to *DCH*, having examined the original accounts bundles presented to me, I conclude that they do indeed correspond entirely to reflecting the financial receipts and invoices for the relevant periods as would be expected in a bundle described as accounts for these periods. I am accordingly of the view that there has been sufficient compliance with O 24 r 3 as all items in this bundle constitute documents of the same nature. I do not accept the plaintiffs' submission that because there are receipts and invoices, these are necessarily diverse documents (though dealing with the same subject-matter or transactions) that do not come within the exception as set out in para 24/3/5 of *Singapore Civil Procedure 2007* (see [\[7\]](#) above). It is therefore my view that the accounts books for each period which contains the relevant receipts and invoices constitutes an accurate and adequate description of the contents and the periods of such items.

Whether the defendants are obliged to translate the documents in the 30 November List

13 The second issue before me is whether the defendants are obliged to translate the items in each of the account books for the plaintiffs at *this stage* of the discovery proceedings.

14 The AR referred to Registrar's Appeal No 134 of 2009 and held that the onus for translation lies with the party who relies on the relevant documents in question.

15 The plaintiffs submit that notwithstanding the existence of authority to the contrary, the court ought to order translations of each item of the accounts in the list of documents pursuant to O 92 r 3. They submit that this court can and must order the translation to be done. However O 92 r 1 provides:

Every document if not in the English language must be accompanied by a translation thereof certified by a court interpreter or a translation verified by the affidavit of a person qualified to translate it *before it may be received, filed or used in the Court*.

[emphasis added]

As it remains uncertain, at this discovery stage, whether or not some or all of the accounts will be received, filed or used in court, I see no reason to prematurely order translation pursuant to O 92. I also agree with the AR that the onus for translation lies with the party who relies on the relevant documents for the trial.

Conclusion

16 In the light of the above, I dismiss the appeal and award costs to the defendants, to be taxed or agreed.

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