

The "Rainbow Joy"
[2005] SGHC 9

Case Number : Adm in Rem 319/2003, RA 268/2004
Decision Date : 13 January 2005
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : R Govintharasah (Gurbani and Co) for the appellant; Yap Yin Soon (Allen and Gledhill) for the respondent
Parties : —

Conflict of Laws – Natural forum – Appellant signing contracts to work on board ship – Appellant injured on ship – Appellant initiating proceedings in Singapore against respondent shipowner and employer – Whether stay of action should be granted on ground of forum non conveniens – Factors considered by court when determining whether another available forum clearly or distinctly more appropriate existing

13 January 2005

Tan Lee Meng J:

1 The appellant, Mr Paquito L Buton ("Buton"), appealed against the decision of the assistant registrar, Mr Vincent Leow, to stay his action against the respondent, the owners of the ship or vessel *Rainbow Joy* ("the shipowner"), on the ground of *forum non conveniens*. I dismissed his appeal and now give the reasons for my decision.

Background

2 On 9 August 2002, Buton, a Filipino engineer, signed an employment contract in Manila to work on board the *Rainbow Joy*, a general cargo ship registered in Hong Kong. The ship is owned by Rainbow Joy Shipping Inc, a Panamanian company, and managed by Hang Woo Ship Management Ltd ("Hang Woo"), a Hong Kong company.

3 Buton's contract was in the Philippines Overseas Employment Administration ("POEA") standard form, which has received a measure of international recognition: see *Dimskal Shipping Co SA v International Transport Workers Federation* [1989] 1 Lloyd's Rep 166. The POEA contract, which is intended to protect the rights of Filipino seafarers, provides that the law of the Philippines shall govern the contractual relationship and that disputes are to be resolved by means of arbitration in the Philippines. It also sets out the minimum sum payable to a seafarer where there has been injury or death. The POEA "Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels" were incorporated into Buton's employment contract. In late August 2002, Buton was flown to Singapore to sign on board the *Rainbow Joy*, which was anchored in Singapore waters at the material time.

4 It is not uncommon for shipowners to enter into two agreements with Filipino seafarers, the first in the approved POEA form to comply with Filipino requirements, and the second, to satisfy other legal requirements. In the present case, apart from the POEA contract executed in the Philippines, another employment contract ("the Hong Kong contract") was signed between the shipowner and Buton to comply with the laws of Hong Kong. As such, the terms of Buton's contract of employment are to be found in both the POEA contract and the Hong Kong contract.

5 On 3 September 2003, while the *Rainbow Joy* was off the coast of Myanmar, Buton was asked by the ship's chief engineer to help repair the starboard side accommodation ladder that had been bent in a collision with a docked vessel. A number of the ship's crew took turns to hit the bent ladder with a ball hammer. While the chief engineer was hammering the ladder, a shard of metal was dislodged and it hit Buton's right eye. As a result, he sustained a corneal laceration.

6 On the following day, the *Rainbow Joy* deviated to Yangon, the nearest major port, to enable Buton to seek urgent medical attention. After examining him, Dr U Mya Aung, an ophthalmologist surgeon at the Eye Hospital and Myittar Oo Eye Care Centre, advised him to have surgery done in his "home country", where there are better medical facilities. On 5 September 2003, Buton returned to the ship, which sailed for Singapore on the following day. According to the shipowner, Buton told the master of the ship that he wanted to return to the Philippines for further treatment. However, Buton claimed that he wanted to be treated in Singapore. This was denied by the shipowner.

7 The *Rainbow Joy* arrived at Singapore on 9 September 2003. On the following day, Buton was flown to Manila for medical treatment. In Manila, he received treatment at the Metropolitan Hospital immediately. On 11 September 2003, the hospital reported as follows:

Our specialist recommends pars plana vitrectomy, removal of cataract and repair of corneal laceration as soon as possible to try to prevent permanent damage to his injured eye.

8 On 10 December 2003, the hospital reported as follows:

Our specialist recommends corneal transplant with secondary intraocular lens implant for management.

He is to come back on January 7 2004 for re-evaluation.

9 The next hospital report dated 26 April 2004 merits attention. It was as follows:

We have informed Mr Buton that a cornea is already available for his corneal transplant. However, he explained that he has not talked yet with his wife regarding the surgery.

The corneal graft will therefore be given to the next patient in line and his chance for another corneal donor might already be in the next 3 months (August 2004).

10 Finally, on 28 April 2004, the hospital reported as follows:

[Buton] missed his chance for corneal transplant because he has yet to talk with his wife.

He was advised to wait for the next available corneal donor.

11 Buton's condition deteriorated. He claimed that at present, he is only able to see silhouettes and blurred images with his right eye.

12 Buton first made a claim for compensation for his loss and suffering in the Philippines by commencing arbitration proceedings before the National Labour Relations Commission on 5 November 2003. Subsequently, he initiated the present proceedings in Singapore on 30 December 2003. It is worth noting that while the Writ of Summons was served on the *Rainbow Joy* in Singapore, the ship was not arrested as Buton's Filipino lawyers, the instructing solicitors, were not prepared to give an undertaking to the Sheriff to pay the latter's expenses and his Singapore lawyers were not prepared

to give a cross-undertaking to the Sheriff with respect to the arrest of the ship.

13 On 15 January 2004, Buton withdrew his claim in the Philippines. In the meantime, the shipowner applied for a stay of the Singapore action on a number of grounds, including *forum non conveniens*. The assistant registrar was persuaded that the Singapore action ought to be stayed on the ground of *forum non conveniens*. Buton appealed against his decision.

The appeal

14 The shipowner contended that the Singapore action should be stayed for three reasons. First, Buton was required by the POEA contract to resolve his differences with the shipowner through arbitration in the Philippines. Secondly, the POEA contract contained an exclusive jurisdiction clause, requiring proceedings to be commenced in the Philippines and as Buton failed to satisfy the test in *Amerco Timbers Pte Ltd v Chatsworth Timber Corp Pte Ltd* [1975–1977] SLR 258, he should not be allowed to continue the Singapore proceedings. Thirdly, the action should be stayed on the ground of *forum non conveniens*. The assistant registrar did not find it necessary to consider the first two of the shipowner's grounds for a stay of the proceedings as he was satisfied that the Singapore action should be stayed on the ground of *forum non conveniens*.

15 The principles governing a stay of proceedings on the ground of *forum non conveniens* have been referred to by the courts on innumerable occasions. In *Oriental Insurance Co Ltd v Bhavani Stores Pte Ltd* [1998] 1 SLR 253 at [10], Yong Pung How CJ explained:

The principles governing this matter are clear and established. The approach suggested by Lord Goff in *The Spiliada* [1987] 1 Lloyd's Rep 1 has since been approved and applied by the Court of Appeal in *Brinkerhoff Maritime Drilling Corp & Anor v PT Airfast Services Indonesia* [1992] 2 SLR 776. We set out the relevant passages from the judgment of Lord Goff:

In my Opinion, the burden resting on the defendant is not just to show that England is not the natural or appropriate forum for the trial, but to establish that there is another available forum which is clearly or distinctly more appropriate than the English forum. In this way, proper regard is paid to the fact that jurisdiction has been founded as of right ...

...

Since the question is whether there exists some other forum which is clearly more appropriate for the trial of the action, the court will look first to see what factors there are which point in the direction of another forum ... and these will include not only factors affecting convenience or expense (such as availability of witnesses), but also other factors such as the law governing the relevant transaction ... and the places where the parties respectively reside or carry on business.

...

If the court concludes at that stage that there is no other available forum which is clearly more appropriate for the trial of the action, it will ordinarily refuse a stay ...

...

If however the court concludes at that stage that there is some other 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.

16 Buton's counsel, Mr R Govintharasah, submitted that although there are some connecting factors with the Philippines, there are more connecting factors with Singapore. However, his assertion did not rest on solid ground. If one looks at all the factors affecting convenience or expense, including the question of availability of witnesses, as well as other factors such as the law governing the relevant transaction and the places where the parties respectively reside or carry on business, it is evident that the shipowner rightly asserted that the Philippines is clearly a more appropriate forum for the trial than Singapore.

17 To begin with, as far as the governing law of Buton's employment contract is concerned, s 31 of his POEA contract provides that "any unresolved dispute, claim or grievance arising out of or in connection with this contract ... shall be governed by the laws of the Republic of the Philippines". Buton tried to distance himself from the POEA contract by saying that when his employment contract, which was initially for a period of one year, was renewed in August 2003 for six months shortly before the accident, there was no indication as to whether it was the POEA contract or the Hong Kong contract that was renewed. This could not be countenanced as his contractual relationship with his employer was governed by both the POEA and Hong Kong contracts and there was no reason why the POEA contract was not renewed. Indeed, s 2 of the POEA standard terms and conditions provides that the employment contract "shall be effective until the seafarer's date of arrival at the point of hire upon termination of his employment".

18 As for the location of witnesses, the evidence of the doctors who treated Buton over a period of time in the Metropolitan Hospital in Manila would be required. It will be recalled that Buton turned down the Filipino doctors' offer of a corneal transplant. Important questions relating to how this refusal of a transplant at the material time affected his recovery and brought him to his present state will have to be determined. Buton's counsel argued that the Filipino doctors need not give evidence as their medical reports could be admitted as evidence. However, the shipowner is likely to assert that Buton would not be in the state that he is if he had accepted the corneal transplant offered by the Filipino doctors. There is nothing in the Filipino medical reports that directly concerns this point. All that was noted was that he refused to undergo a transplant. As such, the Filipino doctors would have to be called to give evidence on the effect of the refusal of the corneal transplant. Furthermore, Mr Govintharasah said that Buton intended to call Singapore specialists as witnesses because he believed that he would not be in his present state had he been treated in Singapore instead of in Manila. The Filipino doctors will surely want to have their say if aspersions are cast on their competence. Admittedly, the Filipino doctors can be flown to Singapore to give evidence but as the Philippines is clearly a more appropriate forum than Singapore, there is no reason to inconvenience them by having the trial in Singapore.

19 It is worth noting that when Buton's Filipino solicitors, M/s Linsangan, Linsangan & Linsangan, wrote to the shipowner's Filipino manning agents on 30 September 2003 to threaten that legal proceedings would be instituted if US\$80,000 was not paid as compensation, Singapore was not expressly mentioned as a possible forum for such proceedings. Instead, the penultimate paragraph of this letter, which is as follows, expressly referred to the possibility of suing in the Philippines and Hong Kong:

Formal demand therefore is being made upon you and your principal to compensate 2/Engr Buton in the amount of US\$80,000 as and for total and permanent disability benefits within

ten (10) days upon receipt of this letter, otherwise you have given us no other recourse but to initiate filing of complaint before the National Labour Relations Commission or in foreign jurisdiction, particularly in [Hong Kong] to claim not only the contractual benefits but damages in tort as well.

20 As it turned out, the first shot was fired by Buton in the Philippines. In the Filipino proceedings, Buton claimed only US\$80,000 but in the Singapore action, his claim was increased to S\$460,000. This led the shipowner to allege that Buton commenced proceedings in Singapore for the purpose of obtaining a settlement on terms that would be more favourable to him than the compensation he expected to receive in the Philippines.

21 The shipowner's counsel, Mr Yap Yin Soon, also pointed out that his client has no presence in Singapore. As the *Rainbow Joy* was not arrested when she called at Singapore, Buton has no security for his claim. In contrast, in the Philippines, he has security in the form of the performance bond given by the shipowner's Filipino manning agents, Cleene Maritime. Furthermore, the shipowner's counsel confirmed that his client will consent to being joined as a party to the Philippines proceedings. He added that his client had real defences to the action and intended to rebut the allegations of breach of duty of care to Buton. It should not be overlooked that at the hearing below, Buton's counsel had initially suggested that if the action was to be stayed, it ought to be on condition that the defendant submit to the POEA's jurisdiction. I am mindful of the fact that Buton's employment contract in the POEA form was signed by Hang Woo, the ship's managers. However, the shipowner contended that this contract was signed on its behalf by Hang Woo and that it is, as an undisclosed principal, a party to the contract. More importantly, as has been pointed out, the shipowner had made it clear that it will consent to being joined as a party to legal proceedings in the Philippines.

22 If all the circumstances are taken into account, there can be no doubt that as between Singapore and the Philippines, the latter is clearly a more appropriate forum for the trial. The assistant registrar, Mr Vincent Leow, summed up the position as follows in his notes on the hearing before him:

I see no real connecting factors of any importance pointing to Singapore. Instead, all the factors point away from Singapore – vessel registered in Hong Kong, Hong Kong statutes are applicable, Defendants operate out of Hong Kong, Plaintiff is Filipino, the ease of enforcement in Philippines (bond) or Hong Kong (presence of company there), the difficulty of enforcement in Singapore.

23 As I agreed with the assistant registrar that there are ample grounds for a stay of proceedings on the basis of *forum non conveniens*, there was no need for the shipowner's other arguments in favour of a stay of the Singapore action to be considered. Buton's appeal was thus dismissed with costs.

Copyright © Government of Singapore.