Soeparto Nilam v Sit Ley Timber (Pte) Ltd
[2002] SGHC 302

Case Number	: OS 972/2002, SIC 3384/2002
Decision Date	: 13 December 2002
Tribunal/Court	: High Court
Coram	: Choo Han Teck JC
Counsel Name(s)	: Ramesh Appoo [Brij Rai & RA Anthony] for the plaintiff; Raymond Wong [Wong Thomas & Leong] for the defendants
Parties	: Soeparto Nilam — Sit Ley Timber (Pte) Ltd

Judgment

GROUNDS OF DECISION

1. The plaintiff applied by this originating summons for an order that a caveat lodged against the plaintiff's property at 79 Farrer Drive #13-04 Sommerville Park by the defendant be removed. The defendant countered with a summons-in-chambers for a stay of the originating summons pending trial of Suit 798 of 2002, or alternatively, for the originating summons to be heard with that suit. The trial of Suit 798 of 2002 has been scheduled to commence in two months' time.

2. The background facts are as follows. The plaintiff had contracted to supply logs from Indonesia to the defendant. The defendant subsequently entered into a contract to sell the logs to a third party. The plaintiff then informed the defendant that by reason of a ban imposed by the Indonesian government the plaintiff was unable to fulfil his obligations to the defendant.

3. Undeterred, the defendant prevailed upon the plaintiff to make further efforts to deliver the logs. It was then agreed that the defendant should advance a sum of US$150,000 (approximately S$270,000) to the plaintiff. The purpose of this advance is disputed and will be an issue in the trial of Suit 798 of 2002. The plaintiff says that it was money intended to "pay off key officials" so that the logs can be shipped out. The defendant denies this and claims that the money was intended to be used to make legitimate payments.

4. In any event, the plaintiff did eventually obtain an advance of US$270,000 from the defendant. There is an issue concerning the payment of interest and whether the advance was illegal or otherwise in breach of the Moneylenders Act. That issue would also be a matter for the trial of Suit 798 of 2002.

5. The advance was partially made, that is, a sum of S$90,000, on 24 December 2001. The plaintiff asked for the balance of S$180,000 on 28 December 2001. The defendant's representatives then asked for security before the balance would be released. Consequently, an option to purchase in respect of the said property was prepared and signed. It appears that the option was prepared by the defendant's then solicitors but this does not seem to be a material fact for present purposes although it may be in the trial of Suit 798 of 2002. The S$180,000 was paid upon the plaintiff signing the option on 28 December 2001. The plaintiff subsequently contended that the option was a sham, partly because he says that the normal option fee is 1% of the purchase price but in this case it was almost 23%. Furthermore, the purchase price was well below market valuation. Various other factors were raised in support of this contention.

6. However, despite the payment of S$270,000, the plaintiff was unable to secure the logs. The defendants was told that more funds were required but the defendant did not provide any more

money and the logs were eventually sold and released to some other party who provided the money.

7. The defendant then exercised the option on 10 May 2002. The plaintiff instructed their solicitors to write to the defendant a long letter dated 5 June 2002 stating that he considers the option to be a sham and was null and void by reason, *inter alia*, of illegality under the Moneylenders' Act. The defendant was asked to remove the caveat against the property.

8. The defendant instead commenced Suit 798 of 2002 on 5 July 2002. The plaintiff applied to remove the caveat on the basis that it was an independent issue from the matters raised in the suit. The application was made under s 127 of the Land Titles Act, Ch 157 which provides as follows:-

> "127.—(1) At any time after the lodgment of a caveat, the caveatee may summon the caveator to attend before the court to show cause why the caveat should not be withdrawn or otherwise removed, and the court may make such order, either ex parte or otherwise, as seems just."

9. Mr Appoo, counsel for the plaintiff, submitted before me that the defendant had lost its caveatable interest because it had accepted the plaintiff's breach of contract and elected to seek payment of the sum of S$270,000 instead of specific performance. Counsel drew my attention to 8 of the defendant's solicitors' letter of 12 June 2002 in reply to the plaintiff's solicitors' letter of 5 June 2002. The said 8 reads as follows:

> "In respect of the advance and the security obtained by our clients over your clients' property, our instructions are to demand for the payment of the sum of $270,000 within the next 7 days. *Upon the receipt of these monies, our clients will withdraw the caveat*". (my emphasis)

10. I agree with Mr Wong for the defendant that this originating summons should be heard together with Suit 798 of 2002. That s 127(1) of the Land Titles Act has been likened to a statutory injunction of an interlocutory nature can be traced to the judgment of Lord Diplock in *Eng Mee Yong v Letchumanan* [1979] 2 MLJ 212 and that had since been followed by the Court of Appeal in *Sim Kwang Mui Ivy v Goh Peng Khim* [1995] 1 SLR 186.

11. I agree entirely with Mr Wong that the balance of convenience lay in allowing the caveat to remain. First, there is no prejudice to the plaintiff if it is to remain. If there were, none had been drawn to my attention. Secondly, the trial of Suit 798 of 2002 is only two months away. There are two other grounds why the application should not be allowed at this stage. First, the election that Mr Appoo says the defendant had made through its solicitors was a qualified one and whether it amounts to an election is a triable issue. I have already emphasized the relevant portion of the alleged elections above. The effect of that paragraph is best left to the trial judge who will have a fuller and clearer view of the facts after evidence is led. Furthermore, if the caveat is removed now, the defendant may be left with a paper judgment should it succeed in Suit 798 of 2002. The balance of convenience is clearly in favour of the defendant. Mr Appoo submitted that there is no issue of a balancing of convenience because there is no serious issue to be tried. I do not think that that is right. On the contrary, there is a very serious issue to be tried. The defendant had exercised an option for sale. The plaintiff is challenging that on the ground that the option was illegal and void. That is a serious, primary issue. There is also a serious secondary issue, namely, whether the defendant had accepted the plaintiff's repudiation and elected to forfeit its rights under the option. All these issues are intricately co-related. It will be unfair to release the caveat before these issues are

addressed; and the proper place to address them is at trial.

12. I note the strenuous contentions by Mr Appoo that the defendant has no chance of success, but his assertions depend on important assumptions of fact which can only be established at trial. For instance, whether there was an illegal transaction or not is clearly a matter of fact that is hotly in dispute. Reading the email sent by the plaintiff to the defendant's Lewis Lim on 7 December 2001, I am of the view that the facts must be flushed out at trial and to allow the plaintiff's application at this stage, in these circumstances, would not be just.

13. I therefore allowed the defendant's application that this originating summons be heard together with the trial of Suit 798 of 2002, or stood down pending that trial as the trial judge may deem preferable.

14. Costs of the proceedings to be reserved to the trial judge in Suit 798 of 2002.

Sgd:

Choo Han Teck

Judicial Commissioner