UDL Marine (Singapore) Pte Ltd *v* Jurong Town Corp
[2011] SGHC 2

Case Number : Suit No. 502/2010 (Summons No. 5748/2010; 5856/2010)

Decision Date : 03 January 2011

Tribunal/Court : High Court

Coram : Zhuo Wenzhao AR

Counsel Name(s) : Ang Wee Tiong and Olivia Low (TSMP Law Corporation) for the Plaintiff; Dinesh Dhillon and Felicia Tan (Allen and Gledhill LLP) for the Defendant.

Parties : UDL Marine (Singapore) Pte Ltd — Jurong Town Corp

Civil Procedure

Administrative law – Procedure

Administrative law – Remedies

3 January 2011

Zhuo Wenzhao AR:

Introduction

1 The points of contention in this case relate to two interlocutory applications in a dispute over a lease granted to a private entity by a statutory authority. I heard both applications together on 22 December 2010 and reserved judgment. After some consideration, I reject the Defendant's application to strike out the Plaintiff's Statement of Claim ("SOC"), and allow the Plaintiff's application to amend the same. The reasons for my decision are set out below.

Background to the dispute

2 The plaintiff, UDL Marine (Singapore) Pte Ltd ("the Plaintiff"), is in the marine industry business. The Defendant, Jurong Town Corporation ("the Defendant"), is a statutory authority whose primary focus is on leasing and developing industrial property in Singapore. At the time of writing, the Plaintiff was the lessee of certain premises ("the Premises") owned by the Defendant.

3 The Plaintiff's case against the Defendant is based on proprietary estoppel. Briefly, the Plaintiff had a lease over the Premises ("the Lease") that was due to expire on 31 December 2010. In anticipation of the expiration of the Lease, the Plaintiff had, in 2004, sought to dispose of its remaining interest in the Lease and seek an alternative location for its business. Upon hearing of the Plaintiff's intention to dispose of the Lease, the Economic Development Board of Singapore ("EDB") contacted the Plaintiff in early 2005 to persuade the Plaintiff to reconsider this decision. The EDB made representations to the Plaintiff that

a) the Defendant would consider granting extensions of 20 years leases over yards in the area, including the Premises;

b) the Defendant would grant a renewal of the Plaintiff's Lease over the Premises if the Plaintiff had a good business plan that was supported by EDB

These representations were made with the Defendant's authority/knowledge.

4 Pursuant to these discussions with the EDB, the Plaintiff submitted a business plan to the Defendant and made formal applications for the renewal of the Lease in 2008 and 2009. The Defendant did not at any point in time indicate that the Plaintiff's business plan was inadequate. However, in November 2009, the Defendant informed the Plaintiff that the Defendant would not renew the Lease. Upon learning of this, the Plaintiff contacted EDB and received confirmation from EDB in January 2010 that the Plaintiff's business plan was good and compatible with the needs of the marine industry. The EDB further told the Plaintiff that it would liaise with the Defendant to allocate a new parcel of land to the Plaintiff for development in accordance to the Plaintiff's business plan. Unfortunately, this eventually came to naught. On 19 May 2010, the Defendant wrote to the Plaintiff stating that the Defendant and the EDB had "jointly evaluated" the Plaintiff's business plan and was unable to support the Plaintiff's application for a new lease for the Premises.

5 Consequently, the Plaintiff commenced suit against the Defendant on 8 July 2010 seeking

a) a declaration that the Defendant's refusal to renew the Lease was wrongful;

b) a declaration that the Defendant is estopped from refusing the renewal of the Lease or refusing the grant of a new lease for the Premises;

c) an order that the Defendant renew the Lease or grant a new lease for the Premises or, in the alternative, grant the Plaintiff equitable compensation in satisfaction of the Defendant's refusal to renew the lease or grant a new lease for the Premises.

The summons

6 Summons 5748 of 2010 is the Defendant's application to strike out the Plaintiff's SOC pursuant to O18 r 19 of the Rules of Court Cap. 322, Rule 5). The grounds for striking out are that the Plaintiff SOC discloses no reasonable cause of action.

7 Summons 5856 of 2010 is the Plaintiff's application to amend its SOC. The proposed amendments fall into two categories. The first category of amendments was made in response to the Defendant's striking out application. They involve the addition of particulars related to the Plaintiff's primary case of proprietary estoppel. The second category of amendments involves the addition of an alternative cause of action against the Defendant, namely that the Defendant had acted irrationally and/or unreasonably in refusing to renew the lease. The remedy which the Plaintiff seeks for this alternative cause of action is a declaration that the Defendant's refusal to renew the lease was irrational and/or unreasonable.

8 Two main issues arise from the summons before me. First, does the Plaintiff's claim in proprietary estoppel (taking into account the Plaintiff's proposed amendments) disclose a reasonable cause of action? Second, should the Plaintiff be allowed to amend its Statement of Claim to include a

claim that the Defendant had acted irrationally and/or unreasonably in refusing to renew the lease? For ease of reference, I shall refer to the first issue as the "proprietary estoppel issue" and the second issue as the "judicial review issue".

Proprietary estoppel issue

9 The main elements required to sustain a claim based on proprietary estoppel were laid down in the case of Hong Leong Singapore Finance Ltd v United Overseas Bank [2007] 1 SLR(R) 292 at 170:

a) There must be a representation on the part of the party against whom the estoppel is sought to be raised;

b) There must be reliance on the part of the party seeking to raise the estoppel; and

c) There must be detriment on the part of the party seeking to raise the estoppel

10 Counsel for the Defendant, Mr Dhillon, claimed that the Plaintiff's SOC did not disclose a reasonable cause of action because it did not make any representation to the Plaintiff that the Lease would be renewed. Two arguments were raised in support of this claim. First, there was no representation from either the Defendant or EDB that the Lease will be renewed. EDB merely informed the Plaintiff that the Defendant would consider applications for renewal of leases in the vicinity, including the Premises. There was no promise that the Lease would definitely be renewed. Second, EDB had informed the Plaintiff that its support for the Plaintiff's application for the renewal of the Lease was conditional on the Plaintiff's production of a good business plan. Even then, the Defendant had the final right to decide whether the Plaintiff's business plan was good enough for its lease to be renewed. Therefore, this was a "subject to contract" case and the Plaintiff could not have been labouring under any impression that EDB's nod of approval would definitely result in the renewal of its lease.

11 I do not agree with the Defendant's arguments. As counsel for the Plaintiff, Mr Ang, had pointed out, the Plaintiff's SOC goes beyond asserting that the Defendant would consider a lease renewal application from the Plaintiff if the latter could produce a good business plan. The proposed amendment at the new paragraph 14 of the SOC pleads that

> On or around 20 December 2005, in a telephone conversation between Leung and the Defendant's Mr Ernest Tay, Mr Leung informed Mr Tay that EDB had told him that *so long as the Plaintiff's business plan was good, EDB would support the business plan, and the Defendant would grant a renewal of the Lease*.
>
> [emphasis added]

Clearly, the Plaintiff's claim was that the Defendant's renewal of the Lease was conditioned solely on EDB's approval of its business plan. This is sufficient to amount to a representation concerning an interest in land that the Plaintiff could rely on. Whether such a representation had been made, and whether it was reasonable for the Plaintiff to rely on it, are questions of disputed fact.

12 During the hearing, Mr Dhillon further submitted that EDB's approval of the Plaintiff's business

plan was given only in January 2010, after the Defendant had already rejected the Plaintiff's application in November 2009. Hence, even if the Defendant had represented to the Plaintiff that it would renew the Lease if the Plaintiff's business plan was approved by the Plaintiff, this condition was not satisfied and the Defendant was entitled not to renew the Lease.

13 I am not convinced by this argument either. Even though the Plaintiff only sought and received EDB's formal approval of its business plan after the Defendant had rejected its application for a renewal of the Lease, this does not mean that the condition in the representation was not satisfied until that date. The representation pleaded in paragraph 14 of the Plaintiff's SOC does not specify the form in which EDB's approval of the Plaintiff's business plan must take. The Plaintiff could conceivably argue that the EDB's written confirmation of its business plan in January 2010 was merely evidence of its long-standing approval, and that the Defendant had acted contrary to its previous representation by rejecting the Plaintiff's application to renew the Lease before seeking EDB's views on the Plaintiff's business plan.

14 For the above reasons, I hold that the Plaintiff's SOC reveals a reasonable cause of action. Therefore, the Defendant's striking out application fails.

The judicial review issue

15 The judicial review issue raises interesting issues of law relating to res judicata and abuse of process. During the hearing, it transpired that the Plaintiff had previously applied for leave under O53 of the Rules of Court to commence a judicial review action against the Defendant's refusal to renew the Lease ("the Leave Application"). Indeed, in Originating Summons (OS) 1133 of 2010, the P had requested leave to apply for a Quashing order and a Mandatory order against the Defendant's decision rejecting the P's application for renewal of its lease. The Leave Application was heard and dismissed by Justice Lai Siu Chu on 16 November 2010. The Plaintiff has since filed a Notice of Appeal against the refusal to grant leave.

16 Mr Dhillon argued that the Plaintiff's attempt to amend its SOC to include a prayer for a declaration that the Defendant's decision was unreasonable and/or irrational was in substance a second application for judicial review. This was in breach of the res judicata principle because the plaintiff's previous Leave Application had already been dismissed. Finally, Mr Dhillon submitted that the Plaintiff's attempt to make two separate applications for judicial review was an abuse of process.

Res judicata

17 I deal first with the question of whether the dismissal of the Plaintiff's previous Leave Application has res judicata effect that prevents it from making further applications for judicial review.

18 Generally, interlocutory decisions do not have res judicata effect because they deal with matters of practice and procedure which remain under the control of the court. This principle does not apply to default or summary judgments because they have the effect of final judgment if not appealed against. Applications for leave to proceed occupy a curious position in the pantheon of interlocutory applications. On one hand, a decision granting leave is clearly "not final" on the merits because the court merely allows the applicant to proceed with his action. On the other hand, a decision refusing to grant leave may be "final" in another sense because it prematurely ends the applicant's action.

19 Judicial authority leans in favour of the position that leave applications do not have res judicata effect. In *Buttes Gas and Oil Co v Hammer (No 3)* [1982] AC 888, a House of Lords appeal committee

refused leave to appeal against a 1974 decision of the English Court of Appeal. This decision refusing leave to appeal was discharged by a second House of Lords appeal committee, which granted leave to appeal. The clear implication was that the first decision refusing to grant leave did not have any res judicata effect. Closer to home, the Court of Appeal in *Bachoo Mohan Singh v PP* [2010] 1 SLR 966 ("*BMS*") held that a High Court decision refusing to grant leave for an application under s 60(1) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) to reserve questions of law of public interest for the Court of Appeal's determination had no res judicata effect. Accordingly, it extended time for the applicant to make a second application to the High Court to determine if there were suitable questions of law of public interest which ought to be reserved for the Court of Appeal's determination. Although *BMS* is not directly applicable because it deals with a criminal matter (the Court of Appeal had suggested at [60] that the doctrine of res judicata might apply with lesser force to criminal matters), this does not dilute the general principle that interlocutory decisions which do not result in final judgment tend not to have res judicata effect.

20 For this reason, I take the view that the previous proceedings in the plaintiff's Leave Application do not have a res judicata effect on the current proceedings.

21 In any event, even if the doctrine of res judicata does apply to interlocutory decisions, there is insufficient identity of subject matter between the plaintiff's Leave Application and the present proceedings for the doctrine to apply. *Goh Nellie v Goh Lian Teck and others* [2007] 1 SLR(R) 453. An application for leave to commence an action under O53 is replete with procedural barriers which have no equivalent in normal proceedings where the plaintiff is seeking a declaration. For example, the leave application must be made within three months after the date of the act complained against. Any delay, unless satisfactorily accounted for by the plaintiff, may lead to the denial of leave. There is no corresponding time bar for OS proceedings seeking a declaration. Furthermore, the substantive requirements for the grant of prerogative remedies differ from those relating to the grant of a declaration. I would not expound on these differences without the benefit of counsel's submissions. Suffice it to say that there may be subtle differences between the situations where the respective remedies may lie, as well as the locus standi requirements for the respective remedies. See *Gregory v Camden L.B.C.* [1966] 1 WLR 899 and *Punton v Ministry of Pensions and National Insurance (No.2)* [1964] 1 WLR 226.

22 It is common ground between the parties that the Plaintiff filed his Leave Application outside of the three months period. I understand that during the hearing for the Leave Application, the Plaintiff had tried to explain that its delay was occasioned by the need to verify that the Defendant had granted renewals of leases to other tenants despite them not meeting the $100 million investment threshold. Given these facts, I am unable to determine whether the Leave Application was rejected because of the timing issue, or because of a lack of merits. Indeed, it is not possible to tell whether a determination of the merits of the Plaintiff's current action was fundamental to the earlier decision dismissing the Plaintiff's Leave Application. *Hoystead v Commissioner of Taxation* [1926] AC 155. Accordingly, even if I had to decide this case on the basis that leave applications in general can have res judicata effect, the insufficiency of subject matter between the leave application and the current proceedings is a fatal bar to any finding of res judicata.

Abuse of process

23 During the hearing, Mr Dhillon's submitted that the Plaintiff's act of trying to amend his SOC to include a prayer for a declaration that the Defendant's actions were unreasonable and/or irrational was an abuse of process because this issue was already res judicata. This is undoubtedly a sound argument. However, given my analysis on the res judicata point (above at [16] to [21]), I would have to reject the abuse of process allegation outright if the Defendant's only support for it was the res

judicata point itself. Be that as it may, I consider that apart from the res judicata point, there are two potential reasons why the Plaintiff's actions may be considered an abuse of process.

24 First, there is a general principle that a plaintiff who wishes to seek different remedies for a single cause of action must do so in the same proceedings. Subsequent attempts to claim different remedies for the same cause of action may be struck down as an abuse of process. *Serrao v Noel* (1885) 15 QBD 549. In that case, the plaintiff had brought an action against the defendant to restrain it from registering certain shares which the plaintiff claimed ownership off. The suit proceeded for almost a year before the defendant consented to judgment and delivered the shares to the plaintiff. A few months after the shares had been delivered to the defendant, the plaintiff commenced a fresh suit against the defendant for losses he had suffered due to the defendant's wrongful detention of the shares. The Court of Appeal unanimously found for the defendant and held that the plaintiff was estopped from claiming any further relief for what was essentially the same cause of action. Although the court did not use the language of Henderson estoppel or abuse of process, it seems clear that the basis for their decision was that the plaintiff could have obtained damages for detinue in his first action, and his failure to do so operated as a bar to any future remedial claim in respect of the same cause of action.

25 Second, the House of Lords held in *O'Reilly v Mackman* [1983] 2 A.C. 237 at 285 that the proper avenue of redress for a plaintiff complaining of a public authority's infringement of his public law rights is through the O53 process, and not the normal OS process. The reasoning behind this decision was that O53 provided certain safeguards to public bodies in respect of complaints brought against their actions and decisions (primarily the strict time limits and the requirement of leave), and it would be an abuse of process for a plaintiff to avoid these safeguards by proceeding via an ordinary OS action.

26 The two principles stated above are of considerable pedigree, and are also backed by sound reasoning. Despite this, I am of the opinion that they do not apply to the present case. These two principles are premised on the assumption that a plaintiff seeking multiple remedies for an administrative law action can do so in a single action. Unfortunately, the assumption does not hold true here. Unlike in the UK where all the remedies for an administrative law action can be obtained under an O53 action, Singapore continues to operate a bifurcated regime for obtaining remedies in an administrative law action. As Justice Woo Bih Li pointed out in *Yip Kok Seng v Traditional Chinese Medicine Practitioners Board* [2010] SGHC 226, the prerogative remedies for a judicial review action have to be sought under the procedure prescribed in O53, while the remedy of declaration can only be obtained under the normal originating summons process. A court cannot grant prerogative remedies in an ordinary originating summons, and neither can it give a declaration in the O53 summons. *Re Application by Dow Jones (Asia) Inc*. [1987] SLR 505; *Poh Kiong Kok v Management Corp strata title 581* [1990] SLR 634.

27 The effect of this bifurcated system is that a plaintiff who wishes to obtain both the prerogative remedies and the remedy of a declaratory judgment in an administrative law action *must* commence two separate actions. No other alternative is open to him. That being the case, the mere fact that the Plaintiff has requested different remedies for his judicial review action against the Defendant in two different sets of proceedings cannot amount to an abuse of process.

28 The question remains as to whether it would have been more appropriate for the Plaintiff to commence his current action together with his O53 action, so that he would not be seen as taking two bites at the proverbial cherry. In my opinion, there is no justification for imposing such a duty on the Plaintiff.

29 An O53 action seeking prerogative remedies is an entirely separate action from a normal OS seeking a declaration, even when both are taken by a plaintiff in respect of a single cause of action at the same time. Regardless whether leave to proceed with the O53 action is granted, the OS proceedings for declaratory judgment will still carry on. The judge who hears the leave application in chambers has no right to stop the OS proceedings. Hence, a plaintiff to whom leave has not been granted for him to proceed under O53 can still continue his OS action. Therefore, even if the plaintiff does have two bites at the cherry, this is because the system itself allows him to do so, and not because of any abuse of process.

30 The only situation where a plaintiff is effectively prevented from taking two bites at the cherry is when the O53 leave application and the merits of the OS action are heard together at a single hearing. For this to happen, two conditions must be satisfied. First, there must be an application by the defendant to strike out the OS action. Without this, there is no basis for the court to even inquire into the merits of the OS action. Second, the defendant must make a specific request to have the striking out application heard in tandem with the leave application. Otherwise, the O53 leave application will be heard by a judge in chambers while the striking out application will be heard by an assistant registrar (as in this case).

31 The rules of court do not require a defendant to do either of these two acts when the plaintiff takes out simultaneous proceedings in an administrative law action. Therefore, even if a plaintiff has commenced the O53 leave application together with his OS action, there is no certainty that the merits of the substantive judicial review request in both actions will be heard together. Given the way the system is structured, I do not think it is appropriate to force a plaintiff to commence both actions at the same time, under the pain of having the later action struck out as an abuse of process. Accordingly, I find that the Plaintiff's proposed addition of the judicial review claim in its SOC does not constitute an abuse of process.

Conclusion

32 In light of the above, I dismiss the Defendant's striking out application in Summons 5748 of 2010, and allow the Plaintiff's application in Summons 5856 of 2010 to amend its SOC. I emphasize that I came to this conclusion without having heard any arguments from either party on the appropriateness of the declaration as a remedy. I will hear the parties on costs.