Sharikat Logistics Pte Ltd *v* Ong Boon Chuan and others
[2011] SGHC 196

Case Number : Suit No 212 of 2011 (Registrar's Appeal No 195 of 2011)

Decision Date : 02 September 2011

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Kannan Ramesh and Arthur Yap (Tan Kok Quan Partnership) for the plaintiff/appellant; Josephine Choo and Quek Kian Teck (WongPartnership LLP) for the first and fourth defendants/respondents.

Parties : Sharikat Logistics Pte Ltd — Ong Boon Chuan and others

Civil Procedure – Pleadings – Further and better particulars

2 September 2011 Judgment reserved.

Choo Han Teck J:

1 This was an appeal by the plaintiff against an order by the Assistant Registrar compelling it to provide the further and better particulars of its claim. The plaintiff and the fourth defendant incorporated the fifth defendant as a joint venture company for a single project. They constructed a terraced factory and leased it to tenants. The fifth defendant's income consists of the rentals. Initially, the plaintiff had 40% of the shares in the fifth defendant and the fourth defendant held the remaining 60%. Sometime between July 2007 and January 2008 the fourth defendant transferred 9% of the shares to the third defendant who is the brother-in-law of the first defendant. The second defendant is the son of the first defendant.

2 The fourth defendant is a company owned by the first defendant, his wife and her brother, the third defendant. There were initially only two directors in the fifth defendant. One was Phang Say Lang ("Phang"), nominated by the plaintiff and the other was the first defendant. Phang was appointed the supervisor in the construction of the factory. The third defendant was the administrator and manager of the project and was solely responsible for the preparation, verification and submission of all progress claims in the construction of the factory. Phang and the first defendant would be the joint signatories to the fifth defendant's bank account.

3 The construction of the factory was awarded by contract to TG Properties Pte Ltd ("TG Properties"), a company in which the first defendant had a 63% shareholding. The contract sum was $3.5m. Another company, TG Realty Pte Ltd ("TG Realty"), in which the first defendant had a 75% shareholding, was appointed the estate agent to secure tenants for the factory. The project architect was one Tan Meow Hwa, who, the plaintiff alleges, did not perform his duties faithfully and did not verify the progress claims submitted by the third defendant. Phang subsequently signed cheque payments for the progress claims in reliance of the architect's certification. The plaintiff alleges that claims in respect of the air-conditioning work, in progress claims 2 to 10 and the variation works 9 and 10 were in fact not done.

4 The plaintiff further alleges that the tenants to the factory were secured by the Jurong Town Corporation and not by TG Realty. Yet a claim for an agency fee of $50,000 was made and payment sanctioned by the first defendant-controlled board (because Phang refused to authorise payment).

The plaintiff also alleges that the first defendant and the fourth defendant conspired to remove Phang as a director of the fifth defendant and his authority over the signing of the company's cheques. The requisite board resolutions were accordingly passed, and one of them was the acceptance of Phang's resignation as director. Phang did not attend the meeting and under Art 83 of the fifth defendant's Articles of Association, the board meeting was not validly convened. Another attempt was made in February 2009 to remove Phang as director, this time by an extraordinary general meeting of the company, but the meeting was adjourned and no further meeting was held. In December 2010, the first defendant once again attempted to pay TG Realty the sum of $54,600 being the $50,000 agency fee and arrears of management fees. Phang again refused to authorise payment of the cheque. Eventually, in December 2010, the first defendant used his majority shareholding to convene an extraordinary general meeting held on 4 January 2011 in which his son, the second defendant was appointed as alternate signatory to the fifth defendant's bank accounts, and at the same time, the first defendant was appointed the managing director. Thus, the first defendant was the majority shareholder of the fifth defendant. He and his brother-in-law were the majority at the Board level, and he and his son became signatories to the bank accounts. On 14 February 2011 the first defendant through a board meeting and a shareholders' meeting obtained resolutions to pay him $7,000 a month in salary, and the second defendant and Phang would be paid $1,000 each. The plaintiff alleges that the resolutions were not *bona fide* in that no payments were made previously and required partly because the directors had no executive functions. The plaintiff also alleges that the first defendant and the fourth defendant conspired to prevent the fifth defendant from declaring dividends.

5 The plaintiff thus sued the first defendant for various breaches of duties as a fiduciary, and the third and fourth defendants for oppression. The allegations and claims were set out in the Statement of Claim consisting of 31 pages. The first and fourth defendants, however, submitted a list of further and better particulars 13 pages long, which can be found in the Annex A to the Order of Court dated 22 June 2011. It is not necessary to set them all out again in this judgment although references will be made to some salient ones.

6 Counsel for the defendant, Miss Josephine Choo ("Miss Choo"), conceded that until Mr Kannan Ramesh's ("Mr Kannan") oral submissions before me the defendant did not have the benefit of knowing what the plaintiff's claim was. It is appropriate to say at this point that the Statement of Claim could have been better organised because a Statement of Claim represents the first salvo in an action by trial. Its purpose is to notify the defendant of the cause (or causes) of action that is being brought against him. The focus is on "the cause of action" but the cause must be supported by material facts so that the defendant will know what claim he must meet. Thus, a breach of fiduciary duty is a cause of action, but in itself, the defendant will not know what was the duty owed and why it was breached. The claim must therefore state the relationship that created the fiduciary duty, and what obligations were imposed by that duty on the defendant. In some cases, the obligations can be readily implied from the facts stated in the claim. Next, the plaintiff must inform the defendant what were the breaches made by the defendant, and what loss and damage accrued by reason of those breaches. Finally, the plaintiff must set out the remedies and reliefs that he is claiming from the defendant.

7 The rules of pleadings are not complex or difficult but unless one is careful, he may wander from the straight path and lose himself, or worse, one might be carried away in the belief that a request for further and better particulars and other forms of interlocutory proceedings are part of a game of strategic manoeuvres played to achieve no better purpose than to score points or harass the opposing party. Saville LJ said in 1994 in *BA Pension Trustees Ltd v Sir Robert McAlpine & Sons Ltd* 72 BLR 26, 33 that:

> The basic purpose of pleadings is to enable the opposing party to know what case is being made in sufficient detail to enable that party properly to prepare to answer it. To my mind it seems that in recent years there has been a tendency to forget this purpose and seek particularisation even when it is not really required. This is not only costly in itself, but is calculated to lead to delay and to interlocutory battles in which the parties and the court pore over endless pages of pleadings to see whether or not some particular point has or has not been raised or answered, when in truth each party knows perfectly well what case is made by the other side and is able properly to deal with it. Pleadings are not a game to be played at the expense of the litigants, nor an end in themselves, but a means to an end, and that end is to give each party a fair hearing.

This seems an apt moment to refer to the above passage as a reminder.

8 A Statement of Claim must set out material facts, not opinion, and not evidence. Thus, so long as the defendant knows what cause of action is alleged and what remedies are sought from him, he should file the appropriate defence to deny and demur; and since pleadings are meant to set up only the basic case, it is open for question after question to be asked for more and more details, but that is not the function of a request for further and better particulars. Just because a particular detail is relevant does not mean that it must be sought and disclosed in the pleadings. Pleadings are part of the first stage of the litigation process and lawyers must not clog it with material that properly belongs to other stages. The process leading to trial is an orderly and systematic one, as with most aspects of the practice of law, it requires discipline; and part of that discipline is to be patient with the process. The time will come in every case when the parties have to state their evidence. Pleadings need only state material facts. The difference between material facts for the purposes of pleadings and evidence for trial is an important factor that determines whether a request for further and better particulars is justified.

9 After pleadings comes discovery, and after discovery, interrogatories. For example, if the Statement of Claim pleaded that a contract arose from a series of correspondence from a particular date to another, the other party may ask for sight of those letters in discovery, and having seen them, may interrogate the first party in respect of relevant information found on those documents – such as the name of the second party's clerk if reference was made to a clerk of the second party in the document disclosed. Finally, the second party will be expected to file an affidavit of evidence-in-chief of that clerk giving his account of his involvement in the writing of the letter in question. All this culminates in the cross-examination of that clerk by counsel for the first party at trial. Just because an action is complex or complicated does not mean that the parties should collapse the various interlocutory stages into one and hope to see evidence when all that is required are statements of material facts that will eventually have to be proved at trial.

10 With those basics and fundamental rules in mind, we can examine the requests sought by counsel for the first and fourth defendants in this case. In the first category of particulars sought, the defendants in question referred to the allegations that TG Properties and TG Realty were companies under the control of the first and fourth defendants, and wanted the plaintiff to set out "all facts and circumstances relied upon by the plaintiff in alleging such control". This is a classic example of unnecessary particularisation. All the defendants need to do is to deny that there is such control or that if there was, to plead that the fact of such control was irrelevant to the case. The second request was for documents of such control to be identified. This is clearly seeking discovery before the appropriate time. The following requests for the basis for stating that the second defendant was appointed to the board by the first and fourth defendants in order to strengthen their control over the company were for details that should be part of the evidence-in-chief. The allegation of the appointment and purpose need only be denied if the defendants do not agree that he was

appointed or was appointed in order to strengthen the other defendants' control of the company. Why would the first and fourth defendants not know whether or not the second defendant was so appointed? The list of requests follow a similar pattern except for the one item regarding paragraph 19(c) of the plaintiff's Statement of Claim which Mr Kannan says he will rectify and he will state whether the representations were oral or written. Paragraph 19(c) alleges that the project architect did not verify the legitimacy of the progress claims and instead relied on the third defendant's representations when he (the architect) certified payments due. These are the sort of allegations that require the defendant merely to admit or deny, and given the position he held, the third defendant must surely know whether he certified payment as alleged, and if not, a denial ensures that the plaintiff must discharge its obligation of proof at trial. Miss Choo also argued that the plaintiff ought to disclose what communications passed between the third defendant and the first, fourth defendant and TG Properties that gave rise to the alleged conspiracy by them. The allegation of conspiracy was founded on the relationship between the defendants and other related entities and the history of events set out in the claim narrated above. Similarly, the defendants would know if they had conspired to injure the plaintiff in the way pleaded. If they did not, a denial will suffice. The rest is evidence. No two conspiracies are entirely alike, they may share traits and features, but those are the very details that are narrated in evidence. It is not often that a letter will declare or invite a conspiracy. The letter invites or accepts proposals to do or omit acts. Whether those acts or omissions amount to the conspiracy alleged is a matter for the court to find at the end of the trial. The individual correspondence giving rise to the conspiracy without explanations (which have no place in the pleadings) will not show the conspiracy. Asking to see them is like a tourist asking to see the University of Cambridge.

11 One reason why the first and fourth defendants did not understand the plaintiff's case is that the Statement of Claim is overly long and disorganised, not that it is short on detail. Professional writers (other than fiction writers) excel when they employ one word to do the work of ten. That is one way of having a shorter and clearer Statement of Clam. For the reasons above and in spite of the valiant effort of Miss Choo, I am of the view that this appeal should be allowed with the question of costs here and below to be determined at a later date if parties are unable to agree costs.