South East Enterprises (Singapore) Pte Ltd *v* Hean Nerng Holdings Pte Ltd and another [2011] SGHC 11

Case Number	: Suit No 334 of 2009 (Registrar's Appeal No 435 of 2010)
Decision Date	: 13 January 2011
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Kertar Singh s/o Guljar Singh (Kertar & Co) for the plaintiff; Koh Choon Guan Daniel (Eldan Law LLP) for the first defendant.
Parties	: South East Enterprises (Singapore) Pte Ltd — Hean Nerng Holdings Pte Ltd and another

Civil Procedure

13 January 2011 Judgment reserved.

Choo Han Teck J:

1 This was an appeal by the plaintiff against an order by the assistant registrar Mr Teo Guan Siew ("AR") on 20 October 2010 that the plaintiff provide security for costs to the first defendant in the sum of $90,000. I reserved judgment after submissions were completed because this dispute has a long history and I think that it was necessary to consider that in the context of the appeal.

2 The trouble arose in 2004 when the first defendant (respondent) obtained a default judgment in the magistrates' court for $27,794 and pursuant to that levied execution by writ of seizure and sale. The execution was carried out by the second defendant (respondent) bailiff. The plaintiff filed this action against the first defendant in 2009 claiming that the defendants had negligently executed the writ of seizure and sale. This action was brought after an initial application in August 2004 to set aside the writ of seizure and sale failed, largely because it was made after the goods had already been seized and sold. Thereafter, this action was filed – four years later. The first defendant then applied to strike out the claim but I did not think that the matter should be struck out without trial, notwithstanding that the plaintiff could not explain why it took four years to commence this action.

3 The first defendant subsequently made an application for security for costs under s 388(1) of the Companies Act (Cap 50). It provides that –

> Where a corporation is plaintiff in any action or other legal proceeding the court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the corporation will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs and stay all proceedings until the security is given

4 Counsel for the plaintiff argued that the AR wrongly exercised his discretion because there was no credible testimony regarding the plaintiff's inability to pay costs. Further, counsel submitted that the merits of the case lay in favour of the plaintiff. It was submitted that the seizure and sale carried out in June 2004 was negligently carried out resulting in the loss now claimed. It was alleged that the bailiff did not keep a proper record of the goods seized or the details of the sale. Counsel thus argued that the application for security was not made in good faith, and was calculated to be an oppressive

act. Finally, counsel submitted that such an order should not be made if the plaintiff was not impecunious. The security ordered had been given in this case. Counsel argued that, in any event, the sum of $90,000 up to the filing of the affidavit of evidence-in-chief was excessive.

5 In perusing the records, I am of the view that the evidence indicated that the plaintiff was more likely to be impecunious than not. From 2004 it had not been paying its debts and the only indication was the post-order event of satisfying the order and producing security of $90,000. In the interim, there were no financial records of the plaintiff since it had not been filing its financial records. Given the long standing dispute and apparent animosity between the parties, the AR was entitled to think that there was reasonable cause to believe that the plaintiff might not pay costs should it fail in this action. I am not persuaded that the AR's discretion was wrongly exercised.

6 Having regard to the nature of the case and the overall circumstances, the sum of $90,000 does not appear to be unreasonable. I think that in the event that the plaintiff succeeds at trial it is not likely to say that this had been an overestimation.

7 For the reasons above the appeal is dismissed. Costs to follow the event and be taxed if not agreed.