Watchdata Technologies Pte Ltd v Kamalraj Johnson and Another [2008] SGHC 60

Case Number : Suit 571/2007

Decision Date : 22 April 2008

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Renganathan Nandakumar (KhattarWong) for the plaintiff; P Suppiah and Elengovan S/O V Krishnan (P Suppiah & Co) for the first and second defendants

Parties : Watchdata Technologies Pte Ltd — Kamalraj Johnson; Hephzibha Joybell Kamalraj

Injunctions

22 April 2008 Grounds of Decision.

Woo Bih Li J:

Background

1 The plaintiff Watchdata Technologies Pte Ltd ("Watchdata") is a supplier and distributor of smart ("SIM") cards and provides related services thereto. Watchdata had entered into an agreement dated 14 July 2004 ("the July 2004 agreement") with Sharon Global Solutions Private Limited ("Sharon Global") under which Watchdata would provide SIM cards and related services to Sharon Global who in turn provided supplies and services to telecommunication operators in India. Watchdata alleged that as at 29 June 2006, Sharon Global was indebted to it for US$2,114,846.40. Kamalraj Johnson and Hephzibha Joybell Kamalraj, the first defendant and the second defendant respectively ("collectively "the Defendants") had signed a deed of guarantee dated 29 July 2006 ("the Guarantee") under which the Defendants agreed to pay US$2,114.846.40, being the debt of Sharon Global if the debt was not settled in full by 31 December 2006.

2 Watchdata alleged that as at 8 August 2007, more than one year after the date of the Guarantee, the amount owing by Sharon Global to it was US$1,623,346.40. On 7 September 2007, Watchdata filed the present writ and statement of claim against the Defendants.

3 The defence was filed on 19 October 2007. It alleged that when Sharon Global entered into the July 2004 agreement with Watchdata, Sharon Global did so as an agent of an Indian company called Sharon Solutions (India) Private Ltd ("Sharon India"). The Defendants denied that Sharon Global was indebted to Watchdata for any amount and also denied that they had agreed to pay the sum of US$2,114,864.40 under the Guarantee.

4 Secondly, the defence contended that there was no consideration or only past consideration to support the Guarantee. Thirdly, the Defence contended that even if the Defendants were liable under the Guarantee, their liability had been discharged because Watchdata had entered into a Memorandum of Understanding dated 15 February 2007 ("the Feb 2007 MOU") with Sharon India to allow the latter to make payment of any sum due from Sharon India by end 2007. Fourthly, the Defence denied that Sharon India had failed to pay the debt due to Watchdata.

5 By summons no. 4713 of 2007, Watchdata applied for a worldwide Mareva Injunction to restrain the Defendants from disposing of their assets up to the sum of US$1,623,346.40 and for an order for

the Defendants to disclose the value, location and details of all their assets. After hearing arguments, I granted Watchdata the reliefs sought. The Defendants have appealed to the Court of Appeal.

The court's reasons

6 In the first affidavit of the first defendant of 26 October 2007 in reply to Watchdata's application, the Defendants referred to a Memorandum of Understanding dated 20 December 2004 ("the Dec 2004 MOU") between Watchdata and Sharon India for Watchdata to supply SIM cards and related products on an exclusive basis to Sharon India. The Defendants alleged that Watchdata had been delivering products to Sharon India and that such delivery was pursuant to the Dec 2004 MOU (with Sharon India) and not pursuant to the July 2004 agreement (with Sharon Global).

7 I will deal with this allegation first. It was not disputed that physical deliveries had been made direct to Sharon India. Accordingly, the Defendants' emphasis on this fact was a red herring. Watchdata's point was that such deliveries were made pursuant to the July 2004 agreement. Accordingly, the key question was not whether physical deliveries had been made to Sharon India but whether they had been made pursuant to the July 2004 agreement, as alleged by Watchdata, or pursuant to the Dec 2004 MOU, as alleged by the Defendants. In this connection, it was very significant that Watchdata disputed the authenticity of the Dec 2004 MOU.

8 There were several points casting doubt on the authenticity of the Dec 2004 MOU.

9 Firstly, the defence did not mention the Dec 2004 MOU at all. As mentioned above, the defence was filed on 19 October 2007. About a week later, when the first affidavit of the first defendant was filed on or about 26 October 2007 ([6] *supra*), he referred to the Dec 2004 MOU for the first time and exhibited it.

10 Secondly, the Dec 2004 MOU referred to the corporate office of Watchdata as being at 10 Eunos Road 8, #12-05, Singapore Post Centre, Singapore 408600 ("the Post Centre address"). However, Watchdata demonstrated quite conclusively that as at that time, the Post Centre address was neither its registered address nor its business address. Watchdata elaborated that it had shifted its operating address to the Post Centre address only in July 2005.

11 Thirdly, the Dec 2004 MOU was allegedly signed by one Andrew Teh who was described as General Manager (of Watchdata). However Mr Teh said that he did not sign that document and the initialling of that document was not his. Mr Teh also said he was not the General Manager of Watchdata in Dec 2004.

12 Fourthly, Watchdata pointed out that the company stamp, allegedly of Watchdata, which was affixed onto the Dec 2004 MOU was different from the stamp which Watchdata had used from 2004 and also from 2006. In the company stamps which Watchdata had used, only the first letter of each word of its name was in capital letters whereas in the stamp affixed onto the Dec 2004 MOU, all the letters were capitalised.

13 In response, the Defendants said in para 15(3) of their third affidavit of 13 November 2007 that the Dec 2004 MOU was prepared actually in 2005 by Watchdata and that Mr Teh had attended at Sharon Global's office (in Singapore) on 20 December 2005 and signed that MOU. The first defendant had not noticed the error in the year stated in the Dec 2004 MOU. To support this allegation, the Defendants said that Mr Teh had signed another MOU on 20 December 2005 ("Al Hatim MOU") with a different company called Al Hatim Solutions & Electronics Cards Trading LLC ("Al Hatim"), although the Al Hatim MOU was dated 21 December 2005. The initial on every page of the Al Hatim MOU was said

to be the same as the initial on every page of the Dec 2004 MOU. Nevertheless, the lettering of the company stamp on the Al Hatim MOU was different from that used in the Dec 2004 MOU. The one used on the Al Hatim MOU was similar to that used by Watchdata whereas the one used for the Dec 2004 MOU was not similar, as mentioned above. The Defendants said that Mr Teh had used two different company stamps that same day.

14 Mr Teh's response was that the Al Hatim MOU was in fact signed by a colleague by the name of "Tian Hui" although Mr Teh's name was inserted in the Al Hatim MOU as the signatory. Mr Teh had no issue with Tian Hui signing the Al Hatim MOU on his behalf as it was approved by Watchdata's Managing Director, Yu Zhilu. However, the initialling on every page of the Al Hatim MOU was not his but Tian Hui's. Tian Hui said that the draft MOU which had been backdated to 30 June 2004, was sent by email by the second defendant on 21 December 2005. Tian Hui changed the date in the document to 21 December 2005. As Mr Teh and Mr Zhilu were not in Watchdata's office that day, she obtained Mr Zhilu's approval to sign the Al Hatim MOU on Mr Teh's behalf and sent the document by fax to the Defendants at their Singapore office and by courier to the Dubai address of Al Hatim. Tian Hui confirmed that she had not seen the Dec 2004 MOU nor had she signed that document.

15 In addition, Mr Teh produced copies of his passport, airline boarding passes and hotel bill to demonstrate that he was in Manila between 18 December to 21 December 2005 to support his point that he could not have signed the Dec 2004 MOU in the Singapore office of Sharon Global on 20 December 2005 as alleged by the Defendants.

16 Based on the evidence so far, it seemed that the Dec 2004 MOU had been fabricated by or on the instructions of the Defendants and when they were caught out, they alleged that it was in fact signed one year later on 20 December 2005. However it seemed that they were caught out again for the reasons stated above.

17 The allegation that there was no consideration or only part consideration to support the Guarantee was a non-starter. The Guarantee was signed under seal. Also, there was clearly consideration given because time was given to Sharon Global to pay. On the other hand, if Sharon Global was not liable at all, then the consideration issue would have been irrelevant in any event.

18 As regards the Feb 2007 MOU, the Defendants appeared, from their affidavits, to be relying on this document for two purposes. The first was to show that the debt being claimed was owed by Sharon India and not Sharon Global. The second was to assert that because time had been given to Sharon India to pay the debt (even if owing by Sharon Global), this indulgence had discharged the Defendants from the Guarantee.

19 It is true that clause 3(a) of the Feb 2007 MOU refers to an outstanding trade debt of US$1.8 million owing by Sharon India to Watchdata. Also clause 15 thereof referred to Watchdata and Sharon India endeavouring to clear the debt "at the earliest but before the end of the year" *i.e*. 2007.

20 Mr Zhilu explained in his first affidavit of 29 October 2007 that as Watchdata was uncomfortable with the outstanding balance from Sharon Global, Watchdata did not want to continue supplying goods to Sharon Global. The Defendants then asked Watchdata to supply to Sharon India instead. After the Guarantee was executed, Watchdata only supplied one order of Sharon Global which was paid in full before delivery. According to Mr Zhilu, the Feb 2007 MOU covered amounts owing by both Sharon Global and by Sharon India, although this was not stated expressly in that document. Nevertheless, a subsequent Co-operation Agreement between Watchdata and Sharon India, dated 17 March 2007, ("the Co-operation Agreement") did refer to an outstanding debt owed by both these companies which seemed to lend some support to Mr Zhilu's allegation, although the

Co-operation Agreement did not make clear how much was owing by each of these two companies.

21 Furthermore, while the Defendants were denying that Sharon Global owed any money to Watchdata, they failed to explain why they signed the Guarantee which stated clearly that Sharon Global was owing money to Watchdata. There was no mention in the Guarantee that Sharon Global had been acting as an agent of Sharon India or that the money owing to Watchdata was due from Sharon India instead.

22 On balance it seemed to me that Watchdata had more than a good arguable case that Sharon Global was owing money to it and that the Guarantee was to secure that liability.

23 As for the second point that the Guarantee had been discharged by the granting of time (to pay) under the Feb 2007 MOU, Mr Zhilu disputed that the Feb 2007 MOU had given time to Sharon Global to pay. He said that that document was only intended to apply to Sharon India in that Sharon India was an additional obligor to pay Sharon Global's debt as well as its own.

24 In any event, even if the Feb 2007 MOU could be said to have given time to Sharon Global to pay, I was of the view that the Defendants could hardly complain given that they were aware of this MOU. Indeed both of them had signed this MOU although in their capacities as Managing Director and Chairperson, respectively, of Sharon India and not in their individual capacities. Given such circumstances, I was of the view that Watchdata had a good arguable case against the contention that the Guarantee had been discharged.

25 As for the Defendants' denial that Sharon India had failed to pay the money owing to Watchdata, this was a bare denial. If all money owing to Watchdata had been paid, it would have been a simple matter for the Defendants to adduce evidence of the relevant payment or payments.

26 This brings me to the next main point. Was there a genuine risk that the Defendants might dissipate their assets with a view to avoid any judgment that might be obtained against them?

27 Initially, Watchdata relied on the following conduct to demonstrate such a risk:

(a) Watchdata's solicitors, KhattarWong ("KW") had sent a letter of demand dated 8 August 2007 calling on the Guarantee. The letter was sent to the residential address of the Defendants at Block 842 H #09-72 Tampines Street 82 Singapore 528842 ("the Tampines Street 82 address"). Watchdata says that unknown to it, this property was sold by the Defendants in May 2007 and transferred to the purchasers on 3 July 2007.

(b) Nevertheless, the Defendants' solicitors, P Suppiah & Co ("PSC") replied by letter dated 15 August 2007 requesting for time, up to 12 September 2007, to revert to KW.

(c) KW replied on 17 August 2007 to refuse the request and requested PSC to confirm whether they had instructions to accept service of process.

(d) On 27 August 2007, PSC replied saying that they were taking instructions and would revert shortly. However, no further response came from PSC.

(e) KW wrote again by letter dated 10 September 2007 informing PSC that the Writ of Summons had been issued and again requested confirmation as to whether they had instructions to accept service of process. No reply was given.

(f) KW wrote again on 13 September 2007 to inform PSC that unless they received confirmation that PSC had instructions to accept service of process by close of business on 14 September 2007, service would be effected directly on the Defendants.

(g) Service was attempted at the Tampines Street 82 address but the attempts were unsuccessful. In the course of attempting such service, Watchdata's solicitors learned that that property had been sold.

(h) KW then applied for substituted service on the Defendants. Neo Jit Jit, the Operations Manger of Watchdata, said in her first affidavit of 18 October 2007, that in the course of making that application, Watchdata's solicitors had attempted service at the office address of the Defendants and managed to serve the Writ on the second defendant on 24 September 2007. For completeness, I add that the Defendants say that this attempt was made at the office address at the instance of the court when Watchdata was applying for substituted service.

(i) In any event, after the second defendant was served, PSC then wrote on 26 September 2007 to KW to accept service on behalf of the first defendant.

28 Watchdata added that it had also engaged private investigators to determine the current residential address of the Defendants. From the private investigators' reports, they learned that the Defendants had moved to another address in Tampines *i.e.* 65 Tampines Avenue 1 #15-04, Singapore 529778 ("the Tampines Avenue 1 property") A search of this property revealed that a caveat had been lodged by purchasers based on a contract or option dated 10 September 2007. This suggested that the Defendants had recently sold the Tampines Avenue 1 property.

29 The above facts led Watchdata to assert that there was a real and imminent risk that the Defendants would dispose of their assets both within and outside Singapore to avoid any judgment.

30 Although the Defendants criticised KW's omission to effect service at their office address until later, I was of the view that there was some basis for Watchdata's concern about the risk of dissipation of assets based on the facts Watchdata had set out. In any event, the episode regarding the Dec 2004 MOU which I have set out in detail above made it abundantly clear to me that the reliefs sought by Watchdata should be granted and I so ordered, subject to some minor variations which I need not go into, with Watchdata's costs of the application to be costs in the cause.

31 I should mention that in applying for a worldwide Mareva Injunction, Watchdata submitted as follows:

> 30. In order for an application for a Worldwide Mareva Injunction to succeed, other additional factors become relevant. In *Guan Chong Cocoa Manufacturers v Pratiwi Shipping SA* [2002] SGHC 202 …., Belinda Ang JC (as her Honour then was) observed that 'a worldwide mareva injunction is a draconian measure to be ordered only in exceptional circumstances – Before the court will make such an order, the situation must be so exceptional as to "cry out" as a matter of injustice for the order covering the foreign assets of a defendant.'

31 Although the Defendants contested the application for a Mareva Injunction, they did not suggest that such an injunction, if granted, should be confined to their assets in Singapore.

32 There was therefore an absence of full arguments as to when a court should grant a worldwide Mareva Injunction. In the absence of such arguments I do not propose to elaborate except to say that I was satisfied that such an injunction should be granted in view of the following factors:

(a) Watchdata has more than a good arguable case on the claim on the Guarantee and a good arguable case as regards the defence that the Defendants have been discharged from liability under the Guarantee.

(b) Based on the evidence so far, there was a real risk that the Defendants would dispose their assets to frustrate any judgment which Watchdata might obtain against them. The risk was not confined to the Defendants' assets in Singapore.

(c) The Defendants' known assets in Singapore were not sufficient to meet Watchdata's claim.

(d) There was no suggestion that a worldwide Mareva Injunction against the Defendants' assets would obstruct them in the operation of their activities in the ordinary course of business. Their business activities were being conducted through corporate entities.