

Singapore Investments (Pte) Ltd v Golden Asia International (Singapore) Pte Ltd
[2009] SGHC 149

Case Number : Suit 617/2008, RA 90/2009
Decision Date : 29 June 2009
Tribunal/Court : High Court
Coram : Chan Seng Onn J
Counsel Name(s) : A P Thirumurthy (Murthy & Co) for the appellant/defendant; Hee Theng Fong and Noelle Seet (KhattarWong) for the respondent/plaintiff
Parties : Singapore Investments (Pte) Ltd — Golden Asia International (Singapore) Pte Ltd
Civil Procedure – Vacation of chamber hearing dates – Strict judicial policy – Strong compelling grounds needed before court exercises discretion to vacate chamber hearing dates

29 June 2009

Chan Seng Onn J:

Introduction

1 This was an appeal from the decision of Assistant Registrar, Saqib Alam ("AR"), who found that the defence that there was no binding agreement with the plaintiff was a sham. The AR granted summary judgment to enforce the lease agreement entered into between the defendant and the plaintiff, the owners of the property. This appeal brought by the defendant had been specially fixed for a half day hearing before me on 18 May 2009. Counsel for the defendant, Mr A P Thirumurthy, asked for an adjournment of the hearing in order to file a new affidavit. He informed me that he took over the matter some 4 weeks ago. The notice of change of solicitors was filed on 14 April 2009. Mr Thirumurthy obtained all the papers and files from the former solicitors the next day on 15 April 2009.

2 Mr Hee Theng Fong, counsel for the plaintiff, objected to the adjournment. Mr Hee said that there were already voluminous affidavits filed, amounting to a total of four affidavits from both sides. Mr Hee submitted that the application for adjournment to file a further affidavit was a delay tactic. I then asked Mr Thirumurthy what exactly were the new facts that required another affidavit to be filed. After some probing, Mr Thirumurthy admitted to me that there were no new facts. He said he was not ready to argue the matter. I then asked him why he misinformed me that he wanted an adjournment to file a further affidavit when the true reason was that he was simply not ready with his legal arguments. I told Mr Thirumurthy that this bordered on dishonesty and amounted to conduct unbecoming of counsel. Mr Thirumurthy thereafter apologised to the court.

3 I then considered two options: grant the adjournment as requested or dismiss the appeal without hearing arguments on the merits from both counsel. In exercising my discretion on whether or not to grant the adjournment, I took into consideration the following matters, some of which were based on what Mr Hee had surfaced to the court:

(a) An earlier hearing for this appeal had been fixed on 13 April 2009, but it was vacated. The Registry directed the parties as early as 9 April 2009 to write in with their available dates. The plaintiff wrote in twice. However there was no response from the defendant. Accordingly, a pre-trial conference had to be fixed on 30 April 2009, whereupon Mr Hee, mentioning also on behalf of

Mr Thirumurthy, indicated to the court that the date 18 May 2009 was suitable to both counsel for fixing the hearing of the appeal. Thus, the special hearing date was fixed on 18 May 2009 at the request of both counsel. In my view, Mr Thirumurthy had ample time to prepare his legal arguments, if he wanted to. He had more than a month, since the time he took over as counsel to prepare for this hearing.

(b) The merits had been adjudicated once before, albeit before the AR, who had given succinct and cogent reasons for granting summary judgment as could be seen in the certified transcript of the AR's hearing dated 11 March 2009. In that sense, it was not as if the defendant did not even have an opportunity to fully argue its case on the merits previously before the court. This was a dismissal of an appeal from the decision of the AR where the merits had already been dealt with before, and not the dismissal of the case at its very first hearing on the merits.

(c) This appeal was brought not by the plaintiff but by the defendant. Therefore, I expected counsel for the defendant to apply all due diligence and to waste no time in preparing for the appeal pursued by his own client. Instead, it was counsel for the plaintiff who had come fully prepared to argue the appeal and who wanted the appeal to be proceeded with so as not to delay matters any further.

(d) The administration of justice would be impaired if counsel were to be allowed to coerce the court into granting an adjournment by simply stating that he is unable to argue the matter or proceed with the hearing as a result of his utter failure to be ready for the hearing. Such irresponsible conduct should not be countenanced by the court and it could well invite personal cost orders against the counsel concerned, as it did in this case.

(e) Mr Hee very helpfully referred me to [39] of *Su Sh-Hsyu v Wee Yue Chew* [2007] 3 SLR 673 ("*Su Sh-Hsyu*"), where the Court of Appeal set out the present judicial policy and the strict approach adopted towards the vacation of hearing dates:

Courts adopt strict approach towards vacation of hearing dates

39 The present judicial policy in relation to the religious and punctilious observance of hearing dates and minimal tolerance for unmeritorious adjournments has not and will not be modified. This strict judicial policy remains a vital cornerstone that ensures the systematic administration of justice and maximises the optimisation of judicial resources to most advantageously serve the public interest. Court hearing days and time, being scarce and expensive resources, should not be wasted: *Tan Huay Lim v Loke Chiew Mun* [1998] SGHC 255 at [10]. It follows that *strong compelling grounds* must prevail before the court will consider the exercise of its discretion to vacate trial dates: *Chan Kern Miang v Kea Resources Pte Ltd* [1999] 1 SLR 145 at [13]. In *Unilever Computer Services Ltd v Tiger Leasing SA* [1983] 1 WLR 856 at 857, the English Court of Appeal clarified that where the court had fixed dates, it would require "cogent reasons" before such dates were vacated. The Singapore standard of "strong compelling grounds" is a higher threshold that requires demonstrably convincing reasons to move a court to exercise its discretion. In this regard, we should also add that the court's sympathies will certainly not lie with litigants and/or solicitors who exhibit a callous disregard for adherence to trial or hearing dates that have been fixed. Parties and/or solicitors who airily view court schedules and hearing dates as being flexible or elastic will have to accept the usually irreversible consequences if their misplaced assumptions turn out to be incorrect.

[emphasis in original]

4 Although the case of *Su Sh-Hsyu* concerned an adjournment of trial dates for an open court hearing, nevertheless the court's strict approach towards the vacation of hearing dates should be no different when it concerns the vacation of special half day, full day or longer hearings fixed for chamber matters, particularly when those dates had been specially fixed after counsel had informed the court that they were suitable dates, but yet counsel remained totally unprepared and unable to proceed with his legal arguments on the hearing dates as fixed for no good reason at all.

5 Clearly, negligent or intentional dilatory conduct on the part of counsel in failing to prepare for the hearing was not at all a good or valid reason for vacating a specially fixed hearing date. The Singapore standard requiring "*strong compelling grounds*" to prevail before the court would consider the exercise of its discretion to vacate trial dates was far from satisfied in this case. Mr Thirumurthy wrongly assumed that so long as he was prepared to pay the costs of an adjournment to the other party, the hearing would be vacated as of right. He had flagrantly disregarded the judicial time that had been specially set aside by the court to hear the appeal and the efforts made by the court in accommodating the diaries of counsel as much as it was reasonably practical to do so when fixing the special hearing dates.

Orders made

6 Accordingly, for the reasons stated above, I refused to adjourn the matter and dismissed the appeal with costs and disbursements fixed at \$7,000 to be paid personally by Mr Thirumurthy. This amount of costs awarded took into account the time spent at the proceedings before me, the getting up work done by counsel for the plaintiff to refresh himself for the hearing, including the 44 pages of written submissions (excluding the exhibits in the Annexes) and the bundle of authorities with eight cases (two of which were new) that counsel had prepared for the appeal. Mr Thirumurthy was also directed to write to his clients within seven days to inform them of the reasons for the dismissal of the appeal and that costs were ordered to be paid personally by him as he failed to prepare himself to argue the appeal when he had more than sufficient time to do so.

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