

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 176

HC/Suit No 152 of 2015
(HC/Summons No 3953 of 2016)

Between

HG Metal Manufacturing Limited

... Plaintiff

And

- (1) Gayathri Steels Pte Ltd
- (2) Vashiharan Navaratnam
- (3) Sherine Sangeetha Navaratnam

... Defendants

A N D

Between

Gayathri Steels Pte Ltd

... Plaintiff-in-Counterclaim

And

HG Metal Manufacturing Limited

...Defendant-in-Counterclaim

GROUNDS OF DECISION

[Civil Procedure] – [Representation of Companies]

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HG Metal Manufacturing Ltd
v
Gayathri Steels Pte Ltd and others

[2016] SGHC 176

High Court — HC/Suit No 152 of 2015(HC/Summons No 3953 of 2016)
Choo Han Teck J
30 August 2016

31 August 2016

Choo Han Teck J:

1 This action is fixed for trial from 28 September 2016 for 6½ days. The plaintiff, represented by Mr Sim Kwan Kiat (“Mr Sim”) is suing for the price of steel sold to the first defendant, which is a private limited company incorporated in Singapore. The amount claimed by the plaintiff comprised of US\$998,763.03 and S\$411,647.21. The second defendant and his wife, the third defendant, are directors of the first defendant. They are sued by the plaintiff as guarantors of the transactions between the plaintiff and the first defendant for the purchase of steel. The trial was originally scheduled to commence in May 2017 but in March 2016 the parties were notified that the trial dates had been brought forward to end September 2016.

2 The defendants were initially represented by Bernard & Rada Law Corporation until 3 August 2016 when Bernard & Rada Law Corporation obtained leave to be discharged from acting for the defendants. The first

defendant then applied by the present summons for leave to have the second defendant represent it at trial.

3 Mr Sim objected to the application on two grounds. First, he submitted that the first defendant's application was defective. He argued that an application must be supported by an affidavit sworn by "any other officer of the company" as required under Order 1 r 9(4)(c) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed). This must be a different officer from the one that was intended to represent the company in the proceedings. The affidavit supporting this application was sworn by the second defendant who was the officer intended to represent the company. Secondly, Mr Sim submitted that there was no good reason offered by the defendant to justify this application. Accordingly, Mr Sim argued that the rule that a company must be represented by a lawyer at trial ought to be upheld in the present case.

4 The second defendant mainly justified the application on the basis of necessity because he had not been able to retain new lawyers for the first defendant ever since the discharge of their former counsel as the trial dates were too close. He further submitted that he felt capable of representing the facts of the case on behalf of the first defendant at trial since it was in his best interest to ensure that the first defendant succeeded in its defence. Finally, he stated that the defendants had no objections to Bernard & Rada Law Corporation representing them but it was the law firm that applied to be discharged and left them in the present state. I note that the second defendant did not offer a reason why the lawyers had discharged themselves.

5 Mr Sim, in response, submitted that the issues raised by the defendants in the counterclaim, apart from factual ones, included legal issues concerning

estoppel and economic duress, among other claims in law. He submitted that this was a reason why there was a need for the company to be represented by solicitors. Finally, Mr Sim suggested that should leave be granted, the conditions that had been suggested in the case of *Bulk Trading SA v Pevensey Pte Ltd and another* [2015] 1 SLR 538 (“*Bulk Trading*”) at [124] should be imposed. Specifically, the conditions sought by Mr Sim were:

- (a) The second defendant must be contactable on all matters relating to the present suit and be ordered to provide his contact details such as his residential addresses in both Singapore and New Zealand, his Singapore and New Zealand mobile and office/residential phone numbers and his e-mail addresses;
- (b) Given that the second defendant is a majority shareholder and controlling director of the first defendant, he should provide an undertaking to be personally responsible for the payment of legal costs ordered against the first defendant; and
- (c) In order for the costs undertaking to be effective, the second defendant should disclose his assets in Singapore sufficient to meet his potential exposure to any adverse cost orders.

6 I am of the view that the procedural steps set out in Order 1 r 9(2), Order 1 r 9(3) and Order 1 r 9(4)(c) of the Rules of Court must be strictly complied with before an application may be considered (see *Bulk Trading and Allergan, Inc and another v Ferlandz Nutra Pte Ltd* [2015] 2 SLR 94 at [53]). I therefore agree with Mr Sim that the application was defective in that the affidavit had not been made by “any other officer” of the company but the second defendant, who was the officer, intended to represent the company.

Nonetheless, I accept that this irregularity could be rectified by the filing of a fresh and proper affidavit. But, even if that were done, there are other factors to be considered by the court before such an application can be granted. These factors, as stated in *Bulk Trading* by Steven Chong J included:

- (a) whether the application for leave had been properly made pursuant to the Rules of Court;
- (b) the financial position of the corporate application and/or its shareholders;
- (c) the *bona fides* of the application;
- (d) the role of the company in the proceedings;
- (e) the structure of the company;
- (f) the complexity of the factual and legal issues;
- (g) the merits of the company's case;
- (h) the amount of the claim;
- (i) the competence and credibility of the proposed representative;
and
- (j) the stage of the proceedings.

7 I agree entirely with Steven Chong J's views in *Bulk Trading* and would have been inclined in this case to allow an officer of the first defendant company to represent it if –

- (a) The application was properly made;

- (b) There was clearly no potential conflict of interests between the company and the officer who is intending to represent it;
- (c) There were good reasons why the erstwhile lawyers for the company had discharged themselves; and
- (d) I would also impose the same conditions affirmed by Steven Chong J in *Bulk Trading*, but in this case, the requirement that the officer disclose his assets may create fresh difficulties if not complied with in time.

8 I am not satisfied that these conditions have been met. I agree with Mr Sim that the claims in law may require assistance from lawyers to do justice to the defendants' counterclaim. Even if the second defendant is able to represent the first defendants on the facts, he may not be able to represent the company adequately on the legal issues and the complexities that may arise at trial. More importantly, the second defendant, who is the officer intended to be representing the first defendant company at trial, is also a guarantor for the first defendant for the sums claimed by the plaintiff. It is true that, on the face of it, the first and second defendants have the common aim of ensuring that the first defendant's defence succeeds. However, it is also true that divergent interests between the first and second defendants would arise if the first defendant's defence fails at trial. Thereafter, the second and third defendants would be personally liable as guarantors for the sum claimed by the plaintiff. This would put the second defendant squarely in a potential conflict of interest. I therefore found him to be an inappropriate representative of the first defendant. Considering these factors as well as the fact that the first defendant's application was not properly made pursuant to the Rules of Court (see [6] above), I dismissed the first defendant's application.

9 After dismissing the application, I told the defendants that they should apply to obtain fresh dates for trial so as to be able to appoint new lawyers to take over their defence. I also gave liberty to apply because both the plaintiff and defendants would like to have the trial held soon. The defendants are to get fresh dates and fresh lawyers within a week.

- Sgd -
Choo Han Teck
Judge

Sim Kwan Kiat and Zhao Jiawei (Rajah & Tann Singapore LLP) for
the plaintiff;
The second defendant in-person.
