Yue Xiu Enterprises (Holdings) and Another v PT Hutan Domas Raya and Another [2000] SGHC 124

Case Number : Suit 1459/1998

Decision Date : 01 July 2000

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Koh Kok Wah (Wong & Leow) for the plaintiffs; Bonnie Lo (Rajah & Tann) for the first defendants; Tang Kin Wai (Lee & Lee) for the second defendants

Parties : Yue Xiu Enterprises (Holdings); Another — PT Hutan Domas Raya; Another

Conflict of Laws – Natural forum – Stay of proceedings – Process for dealing with plea of forum non conveniens – Whether Singapore the natural forum – Whether court should decline jurisdiction even if Singapore not the natural forum

: The plaintiffs are both companies incorporated in Hong Kong. They are related in that the first plaintiffs have a wholly owned subsidiary which in turn owns 65% of the share capital of the second plaintiffs. The second plaintiffs carry on business, inter alia, in forestry exploitation and the import and export of timber.

The first defendants are a company incorporated in Indonesia and are involved in the timber industry. The second defendant is the chief executive of the first defendants. He is an Indonesian citizen but resides in Singapore.

According to the statement of claim filed by the plaintiffs, by a memorandum in Chinese, the first defendants acknowledged that they were indebted to the first plaintiffs in the sum of US$9,230,000 and agreed to pay the same and interest in monthly instalments. By another memorandum similarly dated, the first defendants in consideration for the continued supply of logging equipment by the second plaintiffs to the first defendants, the first defendants agreed to pay the first plaintiffs the sum of US$68,750 each month for 84 months. It should be noted whilst the statement of claim averred that both memoranda were executed on 27 February 1992, copies of the memoranda exhibited by the plaintiffs showed their dates as apparently being 27 August 1992.

The second defendant executed two guarantees on 27 August 1992. The first guaranteed all moneys due and owing and remaining unpaid from the first defendants to the first plaintiffs under the first memorandum. The second guaranteed all moneys due and remaining unpaid from the first defendants to the second plaintiffs under the second memorandum.

The statement of claim went on to aver that the first defendants had only made part payments under the first and second memoranda and accordingly were in breach of their obligations under both. Accordingly, as at 1 August 1998, they were indebted to the first plaintiffs in the sum of US$15,300,000.04 and to the second plaintiffs in the sum of US$2,976,623.52. The plaintiffs claimed these sums from the first defendants under the two memoranda and from the second defendant under the two guarantees which he had signed.

The writ of summons was issued in August 1998. It was duly served on the second defendant at his address in Singapore and he entered an appearance to the action on 10 September 1998.

Things did not proceed so smoothly vis-Ã -vis the first defendants. In February 1999, the plaintiffs obtained an order of court giving them leave to serve the writ on the first defendants in Indonesia. Service purportedly took place pursuant to this order on 15 April 1999. On 21 May 1999, the plaintiffs

entered judgment against the first defendants in default of appearance. The first defendants then applied to set aside the service of the writ and the judgment on the basis that it should have been served through the Indonesian judicial authorities. They were successful at first instance and the plaintiffs` appeal to the judge in chambers was dismissed on 10 August 1999.

On 21 February 2000, the plaintiffs served the first defendants in Indonesia with the writ again, this time via the judicial authorities. The first defendants did not contest this service. Instead, having entered appearance to the action, on 21 March they filed an application by which they sought the following orders:

(1) that the order of court date 15 February 1999 granting leave to the plaintiffs to serve the writ of summons out of jurisdiction on the first defendants and service pursuant to the said order be set aside;

(2) consequently, a declaration that in the circumstances of this case, this court had no jurisdiction over the first defendants in respect of the subject matter of the claim or the relief or remedy sought in the action;

(3) alternatively, that there be a stay of the action as against the first defendants.

The grounds of the application were that the first defendants were not subject to the jurisdiction of this court or alternatively, that the appropriate forum to litigate the matter was Jakarta, Indonesia.

The first defendants` application was heard by the learned assistant registrar on 31 March. She made no order on the application to set aside the grant of leave to serve the writ outside the jurisdiction. In relation to the third prayer, however, the learned assistant registrar granted a stay of action against the first defendants. The plaintiffs appealed.

The appeal was heard before me on 3 May. I allowed it and set aside the stay order. The first defendants are unhappy with this decision.

Relevant facts

By the time the appeal was heard before me, proceedings against the second defendant were at an advanced stage, with discovery having been completed. The second defendant, the president and chief executive of the first defendants, is a Singapore permanent resident. His daughter, Ms Sofia Korompis, is the vice president of the first defendants and she was the one who made the affidavits in support of the first defendants` application for a stay. Ms Korompis is also a Singapore permanent resident. Both the second defendant and his daughter have extensive business interests in Singapore.

From the affidavits which Ms Korompis had affirmed, it appeared that the first defendants` main defence to the plaintiffs` claim was that the two memoranda were illegal and unenforceable under Indonesian law because the second defendant had failed to get the consent of the Commissioner of the first defendants before signing these documents on behalf of the first defendants. Additionally, the memoranda did not specify the events of default and the procedure required to constitute default. She pointed out that both the memoranda and the guarantees were executed in Jakarta, Indonesia and averred that the law governing these instruments was the law of Indonesia. In the case of the guarantees, these documents had been expressly made subject to Indonesian law. Neither Ms Korompis nor anyone else on behalf of the first defendants denied the first defendants` indebtedness to the respective plaintiffs.

The second defendant had taken a similar line in his defence to the plaintiffs` action. His defences were:

(1) that the memoranda were void because they were not approved by the Commissioner of the first defendants;

(2) that his guarantees were not enforceable because (a) his spouse had not consented to them and (b) the assets of the borrower had to be auctioned off before recourse could be had to the guarantees.

The second defendant was, in pleading those defences, relying on various provisions of Indonesian law.

Was Singapore the appropriate forum?

The first defendants` contention was that Singapore was not the appropriate forum for the disposal of the plaintiffs` claim against them and that the courts of Jakarta would be clearly more appropriate for this purpose. They relied on the principles established in **The Spiliada** [1986] AC 460 which have been applied in many cases in Singapore including **Eng Liat Kiang v Eng Bak Hern** [1995] 3 SLR 97 . As pointed out in those cases, when a plea of forum non conveniens is raised, the court must go through a two-stage process. First it must establish whether the Singapore court is the most appropriate forum for the hearing of the case or whether a foreign forum is clearly the more appropriate forum for the trial. If the finding is that the foreign forum is the more appropriate forum, then the court must consider whether there are circumstances which militate against granting a stay of the Singapore proceedings.

The first defendants submitted that the factors pointing to a stay in favour of Indonesia included:

(1) the first defendants were incorporated in Indonesia and carry on business there. They have no presence in Singapore;

(2) the plaintiffs are Hong Kong companies;

(3) the memoranda relied on by the plaintiffs were executed in Jakarta and governed by the laws of Indonesia;

(4) the cause of action, if any, against the first defendants arose in Indonesia and their witnesses would be from Indonesia. The witnesses included the directors and the legal experts. It would be inconvenient and costly for them to come to Singapore;

(5) the plaintiffs` own witnesses were not likely to be from Singapore;

(6) the Singapore court would have to decide issues of Indonesian company law; and

(7) the plaintiffs` claim had no connection whatsoever let alone any real and/or substantial connection with Singapore.

It appeared to me that the first defendants were correct in contending that the relevant factors outlined above pointed towards the courts of Jakarta as being the appropriate forum to decide the

case. I must state, however, that the question of witnesses was not overwhelmingly in favour of Jakarta since:

(i) the plaintiffs` witnesses would have to travel in any case whether the trial was held in Singapore or Jakarta; and

(ii) at least two of the first defendants` witnesses ie the second defendant and Ms Korompis are resident in Singapore.

Despite the above, it was clear that Singapore`s connection with the case was slender and there was no way that it could be decided that Singapore was the natural forum for the disposal of the case.

Any circumstances militating against the stay

Having decided that Jakarta was clearly the more appropriate forum, I had then to consider whether there were any circumstances which would make it wrong to grant the stay asked for. I came to the conclusion that in this case, it would indeed be incorrect to stay the action against the first defendants.

The action had been started against two parties: the principal debtors and their guarantor. The action against the guarantor, the second defendant, was advanced and would be heard shortly. He had three defences one of which was identical with the main defence put forward by the first defendants. When the case against the second defendant came on for trial, the Singapore court would have no alternative but to determine whether under Indonesian law the memoranda are illegal and unenforceable. This is the very same issue that would be determined in the case in Jakarta between the plaintiffs and the first defendants if the Singapore action against the latter were stayed. That meant that there was a real prospect of a different outcome in courts in the two jurisdictions on the same issue. There were two possibilities in this regard: the first was that the Singapore court would find that the memoranda were illegal and therefore that the second defendant was not liable on his guarantees while the Jakarta found the memoranda to be legal. The alternative was that the Singapore court would find the memoranda to be legal and the second defendant liable whilst the Jakarta court found the memoranda to be illegal. Either result would be highly unsatisfactory in that the second defendant would be found liable, implicitly or explicitly, in one jurisdiction and not liable in the other. It was not, in my view, at all desirable to allow such a prospect to become a reality.

It appeared to me also that it would not inconvenience the first defendants unduly if they had to fight the case in Singapore. In the first place, two of their witnesses were here already. Secondly, in order to fight the plaintiffs, the second defendant would in any case have to bring witnesses from Indonesia on the issues of legality and the authorisation which he had from the first defendants to sign the memoranda. These witnesses would be equally available to testify on behalf of the first defendants without added expense or inconvenience.

I was satisfied that the unusual features of this case made it correct to deny a stay to the first defendants notwithstanding that the law governing their liability was Indonesian law and that, as a rule, Singapore courts prefer not to rule on issues of foreign law. It appeared to me that it would best suit the ends of justice if this case were disposed of in one jurisdiction rather than two especially since there were no additional issues to be disposed of in Jakarta (the first defendants` defence being encompassed by that of the second defendant). As proceedings against the second defendant were advanced and he had not asked for a stay, the Singapore court would in any case have to deal

with the issues and thus it was best that it dealt with the issues vis-Ã -vis both defendants and not only vis-Ã -vis the second defendant. I thought that in these circumstances it would be wrong for the court to decline jurisdiction over the first defendants.

Outcome:

Appeal allowed.