

DBS Bank Ltd v Yamazaki Mazak Singapore Pte Ltd and another
[2010] SGHC 204

Case Number : Suit No 511 of 2007 (Registrar's Appeals Nos 160, 161, 162 & 163 of 2010)
Decision Date : 21 July 2010
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Tan Ky Won Terence and Thng Hui Lin Melissa (Rodyk & Davidson LLC) for the plaintiff; Aw Wen Ni (WongPartnership LLP) for the first defendant; Sunita Carmel Netto and Ng Weiting (Ang & Partners) for the second defendant.
Parties : DBS Bank Ltd — Yamazaki Mazak Singapore Pte Ltd and another

Civil procedure

21 July 2010

Judgment reserved.

Choo Han Teck J:

1 These are appeals against the decision of the Assistant Registrar ("the AR") with respect to specific discovery and further and better particulars applications. The plaintiff is DBS Bank Ltd ("DBS"). The defendants are Yamazaki Mazak Singapore Pte Ltd ("Yamazaki"), a Singapore-incorporated company in the business of manufacture and repair of machinery and machine tools, and Hwa Lai Heng Ricky ("Ricky Hwa"), who was an Assistant Manager of its sales department. The present appeals only concerned DBS and Yamazaki.

2 DBS had a loan agreement with Sin Yuh Industries Pte Ltd ("Sin Yuh"), a Singapore-incorporated company in the business of manufacturing machinery components, to part-finance the purchase monies for the purchase of 31 units of machines by Sin Yuh from Yamazaki. (Yamazaki claimed that it sold the machines to a Sin Yuh's subsidiary, Zhang Hui Industries Sdn Bhd, but it conceded that this fact was immaterial to the current proceedings.) The loan agreement was made pursuant to a Scheme Funding Line Agreement ("SFLA") between the Economic Development Board ("EDB") and DBS to provide financial assistance to local business enterprises. As a pre-condition to the loan agreement, Sin Yuh was required to furnish evidence to DBS to show that the difference between the cost of the machines and the loan amount had been paid to Yamazaki. Ricky Hwa prepared and sent a letter dated 16 December 2002 ("the 16 December 2002 letter") under Yamazaki's letter head confirming that Yamazaki had received payment from Sin Yuh. In fact, the representation made in the letter was false. Pursuant to the loan agreement, DBS disbursed a sum of \$1,940,000 to Yamazaki. Subsequently, Sin Yuh defaulted on repayments of the loan and was eventually wound up.

3 DBS had recovered possession of 26 units of the machines and sold them for net sale proceeds of S\$688,354.57. The remaining five units of the machines are the subject of litigation in the Johore Bahru courts. Yamazaki claimed against Zhang Hui the title over the 5 machines on the ground that full payment had not been received for those machines. (In a letter from Yamazaki's previous solicitors dated 29 October 2003, DBS was informed that payments made by Sin Yuh, which were initially towards the purchase of the five machines, were subsequently re-allocated pursuant to Sin Yuh's instructions.) DBS intervened in the Johore Bahru proceedings and claimed that Yamazaki was estopped from claiming title to the five machines in view of Yamazaki's alleged false representation in

the 16 December 2002 letter and that Yamazaki knew or ought to have known that DBS had a fixed charge over the machines.

4 DBS therefore brought this suit against the defendants alleging that the defendants defrauded and/or conspired with Sin Yuh and one Roger Cheong to defraud DBS, causing it to suffer loss and damage. DBS claimed that it was deceived and induced by Yamazaki's letter of 16 December 2002 into signing the loan agreement. In the alternative, DBS claimed that it was induced to make the agreement by the defendants' misrepresentation in the letter. DBS claimed damages for losses arising from the disbursement of loan, after taking the sale proceeds it obtained from the sale of the 26 machines into account. Yamazaki denied its involvement in the loan agreement and claimed that the 16 December 2002 letter was prepared by Ricky Hwa acting outside the scope of his authority and does not therefore bind Yamazaki. Yamazaki further contended that DBS had the burden to show that they have used a reasonable mode of sale and that the net sale proceeds is a reasonable quantum.

5 In its discovery application (Summons No 1088 of 2010 dated 10 March 2010), DBS prayed for the following orders:

- (a) Yamazaki's internal accounting/financial statements or records for the material period of time documenting any payments received by Yamazaki under any of the 36 cheques issued by Sin Yuh;
- (b) All written instructions from Sin Yuh to Yamazaki stating "that no part payments would be allocated towards the purchase price of the same machines" as stated in the letter from Yamazaki's (then) solicitors (CCH Leo & Co) to DBS's solicitors dated 29 October 2003;
- (c) All Yamazaki's internal documents including emails, memorandums and/or notes of any form from Mr Tommy Kito, Mr Yoshihide Miura, Mr Yun, Mr Chong Kwai Soon, Ricky Hwa or any other personnel, including those from Yamazaki's finance/accounts department, relating to the sale of the machines to Sin Yuh/ Zhang Hui;
- (d) All correspondence sent by Yamazaki and/or any employees or agents of Yamazaki to Sin Yuh/ Zhang Hui demanding payment in respect of the machines purchased by Sin Yuh/ Zhang Hui;
- (e) All letters signed by Ricky Hwa, or any other person(s), on Yamazaki's letterhead and addressed to financial institutions, confirming or purporting to confirm that Yamazaki had received downpayments, deposits or any other form of payment from purchasers for Yamazaki's machinery;
- (f) All documents including correspondence between Yamazaki and Arab-Malaysian Finance Bhd and all internal emails, memos and notes of any form relating to monies disbursed by Arab-Malaysian Finance Bhd for payment to Yamazaki for any of the 47 machines sold to Zhang Hui/Sin Yuh including the correspondence preceding and subsequent to Yamazaki's letter to Arab-Malaysian Finance Bhd dated 16 May 2002;

- (g) All documents including correspondence between Yamazaki and Tokyo Leasing (Singapore) Pte Ltd and any internal emails, memos and notes of any form relating to monies disbursed by Tokyo Leasing (Singapore) Pte Ltd for payment to Yamazaki for any of the 47 machines sold to Zhang Hui/Sin Yuh; and
- (h) All documents relating to the sale of the 5 machines that are the subject of the proceedings in the Johor Bahru High Court, including but not limited to all documents (including correspondence, internal emails, memos, reports or any other document) showing or related to the sale price, valuation price and/or circumstance and manner of sale.

6 The AR granted (a), (b), (d) and (e). As for (c), he limited discovery to internal documents relating to the financing from DBS of the machines and internal documents showing DBS' position relating to the 16 December 2002 letter including that of the personnel listed in (c). As for (h), he limited discovery to documents showing or related to the sale price, valuation price and/or circumstance and manner of sale. He refused the application for (f) and (g).

7 Before me, DBS appealed against the AR's decision for categories (c), (f) and (g) and for an order that the documents be disclosed as prayed for (RA 160 of 2010) Yamazaki appealed against the AR's decision for all except categories (f) and (g) (RA161 of 2010). Pursuant to O 24 r 5 of the Rules of Court, the court may make an order for specific discovery of particular documents where the court is satisfied that the documents sought for are relevant (see O 24 r 5(3)) and necessary for disposing fairly of the cause or matter or for saving costs (see O 24 r 7): see also *Tan Chin Seng and others v Raffles Town Club Pte Ltd* [2002] 2 SLR(R) 465 at [15]. The discovery process should not be allowed to "fish" a cause of action: see *Wright Norman v Oversea-Chinese Banking Corp Ltd* [1992] 2 SLR(R) 452. With these principles in mind, I now turn to the individual categories of documents as applied for and contested against.

8 With respect to categories (a), (c) and (d), DBS contended that they are directly relevant to determining when Yamazaki were aware that full payment had not yet been received/ that the confirmation in the 16 December 2002 letter was false, the persons in Yamazaki who were responsible for and/or ought to have been aware of such matters, and whether Yamazaki had adopted/ratified Ricky Hwa's actions. Yamazaki contended that documents relating to payments received by them are irrelevant to the pleaded issue in the present case, as they do not shed any light on whether Ricky Hwa was authorized to issue the 16 December 2002 letter. Given that it was crucial to Yamazaki's defence that it had no knowledge of Ricky Hwa's actions, and that he had acted outside his authority, I find that the correspondence between Yamazaki and Sin Yuh/Zhang Hui with respect to payments are relevant as they would provide parties with a clearer picture as to the extent of Yamazaki's involvement in the issuance of the 16 December 2002 letter.

9 With respect to documents in category (c), before me, counsel for Yamazaki further contended that disclosure, whether as prayed for by DBS or as ordered by the AR should be disallowed. In the alternative, Yamazaki contended that disclosure should be limited to internal documents showing whether the second defendant was authorized to issue the 16 December 2002. The AR had limited discovery to internal documents relating to the financing from DBS of the machines and internal documents showing DBS' position relating to the 16 December 2002 letter. I agree with Yamazaki that unless restricted, disclosure ordered might result in disclosure of documents irrelevant to the pleaded issues. However, I think that the documents relating to financing of the machines are relevant to the issue of Yamazaki's knowledge of Ricky Hwa's actions, and therefore, to the issue of whether Yamazaki would be estopped from pleading that he acted outside his scope authority. Accordingly, I saw no need to disturb the AR's order.

10 With respect to category (b), DBS contended that Yamazaki had not disclosed documents pertaining to 'instructions' from Sin Yuh to re-allocate funds initially allocated by Sin Yuh to the payment of the five machines elsewhere and that this was relevant because Yamazaki claimed title over the five machines on the ground that it had not received full payment for them. Yamazaki contended that the ownership of the five machines is unrelated to its defence in the present suit. I agree with Yamazaki that this category of documents applied for is not relevant to the present proceedings. As already noted, the issue in the present proceedings concerned Yamazaki's involvement or acknowledgement of the 16 December 2002 letter. Further, DBS is claiming for losses based on the disbursement of loan under misrepresentation, conspiracy or tort of deceit. The ownership of the five machines is therefore irrelevant to Yamazaki's defence or DBS' claim. In this respect, DBS is at liberty to apply to the trial judge if evidence at trial indicates otherwise.

11 With respect to category (e), DBS contended that these are directly relevant to the matter of whether Ricky Hwa had been authorized, expressly or otherwise, by Yamazaki to issue confirmation letters similar to the 16 December 2002 letter. Yamazaki contended that DBS had to show a prima facie case that the documents exist, and that DBS failed to discharge its burden to do so. I agree with DBS that previous confirmation letters are relevant. They would shed light on the question whether Ricky Hwa had the authority to issue such letters. In addition, disclosure of the kind of personnel who were entitled to issue confirmation letters would be relevant to Yamazaki's defence that somebody with Ricky Hwa's position did not have the authority to do so. Given that confirmation letters had previously been issued to other banks e.g. Arab-Malaysian Finance, I find that DBS had shown a prima facie case that such documents exist.

12 With respect to categories (f) and (g), DBS contended that the documents will show the scope of Ricky Hwa's employment with respect to his dealings with financial institutions. Yamazaki contended that the categories of documents are too wide-ranging and have no relation to the pleaded issues in the suits, namely, whether Ricky Hwa had the authority to issue confirmations regarding the status of Yamazaki's accounts. Since the issue in dispute was whether Ricky Hwa had the authority to issue the 16 December 2002 letter and whether Yamazaki was aware of his actions, what is relevant are confirmation letters previously issued, and matters relating to DBS' financing of the machines. Further, as these would already have been covered by other categories, I am of the view that disclosure of these categories of documents was not necessary.

13 With respect to category (h), DBS contended that as Yamazaki made an issue of the quantum of the net sale proceeds of the 26 machines recovered and sold by it, it was entitled to evidence of the manner and circumstances of sale of the 5 machines for purposes of comparison. DBS added that it disclosed documents relating to sale and price of the 26 machines. Before me, DBS did not contest the AR's order to limit discovery to documents showing or related to the sale price, valuation price and/or circumstance and manner of sale. Yamazaki contended that the 5 machines were models which are different from the machines sold by DBS, and therefore, would not be relevant as a basis of comparison. I agree with DBS that the pricing of the 5 machines would serve as a useful comparison to the price obtained by DBS on the 26 machines. I therefore find this category of documents relevant to the question whether DBS sold the 26 machines at market price. I see no reason to disturb the AR's order and dismiss Yamazaki's appeal on this point.

14 Yamazaki applied for discovery of all documents including memorandum, correspondence and notes relating to and/or evidencing DBS' proper and prudent assessment of the credit worthiness of Sin Yuh and of the feasibility and suitability of the loan facilities applied for by Sin Yuh and/or in support of DBS' denial that they were aware of Sin Yuh's poor financial position prior to the disbursement of the loan. The AR refused, and Yamazaki appealed (RA 162 of 2010).

15 Yamazaki contended that one of its defences was that it was not responsible for Sin Yuh's alleged failure to meet their payment obligations to DBS as at the time of the alleged disbursement of the loan, Sin Yuh was already in a poor financial position. Yamazaki further added that under cl 4.4 of the SFLA, before proceeding to obtain EDB's approval for the loan, DBS was obliged to conduct a proper and prudent assessment of credit worthiness of Sin Yuh and the feasibility and suitability of the loan. DBS contended that the SFLA was signed between EDB and DBS, and that the SFLA was only in issue in so far as there was a loan risk sharing arrangement between EDB and DBS. Furthermore, DBS denied being aware of Sin Yuh's poor financial position. Therefore, Yamazaki contended that the documents are relevant to establishing its defence/ proving DBS' knowledge of Sin Yuh's financial position. Counsel for DBS submitted that the documents are not relevant to the issues in dispute. I agree. Whether or not DBS assessed the creditworthiness of Sin Yuh had little to do with the issue whether Ricky Hwa had the authority to issue, or Yamazaki knew of the 16 December 2002 letter. Further, DBS' claim that it was unaware of Sin Yuh's financial position was made merely as a response to allegations by Yamazaki in its defence that Sin Yuh was already in a poor financial position when the loan was made. DBS' knowledge of Sin Yuh's financial position was therefore not an issue and did not form part of either parties' case. I therefore dismiss this appeal by Yamazaki.

16 Yamazaki also applied for further and better particulars of the circumstances and manner in which the Plaintiffs recovered possession of 26 units of the Machines, in relation to paragraph 25 of DBS' statement of claim where it stated that DBS subsequently recovered possession of 26 units of the Machines and sold them for a net sale proceed of S\$688,354.57 (Summons No 1203 of 2010 dated 18 March 2010). The AR refused the application, and Yamazaki appealed (RA 163 of 2010). Counsel for Yamazaki submitted that since DBS sought to give credit for the net sale proceeds of the 26 Machines (by setting off the sale proceeds from the amount of damages it is claiming). Counsel therefore contended that the time in repossessing and selling the machines would affect the value of DBS' claim. In response for DBS it was argued that it was Yamazaki who had to plead and prove its case that had DBS sold the machines on an earlier date, the amount recovered would have been greater. Pursuant to O 18 r 12(3), the court may order particulars against a party of any claim, defence or other matter stated in that party's pleading. The principle of particulars is that the party to whom they are given must know what case he has to meet: *Wright Norman v Oversea-Chinese Banking Corp Ltd* [1994] 1 SLR 513 at 524. I dismiss this appeal. If Yamazaki took issue with the sale price, the burden of proof lay with it to show that the machines were sold undervalued, e.g., with reference to the market price of similar machines. I therefore dismiss this appeal by Yamazaki.

17 In conclusion, with respect to DBS' application for further discovery, I dismiss Yamazaki's appeal in respect of categories (a), (c) – (e), and (h) but allowed its appeal for category (b). Accordingly, I dismiss DBS' appeal for disclosure of categories (c), (f) and (g). I further dismiss Yamazaki's appeal against the AR's order in its application for discovery and further and better particulars.

18 The question of costs is reserved to trial judge.

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