IN THE GENERAL DIVISION OF THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 231

Originating Summons No 171 of 2021
(Registrar's Appeal No 162 of 2021)

Between

Png Hock Leng

… *Plaintiff*

And

AXA Insurance Pte Ltd

… *Defendant*

GROUNDS OF DECISION

[Courts and Jurisdiction] — [Jurisdiction] — [Transfer of cases from the State Courts to the High Court]

Png Hock Leng
v
AXA Insurance Pte Ltd

[2021] SGHC 231

General Division of the High Court — Originating Summons No 171 of 2021 (Registrar's Appeal No 162 of 2021)
Lee Seiu Kin J
18 August 2021

13 October 2021

Lee Seiu Kin J:

1 In this originating summons, the plaintiff applied to transfer the whole of MC Suit No 146 of 2020 from the Magistrate's Court to the High Court. The application was heard at first instance by Assistant Registrar Kenneth Wang ("AR") who, on 21 June 2021, dismissed the application. In doing so, the learned AR delivered the reasons for his decision which he recorded in the notes of evidence in the following manner:

> 1 This is an application for transfer of the whole of MC 146 from the State Court to the High Court. The applicant relies on s 54B and 54E of the State Courts Act. There are three main grounds for this transfer: (a) that the counterclaim as quantified by the counterclaimant exceeds the District Court jurisdictional limit; (b) that the case involves important questions of law and public interest concerning the roles and responsibilities of a financial advisor, the Financial Advisors Act, and the MAS regulations; and (c) that for largely the same reasons as in (b), this is a test case more appropriately dealt with in the Supreme Court.

2 I deal first with s 54B.

3 I find that neither the proceedings generally, nor the Counterclaim in particular, raises any important question of law or warrants characterization as a "test case". Yes, it involves financial dealings, it may involve the FAA and the financial regulatory authorities such as MAS. But from the shape of the pleadings and the arguments before me, I am not able to see any issue of law that requires resolution by a higher court or where resolution by a high court is needed for the fundamental operation of the industry or some other fundamental public interest. In fact, despite the possible implication of the FAA and other MAS regulations, I am not even able to clearly identify a specific issue of law (as opposed to issues of fact or evidence) that would necessarily have to be addressed at trial for the resolution of this case.

4 In terms of the "other sufficient reason" limb of s 54B, I find that this too is not satisfied.

5 The most operative concern I had was a submission by [defendant counsel] that sometime in the State Courts, [plaintiff] had indicated that it would only agree to mediation in the SMC if the matter was transferred to the High Court. If this is true, and if remains the position that [plaintiff] takes, I would have found this a persuasive reason in favour of effecting a transfer. Particularly for dispute such as the present, mediation provides a chance for the parties to resolve their differences – or at least some part of their differences – without having to incur the time, toil and cost of litigation. But I note that [plaintiff counsel] has clarified, first, that his client was amenable to mediation in the State Courts, albeit through a free State Court service rather than a for-fee SMC procedure, and second, that although the willingness may have diminished in view of this application and other issues increasing legal costs, his client may remain willing to undergo mediation whether the matter is transferred or not. Ultimately, while [plaintiff counsel] was unable to commit to a position at present, whether the transfer is effected or otherwise does not affect the question of whether mediation would be available (whether by the State Court process or by SMC). In the circumstances, I do think consider it necessary or helpful to order a transfer just so that parties will be agreeable to mediation, and I do not find the possibility of mediation a "sufficient reason" to order a transfer.

6 As for the other reasons urged by [defendant counsel] to effect a transfer, I similarly do not find them persuasive.

7 First, the fact that a counterclaim exceeds the jurisdictional limit of the District Court does not in itself constitute a "sufficient reason" for transfer. As was held in

Autoexport, there needs to be something more. I add, however, that while PC sought to argue that the counterclaim was shadowy in many aspects, I am not entirely convinced that it is appropriate for me to require *prima facie* credible evidence supporting the counterclaim in an application to transfer, especially given this preliminary stage of proceedings when even the pleadings are relatively inchoate. To make a determination of the *prima facie* merits and credibility of the evidence is effectively a preliminary trial or (minitrial, in the words of [defendant counsel]). That may be appropriate in a striking out application, whether in the State Court or the High Court, but to do so in a transfer application seems to imply that the Supreme Court has already seized jurisdiction over the matter. I also do not read Autoexport to set out a *prima facie* credibility test. Perhaps the better position is that if the pleadings make clear that the counterclaim was brought solely or maliciously to abuse the transfer processes, then that would amount to abuse of court process and be sufficient to negate the transfer application. But that threshold would be abuse of court process, and not a detailed inquiry into the *prima facie* merits or credibility of the pleadings and evidence. Although I have questions about some aspects of the counterclaim, I do not find an abuse of process in this case.

8 Second, DC alluded to several other reasons why the State Courts are not appropriate to hear this matter. Among them is an argument that this being a David v Goliath matter, it is better for perception that it be heard by the Supreme Court and that "David" would be able to get a better outcome in the Supreme Court. I am not able to accept this. If litigants bear the perception that for some reason, justified or otherwise, State Court judges are not as able to or willing to do justice at the same quality as the Supreme Court judges when one party is a big corporation, better financed or more well known, then they are mistaken. And their counsel should tell them that this is mistaken. I need say no more about this point.

9 Thirdly, about complexity of the issues, I have read the pleadings and I do not see anything particularly complex that can only be heard, or would more appropriately be heard, in the Supreme Court. Indeed, the causes of action seem fairly straightforward and would be within the realm of issues dealt with regularly in the State Courts.

10 In relation to s 54E, I adopt the same three reasons above as reasons why I consider this an inappropriate case for the exercise of a discretion to transfer. The proceedings in the State Courts are on a simplified track, designed to expedite matters and facilitate their resolution expeditiously at lower costs. This will only be beneficial for the parties, in particular

> the [d]efendant. Making the transfer order will deprive parties of that set of procedures and subject them to the extended rules of the Supreme Court. On the other hand, the only real prejudice I could identify in not ordering the transfer was the issue of mediation. But for reasons I have explained, this is a colourless fact and a transfer makes that neither more nor less likely.
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> 11 For completeness, I add that it is also not appropriate to transfer the counterclaim alone because, like in Autoexport, the claim and counterclaim are between the same parties and arise largely from the same set of facts. Having separate litigation concerning the same facts will risk a multiplicity of proceedings and conflicting findings.
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> 12 Finally, in view of what parties have informed me about mediation, I wish to urge both parties to seriously consider this as an option. State Court processes and SMC are not mutually exclusive. If there is a will, there is a way. If parties both agree that mediation might be helpful, then it would be a pity for them to give up on this option entirely, simply because one prefers one institution while the other prefers the other institution.

2 On 23 June 2021, the plaintiff appealed against this decision in registrar's appeal no 162 of 2021. On 18 August 2021, I heard the appeal and dismissed it with costs. On 29 September 2021, the plaintiff filed a Notice of Appeal against my decision to the Appellate Division of the High Court.

3 In the appeal before me, the plaintiff relied on substantially the same grounds as the first instance hearing. The learned assistant registrar had ably set out the reasons for dismissing the application with which I fully agree. For those reasons, I dismissed the appeal in registrar's appeal no 162 of 2021.

Lee Seiu Kin
Judge of the High Court

Carolyn Tan Beng Hui and Leong De Shun Kevin (Tan & Au LLP) for the plaintiff;
Ang Tze Phern, Ng Cheng Hsuan Joey and Ou Wai Hung Shaun (Rajah & Tann Singapore LLP) for the defendant.
