Abdul Hamid and Others v Nico Marine Pte Ltd
[2009] SGHC 262

Case Number : Adm in Per 127/2008, RA 216/2009

Decision Date : 23 November 2009

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Navinder Singh (Navin & Co LLP) for the plaintiffs/respondents; Tan Bar Tien (B T Tan & Co) for the defendant/appellant

Parties : Abdul Hamid; Amrin Alex; Denny Aritonang; Nur Hakim; Nur Ikhwan; Rasyidin Ar — Nico Marine Pte Ltd

Civil Procedure – Striking out

23 November 2009

Tan Lee Meng J:

1 The appellant, Nico Marine Pte Ltd ("the company"), is a tug and barge operator. The respondents, Mr Abdul Hamid, Mr Amrin Alex, Mr Denny Aritonang, Mr Nur Hakim, Mr Nur Ikhwan and Mr Rasyidin Ar, who are Indonesian seamen and the company's former employees, instituted the present proceedings on 29 July 2008 to recover what they claim to be outstanding wages owed to them by the company.

2 On 27 May 2009, the company's application for the respondents' claim to be struck out was dismissed by Assistant Registrar Tan Wen Hsien ("AR Tan"). On 25 September 2009, I dismissed the appeal against AR Tan's ruling and now give the reasons for my decision.

3 The respondents do not deny that they had received from the company what they thought had been the wages and allowances under their contracts of employment with the company. However, after they left the company, they discovered that the crew agreements, which had been submitted by the company to the Maritime and Port Authority of Singapore ("MPA"), showed that their wages were in fact more than what they had been paid. The respondents did not know about this discrepancy because Mr Goh Wee Hang ("Goh"), the company's employee, had forged all their signatures on the said agreements before transmitting them to the MPA. Why this was done is not clear at this stage but what is evident is that the respondents did not get to see the crew agreements and they did not know that they had not been paid the amounts stated therein as their remuneration.

4 Goh's machinations came to light after the respondents had ceased to work for the company when Goh was prosecuted for his wrongdoing and fined $1,600. The police had also investigated whether or not Goh had benefited from the forgeries in question.

5 It is the respondents' case that they had been misled by the company with respect to their real wages. The seriousness with which the MPA views the wages of crew may be gleaned from its instructions to masters of vessels, which include the following:

> The Merchant Shipping Act requires the Master of every Ship … to enter into an Agreement with every Seaman whom he carries to sea as one of his Crew….
>
> 2 In order to enable the Crew to know the contents of the Agreement, the Master, at the commencement of the voyage, is bound … to have a legible copy (omitting the signature) posted up in some part of the ship which is accessible to the Crew.
>
> 3 Every erasure, interlineation or alteration in the Agreement (except additions in shipping substitutes or persons engaged after the first departure of the ship) is inoperative unless proved to have been made with the consent of all the persons interested, by the written attestation … of a Superintendent, or elsewhere, of a Consular Officer.

6 The respondents complained that with Goh's forgery of their signatures, the company managed to give the MPA the impression that they had all seen and signed the Crew Agreements when the truth is that they had not seen the said agreements. The company thus succeeded in keeping them in the dark about their real wages during the time they worked for the company. They asserted that as the company had represented to the MPA that the amounts stated in the falsified Crew Agreements were their real wages, the company was liable to reimburse them the difference between their wages as stated in the said Agreements and what they had already received from the company.

Whether the action should be struck out

7 When considering whether or not the respondents' action should be struck out, reference may first be made to O 18 r 19 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed), which provides as follows:

> (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement of any writ in the action, or anything in any pleading or in the endorsement, on the ground that —
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> (*a*) it discloses no reasonable cause of action or defence, as the case may be;
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> (*b*) it is scandalous, frivolous or vexatious;
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> (*c*) it may prejudice, embarrass or delay the fair trial of the action; or
>
> (*d*) it is otherwise an abuse of the process of the Court,
>
> and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

8 As the court's power to strike out an action is rather draconian, an action should not be too readily struck out. In *Gabriel Peter & Partners v Wee Chong Jin* [1998] 1 SLR 374 ("*Gabriel Peter*"), the Court of Appeal explained at [18] as follows:

> In general, it is only in plain and obvious cases that the power of striking out should be invoked. … It should not be exercised by a minute and protracted examination of the documents and facts of the case in order to see if the plaintiff really has a cause of action. The practice of the courts has been that, where an application for striking out involves a lengthy and serious argument, the court should decline to proceed with the argument unless, not only does it have doubts as to the soundness of the pleading but, in addition, it is satisfied that striking out will obviate the necessity for a trial or reduce the burden of preparing for a trial.

9 In contrast, where a case is hopelessly doomed to fail, it should be struck out. In *Bandung Shipping Pte Ltd v Keppel TatLee Bank Ltd* [2003] 1 SLR 295, Chao Hick Tin JA noted at [34] that to allow a claim that is hopeless to proceed further for trial would be to compel the defendants to expend time and money in defending a case which obviously had no merit whatsoever.

10 In the present case, the company asserted that the respondents' claims are doomed to fail because they are unfounded and baseless. The company contended that it is not responsible for the forging of the respondents' signatures in the crew agreements and pointed out that it is illogical for the respondents to mount a claim for wages long after leaving its employment when they had not complained about the matter when they were its employees.

11 The position is not as straightforward as claimed by the company. The respondents' counsel, Mr Navinder Singh, relied on *Lloyd v Grace, Smith & Co* [1912] AC 716 for the proposition that depending on the circumstances, an employer may be liable for the fraud of his employee. Mr Singh also asserted that Goh and the company are parties to the fraud against the respondents and that he is entitled to cross-examine Goh and the company's directors to prove this assertion. I agree that whether or not the company is responsible for Goh's fraud cannot be decided on the basis of affidavit evidence alone.

12 The company also asserted that some parts of the respondents' claims are doomed to fail because they are time-barred. However, in respect of the allegedly barred claims, the respondents have pleaded fraud and relied on s 29 of the Limitation Act (Cap 163, 1996 Rev Ed), the relevant part of which provides as follows:

> 29(1) Where, in the case of any action for which a period of limitation is prescribed by this Act –
>
> (a) the action is based upon the fraud of the defendant or his agent ….;
>
> (b) the right of action is concealed by the fraud of any such person as aforesaid;
> ….
>
> the period of limitation shall not begin to run until the plaintiff has discovered the fraud … or could with reasonable diligence have discovered it.

13 Whether or not the respondents' claims are time-barred can only be known after issues relating to Goh's fraud in relation to the crew agreements submitted to the MPA and the company's liability for his fraud have been fully ventilated at a trial.

14 For the reasons stated, I dismissed the company's appeal against AR Tan's decision. The

respondents are entitled to costs with respect to the appeal.