

Woo Koon Chee v Scandinavian Boiler Service (Asia) Pte Ltd and others
[2010] SGHC 66

Case Number : Suit No 53 of 2008 (Summons No 76 of 2010)
Decision Date : 03 March 2010
Tribunal/Court : High Court
Coram : Philip Pillai JC
Counsel Name(s) : Raymond Lye and Cheryl-Ann Yeo (Pacific Law Corporation) for the plaintiff;
Abraham Vergis and Kimberley Leng (Drew & Napier LLC) for the second to fourth
defendants, sixth to seventh defendants and ninth to twelfth defendants.
Parties : Woo Koon Chee — Scandinavian Boiler Service (Asia) Pte Ltd and others

Civil Procedure

3 March 2010

Philip Pillai JC:

Introduction

1 Summons No 76 of 2010 was an application by the second, third, fourth, sixth, seventh, ninth, tenth, eleventh and twelfth defendant (the “relevant defendants”) under s 14 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) and O 45 r 8 of the Rules of Court (Cap 322, R5, 2006 Rev Ed) (“ROC”) for the court to direct that any Assistant Registrar and/or the Registrar of the Supreme Court may sign the share transfer forms that give effect to the completion of the sale and purchase of the plaintiff’s shares in the first defendant to the second, third and/or the fourth defendant and/or their respective nominees.

Background

2 By consent of the parties, this court earlier ordered on 27 April 2009 (the “Consent Order”) that the second, third and/or fourth defendant and/or their respective nominees purchase the plaintiff’s shares in the first defendant at a fair value to be determined by an independent valuer, of whose valuation report setting out the fair value of the plaintiff’s share would be final and binding on all parties. The valuer was appointed on 27 May 2009. Whilst the original timeline for the issuance of the valuation report was 24 June 2009, it was finally issued on 8 December 2009.

3 The Consent Order prescribed that the completion of the sale and purchase of the plaintiff’s shares take place within three weeks after the valuation report is furnished, in this case, on 29 December 2009. However, this had not taken place even though the relevant defendants’ solicitors had on 11 December 2009 and 22 December 2009 written to the plaintiff’s solicitors to request completion of the sale and purchase and offered to tender a cashier’s order as payment for the shares at the relevant defendants’ solicitors’ office. Due to the plaintiff’s previous solicitor being away and the subsequent change of solicitors, the plaintiff did not respond to the relevant defendants’ request for completion directly and his new solicitors on 30 December 2009 requested for more time.

4 Specifically on 30 December 2009, the plaintiff’s newly appointed solicitors wrote to the relevant defendants’ solicitors requesting that the relevant defendants refrain from taking any action

against the plaintiff and that they would respond to the relevant defendants' solicitors' 22 December 2009 letter by the end of the following week. The relevant defendants agreed to give the plaintiff more time and a fresh request was sent to the plaintiff's newly appointed solicitors by the relevant defendants' solicitors for the completion of the sale and purchase of the shares by 5 January 2010.

5 However, when 5 January 2010 arrived, the plaintiff's solicitors requested, once again, for more time and the completion of the sale and purchase did not take place. The relevant defendants then made this application to effect completion of the sale and purchase of the shares ordered under the Consent Order.

The Arguments

6 The plaintiff's counsel first raised what he considered to be an obstacle to this application. He submitted that a summons cannot be filed on Suit No 53 of 2008 as the applicant was obliged to file a fresh originating summons or writ according to *Indian Overseas Bank v Motorcycle Industries (1973) Pte Ltd & Ors* [1992] 3 SLR(R) 841 ("*IOB v Motorcycle Industries*"). Having read this case closely, I did not think it had any direct bearing to this application to enforce a consent judgment in accordance with O 45 r 8 of the ROC and indicated this to both counsel. *IOB v Motorcycle Industries* supported the proposition that a Consent Order's effects are to put an end to the proceedings, preclude the parties from taking further steps in the action and to supersede the original cause of action altogether (at [12] and [13]). What is sought in this application by summons is the performance of the Consent Order and not the original cause of action. I therefore find the plaintiff's submission to be unmeritorious.

7 The plaintiff's solicitors informed the court, that the plaintiff wished to challenge the valuation report and was thus anxious to resist this application under O 45 r 8 of the ROC. They disclosed that they were actively engaged with experts to commence legal action to challenge the valuation report. There is no obstacle to the plaintiff challenging the valuation report in a separate legal action. The defendant's counsel pointed out to the court that no legal action had been filed by the plaintiff to date. Plaintiff's counsel then replied that that they would file their originating summons immediately, *ie*, on 19 January 2010. In the light of this, I indicated to counsel that I would consider both summonses together before finalizing my decisions. However, it transpired the next day, on 20 January 2010, that the plaintiff's application to file the originating summons on 19 January 2010 was rejected by the Registrar and the subsequent originating summons filed was fixed to be heard on 23 February 2010. In light of this, I decided to issue my decision on the present summons granting an order in terms in favour of the relevant defendants. The plaintiff's counsel applied for further arguments and I heard both counsel again on 26 February 2010.

8 On 26 February 2010, the plaintiff's counsel raised the argument for the first time that where an order for specific performance of a contract is sought, a separate application for specific performance is required under O 45 r 8 of the ROC. Plaintiff's counsel argued that the relevant defendants' application here was not available under O 45 r 8 of the ROC. Plaintiff's counsel cited *P J Holdings Inc v Ariel Singapore Pte Ltd* [2009] 3 SLR(R) 582 in support of his argument but when invited to explain whether there was any proposition of law in that case which assisted him, he was obliged to concede that there were none.

9 O 45 r 8 of the ROC reads:

If a Mandatory Order, an injunction or a judgment or order for the specific performance of a contract is not complied with, then without prejudice to its power under section 14 of the Supreme Court of Judicature Act (Chapter 322), where applicable, and its power to punish the

disobedient party for contempt, the Court may direct that the act required to be done may, so far as practicable, be done by the party by whom the order or judgment was obtained or some other person appointed by the Court, at the cost of the disobedient party, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and execution may issue against the disobedient party for the amount so ascertained and for costs.

The plain reading of O 45 r 8 of the ROC, in particular, the disjunctive "or" in the first line of the rule, which includes "judgments" and presumably consent orders of court, were pointed out to him as being contrary to his construction. He had no response. When asked whether he was submitting that a Consent Order can only be enforced under O 45 r 8 of the ROC by a further action and another court order and to provide any other authorities in support of this, he was obliged to concede that he could find none.

10 Seeing no merit in any of the arguments run by the plaintiff's counsel and having formed a conclusion from the chronology of events and nature of his submissions and replies, I concluded that the plaintiff's attempts to resist the application pursuant to O 45 r 8 of the ROC was a strategy to buy time for his separate legal actions to challenge the valuation report. The plaintiff is at all times at liberty to file these actions and make appropriate applications. There were no substantive legal grounds for me not to grant the application.

11 For the foregoing reasons, I allowed the relevant defendants' application and granted order in terms their prayers 1 and 2, namely that:

- (a) any Assistant Registrar and/or Registrar of the Supreme Court may sign the share transfer forms to give effect to the completion of the sale and purchase of the plaintiff's shares in the first defendant as provided for under the terms of the Consent Order; and
- (b) the plaintiff file a consent to entry of satisfaction within three days of completion of the sale and purchase of the plaintiff's shares in the first defendant.

12 Costs of this application and this hearing of further arguments of S\$2,000 exclusive of disbursements awarded to the relevant defendants. The relevant defendants be at liberty to apply.

Copyright © Government of Singapore.