Oversea-Chinese Banking Corporation Ltd v Lulla-Motion (S) Pte Ltd [2007] SGHC 53

Case Number : OS 2234/2006, RA 56/2007

Decision Date : 17 April 2007

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Lee Eng Beng and Loke Shiu Meng (Rajah & Tann) for the plaintiff; Lim Joo Toon (Lim Joo Toon & Co) for the defendants

Parties : Oversea-Chinese Banking Corporation Ltd — Lulla-Motion (S) Pte Ltd

17 April 2007 Judgment reserved.

Choo Han Teck J:

1 The plaintiff bank had a business relationship with the second defendant that was about 20 years old, according to the second defendant's email of 22 December 2006 to Tan Ngiap Joo, a Deputy President of the plaintiff. The first defendant owed a sum of $146,989.69 from overdraft facilities granted to it by the plaintiff. The second defendant owed the plaintiff a sum of $229,304.15 also from overdraft facilities extended by the plaintiff. The second defendant also owed a sum of $2,640,772.85 in the form of a housing loan taken from the plaintiff. The loans were secured by the personal guarantees executed by the second and third defendants in favour of the plaintiff, as well as a mortgage over the property known as 243 Punggol Seventh Avenue.

2 By an order of court of 26 January 2007, Assistant Registrar David Lee ("AR Lee") ordered the second defendant to deliver vacant possession of 243 Punggol Seventh Avenue to the plaintiff, and all three defendants were also ordered to pay the outstanding debts due under the overdraft facilities as secured by the personal guarantees of the second and third defendants. The defendants applied to set aside those orders and that application (to set aside the earlier orders) was heard before Assistant Registrar Kenneth Yap ("AR Yap") on 23 February 2007. AR Yap dismissed the application and the defendants appealed against that decision.

3 Mr Lim Joo Toon, counsel for the defendants, informed me that the defendants were not represented in the proceedings before AR Lee and AR Yap, and that he had only been instructed for this appeal. The defendants had filed this appeal themselves before instructing Mr Lim. Mr Lim contended that the plaintiff ought not to have proceeded with its application for judgment on 26 January 2007 in the absence of the defendants. He argued that the defendants were justifiably absent because they were negotiating an out-of-court settlement with the plaintiff, and had reason to believe that the hearing scheduled for the 26 January would be adjourned. He further submitted that the orders in respect of the payment of interest were wrong because the awards of 9.75% interest on the overdraft facilities and 7% on the housing loan were not in accordance with the contract. Counsel also raised various other substantive defences in respect of the plaintiff's claim, a claim based on a breach of the plaintiff's duties to the defendants insofar as the latter's effort in getting fresh loans were concerned. The substantive defences were not relevant before me because the thrust of Mr Lim's submission was that the AR Lee should not have heard the plaintiff on 26 January in the absence of the defendants, and therefore, the orders made ought to be set aside so that the defendants could properly present their defences.

4 Mr Lim submitted that the second defendant was engaged with the plaintiff in an effort to settle the matter amicably, and that this originating summons had been fixed for hearing on several occasions previously, but were adjourned by the plaintiff for that reason, and that on those occasions the defendants were not required to be present. Hence, counsel submitted that the defendants reasonably expected that the plaintiff would be asking for a similar adjournment on 26 January. Instead, he was only informed by an email sent to him at 9pm on 25 January telling him that the plaintiff was proceeding with its application the next day. However, the second defendant said that he did not see that email until the afternoon of 26 January and by which time the orders had already been made. Mr Lee Eng Beng, counsel for the plaintiff, conceded that the parties had attempted to settle the matter amicably, but he submitted that the plaintiff had not given any impression that it would not proceed with the hearing on 26 January. He pointed out that the Originating Summons had previously been adjourned to be heard on 19 January 2007 to enable the parties to negotiate a settlement. On the eve of the hearing scheduled for 19 January the plaintiff's solicitors wrote to all three defendants. The important passage at paragraph 5 read as follows:

> The [plaintiff] remains prepared to enter into a settlement agreement with you on the terms previously communicated to you, and hopes that you will seriously consider accepting the settlement. As a gesture of goodwill, we will request the Court to grant a 1-week adjournment of the hearing of [this Originating Summons] to January 2007. Subject to the Court granting the adjournment, we will also extend the deadline for the acceptance of our terms of settlement as stated in our letter of 16 January 2007 to 5pm on 24 January 2007. Please signify your acceptance by signing the acceptance column in the said letter and returning the letter by 5pm on 24 January 2007, failing which we will have to withdraw our offer and proceed with the hearing of [this Originating Summons].

The plaintiff's solicitors attended court the next day and requested that the hearing be adjourned to 26 January 2007. The defendants were duly notified by letter dated 19 January which also warned that if the defendants "fail to attend, such order will be made as the Court may think just and expedient."

5 On the plaintiff's account, which was borne out by the letters, I am satisfied that there was no reason to vitiate AR Lee's orders made on 26 January 2007 by reason of the application being heard in the absence of the defendants. If the defendants had misunderstood the situation it was not because of the conduct of the plaintiff or its solicitors. Had the defendants been advised by counsel at the material time, such a misunderstanding might not have arisen. Accordingly, AR Yap's dismissal of the application was correct and this appeal against his dismissal therefore failed.

6 The defendants had further complicated their case by filing their own appeal to set aside AR Yap's decision of 23 February 2007 (to set aside the orders of AR Lee of 26 January 2007) instead of appealing against the orders of AR Lee. This course appeared also to have been undertaken without counsel's advice. In the hearing before me, Mr Lim referred to various issues that might be legitimate issues relating to the loan and guarantee contracts between the plaintiff and the defendants, but because the issue before me was the propriety of the hearing on 26 January 2007, the contractual issues were not relevant. They would have been relevant had this appeal been against the orders of AR Lee instead of the order of AR Yap. If the defendants were out of time for appealing against AR Lee's orders they should have applied for leave to appeal out of time and the merits of the appeal would still have been relevant in that application.

7 For the reasons above, the appeal before me was dismissed.