Trane US Inc and Others v Kirkham John Reginald Stott and Others [2009] SGHC 59

Case Number : Suit 676/2007, RA 375/2007

Decision Date : 09 March 2009

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Niru Pillai (Niru & Co) for the plaintiffs; Chew Kei-Jin (Tan Rajah & Cheah) for the defendants

Parties : Trane US Inc; Trane International Inc; Trane Export LLC — Kirkham John Reginald Stott; Solutions Pte Ltd; Pt Tatasolusi Pratama

Civil Procedure – Extension of time

9 March 2009

Judith Prakash J

1 All the plaintiffs are companies incorporated in the State of Delaware, United States of America. The first and second plaintiffs are wholly-owned subsidiaries of American Standard Companies Inc. The third plaintiff is a wholly owned subsidiary of the second plaintiff.

2 The first defendant is a director of the second and third defendants. He is a Singapore citizen and is a shareholder of the third defendant. He is also a director of Amazon Investments (Singapore) Private Limited, the sole shareholder of the second defendant. The second defendant is a company incorporated in Singapore carrying on the business of an investment company and of the provision of management and administrative support services. The third defendant is a trading company incorporated in Indonesia with a branch registered here.

3 The plaintiffs commenced this action Suit No 676 of 2007 on 23 October 2007 ("Suit 676") seeking, *inter alia*, declarations in relation to various agreements entered into between, *inter alia*, the first plaintiff and the second defendant. In essence, the action concerns the right of the third defendant, PT Tatasolusi Pratama ("TSP"), to sell and distribute Trane products in Indonesia.

4 In June 2007, the second defendant and TSP commenced a suit in the District Court of South Jakarta against, *inter alia*, the first plaintiff. The subject matter in the Indonesian action and Suit 676 is the same, i.e. the right of TSP to distribute Trane products in Indonesia.

5 On 20 November 2007, the defendants filed Summons No 5167/2007/G to stay Suit 676 on the ground that Singapore is not the natural and appropriate forum.

6 On 19 November 2007, the defendants had sought the plaintiffs' agreement to defer the filing of their defence pending the hearing of the stay application. The plaintiffs did not agree. Therefore, the defendants filed Summons No. 5168/2007/L on 20 November 2007. The substantive prayer was that:

> The time limited for the Defendants to file and serve their Defence (and Counterclaims, if any) be extended until fourteen (14) days after the final disposal of the Defendants' application for a stay of the action herein (including any appeals therefrom).

7 On 26 November 2007, the plaintiffs filed Summons No. 5248/2007/G to apply for an anti-suit injunction to restrain the defendants from commencing or continuing with any proceedings in Indonesia.

8 On 30 November 2007, the Assistant Registrar allowed the substantive prayer sought by the defendants in Summons No. 5168/2007/L. The plaintiffs appealed against this decision by Registrar's Appeal 375 of 2007 (RA 375/2007/R).

9 Subsequently, the anti-suit injunction sought by the plaintiffs was granted on 15 July 2008. The stay application was heard and dismissed on 21 August 2008. The defendants have appealed to the Court of Appeal against both decisions.

10 I dismissed RA375/2007/R and I now give my reasons for doing so.

The plaintiffs' arguments

11 The plaintiffs argued that the decision of the Assistant Registrar in Summons No. 5168/2007/L was wrong in principle. According to the plaintiffs, the Assistant Registrar erred in granting an extension of time until the exhaustion of all appeals. An appeal does not operate as a stay of execution or of proceedings. Therefore, to obtain a stay pending an appeal to the Court of Appeal, there must first be a formal application before the Judge who makes the order being appealed against. According to the plaintiffs, the order granted by the Assistant Registrar was equal to a stay of the order made by the Judge dismissing the stay application in the event that there was an appeal to the Court of Appeal. The plaintiffs submitted that this took away the right of the Judge to refuse a stay pending appeal to the Court of Appeal.

12 Additionally, the plaintiffs submitted that they would be prejudiced if the defendants were allowed to hold back the filing of the defence. If the defendants were not obliged to file a defence, there would be a substantial time lag until both the appeals on the anti-suit injunction and the stay applications are heard. The progress of the case will be impeded. In contrast, there would be no possible prejudice to the defendants in filing their defence. The plaintiffs had agreed that they will not treat the filing of the defence as a relevant consideration when the defendants' appeal to the Court of Appeal against the dismissal of the stay application is heard.

13 The plaintiffs also argued that there is now no reason why the defendants cannot file their defence. The action in Indonesia was the only reason for an extension of time for the defendants to file the defence. The Indonesian action had since been dismissed on the basis of non-prosecution. The defendants could not file a fresh action in Indonesia because of the anti-suit injunction.

14 The last argument by the plaintiffs was that the defendants had failed to discharge the burden of showing the merits for the appeal on the stay application. Therefore, they should not have been granted an extension of time to file the defence.

My decision

15 In *Australian Timber Products Pte Ltd v Koh Brothers Building & Civil Engineering Contractor (Pte) Ltd* [2004] SGHC 243, the Court held that the filing of a stay application does not automatically bring all timelines in the Rules of Court (Cap 322, 1997 Rev. Ed.) to a standstill. Therefore, the filing of a stay application does not stop time for service of the defence from running. This principle was approved by the Court of Appeal in *Carona Holdings Pte Ltd and Others v Go Go Delicacy Pte Ltd* [2008] SGCA 34 at [25] ["*Carona*"].

16 On the facts of this case, the plaintiffs had refused to consent to a deferment of filing of the defence pending the stay application. Therefore, it was necessary for the defendants to apply for an extension of time under Order 3 r 4 of the Rules of Court.

17 In *Yeoh Poh San v Won Siok Wan* [2002] 4 SLR 95 ["*Yeoh Poh San*"], the defendant had applied for a stay on the grounds of *forum non conveniens*. The Assistant Registrar dismissed the application and the defendant appealed. No defence was filed. Before the appeal was heard, the plaintiff applied for summary judgment in default of defence. The defendant applied for an extension of time until after the hearing of the appeal to serve her defence. Woo JC held that once an application for an extension of time to file a defence pending the outcome of an appeal is made, the extension should generally be granted so as not to render the appeal nugatory. He made the following observation (at [18]):

> The very reason why a plaintiff's solicitor does not, and should not, insist on the filing of the defence before the original stay application is heard is equally applicable to an appeal, *ie* to require the filing of the defence will defeat the very purpose of the stay application, or, as the case may be, the appeal.

18 According to Woo JC, prejudice would be caused to the defendant if he was required to file a defence. At [27], he explained that:

> The point is that while a defendant is seeking to stay the proceedings, whether by way of original application or an appeal, the defendant should not be required to meet the plaintiff's claim on the merits. A defendant is entitled to focus his attention on the appeal for a stay and not be distracted by running two contradictory courses of action at the same time.

19 In *Carona*, the Court of Appeal approved the observations made by Woo JC in *Yeoh Poh San*. At [34], the Court of Appeal observed that:

> The above dictum suggests that Woo JC was clearly mindful of the practical concern of ensuring that prejudice to the defendant would not be caused by making them run two "contradictory courses of actions". We broadly agree. A defendant should not be compelled to file a defence and made to adopt two contrary courses of action simultaneously. Through the judicious exercise of discretion, the courts can vary timelines in appropriate cases so as to avoid the prejudice caused to the defendant by making them run two contradictory courses of action.

20 Based on the abovementioned principles, I concluded that the Assistant Registrar had rightly granted an extension of time to file the defence to 14 days after the final disposal of the stay application and any appeals therefrom.

21 I did not see any force in the argument that there should have been a formal application before the Judge who made the stay order being appealed against for there to be a stay of the proceedings pending an appeal to the Court of Appeal, or that the decision of the Assistant Registrar took away the right of the Judge to refuse a stay pending appeal to the Court of Appeal.

22 This was an application for extension of time to file a defence and not an application for a stay pending appeal. If the defendants had not obtained an extension of time before the stay application was heard, they could have applied to the judge for such an extension. However, since the defendants had already obtained an extension until the exhaustion of all appeals, there was no such need.

23 Indeed, the effect of the extension of time to file the defence until the appeal is heard may

impede the progress of the case and therefore cause some prejudice to the plaintiffs. However, until all avenues of appeal in relation to a stay application are exhausted, our courts are not properly seized of the matter. In *The Jarguh Sawit* [1998] 1 SLR 648 at [30], Karthigesu JA made the following observations on the issue of jurisdiction:

> Firstly, whether or not a court has jurisdiction is, of necessity, a question logically prior to the substantive dispute of the parties. Unless and until a court is properly seized, it cannot adjudicate on the matter. If the appellants were right to characterise a dispute over jurisdiction as a substantive issue, and that they were entitled to raise it as a substantive defence, then they would in effect be arguing this at trial: "Our case is that this court has no jurisdiction to decide substantive issues; could you then please give a ruling on a substantive issue?" The defect in logic is self-apparent. Thus, our law provides that a party disputing jurisdiction may appear before the court to argue the question of jurisdiction (which we hold to be a procedural issue) without thereby submitting to the court's jurisdiction to determine substantive issues.

24 In *Yeoh Poh San*, it was held that the observation of Karthigesu JA was not confined to a challenge based on an absence of jurisdiction. It applied equally to an application for stay whether based on *forum non conveniens* or some other ground. Therefore, the substantive issue should not be determined until the procedural issues have been settled.

25 The plaintiffs submitted that if RA 375/2007/R was allowed they would not treat the filing of the defence as a relevant consideration when the defendants' appeal to the Court of Appeal against the dismissal of the stay application was heard. In my opinion, this amounted to a compromise position where the defendant would be required to file a defence provided the plaintiff undertook not to treat the filing of the defence as a step in the proceedings.

26 However, such compromise orders are not desirable. This appears from the following passage of the Court of Appeal's judgment in *Samsung Corp v Chinese Chamber Realty Pte Ltd and Others* [2004] 1 SLR 382 at [24]:

> The order made by the judge is also a "compromise" order. On the one hand, it requires the defendant to file his Defence, which is clearly inconsistent with the rule laid down in s 6(1) of the Arbitration Act that a defendant who applies for a stay on the ground of there being an arbitration clause must not take any step in the proceeding and, on the other hand, it provides that a Defence so filed by the defendant would not be taken to mean that the defendant had taken a step in the proceeding. But should the court go to the extent of performing what appears to be a "gymnastic" exercise in order to achieve a result, which as a matter of principle, is far from logical?

27 Additionally, in *Carona*, the Court of Appeal quoted *Yeoh Poh San* to explain the rationale behind the undesirability of compromise orders. At [21], the Court of Appeal stated:

> The rationale behind this is immediately apparent. As Woo Bih Li JC took pains to clarify in Yeoh Poh San v Won Siok Wan [2002] 4 SLR 91 ("Yeoh Poh San") at [24]–[29], compromise orders are not desirable for four primary reasons:
>
> (a) no such compromise orders are granted before the original stay application is heard and the position ought to be the same for appeals on stay applications;
>
> (b) insisting on the filing of a defence would be prejudicial to a defendant who has to meet the merits of the plaintiff's claim while seeking a stay;

(c) if the defendant succeeds in the appeal, he may never have to meet the plaintiff's claim on the merits as the plaintiff may thereafter abandon, or even lose his claim in the alternative jurisdiction; and

(d) our courts are not properly seized of such matters if the stay is indeed granted on such a basis.

28 The plaintiffs' argument that there was no reason why the defendants should not be required to file a defence since the Indonesian action had been discontinued was also without merit. The Indonesian action was struck out because the defendants failed to prosecute it. The anti-suit injunction made them unable to prosecute the Indonesian action. As mentioned earlier, the defendants have appealed to the Court of Appeal. If the appeal is allowed, the defendants will be able to start another action in Indonesia.

29 The last argument by the plaintiffs was that since the stay application had been dismissed and an anti-suit injunction had been granted, it is clear that the judge considered that there was no merit in the stay application. In *Carona*, the Court of Appeal held that the potential success of the stay application would be one of the factors to be assessed in the exercise of the discretion to grant an extension of time for filing the defence. The plaintiffs argued that since the stay had been dismissed and the defendants had failed to show the Court why the appeal on the stay would likely be allowed, the defendants should not have an extension of time to file their defence. They argued that the defendants had the burden of showing me the merits of the appeal.

30 I disagreed. The defendants have the burden of convincing the Court of Appeal that the stay should be allowed. The defendants only had the burden of convincing me that their request for an extension of time to file the defence was reasonable and that they had legitimate grounds to ask for a stay. In *Carona*, the Court of Appeal held (at [102]):

> The potential success of the stay application would often be one of the factors to be assessed in the exercise of the discretion to grant an extension of time for filing the defence. In most cases, the fact that there is a contractual arbitration clause would suffice, without more, to show that there may well be merit in the stay application. The Appellants' concern that the approach of Australian Timber ([8] supra) encourages unmeritorious defendants to make unsubstantiated requests for a stay is considerably overstated. Only reasonable requests for an extension of time would be granted, ie, in instances where the defendants have established that they have legitimate grounds (usually on the basis of documentary evidence) to ask for a stay.

31 On the facts of the case, I was satisfied that the defendants had legitimate grounds to ask for a stay and their request for an extension of time to file the defence was not unreasonable.

32 Accordingly, I dismissed the appeal.