Valency International Trading Pte Ltd *v* Alton International Resources Pte Ltd [2011] SGHC 119

Case Number	: Suit No 196 of 2010 (Registrar's Appeal No 79 of 2011)
Decision Date	: 12 May 2011
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Haridass Ajaib and R Srivathsan (Haridass Ho & Partners) for the plaintiff/appellant; Toh Kian Sing SC and Ting Yong Hong (Rajah & Tann LLP) for the defendant/respondent.
Parties	: Valency International Trading Pte Ltd — Alton International Resources Pte Ltd

Civil Procedure

12 May 2011

Choo Han Teck J:

1 The plaintiff's statement of claim was struck out by the assistant registrar under Rules of Court (Cap 322, 2007 Rev Ed), O 18 r 19 on the ground that the plaintiff's claim was clearly unsustainable in law. The facts that were not in dispute were as follows.

2 The plaintiff contracted to purchase about 65,000 tons of iron ore for US$86 per ton. Payment was to be made by an irrevocable letter of credit from Singapore Bank. These terms were set out in an email from the defendant dated 22 July 2009. A series of emails were exchanged between the plaintiff and the defendant from that date to 27 July 2009 when the plaintiff accepted the defendant's offer and confirmed the terms. The terms provided a laycan period from 1 to 10 August 2009. That being the case, the plaintiff was obliged to effect payment before 1 August 2009.

3 However, on 28 July 2009 the defendant told the plaintiff that they did not have the cargo. The contract was intended to be a CFR contract. On 31 July 2009 the defendant told the plaintiff that there was no contract.

4 The above facts were not in dispute. The issue before the assistant registrar was whether on those facts, the plaintiff's claim disclosed no cause of action and ought to be struck out. The defendant counsel succeeded in persuading the assistant registrar that when a party was in breach, the innocent party must either choose to accept the breach (and terminate the contract) or affirm the contract and, in which case, it must perform its part. In this case, the latter option meant that the plaintiff had to open the letter of credit in payment. The defendant's counsel submitted that there was no third option.

5 Mr Haridass, counsel for the plaintiff submitted that the plaintiff was not obliged to open the letter of credit when the defendant had stated that there was no cargo to be exported. Mr Toh, counsel for the defendant submitted that the position taken by the plaintiff, namely, not performing his part of the contract even though he had not accepted the defendant's breach (and terminated the contract) was clearly rejected by the House of Lords in *Fercometal S.A.R.L. v Mediterranean Shipping Co. S.A.* [1989] 1 AC 788 ("*Fercometal*").

6 In my view, even if that was the state of the law in England, it is open to the plaintiff to argue that *Fercometal* was either misapplied or should not be applied in Singapore. That would be an argument in law which will affect the outcome of the case. It is an argument that should be decided by the trial judge. Until that point of law is determined, the plaintiff's case cannot be struck out at the interlocutory stage. The defendant is entitled to submit no case to answer at the end of the plaintiff's case at trial. If counsel is right and *Fercometal* applied and should be followed, the plaintiff's case will be dismissed by the trial judge at that stage. Until then, the plaintiff is entitled to argue the application of *Fercometal* as a point of law.

7 In my view, therefore, the plaintiff's statement of claim cannot be said to contain no cause of action until the point of law is determined. That point of law, touching on the merits, is a matter for the trial judge to decide. The appeal is therefore allowed with costs in the cause, here and below.