

Tapematic SpA v Wirana Pte Ltd and Another
[2002] SGHC 5

Case Number : Suit 146/2001
Decision Date : 09 January 2002
Tribunal/Court : High Court
Coram : Woo Bih Li JC
Counsel Name(s) : Ashok Kumar and William Ong (Allen & Gledhill) for the plaintiffs; Toh Kian Sing and Edric Pan (Rajah & Tann) for the first defendants; Dinakaran (Thomas Tham & Co) for the second defendant
Parties : Tapematic SpA — Wirana Pte Ltd; Another

Agency – Evidence of agency – Actual authority – Whether actual authority must originate from agreement between principal and agent – Whether necessary for principal to specify all the acts that agent has authority to do – Apparent authority – Principal needing to make representations as to agent's authority

Civil Procedure – Pleadings – Striking out – Striking out – Application to strike out parts of statement of claim – When application to be made – Whether late application bound to fail – O 18 r 19(1) Rules of Court

Judgment

GROUND OF DECISION

Introduction

1. Tapematic SpA ('Tapematic') is the Plaintiff in this action.
2. It was alleged that in late 1999 and early 2000 one Umar Zen, who is the Second Defendant, had approached Tapematic to propose two deals concerning the sale of optical equipment to some Indonesian buyers. Subsequently, two contracts for the sale of optical equipment by Tapematic to the Indonesian buyers known by the acronym 'KBEI' were entered into.
3. It was agreed that payment would be made by way of letters of credit. Tapematic alleged that they told Umar Zen that they would not accept letters of credit issued by Indonesian banks.
4. Arrangements were then made by Umar Zen for two letters of credit to be issued by Standard Chartered Bank ('SCB') in favour of Tapematic.
5. The applicant for the letters of credit was the First Defendant Wirana Pte Ltd ('Wirana').
6. The letters of credit required original cargo receipts issued and signed by an authorised signatory of Wirana stating that the goods were received in good order to be presented.
7. Tapematic alleged that Umar Zen had represented to it that one Raj Kumar Singh was an authorised signatory of Wirana.
8. Subsequently, Tapematic received two cargo receipts on a letterhead with the name 'Wirana Pte Ltd' and signed by one Raj Kumar Singh. Tapematic then tendered the cargo receipts to SCB for payment.

9. However SCB then sent two advices of refusal to Tapematic informing it that the cargo receipts were rejected on the basis, inter alia, that the cargo receipts were not signed by an authorised signatory of Wirana and Wirana had refused to waive the discrepancy.
10. Although Tapematic managed to get the equipment shipped back from Indonesia to Italy, it alleged it suffered some financial loss.
11. Tapematic then commenced action against Wirana, as First Defendant, and Umar Zen, as Second Defendant.
12. The claim against Wirana was based on misrepresentation i.e that Umar Zen had misrepresented to Tapematic that Raj Kumar Singh was authorised to sign the cargo receipts and that Umar Zen was an agent of Wirana.
13. Wirana denied that it had authorised Umar Zen to act on its behalf. It also denied that Raj Kumar Singh was an authorised signatory. It alleged that no one by such a name was in its employ and it had no knowledge of such a person. Also, the cargo receipts were not made on its stationery or letterhead.
14. Umar Zen denied that he had represented to Tapematic that Raj Kumar Singh was an authorised signatory of Wirana.
15. He also alleged that he had dealt with Wirana through an intermediary, one Ramdas Nair, and left the matter pertaining to the signing of the receipts to Ramdas Nair and Wirana. He too claimed that he had no knowledge of Raj Kumar Singh.
16. Wirana applied to strike out certain paragraphs or parts of paragraphs of the Amended Statement of Claim against it in so far as they alleged that Umar Zen was acting as agent or on behalf of Wirana or that Wirana had made any false representation arising from what Umar Zen had allegedly represented to Tapematic.
17. The grounds of the application were that the paragraphs or parts thereof disclosed no reasonable cause of action, were scandalous, frivolous and/or vexatious, may prejudice, embarrass or delay the fair trial of this action and/or were otherwise an abuse of the process of the court.
18. On 25 July 2001, SAR Tan Boon Heng granted Wirana's application.
19. Tapematic appealed against that decision and on 20 November 2001, I dismissed its appeal with costs.
20. Tapematic has appealed against my decision to the Court of Appeal.

Paragraph 31 of the Amended Statement of Claim

21. The thrust of Tapematic's claim against Wirana was that Umar Zen had the authority, actual or apparent, of Wirana to act in all matters in relation to the letters of credit. Paragraph 31 of the Amended Statement of Claim contained the Particulars of this assertions. It states:

'31. At all material times the 2nd Defendant had the authority, actual or apparent, of the 1st Defendant to act in

all matters in relation to the letters of credit.

PARTICULARS

(a) The 2nd Defendant had informed the Plaintiff in or around the months of January and February 2000 that he had arranged for the 1st Defendant to ~~apply for the~~ issuance of the 1st and 2nd letters of credit by Standard Chartered Bank.

(b) The 1st letter of credit was applied for by the 1st Defendant on or about 8 December 1999 and subsequently issued by Standard Chartered Bank on 9 December 1999.

(c) The 2nd letter of credit was applied for by the 1st Defendant on or about 28 January 2000 and subsequently issued by Standard Chartered Bank on 1 February 2000.

(d) After the preliminary cargo receipts were signed by Mr. Pritam Singh from KBEI and then transmitted to the 2nd Defendant via facsimile, the Plaintiffs requested the 2nd Defendant to procure the 1st Defendant to issue to the Plaintiffs the Wirana cargo receipts signed by its authorized signatory Mr. Raj Kumar Singh. On 24 February 2000 the Plaintiffs received the 2 Wirana cargo receipts both dated 11 February 2000 and signed by Mr. Raj Kumar Singh.'

Contentions for Wirana

22. Mr Toh Kian Sing, counsel for Wirana, submitted that for there to be actual authority, there must be a consensual agreement between the principal and agent. He cited Bowstead & Reynolds on Agency, Sixteenth Edition 1996, at p 103 to 104.

23. He submitted that just because Umar Zen had told Tapematic that letters of credit would be issued in its favour and this was done on the application of Wirana, it did not make Umar Zen the agent of Wirana.

24. As for the cargo receipts, Mr Toh submitted that Tapematic were unable to say that these documents were received from Wirana. Furthermore, the documents were received after the alleged representation about Raj Kumar Singh on 11 February 2000.

25. As for apparent authority, Mr Toh submitted that it was established law that there must be a representation from the principal to the third party that the agent had authority to do what he did. There is no concept of a self-authorising agent.

26. For this proposition, Mr Toh cited:

(a) *Freeman & Lockyer v Buckhurst Park Properties* [1964] 2 QB 480

(b) *Tribune Investment Trust v Soosan Trading* [2000] 3 SLR 405, which approved *The Ocean Frost, Armagas Ltd v Mundogas SA* [1986] 1 AC 717.

27. The act of applying for letters of credit could not be considered as a representation by Wirana that Umar Zen was its agent to make representations about Wirana's authorised signatory. Also, the letters of credit themselves did not mention Umar Zen.

28. Mr Toh also submitted that the parties had gone through discovery and interrogatories and yet Tapematic were in no better position than when its Statement of Claim was filed.

29. He relied on the judgment of Justice Lai Siu Chiu in *Thomas & Betts (S.E. Asia) Pte Ltd v Ou Tin Joon & Anor* (Unreported, 27 February 1998) where the judge said at paragraphs 22 to 24:

'22. The particulars given by the plaintiffs were at best vague and sweeping. It seemed to me that the plaintiffs were merely trying to frame their claim in the widest possible terms without the requisite particulars.

23. It is a clear rule of pleading that 'every pleading must contain the necessary particulars of any claim' (O 18 r 12(1) of the RSC). In the absence of providing adequate particulars, and in the absence of any explanation as to why these particulars were inadequate, I was constrained in finding that there were insufficient facts in the pleadings to support the cause of action. I did not think it fair that a plaintiff should be allowed to allege first, and then through the process of discovery or interrogatories, hope to substantiate those allegations later - that would be tantamount to 'fishing' which any court would vigilantly guard against in balancing the interests and rights of the parties concerned.

24. Consequently, on the face of the pleadings, I concluded that no reasonable cause of action was disclosed. Alternatively, it would at least be open to argument that the pleadings were so speculative, harassing, oppressive and uncertain that striking out could also have been justified on the basis that this constituted an abuse of process of court. I accordingly struck out the cause of action based on the implied term.'

[Emphasis added.]

30. Mr Toh submitted that the present case was a stronger one for striking out because in *Thomas & Betts*, discovery and interrogatories had not yet been completed.

31. He also submitted that the further and better particulars supplied by Tapematic did not advance its case on agency.

32. Mr Toh further submitted that Tapematic's assertion about Umar Zen amounted to an alleged agent, Umar Zen, making a representation of another agent's, Raj Kumar Singh's, authority. Tapematic could not validly make such an assertion unless Umar Zen had actual authority to do so which he did not. Mr Toh cited *British Bank of the Middle East v Sun Life Assurance Co of Canada* [1983] 2 Lloyd's Rep 9 for this proposition.

33. As for the cargo receipts, Tapematic's case was based on the premise that these were forgeries. Therefore it could not rely on these same documents to establish agency.

34. As for an argument that Wirana's application to strike out was made late in the day, Mr Toh

submitted that when Wirana's application was filed, the affidavits of evidence-in-chief had not yet been exchanged.

35. Furthermore, the application was filed after discovery and interrogatories. If it had been filed earlier, it would have been met with the argument that discovery and interrogatories were pending.

36. As for yet another request by Tapematic's solicitors for further discovery, this was dated 24 July 2001 and made after the application to strike out had been filed. It was sent to Mr Toh's firm on the eve of the hearing of the application to strike out. Mr Toh was suggesting that it was not a bona fide request for further discovery.

Tapematic's contentions

37. Mr Ashok Kumar, counsel for Tapematic, submitted that both Wirana and Umar Zen were asserting that they had no knowledge of Raj Kumar Singh. Both also denied sending the cargo receipts to Tapematic.

38. Furthermore, Wirana was saying that it had dealt with Ramdas Nair, not Umar Zen, and Ramdas Nair had said he was an agent of Wirana. However, Ramdas Nair also claimed he did not know Raj Kumar Singh.

39. As regards actual authority, he submitted that Umar Zen had informed Tapematic that the letters of credit would be issued and they were indeed issued. These were issued upon the application of Wirana. When Tapematic reminded Umar Zen about the cargo receipts, two cargo receipts carrying the Wirana letterhead and signed by Raj Kumar Singh were sent to Tapematic.

40. Mr Kumar also submitted that the issue of actual authority should be resolved at a proper trial.

41. As for apparent authority, Mr Kumar did not dispute that there is no concept of a self-authorising agent. However, there could very well be a holding out or representation of the authority of Umar Zen by conduct.

42. He put his argument this way:

'43. This "holding out" by way of conduct on the part of Wirana is supported by the particulars in paragraph 31 of the ASOC. Wirana has put Umar Zen in a position where he appears to be authorized to make the representations; to put it another way, Wirana has acquiesced or permitted Umar Zen to negotiate or liase with the Plaintiff on all matters in relation to the letters of credit, which would include of course the identity of the authorised signatory of Wirana for the cargo receipts.

44. The two LCs were applied for by Wirana after Umar Zen had assured the Plaintiffs that he would make all necessary arrangements. This is not denied by Wirana who has admitted on oath that they applied for the LCs for a commission. Negotiations on the draft terms of the letters of credit were also conducted between Plaintiffs and Umar Zen.

45. Accordingly, it is submitted that there was this holding out by Wirana

clothing Umar Zen with apparent authority. When the question as to who Wirana's authorised signatory for the cargo receipts was (sic) came up, it was therefore entirely reasonable for the Plaintiffs to rely on Umar Zen's representations that Raj Kumar Singh was the authorised signatory for Wirana. Cargo receipts carrying Wirana's letterhead and signed by Raj Kumar Singh did arrive in accordance with Umar Zen's representations. It is the Plaintiff's case that Wirana is therefore bound by Umar Zen's representations by virtue of their holding him out as their agent.'

43. Mr Kumar pointed out that the cases relied on by Mr Toh were after full trial.

44. He also relied on certain parts of the judgment of Tay Yong Kwang JC in *HSBC v Jurong Engineering* [2000] 2 SLR 54.

45. In paragraph 63 thereof, Tay JC said:

'63 As a general rule, for a principal to be bound under the doctrine of apparent authority, the representation as to the agent's authority must emanate from the principal himself - *Freeman & Lockyer v Buckhurst Park Properties*. In relation to corporations, where representations can only be made through agents, the translation of the general rule has produced the consequence that in order for a corporation to be bound under the doctrine of apparent authority, the representation as to the authority of the agent must be made by some other intermediate agent within the corporate structure, who has actual authority to do the very act that he represents the other person has having authority to do. The decision of the English House of Lords in the case of *British Bank of the Middle East v Sun Life Assurance Co of Canada (UK) Ltd* [1983] BCLC 78 illustrates this rule.'

46. In paragraph 68 and 70 thereof, Tay JC said:

'68 There is, however, a narrow exception to the general rule stated above: if the company has expressly authorised the agent to make representations on its behalf, then any representation made by that agent that he himself has authority to do an act is a good representation for the purposes of conferring apparent authority on the agent to do that act, even if he has been expressly prohibited to do it, and even if it is not something that agents in his position usually have power to do. The leading authorities on this exception are the two English cases of *The Raffaella*; *Soplex Wholesale Supplies Ltd and PS Refson & Co Ltd v Egyptian International Foreign Trading Co* [1985] 2 Lloyd's Rep 36 and *First Energy (UK) Ltd v Hungarian International Bank Ltd* [1993] 2 Lloyd's Rep 194.

70 Similarly, in *First Energy (UK) Ltd v Hungarian International Bank Ltd*, the English Court of Appeal held that in certain circumstances, an agent had *apparent authority to communicate his principal's approval for him to enter into a particular transaction on behalf of the principal*, even though the third party was aware that the agent did not normally have authority to enter into such transactions. The Court of Appeal pointed out that such apparent authority arose from HIB having placed J in the position of senior manager. As senior manager, J had usual authority to sign and send letters

on behalf of HIB and therefore had apparent authority to represent by letter that he had obtained authorisation from HIB to make an offer on their behalf. The Court of Appeal stressed that their judgment was consistent with the reasonable expectations of the parties, and that, in the circumstances, it was unrealistic to have expected First Energy to have checked with HIB's Head Office in London as to whether an employee as senior as J had obtained necessary approval to make the offer. The Court of Appeal was able to distinguish *Armagas Ltd v Mundogas SA*, for in that case, Lord Keith had not said as a matter of law that an apparent authority to communicate approval could never arise where there was no authority in the agent on his own to enter into the transaction.'

47. Mr Kumar submitted that there should be a trial vis--vis Wirana to establish who sent the cargo receipts and the identity of Raj Kumar Singh.

48. He also referred to an oral response from an officer of SCB, one Peter Tan, who allegedly said that he had dealt with one Raj Kumar Singh of Wirana in relation to the two letters of credit but when a formal Answer to Interrogatories was filed, Peter Tan said he dealt with one Raj Bhan Singh.

49. Mr Kumar said that he had asked for further discovery by a fax dated 24 July 2001. If further discovery was obtained, he might be able to file further particulars to strengthen Tapematic's case.

50. Mr Kumar's last point was that the application to strike out was taken at a very late stage. By the time it was heard, the affidavits of evidence-in-chief had been exchanged. He relied on *Halliday v Shoemith* [1993] 1 WLR 1 and Civil Practice in Singapore and Malaysia by Pinsler 2001 p XVI 2.

My decision

51. Although Mr Toh had submitted that actual authority must emanate from some consensual agreement between the principal and agent, it is clear from *Bowstead & Reynolds on Agency*, which he relies on, that actual authority can be express or implied. A principal need not specifically tell the agent that the agent has the authority to do each and every step. That would be unrealistic. It suffices if the agent is appointed to carry out a function or activity for the principal and the step is reasonably incidental to the function or activity.

52. In the case before me, Umar Zen was neither an officer or employee of Wirana.

53. The crux of the issue was whether by engaging in discussions with Umar Zen, whether directly or through Ramdas Nair, regarding the issue of letters of credit and by applying for the same to be issued, Wirana had appointed Umar Zen as its agent with actual authority for Umar Zen to make representations to Tapematic about the authority of a supposed officer of Wirana. I will refer to this purpose as 'the purpose in question'.

54. I was of the view that the said discussions with Umar Zen and the applications for letters of credit could not, without more, possibly mean that Umar Zen had been appointed as agent of Wirana for the purpose in question. Otherwise, it would mean that the mere discussion by an intended applicant of letters of credit with a broker or intermediary about the issuance of letters of credit and the consequent application for the same would in every case make that person an agent of the applicant for the purpose in question. The fact that the letters of credit had been issued did not

advance Tapematic's case any further.

55. As regards apparent authority, there was no representation from Wirana to Tapematic about Umar Zen.

56. The fact that Umar Zen had informed Tapematic that he had arranged for the issuance of the letters of credit did not constitute a representation from Wirana. There was clearly no holding out by Wirana even if it knew that Umar Zen was liaising or negotiating with Tapematic on the letters of credit.

57. The mere fact that Wirana had applied for the issuance of the letters of credit after Umar Zen had informed Tapematic that he would make the necessary arrangements also did not constitute a representation from Wirana to Tapematic.

58. It was irrelevant whether Ramdas Nair was an agent of Wirana because there was also no representation from Ramdas Nair to Tapematic.

59. Although the cases cited by Mr Toh were decisions after a full trial, it did not mean that an allegation about the status of a person as agent could not be struck out in appropriate circumstances.

60. As for the case of *HSBC v Jurong Engineering*, the person who made the representation was an officer of the corporate defendant. The facts in that case were different.

61. As regards suggestions by Mr Kumar that the cargo receipts could possibly emanate from Wirana, I was of the view that this was contrary to the premise on which Tapematic's case was founded.

62. Tapematic's case was premised on the basis that the cargo receipts were not issued by an authorised signatory of Wirana and hence its allegation of misrepresentation from Umar Zen as agent of Wirana. That being the case, there was no reason to have a trial to allow Tapematic a chance to establish that the cargo receipts in fact emanated from Wirana.

63. The same point applied to the latest request for discovery by Tapematic's solicitors dated 24 July 2001. The documents for which discovery was sought were between SCB and Wirana. They were sought with a view to uncovering the authorised signatory of Wirana which was a non-issue.

64. In my view, this latest attempt at further discovery was a desperate manoeuvre to shore up Tapematic's claim against Wirana.

65. Notwithstanding earlier discovery and answers to interrogatories, Tapematic was still in no better position than when it initiated the action.

66. As for the last argument about the late filing of the application to strike out, O 18 r 19(1) of the Rules of Court provides that:

'The Court may at any stage of the proceedings order to be struck out ... any pleading ...'

[Emphasis added.]

While an application to strike out a pleading should be made as soon as possible, a late application

was not doomed to failure.

67. The case of *Halliday v Shoesmith* [1993] 1 WLR 1 relied on by Mr Kumar was one in which the application to strike out was made at the commencement of the trial and on the facts there the application was not allowed.

68. In the case before me, the further and better particulars furnished by Tapematic were couched with the qualification that there were pending discovery and/or interrogatories. Even when Wirana's solicitors sought further and better particulars, after discovery and answers to interrogatories were provided, they were met with the response that Tapematic would be serving some more interrogatories and would request for further and better particulars.

69. I accepted Mr Toh's argument that had the application to strike out been made earlier, it would have been faced with the counter argument that it was premature.

Sgd:

WOO BIH LI
JUDICIAL COMMISSIONER

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