The "Sin Chuen No 112" (Union Bank of Taiwan and others, interveners) [2007] SGHC 11

Case Number : Adm in Rem 175/2005, RA 269/2006

Decision Date : 08 January 2007

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Raymond Ong Sie Hou and Jasmine Chin (Rajah & Tann) for the plaintiff; Gan Seng Chee and Benjamin Seow Kian Hong (Ang & Partners) for the first intervener

Parties : —

Civil Procedure – Amendments – Statement of claim – Plaintiff applying to amend amount claimed and contracts in support thereof in statement of claim – Whether application should be dismissed for lack of bona fides

8 January 2007 Judgment reserved.

Choo Han Teck J:

1 This action involved a claim by the plaintiff, the master of the vessel "Sin Chuen No 112", against the owners of the vessel for his unpaid wages. The owners have not taken part in the proceedings and may not even be found. Resistance to the plaintiff's claim came from the first interveners, the Union Bank of Taiwan ("the Bank"), who were the mortgagees of the vessel, which had since been sold by the sheriff for $847,251.69. After deducting the sheriff's expenses, a balance of $675,024.32 remained. The plaintiff's claim was initially for an aggregate sum of US$600,000, based on wages allegedly outstanding from 1999. This sum comprised mainly of bonus payments which the owners of the vessel had promised him.

2 The plaintiff filed his statement of claim on 31 October 2005. In it, he pleaded his employment under a contract of employment dated 10 August 1999. That contract was renewed in writing in December 2001 and again in December 2003. These three contracts (referred to collectively as "version 1") were attached to the plaintiff's affidavit dated 4 October 2005. The Bank then asked to inspect the contracts. Upon inspection, the Bank noted that the inspected copies ("version 2"), which were purportedly the originals of the version 1 contracts, were different from the version 1 contracts which had been appended to the plaintiff's affidavit of 4 October 2005.

3 On 2 December 2005, the plaintiff's motion for judgment in default of appearance was dismissed by Lai Siu Chiu J. The plaintiff then produced three more copies of contracts ("version 3") purporting to be the real original copies of his employment contracts. By an Order of Court dated 27 July 2006, the plaintiff's statement of claim was amended. On 8 September 2006, the plaintiff applied to again amend his statement of claim to substitute the version 3 contracts with yet another purported version of his employment contracts ("version 4"). This application was dismissed by the assistant registrar. Unlike version 1 (which comprised of photocopies of *three* contracts), versions 2, 3 and 4 consisted of only *two* contracts each. By reason of version 4, the plaintiff sought to reduce his claim against the owners of the vessel to a sum of about US$240,000. The version 4 contracts were unsigned. The plaintiff consequently appealed against the assistant registrar's refusal to let him amend his statement of claim. The notes of evidence below showed that the assistant registrar dismissed the plaintiff's application on the ground that she did not think it to be a *bona fide*

application.

4 Counsel for the plaintiff, Mr Raymond Ong, submitted that the plaintiff had produced the contracts as and when the owners of the vessel had given them to him in response to his requests for these contracts during the course of this action. Notably, the plaintiff had not explained why he did not appear to have had a single copy of his own employment contract in his possession, or why he had not claimed his long overdue salary (or, at least, the bonus element in any event) for a period of more than six years. The question in this appeal was therefore as follows: should the plaintiff be precluded from making another amendment now? There have been many statements of principles from the English and Singapore courts to the effect that at such a stage in the proceedings, an amendment should be allowed if it would not cause injustice to the other party. As the term "injustice to the other party" is a fairly loose and general term, it requires elaboration for the sake of precision. Before doing that, however, let me first set out a passage where that phrase has previously been used. In *Cropper v Smith* (1884) 26 Ch 700 ("*Cropper*"), Bowen LJ held (at 710):

> Now, I think it is a well established principle that the object of Courts is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights. Speaking for myself, and in conformity with what I have heard laid down by the other division of the Court of Appeal and by myself as a member of it, I know of no kind of error or mistake which, if not fraudulent, or intended to overreach, the Court ought not to correct, *if it can be done without injustice to the other party*.
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> [emphasis added]

The question as to when injustice might result was considered by Mohd Azmi FJ in *Yamaha Motor Co Ltd v Yamaha (M) Sdn Bhd* [1983]1 MLJ 213 to be a question that involved three aspects, which I do not think were necessarily comprehensive, but which were adequate for present purposes. The first concerned the bona fides of the applicant or application, the second concerned the issue of adequate compensation by way of costs, and the third was concerned with the transformation of the character of the claim into something different from the original one. In the present case, the plaintiff's claim was founded upon a purported breach of contract by reason of the owners of the vessel's failure to pay his wages. The proposed amendment was for the purpose of allowing the plaintiff to plead his case in accordance with what he *now* recognised as being the legitimate version of his employment contract, *ie*, version 4. I am of the opinion that that amendment would not alter the nature or character of the claim. If the amendment were allowed, the trial might have to be delayed but that would not, on the affidavit evidence, have resulted in any inconvenience or expense that could not be compensated with costs. In this regard, counsel for the Bank raised the argument that the amendment might have the prejudicial effect of denying them the right to rely on the defence of limitation. Though that would normally be an issue that the court might consider, in this case, the dates appeared not to be so different as to have the result of precluding the Bank from pleading a limitation defence. Thus, the only issue before me was whether the application lacked bona fides.

5 A lack of bona fides is ostensibly a *weaker* version of the notion of "fraudulent" conduct which Bowen LJ expounded upon in *Cropper* ([4] *supra*). In the present case, the Bank also complained that the plaintiff had refused to produce the originals of the contractual documents which constituted version 4, the insinuation being that the plaintiff might either be unable to produce any, or was afraid that these documents, if produced, might be proved to be forgeries. In the present case, the plaintiff's problems run far deeper. If as he said, the contracts were given to him by the owners of the vessel, and any fraudulent forgery of the documentation was attributable solely to that party, he had not sought leave to join the owners as a third party. It was not a sufficient answer, in my view, to claim that the owners could not be found. The plaintiff had entered judgment against the owners on

the basis of the version 1 contracts. Could- and more importantly, *should*- he be allowed to enjoy a judgment so obtained and be allowed to claim for the same subject matter (his salary and bonuses) under a different contract? I do not think so. The plaintiff, having proceeded to have judgment entered thus against the owners of the vessel, could no longer say that his claim was based on another contract. It was therefore not merely an amendment that affected only the interveners. The matter *as a whole*, as opposed to the action between the plaintiff and the Bank, is far too ripe to be reversed, certainly not on the facts as the affidavit evidence currently stands. For these reasons, the appeal is dismissed, with costs to be taxed if not agreed.