Koh Kow Tee Michael *v* Lee Ewe Ming Edward and another
[2015] SGHC 60

Case Number : Suit No 782 of 2014 (Registrar's Appeal No 10 of 2015)

Decision Date : 09 March 2015

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Teo Weng Kie and Shahira Bte Mohd Annuar (Tan Kok Quan Partnership) for the appellant/D2; Bogaars Nigel Brian and Subramaniam Sundarum (Bogaars & Din) for the 1st respondent/plaintiff; Abdul Salim A Ibrahim and Francis Chan (United Legal Alliance LLC) for the 2nd respondent/D1

Parties : Koh Kow Tee Michael — Lee Ewe Ming Edward and another

Civil Procedure – Stay of Proceedings

9 March 2015

Woo Bih Li J:

Introduction

1 On 6 December 2013, three Lamborghini cars were involved in a chain collision along the North South Highway of West Malaysia in the direction from Singapore to Kuala Lumpur. The first car was driven by the plaintiff's son-in-law Chua Zhi Rong ("Chua"). The second and third cars were driven by the first and second defendants respectively.

2 The plaintiff commenced this action to claim various heads of damages. The largest item was the replacement cost for his car which was apparently engulfed in flames. The replacement cost claimed was $1.3m.

3 The plaintiff's claim was made by him personally and was not a subrogated claim, *ie*, it was not a claim made by an insurer. The first and second defendants each sought an indemnity from their insurers, *ie*, Liberty Insurance Pte Ltd ("Liberty") and AIG Asia Pacific Insurance Pte Ltd ("AIG") respectively. AIG was formerly known as Chartis Insurance Pte Ltd. Therefore, Liberty and AIG were conducting the defences of the first and second defendants respectively.

4 On 1 October 2014, AIG filed Summons 4900/2014 ("the Summons") to stay the action pursuant to the inherent jurisdiction of the court under O 92 r 4 of the Rules of Court (Cap 322, R5, 2006 Rev Ed). AIG's reason was that there was a Market Agreement (Barometer of Liability) ("the Market Agreement") signed between the General Insurance Association of Singapore ("GIA") and various insurers including Liberty and AIG which provided who (as between the insurers) was to pay the claim of the owner of the first car.

5 AIG's position was that the Market Agreement applied. Under that agreement, Liberty was liable to pay the plaintiff's claim for loss of his car in full. Liberty disputed that the Market Agreement applied. One of its reasons was that the plaintiff's claim was not made by an insurer.

6 AIG sought a decision from the GIA Panel of Adjudicators ("the GIA adjudicators") as to

whether Liberty was bound by the Market Agreement to pay the plaintiff's claim in full. If so, that would mean that, as between Liberty and AIG, AIG would not be liable to pay the plaintiff's claim even if the second defendant had caused or contributed to the cause of the accident and to the loss of the plaintiff's car.

7 AIG filed the Summons to seek a stay of court proceedings pending the decision by the GIA adjudicators. Apparently a decision had been reached but was not released pending the payment of an administrative fee by Liberty.

8 The Summons was resisted by Liberty and the plaintiff. It was dismissed with costs by an Assistant Registrar ("AR"). AIG then filed an appeal by way of Registrar's Appeal no 10 of 2015. On 20 January 2015, I heard the appeal and dismissed it with costs. I set out my reasons below.

Reasons

9 The main issue was whether a stay ought to be granted. Liberty and the plaintiff did not dispute that the court had an inherent jurisdiction to do so.

10 One sub-issue was the test to be applied for a stay of proceedings under the court's inherent jurisdiction.

11 AIG relied on the Court of Appeal decision in *Tjong Very Sumito v Antig Investments Pte Ltd* [2009] 4 SLR(R) 732, a case involving an arbitration agreement or the existence of such an agreement. There, the Court of Appeal agreed that a stay of proceedings should be ordered if it was at least arguable that a dispute is the subject of an arbitration agreement. However, as can be seen, the disputes in the case before me were not confined to a dispute between AIG and Liberty only. The larger dispute arose from the claim by the plaintiff against both defendants, and the plaintiff was not subject to any adjudication conducted by GIA. Therefore, the question was not whether it was arguable that Liberty was bound by the Market Agreement and the adjudication process under it.

12 In *Four Pillars Enterprises Co Ltd v Beiersdorf Aktiengesellschaft* [1999] 1 SLR(R) 382 ("*Four Pillars*"), the Court of Appeal said that the court's inherent jurisdiction to stay court proceedings, when the Arbitration Act did not apply, was very rarely exercised.

13 In *Reichhold Norway ASA and another v Goldman Sachs International* (2000) 2 AU ER 679 ("*Reichhold*") Lord Bingham of Cornhill CJ said, at 690, that a stay of proceedings under the court's inherent jurisdiction is only granted in rare and compelling circumstances.

14 In *Shanghai Construction (Group) General Co Singapore Branch v Tan Poh Seng* [2012] SGHCR 10, an AR referred to both *Four Pillars* and Lord Bingham's view in *Reichhold* and concluded that even after *Reichhold*, it remains the position that a stay of proceedings (in the absence of a binding arbitration agreement between all the parties) will be granted only in rare and exceptional circumstances. That AR also mentioned the interest of justice.

15 I will also refer to *Wee Soon Kim Anthony v Law Society of Singapore* [2001] 2 SLR(R) 821 because the parties and the AR who heard the Summons referred to it. In that case, the Court of Appeal said that the essential touchstone for the court to exercise its inherent jurisdiction was that of "need". However, the court in that case was not asked to order a stay but instead to allow two solicitors to intervene in an application to court by a complainant for an order to compel the Law Society of Singapore to apply to the Chief Justice for the appointment of a disciplinary committee to consider his complaint against the two solicitors. Therefore, the facts there were very different and,

with respect, the case does not add anything material to the last three cases discussed above.

16 I agreed that in the circumstances, a stay would rarely be granted and only if the interest of justice warranted such an order.

17 On the facts before me, AIG submitted that clearly the Market Agreement would apply in the circumstances while Liberty sought to persuade me to the contrary.

18 I was of the view that under the Summons and the consequent appeal, it was not for the court to decide whether the Market Agreement would apply. That was being decided by the GIA adjudicators. Whether Liberty would contest their decision if that decision went against Liberty was another matter.

19 The main question about granting a stay was whether a decision by the GIA adjudicators in favour of AIG would resolve the plaintiff's claim entirely. As stated above, according to AIG, if the Market Agreement applied, Liberty would be contractually bound to pay the plaintiff's entire claim. However, even if the Market Agreement applied, it was binding as between Liberty and AIG only. As Liberty submitted, the plaintiff was not a party to the Market Agreement. It was not bound by it. Nor could it derive any benefit from it.

20 Liberty was alleging that Chua, the driver of the plaintiff's car, had contributed to the cause of the accident. Therefore, even if Liberty were liable to AIG to pay the plaintiff's entire claim, it was not precluded from raising contributory negligence against Chua and hence against the plaintiff. For the time being, it was not necessary for me to decide whether the plaintiff was liable for the negligence of Chua.

21 Although AIG initially appeared to agree before me that Liberty was not precluded from alleging contributory negligence against the plaintiff, AIG later argued that it would be a breach of the Market Agreement for Liberty to claim contributory negligence against the plaintiff if Liberty was liable, as between Liberty and AIG, to pay the plaintiff's claim.

22 My tentative view was that this was not correct. Such a conclusion would give the plaintiff the benefit of the Market Agreement even though it was not a party to it. Neither was the plaintiff claiming the benefit of the Market Agreement under any statute on third party's rights.

23 In other words, even if the GIA adjudicators were to rule that as between Liberty and AIG, Liberty was to pay all of the plaintiff's claim and assuming such a ruling was binding on Liberty, this would not resolve the plaintiff's claim which would still have to proceed.

24 AIG submitted that legal costs would be saved if the ruling was in favour of AIG. However, this submission assumed that such a ruling would mean that Liberty was also obliged not to contest the plaintiff's claim. In my tentative view, it was unlikely that Liberty was so obliged. At most, it would only mean that AIG need not vigorously contest the claim of the plaintiff since, as between AIG and Liberty, Liberty would be liable to pay the claim.

25 Furthermore, if AIG had to defend the plaintiff's claim against the second defendant pending the ruling and the release of the ruling by GIA, AIG could attempt to claim the costs of doing so against Liberty so long as such costs were over and above what AIG would have incurred in any event if Liberty had agreed from the start that it was liable, as between them, to pay the plaintiff's claim. Therefore, any extra costs incurred by AIG because there was no stay might well be for Liberty's account eventually if AIG were correct about Liberty's liability to AIG.

26 AIG's argument about the saving of costs was therefore not a strong one.

27 I also found it strange that even if the ruling of the GIA adjudicators was to be in favour of AIG, or AIG obtained a court order declaring that such a ruling was binding on Liberty, AIG would still claim that Liberty would be in breach of contract if Liberty continued to pursue its contributory negligence allegation against the plaintiff. Such a course of action suggested that AIG was not acting *bona fide*. What concern could it be of AIG if Liberty wanted to pursue the contributory negligence against the plaintiff? AIG could not suggest any valid reason to adopt such a course of action beyond reiterating that it was to save legal costs. However, by then, the main opponent of the plaintiff would be Liberty and not AIG. Liberty would be the one incurring costs and expenses to meet the plaintiff's claim.

28 I add that the decision of Moore-Bick J in *Reichhold Norway ASA and another v Goldman Sachs International* [1999] 1 All ER 40, which AIG relied on heavily, did not assist AIG because the facts there were quite different.

29 As for AIG's emphasis that the courts support alternative dispute resolution, I was of the view that this submission was off the mark. A refusal to order a stay of the court proceedings did not mean that the GIA adjudication process was being displaced. Both the GIA adjudicators and the court proceedings would proceed concurrently.

30 AIG also argued that if it filed a defence to the plaintiff's claim, this would arguably amount to a submission to the court's jurisdiction which would in turn mean that it had waived its right to have the dispute between Liberty and AIG adjudicated by the GIA adjudicators. I doubted that if AIG filed such a defence, this would mean that it had waived its right to the said adjudication. Furthermore, this concern could have been addressed by a court order that AIG's participation in the action was without prejudice to its alleged right to seek such adjudication. In any event, AIG did not seek such an order to preserve its alleged right.

31 In the circumstances, I was of the view that there was no merit in AIG's stay application and dismissed its appeal with costs.