

Yeoh Poh San and Another v Won Siok Wan
[2002] SGHC 196

Case Number : Suit 12/2002/W, RA 94/2002/Y
Decision Date : 28 August 2002
Tribunal/Court : High Court
Coram : Belinda Ang Saw Ean JC
Counsel Name(s) : Andre Arul (Arul Chew & Partners) for the appellant/defendant; L Kuppanchetti (Alban Tay Mahtani & De Silva) for the respondents/plaintiffs
Parties : Yeoh Poh San; Choo Lee Chin — Won Siok Wan

Judgment

GROUND OF DECISION

1. This was an appeal against the decision of the Asst. Registrar May Loh, refusing a stay of the Respondents' action against the Appellant. I heard the appeal on 21 May 2002 and affirmed the Asst. Registrar's decision. The Appellant, being dissatisfied with my decision, filed Notice of Appeal on 12 June 2002.

2. The Appellant, Won Siok Wan ("Won") and the 2nd Respondent, Choo Lee Chin ("Choo") are named account holders of three joint accounts with United Overseas Bank, Main Branch, 80 UOB Plaza, Singapore. Either account holder could operate the accounts in that the bank could act on the sole signature of either account holder.

3. It was common ground that after Won left the home where she and Yeoh lived, Won travelled to Singapore on 11 June 2001 and during that visit withdrew various sums of money from the three joint accounts. All in all she withdrew a total of S\$2.5m or thereabouts. A breakdown of withdrawals from the three joint accounts is as follows:

Current account no. 101-311-077-3 S \$1,036,000.00

Fixed Deposit account no. 101-462-177-1 S \$ 810,596.41

Foreign Currency Account no. 101-074-120-9 US\$ 372,122.49

(denominated in US Dollars)

4. Won then deposited the withdrawals into separate bank accounts in her sole name with United Overseas Bank in Singapore.

5. Yeoh Poh San ("Yeoh"), the 1st Respondent and Choo objected to the withdrawals when they learned about what Won had done. Yeoh alleged that Won had misappropriated trust money. Yeoh's evidence, which is corroborated by Choo, is that the monies in the joint accounts were his savings for his old age. He was the sole contributor of the funds deposited in the three joint accounts. Won and Choo, both held the monies on trust for him. Won and Choo were to share equally the balance of the monies in the joint accounts upon Yeoh's death.

6. Prior to the withdrawals on 11 June 2002, Won and Choo were Yeoh's companions. Won, however, claimed that she was more than a companion. She was all along Yeoh's common law wife, having lived together as man and wife for 20 years from July 1981 to June 2001. I should mention that Yeoh married Choo on 21 August 2001.

7. On 4 January 2002, the Respondents issued proceedings against Won and on 29 January 2002 successfully obtained a mareva injunction freezing Won's assets in Singapore. Won failed in her application filed on 18 February 2002 to set aside or

vary the injunction.

8. On 18 February 2002, Won applied for a stay of the action on the ground of forum non conveniens. It was argued that the action should be stayed for the following reasons:

- (i) the Appellant and Respondents are Malaysians and ordinarily resident in Malaysia;
- (ii) the main witnesses are resident in Malaysia;
- (iii) 1st Respondent has assets in Malaysia;
- (iv) the Appellant has assets in Malaysia;
- (v) there are issues of Malaysian law before the Singapore court.

9. The principles governing a stay of proceedings on the ground of forum non conveniens are well established. The House of Lords' decision in *Spiliada Maritime Corporation v Consulex* [1987] AC 460 was affirmed and applied in *Brinkerhoff Maritime Drilling Corp & Anor v PT Airfast Services Indonesia & Anor* [1992] 2 SLR 776; *Eng Liat Kiang v Eng Bak Hern* [1995] 3 SLR 97 and *Oriental Insurance Co Ltd v Bhavani Stores Pte Ltd* [1998] 1 SLR 253.

10. The Court of Appeal in *PT Hutan Domas Raya v Yue Xiu Enterprises (Holdings) Limited & Anor*. [2001] 2 SLR 49 at 54 re-affirmed the *Spiliada* approach:

"...The correct approach which a court should take in such a case is as follows. The first stage is for the court to determine whether prima facie, there is some other available forum, having competent jurisdiction, which is more appropriate for the trial of the action. The legal burden of showing that rests on the defendant. In determining that issue the court will look to see what factors there are which point in the direction of another forum as being the forum with which the action has the most real and substantial connection, e.g. availability of witnesses, the convenience or expenses of having a trial in a particular forum, the law governing the transaction and the places where the parties reside or carry on business. Unless there is clearly another more appropriate available forum, a stay will ordinarily be refused. If the court concludes that there is such a more appropriate forum, it will ordinarily grant a stay unless, in the words of Lord Goff, 'there are circumstances by reason of which justice requires that a stay should nevertheless not be granted. In this inquiry the court will consider all the circumstances of the case, including circumstances which go beyond those taken into account which considering connecting factors with other jurisdictions' (hereinafter referred to as 'the unless question' or 'unless proviso' as may be appropriate in the context). One such factor which would warrant a refusal of stay would be if it can be established by objective cogent evidence that the plaintiff will not obtain justice in the foreign jurisdiction. But the mere fact that the plaintiff has a legitimate personal or juridical advantage in proceedings in Singapore is not decisive; regard must be had to the interests of all the parties and the ends of justice. We would emphasise[e] that in determining the 'unless question' all circumstances must be taken into account, including those taken into account in determining the question of the more appropriate forum. However, in this stage of the inquiry the burden shifts to the plaintiff."

11. Chao JA delivering the decision of the Court of Appeal in *PT Hutan Domas Raya v Yue Xiu Enterprises (Holdings) Limited* said that ultimately the question is "where should the case be suitably tried having regard to the interest of the parties and the ends of justice."

12. The Respondents' claim in this action against Won is, inter alia, for money had and received, breach of fiduciary duties owed to Yeoh and for an account. The issue in this case is: Were the monies in the joint accounts impressed with a trust for the

benefit of Yeoh.

13. Counsel for Won, Mr. Andre Arul argued that the monies in the joint accounts were gifts from Yeoh. She had every right to withdraw the monies from the accounts. The alleged trust, if any, was probably created in Malaysia and the dispute is best left to the Malaysian courts to decide. Counsel for the Respondents, Mr. L. Kuppanchetti took the opposite view.

14. A claim for money had and received arises in the place of receipt, which in this case, is Singapore. The joint accounts were opened in Singapore and the alleged misappropriation was committed in Singapore where she withdrew the monies and immediately transferred the funds into her own bank accounts in Singapore with United Overseas Bank Ltd. Singapore was the place where the alleged misappropriation and enrichment took place. On this analysis, there is no conflict of laws issue. But if there were a conflict of laws issue, namely, what law governs the Respondents' claim to the monies, I would regard Singapore law as the proper law of the country where the enrichment occurred: *Hong Kong and Shanghai Banking Corp Ltd v United Overseas Bank Ltd* [1992] 2 SLR 495; *Kartika Ratna Thahir v PT Pertamina Minyak dan Gas Bumi Negara (Pertamina)* [1994] 3 SLR 257.

15. In a stay application, it is appropriate for the court to form, at this interlocutory stage before all the evidence has been heard, a prima facie view on the governing law. See *Banco Atlantico v The British Bank of The Middle East* [1990] 2 Lloyd's Rep 504. Even if a different view is taken and the lex causae is Malaysian law, the Appellant did not adduce any evidence of Malaysian law. On any view, the applicable law is the law of Singapore

16. On this approach, Singapore is the natural forum or most appropriate forum for the determination of the dispute. The place where the breach was committed is prima facie the natural forum: *Cordoba Shipping Co. Ltd v National State Bank* [1984] 2 Lloyd's Rep 91. Additionally, the governing law is Singapore. Thus, there must be weighty grounds for displacing Singapore as the more appropriate forum and in my judgment no weighty grounds for doing so were shown.

17. It was said by Mr. Arul that Malaysia is clearly the more appropriate forum, as the Respondents and Appellant are Malaysian citizens. The parties all reside and have property in Malaysia. Moreover, Yeoh is a partner of a law firm in Kuala Lumpur and Choo is an employee of the firm. The parties are therefore amenable to the jurisdiction of the courts in Malaysia for the adjudication of the dispute.

18. I was not satisfied that the parties' own connecting factors with Malaysia were of sufficient weight to enable me to disregard the factors that so clearly point to Singapore as the appropriate forum. There is undoubtedly a tenable Malaysian flavour as far as the parties' own connection with Malaysia is concerned. But more importantly, the subject matter of the dispute itself has no connection with Malaysia. It must be remembered that the court is required to consider what forum the issues have the closest connection with and will not simply weigh factors without reference to the likely issues. See *The Hooghly Mills Co Ltd v Seltron Pte Ltd* [1995] 1 SLR 773.

19. Mr. Arul referred me to two recent decisions of the Court of Appeal in *Datuk Hamzah bin Mohd Noor v Tunku Ibrahim Ismail Ibni Sultan Iskandar Al-Haj* (Civil Appeal no. 600086 of 2001) and *Andre Ravindran S. Arul v Tunku Ibrahim Ismail Ibni Sultan Iskandar Al-Haj* (Civil Appeal no. 600012 of 2001) where the actions were stayed for Malaysia. He urged me to follow these recent decisions where many of the same connecting factors relied on here were present in the two cases.

20. How each factor is to be weighed so as to tilt the balance of convenience in favour of or against a stay varies from case to case. The outcome of each case applying the well-established principles governing a stay of an action on ground of forum non conveniens is very much dependent on the facts. As Lord Templeman in *Spiliada* at p 465 observed: "The authorities do not, perhaps cannot give any clear guidance as to how these factors are to be weighed in any particular case...".

21. The allegation of trust is a matter more important for Yeoh than Won to adduce evidence on. The witnesses of fact are the Respondents and Appellant as the parties most involved in the setting up of the joint accounts in Singapore and the deposits made over the years. Won has assets in Singapore and Malaysia. There was no suggestion that a Singapore Judgment cannot be enforced in Malaysia.

22. Factors affecting convenience and expense arising from the need for the parties to travel and stay in Singapore for the trial is a neutral factor.

23. Mr. Kuppanchetti submitted that the Respondents genuinely desire to have the action adjudicated in Singapore. They have obtained a mareva injunction against the Appellant and have fortified their undertaking as to damages by depositing S\$200,000 with their lawyers as stakeholders. In my view, the order to fortify the undertaking as to damages is a juridical advantage Won had gained thus far in the Singapore proceedings. It is a factor to be taken into account in answering the question whether the issue in dispute will be tried more suitably for the interests of the parties and the ends of justice in Singapore.

24. Mr. Arul referred to proceedings in Malaysia and Thailand. The proceedings in Malaysia were brought by Won for a declaration that she was at all material times Yeoh's common law wife. She also sought an injunction to restrain Yeoh from disposing of and/or charging the property known as 18, Pesiaran Bukit Tunku, 50480 Kuala Lumpur, Malaysia.

25. The Malaysia proceedings were filed on 14 September 2001 eight months after the action herein and shortly after Yeoh married Choo in August. Yeoh succeeded in his procedural objections to strike out the Malaysian proceedings. Won's appeal was pending at the time this matter was heard by me.

26. As for the Thai proceedings, they arose from the following events. Yeoh and Won are joint account holders of two bank accounts in Thailand. After she left Yeoh on 11 June 2001, she withdrew monies from the two joint accounts and thereafter deposited the monies in two other accounts she held with her brother, On A Wan. Yeoh on hearing what she had done lodged a complaint with the Thai police. Won had apparently made a false declaration that she had lost the passbook of one of the Thai bank accounts. Arising from Yeoh's complaint, criminal proceedings are apparently afoot in Thailand. Yeoh had filed a civil action in Thailand against Won and On A Wan on the basis that he was the sole owner of the funds. At date of hearing of the Registrar's Appeal, the Thai proceedings had yet to be served.

27. Yeoh in his affidavit filed on 2 April 2002 deposed that the Malaysian and Thai proceedings have no bearing whatsoever on the issue before the Singapore court, namely whether the monies in the joint accounts were held on trust by Won and Choo. A relevant issue is the rights and obligations between Won and Choo as joint account holders.

28. The proceedings in Malaysia and Thailand are in my view totally irrelevant. The issues in those proceedings are different and separate from the cause in Singapore. So are the parties. Choo is not involved in the proceedings in Thailand or Malaysia. In Malaysia, Won is the plaintiff and Yeoh the defendant. In the proceedings in Thailand, Yeoh had sued Won and her brother for the proceeds of the joint accounts in Thailand.

29. In the circumstances, as Won had not established that Malaysia is a more appropriate forum for the action, I dismissed her appeal with costs fixed at \$3000.

Sgd:

BELINDA ANGSAW EAN

JUDICIAL COMMISSIONER

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