Sim Chay Koon and others *v* NTUC Income Insurance Co-operative Ltd [2015] SGHC 43

Case Number	: Suit No 199 of 2014 (Registrar's Appeal No 181 of 2014)
Decision Date	: 10 February 2015
Tribunal/Court	: High Court
Coram	: Woo Bih Li J
Counsel Name(s)	: Peter Cuthbert Low and Raj Mannar (Peter Low LLC) for the appellants/plaintiffs; Hri Kumar Nair SC and Shivani Retnam (Drew & Napier LLC) for the respondent/defendant.
Parties	: Sim Chay Koon and others — NTUC Income Insurance Co-operative Ltd

Arbitration – Stay of court proceedings – Court's discretion under Arbitration Act

10 February 2015

Woo Bih Li J:

Introduction

1 This action is a representative action brought by four persons for themselves and on behalf of 34 others (collectively referred to as "the Plaintiffs") against NTUC Income Insurance Co-operative Limited ("NTUC Income"). NTUC Income applied, by Summons No 1308 of 2014, to stay the action in favour of arbitration under s 6 of the Arbitration Act (Cap 10, 2002 Rev Ed) ("AA"). Its application was allowed by an Assistant Registrar with the qualification that it agrees to submit all claims pleaded to arbitration and will not raise any jurisdictional challenges in the arbitration.

2 The Plaintiffs then filed Registrar's Appeal No 181 of 2014. I heard and dismissed their appeal. The Plaintiffs have filed an appeal against my decision to the Court of Appeal. I set out my reasons below.

Background

3 Before 2012, NTUC Income had appointed various agents, including the Plaintiffs, under letters of appointment to promote and sell insurance policies. Parties referred to these letters as "Contracts of Employment" and I will use the same description for convenience. The terms in these contracts were incorporated into a collective agreement. The terms were negotiated at three-yearly intervals between NTUC Income and the Singapore Insurance Employees' Union ("SIEU"). The Plaintiffs were members of SIEU.

4 According to NTUC Income, it had been alerted to inadvertent non-compliance with regulatory requirements pertaining to income tax payments and payments to the Central Provident Fund ("CPF"). NTUC Income then sought to clarify the status of the persons appointed as independent contractors. This was done by terminating the Contracts of Employment and appointing these persons as financial consultants under new financial consultant agreements ("the FC Contracts"). This was done on or about 26 March 2012.

5 The terms of the FC Contracts were negotiated between SIEU and NTUC Income and signed by

the individuals who wished to continue promoting and selling insurance policies for NTUC Income.

6 The Plaintiffs filed the present action on 20 February 2014, *ie*, almost 23 months after the FC Contracts were entered into.

7 The Plaintiffs alleged that the termination of the Contracts of Employment and the entry into the FC Contracts were done by NTUC Income in breach of an implied term of mutual trust and confidence under the Contracts of Employment. Also, these steps were procured by economic duress. The Plaintiffs alleged that they have lost various benefits which they were entitled to under the Contracts of Employment. It is not necessary for me to list out the various reliefs claimed by the Plaintiffs.

8 NTUC Income disputed the Plaintiffs' allegations and claims. It stressed that the terms of the FC Contracts were negotiated with SIEU and that the Plaintiffs are better off under the FC Contracts. It also alleged that it had settled, on behalf of the agents, tax owing to the Inland Revenue Authority of Singapore and refunded alleged CPF over-deductions it had made from General Insurance and Life commissions for a two-year period from 1 April 2010 to 31 March 2012. In short, it alleged that all issues and disputes between NTUC Income and its agents were settled or compromised with the execution of the FC Contracts. Furthermore, the agents who signed the FC Contracts have been receiving payments and benefits under such contracts for almost two years.

9 It is undisputed that cl 20.1 of the FC Contracts provides for disputes to be eventually referred to arbitration. NTUC Income relied on cl 20.1 to seek a stay of the court proceedings. This clause states:

> **20 ARBITRATION AND GOVERNING LAW**
>
> 20.1 If there is a disagreement, one party must notify the other party in a dated notice describing the nature of the disagreement. If no settlement can be reached within [2 months] through consultation, either party can make a written request to the other party that the disagreement be submitted to arbitration before an arbitrator in Singapore according to the Arbitration Rules of the Singapore International Arbitration Centre in force at that point of time. These Arbitration Rules are deemed to be part of this Agreement.

10 The Plaintiffs said that their claims are made pursuant to the Contracts of Employment and not the FC Contracts. There is no arbitration agreement in the former. However, the Plaintiffs also stressed that the FC Contracts were entered into under economic duress.

11 Section 6(1) and (2) AA states:

> **6**.—(1) Where any party to an arbitration agreement institutes any proceedings in any court against any other party to the agreement in respect of any matter which is the subject of the agreement, any party to the agreement may, at any time after appearance and before delivering any pleading or taking any other step in the proceedings, apply to that court to stay the proceedings so far as the proceedings relate to that matter.
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> (2) The court to which an application has been made in accordance with subsection (1) may, if the court is satisfied that —
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> (*a*) there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement; and

(*b*) the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration,

make an order, upon such terms as the court thinks fit, staying the proceedings so far as the proceedings relate to that matter.

12 In *Tjong Very Sumito and others v Antig Investments Pte Ltd* [2009] 4 SLR(R) 732, the Court of Appeal agreed, at [24], in the context of a different Act, *ie*, s 6 of the International Arbitration Act (Cap 143A, 2002 Rev Ed) that if it was at least arguable that the matter in dispute is the subject of the arbitration agreement, then a stay of proceedings should be ordered. I was of the view that this approach likewise applied to s 6 AA.

13 In *Silica Investors Limited v Tomolugen Holdings Limited and others* [2014] SGHC 101, it was stated at [52] and [56] that:

> 52 To determine if a matter falls within the scope of an arbitration clause, the Court must consider whether the factual allegations underlying the claim are within the scope of the arbitration clause, regardless of the legal label assigned to the claim …
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> …
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> 56 It is quite clear that the Plaintiff's claim would fall within the scope of the Arbitration Clause if it was based solely on the Share Issuance Issue and the Management Participation Issue. The fact that the other allegations do not wholly relate to the Share Sale Agreement should not detract from this conclusion. *If a sufficient part of the factual allegations underlying the claim relates to the contract, then the entire claim must be treated as falling within the arbitration clause in the contract*. …
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> [emphasis added]

14 I noted that a primary feature of the Plaintiffs' complaints is that they entered into the FC Contracts under duress. Therefore it was not open to them to suggest that the FC Contracts were totally separate from their claims. Given then that one of the Plaintiffs' claims does relate to the FC Contracts, and also that NTUC Income is arguing that the execution of the FC Contracts had settled or compromised all of the Plaintiffs' claims, it was at the very least arguable that a sufficient part of the factual allegations underlying the claims falls within the ambit of cl 20.1 of the FC Contracts.

15 Furthermore, I agreed with the submissions for NTUC Income that a mere allegation that a contract is invalid does not prevent the question of validity from being determined by an arbitral tribunal pursuant to an arbitration agreement in the contract in question because of the doctrine of separability, which is found in s 21 AA.

16 Section 21(1)–(3) AA states:

> **21**.—(1) The arbitral tribunal may rule on its own jurisdiction, including a plea that it has no jurisdiction and any objections to the existence or validity of the arbitration agreement, at any stage of the arbitral proceedings.
>
> (2) For the purpose of subsection (1), an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.

(3) A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure (as a matter of law) the invalidity of the arbitration clause.

17 I was mindful that under s 6 AA, the court has a discretion whether to order a stay of court proceedings, unlike the situation under the IAA. However, no good reason was offered by the Plaintiffs to persuade the court that it should order a stay. I was not persuaded by the Plaintiffs' argument that the Plaintiffs' claims fall within the exception of subject matter non-arbitrability.

18 The Plaintiffs argued that their original expectation under the Contracts of Employment was that their dispute with NTUC Income would be heard by the Industrial Arbitration Court ("IAC"). Having been deprived of that right because of their re-designation under the FC Contracts, their next best option to vindicate their rights lies with the courts. This was a disingenuous argument. Since their original expectation was that such disputes would go before the IAC, this was all the more reason why they should be heard by an arbitral tribunal now. They are not denied of another dispute resolution mechanism as they imply.

19 As for the Plaintiffs' argument that the disputes raise rights and liabilities under the Employment Act (Cap 91, 2009 Rev Ed) and the CPF Act (Cap 36, 2013 Rev Ed), I did not see why such disputes should not be considered by a privately appointed arbitrator.

20 Whether an offence was made out under either statute and whether any relevant authority might eventually have an interest in the disputes, as was suggested by the Plaintiffs, was a separate matter. It was not for the Plaintiffs to use the interest of any relevant authority as an excuse to avoid arbitration.