IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 104

Suit No 700 of 2020 (Registrar's Appeal No 18 of 2021)

Between

Genuine Pte Ltd

… *Appellant*

And

HSBC Bank Middle East Limited, Dubai

… *Respondent*

GROUNDS OF DECISION

[Bills of Exchange and Other Negotiable Instruments] — [Legal proceedings] — [Action]

[Civil Procedure] — [Judgments and orders] — [Setting aside judgment in default of appearance]

[Civil Procedure] — [Writ of summons] — [Service of writ in times of COVID-19]

Genuine Pte Ltd
v
HSBC Bank Middle East Ltd, Dubai

[2021] SGHC 104

General Division of the High Court — Suit No 700 of 2020 (Registrar's Appeal No 18 of 2021)
Chua Lee Ming J
10 February 2021

28 April 2021

Chua Lee Ming J:

Introduction

1 This was an appeal by the defendant, Genuine Pte Ltd., against the Assistant Registrar's decision dismissing its application to set aside a judgment entered by the plaintiff, HSBC Bank Middle East Limited, Dubai, in default of appearance by the defendant.

2 I dismissed the defendant's appeal against the Assistant Registrar's decision. The defendant has appealed against my decision.

Background facts

3 The relevant facts are simple. By way of a Facility Offer Letter dated 29 January 2018, as amended on 8 April 2019, the plaintiff extended an

uncommitted banking facility to Phoenix Global DMCC ("Phoenix").[1] The banking facility included an export cash line sub-facility, pursuant to which the plaintiff would, on acceptance of Phoenix's application, discount (among other things) bills of exchange drawn on Phoenix's customers.

The 1st Bill of Exchange

4 By way of an application dated 4 February 2020, Phoenix requested the plaintiff to, among other things, finance a bill of exchange dated 16 January 2020 for US$644,490.00 (the "1st Bill of Exchange") in connection with Phoenix's Commercial Invoice No I20-25-0100-BRRI-0035 dated 16 January 2020.[2] The 1st Bill of Exchange was drawn on the defendant. Phoenix granted the plaintiff security over, among other things, the 1st Bill of Exchange by way of pledge, charge and assignment, as security for any amounts owing to the plaintiff in connection with that application.

5 On 9 February 2020, the plaintiff discounted the 1st Bill of Exchange and credited the sum of US$639,478.24 (being the value of the 1st Bill of Exchange less interest) to Phoenix's account.[3] The defendant accepted the 1st Bill of Exchange for payment on 15 April 2020.[4]

The 2nd Bill of Exchange

6 By way of a second application dated 12 February 2020, Phoenix requested that the plaintiff to, among other things, finance a bill of exchange dated 10 February 2020 for US$3,134,924.10 (the "2nd Bill of Exchange") in connection with Phoenix's Commercial Invoice No I20-25-100-URRI-0036A.[5] The 2nd Bill of Exchange was again drawn on the defendant. Again, Phoenix granted the plaintiff security over, among other things, the 2nd Bill of Exchange

by way of pledge, charge and assignment as security for any amounts owing to the plaintiff in connection with that application.

7 On 5 March 2020, the plaintiff discounted the 2nd Bill of Exchange and credited the sum of US$3,113,349.94 (being the value of the 2nd Bill of Exchange less interest) to Phoenix's account.[6] The defendant accepted the 2nd Bill of Exchange for payment on 11 May 2020.[7]

Attempts to enforce the Bills of Exchange

8 On 16 June 2020, the plaintiff's solicitors, Rajah & Tann Singapore LLP ("R&T"), presented original copies of the Bills of Exchange to an address at One Raffles Place, #44-01A Tower One, Singapore. However, the defendant was no longer operating out of that address. In light of the defendant's failure to pay and/or honour the Bills of Exchange, the plaintiff protested the Bills of Exchange.[8]

9 On 26 June 2020, R&T sent a letter of demand to the defendant, demanding payment of the sums due under the Bills of Exchange within five days.[9] The defendant did not make payment.

10 On 4 July 2020, the defendant's representative, Mr Siddharth Shah ("Siddharth"), sent an email to R&T, in which he explained that there were set-off arrangements between Phoenix and the defendant and that, as a result of the set-off, it was Phoenix that owed the defendant monies.[10]

11 On 6 July 2020, R&T sent a second letter of demand in which the defendant was told that the plaintiff would commence formal legal proceedings against the defendant should they fail to make payment.[11] On 7 July 2020,

Siddharth sent another email to R&T, reiterating the reasons set out in his earlier email.[12]

Commencement of Suit 700 of 2020

12 The defendant did not make payment despite the two letters of demand sent to them by R&T. On 3 August 2020, the plaintiff commenced the present action against the defendant. A copy of the writ of summons was left at the defendant's registered address on 4 August 2020 and the memorandum of service was duly filed.[13]

13 Under O 12 r 4 of the Rules of Court (Cap 322, 2014 Rev Ed), the defendant had to enter an appearance within eight days after the service of the writ; it failed to do so. On 19 August 2020, the plaintiff entered judgment in default of appearance against the defendant for the sums of US$644,490.00 and US$3,134,924.10 due under the 1st and 2nd Bills of Exchange respectively (the "Default Judgment").[14]

14 On 9 October 2020, the defendant applied to set aside the Default Judgment. On 18 January 2021, the Assistant Registrar dismissed the defendant's application.

The law on setting aside default judgments

15 Under O 13 r 8 of the Rules of Court, the court may set aside a judgment that has been entered in default of appearance. It is well established that:

(a) where the default judgment sought to be set aside is a regular judgment, the test is whether the defendant can show a *prima facie* defence that raises triable or arguable issues; and

(b) where the default judgment sought to be set aside is an irregular judgment, setting aside as of right remains the starting point although the court has an unfettered discretion to decide whether this rule should be followed, *eg*, if the court is of the view that there has been no procedural injustice of such an egregious nature as to warrant setting aside the irregular default judgment as of right.

See *Mercurine Pte Ltd v Canberra Development Pte Ltd* [2008] 4 SLR(R) 907 ("*Mercurine*") at [95]–[96].

Whether the judgment was regular or irregular

16 It was not disputed that the writ was served in accordance with s 387 of the Companies Act (Cap 50, 2006 Rev Ed) by leaving a copy of the document at the defendant's registered office. It was also not disputed that the plaintiff had not breached any of the applicable rules of procedure.

17 The defendant claimed that ever since the start of Singapore's COVID-19 "Circuit Breaker" measures (the "CB Measures"), it had adopted remote work arrangements. No one was physically present at its registered office. The defendant claimed that it only discovered the service of the writ on 12 September 2020, when a director of the company returned to the defendant's office.

18 The Singapore government implemented the CB Measures to curb the spread of the COVID-19 virus. The CB Measures required residents in Singapore to stay at home save for very limited exceptions. In particular, all non-essential businesses had to stop operating from their office premises. The CB Measures were in place from 7 April to 1 June 2020 (the "CB Period").

19 It was not disputed that during the CB Period, the defendant was not allowed to operate from its office premises and had to implement fully remote work arrangements.

20 Subsequently, a gradual re-opening of the Singapore economy started. From 2 June 2020, some businesses were allowed to re-open ("Phase 1 Re-opening") and from 19 June 2020, most businesses were allowed to re-open ("Phase 2 Re-opening") although remote work arrangements remained the default.

21 It was also not disputed that the defendant's business was one of the permitted services that were allowed to operate from its office premises after the Phase 2 Re-opening.[15] However, the defendant chose to continue with fully remote work arrangements, at least until its director returned to the office on 12 September 2020. The defendant claimed that it was simply acting in accordance with a circular issued by the Ministry of Manpower, which stipulated that remote work arrangements remained the default.[16] Although remote work arrangements remained the default, it was nevertheless possible for at least one or more of the defendant's personnel or directors to return to its office from 19 June 2020 onwards.

22 The defendant submitted that even though the plaintiff had *technically* adhered to the proper procedures in serving the writ, the judgment was nevertheless irregular. The defendant relied on *Melanie Stanley and London Borough of Tower Hamlets* [2020] EWHC 1622 (QB) ("*Melanie Stanley*"), a decision of the English High Court concerning an application to set aside a judgment entered in default of appearance during the COVID-19 pandemic. There, the plaintiff had served the relevant documents on the defendant by placing them in the post on 25 March 2020. The deadline for the defendant to

acknowledge service of these documents was 9 April 2020. However, by 10 April 2020, the defendant had not acknowledged service and the plaintiff entered judgment in default of appearance against the defendant on 15 April 2020.

23 In *Melanie Stanley*, the defendant applied to set aside the default judgment and argued that the default judgment was irregular because the court papers were served when the country was put into "lockdown" (the equivalent of Singapore's CB Measures) on 25 March 2020. The defendant had closed its office premises on 23 March 2020, just two days before the "lockdown." The English High Court set aside the default judgment and explained as follows (at [34]):

> … The world shifted on its axis on 23 March 2020 and it was incumbent on [the plaintiff's solicitor] as a responsible solicitor and an officer of the court to contact the [defendant] to acknowledge that the situation had changed, and to discuss how proceedings could best and most effectively be served … I do not find that he unscrupulously took advantage of the situation, but I do find he exercised poor [judgment]. A moment's thought on his part would have shown that it was not fair or reasonable for him to simply place papers in the post to an office he knew or should have known had been closed down two days before because of a national emergency.

24 I disagreed with the defendant's submission. In my view, the Default Judgment was clearly a regular judgment.

25 *Melanie Stanley* is distinguishable on its facts. In that case, service was effected at the very start of the "lockdown" period. There was simply no way the defendant in *Melanie Stanley* could have become aware that court papers had been served on it, in time for it to acknowledge service by the applicable deadline. In the present case, service was effected about one and a half months after the Phase Two Re-opening. Although remote work arrangements remained

the default, it had become possible by then for the defendant's personnel or directors to go to the office. The defendant ought to have made arrangements for at least someone to go to its office, even if not every day, after 19 June 2020 to see if there was anything that needed attending to. This was particularly so, as the defendant knew that the plaintiff had threatened to commence action, through R&T's second letter of demand. Further, the defendant knew that the plaintiff had not accepted its explanation regarding the alleged set-off. There was no reason for the defendant to think that the plaintiff would hold its hand.

Whether there were triable or arguable issues

26 As the judgment was a regular judgment, the defendant had to show a *prima facie* defence that raised triable or arguable issues. First, the defendant submitted that it did not have to pay the plaintiff on the Bills of Exchange because it had a set-off against Phoenix. The defendant submitted that it had mutual trade relations with Phoenix, under which it sold goods to Phoenix and *vice versa*.[17] As the volume of transactions between the defendant and Phoenix was large, the defendant maintained a "running business account" with Phoenix, under which the defendant did not have to pay Phoenix.[18] According to the defendant, it signed bills of exchange under Phoenix's invoices but no payments were due and no demands for payment were made.[19] The defendant submitted that as such, no sums were due from the defendant to Phoenix under the Bills of Exchange.

27 The defendant further claimed that in fact, Phoenix owed it US$17,718,577.39, being payment made by the defendant to Phoenix for goods that the defendant had not received.[20] According to the defendant, this sum was paid to Phoenix for the purchase of goods but Phoenix had failed to deliver the

goods and as such, the defendant's debts owed to Phoenix, if any, should be set-off against this sum of US$17,718,577.39.[21]

28 I rejected the defendant's submissions. The defendant's acceptances of the Bills of Exchange were general acceptances (s 19(2) of the Bills of Exchange Act (Cap 23, 2004 Rev Ed) ("BEA")); there were no conditions attached to the defendant's acceptances. The defendant's liability as acceptor of the Bills was clear under s 54(*a*) of the BEA: by accepting the Bills, the defendant engaged that it would pay the Bills according to the tenor of its acceptances.

29 Further, the rule that a bill of exchange contract is distinct from the original and underlying contract is well established in law: *Wong Fook Heng v Amixco Asia Pte Ltd* [1992] 1 SLR(R) 654 at [15]. The alleged set-off asserted by the defendant was against Phoenix and had nothing to do with the plaintiff. The defendant had no right of set-off against the plaintiff.

30 Second, the defendant sought to rely on s 21(3) of the BEA, which states as follows:

> **Delivery**
>
> **21**.—(1) …
>
> (3) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery —
>
> (a) in order to be effectual must be made either by or under the authority of the party drawing, accepting or indorsing, as the case may be;
>
> (b) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill.

31 Section 21(3) applies as between immediate parties and to a remote party other than a holder in due course. The defendant accepted that the plaintiff was

not an "immediate party". However, it argued that the plaintiff was not a holder in due course because the plaintiff had not given valid consideration. I rejected the defendant's argument. It was wholly unmeritorious. The plaintiff provided financing to Phoenix by discounting the Bills of Exchange. Clearly, the plaintiff had given consideration for the Bills of Exchange. In my view, s 21(3) was clearly not applicable to the present case.

32 Third, the defendant alleged that the plaintiff had recovered the amounts on the Bills of Exchange because the plaintiff's proof of debt against Phoenix in Dubai had been admitted.[22] I rejected the defendant's allegation. The fact that the plaintiff's proof of debt might have been admitted did not mean that the plaintiff had received payment in full or at all. The defendant produced no evidence whatsoever to substantiate its allegation.

33 Fourth, during oral submissions, the defendant alleged that there was an arrangement between the plaintiff and Phoenix that the Bills of Exchange would not be enforced as a result of the alleged set-off arrangement that the defendant had with Phoenix. I rejected the defendant's argument. This defence was not even raised in the affidavits filed on behalf of the defendant. In any event, the defendant did not produce a single shred of evidence in support of this allegation. The defendant admitted that it had not obtained any evidence from Phoenix in this regard. It was clear that the defendant's allegation was pure speculation.

34 In the circumstances, I had no doubt that the Assistant Registrar was correct in his decision that the defendant had failed to raise any triable issues.

Conclusion

35 For the reasons set out above, I dismissed the appeal. I ordered the defendant to pay costs to the plaintiff fixed at $5,000 inclusive of disbursements.

Chua Lee Ming
Judge of the High Court

Sankar s/o Kailasa Thevar Saminathan and Tessa Low (Sterling Law Corporation) for the appellant;
Nathanael Lin and Marcus Chiang (Rajah & Tann Singapore LLP) for the respondent.

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1 1st Affidavit of Mathew Dominic ("MD 1st Affidavit"), at pp 26–50.
2 MD 1st Affidavit, at p 83.
3 MD 1st Affidavit, at para 10 and pp 128–129.
4 MD 1st Affidavit, at pp 17–18.
5 MD 1st Affidavit, at pp 139–141.
6 MD 1st Affidavit, at para 17 and pp 209–210.
7 MD 1st Affidavit, at pp 21–22.
8 MD 1st Affidavit, at pp 226–235.
9 MD 1st Affidavit, at pp 238–239.
10 1st Affidavit of Pradeepto Kumar Biswas ("PKB 1st Affidavit"), at pp 35–38.
11 MD 1st Affidavit, at pp 245–246.
12 MD 1st Affidavit, at pp 251–256.
13 MD 1st Affidavit, at p 261.
14 MD 1st Affidavit, at pp 264–265.
15 Defendant's Submissions dated 15 January 2021 ("DS"), at para 20.
16 2nd Affidavit of Pradeepto Kumar Biswas (PKB 2nd Affidavit), at para 21.
17 PKB 1st Affidavit, at paras 8–9; DS, at paras 46–47.
18 PKB 1st Affidavit, at paras 11–12; DS, at paras 49–50.
19 PKB 1st Affidavit, at para 13; DS, at para 51.
20 PKB 1st Affidavit, at para 14; DS, at para 55.

[21] PKB 1st Affidavit, at paras 14–15; DS, at paras 55–56.
[22] PKB 2nd Affidavit, at para 12; DS, at para 62.