Otto Systems Singapore Pte Ltd v Greenline-Onyx Envirotech Phils, Inc
[2006] SGHC 176

Case Number : Suit 688/2005

Decision Date : 29 September 2006

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Teh Ee-Von (Infinitus Law Corporation) for the plaintiff; Tan Kah Hin (Choo Hin & Partners) for the defendant

Parties : Otto Systems Singapore Pte Ltd — Greenline-Onyx Envirotech Phils, Inc

Evidence – Documentary evidence – Private documents – Plaintiff company and defendant company unable to agree as to exact amount owing under settlement agreement – Plaintiff applying for trial of preliminary issue of whether letter from defendant to plaintiff challenging amount of debt owing from defendant amounting to acknowledgment of debt – Whether letter containing acknowledgment of debt – Whether letter subject to without prejudice privilege and inadmissible as evidence

29 September 2006

Judith Prakash J:

1 In this action, the plaintiff had alternative claims. The first claim was based on a cheque issued by the defendant in favour of the plaintiff that had been dishonoured by non-payment. The second claim was for the sums of S$399,561.03 and DM251,976 as the amount of indebtedness that the defendant had acknowledged as being due to the plaintiff. On the first day of the trial, the plaintiff applied for the trial of a preliminary issue, namely, whether the defendant had by its solicitors' letter dated 23 May 2002 and/or other documents, acknowledged its debt to the plaintiff. I granted leave for the trial of the preliminary issue and, after hearing the parties on that issue, I granted judgment for the plaintiff in the amount claimed, interest and costs. The defendant has appealed.

Background

2 The plaintiff is a company incorporated in Singapore that is in the business of supplying waste disposal and waste management equipment and apparatus. The defendant is a company incorporated in the Philippines and it carries on the business of waste management and waste collection, transportation and disposal.

3 In 1996 and 1997, the defendant bought equipment from the plaintiff. The defendant made only partial payment for the equipment. In September 1997, the parties entered into a settlement agreement to provide for the payment of the outstanding balance due to the plaintiff ("the settlement agreement"). The defendant made several payments to the plaintiff but did not adhere to the schedule in the settlement agreement. Some time toward the end of 2000, the defendant stopped paying altogether even though there was still an outstanding balance.

4 On 18 April 2002, the plaintiff's Filipino attorneys, M/s Sycip Salazar Hernandez & Gatmaitan, made a demand on the defendant for payment. The letter stated that the outstanding balances due to the plaintiff were S$670,000 and DM66,376.52. The defendant was notified that if full settlement of the amounts demanded was not made within five days, legal proceedings would be commenced. The defendant's attorneys, M/s Puyat Jacinto & Santos, replied on 29 April 2002 to ask that a meeting be scheduled to discuss settlement of any outstanding obligation of the defendant to the plaintiff. The attorneys also said that they were reviewing the defendant's records to determine the

total amount that it had paid to the plaintiff for the equipment. On 30 April 2002, the plaintiff's attorneys rejected the request for a meeting but asked for the defendant's proposals regarding payment of the account.

5 On 23 May 2002, M/s Puyat Jacinto & Santos wrote the letter that came to be at the centre of the case. It is worthwhile quoting that letter at some length. It states:

> In the course of our review of the outstanding account of Greenline Envirotech Philippines, Inc. ("Greenline") in favour of your client, Otto Systems (S) Pte. Ltd. ("Otto Systems"), we discovered a substantial difference in amount between Greenline's and Otto System's respective accounts of the remaining balance of Greenline's obligation.
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> Thus, per your letter of 18 April 2002, the outstanding obligation of Greenline to Otto Systems to the total of S$670,000 and DEM66,376.52. On the other hand, based on Greenline's own account, its outstanding obligation to Otto Systems amounts to the total of S$399,561.03 and DEM251,976.00. For reference, we attach a copy of Greenline's Summary of Payments for the years 1998 – 2000.
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> Based on our review of the 1998-2000 payments made by Greenline to Otto Systems, it appears that the latter erroneously used the then prevailing conversion rate of the Peso to Singapore Dollar when it applied said payments to the outstanding account of Greenline.
>
> Please note that under the 12 September 1997 "Agreement for Settlement of Outstanding Accounts Receivable" between the parties, the maximum ceiling exchange rate for payments to be made by Greenline is S$1.00 to Ppeso 20.00. We attach a copy of the agreement for your easy reference.
>
> Greenline is prepared to present to Otto Systems its proposal for payment of its outstanding obligation. However, its proposal for payment is based on its account of the remaining balance of its obligation which is S$399,561.03 and DEM251,976.00.

6 The plaintiff at that stage did not accept that the amounts due were as stated by the defendant's attorneys. It replied to reassert its claim for the amounts set out in its attorneys' letter of 18 April 2002. In August 2002, the defendant's attorneys sent the plaintiff's attorneys a proposed schedule of payments. The schedule attached to this letter showed that the defendant would pay the plaintiff a total of S$407,061.03 and DM221,738.88. The plaintiff did not accept this and instead in November 2002, put forward a different schedule based on the amounts of S$407,061.03 and DM251,976. No agreement was reached on these figures either and the matter was then at an impasse.

7 This action was commenced in the Subordinate Courts in June 2004. Initially, the plaintiff's claim was for the sum of 2m Philippine pesos or its Singapore equivalent being the amount of a cheque drawn by the defendant in favour of the plaintiff on 25 May 1998. Subsequently, the action was transferred to this court and the plaintiff amended its statement of claim to include an alternative claim based on the letter of 23 May 2002. The relevant paragraphs of the amended statement of claim read:

> 12. Further, in spite of not having adhered to the Settlement Agreement, the Defendants made ad hoc payments to the Plaintiffs in an attempt to settle their outstanding debt with the Plaintiffs. As at 31 December 2000, according to the Defendants' calculations, the sum of S$399,561.03 and DEM251,976.00 remained outstanding. The Defendants had acknowledged their

debt to the Plaintiffs through their solicitors letters dated 23 May 2002 and 5 August 2002.

13. In their solicitors' letter dated 5 August 2002, the Defendants had proposed a payment scheme to repay the outstanding debt. However negotiations broke down and no further payments were made.

8 In response to these amendments, the defendant added the following paragraphs to its defence:

14 Paragraph[s] 12 and 13 of the Amended Statement of Claim are not admitted.

14[a] On 18th April 2002 the Plaintiff demanded payment for S$670,000.00 and DEM 66,376.52.

14[b] The Defendant by their solicitors' letter of 23rd May disputed the sums aforesaid, inter alia, in that the currency conversion rate under the 1997 Agreement between the parties was not applied. The Defendant's preliminary computation was S$399,561.03 and DEM 251,976 which sums were revised to S$407,061.03 and DEM 221,738.88 by way of the Defendant's solicitors' letter of 5 August 2002.

14[c] The Plaintiffs through their solicitors' letter of [18 November 2002] rejected the said letter of 5 August 2002.

14[d] The parties could not agree on any amounts and as such there was no admission to any sum or sums.

14[e] The Plaintiffs in view of the [impasse] aforesaid, re-instituted proceedings in The Philippines without success.

14[f] In any event, the sums of S$407,061.03 and DEM 221,738.88 were covered by arrangement referred to in paragraph 7 of the Amended Statement of Claim and are, accordingly, time barred.

Determination of the preliminary issue

9 Under O 33 rr 2 and 5 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed), the court has the power to order any issue arising in a cause or matter to be tried before, at or after the trial of the matter and if it appears to the court that the decision of such issue substantially disposes of the cause or the matter, the court may give such judgment as may be just. The plaintiff invoked the above provisions in support of its application to have tried as a preliminary issue, the issue whether the defendant had by its attorney's letter dated 23 May 2002 and/or other documents, acknowledged its debt to the plaintiff. The basis of the application was that a trial of the issue would result in a substantial saving of time and expenditure in respect of the trial of the action since determination of the issue was likely to be determinative of the litigation.

10 Having heard the arguments, I agreed with the plaintiff that this case was one in which it would be correct to order a trial on a preliminary issue. This was because determining the issue involved the construction of documents, in particular, the letters passing between the plaintiff's attorneys and the defendant's attorneys in 2002. The court's task in construing these documents was to decide whether they or any of them constituted an acknowledgement of debt. No oral evidence would be required to decide this question. Secondly, if the court did determine that the documents

acknowledged the defendant's liability, the plaintiff was willing to give up its alternative claim for 2m Philippine pesos and therefore none of the issues relating to that claim would need to be decided. Thirdly, the facts giving rise to the debt were not in dispute. What was in dispute was whether the amounts outstanding could still be claimed or were time barred. If the material letters or other documents relied on by the plaintiff constituted an acknowledgement of debt by the defendant, then there would be no issue of time bar in respect of the amounts so admitted.

11 Turning to the preliminary issue, the applicable principles of law were not in doubt. First, in order for an acknowledgement of debt to exist, there must be a clear admission of liability by the party who is sued. Where the admission is clear, there is no reason for the court not to grant judgment on the acknowledged sum. See *Chuan & Company Pte Ltd v Ong Soon Huat* [2003] 2 SLR 205 and *Queensland Insurance Co Ltd v Lee Brothers Organisation* [1965–1968] SLR 226.

12 Ms Teh Ee-Von, counsel for the plaintiff, submitted that based on the undisputed facts, the defendant had purchased goods from the plaintiff and had, by 1998, been unable to pay the plaintiff in full for these goods. The defendant had therefore made *ad hoc* payments to reduce the outstanding debt. When no further payments were forthcoming, the plaintiff instructed its solicitors to issue a letter of demand for S$670,000 and DM66,376.52. The reply from the defendant's solicitors in the letter of 29 April 2002 was that the defendant would like to meet the plaintiff to discuss the "settlement of any outstanding obligation". The plaintiff declined to meet but was prepared to consider any proposal for settling the outstanding account. Thereafter, the defendant's solicitors wrote the letter dated 23 May 2002 stating that according to its account, the outstanding sum was only S$399,561.03 and DM251,976 and further that the defendant would present its proposal for payment of these sums. On 5 August 2002, the defendant proposed to pay the sum of S$407,061.03 and DM221,738.88 after having, allegedly, made an adjustment for an "erroneous application of the payment amounting to" S$7,500 made in March 1999.

13 Ms Teh then went on to refer to an affidavit made by Alexander Tantoco and Ronald Salonga on behalf of the defendant in October 2002 ("the joint affidavit") wherein they had repeated that according to the defendant's records, only the sums of S$399,561.03 and DM251,976 were owing by it. Ms Teh further pointed out that in its amended defence, the defendant had also stated that its preliminary computation of the amounts owing was S$399,561.03 and DM251,976 and that those sums had been revised to S$407,061.03 and DM221,738.88.

14 On the above basis, Ms Teh submitted that the defendant's admission was unmistakable, clear and unequivocal. Whilst it was true that the plaintiff had never agreed that the amount that the defendant had put forward was the actual amount owing, that did not mean that the defendant had not admitted its debt to the plaintiff.

15 In response, counsel for the defendant, Mr Tan Kah Hin, first cited the observation from *Carabao Exports Pty Ltd v Online Management Consultants Sdn Bhd* [1988] 3 MLJ 271 to the effect that an admission must be a clear admission of all, and not simply evidence of some, of the facts upon which the plaintiff would have to rely to establish his cause of action. He then referred to *Ruby Investment (Pte) Ltd v Candipark Pte Ltd* [1989] SLR 815 where a distinction was made (at 821, [30]) between informal admissions and formal admissions in pleadings and it was observed that a party could subsequently seek to explain away or contradict such informal admissions.

16 Mr Tan therefore submitted that I had to construe the letter of 23 May 2002 in the context of the parties' relationship and the fact that this had come after various criminal complaints that the plaintiff had made against the defendant and which had been withdrawn when the defendant had

agreed to make instalment payments. Subsequently, formal proceedings were restarted when the plaintiff's Filipino attorneys had sent their letter of demand of 18 April 2002. The letter of 23 May 2002 was basically, Mr Tan said, no more than a statement of accounts according to the defendant's records. It referred to the exchange rate in respect of the Singapore dollar *vis-à-vis* the Philippine pesos which the parties had agreed on in the settlement agreement and it became clear from the subsequent correspondence that the plaintiff was not accepting this calculation. The position of the plaintiff was that the exchange rate in that agreement had only been applicable in certain circumstances and that it was no longer applicable. Therefore, there was an issue on the amount due. Mr Tan argued that as the parties could not agree on the exchange rate, then, obviously, they were not in congruence as to the whole way of looking at the amount of the debt. If the plaintiff had accepted the suggested figure of the defendant, that would have been all right. The plaintiff had, however, not done so. The plaintiff had then asked the defendant to admit the plaintiff's figure but the defendant did not do so. Subsequently, when the action was commenced in June 2004, it was based solely on the one dishonoured cheque that was not time barred. It was only in March 2006 that the pleadings were amended to bring in the defendant's attorneys' letter of 23 May 2002. In the exchange of correspondence that followed, no amount was agreed upon. That exchange of correspondence was a negotiation to prevent the plaintiff from proceeding with the criminal action which it had started against the defendant in 1998 and its aim was to reach a compromise to avoid litigation rather than to make an admission.

17 When this submission was made, I pointed out to Mr Tan that none of the correspondence was marked "without prejudice". Mr Tan then relied on the case of *Rush & Tompkins Ltd v Greater London Council* [1989] AC 1280 for the proposition that the without prejudice rule applied to exclude all negotiations genuinely aimed at settlement from being given in evidence and that the application of the rule was not dependent on the use of the phrase "without prejudice". It ruled, further, that if it was clear from the surrounding circumstances that the parties were seeking to compromise the action, evidence of the content of those negotiations would, as a general rule, not be admissible at the trial. Mr Tan therefore submitted that I could not rely on the letters cited by the plaintiff.

18 I rejected that argument. In my view, the propositions set out in the above cited case were not applicable to a situation where the correspondence containing the admission had been pleaded in the statement of claim and the defendant, far from applying to strike it out of the statement of claim, had then referred to it himself in the defence. By so doing, the defendant would have waived any right to claim that the correspondence was without prejudice. Further, in this case the letter in question was, at the start of the hearing, part of the plaintiff's bundle of documents and the defendant had agreed to its inclusion in that bundle. It was also included as part of the defendant's own bundle filed on 21 June 2006, albeit, as an exhibit to the joint affidavit filed in legal proceedings in the Philippines. In the circumstances, there was no basis for the defendant at this late stage to claim the privilege of "without prejudice" status for the 23 May 2002 letter.

19 Mr Tan then applied orally for leave to amend his defence to withdraw the reference to the correspondence. He informed me that he had been advised by the defendant's lawyers in the Philippines the previous night that correspondence in the Philippines is usually not marked "without prejudice" because under the rules of court in the Philippines, any correspondence entered into to negotiate a settlement is automatically not admissible in court. In this case, the exchange of correspondence had been undertaken to avoid criminal proceedings against the defendant and its officers in the Philippines and therefore the correspondence between the two sets of Filipino lawyers was covered by the rules of court cited. I rejected this application to further amend the defence. The plaintiff had amended its statement of claim to refer to the correspondence on 6 March 2006. Three weeks later, on 30 March 2006, the defendant had amended its own defence and, having referred to the letter of 23 May 2002, had stated why that letter should not be regarded as an admission. The

defendant had all along been advised by Filipino lawyers and had had ample opportunity to get advice from them on the admissibility of the correspondence. That was not done. Even at the time that Mr Tan made his oral application before me, he had no evidence from a Filipino lawyer by way of affidavit that what he was saying to me was in fact the law of the Philippines. I was not disposed to allow an application that came so late in the day and appeared to be a desperate attempt to save an impossible position. Filipino law was a matter of fact which had to be proved. I could not take judicial cognisance of it and there was no evidence before me that the foreign law was as recounted by Mr Tan and that, even in the circumstances that had occurred in this case, the correspondence would not be admitted in a Filipino court. In any case, there was no evidence that privilege was absolute and could not be waived in the Philippines or that the circumstances here would not and could not constitute such a waiver.

20 I was also impressed by Ms Teh's argument in reply that the amendment applied for would not save the defendant's case because even if the letter of 23 May 2002 was not admissible, the defendant had made part payments which had led to a time extension and had also made admission in other documents including the affidavit filed by Mr Albert dela Fuente, the vice president of the defendant, in these proceedings. Even in the defendant's opening statement, the defendant had agreed that it owed a sum of money to the plaintiff for products supplied to the defendant, and when this was read together with the affidavit of Albert dela Fuente that stated that whilst the plaintiff had demanded S$670,000 and DM66,376.52, the defendant had found the balance to stand at S$399,561.03 and DM251,976, there was definitely an admission of the debt. This could be inferred despite Mr dela Fuente's claim that no admission existed because the plaintiff had not accepted the defendant's figures.

21 I therefore allowed the preliminary issue to be tried. I found for the plaintiff on the preliminary issue. I accepted the plaintiff's arguments that the defendant had by the letter of 23 May 2002 and by the joint affidavit admitted its debts to the plaintiff in the amounts stated. In my judgment, the admission was unmistakable, clear and unequivocable. It was an admission made after the defendant's records had been checked and the terms of the settlement agreement looked at for the purpose of obtaining the applicable exchange rate. Adding to the weight of the letter was the fact that it had been written by attorneys who had the ostensible (if not actual) authority to represent the defendant. The defendant was bound by that letter. The admission was further strengthened by the statement made in the joint affidavit filed in October 2002 that those same figures represented, in the defendant's own accounting of its obligations to the plaintiff, the remaining balance of its obligations. I was, accordingly, satisfied that the plaintiff had proved its case and the defendant had no defence to the claim for those amounts.